

CWP Nos.26006 & 26227 of 2016

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) **CWP No.26006 of 2016**
Date of decision:11.05.2017

Chandan Kumar and others ...Petitioners

Versus

The State of Haryana and others ...Respondents

(2) **CWP No.26227 of 2016**
Date of decision:11.05.2017

Naveen Kumar and others ...Petitioners

Versus

The State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Tarunveer Vashist, Advocate,
for the petitioner(s).

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana, and
Ms. Tanish Peshawaria, DAG, Haryana.

Mr. Pankaj Chugh, Advocate, for respondent no.3.

Mr. Fateh Saini, Advocate,
for respondent no.4 in CWP No.26006 of 2016.

Mr. K.K.Saini, Advocate,
for respondent no.4 in CWP No.26227 of 2016.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two petitions bearing CWP No.26006 of 2016 (hereinafter referred to as the “first petition”) and CWP No.26227 of 2016 (hereinafter referred to as the “second petition”) as the issue involved in both the cases is the same. However, for the sake of convenience, the facts are being extracted from the first petition.

At the threshold, counsel for the petitioners has submitted that the

first petition is being pressed only on behalf of petitioners no.1 to 8, 11 and 12, meaning thereby counsel for the petitioners does not want to press the first petition on behalf of petitioners no.9, 10 and 13 to 19 and as such, this petition on their behalf is dismissed as not pressed.

In short, petitioners no.1 and 2 are the students of 3rd semester and all other remaining petitioners are the students of 1st semester of the Diploma in Engineering in the Kalpi Institute of Technology, Ambala Jagadhri Road, District Ambala (hereinafter referred to as the “respondent-institute”). They were allegedly admitted by the respondent-institute before the cut off date, i.e. 15.08.2016, for the academic session 2016-2017. Since the cut off date, i.e. 15.08.2016, was a holiday being the Independence Day, the admission process was spilled over to the next working day i.e. 16.08.2016. The respondent-institute uploaded details of the admitted students on the web portal of the Haryana State Technical Education Society (hereinafter referred to as the “respondent no.3-society”). In the said list, names of the petitioners were conspicuously absent and instead of their names, the blank spaces were filled up with various English alphabets and their place of residence was shown mostly of Roorki, Uttrakhand. A public notice was issued by respondent no.3-society, informing all the concerned universities/institutions of the State that the State Government has allowed editing/correction/updation of record of students who had been admitted in UG/PG/Diploma courses upto 15.08.2016. The conditions laid down in the said public notice read as under:-

“All the concerned universities/institutions of the State are hereby informed that State Govt. has allowed editing/correction/updation of record of students who had been admitted in UG/PG/Diploma courses upto 15.08.2016 with the following stipulations:

1. The concerned University/Institute shall submit an Affidavit to the effect that:

- i. All the admissions have been made by the institute upto last cut-off date of admissions i.e. 15.08.2016.
- ii. The University/Institute has complied the orders of Hon'ble Supreme Court passed in Civil Appeal No.9048 of 2012 (Parshavanath Charitable Trust & Ors. Vs AICTE & Ors.) and the University/Institute shall be responsible for the legal consequences and claim of candidate whatsoever in this regard.
- iii. The University/Institute has verified the authenticity of all the required certificates of the candidates for the purpose of admission in the University/Institute and accordingly the responsibility of authenticity of all the details being submitted to HSTES lies with the University/Institute.

2. The concerned University/Institute shall submit the list of students duly signed by Head of the Institution for editing/correction/updation of records with all the details required for updation (Name, F/M Name, DOB, Percentage of Qualifying Examination, Category etc. along with copy of Fee Receipt and soft copy of photograph & signature of the students admitted upto 15.08.2016) through e-mail only at jdhs@hry.nic.in to HSTES upto 21.11.2016 keeping in view that total number of admissions shall not exceed the number of actual admissions already updated on the Portal.

3. It is clarified that the Universities/Institutes shall, under no circumstances, be allowed to substitute fresh name/candidate in the place of names/candidates already admitted and updated on the web portal of HSTES prior to the last cut off date of updation i.e. 16.08.2016.

4. The University/Institute shall not be allowed to submit the list in piece-meals rather the same can be submitted only once and strictly upto 05:00 PM on 21.11.2016. It is further clarified that the University(ies)/Institute(s) who have earlier made requests to the HSTES regarding correction in the record of admitted students, shall also submit a fresh and complete list.

5. Only those institutions will be considered who have

submitted affidavit as mentioned at S. No.1. Only the data/list for editing/correction/updation of records which is received by HSTES through e-mail by the stipulated date line will be considered.”

It is alleged that the respondent-institute sent the list of the admitted students mentioning names of the present petitioners as well to the respondent no.3-society but despite that, the official respondents did not permit the petitioners to take their exams, as a result of which the present petition has been filed for seeking a direction to the respondent no.3-society to register names of the petitioners and to permit them to appear in the examination.

At the time of issuance of notice of motion on 14.12.2016, this Court directed respondents no.2 and 3 to issue admit cards but it was made purely provisional making it clear that the petitioners would not claim any equity later on if it is found that they were admitted after the cut off date and the statement made in the Court was incorrect.

This petition is basically contested by respondents no.1 to 3 who have filed their joint written statement, in which it is averred that the petitioners have not approached this Court with clean hands and have suppressed the material facts. It is further averred that the AICTE has issued guidelines on the basis of the judgment rendered by the Supreme Court in the case of **Parshavanath Charitable Trust & Ors. vs. AICTE & Ors.**, 2013(1) JT 557 that the last date for admission shall be 15.08.2016 and the institute(s) were directed to upload detail of the students admitted on the web portal of the respondent no.3-society upto mid night of 16.08.2016 and not upto 21.11.2016. The date of 21.11.2016 was given in case of correction in the data (spelling of students name, fathers name, date of birth, gender, category, course and branch) uploaded upto 16.08.2016. It is also averred that names of the

petitioners did not figure in the list submitted by the respondent-institute on 16.08.2016 and, therefore, their admissions could not be registered and they were not permitted to take the examinations as well.

The respondents have referred to Clause 7 of the prospectus relating to Post Counselling Instructions for the institutes, in which Clause 7(c) provides that *“all admissions by institutes including institute level admissions are to be updated/reported online, as and when they report/admit the candidates. No permission of any kind would be provided for admitting students, if not reported online as per key-dates/Schedule. The online reported candidates for centralized as well as institute level admissions would only be forwarded online to the HSBTE”*. It was further made clear in the public notice that the correction shall be made only in the list which was uploaded upto 16.08.2016 on the portal of respondent no.3-society and no fresh name can be added/replaced/substituted. It is also averred in the reply with reference to the instructions contained in the public notice that *“it is clarified that the Universities/Institutes shall, under no circumstances, be allowed to substitute fresh name/candidate in the place of names/candidates already admitted and updated on the web portal of HSTES prior to the last cut off date of up-dation i.e. 16.08.2016”*.

In the second petition, there are three petitioners who were admitted by respondent no.4, i.e. Delhi Institute of Technology and Management, Gaur, Sonapat. The petitioners in this case are the students of 1st semester of the Diploma in Engineering. Their case is also that they have been admitted before the cut off date, i.e. 15.08.2016, but they have not been permitted to appear in the examination. In the second petition also, an interim

order was passed by this Court on 17.12.2016.

In this case, the same stand has been taken by respondents no.1 to 3 but the respondent no.4-institution has alleged that it had uploaded list of the students admitted till 15.08.2016 and the information was separately sent. Respondent no.4 has also filed an additional affidavit of Manoj Gaur, Administrative Officer of respondent no.4-institute along with photostat copies of the receipt etc. in order to show that the petitioners were given admission before 15.08.2016.

In the first petition, counsel for the respondent-institute has orally submitted that the petitioners were admitted before 15.08.2016 but due to inadvertence, their names could not be mentioned at the time when the information was uploaded on the web portal of respondent no.3-society but in the reply filed, no such averment has been made.

In the second petition, counsel for respondents no.1 to 3 has submitted that the respondent no.4-institute might have sent the information, as stated, but in the list uploaded on the web portal on 16.08.2016, names of the petitioners did not figure at all. It is, thus, submitted that according to them, these petitioners were not given admission before the cut off date and have been given admission after the cut off date and the error committed by them is tried to be corrected by taking the plea that the information regarding admission was otherwise sent to the respondent no.3-society.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The issue involved in this case is as to whether the admission of the petitioners given by respondent no.4 in their institute is before 15.08.2016

or after the cut off date?

It is not disputed that the admissions were given by the respondent-institute to the students before 15.08.2016 of the year concerned, as has been stipulated by the Supreme Court in **Parshavanath Charitable Trust's case (supra)**. There is also no dispute that if the information could not be uploaded on the web portal of respondent no.3-society upto 15.08.2016, being holiday, then the said information was to be uploaded by mid night of 16.08.2016. The respondent-institute had uploaded the information on the web portal of respondent no.3-society upto 16.08.2016 but in the said information, the names of the petitioners were not there rather the blanks were filled up by various English alphabets. The petitioners have tried to set up a case on the basis of the public notice, by which the State Government had allowed editing/correction/updation of the record of students who have been admitted in UG/PG/Diploma course but in the said public notice, it was specifically clarified that the universities/institutions shall not, under no circumstances, be allowed to substitute fresh name/candidate in the place of names/candidates already admitted and updated on the web portal of HSTES prior to the cut off date of updation i.e. 16.08.2016. It has been specifically clarified that the said notice was given for the purpose of correction in data (name, father's name, date of birth, percentage of qualifying examination, category etc.) of the students whose names have already been uploaded on the web portal upto 16.08.2016 but it does not mean that the respondent-institute, for the first time, can give information to the respondent no.3-society upto 21.11.2016 about the credentials of the students who have been admitted before the cut off date i.e. 15.08.2016. Therefore, the respondent-institution cannot take advantage of the

public notice since no information was given about the petitioners at the time when the list of admitted students was uploaded on the web portal on 16.08.2016, therefore, it can be safely imagined and presumed that the petitioners were not admitted before the cut off date, i.e. 15.08.2016, and the respondent-institute is solely responsible for giving admission to the petitioners after the cut off date.

Thus, it is the fault of the respondent-institute, who, under the greed of filling up their vacant seats, might have given admission to the petitioners after the cut off date by keeping them in dark and, thus, they not only played with their career but also extracted money from them and now they are trying to take advantage of the public notice which was not meant for this purpose.

Similar is the position in the second petition, in which respondent no.4-institute cannot improve its case by filing additional affidavit because at the time when the information was uploaded on the web portal on 16.08.2016, names of the petitioners were conspicuously absent therefrom and, therefore, their names cannot be introduced for the first time upto 21.11.2016 as the said public notice was issued by the State Government only for editing/correction/updation of the details of the students whose names have already been uploaded on the web portal upto mid night of 16.08.2016.

In view of the aforesaid facts and circumstances, I do not find any merit in both the petitions and hence, the same are hereby dismissed. However, since the petitioners have been duped by their respective institutions by giving them admission after the cut off date, for their own benefit, therefore, the respondent no.4-institution in both the cases are directed to pay ₹50,000/-

to each of the petitioners as costs and shall also refund their admission and tuition fee, within a period of one month from the date of receipt of certified copy of this order.

Before parting, it is also ordered that the petitioners, who have been cheated by respondent no.4-institution in both the cases, may register a criminal case against the Principal and Members of the Managing Committee of their respective institution(s).

May 11, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No