

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP no. 15516 of 2018 (O&M)

Date of Decision : 26.07.2018

Vishal Chhabra

....Petitioner(s)

Versus

Union of India and another

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER  
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU

Present : Mr.Chandeep Singh, Advocate for the petitioner(s)

Mr.N.K.Vashisht, Advocate for respondent

**MAHESH GROVER, J.(ORAL)**

The petitioner has filed the instant petition for issuance of a writ in the nature of mandamus directing the respondents to consider his candidature for admission to the course of M.D.S by lowering the percentile than the one prescribed in the prospectus. The admitted facts are that the petitioner is an aspirant to the M.D.S course and applied for admission in the Post Graduate Institute of Medical Science and Education Research, Chandigarh (hereinafter referred to as the 'PGIMER'). Concededly the petitioner is short of the prescribed percentile of 50%.

The grievance of the petitioner is that the seats are lying vacant and the PGIMER should lower the percentile in order to utilize the seats. In support of his plea, he has referred to the notification issued by the Central Government dated 14.3.2018 extracted herebelow:-

“No. DE-87(1) 2018 – In exercise of the powers

conferred by Section 20 of the Dentists Act, 1948, the Dental

Council of India, with the previous sanction of the Central Government, hereby makes the following Amendment to the Principle Dental Council of India, Master of Dental Surgery Course Regulations, 2017, published in Part III, Section 4 of the Gazette of India, Extraordinary, dated 05<sup>th</sup> September, 2017 namely:-

1. xxx
2. The following proviso be substituted with the existing second proviso in Regulations 7(1) of the principle “Dental Council of India, Master of Dental Surgery Course Regulations, 2017” as under:-

Provided further that when the number of qualifying candidates in the respective categories on the basis of the above mentioned percentile are less than three times the number of vacancies, the cut-off percentile will be automatically lowered in such a manner than the number of eligible candidates shall be minimum three times the number of seats in each respective category.”

It is argued that denial of admission to the petitioner without attempting to fill all the seats by lowering the cut off percentile as per the afore-extracted proviso has seriously prejudiced his case, besides, rendering the action of the respondents illegal and contrary to the notification dated 14.3.2018.

The respondent no.2 has filed its reply and has stated that the

whereas the PGIMER is an autonomous body where they conduct their own examination for admission to the Post Graduate courses.

The petitioner has not filed any counter affidavit to refute this fact. During the course of arguments, the petitioner has placed reliance on a judgment of this Court in **Dr. Lal Sanga vs. Post Graduate Institute of Medical Science and Education Research, Chandigarh and another** reported as 1990(5) SLR 701 wherein in para 12 it has been observed as follows:-

“12. The Institute Body is empowered to make statutory regulations to streamline admissions of the candidates to different courses in the Institute. It may provide for disqualification or expulsion of students for any misconduct committed by him. We called upon Mr. D. S. Nehra, Sr. Advocate, learned counsel for the respondents to furnish information whether the booklet of information regarding post graduate and postdoctoral courses has been issued by the Institute Body in exercise of its power to make regulations. He has made a statement at the Bar that P.G.I. has not framed any statutory regulations to deal with the punishment to be awarded to the students. It is thus clear that booklet has not got the status of a regulation. Therefore, it cannot be considered a regulation made by the Institute Body. Every "University makes statutory ordinances to regulate the imposition of penalty of disqualification from appearing in the examinations or expulsion from the

University. A detailed procedure is laid down for consideration of such cases by the Standing Committee of the University. The Standing Committee holds proper enquiries and give full opportunity to defend to the candidates. For illustration Panjab University Calendar Volume II 1984 Chapter 2 contains such a detailed procedure, for imposition of any punishment on a candidate. No punishment can be awarded to a candidate merely by the executive instruction. Punishment of removal of the name of a candidate from the rolls of the institute or to declare him not eligible to appear in the examination or disqualifying him from any future selection in the Institute are the serious punishments. Before imposition of such punishments, the power must be conferred by some law on the Director and a procedure must be laid down by law before punishment is inflicted upon a candidate. ”

Learned counsel for the petitioner contends that the prospectus does not have the sanction of law as it does not flow from the institute's power to make regulations.

We would reject this contention for two reasons; first there is no assertion by the petitioner in this regard and consequently, the judgment is distinguishable on the facts of the case in the Lal Sanga's case (supra) where the Court was dealing with issue of punishment to be awarded to a student and in the absence of any statutory regulations the action of the PGIMER

was held to be bad.

Learned counsel for the petitioner then placed reliance on a judgment of the Hon'ble Supreme Court reported as 1995 (3) JT 136 titled as **State of Tamil Nadu vs. Adhiyaman Edu. & Research Institute** with reference to an extract of para 43 which we set down herebelow:-

“43. What emerges from the above discussion is as follows:-

[i] xxxx

[ii] xxxx

[iii] xxxx

[iv] xxxx

[v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

[vi] However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or

requirement laid down by them, although\_ it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally.

Similarly, reliance has been placed on a judgment of the Hon'ble Supreme Court titled as **Dr. Ambesh Kumar vs. Principal, LLRM Medical College, Meerut and others** reported as 1986 (suppl) SCC 543 with reference to para 25 in particular a portion that we extract herebelow:-

“25. xxxxxxxx It is pertinent to mention in this connection that the number of seats allotted to each of the prescribed courses is on the basis of two seats per professor and there is a crying necessity in the State for more experts in various disciplines in Medicine and Surgery etc. It is incumbent on the State Government to see that all these seats earmarked for each of these disciplines or courses are filled up. It appears from Annexure D to the petition in C.A. No. 6119 of 1983 that quite a considerable number of seats in various disciplines were kept vacant as the applicants did not fulfil the eligibility qualification framed by the State Government by its aforesaid order and as a result several Professors and Assistant Professors who are meant for imparting teaching in these disciplines were kept idle though a considerable fund had to be expended for meeting their emoluments. It is for the State to consider and to see that the seats are filled up in all the disciplines and they are not left vacant in spite of a large number of

applicants applying for admission in the various disciplines and the State Government has to evolve such criteria of eligibility that all the seats in different M.D., M.S. degree and diploma courses are filled up.”

Both these judgments do not come to the rescue of the petitioner for the simple reason that no clear mandate has been given in them to mop up the left over seats by lowering the bar of merit. Rather we are convinced that no institute ought to be permitted to lower the bar of merit to enable an aspirant who falls short of standards. We are also of the opinion that Court should not be seen lending their weight to an exercise of enabling non-meritorious aspirants to a course. The observations made by the Hon'ble Supreme Court only expresses a desirability of mopping up as much human resource as possible considering the circumstances that manifest themselves in those judgments which of course are not applicable in the present case. In any eventuality, these are issues for the institute to decide as to whether they would like to admit candidates with lesser merit than the one prescribed by them. We, therefore, do not see any case made out by the petitioner which would persuade us to bind the respondents to a mandate from the Court.

No ground to interfere is made out.

Hence, dismissed.

**(Mahesh Grover)**  
**Judge**

26.07.2018

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Whether speaking/reasoned

Whether reportable

**(Mahabir Singh Sindhu)**  
**Judge**

Yes/No

Yes/No