

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

1. CWP no.15944 of 2018 (O&M)

Bani Suri and another

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

2. CWP no.16611 of 2018 (O&M)

Isha Gupta

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

3. CWP no.16736 of 2018 (O&M)

Abhinav Garg

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

4. CWP no.17316 of 2018 (O&M)

Niharika Dhawan

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

5. CWP no.19670 of 2018 (O&M)

Jatinderbeer Kaur

....Petitioner(s)

Versus

**CWP no.15944 of 2018 (O&M)  
and connected cases**

**2**

State of Punjab and others

...Respondent(s)

**Date of Decision : 23.08.2018**

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

Present:- Mr. D.S.Patwalia, Sr. Advocate with  
Mr. Kannan Malik, Advocate  
Mr. Gurminder Singh, Sr. Advocate with  
Ms. Harpriya Khaneka, Advocate  
Mr. Rajiv Joshi, Advocate  
Mr. Ramandeep, Advocate  
for petitioners

Mr. Suveer Sheokand, Addl. AG, Punjab

Mr. Anupam Gupta, Sr. Advocate with  
Mr. Ashish Rawal and  
Ms. Gurneet Sagoo, Advocates for University

Mr. Sehar Sandhu, Advocate for  
Mr. B.B.S.Sobti, Advocate

Mr. P.S.Khurana, Advocate

Mr. K.K.Goel, Advocate

**MAHESH GROVER, J.**

**CM no. 11373-CWP of 2018 in CWP no.15944 of 2018**

Allowed as prayed for.

**Main cases**

Reply by way of affidavit of Dr. Avnish Kumar, Director  
Research & Medical Education, Punjab on behalf of respondents no. 1, 2, 7  
and 8 (in CWP no. 19670 of 2018) has been filed in the Court today and the  
same is taken on record. A copy thereof has been supplied to the counsel  
opposite.

By this order we will dispose of five civil writ petitions bearing

CWP nos.15944, 16611, 16736, 17316 and 19670 of 2018 as they have raised common questions based on similar facts.

A prayer has been made in these petitions to issue a writ in the nature of Certiorari quashing clause 17 of the notification dated 6.2.2018 as even though 1% quota has been provided for categories enumerated therein yet in the matter of implementation the said quota is defeated.

For the purposes of reference clause 16 and 17 which petitioners find offensive, as reflected in the prospectus, are extracted herebelow:-

**“16. Reservation in Government Medical/Dental Colleges:**

The reservation for the State quota seats in Government institutes in various categories for admission to the Undergraduate courses in Government Medical/Dental Institutes shall be as under:-

- (i) xxxx
- (ii) xxxx
- (iii) xxxx
- (iv) xxxx
- (v) Sports Persons 1%

Credit shall be given only for the sports achievements made during class XI and XII. The admission shall be made on the basis of inter-se merit of the candidates determined on the basis of gradation (Category A/B/C) issued by the Director of Sports, Punjab. However, for exempted categories under para 12 of this Notification, the competent authority will be Director, Sports of that State or U.T from where the candidate has passed his class XI and XII examinations.

- (vi) Children/Grandchildren of terrorist affected persons 1%

(vii) to (ix) xxxxxx

17. Admission to Private Institutes

i) The distribution of seats in Private Medical/Dental Institutions shall be:

|                                 |                               |
|---------------------------------|-------------------------------|
| Government quota seats          | 50%                           |
| Management/Minority quota seats | 50% (including 15% NRI quota) |

ii) Reservation in Private Institutes (for Government/Management quota seats) shall be as under:

|                                                             |     |
|-------------------------------------------------------------|-----|
| a) Scheduled caste                                          | 25% |
| b) Backward classes                                         | 10% |
| c) Physically handicapped/orthopedically handicapped        | 3%  |
| d) Migrants from Jammu & Kashmir due to terrorist violence” | 1%  |

A two fold grievance has been made by the petitioners; (i) that reservation in Government Medical/Dental colleges contemplates 1% quota for sports persons and 1% for children and grandchildren of terrorists affected persons but the same are not applicable in private institutes, even though the admission process is routed through the Government and is largely centralized. (ii) that the Government has prescribed a roster system to fill up the seats for the intended reservations as provided in the notification and termed as “Micro Reservation”, which if worked in the manner adopted by the State renders the reservations for the seats illusory.

In so far as first grievance is concerned, learned counsel for the petitioners contend that denial of such reservation in private institutes would be discriminatory and hit by Article 14 of the Constitution of India. While in so far as second grievance is concerned there would have been no grouse

so far as application of the roster system is concerned but what is objectionable is the manner in which it is done resulting in defeating the “micro reservation” altogether.

We deem it appropriate to mention here that the dispute does not pertain to the entire seats in the State quota though filled up on a roster point but is limited only to those seats which fall vacant after All India counselling to revert to the State quota which are then also filled up by the State as per the roster system by treating it separately from the allocated Government seats which incidentally number 425 in all.

For example and as a matter of fact 23 seats have fallen to the share of the State from the left over All India quota seats. The State in order to effect the roster has filled up the 425 seats on 1 to 100 roster points for each 100 and applied the same principle to the seats that have come from the All India quota.

The petitioners in turn interpret this to be arbitrary and designed to defeat the reservation altogether and according to them the procedure that needs to be adopted is such that adds continuity to the filled up seats. For example if 425 seats were filled up in previous year, the roster ought to be taken from 426 onwards and carried forward. Similarly, if 23 seats had fallen vacant in the previous year they ought to be added to 425 to take the tally to 448 and for the ensuing session starting point for the roster would be 449.

State of Punjab has not added its own explanation and left it to the University to explain its stand, which it has and it is relevant to set it out through the relevant paragraphs justifying the course adopted by them:-

“The 100 point roster for Medical/Dental Colleges is prepared separately. The total seats for MBBS under State quota for session 2018 are 425 seats and for BDS course there are 68 seats. It is important to submit here that the seats of MBBS and BDS are not clubbed together for the admission purposes. A copy of the distribution of seats of MBBS Course for academic session 2018 is attached as Annexure R-4/3.

It is pertinent to mention here that as per past practice in preceding years the seats of State Govt. Medical Colleges were allocated as per percentage of reservation shown in the Prospectus which arises fraction of seats, thus seats were allocated rotation wise in the State Govt. Medical College with respect to micro reservation of 08 categories i.e 1% each as described in the preceding paras above. By this method the calculated seats were not uniform in subsequent years in respective medical colleges and the uncertainty among the candidates was prevailing. To overcome this situation it was decided to apply combined Hundred Point Roster within which micro reservation of 08 categories i.e total 8% was fixed from point no.51, 57, 63, 69, 75, 81, 87, 93 in equal intervals of 6 points in 8 almost equal blocks (i.e 50/8) in the same hierarchy as depicted in the Punjab Govt. Notification. By this method, all the micro

reservations were allotted a fixed point and in every year it shall be distributed uniformly and after fourth year, automatically seat shall be increased in the respective college according to their roster point as per the current seat distribution. By this method, the manual error and any malpractice shall be eliminated, which was the intention behind starting the hundred point roster.

If the surrendered/reverted seats of All India Quota are considered in subsequent points in the running roster then it may affect the percentage of reservation in midway of the counselling then again in the current year, the number of the seats in the micro reservation shall increase as compared to the original distribution at the start of the counselling. It is pertinent to mention here that the reverted seats from All India are added in the second round of the counselling. Thus practically it will again create the situation of non uniform pattern of the seats distribution in the micro reservation. For example, if the reverted seats (23) of the last year included in the running roster, then the reservation in the backward area, border area, sports and terrorist affected would have increased by 1 each in the same year contrary to the original seat distribution at the start of counselling. This uncertainty becomes more important when the parallel rounds of the counselling are going on in All India

counselling. The candidates who select a seat in the second round of the State or All India counselling becomes not eligible anywhere. Thus, if these seats are added in between the running roster then the uncertainty over the seat selection becomes more.

To avoid this confusion, it was decided to prepare the separate hundred point roster for the reverted/ surrendered seats of All India Quota on the same pattern as for the original roster at the start of counselling for the state quota seats. Moreover, it is important that the total seats of the state are constant and the reverted seats from All India be vary from nil to maximum in any year. Thus including them in the running roster will disturb the seat distribution for all types of reservation for the current year as well as subsequent years.”

Learned counsel for the petitioners then refer to the decision taken by the University itself on 12.7.2017, the relevant of which is reproduced below:-

“In the meeting, issues regarding distribution of seats received vide Letter No.18518 dated 7.7.2017 of Registrar, BFUHS, Faridkot and starting roster point were considered. This distribution was prepared by the University after consulting the Principals of all the Institutes, wherein seats of Government Medical College, Patiala and Guru Gobind Singh Medical College,

Faridkot started from Roster point 51. Roster for Govt. Dental College, Patiala & Amritsar have been started from Sr. No. 31 & 81. Similarly, Roster of management quota of private institutes were started from different points.

XXXX

Those All India Quota seats which would be surrendered/ reverted to the state by Director General Health Science, New Delhi would be included as per ongoing point of combined roster of Government Colleges.”

It is contended that once the University itself has taken a decision any contrary procedure adopted would reflect arbitrariness, particularly, when a subsequent decision of the University deviates from the decision of 12.7.2017. Reference has been made to a writ petition bearing W.P.(civil) no. 267 of 2017 titled as **Dar-Us-Slam Educational Trust and others vs. Medical Council of India and others** decided on 9.5.2017, which in any case has no relevance and does not mandate that the University adopts a particular procedure to fill up the left over seats and what is said by the Hon'ble Supreme Court in para 7 of the afore-stated judgment is that the State Government shall conduct manual counselling for allotment of seats after ascertaining the number of seats that remain vacant after the counselling. It would be prudent to extract para 7 of the aforesaid judgment as below:-

“7. In order to ascertain the number of

seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counselling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.”

The respondents-University in response to this has referred to a decision taken on 17/18-8-2017 wherein in para 4 and 5 they have given reasons that if vacant seats of All India quota are included in running roster, reservation shall be disturbed as there shall be a mismatch of reservation between the State of Punjab and All India. For the purposes of reference, we may extract para 4 and 5 of decision dated 17-8-2017:-

“4. It is apprised that the meeting for finalization of distribution of seats and maintenance of Roster for admission to MBBS/BDS Course, session 2017 was held on 12.7.2018 at your good office wherein it was decided to include the vacant All India Quota seats in the running roster maintained for State Medical/BDS Colleges in Punjab.

5. It is added that if the vacant seats of All India Quota are included in the running roster, then

reservation shall be disturbed as there shall be a mismatch of reservation between the State of Punjab and All India.”

We have heard learned counsel for the parties and have perused the records.

In so far as first grievance of the petitioners that reservations being restricted to Government institutes alone while not extending the same to the private institutes is concerned, we are of the opinion that such an artificial distinction can only be sustained at the cost of violence to Article 14 of the Constitution of India . There is absolutely no rationale as to why reservation should be restricted only to Government institutes and not to the private ones, particularly, when the entire process flows from a centralized procedure and is based on Government instructions.

No justification has been offered by the University or the State in this regard. Consequently, we have no hesitation to observe that such an artificial distinction is unsustainable and is accordingly held so with a direction that reservations admissible to the Government institutes would apply to the private institutes as well.

In so far as second issue of workability of the roster is concerned, we are convinced that the University does have a justification to offer. All India quota seats which fall to the share of the State come at subsequent stage and do offer a fluid situation. We cannot really pick holes in the explanation given by the University that 425 seats have been allocated to the State and if the percentage of reservation is worked out it often means calculation of seats in fractions and for this purpose seats were allocated rotation wise in State Government colleges with respect to the categories in

question and referred to as micro reservation. Eventually over a period of time the target of reservation is achieved which may not be possible if executed in the manner suggested by the petitioners and by allotting a fixed point in every year to these categories enumerated in micro reservation; each and every category shall be absorbed uniformly and after every fourth year there would be an automatic increase in the respective category according to the roster point. They have also expressed their difficulty with the clubbing of All India quota seats to the existing ones as they become available only after the first counselling is over.

We have already extracted the stand of the University and it need not be dilated any further. Suffice it to say that it does not reveal any illegality. Possibly the solution offered by the petitioners may also work effectively but merely because things can be done in another way perceived to be better, would not be a ground for the Courts to interfere, particularly, when no malice has been shown in its application nor any illegality or irregularity.

For the afore-stated reasons, we accept the instant petitions partially to declare that reservation that is applicable to Government institutes shall extend to the private institutes as well but in so far as the workability of the roster is concerned, we do not find any reason to interfere.

**CM no. 11688-CWP of 2018 in CWP no. 15944 of 2018**

This is an application under Order 1 Rule 10 CPC by the applicant who perceives an adverse fall out on her status in the admission. Since what has been agitated before us is a question of principle and workability of the roster, we are unable to appreciate the impact of our

decision on the admission process in the absence of entire material being before us. Since it will be the University that will be giving effect to our judgment, we make it clear that if there is an adverse fall out on the applicant, she shall be afforded an opportunity before taking any decision.

For the aforesaid reason, we are of the opinion that the presence of the applicant before us may not be necessary. Hence, instant application is hereby dismissed.

(Mahesh Grover)  
Judge

23.08.2018  
rekha

(Mahabir Singh Sindhu)  
Judge

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |