

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18269 of 2018
Date of Decision:26.07.2018

Deepak Bansal and others

. Petitioners

Vs.

State of Punjab and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Puneet Gupta, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The Essentiality Certificates/No Objection Certificates issued to Gian Sagar Education and Charitable Trust, Village Ram Nagar, District Patiala vide Nos.2/24/05-4HB3/3359 dated 2.8.2005, 2/60/06-6HB3/3348 dated 20.06.2006, 2/59/2010-3HB3/1739 dated 26.3.2010 and 2/10/2012-4HB3/2704, dated 27.5.2013 granted for running the Gian Sagar Medical College and Hospital, Ram Nagar, District Patiala for M.B.B.S. course with intake of 100 seats per year and M.D./M.S. courses with intake of 15 seats per year was withdrawn on 10.5.2017 by the Department of Medical Education and Research and on 19.5.2017, a Plan for shifting the students studying in the Gian Sagar Institutes, Village Ram Nagar, Banur, District, Patiala in various streams, namely, Medical, Dental, Nursing and Physiotherapy etc. to different Government/Private Colleges in the State of Punjab was submitted to the Ministry of Health & Family Welfare, Government of India, Medical Council of India, Dental Council of India and Indian

Nursing Council. The relevant text of the said letter dated 19.5.2017 is read as under: -

“As detailed in the aforesaid letters under reference the Gian Sagar Institutes (Medical, Dental, Nursing and Physiotherapy) were not functioning as per the prescribed norms and the functioning of the said Institute had come to a complete stand still. The details of the case may kindly be perused in the aforesaid letters which forced the State Government to withdraw the Essentially Certificates/No Objection Certificates (copies enclosed at Annexure: X).

2. Under such circumstances, after deliberations between Department of Medical Education and Research, Punjab and Vice Chancellor, Baba Farid University of Health Sciences, a Road Map for shifting of these students, which has been approved by the competent authority of State of Punjab, has been prepared. It has been decided that the shifting of the students shall strictly be according to

quota-wise, category-wise and merit attained by them in the qualifying Entrance Examination for the particular session. The proposed plan will be simultaneously submitted in the Hon'ble Punjab and Haryana High Court in CWP Nos. 7647, 7686, 7823 and 7824 of 2017, which are listed for hearing on 23.5.2017.

It is therefore, requested that the enclosed plan may be approved at the earliest so as to save the career of students who were studying in Gian Sagar Institutes (medical, Dental, Nursing and Physiotherapy)."

The Plan for shifting of the students was a one time measure. Detailed guidelines were laid down in the said Plan, in regard to the shifting, in which Clause 2.0 dealt with the 'fee structure for the shifted students', which read as follows:

"2.0 Fee structure for the shifted students:

2.1 That when a student admitted against Government quota seat in Gian Sagar College is shifted to either a Government College (including University College) or to a Government Quota seat in a Private

College then the student shall continue to pay Government quota fee, as payable in a Private College, in the new institution also.

2.2 Similarly, when a student admitted against Management quota seat in Gian Sagar College is shifted to the Management quota seat of a Private College then the student shall continue to pay the same Management quota fee in the new institution also. It is pertinent to mention here that this clause shall be applicable to all Private Colleges including Private Universities viz. Adesh University, etc. These Private Universities may have their own fee structure but under these special circumstances they shall be directed to bring parity with Government notified fee structure for Private Institutes for these shifted students of Gian Sagar Institutes.

2.3 It is clarified that the students shall deposit fee as per the fee structure mentioned in the prospectus of Baba Farid University of Health

Sciences for that particular course and that particular batch.

2.4 The students shall be required to produce original receipt of the fee paid to Gian Sagar Institutes (Medical, Dental, Nursing, etc.) so that they are not charged the same fee again for the current academic year by the new College to which they have been shifted. But if any student fails to produce receipt of the fee paid in Gian Sagar Institutes, ibid, then he/she shall be charged fee on pro-rata basis by the new College for the current academic year also. It is clarified that the new Colleges, to which the students have been shifted, shall charge fee for the subsequent academic years whenever it becomes due.

The Plan was approved by the Medical Council of India vide its letter dated 26.5.2017 and also by the Government of India on 2.6.2017. The said Plan was produced before this Court where a bunch of writ petitions were pending, which were disposed of together on 03.07.2017 with the lead case bearing CWP No.9913 of 2017 titled as “Jasdeep Kaur Virk and others Vs. State of Punjab and others”. The order passed by this Court dated 3.7.2017 read as under: -

*“Present : Mr. Puneet Gupta, Advocate
Mr. Anil Rana, Advocate
Mr. Gurminder Singh, Senior Advocate with
Mr. J.S.Gill and Mr.R.P.S. Bara, Advocates
Mr. Deepak Agnihotri, Advocate
for the petitioner (s).*

Mr. H.S.Sitta, Asstt. A.G., Punjab.

*Mr. K.S.Sandhu, Advocate
for respondent No.3-Baba Farid University
of Health Sciences.*

*Mr. M.S.Longia, Advocate for the
MCI/DCI.*

*Mr. Aditya Singh, Advocate and
Mr. P.D.Tiwari, Advocate
for respondents No.5 and 6
(CWP No.7647 of 2017).*

Mr. Satish Singla, Advocate for UOI.

*Mr. Munish Jolly, Advocate
for respondent-Indian Nursing Council.

AJAY TEWARI, J. (Oral)

*This order shall dispose of above mentioned
nine writ petitions.*

*On 02.06.2017 the following order was
passed in CWP No.7647 of 2017 :-*

*“Learned counsel appearing on behalf
of Union of India has produced two
orders dated 2.6.2017 passed by the
Ministry of Health and Family
Welfare, Government of India, one
pertaining to the approval of
recommendations made by the MCI
for shifting the students from Gian*

Sagar Medical College to other medical colleges of the State of Punjab as approved by the State Government in their letter dated 19.5.2017 as one time measure and the other order pertaining to acceptance of the recommendation of the Dental Council of India for closing down the Gian Sagar Dental College withdrawing its recognition under Section 16A of the Dentist Act, 1948 and granting approval to the Government of Punjab to shift students across all batches studying in the said college as per the guidelines prescribed by the Government of Punjab in its letter dated 19.5.2017. The order of the DCI dated 29.5.2017 is also produced. Both the orders of Union of India dated 2.6.2017 and DCI dated 29.5.2017 are taken on record.

Learned counsel appearing on behalf of Indian Nursing Council has also produced an order of Indian Nursing Council issued by its Secretary that though in the writ petitions neither

any relief has been sought from the INC nor any specific prayer has been made regarding it but keeping in view the future prospects of the students as they ought not to suffer due to negligence on the part of the institution, INC has no objection if the students are shifted to a recognized nursing institution. The said order is also taken on record.

The Court is also apprised by counsel appearing on behalf of Gian Sagar Colleges that the discipline of Physiotherapy comes directly under the State Government as such it would take its decision for the purpose of shifting the students of Physiotherapy accordingly.

Since the requisite approvals have been received, therefore, the next step is the modalities to be adopted for the purpose of shifting of students of all the batches of MBBS/MD, BDS/MDS, Nursing and Physiotherapy to other colleges in the State of Punjab.

Learned counsel for the petitioners has submitted that the first step which is to be taken by the State is to fix a date for the counselling of the students of all the batches on the basis of merit-cum-preference keeping in view their rank which they have secured in the Combined Entrance Test. It is further submitted that after the counselling, the said students have to be allocated the colleges as per the merit and plan approved by the Government of India. It is also prayed that the students may not be shifted to another University, namely, Adesh University to which Adesh Colleges are affiliated as the petitioners have been studying in Gian Sagar Colleges, which are affiliated to Baba Farid University of Health Sciences, which is altogether different from Adesh University. He has also submitted that as per the formula adopted by the respondents the shifting has been kept below 10% keeping in view the teacher-student ratio and according to him the percentage is between 8-9%.

He has suggested that by increasing even 1/2%, while keeping in view it below 10%, all the students would be adjusted in other colleges other than Adesh Colleges. He also made a request for a direction to the Gian Sagar Colleges to return the original testimonials of the students.

Learned Advocate General, Punjab has submitted, after receiving instructions from the Secretary of the Department, who is present in Court, that the Government would require 2 days for the purpose of uploading the date of counselling and 3 weeks to complete the entire process. He has, however, submitted that the admission/allocation would be in terms of the plan approved by the Government of India.

After hearing learned counsel for the parties, the following directions are hereby issued: -

1. The State of Punjab shall upload the date of counselling uptill 5.6.2017 and complete the entire process of counselling, allocation and admission

of the students of all the batches of MBBS/MD, BDS/MDS, Nursing and Physiotherapy within a period of 3 weeks thereafter.

2. The entire process shall be carried out by the respondent/State in terms of the plan submitted and approved by the Government of India.

3. Gian Sagar Colleges shall return the original certificates and attendance record of the students, who are to be shifted, on their making appropriate application. The documents etc. shall be returned without any pre-conditions.

Adjourned to 3.7.2017 for further hearing.

A copy of this order be given to counsel for the parties under the signature of Special Secretary of this Court for compliance.

A photocopy of this order be placed on the files of other connected case.”

Counsel have apprised the Court that pursuant to the last order admissions of all the students (across the board) have been made in various institutions and to that

extent the basic grievance of the petitioners has been redressed. Two minor issues are still alive. The first is that the original certificates and the attendance record of the students has not yet been given by the respondents No.5 and 6. Mr. Aditya Singh, Advocate appearing for the respondents No.5 and 6 has taken instructions from Dr. Nitender Singh, who is the new Chairman of the respondents No.5 and 6 and states that because the new management has just now taken over they have still not been able to lay their hands on these documents. On principle they have no objection to return the original certificates of all the students as well as certifying the attendance record of all the students and seeks some time to do the needful.

The next issue which has arisen is that the students are all now reeling under shortage of lectures due to no fault of theirs. On the asking of the Court Shri Karan Singh Sandhu, Advocate, Baba Farid University of Health Sciences- respondent No.3 has stated that the University on principle would not be averse to make arrangements for conducting extra classes of these students so that they

are able to make up the deficiency in lectures (if practicable).

It has been brought to the notice of the Court that this tangled web was sorted out by great efforts particularly of the Secretary, Department of Medical Education and Research, Punjab, Mr. Vikas Pratap, IAS and Vice Chancellor of Baba Farid University, Dr. Raj Bahadur and their team of officers. The Court place on record its appreciation for the persons who have worked so hard to ensure that the students are not put to un-necessary prejudice.

In the circumstances, these petitions are disposed of with a direction to respondents No.5 and 6 to return the original certificates and attendance records of all the students as has been undertaken by it by the Chairman.

The respondent No.3 is also directed to consider and work out a plan for holding extra classes so that the students can make up the deficiency of lectures if the same is practical. Both these exercises be effectuated within a period of two months from the date of receipt of this order.

Since the main cases have been decided, the pending Civil Misc. Applications, if any, also stand disposed of.”

It was categorically directed by this Court, in the aforesaid order, that the entire process of shifting shall be carried out by the respondents/State in terms of the Plan submitted and approved by the Government of India. However, there were only two minor issues raised before the Court by the petitioners, firstly that the original certificates and attendance record be also given and second was about the shortage of lectures for which there was no fault of the students. This Court issued the direction to respondents No.5 & 6 in the said writ petition to return the original certificates and attendance record of all the students and to consider and work out on a Plan for holding extra classes so as to make the students able to make up the deficiency in lectures. A period of two months was given for completing this exercise.

Apropos, the students were shifted to various colleges in the State of Punjab as per the Plan but the present petition has been preferred by 7 students of the MBBS, who are studying in the Government Medical College, Patiala, after having been shifted from Gian Sagar Medical College and Hospital in which they had got admission in Government quota and were shifted in the same quota in the Government Medical College, Patiala. Their grievance is that they should not be asked to pay the fee which they have been paying in Gian Sagar Medical College and Hospital because the other students, who though had taken the admission in the Government quota in the Government Medical College, Patiala, are paying the annual fee which

is far less than the fee which is being asked to be paid which they had been paying while studying in the private institute, namely, Gian Sagar Medical College and Hospital. In this regard, the petitioners have tried to take advantage of a letter dated 15.6.2017, purported to have been issued by the Baba Farid University of Health Science.

I have heard learned counsel for the petitioners and after examining the available record, am of the considered opinion that there is no merit in this petition as the petitioners are bound by the terms and conditions of the Plan on the basis of which they were shifted and the said Plan has got the approval of this Court in CWP No.9913 of 2017 in which a direction was issued by this Court, while passing the order on 02.06.2017, which is recorded in CWP No.7647 of 2017, that the entire process shall be carried out by the respondent/State in terms of the Plan, submitted and approved by the Government of India, and according to Clause 2.1 of the Plan, which deals with the fee structure, the students have to continue to pay Government quota fee, as payable in the private college, in the new institution also, therefore, there is no error on the part of the Government Medical College, Patiala in issuing the impugned notice dated 6.6.2018, which has been assailed in the present petition. The petitioners cannot play hide and seek with the Court and with the respondents because at the time, when they were asking for shifting, the Plan was accepted as it is and there was no challenge to the directions issued by this Court that the shifting has to be done in accordance with the Plan but now they wanted to shift their stand. If there was any kind of grievance in regard to the structure of fee provided in the Plan, the petitioners should have challenged the terms and conditions of the Plan when the matter was under consideration of

this Court in the bunch of writ petitions with the lead case as CWP No.9913 of 2017 titled as Jaasdeep Kaur Virk (Supra) or CWP No.7647 of 2017 titled as Raghav Mittla and others Vs. State of Punjab and others but the petitioners remained silent in this regard, which means that they have accepted the terms and conditions of the Plan of shifting which cannot be reopened now after a direction has been issued by this Court in the order dated 2.6.2017, passed in CWP No.7647 of 2017, as this Court has no jurisdiction to pass any order in favour of the petitioners which would virtually change the direction already issued by a coordinate bench of this Court.

Thus, in view of the aforesaid circumstances, there is hardly any merit in this petition for the purpose of interference.

Dismissed.

26.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*