

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17108 of 2019

Date of Decision: July 02, 2019

Himanshu Sharma

.....Petitioner

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MR. JUSTICE SUDHIR MITTAL.**

Present: Mr. P.R. Yadav, Advocate
for the petitioner

Mr. Ankur Mittal, Addl. A.G. Haryana

Sudhir Mittal, J.

The petitioner is a candidate for admission to the MMBS/BDS course being run by medical institutions established in the State of Haryana. He passed his Class X examination and 10+2 examination conducted by Central Board of Secondary Education from a school situated in District Mahendergarh (Haryana). Being Backward Class candidate he got the requisite certificate issued on 25.05.2017 from the competent authority. Haryana Resident Certificate dated 26.05.2017 was also got issued by him. The NEET examination for the academic year 2018-2019 was qualified by him as is evident from result dated 04.06.2018 and he secured 504 out of 720 marks. However, he was denied admission on the ground that the income certificate of his father was issued by Tehsildar Dwarka, Delhi.

2. Aggrieved by the aforementioned action the petitioner approached this Court through CWP No. 22364 of 2018. The said writ petition was disposed of

vide order dated 15.11.2018 after examining the relevant statutory provisions regarding issuance of income certificate. The following order was passed:-

“To our minds the notification dated 18.11.2016 is vague as it does not specify that a certificate has to be from a Tehsildar of Haryana. They cannot blame the petitioner of obtaining a certificate from Tehsildar of Delhi. The stand of the respondents therefore is unjustified. It is not in dispute that the petitioner was indeed in merit having secured 504 marks and rank of 94 and ordinarily he would have been given admission in the said category but for the stand of the respondents who have negated the certificate of income issued by the Tehsildar of Delhi.

Although in the reply the respondents have taken a stand of the petitioner not being a resident of Haryana but during the course of arguments this objection was given up and the issue was confined only to the issuance of certificate by a competent authority.

We have already observed that the stand of the respondents is unjust in view of the ambiguity employed in the language of the notification considering that the provisions of Haryana Act were to be carried out by certain set of officials, natural flow of the language in the notification should have specified that Tehsildar of the State of Haryana or a particular area.

*Despite this we are unable to grant any relief to the petitioner in view of the specific mandate of the Hon'ble Supreme Court given in case bearing Civil Appeal No. 10353 of 2018 titled as '**Parmod vs. UOI and others**' decided on 9.10.2018 that once the seats are filled the appellants be considered for admission in the next year. Relevant portion of the directions of the Hon'ble Supreme Court are extracted herebelow:-*

“In the aforesaid facts and circumstances of the case, though appellants were entitled for admission in the MBBS course, but now as all the seats have been filled, the appellants have been illegally deprived of the admission. As such, we direct that the appellants be admitted in the next year, in MBBS course and in a government medical college as the seats of handicapped have

been handed over to the general category, the seats of that category shall be reduced for the next academic session 2019-2020.”

Consequently, we direct that the petitioner be considered for admission for the next academic session in Government Medical College in the State of Haryana, if permissible in law.

Disposed of.”

3. The aforementioned directions have become final between the parties.
4. Pursuant to the aforementioned directions the petitioner started making representations at regular intervals. The first representation is dated 19.02.2019 and the last one is dated 13.05.2019. All of them have been placed on record collectively as Annexure P-6. A representation dated 17.05.2019 (Annexure P-8) was made to the Government of Haryana through the Additional Chief Secretary, Department of Medical Education and Research alone, yet, no response was forthcoming. Nodal Authority for conducting admission to the medical institutions in the State of Haryana namely Pandit B.D. Sharma, University of Health Sciences, Rohtak, sent a letter dated 20.05.2019 (Annexure P-9) to the petitioner asking him to seek clarification from the office of Director, Medical Education and Research, Haryana. Finally, notification dated 21.06.2019 was issued by Government of Haryana initiating admissions to the MBBS/BDS course for the academic session 2019-2020 but no mention therein was made to the case of the petitioner, because of which the present writ petition has been filed.
5. Learned counsel for the petitioner submits that in view of judgment dated 15.11.2018 (Annexure P-5) the State was bound to consider the candidature of the petitioner in the academic year 2019-2020 but it has failed to do so. Reliance is placed upon order dated 09.10.2018 passed by Supreme Court of India in Civil Appeal No. 10354 of 2018 titled as ***Parmod vs. Union of India***, which has

also been referred to in the order passed by this Court. Specific attention has been drawn to the following paras :-

“In the aforesaid facts and circumstances of the case, though appellants were entitled for admission in the MBBS course, but now as all the seats have been filled, the appellants have been illegally deprived of the admission. As such, we direct that the appellants be admitted in the next year, in MBBS course and in a government medical college as the seats of handicapped have been handed over to the general category, the seats of that category shall be reduced for the next academic session 2019-2020.

Accordingly, the appeals are allowed. The impugned orders passed by the High Court is set aside. Apprehension is raised that the eligibility criteria may be changed. The apprehension is baseless as any change subsequently made is not going to affect the right of the appellants to obtain admission. The order is final, conclusive and binding.

6. A detailed reply has been filed in the Court today on behalf of respondents No. 1 and 2 and the same has been taken on record. The stand taken therein is that candidature of the petitioner can be considered in accordance with his merit position in NEET 2019 as passing of NEET 2019 is a mandatory requirement.

7. Learned counsel for the petitioner rebuts the contention raised on behalf of the State of Haryana by arguing that the petitioner was not bound to take NEET 2019 examination because of order already passed in the earlier writ petition. Had it been the intention of this Court to relegate the petitioner to the next academic session and to make him go through the complete process required for obtaining admission, no direction need to have been issued to consider the candidature of the petitioner in the next academic session 2019-2020. Benefit of

direction for consideration in the academic year 2019-2020 was only given because the petitioner had suffered on account of the illegality committed by the respondents.

8. A perusal of the order dated 15.11.2018 passed by Division Bench of this Court in the earlier writ petition filed by the petitioner leaves no manner of doubt that the candidature of the petitioner was required to be considered in the current academic session (academic session 2019-2020) on the basis of his merit in NEET 2018 and fulfillment of other requirements. This order has also relied upon judgment of Supreme Court in *Parmod's case (supra)* wherein it has been specifically observed that the order is final between the parties and can not be avoided under any circumstances. The intent of this Court was, thus, clear that the candidature of the petitioner be considered in the academic year 2019-2020 because he could not be granted admission on account of illegality committed by the admission authorities. According to law, there was no requirement that the income certificate should have been issued by Tehsildar from the State of Haryana. Since parents of the petitioner reside in Delhi, Tehsildar Dwarka, Delhi, was competent to issue the said income certificate.

9. Under the aforementioned circumstances, stand of the respondents can not be accepted. The writ petition is, accordingly, allowed and it is directed that the petitioner be considered for admission in the MBBS/BDS course on the basis of his merit in NEET 2018 as well as other necessary requisites essential for granting admission to BC-A candidate. For this purpose, the petitioner shall be entitled to apply online in case the last date for application is not over and in the eventuality of last date having gone by, the petitioner shall be permitted to move his application through hard copy and the admission authorities shall be bound to consider the same. In case, the petitioner is otherwise found eligible for admission,

he shall be granted the same in accordance with his merit position to be determined in accordance with his NEET 2018 rank.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

July 02, 2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No