

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

Civil Writ Petition No.36425 of 2019(O&M)

Reserved on : October 28, 2020

Date of decision: December 04, 2020

Danish Nazir and others

...Petitioner

Versus

All India Council for Technical Education
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Harsh Aggarwal, Advocate
for the petitioners.

Mr.Ravi Sharma, Advocate
for respondent No.1 – AICTE.

Mr.Anish Verma, Advocate
for respondent No.2 – Institute.

Harinder Singh Sidhu, J. :

The petitioners are students from the State of Jammu and Kashmir. They have filed this petition seeking directions to respondent No.1 – All India Council for Technical Education (AICTE) to release scholarship under the Prime Minister's Special Scholarship Scheme (PMSSS) [hereinafter for short 'the Scheme'] to them in respect of their studies in BBA and B.Pharmacy courses in respondents No.2 and 3 – Institutes. Respondent No. 2 is the Ganpati Business School, Bilaspur,

Jagadhri, Haryana. Respondent No. 3 is the Ganpati Institute of Pharmacy, Bilaspur, Jagadhari, Haryana.

Vide notification dated 18th August, 2010 the Government of India had constituted an Expert Group under the Chairmanship of Dr. C. Rangarajan for enhancing employment opportunities in the State of Jammu and Kashmir and other allied objectives. It submitted its report under the head '*Report of the Expert Group to formulate a job plan for the State of Jammu and Kashmir*'. One of the measures recommended was institution of a Special Scholarship Scheme for Jammu and Kashmir students. It envisaged 5000 scholarships per annum. Out of this 4500 scholarships were to be for general degree courses, 250 for engineering and 250 for medical studies.

This recommendation was approved by the Cabinet Committee on Economic Affairs. Thereafter notification dated 24.09.2012 was issued by the Government of Jammu and Kashmir, Higher Education Department giving details of the Special Scholarship Scheme for the students of Jammu and Kashmir who intended/ or were pursuing higher studies outside the State. As per the notification 5000 fresh scholarships were to be provided every year over the next 5 years out of which 4500 scholarships would be for the general degree courses, 250 for engineering and 250 for medical students. The eligibility criteria was that the student should have passed Class 12th or equivalent examination through State Board of Education, Jammu and Kashmir or CBSE affiliated schools located in Jammu and Kashmir and was pursuing degree courses/engineering and medical studies

in Government colleges/institutes/other non- Government institutes recognized by AICTE and UGC or institutes created through an Act of State Government located outside Jammu and Kashmir. An income ceiling at Rs.4.5 lac per annum was fixed. It was also provided that scholarship granted under the scheme would be renewed for the subsequent classes subject to good conduct and maintenance of prescribed attendance.

On the recommendation of Inter- Ministerial Committee (IMC), respondent No.1 - AICTE has been entrusted with the responsibility of implementation of scheme and for the release of scholarship to all the eligible candidates. A web portal has been developed by the AICTE for this purpose.

Revised guidelines for the Special Scholarship Scheme for the academic year 2014-15 were issued by AICTE (Annexure P-4). Para 4 of guidelines defining eligibility reads as under :-

'Students belonging to the State of Jammu and Kashmir, appearing for Class XII or equivalent exam through the State Board of Jammu and Kashmir and from Central Board of Secondary Education (CBSE) affiliated schools located in Jammu and Kashmir, pursuing General Degree courses, Engineering and Medical studies in Government colleges/institutes/other non Government institutes recognized by AICTE or UGC and other regulatory authorities or institutes created through an act of State Government, located outside the State of Jammu and Kashmir, would be eligible to apply for scholarship under this scheme. Students pursuing Integrated Courses in such colleges/institutes where the scheme is applicable would

also be eligible to apply for scholarship for duration of course. The income ceiling is Rs. 6 lakhs per annum for the academic session 2014-15.

From the academic year 2014-15, only those eligible candidates whose names are uploaded on AICTE web portal by State Government and provided Centralized Admission to institutes/colleges approved by AICTE, UGC and/or any other regulatory authority would be considered for award of scholarship as per ceiling of number of scholarships specified, stream wise, in the scheme. Students admitted to Centrally Funded Institutes/Universities on their own and by virtue of their own merit at national level would also be considered for award of scholarship.'"

As per the eligibility mentioned under Clause 4, a student who is pursuing general degree course in non- Government institutes recognized by AICTE or UGC and/other any other regulatory authority or institutes created through the Act of the State Government located outside State of Jammu and Kashmir would be eligible for grant of scholarship under the Scheme.

Petitioners No.1 to 8 took admission in May 2014 in respondent No.2 – Ganpati Business School in General Degree Course (BBA) and petitioners No.9 to 12 took admission in respondent No.3 - Ganpati Institute of Pharmacy, Bilaspur, Jagadhri, Haryana in B. Pharmacy course.

Respondent No.2 - Institute is running BBA course as per the University and UGC norms. It is affiliated with Kurukshetra University.

The controlling Kurukshetra University is listed in the list of Universities approved by the UGC at Serial No.54. Since respondent No.2 is affiliated with Kurukshetra University and is being controlled by Kurukshetra University which has already listed under UGC Act, therefore, BBA course being offered by respondent No.2 comes within the purview of UGC.

Respondent No.3 is undertaking B. Pharmacy Course affiliated with respondent No.5 - Pandit Bhagwat Dayal Sharma University of Health Science, Rohtak, Haryana. Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak, Haryana is approved by Pharmaceutical Council of India (PCI). Respondents No. 2 and 3 – Institutes are approved by AICTE. The students of BBA of respondents No.2 and 3 Institutes have been recipient of Prime Minister Scholarship Scheme (PMSSS) for Jammu and Kashmir students since 2012. The norms and procedure is the same as on date. The AICTE had sanctioned the scholarships for Jammu and Kashmir students for the academic year 2013-14 for release during the financial year 2013-14 to respondent No.2 - Ganpati Business School, Chhachhrauli and respondent No.3 - Ganpati Institute of Pharmacy, Bilaspur, Jagadhri (Annexure P-3).

It is pleaded that the petitioners who are residents of Jammu and Kashmir and being fully eligible as per their qualification have applied for grant of scholarships under the scheme for the academic year 2014-15. As they were so eligible, the respondent No.2 and 3 Institutes have not taken tuition fee, hostel fee or other college charges from them. The Institutes forwarded their case to respondent No.1 - AICTE for release of

scholarship. Despite many communications and reminders by the institutes the scholarships have not been released. As the petitioners have completed their course without payment of any fee and the scholarships have not been released therefore, respondents No.2 and 3 have started demanding entire tuition fee, examination and other charges.

With regard to petitioner No.1 to 8, AICTE put on website dated 15.12.2015 a list of students not eligible for grant of scholarships under PMSS Scheme. The reason for declining scholarship to them as mentioned therein was that respondent No.2 Institute was not approved by UGC under Section 12B of UGC Act. Respondent No.2 had written to respondent No.1 on 22.12.2015 (Annexure P-13) clarifying that respondent No.2 was a professional institute providing BBA course affiliated to Kurukshetra University which is recognized by the UGC and was listed at Sr. No.54. The institute was running the BBA course as per University and UGC norms. It was also clarified that the students admitted in BBA in this institute were recipients of the Prime Minister Special Scholarship Scheme for J & K. Students since 2012.

Petitioners No.9 to 12 were duly registered and had appeared for the first year examination held in May 2015 with respondent No.5 i.e. Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak, Haryana. However, respondent No.1 – AICTE did not include their names in the list dated 15.12.2015 of approved students in 16th IMC for SSS for Jammu and Kashmir for the year 2014-15. Respondent No.3 – Institute wrote a letter dated 22.12.2015 to respondent No.1 – AICTE to

reverify the record and include their names in the re-approved list. It was also mentioned that they had already taken the examination in May 2015. The AICTE reverted to respondent No.3 to contact GGM Science College, Jammu (Nodal Authority of AICTE). Thereafter, respondent No.3 also sent request to GGM Science College, Jammu, which further forwarded it to Special Secretary, Department of Higher Education, Civil Secretariat, Jammu vide letter dated 15.7.2016. It is stated that many reminders were sent to respondent No.1 to release scholarships of all the petitioners but of no avail. The last reminder was sent on 03.12.2018 (Annexure P-11) to AICTE by respondent No.2 and 3.

In the written statement filed on behalf of respondent No.1 – AICTE it is stated that the petitioners have got admission in respondent No.2 and 3 institution on their own and in contravention of terms and conditions of the Scheme and subsequent modification/amendments. As such they are not entitled to the Scholarships.

It is further stated that Ministry of Human Resources and Development has authorized AICTE to implement the scheme strictly adhering to the guidelines framed and methodology approved by Inter-Ministerial Committee issued to all students in the form of instructions (Annexure R-1/2) for students for counselling. Therefore, act of respondents No.2 and 3 Institutes in admitting petitioners without them finding place in merit list in counselling process organized by AICTE is totally unauthorized.

Ld. Counsel for the petitioners has argued that in the year

2014-15 there were large scale floods in Jammu & Kashmir because of which the students had to face great hardships and they could not appear for counselling. The students should not be made to suffer because of this unprecedented situation and they be denied the benefit of a beneficial scheme solely on some procedural lapse especially as they fulfil all the conditions as envisaged in the Scheme. He relies on a decision of a Ld. Single Judge of the Jammu & Kashmir High Court dated 07.06.2017 in **Sania Ishaq and others Vs. Union of India and ors** (OWP No. 701/2015 decided on 07.06.2017), where in an identical situation the action of respondent No. 1 in declining the benefit of the scheme was quashed and respondent No. 1 was directed to release the scholarships. The judgment was upheld in appeal. He further states that as per information received by the petitioners under the RTI (Annexure P-16) out of the sanctioned 5000 scholarships for the year 2014-15 the number of scholarships disbursed was only 1687.

I have heard Ld. Counsel for the parties.

The case of the petitioners is similar to that of the petitioners in **Sania Ishaq and others** (supra). Similar objections raised by respondent No. 1 to the grant of scholarship were negated by the High Court. Taking note of the unprecedented situation caused by the floods that occurred in 2014, the Court held that the rigid adherence to the rigour of the scheme which envisaged grant of scholarships only to those who had taken admission pursuant to counselling conducted by respondent No. 1 was not warranted and would defeat the laudable objectives of the scheme.

The relevant discussion is as under:

“14. The stand of respondents No.1 and 5 is that the petitioners and other students for the academic session 2014-15 have taken admission in the respondent University of their own which was impermissible as there was no counselling or allotment of that University to them and that the respondent University is not approved under Section 2(f) and 12 B of the UGC Act for general courses and also is not approved by AICTE. However, this position has been clarified by the respondent University as referred hereinabove i.e. Section 12 B of the UGC Act, 1956 is not applicable vis-à-vis disbursement of scholarship. Section 12 B prescribes for declaration of fitness of a University for purposes of receiving grants which, in itself, is not a condition for disbursement of scholarship to the students. The grant to a University is for meeting planned and nonplanned expenditure to be incurred by a University for its developmental activities and recurring expenditures like salary of teachers and other staff. Respondent Mewar University being a self-financed University is not entitled to receive any grant, therefore, Section 12(B) has no applicability. Approval by AICTE for technical courses too is not required except that the University has to maintain standards set by the AICTE. The respondent University is not a technical institution within the meaning of Section 2(h) of AICTE Act, 1987 nor is required to have approval of AICTE in terms of Section 10(k) of the Act. Section 2(h) and 10(k) are reproduced here-under:

“2(h) Technical institution means an institution, not being a university which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declares as technical institutions. 10(k) Grant of approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned”.

15. The approval for starting new courses in technical institutions by a University is not required. Same position has been settled by the Hon’ble Apex Court in a judgment rendered in the case of “Bharathidasan University and another Vs. AICTE and others”, (2001) 8 SCC 676.

16. Petitioners in the writ petition have made it clear that for the first time during the academic year 2014-15, vide notification dated

18.06.2014 it was provided that selection of the candidates and allotment of seats will be done by counselling after the preparation of merit list after online application and document verification and other formalities which will be done through facilitation centers. It was also for the first time in the year 2014-15 provided that a student will not be eligible for scholarship if he seeks admission of his own through other process. Petitioners 6 to 10 and other similarly situated students applied for online registration and document verification in accordance with said notification. They were waiting for the counselling which was notified to be done between 30.08.2014 to 06.09.2014. Then dates were revised pursuant to the orders of the Hon'ble Apex Court, as such, was fixed but on account of unprecedented rains and flood in the city of Srinagar where the venue was fixed, majority of registered students could not make it to the counselling center except few.

17. When during counselling, course and college of the choice of students is to be allotted, there could be no hard and fast rule in not allowing the petitioners to pursue the course for which they had taken admission in respondent University.

18. Going by the context of "increasing access to education" as per recommendations of the Expert Group, which has been accepted, the essence is quite visible. The implementation of the scholarship scheme has to be pragmatic and result oriented. The special concession, in the background of the special circumstances, must reach to the deserving. For so doing, flexible approach rather than rigidity shall be in keeping with the objective to be achieved. The technicalities of trivial nature cannot be allowed to prevail so as to negate the laudable object to be achieved. True it is that grant of scholarship has to be regulated, that too with an objective of avoiding any misuse or squandering. The students who have shown their zeal and enthusiasm in pursuing approved courses in the institutions outside State of Jammu and Kashmir in the context of recommendations of the Expert Group relatable to the increasing access to education, that too in the background which persuaded the respondent authorities to introduce a Special Scholarship Scheme for Jammu and Kashmir, have to be encouraged. Prevaricative approach on hyper technical grounds has to be avoided.

19. The crux of the controversy is as to whether petitioners and similarly situated students who have taken admission in the respondent

University provisionally and who have only applied as per AICTE directives but have not participated in the counselling, could be denied benefit of the scheme. The object of applying through a designated portal, a procedural requirement so as to ward off any mischief, is not denied but the question is what prevented the petitioners and other students from participating in the counselling has been clearly highlighted by the petitioners in their rejoinder by stating that in the month of September, 2014, Kashmir Valley witnessed a devastating flood. The NET facility and all other facilities were snapped by the fury of nature. Under such circumstances if the students have shown their courage and got provisional admission in respondent University, as such, are pursuing the courses, can they be deprived of the benefit of the scheme. The fact that the petitioners and other students have taken admission in the respondent University and they are pursuing the course is not denied. The decision that the students who had not applied through a designated portal will not be entitled to scholarship is not that rigid so as to deny the benefit to the genuine candidates. If it would have been rigid in its operation then for the academic year 2012-13 and 2013-14, students who took admission would not have been granted scholarship under the scheme. There is always a scope for improvement for rationalizing grant of scholarship but object is never to deny benefit to the genuine candidates.

20. *In the stated facts and circumstances, an exceptional situation has been carved out for not fully adhering to the mode and method of applying and counselling, that too for a valid reason i.e. counselling center was in Srinagar city which, in the month of September, 2014, as a matter of fact, had submerged. Even though petitioners and other like students had taken admission, in case number would have been more in Mewar University, they could be shifted to other Universities or Colleges but now since Mewar University, on proper admission, has accommodated them, therefore, by releasing scholarship, in effect, object of scholarship scheme in its context was achieved. The future of the students, who have been pursuing their courses in the respondent University, is at stake. Their bona fides are free from doubt, to deny them scholarship is to put their future in jeopardy, when the Special Scholarship Scheme with its laudable objective does not permit so. Consistent with the objective, there is no justified cause for denying grant of scholarship.*

21. *In the final analysis, it is directed, by way of one time exception for*

the academic session 2014-15, the students who have been admitted by the respondent No.3 shall be registered for scholarship and scholarship shall be released in their favour through respective institution and also for subsequent years till they complete their courses.

22. It is also directed that the scholarship in favour of 272 students admitted in respondent University during the year 2013-14 shall also be released in their favour, through the respondent No.3 (University)”

Accordingly, this petition is allowed. Respondent No.1 is directed to release scholarship to the petitioners for the academic session 2014-15 and the subsequent years.

December 04, 2020

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No