

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 24957 of 2022 (O&M)

Date of Decision: 03.11.2022

Sahil

.....Petitioner

Versus

Government Medical College and Hospital, Sector 32, Chandigarh and
another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present:- Mr. Sahil, petitioner in person.

Mr. Rakesh, Law Officer, GMCH-32, Chandigarh with
Mr. Satpal Singh, Registrar (Academic), GMCH-32,
Chandigarh.

Dr. Akshita Kundra, respondent No.3 in person.

* * * *

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

The matter has been taken up at the request of the parties as members of the bar are abstaining from work.

This petition has been filed by the petitioner invoking extra ordinary writ jurisdiction under Articles 226/227 of the Constitution of India being aggrieved by an order dated 26.10.2022 (Annexure P-13) passed by respondent No.2, vide which the representation filed by the petitioner in terms of the liberty granted by this Court vide order dated 21.10.2022 passed in Civil Writ Petition No. 24614 of 2022, has been rejected and the petitioner has been denied admission on Orthopaedic seat reserved for Economically Weaker Section (EWS) category in Government Medical College and Hospital, Sector 32, Chandigarh on the ground that he does not

fulfill the domicile criteria prescribed for Union Territory, Chandigarh pool quota contained in Clause 2 B(iii) of the Prospectus.

The petitioner appearing in person submits that he had submitted his EWS Certificate alongwith Residence Certificate as required under the Clause of the Prospectus and the supporting documents before the authorities to establish that he was born and brought up in Chandigarh and his father holds immovable property in Chandigarh i.e. a flat allotted to his father under EWS category in Housing Board Colony, Dhanas, Union Territory, Chandigarh. He submits that he fulfills the criteria prescribed for the U.T. pool but the authorities without considering the documents have rejected his claim on the ground that his parents do not own property in Chandigarh.

This Court after hearing the learned counsel for the petitioner as well as learned Senior Standing Counsel appearing for Union Territory, Chandigarh had passed a detailed order on 31.10.2022 to the following effect:-

“Heard on the question of admission and interim relief.

The petition relates to allotment of Post Graduate course seat in Orthopaedics during the academic session 2022 under the U.T. Chandigarh Pool, at the Government Medical College and Hospital, Sector 32, Chandigarh, which has been reserved for Economically Weaker Section (EWS).

The petitioner had previously approached this Court by filing CWP-24614-2022, placing on record the documents to establish that he fulfills the necessary eligibility criteria for allotment of seat in the U.T. pool, as prescribed in Clause 2 B (iii) of the prospectus, that is, the allotment letter dated 11.09.2013, whereby the petitioner’s father had been allotted a flat in Housing Board Colony, Dhanas, Chandigarh, under the

Chandigarh Small Flats Scheme – 2006, document of possession which was handed over to him on 19.09.2013, and the Residence Certificate dated 15.09.2022 in that regard by the competent authority, and, therefore, the petitioner fulfilled the eligibility criteria, contained in Clause 2 B (iii) of the prospectus, and was entitled for allotment of a seat in Orthopaedics reserved for the EWS category.

The petition filed by the petitioner was disposed of by this Court vide order dated 21.10.2022, directing the respondent-authorities to consider the aforesaid documents of the petitioner, vis-à-vis the eligibility criteria requirement, as contained in Clause 2 B (iii) of the prospectus, and decide his claim expeditiously.

The respondent-authorities, vide order dated 26.10.2022, have rejected the petitioner's claim by referring to Clause 2 B (ii) of the prospectus, and have not given any attention or considered the documents relating to residence/allotment of flat in the EWS category to the petitioner's father, as claimed by the petitioner under Clause 2 B (iii) of the prospectus. It is further evident from a perusal of the order that the only requirement mentioned in Clause 2 B (iii) is holding property in Chandigarh for 5 years any time prior to filing of the application and the clause does not make any mention of ownership or permanent residence.

In these circumstances, as prima facie, the documents relating to allotment of flat in the EWS category to the petitioner's father in Housing Board Colony, Dhanas, Chandigarh, and consequently the fact that his parents hold property in Chandigarh, are not denied, therefore, in the circumstances of the case, the submission of the learned counsel for the petitioner that the petitioner is entitled to be considered for allotment of the seat in Orthopaedics in the Government Medical College and Hospital, Sector 32, Chandigarh, which is reserved for EWS category in the academic session 2022 under the U.T. Chandigarh Pool, appears to be justified in spite of which the authorities, by passing the impugned order dated 26.10.2022 (Annexure P-13), have proceeded

further in the matter by converting the seat to the General category. In these circumstances, it prima facie appears that the petitioner's claim falls squarely within Clause 2 B (iii) and is based on documentary evidence.

Learned Senior Standing Counsel, appearing on behalf of the UT Chandigarh, submits that prima facie, the claim of the petitioner appears to be justified and he may be granted a day's time to seek instructions in the matter.

As prayed, list on 01.11.2022.

A copy of this order be given to learned counsel for the parties under the signatures of the Bench Secretary."

In view of the statement made before this Court as aforesaid, the matter was taken up on 01.11.2022. As the members of the bar were abstaining from work, Mr. Rakesh, Law Officer and Mr. Satpal Singh, Registrar (Academic), Government Medical College and Hospital, Sector 32, Chandigarh, appeared on behalf of GMCH-32 and submitted that the authorities may be granted a day's time to re-examine the matter and pass a fresh order in this regard. The order dated 01.11.2022 passed by this Court is to the following effect:-

"Members of the bar are abstaining from work on account of strike.

This Court after hearing both the parties at length had passed a detailed order on 31.10.2022 wherein this Court had taken into consideration the wording of clause 2 B (iii) of the Prospectus for Admission to MD/MS courses (Session-2022), which only requires holding of immovable property in Union Territory of Chandigarh for a period of five years at any time prior to the filing of the application, in juxta-position with the documents filed by the petitioner relating to allotment and possession of a flat in Housing Board Colony, Chandigarh in the year 2013. From the record, prima-facie, the petitioner, who asserts that he is born and brought up in Chandigarh, appears to be fulfilling the

requirement(s) as prescribed under Clause 2 B (iii) of the Prospectus. On this, learned Senior Standing Counsel appearing on behalf of Union Territory, Chandigarh had submitted that prima-facie the claim of the petitioner appears to be justified and therefore, he may be granted a day's time to seek instructions in the matter.

From the record, it appears that the petitioner in his representation has made the following specific averments and placed the documents before the respondent-authorities to the following effect:-

“2(a) Being from the Economically Weaker Section (EWS), my family was living in Janata Colony which was an unauthorized colony since the time immemorial. The U.T. Administration in order to eradicate the unauthorized colonies and to make Chandigarh slum free, came out with a Scheme called ‘Chandigarh Small Flats Scheme, 2006’ and after proper biometric survey held in 2006, my father was held entitled for allotment of a flat built specifically for Economically Weaker Section (EWS) on licence basis under the said rules. Copy of the Chandigarh Small Flats Scheme, 2006 is attached as Annexure A-2. Copy of the letter of allotment dated 11.09.2013 is attached as Annexure A-3. Copy of the possession slip dated 19.09.2013 is attached as Annexure A-4. Copy of the document showing that my father was handed over the actual physical possession of the allotted flat is attached as Annexure A-5. A copy of the certificate of residence dated 15.09.2022 duly issued after necessary verification is attached as Annexure A-6. The perusal of the allotment letter shows that the said flat was allotted to my family initially for a period of 20 years i.e. upto the year 2033. Moreover, the Scheme under which it was allotted says that it was allotted with a perpetual licence and it can only be cancelled in case of any violation, but otherwise it is perpetual licence and it will continue till it is cancelled. The requirement of clause 2(B)(iii) says that my parent should hold property only for 5 years and in view of the documents appended, it is established that my family is holding an immovable property in U.T.

Chandigarh for the period of last 5 years, as such, I am eligible for consideration under the U.T. Chandigarh Pool. For the purpose of clarification, it is further clarified that the competent authority has specifically used the word 'held/hold' in clause 2B(iii) and the word 'owner' is not used, and this is obviously because of the reason that a person belonging to Economically Weaker Section (EWS) cannot own a property in a costly city like Chandigarh. This is further apparent from the fact that Clause 2C which defines Economically Weaker Section (EWS) specifically uses the word 'owner', whereas Clause 2B(iii) only uses the word 'held/hold', and as such since my family is holding the property for more than 9 years, it makes me eligible for consideration under the U.T. Chandigarh Pool in terms of Clause 2B."

Today, members of the bar are abstaining from work on account of strike. However, Mr. Rakesh, Law Officer and Mr. Satpal Singh, Registrar (Academic), Government Medical College and Hospital, Sector 32, Chandigarh, are present in Court and submit that the authorities may be granted a day's time to re-examine the matter and pass a fresh order in this regard.

In view of the aforesaid statement, list the matter tomorrow i.e. 02.11.2022, on which date the responsible officer of Union Territory, Chandigarh would remain present in Court and inform about the decision taken by the respondent-authorities.

A copy of this order be given to the parties under the signatures of the Bench Secretary."

In compliance of the statement before this Court, when the matter was taken up by this Court on 02.11.2022, Mr. Rakesh, Law Officer, GMCH-32, Chandigarh, placed minutes of the meeting held on 01.11.2022, wherein the Committee has stated that the petitioner has a valid certificate establishing him as EWS candidate and has also a valid Residence Certificate and has thereafter taken a conscious and considered view to

partially re-conduct the counseling held on 26.10.2022 in order to determine the rights of the petitioner (EWS category under U.T. Chandigarh pool) qua the other eligible candidates and to give a fair chance to all who might be at parity with him.

During the course of hearing, Dr. Akshita Kundra daughter of Sh. Sanjeev Kundra, resident of House No. 2114, Sector 45, Union Territory, Chandigarh, a candidate, who had been allotted the Orthopaedic seat in GMCH, Sector 32, Chandigarh, in the second round of counseling after its conversion to the general category, appeared in Court and prayed that she may be impleaded as a respondent in the present petition. Accordingly the said candidate was directed to be impleaded as respondent No.3 in the petition. Pursuant to the aforesaid events, this Court had passed the following detailed order on 02.11.2022:-

“Members of the Bar are abstaining from work on account of strike.

Pursuant to the orders dated 31.10.2022 and 01.11.2022 passed by this Court, the Admission Committee for making admissions in MD/MS Course at the Government Medical College and Hospital (GMCH), Sector 32, Chandigarh held a meeting on 01.11.2022.

Mr. Rakesh, Law Officer, GMCH-32, Chandigarh has placed minutes of the meeting and the decision taken therein before this Court which is taken on record as Annexure ‘X’. According to the said decision, the Committee has taken a conscious and considered view to partially re-conduct the counselling that was held on 26.10.2022 in order to determine the claim of the petitioner under EWS Category under UT Chandigarh Pool qua other eligible candidates and to give a fair chance to all who might be at parity with him. The Committee has requested this Court to grant permission to re-conduct the partial second round of counselling.

At this stage, Dr. Akshita Kundra, daughter of Sh. Sanjeev Kundra, resident of H. No. 2114, Sector-45, U.T., Chandigarh has appeared before this Court and stated that

she has been allotted a seat in Orthopaedics at GMCH, Sector 32, Chandigarh, which was initially reserved for the EWS Category, but was thrown open on 26.10.2022. She prays for a hearing before the matter is disposed of/decided in terms of the aforesaid request made by the Admission Committee. She further prays that the matter be taken up tomorrow so that she can put up her case before this Court. She further prays that she may be impleaded as a respondent in the present writ petition.

The prayer made is allowed.

Dr. Akshita Kundra is directed to be impleaded as respondent No. 3.

The matter be taken up on 03.11.2022 to enable her to make submission(s).

Let a copy of the writ petition alongwith all the documents and annexures be supplied to her by the petitioner during the course of the day.”

Pursuant to the impleadment and liberty granted by this Court vide order dated 02.11.2022, today Dr. Akshita Kundra-respondent No.3 has filed her written statement in Court, which is taken on record. The respondent No.3 submits and has stated in her written statement that the petitioner does not belong to the EWS category as he had not furnished the necessary documents in support of his claim under the UT pool quota as prescribed under Clause 2 B (iii) of the Prospectus. Respondent No.3 has also stated that she cannot be held responsible for whatever has happened with the petitioner as she appeared in the counseling in accordance with law and took a seat which was available and offered to her by the authorities concerned. It is stated that there is no concealment or fault on the part of respondent No.3 and in such circumstances, as the respondent has been allotted a seat in accordance with law, at this stage, the petition filed by the petitioner being belated deserves to be dismissed as rights have accrued to respondent No.3.

We have heard the petitioner appearing in person; Mr. Rakesh, Law Officer and Mr. Satpal Singh, Registrar (Academic), Government Medical College and Hospital, Sector 32, Chandigarh appearing on behalf of GMCH, Sector 32, Chandigarh as well as Dr. Akshita Kundra-respondent No.3 in person.

The decision taken by the Admission Committee on 01.11.2022 is in the following terms:-

***PROCEEDING OF ADMISSION COMMITTEE
FOR THE ADMISSION IN MD/MS COURSES HELD ON
01.11.2022 AT 04.30 P.M. UNDER THE CHAIRMANSHIP
OF DIRECTOR, PRINCIPAL, GMCH-32, CHANDIGARH.***

In compliance with the order in CWP-24957 of 2022 (O&M) by Hon'ble Punjab and Haryana High Court, Chandigarh dated 31.10.2022 followed by order dated 01.11.2022, the admission committee met in the office of Director Principal on 01.11.2022 at 4.30 PM to reconsider the admission of Dr. Sahil under UT Chandigarh Pool EWS category seats in context of eligibility clause No. 2B(iii). The following were present in the meeting

- 1. Prof. Jasbinder Kaur, Director Principal***
- 2. Prof. A.K. Attri, Professor Incharge Academic***
- 3. Prof. Sudhir Garg, Medical Superintendent-cum-Head, Deptt. of Orthopaedics***
- 4. Prof. G.P. Thami , Head, Department of Dermatology***
- 5. Mr. Satpal Singh, Registrar (Academic)***
- 6. Mr. Rakesh, Law Officer (Non member of admission Committee)***

Committee reviewed the facts of the case related to the eligibility of Dr. Sahil for EWS category of UT Chandigarh Pool. Dr. Sahil has a valid certificate establishing him as an EWS category candidate. He also has a valid resident certificate. However the candidature of Dr. Sahil was not considered by the admission committee during first and second round of counselling under clause 2B(ii) and 2B(iii) as according

to its interpretation, he was not meeting all the parameters of these eligibility clauses as mentioned in the prospectus. As far as clause 2B(iii) is concerned, committee was of the opinion that being a licensee, his father currently is not the title holder/owner of the property, so his candidature was not considered under this clause.

However, as per prospectus, unfilled EWS category seats have been de-reserved along-with unfilled SC category seats and offered to General category candidates as per their merit during second counselling.

In addition during this counselling, unfilled Institutional Preference (IP) seats have also been added to the General category of the UT Chandigarh Pool and offered to the General Category candidates of this Pool.

In view of directions from the Hon'ble High Court vide order dated 31.10.2022 and 01.11.202, the admission committee again deliberated upon the candidature and eligibility of Dr. Sahil and in light of the observations of Hon'ble High Court took a conscious considered view to partially re-conduct the counselling held on 26.10.2022 in order to determine the rights of Dr. Sahil (EWS Category under UT Chandigarh Pool) qua the other eligible candidates and to give a fair chance to all who might be at parity with him.

It is further submitted that according to the Medical Counselling Committee (MCC) of Ministry of Health & Family welfare, Govt. of India counselling schedule, second round of state counselling for PG seats has to be completed by 26.10.2022 (Annexure-I).

So it is prayed that the Hon'ble court may grant permission and may pass the orders to re-conduct partial second round of counselling starting from the point of de-reservation of EWS seat."

From a perusal of the aforesaid minutes, it is evident that the Admission Committee has stated that the petitioner has a valid certificate establishing him as an EWS category candidate and has also a Residence

Certificate and the authorities after realizing their mistake have reconsidered the matter and taken a conscious considered view to partially re-conduct the counseling held on 26.10.2022 in order to determine the rights of the petitioner (EWS category under U.T. Chandigarh pool) qua the other eligible candidates and to give a fair chance to all who might be at parity with him.

In view of the aforesaid facts and circumstances, specifically the decision of the Committee dated 01.11.2022, this Court is not required to go into the merits of the claim of the petitioner or the rival claims as the authorities themselves have reconsidered the issue and finding the EWS Certificate and U.T. Pool Residence Certificate to be valid and realizing their mistake have taken a considered decision to partially re-conduct the counseling that was held on 26.10.2022. We are also not required to look into the correctness or the validity of the decision dated 01.11.2022 taken by the Admission Committee in the present proceedings as the same have not been challenged by any person including respondent No.3.

On a specific query being made, it is informed by the officers of GMCH, Sector 32, Chandigarh, present in Court that the admission process is going on and the mop-up round of admission would be held on 14.11.2022 and the last date for admission is 25.11.2022 and in such circumstances, as the admission process is still going on, the permission as prayed for be granted.

Though under normal circumstances, the schedule as notified and prescribed cannot be altered or modified even by the Court except in exceptional circumstances. However, in view of the law laid down by the Supreme Court in *S.Krishna Sradha versus State of Andhra Pradesh and others (2020) 17 Supreme Court Cases 465*, wherein the Supreme Court has held that even after the admission process is over and the last date for

admission has lapsed and in cases where the Court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right and remedies expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission, which has resulted in violation of right of equality and equal treatment to the competing candidates, the Court, in such exceptional circumstances, can permit admission even after the last date of admission provided that said action or order is passed within a month of the last date of admission.

In the instant case, the admission process is still going on. The authorities in their own decision have stated that the petitioner possesses the necessary documents for qualifying in the U.T. pool and realizing that he has been wrongly denied consideration for no fault on his part and the admission process is still going on, have sought permission to partially re-conduct the counseling held on 26.10.2022 in order to determine the claim of the petitioner under EWS category under U.T. Chandigarh pool qua other eligible candidates and to give a fair chance to all who might be at parity with him.

In view of the facts of the present case and the stand of the authorities, we think it appropriate to allow the request and therefore, without expressing any opinion on the merits of the case or the entitlement of the parties and looking to the fact that the petitioner has approached this Court within time and as presently advised, no fault is attributable to him and there appears to be an apparent fault and breach of the rules relating to the admission on the part of the authorities, the permission as prayed for by the respondent-authorities vide their decision dated 01.11.2022, is granted. It

is made clear that the exercise as aforesaid be completed before the mop up round and well before the last date of admission as notified.

As stated earlier, we make it clear that this Court has not expressed any opinion in respect of the merit of the issues raised by the petitioner in the present petition or for that matter the rival contentions of respondent No.3 and the issues raised by her in her written statement, which are left open to be considered, if so required, by the authorities concerned at the time of conducting re-counselling. We have also left open the rights of any person aggrieved to assail the decision of the Admission Committee dated 01.11.2022, if so advised, in accordance with law.

With these observations, the petition stands disposed of.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.11.2022

ravinder

Whether speaking reasoned	√Yes/No
Whether reportable	√Yes/No