

SUPREME COURT OF INDIA

Sandeep Barar

Vs.

State of Punjab

C.A.No.4408 of 1989

(M. H. Kania. CJI, and Kuldip Singh, J.)

17.11.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. We pronounced our conclusions in these appeals by our order dated January 30, 1990. We now deliver our reasons.

2. The Punjab Government by a notification dated April 21, 1989 announced the policy for admissions to MBBS/ BDS courses for the sessions 1989-90 in all the three State Medical Colleges and two State Dental Colleges. Two per cent seats were reserved for sportsmen / sportswomen. The relevant part of the notification is as under :

"In the reserved category of sportsmen / sportswomen, the admission shall be made from amongst the eligible candidates on the basis of their gradation done by the Department of Sports, Punjab

..... Sportsmen / Sportswomen shall be eligible if they secure a Minimum of 35% marks in the P.M.T."

3. It is obvious that the admission to the reserved category of sportsmen / sportswomen was to be made from amongst the eligible candidates on the basis of their "gradation" done by the Department of Sports, Punjab. The procedure for issuing Sports Gradation Certificate has been provided by the Instructions dated August 6, 1986 issued by the Government of Punjab. The relevant part of the Instructions are as under :

" 1. The certificates shall be in the following descending order of merit: -

Grade-A : Sportsman of International Standing i.e. those who have represented India in recognised International Tournaments, meets, events competitions etc.

Grade-B: Sportsman of National Standing, i.e. those who have represented their States, combined University, services, States, schools etc. in recognised National Tournaments, contests, competitions etc.

Grade-C: Sportsman of State standing i.e. those who have represented their District, combined District, Schools, Universities, departments in Inter-District Schools, Inter-varsity and Inter-Departmental recognised Tournaments, contests, competitions etc.

Grade-D: Sportsmen of District standing, i.e. those who have played for their schools, college institutions etc. in the recognised Inter-college, Inter-schools, Inter-Institutional tournaments, matches, contests etc.

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3. In the matter of rating inter se, the performance in the same grade will be in the following descending order: -

(a) Record holders in any event.

(b) Winners.

(c) Runners up

(d) Third position holders.

(e) Number of times participated.

(f) Number of discipline participated.

4. Participation in a lower grade shall be a pre-requisite for acceptability in the higher grade. For instance, no achievement in Grade 'A' would be recognised if it is not shown to have been achieved through participation in Grade B, C and D. Similarly for recognition of an achievement in Grade 'B' participation in Grade 'C' and 'D' will be necessary.

5. In discipline like Athletics etc. position achieved will be considered only if it has been achieved through a competition with seven or more competitions from at least seven units / states.

6. Only those certificates issued by the concerned sports bodies as are properly signed in ink by at least two office bearers thereof should be entertained and application shall only be received along with an affidavit affirming the correctness of the claim(s) duly attested by the Magistrate 1st class on a non-judicial paper.

7. The applicants shall be interviewed and may also be given field test(s) in the discipline(s) concerned to ascertain the correctness of the testimonials / certificate(s) which they produce in support of their claim(s) to take the grading of the candidate(s) not merely on the basis of certificate(s) but by examination from other appropriate angles.

8. Director of Sports, Punjab, who will issue the certificate will also have the authority to cancel any certificate at any time if it is found to have been issued on false / incorrect information or record."

4. Earlier to the Instructions dated August 6, 1986 the Punjab Government had issued Presidential Order dated August 30, 1984 which provided a system of Weightage by which additional marks were to be awarded on the basis of sports achievement and were to be added to the marks secured in the admission test. The Weightage was as under :

Grade-A: 8% of the marks secured in the written test.

Grade-B: 5% of the marks secured in the written test.

Grade-C: 3% of the marks secured in the written test.

Grade-D: 2% of the marks secured in the written test."

5. The admission policy dated April 21, 1989 was challenged by the respondents in these appeals on various grounds. A Division Bench of the High Court struck down the admissions on the basis of 'gradation certificates' and held that instead of grading the sportsmen under the Government Instructions dated August 6, 1986 weightage as provided in the Presidential Order dated August 30, 1984 be the governing factor in the admissions to reserve seats for sportsmen / sportswomen. The High Court allowed the writ petitions on the following reasoning :

"This shows that academic excellence is not given a go-by even for reserved categories. When the main object is to produce doctors and not sportsmen, the government policy in that regard is oriented to achieve academically sound doctors but interlaced, within tolerable limits, some sports element. One cannot imagine situation when a candidate aspiring to become a doctor adopts the sports route to become one by design. Rather it is the sports instinct which makes him a sportsman. And if in achieving the excellence thereof he somewhat lags behind in his academic pursuits the government policy right from 1962 onwards has been to give him a head start at tolerable and acceptable base. In no case, can the policy of the Government be so spelled, as is urged on behalf of the respondents, to mean that on acquiring the minimum eligible of 35 per cent further relative merit of the candidate in the sports category loses all significance, and that the sports certificate higher in grade determines the admission. We can never subscribe to such view, result oriented and objective as the products of the Medical, Dental Colleges are supposed to be. We hold accordingly. "

6. We have heard learned counsel for the parties. Elaborate arguments were addressed the question whether the academic excellence or the achievements in the field of sports should be the main consideration. It was also argued that in the matter of State employments no reservations can be made for the sportsmen / sportswomen and only weightage is permissible. This argument was advanced on the interpretation of Art. 16(1) read with Art. 16(4) of the Constitution. It is not necessary for us to go into these questions. We leave these questions open to be decided in an appropriate case.

7. We are of the view that these appeals are to be allowed on the short ground that the methodology for admission to the reserve seats for sportsmen / sportswomen is the function of the State and has to be decided by the State Government. It is the function of the executive to lay down the procedure for admission to the reserve categories. It is no doubt correct that this Court has the power of judicial review and if the validity of the Government Instructions is challenged this Court., can examine the same. We are, however, of the view that the High Court was not justified in directing that different procedure than the one notified by the State Government be made applicable to the admissions. In the present case the Government Instructions dated August 6, 1986 had superseded the earlier Presidential Order dated August 30, 1984. The admissions for the Session 1989-90 were to be held on the basis of the gradations assessed under the 1986 Instructions. The High Court was not justified in issuing the directions that the 1984 Instructions and not the 1986 Instructions was to be followed. The legality of the 1986 Instructions was not challenged before the High Court. The High Court only gave its preference for the weightage system provided under the Presidential Order dated August 30, 1984 and directed that admissions be regulated on that basis. This could not be done by the High Court.

8. We, therefore, allow the appeals, set aside the High Court judgment and reiterate our conclusions pronounced on January 30, 1990 which are as under:

"a) Admissions, in colleges and two State dental colleges for the session commenced in the year 1989, to the seats reserved in favour of sportsmen / sportswomen be made in accordance with the Government of Punjab, Deptt, of Health and Family Welfare notification dated April 21, 1989 (Annexure 'A' in CA 4408/19,89) read with Government of Punjab, Deptt. of Education Instructions dated August 6, 1986 (excluding para 2 which has already been struck down) (Annexure 'B' in CA 4408/89).

b) We hold that the Government instructions dated August 30, 1984 providing weightage in the various grades are no longer operative and had been superseded by the instructions dated August 6, 1986.

c) We strike-down the instructions issued by Director of Sports contained in memorandum Sports SDA-VII-86-87-8895 dated 16-9-1986 (mentioned as August 6, 1986 in the High Court judgment) (Annexure 'C' in CA 4408 / 89) and direct that the same be not taken into consideration while finalising the selection.

d) Admissions to all the seven seats (six to MBBS and one to BDS) be made as directed by us in this order above. Three of the respondents namely Amandeep Kaur Sahota, Baljinderdeep Singh Dhanj and Navdeep Walia have already been admitted as a result of the High Court order. In the interest of

justice we direct the respondent State of Punjab to create three additional seats with the approval of the Medical Council of India and if such an approval is granted, then these three students be accommodated against the additional seats.

There shall be no order as to costs."

Appeals allowed.

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