Preeti Mittal

Vs

Gaganjot Kaur Saira

Civil Appeal No. 12143 of 1999

(K. Venkataswami, S.S. Mohammed Quadri JJ)

05.04.1999

JUDGMENT

K. Venkataswami, J.

1. Special leave granted.

2. All these eight appeals arise out of a common order dated 26.11.1998 of the Punjab and Haryana High Court made in CWP Nos. 12304, 12350, 13775, 13296, 12350 of 1998. The Chandigarh Administration & Another (hereinafter called the `appellants') have preferred four appeals and the individuals affected by the order under appeal have filed separately four appeals. The common issue relates to the admission of the candidates to the MBBS course for the year 1998-99 in the Government Medical College, Chandigarh (hereinafter called the `College').

3. Brief facts leading to the filing of the Writ Petitions are as under :

> The Government Medical College, Chandigarh, was started in the year 1991 with an annual intake of 50 MBBS seats. 15% of the seats (7 seats) were being filled by the College from the All India Quota seats in accordance with the decision of this Court from the year 1991 upto 1994 by admitting students selected through the Combined Entrance Test conducted by the CBSE, New Delhi. It appears that from the year 1994-1995 onwards the Directorate of Health Services, Ministry of Health & Family Welfare, Government of India, did not send any students against the 7 seats on account of an order of the Punjab & Haryana High Court holding that the College was not a recognised one. Consequently, all the 50 seats were filled exclusively from the Chandigarh Pool. While so, on 27.3.1998 the Punjab & Haryana High Court in CWP No. 2731 of 1998 held that 100% reservations for the students of Chandigarh Pool was against the settled principles of law on the point. In view of the said judgment dated 27.3.1998 of the Punjab & Haryana High Court, it was decided by the Administration to fill up 15% seats from All India Pool and the remaining 85% from Chandigarh Pool. Accordingly, a Notification was issued on 19.9.1998. In the said Notification, clause (d) reads as follows :-
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> "If candidate clears in All India Pool, even though belonging to Chandigarh, he/she would have the right to be considered and admitted in that pool subject to his/her merit. Other conditions would remain the same."
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> Similar clause identically worded bearing No. 4 finds a place under the heading

`Clarifications' in the Prospectus issued for the year 1998 by the College.

4. After the select list was published, the contesting respondents in these appeals challenged the same by filing the separate Writ petitions.

5. The question that fell for consideration of the Punjab & Haryana High Court was whether the Administration was right in first filling up 85% of Chandigarh Pool out of merit list and then filling up the remaining 15% of All India Pool. According to the Writ Petitioners before the High Court (hereinafter referred to as `Writ Petitioners'), the Administration was not right and it has acted against the spirit of clause (d) of the Notification corresponding to clause 4 of the `Clarifications' given in the Prospectus. The contention of the Writ Petitioners was that 15% of the All India Pool must have been filled in first and the remaining 85% of Chandigarh Pool must have been filled up subsequently. The reason for taking such a stand by the Writ Petitioners was that by filling up Chandigarh Pool first, the meritorious students hailing from Chandigarh lost their seats/claims, which had been given to candidates from All India Pool. Factually speaking, according to the Writ Petitioners the first seven numbers from the merit list were all candidates from the Chandigarh Pool. But for the impugned procedure followed by the Administration by filling up Chandigarh Pool in the first instance, no single seat could have gone to candidates from All India Pool. In that way, according to the Writ Petitioners, the Chandigarh Pool candidates are effected. On the other hand, the reason for filling up the Chandigarh Pool first followed by All India Pool, according to the Administration, was to safeguard the interests of All India Pool candidates and to make the order of the High Court meaningful and purposeful.

6. It was the claim of the Administration that neither the Notification nor the Prospectus gives any specific direction regarding the filling up of candidates in the first instance from either Pool. Therefore, the Administration by invoking clause-1 of the `Overriding Conditions' given in the Prospectus, devised the method as noticed above.

7. The High Court, after considering the rival submissions and interpreting clause (d) of the Notification equivalent to clause 4 of the `Clarifications', was of the view that the procedure followed by the Administration was not in accordance with the said instructions/Prospectus. The High Court also was of the view that there was no occasion for the Administration to invoke clause-I of the overriding conditions as there was no ambiguity. It is seen from the judgment that the High Court proceeded on the basis that the Notification dated 19.5.1998 explicitly made a provision that the All India Pool candidates would be filled in first and the Chandigarh Pool thereafter according to the merit. This assumption appears to be not correct. In view of what is stated above, the High Court allowed the Writ Petitions and directed the appellants to reframe the merit list of the eligible candidates for the admission to MBBS course by filling up All India Pool in the first instance and then the candidates from the Chandigarh Pool. The High Court also set aside the seat given to a Scheduled Caste candidate from Chandigarh Pool on the ground that no Scheduled Caste candidate from All India Pool was available and directed that the seat should be given to the general candidate from All India Pool.

8. Aggrieved by the above decision of the High Court, these appeals are preferred by special leave. The leading argument was advanced by Ms. Indu Malhotra, learned counsel appearing for the Administration. According to the learned counsel, the common issue raised in these cases is a one time issue in the sense that the seats belonging to the All India Pool were being filled up, upto the year 1994, by accepting the students whose names were given by the Central Board of Secondary Education. Thereafter, between the year 1995-1998 no students were accepted from the All India

Quota due to lack of recognition of Government Medical College, Chandigarh, by the Medical Council of India. It is only for the year 1998-1999 the students were sought to be accepted from the All India Pool in compliance with the directions given by the High Court of Punjab & Haryana. With effect from the academic year commencing 1999, the Central Board of Secondary Education would recommend names of candidates to be given admission to the seats set apart for the All India Pool and, therefore, the present arrangement was only for the academic year 1998-99 and will not recur hereafter.

9. Apart from the above submission, it is the contention of the learned counsel for the appellants that this Court in *State of Maharashtra v. Minoo Noazer Kavarana and others, 1989(2) SCC 626* has categorically held that filling up of seats by the Administration is the exclusive jurisdiction of the Administration and the Courts shall not interfere with that unless the course adopted by the Administration was arbitrary. According the learned counsel, the Administration has to resort to the method adopted in these cases to safeguard the interests of the candidates from All India Pool and if the direction given by the High Court is to be followed, it will be not only detrimental to the interests of students applying under All India Pool, but also will be contrary to the law laid down by this Court in Minoo Noazer Kavarana's case (supra).

10. On the other hand, counsel appearing for the contesting respondents (writ petitioners before the High Court) contended that the High Court was right in interpreting the scope of clause (d) of the Notification corresponding to clause 4 of the `Clarifications'. It was also the contention of the learned counsel appearing for the contesting respondents that it is not open to the Administration to go against a judgment of the Punjab & Haryana High Court rendered in *CWP No. 11653/98 (Neetika Bansal v. Chandigarh Admn. and others)* just before the release of the list, dismissing a writ petition moved by a candidate from All India Pool praying for a direction to the Administration to fill up first the candidates from Chandigarh Pool and then the candidates from All India Pool.

11. Learned senior counsel appearing on behalf of Shishir Gupta (Writ Petitioner in W.P. No. 13775/98) submitted that his name (Shishir Gupta) was found in the merit list at Serial No. 50 and in spite of that, he was not selected whereas Serial Numbers below him were found in the Select List. To this, the answer of learned counsel for the appellant-Administration is that Shishir Gupta did not apply for a seat in the Government Medical College, Chandigarh, and therefore he cannot find fault with the Select List.

12. We have considered the rival submissions. We have already seen that from 1994-1995 to 1997-1998 no students were elected from the All India quota on the ground that the Government Medical College, Chandigarh had no recognition from Medical Council of India. It is only by reason of the judgment of the High Court in CWP No. 2731/98 the Chandigarh Administration decided to fill up 7 seats by candidates from All India Pool. It is important to bear in mind that neither the Notification nor the Prospectus issued for admission to MBBS Course for the Session 1998-99 did contain any indication that the seats for All India Pool would be filled up first and thereafter the seats reserved for Chandigarh/U.T. Pool would be filled up. The High Court at once place wrongly stated as follows :-

> "Administration in its Notification dated 19.5.1998 explicitly made a provision that the All India Pool candidates would be filled in the first and the Chandigarh Pool thereafter according to merit."

Learned counsel appearing for the contesting respondents also could not sustain the above

assumption of the High Court as there was no such direction in the Notification/Prospectus.

13. While rejecting the contention of the learned counsel appearing for the Administration about the invoking Clause 1 of the overriding conditions, the High Court observed thus :-

> "Clause 1 of the "Overriding Conditions" given at page 6 of the Brochure is reproduced below :-
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> 1. Admissions are made according to the rules and regulations as mentioned in this prospectus. *However, in all matters which either need interpretation or for which no provision exists in the prospectus, the decision of the Admission Committee shall be final.* No correspondence will be entertained regarding rejection or disqualification of any candidate."
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> It will be seen that this clause authorised the Admission Committee to operate in two fields in case of doubt : firstly, in matter which needed interpretation and secondly, in such matters where no provision existed in the prospectus. To our mind, the conditions for exercise of this power did not exist in the present case as there was no ambiguity, flaw or any gap in the provisions of the prospectus or the brochure with regard to the manner or method to be followed in the making of admissions as it had repeatedly been set out by implication in both these documents that admissions were to be made first against the All India Pool and thereafter against the Chandigarh Pool seats."

The above observations also do not appear to be correct because as noticed earlier neither the Notification nor the Prospectus give any guideline as to the manner of filling up of the seats which necessitated the Admission Committee to invoke Clause 1 of the `Overriding Conditions' in the Prospectus. The High Court was, therefore, not right in holding that there was no room for the Admission Committee to invoke Clause 1 of the `Overriding Conditions'.

14. It is seen from the papers that on 3.8.1998, a day before the publication of the results, the Admission Committee decided to fill up Chandigarh Pool first and thereafter to fill up the All India Pool. The reasons for doing so, according to Chandigarh Administration, were that such a course will benefit the All India Pool candidates and the Chandigarh Pool candidates were eligible to be considered for both Pools and they were in a large number. It was also considered that the meritorious candidates of Chandigarh Pool were accommodated in the 43 seats set apart for Union Territory and the Chandigarh students did not encroach upon the seats set apart from the All India Pool for which also they (Chandigarh Pool) were eligible to be considered. The reasons for filling up Chandigarh Pool first do appear to us as fair and reasonable for it made the selection of candidates from All India Pool meaningful. The observations of the High Court that the decision of the Admission Committee to fill up the Chandigarh Pool seats first had the effect of denying admission to some of the Chandigarh Pool candidates who would have otherwise secured admission in the All India Pool is also not sustainable as the meritorious students from the Chandigarh Pool were permitted to compete with the All India Pool candidates. As a matter of fact in the All India Pool list published, candidate from Chandigarh Pool was selected.

15. It is in these circumstances that the judgment of this Court in State of Maharashtra v. Minoo Moazer Kavarana & others, 1989(2) SCC 626, was pressed into service by the Chandigarh Administration before the High Court. The learned Judges however were of the view that that

judgment was rendered on the peculiar facts of that case and, therefore, reliance cannot be placed. On the other hand, we find that the judgment of this Court in the said case squarely covers the issue. This Court in the said judgment, while dealing with more or less similar situation, observed as follows :-

> "It may be stated at this stage that by virtue of the judgment in the case of Nidamarti Maheshkumar v. State of Maharashtra relating to admission in Medical Colleges in Maharashtra, the State of Maharashtra laid down the policy of regional reservation of 70 per cent of seats for the region of Bombay and the remaining 30 per cent of seats for the candidates outside Bombay but within the State of Maharashtra. It has already been noticed that the High Court is of the view that the 30 per cent of seats should have been filled up first and, thereafter, 70 per cent of regional seats should have been filled up. We have not been able to understand the reasons for this view of the High Court. If 30 per cent of seats are filled up first, the candidates who are residing outside Bombay will have to compete with the local Bombay students who are also eligible for admission in the said seats. It may so happen that most of the seats meant for candidates outside Bombay may be filled up by the local Bombay candidates if however, 70 per cent of seats are filled up first, the more meritorious Bombay students would be admitted and those, who would not be admitted, would obviously be candidates obtaining lesser marks and it will not be difficult for the outside candidates to compete with them for the said 30 per cent of seats. The question whether 70 per cent of seats or 30 per cent of seats should be filled up first is a question which should be left to the discretion of the government. In our opinion, this aspect is not within the purview or the jurisdiction of the court. We do not find any unreasonableness or impropriety in the State Government's decision to fill up 70 per cent of seats first. The High Court was not, therefore, justified in directing admission on the basis of filling up 30 per cent of seats first and, thereafter, 70 per cent of seats and such direction has created some complications in the matter."
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> The above passage clearly indicates that the manner in which the seats were filled up by the Chandigarh Administration is quite in accordance with the view expressed by this Court.

16. As observed in the said judgment of this Court, there was no good reason for the High Court to interfere with the decision of the Chandigarh Administration in the matter of filling up of seats for the MBBS Course.

17. The contention of the learned counsel appearing for the contesting respondents that in view of the decision of the Punjab & Haryana High Court in Neetika Bansal case (supra) the procedure followed by the Chandigarh Administration was not correct, is not acceptable. It is seen that in the Neetika Bansal case (supra) the challenge related to the correctness of the provision (clause (d) of the Notification) which enabled the Chandigarh/U.T. Pool candidates to compete both for the All India Pool and Chandigarh Pool. While dismissing the writ petition, the High Court no doubt made certain observations which are in favour of the contesting respondents. However, having regard to the scope of the writ petition and in view of the discussion above, we do not think that the decision in Neetika Bansal case (supra) stood in the way of Admission Committee taking the decision, as noted above, on 3.8.1998.

18. The contention advanced by the learned counsel appearing on behalf of Shishir Gupta to the

effect that though his name did find a place in the merit list at Sr. No. 50, his name did not find a place in the select list, is also unsustainable inasmuch as that he did not apply to the Government Medical College, Chandigarh.

19. Incidentally, we have also noticed that the issue on hand, as contended by the learned counsel appearing for the Chandigarh Administration, is one time issue as from the year 1999-2000 the candidates for All India Pool will be given by the Central Board of Secondary Education and, therefore, the selection by the Chandigarh Administration for this category will not arise in future. We also notice that the candidates selected as per the list published by the Administration had undergone the course nearly for a year and in the absence of strong reasons for setting aside the selection, the Court will not interfere with the selection.

20. Regarding the seat to the general candidate in All India Pool by the High Court on the ground that no Scheduled Caste candidate in that Pool was available, we are of the view that the High Court was not right in giving that direction. We have already seen that as per Clause (d) of the Notification, the candidates from Chandigarh Pool are entitled to compete both for Chandigarh Pool as well as All India Pool. That being the position, when a Scheduled Caste candidate was not available in the All India Pool and such candidate is available in Chandigarh Pool that must go to a Scheduled Caste candidate in Chandigarh Pool. The reason given by the High Court that on a reading of clause 3 of the Clarifications the seat should go to general candidate in All India Pool, is based on wrong appreciation of that clause 3. Clause 3 reads as follows :-

> "3. If the requisite number of students belonging to Scheduled Caste category are not available, seats thus remaining vacant will be open to students of the general category."

There is no indication that the seat belonging to Scheduled Caste Category in a particular Pool should go to general category of that Pool. Clause 3 generally says that if a Scheduled Caste candidate is not available the seat must go to general category. This clause read with clause 4 of the Clarifications corresponding to clause (d) of the Notification, will clearly show that if a Scheduled Caste candidate is not available in All India Pool that must go to Scheduled Caste candidate in Chandigarh Pool, if available. Therefore, the High Court was not right in directing that the seat belonging to Scheduled caste category in All India Pool to be given to general category in the same Pool.

21. for all these reasons, the appeals are allowed and the Writ Petitions filed before the Punjab and Haryana High Court challenging the selection of candidates for the first year MBBS course for the year 1998-99 shall stand dismissed. However, there will be no order as to costs.

Appeals allowed.