

SUPREME COURT OF INDIA

Uskan Dogra & Ors.

Vs.

State of Punjab & Ors.

(Y.K. Sabharwal,CJ. D.M. Dharmadhikari and Tarun Chatterjee, JJ.)

C.A.No.8071 of 20041

14.12.2004

ORDER

Y.K. Sabharwal,CJ.

1. Permission to file SLP granted.

2. Leave granted.

3. Various candidates appeared in the entrance test (PMET, 2003) conducted by Baba Farid University of Health Sciences, Faridkot for admission to MBBS, BDS and other courses. The seats for MBBS were to be filled up in (i) Government Medical College, Patiala, (ii) Government Medical College, Amritsar, (iii) Guru Gobind Singh Medical College, Faridkot, (iv) Sri Gum Ram Dass Institute of Sciences and Medical Research (SGRD), Amritsar, and (v) DMC, Ludhiana. The entrance test was held on 29-6-2003. In order to appreciate the directions issued by the High Court, it would be appropriate to notice the merit position of the appellants who had challenged the grant of admissions to Respondents 9 to 13 in DMC, Ludhiana as under:

1.	Varinder Joshi (Petitioner 1)	189	General
2.	Mohit Shakia (Petitioner 2)	192	-do-
3.	Ankit (Petitioner 3)	233	-do-
4.	Richa Garg (Petitioner 4)	261	-do-
5.	Vivek Bansal (Petitioner 5)	265	-do-
6.	Renu Bala (Petitioner 6)	270	-do-
7.	Deepak Garg (Petitioner 7)	326	-do-
8.	Gumoor Channi (Respondent 10)	372	-do-
9.	Muskan Dogra (Respondent 11)	857	-do-
10.	Aikaj Jindal (Respondent 12)	857	-do-
11.	Neha Sood (Respondent 13)	2551	-do-

(2005) 9 SCC 186

S. No.
Name
Rank Category

The position of candidates as petitioner or respondent, as abovenoted, is as given in the writ petition before the High Court. Further, insofar as Deepak Gara is concerned, he did not take admission and, therefore, we need not consider his case. We may also note that Ankit, Petitioner 3 before the Hig Court took admission in BDS course in Dental Medical College. Patiala as he was only interested to join MBBS course in DMC, Ludhiana It seems that m Punjab for MBBS course, DMC, Ludhiana is the most sought-for college out of the aforenoted five colleges.

4. From the merit position of candidates who were Respondents 11, 12 and 13 before the High Court, it is evident that there is enormous gap in their ranking in merit as compared to those of the petitioners who had challenged the admissions given by DMC, Ludhiana.

5. The candidates Muskan Dogra, Aikaj Jindal and Neha Sood, appellants in civil appeal arising out of SLP (C) No. 21219 of 2004, have challenged the impugned judgment of the High Court directing cancellation of admissions granted to them. Candidate Gurnoor Channi is appellant in civil appeal arising out of SLP (C) No. 21338 of 2004. She has also challenged the directions concerning her in the impugned judgment.

6. We have perused the record and heard submissions made by learned counsel representing the affected candidates, the colleges concerned, the State Government and Medical Council of India.

7. It cannot be doubted that the aforesaid three candidates, with the ranking of 857 and 2551 on merit, in general category, would not have got admission in any medical colleges in Punjab in MBBS course. They, however, were given admission as a result of a separate quota that was introduced by DMC, Ludhiana, namely, the “faculty quota” meant for wards of the bona fide faculty members.

8. The “faculty quota” has been declared as unconstitutional by the High Court. There are various decisions of this Court deprecating such quota and reservation. The High Court after rightly quashing the quota and consequently the admissions granted to the aforesaid three candidates, issued the following directions:

“(0 The reservation introduced as ‘faculty quota’, namely, the ‘wards of bona fide faculty members’ by DMC, Ludhiana for admission to MBBS course is declared unconstitutional and the same is accordingly struck down; consequently, the admissions granted to Respondents 11 to 13, who were admitted against the aforementioned faculty quota, are also set aside.

(ii) The manner in which seats have been filled from the waiting list, is held to be illegal and consequently, the admission granted to Respondent 10 out of the 'waiting list' in DMC, Ludhiana is set aside.

(iii) The petitioners except Petitioner 6 who are higher in merit than Respondents 9 to 13, shall be given an option for their allocation to DMC, Ludhiana against the available seats and strictly as per merit in PMET, 2003.

(iv) Since Petitioner 3 did not opt for MBBS course and is pursuing BDS course in Government Dental College for the last one year, he shall be given an option to join MBBS course in DMC, Ludhiana, however, in case Petitioner 3 opts to join the aforementioned course, he shall have to start the same from its very beginning.

(v) Respondent 10 (Gumoor Channi), who was initially admitted to SGRD at Amritsar allegedly as per her merit in PMET, 2003, shall however be entitled to be reshifted to the said institute and course for MBBS (sic) so, if so entitled as per merit. The cost of Rs 25,000 shall be deposited by DMC, Ludhiana with the Punjab State Legal Services Authority within a period of two months from the date of receipt of a certified copy of this order."

9. As a result of the aforesaid directions, the writ petitioners before the High Court have exercised options for getting admission in DMC, Ludhiana. The result of their getting admissions in Ludhiana College would be their vacating seats in SGRD College, Amritsar.

10. Under the aforesaid circumstances, it has been strenuously contended for the aforementioned three candidates whose admissions have been cancelled, who are the appellants before us, that they should be accommodated in the seats that would fall vacant in SGRD College, Amritsar. In other words, the submission is that they should be given admission in MBBS course in SGRD College, Amritsar. We do appreciate that as a result of the High Court ; directions on cancellation of their admissions in Ludhiana college and on shifting of meritorious candidates from Amritsar to Ludhiana, the seats at Amritsar college will fall vacant and if these three candidates are not allowed admissions in the college at Amritsar, their study would go waste and the seats would also remain unfilled and go waste. But, at the same time, we cannot lose sight of the fact that on their position on merits, admittedly, none of the three appellants would have got admission in any medical college in Punjab. Even in SGRD College, Amritsar, the last candidate who had got admission in MBBS course had the ranking of 285, whereas the rankings of these three candidates are 857 and 2551. Further, regarding the study of these candidates going waste, it deserves to be noticed that even the writ petitioners for no fault of theirs would lose about six months of study, as we would presently note, while dealing with the direction to grant them admission in DMC, Ludhiana. We can appreciate the magnanimity but not when it is entirely at the cost of merit. We do not wish to send a message that merit can be blatantly compromised when, in fact, it comes to the stage of issuing directions. As is clear from facts noted above, it is not even a borderline case.

11. The further contention urged on behalf of these appellants that some of them could have been admitted at the relevant time in BDS course, is of no consequence, since the question for consideration is admission not in BDS course but in MBBS course. Under these circumstances, we do not think that any ground has been made out for taking a lenient view in respect of these three candidates.

12. Insofar as Gurnoor Channi is concerned, her position is somewhat different. Firstly, her ranking in merit is much higher as compared to the aforesaid three candidates. She is at number 372. Secondly, she took a admission first in MBBS course in SGRD College, Amritsar under NRI quota and later she vacated that seat on getting admission in DMC, Ludhiana in general category. The seat vacated by her at Amritsar college has since been filled by another candidate. There are, however, other seats in Amritsar college which would fall vacant as the writ petitioners before the High Court, have opted for admission in DMC, Ludhiana despite their losing nearly six months in the process. Having regard to the totality of the circumstances, we are of the view that Gurnoor Channi shall be admitted in MBBS course in the second year in SGRD College, Amritsar, subject to her complying with Regulation 6(5) by completing 18 months of study in that College in the second year. Further, it would be open to the College to notionally treat her admission against NRI quota, the quota against which she had been originally admitted and charge fee from her on that basis.

13. Insofar as Writ Petitioner 3 (Ankit) referred to above in Direction (iv) of the High Court is concerned, no fault can be found with the direction. He will have to start MBBS course in DMC, Ludhiana, from its very beginning. Learned counsel appearing for him submits that Ankit would like to join the said College despite the fact that it would result in wastage of one-and-half year of his study already undertaken in Dental College, Patiala. In this regard, learned counsel appearing for MCI rightly submits that on implementation of the direction of the High Court in regard to Ankit, the intake of DMC, Ludhiana for academic year 2005-2006 shall stand reduced by one seat and it should not be taken that they would be entitled to have an additional seat to accommodate this candidate. We agree. The submission to the contrary urged on behalf of DMC, Ludhiana deserves to be rejected on the short ground that it is this College itself which is responsible for all the mess created.

14. The result of the aforesaid discussion is that for the five seats falling vacant in DMC, Ludhiana (four as a result of cancellation of admission of Gurnoor Channi, Muskan Dogra, Aikaj Jindal, Neha Sood and one on account of death of a candidate) would be filled by granting admissions to Varinder Joshi, Mohit Shakia, Richa Garg, Vivek Bansal and Renu Bala who all have opted for the said admission. All these five candidates have already spent six months in second year in SGRD College, Amritsar. Regulation 6(5) of the Graduate Medical Education Regulations, 1997 provides that the applicant/candidate must submit an affidavit stating that he/she will pursue 18 months of prescribed study before appearing at the professional Bachelor of Medicine and Bachelor of Surgery (MBBS) examination at the transferee college, which should be duly certified by the Registrar of the university

(2005) 9 SCC 186

concerned in which he/she is seeking transfer. The transfer will be applicable only after receipt of the affidavit.

15. The aforesaid Regulation came up for consideration before this Court in *Medical Council of India v. Sarang*¹. Reversing the decision of the A Bombay High Court, it was held that the Medical Council is right in insisting that the study by the student has to be in the same college. It has been noticed that the object of the Regulation is that although the course of the study is common to all medical colleges, but the sequence of the coverage of the subject varies from college to college. Therefore, we make it clear that all the five candidates who will get admission in DMC, Ludhiana, will have to b complete 18 months in Ludhiana college which, unfortunately, would result in wastage of six months put by them in SGRD College, Amritsar. Learned counsel appearing for these five candidates submits that despite this wastage of six months, they would like to get admission in DMC, Ludhiana.

16. The aforesaid directions regarding transfer and admission have been made on the peculiar facts and circumstances of the case and shall not be treated as a precedent.

17. All the appeals are disposed of in the light of the above terms.