
(28) The respondent after availing all the remedies available to him by filing appeals and revision before the revenue authorities and all resulted in to dismissal of his cases, cannot invoke jurisdiction of the civil court by filing a suit for declaration after 35 years of the passing of the order. It has also been pointed out during the course of arguments that the plaintiff had concealed material facts by not disclosing the factum of previous litigation which had been going on between the parties before the revenue authorities as well as before the civil court. It is well settled that when a competent authority passes an order in exercise of jurisdiction vested in it and the same is not void, then the civil court will have no jurisdiction to entertain the suit.

(29) For the aforesaid reasons, this petition is allowed with costs assessed as Rs. 5000. The impugned order deciding issue No. 5 against the petitioner is set aside. As a consequence thereof, the suit for declaration filed by the plaintiff-respondent is bound to be dismissed as the civil court had got no jurisdiction to entertain the suit.

R.N.R.

Before Amar Bir Singh Gill & Swatanter Kumar, JJ

MS. PRERNA DEAN—*Petitioner*

versus

CHRISTIAN MEDICAL COLLEGE, LUDHIANA & OTHERS—
Respondents

C.W.P. No. 9546 OF 2001

8th November, 2001

Constitution of India, 1950—Art. 226—Sponsorship Policy Document, 2000—Cl. 6.2.4—Admission to MBBS on the basis of entrance test—Petitioner applying for under reserved category relating to sponsored for Mission Hospitals—Cl. 6.2.4. of the 2000 policy provides that Sponsoring Agency can sponsor as many candidates as it wishes but not less than three candidates—Sponsoring Authority sponsoring only two candidates—Denial of admission to the petitioner under reserved category—Respondents failing to publish such a condition as stipulated in the Cl. 6.2.4.—Whether denial of admission violates the instructions of the College and contrary to the terms and

conditions of the brochure—Held, no—A competent authority has power to issue appropriate directions or instructions in furtherance to the brochure and its policy.

Held, that the competent authority has the power to issue, appropriate directions or instructions in furtherance to the brochure and its policy, which are the very basis for admission to professional courses. However, the subsequent directions or instructions must be in conformity with the original policy and should be declared reasonably in advance to the counselling so that all the candidates are put at due notice for enabling them to take appropriate decision in regard to their future prospects.

(Para 12)

Further held, that the resolution of the Governing Body and Clause 6.2.4. of the Sponsorship Policy Document, 2000 gives a dual protection to a candidate to get admission to the M.B.B.S. Course on his/her own merit. If a sponsoring authority has sponsored three or more candidates, their merit shall be determined *inter se* themselves. If for any reason like the present one, the candidate sponsored is not eligible to get admission under category No. 8, the name of the candidate is put on the common merit of the sponsored candidates. In other words, if a sponsored candidate for category No. 8 is unable to get admission in *inter se* the candidates sponsored by the same authority, they go to the common merit list prepared of all the sponsoring authorities. This practice adopted by the governing body of the College is not vitiated on the ground of arbitrariness or unfair.

(Para 14)

Alka Chatrath, Advocate for the Petitioner

P.S. Patwalia, Advocate for the respondent

JUDGMENT

SWATANTER KUMAR, J.

(1) Christian Medical College, Ludhiana, Punjab, was permitted to make its admissions on merit on the basis of an entrance test conducted and in accordance with its own regulations for the ensuing

academic year. In view of the order of the Hon'ble Apex Court dated 22nd April, 1994 passed in I.A. No. 5 in Civil Appeal No. 3147 of 1993 and the order dated 14th May, 1993 passed in Special Leave to Appeal (Civil) No. (s) 8060 of 1992 and 14513—15 of 1992, it is conceded that similar orders were passed by the Hon'ble Apex Court for the subsequent years. In furtherance to such orders, Christian Medical College, Ludhiana, hereinafter referred to as the College, published a brochure/prospectus for admission to M.B.B.S. programme of the college for the year 2001. In the said course, seats have been reserved for various categories under the Punjab domiciles as well as non—Punjab domiciles (All India category). Amongst others, category No. 8 deals with candidates sponsored for Mission Hospitals.

(2) The petitioner had applied and taken the entrance test as a sponsored candidate for Mission Hospitals under category No. 8 for which 21 seats are reserved. The petitioner passed her 10+2 examination and obtained 384 out of 500 marks in that examination. Her application was sponsored and she submitted the requisite Forms A, B and C with complete particulars to the respondent-College. The last date for submission of Form C was 15th June, 2001, before which date the petitioner submitted the said application. The petitioner satisfied the academic eligibility conditions and according to her as she was desirous of serving the Mission Hospitals, she applied under that category to the Council of Baptist Church in Northern India and submitted her complete bio-data and requisite application for sponsoring the name of the petitioner to the respondent-college. The Vice President of the Council of Baptist Church of Northern India informed the petitioner that her application has been sponsored to the respondent-college on 18th May, 2001.

(3) Petitioner was issued Roll No. 5143 for taking entrance examination, which was held on 3rd June, 2001. The result of the said entrance test was declared on 29th June, 2001 and the name of the petitioner was not included in the select list under category No. 8. However, her name was included in the combined list of these institutions at Sr. No. 22. As the name of the petitioner was not mentioned in the final selection list under Category No. 8. She submitted a representation. copy of which is annexed to the petition as Annexure P/5, on 5th July, 2001 to the governing body of respondent-college,

but of no consequence and with the fear that admissions may not be finalised in the meanwhile, the petitioner filed the present writ petition.

(4) Upon notice, the respondents No. 1 and 2 filed a detailed written statement. The facts averred by the petitioner are hardly disputed by the respondents. The respondents placed reliance upon the interpretation of the clause governing admission to this category and the resolution of the governing body of the college on the basis of which admission to the petitioner has been denied. The basic case of the respondents is that she could get admission under the sponsored category No. 8 only if the sponsoring authority had sent minimum three names under that category. As only two names were sent the petitioner was not considered for admission under category No. 8, but she was put in the common select list in accordance with the directions of the brochure and the decision of the governing body and she being at serial No. 22, was not entitled to admission in the M.B.B.S. course on her own merit. Thus, the respondents pray for dismissal of the writ petition.

(5) Before we proceed to discuss the contentions raised before this Court by the learned counsel appearing for the respective parties, we consider it appropriate to refer to the relevant clauses of the brochure and the decision of the governing body relied upon by the respondents.

(6) It is admitted before us that the petitioner applied under category No. 8 which relates to sponsored for Mission Hospital and undisputedly there are 21 seats reserved for this category under the All India quota. The clause governing admission to this category reads as under :—

“Sponsorship to categories 2 and 8 will be by the Christian Medical College Ludhiana Society (Regd.) sponsoring bodies/churches from among the applicants eligible and with commitment to serve in mission hospitals on long term basis. Applicants sponsored, as per the guide-lines of the Selection Committee/Governing Body, will be selected on merit as given below.

Category No. 8 Applicants in this category will be considered on merit based on their performance in the admission

written test by competing with applicants sponsored by the respective sponsoring body, and not on overall merit amongst all sponsored applicant in category No. 8.”

(7) In order to allocate seats fairly, under this category, the governing body of the College had passed a resolution being EC No. 27 of 1992, copy of which has been placed on record an Annexure R-1/6 for the years 1992—95. The relevant portion of the said resolution read as under :—

<u>“All India Candidates :</u>	<u>40</u>	<u>Seats</u>
(Non-Pb-domicile)		
Category No. 6 C.M.C. Society Sponsored	35	
Category No. 7 C.M.C., Ludhiana Sponsored	3	
Category No. 8 General	2	

For C.M.C. Society Sponsored Candidates, one seat shall be for each sponsoring agency who has sponsored atleast 3 candidates provided the candidate fulfil all other requirements, otherwise the candidate(s) for that sponsoring, body shall be treated in combined merit for C.M.C. Society Sponsored Candidates.”

(8) During the course of hearing, learned counsel appearing for the College had placed on record constitution of the governing body to show that the representatives of all the sponsoring bodies are, by and large, members of the governing body of the College and the resolution passed is in substance (a resolution passed) by the sponsoring authorities and every-body including the candidates sponsored are aware of the above practice and resolution. The governing body had circulated a document titled as Sponsorship Policy Document-2000 as approved by the governing body in its meeting held on 23rd March, 2001 for the current year. This policy provides for different aspects which are to be kept in mind and adhered to by the sponsoring body while sponsoring a particular candidate. Clause 6.2.4 of this policy reads as under :—

“6.2.4. Sponsoring Agency can sponsor as many candidates as it wishes but not less than three candidates for the degree courses.”

(9) On the basis of the above resolution and clause of the sponsorship policy, the respondents had denied admission to the petitioner for the reason that her sponsoring authority had only sponsored two applicants while it ought to have sponsored at least three candidates to make them eligible for admission to the M.B.B.S. course under this category. Thus, the short question that falls for consideration is whether the decision of the respondent—college is violative of its instructions: is contrary to the terms and conditions of the brochure or offends any legal right of the petitioner.

(10) The learned counsel appearing for the petitioner, while relying upon two Full Bench judgments of this Court in the cases of *Amardeep Singh Sahota versus State of Punjab and others*, (1) and *Rahul Prabhakar versus Punjab Technical University, Jalandhar*, (2) contended that terms and conditions of the brochure are binding on the authorities and the candidates. The respondents have not published any such conditions as stipulated in the resolution or under clause 6.2.4 of the policy for sponsoring in the brochure. As such the petitioner could not be rendered ineligible on that condition. Action of the respondents is violative of the terms and conditions of the brochure and the petitioner is entitled to be given admission in the MBBS course under category No. 8.

(11) No doubt, the consistent view of this Court including the view expressed in the above judgement is that the terms and conditions of the brochure are binding and they cannot be altered subsequent to the examination to the prejudice of the applicants. However, this view of this Court has been diluted or read down by the Hon'ble Apex Court in the case of *Rajiv Kapoor vs State of Haryana*, (3) where the Hon'ble Court held as under :—

“In our view, the High Court fell into a serious error in sustaining the claim of the petitioners before the High Court that selection and admissions for the course in question have to be only in terms of the stipulations contained in Chapter V of the Prospectus issued by the

(1) 1993 (4) SLR 672

(2) 1997 (3) SCT 526

(3) JT 2000 (3) SC 635

University. Such an error came to be committed in assuming that the Government had no authority to issue any direction laying down any criteria other than the one contained in the Prospectus and that the marks obtained in the written Entrance Examination along constituted proper assessment of the merit performance of the candidates applying for selection and admission. The further error seems to be in omitting to notice the fact that the orders dated 21st May, 1997, which came to be issued after the declaration of results of written Entrance Examination, even if eschewed from consideration the orders dated 20th March, 1996 and 21st February, 1997 passed in continuation of the orders of the earlier years, continued to hold the field, since the orders dated 21st May, 1997 were only in continuation thereof. Those orders dated 20th March, 1996 and 21st February, 1997 had, admittedly been forwarded to the University, with a request to make necessary entries in the Prospectus/Syllabus.

The High Court, in allowing the Writ Petitions purported to follow an earlier judgement of the Full Bench of the very High Court reported in *Amar Deep Singh Sahota vs State of Punjab etc.* [1993 (2) PLR 212]. On carefully going through that judgement, we find that the Full Bench did not doubt the competency or authority of the Government to stipulate procedure for admission relating to courses in professional colleges, particularly in respect of reserved category of seats, but on the other hand, it specifically deprecated the decision to do away with the requirement of minimum marks criteria in respect of seats reserved for sports category and that too by passing orders after the examinations were held under a scheme notified in the Prospectus. As a matter of fact the Full Bench, ultimately directed, in that case, that selections for admission be finalised in the light of the criteria specified in the Government orders already in force and the prospectus, after ignoring the offending notification introducing a change at a later stage.

...We are unable to appreciate this reasoning. The Government orders dated 21st May, 1997 did not introduce, for the first time, earlier the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid down criteria. It merely modified the pattern for allotment of marks under various heads from the total marks. Therefore, even if the modified criteria envisaged under the orders dated 21st May, 1997 is to be eschewed from consideration, the earlier orders and the criteria laid down therein and the manner of assessment of merit by the Selection Committee after interview, were still required to be complied with and they could not have been given a complete go-bye, as has been done by the High Court.”

Thus, the judgements of the Full Benchs of this Court have to be read harmoniously and the principles settled would stand merged in the view expressed by the Hon'ble Apex Court in Rajiv Kapoor's case (supra).

(12) Thus, the compatible view is that the competent authority has the power to issue appropriate directions or instructions in furtherance to the brochure and its policy, which are the very basis for admission to professional courses. However, the subsequent directions of instructions must be in conformity with the original policy and should be declared reasonably in advance to the counselling so that all the candidates are put at due notice for enabling them to take appropriate decision in regard to their future prospects.

(13) Another factor which the Court has to consider is whether such subsequent instructions or orders are destructive or are in derogation to the originals prospectus or government policy and causes prejudice to the rights of the candidates who had applied in terms of the original brochure. Applying these principles to the facts of the present case, the respondent-college had passed the resolution in the above terms as back as in the year 1992 and since then it is adhering to the said practice. The *bona fides* of the respondent-College in passing afore-referred resolution can hardly be doubted. It is intended to provide fair competition within a reserved category itself.

(14) The resolution of the governing body and Clause 6.2.4 gives a dual protection to a candidate to get admission to the MBBS course on his/her own merit. If a sponsoring authority has sponsored three or more candidates, their merit shall be determined *inter-se* themselves. If for any reason like the present one, the candidate sponsored is not eligible to get admission under category No. 8, the name of the candidate is put on the common merit of the sponsored candidates (CMC list). In other words, if a sponsored candidate for category No. 8 is unable to get admission in inter se the candidates sponsored by the same authority, they go to the common merit list prepared of all the sponsored authorities. This practice adopted by the governing body of the respondent-College is not vitiated on the ground of arbitrariness or unfair. The College has consistently followed this practice at-least from 1992 till today. The practice so adopted does not offend any know canons of law, statute (s) or the conditions of the brochure. In fact the resolution and Clause 6.2.4 of the policy only elucidates the manner and methodology to be adopted by the admission committee for filling up the seats under category No. 8 of the brochure.

(15) We have already discussed that these subsequent decisions are not in conflict with or in contradiction to the original brochure or the scheme formulated by the governing body under orders of the Hon'ble Apex Court. Even if there is some negligible variance in these two documents and the institution/its governing body has adopted one interpretation and practice uninterruptedly and uniformly for the last more than eight years, this Court has no occasion to hold that such practice is invalid or is unjust. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Dr. Uma Kant vs. Dr. Bhika Lal Jain and others*, (4) where the Court held as under :—

“It is well settled that in matters relating to educational institutions, if two interpretations are possible, the courts would ordinarily be reluctant to accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities.”

A Division Bench of this Court in the case of *Sujita Raj vs. Post Graduate Institute of Medical Education and Reserach Chandidarh etc.*, CWP No. 12914 of 2001, decided on 11th October, 2001, held as under :—

“It is a settled principle of law that practice adopted and followed in the past to the knowledge of the public at large can legitimately be treated as good practice acceptable in law. The practice so adopted can fairly be equated to instructions rules unless it is offending any specific provisions of law or written instructions issued by the government in that behalf. Certainly a practice adopted by the institute for a number of years in the past, which is not opposed to public policy or terms of the notification issued by the State as well as the conditions of the brochure normally would not be interferred by the court at this late stage. Reference in this regard can be made to the judgement of the Hon’ble Supreme Court in the case of *The Dy. Commissioner of Police and Others vs. Mohd. Khaja Ali 2000(2) S.L.R. 49.*”

(16) The matters which are clarificatory in nature and have been consistently implemented by the institution uniformly, thus, should not be normally disturbed by the Courts. Of course, exceptions to this general principle are many and one of the valid exceptions would be that subsequent orders and instructions are in conflict with the original terms of the brochure and to an extent that it prejudicially affects the accrued rights of the applicants under the original brochure.

(17) The sponsorship given by the college is a privilege provided exclusively to the sponsoring agencies of the respondent-college and is not a right vested in the candidate who applies for sponsorship. It is a tripartite responsibility of the sponsoring agency, the college and the student. All three are required to discharge their responsibilities in terms of the admission policy and the published brochure for admission to such courses. Under Clause 5.7 of the sponsorshsip policy, the guidelines are to be applied uniformly and justly. The students similarly situated like the petitioner have been rejected in the past by the respondent-college and it will not be fair to obstruct continuation of this policy at this stage of the admissions now.

(18) The learned counsel for the petitioner while relying upon the judgement of the Hon'ble Supreme Court in the case of *Viney Rampal vs. State of J & K (5)* contended that as the petitioner was eligible as per the brochure, the respondents could not subsequently make her ineligible on the basis of the resolution/policy. We may, at the very outset, notice that the judgement of the Hon'ble Apex Court was totally on different facts. This case is of no help to the petitioner inasmuch as the resolutions as well as the policy of the respondent-college in regard to allocation of seats under category No. 8 was declared prior to the test/admissions. The resolution/policy was not in conflict with the original brochure. We have already discussed that it only provided a procedure or methodology under which admission should be made to the said reserved category in terms of the resolution passed in the year 1992. Even in these cases, the Hon'ble Supreme Court placed emphasis that instructions should be in conformity with regulations framed by the Council or the advertisement which was originally issued for admission to the course.

(19) The procedure of admission primarily falls in the domain of the governing body and the admission committee constituted under the said policy. It is nobody's case before us that the governing body was not competent to pass such a resolution. In fact the sponsoring authorities themselves are part and parcel of the governing body of the respondent-College. Once functions of admission are to be discharged by the specified authorities and they have been discharged by such authorities, the Court can hardly find any error, much less a jurisdictional error, in issuance of such instructions. The Hon'ble Apex Court in the case of *Kurushetra University and another vs. Jyoti Sharma and others, (6)* held that the Vice Chancellor could not have exercised emergent powers under Section 11(5) of the Act in that case and issued notifications in contradiction to the admission procedure prescribed by the admission committee.

(20) For the reasons afore-stated we are of the considered view that this writ petition has no merit and the same is liable to be rejected. Thus, we dismiss this writ petition, leaving the parties to bear their own costs.

R.N.R.

(5) AIR 1983 SC 1199

(6) JT 1998 (6) SC 475