
limitation under Section 119 of the Act has been rejected in the following terms :—

‘We have perused Section 119 of the Act, extracted in the writ petition. It is not possible for us to accept that the statutory provision incorporated under Section 239 of the Act, is amenable to relaxation at the hands of the Board through instructions under Section 119 of the Act.

(14.2) The above finding does not deal with the provisions of Section 119(2) of the Act specifically nor takes into account various judicial pronouncements discussed above.

(14.3) Accordingly, we overrule the ratio laid down in **Niranjan Dass** (*supra*).

(15) We answer the reference in affirmative.

(16) Let the case now be placed before the Division Bench.

R.N.R.

Before S.S. Nijjar and J.S. Narang, JJ.

JAGAT PREET KAUR CHADHA
AND OTHERS,—*Petitioners*

versus

PUNJAB UNIVERSITY AND ANOTHER,—*Respondents*

C.W.P. NO. 11140 OF 2004

25th September, 2004

Constitution of India, 1950— Arts. 14, 16 & 226—Admission to the Bachelor of Engineering Courses on the basis of entrance test—Petitioners seeking admission against the seats reserved for sports category— Before counselling the University laying down a criteria of obtaining minimum qualifying marks in the entrance test—Petitioners failing to secure the minimum qualifying marks—Exclusion from the list- Challenge thereto—Original prospectus of the University not containing the criteria of obtaining minimum qualifying marks— Whether the University can introduce the criteria of a minimum

cut off aggregate marks subsequent to the publication of the prospectus—Held, yes— To make sure that only the deserving candidates are admitted to professional courses, minimum qualifying marks are essential factor for determination of merit for eligibility— No legal right of petitioners infringed—Petition liable to be dismissed.

Held, that laying down of minimum eligibility criteria has been repeatedly and emphatically approved. We are unable to accept that any legal right of the petitioners has been infringed. It has been specifically pleaded by the respondents that in earlier years, the minimum qualifying marks were always kept at 15%. This condition was well known to all the candidates. The petitioner has himself stated that the prospectus for Punjab Engineering College had specifically provided that there would a minimum cut-off aggregate of 15% marks. The respondents-university have only introduced the criteria which ensures the bare minimum of academic excellence which would be required of a student who is ultimately to become an Engineer.

(Para 7)

Further held, that the University has merely reintroduced the minimum qualifying marks which have been accepted to be an essential factor for determination of merit for eligibility of students seeking degrees from professional colleges. It has not been introduced to show undue favour to undeserving candidates. It has been introduced rather to make sure that only the deserving candidates are admitted to professional courses.

(Para 10)

P.S. Patwalia, Sr. Advocate with D.S. Patwalia, Advocate,
for the petitioners.

R.N. Rania, Advocate, *for respondents No. 1 and 2.*

Sanjeev Bansal, Advocate, *for respondents No. 3, 4, 7, 8,
10, 11, 14 & 19.*

Kapil Sharma, Advocate, *for respondent No. 9.*

S.K. Hoonda, Advocate.

JUDGMENT
S.S. NIJJAR, J. (Oral)

(1) We have heard the learned counsel for the parties at length and perused the paper-book.

(2) Separate written statements have been filed by the respondents. The petitioners claim to be Sports Persons having excelled in different sports. They are seeking admission in the Bachelor of Engineering Course against the seats reserved for the sports category. The petitioners applied for All India Engineering Entrance Examination (hereinafter referred to as "AIEE"), conducted by the Central Board of Secondary Education (hereinafter referred to as "the C.B.S.E."). The test was held on 21st May, 2004. Respondents No. 1 and 2 i.e. Punjab University and Department of Chemical Engineering and Technology, Punjab University respectively have made admissions to all the seats in the department of Chemical Engineering and Technology, on the basis of AIEEE—04 test for the academic Session 2004-2005. Punjab Engineering College, Chandigarh has also made the admissions on the basis of the aforesaid test. C.B.S.E. had published the Prospectus known as "INFORMATION BULLETIN & APPLICATION FORM" (Annexure P—5). Last date for receipt of application form was 15th January, 2004. Date of Examination was fixed on May 9-10, 2004. Respondent No. 1 also published its own Prospectus which is attached to the writ petition as annexure P-6. In this prospectus, last date for receipt of complete application forms was 28th June, 2004. The petitioners submitted the applications within the stipulated period. The result of AIEEE, 2004 was declared in the last week of June, 2004. The marks, State and All India Rank of the petitioners are as under :—

Name	Marks Rank	AIEEE—04 Mark	State
Jagat Preet Kaur	83/675	142864	2179
Mani Garg	72/675	159472	2348
Narinder	71/675	160090	3786
Sandeep Singh	96/675	124354	2940"

(3) The Vice-chancellor of respondent no. 1 constituted a Committee for screening the applications. Only the applicants whose applications were in conformity with the requirements and specifications mentioned in the prospectus were to be called for Interview/trial, which were scheduled to be held on 9th July, 2004. It was specifically provided that the candidates who failed to present themselves for actual trial on 9th July, 2004 at 9.00 a.m. will not be eligible for the benefit of reservation under the Sports Category. The trials were duly held on 9th July, 2004. A list (Annexure P-7) was prepared showing the eligible candidates as per merit as also the ineligible candidates. Candidates 22 seats are reserved for the sportspersons in all the courses in respondent no. 2 department, including the course of Bachelor of Pharmacy. In this list, Annexure P-7, the petitioners were ranked as Numbers 3, 14, 18 and 35. The same list was displayed on the Notice Board of the department on the day of the counselling i.e. 22nd July, 2004. When the petitioners reached the department at 9 a.m. for counselling, they saw that the list (Annexure P-7) was being removed from the notice board. They were informed that the counselling was postponed for two hours as the merit was being re-determined. The petitioners immediately raised a hue and cry. This was for the reason that the petitioners were told that now the University had fixed a criteria of minimum of 15% marks to be secured in AIEEE-2004 as qualifying score. The candidates who did not score the minimum qualifying marks were being excluded from the list. Thus, the names of the petitioners were removed from the list. Against the action of the respondents, the petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India. They have also challenged the admission granted to respondents no. 3 to 9 in the department of Chemical Engineering and Technology of respondent no. 1-University.

(4) Mr. P.S. Patwalia, learned Sr. Counsel appearing for the petitioners has submitted that the original Prospectus of the University did not contain the criteria of obtaining minimum qualifying marks for being selected for admission. This condition has been introduced subsequent to the publication of the prospectus (Annexure p-6), and therefore, cannot be acted upon. In support of the submission, the learned Sr. counsel relied on Full Bench decisions of this court

rendered in the case of **Amardeep Singh Sahota versus. State of Punjab and others (1)**, and **Rahul Parbhakar versus. Punjab Technical University, Jalandhar and others (2)**. Learned Sr. Counsel has further submitted that once names of the petitioners had been put on list (Annexure p-7), the respondents are estopped from denying the admission to the petitioners. They had already foregone admission which they could have secured in other Institutions as they were fully confident of being granted admission in the respondent No. 2-Department. Respondents No. 1 and 2 have filed a short affidavit. It is stated that admissions to all the Engineering Courses in the past were finalised at the University level through a common Entrance Test conducted by the Punjab University itself. The results of only those candidates who had secured a minimum of 15% marks or more at the Entrance Examination were declared. A candidate securing less than 15% marks was declared as not eligible. There was a relaxation for admission of S.C./S.T. candidates. For these students, the minimum cut-off marks was 10%. For the first time in the academic session 2004-2005, the admissions were made on the basis of the merit secured in the AIEEE examination conducted by the C.B.S.E. However, the Prospectus of the C.B.S.E. was silent with regard to the past percentage at the common entrance test. Therefore, the Vice-Chancellor constituted a joint admission committee well in advance of the admissions to consider all cases of admission in University. The Committee met on 14th July, 2004 and recommended to the University authority to lay down 15% of the marks as the cut-off aggregate. A concession of 10% aggregate was recommended for S.C./S.T. candidates. The recommendations were accepted by the Vice-Chancellor on 22nd July, 2004. Even a percentage of 10% was accepted for the seats reserved for NRI candidates who were required to pay much heftier fee and expenditure for the post concerned. Candidature of the petitioners has been rejected as they have not obtained 15% cut-off marks in the aggregate. The cut-off criteria has been applied uniformly to all the categories including the Sports category.

(5) Mr. Raina, learned counsel appearing for the respondents-University has submitted that the decision taken by the respondents is neither arbitrary, nor violative of Article 14 of the Constitution of India.

(1) 1993 (4) S.L.R. 673

(2) 1997 (5) S.L.R. 163

(6) We have considered the submissions made by the learned counsel for the parties. In the case of **Amardeep Singh Sahota**, (*supra*), after examining the entire matter, it has been categorically held by the Full Bench as follows :—

“12. The criterion on which the admission should be made under the sports quota has been a subject matter of challenge in this court in various cases. In **Miss Maninder Kaur and others versus State of Punjab**, AIR 1985 Punjab and Haryana 46, the policy decision taken by the State Government on January 11, 1962 in regard to the admission under the sports quota came up for consideration. The State under this policy decision had categorised the sportsmen into four grades. Grade-A related to sportsmen of international standard; Grade-B to sportsmen of national standing; Grade-C to sportsmen who have achieved State status and Grade D to sportsmen who played for their college, school, institution etc. without achieving State status. The weightage was given to the students in the form of percentage of marks secured in the written test. This weightage was added to the marks secured in the admission test in respect of sportsmen/sportswomen and then the merit was determined and admission made accordingly. I.S. Tiwana, J., as he then was, who decided that case was of the opinion that only consideration that should prevail with the authorities for the purposes of these admissions should be the rating of these candidates in the light of their performance in the field of sports. According to him, the marks obtained in the pre-medical entrance test were wholly irrelevant and the candidates should be admitted purely on the rating which they obtained under the policy decision in sports. The decision in **Maninder Kaur (supra)** came up for consideration in the case of **Ranbir Singh versus Thapar Institute of Engineering and Technology, Patiala**, AIR 1988 Punjab and Haryana 51 : (1987(4) SLR 233 (SC), the view taken by I.S. Tiwana, J., was overruled by the Division Bench. The Bench upheld the policy of

the State Government giving weightage to the various categories of sportsmen/sportswomen by adding 10%, 5%, 3% and 2% marks on the basis of their sports gradation certificates. The case of **Maninder Kaur** (*supra*) was overruled in this decision. The Bench took the view that the learned Judge has not appreciated the fact that the admission was being sought by a student in a professional college and not in a sports college. In order to pass an examination in such a professional college, the candidate should have a good academic career otherwise it may not be possible for him to pass the same. It was further observed that no useful purpose would be served if the students who are unable to get through the examinations are admitted. The ratio decidendi of this case is that the merit in sports no doubt is to be considered for admission in a professional college but the marks obtained in an examination have also to be given due weightage and the student should have a good academic career before he is admitted to a professional college. The principle laid down in **Maninder Kaur's case** (*supra*) that only merit in sports has to be considered was not accepted by the Bench.

In **Miss Chetna Sharma and others versus U.T., Chandigarh and another**, 1992(1) S.L.R. 1, the question involved was in regard to the reservation under the sports category in an engineering college. The principle laid down in the case of **Ranbir Singh** (*supra*) was accepted again by the Bench of this Court holding that the weightage of marks in addition to academic performance was fair and just and the policy of the State Government in that behalf was not illegal.

In **Miss Daljeet Kaur versus State of Punjab and others** AIR 1990 Punjab and Haryana 176, the matter of admission to the Medical College in relation to the reservation for sportsmen/sportswomen in the sports quota again came up for consideration and the question was how the competing claims of academic excellence and the sport

excellence in the field of reservation in favour of sportsmen/sportswomen should be reconciled. The Court accepted the principle that academic excellence was not to be given a go-by even for reserved categories. It was held that when the main object is to produce doctors and not the sportsmen, the Government policy in that regard is oriented to achieve academically sound doctors but interlaced within tolerable limits, some parts element. It was further held that one cannot imagine a situation when a candidate aspiring to become a doctor adopts a sports route to become one by design. Rather, it is the sports instinct which makes him a sportsman. The policy of the Government laying down the minimum eligible 35 per cent marks combined with the relative of the candidate in the sports category was held to be valid. The contrary contention was not accepted.

In this case also, therefore, besides the excellence in sports, relative merit amongst the students in relation to the marks obtained in the admission examination was also given due consideration and the policy of the Government was upheld with regard to obtaining minimum marks in the admission examination. In a very recent judgment of the Supreme Court in **Sandeep Brar and another versus State of Punjab and others**, reported in 1993(1) SLR 123 (SC) Hon'ble Kuldip Singh, J. has held that the methodology for admission to the reserve seats for sportsmen/sportswomen is the function of the State Executive to lay down the procedure for admission to the reserve categories. It is no doubt correct that the Court has the power of judicial review. If the validity of the Government instructions is challenged, the Court can examine the same but the High Court would not be justified in directing different procedure than the one notified by the State Government to be made applicable to the admissions. In principle, therefore, it has been laid down by the Hon'ble Supreme Court of India that it is the jurisdiction of the State Government to lay down the

policy for the admission to the reserve seats for sportsmen/ sportswomen when making admissions to any medical college. We have consequently to examine as to whether the policy laid down by the 7/12 June, 1991 instructions was a valid policy or it suffers from some legal infirmity. However, at this stage, it would be appropriate to point out that in **Sandeep Brar's** (*Supra*) elaborate arguments were addressed on the question whether academic excellence or the achievements in the field of sports should be the main consideration. But this question was left open by the court to be decided in an appropriate case.

xxx xxx xxx xxx

14. Students pursuing courses in Medical or Engineering Colleges, which are technical subjects, require an academic mind, as ultimately after obtaining degrees from these professional colleges, they serve humanity. Policy of the Government laying down the sole criterion for admission as sports cannot be countenanced. It would be against public interest and wholly arbitrary. Excellence in sports may be a very important consideration for admission in the sports quota but a certain minimum academic standard is also required to enable the students to obtain degrees.”

(7) From the above, it becomes clear that laying down of minimum eligibility criteria has been repeatedly and emphatically approved. We are unable to accept the submission of the learned Sr. Counsel for the petitioners that any legal right of the petitioners has been infringed. It has been specifically pleaded by the respondents that in earlier years, the minimum qualifying marks were always kept at 15%. This condition was well known to all the candidates. The petitioner has himself stated that the prospectus for Punjab Engineering College had specifically provided that there would a minimum cut-off aggregate of 15 marks. The respondents-University have only introduced the criteria which ensures the bare minimum of academic excellence which would be required of a student who is ultimately to become an Engineer. In **Amardeep Singh Sahota's** case (*supra*) the Full Bench has categorically held that these are

students who will ultimately serve humanity. Excellence in Sports may be a relevant consideration, but a certain minimum academic standard is required to be maintained.

(8) Undoubtedly, in **Amardeep Singh Sahota's case** (*supra*), the Full Bench has observed that the eligibility for the admission to a course has to be seen according to the prospectus issued before the Entrance Examination. It has been further held that the prospectus has been force of law. It was not open to the State of Punjab to issue contrary instructions. But the contrary subsequent instructions in the aforesaid case had removed the minimum eligibility criteria. The instructions dated May 20, 1992 issued by the State of Punjab for admission to the MBBS/BDS/BAMS (Ayurvedacharya) Course for the Session 1992-93 had provided that admissions in all the three medical colleges shall be made by holding a Competitive Entrance Examination (PMT). Clause III (a) of the Notification lays down the eligibility criteria for admission to the said Courses. This Clause III (a) was exactly quoted in paragraph 4.2 (a) (i) of the Prospectus. The aforesaid paragraph was as follows :—

- (a) (i) Admission shall be made on the basis of the relative merit of candidates determined on the result of the Competitive Entrance Examination (PMT). In the case of reserved seats relative merit of the candidates shall be determined within each category of reservation. 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 in accordance with, Punjab Government Education Department Letter No. 47/26/83-5 Edu. (a) 5/1490, dated 7th June, 1991/12th June, 1991. In the reserved category of children/widows of the defence personnel, candidates of sub-category vi(2) mentioned in para III (c) infra, shall be admitted only if eligible candidates of sub-category vi(I) are not available. Minimum marks, required for eligible candidates will be communicated subsequently."

(9) It was specifically provided in this paragraph that minimum marks required for eligible candidates will be communicated subsequently. Instead of notifying the minimum marks, the State Government issued another notification dated 13th July, 1992 in partial modification of the Notification dated 20th May, 1992 which reads as under :—

“III (i) The condition of minimum qualifying marks for Competitive Entrance Test (PMT) has been waived off and the admission to MBBS/BDS/BAMS will be made strictly in order to relative merit of candidates determined on the result of Entrance Test (PMT). In case of reserved seats relative merit of the candidates will be determined within each category of reservation.”

2. The other terms and conditions will remain the same as already notified on 20th May, 1992.”

(10) It was the waiving of the minimum qualification which was challenged by the petitioner. It was in these circumstances that the Full Bench held that the conditions of eligibility could not be changed subsequent to the issuance of the Prospectus to the detriment of the students to benefit certain other students. The circumstances in the present case are converse. The University-respondent No. 1 has merely reintroduced the minimum qualifying marks which have been accepted to be an essential factor for determination of merit for eligibility of students seeking degrees from professional colleges. It has not been introduced to show undue favour to undeserving candidates. It has been introduced rather to make sure that only the deserving candidates are admitted to professional courses. Even otherwise, we may also notice here the three questions of law which were referred to the Full Bench in **Amardeep Singh Sahota's case** (*Supra*). The three questions referred were as follows :—

“2.

(1) Whether the admission to the Sports Category should be made purely on the basis of achievements in sports or in accordance with instructions dated 7/12 June, 1991 (2) or their merit *inter se* should be determined in the same grade

by keeping in view their merit in the pre-entrance test (3) or whether the giving of precedence to those persons who participated in senior tournaments or championships over those who had participated in Junior or school championships embodied in note 1 to para 3 of the instructions dated 7/12 June, 1991 is a valid classification.”

(17) The Full Bench answered the aforesaid three questions which were referred, as follows :—

“21.

(i) The admission to the sports category should not be made purely on the basis of achievements in sports but it should be made in accordance with the instructions dated 7/12 June, 1991.

(ii) The merit *inter se* should be determined in the same grade by excluding students who do not get the minimum qualifying marks alongwith relative merit obtained in sports according to instructions dated 7/12 June, 1991.

(iii) The preference to seniors *qua* juniors is a valid classification and the instructions dated 7/12 June, 1991 cannot be held to be invalid on that account.”

(12) A perusal of the aforesaid conclusions make it abundantly clear that admission in the sports quota were to be made by excluding the students who did not get the minimum qualifying marks. Thus, *inter se* merit even in the sports category is not based purely on the basis of achievements in the sports. A candidate must score minimum qualifying marks for taking advantage of the outstanding achievements in sports.

(13) In view of the above, we are of the opinion that the observations of the Full Bench in **Amardeep Singh Sahota's case** (*supra*) are of no assistance to the case projected by the petitioner.

(14) Consequently, we find no merit in the present writ petition and the same is hereby dismissed. No costs.