

(8) For the foregoing reasons, even though it has been found that no new tenancy was created simply by enhancement of rent, but all the same in view of the above referred findings regarding subletting, this revision petition fails and is hereby dismissed. However, the parties are left to bear their own costs in view of the peculiar circumstances of the case.

R.N.R.

Before S. S. Sodhi, J.

CHANDER PARKASH MALHOTRA,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4415 of 1982.

September 8, 1988.

Constitution of India, 1950—Articles 226—Competitive Entrance Examination—Reservation of seats—Sportspersons—Basis of marks obtained in competitive examination—Gradation—Whether the Gradation made by Department of Sports can override the marks obtained in competitive examination.

Held, that there can be no escape from the conclusion that the respective merit of the candidates for admission to Medical Colleges even under the sports Category has to be assessed on the basis of their performance in the pre-entrance examination and not with reference to any gradation by the department of sports, on the basis of proficiency in the field of sports. (Para 8)

Writ Petition under Articles 226/227 of the Constitution of India praying :—

- (i) *that a writ of mandamus be issued to the respondents to give admission in the order of merit to the category of sportsmen in the Examination held in June, 1982 or pass any other writ, direction or order which this Hon'ble Court may deem fit in the circumstances of the case.*
- (ii) *that any admission in violation of this criteria be quashed;*
- (iii) *that in the interim the petitioner may be given admission;*
- (iv) *that filing of certified copy of annexure P-1 be dispensed with;*

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- (v) *that serving of advance notices upon the respondents may kindly be dispensed with;*
- (vi) *costs of the writ petition may also be awarded in favour of the petitioner.*
- (vii) *records relating to admission and other relevant record may please be called for.*

S. C. Sibal, Advocate, for the Petitioner.

D. N. Rampal, Advocate for A.G. Punjab, for the Respondent.

JUDGMENT

S. S. Sodhi.

(1) Chander Prakash Malhotra, the petitioner here filed the present petition as far back as October 1982 seeking a direction that he be granted admission to the Medical College, Patiala.

(2) There is a competitive entrance examination prescribed by the State of Punjab for selection of candidates for admission to the Medical Colleges owned and run by it with a reservation of seats prescribed therein for sportsmen and sportswomen to the extent of 2 per cent, for admission to these Colleges. For the relevant year, seven seats reserved under this sports category. It is against one of these seats that the petitioner sought admission.

(3) The rules relating to the admission to candidates to the Medical Colleges were as set out in the notification issued by the Punjab Government on May 18, 1982. The relevant part thereof, as incorporated in the prospectus for admission to the Medical Colleges is reproduced hereunder :—

“3.2 (a) Admission shall be given on the basis of the relative merit of candidates determined on the result of the competitive entrance examination. In the case of reserved seats relative merit of the candidates shall be determined within each category of reservation. A candidate, however, must secure a minimum of 50 per cent marks in the competitive entrance examination to qualify for admission. Candidates belonging to Scheduled Castes/ Scheduled Tribes will have to secure a minimum of 33

per cent marks in the said examination to qualify for admission. Within each reserved category the criterion for determining relative merit shall be the performance in the competitive entrance examination alone. In any main reserved category, there will be no sub-category for preference. For example, in sports category, merit of candidates having different sports grades will be determined only on the basis of performance in the entrance examination. Similarly, there will be no preferential sub-category in the reserved categories mentioned as (vii), (viii), (ix) in para-III.

(b) Seats left vacant in the reserved categories may be filled from the candidates of general category.

(c) "Seats are reserved to the categories noted below and to the extent mentioned against each :—

(i) Scheduled castes/Scheduled Tribes	25 per cent
(ii) Backward Classes	5 per cent
(iii) Backward Area	2 per cent
(iv) Border Area	2 per cent
(v) Sportsmen/women	2 per cent
(vi) Nominees of the Central/State Govt.	7 per cent
(vii) Children/grand children of Political Sufferers.	2 per cent
(viii) Children/grand children of defence personnel	2 per cent
(ix) Handicapped candidates (for MBBS course only)	1 per cent

Note 4 :—A candidate shall be eligible for admission under category (v) above only if he/she produces a certificate from the Director, Sports Department, Punjab, Chandigarh."

(4) The petitioner sought admission under the sports category by virtue of his participation at the National Level in Volleyball.

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In the Pre-entrance Medical Test for admission held in June, 1982, he obtained more than 50 per cent marks and thereby fulfilled the essential condition for eligibility for admission.

(5) As mentioned earlier, seven seats had been reserved for sportsmen. The name of the petitioner figured in the third place for these seven seats reserved under the sports category, but he was virtually at the top as the first and second candidates in this list had secured admission under the general category.

(6) On July 19, 1982, the Punjab Government, however, issued another notification whereby the qualifying marks for sportsmen in the pre-entrance test for admission to Medical Colleges was reduced from 50 to 25 per cent. This adversely affected the position of the petitioner as admissions were given thereafter not only on the basis of result of the pre-entrance examination, but also on the gradation of candidates made by the department of sports. It was, faced with this situation, that the petitioner rushed to this Court seeking to challenge the notification reducing the qualifying marks in the pre-entrance test for sportsmen for admission to the Medical Colleges.

(7) It was the contention of Mr. S. C. Sibal, counsel for the petitioner that selection of candidates under the sports category, on the basis of their gradation in the field of sports, was wholly untenable and could not be sustained in law. Reference was here made to the judgment of the Divisional Bench in (*Miss. Vandana Rawal v. State of Punjab and others*) (1) where the prescription of minimum qualifying marks for sportsmen in the pre-entrance examination for admission to Medical Colleges was challenged. It was held, there that the prescription of minimum qualifying marks in this examination was patently valid both on principle and precedent as the object was to train and qualify candidates to become doctors and not sportsmen and sportswomen and the criteria for admission to Medical Colleges was thus rightly laid down by the government to be the performance of candidates in the competitive entrance examination as provided in the prospectus.

(8) Seen in this light, there can be no escape from the conclusion that the respective merit of the candidates for admission to Medical Colleges even under the sports category has to be assessed on the basis of their performance in the pre-entrance examination and not

(1) C.W.P. 3659 of 1982 decided on August 4, 1984.

with reference to any gradation by the department of sports, on the basis of proficiency in the field of sports.

(9) As regards the petitioner, it deserves note that this Court by its order of November 2, 1982 granted him provisional admission to the Medical College. The petitioner has since passed his M.B.B.S. Examination and has also completed his internship.

(10) Further, on June 1, 1988, the petitioner moved civil miscellaneous application 7584 of 1988, whereby he prayed that the respondent-University be directed to declare the marks obtained by the petitioner in the M.B.B.S. Examination to enable him to get admission for a House job. In dealing with this application, A. L. Bahri, J. on June 10, 1988, directed the respondent-University to send copies of the marks-sheet of the petitioner to the Medical Superintendent, Rajindra Hospital, Patiala and the Director, Health Services, Union Territory, Chandigarh, to enable the petitioner to get a House job, if found otherwise eligible.

(11) Such thus being the situation in the present case, there can be no escape from the conclusion that the petitioner was indeed entitled to admission as claimed. The relief originally sought in this behalf has, however, since been overtaken by subsequent events, namely, the fact that he has since passed his M.B.B.S. Examination and also has completed his internship. A direction is accordingly now issued to the Punjabi University, Patiala to forthwith release and declare the final result of the petitioner for the M.B.B.S. Examination.

(12) This petition is thus hereby accepted with costs. Counsel fee Rs. 500.

R.N.R.

Before V. Ramaswami, CJ and G. R. Majithia, J.

FOOD CORPORATION OF INDIA,—Petitioner.

versus

SALES TAX TRIBUNAL AND OTHER,—Respondents.

Civil Writ Petition No. 421 of 1986.

September 28, 1988.

Punjab General Sales Tax Act (XLVI of 1948)—Section. 20(5)—Petitioner filing appeal against assessment order—Application for exemption from payment of tax also filed—Power of Tribunal to grant such exemption—ground for exemption—non-existing—Assessee having a good case in appeal—Can payment of tax be waived.