

(2004) 01 P&amp;H CK 0012

## High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 18420 of 2003

Manjit Kaur

APPELLANT

Vs

M.D.U. Rohtak and Another

RESPONDENT

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**Date of Decision:** Jan. 19, 2004**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Citation:** (2004) 1 ILR (P&H) 499**Hon'ble Judges:** M.M. Kumar, J; J.S. Khehar, J**Bench:** Division Bench**Advocate:** K.S. Dhaliwal, for the Appellant; Ritu Bahri, D.A.G. and R.S. Taccoria, for the Respondent**Final Decision:** Allowed

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**Judgement**

M.M. Kumar, J.

The sole question raised in this petition filed under Article 226 of the Constitution of India is whether Clause (I) of the eligibility criterion for admission provided in the prospectus answers the prescription of the principles as enshrined in Article 14 of the Constitution.

2. Brief facts of the case are that the Petitioner applied for admission to B. Sc. (Nursing) Course for the Session 2003-04. The course is of four years duration. She has passed her matriculation examination from the Board of School Education, Haryana on 18th June, 1999. She qualified her Senior Secondary School Examination from the National Institute of Open School, New Delhi on 8th June, 2003. She applied for admission to the B. Sc. (Nursing) Course well in time. However, she was not considered eligible by Respondent No. 2 i.e. Pt. B. D. Sharma Post Graduate Institute of Medical Sciences, Rohtak on the ground that she did not pass her Senior Secondary Examination as a regular student as is required by Clause (I) of the prospectus. According to Clause (I) of the eligibility criterion for admission only

those candidates were considered eligible who have studied 10 +1 and 10 +2 classes as regular students in a recognised institution in Haryana.

3. In the written statement, the stand taken by Respondent Nos. 1 and 2 is that the Petitioner has passed her Senior Secondary School Certificate Examination 2003 from the National Institute of Open School, New Delhi through its study centre which is known as Mukhi National Open School, Gohana (Sonepat). According to the Respondents, the afore-mentioned centre is not a regular study centre and the Petitioner cannot be considered as a regular candidate. It has further been asserted that no certificate has been submitted by the Petitioner showing that she studied as a regular candidate. Emphasis has also been laid on the condition of eligibility laid down in the prospectus to submit that nothing can be extracted or added to the prospectus. However, it has not been denied that the Senior Secondary School Examination qualified by the Petitioner from the National Institute of Open School is recognised in Haryana.

4. Shri K. S. Dhaliwal, learned Counsel for the Petitioner has argued that Clause (I) of the eligibility criterion is absolutely discriminatory and violates Article 14 of the Constitution. According to the learned Counsel, the candidature of the Petitioner could not be cancelled merely on the ground that she has passed the examination from an institution where regular classes are not being held. The National Institute of Open School is a recognised institution all over the country as well as by the State of Haryana and, therefore, no distinction can be drawn between the candidates qualifying from the National Institute of Open School and the candidates who have studied by going to a school in a regular manner.

5. Shri R. C. Tacoria, learned Counsel for Respondent No. 1 and Ms. Ritu Bahri, Deputy Advocate General, Haryana for Respondent No. 2 have argued that once the Petitioner had failed to fulfil the eligibility criterion laid down in the prospectus she could not be admitted especially when there is no seat left unfilled. According to the learned Counsel after the counselling held on 18th September, 2003 no seat remained unfilled and therefore, the Petitioner cannot be accommodated. It has been submitted that only regular candidates who have attended the classes in a regular manner would be admitted and such candidates alone can be considered eligible. Clause (I) of the prospectus has been defended by asserting that it does not violate the principles of equality enshrined in Article 14 of the Constitution.

6. After hearing the learned Counsel for the parties, we are of the view that this petition deserves to succeed. It would be appropriate to make a reference to Clause (I) of the eligibility criterion of the prospectus which reads as under:

Only the female candidates of the following categories will be eligible for admission to B. Sc. (Nursing)--4 Years Basic Course.

The candidates, who have studied 10 +1 and 10+2 classes as regular candidates in recognized institutions in Haryana (such candidates will submit a certificate to this

effect from the Principal/Head of the Institution last attended in the performance given in Appendix "A")

7. A perusal of the above clause would make it evident that candidates who have studied 10+1 and 10+2 classes in an institution recognised in the State of Haryana would be eligible to apply for the B. Sc. (Nursing) Course. It further requires that such candidates must have studied 10 +1 and 10 +2 classes as a "regular candidate". The expression "regular candidate" used in Clause (I) would not necessarily mean that a candidate must have visited the school everyday by attending classes. In common parlance, the expression "regular" would mean according to law, rule, established practice etc. According to the Shorter Oxford English Dictionary, Third Edition, the expression "regular" has been defined as under:

...4. Pursuing a definite course, or observing some uniform principle, of action or conduct: adhering to rule: now exp. observing fixed times for, or never failing, in, the performance of certain acts or duties....5. Conformable to some accepted or adopted rule or standard: recognized as formally correct....

8. Chambers English Dictionary defines the expression "regular" as under:

... Governed by or according to rule, law, order, habit, custom established practice, mode prescribed, or the ordinary course of things: placed, arranged, etc. at regular intervals in space or time: of a marriage, celebrated by a minister of religion after proclamation of banns:....

9. A perusal of the aforementioned meaning assigned to the expression "regular" does not necessarily leads to the conclusion that only those students who have attended the classes by attending the school every day or regularly would be considered as regular candidates.

10. Such a candidate who has studied in a regular manner even in National Institute of Open School would satisfy the requirement of Clause (I). In any case we are inclined to interpret the rule by the principle of reading down because it is well settled that where another interpretation which sustain the constitutional validity of the rule rather than the one which results into contravention of constitutional requirements. The aforementioned proposition of reading down has been repeatedly applied by the Supreme Court in various Judgments. A reference in this regard may be made to the judgment of a Constitution Bench in the case of [20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra](#), and in [K. Anjaiah and Others Vs. K. Chandraiah and Others](#), . In K. Anjaiah's case (supra), their Lordships observed as under:

It is a cardinal principle of construction that the Statute and the Rule or the Regulation must be held to be constitutionally valid unless and until it is established that they violate any specific provision of the Constitution. Further it is the duty of the Court to harmoniously construe different provisions of any Act or Rule or

Regulation, if possible, and to sustain the same rather than strike down the provisions outright.

11. Similar view has been expressed by the Supreme Court in the case of [Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishan and Others](#), and the same reads as under:

In considering the validity of a statute the presumption is in favour of its constitutionality and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. For sustaining the presumption of constitutionality the Court may take into consideration matters of common knowledge matters of common report, the history of the times and may assume every state of facts which can be conceived. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any is based on adequate grounds. Courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity. These principles have given rise to the rule of reading down the sections if it becomes necessary to uphold the validity of the sections.

12. If the interpretation preferred by the Respondents accepted then it would result into transgression of principles envisaged by Article 14 of the Constitution. In order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differentia must have a rational relation to the object sought to be achieved by the statute in question. In the present case, the distinction created between the two group persons is the manner of study. One group has to study by going to school and by attending classes every day and the other group is to study sitting at home and taking up examination finally. Result of both the efforts is the same namely acquisition of certificate of 10+1 or 10+2 examination. The object sought to be achieved appears to be that before a person is declared as eligible for admission to B. Sc. (Nursing) Course he must be familiar with the course study of 10 +1 and 10 + 2 classes. Further more, he must satisfy the requirement of having passed those classes. The object cannot be that he must have studied by going to school regularly or by studying at home. Therefore, the distinction sought to be drawn between a candidate who studied by attending classes and the other candidate is not founded on an intelligible differentia and there is no nexus with the object sought to be achieved. Therefore, such a classification of persons carved out for the benefit of Clause (I) of the eligibility criterion of the prospectus is absolutely arbitrary and violates Article 14 of the Constitution. It is well known that equality and discrimination are sworn enemies and cannot stand by each other. In [E.P. Royappa Vs. State of Tamil Nadu and Another](#), the Supreme Court has even shifted the emphasis from the theory of clarification to an open end rule. In the present case, if the meaning given to Clause (I) of the eligibility criterion is adopted it would fail to

satisfy the twin test of classification referred above. Therefore, we are of the considered opinion that the principles of reading down should be applied because it would save Clause (I) from being declared as ultra vires of Article 14 of the Constitution. Therefore, this petition deserves to succeed.

13. For the reasons stated above, Clause (I) of the eligibility criterion for admission to B. Sc. (Nursing) Course as mentioned in the prospectus for the year 2003-2004 is read down to mean that the candidates who have studied 10 +1 and 10 +2 classes as regular candidates in the institutions recognised by the State of Haryana would be considered eligible. Therefore, the passing of Senior Secondary School Examination from the National Institution of Open School, New Delhi would be considered to be covered by Clause (I), Accordingly, the Petitioner is declared eligible to take admission. Respondent No. 2 is directed to proceed to consider her case for admission by treating her as eligible and if she is found successful in the counselling in which she appeared on 18-9-2003, she be admitted to B. Sc. (Nursing) Course.

14. The petition stands allowed in the above terms.