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Date: 23/10/2025

Himanshu Biswas and Others Vs State of Punjab and Others

CWP No. 24501 of 2012

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 23, 2013

Acts Referred:
Constitution of India, 1950 â€" Article 142

Citation: (2013) 171 PLR 118 : (2013) 3 SCT 259

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: Puneet Kansal, for the Appellant; Pankaj Mulwani, DAG, Punjab, Mr. Ashish Rawal, Advocate for the Respondent No. 2, Mr. Ashok Tyagi, Advocate for the Respondent No. 3 and Mr. Padamkant Dwivedi, Advocate for the Respondent No. 4, for the Respondent

Final Decision: Allowed

Judgement

Rameshwar Singh Malik, J.
The present writ petition is directed against the alleged inaction on the part of respondent-University while not

recognising and regularising the admission of the petitioners in BAMS course in the respondent-College. Petitioners are seeking the consequential

relief directing the respondent-University for issuing the roll numbers to the petitioners enabling them to appear in the examination from time to time.

Facts first. The factual aspect of the matter is hardly in dispute. However, the basic facts necessary for disposal of the instant writ petition are that

the respondent-University issued the prospectus for admission to BAMS/BHMS courses. Respondent-University was appointed as a Nodal

Agency for conducting the admission process known as "Punjab Ayush Entrance Test" (PAET-2011) for various colleges in the State of Punjab,

starting from the academic session of 2011-12. Petitioners, in terms of the prospectus issued by the respondent-University, applied for the

admission to BAMS Course. As per the prospectus, admissions were to be made in view of the Punjab Government Notification No. 5/3/11-

3HBIII/3315 dated 12.5.2011 and Corrigendum (s) issued from time to time for BAMS/BHMS Courses. It is pertinent to note here that initial

cut-of date for admission was 30.09.2011, which was substituted by 30.10.2011 vide corrigendum dated 29.6.2011, at page 68 of the paper

book. Another corrigendum dated 9.12.2011 (Annexure P-1) was issued by the Government of Punjab, Department of Medical Education and

Research extending the cut-of date for admission to BAMS, MPT and BPT courses up-to 16.12.2011. Pursuant to the above-said corrigendum

(Annexure P-1), advertisements were issued in various newspapers dated 12.12.2011 inviting the eligible students to attend 3rd counseling, which

was to take place on 16.12.2011. Consequently, petitioners appeared at the 3rd counseling on 16.12.2010, which was conducted by the duly

authorized persons including the nominee of the Punjab Government. On the basis of the merit secured by the petitioners, they were granted

admission in the respondent-College. Petitioners deposited the requisite amount of fees with respondent College, who forwarded the same to the

respondent-University. Respondent-University accepted the fees of the petitioners. Petitioners started attending the classes. At the end of the

academic session, respondent-College sent the examination fees of the petitioners to the respondent-University in the month of September 2012,

which was also accepted by the respondent-University vide receipt No. 2614 dated 14.9.2012. Names of the petitioners were also included in the

list of students whose examination fees have been accepted by the University. The relevant list containing the names of many students including the

petitioners, issued by the, respondent-University, was appended at Annexure P-2. However, only a couple of days before the commencement of

the examination, petitioners came to know from the Principal of respondent-College that the respondent-University has not issued the roll numbers.

The reason which was orally disclosed to the petitioners was that the petitioners have been granted admission after the last date, i.e. 31.10.2011,

fixed by Central Council of Indian Medicine-respondent No. 3. It is further pleaded case of the petitioners that they also contacted the

respondent-University in this regard but could not get the roll numbers issued. Having been left with no other option, petitioners approached this

Court by way of instant writ petition.

2. Notice of motion was issued and pursuant thereto, separate written statements have been filed by the respondents. That is how, this Court is

seized of the matter.

3. Learned counsel for the petitioners submits that it is not the case of any of the respondents that the petitioners-students had been at fault of any

kind at any point of time. Following the terms and conditions of the prospectus issued by the respondent-University, petitioners attended the

counseling, faired well, came in merit and were consequently admitted, as per their merit. They deposited the requisite amount of fee, had been

attending the classes regularly followed by deposit of examination fee, which has been duly accepted by the respondent-University. Thereafter, it

was too late in the day on behalf of the respondent-University not to issue the roll numbers permitting them to take the examination on the ground

that the petitioners were admitted after the cut-of date fixed by the Central Council of Indian Medicine - respondent No. 3. He further submits that

petitioners could not take the examination held in November 2012 only because of the serious inaction of the respondent-University based on

wholly misconceived and perverse approach. He next contended that the only way out to save the one academic year of the petitioners was to

direct the respondent-University to allow the petitioners to take their main examination at the time of supplementary examination, which is going to

be held in the month of May 2013 and the respondent-University may be directed accordingly. He also submits that in almost identical situation,

Government of India vide its communication dated 12.11.2010 (Annexure P-4) granted extension of time for completion of the admission of

students in the Ayurveda, Unani and Siddha Medical Colleges for the academic year 2010-11. Petitioners ought not to have been made to suffer

for any inter se mistake or communication gap amongst the respondents. Finally, he prays for acceptance of the writ petition.

4. Learned counsel for respondent No. 3, being under the control of Ministry of Health and Family Welfare, Department of Ayurveda, Yoga and

Naturopathy etc. (AYUSH), who issued communication (Annexure P-4), could not have objected to the admission of the petitioners, which were

made well within the time extended by the State of Punjab vide its corrigendum (Annexure P-1).

5. Per contra, learned counsel for respondent-University submits that although, the eligibility of the petitioners for the admission in question was

never in doubt, yet their admissions were made beyond the cut-of date, fixed by respondent No. 3. He further submits that all the Universities in

the State were informed about the communication dated 1.12.2011 (Annexure R-1) issued by respondent No. 3 not to make any admission after

31.10.2011. The communication dated 1.12.2011 (Annexure R-1) was issued by the respondent-University on 15.12.2011. Further, about the

admission made beyond the cut-of date, the respondent-College was intimated as early as on 3.2.2012 (Annexure R-2) by the respondent-

University. He next contended that since the State of Punjab had no authority to extend the date for admission beyond 31.10.2011, the admissions

of the petitioners were not liable to be regularised. Learned counsel for respondent No. 3, while relying upon the judgment of the Hon"ble

Supreme Court in Medical Council of India Vs. Madhu Singh and Others, submits that since admissions of the petitioners were made after the cut-

of date, the respondent-University has rightly declined to recognise and regularise the same. Learned counsel for the respondents Nos. 1 and 4

have supported the cause of the petitioners.

6. Having heard the learned counsel for the parties, after careful perusal of record of the case and giving thoughtful consideration to the rival

contentions raised, this Court is of the considered opinion that the present writ petition deserves to be allowed. To say so, reasons are more than

one, which are being recorded hereinafter.

7. Firstly, it is the settled principle of law that the terms and conditions of the prospectus have the force of law. Note-3 on the very first page of the

prospectus, reads as under:-

This Prospectus contains two parts:-

Part-I: concerns conduct of PAET - 2011 and allocation of ranks only.

Part-II: concerns the rules for admissions to BAMS/BHMS courses in Ayurvedic/Homoeopathic Institutes. This shall be strictly in accordance with

the Punjab Government Notifications.

Clauses 1.1 and 1.3 of Part-I of the prospectus read as under:-

1.1 The admission to all the institutions including the Minority institutions in the State of Punjab shall be done as per the

notifications/instructions/guidelines/rules issued by the State Government. Admission to the NRI seats shall be as per provisions of The Punjab

Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act 2006, from time to

time.

1.3 After the declaration of result of the PAET 2011, the candidates shall have to apply to Guru Ravidas Ayurved University, Hoshiarpur for

Admission as per clause 2.2 of Punjab Govt. Notification No. 5/3/11-3HBIII/3315 dated 12.05.2011 and its amendments.

8. Government notification has been defined in clause 2(vi) of Part-1 of the prospectus, which reads as under:-

Government Notification"" means Notification No. 5/3/11-3HBIII/3315 dated 12.05.2011 and corrigendum issued from time to time and other

notifications issued for this purpose from time to time by the Department of Medical Education & Research.

9. Similarly in part-II of the prospectus, the procedure about the admission has been laid down and relevant part of clause 1 and 2 thereof reads as

under:-

1. INTRODUCTION

Para-B pertains to admission to BAMS/BHMS courses on the basis of PAET-2011. This part contains Punjab Government Notification No.

5/3/11-3HBIII/3315 dated 12.05.2011 and corrigendum issued from time to time for BAMS/BHMS Courses. It contains the ADMISSION

APPLICATION FORM which is required to be filled and returned to the University along with prescribed fee and all other enclosures as are

required as per the said NOTIFICATIONS within the prescribed period on or before the due date and time i.e. 2nd September, 2011 by 5.00

P.M. [Same form shall be considered for all the seats of all the institutes under all types of Quotas except NRI/Minority seats. PLEASE READ

CAREFULLY AND OBSERVE ALL RULES/REGULATIONS AND INSTRUCTIONS CONTAINED IN THE in this Para-II of the

prospectus.

2. NRI SEATS

xx xx XX XX xx xx xx

Subject to the important note given below, candidates will be admitted in the courses/institutions as per Government Notification No. 5/3/11-

3HBIII/3315 dated 12.05.2011 and corrigendum issued from time to time and subsequent notifications and as per provisions of this Prospectus by

a Selection Committee constituted for this purpose. Only those candidates who qualify in the PAET-2011 and meet other laid down conditions

shall be eligible to apply. The applications of the ineligible candidates will be rejected.

The list of the Colleges and the seat availability shown at various places in this prospectus may vary and the final status shall be displayed at the

time of counselling.

Notwithstanding candidate"s participation in PAET-2011 only those candidates who are eligible as per the Prospectus, University Rules and

Punjab Govt. Notification No. 5/3/11-3HBIII/3315 dated 12.05.2011 and corrigendum issued from time to time and subsequent notifications and

apply for admission after PAET-2011 as prescribed shall be considered for admission.

10. The relevant part of the notification dated 12.5.2011 issued by the Government of Punjab reads as under:-

GOVERNMENT OF PUNJAB

DEPARTMENT OF MEDICAL EDUCATION

AND RESEARCH

(HEALTH III BRACH)

NOTIFICATION

No. 5/3/11-3HBIII/3315

Dated: 12/05/2011

SUBJECT: ADMISSION TO BAMS AND BHMS COURSESIN AYURVEDIC AND HOMOEOPATHIC INSTITUTES SITUATED IN

THE STATE OF PUNJAB - 2011 ONWARDS.

1. GENERAL

The Governor of Punjab is pleased to notify the admissions to Under-Graduate Degree courses that is BAMS and BHMS for the year 2011

onwards in the Ayurvedic and Homeopathic institutes in the State of Punjab. All the institutions whether Government or private, aided or unaided,

minority or non-minority shall be covered by this notification.

The Governor of Punjab is further pleased to authorize Guru Ravidas Ayurvedic University, Hoshiarpur to conduct the Punjab AYUSH Entrance

Test-2011 onwards, hereinafter called PAET, in the compulsory subjects of Physics, Chemistry and Biology (Botany & Zoology) for selection of

candidates for admission to BAMS/BHMS courses in various institutions, in the State of Punjab, for the year 2011 on-wards. The seats of the

State quota in Government Institutes and that of the Government quota in private institutes shall be filled out of the candidates as per their merit in

the PAET of corresponding year.

11. Respondent-State has given the background justifying its action while issuing the corrigendum dated 9.12.2011 (Annexure P-1) extending the

date of admission up-to 16.12.2011. Para 2 of the preliminary submissions of counter affidavit dated 18.3.2013 of Dr. A.S. Thind, Director

Medical Education and Research, Punjab, reads as under:-

2. That the brief facts of the case are that the last date for admission in under-graduate courses in B.S.M.S. was 30.10.2011 and respondent No.

1 received an official note from the Office of Minister for Forest, Labour, Medical Education & Research stating as under:-

It has come to my notice that due to late declaration of result of some colleges, B.A.M.S/BPT seats of the Colleges have remained vacant.

Concerned Colleges have requested that keeping in view the future of the students, date of the admission for BAMS/BPT may kindly be extended.

Therefore, file relating to admission for BAMS/BTP be put to the undersigned within two days. The true translated copy of noting of Minister of

Medical Education and Research is annexed as Annexure-R/1/T. Keeping in view the above facts the then Principal Secretary Medical Education

in view of the instructions from the Minister to Govt. of Punjab, Department of Medical Education and Research, Punjab vide his order dated

09.12.2011 extended the last date for admissions to B.A.M.S./B.P.T. courses was extended till 16.12.2011. The true translated copy of nothing

is annexed as Annexure-R/2/T.

12. It is not the pleaded case of the respondent-University that the notification (s) and the corrigendum including Annexure P-1 issued by the

respondent-State were not binding on it. Further, the respondent-University has not initiated any action against respondent-College for making the

admissions up-to 16.12.2011, pursuant to the corrigendum issued by the State Government, extending the date of admission. The admission fees

as well as examination fees deposited by the petitioners with the respondent-College, which were forwarded to the respondent-University, have

also been duly accepted by it as there is no denial on behalf of the respondent-University, in this regard. Further, the respondent-University never

issued any public notice informing the students like the petitioners not to take admissions, in terms of the corrigendum (Annexure P-1).

13. So far as the judgment in Madhu Singh''s case (supra) relied upon by learned counsel for respondent No. 3 is concerned, the same was

rendered on a different set of facts and the admissions therein were the mid-session admissions, which were restricted only to the courses of

MBBS/BDS. Admissions in MBBS/BDS are made on the basis of entrance test on all India basis, whereas the facts of the present case are

entirely different. No all India quota is involved in the admission of BAMS. Thus, the judgment in Madhu Singh''s case (supra) is distinguishable on

facts. It is also the settled proposition of law that some-times difference of one additional fact or circumstance can make the world of difference as

held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others,

14. Peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judge

made law thereto. Thus, since the judgment of the Hon''ble Supreme Court in Madhu Singh''s case (supra) is on a different set of facts, the same is

of no help to respondents Nos. 2 and 3.

15. Closer to the facts of the present case, the observations made by the Hon''ble Supreme Court in Chowdhury Navin Hemabhai and Others Vs.

The State of Gujarat and Others, are relevant and can be followed as a guiding factor. The relevant observations made by the Hon''ble Supreme

Court in paras 21 and 22 of the judgment, read as under:-

21. In Sandeep Subhash Parate Vs. State of Maharashtra and Others, this Court has also held that while exercising its discretion and jurisdiction

and to do complete justice in terms of Article 142 of the Constitution, the Court must consider all relevant aspects of the matter including the

decisions of this Court. In that case, the Court found that the Sandeep Subhash Parate did not lack bona fides in getting admission in the course of

Bachelor of Engineering, Pune University, in a seat reserved for Scheduled Castes, and exercising its constitutional power under Article 142 of the

Constitution the Court held that his studies in the professional course should not be disturbed as he might not be entirely responsible for the

admission in a reserved seat.

22. In the facts of the present case, we have found that the appellants were not to be blamed for having secured admission in the MBBS course

and the fault was entirely of the rule-making authority in making the 2008 Rules and the appellants have gone through the pains of appearing in the

common entrance test and have been selected on the basis of their merit and admitted into the MBBS course in the college in accordance with the

State Rules, 2008 and have pursued their studies for a year. Hence, even though under the MCI Regulations the appellants were not eligible for

admission to the MBBS course in the academic year 2008-2009, for the purpose of doing complete justice in the matter before us, we direct that

the admissions of the appellants to the MBBS course in the college during the academic year 2008-2009 will not be disturbed.

16. Reverting back to the facts of the present case and respectfully following the law laid down by the Hon''ble Supreme Court in Chowdhury

Navin Hemabhai''s case (supra), this Court feels no hesitation to conclude that the petitioners proceeded on a legitimate expectation that the

notification dated 12.5.2011 including the corrigendum (s) like the one as Annexure P-1, which was made the basis of procedure for admission,

would be binding on all concerned. Nobody has raised any doubt about the eligibility of the petitioner. They took the entrance examination, made

the bench mark and secured the admission as per their merit. In these circumstances, this Court cannot shut its eyes to the serious prejudice being

caused to the petitioners, without there being any fault on their part.

17. No other argument was raised.

18. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is unhesitatingly held

that no illegality can be attached to the admission of the petitioners, in the given fact situation of the present case. Thus, the action of the

respondent-University, while not recognising and regularising the admission of the petitioners, is declared to be unjust, unwarranted and

unreasonable.

Consequently, following directions are issued:-

(i) The respondent No. 2-University as well as respondent No. 3-Council are directed to recognise and regularise the admissions of the petitioners

without any further loss of time.

(ii) The respondent-University is further directed to take appropriate action making necessary arrangements enabling the petitioners to take their

main examination in the month of May 2013 when the supplementary examination are statedly going to be held.

(iii) Respondent-University shall inform the petitioners forthwith if any amount is to be deposited by them on account of examination fees etc. and

the petitioners are also directed to deposit the requisite amount, if any, as soon as they are informed by the respondent-University.

(iv) Once the requisite amount, if any, is deposited by the petitioners, the respondent-University shall forthwith issue roll numbers to the petitioners

permitting them to take their examination.

These directions are being issued with a view to save one academic year of the petitioners because they have not been found to be at fault, at any

point of time, nor it has been so alleged by any of the respondents. Since these directions have been issued in the peculiar facts and circumstances

of the present case, it will not be treated as a precedent in future.

Resultantly, the instant writ petition stands allowed in the terms aforementioned, however, with no order as to costs.