

(1990) 11 SHI CK 0002

High Court of Himachal Pradesh

Case No: C.W.P. No"s. 493 and 560 of 1990

Ashish and Rakesh

APPELLANT

Vs

Himachal Pradesh
University and Others
and State of Himachal
Pradesh and Others

RESPONDENT

Date of Decision: Nov. 20, 1990

Citation: (1990) 2 ILR HP 681

Hon'ble Judges: V.K. Mehrotra, J; Bhawani Singh, J

Bench: Division Bench

Advocate: Rajiv Sharma, in C.W.P. No. 493 of 1990 and D.D. Sood, in C.W.P. No. 560 of 1990, for the Appellant; Chhabil Dass, General for Respondents No. 1, 2 and 3, D.C. Jishtu, for Respondents No. 1 and 2 and Indar Singh, for Resppondent Nos. 4 and 5 in C.W.P. No 493 of 1990 and C.W.P. No. 560 of 1990, for the Respondent

Judgement

Bhawani Singh, J.

These Civil Writ Petitions are being taken up for decision by a common judgment since the controversy in both of them centres around between the parties in this case.

2. Indira Gandhi Medical College, Shimla, affiliated to Himachal Pradesh University, is owned by the State of Himachal Pradesh. It offers studies in various disciplines. So far as M.B.B.S. Degree Course is concerned, admissions are regulated by the prospectus issued by the Government of Himachal Pradesh, Department of Health and Family Welfare, for each Session. Before the candidates are offered admissions, Pre-Medical Test (P.M.T. examination) is conducted by the Himachal Pradesh University and a list of meritorious candidates is finalised according to the categories envisaged in the prospectus. These cases concern admissions for the Session 1990-91 in the M.B.B.S. Course.

3. The Petitioners are some of the many candidates for admission to this Course. There are altogether 65 seats available for distribution amongst different categories. 27 seats fall in Group-"A" (reserved) while 10 seats are reserved to be filled on the basis of All India Entrance Test generally conducted by the Central Board of Secondary Education. Then, there are 28 seats falling in Group-"B(i)" (unreserved) meant to be filled on the basis of open merit. There is sub-distribution to Scheduled Castes (9), Scheduled Tribes (5), Government of India nominees (5), Backward Classes (2), Children-son/daughter-of ex-servicemen (1), Children-son/daughter-of Defence personnel (1), Wards of Freedom Fighters (1) and Backward Area (3).

4. The Himachal Pradesh University held the Pre-Medical Test on June 16, 1990 and the result was declared on July 9, 1990. According to this result, Petitioner Rakesh Mohan Gautam secured 216 marks out of the total of 300 marks and was declared selected for the Course for the Session 1990-91. Petitioner Ashish was also declared successful and secured 209 marks out of 300 marks. Petitioner Rakesh Mohan Gautam was selected under Group B (i) (unreserved) while Petitioner Ashish was selected against the category meant for the children of serving defence personnel (A-6) and he states that in pursuance of this selection, he received communication (Annexure P-2) on 23-7-1990 directing him to attend the office of Director-cwm-Principal, Indira Gandhi Medical College, Shimla, on 7th or 8th August, 1990 with all original certificates and documents for verification but before he could actually seek admission, all the admissions in the Medical College were stayed by this Court in Civil Writ Petition No. 408 of 1990, Puneet Sharma and Ors. v. Himachal Pradesh University and others. In this case, this Court went into the grievance of the Petitioners regarding the inaccuracies in certain key-answers which had affected the valuation of their papers to the Pre-Medical Test in subjects like Physics, Chemistry and Biology. Number of key-answers and the questions set by the examiners for the test were set-up to convince the Court to allow the rechecking and re-evaluation of the answer-sheets. This Court found substance in these submissions and allowed the prayer with the result that the answer-sheets were subjected to re-evaluation. The University undertook the job through a Committee of Experts appointed by this Court and a fresh list of candidates was accordingly drawn-up wherein Petitioner Ashish secured 217 marks out of 300 marks while Petitioner Rakesh Mohan Gautam got 221 marks out of 300 marks. He was placed at No. 6 in the waiting list released by the University.

5. Petitioner Ashish further submits that on 26-8-1990, he received a telegram (Annexure P-4) directing him to report for medical examination on 28-8-1990 but on his visit to the Medical College, he was informed that Miss Suneeti Bisht, who had been given admission on merit, had applied under the category of wards of ex-servicemen (A-5) and, therefore, one seat reserved for the wards of ex-servicemen was treated unreserved. He was also told that Ranjeet Singh Rana, falling under the category of wards of ex-servicemen, complained against the

adjustment of Miss Suneeti Bisht against this category since she actually fell under the category of children of serving defence personnel (A-6). The result was that the Petitioner was refused admission to the Course. He also submits that he approached the Vice-Chancellor on 28-8-1990 and also submitted a detailed representation dated 29-8-1990 (Annexure P-5) in addition to the legal notice dated 28-8-1990 (Annexure P-6). The Petitioner has, therefore, sought the annulment of the admission given to Miss Suneeti Bisht on the grounds being mentioned and discussed in the later part of this judgment.

6. Miss Suneeti Bisht is the daughter of Brigadier Opendar Kumar who is a serving defence personnel like Lt. Col. H.D. Garg, father of Petitioner Ashish. In her form, she described her category as A-5, meant for the children of ex-servicemen but in the other parts of the form, the information conveyed was that her father is serving defence personnel. Certificate (Appendix A-3) describes that her father Brigadier Opendar Kumar is working as Army Officer, Sector Commander, Assam Rifles, Manipur Range, Imphal. The Scrutiny Committee of the University, without caring to see other entries and documents, moved on the basis that Miss Suneeti Bisht was a candidate under category A-5. This went on till the matter was examined on the complaint of Ranjeet Singh Rana, who was a claimant against category A-5. The result was that the University reexamined the matter, set-aside the mistake and Miss Suneeti Bisht was admitted against category A-6 and she having secured 20th position in the open merit, the seat meant for the children of serving defence personnel (A-6) was dereserved and learned over to Group B(i) (unreserved), taking the total to 29 seats from 28 seats.

7. The case of Petitioner Rakesh Mohan Gautam is that his name, according to the present position, figures at No. 1 in the waiting list, therefore, he is entitled to admission against the only seat available in the open category as a result of dereservation of the seat under category A-6 and Petitioner Ashish has no right to be admitted since as a result of dereservation of the seat, no seat is available under category A-6. Petitioner Rakesh Mohan Gautam has no grievance against the admission of Miss Suneeti Bisht, rather it is clear from his stand in the pleadings that he has supported the stand taken by the University, State and Director-cum-Principal of the Indira Gandhi Medical College, Shimla. In this way, the stage has reached when we should proceed to examine the precise key questions raised in these cases.

8. Shri Rajiv Sharma, learned Counsel for Petitioner Ashish, submitted that Miss Suneeti Bisht could not have been considered against category A-6 when she had sought admission against category A-5. Reference to "category once indicated will not be permitted to be changed", under Note (ii) read with Note (i) in Appendix-A, was made to submit that the Respondents could not have considered her case under category A-6 since Miss Suneeti Bisht has sought her admission against a specific category, A-5. As she could not have changed the category once indicated,

the only consequence could have been that her form was liable to be rejected since she was not entitled to be considered against category A-5. Shri Rajiv Sharma also raised the alternative argument that in case it is held that the action of the University and the Medical College giving her the benefit of category A-6 is correct, in that event, she may be ordered to be admitted against Group B(i) (unreserved) without loss of seat in Group A-6 and Petitioner Ashish being the only candidate against this category, deserves to be admitted against this category (A-6).

9. We are not impressed by either of these submissions of the learned Counsel for Petitioner Ashish. The mistake indicating category A-5 instead of A-6, committed by Miss Suneeti Bisht, appears to be by sheer inadvertence. But for this, she had clearly sponsored her candidature against category A-6 which is quite evident from other material available on the record. This mistake went unnoticed till her placement and admission against this category was protested and then the mistake was corrected and her case was treated as a child of defence personnel, having been selected on the basis of merit as she was otherwise at Serial No. 20 on merit in Group B(i) (unreserved). Note (i) under "Ill-Admission" was pressed into service. This Note reads:

Note. (i) Provided that the seats reserved under different categories in Group A shall be treated as so reserved only if no candidate falling under such respective categories is selected on merit in Group B and seats of particular category shall be treated as unreserved to the extent the candidates falling in that category are selected on merit in Group B.

This Note envisages that reservation under different categories in Group-A will be available only if no candidate under such respective categories is selected on merit in Group-B. The reservations will be available to the extent of the number that fails to find mention in the selection on merit in Group-B, meaning thereby, if there is only one seat reserved in a particular category and the candidate of that reserved seat comes in merit in Group-B, no other seat is available in that reserved category and in case there are two seats in that reserved category, out of which one is selected on merit in Group-B, only one seat is available to be filled by any other eligible candidate available in that category. There is laudable intention behind this kind of provision. The object appears to be not only to take candidates falling under such respective categories by reserving seats for them but also to see that the benefit of reservation to them is not extended further to the number of seats available for them and in case such a candidate(s) has been selected in open merit in Group-B, the seat available to the category stands converted to open merit. Further, the scheme distributing the seats under Group-A (reserved) indicates that every possible attempt has been made to restrict the reservations and make those seats available to Group-B(i) candidates. In addition to Note (i), already reproduced above, we can refer to some other material available in this regard in the prospectus:

Note. These three seats are reserved for candidates belonging to the backward area as notified by the Government from time to time who have passed at least two or three examination, i.e.. Primary, Middle and Matric from the Institution located in the backward areas. In case no candidate becomes available from the backward area for these reserved seats, the same will go to the general category candidates.

If there is a short-fall in the Government of India nominations, those seats will go to Group-B candidates.

10. Same inference can be drawn from para-1, page-3 of the prospectus which provides that after competition of candidates of Group-A and B(i), except Group A(3) B(ii) amongst their own categories, the unfilled seats from Group-A will be treated as unreserved when the required number of candidates are not found eligible as per the Rules of the prospectus and will be added to Group B(i). We agree with the contention of the learned Advocate General that for selections to Courses like Medical and Engineering, the sole criterion should be the merit of the candidates (See: [Dr. Jagadish Saran and Others Vs. Union of India \(UOI\)](#),

11. Therefore, it can very well be said that reservations to definite categories are to be construed strictly (See: [C.A. Rajendran Vs. Union of India \(UOI\) and Others](#),

12. Note-(iii) envisages that the minimum number of women candidates will be ten exclusive of candidates nominated under Group A(3). It also says that if the number of women candidates falls short of this number, the short-fall will be made good irrespective of the fact that by so doing more meritorious male candidates stand superseded. The maximum number of women candidates has not been prescribed. This provision relating to women further demonstrates that in other reserved categories, minimum number has not been prescribed. There, the only object has been that a candidate from these categories must be available for admission and in case he is available and is selected on merit under Group-A where there is only one seat available in that category, the seat is dereserved and becomes available to Group B(i) (unreserved). Now, the question is whether the consideration of admission of Miss Suneeti Bisht under category A-6 from category A-5 would amount to going against Note-(ii) read with Note-(i) to Appendix-A. These Notes are reproduced:

Note. (ii) A candidate wishing to be considered for a reserved seat should in his/her application form specify one category of reserved seat for which he/she is eligible. This will not prejudice his/her case of being selected against unreserved [Group B(i)] seats. (Category once indicated will not be permitted to be changed).

Note.(i) Under no circumstances will a category once indicated be allowed to be changed. A new category cannot be claimed after submission of the application.

13. We have examined the circumstances which prevailed with the University to consider the case of Miss Suneeti Bisht under Category A-6. We hold that this action

of the University is quite legal and justified. Mistake was committed not only by Miss Suneeti Bisht but also by the Scrutiny Committee and later on by the University Administration which processed her admission case. Mistake has to be rectified and not allowed to be perpetuated. With this correction, Miss Suneeti Bisht was given admission under category A-6 and by so doing, a seat under category A-5 became available to Ranjeet Singh Rana.

14. The provisions under Note-(ii) and under Appendix, Note-(i) are not mandatory; rather they are regulatory in nature. The object is to avoid vagueness and to ensure exactness as to the category against which a candidate wishes to be considered. It also enables a candidate falling in a particular category to be selected against unreserved Group-B(i) seats and the idea of indicating the category can also be for the purpose of identifying a candidate falling under any of the respective categories, say, for example, Miss Suneeti Bisht has been selected against category A-6 and has been brought to Group B(i) (unreserved) but she is identifiable by her category of coming from category A-6 which has remained unchanged. By this way, all the provisions of Note (i), Note (ii) and Note (i) of Appendix A operate harmoniously. Moreover, we see no bar against the selecting authorities assigning a particular category to a candidate in case the facts available so warrant. Accordingly, we reject both the submissions raised by Sliri Rajiv Sharma counsel for Petitioner Ashish and up-hold the admission of Miss Suneeti Bisht against category A-6 in Group B(i) (unreserved). Similarly, Ranjeet Singh Rana has been rightly admitted against category A-5. Petitioner Ashish Kumar is not entitled to be admitted against category A-6 since there is no seat available there.

15. We are told that at present only one seat is available and Petitioner Rakesh Mohan Gautam is at No. 1 in the waiting list. If this is so, he is entitled to this seat in Group B(i) (unreserved) and we direct the Himachal Pradesh University and the Director-cum-Principal of the Indira Gandhi Medical College, Shimla, to allow him admission against this seat.

16. Now, the question is whether Petitioner Ashish deserves to be treated with compassion and his provisional admission regularised, as was contended finally by his counsel. We say, yes, for the reason that he was declared successful by the University against category A-6 and was called upon to seek admission in the Course. However, the matter was stayed by this Court and after the release of the fresh merit list by the University, he was again directed to report for medical examination on 28-8-1990. It was during this time that he came to know that Miss Suneeti Bisht, who had applied under category A-5, was actually adjusted against category A-6 qua which he had been asked to seek admission. Baffled by this revelation, he protested to the Vice-Chancellor through representation and legal notice and when he failed to succeed, he preferred the present writ petition. This Court by the order of 13-9-1990 in CMP No. 904 of 1990, directed the provisional admission of the Petitioner in the MBBS Course for the Session 1990-91 in the

reserved category for children of defense personnel (category A-6). Accordingly, he sought admission in the first year of MBBS Course and he is continuing his studies till date.

17. We have found that mistake was not only committed by Miss Suneeti Bisht but also by the University functionaries. Petitioner Ashish had been entertaining high hopes of his admission all along without any fault on his part. Finally, he challenged the action of the University in this regard and he was allowed provisional admission, obviously, after hearing the parties to the case and finding prima facie case in his favour. Today, the interpretation of the provisions has turned against the Petitioner (Ashish). Looking to all the facts and circumstances of this case, we find this to be a fit case which needs to be treated with compassion and humanistic approach. Similar view was expressed by the Supreme Court in AIR 1980 SC 1230 {Charles K. Skaria and Ors. v. Dr. K.U. Gopalakrishnan and Ors.} when Justice V. R. Krishna Iyer, speaking for the Court, said in para 28 as under:

28. To dismiss an appeal is merely to declare that judicial remedy will not issue and not that by other processes justice should not be sought or granted. From the humane perspective and with a view to helping Appellant No. 1 to pursue his relief through the University or other appropriate State agency, we directed the impalement of the Indian Medical Council which is the statutory body concerned, at the national level, with higher medical degrees and courses. The Medical Council has not appeared before the court though its presence would have helped the forensic process to heal the fractured academic course. But we cannot wait longer. It behooves the State to give academic justice- not legal remedy-to Appellant No. 1 if circumstances permit, having regard to the fact that, with diploma qualification, he has spent months in doing his Ophthalmology degree course. In law he fails, in justice he need not, if marginal adjustments by increasing one seat more were possible without injury to academic efficiency. What we mean is that though Appellant No. 1 has no legal claim to a seat, the overall circumstances will merit compassionate consideration, and we direct the Kerala University and the Indian Medical Council to permit him to complete his Course by adding one more seat, for this year only to the Ophthalmic degree course.

18. Shri Rajiv Sharma also submits that the apex Court has in number of decisions allowed the students already prosecuting studies to continue the same. Reliance in support of this submission was placed on [Suman Gupta and Others Vs. State of Jammu & Kashmir and Others](#), , [State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others](#), [Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another](#), , [A. Sudha Vs. University of Mysore and Another](#), and [Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others](#), .

19. Accordingly, we direct the Director-cum-Principal, Indira Gandhi Medical College, Shimla, to allow the Petitioner, Ashish, to continue his studies uninterruptedly. We further direct him and the Medical Council of India to make available one more seat

for the Session 1990-91 against which the admission of Petitioner Ashish would be regularized. We are not oblivious of the fact that Medical Council of India should have been heard in the matter before giving a direction to make one more seat available, but in view of the fact that in the past seats had been increased by the Medical College and the Medical Council of India on the directions of this Court and that the Course has already commenced and the students have lost much of the time in agitations, it is desirable that a direction, regulatory in nature, is more efficacious than to postpone the matter to any future date. However, we leave it open to the Medical Council of India to move this Court for placing its views, in case it chooses to do so.

20. The writ petitions are, therefore, decided in the aforesaid terms leaving the parties to bear their own costs.