Before Swatanter Kumar & J. S. Narang, JJ

MAMTA BANSAL & OTHERS,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 13722 of 2001

29th November, 2001

Constituion of India, 1950—Arts. 16(4) & 226—Regulations on Graduate Medical Education, 1997—Chapter II Para 5(v)—Notifications dated 25th May, 2001 & 21st August, 2001 issued by the Punjab Govt.—Admission to the Graduate Medical Courses—Medcial Council of India prescribing the minimum education standards & imposing condition of obtaining minimum qualifying marks in the competitive examination—After the declaration of result of the competitive examination & even in the midst of counselling, Govt. by issuing a notification withdrawing the condition of minimum qualifying marks for all the reserved categories—Decision of the Govt. to completely do away with the eligibiltiy condition causing serious prejudice to the General Category seats left unfilled when reserved category Candidates who got admission against reserved category candidates failed to satisfy the eligibility conditions—Such decision of the Govt. without prior approval of the Council arbitrary, unfair & unjustified being neither explanatory nor elucidatory—State Govt. not competent to issue the notification completely destroying the original notification either retrospectively or retro-actively to the disadvantage of the students.

Held, that the Government,—*vide* notification dated 21st August, 2001 has not attempted to elucidate or explain the existing criteria, but has completely altered the stipulated conditions of the brochure as per the Government notification dated 25th May, 2001, to the disadvantge of the larger section of the students. Besides the fact that it offends the prescribed standards promulgated by the Medical Council of India, there are no apparent reasons for doing away with the minimum qualifying marks prescribed under the brochure. The condition of minimum marks is not a creation of the prospectus alone. It is a part and parcel of the Government policy and

notification and prescription of Medical Council of India. The Government is obviously at liberty to formulate its education policy including the reason(s) for various criteria, but once such policy is notified and fully given effect to and adheared to. Apart from this, even counselling held in furtherance thereto, it will be unfair to permit the Government to alter such situation and that too without any justifiable course. Thus, the State Government was not justified in issuing the notification dated 21st August, 2001 in contradiction to its earlier notification being neither explanatory nor elucidatory.

(Paras 21 & 29)

Further held, that the jurisdiction of the Government to formulate its general education policy including medical courses cannot be disputed, but such formation is controlled by obvious limitations of relevant laws in force at that time. The condition of minimum qualifying marks was prescribed by the Medical Council of India and adopted by the State in its own wisdom. Appropriate authorities including the Medical Council of India must have examined all the pros and cons of such restriction and we have no reason to disbelieved that such an exercise was not taken either by the Govt. or by the Council before imposition of such condition. Once a condition of this kind is imposed, then it can be waived or withdrawan only upon following prescribed procedure and that too in given circumstances. Sudden withdrawal of such essential qualification, that too in the middest of the counselling can hardly be sustained. The State Govt. has exceeded its jurisdiction in issuing the notification without prior approval of the Medical Council of India. The extreme emergency shown by the State in issuing the impugned notification is beyond any reasonable comprehension.

(Paras 32 & 51)

Further held, that the action of the Government in issuing the impugned notification is patently transgression of its prescribed limitations. The Government's decision is nothing but a exhortation of errors in law on incorrect factua premises. The State, in exercise of its executive powers could not dilute, muchless completely do away with, the minimum education prescribed (condition of obtaining minimum marks in the competitive examination) by the Medical Council of India in discharge of its statutory functions. State has no competence

to give effect to the impunged notification either retrospectively or retro-actively to the disadvantage of the students more particulary when it is destructive of the original notification nexus between the impunged notification and the object sought to be achieved by issuance thereof keeping in mind the State policy and eligibility qualification cannot be termed as explanatory or elucidatory to the original notification. In fact it is destructive of the very underlying promulgated under first notification and the prospectus. Besides all this, decision of the Govt. suffers from infirmity of patent arbitrariness as it offends the principles of fairness, rectitude and stability in administrative or executive action.

(Paras 65 & 66)

G.S. Bajwa, Advocate with Divjyot Singh, Advocate *for the petitioners* in CWP No. 13722 of 2001.

R.K. Chopra, Advocate for petitioners in CWP 13003 of 2001

N.S. Gill, Advocate for petitioner in CWP No. 12346 of 2001

V.K. Mahajan, Advocate *for petitioner* in CWP No. 12200 of 2001

Ramesh Kumar, Advocate *for petitioner* in CWP No. 12156 of 2001.

R.D. Bawa, Advocate

Deepak Sibal, Advocate

V.K. Mahajan, Advocate

A.G. Masih, DAG, Punjab

Anupam, gupta, Advocate *for the University.*

JUDGEMENT

Swatanter Kumar, J.

(1) Challenge in these five writ petitions under Articles 226\227 of the Constitution of India is to the notification dated 21st August,, 2001, issued by the Department of Medical Education and Research,

Government of Punjab. This notification alters materially and in substance the earlier notification dated May 25, 2001, published in the news papers on June 25, 2001, issued by the Government for conducting Punjab Medical Entrance Test (PMET)-2001 for admission to medical couses. The notification dated 21st August, 2001 read as under :—

"Government of Punjab

Department of Medical Education & Research.

(Health III Branch)

Notification

The 21st August, 2001

No. 5/2001-5HB3/4304.—The Governor of Punjab is pleased to partial modify notification dated 25th May, 2001 issued,—*vide* No. 5/1/2001-5HB3/3009, dated 25th May, 2001 to the extent that paragraph 8(i) & (b) wherein minimum marks to be obtained by Schedule Caste/Schedule Tribe or other Backward Classes as well as by Sports persons and physically handicapped persons have been prescribed. It has now been decided to withdraw these minimum qualifying marks so far as candidates belonged to Schedule Caste/ Schedule Tribe or other Backward Classes as well as Sports persons and handicapped persons are concerned. Now their eligibility will be determined as per the policy followed for admission for the academic sessions P.M.E.T. 2000.

Dated Chandigarh Sd/-
The 21st August, 2000

N.S. Rattan,
Principal, Secretary to
Govt. Punjab, Department of
Medical Education & Reserch.

No. 5/1/2001--5HB3/4305, dated 21st August, 2001

A copy alongwith one spare copy is forwarded to controller Printing and Stationary Department, Chandigarh Administration,

Chandigarh for publication in the Punjab Government Gazette (Extra ordinary) today and supply one hundered copies without endorsement to this Department for official use.

Principal Secretary to Government,
Punjab, Department of Madical
Education & Reserch.

(2) The Governor of State of Punjab,--*vide* notification, dated 25th May, 2001 appointed Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as "the University") to conduct the Punjab Medical Entrance Test 2001 for selection of candidates for admission to MBBS, BDS and other professional courses. Pursuant to this notifiction, the Government also published its policy for the current academic year along with the manner and method in which the admissions were to be made and competitive examination was to be held. The policy of the government, in regard to reservation of seats for various ctegories and classes was also duly notified accordingly. Amongst others, seats were also reserved for Scheduled Castes, Scheduled Tribes, Backward Classes, handicapped, sports category etc. However, under clause 8 of the notification the general conditions of eligibility were provided 85% Seats were reserved for the students, who have passed their 10+1 and 10+2 examinations from the institutes recognised by the State of Punjab and situated in the State of Punjab, while 15% seats were reserved for the other candidates having passed 10+1 and 10+2 from all over the country.

(3) Keeping in view the controversy in the present writ petition, it will be appropriate to refer to the eligibility conditions which were altered and changed by the government just during and/or before the course of counselling. Relevant eligibility clauses 8 (a) and (b) of the notification read as under :—

> "(a) For admission to MBBS/BDS candidate must have come in the merit list prepared as a result of the entrance examination by securing not less than 50% marks in Physics, Chemistry and biology taken together in the competitive examination in respect of candidates belonging to scheduled castes, schedule tribes or other backward classes the marks obtained in Physics,Chemistry and Biology taken together in

competitive entrance examination be 40% instead of 50% as stated above.

(b) For admission to BAMS/BHMS/Bachelor of Physiotherapy and Bachelor of Nursing the candidate must have come in the merit list prepared as a result of the entrance examination by securing not less than 30% marks in Physics, Chemistry and Biology taken together in the competitive examination in respect of candidates belonging to scheduled castes, scheduled tribes or other backward classes the marks obtained in Physics, Chemistry and Biology taken together in competitive entrance examination be 20% instead of 30% as stated above.

xx xx xx

xx xx xx

Dated Chandigarh the
June 25th 2001.

(Sd/-) . . . ,
(N. S. RATTAN)
Principal Secretary to
Govt., Punjab Department of
Medical Education and Reserch."

(4) We may also notice that another writ petition being Civil Writ Petition No. 12156 of 2001 was filed by one Rajinder Kumar. In this writ petition, the petitioner relied upon a letter dated 7th August 2001, copy Annexure P/5 to the said writ petition, issued by the Department of Welfare, (Welfare Cell-Non-Plan) whereby the said department had written to the Department of Medical Education and Research that the condition of minimum marks should be withdrawn immediately to implement the policy for reserved category.

(5) On the basis of this letter, the petitioner prayed for issuance of a will in the nature of mandamus directing the respondents to consider the petitioner duly qualified and eligible despite the fact that he has obtained only 34.5 marks in the Entrance Examination.

(6) As the questions of law arising in all these petitions are common, based on somewhat similar facts. We consider it appropriate to dispose of these writ petitions by a common judgment. The facts

for reference are being taken from the case of Civil Writ Petition No. 13722 of 2001 titled Mamta Bansal and others *versus* State of Punjab and others.

(7) All the petitioners belong to the category of 85% quota. They had taken Entrance Test on 7th July, 2001 conducted by the University for admission to M.B.B.S., B.D.S., B.H.M.S. and such other courses. The petitioners arrayed in all other petitions also took the Entrance Test, result of which was declared on 7th July, 2001 itself. The five petitioners in this petition were declared successful and obtained the following ranks :—

Mamta Bansal (Petitioner No. 1)	227
Astha Baghla (Petitioner No. 2)	225
Tarundeep Dhawan (Petitioner No. 3)	228
Renu Gupta (Petitioner No. 4)	243
Anshul Gupta (Petitioner No. 5)	253

(8) In terms of clause 8(a) and (b) of the prospectus, these petitioners were required to get not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination for admission to M.B.B.S. and B.D.S. courses. The petitioners satisfied the eligibility conditions and were entitled to be admitted. According to the petitioners, the university had published the brochure for conducting the competitive examination. The procedure with complete terms and conditions including the notificaiton of the Government had been published in a prospectus titled as Prospectus Punjab Medical Entrance Test 2001. The clause's related to admission/counselling procedure. The counselling for different courses was to be held on 17th August, 2001. This date was advertised by the University as per the conditions of the brochure and actually counselling was commenced on 17th August, 2001 and thereafter was carried over to different dates and that the final counselling for the remaining seats of the General Category was done on 20th August, 2001 and on 23rd August,

2001 for candidates of the sports category. As per clause 3 (vii), the interview was to be held in order of marks obtained in the Entrance Test. All unfilled seats of the reserved categories were to be taken as dereserved automatically and were to be filled out of the general category candidates in tems of clause 3(ix). The previous notification was withdrawn suddenly and during the course of counsellig, the Government of Punjab issued notification dated 21st August, 2001, completely altering the eligibility condition and abolishing the condition of minimum marks for all the reserved categories i.e. Scheduled Castes, Backward Castes, Handicapped etc. The petitioners would have got admission in the general category in the normal course on the basis of their own merits but waiver of the earlier conditions in regard to eligibility clause has caused serious prejudice to them and they are likely to loose their admission, which othrewise would have come to the general category because the reserved category candidates having failed to satisfy the eligibility conditions. The University issued an advertisement in "The Tribune" on 26th August, 2001, by going beyond notification it has been stated in the advertisement that "there was no lower limit" for admission to professinal courses for the reserved categories. We could shortly refer to this aspect of the matter.

(9) According to the petitioners, under regulation 5 of Chapter-II relating to admission, selection, migration and training, the Medical Council of India has provided criteria of merit for qualifying entrance examination. The candidates belonging to general category must have obtained not less than 50% marks in the competitive examination and 40% instead of 50% in the case of Scheduled Castes, Scheduled Tribes, and other Backward Classes etc. This condition being part of the conditions imposed by the Medical Council of India could not be altered by the Government and that too, to the prejudice of the petitioners and other similarly situated persons.

(10) The petitioners have made the notificaiton dated 21st August, 2001 as subject matter of challenge in the present writ petition on different grounds including the very validity of the notification.

(11) Upon notice, the University has not filed reply. However, the government has filed the written statement. It has been stated that the Government had the competence and in the interest of the reserved categories, notification dated 21st August, 2001 was issued.

Under the terms of the earlier notification and the prospectus, the government had the authority to change, alter or modify the terms and conditions of the prospectus without prior notice. It is stated that the seats meant for the reserved categories in private and Government Dental Colleges are likely to remain vacant, therefore, the criteria of minimum marks in the Entance test was done away with by the impugned notification.

(12) We may also notice at this stage that two different applications being Civil Misc. No. 25972 and 26072 of 2001 were filed for impleadment. These applications were filed by the candidates claiming reserved seats and they contend that the notificaiton of the Government dated 21st August, 2001 is fair and valid and therefore, it should be implemented and prayed for the dismissal of the writ petiition. Vide order dated 11th September, 2001 and 20th September, 2001, the applications were allowed and the applicants therein were impleaded as respondents 3 to 11 and 12 to 14. The respondents No. 3 to 11 filed independent written staement in support of the case of respondents. It has been further pleaded that the purpose of reservation would stand frustrated if implementation of the notification dated 21st August, 2001 was not enforced.

(13) From the pleadings of the parties it is clear that the petitioners in the five writ petitions challenged the issuance of the notification, mainly on the pleas that :—

(a) The resondents have no power to alter substantially or otherwise indicating criteria for admission provided under the brochure, once it has been notified and acted upon :

(b) The impugned notification not only diminishes but completely destroys the basic precept for admission to such courses i.e. rule of merit. Not only diminishing but completely doing away with the rule of merit :

(c) The State Government has no jurisdiction or sanction, to dilute, much less to completely do away with, minimum statutory academic standards prescribed by the Medical Council of India, to be maintained by holding competitive entrance examinations for admission to graduate medical courses :

(d) The petitioners have a vested right, as on the conclusion of the counselling for reserved categories for M.B.B.S. and B.D.S. courses, a right has vested in them for allocation of vacant seats, which would stand transferred to general category :

(e) The notification in question lacks legislative competence and sanction. Even if the act is treated to be executive in its nature, it has been done without any assent of the Governor. As a matter of fact it has not even been brought to the notice of the Governor and as such is vitiated ;

(f) The impugned notificaiton has been issued in contradictory terms with undue haste and without application of any mind ;

(g) In any event, the impugned notification, even if held to be otherwise valid, cannot be permitted to operate retrospectively as it would amount to unsettling the settled rights.

(14) While, according to the petitioner in C.W.P. No. 12156 of 2001 and the respondents in other writ petitions :—

(a) The notification is valid, has been issued in accordance with law and does not disturb any existing rights ;

(b) In fact the petitioners have no vested right to claim the seats. It was only an anticipated right if at all ;

(c) The issuance of the notification was only an executive act and thus, there was no occasion for the government/ the cabinet to seek assent or even bring the facts to the notice of the Governor :

(d) In order to accompalish the purpose of the reservation policy framed by the State issuance of notification in question was necessary :

(e) The Government is competent to make any changes in the terms and conditions stated in the brochure. In the present case, there is hardly any change.

The subsequent notification dated 21st August, 2001 is only explanatory.

(15) In order to appropriately examine the merits of the rival arguments raised by the learned counsel appearing for the respective parties we feel it would be necessary to discuss the basic concepts of topics underlying these submisionns to provide a cumulative answer to these submissions.

Can the State or other competent authority alter or vary the terms and conditions of a duly notified and declared notification/ prospectus including admission criteria to the prejudice of the candidates of any class or category :—

(16) We have already noticed that all the petitioners in various writ petitions except in C.W.P. No. 12156 of 2001 are the candidates who have qualified the entrance test 2001 for admission to M.B.B.S./ B.D.S. Courses in various colleges in the State of Punjab. Result of the entrance test which was held on 7th July, 2001 was declared on the same day. It was notified that counselling would be held for the specified categories on different dates. The counselling for general category was fixed on 10th August, 2001 and then on 17th August, 2001. Counselling for sports category was fixed on 23rd August, 2001. In terms of the notification of the State of Punjab dated 25th May, 2001, the candidates seeking admission to M.B.B.S./B.D.S. courses must have come in the merit list prepared as a result of entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. However, in respect of the candidates belonging to Scheduled Castes/Scheduled Tribes or other Backward Classes, such candidate would be eligible for admission if he has obtained 40% marks instead of 50% marks. This condition of eligibility meant for reserved category was totally removed by the State Government,—*vide* its notification dated 21st August, 2001. In other words, the condition of minimum qualifying marks for the candidates belonging to Scheduled Castes/Scheduled Tribes/Backward Classes/Sports Persons/and Handicapped Persons was withdrawn in its entirety. It was stated in the notification that eligibility would be determined as per the policy followed for academic session of 2000. This notification was admittedly issued in the middest of the counselling and after the competitive examination had been held and result thereof having been declared.

(17) The prospectus issued by the University is a complete and composite document. It not only contains introduction, scheme for conducting the entrance test, declaration of result, general instructions and method of admission, but also contains Government notifications, policy of the Government and different kinds of certificates which were required to be furnished by a candidate in accordance with the requirement contained therein. A candidate was expected to familiarise himself fully and consciously about the terms and conditions of the brochure. These conditions amongst others specifically provide duel eligibility criteria one relating to eligibility for taking the entrance test and second with regard to admission to medical courses. The candidate, who upon declaration of the result could not satisfy the second criteria of obtaining 50% or 40% marks, as the case may be, were rendered ineligible for admission to the M.B.B.S. and B.D.S. courses, still they may be eligible to take admission to other courses like B.A.M.S., B.H.M.S., Bachelor of Physiotherapy and Bachelor of Nursing Courses etc. Clause 8(b) of the notification dated 25th May, 2001 permitted the candidates to take up the other courses even if they had less than 50%/40% marks in the competitive examination but not less than 30%/ 20% marks. What has been attempted by the notification dated 21st August, 2001 is making the ineligible candidates eligible for admission to M.B.B.S. and/or B.D.S. courses. On the face of it. It is apparent that it is a substantial and material alteration in the previous notification/brochure duly published and pursuant to which the entance test had already been held, result declared and at a stage when the counselling was being done. Thus, it has to be examined whether by such alteration, the candidates, who had already earned bar of ineligibility, could be rendered eligible in view of the settled position of law and specific terms and conditions of the brochure/notification.

(18) We would proceed to examine the law relating to the nature and effect of the terms and conditions of a brochure/government notification issued prior to the entrance examination . We need not refere to the judgments of various Division Benches and Single Benches of this Court in this regard as the law has been clearly enumerated by a Full Bench of this Court in the case of *Amardeep Singh Sahota* versus *State of Punjab and others (1).* The Full Bench was concerned with somewhat similar circumstances where the Government had

(1) 1993 (4) SLR 643

waived the requirement of obtaining minimum qualifying marks by a subsequent notification. The Bench held that the State had jurisdiction to lay down the policy for admission to sports quota in Medical Colleges, but deprecated the practice for frequent and mid-term changes in the policy. The Bench held as under :—

> ".....It is therefore, clear from the policy of the government that insofar as admitted to reserve category of sports is concerned, the gradation was to be made on the basis of instructions dated 7th/12th June, 1991 but the candidates would be required to obtain minimum marks for becoming eligible for admission.
>
> Students pursuing coursese 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."
>
> "The Notification of the State Government dated 13th July, 1992 which we have already quoted above and which waves the requirement or obtaining minimum qualifying marks in our opinion, is an after thought and wholly arbitrary. If the validity of this Notification is upheld then the result would be that only merit in sports would become the criterion for admission in the reserved category of sports. This is not acceptable. In the circumstances, the Notification dated 13th July, 1992, is liable to be quashed and cannot be given effect to.
>
> It may at this stage further be stated that the Notification dated 13th July, 1992 goes contrary to the policy which was laid down for admission in the Notification dated 20th May, 1992 on the basis of which the prospectus had been issued to the students and the students

appeared for test on the basis of the policy laid down in the Prospectus. The Prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. In Ravdeep Kaur *versus* The State of Punjab and others, I.L.R. (1985) Punjab and Haryana 343, a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since the Prospectus issued for admission to the 1992-93 Course in the medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated 16th July, 1992 issued by the State Government is invalid in law.

There is another aspect of the matter if condition of acquiring minimum qualifying marks in an admission examination is waived then the examination itself would become a farce. A sportsman may just enter the hall not answer any question and come back get zero and yet because of his sports category he would get admission in a medical college. In this way, the very purpose and spirit of the competitive examination will be given a go by. If an examination is held, it must be given its due importance."

(19) The above conclusions of the Full Bench of this Court were approved with some variation and the content of the judgment was watered down by the Honb'le Apex Court in a recent judgment renedered in the case of *Rajiv Kapoor and others* versus *State of Haryana and others (2)* the appex Court held that the Government

(2) AIR 2000 SC 1476

had the jurisdiction to issue orders or instructions subsequent to the issuance of the prospectus. The decision of this Court in the case of *Rajiv Kapoor* (supra) was reversed and the Hon'ble Apex Court held as under :—

> "In our view, the High Court fell into a serious error in sustaining the claim of the petitioners before the High Court that selection and admissions for the course in question have to be only in terms of the stipulations contained in Chapter V of the Prospectus issued by the University. Such an error came to be committed in assuming that the Government had no authority issued any direcitons laying down any criteria other than the one contained in the Prospectus and that the marks obtained in the written Entrance Examination alone constituted proper assessment of the merit performance of the candidates applying for selection and admission. The further error seems to be in omitting to notice the fact that the orders, dated 21st May, 1997, which came to be issued after the declaration of results of written Entrance Examination, even if eschewed from consideration the orders dated 20th March, 1996 and 21st February, 1997, passed in continuation of the orders of the earlier years, continued to hold the field, since the orders, dated 21st May, 1997, were only in continuation thereof. Those orders, dated 20th March, 1996 and 21st February, 1997, had, admittedly been forwarded to the University, with a request to make necessary entries in the Prospectus/Syllabus.
>
> The High Court, in allowing the writ petition purported to follow an earlier judgment of the Full Bench of the very High Court reported in **Amar Deep Singh Sahota** *versus* **State of Punjab, 1993(2) 104 Pun LR 212.** On carefully going through that judgment, we find that the Full Bench did not doubt the competency or authority of the Government to stipulated procedure for admission relating to courses in professional colleges, particularly in respect of reserved category of seats, but on the other hand, it specifically depreciated the decision to do away

with the requirement of minimum marks criteria in respect of seats reserved for sports category and that too by passing orders after the examinations were held under a scheme notified in the Prospectus. As a matter of fact the Full Bench, ultimately directed, in that case, that selections for admission be finalised in the light of the criteria specified in the Government orders already in force and the Prospectus, after ignoring the offending notification introducing a change at a later stage.

So, far as the cases before us are concerned, the High Court not only held that the Government order, dated 21st May, 1997 issued after the declaration of the results of the entrance examination held pursuant to the Prospectus issued for 1997, could not be followed but went a step further to hold that except the Prospectus in question nothing else could be looked into and that the Government orders had the effect of varying the criteria laid in the Prospectus in the matter of selections to the seats reserved for H.C.M.S. candidates. We are unable to appreciate this reasoning. The Government orders, dated 21st May, 1997, did not introduce, for the first time, either the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid down criteria. It merely modified the pattern for allotment of marks under various heads from the total marks. Therefore, even if the modified criteria envisaged under the orders, dated 21st May, 1997, is to be eschewed from consideration, the earlier orders and the criteria laid down therein and the manner of assessment of merit by the Selection Committee after interview were still required to be complied with and they could not have been given a complete gobye as has been done by the High Court.

Both the orders of the Government, dated 20th March, 1996, and 21st February, 1997 in unmistakable terms stipulated that after issue of no objection certificate against reserved seats to the H.C.M.C. Medical Officers

they had to appear not only in the Common Entrance Test and obtain at least 20% of marks or above to become eligible for consideration but the merit of the candidates had to be determined by the Selection Committee constituted for the purpose. As per the criteria specified in Annexure A."

(20) Another Full Bench of this Court in the case of *Anil Jain and others* versus *The Controller of Examinations, MDU, Rohtak and others (3)* while dealing with the case of admission to Post-graduate Medical Courses, took the view as udner :—

".....That prospectus contained eligibility conditions, schemes of examination, method of selection and admission, procedure for applying for admission and general information to candidates. Candidates appeared in the entrance test on the basis of the provisions contained in the prospectus. Eligibility for admission to the course has to be ascertained according to the provisions contained in the prospectus. The prospectus thus, controls the method and procedure for taking the examination and for admission to the courses. Full Bench of this Court in **Amardeep Singh Sahota** *versus* **State of Punjab and others 1993(4) SLR 673** observed :—

"Eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law."

We are in respectful agreement with the said statement of law. This being the position, we hold that the prospectus decides the rights of he candidates for admission to the course. When, it is seen that the provisions contained in the prospectus have been strictly complied with by the respondents, petitioners are not justified in putting forth claim for admission to the additional seats which

(3) 1997 (3) R.S.J. 88

were created or to the seats which had fallen vacant subsequently.

(21) In *Rajiv Kapoor's* case (supra), the Hon'ble Apex Court has held that Government could issue orders even after issuance of the brochure, but scope of such directions during the same academic year, is apparently clear from the caution given by the Court in the same judgment. Their Lordships observed in addition to the above observations that prospectus as well as the orders of the Government have to be construed in such a manner that merit is properly assessed on the basis of the criteria prescribed. Their Lordships further noticed that the guide-lines/orders issued by the Government did not introuduce for the first time a criteria for admission on merit. While in the present case the Government,—*vide* the impugned notification has not attempted to elucidate or explain the existing criteria, but has completely altered the stipulated conditiions of the brochure as per the previous Government notification, to the disadvantage of the larger section of the students. Besides the fact that it offends the prescribed standards promulgated by the Medical Council of India, there are no apparent rasons for doing away with the minimum qualifying marks prescribed under the brochure. The condition of minimum marks is not a creation of the prospectus alone. It is a part and parcel of the Government policy and notification and prescription of Medical Council of India. The Government is obviously at liberty to formulate its education policy including the reason (s) for various criteria, but once such policy is notified and fully given effect to and adhered to. Apart from this, even counselling held in furtherance thereto, it will be unfair to permit the Government to alter such situation and that too without any justifiable course.

(22) The date of eligiblility would be the date of applications for admission to the competitive test and for admission to the professional courses. At best, it can be the date of result of the competitive test intending the qualifying candidate to seek admission to the various professional courses and that too as per their preference of subject, courses and College/Institute on the bais of merit secured by them in the competitive examination. The competitive test and its result closed the chapter for all intents and purposes in terms of the brochure as well as the Government notification and instructions.

(23) The change proposed by the impugned notification is neither explanatory nor elucidatory of the origianal Government notification and/or its policy. The minimum qualifying marks is a condition which has an inbuilt bar for admission to the medical and other courses. This bar of eligibility renders a candidate unqualified for admission to M.B.B.S. and B.D.S. courses if he has failed to obtain the minimum marks of 50% in the prescribed subject in the competitive examination and 40% in the case of Scheduled Castes/Scheduled Tribes categories. On the date of declaration of result all the candidates, irrespective of the category to which they belong, have either qualified for admission or have earned a dis-qualification. Thus, the notification, does not further any cause, but in turn, recklessly destroys the spirit of the earlier notificaiton. The Government, in its wisdom and on the basis of the best experience, introduced the condition of minimum qualifying marks to all the categories. We were told during the course of arguments that the condition of minimum marks was not applicable in the previous years. This has been introduced for the first time for the academic session 2001.

(24) Every decision of the Government is supposed to be taken in good faith and preferably on data based studies. The Government, in its wisdom, thus, had come to the conclusion that introduction of minimum qualifying marks in the competitive examination even by the reserved classes candidates was called for. Such a decision taken in May, 2000 at the time of publication of notification hardly calls for any such alteration, which amounts to a complete somersault to policy decision. The policies in regard to education matters ought to be framed with considerable thought, caution and with due care to the attendant factors. But once such a policy decision is taken, it ought not to be altered frequently and that too without any compelling circumstances and without giving proper and sufficient notice to all concerned in this regard we again refer to the following observations of the Full Bench in Amardeep Singh Sahota's case (supra) :—

> "We have held that it is the jurisdiction of the State Government to lay down the policy for admission to the sports quota in the Medical Colleges but in our opinion the State Government should not change the policy every year and in one year change it many times as has been done in this year. We expect the State

Government that any policy which it determines in regard to the sports quota for the next year, shall be permitted to continue for atleast three years so that students who are eligible in the sports quota may be aware of the said policy."

(25) There is apparent contradiction in the present notificaiton and the earlier notificaiton issued by the Government on 25th May, 2001. While it is stated in the impugned notification that criteria for the earlier academic session i.e. 2000 would be applicable there clause 8(1) of the earlier notification reads as under :—

"8 GENERAL CONDITIONS

(a) to (k) X X X

(1) Any instructions issued earlier for previous academic year (s) shall not be applicable to PMET—2001."

(26) By the impugned notification the Government amended clause 8(a) and (b) of the earlier notification, but did not amend or specifically delete Clause 8(1) thereof, thus, giving rise to an apparent conflict in the criteria to be adopted for admission to the professional courses. Viewed from any angle, conducting and result of the competitive examination has been rendered purpuseless and ineffective. We have already noticed that the candidates who have not been able to qualify for M.B.B.S. and B.D.S. courses, their claim for admission to other courses is not obviously debarred. If the candidates belonging to reserved category have claimed more than at least 20% in the competitive examination they would be entitled to admission in other courses like B.A.M.S., B.H.M.S., B.A.M.S., Bachelor of Physiotherapy and Bachelor of Nursing courses. We are unable to appreciate this sudden act on part of the State to waive off the minimum qualifying marks after declaration of the result and especially when in fact substantial part of the counselling stood concluded.

(27) During the course of admission, it is normally not appropriate to hamper the admissions by altering the eligiblity conditions. It has the effect not only of disturbing the admissions and causing disadvantage to the students at large, but also adversely affecting the commencement of the course. The Government and for that matter any competent authority must act with great care and

caution in such matters. The manner and method of admission is prescribed under the terms and conditions of the brochure read with notification of the Government. In the case of *Kurukshetra University and another* versus *Jyoti Sharma and others (4),* the Hon'ble Apex Court held as under :—

> "Our attention has been drawn to Section 23 of the Act under which Executive Council, which is the principle executive body of the University, is authorised to issue Ordinances. Under Section 22 an Ordinance may provide for admission of students to University, their courses of study, etc. Ordinance No. 1 provides that admission of students shall be regulated by Admission Committee, constitution of which is provided therein."
>
> "In the circumstances we do not find any error in the impugned judgment where the High Court held that the Vice-Chancellor could not have in the established facts of the case exercised power under section 11(5) of the Act by issuing notifications dated 22nd August, 1997 and 8th September, 1997."

(28) The other reasons, which have weighed with us in coming to the conclusion that the State ought not to have issued the notification dated 21st August, 2001 which completely destroyed the prescribed condition of eligibility and minimum qualifying marks under the previous notification, as such, is not sustainable in the facts and circumstances of the case, we would shortly proceed to discuss under other heads.

(29) In view of our aforestated discussion, we accept the arguments raised on behalf of the petitioners in the four petitions and reject the submissions on behalf of the respondents and petitioner in C.W.P. No. 12156 of 2001. We are of the considered opnion that in the facts and circumstances of this case, the State Government was not justified in issuing the notification dated 21st August, 2001 in contradiction to its earlier notification being neither explanatory nor elucidatory.

(4) JT 1998 (6) SC 475

Jurisdiction of the State to completely withdraw the condition of minimum qualifying marks as prescribed under the earlier notification and its effect :

(30) Medical Council of India is a body constituted of experts under the Medical Council of India Act to provide and maintain standards of education in medical faculties in India The Medical Council of India, in exercise of its power has further framed regulations which are called "Regulations on Graduate Medical Education, 1997". The condition for obtaining minimum marks has been prescribed under Chapter II—Admission, selection, migration and training, Sub-para (v) of Para No. 5, which governs selection of the students for medical courses and provides for basic eligibility criteria reads as under :—

> "(5) To be eligible for competitive entrance examination, the candidate must have passed any of the qualifying examinations as enumerated under the head note "Eligibility Criteria."
>
> Provided also that :—
>
> (i) in case of admission on the basis of qualifying examination a candidate for admission to medical course must have obtained not less than 50% marks in English and 50% marks in Physics, Chemistry and Biology taken together at he qualifying examination :
>
> (ii) in case of admission on the basis of a competitive entrance examination, a candidate for admission to medical course must have obtained not less then 50% marks in English and 50% marks in Physics, Chemistry and Biology taken together both at qualifying and competitive examinations :
>
> Provided further that in respect of candidates belonging to Scheduled Castes/Scheduled Tribes and other Backward Classes (OBCs), the marks obtained be read as 40% instead of 50%"

(31) In conformity with the prescribed standards of education and entrance examination by the Medical Council of India, the

Government of Punjab,— *vide* its notification dated, 25th May, 2001 had incorporated the eligibility criteria for admission to competitive test as well as for admission to the medical courses. This condition imposed in the notification is not directory in nature, but is mandatory. Till the holding of the examination and declaration of the result and even counselling, the eligibility condition of 50%/40% was uniformly applied to the respective categories. This condition of eligibility, admittedly, was withdrawn without approval of the Medical Council of India and probably it suffered the serious ramifications of the decision at the relivant time. Part of the counselling was over and even the candidates in the general category had been allotted seats.

(32) The jurisdiction of the Government to formulate its general education policy including medical courses cannot be disputed, but such formation is controlled by obvious of limitations relivant laws in force at that time. We have already noticed that condition of minimum qualifying marks was prescribed by the Medical Council of India and adopted by the State in its own wisdom. Appropriate authorities including the Medical Council of India must have examined all the pros and cons of such restriction and we have no reason to disbelieve that such an exercise was not taken either by the Government or by the Council before imposition of such condition. Once a condition of this kind is imposed, then it can be waived or withdrawn only upon following prescribed procedure and that too in given circumstances. Sudden withdrawal of such essential qualification, that too in the middest of the counselling can hardly be sustained.

(33) The regulations framed by the Medical Council of India cannot be ignored, but are expected to be followed by all concerned. At this stage, we may refer to the judgment of the Hon'ble Supreme Court in the case of *Dr. Preeti Srivastava and another* versus *The State of Madhya Pradesh and others (5).* This case related to the admission to the Post-graduate Medical Courses and the question amongst others before the Hon'ble Apex Court was "the effect of lowering qualifying marks for the candidates belonging to reserved category from 45% to 20%." The Court held as under :—

> "The purpose, however, of higher medical education is not to fill the seats which are available by lowering standards; nor is the purpose of resevation at the stage

(5) J.T. 1999 (5) SC 498

of post-graduate medical education merely to fill the seats with the reserved category candidates. The purpose of reservation, if permissible at this level, is to ensure that the reserve category candidates having the requisite training and calibre to benefit from post-graduate medical education and rise to the standards which are expected of persons possessing post-graduate medical qualification, are not denied this opportunity by competing with general category candidates. The general category candidates do not have any social disabilities which prevent them from giving of their best. The special opportunity which is provided by reservation cannot, however, be made available to those who are substantially below the levels prescribed for the general category candidates. It will not be possible for such candidates to fully benefit from the very limited and specialised post-graduate training opportunities which are designed to produce high calibre well trained professional for the benefit of the public. Article 15(4) and the spirit of reason which permeates it, do not permit lowering of minimum qualifying marks at the post-graduate level to 20% for the reserved category as against 45% for the general category candidates.....the marks cannot be lowered further for admission to the post-graduate medical courses, especially when at the super speciality level it is the unanimous view of all the judgments of this Court that there should be no reservations. This would also imply that there can be no lowering of minimum qualifying marks for any category of candidates at the level of admission to the super-specialities courses."

(34) In the case of *Dr. Sadhna Devi & others* versus *State of U.I. and others, (6),* the Hon'ble Apex Court reiterated the above view and clearly indicated that the reserved seats should be made available to the candidates beloging to the general category. Their Lordships hdd as under :—

"In our view, the Government having laid down a system for holding admission tests, is not entitled to do away with the requirement of obtaining the minimum

(6) J.T. 1997 (3) SC 255

qualifying marks for the special category candidates. It is open to the Government to admit candidates belonging to the special categories even in a case where they obtain lesser marks than the general candidates provided they have got the minimum qualifying marks to fill up the reserved quota of seats for them."

"....If they fail to secure even the minimum qualifying marks, then the seats reserved for them should not be allowed to go waste but should be made available to the candidates belonging to general category. This contention must be upheld. Otherwise, to borrow the language used in *Dr. Jagdish Saran* Case (supra), this will be a "national loss".

(35) The full Bench of this Court in *Amardeep Singh Sahota's* case (supra) held that the candidates claiming seats under the Sports category were obliged to satisfy the candition of minimum qualifying marks despite their supremacy in their sports events.

(36) The learned counsel appearing for the respondents contended strenuously that the above principles enunciated by the Hon'ble Apex Court are applicable in the cases relating to admission to post-graduate courses, therefore, they have no application to the facts of the present case. It has been further argued that the copy of the notification dated, 21st August, 2001 was sent to the Secretary, Medical Council of India, New Delhi, and, therefore, the Court should presume concurrence of the Council. Both these arguments are misconceived. Firstly, in the above referred cases, the Hon'ble Apex Court has laid down the principles of law and procedure that the State Administration is required to honour and apply meticulously the standards prescribed by the Medical Council of India in dischargeof its statutory functions. Even if the cases relate to the Post-graduae Medical Courses, *per se* would not render the principles inapplicabe to the facts and circumstances of the present cases. It is the dicta coupled with the principle of general applicability, which has to be seen and not only the circumstances or the object where it is applied by the highest Court of the land.

(37) The regulation that has been promulgated by the Medical Council of India as afore-noticed relates only to admission to M.B.B.S./

B.D.S. courses. Once an act is required to be done consciously by the Council, the Court would have to examine the issue with some objectivity and not accept the argument of deemed sanction. On the facts of the present case, such a question even does not arise because the examination had already been held, results had been declared and even substantial part of the counselling was over when the notification in question was issued and there was no occation or time for the council to re-act to the said notification. Firstly, the government in fact never asked any action to be taken by the Medical Council of India and the copy was forwarded in routine. Secondly, till the conclusion of the arguments of these cases, no submission was made on behalf of the State that in furtherance to the impugned notification, the Medical Council of India has granted its permission for withdrawal of the condition of minimum qualifying marks. Neither any of the condition of minimum qualifying marks. Neither any averment has been made nor any documentary evidence has been brought on record in this regard.

(38) We may notice here that the Full Bench of this Court in *Amardeep Singh Sahota's* case (supra) related to M.B.B.S. courses and the principles enunciated therein in any case, are binding upon this Bench. Any adverse consequence of withdrawal of notification is that rule of merit would be given a complete go-by under the impugned notification. To illustratively examine this aspect a person who has not qualified or has even obtained zero marks in the competitive test is eligible for admission to the medical courses. That could never be the intention of an expert body like the Medical Council of India or for that matter, even of the State. It does not eventually serve the purpose of such reservation nor any national interest.

(39) The learned counsel for the respondents even made a reference to Article 16(4) of the Constitution of India and reading the same analogy into the provisions of Article 15(4) of the Constitution, contended that the notification is merely implementation by the State of the constitutional mandate. As far as Article 16(4) of the Constitution is concerned. It is a special provision relating to the State Services and the purpose sought to be achieved is entirely distinct and different than the object of the present medico education scheme. The respondents cannot derive any benefit therefrom. In any case, this question need not detain us any further in view of the clear mandate given by the

Hon'ble Apex Court in the above cases as well as in the case of *Mohan Bir Singh Chawla* versus *Panjab University, Chandigarh and another, (7).*

(40) Before we state our conclusion on this preposition, it will be most apt for us to refer to a very recent judgment of the Hon'ble Supreme Court of India in the case of *State of Punjab* versus *Dayanand Medical College and Hospital and others (8)* where the Hon'ble Apex Court discussed various previous pronouncements of the same Court and upheld the view of a Division Bench of this Court, where notification of the State reducing the minimum marks was set aside. Their Lordships held as under :—

> "Further, the condition of 50% marks in the entrance test was reduced to 40% because 80% of the seats reserved for P.C.M.S. marks in P.G.E.T. due to the fact that they do not get academic support in rural areas. It is submitted that the postgraduate entrance examination is held for those who have already passed in M.B.B.S. examination by securing at least 50% marks and therefore, the candidates who had not secured 50% in the postgraduate entrance examination cannnot be declared to be filled in M.B.B.S. The lowering of the marks to less than 50% has the twin objective of safeguarding the interests of weaker sections of the Scheduled Castes and Backward Classes and to meet the constitutional obligation. We are afraid, the approach of the State of Punjab in this regard results in stultifying the logic. What is contended is that suitable candidates are to be selected from amongst the eligible candidates and in that regard an entrance test is being held. When such an entrance test is held, a prescription has been made by the Medical Council of India fixing a standard in terms of Entry 66. List 1 of the Seventh Schedule to the Constitution and which cannot be diluted at all as has been held in a series of decisions including **Dr. Peeti Srivastava's case (supra), Dr. Naravan Sharma** *versus* **Dr. Pankaj Kumar Lekhar (supra)**

(7) JT 1996 (11) SC 226
(8) JT 2001 (8) SC 529

and Medical Council of India *versus* **State of Karnataka (supra).** Therefore, it is not open to the University or the Government to dilute that standard by fixing marks lower than what is wet out by Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly stated by this Court to be repository of the power to prescribe standards in Post Graduate Studies Subject, of course, to the control of the Central Government as envisaged in the Act constituting the Council."

"We, therefore, find that the prescription made by the respondents reducing the minimum marks to 40% in the entrance examination for considering the eligibility of the candidates for admission to postgraduate medical courses and in respect of the basic subjects fixing no minimum standard is plainly in contravention of the Regulations framed by the Medical Council of India and that part of the notification will have to be ignored. If that is done and if the Regulations framed by the Medical Council of India are applied in toto, appropriate working will have to be made by the appellants as indicated, supra and the same will have to be given effect to."

(41) Similar to the contentions raised before the Hon'ble Apex Court, are the contentions raised before us. It is nobody's case and in fact there is no challenge in any of the writ petitions including the writ petitions filed by the respondents where challenge to imposition of condition of minimum qualifying marks,—*vide* notification dated 25th May, 2001 is raised. It was obligatory upon the State to approach the Medical Council of India to lower the prescribed standard and upon such confirmation alone, the State could introduce such condition in the notification governing the scheme of examination and admission to medical courses. To prescribe reservation and the manner in which

the seats of such reserved category shall be filled, primarily falls in the domain of the State. The condition fixed is obviously attainable and is realistic. This condition was introduced by the State despite the fact that such condition was not applicable in the earlier academic years. It was expected by the State that the students belonging to the reserved category could and should satisfy the condition in regard. In view of the settled position of law, the State can hardly escape the liability of facing the obvious consequences of issuing the impugned notification.

(42) We have already mentioned that inevitable consequence of the impugned notification is that the principle of merit will have to be brought to its nadir. There would be violation of the prescribed standards of education by the Medical Council of India. The impugned notification has been issued in the middest of the counselling without giving proper and prior notice to all concerned. The change brought in by the impugned notification is substantial and adversely affects the settled admission to the various medical courses in the State of Punjab. Full Bench of this Court in the case of *Anil Jain* (supra) and the Hon'ble Apex Court in the case of *Anand S. Biji* versus *State of Kerala and others, (9)* had categorically held that admissions to such courses should be given finality and courses commenced in time.

(43) As has been held in *Dr. Preeti Srivastava's* case (supra) the directions issued and standards of medical qualifications and matters relating thereto are mandatory in nature in their application. In the case of *Bharathidasan University and others* versus *All India Council for Technical Education and others (10)* the Hon'ble Apex Court was considering somewhat different issue as the powers of All India Council for Technical Education under the relevant Act were narrower in their scope. The Council was required to submit a report to the U.G.C. and, thus, their Lordships in view of the provisions of that Act held that role of the Council was advisory, recommendatory and a guiding factor. It has no competence to enforce its sanctions. The above observations of the Hon'ble Apex Court were made in different context and keeping in view the role attributable to the University Grants Commission. In the case the University itself was commencing the technical course and, therefore, their Lordships took

(9) J.T. 1993 (3) SC 130
(10) 2001 AIR SCW 3824

the view that the University was not a technical institution within the definition under Section 2(h) of the Act. That is certainly not the case herein.

(44) We may notice that as far as Medical Council of India is concerned, it is not a body, subject to control of U.G.C. or for that matter any statutory authority. The recommendations of the Medical Council of India are liable to be submitted to the Government of India which normally accepts such recommendations. As far a maintenance of academic standards governing the medical education in the country are concerned they are totally vested in the Medical Council of India as it is the final authority. Thus, greater and specific are the power vested in the Medical Council of India and due machinery has been provided/prescribed within the provisions of the Act for enforcement of its sanctions or conditions imposed in that regard. For that matter, whether the recommendations of the Medical Council of India are treated to be mandatory or persuasive, the State Administration and Universities are expected to adhere to the same. The State can hardly couch itself of the power to do away with the prescribed standards of medical education and that too abruptly under the garb of its socio-education schemes. The expression mandate is bound to have definite connotation and the authorities concerned would be required to implement the prescribed standards in their State policies and it will be equally binding on the recognised Universities. Assuming that the State, in exercise of its executive power with the intent to implement its socio-education policy, issues a notification, the contents of which would offend the legislation or a rule/regulation framed by a central statutory body, in that event, the central regulation/subordinate legislation shall take precedence over notification of the State.

(45) Another aspect of this matter, which we consider it necessary to mention is, that nearly 1726 candidates under the Scheduled Castes/Scheduled Tribes and Backward Classes categories had appeared in the P.M.E.T. Test-2001, out of which 158 candidates qualified for admission to MBBS/BDS and other courses. However, the majority of the seats in the BDS Course may remain vacant as the candidates did not satisfy prescribed condition of minimum qualifying marks in the competitive examination. As per the terms and conditions of the brochure, the vacant unfilled seats, would go to general category and would be filled in by the candidates in the general category in order of merit.

(46) There are 95 seats in the MBBS course for the reserved category of Scheduled Castes/Scheduled Tribe candidates and 96 persons had qualified the competitive test for MBBS course. In other words nearly 10 candidates belonging to reserved category opted not to join the MBBS course under the reserved category. This itself indicates that the condition of minimum qualifying marks is not impossible of attainment by a normal candidate of reserved category. The candidates, who could not get seats in the MBBS/BDS courses, are not completely ousted from the zone of consideration for counselling and consequent allotment of seats. They would certainly get seats in the M.B.B.S, B.H.M.S., Bachelor of Physiotherapy and Bachelor of Nursing courses.

(47) The change of admission policies, that too substantially, is bound to affect the interests of the candidates adversely and to some extent they may be taken totally by suprise. Mentioning generally some of the candidates after declaration of the result in all categories might have opted to take the seats in the second counselling by putting their name in the waiting list or otherwise. Their calculations for allotment of seats and for choice of subject and college were correctly made on the basis of the terms and conditions of the prospectus, the notification and the displayed result. Now because of the radical change of doing away with the condition of minimum qualifying marks for the candidates of various reserved categories, their interest would suffer an irreparable loss. They may not get any seat.

(48) Examining the element of prejudice to the candidate under the sports category reference can also be made to C.W.P. No. 10575 of 2001 and C.W.P. No. 12865 of 2001. In those cases, the petitioners contend that in view of the terms and conditions in the notification dated 25th May, 2001 only four candidates had qualified under the sports category. There are only four seats reserved for the quota in the M.B.B.S. courses. Consequently all four candidates who secured higher merit in the entrance test would have surely got the seats but because of the impugned notification now 17 candidates i.e. all candidates under the sports categories, who had applied, would be eligible to be considered for this course. Despite the fact that they are much lower in merit of the competitive examination, they would get seats in M.B.B.S. course in preference to the petitioners becaue of higher gradation certificates in sports, that too in violation of the

judgment of the Full Bench of this Court in *Amar Deep Singh Sahota's* case (supra). These candidates had, therefore, not made efforts to get seats at other places.

(49) Another glaring example of resultant prejudice to the rights of the petitioners in those petitions (C.W.P. No. 19575 of 2001 and C.W.P. No.12865 of 2001, the arguments on which were heard together with these writ petitions), were offered the seats of B.D.S. on 18th August, 2001 under the general category, but they refused the said seats as they were bound to get admission to M.B.B.S. course under the sports category for which they had applied. The impugned notification is, thus, bound to ruin their future aspects of professional education of a higher subject and better college.

(50) It is true that there is no indefeasible vested right in the petitioners in the present cases, but the declaration of result, obviously, is a settlement of a right for admission to M.B.B.S./B.D.S. courses. This settled position cannot be permitted to be unsettled by an abrupt and arbitrary decision of the Government to do away with the condition of minimum qualifying marks prescribed for such courses. Principle of equity and fairness would demand that the candidates in whose favour a right has accrued and they have exercised their permissible options based on the terms and conditions of the brochure existing at the relevant time, should not be exposed to avoidable prejudice.

(51) For this reasoning, we do not find any sustainable ground for the Government to Issue the impugned notification in the middest of the counselling. The State Government has exceeded its jurisdiction in issuing the notification without prior approval of the Medical Council of India. The extreme emergency shown by the State in issuing the impugned notification is beyond any reasonable comprehension. Accordingly, we answer this contention of the parties.

Retrospective effect of the impugned notification :—

(52) The impugned notification admittedly was issued on 21st August, 2001 while it intended to withdraw a condition of the notification which had already taken effect to and had been acted upon by all concerned. It was hardly fair for the Government to issue the impugned notification after completion of the examination and even declaration of result and substantial part of the counselling

having been concluded. We have already discusssed above that definite prejudice is likely to be caused to the candidates of various categories if this notification is permitted to take effect as if the condition was incorporated in the notification in May, 2001.

(53) It could be said that the petitioners have no vested right in the seats which may be available ultimately to general category but these are the rights which have accrued subject to the terms and conditions of the brochure/notification of the Government on the declaration of the result. A candidate to our mind, having opted to come on the waiting list on the premises of the declared result of second counselling, may suffer a serious prejudice if the seats of the higher courses are now taken away and given to other categories by lowering the condition of minimum qualifying marks or in fact by completely doing away with it. In the case of *Kanhialal* versus *The District Judge and others (11)* the Hon'ble Apex Court held that existing rights cannot be taken away by giving retrospective effect to a statutory provision unless it was so expressly provided and justified.

(54) A Full Bench of this Court in the case of *Neelam Kumari* versus *State of Punjab and others (12)* took the view that the academic acts like recognition and its withdrawal would be operative prospectively and will not apply retrospectively. The Hon'ble Apex Court in the case of *Suresh Pal and others* versus *State of Haryana and others (13)* while commenting upon the effect of withdrawal of recognition of an academic course or certificate, held that the adverse result of de-recognition would effect the students joining the course after the order of de-recognition and not prior thereto. On the same analogy if the students have taken the competitive examination the result of such competitive examination and admission thereto must abide by the prescribed condition and that the new condition, if the government proposes to introduce, is contrary and destructive of the original declared policy, they should be made prospective i.e. at least from the next session by giving ample opportunity to the students to acclimatise and educate themselves in that regard. It will put all the candidates on adequate notice and enable them to exercise their right of preference of subjecct and college more effectively in order of their merits.

(11) 1983 (2) SCC 32
(12) 1993 (1) RSJ 327
(13) 1987 AIR SC 2027

General Discussion :—

(55) There is some extent of contradiction in the two notifications issued by the Government as noticed above by us. In equity as well, may not be permissible to permit the State to enforce its impugned notification at this stage. The major part of the counselling is over. The courses have already been delayed beyond the prescribed limit of 28th of September and the obvious consequence of the impugned notification would be complete re-counselling of the seats for which the counselling has already begun. This would further delay the matter and would prejudice seriously the commencement of this professional courses. Even for these reasons we are of the considered view that the settled matters should not be permitted to be unsettled at this stage,—vide the impugned notification.

(56) The learned counsel for the petitioner relying upon various judgments of this Court and the Hon'ble Supreme Court of India contended strenuously that the impugned notification could only be issued upon grant of assent of the Governor or in any case, it was mandatory for the cabinet, this being a policy decision to bring it to the notice of the Governor in accordance with the rules of business. On the other hand, learned counsel for the responents whilst relying upon the rules of business, and various judgments of the Hon'ble Supreme Court contended that it was not obligatory upon the State to obtain assent of the Governor prior to issuance of the notification or even send the matter for information of Governor. In view of our findings on other arguments, we are of the considered view that the impugned notificaiton dated 21st August, 2001 is liable to be set aside. Thus, we consider it entirely un-necessary for us to go into the legal niceties of this submission. We would leave this question open to be examined by the Court in an appropriate case if the occasion so arises. However, we would notice certain facts as they appear on the file, which was produced before us during the course of hearing.

(57) We may also notice that a Division Bench of this Court in the case of *Dayanand Medical College and Hospital, Ludhiana* versus *State of Punjab and others, (14)* had taken the same view in regard to post graduate mattter in medical-courses. The judgment of the Division Bench on the issue in question has already been approved by the Hon'ble Apex Court as afore-noticed.

(14) I.L.R. 2001 (2) Punjab & Haryana 494

(58) At this stage, we may also notice that in the case of *Dr. Dinesh Kumar* versus *Motilal Nehru Medical College, Allahabad (15)* the Hon'ble Supreme Court of India had clearly stated that courses must commence in professional courses of medicine by 30th of September of the academic year. This principle was further followed and enforced by a Full Bench of the Delhi HIgh Court in *Dr. Sandhya Kabra and others* versus *University of Delhi (16).* Full Bench of this Court in the case of *Anil Jain* (supra) and the Hon'ble Apex Court in the case of *Anand S. Biji* versus *State of Kerala and others (supra)* had categorically held that admissions to such courses should be given finality and courses commenced in time. The present admissions to the M.B.B.S./B.D.S. courses have already been considerably delayed. The impugned notification is bound to cause further delay, which shall be seriously prejudicial to the academic interests of the students who have been granted admissions. The students are required to complete 18 months of actual study before they are permitted to take their first professional examination of their course. Admission of the students at the earliest would subserve the cause of maintaining timely commencement of the professional courses and also would contribute stability to the rule of admission.

(59) After the aforesaid discussion in respect of various facts of this case under the afore-stated topics, now we consider it appropriate to refere to the records, which were produced before the Court during the course of hearing.

(60) It appears that from some news items and on request from the Welfare Department of the Punjab Government, the matter was taken up for consideration in the Department of Medical Education of the Government. Vide note dated 9th August, 2001, the matter was placed before the Principal Secretary, Medical Education and Research, Government of Punjab, who,—vide his note dated 10th August, 2001, cautioned the Government not to take a decision contrary to the terms and conditions of the brochure, not to offend the qualifications prescribed for competitive test by the Medical Council of India and also made reference to various judgments of the Court including the case of *Dayanand Medical College and Hospital, Ludhiana* versus *State of Punjab and others.* This note of the Principal Secretary was approved

(15) 1987 (4) SCC 459
(16) 1992 (7) SLR 31

by the Minister of State. Medical Education and Research, who commented that terms and conditions specified in the brochure and the earlier notification should be adhered to. The Cabinet Minister of the concerned department while concurring with the note observed that the Government should avoid litigation. However, the Chief Minister,—*vide* his order dated 18th August, 2001, not only directed withdrawal of the minimum qualifying marks for the category, for which the note was initiated, but also directed that such a condition would not apply even to the other categories like sports and handicapped persons. The note initiated did not relate to grant of exemption from the rigours of the condition to the categories other than Scheduled Castes and Scheduled Tribes category.

(61) The note for grant of exemption to this reserved category from the rigours of conditions of minimum marks was initiated on 11th June, 2001, but was declined by the competent authority on 12th June, 2001. Obviously, thereafter, notification was issued on 25th May, 2001 and prospectus was published and circulated to the students. In other words the Government had taken a conscious decision, as already noticed, for implementing the said condition, for the current academic year 2000-2001.

(62) The decision taken by the Chief Minister primarily appears to be taken in his own discretion without any apparent basis to support such a decision. Before the Government, there was no material to show that sufficient number of candidates, under the category of sportsmen and handicapped persons, had not qualified the competitive test. We may notice at the cost of repetition that sufficient persons under the sports category had qualified to fill up the seats in the M.B.B.S. Course. On what premises and for what reasons, the decision for granting exeption to these categories was taken by the Chief Minister, are not traceable on the record of the file produced before us. It appears to us that the Government opted to act on its whims and judgment of imagination rather than the history of past years, on record, which suggested against issuance of such notification and for valid reasons.

(63) We have already noticed that sufficient number of candidates under the reserved category of Scheduled (Castes/Scheduled Tribes and Backward Classes had qualified the) (Ed.) competitive test.

This fact is numerically demonstrable from the figures brought on record by the University. The total number of M.B.B.S. seats for this category have already been filled up and there are more than needed candidates under this reserved category for allotment of B.H.M.S., B.A.M.S. seats. However, number of seats in B.D.S. Course may remain vacant, because the candidates of this category do not satisfy the prescribed condition of securing minimum qualifying marks in the competitive examination.

(64) We find it unnecessary to discuss this aspect of the matter in any further elucidation. From the record it appears to us that decision of the Government certainly suffers from the vice of arbitrariness. The Government decision may even be open to chastise on various other grounds appearing from the record. Despite caution from the concerned quarters, the Government took the undefendable decision without appreciating its ramifications. The impugned notification demonstratively shows that the decision of the Government not only suffers from the vice of arbitrariness but lacks rectitude and fairness.

(65) In view of our detailed discussion above on various facets of this case we are of the considered view that action of the Government in issuing the impugned notification. The Government's decision is nothing but an exhortation of errors in law on incorrect factua premises. The State, in exercise of its executive powers could not dilute, much less completely do away with the minimum education standards prescribed (condition of obtaining minimum marks in the competitive examination) by the Medical Council of India in discharge of its statutory functions. In view of the regulations aforenoticed prescription of minimum marks in the competitive examination apparently is the lodestar for admission to the graduate medical courses. The stand of the State and the private respondents is nothing but a sophistry founded on imagination rather than the facts on record.

(66) In any case, State has no competence to give effect to the impugned notification either retrospectively or retroactively to the disadvantage of the students more particularly when it is destructive of the original notification issued by the Government, upon due deliberation and after taking a conscious decision on 25th May, 2001. There is apparently no reasonable nexus between the impugned

notification and the object sought to be achieved by issuance thereof keeping in mind the State policy and eligibility qualification prescribed by Medical Council of India. The notification cannot be termed as explanatory or elucidatory to the origianl notification. In fact it is destructive of the very underlying theme promulgated under first notification and the prospectus. Besides all this, decision of the Government suffers from infirmity of patent arbitrariness as it offends the principles of fairness, rectitude and stability in administrative or executive action.

(67) For the reasons afore-stated, we have no hesitation in quashing the impugned notification dated, 21st August, 2001, which is hereby quashed. We direct the authorities to make admissions on the basis of notification, dated 25th May, 2001, and commence the medical courses without any further delay. However, in the facts and circumstances of the present case, there will be no order as to costs.

R.N.R

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