
(2011) 03 DEL CK 0374

In the Delhi High Court

Case No : Writ Petition (C) 1584 of 2011 and CM No. 3353 of 2011 (for directions)

Dr. Seema S. Yadagiri

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0374

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Vikram Mehta and Nar Hari Singh, for the Appellant; Jatan Singh and Ashish Kumar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner had appeared in the All India Post Graduate Medical Entrance Examination-2011 conducted by the Respondents and had secured a high rank of 1451 therein and in accordance with the option exercised by her, was called for counseling at Mumbai on 5th March, 2011. The Petitioner claims to be a resident of District Gulbarga, Karnataka. She has filed documents before this Court to show that she along with her mother travelled to Mumbai to participate in the counseling and reached there in the morning of 5th March, 2011. It is the case of the Petitioner duly supported by documents that on reaching Mumbai, she took ill and had to be hospitalized in Chhatrapati Shivaji Maharaj Hospital and was discharged therefrom only the next day i.e. 6th March, 2011. 6th being a Sunday, the Petitioner reported at the Counseling centre on 7th March, 2011 but was denied participation in counseling for the reason of having not appeared on the stipulated day. The Petitioner claims to have thereafter rushed to Delhi where the offices of the Respondents are situated and when her representations to the Respondents failed, has filed the present petition for directing the Respondents to allow the Petitioner to participate in the counseling. It is stated that the counseling is being held till 21st March, 2011 but

if the Petitioner is denied participation in the same immediately, all the seats in the preferred courses in the best Institutes are likely to be filled up, causing irreparable loss to the Petitioner.

2. The counsel for the Respondent No. 1 appears on advance notice. He has drawn attention to page 27 of the paper book being a part of the prospectus for the said examination and in Clause 12 (e) wherein it is provided that if owing to dire-emergency such as Hospital admission, Accident etc. the candidate is unable to appear in person on the notified date for counseling, he/she can send a blood relative along with an authority letter to represent him/her in counseling. He thus contends that the Petitioner under the said Rule was required to appear for counseling through her representative and having failed to do so is now not entitled to any relief. Attention is also invited to Clause 12(i)(c) of the said prospectus which bars an absenting candidate from participating even in the 2nd round of counseling. He thus contends that the Petitioner is not entitled to the relief claimed.

3. Considering the nature of the controversy and the urgency, need is not felt to issue formal notice and the counsels have been finally heard.

4. I have in judgment dated 22nd July, 2010 in W.P.(C) 4782/2010 titled Saurabh v. Govt. of NCT of Delhi and in judgment dated 9th August, 2010 in W.P.(C) No. 5357/2010 titled Sanjay Kumar Patel v. Union of India on a consideration of the case law on the subject have held that in spite of the rule of forfeiture for non-appearance in counseling at the stipulated time, the Court has the power to intervene in cases where the participant is prevented from appearing / participating in counseling for reasons beyond his/her control.

5. The Division Bench of this Court also recently in judgment dated 3rd March, 2011 in LPA No. 599/2010 titled Varun Kumar Aggarwal v. Union of India has held that the hopes and aspirations of a candidate who has obtained a high rank in admission test for Post Graduate Medical courses should not be scuttled and the Court should make all attempts to ensure that a meritorious candidate does not lose out on the admission.

6. In so far as the argument of the counsel for the Respondents of the Petitioner having not participated through her representative also as permitted under the prospectus is concerned, counseling is held by the Respondents only at four centres in the country; however candidates from all over the country participate in the examination held by the Respondents and have to travel long distances to participate in the counseling. Only blood relatives/spouses are permitted to represent as authorized representative of the candidate. It is not always possible that the candidate would be traveling with such blood relative/spouse. In the present case however though the mother of the Petitioner is shown to have travelled with her from Gulbarga, Karnataka to Mumbai by train but the mother in a strange city where her daughter had been suddenly taken ill could not be expected to leave the daughter and rush for participation in the counseling. I am

therefore of the opinion that merely because the said provision has been provided for in the prospectus would not come in the way of the Petitioner being entitled to the relief in accordance with the judgments aforesaid.

7. The counsel for the Petitioner has stated that since the Petitioner is now at Delhi, she is permitted to participate in the counseling at Delhi. The counsel for the Respondent No. 1 has stated that he will have to take instructions whether the same is possible, the Petitioner having opted for counseling at Mumbai.

8. Since each and every day or minute is crucial, the counsel for the Petitioner has opted to rush to Mumbai only for participation in the counseling.

9. The petition is accordingly allowed.

10. The Respondents are directed to allow the Petitioner to participate in the counseling at Mumbai as soon as the Petitioner appears for the said purpose along with the copy of this order.

No order as to costs.

Dasti under signatures of court master.

CM No. 3354/2011 (for exemption).

Allowed, subject to just exception.