
(2010) 12 DEL CK 0410
In the Delhi High Court
Case No : Writ Petition (C) 7529 of 2010

Dr. Sonal Jain

APPELLANT

Vs

Director, AIIMS

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2010) 12 DEL CK 0410

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Pramod Kumar, for the Appellant; Sandeep Mittal, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner had applied for appearance in the Entrance Examination to be held by the Respondent on 14th November for admission to the Post Graduate courses. The Respondent rejected the application of the Petitioner on the ground of the Petitioner though having filed an undertaking as required to be filled of being not an accused in any offence having also intimated to the Respondent that she had been charged with the offence of impersonation in the Medical Entrance Examination. Aggrieved there from, this Writ Petition was filed. This Court vide order dated 9th November, 2010 while issuing notice of the writ petition permitted the Petitioner to appear in the Entrance Examination, the result whereof was however directed to be withheld till further orders.

2. The counsels today inform that the result of the Petitioner though has not been declared but her name finds mention in the list of candidates called for counselling scheduled for 10th and 16th December, 2010.

3. The question which thus arises is whether the Petitioner inspite of being an accused in an offence of impersonation is entitled to pursue Post Graduate course. It is informed that a Revision Petition preferred by the Petitioner against framing of the charge against her has since been dismissed.

4. The counsel for the Respondent has fairly stated that there are no rules of the Respondent in this respect. It is however stated that if the Petitioner is arrested or punished, she would not be entitled to pursue the course.

5. The guilt of the Petitioner is still to be adjudicated upon. There does not seem to be any reason to prevent the Petitioner from pursuing further education particularly when there is no rule of the Respondent prohibiting so. Though the Respondent had desired an undertaking aforesaid from the applicants but it is informed that there is no rule prohibiting accused persons from gaining admission or pursuing the Post Graduate course. When the accused persons are permitted to even contest elections, there seems to be no reason to prevent them from pursuing higher education. A convict even has a right to pursue further studies provided the same do not interfere with the punishment. The approach of modern penologists is rehabilitative rather than retributive. In the present case there is nothing to suggest that the charge against the Petitioner will interfere with the studies which she intends to pursue. Moreover, if the Petitioner is so prevented and is ultimately acquitted, the denial of further education cannot be compensated in any way.

6. The Supreme Court in D.K. Basu Vs. State of West Bengal, held that the precious right guaranteed by Article 21 cannot be denied to convicts, under trials, detenus and other prisoners in custody except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. It was held that it cannot be said that a citizen "sheds off" his fundamental right to life the moment a policeman arrest him-nor it can be said that the right to life of a citizen can be put in abeyance on his arrest. The Petitioner is a qualified MBBS. The charge against her is of impersonation to assist another gain entry to Medical College. Even if the Petitioner is convicted, her MBBS degree shall remain intact. There is no law restricting the right of Petitioner to further education, which is her natural and fundamental right.

7. In the aforesaid circumstances, this writ petition is disposed of with the following directions:

(i) the result of the Petitioner of the Entrance Examination be declared forthwith and the Petitioner if found eligible be permitted to participate in the counselling scheduled for 10th and 16th December, 2010 or for any other dates.

(ii) the Petitioner if admitted, shall be allowed to pursue her course unless in default of any of the other rules of the Respondent and/or prevented there from owing to arrest or otherwise.

(iii) the Petitioner through counsel undertakes to this Court that no benefit of the said admission shall be taken in the criminal trial against the Petitioner.

The writ petition is disposed of with no order as to costs.

Copy of this order be given Dasti under the signature of the Court Master to the counsels for the parties.