

(2013) 07 DEL CK 0236

In the Delhi High Court

Case No : Writ Petition (C) 4594 of 2013

Hridaya Bhushan and Others

APPELLANT

Vs

Netaji Subhash Institute of Technology and Another

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 DEL CK 0236

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Deepak A. Masih and Ms. Esha Dogra, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner no. 2 before this Court applied to the respondent-Netaji Subhash Institute of Technology for admission to B.E. Course for the academic year 2013-2014. The brochure issued by the said institute for the academic session 2013-2014 provides inter alia reservation for the children of Ex-servicemen/serving personnel of the Defence/Armed Forces and all Police Personnel who are in receipt of gallantry defence awards.

The relevant clause contained in the brochure in this regard reads as under:

4. Reservations

The aforesaid allocation of seats carries the following categories of reservations:

(i) xxxx

(ii) xxxx

(iii) xxxx

(iv) Defence Category (Supplementary): Over and above the Normal intake, 5% of the total seats are reserved for Defence Category candidates in accordance with the following priorities:-

xxx

Priority V. Children of Ex-servicemen/serving personnel of the Defence/Armed Forces and all Police Forces who are in receipt of Gallantry awards.

Note:

Gallantry Awards include: Param Vir Chakra, Ashok Chakra, Sarvottam Yudh Seva Medal, Maha Vir Chakra, Kirti Chakra, Uttam Yudh Seva Medal, Vir Chakra, Shaurya Chakra, Yudh Seva Medal, Sena/Nau Sena/Vayu Sena Medal.

The petitioner no. 1 who is the father of petitioner no. 2 is in receipt of two Police Medal for Gallantry, which were awarded to him by the President of India. Since the medals/awards received by the petitioner no. 1 do not qualify for admission of petitioner no. 2 against the seats reserved in defence category, the petitioners are before this Court seeking to the following reliefs:

a. Issue appropriate writ order direction thereby direct the respondent no. 1 to consider the admission of the petitioner no. 2 under the reserved supernumerary defence category.

b. Direct the respondents to include the President's Police Medal for Gallantry and Police Medal for Gallantry by MHA in the List of Medals under Priority V.

2. The learned counsel for the petitioners has drawn my attention to the communication dated 3.6.1994 sent by Additional Secretary, Department of Defence, Ministry of Defence to the Chief Secretaries of the States and Union Territories, recommending the prioritization mentioned in the said communication, for the purpose of reservation or preference for admission to medical/professional colleges, for the wards of Defence Personnel, so as to achieve the standardization in such reservation or preference. The standardization recommended in the said letter reads as under:

Priority-I - Widows/wards of Defence Personnel/Para Military Personnel killed in action.

Priority-II - Wards of serving personnel and ex-servicemen/Para Military Personnel disabled in action.

Priority-III - Widows/wards of defence Personnel/Para Military Personnel who died in peace time with death attributable to Military Service.

Priority - IV - Wards of Defence Personnel/Para Military Personnel disabled in peace time with disability attributable to Military Service.

Priority - V - Wards of ex-servicemen personnel and serving personnel/para military/police personnel who are in receipt of Gallantry Awards: -

1. Param Vir Chakra

2. Ashok Chakra

3. Sarvottam Yudh Seva Medal
4. Mahavir Chakra
5. Kirti Chakra
6. Uttam Yudh Seva Medal
7. Vir Chakra
8. Shaurya Chakra
9. Yudh Seva Medal
10. Sena, Nau Sena, Vayu Sena Medal

3. He has also drawn my attention to the letter dated 21.7.2009 sent by Government of India, Ministry of Home Affairs to the Deputy Registrar, University of Delhi, recommending that wards of all the police personnel who are recipient of gallantry awards, namely President's Police Medal for Gallantry and Police Medal for Gallantry awarded by Ministry of Home Affairs be eligible for reservation for admission in various courses in the University of Delhi against the above category. The said letter was sent in response to the letter of University dated 6.7.2009 seeking names/list of Para-Military Forces under the Ministry of Home Affairs who would be eligible to avail the concession for admission of their wards under the rules, of the 5% of the total seats for Children/War Widow of Defence Personnel/Para-Military Forces who are in receipt of Gallantry Awards, for admission to various courses in the University of Delhi.

4. As far as the communication dated 3.6.1994 is concerned, it does not include the President's Police Medal for Gallantry or Police Medal for Gallantry awarded by Ministry of Home Affairs amongst the Gallantry Awards included in the said communication. Therefore, any reliance upon this communication is wholly misplaced.

5. As regards, the communication dated 21.7.2009, no doubt, Government of India, Ministry of Home Affairs has recommended inclusion of President's Police Medal for Gallantry and Police Medal for Gallantry awarded by Ministry of Home Affairs amongst the awards, recipient of which would be eligible for admission of their wards against the quota reserved under the defence category, but, there is no material on record to show that the said recommendations were accepted by the University of Delhi, which is an independent, autonomous, statutory body. There is no material on record to show that the recommendations made by the Government of India in this regard are binding upon the University. The petitioner has not placed on record any rules/regulations/decisions of University of Delhi including the aforesaid police medals amongst the award recipients of which are eligible for admission of their wards against reserved quota in defence category. In the absence of any rules/regulations/decisions of either of the University of Delhi or the respondent NSIT including President's Police Medal for Gallantry and Police Medal for Gallantry awarded by MHA amongst the eligible

gallantry awards, no benefit for the said award can be given to the petitioner no. 2 for the purpose of admission in B.E. Course of NSIT, which otherwise is considered to be a very prestigious and highly coveted course of Delhi University.

6. During the course of arguments, it was contended by the learned counsel for the petitioners that in W.P.(C) No. 4594/2013, decided on 15.5.2013, this Court had taken a view that the university is bound by the instructions issued the Government of India in this regard and consequently it is obligatory for the respondents to include the aforesaid awards in the list of eligible gallantry awards. I have carefully perused the copy of the order dated 15.5.2013, made available by the learned counsel for the petitioners. However, I am unable to find from this copy as to what were the facts of the said case and what were the issues which arose for consideration in that case. In fact, a perusal of the copy made available by the learned counsel for the petitioners does not even indicate that University of Delhi was a party to the said petition. In the absence of necessary particulars, no reliance upon the said judgment can be placed by the petitioners.

7. As noted earlier, University of Delhi is an autonomous body. Being an independent body, the University is entitled to take its own decision in matters which awards it would as the eligible gallantry awards for the purpose of giving reservation/preference in admission to various courses, including B.E. Course. In the absence of any statutory obligation, the recommendations made by Government of India would not bind the University, which can take its own view in the matter, different from the view taken by the Government. No legal infirmity in the decision of the University not to give benefit of reservation in defence category to those, whose parents are in receipt of President's Police Medal for Gallantry and Police Medal for Gallantry issued by MHA, is therefore found by the Court. There is no material before the Court which would show that the President's Police Medal for Gallantry and Police Medal for Gallantry awarded by MHA are equal in all respects to the awards which the respondents have recognized for the purpose of extending benefit of reservation under defence category. There can be awards similar to President's Police Medal and Police Medal by Ministry of Home Affairs, which are Police/Para-Military forces award to their personnel and which do not find inclusion in the list of gallantry awards recognized by the respondents. In any case, these are not the issues which can be gone into in a writ petition and the respondents are the best persons to decide which gallantry awards need to be recognized for according the benefit of reservation in a prestigious course, as such B.E. Course from NSIT.

8. It was lastly contended by the learned counsel for the petitioners that during the academic year 2012-2013, respondents had included President's Police Medal for Gallantry and Police Medal for Gallantry awarded by MHA in the list of awards eligible for reservation under the defence category. Since the respondents are not before the Court, it is not possible to ascertain as to what were the reasons for exclusion of the above referred two awards from the list of

awards eligible for according benefit of reservation since for the reasons stated here in below, since I am of the view that even otherwise, the petitioner is precluded from challenging the list of gallantry awards shown in the prospectus for the year 2013-2014, I need not delve further into this aspect of the matter.

9. In *Manish Kumar Shahi Vs. State of Bihar and Others*, , Supreme Court, *inter alia*, held as under:-

We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the Petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.

In *Ramesh Chandra Shah and Others Vs. Anil Joshi and Others*, , the private respondents who failed to clear the test conducted by Uttarakhand Board of Technical Education, filed a writ petition seeking quashing of the advertisement in the said test on the ground that the said test was ultra vires the provisions of Uttar Pradesh Medical and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. The writ petition filed by them having been dismissed by the High Court, they approached the Supreme Court after obtaining special leave to appeal. Rejecting the challenge to the test, the Apex Court noted as under:-

... They appeared in the written test knowing that they will have to pass the examination enumerated in para 11 of the advertisement. If they had cleared the test, the private Respondents would not have raised any objection to the selection procedure or the methodology adopted by the Board. They made a grievance only after they found that their names do not figure in the list of successfully candidates. In other words, they took a chance to be selected in the test conducted by the Board on the basis of the advertisement issued in November 2011. This conduct of the private Respondents clearly disentitles them from seeking relief under Article 226 of the Constitution. To put it differently, the private Respondents will be deemed to have waived their right to challenge the advertisement and the procedure of selection.

It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

The petitioner no. 2 applied for admission during the academic year 2013-2014 on the basis of the prospectus issued by the respondent-NSIT. Admittedly, the said prospectus did not provide for benefit of reservation to the wards of those

who are in receipt of the President's Police Medal for Gallantry and Police Medal for Gallantry awarded by MHA. If the petitioners were aggrieved on account of exclusion of the aforesaid award, in the year 2013-2014, they ought to have challenged the said prospectus before applying for admission in terms of the said prospectus for the examination conducted by NSIT. Having applied to NSIT in terms of prospectus which contained no reservation for the awards of those who are in receipt of President's Police Medal for Gallantry and Police Medal for Gallantry awarded by MHA, and they having taken a chance of admission on the terms contained in the prospectus, it is now not open to the petitioners, on being unsuccessful in obtaining admission, to challenge the aforesaid exclusion in the prospectus for the year 2013-2014. 12.

For the reasons stated hereinabove, I find no force in the writ petition and the same is hereby dismissed. There shall be no orders as to costs.