

(2002) 08 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30981 of 2002

Mayank Srivastava

APPELLANT

Vs

Indian Institute of Information Technology (Deemed University) and Another

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Citation : AIR 2002 All 351 : (2002) 3 UPLBEC 2729

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : S.D. Singh, Ashok Trivedi and Beena Trivedi, for the Appellant; Govind Saran, for the Respondent

Final Decision : Dismissed

Judgement

S. K. Singh, J.—Prayer in this petition is for a direction to the respondents to hold counselling for the petitioner and to consider his candidature for admission in the course of B. Tech. Information Technology (IT.), 2001.

2. As pleadings between the parties are complete, on the request of Counsel for the parties the matter is being heard on merits and is being finally decided and Counsel appearing on both sides have been heard at length.

3. Pleadings in this petition appears to be in bulk, as it consists of writ petition, counter-affidavit, four supplementary counter-affidavits, rejoinder-affidavit, which all have been perused.

4. The facts of the present case travels in a narrow compass which can be summarised. Petitioner appeared in the entrance examination conducted by the respondents for the course of four years B. Tech., in Information Technology (I.T.). Petitioner was allotted Roll No. 328050987. Procedure for admission and terms and conditions for the purpose of admission is spelt out in the information brouchure issued by the respondents. Written test was to be held on 30th May, 2001 and the result was to be declared by publication. In the newspaper on 10th

June, 2001 and it was also to be available on the web site of the Institute. It is said that the petitioner resides at Kanpur with his father. In the form filled by him he has disclosed his residence as B-19, Beema Bihar, Lakhanpur, Kanpur. On publication of the result showing list of successful candidates and also wait listed candidates, they were called for counselling and admission on 25th/26th June, 2001. Petitioner's name/Roll number does not find mention in that list. It is said that thereafter no other result/list of candidates for counselling was published by the respondents in any newspaper or on the web site. It is said that petitioner's father was reliably informed that the respondents had called the petitioner for counselling on 7.8.2001 upon which he contacted the respondents on 8.8.2001 at about 9.00 a.m. but it was said that petitioner was to appear for counselling on 7.8.2001 and he failed to appear and therefore, now he cannot be admitted. It is said that 13 seats are still lying vacant in the course of B. Tech. (I.T.), 2001 but the respondents arbitrarily refused petitioner's entrance, to the course in question. It is this action of the petitioner which made him aggrieved, to come up to this Court.

5. Learned Counsel for the petitioner submits that it was obligatory on the part of the respondents to publish the result and the date of counselling for the particular student in the newspaper and also on the web site, which having not been done, in the event petitioner appeared before the respondents on the next date, he can not be denied admission. It has been further submitted that petitioner has never been given adequate information in respect to the date of his counselling as 7th August, 2001 as the communication which is said to have been sent through courier service has never reached the petitioner. Admittedly it was delivered to one Rashmi Sinha who happens to be landlady of the petitioner. It is submitted that the courier agency has never taken pains to ascertain the delivery of the letter to the petitioner which was required to be done and only after identifying petitioner letter should have been given. It is argued that as there is no fault on the petitioner in approaching the respondents, the next date which was so fixed for the petitioner to take admission, denial on the part of the respondents is totally unjustified. It has also been submitted that the candidate having lessor marks have been considered and selected but the petitioner has been left out. Lastly, it has been submitted that 13 seats are still available and are lying vacant and therefore, petitioner is liable to be accommodated against those seats. In view of pleading of respondents, faced with situation, that the session in which petitioner is claiming admission is already over, learned Counsel submits that petitioner is to be accommodated for the next Session i.e., 2002-2003 which is to start from 29th July, 2002. In support of the submission that terms and conditions of brochure for admission are mandatory and are binding on the respondents, learned Counsel refers the decisions as reported in AIR 1999 P & H 319, *Indu Gupta v. Director, Sports, Punjab and Chandigarh*. In support of the submission that delay on the part of the petitioner cannot be attributed on his part and as there is fault of the University, admission cannot be denied, reliance has been placed on the decisions reported in 2000 (3) ESC 1942

(All) : (2000) 2 UPLBEC 1264, Archana Srivastava v. V.C., University of Allahabad; (1999) 3 UPLBEC 1992 , Kumari Rekha Somani Vs. Vice Chancellor, Banaras Hindu University, Varanasi and others, , Somani v. VC, B.H.U.; (1996) 3 UPLBEC 2119 (SC), Gujarat University v. Rajiv Gopinath Bhatt; (1989) 2 UPLBEC 229, Vivek Kumar Vyas v. H.B.T.I. and Ors. and 2001 (1) Sup 198, Shalini v. Kurukshetra University. In respect to the submission that if the seats are available admission may be given in the next session and even admission can be given against any quota/N.R.I, quota, reliance has been placed on the decisions reported in 2000 (2) ESC 1136 (All) : (2000) 2 UPLBEC 1113, B.H.U. v. Km. Rohini Singh and Ors. and Special Appeal No. 978 of 2001, decided on 26.9.2001, Charu Singh v. Sudeep Poddar and Ors..

6. In response to the aforesaid submission learned Counsel for the respondents submits that petitioner has been given due notice and information about the date of counselling well in advance and he was intimated that he is to appear on 7th August, 2001 for counselling. It has been further submitted that on account of non-reporting of the petitioner for counselling his claim cannot be considered as all the seats available under general quota stood filled on 7th August, 2001 itself and therefore, petitioner cannot be given admission. It is argued that no candidate having lessor merit than the petitioner has been admitted. On the basis of lengthy . detail having been provided in the counter-affidavit and four supplementary counter-affidavit the details has come before the Court about total number of seats, total number of candidates so called in order of merit, position of seats against various classes filled from time to time in various counselling and it is the last and fourth counselling for remaining 15 seats of general category which was done on 7.8.2001. In this counselling 152 candidates of general category in order of merit were called. It has been submitted that on 30th July, 2001, itself intimation was sent to the petitioner on the address so mentioned in the admission form which was admittedly delivered at the address given by the petitioner himself. As on 7th August, 2001 itself all the 15 seats for general category stood filled up by the candidate who came for counselling no seat remained vacant. To the submission of the petitioner that he could be accommodated against the N.R.I. quota, learned Counsel submits that under the brochure itself for taking admission under the N.R.I, quota which is called as (D-SAIT) Direct Admission of Students at Abroad the different criteria is provided. It speaks about various kind of requirements consisting of residence, registration fee and various other kinds of requisites which the petitioner do not fulfill and therefore, he cannot be taken against the N.R.I, quota. So far the last submission from the side of the petitioner that petitioner can be accommodated in the next session i.e., 2002-03 is concerned learned Counsel submits that for this session, selections have been made through joint entrance examination originated by I.I.T.S. organised by the Chairman of the Indian Institute of Technology, Bombay. A letter has been written on 25.6.2002 addressed to the Director, I.I.T., Allahabad regarding the list of candidates who have been allotted the course in the institute based on their performance in the main examination of

J.E.E., 2002. In view of this learned Counsel submits that on the basis of the merits of the candidates so selected for the next session, no selectee can be displaced for giving the room to the petitioner, who claims his right for the previous session.

7. In view of the aforesaid submission as has come from both sides, matter has been examined.

8. Petitioner's name admittedly do not find place in the merit list of the successful candidates and also that in the wait listed candidates (Para 10 of the writ petition). It is only after 3rd counselling 15 seats in general category to which petitioner lay his claim remained available. Candidates according to their merits were given information through courier service. In all 152 candidates of general category were called. All were given information in the same manner. There appears to be no dispute about the fact rather it is an admitted position that intimation as was sent to the petitioner dated 30th July, 2001 on the address mentioned by the petitioner himself in the admission form was delivered on 31st July, 2001 itself i.e., 6 days in advance of the date so fixed. So far the courier service or even postal authorities through whom a communication is to be served cannot be supposed and expected to get identification about the exact person to whom it is to be delivered. It is not the case that delivery of the letter/information has taken place either on some other address or to any person who is not residing in that house. Admittedly the lady who has received the letter is the landlady of the petitioner. Petitioner has given the address of that house where he was living as a tenant. It was for the petitioner to have taken care that the letter/information which comes in his name is really handed over to him by the landlady who resides in the ground floor. Every candidate who was given information having turned up, on its merits received admission. On account of the non-turning of the petitioner all the 15 seats stood filled up on 7th August, 2001. On the fact of the present case it cannot be said to be a case of any fault or negligence on the part of the respondents in not giving proper information to the petitioner rather information/ letter sent by the respondents was received at the address of the petitioner well in advance.

9. In view of the aforesaid, it will be sufficient to observe that the cases on which reliance has been placed by the learned Counsel for the petitioner, that on account of delay on the part of the petitioner, there being no fault on his part admission cannot be denied have no application to the fact of the present case. All cases cited by learned Counsel for petitioner will be applicable only when it is held that petitioner has not received information in time and delay in reporting happened due to fault of opposite parties. There may be a situation where some representative of the candidates may appear and inform the authority that for a particular reason candidate is not able to appear on that date, then date can be said to have been extended to accommodate him but in a case where authority have not received any information and no body appeared then how long they should be expected to keep waiting and not giving chance to next candidate

present. Take a case, on account of non-reporting of the candidate admission is deferred and thereafter he does not turn up, then it will be a futile exercise. In view of this, on the finding so recorded in the present case, decision referred by learned Counsel are of no help to petitioner. By means of various supplementary counter-affidavits and otherwise now it is an admitted position that from 8.8.2001 first semester started. The examination of the 1st Semester was conducted in the month of December, 2001. On declaration of the result IInd Semester also started from 12th January, 2002 and the examination of this semester took place in the month of May-June, 2002 and w.e.f, 16th July, 2002 IIIrd Semester also started. Every semester consist of three examination i.e., two mid semester examination and one end semester examination. Marks obtained in two mid semester examination and one end semester examination together with the marks allotted on the basis of internal assessment are totalled collectively to form result of the candidate for a particular semester. In view of this, the claim of the petitioner for getting relief for entrance in the session 2001 is ruled out. Even the claim of the petitioner of his being admitted in D-SAIT Scheme (N.R.I. Quota) also depends on completion of various kinds of requisites, which petitioner admittedly lacks and therefore, his claim under this quota also cannot be accepted.

10. The decision as has been referred by the learned Counsel for the petitioner for extending admission under N.R.I. quota as given in Special Appeal No. 978 of 2001 decided on 26.9.2001 will have no application to the facts of the present case as in the case before the Hon"ble Special Appeal Bench, there was three kind of situation i.e., (i) on the Judgment of learned Single Judge having been set aside, how candidate whose counselling was done on account of order of learned Single Judge, (ii) the seats having been kept vacant, and (iii) seats to remain vacant on its availability, were to be reconciled. It is in this situation and to the arrangement which was directed by this Court to which there was agreement between the parties, a direction was given for accommodating the candidate even against N.R.I. quota and therefore, it cannot be said that, to follow it as a law, the mandate has been given by this Court. The relevant observation in this respect as contained in the Judgment of the Division Bench given in the Special Appeal referred above is hereby quoted :

"Considering the submissions made by the parties, we are of the view that it would not be appropriate in the interest of justice to set aside the admissions made on the basis of the counselling pursuant to the Judgment and order of the learned Single Judge. However, the ends of justice would be best served by passing the following directions to which all the parties appearing before us have no objection.

The counselling which has already been started on the basis of the order passed by the learned Single Judge and on the basis of the interim order passed from time to time by this Court is not being disturbed as the same may affect the career of large number of students. We also note that respondents No. 1 and 2

have stated before us today that their counselling for the subjects for which they have exercised their options have already been concluded and they have been admitted in the subjects and in the institutions of their choice. We further provide that all the appellants shall be given admission on those seats which have been directed to be kept vacant pursuant to the interim orders passed in the special appeal. In respect of seats which have been directed to be kept vacant in respect of some of the appellants subject to availability. We direct that if any seat in the branch/discipline of Engineering in the institution as provided for in the interim order is not available at present, but subsequently falls vacant under the general category seats or in any other quota or becomes vacant on account of drop out candidates or becomes available due to non filling of seats under N.R.I, quota then those seats be given to them."

11. So far the last submission of the petitioner that in the event session 2001 is already over and in view of nature of studies which are required in this course, now as it may not be possible to accommodate him in that year, then petitioner may be accommodated for the session 2002-03 is concerned suffice it to say that for this session a Joint Entrance Examination has taken place with the consent of four Institutes i.e., I.I.T. Gwalier, I.I.T., Allahabad, N.I.F.F.T., Ranchi and University of Roorki and the successful candidates have been allocated their respective seats in particular institute having been asked to take their admission by 29th July, 2002, cannot be permitted to be displaced for no fault of their own. Every candidate who is selected in competitive examination by his merit has to be given first priority and therefore, petitioner has no preferential claim than a selectee on the merits in the joint entrance examination for the session 2002-03 and therefore, the claim of the petitioner also merits rejection.

12. The course in which the petitioner is seeking admission i.e., 4 years B. Tech. in Information Technology (IT.) is concerned, it is not an ordinary course of lower standard where even after lapse of some time due to any concession by extending leniency and discretion in favour of a candidate some time, permission is being given to accommodate him. Admittedly the course of B. Tech in Information Technology (I.T.) is high technology course for which a very sophisticated and expensive infrastructure is required for imparting requisite professional training to the student, The seats are limited at every institute which is fixed by the competent authority i.e., Board of Governors looking into the availability of sophisticated infrastructure facilities and therefore, for session 2002-03 for which petitioner has laid a claim, during the course of submission being available for the fresh selectee on his own merits, petitioner has no room to be accommodated.

13. On the facts of the present case this Court is not satisfied that there has been any lapse on the part of the respondents in giving information about the date of counselling to the petitioner. Large number of candidates were called in the said counselling (fourth counselling) by the same mode and there is not a single complaint in respect to lack of notice but for the petitioner, which too on

the facts of the present case is not acceptable. Main thrust of the learned Counsel in this respect that information should have been conveyed on the web sites also needs rejection as the requirement as contained in the brochure is in respect to the original examination results which states "the result of the entrance Test, 2001 will be published on June 10, 2001, it will also be available on the web sites of the Institute." This Court feels that in respect to the date fixed for appearance of the petitioner in the fourth counselling i.e., 7th August, 2001 he was rightly informed through courier service, like large number of other students and everyone seems to have received due information as there is no pleadings in this respect. Information to the petitioner too was also given at his address mentioned by him in his application form. On the aforesaid premises although it seems to be a hard case for the petitioner in not getting himself admitted, but the Court cannot allow any relief as prayed in this petition by way of a direction for his admission in B. Tech. in Information Technology (I.T.) Course, 2001 and also in Session 2002-2003, for which alternate submission was advanced during the course of arguments.

14. In view of the aforesaid analysis, the Court feels that petitioner is not entitled to get any relief in this petition, which is accordingly dismissed.

Parties are directed to bear their own costs.