

(2009) 03 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (C) 7363 of 2009 and CM 3207 of 2009

Mrs. Anuradha Jain

APPELLANT

Vs

National Board of Examinations and Another

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0066

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sunil Kumar, Amita Kanungo and Himanshu Shekhar, for the Appellant; Rajeeve Mehra and Arvind Sharma, for the Respondent

Judgement

Hima Kohli, J.—With the consent of counsels for the parties, the present writ petition is taken up for hearing and disposal at the stage of admission.

2. The petitioner has approached this Court praying inter alia for directions to the respondents for setting aside fixation of the date, 9.3.2009, the date fixed by the respondent No. 1 as the last date for submission of the medical internship completion certificates for MBBS students in order to be eligible to appear for the entrance examination for the "Diplomat of National Board Centralized Entrance (CET-NBE) June 2009" (in short "CET-NBE June, 2009) course fixed to be held on 14.6.2009. The aforesaid test is for admission to the course commonly known as the DNB course, which is equivalent to a post-graduate medical degree like MD/MS.

3. It is stated on behalf of the petitioner that her daughter took admission in the MBBS course in the year 2003. As per the time schedule mandated by the Supreme Court for the purposes of medical entrance tests and admission, the last date for admission in the exam year is fixed as 30th September. She is in the process of completing her one year of internship on 31.3.2009 and is adversely affected by the cut-off date of 9.3.2009 fixed by the respondent No. 1 for submission of medical internship certificates for MBBS students so as to qualify

for taking the Centralized Entrance Test to be conducted on 14.6.2009. A perusal of the notice brought out by the respondent No. 1 on 2.2.2009, as downloaded by the petitioner, shows that the last date of submission of the application form along with the prescribed fee is fixed as 9.3.2009. The grievance of the petitioner is that though her daughter is desirous of undertaking the DNB course, she will qualify after completing her internship only on 31.3.2009, which will be too late in view of the last date of submission of application forms fixed by the respondent No. 1 as 9.3.2009.

4. Counsel for the petitioner contends that fixation of the date as 9.3.2009 by the respondent No. 1, for the purpose of eligibility, is arbitrary and does not have a rational nexus with the objective sought to be achieved, there being no eligibility criteria fixed by the respondents in that regard. He further states that last year, the respondent No. 1 had fixed 15th April, 2008 as the last date for submission of internship completion certificates and this year, the respondent No. 1 has arbitrarily fixed 9.3.2009 as the cut-off date, thus causing irreparable loss and injury to the daughter of the petitioner and depriving her of an opportunity to take the CET-NBE to be conducted on 14.06.2009. In support of his submissions, counsel for the petitioner relies on the judgments of the Supreme Court in the following cases :

1. Lokanath Deb and Ors. v. Raghunath Misra and Ors. AIR 1985 (Ori) 241 ,
2. Dr. Basanta Kumar Behera and Others Vs. State of Orissa and Others, , and
3. Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, .

5. On the other hand, counsel for the respondents submits that the respondent No. 1 has neither been arbitrary, nor irrational in fixing the cut-off date as 9.3.2009. He submits that in ordinary course, since the year 2004, the respondent No. 1 has always fixed the cut-off date which falls in the month of February each year and the examinations are conducted in the month of June of the same year. However, during the last year, the date had to be rescheduled from the month of February to April, 2008 on account of certain inquiries which had to be undertaken in cases of impersonation. He further states that the contention of the petitioner that her daughter shall suffer irreparable loss and injury is answered by the fact that the examination for the DNB course is not conducted on an annual basis, but on a bi-annual basis. He states that while the first examination of the relevant year is conducted in the month of June, the second examination for the same course is conducted in the month of December of the same year and the cut-off date for the second examination for the same course would be August, 2009. He, therefore, submits that at best, the daughter of the petitioner will lose only five months to qualify the eligibility criteria laid down by the respondent No. 1.

6. Counsel for the respondents further submits that 90% of the batch that shall take the examination to be conducted in June, 2009 would be eligible as per the cut-off date fixed by the respondent No. 1 in March, 2009, having completed

their internships by 31st December, 2008. It is further urged that had the daughter of the petitioner a valid grievance, nothing precluded her from approaching the Court immediately or at least within a reasonable time from the date of issuance of the notice by the respondent No. 1 i.e. 2.2.2009, and having approached the Court as belatedly as on the eve of the cut-off date, the writ petition is liable to be rejected on the ground of delay and laches. Reliance is placed by the respondents on a judgment in the case of WP(C) No. 6355/2007 entitled Deepali Yadav and Anr. v. UOI and Anr., decided on 29.8.2007.

7. The only issue that this Court is required to consider in the present case is as to whether the action of the respondent No. 1 in fixing 9.3.2009 as the cut-off date for conducting the CET-NBE June, 2009 examination is arbitrary and unjustified. A consideration of the submissions made by the counsels for the parties shows that it is an undisputed position that in ordinary course, for the past few years, dating back till the year 2004, the respondent No. 1 has been fixing the cut-off date for conducting the examination in the month of June every year for which the month of February has been fixed as the last date for submission of forms. The year 2008 was an exception to the rule on account of extraordinary circumstances beyond the control of respondent No. 1, as noted above.

8. Fact remains that even if the daughter of the petitioner is not eligible as on 9.3.2009, to sit for the examination to be conducted by the respondent No. 1 for the DNB course in the month of June, 2009, she would be eligible for taking the said examination six months down the line, in December 2009. Hence, it cannot be contended that the daughter of the petitioner would suffer irreparable loss and injury. It is only a question of relative time lag.

9. In the case relied upon by the counsel for the respondent i.e. Deepali Yadav (supra), the learned Single Judge had taken into consideration the examination that was to be held by the respondent No. 1 for the DNB course scheduled to begin in January, 2008. In the said case, the test was to commence on 9.12.2007. For the said examination, the respondent No. 1 had stipulated that only such candidates would be eligible to take the examination fixed in December 2007, who would complete internship of one year on 31.8.2007. While considering the submission of the aggrieved candidates in the aforesaid case, in the light of the validity of the cut-off date prescribed for the DNB course, the learned Single Judge observed that it is well settled that whenever an administrative agency or the legislature fixes a cut-off date, as long as the stipulation is not arbitrary but has some co-relation with the objective sought to be achieved, the Court would not interfere and personal convenience could not outweigh public interest.

10. Even in the present case, considering the fact that the respondent No. 1 has been consistently for the past few years since the year 2004, conducting the examination for the first batch i.e. for the batch of examinees sitting in June of the year, as February of the same year, as the cut-off date, the plea of the

petitioner that an exception has been made by the respondent No. 1 this year, is unacceptable. Rather, reliance placed by the petitioner on the cut-off date fixed by the respondent No. 1 in the last year, i.e., the year 2008 as April, shows that the same was an exception to the rule and made on account of extraordinary circumstances, beyond the control of respondent No. 1.

11. No doubt, the daughter of the petitioner would face some hardship to the extent that she would be able to fulfill the criteria of eligibility for taking the examination to be held in the month of December, 2009, only at the end of March, 2009. However, this alone cannot be considered as sufficient ground for interference by this Court while exercising its powers under judicial review. The Court is also required to take into consideration the broader spectrum of the matter by examining as to whether the decision of respondent No. 1 of fixing a cut-off date for a large number of candidates who would qualify to sit for the examination to be conducted in June, 2009 would be adversely impacted. The answer to the same has to be in the negative in view of the statement of the counsel for the respondents that if the date 09.03.2009 is maintained as the cut-off date to qualify, then 90% of the batch in question would qualify for taking the examination, fixed in June 2009, exception being about 10% thereto. Fact also remains that the latter category would still get an opportunity to sit for the examination at the end of this year.

12. Counsel for the respondents also draws the attention of this Court to Clause 4.1(a) of the information bulletin annexed as Annexure-2 to the writ petition to state that it is a mandatory requirement that candidates should be in possession of medical degrees from Indian Universities registerable as per the provisions of Indian Medical Council Act 1956 and should possess a permanent registration certificate issued by Medical Council of India/State Medical Council and must have completed one year of internship on or before the last date of submission of the application form i.e. 9th March, 2009. He submits that in the present case, the petitioner has not challenged the second criteria of possession of a permanent registration certificate by the cut-off date i.e. by 9.3.2009 and, thus even otherwise, the daughter of the petitioner would not qualify to sit in the examination in June, 2009, not being in possession of a permanent registration certificate.

13. There is force in the aforesaid contention of the counsel for the respondents and the Court is inclined to agree with the said submission. Thus, the daughter of the petitioner would suffer from a two-fold disqualification. Both of them are linked with the date, 31.3.2009 by which date, the daughter of the petitioner would not be in a position to possess a permanent registration certificate and complete the one year internship. But this is true only for the first examination to be conducted in June 2009 and not for the second one to be conducted in December, 2009.

14. Reliance has been placed by the counsel for the petitioner on a judgment of the Supreme Court in the case of Mridul Dhar (supra) wherein directions were

issued that no student shall be admitted in any course of medicine or dentistry after expiry of the last date prescribed for closure of admission in that course; nor shall any university register any such admission sought to be made. The aforesaid judgment undoubtedly fixes the cut-off date for admission to the MBBS, post graduate and super-specialty course, but it does not fix the date of exit from the said course.

15. Counsel for the petitioner contends that her daughter being of the first batch for the purpose of consideration after the aforesaid judgment, having taken admission in the MBBS course in the year 2003, the said issue has cropped up for the first time and needs to be considered. In the aforesaid judgment, the Supreme Court has not mandated the respondent No. 1 to take into consideration the month of admission of the students in the courses of medicine and dentistry in the year 2003 for the purposes of conducting their examinations for the DNB course. In other words, the aforesaid judgment has not fixed an exit date for the students undertaking the aforesaid courses.

16. The Full Bench judgment relied on in the case of Dr. Basanta Kumar Behera (*supra*) reveals that in the said case, the examinations for joint post-graduate course in higher specialities in the State of Orissa were held annually and the grievance of the petitioners therein was that they did not fulfill the eligibility requirements by 30th June of the year of admission due to reasons beyond their control and, thus they were deprived of the opportunity to appear in the entrance examination for selection for admission to post-graduate courses.

17. Unlike the facts of the above case, in the present case, as already indicated above, the examination is a bi-annual affair. Even if the daughter of the petitioner loses the first chance on account of non-fulfillment of the eligibility criteria, as on 9.3.2009, a second chance shall be available to her five months down the line, in the month of August, 2009. Hence, it cannot be stated that it is the end of the road for the daughter of the petitioner.

18. For all the aforesaid reasons, this Court is not persuaded to interfere with the action of the respondent No. 1 in fixing the cut-off date as 9.3.2009 for submission of the application form by a candidate to be considered eligible for taking the CET-NEB June, 2009 examination.

19. Accordingly, the writ petition is dismissed, along with the pending application. Parties are left to bear their own costs.