

(2006) 12 DEL CK 0093
In the Delhi High Court
Case No : WP (C) No. 12707 of 2006

Ms. Reena Maan	Vs	APPELLANT
The State (NCT of Delhi) and Another		RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Citation : (2007) 136 DLT 548 : (2009) 93 DRJ 633

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Devendra Pal Mann, for the Appellant; Avnish Ahlawat and Latika Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner has sought a direction to the respondents to allow her for counseling and admit her on the basis of her merit/rank No. C-71/0-03407 pursuant to Common Entrance Examination test of Diploma Course in Elementary Teacher Education (ETE).

2. Brief facts to comprehend the controversies are that petitioner had appeared in Common Entrance Test (CET) of Diploma Course in Elementary Teacher Education (ETE) on 4th July, 2006. A merit list was prepared by respondents and merit rank of the petitioner was C-71/0-03407 (Private Institutions in Sports Category) as published by respondents on 25th July, 2006.

3. According to the petitioner, counseling was to be held on 29th July, 2006. On that day she was sick as such and Therefore, she asked her brother to go to the counseling centre, Moti Bagh with her testimonials and appear in her place. The brother of the petitioner went to the centre of DIET at Moti Bagh at about 10.00 am in the morning on 29th July, 2006 but he was not allowed to enter saying that no person other than the candidate could be allowed. Despite various requests made by the brother of the petitioner, that he wants to appear on behalf of his sister who was very sick and was not in a position to come and he has

come in her place, which request was turned down.

4. The petitioner's assertion is that she remained confined to bed up to 6th August, 2006 and on recovery she went to the office of the respondent on 7th August, 2006 and requested the concerned official to allow her to appear for counseling as she could not come on 29th July, 2006 on account of her indisposition. The petitioner request was, however, not considered. Though the petitioner also gave an application that she may be allowed to appear for counseling but as only two days were left for the third counseling and no action was taken by the respondents, the petitioner filed the present petition seeking direction that she may be allowed to appear for counseling. Pursuant to an interim order dated 11th August, 2006, respondents were directed to allow the petitioner to appear for counseling. The petitioner, Therefore, appeared for counseling but she has been rejected on the ground that the certificate of participation produced by her which was issued by Kala Bharati, Aurangabad was not a national level certificate since Kala Bharati, Aurangabad is neither recognised by the Government nor the certificate anywhere mentions that it is a national level certificate or that the agency is affiliated to any Government organisation/authority and for a national level certificate one has to represent the State in national school games.

5. Respondent filed the counter affidavit of Shri B.N. Bajpai, Director, State Council of Educational Research and Training, New Delhi contending that during the counseling, on verification, the team of Sport Category (SMW) reported that the sports category certificate of the petitioner is invalid. It was contended that for filling up three vacant seats under SMW (Sports Men/Women), as per directions contained in the prospectus, 39 candidates were called but only three candidates reported, including the petitioner. There were total four candidates for three seats to be filled up. Since the certificate of other three candidates were found valid, the three vacant seats have been filled up from three eligible candidates and the candidature of the petitioner was cancelled as the petitioner did not possess valid sports certificate. It was contended that the certificate produced by the petitioner is a certificate of memorial tournament and not of a game/sport organized by a national level federation/organization/association.

6. Regarding the course, respondents contended that the State Council of Education Research and Training (SCERT) is an autonomous body of Government of NCT of Delhi and is a nodal agency recognised by the National council of Teacher Education (NCTE) for admission, curriculum, construction, course conduct, guidance, examination and certification of pre service training service programme for elementary school teachers. Respondent No. 2, offers two-year Diploma in Elementary Teacher Education from nine District Institutes of Education and Training (DIETs) and 10 recognised Private Institutes in Delhi out of which seven are for female candidates. It was stated that ETE is a full time Diploma Course for two-year duration wherein a total of 1040 candidates in nine DIETs and 600 candidates in 10 private ETE Teacher Training Institutes are

admitted. Out of 1040 seats, 20 seats are for teaching of Urdu and 20 seats for teaching Punjabi are allotted for DIET at Darya Ganj and DIET at Karkardooma respectively.

7. According to respondent these seats allotted to various DIETs and private institutions are subject to reservation and in case candidates are not available in ST category, the seats are to be transferred to SC category and in case the candidates are not available in any category, the seats are transferred to general category. The respondents also contended that sport admission are done in case seats are vacant even after two counseling sessions wherein the number of candidates to be considered are 10 times, the number of vacancies in all categories. Relying on the decision of the Supreme Court, it was contended that if the candidates have missed out on the date of counseling on account of illness, such candidates will not be considered as they lose their chance by not being available on the date of counseling. It was contended that about 30 such requests of the candidates were turned down for various reasons that they could not appear for counseling on the dates which were fixed for their counseling.

8. The pleas raised by the respondents in the counter affidavit were denied by the petitioner who filed a rejoinder dated 21st September, 2006 to their counter affidavit. The petitioner reiterated that her sports category certificate is not invalid and stated that after getting an interim order by this Court at about 2.00 pm on 11th August, 2006 petitioner went with her father to the office of Director, SCERT, defense Colony, New Delhi. The Director was not in his office and the subordinate staff reluctantly received the order at about 3.00 pm and the petitioner was asked to go to counseling centre, Moti Bagh, DIET Centre. Mr. Pandey, Counseling-in-charge at Moti Bagh Centre was requested to allow her for counseling and also told him that the certificate has already been submitted by her in the office of Director at defense Colony.

Mr. Pandey, Counseling-In-Charge, at Moti Bagh DIET Centre, however, refused to take notice of said order on the ground that the directions were not issued to him personally and the director has not directed him regarding the same and the petitioner was made to wait up to 8.00 PM and the other candidates were given admission to the said course.

9. According to the petitioner, the counseling of the petitioner was just a formality and her candidature has been rejected on the false ground that her sport certificate was invalid. The petitioner reiterated that she participated as a player representing Delhi and the same was a national level tournament held under the auspices of Maharashtra State Kabaddi Association and Amateur Kabaddi Federation of India. According to the petitioner, Shri M.S. Tyagi, Project Officer (Teams), Sports Authority of India, Jawahar Lal Nehru Stadium, New Delhi has given the certificate regarding the Amateur Kabaddi Federation of India which is recognised by the Ministry of Youth Affairs and Sports. According to the petitioner, she was first from the eligible candidates as per the merit list and her candidature has been rejected with malafide intentions. Petitioner relied on

Clause 4 of the prospectus which is as under:

(vi) Sportsmen/Sportswomen (SMW) Certificate for participation at National level games and sports competitions organized by Govt. Sports Organisation/Authority or Govt. Recognized Organisation/Authority at Secondary/Sr. Secondary level of education.

10. It was contended that the certificate of the tournament had all the characteristics of national level certificate and in the circumstances it cannot be construed that it was not a national level certificate. The petitioner also pleaded that the sponsors may organise a game or memorial tournament at any level and merely because it is organized in the memory of a renowned personality, it does not become a tournament other than a national level tournament.

11. An additional affidavit of the Director, respondent No. 2, dated 31st October, 2006 was also filed giving the certificates of three other candidates, namely, Deepika Rani, Mamta and Madhvi Bhardwaj. The respondent also produced the minutes dated 11th August, 2006 pertaining to four candidates including the petitioner stipulating that the petitioner is not eligible under sports category due to the reason that the sports participation certificate was found to be invalid as it was of memorial tournament not organized by National level federation/organization/ Association.

12. The petitioner in response to the additional affidavit filed by the respondent produced the letter dated 20th October, 1998 of Amateur Kabaddi Federation of India addressed to the Secretary, Krida Bharti, Aurangabad stipulating the permission to conduct All India Kabaddi Tournament at Aurangabad and requested him to start preparation for the All India Kabaddi Tournament. The petitioner also produced a participation certificate issued by Kendriya Vidyalaya Sangathan in regional games and sports meet, 1998-1999 held at AGCR Colony.

13. I have heard the counsel for the parties and perused the petition, counter affidavits, rejoinder and the documents filed with them. The respondent strongly contended that the tournament was not a national level tournament but was simply a memorial trophy since Kala Bharti, Aurangabad is neither recognized by the government nor the certificate anywhere mentions that it is a national level certificate or whether the agency is affiliated to any Govt. organization/authority. The respondents further asserted that National level certificate means that one has to represent the State in national school games.

14. Though the respondents have contended that the certificate produced by the petitioner of Krida Bharati, Aurangabad is not a national level certificate but as to how it is not a national level certificate has not been reasoned. Perusal of the certificate reflects that it was an All India "A" Grade Kabaddi Tournament for Men and Women which was organized under the auspices of Maharashtra State Kabbaddi Association and Amateur Kabbaddi Federation of India. The plea of the respondents, that a national level certificate is one which is given to a sports person who represents a state, rather substantiates the contention of the

petitioner, than the contention of the respondents. The petitioner in this All India "A" Grade Kabbaddi Tournament represented Delhi which is apparent from the said certificate. The plea raised by the respondents in their additional affidavit dated 31st October, 2006 is also an improvement of the grounds raised by the Committee in its decision dated 11th August, 2006 holding that the certificate of the petitioner was invalid on the ground that it was a memorial tournament. The reasons as given by the Committee are as under:

1. The certificate of sports participation shown by the candidate, Ms. Reena Maan, was verified in line with the eligibility conditions mentioned in the prospectus and the same was found to be invalid for admission to ETE Diploma Course.

2. The certificate produced by the candidate was invalid since it was a memorial tournament and not organized by the national level federation/organisation/association.

3. The tournament was not a national level tournament, instead it was a memorial trophy.

15. The petitioner's contention that "Krida Bharati, Aurangabad" is a sports organization recognized by the Government of Maharashtra vide registration certificate No. 00064 cannot be ignored and has not been refuted by the respondents. The petitioner has also produced the registration certificate of "Krida Bharati, Aurangabad" which dispels the plea of the respondents that the All India "A" Grade Kabbaddi Tournament was organized by an organization not recognized by the Government. This plea is further dispelled because the tournament was under the auspices of "Amateur Kabbaddi Federation of India". The respondents have not disclosed whether any other registration is required so as to be a registration or recognition by the Government. The petitioner has also produced a copy of the letter which reflects that All India "A" Grade Kabaddi Tournament was organized with the permission of Amateur Kabaddi Federation of India which is affiliated to Indian Olympic Association and Asian Amateur Kabbaddi Federation which are sole organizations recognized by the Ministry of Sports, Government of India. The plea of the respondents that a memorial tournament cannot be a national level tournament is also without any basis as neither in the rules of the respondents nor in their prospectus, it has been defined as to what is a national level tournament or that a memorial tournament shall not be a national level tournament.

16. In contra distinction, the certificate of Ms. Deepika Rana of Senior National Kabaddi Championship 2005 shows that she was of Delhi and the certificate does not show that Ms. Deepika Rana represented Delhi. Similarly, the certificate of Kumari Mamta of 24th Senior National Throw ball Championship also stipulates Kumari Mamta of Delhi and not that the said candidate represented Delhi. When the requirement of the respondents is that the candidate should have had participation at a national level games and sports competition organized by

Government sports organization/authority or Government recognized organization/authority, the national level certificate issued by "Krida Bharati, Aurangabad" which is a registered organization and which had organized All India "A" Grade Kabbaddi Tournament could not be ignored on the grounds that it was invalid on account of the tournament being a memorial tournament.

17. For the forgoing reasons it is clear that Krida Bharti, Aurangabad is recognized by government of Maharashtra and the certificate issued to the petitioner is a national level certificate where the petitioner had participated on behalf of the State of Delhi and the said certificate could not be termed as invalid in accordance with the criteria laid down by the respondents and the petitioner could not be held ineligible for admission.

18. The other plea of the respondents is that as the petitioner did not appear for counseling on the day fixed for her, she has forfeited her right. To consider whether the petitioner has forfeited her right, it will be appropriate to peruse the procedure detailed by the respondents. The advertisement of the respondent for selection of candidates for two-year Diploma in Elementary Teacher Education (ETE Course), Session 2006-2008 in Private Teacher Training Institutes detailed the procedure for allotment of Institute which is as under:

Procedure for allotment of Institute: Each candidate will be called in order of merit (Rank Wise). The seats available under concerned category at particular institute will be offered to the candidate for admission. In case he/she does not accept to take admission, his/her candidature will be cancelled and the next candidate, in order of merit, will be called for admission. The number of seats in each institute for each category is given in the prospectus. There is no guarantee that the candidate will be allotted to the institute of his/her choice as allotment is based on merit and candidate's options.

Selected candidates after verification of certificates will deposit the fee in cash, as prescribed on the same day of counselling, failing which he/she will forfeit the right for admission. His/her candidature for admission to ETE course will be cancelled and seat will be allotted to the next candidate in order of merit. Candidates are directed to strictly adhere to instructions and schedule of admission notified from time to time on the SCERT website: www.scertdel.in. In case of non-compliance of the schedule of admission and instructions candidates may lose their right for admission in ETE course.

19. From the procedure for allotment of institutes detailed in the advertisement, it cannot be inferred that if a candidate is sick though meritorious and is not able to come personally and sends his/her mother, brother or sister with the relevant documents and fees to be deposited, then the mother, brother or sister, who are deemed agents of the candidate, will not be entertained and a meritorious candidate will forfeit his/her right. In view of the evidence produced by the petitioner about her indisposition on the date her counseling was fixed the respondents could not and has not denied that she was not in a position to come

for counseling. It also could not be denied by the respondents that her brother had gone to the centre where the counseling was done. In such circumstances, could the brother of the petitioner appear and produce her certificate and accept the allotment of institute on her behalf. It is also relevant to note that the petitioner appeared for counseling subsequently pursuant to the interim order of this Court.

20. In case a candidate is to be interviewed during the counseling, probably then an agent of a candidate, brother, sister or mother, cannot appear on behalf of the candidate and can not be interviewed but in the counseling for allotment of institute only, where the option of the institute is to be exercised and is to be granted by the respondents and which is to be accepted and thereafter fees is to be deposited, it will be unreasonable not to permit such an agent to appear on behalf of the candidate who is not in position to come on account of his/her illness and thwart the merit of such a candidate especially in the present facts and circumstances. In these circumstances the respondents could not deny the right of a meritorious candidate nor can contend that such a candidate forfeits his/her right on account of non appearance personally on account of illness. In any case, in the present facts and circumstances, pursuant to an interim order of this Court, the petitioner was allowed to appear for the counseling and she did appear. The petitioner has also raised a plea that the official, Mr. Pandey, had refused to take notice of the interim order passed by this Court on the pretext that the directions were not issued to him personally and the Director had not directed him regarding the same and petitioner was made to wait up to 8.00 pm and by that time the counseling of all the other candidates was over and they were given admission to the said course and only thereafter the petitioner was allowed counseling which was granted to her just as a formality and consequent thereto her certificate has been held to be invalid in order to justify their earlier act not to permit the counseling to the petitioner with other candidates. The petitioner was permitted counseling by an interim order and it has been held that she had not forfeited her right to admission and Therefore, the respondents cannot take the plea now that since the petitioner did not appear personally on the date for which the counseling was fixed, Therefore, the petitioner has forfeited her right for admission to ETE course. The petitioner has been denied admission wrongly and for this, the fault lies with the respondents who adopted a rigid and unrealistic approach. In the circumstances, I am of the opinion that the respondents are liable to give admission to the petitioner forthwith in ETE course. In *Dolly Chhanda Vs. Chairman, JEE and Others*, , on account of admission denied to the candidate on account of fault on the part of the authorities, the Apex Court had directed the authorities to grant admission in MBBS course. The Supreme Court in this case had observed as under:

The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29-6-2003. But it does not mean

that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, Therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

21. The session of the ETE course is not yet over and in the circumstances it will be appropriate to direct the respondents to grant admission to the petitioner forthwith who can not be denied admission because of the fault of the respondents.

22. The writ petition is Therefore, allowed and the respondents are directed to admit the petitioner forthwith on the basis of her merit/rank No. C- 71/0-03407 pursuant to Common Entrance Examination test of Diploma Course in Elementary Teacher Education (ETE) course. Parties are however, left to bear their own costs.

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