
(1998) 10 MAD CK 0133
In the Madras High Court

P. Murugan and Another

APPELLANT

Vs

Directorate of College Education and Another

RESPONDENT

Date of Decision : 09-10-1998

Acts Referred:

Citation : (1999) 2 MLJ 274

Hon'ble Judges : S. S. Subramani, J

Bench : Division Bench

Judgement

S. S. Subramani, J.—In both these writ petitions, petitioners seek issuance of writ of mandamus directing the respondents to permit the petitioner to attend the interview for the B.Ed, course run by the 1st respondent in the 2nd Respondent Institute, viz., Institute of Advanced Study in Education at Saidapet, Chennai, for the year 1998-99.

2. In the affidavit in support of the petitioner, it is stated that after completing qualifying examinations, petitioners applied for B.Ed, course conducted by the first respondent at the Institute of Advanced Study in Education, and the petitioners were asked to attend an interview on 21.9.1998 at 9.30 a.m. with all original certificates. The letter dated 16.9.1998 was received by the petitioners only on 21.9.1998 making it impossible for them to attend the interview. The petitioners started to Chennai immediately after receiving the said letter and reached Chennai on 22.9.1998. They met the second respondent who informed them about their helplessness since their absence cannot be excused for the said reason and refused to admit them. It is the case of the petitioners that they are not responsible for the postal delay and they should have been admitted in the course. They seek the assistance of the court to compel the respondents to admit them in the course.

3. I heard the Government Pleader also in this regard.

4. The only question that arises for consideration is whether the respondents are justified in refusing to admit the petitioners since they failed to attend the

interview on 21.9.1998, and whether the postal delay can be considered as reasonable cause to compel the respondents to admit them.

5. I do not think that the postal delay can be pleaded as a defence in not attending the interview. In fact, this point is decided in various decisions. Of course, in those cases it was the converse case, i.e., the application was received by the authorities after the stipulated date. The question was, whether the postal delay in such cases could be considered as a reasonable cause for considering those applications.

6. In *Maheswari v. Secretary, Selection Committee, Sabarmathi Hostel, K.M.C. etc.* (1995) 1 L.W. 348, a Division Bench of this Court held thus:

In the case of recruitment to public services or admission to colleges, thousands of applications are received and if it is held that it is sufficient if the application is sent by post irrespective of the fact whether it is delivered to the addressee before the last date and time fixed for receipt of the application as long as it is posted before the last date fixed for receipt of applications, it would upset the entire scheme of the examination and also the scheme of admission to the colleges, because these are required to be done within the time frame.

In that case, their Lordship said that postal delay cannot be a reason to consider the application which was received late.

7. In the same volume, in *R. Vinothkumar v. Secretary, Selection Committee* (1995) 1 L. W. 351, a Full Bench of this Court also had an occasion to consider the same question. In para. 3 of the judgment, Justice Raju (as he then was) held thus:

...In the case of admissions to colleges and recruitments, there is no contractual relationship involved and as rightly emphasised by the Division Bench, public interest and interest of such of those applicants who submitted their applications so as to reach the concerned authority within the stipulated time are also involved. The application of the principle of "agency" would result in undermining the very time schedule fixed for finalising selections for admission and making the very selections subject to the vagaries of the postal services and virtually lead to a nebulous situation where finality at the earliest is desirable in public interest.

8. In a recent Full Bench decision of Punjab and Haryana reported in *Rahul Prabhakar v. Punjab Technical University, Jalandhar* and Ors. ILR (1997) P. & H. 292, in para 13 of the judgment, it was held thus:

Another aspect that has to be considered is whether postal authorities can be considered to be agents of the co-ordinator. If they are agents of the co-ordinator, by handing over application to the postal authorities, can it be considered that application form was in fact given to the co-ordinator. Reference has to be made to Section 3 of the Indian Post Office Act, 1898 wherein words "In course of transmission by post" and "delivery " are defined. A postal article,

as per that section, shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee.

Clause (b) of Section 3 states that delivery of a postal article to a postman or other person authorised to receive postal articles shall be deemed to be a delivery to a post office. Then Clause (c) of Section 3 states that delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent shall be deemed to be delivery to the addressee. From this provision, it is seen that an article when it is entrusted with the post office for being delivered to the addressee will it is delivered to him or his agent. Even if there occurs delay of several months in delivering a postal article to the addressee, the article will continue to be in the course of transmission.

It has been judicially recognised that it is common experience that delivery of postal articles is delayed for considerable length of time, may be, through accident or through the negligence of the postal employees, vide, *Radhakishan Vs. State of U.P.*, and *Institute of Chartered Accountants of India and Another Vs. Inder Chand Jain*, . In the second case, Supreme Court was considering the provisions in Sub-regulation (2) of Regulation 87 of the Chartered Accountants Regulations. It inter alia provided that nomination of a candidate shall be (ii) forwarded by registered post to the Secretary by name so as to reach him not later than 5 p.m. on the specified date." This provision has a proviso stating that a nomination delivered against an acknowledgement before the aforesaid time and date shall be deemed to have been so forwarded and so having reached if the Secretary is satisfied that the nomination has been duly forwarded by registered post at least 48 hours before the aforesaid time and date. The above provision requires that the nomination should be sent by registered post. Taking into account the fact that such nomination may not be received by Secretary even though posted more than 48 hours before the specified time. It was provided that if nomination was delivered by hand before the specified time and against acknowledgement, it would be treated as Having been validly received. This can happen only if the Secretary was satisfied that the nomination was forwarded by registered post to him by the candidate 48 hours prior to the specified time and date. What is meant by the said provision is that the nomination must be forwarded by registered post to the Secretary so as to reach him in fact not later than 5 p.m. on the specified date. If the above provision is not strictly complied with, their Lordships took the view that the nomination cannot be taken to be one filed within time. In the circumstances, their Lordships held that since the nomination was not delivered to the Secretary against an acknowledgement before the specified time, the nomination was not proper. Lord Mansfield in *Whitfield v. Le Despencer*, observed, The Postmaster has no hire, enters into no contract, carries on no merchandize or commerce. But the post office is a branch of revenue, and a branch of police, created by Act of Parliament. As a branch of revenue, there are great receipts; but there is likewise a great surplus of benefit and advantage to the public, arising from the

fund. As a branch of police, it puts the whole correspondence of the kingdom (for the exceptions are very trifling) under Government, and entrusts the management and direction of it to the crown, and officers appointed by the crown. There is no analogy therefore between the case of the Postmaster and a common carrier." This observation has been quoted by the Supreme Court in *Union of India v. Mohd. Nazim*, with approval and took the view that post office is not a common carrier. It is not an agent of the sender of the postal article for reaching it to the addressee. According to their Lordships, post office is really a branch of the public service providing postal services subject to the provisions of the Indian Post Office Act, 1893 and the rules made thereunder.

In this view of the matter, entrustment of a postal article with the post office for transmission to the addressee does not give rise to a contractual relationship between the sender and the post office.

[Italics supplied]

9. In view of the settled legal position, the postal delay cannot be a ground to compel the respondents to have another interview nor that could be a reason to issue a writ of mandamus for admitting the petitioners. As was held in the Full Bench decision of Punjab and Haryana High Court, a postal article shall be deemed to be in the course of transmission from the time it is delivered to the post office to the time it is delivered to the addressee. If the argument of the counsel is to be accepted, if in a case, the article is delivered after six months, the same will be under transmission. In the case of admission, the same will have to be completed within a particular time, for, each day counts for every student and also for the Institution.

10. As per the intimation given to the petitioner, it is stated that in case of default to attend the interview at the time and place, the eligibility for admission shall be forfeited. Another candidate, next in the queue, gets a vested right to get admitted and after his admission, the petitioner cannot come and say that his admission is improper. For the said reason, I feel that the petitioner has not made out a case for the issuance of writ of mandamus.

11. It has been repeatedly held that a mandamus could be issued only when the petitioner has got legal right and the respondent also got corresponding duty towards the petitioner. Both these ingredients are absent in this case. It is only a case of sympathy. As was held by the Full Bench of our High Court in *Vinodkumar case* (1995) 1 L.W. 351, "mere personal hardship of the applicants or general notions of justice or abstract considerations of sympathies" cannot be invoked in such cases.

12. In the result, both the writ petitions are dismissed. No costs. Even though I have held that the petitioners are not entitled to get issuance of writ of mandamus, if there is any vacancy, the question whether the petitioners are entitled for admission may be considered by the respondents since they have been denied admission for no fault of them. Consequently, W.M.P.Nos.23657 and

23658 of 1998 are closed.