
(2020) 10 BOM CK 0042
In the Bombay High Court
Case No : Writ Petition (L) No. 3436 Of 2020

Prathmesh

APPELLANT

Vs

Director, Indian Institute Of Technology (IIT) Bombay And
Ors

RESPONDENT

Date of Decision : 23-10-2020

Acts Referred:

Constitution Of India, 1950 — Section 12, 15(4)

Citation : (2020) 10 BOM CK 0042

Hon'ble Judges : Dipankar Datta, CJ;G. S. Kulkarni, J

Bench : Division Bench

Advocate : Ashraf Ahmed Shaikh, Arsh Misra

Final Decision : Disposed Of

Judgement

Dipankar Datta, CJ

1. A member of the Scheduled Caste (hereafter "SC", for short) community, as petitioner, has approached this Court by presenting this writ petition dated September 18, 2020 for adjudication. Having a degree of Bachelor of Engineering B.E. (Mechanical Engineering) to his credit, the petitioner has been aspiring to take admission in the course of Master of Design (M.Des.) at IIT Bombay (hereafter "the IIT", for short). The grievance voiced is that he stands deprived of the seat in the SC category that he had earned on merit and hence, judicial intervention is sought to secure an admission for pursuing the (M.Des.) course.

2. The petitioner had appeared for the Common Entrance Examination on January 18, 2020 for admission to the M.Des. Course. The result of such examination was declared on March 4, 2020. Having been successful in clearing the entrance examination, the petitioner had applied and obtained registration for the M.Des. course. The Institute conveyed such fact to the petitioner by email dated March 16, 2020 and called upon him to pay the fees. The petitioner complied with the same and receipt of fees was confirmed by email dated May

15, 2020. This was followed by issuance of an application form. By a further email dated July 7, 2020, the petitioner was informed of the period within which portfolio had to be submitted. Such mail also conveyed that the online interview would be conducted between July 21 and 26, 2020. By another email of even date, the petitioner was informed that he had been shortlisted for online interview and that he should check his email for more details. The first email dated July 7, 2020 contained the following instructions:

"a) The first list of admitted candidates is likely to be declared soon after the interview. If selected, the admission offer letter will be sent to you by email. However, a specimen copy will be available on the IIT Bombay website. The Institute reserves the right to withdraw the admission AT ANY TIME, in case the candidate does not fulfill the minimum qualification required, percentage of marks in qualifying examination or supplies any false information.

b) All candidates should refer to the information given in the IDC Admission Brochure 2020 on IIT Bombay website.<http://www.iitb.ac.in/newacadhome/mdes.jsp>". Ultimately, the Institute informed the petitioner that he was required to appear for online interview on July 22, 2020, which he duly attended.

3. The petitioner did not receive any email from the Institute thereafter, although on merit he was selected for admission in respect of a seat reserved for the SC category. In the absence of information that he had been selected for admission and that he was required to make payment of fees by August 10, 2020, the petitioner did not report for admission. Consequently, the Institute proceeded to fill up the seat by granting admission to a SC aspirant, who had responded by the due date and paid the requisite fees. It was subsequently that the petitioner came to learn of the fact that he had been selected for admission in the M.Des. course, yet, the seat that he had earned by dint of his merit was filled up by another aspirant, who had secured less marks than him.

4. Shri Shaikh, the learned advocate for the petitioner, contends that on each and every occasion when information was required to be conveyed to the petitioner by it, the Institute preferred to do so by the medium of email; as a consequence, the petitioner was under the impression that by email the Institute would let him know the fate of selection. Given the fact that the Institute is a premier Institution in the country, concerned with technology, it is unimaginable that the email, which the Institute insists had been forwarded to the petitioner informing him that he was required to take admission by effecting payment of fees by August 10, 2020, would not reach him. The petitioner having earned his seat for admission in the M.Des. course on merit, he should not be made to suffer for no fault on his part and the Institute ought to be directed to accommodate him either by dislodging the candidate who was given admission to occupy a seat meant for the petitioner or in the alternative, to create a supernumerary seat for such purpose.

5. In the course of hearing, Shri Shaikh referred to page 129 of the writ petition

and contended that he had visited the IDC Website www.idc.iitb.ac.in [Exhibit-A to the petitioner's rejoinder affidavit to the affidavit-in-reply of the Institute] and had received guidance therefrom that he needs to keep an eye on such website for the purpose of deriving information in regard to the next course of action to be adopted by him. The result of interview was never published on such website and hence, the defence taken in the counter affidavit of the Institute that the petitioner ought to have visited the portal of the Institute for the purpose of finding out whether he has succeeded in the interview should not be accepted by the Court.

6. In support of the contention that the Institute may create a supernumerary seat, our attention has been drawn by Shri Shaikh to proceedings under the Right to Information Act, 2005 pertaining to the IIT, Kharagpur. Referring to the same, he contended that in 2008 the IIT, Kharagpur had created a supernumerary seat to accommodate a candidate in the B. Arch. course and since the IIT Kharagpur and the Institute have been created by the self-same legislation, i.e., the Indian Institutes of Technology Act, 1961, there ought to be no difficulty for the Institute to also create a supernumerary seat for accommodating the petitioner in the given circumstances.

7. Finally, Shri Shaikh has cited the decision of the Supreme Court dated December 13, 2019 in the case of S. Krishna Sradha V/s The State of Andhra Pradesh & Others (Civil Appeal No.1081 of 2017). Placing reliance on paragraph no.9 of the said decision, it has been submitted by him that if at all creation of a supernumerary seat is not possible, the petitioner may be directed to be accommodated in a seat reserved for SC category in the following academic year (2021-22).

8. Opposing the writ petition, Shri Misra, learned advocate for the Institute, submitted very fairly that due to a technical glitch, 19 of the selected candidates did not receive the emails sent to them conveying that they were required to report for and take admission by August 10, 2020 upon payment of the requisite fees; however, 14 out of these 19 candidates had been diligent and visited the portal of the Institute. Having derived relevant information about their selection, they reported by the due date and secured admission upon payment of fees. The petitioner is one among the said 5 students who neither visited the portal of the Institute nor reported for admission, resulting in surrender of their seats which were filled up by the candidates figuring in the merit list but securing a position lower than such candidates. It is the specific contention of Shri Misra that non receipt of information about selection via email notwithstanding, it was the duty of the petitioner to visit the portal of the Institute and not having done so, casting the entire blame on the Institute is improper. According to Mr. Misra, the petitioner too contributed in equal share for the predicament in which he finds himself now and, therefore, cannot claim, as a matter of right, that he ought to be admitted in the M.Des. course, the classes wherefor have commenced in the second week of August, 2020.

9. Relying on the decision of the Supreme Court in Dental Council of India V/s. Pravina and Others, reported in (2005) 13 SCC 114, Shri Misra has submitted that it is beyond the domain of the High Court to direct creation of a supernumerary seat and, therefore, no such direction be issued.

10. Insofar as the contention of the petitioner that he ought to be admitted upon dislodging the candidate who has been admitted in his place is concerned, Shri Misra contended that such candidate not being a party to the proceedings, the Court may not pass any judicial order affecting his interest.

11. Regarding the alternative prayer of the petitioner for admission in the following academic year, Shri Misra contended that the same could amount to a denial of seat to a candidate more meritorious than the petitioner, should such candidate intending to take admission in the M.Des. course qualify and, hence, no direction in that regard should also be made.

12. Shri Misra has, accordingly, prayed for dismissal of the writ petition.

13. We have given our thoughtful consideration to the rival submissions advanced at the bar, particularly bearing in mind that an otherwise meritorious SC candidate stands the risk of losing a well deserved opportunity to pursue further studies at an institution of repute like the Institute.

14. Initially, the schedule for admission to the M.Des. course was as follows:-

"Important dates

Wednesday, 4 March, 2020 to Wednesday, 18 March, 2020

Submission of online application with application fee <http://www.iitb.ac.in/newacadhome/mdes.jsp>

Wednesday, 18 March, 2020

Last date of application with payment of fees

Monday, 6 April, 2020

Date for declaration of result of candidates shortlisted for M.Des. test and interview on the IIT Bombay portal. <http://www.iitb.ac.in/newacadhome/mdes.jsp> or <http://portal.iitb.ac.in/mdesapp/>

Friday, 17 April, 2020

Date for M.Des. written test

Saturday, 18 April and Sunday, 19 April, 2020

Dates for M.Des. interview

Monday, 4 May, 2020

Declaration of results on IIT Bombay portal

Monday, 11 May, 2020

Payment of fees and confirmation of admission

Subsequent admission offers, if seats are vacant will be announced on the IITB website."

15. The aforesaid schedule had to be altered because of the pandemic. It is an admitted case that the petitioner was informed by email dated July 7, 2020 of arrangement of online interviews between July 21 and 26, 2020. Such email required the petitioner to note that he should refer to the information given in the IDC Admission Brochure 2020 on "IIT Bombay website". The original schedule, quoted above, too reflects that the results would be published on the "IIT Bombay portal", albeit on May 4, 2020. There is also no material to contradict that after having attended the online interview on July 22, 2020, the petitioner went in deep slumber and woke up a month later, on August 21, 2020 to be precise, when via email he inquired as to whether the results for the M.Des. course have been announced and if not, the approximate date of announcement. This was, of course, followed by several representations. It is, therefore, clear that for a month since his online interview, the petitioner had not shown any inclination to know his results. If one looks at the schedule which was originally announced, May 4, 2020 was the date for declaration of results on the "IIT Bombay portal" and May 11, 2020 for payment of fees and confirmation of admission. Thus, there was an interval of a week between the declaration of results and for payment of fees. The petitioner was duly informed, by email dated July 7, 2020, that July 26, 2020 was the last date for interview. If one were to keep the original schedule in mind and assume that similar timelines could be applicable, the minimum that was expected of the petitioner, if he was really interested in taking admission in the M.Des. course, was diligence on his part to search for and/or inquire about the results at least after a week from July 26, 2020 since he did not receive any email which, according to him, was the medium of communication adopted by the Institute. Also, had there been any occasion for the original schedule to be followed, it was notified that the declaration of results would be made on the portal of the Institute. The Institute did not alter the course of action to be followed except bringing about a change in the dates. Therefore, it does not sound logic that the petitioner was under no obligation to visit the portal of the Institute for ascertaining whether he had been selected or not. While it is unimaginable that the Institute, which is considered to be one of the most prominent institutions in the country involved in the field of imparting education in technology, would falter in notifying the petitioner's results via email, sight cannot be lost of the fact that the petitioner too was remiss in his conduct in not visiting the portal of the Institute. Visiting only the IDC website, which the petitioner claims to have made, did not absolve him of the duty to visit the portal of the Institute. Had he been diligent and so visited, he could have derived information of his selection and that he was required to report for admission by a particular date and to pay the fees therefor. We,

therefore, hold that it is not a case where no fault can be attributed to the petitioner. Thus, the ratio of the decision in *S. Krishna Sradha* (supra) goes against the petitioner.

16. Further, Shri Misra is right in his submission that no direction for dislodging the other candidate who was admitted in place of the petitioner should be made behind his back. We may usefully refer to the decision in *Ranjan Kumar V/s. State of Bihar*, reported in (2014) 16 SCC 187 in this regard.

17. That apart, the decision in *S. Krishna Sradha* (supra) cautions that orders for admission may not be passed if the Court has not been approached at the earliest and without any delay. The length of delay in presenting this writ petition, although not inordinate, is fatal for the petitioner since classes have commenced from August 10, 2020. In matters of admission such as these, every day counts and the party has to account for each day's delay in approaching the Court. This is one other reason for our inability to come to the rescue of the petitioner and give a direction for his admission in the next academic year.

18. Also, in view of the decision in *Dental Council of India* (supra), it is not open to a high court to make direction for creation of a supernumerary post. We, thus, cannot make any positive direction for creation of a supernumerary seat.

19. However, we cannot at the same time be oblivious of two aspects of importance. First, as has been noted at the beginning of this judgment, the petitioner is a member of the SC community. Provision in Article 15(4) of the Constitution of India enables the State to make special provisions for the advancement of socially and educationally backward classes of citizens or, inter alia, for the members of the SC. Such provisions can be made not only by the legislature but also by the executive. The members of the SC community can thus be viewed differently by the State. Secondly, we wish to be reminded of the oft-quoted saying "To err is human". The Supreme Court in one of its decisions while referring to the same has observed that courts are no exception and that to own up the mistake when a judicial satisfaction is reached does not militate against its status or authority; perhaps, it would enhance both. In a situation such as the present, a leading institution like the Institute ought not to use technical glitch as a shield for defending its inability to reach to the petitioner information of his selection for admission. The Institute should have been more careful and cautious as well as vigilant in its approach so as not to infringe the valuable right of any candidate. Bearing in mind the said Constitutional provision and also considering that the Institute is a State within the meaning of Article 12 of the Constitution, coupled with the admitted position on fact that the Institute has contributed in equal measure resulting in the petitioner to miss out on the opportunity to take admission in the M.Des. course, we propose to dispose of this writ petition with the following observations.

20. We sincerely hope and trust that the Director of the Institute, in keeping with Article 15(4) of the Constitution and bearing in mind that rectification of an error

would enhance the image, status, authority and prestige of the Institute rather than showing the Institute in poor light, would explore the possibility of making such special provision for the petitioner to enable him either take admission for pursuing the M.Des. course of study at the Institute this year by creating a supernumerary seat, or if the same is not possible, to consider the desirability of granting opportunity of admission to him in the forthcoming academic year. If the Director is not inclined to grant any relief, the petitioner may be informed of the reasons in support of the decision.

21. The writ petition, accordingly, stands disposed of. There shall be no order for costs.

22. This order will be digitally signed by the Private Secretary/Personal Assistant of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.