

(1999) 02 MAD CK 0136
In the Madras High Court
Case No : Writ Petition No. 20228 of 1998

R. Arul Selvan

APPELLANT

Vs

Secretary to Govt. Transport Dept. and Others

RESPONDENT

Date of Decision : 22-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Mad 367

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

Bench : Single Bench

Advocate : C. Manohar, for the Appellant; M. Rathinam, Government Advocate for Respondent No. 1, Ramasubramaniam, for Ramasubramaniam Associates for 2nd Respondent and T. Chandrasekaran, for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner is a minor represented by his father and guardian. The affidavit is sworn to by the father.

2. Petitioner is the son of an ex-employee of 3rd respondent-Corporation. He was working as a Conductor at Kumbakonam Depot, and he retired from service on 30-6-1998. The Government have established Medical and Engineering College at Erode with an intention to provide professional courses to the children of employees of Transport Corporation and for this purpose contributions were received from each employee. First respondent is the final Authority who controls this aspect. Second respondent is the authority who selects and admits students to the Technical Courses in the Engineering College at Erode, and third respondeht is the authority who has to forward application received from employees' sons/daughters for admission to such Courses. Second respondent notified by his Circular No. 2681/A6/IRT/98 dated 12-11-1998 calling for applications for admission to Engineering College, Erode from eligible candidates (sons/daughters of employees of Transport corporation), fixing the last date for receipt of application as 18-11-1998. The same was published in the

Kumbakonam Depot only on 14-11-1998. Petitioner submitted his application for admission to Engineering Course at Erode, and the application was submitted at the Kumbakonam Depot for being forwarded to third respondent by fourth respondent. The application was sent to third respondent's office at Chennai on 17-11-1998 by letter No. 2707/I.R./3/State Exp. Trpt. Corporation, Kumbakonam/98 dated 17-11-1998 through special messenger and through bus. It is the case of the petitioner that he has obtained 238-03 marks which is sufficiently above the cut-off marks for admission to professional course for the Academic Year 1998-99. It is said that for selecting 150 candidates, nearly 200 students were called for counselling. When the selection list came, petitioner's name was not included, and when he approached the second respondent on 8-12-1998, he was informed that his application could not be taken up for consideration as it did not reach the Authorities in time. According to the petitioner, the said statement may not be correct. Petitioner has stated that he submitted his application on 17-11-1998 and the same was sent through bus on that day itself, and there is also evidence to show this. According to him, the non-consideration of his application is unjust. Therefore, he has come to this Court for the issuance of a writ of mandamus, directing respondents 1 and 2 to select and admit the petitioner R. Arul Selvan in B. E. Course at the Engineering College, Erode, for the academic year 1998-99, and pass such further or other orders.

3. Respondents 2 and 3 have filed separate counters.

4. In the counter-affidavit filed by 2nd respondent, it is said that the petitioner's application was received by 2nd respondent only on 24-11-1998, i.e., after the final list was prepared and sent to the Government. In fact, the petitioner's application was received by 2nd respondent only on 24-11-1998 after the merit list was sent to the Government for approval" According to 2nd respondent, he had requested the Government to permit him to consider the application received after the Engineering merit list was sent to Government for approval, and the Government, by their letter dated 1-12-1998, informed the 2nd respondent that applications received after submission of merit list to Government, could not be considered, and directed the respondent to inform the candidates to apply for the next academic year. This fact was also informed to the petitioner, and the respondents expressed their inability to consider the petitioner's application for this Academic Year. It is said that the petitioner's application was sent by third respondent and received only after office hours on 24-11-1998 and, therefore, it could not be considered.

5. In the counter-affidavit of third respondent, it is said that the application reached the concerned Authority only on 21-11-1998, i.e., after the due date. After verification, the application was forwarded to the respondents for scrutiny. It is said that the application was submitted by the applicant at a belated stage. It is said that the third respondent is not liable. It is further said that there was no delay on its part in forwarding the application to 2nd respondent.

6. Petitioner has submitted his application on 17-11-1998, is not disputed by any of the respondents. It is also stated in the affidavit that on the very same day, 4th respondent despatched the application to third respondent at Madras i.e., on 17-11-1998 itself. The despatch number is also mentioned in the affidavit. This fact is also not controverted by any of the respondents.

7. The procedure to apply is notified by the Government, and the same is part of the typed set of papers, at page 5. It is seen therefrom that the applications could be sent only through the respective branch or the Transport Corporations and it must reach the third respondent by 18-11-1998. While there is a specific allegation that the application of the petitioner was sent on 17-11-1998 from Kumbakonam to Madras, and that to by a special messenger on 17-11-1998 through bus and not by post, the submission that it reached the third respondent only on 24-11-1998 cannot be believed. At any rate, it will reach the third respondent on or before 18-11-1998 itself. At the same time, the third respondent has not placed any record to show that the application was received by it only on 21-11-1998.

8. The final list of selected candidates was sent on 24-11-1998. That was sent by the second respondent. It is seen that the second respondent's office is also at Madras and even if the statement of third respondent that it reached its hands only on 21-11-1998 is true, why it delayed the same in despatching it to the third respondent till 24-11-1998, is also not explained. Offices of respondents 2 and 3 are situated only in Madras. Why I am stressing on this is, the candidate cannot directly submit his application to the respondents. He can send his application only through the concerned depot to third respondent, and from third respondent it has to be despatched to the second respondent. If there is a procedure prescribed as to how the application has to be made, and if the petitioner has made arrangements to submit his application in time, and in fact he submitted the application in time, the Authorities are duty bound to see that the application reaches the destination in time. It is not a case of delay on the part of the petitioner. The delay is only on the part of the third respondent, in forwarding the application submitted by the petitioner in time. When an application is received by the Authority in time, and in this case, it must be presumed to have been received by third respondent on or before 18-11-1998 itself, it follows that the petitioner has submitted his application as prescribed under the procedure. There is absolutely no explanation on the part of third respondent why he delayed the despatch of the application from 21-11-1998 to 24-11-1998. Of the intervening date 22-11-98 (Monday) was working days (sic). The final list was prepared on 24-11-1998 and sent to the Government. Applications received up to the end of the office hours on that date were sent for consideration by the Government. So far as the petitioner's application is concerned, it reached the office of second respondent after office hours.

9. Even though the second respondent was generous enough to bring this fact to the notice of the Government on the very next day and also the fact that the

petitioner's rank was 81 out of 150 and he is eligible to be admitted, the Government did not think of admitting the petitioner, only for the reason that the application was received belatedly. It wrote to the second respondent onwards that the belated application cannot be considered, and that the candidate may be directed to appear for the next Academic Year.

10. The only question that requires consideration is, what is the effect of entrustment of the filled in application form to respondents 3 and 4.

11. I have already found that the application was entrusted to the 4th respondent in time and the fourth respondent has also despatched it by a special messenger from Kumbakonam to Madras on that day itself. If it has reached on the 18th, that will be sufficient compliance of the Notification issued by third respondent dated 13-11-1998 about which reference has been made earlier.

12. There is only one mode of sending the application, i.e., through the respective branch of the Transport Corporations and no other mode is recognised. In (1995) 1 Mad LW 351 (R. Vinothkumar v. Secretary. Selection Committee, Sabarmathi Hostel. K.M.C., etc.) a Full Bench of our High Court considered the question whether a post office can be recognised as an agent and whether the entrustment of the article to the post office will constitute compliance of the conditions of the prospectus. The Full Bench was constituted since there was divergence of opinion between two different Benches. In (1994) 2 Mad LW 686 (Arul Latha Gold v. Government of Tamil Nadu), Justice M. Srinivasan, as he then was, and myself held that post office is an agent and the entrustment of a postal article to the post office will be sufficient compliance of the conditions of the prospectus. In the decision reported in R. Maheswari Vs. Secretary Selection Committee, Tamil Nadu Professional Courses, Madras and another, (though decided earlier but reported subsequently), K. A. Swamy, C. J. and Somasundaram, J. took a different view. The principle enunciated in Maheswari's case (supra) was accepted by the Full Bench and the decision in Arul Latha Gold's case (supra) was overruled. In para 22 of the judgment, the Full Bench has held thus :--

".....It is thus clear that if conditions or stipulations are contained in the prospectus with an option being given to applicants to send the applications either in person or by registered post and if an applicant prefers to send the application by registered post, by handing over the same at a post office some days earlier to the last date of receipt of applications and once such an option is exercised, it goes without saying that as per the principle evolved in the Common Denominator Decisions of the Apex Court of this country, as reflected in the decision of the Division Bench of Orissa High Court, such post office must have to be construed to have been constituted as the agent of the sender/applicant and not the agent of the addressee/Directorate. Only if the post office is being constituted as the agent of the addressee. the receipt of application by such agent, long prior to the last date of receipt of applications would tantamount to the receipt of application by the Principal/addressee/Directorate.:....."

In this case, there is no other mode of despatching the application form. There is also one more reason for sending the application through the concerned Depot. The concession is given only to the children of Transport Corporations. The application form contains various matters that have to be filled up by the employee. Those columns will have to be verified by third respondent, and only after such verification, the application has to be despatched to second respondent. When there is no other mode of despatching the application and when the petitioner has entrusted the duly filled in application sufficiently early, even if it does not reach the second respondent in time, the entrustment of application form by petitioner with third respondent would amount to sufficient compliance. In this case, the delay is on the part of third respondent in sending the application. I have said that under normal circumstances, the application form must have reached the third respondent on 18-11-1998 itself. Even if we take it as 21-11-1998 as contended by third respondent, second respondent has taken into consideration all applications received by it till the end of office hours on 24-11-1998. There is no explanation by third respondent why he delayed the application and sent it only on 24-11-1998 to second respondent, though both the offices are situated in the same Town. In the Notification issued by second respondent, it is said that the duly filled in application form must reach it by 20-11-1998. That is a communication between second respondent and various Transport units. When the third respondent has been informed that the filled up application form must be despatched sufficiently early so as to reach the second respondent on or before 20-11-1998, it is duty bound to send the same sufficiently early. That has not been done in this case. The inaction on the part of third respondent has affected the career of the petitioner in this case. Second respondent who has constituted third respondent as its agent is, therefore bound to consider the application submitted by petitioner. In fact, from the correspondence it is seen that the second respondent was prepared to consider the same but it was only the Government which rejected the application as belated. I do not think that the rejection on that ground is correct. I have already said that while considering the merit of the petitioner, second respondent himself has admitted that he will be No. 81 in the rank out of the 150 candidates. That could be seen from the letter dated 25-11-1998 addressed to the Secretary, Transport Department, Government of Tamil Nadu.

13. In the result, there will be a direction against the respondents to consider the case of the petitioner for admission to B.E. Course at the Engineering College, Erode, for the Academic Year 1998-99. His application will be treated as one received in time. I direct the respondents to pass Orders on the application of the petitioner within one week from today. The writ petition is allowed as indicated above. No costs. W.M.P. No. 30644 of 1998 for interim direction is closed.