

(2010) 11 CAL CK 0042
In the Calcutta High Court

Case No : M.A.T. No. 593 of 2010 and C.A.N. No's. 3900, 7255 and 4868 of 2010

Rajat Majumder

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 2 CHN 276

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Bibek Jyoti Basu, Uttam Kr. De and Nabarun Biswas, for the Appellant; Subrata Mukhopadhyay, Basabi Roy Chowdhury for Respondent Nos. 2-4, Tapabrata Chakraborty and Abhijit Basu for State, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This Mandamus-Appeal is at the instance of the writ-petitioner and is directed against an order dated 5th April, 2010 passed by a learned Single Judge of this Court by which His Lordship disposed of the writ-application by directing the Co-ordinator, Central Selection Committee (Engineering and Technology) having his office at AQ 13/1, Sector-V, Salt Lake City, Calcutta to take appropriate decision with regard to the representation contained in the letter dated 2nd March, 2009 disclosed in the supplementary affidavit filed by the writ petitioner dated 27th August, 2009.

2. His Lordship further directed that the said Co-ordinator should take into consideration the accreditation aspect of the Post Diploma Course undertaken by the writ-petitioner at the Central Institute of Plastics Engineering and Technology, on the basis of which he appeared for the Joint Entrance Lateral Entrance Test-2009 and should also look into the aspect as to whether the subject of Post Diploma Course matched the eligibility requirement of the writ-petitioner for being admitted to the Bachelor in Technology (Mechanical Engineering). The said

Co-ordinator was given liberty to take assistance of the All India Council for Technical Education so as to remove any doubt in the matter of course-contents of the Post Diploma Course undertaken by the writ-petitioner in the Central Institute of Plastics Engineering and Technology. The Co-ordinator was directed to take decision as early as possible, but not later than six weeks from the date of communication of the certified copy of the said order.

3. Being dissatisfied, the writ-petitioner has come up with the present Mandamus-Appeal.

4. In the writ-application, out of which the present Mandamus-Appeal arises, the appellant prayed for direction upon the respondent No. 2 to allow the appellant to be admitted in one of the prime engineering colleges undertaking courses in Bachelor of Technology (Mechanical Engineering) in the year 2009 prior to the second counselling and also prayed for restraining the respondents from filling of the seats available in Bachelor of Technology (Mechanical Engineering Course) in West Bengal.

5. Such writ-application was affirmed on 5th August, 2009.

6. The case made out by the appellant may be summed up thus:

a) The appellant belonged to the Scheduled Caste category and had passed Madhyamik Examination from the West Bengal Board of Secondary Education in the year 2004 in the 1st Division. The Central Institute of Plastics Engineering and Technology is an Institute under the Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilisers where the appellant duly applied for being admitted to the Post Diploma in Plastics Mould Technology.

b) The said course is a four-years-Post Diploma-Course and the appellant, having requisite qualification, was admitted to the said course in the year 2005 and ultimately, passed the first six semesters and obtained 67; marks at an average. The said Institute has already issued Course Completion Certificate dated 24th July, 2009 in favour of the appellant.

c) From the advertisement in the local newspaper about the Joint Entrance Lateral Entrance Test-2009 ("JELET-2009") for being admitted to the course of Bachelor in Technology (Mechanical Engineering), the appellant filled up the prescribed form for getting admission to the same and appeared in JELET-2009 and was ranked as 1103 overall. His overall rank amongst the Scheduled Caste candidate was 156 and in the Mechanical Engineering branch, the appellant's overall rank was 174 and his rank in Scheduled Caste category in that branch was 20.

d) The appellant was, thus, called for counselling programme for JELET-2009 held by the Central Selection Committee of West Bengal Joint Entrance Examinations Board and the appellant's counselling programme was held on 25th July, 2009 at 5:00 PM.

e) The appellant duly appeared before the Central Selection Committee on the said date and time along with his Scheduled Caste Certificate and all other testimonials for the purpose of verification of eligibility and other criteria as specified in the Information Brochure of JELET-2009.

f) The appellant also paid the necessary counselling fee of Rs. 500/- and duly filled in the counselling form, which was duly verified by the competent authority of the Central Selection Committee.

g) The appellant was supposed to be taken in the Mechanical Engineering Course for Bachelor in Technology on the basis of his result, but his entry was refused without any reason. The first counselling had already been finished by the time the writ-application was filed, and the second counselling was scheduled to take place on 10th August, 2009.

h) The appellant, thus, prayed for the relief claimed in the application in view of his position in the selection test.

7. The application was opposed by the respondent Nos. 2 and 3 by filing joint affidavit-in-opposition and the objection of those two respondents may be epitomised thus:

a) According to the Information Brochure of JELET-2009 Examination which was handed over to all the candidates, a Diploma holder would be admitted to Degree Course in Engineering/Technology in respect of the discipline for which the Diploma is awarded and there is no such Branch Code mentioned in the Brochure in respect of "Plastic Mould Engineering".

b) For the above reason, the Central Selection Committee could not allot any seat to the petitioner as he was a diploma holder in Plastic Mould Technology but he applied for Mechanical Engineering course which is not at all permissible as per the rules regarding admission through JELET. There is no laches on the part of the Central Selection Committee for not allotting any seat to the appellant.

c) Being well-informed about the rules and regulations of JELET-2009 Examination, the appellant applied for admission in the degree course of Engineering and Technology and wrongly described himself as a diploma holder in Mechanical Engineering branch. Thus, the writ-application was liable to be dismissed.

8. The appellant filed affidavit-in-reply to the affidavit-in-opposition, thereby repeating his statements made in the original writ-application and subsequently, by a supplementary affidavit dated 27th August, 2009 relied upon a letter alleged to have been written by the father of the appellant "Under Certificate of Posting" to the Member Secretary, West Bengal Joint Entrance Board, thereby praying for disclosing information as to how column-13 of the application form should be filled up when the branch codes mentioned in the form did not specify any code for student appearing for Plastic Mould Technology.

9. The respondents, however, denied having received any such letter.

10. As indicated earlier, the learned Single Judge disposed of the writ application by passing the order impugned.

11. Being dissatisfied, the writ-petitioner has come up with the present appeal. After hearing, the learned Counsel for the parties and after going through the materials on record, we find that in the information brochure supplied to the candidates, the following requirements have been demanded under the heading "Eligibility":

ELIGIBILITY:

The Applicant (both male and Female) must be an Indian citizen who either- i) have passed diploma course in Engineering/Technology/Pharmacy or have passed Degree in Science (B. Sc.) with Mathematics as a subject OR (ii) have passed the pre-final semesters/part and due to appear in the final semester (6th)/part examination - 2009 of the Diploma Courses in Engineering/Technology/Pharmacy or due to appear in the final examination of Degree in Science (B. Sc.) with Mathematics from any recognized Institute/University of the country. Any diploma holder with 60% marks in aggregate will be eligible for admission to degree courses based on the merit position in the JELET-2009 conducted by the "West Bengal Joint Entrance Examination Board" to be held on Sunday, the 17th May, 2009 for admission to Govt Engineering/Technology Colleges candidates must be resident of West Bengal for the last 10 years as on 31.12.2008.

12. Under the heading "Result and Admission", the following information has been given:

RESULT AND ADMISSION:

It should be noted that the Board is in no way responsible for admission to the different Universities/Institutions. The Board only provides the merit list of the admission test and the final selection rests with the concerned University/Institution. The Board neither publishes nor communicates result to any individual applicant. The result may be released on Website: www.wbjeeb.in. It does not have any provision for post-publication scrutiny or review and hence will not entertain any such application.

Compliance with requirements for making application for the Joint Entrance Examination does not make a candidate eligible for admission to any University/Institution.

For admission to Government Institutes the candidates must have to fulfil the domicile requirements as indicated in "Information Brochure."

However, admission to Universities shall be governed by the University rules and regulations.

It should be noted that a diploma holder will be admitted to Degree course in

Engineering/Technology in respect of the discipline for which Diploma is awarded. However, the eligibility of Diploma Holders in different disciplines where degree courses are not existing in the same nomenclature, will be considered for the courses which will be available before counselling in Central Selection Committee's (E&T) Website: www.wbjeeb.in.

13. Under the heading "Branch Code", the following information is given:

BRANCH CODE:

Candidates intending to apply for the examination must write the Branch Code (three digit) as applicable on the application form in proper places as detailed below:

Sl No

Name of the Branch

Branch Code

1.

Automobile Engineering

101

2

Applied Electronic Instrumentation

102

3

Bio Medical Engineering

103

4

Civil Engineering

104

5

Chemical Engineering

105

6

Computer Software Technology

106

7

Computer SC. & Engineering/Tech.

107

8

Electronics & Communication Engg.

108

9

Electronics & Instrumentation Engg.

109

10

Electronics & Telecommunication Engg.

110

11

Electrical Engineering

111

12

Food Technology/Food Processing Tech.

112

13

Foot wear Technology

113

14

Instrumentation and Control Engineering

114

15

Instrumentation Engineering

115

16

Information Technology

116

17

Mechanical Engineering

117

18

Medical Lab. Technology

118

19

Metallurgical Engineering

119

20

Mining Engineering

120

21

Pottery and Ceramic Technology

121

22

Production Engineering

122

23

Printing Technology

123

24

Survey Engineering (Civil)

124

24

Survey Engineering (Mining)

125

26

Tool and Die Making

126

27

Textile Technology

127

28

Fashion Technology

128

29

Pharmacy

201

14. On consideration of the above information, we are of the view that in order to get admission in the degree course of Engineering/Technology in respect of any of the disciplines, it is not necessary that the applicant must have the diploma in that very discipline. Even if, an applicant has obtained a diploma in different discipline when the degree course does not provide for such discipline in the same nomenclature, such candidate can be considered for the courses which will be available before counselling as indicated in Central Selection Committee's website, provided, the applicant has got diploma in any of the 29 branches of diploma as mentioned in branch code.

15. For instance, although there is no degree course in "production engineering", a person obtaining diploma in "production engineering" may apply and be selected in any of the branches of the degree course provided that a seat must be available for that branch immediately before his counselling starts on the basis of his marks obtained in the selection test. If a person holding diploma in "production engineering" ranks first in the selection test, at the time of his counselling which would start based on his rank, all the seats will be available in all the branches of degree courses and he is free to choose any of those available seats. Similarly, if his rank is 10th in the selection test, at the time of his counselling, except the nine seats already filled up at the instance of the rank-holders No. 1 to 9, he will be entitled to get admission in any of the branches of the degree courses then available as would be reflected in the official website. However, if the applicant is not a diploma holder in any of the 29 branches of the diploma as indicated in the branch code, he will not be eligible for admission.

16. In the case before us, the appellant although had no diploma in any of the 29 branches indicated in the branch code, filled up the form as if he was a diploma holder of Mechanical Engineering and on that basis, his result and position in the selection test was declared although he was not at all a holder of diploma in Mechanical Engineering.

17. We, therefore, find that the contention of the appellant, that any person holding diploma in any of the branches although not mentioned in the branch code should be entitled to get admission in degree courses, is not tenable.

18. We are, therefore, unable to accept the contention of Mr. Basu that his client was eligible in accordance with the existing rule.

19. Apart from the aforesaid fact, we find that the writ-application had become infructuous on the date of delivery of judgment by the learned Single Judge on 5th April, 2010 when all the seats were filled up in the absence of any interim order and there could not be any direction to consider the candidature of the appellant at that stage when one year had by that time already passed.

20. We, therefore, find that the writ-application had become infructuous and consequently, no effective order could be passed in the writ-application filed by the appellant. There was thus no scope of passing the direction as given by the learned Single Judge while disposing of the writ-application.

21. We, however, agree with Mr. Basu that there was some ambiguity in the information brochure and it should be clarified that the person holding diploma only in any of the 29 branches, as indicated in the branch code, are eligible for selection.

22. We are, however, unable to accept the contention of Mr. Basu that the letter mentioned in the supplementary affidavit dated 27th August, 2002 was received by the respondent-authority and in spite of receiving the same, the respondent did not clarify the position. We do not find any reason why the appellant staying in Salt Lake should post such letter from a different place near Bongaon. Moreover, mere Certificate of Posting does not prove delivery of the letter and when the respondent has specifically denied having received such letter, in the absence of positive evidence showing receipt of the letter by the concerned respondent we are unable to hold that such letter was received by the respondent.

23. On considering of the entire materials on record, we, thus, find that the learned Single Judge erred in law in passing the directions impugned in this appeal when the writ-application had become infructuous on the date of disposal of the same. In view of our finding that the appellant had no eligible qualification for getting admission in the decree course by virtue of the examination in question, we cannot even pass any other order than to dismiss the writ application although we do not support the order impugned.

24. Regarding the allegation that two other persons who were similarly placed with the appellant in the past got admission in the years 2004 and 2006 respectively, we are not impressed by such submission for the simple reason that such allegation was brought for the first time in the affidavit-in-reply and the supplementary affidavit and the respondents in their affidavit-in-opposition to the supplementary affidavit have specifically denied such allegation. Moreover, we do not know the eligibility criteria of the candidates who appeared in the year 2004 and 2006. On the basis of the qualification, as it stands now, there is no scope of lawfully giving the benefit of selection to a person similarly placed with the appellant before us. If, in the previous years, any such illegal selection was

made, such illegal selection cannot be a ground for passing direction upon the respondents to do further illegal act. In the absence of those two selected candidates allegedly similarly placed with the appellant, there is also no scope of scrutinizing the legality of their selections in this appeal as the appellant has also not prayed for cancellation of their selections on the ground of violation of Article 14 of the Constitution of India in this proceeding.

25. We, however, direct the Respondents Nos. 1 to 3 to clarify the position in the information brochure for the next JELET examination that unless the diploma holders hold diploma in respect of any of the 29 branches mentioned in the branch code, they would not be eligible for selection.

26. The appellant having given wrong declaration in his application indicating that he held diploma in Mechanical Engineering by quoting the relevant branch code of mechanical engineering is not entitled to get any equitable relief of even return of the application fees or counselling fees as he cannot take advantage of his own wrong which induced the respondents to commit mistake by allowing the appellant to sit at the selection test and subsequently asking him to appear for counselling.

27. We thus dispose of the appeal with the above observations. The order impugned is set aside, however, without any relief to the appellant.

28. In the facts and circumstances, there will be, however, no order as to costs.

29. In view of disposal of the appeal itself, the connected applications have become infructuous and the same are disposed of accordingly.

Sambuddha Chakrabarti, J.

30. I agree.