

(1989) 11 DEL CK 0021

In the Delhi High Court

Case No : Civil Writ Petition No's. 2537, 2700, 2757, 2798 and 2856 of 1989

Ritu Makkar and Others

APPELLANT

Vs

Delhi College of Engineering and Others

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Citation : (1990) 40 DLT 579 : (1990) 18 DRJ 150

Hon'ble Judges : R.L. Gupta, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Mukul Rohatagi, Vipin Sanghi, Sarva Mitter, A. Ahlawat and S.K. Tiwari, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) As common questions arise in these five writ petition, this judgment disposes of all of them. . The petitioners in Civil Writ No. 2537 of 1989 are (1) Miss. Ritu Makkar, (2) Mr. Mahesh Kumar N. Chandwani, (3) Mr. Maninder S. Rana. In Civil Writ Petition No. 2700 of 1989 Ms. Seema is the petitioner. In Civil Writ Petition No. 2757 of 1989 Ms. S. Shobha and Ms. S. Pushpa are the petitioners. M/s. Rohit Dewan, Virender Kumar Kaira, Dinesh Sehgal and Ms. Shoma Chatterjee have filed Civil Writ Petition No. 2798 of 1989. The fifth petition (Civil Writ Petition No. 2856 of 1989) has been filed by Dinesh Main. The respondents in all these petitions are (1) Delhi College of Engineering, Kashmiri Gate, Delhi, (2) Delhi Institute of Technology, Kashmiri Gate, Delhi and (3) Delhi Administration.

(2) The petitioners in all the five petitions appeared in the Senior School Certificate Examination (12 years course) of the Central Board of Secondary Education, New Delhi (hereinafter referred to as the Board) in March, 1989. The petitioners passed the examination securing high percentage of marks. The Rules of the Board permit a candidate to improve the marks obtained in one of the subjects in which he/she had appeared earlier. The case of the petitioners is that they took the "improvement examination" which was conducted in the end of

July, 1989. The result of the said examination was declared by the Board on 25th August, 1989. It is claimed by all the petitioners that each one of them improved his/her marks in the subject in which he/she appeared. Along with the petitions, the petitioners have annexed statement of marks obtained earlier and the marks obtained after appearing in the "improvement examination".

(3) All the petitioners who were Science students, were desirous of taking admission in various fields of Engineering taught in the two colleges viz., Delhi College of Engineering and Delhi Institute of Technology, respondents 1 and 2 respectively, which are run by the Delhi Administration. These colleges, however, are affiliated to the University of Delhi. All the petitioners on the strength of the result of the examination conducted by the Board in March, 1989, had submitted their Admission forms as per the prospectus issued by the two colleges for admission in Bachelor of Engineering courses for the year 1989-90, within the time allowed.

(4) It is borne out from the prospectus issued by the Delhi College of Engineering (respondent No. 1) that all the petitioners possessed the requisite educational qualifications for admission to the courses of study offered by the respondent colleges. Those qualifications are laid in para 4.1.1 of the prospectus, In a note under the heading "Educational Qualifications", it has been made clear that improved performance by the applicant as long as the improved marks sheet is submitted by 28th August, 1989 will be considered for admission purposes. That note has a bearing on the decision of these petitions and may be quoted :

"(2)Improved performance will be considered for admission purposes. For placing the candidate on merit list the highest marks shall be considered, irrespective of whether these marks are obtained in the first or subsequent attempts. The improved marks sheet should be submitted by 28th August, 1989 and beyond this date no improved mark-sheet shall be entertained."

(5) The assurance that improved performance of an applicant would be the criteria for admission purposes, was further clarified by respondent No. 1 in a press notification which laid down the revised time schedule for Bachelor of Engineering admission for the year 1989-90. This notification was issued on 25th August, 1989. It reads as follows :

"REVISED Time Schedule/or B.E. Admission at Delhi College of Engineering, Delhi for the year 1989-90.

(1)Final Merit List in Respect of 300 Existing Seats would be notified on the College Notice Board on 28-8-89 (5.00 P.M.) and Payment of Fees (Admission) on 31-8-89 (11.00 A.M.)

(2)Final Merit List in Respect of 320* Seats (Including 20* Seats for B.E. Computer Engg.) would be Notified on the College Notice Board on 21-9-89 15 00 P.M.) and Payment of Fees (Admission) on 25-9-89 (1 1.00 A M.). In Preparing the Final Merit List, withdrawal if any, From the List of 28-8-89 would

betaken into account.

(3) Improved Performance in C.BSE. or Equivalent Examination would be Accepted up to 2.00 P.M. on 28-8-89 in Respect of 300 Scats for which Notification would be done on 28-8-89 (5.30 P.M.), and also between 11.00 A.M. and 2.00 PM. on 21-9-89 in Respect of 320* Scats for which notification would be done on 21-9-89 (5.00 P.M.). The Improved Mark-Sheet is to be submitted to the Chairman, Admission Committee.

(4) Admission to B.E. courses for 1989-90 at Delhi College of Engineering, Delhi Stands closed on 25th Sept.. 1989. (*Subject to the Final Approval of the University of Delhi)".

(6) The petitioners in all the writ petitions have averred and it is not denied by the respondents that all of them had submitted their improved marks-sheets on or before the due date and time. The petitioners have been admitted to the colleges. Their grievance, however, is that they have not been allotted the course/branch of the Bachelor of Engineering to which they were entitled as per the marks obtained by them in the "improvement examination". The courses offered by the colleges are very many such as: (1) B.E. (Electronics); (2) B.E. (Computers); (3) B.E. (Instrumentation); (4) B.E. (Mechanical); (5) B E. (Production and Industrial Engineering) ; (6) B.E. (Civil Engineering)

(7) The case of the petitioners in a nutshell is that the other applicants who had obtained percentage of marks much lower than those obtained by them in the "improvement examination", "have been offered branches/courses, although those were the first or the next higher choices of the petitioners. It appears from the prospectus that it was incumbent on the applicants to indicate preference of the branch by writing branch code number. That provision is contained in sub-para 11 of para 4.1.7 and it reads as under :

"11. Indicate the preference to the branch by writing branch Code No. as given below under the choice numbers. Branch Code No. Branch 1. B.E. Electronics at D.C.E. 2. B.E. Electrical at D.C.E. 3. B.E. Mechanical at D.C.E. 4. B.E. Civil at D.C.E. 5. B.E. Production and Industrial Engg. at D.C.E. 6. *B.E. Computer Engg. at D.C.E. 7. B.E. Electronics at D.I.T. 8. B.E. Computer Engg. at D.I.T, 9. B.E. Instrumentation and Control at D.I.T. (*Subject to the approval of the authorities)

THE option were exercised is treated as final. If you are offered a seat in the branch which may or may not be your first preference and you refuse to accept the same or you do not report for admission on the scheduled date it will be considered that you are not interested in admission and hence your name will be deleted and you will not have any subsequent claim to a seat in the B.E. Course.

A candidate who has paid his fees against an offer of admission in a branch other than the one of his/her first choice will automatically be transferred to the branch next in order of his/her higher preference as indicated in his/her application, as soon as a seat is available. However, if the candidate desires to continue in the

branch allotted at the time of admission, he/she should so confirm in writing to the Deputy Administrative Officer within three days of his/her admission under receipt. Any such request made afterwards will not be considered.

SINCE the admission to Be Courses at Dce and Dit are being done together, the transfer of branches on the basis of preference may involve the change of institution Rce to Dit or vice versa. The students on rolls on 31.8.89 will continue to remain in the same institution. Any upgradation later will be confined to the branches in that institution only."

(8) On facts there is not much of a dispute. The only counter-affidavit filed was on behalf of respondent No. 1 by its Principal. Mrs. Avnish Ahlawat, Advocate is appearing on behalf of that respondent and also the Delhi Administration. Mr. S. K. Tiwari, Advocate is appearing for respondent No. 2 and has adopted the arguments put forth by Mrs. Ahlawat. The respondents admit that the petitioners in all these five writ petitions did improve upon their earlier marks obtained in the examination conducted by the Board in March, 1989 and as provided in the prospectus, submitted their marks-sheets by 28th August, 1989. Their case is that the petitioners have been granted admission on merit but in the available vacancies after the publication of the second list. It is averred that as per the time schedule laid in the prospectus, the first merit list for the category to which the petitioners belong, was to be published/notified on 7th July, 1989 and the second merit list on 27th July, 1989. It was the final list which was to be published on 28th August, 1989. The admissions in accordance with those lists were to take place on 11th July, 1989, 1st August, 1989 and 31st August 1989. According to them the lists to be notified were provisional as the Joint Technical Course Admission Committee of the Delhi University had to approve them.

(9) It seems that the understanding of the respondents was that because of the schedule laid in paragraph 4.1.10 of the prospectus, if all the seats in the general category had been filled on 11th July, 1989, then there was no need to publish the second or the final admission list. This submission is contained in paras 12-15 of the counter-affidavit filed on behalf of the respondents. The relevant portions of those paras may be quoted:

"IT is submitted that as per the above formula with reference to schedule of admission notification and admission (Payment of fees) as indicated in para 8, it is clear that if all the seats under Dc category are filled up on 11.7.89, there is no need for the 2nd or subsequent admission lists. As it happens, some seats under Do category remained vacant after 11.7.89 due to either non-payment of admission fees on 11.7.89 or due to withdrawal of admission through formal application and thus, the 2nd admission list was put on 27.7.89. The teachers in charge of B.E. admission process are expected to conduct upgradation process in accordance with the provisions given in the college prospectus on a day to day basis. Since the withdrawals continued to take place on different dates, the college is quite competent to display upgradation list on a day to day basis during the period 11.7.89 to 26.7.89. However, since the teachers conduct this

admission work in addition to their primary function of teaching the various courses which is continuing even to date, as a matter of convenience the day to day upgradation lists are not displayed although, the basic operation is conducted more or less on a day to day basis. Thus, the 2nd admission list dated 27.7.89 is a resultant list considering upgradation of students admitted on 11.7.89.

THE procedure mentioned above was to be followed between the period 1.8.89 to 28.8.89. However, a departure was made in view of the pries announcement of Case improvement results that the same would be available around 26.8.89 and the continuous upgradation process was halted after 23.8.89 as mentioned in item 3 of the formula given above.

THE day to day upgradation procedure followed by the college regarding the allocation of the branches have been clarified in para Xii above and Therefore, upgradation of branches up to 23.8.89 was conducted as a natural process."

(10) Thus the respondents stand is that the applicants who had improved their, performance were to be considered for admission only if there were some seats available after the publication of the upgraded list. It is further stated that there were some seats which had not been filled in even after the notification of the second list and process to fill them up by upgrading the applicants was going on when because of the press notification (quoted above), it had to be stopped. On receipt of the improved marks sheets, it is the case of the respondents that the petitioners have been given admission but they cannot be given the branch/course of their choice due to the fact that those branches have already been filled up by allotting them to the applicants whose names appeared in lists flits and second.

(11) We may note here that on 21st September, 1989, while issuing notice on a miscellaneous application (No. 4167/89 in C. Writ 2537/89), we had restrained the respondents from publishing the contemplated upgradation list without considering the blames of the petitioners in their overall merit, i.e. marks obtained in the improvement examination. Thus the list showing the branches/courses is yet to be published. The lists published already for whatever the reason, are provisional and liable to change as far as the allotment of branches/courses is concerned.

(12) We are of the view that the stand of the respondents is untenable. The press notification as well as the slid note (both quoted above) leave no manner of doubt that final merit list in respect of 300 seats was to be notified after keeping in view the improved performance of the applicants. The reason given in paragraph 12 of the return is misconceived. Infact the process of admission as well as the allocation of branches/courses in the colleges was to be carried out after the submission of improved marks-sheets as per the schedule laid down in the prospectus as well as the press notification.

(13) We allow these petitions and quash the admission lists already issued. We

direct that the allocation of courses/branches in respondents colleges be made strictly in accordance with the marks-sheets submitted on or before 28th August, 1989. We are informed that no student who has been admitted is likely to be affected as far as the admission is concerned. Out of the 320 seats we are informed that the allocation qua 44 applicants is to be made all over again. The studies are also not likely to be affected as the first semester for all these courses is common and that semester is yet to be completed.

(14) No order as to costs.