

(2011) 07 DEL CK 0247
In the Delhi High Court
Case No : Writ Petition (C) No. 212 of 2011

Rohan Gupta

APPELLANT

Vs

National Board of Examinations and Others

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 07 DEL CK 0247

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : A.D.N. Rao with Ms. Neelam Jain, for the Appellant; Rakesh Gosain for NBE. Mr. Sunil Kumar for UOI. Ms. Ratna Dhingra with Ms. Shreya, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the

respondent National Board of Examinations (NBE) to register the name of the petitioner in DNB programme in the stream of Neurology for the

academic year 2010-11 with Indraprastha Apollo Hospital. Brief facts of the case relevant for deciding the present petition are that the petitioner

herein took the DNB-CET entrance examination on 18.4.2010 and qualified the same and thus applied for admission in various colleges including

the respondent Indraprastha Apollo hospital. That he appeared before the Selection Committee of the respondent hospital for admission to DNB

in the stream of Neurology and was waitlisted at serial No. 1. For the one seat in the field of Neurology that was on offer in the respondent

hospital, one Dr. Vipul Mittal was selected. However, as per the petitioner,

Dr.Vipul conveyed his disinterest in joining the said course on

30.4.2010, which was the cut off date for admission for DNB and on the same very day the petitioner was offered the said seat by the respondent

hospital by virtue of his being on the waitlist at serial No. 1 and he intimated his acceptance on the same very day. The case of the petitioner is that

after 30.4.2010 he went to his hometown in Jammu to take his belongings and to arrange for the fee amount of Rs. 50,000 and thus came back

and joined the said course on 5.5.2010 and then continued in the said course thereafter. The respondent hospital forwarded the registration of the

petitioner for the said course to the respondent No. 1 National Board of Examinations(NBE) which was rejected on the ground of delay as the cut

off date was 30.4.2010. Feeling aggrieved with the same, the petitioner has preferred the present petition claiming that he took his admission on

30.4.2010 itself and thus should be granted registration by the respondent Board.

2. Mr. A.D.N. Rao, Learned Counsel appearing for the petitioner submits that the petitioner had duly qualified the DNB CET (SS) 2010 and after

his results, the petitioner had applied for admission in the said course of DNB at various hospitals including the Indraprastha Apollo Hospital.

Counsel further submits that the interview of the petitioner was held by the Selection Committee of the Indraprastha Apollo Hospital on 28th and

29th April, 2010 and that the petitioner was placed at serial No. 1 in the waiting list and the said one seat was offered by the hospital to Dr. Vipul

Mittal. It is also the case of the petitioner that on 30th April, 2010 the said selected candidate Dr. Vipul Mittal telephonically informed the hospital

authorities that he was not willing to join the said programme and, therefore, the said seat was offered to the petitioner as he was at serial No. 1 in

the waiting list. It is also the case of the petitioner that he had immediately conveyed his acceptance to join the said DNB course on 30th April,

2010 itself. It is also the case of the petitioner that after joining the said course the petitioner went back to Jammu, which is his hometown for

arranging money towards the course fee and the said fee was deposited by the petitioner on 5th May, 2010 after he returned back from Jammu

and that the petitioner has been continuing the said course since thereafter. It is also the case of the petitioner that the petitioner has not been

granted registration by the respondent Board on the ground that he failed to join

the said DNB programme before the laid down cut off date i.e.

30th April, 2010. Counsel for the petitioner further submits that only on the last date itself the petitioner was informed by the hospital that Dr. Vipul

Mittal did not join the said course and, therefore, in a great haste he had approached the respondent hospital to join the said course and went back

to his home for arranging the money. Counsel also submits that the respondent hospital has conveyed the joining date of the petitioner as 5th May,

2010 to the respondent Board and, therefore, the said mistake crept in even in further communications. Counsel thus submits that even it is

assumed that the petitioner had joined on 5th May, 2010, the delay would be of around 5 days only and, therefore, for such a small delay the

petitioner should not be made to suffer, more particularly when the petitioner is already half way through the said course. Counsel for the petitioner

submits that the prospectus issued by the respondent provides the period of two years for the selected candidates in the DNB CET (SS) test to

seek their admissions in various affiliated institutes, therefore, through the notice dated 5th April, 2010 the validity of the test undertaken by the

candidates in April, 2010 was restricted to 30th April, 2010. Counsel thus submits that it is only because of the said public notice the cut off date

has been restricted to 30th April, 2010 otherwise as per the prospectus the validity period was for two years period.

3. Learned Counsel appearing for the respondent hospital, has supported the case of the petitioner. She submits that the petitioner had joined the

said course on 30th April, 2010, but had deposited the necessary course fee on 5th May, 2010 and, therefore, by mistake the said date of 5th

May, 2010 was communicated by the hospital to the Board as the joining date of the petitioner in the said programme.

4. Dr. Rakesh Gosain, Learned Counsel appearing for the Board on the other hand has strongly opposed the present petition. Learned Counsel

submits that respondent Indraprastha Apollo Hospital vide its letter dated 4th May, 2010 had conveyed to the petitioner about his selection in the

said DNB course and on 5th May, 2010 the petitioner under his own signatures acknowledges the receipt of the said letter. Counsel further

submits that by letter dated 4th May, 2010, the hospital had also conveyed the date of joining to the petitioner with the hospital as 5th May, 2010.

Counsel also placed reliance on another document referred to as check list wherein again the date of the joining of the petitioner in the said programme has been indicated as 5th May, 2010. Similarly in the certificate given by the hospital in Format 3 the date of the joining of the petitioner has been mentioned as 5th May, 2010. Counsel also submits that vide letter dated 23rd June, 2010 also the respondent hospital made a request to the Board to give a special consideration to all the cases of DNB(SS) admissions and this request as per the counsel was made by the hospital only because the hospital was conscious of delay on the part of the petitioner to join the said course. Based on the said documents, counsel submits that it is quite evident that the petitioner has failed to join the said DNB course before the cut off date of 30th April, 2010 and, therefore, he was rightly denied registration by the respondent Board. Counsel also submits that the Board had duly conveyed the said rejection vide their letter dated 18th June, 2010, but yet the petitioner continued with the said course at his own peril. Counsel has also drawn attention of this Court to the application form duly filled in by the petitioner himself, which was forwarded by the Head of the Department hospital wherein again the petitioner has stated his joining date as 5th May, 2010. Counsel also submits that the petitioner after having come to know about his rejection filled another form wherein he has indicated his joining date as 30th April, 2010.

5. I have heard Learned Counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them.

6. The short controversy which has arisen in the present case is as to whether the petitioner had joined the DNB course in the stream of Neurology

with the respondent-Indraprastha Apollo Hospital on 30.4.2010 which was the laid down cut off date by the National Board of Examinations

(NBE) or later in time on 5.5.2010. It is not in dispute that the petitioner after having qualified the common entrance test i.e. DNB-CET conducted

by the respondent Board approached the Indraprastha Apollo Hospital which is an accredited hospital with the Board to seek admission in the

DNB course in the stream of Neurology. It is also not in dispute that the petitioner was placed at serial No. 1 in the wait list after he was

interviewed by the selection board constituted by the Indraprastha Apollo Hospital and one Dr. Vipul Mittal was selected against the said one

DNB Neurology seat. It is also not in dispute that Dr. Vipul Mittal had expressed his unwillingness to join the said seat and had accordingly

informed the hospital authority telephonically on 30.4.2010. The said seat was accordingly offered by the hospital to the petitioner on 30.4.2010

itself as he being at serial No. 1 in the wait list. As per the petitioner and the respondent hospital the petitioner had immediately conveyed his

acceptance and in fact joined the said DNB course in the stream of neurology on 30.4.2010 itself but could deposit the training fee on 5.5.2010 as

after joining the said course he went back to his native place Jammu to arrange money for the same. It is therefore quite evident that the date of

joining of the petitioner in the said DNB course, if taken as 5.5.2010 then clearly, there is a delay of about five days from the cut off date i.e.

30.4.2010 and if the date of joining of the petitioner is accepted as 30.4.2010 then the petitioner was well within his right to seek his registration

with the respondent Board. On perusal of the various documents placed on record by the respondent Board it is quite manifest that the petitioner

had joined the respondent hospital on 5.5.2010 and not on 30.4.2010. The respondent hospital in its letter dated 8.5.2010, addressed to the

Executive Director, NBE conveyed the date of joining of the petitioner in the said DNB course as 5.5.2010. The said letter is duly signed by none

else but the Additional Director Medical Services of the respondent Hospital. In another document i.e. DNB Trainee's Registration-Check List,

the date of joining of the petitioner in the relevant column has been disclosed as 5.5.2010 and this document is not only signed by the petitioner

himself but by the concerned Head of the Institution. In another document referred to as Format No. 3, again the date of joining of the petitioner

has been mentioned by the respondent hospital as 5.5.2010 and this document is also signed by the Head of the Department of Neurology and

also by the Head of the Institution of the respondent hospital.

7. What surprises this Court is that even in the application form duly filled in by the petitioner and signed by the Head of the Department of the

respondent hospital, the date of joining of the petitioner in the said course has been clearly stated as 5.5.2010, although another such form was

filled in by the petitioner and forwarded by the Head of the Department of the hospital carries the joining date of the petitioner as 30.4.2010.

Manifestly, the said joining date of 30.4.2010 was filled in by the petitioner when the respondent Board rejected the request of the hospital to grant

registration to the petitioner in the said DNB super specialty course vide their communication dated 18.6.2010. No doubt the respondent hospital

in their letter dated 29.6.2010 addressed to the Executive Director, NBE took a stand that the said seat was offered to the petitioner on

30.4.2010 and the same was accepted by him on the same date, but this stand of the respondent hospital as well as of the petitioner does not find

support from the aforesaid various documents placed on record by the respondent Board.

8. It is a settled legal position that for invoking the writ jurisdiction of his court under Article 226 of the Constitution of India, the petitioner

approaching the court must truthfully place all the material facts and any false averment or assertion made by the petitioner would result in denial of

any relief to the petitioner. It is not only the petitioner but shockingly even the respondent hospital has come in support of the petitioner in

supporting his wrong stand of his joining the said DNB course on 30.4.2010. The said false stand taken by the petitioner and the hospital has been

taken by them with a view to bring the case of the petitioner well before the cut off date of 30.4.2011 as laid down by the respondent Board so

that he is not denied registration in the DNB course. There cannot be any dispute that the petitioner did qualify the common entrance test and was

also declared successful in the interview taken by the respondent hospital and was placed at serial No. 1 in the wait list. The said DNB Neurology

Course is of three years duration and the petitioner is already half way through and in case the petitioner is denied his registration in the said course

by the respondent Board then the said seat of DNB Neurology Course would go waste as the same cannot be filled at this stage. Another

extenuating factor which goes in favour of the petitioner is that the schedule for the special CET-SS for admission in the DNB Super Specialty

Course was quite compressed as from 18th April, 2010 to 30th April, 2010 the entire process from entrance test to the admission was to be

completed. After having appeared in the said exam on 18.04.2010 the result was declared by the Board on 20th April, 2010 and thereafter the

petitioner had approached the Indraprastha Apollo Hospital to seek his admission in the Super Specialty DNB Course in the stream of Neurology

for which he was interviewed on 28/29.4.2010 and after the interview one Dr. Vipul Mittal was selected and the petitioner was placed at serial

No. 1 in the wait list. On 30.4.2010 which was the last date as per the respondent to seek admission in the said course, Dr. Vipul Mittal had

declined to join the said seat and due to this fact alone the petitioner became entitled to seek admission in the said course. It was thus humanly

impossible for the petitioner who was a resident of Jammu to have joined the said course on 30.4.2010 itself and also to deposit the training fee on

the said date and therefore some delay on the part of petitioner placed in such a situation was inevitable.

9. this Court is mindful of the mandate perpetuated by various legal authorities that ordinarily the writ court would not interfere in academic matters

and the decision is best left to the experts in the field and any misplaced sympathy may lead to passing of an order which may be in disregard of the

rules of the educational institutions. But, at the same time, it also cannot be forgotten that the writ court while exercising the equitable jurisdiction

under Article 226 of the Constitution of India has also a pious duty to see that there is no miscarriage of justice and wherever possible dispensation

of justice should not become a causality. this Court is of the opinion that this case is fit case to make an exception and that any interference in

favour of the petitioner would not lead to perversity or promoting any illegality. Taking a judicious view of the matter and to balance the equities

and also considering the fact that the petitioner has already completed almost half of the duration of his course and also considering the fact that it

was impossible for the petitioner to have given his acceptance on the same very date when the selected candidate declined to join the said course,

the late joining of the petitioner on 5.5.2010 deserves to be condoned. this Court however deprecates the conduct of the petitioner and the

respondent hospital in taking the said false stand of disclosing his joining date as of 30.4.2010 by giving benefit of doubt to them as they knew that

the mention of the correct date i.e. 5.5.2010 could result in denial of registration of the petitioner in the said course. However, cost of Rs. 25,000

each is imposed upon the petitioner and the hospital for taking such a false stand which is not supported even by their own documents, which shall

be deposited by them to the Indian Red Cross Society(IRCS) and the receipts of the same shall be filed with the Registry of this Court within a

period of 4 weeks from the date of this order.

10. In the ultimate analysis, the petitioner succeeds in the present petition. The respondent Board is accordingly directed to register the petitioner in

the DNB (Neurology) within a period of two weeks from the date of this order. This order in any circumstance shall not be treated as a precedent

and is passed only in respect of facts of the case at hand. The petition is accordingly allowed.