

(2010) 08 MAD CK 0163

In the Madras High Court

Case No : Writ Petition No. 11760 of 2010 and M.P. No. 1 of 2010

S. Jothi Ramalingam

APPELLANT

Vs

The Secretary Central Board of Secondary Education and The
Chairman Central Counselling Board (MHRD Govt. of India)

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 MAD CK 0163

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M.L. Ganesh, for the Appellant; C. Nagarajan, for Respondent-1 and
K.R. Vijayakumar, for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—Heard the submissions made on either side and perused the materials available on record.

2. The issue that arises for consideration in the present writ petition is whether the petitioner's son, who applied for All India Engineering Entrance

Examination (AIEEE) 2010 to join B.Tech course mentioning therein that he belongs to General Category, could seek admission under OBC

Category by seeking correction in the application form.

3. The petitioner's son passed Higher Secondary Course (10+2) under CBSE pattern during the academic year 2009-2010 and secured 466/500

marks. He applied for All India Engineering Entrance Examination (AIEEE) 2010, to join B.Tech Course, vide his application dated 12.12.2009.

Column No. 12 of the application form relates to "Category" wherein he filled up as "General Category". He also appeared for the examination.

The first respondent is the agency that conducted the AIEEE - 2010 Examination. The first respondent released the All India Ranking position for

B. Tech course and the ranking position of the petitioner's son was 27840. According to the petitioner, his son inadvertently filled up column No.

12 as if he belongs to General Category, while he belongs to OBC Category. Had he been considered under OBC category, his All India Ranking

position would be 7341 instead of 27840 and if he is considered under OBC category, he would be accommodated in the Regional Engineering

College in Tamil Nadu itself. If he is considered under General category candidate, he would not get a seat in the Regional Engineering College

within Tamil Nadu. Hence, a representation was made to the respondents on 30.05.2010 to treat the petitioner's son as OBC candidate. It is

stated that the petitioner also contacted the first respondent over phone and in turn the first respondent replied that nothing could be done, once the

ranking list was released. It is further stated that when his son applied for IIT Entrance Examination, he mentioned therein that he belongs to

General Category OBC (Creamy Layer). Hence, it was mistakenly filled in his application for AIEEE - 2010 Examination.

4. In these circumstances, the petitioner has filed the present writ petition praying for a direction to the first respondent to refix the ranking position

of his son viz., J. Chandramohan under OBC category, after verifying the community certificate and for a consequential direction to inform the

second respondent to consider the ranking position of his son at the time of counselling for allotment of seats in accordance with All India Ranking

Status.

5. Notice of motion was ordered on 08.06.2010 and interim direction was also granted on 24.06.2010 to keep one post vacant in B.Tech Course

at Regional Engineering College within the State of Tamil Nadu.

6. Heard Mr. M.L. Ganesh, learned Counsel for the petitioner; Mr. C. Nagarajan, learned Counsel for the first respondent and Mr. K.R.

Vijayakumar, learned Counsel for the second respondent.

7. The learned Counsel for the petitioner submitted that the career of the student would be seriously affected, if the petitioner's son is not treated

under OBC category, as he belongs to OBC category. He further submitted that just because a mistake was made while filling up the application

form, the same could not be put against the petitioner's son, if the truth is otherwise. In this regard, the learned Counsel relied on a decision of this

Court in *V. Premanand v. State of Tamil Nadu* reported in 1995 (2) MLJ 325.

8. On the other hand, the learned Counsel for the first respondent submitted that the respondents acted based on the information furnished by the

petitioner's son. If a mistake is committed while filling the application, the same could not be corrected at a later point of time. It is further

submitted that the All India Ranking list was published and the candidates were also informed about their ranking position.

9. The learned Counsel for the second respondent has produced the Information Brochure given along with the application form and has brought

to the notice of this Court Clause 3.1(5). The said clause provides for change of category from SC/ST/OBC to Open, but not vice versa. The

learned Counsel also relied on a Division Bench judgment of this Court in *Dr. M. Vennila v. Tamil Nadu Public Service Commission* reported in

2006 (3) CTC 449.

10. I have considered the submissions made on either side. It is an admitted fact that the petitioner's son inadvertently filled up the application form

by mentioning that he belongs to General category. Based on the information furnished by the petitioner's son, the first respondent, who conducted

the AIEEE - 2010 examination, treated the petitioner's son as General category candidate and prepared the All India Ranking list. Therefore, the

petitioner could not have any grievance.

11. Clause 3.1(5) of the information brochure, relied on by the learned Counsel for the second respondent, is extracted hereunder:

3.1 (5) After login, the personal data of the candidates (as per the AIEEE - 2010 data base) will automatically appear on the screen. Candidates

must verify their personal data. In case of any discrepancy, candidates will be allowed only once to correct the data in respect of category, sub-

category, etc. in the following ways:

Category can be changed from (SC/ST/OBC) to "Open" but not vice versa.

i) Sub Category can be changed from SCPH to SC, STPH to ST, OBCPH to OBC and OPPH to OP, but not vice versa.

....

The said clause also makes it very clear that there cannot be any change of category from General to OBC. This was put on notice to the petitioner's son. The judgment relied on by the learned Counsel for the petitioner in v. Premanand's case (cited supra) is of no assistance. In the said case, the petitioner therein claimed admission to First Year MBBS Course under the Special Category reserved for Children born of inter-caste marriage. The State Government, in order to encourage inter-caste marriage and that too between a member of SC/ST and Forward Community, has reserved certain seats in educational institutions for the children born of inter-caste marriage. The petitioner in the said case, mentioned in the application form, that he belongs to the Special category. However, he filled the application stating that he was born of inter-caste marriage of SC/ST and Forward Community. He had also mentioned therein that he had applied for a certificate from the Tahsildar and the same had not yet been received and the certificate would be produced as soon as it was issued. In those circumstances, when he was not considered under the Special category, the Division Bench of this Court held that he is entitled to be considered under the Special category, taking note of the fact that he mentioned therein that he was born of inter-caste marriage between SC/ST and Forward Community and also explaining the fact that he was not able to get certificate from the Tahsildar, though he applied for the same. Hence, the said decision is not applicable to the facts of this case.

12. In this case, the petitioner's son admittedly filled in the application form that he belongs to General category. Further, the issue involved in the present case is squarely covered by the decision of a Division Bench of this Court in Dr.M.Vennila's case (cited supra), relied on by the learned Counsel for the second respondent. In the said case, the petitioner therein failed to sign the application form. Hence, the same was rejected and that was put to challenge. While considering various decisions of the Honourable Apex Court and Full Bench decision of the Punjab and Haryana High Court and also other High Courts, a Division Bench of this Court held that the information brochure have the force of law and one has to strictly adhered to the terms and conditions mentioned in the brochure and submission of application should be complete in all respects. While it is

also stated in para 25 of the said judgment that the principles laid down therein are not only applicable to the applications calling for employment

but also to the cases relating to admission of students to various courses. The relevant passage from para 25 of the said judgment is extracted

hereunder:

25. ...We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the

admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large.

13. The principles laid down in paras 19 and 20 of the said judgment are extracted hereunder:

19. The principle that the prospectus is binding on all persons concerned has been laid by the Supreme Court in Punjab Engineering College

Chandigarh through its Principal Vs. Sanjay Gulati and Others, . Following the same, a Division Bench of this Court has also observed in

Rathnaswamy, Dr.A. v. Director of Medical Education 1986 WLR 207, that the rules and norms of the prospectus are to be strictly and solemnly

adhered to. The same view is also taken by another Division Bench of this Court in Nithiyan P. and S.P. Prasanna v. State of Tamil Nadu 1994

WLR 624. The same principle is reiterated in the case of Dr. M. Ashiq Nihmathullah Vs. The Government of Tamil Nadu and Dr. K. Sabapathy, .

It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed

by it for identifying the candidates for selection and admission.

20. Learned Advocate General relied on the following two decisions of the Supreme Court, (i) W.B. State Electricity Board v. Patel Engineering

Co., 2001 (2)SCC 451; and (ii) Rajsekhar Gogoi Vs. State of Assam and Others, , in support of his stand. It is true that both the decisions relate

to Government contracts and submission of tenders. The following observation made in W.B. State Electricity Board v. Patel Engineering Co.

2001 (2) SCC 451, is relevant:

23. The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of computer termed as ""a repetitive systematic

computer typographical transmission failure"". It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always

unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of Respondents

1 to 4 to correct the same before submission of the bid. Had they been vigilant in checking the bid documents before their submission, the mistakes

would have been avoided. Further, correction of such mistakes after one-and-a-half months of opening of the bids will also be violative of Clauses

24.1, 24.3 and 29.1 of the ITB.

In para 31 their Lordships have held

31. ...It is equally in public interest to adhere to the rules and conditions subject to which bids are invited....

After laying down the law, though the bid of respondents 1 to 4 therein is the lowest of bids offered, in view of the fact that there is inconsistency

between the particulars given in the annexure and the total bid amount, their Lordships refused to issue direction to consider their bid along with the

other bids. It is clear that though bid of the respondents 1 to 4 therein is less by 40 crores and 80 crores than that of respondents 11 and 10

respectively, in view of the defect in complying with the conditions, the Supreme Court refused to issue direction for acceptance of the lowest bid

of respondents 1 to 4. In other words, it makes it clear that it is in public interest to adhere to rules and conditions and there cannot be any laxity in

compliance of the same.

14. Paras 22 and 23 of the said judgment are also extracted hereunder, wherein the Full Bench of the Punjab and Haryana High Court considered

a case, similar to the one, which is now under consideration.

22. Learned Advocate General has also placed reliance on the Full Bench decision of Punjab and Haryana High Court in the case of Indu Gupta

Vs. Director, Sports Punjab and Another, . In the case before the Full Bench, the petitioner applied for admission to B.Tech course. She claimed

the benefit of reservation under the sports category. She could not get the gradation certificate countersigned by the Director of Sports, Punjab,

and so she was not considered for admission under reserved category for sports personnel. The argument advanced by the counsel representing

the petitioner is that gradation certificate, based on her performance in the sports meet is only evidencing the existence of fact entitling her to the

benefit of reservation and so the condition that gradation certificate should be

sent along with the application form for admission is only a formality and candidate may produce the gradation certificate at the time of admission. In support of the contention, the petitioner relied on the observation made by a learned single Judge in Civil Writ Petition No. 11787 of 1995 decided on September 8, 1995 and the reasons given by the learned single Judge were approved by a Division Bench in L.P.A. filed against that judgment by the Punjabi University, Patiala. However, in Civil Writ Petition Nos. 9211 of 1997 decided on August 26, 1997 and 12093 of 1997 decided on August 28, 1997, the other Division Benches took the view that application for admission should have been enclosed with a copy of the gradation certificate and that the candidate who produced the gradation certificate after the submission of the application is not entitled to the benefit of reservation as a sport person. In view of the divergent view, the matter was referred to Full Bench for consideration. It is seen from the factual details presented before the Full Bench that admission in the participating institutions of Punjab Technical University, Jalandhar has to be made as per the terms and conditions contained in the admission brochure/application form issued for the year 1997. In the application form it was specifically stated that all particulars required must be filled in and attested photo copies of the certificates in support of the claim made by the candidates must be attached with the application form. Clause 3.8 makes it clear that the application complete in all respects should reach the Co-ordinator CET - 1997, Punjab Technical University, Jalandhar by 5.00 p.m on June 25, 1997. It is also specifically stated that the application not submitted in the prescribed application form or not filled by the candidate's own handwriting or not supported by attested photocopies of the documents or incomplete application in any other manner or received after the due date/time will be rejected. The above mentioned terms and conditions contained in the brochure have been issued by Notification of the Punjab Government dated 30th January, 1997. The terms and conditions regarding eligibility, reservation, allocation of seats, gradation certificate, and public declaration are binding on the candidates as well as the party issuing the said brochure for the period in question. In para 9, their Lordships by referring the earlier Full Bench decision in the case of Raj Singh v. Maharshi Dayanand University 1994 (4) Recent

Services Judgments 289, disapproved the liberal construction of the terms and conditions of the brochure and specified the need for their strict

adherence to avoid unnecessary prejudice to the candidates or the authority during the course of admission. In the same paragraphs, by referring

the Division Bench decision in the case of Madhvika Khurana (minor) v. M.D. University Civil W.P. No. 15367 of 1991, their Lordships

observed that the students seeking admission to the professional courses are even otherwise matured enough and supposed to understand the full

implication of filling the admission form and compliance with the instructions contained in the brochure. In paragraph 10 their Lordships noticed

another Full Bench decision in Rahul Prabhakar Vs. Punjab Technical University and Others, , wherein it is stated that

A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab 1993 (4) Serv. LR 673, had to consider the scope and binding force of

the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and

it was not open to alteration. In Raj Singh v. Maharshi Dayanand University 1994 (4) RSJ 289, another Full Bench of this Court took the view that

a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits

him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen

according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the

prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur Vs. Punjab University, Patiala and others, , took the view that

there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches

have been followed in C.W.P. No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions

contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No

modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for

applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule

has to be complied with in letter and spirit. If the application has not reached the co-ordinator or the competent authority as the case may be the

same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed

in violation of the terms of the brochure have only to be rejected.

15. For all the above stated reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.