

**(2009) 07 DEL CK 0178**

**In the Delhi High Court**

**Case No :** Writ Petition (Civil) No. 10322 of 2009

Saniya Siddiqui

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

---

**Date of Decision :** 30-07-2009

**Acts Referred:**

**Citation :** (2009) 07 DEL CK 0178

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Advocate :** Ashok Mathur, for the Appellant; Mohinder J.S. Rupal, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Anil Kumar, J.—The petitioner seeks direction against the respondent to allow her to attend the counseling for admission to medical/dental courses 2009- 2010.

2. The petitioner appeared in the Delhi University Medical/Dental Entrance Examination, 2009. The petitioner claimed admission in the OBC quota. According to her seats are reserved for admission to medical/dental colleges for OBC candidates.

3. The petitioner was communicated her merit rank by letter dated 10th June, 2009. The petitioner was placed at a rank of 48A in the OBC category.

4. The petitioner has contended that she started from her native place, Ambikapur, District Surgaja, Chhattisgarh to attend the counseling against the advice of her family not to travel on 8th July, 2009. However, on account of her medical condition she had to return back and was admitted to District Government hospital where she remained under treatment till 10th July, 2009. The petitioner is alleged to have faxed the relevant documents for her counseling which was fixed on 9th July, 2009. She reached Delhi on 11th July, 2009 when she was told that in the event of any seat becoming vacant her case would be considered sympathetically.

5. The petitioner contended that she had come to know that on account of number of candidates joining AIIMS and other institutions there were vacancies in the OBC category and, therefore, the petitioner had made a representation for consideration of her case. However, she was informed by the respondent that since she had not appeared nor had anyone appeared on her behalf she had forfeited her right. In these circumstances, the petitioner has contended that she is a meritorious student and since seats are vacant in the OBC category, she may be considered along with other candidates who have been put in the wait listed category.

6. The learned Counsel for the petitioner has relied on the decisions of the Single Judge in W.P(C) No. 5182/2008 titled Chandershekhar Pal v. C.B.S.E and Ors. and W.P(C) No. 5678/2008 titled Subadhra S v. Union of India and Ors. decided on 6th August, 2008 whereby the candidates who had not appeared at the time of counseling were permitted to be considered along with other candidates in respect of the seats which were vacant on account of other candidates not joining the colleges.

7. The petition is contested by the respondent contending inter-alia that the writ petition is not maintainable either in the facts and circumstances of the case or in law. According to the respondent since the petitioner did not attend the counseling which was scheduled on 9th July, 2009 either personally or through her authorized representative, she has forfeited her right. It is contended that only those students who appeared in the counselling and who did not opt for the course or who had not been admitted to any course can be granted admission rank wise and category wise. Since the petitioner did not attend the counseling, she has no right to be considered. It is further contended that the respondents were not informed about the illness of the petitioner on the stipulated date. This was, however, admitted that the petitioner has total 458 marks out of 800 marks and she is ranked 48A (49). It is further asserted that as the petitioner was absent on the date of counseling, the candidates having rank lower than the petitioner who attended the counseling were offered the available seat for MBBS course in the respective colleges where seats were available.

8. The respondents have also contended that OBC category candidates securing merit position upto 65 have been considered and the petitioner has to be blamed herself for the situation in which she has put herself. It is also asserted that the counseling on 9th July, 2009 was only for admission to MBBS course in the medical colleges under the University, namely Lady Harding Medical College (LHMC) and University College of Medical Sciences. According to the respondents there is no reservation of seat for OBC category in Maulana Azad Medical College and also there is no reservation of seats for OBC candidates for admission to BDS course.

9. The learned Counsel for the respondents also relied on Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others, , to contend that the petitioner has lost her right even to be considered as she did not appear nor any authorized

representative appeared on her behalf on the day of counseling.

10. I have heard the learned Counsel for the parties. The learned Counsel for the petitioner at the outset contended that the petitioner is not seeking consideration for the BDS course or for admission to Maulana Azad Medical College. The petitioner wants to be considered for admission to those seats which would be available on account of candidates not taking admission to various courses pursuant to the counseling already done by the respondents according to her merit ranking.

11. The learned Counsel for the petitioner has emphatically relied on Chandershekhar Pal (supra) and Subadhra S (Supra) and has contended that if the Single Judge of this Court has allowed candidates for counseling in similar circumstances, the petitioner should be consideration for admission to those seats which have become available on account of the students not taking the courses opted by them or if the seats have become available for any other reason along with wait listed candidates.

12. In Chandershekhar Pal (Supra) the candidate had appeared in the All India Pre Medical Test and had been placed at 44th rank in the Scheduled Castes category. He could not appear on the date of counseling as he had received the letter intimating about counseling on the same date on which the counselling was fixed. The candidate was a resident of Singhana, Tehsil Manawar, District Dhar, Madhya Pradesh which was at a distance of about 1200 km from Delhi where counseling was to be held and, therefore, he could not appear. Since the candidate could not appear for counseling for the reasons beyond his control, it was held that he could not be put to prejudice and he was permitted to appear in the second round of counselling which was to take place from 25th July, 2008 and the authorities were directed to permit the candidate to appear in the second round of counseling according to his rank so that the candidate could be assigned a college subject to availability of a vacant seat.

13. In Subadhra S (Supra) Clause 7 of the bulletin of information for admission to the medical colleges had categorically stipulated that if the candidate or the authorized representative would fail to appear on the notified date against his rank, he/she shall forfeit the claim for a seat without any further reference in the matter. The clause in the bulletin of information of this case was similar to the one in the present case. The candidate in the said case had obtained an All India rank of 10510 in the General category and the rank of 386 in the Scheduled Caste category. The candidate under the false impression that he had to appear for counseling according to her All India rank, did not appear on the day and time fixed for counseling as per the Category Rank. The candidate was not entertained by the authorities. The Single Judge relying on the ratio of the order in Anjev Nayan Kumar Anjani v. Union of India and Ors. CWP No. 5383/2008 decided on 28th July, 2008 had allowed the petition of Subadhra S and directed the respondents to permit the petitioner for counseling and allotment of seat in the second round.

14. In *Anjevv Nayan Kumar Anjani* (Supra) the Single Judge had again allowed the candidate who was declared to have secured 280th rank in SC category and he was not entertained on the day of counseling. On consideration the writ petition of this candidate was allowed and he was allowed to appear in the second round of counseling from 25th July, 2008. These orders passed by the Single Judge in different situations allowing the candidates to appear for subsequent counseling were not challenged in appeal.

15. The decision relied on by the respondent, *Sunil Oraon* (Supra) pertains to a direction sought by the candidate against Central Board of Secondary Education to allow him to appear in the examination conducted by the said board. In this case the school had admitted students in gross violation of affiliation bye-laws without providing support in terms of infrastructural facilities and without adequate provision of qualified teachers and had also admitted students from unauthorized schools and was sponsoring students of unaffiliated schools. In the circumstances, the prayer of the students to allow them to appear in the examination of CBSE was declined. Apparently the case of the petitioner is quite different and on the ratio of the decision in *Sunil Oraon* (Supra) the petitioner cannot be denied the relief claimed by her.

16. This has not been disputed by the respondents that in terms of bulletin of information for undergraduate degree courses, the candidates who had appeared for counseling and who could not secure seats on account of their merit position being low or on account of non availability of seat of their choice, are put in the category of wait listed candidate. These candidates are entitled for consideration for admission to those seats which have fallen vacant on account of various reasons.

17. If the candidates who have not accepted the course offered to them and other candidates who do not get medical seats on account of their low ranking can be offered a seat in the medical college, the petitioner who is having a relatively higher ranking cannot and should not be declined the right of consideration for admission to the medical college along with those candidates who have been listed in the wait listed category according to the relevant clauses of bulletin of information for medical/dental courses 2009-2010. The Single Judge of this Court in some cases as detailed hereinabove had directed consideration of such candidates for counseling. In the circumstances it will be inappropriate not to allow consideration of the petitioner on the ground that only wait listed candidates are to be considered and not the petitioner.

18. For admission to the medical courses the primary consideration is merit ranking of the candidates. The next requirement is appearance for counseling which appears to be the process of verifying the testimonials of the candidates and offering such a candidate an available seat in the medical colleges. This administrative step of "counseling" cannot be raised to such a level so as to completely negate the merit ranking which is sine qua non for admission to courses in the medical colleges. In order to give finality to admission in courses

in medical college, the admissions already done are not to be changed on account of merit ranking of candidates who do not appear for admission on the date and time fixed for the process of admission. But on account of non appearance for any sufficient and justifiable reason, the merit ranking of a candidate cannot be completely ignored. If a candidate who is not given the intimation of counseling within time and a candidate who is not considered at the time of counseling for any other reason, can be considered for unfilled seats or the seats which fall vacant on account certain students not joining after counseling, then even those students who are not able to attend counseling on account of sufficient reasons should be considered for the unfilled seats or the seats which become vacant on account of certain students leaving the courses after getting admission. The plea of the counsel for the respondent that only the wait listed candidates i.e. those who had appeared for counseling and who had been offered seat but who did not opt for the same and those who did not get the seat on account of their low merit ranking, are to be considered for unfilled and vacant seats, does not appear to be rational and reasonable nor is it consonance with the criteria for admission which is unequivocally merit ranking. The plea of the learned Counsel for the respondent that the orders of this Court relied on by the counsel for the petitioners are distinguishable, therefore, cannot be accepted. In all the cases relied on by the counsel for the petitioners, the candidates who could not appear on the day fixed because of sufficient reason, had been allowed to be considered for admission later on, on the basis of their merit ranking without disturbing the admissions already done by the authorities.

19. The plea of the learned Counsel for the respondent that the counseling is over therefore, the petitioner cannot be considered, is also based on a very narrow perception of the process of admission. Counseling appears to be the process of verifying the testimonials of merit ranking candidates and offering them available seats in medical colleges according to their ranking on the date and time fixed for the purpose. If the seats are available in medical institutions and the last date for filling the seats has not expired and the candidates can be admitted, then the petitioner cannot be denied consideration with other wait listed candidates. The learned Counsel for the respondent has admitted that the process of admission of wait listed candidates has not been completed.

20. For the foregoing reasons, the respondents are directed to consider the petitioner for admission against the vacant seats to the appropriate course according to her category and merit ranking with other wait listed candidates. Writ petition is allowed in terms hereof and the parties are left to bear their own cost.

21. Dasti.