
(2010) 08 DEL CK 0347

In the Delhi High Court

Case No : Writ Petition (C) No. 5357 of 2010 and C.M. No. 10553 of 2010

Sanjay Kumar Patel

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2010) 5 SLR 448

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ruchira V. Arora, for the Appellant; B.V. Niren, CGSC, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner having failed to appear on the scheduled date and time for counseling for the admission to the medical colleges to pursue MBBS course has filed this petition for direction to the respondent to allow the petitioner to participate in counseling in the 2nd round and which is stated to be underway.

2. It is the case of the petitioner that he could not appear for the counseling on the scheduled date and time for the reason of misconception; it is contended that though the petitioner was to appear for counseling as per his counseling category rank, but remained under the impression that he was to appear for counseling as per his All India Rank. The counsel for the petitioner contends that the petitioner is a young boy of about 20 years of age and even if has committed a mistake, ought not to be penalized for the same. It is further contended that unless the petitioner is considered in the 2nd round of counseling which is stated to be still underway, the petitioner would lose one year.

3. The Division Bench of this court in judgment dated 1st September, 2009 in LPA 396/2009 has disagreed with the observations of the Single Judge that the rule regarding forfeiture of a seat for failure to appear in counseling is irrational, unreasonable and not in consonance with the merit based criteria. The Division

Bench nevertheless held that, whether in a particular case the University authority should be directed to consider the case of the candidate would depend upon the facts of the case. In that case no relief was granted to the petitioner Saniya Siddiqui for the reason of the seat having already been allocated to another candidate Zini Chaurasia who had also preferred LPA 394/2009 and which was disposed of vide the same judgment. This court in Archit Vashisht Vs. Guru Gobind Indraprastha University and Others has also held that the methodology of counseling is now a universally accepted procedure conforming to fairness; it affords maximum opportunity in a symmetrical manner.

4. In view of the aforesaid legal position, I have in judgment dated 22nd July, 2010 in WP (C) 4782/2010 titled Saurabh v. GNCT of Delhi have held that where the court finds that that candidate has been prevented from appearing for counseling on the scheduled date and time for the reasons akin to "act of god" or "force majeure" or "impossibility beyond human control", notwithstanding the procedure of counseling prescribing for forfeiture of the seat for non appearance, a direction can be given for the candidate to be considered in the counseling then remaining.

5. However, in the facts of the present case I do not find the petitioner to have been prevented by reasons beyond his control from appearing for counseling on the scheduled date. The petitioner discloses himself to be a resident of Bhopal; he reached Delhi on 5th August, 2010 well in time for counseling. The reason given of misconception is also not believable. It is written in bold letters at two places in the letter issued to the petitioner that schedule of counseling was as per the counseling category rank number. No case of the petitioner not understanding the same is made out. Moreover, upon the petitioner having failed to appear for counseling, the next candidate has become entitled to be considered for admission and this court cannot look into the interest of the petitioner only.

6. In view of the aforesaid circumstances, the order allowing the petitioner to be considered for counseling by disturbing the 2nd round of counseling cannot be given. The only relief which can be granted to the petitioner is to be considered at the end of the list of 2nd round of counseling, if any vacancy exists. The petition is disposed of. No order as to costs.

CM. No. 10554/2010 (for exemption)

Allowed, subject to just exceptions.