
(2012) 08 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition No. 12656 (W) of 2012

Sarit Chakraborty

APPELLANT

Vs

West Bengal University of Technology and Others

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Citation : (2012) 08 CAL CK 0053

Hon'ble Judges : Girish Chandra Gupta, J

Bench : Single Bench

Advocate : Basabi Roy Chowdhury, for the Appellant; Subhomoy Bhattacharyay, Advocate for the respondents no. 2 to 4 and Mr. Abhijit Gangopadhyay, Advocate for the AICTE, for the Respondent

Final Decision : Dismissed

Judgement

Girish Chandra Gupta, J.—Rule 3.4(a) laid down in the Information Brochure JEM-2012, issued by the West Bengal Joint Entrance Examination Board, provides as follows:-

For all the courses except B. Arch, Marine Engineering and B. Pharmacy: General candidates must pass H.S. (10+2) or its equivalent examination with a minimum of 45% marks in Physics, Chemistry and Mathematics taken together (40% for SC/ST candidates) and with at least 30% marks in English (for all category of candidates) with individual pass marks in Physics, Chemistry, Mathematics, English and vernacular (for any other fifth subject).

It is not in dispute that the writ petitioner is a general category candidate and he obtained 44.6% marks in aggregate in the Science group. It is also an admitted fact that his rank in the engineering stream is 1905. The question which arises for determination is whether applying the principle of rounding off the petitioner can be deemed to have obtained the minimum 45% marks required by the aforesaid rule. The petitioner has relied upon a judgment of the Apex Court in the case of State of U.P. & Anr. Vs. Pawan Kr. Tiwari & Ors. reported in 2005(2)

SCC 10 wherein Their Lordships dealing with the question as to how many seats should be deemed to have been left for the general category applicants out of the total 93 seats opined as follows:-

The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

2. The respondents namely WBJEEB in its affidavit-in-opposition contended that "the principle of rounding off has never been applied in cases of granting marks to enable a candidate to qualify in a competitive examination where the rules clearly and unambiguously state that he/she will be disqualified if he/she does not obtain the specified marks in the qualifying examination". They have also relied upon a judgment in the case of Orissa Public Service Commission and Another Vs. Rupashree Chowdhary and Another, wherein Their Lordships opined that such rounding off was not permissible regard being had to the rules. To be precise the views expressed by Their Lordship in paragraphs 9 and 10 are as follows:-

The appointment to the post of Civil Judge (JD) under the Orissa Judicial Services is guided by the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 and Rule 24 thereof specifically deals with the criteria for determining of candidates for interview. Rule 24 reads thus:-

24. Determination of number of candidates for interview.-The Commission shall call the candidates for interview who have secured not less than forty-five per centum of marks in aggregate and a minimum of thirty-three per centum of marks in each paper in the main written examination.

A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.

3. I already have quoted the rule applicable to the present case which provides that "a minimum of 45% marks" in the science subjects is required whereas the

rule which was construed in the case of Orissa Public Service Commission (supra), quoted above, stipulated that only those candidates shall be called for interview who have secured "not less than 45 per centum marks in aggregate". The latter is in my opinion more emphatic and appears to exclude the application of the rule of rounding off by providing that "not less than 45 per centum of marks in aggregate" were required before a candidate could be called for interview.

4. The other distinguishing feature is that in the case of Orissa Public Service Commission (supra) an added insurmountable difficulty was that application of the rule of rounding off was likely to result in unfair discrimination which Their Lordships indicated in paragraph 11 of the judgment which reads as follows:-

We may also draw support in this connection from a decision of this Court in Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi. In the said judgment this Court has laid down that (SCC p.658, para 6)

6.when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, [then] it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

5. Considering the entire facts and circumstances Their Lordships in the case of Orissa Public Service Commission (supra) held that "There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration".

6. It may however be pointed out that neither the judgment in the case of State of UP & Anr. Vs. Pawan Kumar Tiwari (supra) nor the judgment in the case of Orissa Public Service Commission vs. Rupashree (supra) is on all fours of the case before me. In the present case admission to the B. Tech course is dependent upon the rank obtained by the candidate at the Joint Entrance examination conducted by the respondent no.3 and the requirement of 45% marks in the science subjects is a mere qualification to participate in the Joint Entrance examination conducted by the respondent no.3. Therefore the competence of the candidate is to be determined on the basis of his performance at the Joint Entrance examination and not on the basis of his performance at the school level. An identical situation arose before the Bombay High Court in the case of Harish vs. State of Maharashtra reported in 2009(5) MLJ 57 wherein a Division Bench applied the principle of rounding off holding as follows:

The process of rounding off, though would not be attracted in the context of regulation framed by the Medical Council of India which operates while preparing

merit list on the basis of marks obtained in the competitive examination for seeking admission to P.G. Course in the pre PG Medical examination but in order to enable a candidate to appear for competitive examination if this well known formula is adopted it does not affect the other candidates. Further it will be inequitable and unjust to deprive a candidate to compete in entrance examination merely on the ground that he/she is not eligible having scored a fraction of marks less than 45% marks when it can be considered for rounding off as held in State of UP vs. Pawan Kumar Tiwari reported in 2005(2) SCC 10.

7. Reference may also be made to the judgment in the case of State of Punjab v. Asha Mehta, (1997) 11 SCC 410 wherein Their Lordships refused to interfere holding, inter alia, that the question whether 32.5% could be rounded off to 33% is purely an arithmetical calculation.

8. In the case of National Institute of Technology vs. Ankit reported in 2007(15) SCC 781 the Apex Court interfered because the High Court had erroneously proceeded on the basis that 5% of 45 would work out to 2.5 and on that basis three candidates were entitled to change over. Their Lordships corrected the mistake by holding that 5% of 45 would work out to 2.25 and held that "We therefore do not approve the rounding off as done by the High Court."

9. In the case of Selin Mary Mammen vs. Mahatma Gandhi University and Ors. Reported in 2008(17) SCC 615 the question had cropped up whether a candidate who had secured 54.9% marks could be allowed to pursue the M.Sc (Physics) course of study when the rules required 55% of marks. The High Court had taken a view that admission granted to the candidate in violation of the rule was bad. The Apex Court did not express any opinion but disposed of the matter allowing the candidate to continue considering that she had completed her full course of study and had already taken the examination. Only the results were due to be published. It was however made clear that the order passed in the totality of the facts and circumstances of the case was not intended to become a precedent.

10. Their Lordships in the aforesaid case did not apply the rule of rounding off. But sight cannot be lost of the fact that admission to M.Sc (Physics) was dependent only upon the marks in the qualifying examination whereas in the case before me admission is dependent upon performance in the entrance examination.

11. Considering that the rules in the present case do not expressly or impliedly excluded the principle of rounding off and considering that the competence of the candidate to get an admission is not dependent upon his performance at the school level and considering that he can only get an admission based on his performance at the entrance test conducted by the respondent no.3, I am of the opinion that the principle of rounding off should be applied to the marks obtained at the school level. Needless to mention that I am supported in my view by a Division Bench judgment of the Bombay High Court indicated above.

12. In the result the writ petition succeeds. The respondents are directed to allow the writ petitioner to participate at the counselling process for admission in an engineering college of his choice depending upon his rank indicated above.

13. Respondents no.3,4 and 5 are also directed to apply the principle of rounding off uniformly to all the candidates who may have secured 44.5% or above but below 45% marks in aggregate.

14. Parties shall bear their own costs.

15. Mr. Bhattacharyya, learned Advocate for the respondents no.2 to 4, prayed for stay of this order. The prayer is considered and rejected. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate appearing for the parties subject to compliance with the requisite formalities.