

(2018) 02 DEL CK 0337

In the Delhi High Court

Case No : Civil Writ Petition No. 7369 Of 2017, Civil Miscellaneous No. 30407 Of 2017

Sarita & Ors

APPELLANT

Vs

Guru Gobind Singh Indraprastha University & Anr

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 226
Delhi Professional Colleges Or Institutions (Prohibition Of Capitation Fee Regulation Of Admission Fixation Of Non-Exploitative Fee And Other Measures To Ensure Equity And Excellence) Act, 2007 — Section 13

Citation : (2018) 02 DEL CK 0337

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Gaurav Dua, Vrinda Agarwal, Anita Sahani, Anuja Saxena

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The Petitioners, seven in number, have approached this court by way of the present petition under Article 226 of the Constitution of India seeking

issuance of a direction to the Respondents to allow them to take admission against the left over vacant seats in B.Ed. (Special Education) course run

by Respondent No.1 "Guru Gobind Singh Indraprastha University for the 2017-18 academic session even though they had, admittedly, appeared

only in the Common Entrance Test (hereinafter referred to as CET) for the B.Ed. (General) course and not in the CET for B.Ed. (Special Education).

2. The brief facts relevant for the adjudication of the present petition are that Respondent No. 1-University issued an Admission Brochure for the

Academic Year 2017-18 on 16.02.2017 initiating the admission process for

various courses. The candidates who were desirous to take admission in a particular programme had to appear for the CET for that programme. Each programme in the brochure had been assigned a unique CET code. The admission brochure, inter alia, contained the procedure for admission to B.Ed. (General) and B.Ed. (Special Education), both having different CET codes i.e. 122 for B.Ed. (General) and 159 for B.Ed. (Special Education).

3. A total of 7147 candidates, including the Petitioners, applied for CET for B.Ed. (General) and 6264 candidates appeared for the Test. On basis of

their performance in the CET 6141 candidates qualified for B.Ed. (General), but the Petitioners were unable to qualify the same. As against B.Ed.

(General) only a total of 329 candidates applied for CET for B.Ed. (Special Education), and 269 candidates appeared in the CET out of which 266

candidates qualified the same. The Petitioners, admittedly, did not apply for B.Ed. (Special Education) and, therefore, did not appear in the CET for

B.Ed (Special Education). The first round of counselling regarding these courses was held on 31.07.2017 with the second round being held on

11.08.2017 followed by open house counselling on the same day. The final seat status with respect to vacancies after the completion of all rounds of

counselling was:

1. B.Ed. (Special Education) HI - 22

2. B.Ed. (Special Education) MR - 07

3. B.Ed. (Special Education) ASD - 11

4. Upon learning that a large number of seats in B.Ed (Special Education) had remained unfilled, the Petitioners, who could not qualify the CET for

B.Ed. (General) approached the Registrar of Respondent No. 1 to give them admission in the B.Ed. (Special Education) Course against the seats lying

vacant, even though they had not applied or appeared in the CET for B.Ed. (Special Education). Upon their request being rejected by Respondent No.

1 the Petitioners approached this Court by way of an impleadment application in a pending Writ Petition being W.P(C)No.6974/2017, which petition

had been filed as a public interest litigation seeking a direction to the Respondents to grant complete exemption from the CET to those aspirants who

wished to pursue the B.Ed. (Special Education) course run by Respondent no.1. It is claimed by the Petitioners that since they were not seeking a

complete exemption from CET but were only praying that the CET for B.Ed. (General) course be treated as sufficient for B.Ed.(Special Education)

they were, on 22.08.2017, given leave by this court to withdraw their impleadment application with liberty to file an appropriate Writ Petition.

5. Arguing for the Petitioner, Mr.Gaurav Dua, highlights the fact that the eligibility criteria such as age, educational qualification, degree and academic

attainment are the same for pursuing both B. Ed (General) and B. Ed. (Special Education). He submits that till the year 2015-16 the CET was

common for both the courses and since the Petitioners were never informed that the CET Codes for the programmes of B.Ed. (General) & B.Ed

(Special Education) were now different, they did not apply for the CET for B.Ed. (Special Education). He submits that the very fact that a large

number of seats in B.Ed. (Special Education) have remained unfilled in itself shows that most candidates were not aware of the bifurcation of the

CET Codes for the two B.Ed. courses. He submits that even otherwise since there is an acute shortage of special educators for children with

disabilities in India as also the fact that the eligibility criteria for both the courses is the same, candidates who are willing to take up such a vocation by

pursuing B.Ed(Special Education) should not be turned away.

6. Learned counsel for the Petitioner further submits that the purpose of an entrance test is to promote competition and transparency in the selection

process. He contends, that since there were not enough candidates to fill up the available seats in B.Ed. (Special Education), no purpose was achieved

by conducting an entrance test for the said course. His submission thus is that in such a situation when the available seats could not be filled and there

is, admittedly, a scarcity of Special Educators, not giving admission to the Petitioners would cause prejudice to all interested parties.

7. He further submits that the prayer of the Petitioners is in the general interest of the society since filling up the vacant seats in B.Ed. (Special

Education) will facilitate imparting education to children/students with disabilities. He submits that the fact that 40 % of the seats of B.Ed. (Special

Education) are lying vacant is a testament to the fact that there are not enough aspirants in this field. In such a situation, he submits, people taking

admission in such courses should receive incentives and not be discouraged by the authorities.

8. Learned counsel for the Petitioners has placed reliance on the decision of the Honâ??ble Supreme Court in the case of *Sadhuram Bansal v. Pulin*

Behari Sarkar & Ors reported as (1984) 3 SCC 410 as also on the decision of this Court in the case of *Social Jurist v. Govt. of NCT of Delhi & Anrs*

reported as 163 (2009) DLT 489 to contend that social justice is the recognition of greater good to a larger number without deprivation of accrued

legal rights of anybody. His contention, thus, is that the Court must endeavour to do social justice and not be bound by fine-spun technicalities.

9. While Respondent no.1 has opposed the Petition, Respondent no.2 has supported the Petition. The primary objection raised by the learned counsel

for Respondent No. 1 is that Candidates for different programmes have appeared for the CET of the particular programme exercising their choice in

terms of the Admission Prospectus, which terms are binding upon them. The Admission Brochure contained the details, the procedure for admission

and the distinct CET codes for the two programmes i.e. B.Ed. (General) and B.Ed. (Special Education). The Petitioners, chose to appear only in the

CET for B.Ed. (General) but not in the CET for B.Ed. (Special Education). She submits that granting admission to the Petitioners without them having

qualified or even appeared for the CET for the particular programme would violate the provisions of the Admission Brochure by which both the

Respondent No. 1 and the Petitioners are bound.

10. The Learned counsel for Respondent No. 1 also contends that the CET is held in accordance with the provisions of The Delhi Professional

Colleges or Institutions (Prohibition of Capitation Fee Regulation of Admission Fixation of Non-Exploitative Fee and other Measures to Ensures Equity

and Excellence) Act, 2007 (hereinafter referred to as 'the Act') and Section 13 thereof makes it mandatory for the University to effect admissions

only through CET and no exemption thereof is envisaged or permitted. In support of her contention, she has placed reliance on the decision dated

25.09.2017 of a Division Bench of this Court in W.P.(C)No.6974/2017 titled *Tarun Narang v. Guru Gobind Singh Indraprastha University and Ors*.

11. On the contrary, Respondent No. 2 has chosen to support the prayer of the Petitioner. Learned Counsel for Respondent No. 2 submits that the

educational qualification required for both the courses is the same i.e. a candidate must have scored 50% marks in graduation. Hence, if the

Petitioners have appeared in the CET for B.Ed. (General) and are willing to take admission in B.Ed. (Special Education), the application of the

Petitioners should be considered by Respondent No. 1 since the curriculums of both the courses are similar. The counsel for Respondent No. 2 also

agrees with submission of the Petitioners that it would be in the interest of social justice to let the Petitioners take admission in B.Ed. (Special

Education) since there is a dearth of teachers for children/students with special needs. His submission, thus, being that giving the Petitioners admission

will not cause prejudice to either party and will also be in the in the general interest of the society.

12. Having considered the rival submissions made on behalf of the parties and having perused the documents on record, it seems that the Petitioner

are using a sympathetic cause to further their own interests which would not otherwise be permissible in law. On consideration of the provisions of

Section 13 of the Act and the decision in W.P.(C)No.6974/2017 titled Tarun Narang v. Guru Gobind Singh Indraprastha University and Ors. it follows

that the request of the Petitioners is barred by the mandate of the statute and this court. Section 13 of the Act is reproduced hereinbelow:

13. An institution shall, subject to the provisions of this Act, make admission through a common entrance test to be conducted by the

designated agency, in such manner, as may be prescribed:

Provided that the management seats may be advertised and filled up, from the candidates who have qualified the common entrance test, by

the institution in a transparent manner based on the merit at the qualifying examination.

I also find it appropriate to reproduce paragraphs 6 to 8 of the decision of this court in Tarun Narang v. Guru Gobind Singh Indraprastha University

and Ors., which are relevant to decide the matter before this court:

6. In view of the mandate of Section 13 of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of

Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007, it is mandatory for the

University to effect admissions only through Common Entrance Test and no exemption thereof is envisaged or permitted.

7. Therefore, the Prayer (A) made by the Petitioner to grant the complete

exemption from the Common Entrance Test to those aspirants who have not appeared in the said test and consequently grant admission to B.Ed. (Special Education) course cannot be granted.

8. For the aforementioned reasons, Prayer (B) and (C) as prayed for also cannot be granted. The writ petition is accordingly dismissed, but no order as to costs.

13. It needs to be considered that though the Petitioners herein stand on a different footing in comparison with the Petitioners in WP(C) 6974/17, to

the extent that the Petitioners herein did appear for the CET of B.Ed. (General) whereas the Petitioners in WP(C) 6974/17 did not appear in either

CETs, the relief sought for by the current Petitioners is, in effect, similar to the relief sought for by the Petitioners in WP(C) 6974/17. While the

Petitioners herein have, in their prayer, sought for a direction to Respondent No. 1 to grant admission to them in the B.Ed. (Special Education)

programme, the same cannot be done without first waiving the requirement for appearing in the CET for the aforesaid programme. The fact that the

Petitioners have only appeared in the CET for B.Ed. (General) and, admittedly, have not even qualified in that, their performance in the CET for B.Ed.

(General) also does not help their cause. Hence, to satisfy the prayer of the Petitioner, the entire requirement of giving the CET for the programme

will need to be waived, which, in view of Section 13 of the Act is mandatory for the universities to effect admissions as has been observed by the

division bench in its decision above.

14. Having perused the admission brochure, I do not find any merit in the submission of the learned counsel for the Petitioners that the students were

not aware of two distinct codes for B.Ed.(General) and B.Ed.(Special Education). The brochure clearly mentions two distinct CET codes for the

subject of B.Ed. (General) and B.Ed. (Special Education) and once the Petitioners filled the specific code for B.Ed. (General), there is no reason as to

why they could not fill the separate code for B.Ed. (Special Education) prescribed in the same brochure. It is thus apparent that this plea of the

Petitioners is merely an afterthought, as they have raised this issue only after they were unsuccessful in CET for B.Ed. (General) and learnt that there

were some unfilled seats in B.Ed. (Special Education).

15. Thus while this Court is conscious of the fact that there is a scarcity of

Special Educators as is sought to be projected by Respondent No. 2 for which the authorities should take steps to fill the and create more posts of Special Educators to impart teaching to children/students with special needs, but the same has to be done only by following the procedure prescribed by law and cannot be done by directing the Respondent no.1 to grant admission to the Petitioners in B.Ed. (Special Education) by ignoring the mandatory provisions of Section 13 of the Act. In fact if such a direction as is sought by the Petitioner were to be given, it would in itself be violative of Article 14 & 21 of the Constitution of India.

16. The Writ Petition is, accordingly, dismissed, with no order as to costs.