

(2023) 01 BOM CK 0062

In the Bombay High Court

Case No : 13 Writ Petition No.12658 Of 2022

Shaikh Riyan Shaikh Eqbaloddin

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 142, 226

Citation : (2023) 01 BOM CK 0062

Hon'ble Judges : Ravindra V. Ghuge, J; Sanjay A. Deshmukh, J

Bench : Division Bench

Advocate : Shaikh Ashraf Patel, Sk. Mohd. Salim Abdul Karim, R. B. Bhosale

Final Decision : Partly Allowed

Judgement

Ravindra V. Ghuge, J

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses (B) and (C), as under :-

"B) The respondent may kindly be directed to decide the claim of petitioner for registration to CSAB and admission in NIT's by issuing writ of mandamus, order in the like nature by making rule made absolute.

C) Till pending hearing and final disposal of this writ petition, petitioner may kindly be allotted seat in NIT Nagpur."

3. On 22/12/2022, after hearing all the parties, we have passed the following order :-

"1. The petitioner, after clearing the HSC examination, further cleared the JEE (Main) examination with Application No. 220310705262. He acquired 91.1310484 percentile. His admission to IIT's/NIT's was registered for the Joint Seat Allocation Authority (JOSAA) counseling. The petitioner's admission is not

processed and he is not considered for the solitary reason that respondent no.2 purportedly did not receive the requisite fees of Rs.38,000/- .

2. The petitioner has placed before us the print out that he has obtained from the website of the IndusInd Bank pertaining to the statement of his bank account No.201012992033. An entry on 28.10.2022 indicates a money transfer transaction, by which Rs.38000/- were transferred to respondent no.2 on it's account at Mumbai. The amount of Rs.38000/- was, therefore, debited to the account of the petitioner. A further entry dated 02.11.2022 indicates a refund from Central Seat Allocation Board (CSAB)/respondent no.2, vide which the amount of Rs.38000/- have been credited to the account of the petitioner. Prima facie, considering these transactions, it can be gathered that the petitioner has deposited Rs.38000/-with respondent No.2, within time.

3. The learned Advocate for respondent Nos.1 & 2 places a scanned copy of the affidavit-in-reply prepared by the Chairperson of National Institute of Technology, Rourkela, Odisha, dated 21.12.2022. The same is taken on record, with liberty to the respondents to file the original affidavit-in-reply in the Registry. The learned Advocate for the respondents submits that the said amount of Rs.38000/-never reached the account of respondent no.2.

4. In view of the above, leave to add the National Institute of Technology, Rourkela, Odisha, through its authorised signatory as respondent no.3. Addition be carried out forthwith.

5. Issue notice to the respondents, returnable on 4. 01.2023. This matter would be listed in the 'urgent admission students' category. The learned Advocate Shri. Bhosale waives service of notice on behalf of the respondents.

6. Considering the limited controversy, we expect the petitioner to collect a certified copy of the statement of accounts from the concerned bank and produce the same before the Court on the next date, with a short affidavit.

7. In the event, any seats to respondent No.3 at NIT, Nagpur are vacant even today, we would expect respondent Nos.2 & 3 to keep one seat vacant, in the light of the peculiar facts of this case, in the backdrop of our prima facie conclusion that a transaction of crediting Rs.38000/-in the account of respondent no.2 is visible from the bank's record and return of the said amount is also visible."

4. On 04/01/2023, we had passed an order in continuation with our earlier order, as under :-

"1. Pursuant to the order of this Court dated 22.12.2022, the petitioner has produced a photostat copy of his bank statement for the period 27.10.2022 till 03.12.2022 (3 pages). The same is taken on record and marked as "X-1" for identification.

2. The learned advocate representing the respondents places on record a

communication by the Branch Manager of ICICI Bank Ltd. Udit Nagar Branch, dated 30.12.2022, making a statement that an amount of Rs.38,000/- was not received by the bank from the petitioner, to be credited in the account of the respondent. The said communication is marked as "X'-2" for identification.

3. For clarity, We are of the view that the print out of the bank statement, of the account of the respondent (INCSAB Mumbai) bearing No. 652162XXXXXX8264, in which the petitioner's amount of Rs.38,000/- was said to have been credited and subsequently returned to the petitioner, by refund on 02.11.2022, for the period 27.10.2022 till 5. 11.2022, should be produced before us.

4. Let the certified copy of said bank statement be produced on record, on the next date.

5. Stand over to 16.1.2023 in the 'students' category."

5. We have perused the Bank statement produced by the petitioner before us pertaining to IndusInd Bank, which indicates a transaction favouring the Central Seat Allocation Board (CSAB), which is respondent No.3. An amount of Rs. 38000/-has been debited from the account of the petitioner in favour of the CSAB. There is no message or entry, indicating that the transaction had failed. So also, the said amount was not credited to the account of the petitioner by way of a reversal of entry. The last date for depositing the said amount was 28/10/2022. The entry in the statement of the account of the petitioner, dated 02/11/2022, clearly indicates a refund from the CSAB. The said amount is deposited/credited in the account of the petitioner.

6. The petitioner forwarded an E-mail to the CSAB, which reads as under :-

"Respect sir i have complete my transaction on csab22 portal of special round but after completing of payment of rupees 38000 the choice fillings option is not open i have called on helpdesk no so many times bud they did not gave satisfactory ans they just noted my complaint.

I have my transaction no which i got from my bank am attaching with this mail sp plz its my humble request resolve this problem because only two hours are left for choice filling and and if it can not done only you people are responsible for wasting my one year Transaction Id: 230116045477/87081144/IN JEE APP. ID: 220310705262 Name: Riyan shaikh"

7. The respondents have entered an affidavit-in-reply dated 21/12/2022, with the index bearing date 22/12/2022. It is stated in the affidavit-in-reply that the CSAB never received the amount of Rs. 38000/- . The contentions of the respondents in the lengthy affidavit-in-reply can be summarized, as being a stand of the respondents that, the said amount of Rs. 38000/- was never credited to it's account. After conclusion of 6 rounds of JoSAA, the left over seats at the NIT Plus System were offered to the candidates through the CSAB-2022 Special Round. The petitioner belongs to the economically weaker section. The entire process of the special rounds is done through the website maintained by

the NIC. The closing time on 28/10/2022 for the CSAB Portal was 17.00 hours. A total of 50908 candidates successfully logged into the CSAB Portal on a single date i.e. 28/10/2022. It is specifically denied that any amount was credited into the ICICI Bank account of the CSAB at Rourkela.

8. The learned Counsel for the respondents places on record a copy of the communication dated 11/01/2023, received by him from the CSAB, alongwith the Bank entries dated 28/10/2022 (page Nos.75 to 137). The said compilation is taken on record and collectively marked as 'X-3' for identification. It is a transaction report of the CSAB Bank account pertaining to entries of 28/10/2022. There are around 2988 bank transaction entries with details of the entire transactions as well as the names of the customers. The learned Advocate for the petitioner has carefully gone through each entry to confirm that the name of the petitioner does not appear amongst those who have deposited Rs. 38000+ towards the seat allocation fees.

9. As such, this case assumes a peculiar character. On the one hand, the bank entry/statement of accounts of the petitioner held by him in IndusInd Bank, clearly indicates a computer generated entry in favour of the CSAB, dated 28/10/2022. The amount of RS. 38000/-is debited, purportedly to be credited in the account of the CSAB. The entry on 02/11/2022 again indicates a refund from the CSAB, by which the said amount has been redeposited in the account of the petitioner. The certified copy of the said statement is 'X-1', which stands testimony to the fact of such amount being credited in favour of the CSAB Mumbai and it being refunded on 02/11/2022. The ICICI Bank, with which the CSAB holds an account, has issued a certificate 'X-2', claiming that no entry as contended by the petitioner can be seen from the account of the CSAB held with the ICICI Bank Rourkela.

10. The covering letter below 'X-3', issued by the Chairman, Local Organizing Committee, CSAB-2022, Professor Mukesh K. Gupta, more particularly paragraph 4, indicates that the case of the petitioner appears to be that of a failed transaction and the amount being reversed by the Bank or the Debit Card Issuer.

11. In the above backdrop, we have perused the recent order dated 22/11/2021, passed by the Hon'ble Supreme Court in Civil Appeal No. 6983/2021, filed by Prince Jaibir Singh Vs. Union of India and others. In the said case, though the appellant logged into the site of the CSAB so as to access the JoSAA Portal and uploaded the documents, he could not deposit the acceptance fees to be paid on 29/10/2021. He was admittedly short of funds and he borrowed money from his sister on 30/10/2021. He then made about 10 to 12 attempts to complete the payment of fees, which were unsuccessful due to a technical error in the server. Despite his calls to the respondents and attempts to make the payment from the Cyber Cafe, he was helpless. He, therefore, travelled to the office of the CSAB in Kharagpur, where the officials expressed their inability to assist him. The Division Bench of the Bombay High Court was moved under Article 226, praying for the acceptance of the fees by the CSAB and to facilitate his admission to IIT Bombay.

He failed before this Court and approached the Hon'ble Supreme Court.

12. In Prince Jaibir Sing (supra) the Hon'ble Supreme Court, therefore, held in paragraph Nos. 4 to 6 as under :-

"4. This Court has, before it, a young Dalit student who is on the verge of losing a valuable seat, which has been allocated to him at IIT Bombay. The travails of the appellant have taken him from Allahabad, where he is presently studying, to Kharagpur and, eventually, to Mumbai and ultimately to the National Capital,

5. Having regard to the facts of the case noted above, it would be a grave travesty of justice if a young Dalit student, who had to move this Court, is turned away without considering the difficulties he has encountered in acquiring the funds and to pay the fee for admission for the B.Tech Degree Course at IIT-Bombay and, thereafter, in ensuring that the payment is processed online. If the petitioner were not to be admitted during the current academic year, he will be ineligible to appear after two consecutive attempts. Though technology is a great enabler, there is at the same time, a digital divide. Hence, we are of the view that this is a fit and proper case where the exercise of the jurisdiction under Article 142 of the Constitution is warranted at the interim stage in the facts as they appear before the Court.

6. We accordingly direct the first and second respondents to ensure the appellant is admitted to IIT-Bombay pursuant to the allocation of the seat to him. This shall not entail disturbing any other student who has already been admitted. The creation of a supernumerary seat, in the facts of the present case, shall be subject to the admission of the appellant being regularized in the event that any seat falls vacant as a result of exigencies which may arise in the course of the admissions process. Otherwise, the continued studies of the appellant for the B.Tech Degree Course in Civil Engineering shall be against the supernumerary seat. The parties shall act on a certified copy of this order and implement these directions on or before 24 November 2021."

13. The respondents have relied upon a short judgment delivered by the learned Single Judge of the High Court of Kerala, dated 22/11/2022 in Writ Petition (Civil) No.35274/2022. In the judgment, the learned Single Judge has held as under :-

"When this matter was called today, Sri. Shyam Padman – learned standing Counsel for the respondent - National Institute of Technology, submitted that this writ petition has become infructuous because, not only the allotment phase mentioned therein but also the subsequent one, has now been completed and admission closed. He added that this is more so because, though the petitioner says that he could not upload his documents, the fact remains that it was done and his option also exercised, subsequent to which the allotment being completed.

In the afore circumstances, I close this writ petition finding it to have become

infructuous; however, leaving liberty to the petitioner to seek a rehearing, if any further orders are found necessary.”

14. Prince Jaibir Singh (supra), who was before the Hon’ble Supreme Court, admitted that he did not have the money to credit it into the account of the CSAB on the JoSAA Portal. He made an attempt on 30/10/2021. In the case in hand, the petitioner belongs to the minority religion, whose Bank Account statement clearly indicates that the amount was debited from his account and credited to the CSAB. On the 5th day, after the deadline was over, an entry indicating the said amount being credited back to the account of the petitioner from the CSAB, is apparent. As observed by the Hon’ble Supreme Court “Though technology is a great enabler, there is at the same time, a digital divide. Hence, we are of the view that this is a fit and proper case where the exercise of the jurisdiction under Article 142 of the Constitution is warranted at the interim stage in the facts as they appear before the Court.”

15. The case of the present petitioner stands on a better footing since the computer generated auto entry indicates the amount of Rs. 38000/- being debited from the account of the petitioner in favour of the CSAB on 28/10/2022 and the entry dated 02/11/2022 indicates that the amount is redeposited in the account of the petitioner from the account of the CSAB. This is an auto generated computer date. If this Court refuses to grant relief to the petitioner, a person belonging to a village, who is attempting admission in the Visvesvaraya National Institute of Technology, Nagpur, he would fail to secure such an admission.

16. The above aspect, being the only issue before us and since the amount of Rs.38000/- has been redeposited in the account of the petitioner after the cut-off date by CSAB, that we are of the view that discretion deserves to be exercised under Article 226 of the Constitution in favour of a person, who belongs to the minority, comes from a village and belongs to the economically weaker section. Be that as it may, since the amount is returned to the petitioner and the Portal is closed, it would be appropriate to direct the petitioner to issue a demand draft in favour of the National Institute of Technology, Rourkela for the purpose of crediting the amount in the account of the CSAB, which the CSAB shall accept.

17. The petitioner has placed before us a self attested printout obtained from Visvesvaraya NIT, Nagpur pertaining to General-EWS category-Gender-Neutral under the Metallurgical and Material Engineering Branch, Branch Code No. 4127, Institute Code No.230, indicating 2 vacancies as on date. The said printout obtained by the petitioner from the CSAB website, is marked as ‘X-4’ for identification. So also, we had ordered in paragraph 7 on 22/12/2022 that, one seat at NIT Nagpur would be kept vacant.

18. Pursuant to this exercise, the petitioner’s admission at NIT Nagpur, which is already confirmed, shall lead to the allocation of a seat to the petitioner by confirming his admission. The procedure with regard to depositing the admission fees and the semester fees would follow thereafter. This direction is issued in the

light of the statement of the petitioner based on the 'X-4', that 2 seats for the 'Gen-EWS' category are available.

19. This petition, in the light of the above directions, is partly allowed. Rule is made absolute in the above terms.