

(2006) 09 DEL CK 0105
In the Delhi High Court
Case No : W.P (C) No. 12573 of 2006

Shri Kuldeep Singh

APPELLANT

Vs

State Council of Education Research

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Citation : (2006) 133 DLT 468

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Kuldeep Sehrawat, for the Appellant; Avnish Ahlawat and Latika Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner has sought a writ of mandamus directing the respondent to admit the petitioner in anyone out of 9 Government DIETS in the two year Diploma Course of Elementary Teacher Education (ETE) for the academic year 2006- 2008 as he could not appear in the counseling on 20.7.2006 on account of suffering from Typhoid though he had sent his mother and uncle with his certificates which were not considered nor his uncle and mother were allowed counseling on behalf of the petitioner.

2. The petitioner contended that respondent is an autonomous statutory body of the NCT of Delhi which was set up and established with a view to concentrate on the improvement of quality of school education by bringing qualitative improvement in the training of school teachers at all levels and for which purpose 9 Districts Institutes of Education and Training (DIETs) were opened which function under the administrative control of Delhi Government.

3. The admission to these nine Districts Institutes of Education and Training is granted pursuant to an examination conducted by the respondent. The respondent issued a prospectus for diploma course in Elementary Teacher Education (ETE). The petitioner applied for admission to diploma course in

Elementary Education and he was allotted roll No.06591 for the entrance test after he fulfilled all the requisite essential eligibility conditions for the entrance test to be held on 4.6.2006.

4. The respondent published the result of the examination for admission to diploma course in Elementary Teacher Education (ETE) on 18.7.2006 which included the name of the petitioner and his rank was C-509/O-00638 in the general category where C stands for particular category and O stands for overall ranking of the candidate.

5. According to the petitioner the date for counseling for the petitioner was fixed on 20.7.2006 at 9 to 11 AM at DIET, Nanakpura, South Motibagh, New Delhi. According to the petitioner he fell sick on 19.7.2006 as he got typhoid and he was unable to move and go personally for the counseling on 20.7.2006 as he was advised bed rest and, Therefore, he sent his mother, Smt. Santra and uncle Sh. Manish with all his original certificates to show to the counseling board and deposit the requisite fees or to take a future date for counseling, if the presence of the petitioner was required. According to the averments made by the petitioner the members of the counseling board refused to check the original certificates of the petitioner tendered by Smt. Santra, his mother and the uncle Sh.Manish and they also refused to accept the fees by contending that the members of the board did not have power to conduct counseling with the parents/guardians in the absence of the candidate. The mother and the uncle of the petitioner were rather intimated that only the Director of the respondent is competent to extend the time for counseling on medical grounds.

6. The petitioner on slightly recovering from his typhoid went to the office of the Director of the respondent on 29.7.2006 for permission for counseling but found the office of the Director closed forcing petitioner to visit again on 31.7.2006 at defense Colony, New Delhi with written representation along with the medical certificate and sought his indulgence to allow the petitioner for fresh counseling. The medical certificate and representation of the petitioner was received in the office of the respondent on 31.7.2006, however, the respondent did not permit the petitioner for a fresh counseling on 31.7.2006 or thereafter. The petitioner made yet another representation on 2.8.2006 when he was told that no admission could be granted after closing of the admission. The petitioner has produced the second representation sent by him along with the postal receipts etc.

7. The petitioner categorically contended that another candidate Sh. Kaushal of Village Ladhpur, Delhi had been granted admission in the diploma course in Elementary Teacher Education (ETE) in one of the DIETs at Karkardooma, Delhi even after the expiry of the last date of admission.. Regarding Mr.Kaushal, it was contended that his rank was 542 and he has been granted admission though the petitioner with a rank of 509 has not been granted admission and some of the seats are still lying vacant. The petitioner, Therefore, challenged the action of the respondent that he could not be denied admission with higher ranking in the

admission list compared to other persons who have been admitted though having lower ranking on the ground that the petitioner did not come personally on the date of counseling i.e. on 20.7.2006 though he had sent his mother and uncle with the original documents.

8. The petitioner Therefore, challenged the action of the respondent by filing the present writ petition. On filing the petition by an interim order dated 8.8.2006 the respondent was directed to keep one seat for the petitioner in the general category in case all the seats were not filled. Though the respondent was served, however, no one appeared on their behalf on 5.9.2006 nor filed the reply to show cause notice. The matter was adjourned to the next date i.e 8.9.2006, however again reply was not filed and the counsel for the respondent sought more time to take instructions on 8.9.2006 Thereafter a counter affidavit of Sh. B.N.Bajpai director of the respondent has been filed. The respondent admitted that it offers two year diploma course in Elementary Teacher Education (ETE) from nine District Institutes of Education and Training and 10 recognized private Institutes in Delhi out of which seven are for female candidates. Elementary Teacher Education (ETE) is a full time diploma course for two years. 1040 candidates are admitted in 9 DIETs and 1600 candidates are admitted in 10 private ETE Diploma Training Institutes. It was clarified that out of 1040 seats 20 seats are for teachers of Urdu and 20 seats for teachers of Punjabi. It was also contended that the seats in DIETs are subject to reservation.

9. The respondent admitted that the admission is on the basis of an entrance examination and the candidates are called in order of merit for counseling. It was asserted that the candidates who do not indicate their option for admission in private institutes are considered for admission in DIETs only. The respondent was, however, categorical that a candidate has to appear in person on the date of counseling along with the fees and any candidate failing to report for counseling on the date and time designated for particular candidate is not entertained for admission under any circumstances.

10. Though in the counter affidavit it was contended that it has been held in a number of cases by the Apex Court that where a period has been prescribed within which admissions are to take place, no admission can be granted after the scheduled date even if the seats are left vacant, however, no judgments have been referred to by the respondent. The respondent contended that this year about 30 candidates' request have been turned down on account of similar reasons as given by the petitioner for not appearing in counseling.

11. In reply to the allegation of the petitioner that one candidate namely Sh.Kaushal of Village Ladhpur, Delhi who had been granted admission after the expiry of date of counseling, the respondent only contended that the petitioner be put to the strict proof with respect to it. The averment was made in paragraph 15 of the petition by the petitioner which is as under:-

That it came to the knowledge of the petitioner that one candidate namely

Sh.Kaushal of village Ladpur, Delhi has been granted admission in the said course in one of the DIET at Karkardooma Delhi, even after the expiry of the date of counselling.

The reply of the respondent is as under:-

15-16. Averments as made in para 15 are wrong and denied, and it is submitted that the petitioner needs to be put to strict proof with respect to it.

12. The learned counsel for the petitioner has relied on Dolly Chhanda Vs. Chairman, JEE and Others, where the claim of a daughter of an ex-serviceman was rejected in the first counseling on the ground that the certificate issued to her by Zilla Sainik Board did not satisfy requirement of reserved category. When the daughter of the ex-serviceman produced the fresh and correct certificate at the second stage of counseling her candidature and grant of admission was not considered and the admission was given to other candidates securing lower rank than her. The Apex Court had held that adopting of highly technical and rigid attitude by the authorities concerned cannot be proper and should not be permitted and the State Government was directed to give admission in anyone of the State medical colleges. It was held that depending upon the facts of a case there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. It was further held that every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. The relevant observation of the Supreme Court in Dolly Chhanda Vs. Chairman, JEE and Others, are as under:-

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

13. In Dolly Chhanda (supra) the Apex Court relying on Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, had held that much of hardship and harassment in administration flows from over emphasis on the external rather than essential. It was held:

It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark lists from universities, why, even bail orders from courts and government orders from public offices.

13. This has not been disputed that the rank of the petitioner is C-509/O- 00638 where C stands for particular category and O stands for overall ranking of the petitioner. This is also not disputed that the date of her counseling was 20.7.2006. The petitioner has produced the copy of the medical certificate dated 29.7.2006 certifying that the petitioner was suffering from typhoid from 19.7.2006 to 28.7.2006. The certificate is issued by the Medical Superintendent of Dewan Chand Memorial Gokul Chand Arya Hospital, Auchandi, Delhi. The fact that the petitioner was suffering from typhoid cannot be disputed by the respondent in the facts and circumstances as nothing to the contrary has been produced or such facts disclosed which will create doubt about petitioner suffering from typhoid during said period.

14. The learned counsel for the respondent Mrs. Ahlawat has rather contended that the petitioner ought to have produced a medical certificate from a Government hospital. Since the petitioner was under treatment at Dewan Chand Memorial Gokul Chand Arya Hospital, Auchandi, Delhi which is apparent from the medical certificate produced by him, to expect from the petitioner to produce the certificate from a Government medical hospital is not justifiable or rational. If the candidate was under treatment at Dewan Chand Memorial Gokul Chand Arya Hospital, Auchandi, Delhi, how a certificate could be provided by a Government Hospital. If a person was not under treatment at a Government Hospital, how and why a Government Hospital would provide a certificate of illness which has not been treated at that Government Hospital. The petitioner could produce the certificate from a hospital where he was under treatment and the respondent could not insist that in case petitioner wanted admission with the respondent on falling sick he had to go for treatment at a Government medical hospital. This is not the case for recovery of charges spent for medical illness which could be reimbursed according to rules only on treatment at Government Hospital.

15. The version of the petitioner is that he had sent his mother and uncle with the necessary certificates who reached within time and produced the certificate before the members of the counseling board who refused to accept the same on the ground that only the petitioner could produce the same and only then the

certificates could be considered. The mother and uncle of the petitioner also sought time so that the petitioner could recover and appear, however, he was told categorically that such a power vests with the Director of the respondent and the members of the counseling board does not have such powers. Though the respondent has denied that the mother and the uncle of the petitioner came, however, considering the totality of the circumstances and just a bare denial of the respondent it is probable to infer that the petitioner's mother and uncle went to the counseling board along with the certificates of the petitioner which were not accepted and considered.

16. The objective of the admission test and giving admission on the basis of ranking is to select meritorious students and grant them admission in the Elementary Teacher Education diploma course. The plea for granting admission on the basis of merit cannot be sacrificed by the respondent on account of such procedural inadequacies as in the present case. There can be a number of eventualities where in exceptional cases the meritorious students may not be able to approach the counseling board on the date and time prescribed. The Apex Court in the case of Dolly Chhanda (Supra) had held that depending upon the facts of a case there can be relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains to the domain of procedure. This is not disputed that the petitioner had requisite qualification and during the counseling, in the present facts and circumstances, the counseling board only had to see the certificates of the petitioner and allot him an appropriate DIET. The petitioner was not to be interviewed again or there was no other test to be conducted to ascertain the eligibility of the petitioner in the said course. In the circumstances merely because the petitioner could not appear for counseling as he was suffering from typhoid, the right of the petitioner who is a meritorious student having obtained a ranking of C-509/O-00638 cannot be denied.

17. To contend that the petitioner could not be allowed to appear on a subsequent date for counseling despite petitioner suffering from typhoid and the presence of the mother and uncle with the original certificates could not be considered, the respondent has relied upon the judgment of single judge in W.P. No. 12272/2004, Sandeep Rana v. SCERT and W.P. 12287/2004 Sh. Rakesh Kumar Mann v. SCERT decided on 24.3.2005. In these cases candidates had challenged the actions of the authorities on three main grounds that they do not have power to effect reservation for private institution; they cannot effect reservation for institutions which are restricted to female candidates and the claim of only those candidates could be considered who had approached the court. Apparently the ratio of these cases is not relevant to the present case. In another case WP(C) 17903 OF 2004 Daljeet Kaur v. Govt. of NCT of Delhi and ors the contention of the petitioner was that she had reached the Moti bagh site for counseling on 20th July, 2004 which was the notified date for general category and notified date for reserved category was 21st July, 2004, but the secretary of the SCERT told the petitioner to come for counseling on 2nd August, 2004 On

2nd August, 2004 the case of the petitioner was not considered and she was not granted admission. In that case the plea of the respondent was that the candidate did not appear for counseling deliberately as the date for counseling for reserved category students was 21st July, 2004. The candidate had not appeared for counseling even on 2nd August, 2004 and the respondent disputed receipt of any letter from the candidate on 2nd August, 2004. The Court in those circumstances held that the petitioner ought to have been vigilant and should have appeared on the relevant dates as stipulated in the public notice. In *Daljit kaur* (supra) the petitioner did not attend the counseling on the date as specified in the prospectus and no cogent reason for not attending the same was put forward. However in the present case the petitioner could not appear himself for counseling on the date fixed because of his illness though he had sent his mother and uncle with certificates and has also produced medical certificate and was duly represented by his uncle and mother whose presence was not considered sufficient by the respondent. The facts of the case cited by the respondent are clearly distinguishable from the facts of the present case.

18. In the counter affidavit filed on behalf of the respondent it has not been disputed that pursuant to ex-parte interim order dated 8.8.2006 directing the respondent to keep one seat in the general category if all the seats have not been filled, no seat has been kept on account of filling up of all the seats. Consequently one seat is with the respondent for admission of the petitioner to the course in the general category.

19. If the objective of the admission test and counseling is to select meritorious students for admission to Elementary Teacher Education, the respondent should not deny admission to the petitioner in the facts and circumstances on account of their own highly technical and rigid attitude. The plea of the petitioner that 30 other similar students who did not appear for counseling on the date fixed have been denied admission, cannot justify the rigid and technical action of the respondent in denying admission to the petitioner. The petitioner has not disclosed the circumstances in which the other candidates did not appear for counseling and how they justified or did not justify their non appearance. In contradistinction the petitioner had fallen sick as he had typhoid and, Therefore, he could not appear for counseling physically and the fact that his mother and uncle had gone to the counseling board, will make the case of the petitioner different from other cases.

20. The plea of the respondent that after the date of counseling no admission had been given is also refuted by the petitioner. The petitioner has categorically contended that another candidate was granted admission after the date of counseling. The evasive denial by the respondent regarding another candidate namely Sh. Kaushal of Village Ladhpur, Delhi also reflects that respondent has not stuck to the policy of not granting admission after the date of counseling. If Sh. Kaushal of village Ladhpur was not granted admission after the date of his counseling, the respondent ought to have disclosed as to what was the date of

counseling of that candidate and when was he granted admission.

21. The respondent is also unable to show any cogent reason for not granting admission to a candidate who is meritorious after the alleged date for counseling especially when the writ petition has been filed without any undue delay by the petitioner and the time has been sought time and again by the respondent to file his counter affidavit. The formalistic, ritualistic, unrealistic approach of the respondent in the present case contending that those candidates who did not produce some certificates were given time but those who could not appear for valid reason could not be permitted is symptomatic of non application of mind and Therefore, should not be permitted. This court Therefore, is of the opinion that the petitioner should be granted admission to the course in any of the DIET in the current academic session forthwith.

22. Rule is Therefore made absolute and the writ petition is accordingly allowed and the respondent for the foregoing reasons is directed to grant admission to the petitioner in the Elementary Teacher Education (ETE) in any of the DIETs for the academic year 2006-2008 in accordance with the rules and regulations forthwith. However, considering the facts and circumstances the parties are left to bear their own cost. dusty.