

(2010) 10 DEL CK 0217

In the Delhi High Court

Case No : Writ Petition (C) No. 6671 of 2010

Surbhi Malhotra and Another

APPELLANT

Vs

Principal Secretary, Deptt. of Training and Technical
Education, GNCTD

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 10 DEL CK 0217

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Vijay Sharma, for the Appellant; Anju Bhattacharya and Elgin Matt
Johan, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The two petitioners who are sisters had appeared in the Common Entrance Test (CET) held by the Board of Technical Education, Delhi for admission for the academic session 2010-11 in various full time diploma programme offered in the Institutes affiliated to the said Board. In the result declared, the petitioner No. 1 was at rank 5363 and the petitioner No. 2 at rank 8120 in the merit list. The petitioner No. 1 in the first round of counseling, as per the seats available, was allotted Electronics Engineering (Medical Electronics) in Kasturba Polytechnic for Women, Delhi. The petitioner No. 2, as per her rank, was not even called for the first round of counselling.

2. The present petition has been filed pleading that the petitioner No. 1 participated in the second round of counselling to get the desired course of Computer Engineering in the same Kasturba Polytechnic for Women but could not get it. It is further pleaded that in the second round of counselling, students with the rank between 7000-9000 only could apply; that the petitioner No. 2 applied but could get only the course of Diploma in Fashion Designing at Kasturba Polytechnic as against her preference for Electronics Engineering. The petitioners

filed this petition pleading that the students who had got admission upto the second round of counselling were not eligible to apply in the extended/3rd round of counselling; that in the extended/3rd round of counselling students with rank between 9000 to 12000 only were permitted to participate and in the said round admissions were made arbitrarily and not on merit; that thus those having much lower rank were admitted to preferred courses like Computer Engineering. The petitioners filed this petition for directing the respondent to allot a seat in Computer Engineering to the petitioner No. 1 and for allotment of the seat vacated by the petitioner No. 1 in Electronics Engineering to the petitioner No. 2. The petitioners, alongwith the petition, did not file the Rules of Admission. On the pleas in the petition and the practice followed by the respondent appearing to be in derogation of the principle of merit being given primacy, notice of the petition was issued even though the counsel for the respondent appearing on advance notice had stated on that date also that admissions was made as per rules in the prospectus and that the session had already begun and were studies/classes one and a half months underway.

3. The respondent, alongwith its counter affidavit, has filed a copy of the prospectus containing the Rules for admission. In the said prospectus it is clearly mentioned that "Migration will not be permitted during extended round of counseling". The respondent, alongwith the counter affidavit, has also filed a copy of the notice published regarding eligibility of candidates for 3rd (extended) round of counselling and which also clearly stipulates that "only candidates who have not secured any seat during 1st round and 2nd round of counselling are eligible to participate in extended round of counselling". The counter affidavit also refutes the pleadings that in the 2nd round of counselling only rank holders from 7000 to 9000 were eligible to participate. It is pleaded that as per the Rules even those who had participated in the 1st round of counselling and had secured seats were eligible to participate in the 2nd round and for this reason only the petitioner No. 1 even though had been allotted a seat in the 1st round, participated in the 2nd round also but could not succeed.

4. From the Rules of the admission, neither of the petitioners were entitled to participate in the 3rd (extended) round of counselling.

5. The Supreme Court, in *Amlan Jyoti Borooah Vs. State of Assam and Others*, has held that when a person appears in an interview without any demur and having accepted the change in the selection procedure sub silentio, by not questioning the same, he cannot later be permitted to turn around and contend that the procedure adopted was illegal. It was held that the petitioner in such case is estopped and precluded from doing so, the ratio being that candidates who take part in the selection process knowing fully well the procedure laid down therein cannot be permitted to turn back and assail the same after having being declared unsuccessful. Similarly, in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, it was held that it is now well settled that if a candidate takes a calculated chance and appears at the interview, then only because the

result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. It was held that when a person appears in the examination without protest and when he finds that he could not succeed in the examination he files a petition challenging the examination, the Courts could not grant any relief to such a petitioner. To the same effect is *Union of India and Another Vs. N. Chandrasekharan and Another*, and *K.H. Siraj Vs. High Court of Kerala and Others*,

6. Though the procedure adopted by the respondent, even if according to the Rules set down by the respondent allows those with lower ranks to get more popular and sought after courses in the event of vacancies therein and which were not available to those admitted in the 1st and 2nd round of counselling owing to there then being no vacancies, but in this petition there is no challenge to the said Rules. I have even otherwise considered the matter. If it were to be held that in the event of any seats remaining vacant, the entire process of counselling has to be repeated with the vacant seats being offered even to all those who had been admitted in the 1st and 2nd round of counselling, then it is likely to make the said process of counselling never ending and is likely to lead to delays in commencement of the academic session. The Supreme Court in *Arvind Kumar Kankane. Vs. State of U.P. and Others*, has held that if counselling goes on continuously for a long period, it will upset the course of study. It was held that there is no need to offer the seats to all and the action of offering the seat to wait listed candidates only was approved. The same question, as in this petition, had also arisen in *Archit Vashisht Vs. Guru Gobind Indraprastha University and Others* This Court held that the methodology of counselling is now a universally accepted procedure conforming to fairness; it affords maximum opportunity in a symmetrical manner, to such candidate for electing the course or the institution of his choice; the basic rules for such counselling session are set by the University or the academic Body entrusted with the task; that merely because an extended round of counselling is held and those with lower rank admitted is no ground to compel the university to disregard the Rules contained in the brochure. The argument of the same being contrary to the principle of primacy to meritocracy was met by holding that the public interest element of ensuring that such seats should not be wasted or allowed to lapse are to be balanced with another important public interest in maintaining certain academic standards. It was held that if no finality for the entire admission process is prescribed and it is allowed to remain uncertain, it would be against the public interest. The fine balance to be achieved between these two competing public interests was held to be a policy choice to be made by the concerned University. Such policy decision of the University was not found to be manifestly arbitrary or facially unreasonable so as to warrant judicial intervention under Article 226 of the Constitution of India. I respectfully agree with the said view applicable in the present case on all fours. In the present case also, the counsel for the respondent has informed that the first sessional examinations are already over

and no change, as sought, can be effected at this stage.

There is no merit in the petition. The same is dismissed. No order as to costs.