

(2012) 05 AHC CK 0228

Allahabad High Court

Case No: Special Appeal No. 607 of 2011

Sujeet Chaudhary

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 7, 2012

Citation: (2012) 6 ADJ 35

Hon'ble Judges: Yatindra Singh, J; Mohd. Tahir, J

Bench: Division Bench

Advocate: Ashok Khare and Vijay Kumar Tripathi, for the Appellant; R.N. Singh, Yashwant Varma and A.S.G.I., for the Respondent

Final Decision: Disposed Off

Judgement

1. The only question involved in this special appeal is, whether the candidates are ineligible to appear in the Joint Entrance Examination (JEE) for the IITs and the other institutions if they, after being successful, had taken admission or reserved their seats by depositing registration fee in the earlier JEE; even though they had not joined any programme.

THE FACTS

Sri Sujeet Chaudhary (the Appellant) is an OBC (Non Creamy Layer) candidate. He appeared in JEE 2010. It was conducted by Indian Institute of Technology (IIT), Madras.

2. The Appellant was successful in JEE-2010. He secured an over all rank of 2091. He was allotted Metallurgical and Materials Engineering at IIT, Roorkee in the first allotment.

3. A Successful candidate may improve his allotment by opting for second allotment. But in order to opt for the second allotment, he has to deposit registration fees and reserve his seat in the first allotment.

4. The Appellant sent an E-mail to the Chairman, JEE 2010 on 29.6.2010 whether the fees deposited by him would be refunded if--

The Appellant was not satisfied with the seat allotted to him in the second allotment; and

He was not taking admission.

5. The Appellant was informed that the fees would be refunded after deduction of processing fee of Rs. 1000/-.

6. The Appellant sent a bank draft of Rs. 40,000/- in favour of the Chairman IIT, Madras and indicated his option for the second allotment. However, his position did not improve: it remained the same.

7. The Appellant did not take admission in the course allotted to him. The fees deposited by him was refunded on 3.11.2010 after deducting the processing fee of Rs. 1000/-.

8. The Appellant again filled up form of JEE-2011. However, he was informed by the letter dated 7.3.2011 that his candidature was rejected on the ground that:

He had accepted admission by paying registration fee in JEE 2010; and

As per eligibility criteria, he was not eligible to appear in the JEE, 2011.

9. Against the aforesaid order, the Appellant filed a writ petition No. 17520 of 2011. It was dismissed on 5.4.2011. Hence, the present special appeal.

10. In this special appeal, an interim order was passed on 8.4.2011 permitting the Appellant to provisionally appear in the JEE 2011. Subsequently, another interim order was passed on 31.5.2011;

Directing that the Appellant's result be declared;

Permitting him to provisionally appear in the counselling;

Allocating provisional seat to him.

These actions were subject to result of the special appeal.

11. The Appellant was again successful and obtained over all rank of 874 and rank of 86 among the OBC candidates. However, before he could get provisional admission, the Chairman JEE 2011 (the contesting respondent) filed civil appeal No. 4986 of 2011 before the Supreme Court.

12. The aforesaid civil appeal was allowed by the Supreme Court on 4.7.2011 on the undertaking given by the contesting respondent that in case special appeal was allowed by the High Court then the contesting respondent would create an additional seat at IIT Delhi in the discipline Electrical Engineering and allot that to the Appellant in the academic year falling next to the date of decision of the High

Court.

THE APPELLANT'S SUBMISSIONS

13. We have heard Sri Ashok Khare and Sri VK Tripathi, counsel for Appellant; and Sri Yashwant Verma and Sri Roshan Gupta, counsel for the contesting respondent. With consent of parties, the special appeal is being finally decided.

14. The counsel for the Appellant submits that;

(i) The relevant terms and conditions in the JEE-2010 brochure are different than the relevant terms and conditions of the JEE-2011 brochure;

(ii) The terms and conditions of JEE-2011 brochure make the candidates ineligible if they deposit the fees, whereas the terms and conditions of the JEE-2010 brochure do not do so;

(iii) The Appellant had deposited the registration fee due to some confusion. He is a brilliant student. He may not be penalised.

1st & 2nd SUBMISSIONS: NOT ELIGIBLE TO APPEAR

15. The relevant part of terms and conditions of the brochure are item number 4(ii) of the "Important points to note" and "Fee Structure". They are reproduced in Appendix-1.

16. Undoubtedly, there is some difference in the wordings of these terms and conditions of these two years. However, it does not help the Appellant.

17. The Appellant was appearing in JEE-2011. It is brochure of JEE-2011 that is relevant. Even according to the Appellant's counsel, it bars the Appellant. This was also the position in the JEE-2010 brochure.

18. The condition number 4(ii) of JEE-2010 states that in case a candidate had accepted admission after qualifying the JEE in the earlier years by paying the full fees then it will bar the candidate from appearing in the next JEE whether or not he had joined any programme.

19. The Appellant had deposited the full registration fees and reserved the seat. It is not relevant that he joined the institute or not. By depositing the registration fees he had accepted admission in Metallurgical and Material Sciences at IIT Roorkee. The Appellant had knowledge that there was such a condition debarring a candidate.

20. Our country is over-populated and there is lack of infrastructure: every seat counts; no seat can be permitted to go waste. It is for this reason that such conditions as above are imposed. They are reasonable and rational.

21. It is not out of the place to mention that in the writ petition, a counter-affidavit was filed in April 2011. It was after one year. In the counter-affidavit it is stated that the seat reserved for the Appellant, was still unfilled: it has been wasted. In case the

Appellant had not taken admission or reserved his seat then it could have been offered to another candidate.

22. In our opinion, the candidature of the Appellant for JEE 2011 was rightly rejected. There is no merit in the appeal. However, it is not end of the matter.

3rd Submissions: seat may be offered-if vacant

23. It is common knowledge that all seats in the reserved category in the IITs are not filled up and often are transferred to the preparatory course. The candidates doing this course and these seats are subsequently adjusted in the next academic year.

24. The result of JEE 2012 is not out. It is possible that some seats may remain unfilled and transferred to the preparatory course for adjustment in the next academic year.

25. The Appellant is a good student. He had cleared JEE-2010. In JEE-2011, he has secured over all rank 874 in JEE-2011 and rank 86 among the OBC. It is a privilege to study at an IIT; it is a different experience.

26. In this case, a mistake was committed by the Appellant but some confusion was also contributed by the reply of the contesting respondent to the Appellant seeking clarification. Had this fact been clarified, the Appellant might not have deposited the fees--as the chance of improving his allotment was remote and his email indicated that he was not likely take admission in the discipline offered to him in the first allotment.

27. In view of above in case in JEE 2012, any seat remains unfilled in any of the IIT then instead transferring one of them to the preparatory course, the Chairman IIT-JEE-2012 may consider offering it to the Appellant at any of the IITs or at IIT Delhi as JEE 2012 is being conducted by it.

A CLARIFICATION

28. We make it clear that:

(i) The offer of seat after JEE-2012 is conditional and is at the discretion of the Chairman JEE-2012;

(ii) In case no offer is made as mentioned in the preceding paragraph then, this will not amount to any violation of any undertaking or any order;

(iii) In case any offer is made at any institute other than IIT Delhi or in a discipline other than Electrical Engineering then this will also not amount to violation of the undertaking given before the Supreme Court or any order.

CONCLUSIONS

29. Our conclusions are as follows:

(a) The Appellant had accepted admission by depositing registration fee and was not eligible to appear in JEE-2011.

(b) Considering the circumstances of the case, a seat as referred above might be offered in JEE-2012 if it remains vacant.

With the aforesaid observations, the special appeal is disposed off.