

(2010) 07 DEL CK 0395

Delhi High Court

Case No: Writ Petition (C) 4782 of 2010 and CM No. 9475 of 2010

Saurabh

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

Date of Decision: July 22, 2010**Hon'ble Judges:** Rajiv Sahai Endlaw, J**Bench:** Single Bench**Advocate:** Sanjoy Ghose, Mayuri Raghuvanshi and Kaustubh A. Raj, for the Appellant; Vinay Tyagi, for R-1 and Mohinder J.S. Rupal and Preeti Maniktalya for R-2 and 3, for the Respondent**Final Decision:** Allowed

Judgement

Rajiv Sahai Endlaw, J.

The petitioner, belonging to Scheduled Caste, had appeared for the examination held by the respondent No. 2 University of Delhi for admission to MBBS course. The petitioner secured rank 217. The petitioner was called for counseling on 9th July, 2010. The counsel for the respondent University informs that the counseling was scheduled to be held and held till 1430 hours only on that date. The petitioner failed to attend the counseling session. Under the Rules of the University of Delhi, a candidate who fails to attend the counseling forfeits his seat. It is the case of the petitioner that candidates with rank up to 238 were admitted and hence but for his failure to attend the counseling he is entitled to be admitted to the MBBS course in the Maulana Azad Medical College or the University College of Medical Sciences as per his rank.

2. The petitioner filed this petition stating that he is ordinarily a resident of Samastipur in Bihar, had gone to Shirdi for pilgrimage and then went to Mumbai to travel back to Delhi for counseling on 9th July, 2010; that he undertook the train journey on 5th July, 2010 and reached Delhi on 6th July, 2010; that on 9th July, 2010 he was suddenly afflicted with severe abdominal pain and owing where to he could not attend the counseling. It is further the case of the petitioner that in the past also

he used to suffer frequent abdominal pains and was under treatment in Moolchand Hospital and had been referred to All India Institute of Medical Sciences (AIIMS) where he had remained admitted from 3rd February, 2010 to 14th February, 2010 and was diagnosed as suffering from irritable bowel disease. Though the Rules of the respondent University permit the candidates to send somebody else on their behalf for counseling, the petitioner states that he could not send anybody else also for counseling because he thought he will himself be able to attend the same but was unable to do so till 1700 hours and could reach the designated place for counseling only thereafter but was returned since the counseling had ended at 1430 hours. The counsel for the petitioner today also informs that in fact the petitioner had appeared for his Chemistry Practical Examination for class XII held on 8th February, 2010 while still admitted to AIIMS as aforesaid.

3. The petitioner in this petition claims the relief of being considered as a wait listed candidate for further counseling if any to be held by the respondent University for admission to vacant seats if any.

4. The petition came up before this Court first on 20th July, 2010. The petitioner on that date relied on the judgment dated 30th July, 2009 of a Single Judge of this Court in W.P.(C) No. 10322/2009 titled Saniya Siddiqui v. University of Delhi. The counsel for the respondent University appearing on advance notice informed that the said judgment of the Single Judge had been set aside by the judgment dated 1st September, 2009 of the Division Bench in LPA No. 396/2009.

5. The Division Bench in Saniya Siddiqui's case (supra) though has set aside the judgment of the Single Judge was guided in doing so because the seat which Saniya Siddiqui was claiming in that case had already been allotted to one Zini Chaurasia and who had also preferred LPA No. 394/2009 against the order of the Single Judge and which LPA was also decided in judgment aforesaid dated 1st September, 2009. The Division Bench though disagreeing with the observation of the Single Judge that the Rule regarding forfeiture of seat for failure to appear in counseling is irrational, unreasonable and not in consonance with the merit based criteria, nevertheless held "Whether in a particular case the University authorities should be directed to consider the case of the candidate would depend upon the facts of the case". In view of the said observation of the Division Bench, the counsel for the respondent University was on 20th July, 2010 when the matter had come up first as aforesaid asked, to take instructions.

6. The counsel for the respondent No. 2 University of Delhi has today given break-up of the seats available in Maulana Azad Medical College & University College of Medical Sciences for MBBS course in the Scheduled Caste category and states that all the said seats have been filled up. He states that the vacancy if any shall be filled up by calling the next wait listed candidate and the petitioner having forfeited his seat cannot get preference over the next wait listed candidate even though lower in rank than the petitioner. He further points out that the Rule aforesaid was framed in

accordance with the Scheme formulated by the Supreme Court in [Sharwan Kumar and Vs. Director General of Health Services and another etc.,](#) . It is contended that liberty was given to the candidates to appear for counseling either themselves or send anybody else and it is only for this reason that the extreme penalty of forfeiture of the seat has been provided for such non-appearance. It is further contended that if the petitioner is directed to be placed in the waiting list as per his rank, the rights under the Rules, of the other candidates in the wait list would be affected. The counsel for the respondent University is however unable to state as to how many other candidates in the Scheduled Caste category are there for admission to the MBBS course and states that instructions in this regard can be obtained.

7. The counsel for the respondent University has also points out with reference to the travel documents/train ticket filed by the petitioner that it is not as if the petitioner was alone - he had travelled with two other persons and could have sent any of them. It is further stated that the e-mail of the brother of the petitioner to the College was also sent and received after 1700 hours on 9th July, 2010 and the petitioner himself made the representation for the first time only on 15th July, 2010. It is contended that the petitioner has not been prompt and has even otherwise not made out any case for being given preference as per his rank in the wait list category.

8. The contention of the respondent University is that under the Rules [framed by the Supreme Court in Sharwan Kumar (supra)], there is no power whatsoever to undo the forfeiture on failure to attend counseling. It is thus contended that this Court ought not to direct what is not provided for. I am unable to accept the said proposition in absolute terms. The law has always recognized the principle of "act of god" or "force majeure" or "impossibility beyond human control". A student who owing to his/her brilliance or sheer dent of hard work has achieved success and entrance to a coveted Medical College, if for such reasons is prevented from attending counseling cannot be dealt a double blow by denying him even chance of admission in wait listed category. It is not as if the Court is unseating student who has already been admitted or in whom rights have accrued. The Court would only be putting such student ahead of other students, lower in rank and who as of today have not secured admission and in whom no rights have accrued and who as of now have a mere chance of admission. The rule of forfeiture is intended to prevent the same student from securing admission in several medical colleges and which may lead to seats ultimately remaining vacant.

9. The Supreme Court in judgment in Sharwan Kumar has only provided for forfeiture. The Supreme Court in that case did not consider whether failure to appear for counseling for reasons beyond control of the candidate such forfeiture could be waived/set aside or not. The said question was however expressly for consideration before the Division Bench in Saniya Siddiqui (supra) and the Division Bench as aforesaid has held that depending upon the facts of the case, the

University can be directed to consider the case of the candidate. The Division Bench in Saniya Siddiqui refused to consider the facts of that case (which the counsel for the respondent University states are similar to this case) for the reason of seat by that time having already been filled up and the other candidate i.e. Zini Chaurasia having relinquished seat in another medical college. However that is not the position here.

10. The counsel for the respondent University has also referred to the judgment of Division Bench of this Court in [Dr. Reema Chawla, Dr. Shashank Sharma, Dr. Sumi Prakash, Dr. Monika Sehgal, Dr. Shailja Kundra, Dr. Kapil Gulati and Dr. Anchal Jain Vs. University of Delhi](#), to contend that even if the candidates who have failed to appear in counseling are again put in the waitlist as per their rank, it would have a cascading effect. I do not agree. As aforesaid, the waitlisted candidates above/before whom the candidate (who had failed to appear for counseling and is found to have been owing to reasons beyond his control) is placed, have no rights till then. Their chance to admission cannot be placed at a higher pedestal than merit. The Division Bench had given the reason of "chain reaction" which would upset the entire counseling taken place till then. That is not the position in such cases.

11. The seats in Medical Colleges are highly coveted. The petitioner who has secured a high rank cannot be said to have voluntarily relinquished his seat. It is common knowledge that seats in Medical Colleges in Delhi are preferred over seats in several other Medical Colleges in the country. No case of the petitioner having voluntarily failed to attend the counseling or having failed to attend counseling for reasons of having first sought admission elsewhere is found. The documents filed do show that the petitioner owing to health reasons was prevented from attending counseling. The negligence and mistake (in not sending anyone else for counseling) even if any of the petitioner who is a young lad of 18 years has to be ignored and cannot come in the way of his career and future. I am satisfied that the petitioner, for reasons beyond his control, could not attend the counseling and a case for directing the respondent University to consider the petitioner as a wait listed candidate as per his rank is made out.

12. The petition is accordingly allowed. The respondent No. 2 University of Delhi is directed as aforesaid. No order as to costs.

Copy of this order be given dasti.