

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No.10751/2009**

% **Date of Decision: 10.09.2009**

Shri Ankit Gautam Petitioner
Through Mr.Govind Kaushik, Advocate.

Versus

State (Govt of NCT, Delhi) and another Respondents
Through Ms.Avnish Ahlawat, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner who is 100% blind is seeking direction to respondent No.2, State Council of Educational Research & Training to allow the petitioner to deposit the fees and grant admission in Diploma Course in Elementary Teacher Education Program on the basis of his merit under physically handicapped category.

2. The petitioner contended that he is 100% blind and he had appeared in the 10+2 examination in May 2009 and secured 367 marked out of 500 marks, i.e., 73.40% marks. The petitioner had

submitted form for admission to Diploma Course in Elementary Teacher Education in June/July 2009. According to the petitioner, Diploma Course in Elementary Teacher Education is run by respondent No.2 which is an autonomous body under Government of NCT of Delhi. According to the schedule of admission, the filled up forms had to be submitted by 4th July, 2009 and on the basis of the qualifying examination, the merit list had to be put up by the respondent No.2 on the website www.scertdelhi.org on 24th July, 2009. The candidates whose names were on the merit list had to appear for verification and submit all original documents and fees on 24th, 25th and 27th July, 2009 between 10 AM to 5 PM. The second list for admission was to be put up by respondent No.2 on 6th August, 2009 whereas the waiting list had to be put up on 18th August, 2009 according to the schedule of admission.

3. The petitioner's grievance is that the first list of admission was not put up on 24th July, 2009 rather it was put up on 27th July, 2009. No intimation was given to the petitioner regarding change of schedule of declaration of merit list and revised dates for verification and admission. The petitioner has contended that since he is 100% blind he could not access the website on his own and therefore he approached a cyber café, "Sai Cyber Café" for ascertain his name in the admission list. It is contended that the person at the Cyber café had told him that his name had not appeared in the admission list. The

petitioner also asserted that he could not take help of his father as he is working with Indian Air Force and is posted at Pune. According to the petitioner, since he is 100% blind he could not come to know about his result till 3rd August, 2009 whereas the revised last date for depositing the fees was 30th July, 2009 which was also not communicated to the petitioner. According to the petitioner, his father, therefore, came on 3rd August, 2009 and approached the respondent No.2 seeking admission to Diploma Course in Elementary Teacher Education (ETE) under the physically handicapped category, however, it has been turned down by the respondents.

4. The petitioner, thereafter, filed the present petition contending inter alia that he is a meritorious candidate and on account of his being 100% blind, he had to depend on other to get his result checked and he was told that his name did not appear in the first merit list which was put up on 27th July, 2009 instead of 24th July, 2009 as was indicated in the bulletin of information. It is pleaded that in the circumstances, the petitioner cannot be denied his right to get admission because he could not approach 30th July, 2009 revised date for taking admission which was not communicated to the petitioner.

5. The petition is contested by the respondent contending inter alia that reporting of candidate whose name had appeared on the website in

the first list was mentioned as 24th, 25th and 27th July, 2009 from 10.00 AM to 5.00 PM. The candidates whose names were included in the first list had to appear on said dates from 10 AM to 5 PM and second list was to be declared on 6th August, 2008.

6. Relying on clause 9(f), it is contended that the candidates who failed to report for admission on the date and time designated for particular allotted institute, are not be entertained for admission under any circumstances at later stage. It is also asserted that in case of exigencies like death of family members, accidents, the guardian/representative of candidate along with written request and all original documents and fees etc. had to report to the principal of allotted DIET/institute on the specified date and time so that the seat of a candidate could be retained accordingly.

7. The respondent No.2, however, admitted that first list for admission could not be put up on the website on 24th July, 2009 and the first list was put up on 27th July, 2009 for admission with effect from 28th July, 2009 to 30th July, 2009. It is contended that those candidates who did not get admission in the first list by appearing from 28th July, 2009 to 30th July, 2008, their admission had been cancelled and the seats have been giving to the other candidates in the waiting list. The respondent No.2 categorically denied that the name of the

petitioner did not appear in the admission list of 27th July, 2009. It is contended that since the petitioner did not appear on 28th, 29th and 30th July, 2009, he has lost his chance and his seat has gone to the second list candidate. The admission of the petitioner is also resisted on the ground that more than 100 candidates like the petitioner have not been granted admission because they could not deposit the fees within the stipulated time.

8. The petitioner filed a rejoinder categorically asserting that since the result was not declared on 24th July, 2009, he went on 28th July, 2009 to Sai Cyber Café at Village Mohamadpur near Sector 1, R.K. Puram which is near to his residence and an employee who accessed the site on behalf of the petitioner told him that his name is not in the select list. The petitioner has also produced a copy of the Cyber Café slip to indicate that he had approached the said cyber café on 28th July, 2009 and on his behalf internet was used from 10 AM to 10.30 AM. The petitioner also claimed admission on the ground that if exigencies like death or accidents itself, the seat of a candidate can be retained, therefore, in the circumstances of the petitioner who is completely blind and since the result was not declared by the respondent No.2 on the date notified by them and no intimation was given, therefore, the circumstances are exceptional and he is entitled for admission to the said course.

9. The petitioner also contended that the respondents have issued the list of other category candidates separately which includes the name of only four candidates. The petitioner also relied on the order dated 12th August, 2009 passed by this Court directing the respondent to keep one seat available for the petitioner in Diploma Course in Elementary Teacher Education for session 2009-2010 at DIET, Motibagh Centre, New Delhi. It is also contended that the respondents have not denied that the one seat could not be retained at the said DIET pursuant to order dated 12th August, 2009 as the said fact has not been denied in the counter affidavit dated 28th August, 2009 filed on behalf of the respondent.

10. This court heard the learned counsel for the parties. This is not disputed that the petitioner is 100% blind. If the petitioner is 100% blind and his father was also not posted in Delhi, the reliance of the petitioner on some other person cannot be faulted. The respondent No.2 also cannot absolve themselves from the consequences of not putting up the list of admission on 24th July, 2009. This is also not disputed and cannot be disputed that no individual intimation were sent to the candidates whose names were included in the first admission list. In case the respondent No.2 had put the list on 24th July, 2009, the petitioner could not be permitted to make the grievance

which has been made by the petitioner on account of not displaying the first admission list on 24th July, 2009 according to the schedule of admission. If the list was not put up on 24th July, 2009, it was not expected from petitioner to keep on accessing the website everyday to check as to when the list would be put up by the respondent No.2.

11. The plea of the petitioner that he approached a cyber café in order to get admission list checked on the website on 28th July, 2009 cannot be disbelieved. The version of the petitioner that he got the website accessed through someone, a boy at the cyber café on 28th July, 2009 who told him that his name did not appear in the first admission list, cannot be doubted. The 100% disability of the petitioner and the fact that the respondent No.2 also faulted in not displaying the first admission list on 24th July, 2009 will make the case of the petitioner as an exceptional case or such a case for which an eventuality of retaining the seat should have been resorted to by the respondent no.2. Retention of seat under clause 9(f) could not be denied to the petitioner because the father of the petitioner who was posted at a considerable distance from New Delhi could not reach Delhi between 28th to 30th July, 2009. The respondent no.2 cannot absolve themselves from the consequences of not adhering to scheduled dates for putting up the admission list on the internet. If the admission list had been delayed for the reasons, which have not been disclosed, the respondent no.2 should have given

personal intimation to the candidates whose names had appeared in the admission and who were seeking admission under the category of physically handicapped. The petitioner cannot apply the rigor of rule of cancellation of the seat in case of petitioner or his guardian not approaching the respondent by the last date notified by the respondent no.2.

12. The plea of the learned counsel for the respondent no.2 that since the father of the petitioner and petitioner had not approached the principal of the allotted DIET cannot be accepted on the ground that the seat of the petitioner stood cancelled on 30th July, 2009. The second admission list was to be put up on 6th July, 2009 and the petitioner with his father had approached the respondent no.2 on 3rd July, 2009 which fact cannot be denied. In these circumstances, the respondent no.2 should have directed the principal of the concerned DIET to retain the seat of the petitioner and ought not to have offered to other candidate below the merit position of the petitioner. Non retention of the seat which was allocated to the petitioner could be worked out contrary to the interest of the petitioner. In the circumstances, it cannot be held that the petitioner had forfeited his right to admission despite petitioner approaching the respondent no.2 on 3rd August, 2009.

13. The plea of the respondent no.2 that they are about hundred candidates like petitioner who have not been given admission on account of not approaching the allotted DIET by the last date cannot be accepted. Though in the counter affidavit filed on behalf of respondent no. 2 it is contended that there are hundred candidates like that of petitioner, however, it is not disclosed whether any of them is hundred percent blind and has sought admission in the category of physically handicapped. The case of the petitioner in the facts and circumstances cannot be equated with other candidates who could not approach the allotted DIET by the last date notified by the respondent no. 2 in the facts and circumstances. Circumstances will vary from case to case and on the ground that other candidates will also become entitled for admission, the petitioner cannot be denied admission to the said course who is 100% blind and who despite efforts on his part, could not approach the respondent No.2 on the new dates fixed by respondent no.2 after failing to declare the admission list on 24th July, 2009 according to schedule of admission. In any case allegedly similarly placed candidates have not approached this court and in the circumstances, the relief sought by the petitioner cannot be denied to him on this ground.

14. If on account of death of the family member, accident etc. the seat of a candidate could be retained for the purpose of production of

original documents later on, in the peculiar facts and circumstances of the case, it cannot be held that the petitioner has forfeited his right for admission to Diploma Course in Elementary Teacher Education.

15. This has not been disputed that pursuant to interim order passed by this court dated 12th August, 2009, the respondent No.2 have retained one seat in Diploma Course in Elementary Teacher Education in DIET, Motibagh Centre, New Delhi in the physically handicapped quota as this fact has not been denied by the respondent No.2 in their counter affidavit. Therefore, in the facts and circumstances the respondent No.2 is liable to admit the petitioner in Diploma Course in Elementary Teacher Education in DIET Motibagh Centre, New Delhi. Therefore, it will be just and appropriate to direct the respondent No.2 to admit the petitioner in the said DIET.

16. Therefore, in the peculiar facts and circumstances of the petitioner, the writ petition is allowed. The respondents are directed to admit the petitioner in the Diploma Course in Elementary Teacher Education at DIET Motibagh Centre, New Delhi. The petitioner is permitted to deposit the fees and to produce his relevant documents entitling him for admission to the said course within two weeks. The petitioner be given admission forthwith in the facts and circumstances

and be allowed to attend classes. Considering the facts and circumstances of the case, the parties are left to bear their own costs.

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September 10th, 2009
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ANIL KUMAR, J.