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

% Judgment Delivered on: 26.03.2010

+ W.P.(C) 10766/2009

DR.SATYENDRA KUMAR GUPTA Petitioner

Through : Mr. Arun Kumar Sharma and
Ms. Vandana Sharma and Mr. Mehul
Sharma, Advs.

versus

UOI & ORS. Respondents

Through : Ms. Prema Priyadarshini, Advs. for
respondents no.1 and 4.
Mr. Atul Kumar, Advs. for respondents
no.2 and 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Petitioner is stated to have appeared in All India Engineering / Architecture Entrance Examination, which was held on 26.4.2009. The result of the entrance examination was declared on the website of the respondents on 30.5.2009 and online registration for counselling, on the basis of the result of the AIEEE, commenced from 8.6.2009 to 28.6.2009.
2. Learned counsel for the petitioner submits that the petitioner entered his choice of Engineering College online on 12.6.2009 and result of the on line counselling was declared by Central Counselling Board at Warrangal on the website on 30.6.2009. The petitioner was shocked to learn that his name was not included in the list for first round of counselling held on 8.7.2009. Petitioner sent an e-mail along with his print out of his 314 choices of

Engineering College to the Registrar, NIT, Warrangal, and also reached Motilal Nehru College of Engineering at Allahabad on 1.7.2009. The petitioner again sent a fax to NIT, Warrangal, for inclusion of his name in the second round of counselling and also met the Head of the Computer Department at Warrangal on 4.7.2009. Petitioner was denied counselling on the ground that he had not locked his choice online within the time allowed.

3. It is the case of the petitioner that he was residing at Kanpur and there was no delay on his part and he had locked his choice on 22.6.2009 on the website www.ccb.nic.in and filled up 314 choices of Engineering College and finally the remark appeared on the screen "save and exit". The Petitioner has also filed a photocopy of his choices filled in by him in the online form.
4. Learned counsel for the petitioner submits that on account of a technical snag the petitioner should not be made to suffer.
5. Learned counsel for respondents no.1 and 4 submits that as of today the counselling stands concluded; the Session has commenced; and, in fact, the first semester stands completed. Counsel further submits that once the admission process has been completed the petitioner cannot be granted admission. Learned counsel for the petitioner, however, submits that even after the ninth round of counselling, certain seats are available.
6. Learned counsel for petitioner submits that in identical matters where despite efforts made the candidates could not lock their choices due to technical problem, this Court had allowed the writ petitioners. Counsel for petitioner relies upon a common order

passed in the cases of **Perwez Alam and Others Vs. Union of India & Others**, W.P.(C)No.9960/2009; and **Mayank Sachan Vs. CBSE NEW DELHI**, W.P.(C)No.10137/2009, relevant portion of which is reproduced below:

5. It is common case of the petitioners that they in fact locked their choices online before the last date and if at all the choices could not be locked that could be due to technical problem in the internet and the petitioners should not be made to suffer on account of technical snag in the system. Counsel for petitioners have strongly urged before this Court that all students in India are not similarly placed as those residing in Metropolitan cities and large towns and belong to higher strata of society, who are fortunate enough to have excess to the internet and computers.
7. It is contended by counsel for the parties that the Ministry of Human Resource Development, Government of India being conscious of the technical snag and also the fact that students from far flung areas may not have excess to the computer facilities, directed that special counselling be held between 8th and 13th September, 2009. It is also contended that this fact is also born out from the additional affidavit filed in connected writ petition [WP(C)No.9922/2009].
8. Counsel for respondents (UOI and Central Counselling Board National Institute of Technology) submit that as per the prospectus it was necessary for the students to lock their choices online and in the absence of locking of choices, the petitioners cannot be considered for admission.
9. I have heard counsel for the parties and given my thoughtful consideration to the matter. It may be noticed that during the pendency of these writ petitions, this Court had allowed the petitioners to participate in the process of counselling according to their merit and also directed if they are found eligible, should be considered for provisional admission. The petitioners in both these writ petitions have been granted provisional admission. In an identical connected writ petition [WP(C)No.9922/2009] an additional affidavit has been filed by respondent, which reads as under:

“2. That as per the Interim directions of the Hon’ble High Court, the Writ Petitioner was included in the 5th round of counselling and provisionally admitted in Electrical Engineering Branch in N.I.T., Srinagar under home state quota. After completion of the 7th round of

counselling, few seats in least branches have remained unfilled in NITs and IIITs. As such as per the directions of the Ministry of Human Resource Development, Gol... New Delhi, a special counselling was held to fill the vacant seats in NITs and IIITs from 8th to 13th September, 2009 and the results were declared on 15th September, 2009. This special counselling was held with a view to provide an opportunity to all the candidates who did not lock their choices earlier and who did not report at their respective institutes after seat allotment in the main counselling. At the time of declaring the results, a waiting list was also displayed in the website of the CCB., i.e., www.ccb.nic.in for each one of the participating Institutes separately. The candidates, who were allotted seats, were required to report at their respective allotted Institute on or before 22nd September, 2009. On 23rd September, 2009, the lists of vacant seats were prepared and also the list of successful candidates from the waiting lists was displayed and they were required to report at their allotted Institutes on or before 30th September, 2009 and accordingly the counselling was closed on 30th September, 2009.

3. I further submit that the least ranker who was allotted seat as per the waiting list in the special counselling under the O.P. category in N.I.T. Srinagar was Mr.Nishant Naveen, whose all India Rank is 34440. But whereas, the Writ Petitioner All India Rank is 55288 which clearly indicates that the Petitioner is not eligible to get any seat allotment in N.I.T., Srinagar in any branch much less in Electrical Engineering in the special counselling.

In view of the above facts, the contention of the petitioner for the Writ Petitioner that the Writ Petitioner is eligible for admission, is not tenable. It is a fact that some of the seats in N.I.T., Srinagar are still vacant because the candidates, who were allotted seats in the special counselling and also in the waiting list, did not join. But, this does not confer any right to the Petitioner to get admission as per her merit in All India Rank (list of candidates who were allotted seats in the waiting list is enclosed.)”

10. Mere reading of the additional affidavit would show that as per the directions issued by the HRD Ministry, special counselling was held in 9th round between the period 8th to 13th September, 2009, to fill the vacant seats and also with a view to provide an opportunity to all candidates who do

not lock their choice earlier.

11. After hearing counsel for the parties, I am satisfied that the petitioners had made *bona fide* attempt to lock their choices, however, due to technical snag the choices could not be locked, copy of the print out has been placed on record by petitioner No.2 in [W.P.(C) 9960/2009]. I find no force in the submission of counsel for respondent no.3 that the print out does not show the unique number which would have been displayed in case the choice had been locked. This is precisely the grievance of the petitioners that despite the effort having been made the choice was not locked due to a technical snag. It is not in dispute that all the petitioners have been found eligible and were granted provisional admission in various institutes. It is also not in dispute that counselling was in fact carried upto 9th round. The additional affidavit makes it clear that the special counselling was held with a view to provide an opportunity to all candidates who did not lock their choices, in effect the lapse if any on account of non-locking of the choices stand condoned. Accordingly both the writ petitions [W.P.(C) 9960/2009] [W.P.(C) 10137/2009] are allowed. Provisional admission granted to petitioners is confirmed.
12. Admittedly the petitioner had secured an all India ranking of 83349 and the State ranking of the petitioner is 12169. The petitioner would have been eligible for counselling. Having regard to the fact that petitioner was eligible and he had made an attempt to lock his choices online on 22.6.2009, the petitioner cannot be made to suffer on account of a technical error. The petitioner can, however, not be granted admission mid-session as the entire process for admission stands concluded.
13. Learned counsel for the petitioner, at this stage, submits that petitioner is willing to take admission in the next academic session i.e. 2010-2011 and he relies on of ***Prabhat Kumar Vs. Central Board of Secondary Education and Others***, WP(C)No.12543/2009, where the petitioner despite being eligible was not granted admission and subsequently a stand was taken

by the respondent that admission cannot be granted as the admissions stand closed. Paras 3 to 6 read as under:

3. Counsel for petitioner submits that on 13.9.2009 special counseling for various students was carried out, for which the petitioner also applied and result was declared on the internet on 15.9.2009 and petitioner was kept on the waiting list in the SC category in Moti Lal Nehru National Institute of Technology, Allahabad. Despite making repeated attempts, petitioner was not granted admission, however, he was shocked to learn that the result has been declared on 30.09.2009 and the last date to report to the office of respondent no.3 was 30.9.2009 itself. The petitioner is stated to have rushed to the office of respondent no.3 at Allahabad, but could reach the office only at 5:15 p.m. and he was informed that he would have to attend the office of respondent no.2 i.e. National Institute of Technology, Warangal, Andhra Pradesh. Thereafter petitioner has been pursuing his case with respondent no.2 to enable him to get admission at Moti Lal Nehru National Institute of Technology, Allahabad, U.P., however, he was not considered on account of delay.
4. Counsel for respondents 2 and 4 on instructions submits that the seat is available in Bio Technology in Moti Lal Nehru National Institute of Technology, Allahabad and the petitioner is eligible for the same.
5. Counsel for petitioner submits that he has no objection and is willing to pay the necessary fee to the institute within one week from today. At this stage, counsel for respondent no.2 and 4 submits that first semester examination has already concluded and the result has been declared, thus it would not be possible to promote the petitioner to the second semester in the absence of his not having applied in the first semester examination. Counsel for petitioner submits that petitioner should not be made to suffer on account of the fault of the respondents. Counsel further submits that petitioner is willing to take admission in the academic session 2009-10 and will join the semester degree from 2010-2011. Counsel for respondent no.2 & 4 has no objection to the same.
6. In view of peculiar facts and circumstances of this case, petitioner will be granted admission for the session 2009-10, however, he will sit for his semester from 2010-2011 onwards. Petitioner is stated to have

already paid Rs.25,000/- and is ready to pay the balance fee.

- 14.** Learned counsel for the petitioner submits that the case of the petitioner is no different to the case of **Prabhat Kumar** (supra), as well as **Perwez Alam and Others** (supra) and **Mayank Sachan** (supra), in fact, the case of the petitioner is on a better footing as even today over 1300 seats are lying vacant.
- 15.** Accordingly, taking into consideration the facts of this case that the petitioner has made a bona fide attempt to lock his choice on 22.6.2009, however, his choice could not be locked due to a technical snag, which has also been confirmed by the respondents in W.P.(C)No.9922/2009, present petition is allowed. Having regard to the submission made by counsel for the respondents that the admissions stand closed, the petitioner will be considered for admission in the academic session 2010-2011. The fees shall be deposited by the petitioner by 16.4.2010 at Moti Lal Nehru College, Allahabad, or such other college, which may be allotted to the petitioner by respondent no.4.
- 16.** Petition stands disposed of in view of above.
- 17.** Let copy of the order be given dasti to counsel for the parties under the signatures of the Court Master.

G.S. SISTANI, J.

March 26, 2010
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