

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 30.08.2011

+W.P.(C) No.5947/2011 and C.M.No.12033/2011

Yatharth Gupta

.....Petitioner

Through: Mr. R.K. Saini and Mr. Sitab Ali
Chaudhary, Advocates.

Vs.

Netaji Subhas Institute of Technology
& Anr.

.....Respondents

Through: Ms. Avnish Ahlawat, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.Oral :

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondents to allow the petitioner to participate in the 3rd round of second phase of counseling as per his rank and merit to seek admission in B.E. Course. The petitioner also seeks directions to direct the respondent No.1 to make a proper provision in the prospectus to provide further time or to depute an authorized representative of the candidate, who due to some emergent circumstances is not able to present himself in the second phase of counseling.

2. Brief facts as set out by the petitioner in the petition relevant for deciding the present petition are that the petitioner is a resident of Ghaziabad and after having qualified his 12th examination of CBSE Board had appeared in the All India Engineering Entrance Examination (AIEEE), 2011 conducted by the CBSE and in the said examination he secured an All India Rank of 7936 and general category rank of 6638. After having qualified the said entrance test, the petitioner sought his admission with Netaji Subhash Institute

of Technology, the respondent No.1 herein, which is an autonomous institute of the Govt. of NCT of Delhi (respondent No.2) and is affiliated with the University of Delhi, imparting education in engineering courses. The petitioner got himself registered on-line to seek admission in B.E. Course in the respondent No.1-institute and that he deposited the necessary registration fee of Rs.1,000/- on 13.06.2011. As per the criteria laid down in the prospectus issued by the respondent No.1, the admission process has been divided into two phases, with each phase having three rounds of counseling. It is also the case of the petitioner that as far as first phase of counseling is concerned, the same is on-line and for consideration of participation in the second phase of online counseling, physical presence and marking of attendance has been made compulsory and the said date as per the prospectus (for outside general category candidates) was 26.07.2011 and for Delhi region general candidate the date was fixed as 25.07.2011. It is also the case of the petitioner that as per his rank he could not make up in the first phase of

counseling and, therefore, as per the laid down requirements in the said prospectus, the petitioner was required to present himself and mark his attendance to participate in the second phase of counseling on 26.07.2011. It is also the case of the petitioner that because of suffering from viral fever and severe gastritis on 25.07.2011 he was taken to nearby hospital for treatment where the Dy. Medical Superintendent attending the petitioner advised him rest for a period of four days. It is also the case of the petitioner that against the medical advise the petitioner left his home on the morning of 26.07.2011 at about 8:30 a.m. and reached Anand Vihar Metro Station by bus, but after reaching there his physical condition was so bad that he started feeling unconscious and was brought back to his home by his uncle. It is also the case of the petitioner that it took him 4-5 days to regain his health to normal and after having recovered from his illness, he along with his father visited the respondent-institute on 01.08.2011 so as to meet the officials of the respondent No.1 to check his admission status . It is also the case of the

petitioner that although the counseling was still in progress but he could not get any definite reply from the officials of the respondent No.1 and on 08.08.2011 the petitioner and his father met the Chairman of the Admission Committee, who informed them that the petitioner still stands a fair chance to get admission in the third round of second phase of counseling as the students having rank of 6700 of outside Delhi category had already been considered in the second round of second phase counseling. The said Chairman, however, informed the petitioner that he already stands debarred to participate in the said counseling, as he had failed to present himself and mark his attendance on 26.07.2011. It is also the case of the petitioner that he made a representation on 12.08.2011 to the Director of the respondent No.1-institute to plead for his participation in the third round of second phase counseling to be held on or before 31.08.2011. It is also the case of the petitioner that a part of third round of second phase of counseling was held on 13.08.2011 itself in which candidates upto the rank of 8700

(outside Delhi category) were considered for admission, but yet some seats were still available for which a further round of counseling was to be held by the respondent No.1-institute. In the said background of facts, feeling aggrieved by being denied to participate in the counseling, the petitioner has approached this Court.

3. Mr.R.K.Saini, learned counsel appearing for the petitioner has strongly contended that the petitioner had duly qualified the entrance examination i.e. AIEEE, 2011 conducted by the CBSE which is a highly competitive examination and had secured All India Rank of 7936. The contention of counsel for the petitioner is that the petitioner would be deprived to get a seat in the respondent No.1-institute mainly because he could not present himself to mark his attendance on 26.07.2011, that too on account of circumstances beyond his control. Counsel also argued that no provision has been made by the respondent No.1-institute in the prospectus to deal with the supervening circumstances due to which the candidate may not be able to cause his

physical presence on the stipulated date and time. Counsel also raised a plea that even in the prospectus, there is no provision where a student can also be represented through an authorized representative to allow the student to be registered to participate in the second phase of counseling process. Counsel also submits that it is not the case of the petitioner that he did not turn up for the counseling or refused to take admission after having got the seat in the first phase of counseling or there was any failure on the part of the petitioner not to participate in the first phase of counseling, although as per his rank he could get the seat in the first phase of counseling, as in such cases only the candidate can be refused to participate in the next phase of counseling. The argument of counsel for the petitioner is that mere absence of the petitioner just to report his physical presence and mark his attendance on the stipulated date i.e. 26.07.2011 with no provision to provide for any supervening circumstance, such denial to the petitioner would play havoc on his career. In support of his arguments, counsel for the petitioner has

placed reliance on the judgment of this Court in the case of *Saurabh Vs. GNCT of Delhi & Ors. WP(C) 4782/2010 decided on 22.07.2010.*

4. Opposing the present petition, Ms. Avnish Ahlawat, learned counsel for the respondent submits that in terms of the laid down instructions in the prospectus for the year 2011-12, the physical presence and marking of attendance for the second phase of counseling/admission has been made compulsory for the general candidates belonging to Delhi region as well as outside Delhi region who seek their admissions in the B.E. Course. Giving the rationale behind the said instruction requiring the candidates to physically present themselves, counsel submits that because many candidates are seeking their admissions in various institutes at the time of second phase of admission/counseling and only those candidates who are seriously interested to seek admission in the respondent-college come forward to seek their admissions and due to that reason their physical presence for the registration of second stage of counseling

has been made compulsory. Counsel also submits that the entire schedule of counseling has been duly notified in the Bulletin right from the first round of counseling of first phase till the end of second phase of counseling. The contention of the counsel for the respondent is that the entire process of admissions as per the laid down time schedule must come to an end on 31.8.2011. Counsel also submits that the present petitioner did not present himself on 26.7.2011 to mark his physical presence for his registration in the second phase of counseling, and therefore as per the laid down Instructions, the petitioner became ineligible to participate in the second phase of counseling. Counsel also submits that the petitioner did not approach the respondent college till 12.8.2011, which again shows non-seriousness on his part. Counsel also submits that even the medical certificate filed by the petitioner does not show whether the petitioner was suffering from any serious kind of ailment which prevented the petitioner to present himself to attend the second phase of counseling. In support of her arguments, counsel for the

respondent has placed reliance on the judgments of this court in *Ms. Nishtha Jain (Minor) Vs. University of Delhi & Ors. W.P.(C) No. 13811/2006 decided on 13.11.2006*, and *Akhil Lohchab Vs. University of Delhi, W.P.(C) No. 5707/2010 decided on 18.11.2010*.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. It is not in dispute between the parties that the petitioner was not allowed to participate in the second phase of counseling only because of the fact that he did not physically present himself to mark his attendance on 26.07.2011. There are three rounds of counseling in both the phases i.e. first phase and second phase and both the counselings are on-line. The candidate on the basis of All India Rank obtained by him in AIEEE could apply for on-line registration to participate in the counseling as per the schedule laid down in the prospectus. The first round of first phase of counseling was to commence on 04.07.2011 and the third round of second phase of counseling was to finally end

on 31.08.2011. The petitioner is a candidate from outside Delhi region and belongs to General category and as per his rank he could not get a seat in the first phase of counseling and to exactly know the exact number of students desirous of participating in the second phase of counseling the respondent-institute had laid down a requirement of physical presence of the students who would be participating in the second phase of counseling and who have not been allotted any seat till the third round of first phase of counseling process.

7. In the prospectus 2011-12, issued by the respondent institute, it has been clearly indicated that to participate in the second phase of counseling, physical presence and marking of attendance are compulsory for all those candidates who were not allotted any seat in the 3rd round of first phase of counseling. It has been further indicated that based on the physical presence and marking of attendance and requisite information provided by the candidates, the online seat allotment result of second phase

will be available online at the website of the respondent as per the schedule for participation in the various rounds of second phase of counseling indicated therein. The said provision for physical presence and marking of attendance has been made compulsory, possibly to exactly know as to how many students are serious in seeking admission in the respondent institute and also about those who have not been allotted any seat till the 3rd round of first phase of the counseling. No fault thus can be found in the incorporation of the provision to make physical presence and marking of attendance compulsory as the institute has every right to know the seriousness of those candidates aspiring to seek admission in their institute as at the same time the same very student may either secure admission in other such institutes or may not be interested to seek admission in the respondent institute. The dissension is not thus with the rule of making the physical presence and attendance compulsory for all those candidates who were not allotted any seat till the 3rd round of first phase of counseling, but the problem is

certainly created when no provision has been made for making an exception for all those who failed to present themselves in the counseling due to circumstances beyond their control including the medical exigencies. Surprisingly, the respondent has also not made any provision where the candidates in such a situation give an authority to their family members to represent them to mark their attendance. It would be a travesty of justice if a student, who after having put his hard work qualifies the highly competitive test; secures a meritorious position but gets deprived to seek admission in an institute as per his rank and merit just because he could not physically present himself to mark his attendance on a stipulated date so as to make him eligible to participate in the second phase of online counseling due to reasons beyond his control . It cannot be ruled out that due to certain exigencies, which certainly includes medical exigencies as well, a student himself may not be able to physically present himself to mark his attendance on a particular given date which will consequently disentitle him

to participate in the second phase and will most certainly prove fatal to his career as he is deprived admission on this ground alone. Ordinarily, the courts lean in favour of the laid down rules and instructions and it is only for exceptional reasons, an unwritten rule needs introduction in exceptional circumstances to advance the cause of justice. No explanation came forth from the respondent as to why no such provision has been made in the prospectus to deal with the medical exigencies or other emergent situations beyond human control, when possibly an aspiring student may not present himself to mark his attendance on a particular date. The respondent has also not advanced any reasons for not even making a provision for such a candidate to give authority to his blood relation to represent him to mark his attendance on a stipulated date. In such like situations, the writ court cannot act as a helpless, hapless mute spectator as the prime duty of the court is to dispense justice and not to entrap itself in the cobwebs of those rules which do not cater to deal with the normal befalling of human lives. It is also

pertinent to mention that this court in similar circumstances in WPC No. 3166/2011 and WPC No.3237/2011 had granted relief to the petitioner who could not physically present themselves at the time of counseling due to medical exigencies. The petitioner before this court is a resident of Ghaziabad and on the evening of 25.07.2011 he had suffered severe gastritis fever but still he made an attempt to leave his place on the morning of 26.07.2011 to proceed for marking his attendance but could not succeed as he felt unconscious at Anand Vihar Metro Station. As per the petitioner he along with his father had visited the respondent institute on 01.08.2011 but finding no plausible answer from the officials of the respondent, he ultimately, vide his letter dated 12.8.2011 to the director of the respondent institute pleaded his case for online participation in the second phase of counseling. There is no reason to disbelieve the said version of the petitioner, although this court does feel that the petitioner should have been more active and diligent in taking up his matter with the respondent institute and

negligence is writ large on the part of the petitioner but still considering the future of the petitioner and particularly looking into the fact that the third round of the second phase of counseling is still in progress and participation of the petitioner will not deprive any candidate who is higher in rank to the petitioner or disturb a candidate who has already secured a seat, this Court feels it to be a fit case to exercise its extraordinary writ jurisdiction for the purpose advancing the cause of justice and equity.

8. The two aforesaid judgments relied upon by the counsel for the respondent are not applicable to the facts of the present case and therefore the same cannot come in aid of the defence raised by the respondent in their counter affidavit.

9. In the light of the above discussion, this court is satisfied that the petitioner for the reasons beyond his control i.e. because of his medical conditions could not present himself to mark his attendance to participate in the second phase of online counseling and therefore to balance

the equities and in the peculiar facts and circumstances of this case, the petitioner deserves to be allowed to participate in the 3rd round of second phase of counseling to seek admission in the course with the respondent institute.

10. This court cannot help but observe that the rule of marking the physical presence at the time of counseling though has a reasonable rationale to gauge the seriousness of the candidate, but at the same time are not equipped and are inept to tackle the practical situation arising in case of inability of the student to make it personally to the counseling. Thus this court deems it appropriate that the respondent college should consider framing a provision, with safeguards, which will take care of such like eventualities arising in the future.

11. In the event of the foregoing, the present petition is thus allowed.

KAILASH GAMBHIR, J

AUGUST 30, 2011
mg/dc