

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7373/2011 & C.M.No.16707/2011**

Date of Decision: 22nd February, 2012

IN THE MATTER OF:

UDAI PRATAP SINGH YADAV Petitioner
Through: Ms. Sandhya Goswami, Adv.

versus

VETERINARY COUNCIL OF INDIA AND ORS Respondents
Through: Mr. Rattan Lal, Adv. for R-1 & 2.
Mr. Mukesh Kumar, Adv. for R-3.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

: **HIMA KOHLI, J (Oral)**

1. This petition is filed by the petitioner, a resident of Kanpur praying *inter alia* for directions to respondents No.1/Veterinary Council of India (VCI) and respondent No.2/College situated in Puducherry to grant him admission in the B.V.Sc. and A.H. Course for the academic session 2011-12 .

2. Briefly stated the facts of the case are that the petitioner completed his 12th Standard Education from the Board of High School and Intermediate Education, U.P. On 14.05.2011, he appeared in the Common Entrance Examination (All India Pre-Veterinary Test) conducted by respondent No.1/VCI for admission to Government Veterinary Colleges under the said Council. In July, 2011 the result of the entrance examination was declared. It is an undisputed fact that

the petitioner, who belongs to the OBC category, had qualified in the entrance test and on 20.08.2011, he received a letter for participating in the counselling which was to be held in the office of respondent No.1/VCI at Delhi on 26.08.2011. The petitioner presented himself for counselling at Delhi on 26.08.2011 and after the counselling, he was informed that he has been selected for admission in the course in question in the respondent No.2/College situated in Puducherry. As per the Brochure circulated by respondent No.1/VCI, the date of joining of course of admission was stipulated as below:

"26. DATE OF JOINING THE COURSE

The selected candidates shall have to report for admission to B.V.Sc. and A.H. Course at the allotted Veterinary College/University within a maximum period of 10 days from the date of Counselling, or as directed. No relaxation of time on any ground shall be allowed. In case of failure on the part of the candidate to join within the stipulated period, the seat allocated shall be forfeited and no claim thereof."

3. Having received his letter of admission on 26.08.2011, the petitioner had to join the respondent No.2/College by 30.08.2011. As per the petitioner, he booked his train ticket to travel to Puducherry on 28.08.2011. The said train was to depart from Kanpur to Puducherry on 29.08.2011. In the intervening night between 28-29.08.2011, the petitioner was visited with a family tragedy, in which his real maternal uncle and his maternal grandfather met with a fatal car accident while

travelling from Kanpur to Delhi. The maternal uncle of the petitioner died on the spot and his grandfather, who was seriously injured and had to be shifted to a Nursing Home, succumbed to his injuries on 31.08.2011. Due to the aforesaid tragedy, the petitioner had to remain in Kanpur to participate in the last rites and cremation ceremonies of his uncle and grandfather. As a result, he was unable to reach Puducherry in accordance with the schedule planned by him.

4. Immediately, upon completion of the last rites of his uncle and grandfather, the petitioner rushed to Puducherry by air on 02.09.2011. Though he reached Puducherry on 02.09.2011 itself, he did not have with him sufficient money to deposit the admission fee of ₹ 12,500/- with the respondents No.2 and 3. The said amount was hastily arranged by his family at Kanpur and then transmitted to the petitioner only on 06.09.2011 whereafter, he reported to respondent No.3/Registrar of the Puducherry University on the same day and got his attendance marked. But, the office of the respondent No.3 told the petitioner to return on the next day. On 07.09.2011, the petitioner was informed that his papers had been forwarded by respondent No.3 to the Academic Registrar. As the petitioner was not permitted to join the respondent No.2/College on 08.09.2011, he submitted his admission documents in the office of the Vice Chancellor of respondent No.3/University when he was asked to submit the originals in the office

of the Registrar. On 09.09.2011, the petitioner was asked to come on the next day on the ground that he would be informed of the decision taken by respondent No.1.

5. Counsel for the petitioner states that for the next one week, the petitioner was made to keep on shuttling between the office of the Vice Chancellor and the Registrar of respondent No.3/University. On 16.09.2011, the respondent No.2/College wrote a letter to respondent No.1/VCI asking for advice and suggestion pertaining to the late admission of the petitioner (Annexure P-6). However, respondent No.1/VCI did not forward any advice as asked for by the respondent No.2/College and the college refused to grant him admission. The petitioner remained in Puducherry till 19.09.2011 and he kept on pursuing the matter with the respondent No.2/College, the Registrar of respondent No.2/University and the office of the Vice Chancellor but was not granted admission. Fed up with the aforesaid inaction on the part of respondents No.2 and 3 and fearing further loss of valuable time, the petitioner left from Tamilnadu to Delhi on 19.09.2011 and filed the present writ petition on 30.09.2011 praying *inter alia* for directions to be issued to respondents No.1 and 2 to grant him admission in the course in question.

6. Notice was issued on the present petition on 05.10.2011 returnable for 09.11.2011. On the very same date after briefly

noticing the facts of the case, it was directed that if all the seats in the respondent/College had not been filled up, then one seat should be kept vacant till the next date. On the next date, i.e., on 09.11.2011, it was observed that service in respect of respondents No.1 and 3 was complete and appearance was entered on their behalf. However, as service in respect of respondent No.2/College was awaited, the petitioner was directed to take fresh steps to serve the said respondent. In the meantime, counsel for respondents No.1 and 3 were directed to file the counter affidavits within two weeks and the matter was adjourned to 14.12.2011. On 14.12.2011, appearance was entered on behalf of respondent No.2/College by the same counsel who had appeared for respondent No.1/VCI on 09.11.2011, namely, Sh. Rattan Lal. However, counter affidavit was not filed by respondents No.1 and 3 in terms of the previous order. Counsel for respondent No.3 stated that his client was a performa party and therefore he did not propose to file a counter affidavit. While noticing that respondent No.2 had been served on 14.11.2010 and had still not filed its counter affidavit, costs of ₹10,000/- were imposed on the said respondent further time of two weeks was granted to it to file its counter affidavit and the matter was renotified for 06.02.2012.

7. On 06.02.2012 it transpired that the counter affidavit filed by respondent No.2 had been returned by the Registry under objections

for want of proof of payment of costs imposed on the said respondent on 14.12.2011. The costs were then handed over to counsel for the petitioner in Court but, the matter could not be heard on the said date as the counter affidavit of respondent No.2/College was not on record. Counsel for respondent No.2/College was directed to re-file the counter affidavit after removing the objections and matter was adjourned for today. At the same time, respondent No.2/college was directed to file an additional affidavit stating *inter alia* the number of seats available in the College in the course in question and the last date on which the seats had been filled up. Respondent No.2/College was also directed to state as to whether one seat had been kept vacant by it in terms of the *ex parte* order dated 05.10.2011. An additional affidavit has been filed by respondent No.2 on 21.02.2012 confirming *inter alia* that the seat allotted by respondent No.1/VCI to the petitioner for the academic session 2011-12 is still lying vacant.

8. Counsel for the respondent No.1/VCI and respondent No.2/College opposes the present petition and states that the prospectus issued by respondent No.1/VCI had made it very clear that no relaxation of time on any ground would be allowed to any candidate for joining the course and in case of failure on the part of the candidate to join within the stipulated period, the seat allocated would be forfeited. He submits that in view of the aforesaid stipulation and

the petitioner having failed to report to respondent No.3/University on or before the cutoff date, 30.08.2011 in terms of letter dated 26.08.2011 addressed by respondent No.1/VCI to him, he had forfeited his claim to the seat in question.

9. It is next submitted by learned counsel for the respondent No.2/College that the present petition is highly belated for the reason that the petitioner had taken as long as one month before approaching this Court for appropriate relief. It is stated that the first semester of the course in question had ended on 09.02.2012 and, therefore, the petitioner should be non-suited for delay and latches. Lastly, it is stated that the petitioner has failed to place on record any documents to show that he had sent any intimation of his late joining and nor had he filed on record his joining report on or before the prescribed date and further that he had not filed any document to substantiate his claim that both his grandfather and his uncle had expired on the eve of his leaving from Kanpur to Puducherry, as assigned by him. Respondent No.2/College, has asserted in the counter affidavit that the certificates issued by private doctors could be procured very easily and, therefore, the evidence produced by the petitioner being of very weak nature, was liable to be disregarded. As regards letter dated 16.09.2011 addressed by respondent No.2/College to respondent No.1/VCI asking for advise with regard to the case of the petitioner,

respondent No.1/VCI has taken a stand in its counter affidavit that it did not receive the said letter from respondent No.2.

10. In rebuttal, counsel for the petitioner refers to the documents enclosed with the rejoinder, that is, the death certificate dated 29.08.2011 pertaining to Sh. Rajesh Kumar Yadav, stated to be the maternal uncle of the petitioner and the death certificate dated 31.08.2011 pertaining to Sh. Gherao Ram Yadav, maternal grandfather of the petitioner. Both the said death certificates have been issued by the Registrar, Birth and Death, Government of Uttar Pradesh. The place of death of the grandfather of the petitioner is shown as Divya Hospital, Kanpur whereas that of the uncle of the petitioner is shown as close to Banda (North). It is submitted by learned counsel for the petitioner that these documents could be obtained by the petitioner in the last week of September 2011, and therefore, they could not be filed along with the writ petition. She further stated that the petitioner did not want to cause any delay in approaching the Court due to the urgency in the matter and therefore, the death certificates were placed on record along with the rejoinder that was filed on 12.12.2011. She also submits that the genuineness of both the documents has not been questioned or doubted by any of the respondents and they duly substantiate the *bonafide* reasons furnished by the petitioner for reporting to the respondent

No.3/University on 06.09.2011. She points out that the petitioner had nothing to gain by reporting for admission belatedly and that he belongs to the OBC category and under great financial constraint and due to the family calamity, could not arrange to deposit the fee with respondent No.3 till 6.9.2011.

11. This court has heard the counsels for the parties and carefully perused the pleadings and the documents placed on record.

12. The facts of the present case as presented by learned counsel for the petitioner are rather unfortunate where a quirk of fate has jeopardized the academic career of the petitioner, who was ready to join the respondent No.2/College in terms of the admission letter dated 26.08.2011 issued by respondent No.1/VCI, but could not do so due to unforeseen circumstances that occurred on 28-29.08.2011 when both, his maternal grandfather and his maternal uncle expired in a car accident while travelling from Kanpur to Delhi. Though the petitioner did not enclose the death certificates of the aforesaid relatives along with the writ petition, he has made good the said deficiency by enclosing the said certificates issued by the competent authority, alongwith the rejoinder filed on 12.12.2011. The said certificates sufficiently substantiate the submission made in the writ petition that the fatal car accident occurred near Banda wherein the uncle of the petitioner died on the spot on 29.08.2011, and his

grandfather had to be admitted to Divya Hospital, Kanpur for treatment where he finally succumbed to his injuries on 31.08.2011.

13. To examine the stand of the respondent No.1/VCI that the petitioner had approached the Court belatedly, the Court must examine the sequence of events as narrated in the writ petition which are to the effect that the petitioner was required to report to respondent No.3/University on or before 30.08.2011. However, his uncle and grandfather met a serious car accident in the night intervening 28th-29th August, 2011. The petitioner's uncle lost his life on the spot and his grandfather expired at the Nursing Home on 31.08.2011. The petitioner participated in their last rites and after completing the last rites that were held at Pratapgarh, Eastern U.P., the petitioner managed to purchase an air ticket to fly down to Chennai and from there arrived at Puducherry on 02.09.2011. Since the petitioner left from Kanpur for Puducherry in a hurry and looking at the circumstances in which he had to leave, the Court is inclined to accept the submission made by the petitioner's counsel that he could not carry with him the admission fee of ₹12,500/- and the said amount was arranged by his family at Kanpur after a couple of days and transmitted to him at Puducherry on 06.09.2011.

14. The petitioner has also placed on record a copy of a document annexed as Annexure P-5 to the writ petition, which is an endorsement

on a piece of paper to show that he had reported in the office of Assistant Registrar of the respondent No.3/University on 06.09.2011. Pertinently, neither the respondent No.2/College nor respondent No.3/University have denied the said document filed by the petitioner, thus, fortifying his submission that he had duly reported to respondent No.3/University with his fee on 06.09.2011. Merely because the petitioner was made to shuttle between office of the Vice Chancellor and the Registrar of respondent No.3/University from 06.09.2011 to 16.09.2011 cannot be a ground to oust him. Further, the fact that the petitioner was knocking at the door of respondent No.2/College is also borne out from the letter dated 16.09.2011 addressed by respondent No.2/College to respondent No.1/VCI asking the latter for advice with regard to the request of the petitioner to waive the delay in reporting for admission.

15. All the aforesaid sequence of events, when looked at collectively, demonstrate that due to the occurrence of the aforesaid unforeseen circumstances which were well beyond his control, the petitioner cannot be blamed for not reporting for admission to respondent No.3/University on or before 30.08.2011. Rather, the petitioner had no role to play in the incidents that unfolded between 28.08.2011 to 06.09.2011 and even thereafter. The fact is that the petitioner had taken all possible steps to report to the respondent No.3/University for

taking admission in the course in question. Further, it cannot be said that the petitioner had anything to gain by reporting belatedly to the respondent No.2/college and respondent No.3/University. Rather, he had too much to lose as his entire academic career was at stake and he knew that non-joining on time would deprive him of a valuable opportunity and jeopardize his career prospects. It is, therefore, not a case where any *malafides* can be attributed to the petitioner for joining late.

16. It is also relevant to note that respondent No.2/College had written to respondent No.1/VCI seeking a clarification with regard to the admission of the petitioner to which the latter did not respond. While respondent No.2/College has not denied dispatching such a request for clarification to respondent No.1/VCI, a bald averment has been made by respondent No.1/VCI in its counter affidavit that it never received the letter dated 16.09.2011 addressed by respondent No.2/College. Simply because the petitioner approached this Court by filing the present petition by the end of September 2011, that in itself cannot be treated as a case where he has taken an unreasonably long time to approach the Court because the entire events till the date of filing the present petition must be examined in the correct perspective.

17. Here is a student who is at the threshold of stepping into higher studies after succeeding in his CET and the counselling held by

respondent No.1/VCI. Suddenly, an unfortunate calamity befalls him and his family in which he loses two of his close relatives. When he and his family were struggling to cope with the grief of losing two near and dear ones and were busy with preparation of their last rites, the petitioner who belongs to an OBC category and hails from a family that is financially stressed, garners funds just sufficient for him to defray the expenses to purchase an air ticket for him but not enough to carry with him his admission fee. The petitioner then arrives at Puducherry on 2.9.2011 and reports to the office of respondent No.3/University on 6.9.2011 with the admission fee that was transmitted by his family from Kanpur. Then he is made to run from pillar to post by respondent No.2/College and respondent No.3/University and neither of them turn a hair at his plight nor do they take any constructive steps either to approach the respondent No.1/VCI for condonation of delay or to guide him till 19.9.2011. Records reveal that respondent No.2/College took one whole week to write to respondent No.1/VCI for a clarification in this regard and on its part, respondent No.1/VCI chose to maintain a studied silence. The pleas of the petitioner made to the respondents No.2 & 3 appear to have fallen like water off a duck's back. None of the respondents chose to respond to the petitioner. Faced with such an adverse situation and no guidance from any quarter, the petitioner knocked at

the doors of the Court by filing the present petition in the last week of September 2011. In this background, the Court is of the opinion that the stand of the respondents that the petition is hit by delay and laches has to be turned down as being devoid of merits.

18. Furthermore, vide interim order dated 05.10.2011, the respondent No.2/College was directed to keep one seat vacant if the same had not been filled up and that till date, the said seat is still lying vacant is also a relevant factor. The submission made by the learned counsel for respondent No.2/College that the first semester is over by now and therefore the petitioner's request for admission ought to be turned down, may not be a dissuading factor in the present case when the course in question spreads over 10 semesters and is spaced out over 5 years.

19. The conduct of the respondents No.1 & 2 post filing of the writ petition is also noteworthy. It is to be noted that respondents have none else but themselves to blame for the delay in the adjudication of the present petition for the reason that despite the fact that respondent No.1 and 3 were duly served with the summons on 21.10.2011 on which date counsel for respondent No.3 had also filed his power of attorney and appearance was entered on behalf of the said respondents on 09.11.2011, the counter affidavit came to be filed by respondent No.1/VCI as late as on 02.12.2011 and respondent

No.2/College chose to file its counter affidavit a month later, on 01.02.2012 and that too after imposition of costs of ₹10,000/- on the said respondent for causing delay in adjudication of the present case and for non-filing of the counter affidavit. Thus the blame for the delay in deciding the case lies squarely at the door of the respondents No.1 & 2. In the face of such adverse family circumstances that the petitioner was confronted with, this Court is of the opinion that he took all steps that a diligent candidate could have taken to approach the respondent No.2/College with reasonable dispatch and to seek condonation of delay in reporting late for admission in the course in question, in terms of the letter dated 26.08.2011 issued by respondent No.1/VCI.

20. In the aforesaid facts and circumstances, the writ petition deserves to be allowed. Respondent No.2/College is directed to grant admission to the petitioner in the course in question in the academic year 2011-12 by condoning the delay of about one week in reporting late for admission. The petitioner shall report to respondent No.2/College at the earliest and preferably within one week from today and upon his reporting to respondent No.2/College, his fee shall be accepted and his application processed forthwith for purposes of admission. As regards the first semester that is stated to have ended on 09.02.2012 and which the petitioner has missed for reasons largely

attributable to respondents No.1 & 2 who caused delay in filing their counter affidavits, it is deemed appropriate to permit the petitioner to sit for his first semester examinations at the time when he takes examinations for the third semester, or as per the rules applicable in that regard. The respondent No.2/College shall render all necessary assistance to the petitioner by granting him extra coaching without burdening him with an additional financial liability for him to make up for the classes that he has not been able to attend in this duration.

21. The petition is allowed with costs quantified at ₹10,000/- and imposed on respondents No.1 and 2 jointly to be paid to the petitioner by adjusting the said amount from the fee to be deposited by him with respondent No.2/College at the time of reporting for admission. Respondent No.2/College shall be at liberty to recover fifty percent cost from respondent No.1/VCI. The costs are being restricted to ₹10,000/- keeping in mind the fact that costs of ₹10,000/- have already been imposed on respondent no.2 for the non-filing of its counter affidavit within the stipulated time.

22. ***Dasti*** to the parties under the signatures of the Private Secretary.

FEBRUARY 22, 2012
'anb'

W.P.(C) No.7373/2011

(HIMA KOHLI)
JUDGE

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