IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Reserved on : 24-01-2017 & Delivered on :14-03-2017

Coram :

Honourable Mr. Justice V.RAMASUBRAMANIAN
and
Honourable Ms. Justice J.UMA DEVI

W.P.No.34451 of 2016

K. Sai Kumar Reddy S/o. K Srinivas Reddy
Street No12, HMT Nagar, Nacharam, Hyderabad

… Petitioner

Vs.

1. The Ministry of Labour and Employment, Government of India, Shrama Shakti Bhavan, Rafi Marg, New Delhi, rep. by its Secretary, and others.

… Respondents

For Petitioners : Mr. G. Venkata Reddy

For Respondents : Mr. B.G. Ravinder Reddy,
Mr. A. Prabhakar Rao
Mr. B. Narayana Reddy (ASG)

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

<u>Writ Petition No.34451 of 2016</u>

<u>Order</u>: (per V.Ramasubramanian, J.)

The petitioner, whose application for admission to MBBS Course in the Medical College run by the Employees State Insurance Corporation was not entertained by the College, has come up with the present writ petition seeking appropriate directions to admit him.

2. Heard Mr. G. Venkata Reddy, learned counsel for the petitioner, Mr. B. Narayana Reddy, learned Assistant Solicitor General, appearing for the respondents 1 and 6, Mr. B.G. Ravinder Reddy, learned counsel appearing for the respondents 2 to 4 and Mr. A. Prabhakar Rao, learned counsel appearing for the 5th respondent.

3. By an admission notice issued on 01-09-2016, the Director General of Employees State Insurance Corporation (ESI Corporation) invited applications from eligible candidates for admission of "Wards of Insured Persons" into the Under Graduate Courses (MBBS) in the Medical College established and run by the Employees State Insurance Corporation. The petitioner whose father is an insured person, sent an application by speed post, on 16-09-2016. The petitioner could send his application only on 16-09-2016, since TS EAMCET-III was conducted only on 11-09-2016 and the results were announced on 15-09-2016.

4. When an article is sent by speed post, especially from Hyderabad to Delhi, it was expected to reach the destination at least within 72 hours. Therefore, the petitioner presumed that his application would have been delivered in the office of the 1st respondent, latest by 19-09-2016. The website of Indian Posts, which provides a tracking system, also indicated that the application sent by speed post reached Delhi on 19-09-2016. The last date for admissions to first year of the MBBS Course was extended up to 07-10-2016, by the Hon'ble Supreme Court.

5. But the petitioner did not find his name in the select list, despite having scored good marks and having obtained a good rank. Therefore, he came up with the above writ petition seeking a mandamus to direct the respondents to admit him.

6. The writ petition was actually filed on 06-10-2016 and was moved in the Vacation Court. The Vacation Court, on 06-10-2016, ordered notice and also issued an interim direction to consider the case of the petitioner for admission to Under Graduate Course. The order passed on 06-10-2016 reads as follows:

> "The case of the petitioner shall be considered for admission into Under Graduate Course (MBBS) in the fourth respondent college, under Wards of Insured Persons (IPs) Quota, if there are any vacancies and if he satisfies all requirements as required under law."

7. However, the respondents did not admit the petitioner. But the Deputy Director of ESI Corporation came

up with a counter affidavit making a positive assertion that the application form of the petitioner was received only on 18-10-2016, long after the cut off date for receipt of applications and long after the closure of the very admission process. Since the said stand appeared to be *prima facie* contrary to the printout of the website information hosted by the Department of Indian Posts, we directed the learned Assistant Solicitor General appearing for the Department of Posts to get a status report and file a counter.

8. In response, the Chief Post Master in the office of the General Post Office, Hyderabad, has filed a counter affidavit. Paragraph 3 of the counter affidavit provides a complete picture and hence it is extracted as follows:

> "In reply to Para 1 to 15 of the affidavit, I state the Speed Post article bearing No.EN722308150IN booked at Hyderabad GPO on 16.9.16 and delivered to its addressee on 13.10.16 through Indraprastha HO New Delhi. The tracking report of the article referred to above is enclosed (R-I) for kind reference. The above said speed post article booked in Hyd. GPO on 16.09.16 at 11.55:35 hours and bagged to NSH Hyderabad on the same day vide bag No.EB No.1008324842 at 13:18:42 under SI.No.04/39. The speed post article received at NSH, Hyderabad on 16.09.16 at 14:54:55. The speed post bag opened at 15:29:55 hours at NSH, Hyderabad. The speed post article received by NSH Hyderabad on 16.09.16 at 15:29:17. In turn the article was dispatched to NSH, New Delhi on 16.09.16 at 15:44:32 hours. Further, the bag dispatched to Palam, New Delhi by NSH, Hyderabad at 17:28:22 hours on 16.09.16. The speed post bag received at NSH, New Delhi on 17.09.16 at 7:11:44. The speed post bag opened at NSH, New Delhi on 17.09.16 at 7:33:37, again the bag forwarded to IARISO by NSH, New Delhi on 17.09.16 at

9.50.59 hours. The above said speed post article received by IARI SO on 19.09.16 at 6:33:33 hours. It is humbly submitted that there is no delay in transmission of speed post articles by Hyd. GPO. However, as per Section 6 (R-2) of Indian Post Office Act, 1898 "exemption from liability for loss, misdelivery, delay or damage the Government shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default".

9. In addition to the counter affidavit filed by the 6th respondent, the learned Assistant Solicitor General also produced a copy of the e-mail sent by the Senior Superintendent Post Offices, New Delhi Central Division to the Assistant Director in the office of the Chief Post Master General, Telangana Circle. It will be useful to extract the contents of the said mail, which read as follows:

"Kindly refer to your office letter number cited above, regarding above cited subject.

In this connection, it is intimated that enquiry made into the case by concerned ASP, AMPC revealed that SPA No.EN7223081501N was rejected on 17.09.2016 and was dispatched to IARI SO (PO) in SP Bag No.EBD0003817994 (IPHO) and was delivered through IPHO on 13.10.2016 after received SPA as misspent from IARI (PO), New Delhi-110012. It seems that SPA u/r was inadvertently dispatched to IARI PO due to some address problem on the SPA u/r.

The enquiry into the case by concerned PRI (P) IARI PO revealed that the article u/r was delivered included in bulk mail of CSIR Pusa, New Delhi-110012 on 19.09.2016.

> Due to heavy receipt of application form in gunny bags from Post Office, which is about 2 lakh, it took about 20-25 days for its opening etc. After opening of the dak CSIR Pusa, New Delhi 110012 returned article u/r to IARI PO on 08.10.2016 as a misspent. The said SPA was dispatched on same day to NSH New Delhi.
>
> As all the work related to processing of mail, either mail preparation work is being carried out jointly/collectively by team working in MMS Hall/Manual sorting/parcel and dispatched branch of the set concerned under the supervision of the supervisor (s) and Head sorting assistant. Therefore, individual responsibility regarding short receipt/non-dispatch/ wrong-dispatch of the said SPA can't be fixed.
>
> However, the compensation for delay in delivery as per departmental rules may be paid to complainant.
>
> SPM, Indraprastha HO, has already requested to the Deputy Director, General Branch, ESIC, New Delhi-110002 to arrange to provide the wrapper of the above said SPA addressed to Employee State Insurance Corporation HQ office, Panchadeep Bhavan, CIG Road New Delhi – 110002 to this office immediately to produce the same in the Hon'ble High Court Hyderabad (the case is under progress)."

10. From the counter affidavit filed by the Department of Posts and the copy of the mail sent by the New Delhi office to the Hyderabad Office, it is clear that the application form presented by the petitioner at the speed post counter at Hyderabad on 16-09-2016 was delivered to the 2nd respondent only on 13-10-2016, long after the deadline fixed for submission of application forms. Therefore, the ESI Corporation and the Medical College run by them cannot be found fault for not granting admission to the petitioner. It is clear from the admission on the part of the Department of

Posts that the application of the petitioner was not delivered to the ESI Corporation before the cut off date. Therefore, today no relief can be granted against the ESI Corporation.

11. It is true that the petitioner is not at fault. The notification issued by the ESI Corporation on 01-09-2016 stipulates that the applications should be submitted in the prescribed format so as to reach the Head quarters' office latest by 5.00 P.M. on 22-09-2016. Since the application did not reach either on 22-09-2016 or on the last date for closure of admission, it is not possible to direct the ESI Corporation to admit the petitioner at this distance of time. The Supreme Court has issued a clear mandate that no court can direct the admission of a student to a Medical College beyond the cut off date. Hence, the question of issuing a direction to the Medical College to admit the petitioner does not arise.

12. But we cannot also plead helplessness and dismiss the writ petition of the petitioner, when a young meritorious student, aspiring for admission to Medical Courses, could not secure admission on account of the deficiency in service on the part of the Department of Posts. In *Chandigarh Administration v. Jasmine Kour*, the Supreme Court analyzed the entire case law on the point and summarised the principles in para 30 of its decision as follows:

> "The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the

courts or the Board and midstream admission should not be permitted.

Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.

If a candidate is not selected during a particular academic year due to the fault of the Institutions/Authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.

When a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission.

If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non- selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

If it is found that the candidate acquiesces or waives his/her right to claim relief before the Court promptly, then in such cases, the legal maxim vigilantibus non dormientibus aequitas subvenit, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply next academic year.

There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical."

13. Though the issue as to whether such candidates are entitled only to compensation and not admission, has now been referred to a larger bench, the law as on date is that the High court cannot grant admission to the petitioner. In the facts and circumstances of the case, since it is not possible for us to direct the admission of the petitioner at this distance of time especially when his application itself was not received within time by the College, the only course of action open to us is to compensate the petitioner. It is needless to point out that the wrong doer should be called upon to compensate the person who suffered due to the wrong doing.

14. In the case on hand, the Department of Posts is the wrong doer. But interestingly the Department of Posts rely

upon Section 6 of the Indian Post Office Act, 1898 to claim immunity from liability. Section 6 is extracted in para 3 of the counter affidavit filed by the Chief Post Master. We have reproduced paragraph 3 of the counter affidavit in entirety elsewhere.

15. Therefore, the question that now falls for consideration is as to whether in the teeth of Section 6 of the Indian Post Office Act, 1898, any liability can be fastened upon the Department of Posts or not?

16. For finding an answer to the above question, we may have to peep into the history of the Indian Post Office Act, 1898 and also take stock of the changing face of the postal services in our country. The Act was first enacted in 1866 under the colonial regime. In 1882, the Act underwent a change, with the insertion of a provision for authorising an officer of the post office to search for Newspapers regarding which a notification had been published under the Sea Customs Act. In 1895, another amendment was made for dealing with fictitious or previously used postage stamps. In 1896, yet another amendment was made, providing for recovery of customs duty.

17. After 30 years of its enactment in 1866, the entire Act was revamped under the 1898 Act. The stated object of the 1898 Act was to confer protection and powers in the extension and increase of postal business. The hidden agenda behind this enactment, was to keep a watch on the Indian

freedom movement and on the exchange of correspondence between persons involved in the movement. In other words, the Department merely facilitated the Government to perform its sovereign functions. Therefore, the protection under section 6 was apparently intended to safeguard the British Raj from claims for compensation. Section 6 has to be understood in the context of the Legislative intent under the colonial rule.

18. It may be of interest to note that if India had never attained independence, but had continued to be ruled by the British, the exemption from liability under Section 6 of the 1898 Act, would have gone way back in 1947 itself. A careful look at the historical reasons behind Section 6 of the 1898 Act would show that under the English law, ***the Crown was protected from liability by two rules, which were deeply entrenched in the English jurisprudence. These were (1) the rule of substantive law that the King could do no wrong; and (2) the procedural rule that the King could not be sued in his own Courts***. The purport of these rules was not merely that the Crown could not be sued in respect of wrongs which it had expressly authorised but that it was also immune from liability in respect of wrongs committed by the servants of the Crown.

19. But what happened later was that in the early years of the 20th Century, there was a growing concern even in England. It appears that in the Scottish case of **Macgregor v.**

Lord Advocate[1] a claim for damages by a member of the public who was knocked down by a motor car driven by a driver in the Royal Army Service Corps was dismissed on the ground that no such action will lie against the Crown in respect of a wrongful act committed by one of its servants.

20. After a public outcry, a committee presided over by Lord Hewart (initially an Attorney General and later the Lord Chief Justice), known as the Crown Proceedings Committee was constituted in 1927. ***This Committee proposed that the law relating to the privileges of the Crown in litigation and its immunity from liability in tort should be reformed. Interestingly, this proposal was opposed by some Government departments led by the Postal Department***. Eventually, the Committee's report was accepted after 20 years and the Crown Proceedings Act, 1947 was passed, making the Crown liable for a tort committed by its servants. At about the same time, a similar enactment was passed in the United States of America and it is known as Federal Tort Claims Act, 1946. ***Therefore, Section 6 of the Indian Post Office Act, 1898 would not have continued to be in the statute book, if the British themselves had continued to be in power. Hence it is an irony of history that in free India the immunity under Section 6 is still pressed into service***.

[1] 1921 SC 847

21. In any case, at the time when the 1898 Act was enacted, the services offered by the Department of Posts included mere delivery of mail, postal articles and money orders. But after independence, the Department of Posts ceased to be a mere extended arm of the Government. The Department started accepting deposits under the Small Savings Scheme, it also started providing life insurance cover under Postal Life Insurance. The Department now acts as the agent of the Government of India for discharging services such as wage disbursement under the Mahatma Gandhi National Rural Employment Guarantee Scheme.

22. From the role as originally assigned to the Department of Posts under the colonial regime, a huge shift took place in 1987 when speed post services were introduced in order to compete with the business of courier services. ***In 1996, the Department of Posts set up a Business Development Directorate, which was reorganised in 2005 as Business Development and Marketing Directorate***. On the occasion of the Silver Jubilee (25 years) of the commencement of speed post services, the ***Department took pride in claiming to be the largest Express Service Network in India. Today, the Department offers (1) mail services, (2) business solutions, (3) financial services, such as mutual funds, Forex services etc., (4) Philately and even online shopping in philatelic stamps and (5) silk products from the weavers of Varanasi.*** That these

services are offered by the Department of Posts can be verified from their website indiapost.gov.in.

23. Therefore, we are of the considered view that the immunity under Section 6 of the Indian Post Office Act, 1898 may be available in respect of ordinary letters or even registered letters where no guarantee of delivery or no guarantee of the time of delivery is made. However, the immunity under Section 6 may not be available to an article sent by speed post where the delivery as well as time schedule of delivery is both indicated. ***A statutory protection cannot be extended to a tortuous liability arising out of a commercial transaction***. The delivery of mails through post cards, inland letters etc., by the Department of Posts may fall in the realm of public services rendered without an eye on profit. But speed post services are rendered as a commercial venture providing stiff competition to courier services in the private sector. Therefore, the Department of Posts cannot take refuge anymore under Section 6 of the Indian Post Office Act.

24. There is no dispute that the petitioner would have secured admission to the 1st year of the MBBS, in the ESI Medical College, if only the Department of Posts had delivered the application sent by the petitioner before the cut-off date. The petitioner registered the application through speed post on 16-9-2016 and admittedly the article reached New Delhi on 19-9-2016. By not delivering the article even before the last date for admission of candidates to the 1st year of the

MBBS Course, (it was actually delivered on October 13, 2016) the Department has spoiled the aspirations of a young, meritorious student. Hence, we are of the considered view that the Department should be directed to pay compensation in a sum of Rs.5 lakhs to the petitioner.

25. Accordingly, the writ petition is allowed directing the Union of India in the Ministry of Communications, Department of Posts represented by the 6th respondent herein to pay compensation in a sum of Rs.5,00,000/- (Rupees five lakhs only) to the petitioner within 8 (eight) weeks from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

14th March, 2017.
Ksn/Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.34451 of 2016
(per VRS, J.)

14th March, 2017.
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