

\$~11.

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

+ **Date of Decision : 19.11.2018**

% **W.P.(C) 11675/2018 & C.M. No. 45081/2018**

MS. NEELAM DEVI

..... Petitioner

Through: Mr. Dhruv Dwivedi, Ms. Ankita Khanna
and Boony Mehra, Advocates

versus

KENDRIYA VIDYALAYA SANGATHAN

..... Respondent

Through: Ms. Rashmi Bansal, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 04.10.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 3374/2018, whereby the tribunal has rejected the said O.A. preferred by the petitioner.

2. The respondent vide advertisement No.14 invited online application to fill up vacancies for the post of Principal, Vice Principal, PGT, TGT, Librarian and PRTs in the Kendriya Vidyalaya Sangathan (KVS). The only mode for applying for the vacancies was through online application process. The online registration commenced on 24.08.2018 and the last date for online registration was 13.09.2018. The last date was, however, extended from 13.09.2018 to 23.09.2018.

3. The petitioner states that she is qualified for the post of Primary Teacher (PRT) and, accordingly, she attempted to apply for the said post through the online application process. She attempted to upload her application on the website of the respondent initially on 21.09.2018, and thereafter repeatedly attempted on 22.09.2018 and again on 23.09.2018, but despite her repeated efforts for over two hours on 23.09.2018, she could not do so on account of certain glitches encountered her by in the system. After having failed to upload her application, she sent an email communication on 23.09.2018 at 11:35 p.m. on the email IDs of the respondents viz. commissioner-kvs@gov.in; kvs.commissioner@gmail.com; cvokvs@gmail.com by using the email ID of her cousin brother Mr. Navdeep Lather. She informed the respondent that she had been trying to apply for the KVS recruitment for the last two hours, but the website is not responding. She sought help. The petitioner states that she did not get any response.

4. The detailed averments made by the petitioner with regard to the attempts made by her are as follows:

“11. It is submitted that the petitioner is proficient with computer operation and process of filling up application forms online. It is the case of the petitioner that she was not able to get through the first step of process itself i.e. generating the registration number for login. The petitioner herein on 21.09.2018 through her computer went to the webpage of the respondent i.e. <http://kvsangathan.nic.in/> and thereafter clicked on link to register herself for the filing up the application form.

12. The petitioner was not able to submit her details which were to be filled up in Step-1 of the form of registration and then had to proceed to the next step.

13. Thereafter, on the next date i.e. 22.09.2018 the petitioner again tried to fill up the form and faced same issue while submitting the details, there was no response from the website and website of the respondent was crashing constantly. It is in germane to mention that the petitioner's computer and internet connection was in perfect working state and no fault was there on part of the petitioner. Even otherwise, the petitioner being prudent tried fill up the form from different computer and internet connection, however failed to do so for the same reasons.

14. It is respectfully submitted that, since, the petitioner was unable to submit her form and generate a registration number itself, the petitioner called the office of the respondent for the help on 22.09.2018 itself and call of the petitioner was transferred internally but no response was received from the respondent to rectify the fault. It is shocking for the petitioner to know that there exist no branch who can deal with technical problem faced by the candidates during the online process of filling up the form. It is further a matter of record that the detailed advertisement dated 17.08.2018 (Annexure A-3) does not mention any resolution for the problems as faced by the petitioner herein.

15. Thereafter, on 23.09.2018 i.e. the last date of filling up the form online, the petitioner again tried several times for getting through the registration process and also tried to use another computer and connection to get the form filled however was unable to do so due to the no response/ technical fault on the website of the respondent.

16. It is submitted that on 23.09.2018 at one point with much effort and repeated attempts when the petitioner filled the form and clicked on the 'submit' tab, then the website displayed a message 'duplicate data found', which is usual course meant that, the server already exists with a form of similar details as filled up by the petitioner. It is submitted that petitioner though it could be possible that even though website was not responding, but data must have been submitted on the earlier attempts and registration number must have been generated.

17. The petitioner then through option of 'forgot registration number', a different link i.e. <https://cbseitms.nic.in/appforgot.aspx> tried to retrieve the registration number, however was unable to retrieve it, as the portal displayed a message "no data found" after submitting information sought for retrieval.

18. It is submitted that the petitioner has also made a video recording of her attempt to fill up the form but failed to do so, due to the technical glitch on the website of the respondent. The video recording of failure of respondent website to respond which may be filed as and when directed by this Hon'ble Court.

19. The petitioner tried to fill up the form multiple times till late hours of 23.09.2018 i.e. before the deadline, however, due to the technical glitches on website of the respondent website itself the petitioner was unable to do so. To this effect the petitioner through her cousin brother Mr. Navdeep Lather sent an e-mail dated 23.09.2018 to the respondent asking for immediate help before the deadline. However, no response was received back".

5. In support of these averments, she has placed on record a few screenshots of the computer screen.

6. The petitioner states that on 24.09.2018, she telephonically complained about the technical glitch faced by her while attempting to register her candidature. She was informed by the respondent that since the last date for filling the form is over, they were helpless. She contacted the higher officers of the respondent, but to no avail. On 28.09.2018, she personally went to the office of the respondent and filed a complaint against acknowledgment. Since her complaint was not entertained, she preferred the aforesaid O.A. Pertinently, the examination for the post of Primary Teacher (PRT) had not been held when she approached the tribunal and, even till date, the same has not been held. It is scheduled to be held on 22.12.2018.

7. The O.A. of the petitioner was, however, rejected by the tribunal by a summary order. The reason for rejection recorded by the tribunal is that the petitioner had not applied online for the said post when the online system was available from 24.08.2018 to 23.09.2018. Nothing prevented her to make a request within that period, in case she was unable to upload her application due to the alleged glitches in the online system. The tribunal has observed that in case the prayer made by the petitioner is granted, the same shall amount to extending the last date of submission of the applications, which is not permissible under the law.

8. The submission of learned counsel for the petitioner is that the petitioner repeatedly attempted to upload her application on 21.09.2018, 22.09.2018 and 23.09.2018. Eventually, when she failed despite her repeated attempts, she sent the email communication at 11:35 p.m. on 23.09.2018. The submission is that when a cut off date is prescribed, it is open to the candidate to apply at any time before the cut off date and time, and the candidate cannot be non-suited on the ground that the attempt to submit the application was made towards the end of the time granted. The further submission of learned counsel for the petitioner is that the petitioner did everything that could be done, and she contemporaneously made her representation, firstly, on 23.09.2018 before the close of the time and date for submission of her form and thereafter on 25.09.2018, received by the respondent on 28.09.2018.

9. Upon issuance of notice to the respondent, the respondent has tendered the counter-affidavit in the Court. The stand taken by the respondent is that over 6,58,000 applications have been received by the cut off date in response to the advertisement. Out of this, 114,817 applications have been received on the last three days. Thus, it could not be said that the website of the respondent was not working effectively. The submission is that the website was working perfectly, and the claim of the petitioner that there were glitches in the system is not correct.

10. The further submission of learned counsel for the respondent is that on the portal for submission of online applications, the candidates were prominently provided a link “contact us” in case they face any difficulty. The

candidates could also send email to cbse.kvsr@gmail.com, if there were any technical issues. However, the petitioner did not follow these instructions and sent her email at email addresses, which were of no relevance, and the recipient of the mail could not have rendered any help to her at 11:35 p.m., when the mail was sent.

11. Learned counsel for the respondent has also sought to place reliance on the judgment of the Punjab & Haryana High Court in ***Harmehak Narula v. Panjab University, Chandigarh & Anr.*** in CWP No.12174/2012 decided on 23.07.2012. In this case, the petitioner had not submitted her application in time. The Court held that any show of mercy or sympathy to the petitioner would lead to taking away the chance of another person, who is in the wait for getting the seat. The terms and conditions contained in the prospectus should be strictly adhered to. The cut off date, or last date of submission of application, has to be treated as sacrosanct. Relaxation or concession on that count would lead to discrimination against those who have applied in time.

12. Having heard learned counsels and perused the record - including the impugned order, we are inclined to allow this petition. The only method of submission of the application forms was through the online process. There can be no denial of the fact that the petitioner had attempted to submit her form through the online mode. This is evident from the screenshots taken by her from the computer, which show that the petitioner Neelam Devi indeed attempted to upload her form on the website of the respondent. Her statement that she kept trying to upload the form without success is also corroborated by

her email sent on 23.09.2018 at 11:35 p.m. on three different email IDs taken note of herein above. It is not the respondents case that the said email IDs are non-existent. They are email ID of the Commissioner of the KVS and the CVO of the KVS. No doubt, on the portal of the respondent, the candidates were informed that they could contact the CBSE for help or for technical issues. However, the submission of the respondent is that, in any event, no help could have been rendered at such a late hour as 11:35 p.m. Thus, the conduct of the petitioner in sending the email communication to the Commissioner, KVS and not at the provided email address cannot be said to be fatal. The relevance of the said email is only that it establishes that the petitioner attempted to upload her form before the cut off date and time.

13. It is well settled that when a time limit is prescribed during which a certain act has to be performed, it is open to the concerned person to perform the act at any point of time before the close of the time. To claim non-performance, it is no answer to say that the performance took place, or was attempted, close to the expiry of the time. In this regard, we may refer to the decision in **Manohar Joshi v. Nitin Bhaurao Patil & Anr.**, (1996) 1 SCC 619, wherein the Court observed:

“13. It is settled by the decision of this Court in Ramlal v. Rewa Coalfields Ltd. [(1962) 2 SCR 762 : AIR 1962 SC 361] (SCR at p. 767) that the litigant has a right to avail of limitation up to the last day and his only obligation is to explain his inability to present the suit/petition on the last day of limitation and each day thereafter till it is actually presented. This being the basic premise, it cannot be doubted that the election petitioner in the

present case was entitled to avail of the entire limitation of 45 days up to the last day, i.e., 14-4-1990 and he was required to explain the inability of not filing it only on 14-4-1990 and 15-4-1990 since the petition was actually presented in the High Court on 16-4-1990. If Section 10 of the General Clauses Act applies, the explanation is obvious and the election petition must be treated to have been presented within time”.

14. The petitioner got received her representation dated 25.09.2018 on 29.08.2018, wherein she has set out in detail her experience with regard to her endeavour to register for the examination in question. She even submitted the video and photos to substantiate her claim that the web page of the respondent crashed multiple times when she attempted to submit her form. The fact that many others were able to upload their form - including on the last date i.e. 23.09.2018, does not mean that no candidate could have encountered a glitch in the system while attempting to upload the form or register online. Had the petitioner not attempted to upload her form and register online before the cut off date and time, it would have been a completely different situation and the case would have been covered by the decision in ***Harmehak Narula*** (supra). The decision in ***Harmehak Narula*** (supra) is not apposite, since in that case the application was not submitted in time, and no attempt to submit the same in time was made. The fact situation in hand is, in fact, covered by the judgment in Punjab & High Court in ***Alisha Sehjal v. State of Punjab***, CWP No.12180/2014 decided on 07.08.2014. In para 6 of this judgment, the learned Judge has observed as follows:

“6. In the situation that emerges, the point that has to be seen is whether the plea made by the petitioner would cause such a serious infraction of anybody else's right who may have gained admission on the basis of application form filled in within time online and a prospect of such a candidate having to be jettisoned by a late entrant such as the petitioner. There is no such eventuality. A judgment of the Full Bench stating that the conditions prescribing a last date cannot be easily diluted was set in a context of the Coordinator accepting a plea of a candidate that his application was not delivered on account of postal delay and the court interfered with the receipt of application beyond the time which had a prospect of edging out a candidate who had applied within time. The courts that administer justice cannot be wooden to realities and are not required to fetter themselves by needless technicalities, where no serious prejudice is caused to any other student. On the other hand, it would serve the cause of education that meritorious candidates are given the places that are due. If a scheduled caste candidate gets a rank and becomes eligible for consideration and the colleges affiliated to the University have vacant seats on account of unavailability of meritorious candidates with minimum eligible marks, to turn out such a candidate would be the worst kind of betrayal. As much passionate as the counsel for the University would plead that there cannot be a dilution of the requirements, I would remind the University that it is established for fostering education and administering better standards. It will not cause any obstacle to come in the way for advancement of its objective. We have come by a sorry spectacle of several factors and vested interests gaining the better over merit with a flight of talent from our country. If there was a meritorious candidate and it is a person who belongs to scheduled caste at that, I would expect the University to remove the blinkers and secure what is just to the student.”

15. The date of the examination, as aforesaid, is 22.12.2018 and, in our view, no prejudice would be caused to the respondent or to any other candidate if the

candidature of the petitioner is considered. We cannot accept the submission of the respondent that if the petitioner is allowed to participate in the examination process, it would open floodgates as others would also seek similar relaxation. This is for the reason that, undisputedly, the petitioner tried to upload her form and register online before the cut off date. Those who did not do so, and are not able to substantiate such a claim made by them, would obviously not fall in the same class as the petitioner.

16. For the aforesaid reasons, we set aside the impugned order and allow the petition. The respondents are directed to accept the application of the petitioner and grant her registration for the proposed examination for the post of Primary Teacher (PRT). Necessary action in this regard shall be undertaken by the respondents within the next two weeks.

17. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 19, 2018

sr