



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT Petition (L) No. 27767 OF 2024

Lamya Khurshid Siddiqui

...Petitioner

Versus

Centre For Excellence in Basic Sciences (CEBS) &
Anr

...Respondents

Mr. Sidharth Samantray, a/w Siddharth Shah, i/b Aniket Mokashi, for the Petitioner.

Mr. Saurabh Pakale, i/b Padmaja Malgoankar, for Respondent No.1.

Mr. Rui Rodrigues, a/w Ashutosh Misra for Respondent No.2-UoI.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : SEPTEMBER 12, 2024

PC :

1. This Writ Petition has been filed by a student from Chhattisgarh, who has successfully completed the 12th standard this year, with Physics, Chemistry and Biology as the subject elective.

2. On May 8, 2024, the Petitioner registered for the National Entrance Screening Test (“*NEST*”), which is a national level entrance exam conducted for admission into the five-year integrated Master of

Science course conducted by the National Institute of Science Education and Research, Bhubaneswar (“**NISER**”) and for The Centre for Excellence in Basic Sciences, Mumbai (“**CEBS**”). CEBS is Respondent No.1 and the Union of India is Respondent No. 2.

3. To appear for the NEST, candidates are required to pass the 12th standard with an aggregate score with an 60% or above. The Petitioner had scored 90.2%. On June 30, 2024 the Petitioner appeared for the NEST exam. The results declared on July 12, 2024 showed the Petitioner having secured an all-India rank of 491 thereby qualifying for admission to the course. NISER has 200 seats while CEBS has 57 seats. In the general category, to which the Petitioner belongs, the seat capacity in the general category is 101 at NISER and 23 at CEBS.

4. The Petitioner received an expression an interest from NISER to attend a counseling session scheduled for August 6, 2024. The Petitioner participated, and was placed on the waiting list with a rank of 30. The admissions were closed after absorbing the 25th candidate on the waiting list, and the Petitioner could not secure admission at NISER.

5. On August 9, 2024, the Petitioner received an email from

CEBS inviting the Petitioner to attend a admission counseling scheduled for August 14, 2024. The Petitioner responded confirming her attendance for the session. However, on August 12, 2024, two days before the scheduled counseling session, the Petitioner met with an accident, rendering her unable to walk, necessitating bed rest. Consequently, she could not attend the counseling session.

6. The Petitioner addressed a letter to the CEBS on August 21, 2024, explaining her situation, and noticing that the admissions process was still on, requested for an alternate schedule to attend a counseling session. She addressed a similar email to the Dean of CEBS, highlighting the unfortunate unforeseen developments and seeking guidance. On August 22, 2024, CEBS replied to the Petitioner stating that “*as per existing policy, candidates who did not attend the offline admissions on 14th, can no longer be continued in the admission queue*”. It was stated that admissions were still taking place but online, against any vacancy as per the waiting list uploaded the website. Since the Petitioner could not attend session on August 14, 2024, she was not even on the waiting list.

7. In the above circumstances, the Petitioner has sought the

intervention of this Court in exercise of its extraordinary jurisdiction to issue any appropriate writ or direction to CEBS to reconsider the Petitioner's application for admission to the course, in particular, taking into account that students with ranking much below the Petitioner's rank were found to have been given admission to the course at CEBS.

8. Mr. Sidharth Samantray, learned Counsel for the Petitioner submitted that the Petitioner has been a good performer in academics, having secured 96% marks in the 10th standard and 90.2% in the 12th standard. In the NEST exam she had secured a general rank of 491 and has a high percentile, and she is otherwise empirically well qualified for admission to the course. Her only shortcoming has been her inability to attend the session scheduled on August 14, 2024, owing to circumstances out of her control. Mr. Samantray would also point out that students in the open category with a rank below the ranking of the Petitioner have been given admission as on August 23, 2024 (the data available online). Considering the extraordinary situation namely, of the Petitioner having suffered an accident leading to her inability to walk, this Court should consider issuing appropriate directions. Immediately upon her recovery, the Petitioner wrote to CEBS asking for the counseling session to be scheduled for another day, considering the

specific merits of her case, coupled with the extraordinary unforeseen development that led to her inability to participate in the counseling session in Mumbai, and the fact that admissions had not yet been completed.

9. Mr. Samantray would also submit that should there be any seat available for the course, such seat may be kept vacant pending the hearing and final disposal of this Petition, so that the Petitioner may be accommodated on merits upon disposal of this petition, should this Court be inclined to issue a direction to grant admission to the Petitioner.

10. On the other hand, Mr. Saurabh Pakale, learned Counsel on behalf of CEBS would submit that the admission process had been completed on September 2, 2024 and all seats have been filled up with the waiting list having run its course. The course has commenced. In response to a query from us about whether there were any seats at all that had not been filled up, Mr. Pakale fairly stated that two seats meant for accommodating students from “supernumerary quota” earmarked for the erstwhile state of Jammu and Kashmir, in terms of a direction from the University Grants Commission (“*UGC*”), would be the only

seats that are not filled up. No students from Jammu, Kashmir and Ladakh have been admitted.

11. At the first hearing on September 11, 2024, we requested Mr. Pakale to take instructions on whether, taking into account the merits of the Petitioner's candidature and the extraordinary circumstances in which she could not travel to Mumbai to attend the offline counseling session, and considering that two seats in the course are going unutilized, CEBS would be willing to accommodate the Petitioner to deal with the extraordinary situation. Upon taking instructions, today, Mr. Pakale would submit that the two extra supernumerary seats kept for Jammu, Kashmir and Ladakh are vacant. However, he would submit, these seats had been created pursuant to directions from the UGC, which was consequent to a decision of an inter-ministerial Committee of the Human Resource Development Ministry, Government of India, and therefore, this Court may direct that notice be issued to the UGC, to hear its submissions on whether such seat could be allocated to the Petitioner.

12. Mr. Pakale would submit that accommodating the Petitioner may mean that other students who have not approached the Court and

may be similarly placed but would lose out. Taking such facets into account, Mr. Pakale would leave it to the Court to deal with the situation in the manner that is felt appropriate, and tendered for our consideration a compilation of documents relevant to assist in a decision. The same were taken on record.

13. Upon a review of the compilation of documents tendered by Mr. Pakale, we find that in the general category, the CEBS has 23 seats. The policy of having two supernumerary seats candidates from Jammu, Kashmir and Ladakh is identical at both NISER, and CEBS. It is also found that the creation of two additional supernumerary seats for students of Jammu, Kashmir and Ladakh was first initiated pursuant to a letter of the UGC dated October 19, 2012. On September 15, 2014 the Secretary of the UGC wrote to all Vice-Chancellors of universities in India to personally look into the matter and ensure that two such seats are created in their respective institutions. It is these two seats for which the CEBS has capacity, and that has not been filled up in the absence of candidates from these regions.

14. We have given our anxious consideration to the issue at hand. It is an admitted position that the admission process was completed on

September 2, 2024. The capacity of two seats intended to be filled by students from Jammu, Kashmir and Ladakh are indeed available and have not been filled up. The Petitioner has an excellent academic record inasmuch as her NEST score places her in the percentile of 98.11484. Incidentally, such percentile is well above the qualifying percentile of 90 for students in the general category. The qualifying percentile in the supernumerary quota is 60. Consequently, the Petitioner ranks way above the qualifying threshold in any view of the matter. A total of 27,973 students appeared for the NEST exam, out of which 2,378 have qualified, and among them, the Petitioner ranks 491. Students with a ranking below hers have already been admitted to the course. We find only one student as of this list of August 23, 2024 on the waiting list, with a rank above the Petitioner. Every other student on the waiting list has a ranking below the Petitioner's rank.

15. Upon a perusal of the list of students admitted as of August 23, 2024, it is also evident that in the general category, students with a rank below the Petitioner have secured admission. Even students who have majored in Mathematics and have a rank below the Petitioner's ranking, have been admitted. Evidently, the impact of not being able to attend the in-person session held on August 14, 2024, appears

disproportionate. Consequently, we examined the email trails set out by Mr. Pakale in his compilation of documents, in relation to two other students who too had medical issues, due to which they informed the reasons for which they could not attend the session on August 14, 2024. We find that the two students who wrote in citing medical issues (one was ranked 436 and the other was ranked 500) were informed that any representative could attend in their place and bring the identification papers and they would be given provisional admission. At the time of joining the course, their original records would be examined for confirmation. Therefore, it appears that the in-person session scheduled for August 14, 2024, primarily entailed verification of identity, and interaction with the student was not a qualitative element in securing admission.

16. It is also evident that in relation to NISER, which has a greater capacity for intake of students (200 in total, with the capacity for general category being 101), as opposed to CEBS with 57 in total, with capacity for general category being 57), the Petitioner was wait-listed at 30 and 25 students from the waiting list secured admissions. Therefore, the Petitioner, considering her credentials, does present to us an extraordinary situation in which we have to consider how to recognize

her merit and adjust for the disproportionate injury being suffered for no reason other than being unable to walk and travel to Mumbai for an in-person session that essentially entailed verification of identity and documentary records.

17. In these circumstances, it is apparent that we are faced with a peculiar situation in which, solely because the Petitioner was unable to attend the in-person session on August 14, 2024, the Petitioner is not being admitted on the premise “existing policy” of non-attendance on August 14, 2024 being fatal to her prospects for admission. In the Petition, the secondary prayer is to direct the CEBS to schedule a session for such interaction, but having considered the record, we do not think the sheer inability to participate in such verification process in an extraordinary situation should be permitted to inflict grievous harm to a bright student’s academic prospects. If the session scheduled for August 14, 2024 could have been attended by any relative or representative to get a provisional admission with the verification with the student being done at the time of joining the course to confirm the provisional admission, indeed, the adverse impact on the Petitioner is disproportionate and unreasonable.

18. Against this backdrop, since at least three students ranking below the Petitioner have been granted admission in the general category, the harm being visited on the Petitioner for having met with an accident, is disproportionate and extreme. Therefore, we are of the view that it would be necessary to recognize the Petitioner's merit and redress the discrimination being suffered by her and not let her opportunity to secure admission into the integrated five-year course suffer for the sheer inability to attend an in-person process meeting. It is apparent that had the Petitioner been able to attend the counseling session on August 14, 2024, her documents could have been verified and she would have secured admission, considering that at least three others with the rank below hers have secured admission. If only she had written in earlier, the CEBS ought to have allowed some representative of hers to carry her papers and she would have secured provisional admission only to be confirmed upon verification in person when she joined the course.

19. Consequently, the two supernumerary seats that are admittedly lying vacant, do present an avenue to adjust for such peculiar and extraordinary situation. In these circumstances, taking into account the peculiar facts and circumstances of the case, including the

Petitioner's performance at the NEST with a percentile of 98.11484; the qualifying percentile for the general category and for the supernumerary seats; the Petitioner's performance in the admission process at NISER; the availability of two vacant seats that would go un-utilised; the offline counseling process essentially being an exercise of verification; and the waiting list not having anyone with a rank above the Petitioner (except for one as of August 23, 2024), in our opinion, the apparent injustice suffered by the Petitioner solely due to her inability to attend the in-person session on August 14, 2024, is capable of being remedied, without causing any injury or injustice to any other candidate. We also note from the compilation tendered by Mr. Pakale that the admission process run by CEBS did not put candidates to notice that the in-person session could have been attended by any representative in extraordinary circumstances, to secure a provision admission. Accordingly, we consider this to be a fit case to exercise the extraordinary jurisdiction under Article 226 of the Constitution to grant relief to the Petitioner. Thus, recognising that the right to education being not only a statutory right but also a right that leads to the enjoyment of the right to life under Article 21, without creating any precedent since this is a peculiar set of facts, it would be appropriate to utilise one of the two un-utilised supernumerary seats to accommodate the Petitioner.

20. As regards Mr. Pakale's submission that other similarly placed students who have not come to court would not get the same treatment, it must be fairly stated that two other cases indeed existed, and on being approached before August 14, 2024, they were guided by CEBS to send a representative with their documents to secure provisional admission. It is trite law that the law does not protect the indolent and does protect the vigilant – the Petitioner has been conscious of her entitlement to knock the doors of the court for redressal of her grievances and protection of her fundamental rights in pursuit of her education and to see if she could be considered on merits, adjusting only for the extreme implications of not being able to attend the session on August 14, 2024 and that too owing to an accident and an unforeseen emergency.

21. Since the Petitioner appears to qualify in terms of all other criteria and is being denied admission solely due to non-attendance on August 14, 2024, it is made clear that the Petitioner's inability to visit CEBS at Mumbai on August 14, 2024 should not be held against her. If the Petitioner otherwise complies with all other requisite substantive criteria and procedural formalities, she is hereby declared to be entitled to admission. Since the course has just commenced, it would be in the

interests of justice to direct that such admission be granted and the procedural formalities should be completed expeditiously, preferably within a period of one week from today, within which period, all other verification and procedural formalities shall be attended to. It is made clear that this direction is being issued in the peculiar facts and circumstances of this case and is not meant to be a precedent either to render the in-person counseling session as dispensable or to allocate the supernumerary seats at will for admission, when un-utilised.

22. We are persuaded to grant relief to the Petitioner on the basic consideration that two seats would remain unutilized and would in fact be wasted. In these circumstances the merit of the Petitioner would be a casualty. We hence direct Respondent No. 1 to intimate the UGC of the Petitioner's admission as directed by us, so that the UGC records the same.

23. In the result, the Writ Petition is allowed, with the following directions:-

A) The Petitioner shall be admitted to the five-year integrated Master of Science course that she has applied for, subject to

verification of her credentials, identity and related documents that would have been verified had she attended the in-person session on August 14, 2024;

B) All formalities for admission of the Petitioner shall be completed as expeditiously as possible, and every endeavour should be made to ensure this process is completed within a period of one week from today.

C) CEBS to intimate UGC of the Petitioners admission to the course.

D) The CEBS henceforth shall be more elaborate in its description of the in-person “counselling session” to students and in communicating what is expected of students at such session, and also the means to deal with extraordinary circumstances that may emerge if it becomes impossible for a student to attend such session; and

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]