

Dolly Chhanda vs Chairman, Jee & Ors on 5 October, 2004

Equivalent citations: AIR 2004 SUPREME COURT 5043, 2005 (9) SCC 779, 2004 AIR SCW 5699, (2004) 8 JT 267 (SC), 2004 (10) SRJ 147, 2004 (8) SCALE 422, (2004) 23 ALLINDCAS 96 (SC), 2004 (6) SLT 285, 2004 (8) JT 267, (2004) 4 CTC 796 (SC), (2004) 4 MAD LJ 111, (2004) 7 SUPREME 297, (2004) 2 ORISSA LR 532, (2005) 2 PAT LJR 14, (2004) 4 SCT 546, (2004) 6 SERVLR 399, (2004) 8 SCALE 422, (2005) 59 ALL LR 164, (2004) 98 CUT LT 756, 2005 BLJR 1 426, (2005) 2 BLJ 44, (2004) 24 INDLD 282, (2004) 4 ALL WC 3203, 2005 SCC (L&S) 734

Bench: R.C. Lahoti, G. P. Mathur, P. P. Naolekar

CASE NO.:

Appeal (civil) 6506 of 2004

PETITIONER:

Dolly Chhanda

RESPONDENT:

Chairman, JEE & Ors.

DATE OF JUDGMENT: 05/10/2004

BENCH:

CJI R.C. LAHOTI, G. P. MATHUR & P. P. NAOLEKAR

JUDGMENT:

J U D G M E N T (Arising out of S.L.P.(Civil) No.21153/2003) G. P. MATHUR

1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 31.10.2003 of High Court of Orissa by which the writ petition filed by the appellant for issuing a direction to the respondents to admit her in MBBS course was summarily dismissed.

3. The appellant passed 10+2 (Science) Examination conducted by the Council of Higher Secondary Education, Orissa, in First Class. As she was desirous of joining a medical course, she appeared in the Joint Entrance Examination, 2003 (for short 'JEE-2003') under the reserved MI category being daughter of an ex-serviceman NK Manoranjan Chhanda who was discharged from armed forces on the ground of permanent disability. Under Clause 2.1.4 of Information Brochure of JEE-2003 certain percentage of seats are reserved for children/widows of personnel of armed/paramilitary forces of Orissa, killed/disabled in action during war or peace time operation. Her rank in the

JEE-2003 in the reserved MI category in the medical stream was 20 and accordingly she was called for counselling for admission to a medical college on 7.7.2003. During the course of scrutiny of papers it was revealed that in the certificate dated 29.6.2003 given to her father by the Zilla Sainik Board in Column No.3 which pertained to "Disabled/killed in war/hostilities" the words "not eligible" were written. Since the aforesaid certificate did not satisfy the requirement of the reserved MI category, her candidature was rejected. The candidates who had secured ranks at 24 and 26 in the aforesaid category were given admission. She produced the disability certificate which was issued to her father by the army authorities, but in view of requirement of Clause 2.1.4 of the Information Brochure the same was not accepted. The appellant's father then requested the Zilla Sainik Board, Sambalpur to rectify the mistake, which issued a fresh certificate on 16.7.2003 which mentioned "Permanently Disabled" in Column No.3. The appellant then again approached respondent no.1 with the aforesaid correct certificate, but no action was taken. On coming to know that another round of counselling had been fixed for 29.10.2003 on account of increase in seat, the appellant went to the concerned centre and requested for being given admission on the basis of the fresh certificate issued by the Zilla Sainik Board, which certified that her father had been discharged from armed forces on the ground of permanent disability. The candidates who had secured rank from 27 to 30 in the MI category were called for counselling, but the appellant's candidature was not considered. The case of the appellant thus is that it was the Zilla Sainik Board which had committed the mistake in not issuing a correct certificate and the said mistake having been rectified in the second certificate issued on 16.7.2003, she was entitled for admission in a medical college as candidates securing lower ranks had already been admitted.

4. The writ petition filed by the appellant was dismissed by the High Court on the ground that at the time of the counselling on 7.7.2003 the certificate furnished by the appellant did not bear any testimony that her father being a personnel of armed/paramilitary forces of Orissa had been disabled in action and consequently in terms of Clause 2.1.4 of the Information Brochure her claim that she belong to the reserved MI category had not been established.

5. In the counter affidavit filed on behalf of the respondents, it is admitted that the appellant had secured rank at serial no.20 in the medical stream in the JEE-2003 in the reserved MI category. The stand taken is that as in the certificate produced by the appellant at the time of counselling on 7.7.2003, it was not mentioned that her father was a disabled personnel of the armed/paramilitary forces, her candidature was rejected. It is further pleaded that since her candidature was rejected due to her ineligibility, she was not allowed to appear in the second counselling. The fact that candidates who have secured ranks lower than the appellant in the reserved MI category have been given admission is not disputed.

6. The appellant has filed a copy of the certificate dated 3.10.2001 issued by Signal Abhilekh Karyalaya, Signals Records, Post Bag No.5, Jabalpur (M.P.), which certifies that Ex-NK Manoranjan Chhanda resident of VPO Larambha, District Sambalpur (Orissa) is suffering from permanent disability. The certificate produced by the appellant on 7.7.2003 was issued by Zilla Sainik Board on 28.6.2003 and in this certificate a mistake had crept in, namely, in Column No.3 pertaining to "Disabled/killed in war/hostilities", the words "not eligible" were written. This mistake was rectified in the second certificate issued by the Zilla Sainik Board on 16.7.2003 where in Column No.3 the

words "Permanently disabled"

were written. The factual position, viz., that the appellant's father Manoranjan Chhanda was discharged from army on account of permanent disability is not at all disputed by the respondents. Similarly, the correctness of the second certificate issued by the Zilla Sainik Board, Sambalpur, wherein it was mentioned that Ex-NK Manoranjan Chhanda had suffered permanent disability is also not disputed. The only ground on which the appellant's candidature was rejected is that at the time of the counselling on 7.7.2003 she failed to produce the certificate to show that she belongs to a reserved category.

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

8. This principle was explained and applied in *Charles K. Skaria & Ors. v. Dr. C. Mathew & Ors.* 1980 (2) SCC 752. The controversy here related to admission to a post graduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or sub-specialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The Prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to post graduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below :

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course ? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor.

...

Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanizes the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices "

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the

appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in the JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

11. The appeal is accordingly allowed with costs. The judgment and order dated 31.10.2003 of the High Court is set aside. The respondents are directed to give admission to the appellant in any one of the State medical colleges forthwith. In case the State seats have already been filled up, one extra seat shall be created for her.