

Subhash Chander Vs. M.C.D.

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Court : Delhi

Decided On : Aug-18-2006

Reported in : 134(2006)DLT680

Judge : Mukul Mudgal and; S. Muralidhar, JJ.

Appeal No. : LPA No. 72 of 2002

Appellant : Subhash Chander

Respondent : M.C.D.

Advocate for Def. : Tarun Sharma, Adv.

Advocate for Pet/Ap. : Raman Kapur and; Nidhi Jain, Advs

Disposition : Appeal dismissed

Judgement :

S. Muralidhar, J.

1. This appeal is directed against the order dated 3.1.2002 passed by a learned Single Judge dismissing W.P.(C) 1520/98 filed by the appellant.

2. The appellant had filed a writ petition challenging an advertisement dated 24.1.1998 issued by the respondent Municipal Corporation of Delhi (MCD), to the extent it laid down a condition that the application by a candidate for obtaining an

other backward class (OBC) certificate should have been made to the concerned officer at Delhi on or before 31.7.1996.

3. The learned Single Judge dismissed the writ petition on two grounds. First, that till 30.12.1997, no OBC certificate from the competent authority at Delhi had been obtained by the appellant and that accordingly the appellant had rightly been considered as a general candidate. Secondly, the subsequent submission of such certificate by the appellant was to no avail in terms of the judgment of Hon'ble Supreme Court in MCD v Veena (2001) 6 SCC 571.

4. We have heard submissions of Mr. Raman Kapoor learned advocate for the appellant and Mr. Tarun Sharma learned advocate for the respondent/MCD.

Background Facts:

5. The admitted facts in the present case are that the respondent issued an advertisement on 16.7.1996 inviting applications for the post of assistant teachers. The advertisement set out instructions as regards the age limit, educational qualifications, the procedure for applying and certain other general instructions. The relevant portion of the said advertisement as regards the procedure for applying to the post and the general instructions read as under

How to apply:

The candidates registered in Employment Exchanges of Delhi till 15.6.96 may apply for the aforesaid post by submitting their bio-data in his/her own handwriting in the format detailed below, Along with the following.

(i) Bank Draft for Rs 40/- for General Category and Rs 25/- only for reserved categories drawn in favor of ' Commissioner, M.C.D.' payable at Delhi.

(ii) A recent passport size photograph only attested by a Gazetted Officer should be pasted on each Application Form (stapling not allowed).

(iii) Three self-addressed envelopes of 12 cms X 25cms size with postage stamp of Rs one affixed on each.

(i) Attested copies of Certificates and mark-sheets of educational qualifications.

(ii) Proof of age.

(iii) Attested copies of documents in favor of claim of SC/ST/OBC/PH/ex-S persons, etc.

(iv) Complete application in all respect should reach the following address by 31st July , 1996 through 'Registered Letter' only.

Asstt. Commissioner (Education)

Education Deptt. (HQ)

Municipal Corporation of Delhi,

Nigam Bhawan, Kashmere Gate, Delhi-6.

B. General Instructions:

1. The envelope containing the application should affix in bold letters on the top ' Recruitment of primary teacher (General/Tamil/Urdu & Nursery teachers in the MCD, 1996. Category viz. Gen./SC/ST/OBC/PH/ex-S, etc may also be indicated clearly on top of the envelope.

2. Separate application form should be filed/sent for each different category/post.

3. Fee once paid shall not be refunded under any circumstance.

4. Application form must be filled/submitted in Hindi or English only.

5. Any candidates whose certificate & mark sheets are found false or fraudulent on verification from the concerned Boards/Univ. the selection of such candidates shall be canceled without prior notice and further action under the law, shall be invited.

6. Canvassing in any form will be treated as a disqualification of the candidates.

6. The appellant submitted his application to the respondent on 30.7.1996 along with an OBC certificate dated 25.8.1980 obtained from Town Rampur Maniharan

District Saharanpur, UP. It appears that selection process was not completed for some time thereafter. On 24.1.1998 the impugned advertisement was published by respondent/MCD by way of a public notice informing candidates who had applied to the post of Assistant Teacher that they could file their objections, if any, to the Additional Deputy Commissioner (Education), Nigam Bhawan, Kashmere Gate, through Registered Post latest by 12.2.1998. The relevant portion of the advertisement dated 24.1.1998 reads thus:

Procedure for recruitment of Primary Teachers

It is to inform the candidates who applied to the post of Primary Teachers advertised in the News-Papers in July-1998, can file their objections, if any, to the Additional Deputy Commissioner (Education), Nigam Bhawan, Kashmere Gate, through Registered Post only latest by 12.02.1998. The final list of the the applicants has been displayed on 12.12.1997 on the Notice Board of the Education Department (Headquarters).

7. A note was appended to the said public notice which read as under:

Note: The candidates who have submitted the O.B.C Certificate issued till 31/05/1997, and applied to the Competent Authority of Govt. of N.C.T. Delhi on or before 31/07/1996, have been considered in OBC category.

The candidates while submitting their objections shall enclose the proof/evidence in support of their claim.

8. The appellant applied for the OBC certificate from the SDM Delhi on 20.12.1996 and obtained the same on 2.5.1997. It is not in dispute that this OBC certificate was submitted to the respondent on 30.12.1997. When the appellant found that certain other similar candidates had been considered for appointment, he made a representation to the respondent/MCD and thereafter filed Writ Petition (C) No.1520 of 1998 seeking the following relief:

(a) issue appropriate writ, order or direction, striking-down the impugned advertisement dated 24.01.1998 (Annexure-A) to the extent it lays down a condition to the effect that application for obtaining O.B.C. certificate to the

concerned officer of Delhi should have been filed on or before 31st July, 1996;

9. In its reply to the writ petition, the MCD denied that there was no discrimination vis--vis the appellant. The only ground on which he was not considered for appointment was that he had not applied for the OBC certificate from the authority in Delhi on or before 31.7.1996 as indicated in the public notice dated 24.1.1998. By his own showing, the appellant had applied for the OBC certificate from the SDM, Delhi only on 20.12.1996 . thereforee, notwithstanding the fact that he had obtained it before 2.5.1997, well before cut off dated 31.5.1997, as indicated in the public notice dated 24.1.1998, and further although he had submitted this OBC certificate on 30.12.1997 on which date the selection was not completed, he could still not be appointed because he had not applied to the competent authority before 31.7.1996 for issuance of the OBC certificate.

Effect of MCD v. Veena:

10. It appears that before the learned Single Judge the appellant placed reliance on the judgment of a learned Single Judge of this Court in Veena v. MCD 1998 (6) AD(Delhi) 77. In that case, the OBC certificate produced by the petitioners for the post of Assistant Teacher in MCD was not issued by the authorities in Delhi. Form AA required that the OBC certificate should have been obtained from the office of the Government of the National Capital Territory of Delhi, although the note in the advertisement, which read as follows, made no such reference to such a Form:

Note: Candidates seeking reservation as ST/SC/OBC/Exs/OH may submit the prescribed certificate from the competent authority in support of their claim with applications. The reservation policy to the categories of SC/ST/OBC/Exs and physically Handicapped candidates shall be followed in accordance with the latest policy of Central Delhi Govt.

Accordingly, the learned Single Judge held that where the petitioners had not been informed by way of the advertisement that they were required to submit their OBC certificate in accordance with Form AA prescribed for that purpose, their cases could not be rejected. Accordingly the learned Single Judge directed MCD to consider the cases of those petitioners.

11. It appears that by the time the writ petition in the present case was finally heard, the Hon'ble Supreme Court gave its judgment in MCD v Veena (supra) whereby the said judgment of learned Single Judge was set aside. The Supreme Court was of the view that there was nothing arbitrary about MCD requiring candidates to submit an OBC certificate from an authority in Delhi because a particular caste which is considered as OBC in some other state need not necessarily be considered as OBC in Delhi and this position was well settled in several decisions of the Hon'ble Supreme Court. It was in those circumstances that Hon'ble Supreme Court set aside the orders of the learned Single Judge . No other point appears to have been raised or dealt with by the Hon'ble Supreme Court in the said judgment. The Hon'ble Supreme Court was not called upon to determine whether the cut-off dates for applying for the OBC certificate (31.7.1996) and obtaining the same from the authorities in Delhi (31.5.1997) was reasonable, or the effect of not complying with either of these cut-off dates on the candidature of the applicants.

12. The learned Counsel for the appellant submits that the learned Single Judge in the instant case erred in dismissing the writ petition in terms of the judgment of Hon'ble Supreme Court in MCD v Veena (supra) since that judgment did not in fact consider whether prescribing a cut off date by which the applications for an OBC certificate had to be made was reasonable or not. During the course of argument the learned Counsel for the respondent/MCD also fairly submitted that in order to decide the point arising in the present case, the ratio of judgment of Hon'ble Supreme Court in MCD v Veena (supra) may not be helpful. We are of the view that the judgment in MCD v Veena (supra) could not have been basis for the rejection of the appellant's writ petition.

Non-production of OBC Certificate by 30.12.1997: Effect of

13. The other point on which the learned Single Judge proceeded was that till 30.12.1997 no OBC certificate from the competent authority at Delhi had been submitted by the appellant to the respondent and, therefore, the appellant had rightly been considered as a general candidate. Thus, it appears, was not entirely correct since public notice dated 24.1.1998 only stipulated two requirements. One

was that the applicant should have applied for the OBC certificate from the competent authority in Delhi before 31.7.1996. Second, he should have obtained such OBC certificate from the competent authority in Delhi before 31.5.1997. Admittedly in the instant case the appellant obtained the OBC certificate on 2.5.1997, before the cut-off date of 31.5.1997. He submitted such certificate to the respondent on 30.12.1997. By this time the selection was not yet complete since the advertisement dated 24.1.1998 extended time for submitting objection till 12.2.1998. The ground on which the appellant's candidature was rejected was not that he submitted the OBC certificate late, but that he had not applied for it by 31.7.1996. Clearly, therefore, the learned Single Judge was in error in dismissing the writ petition on this ground as well. However, instead of remanding the matter to the learned Single Judge for consideration afresh of the writ petition, we consider it appropriate to decide this issue in the present appeal itself since the appointment in question pertains to year 1998 and considerable time has already elapsed.

14. As pointed out hereinabove, the only ground on which the case of the appellant was rejected was that he had not complied with the first of the two conditions stipulated in the advertisement in the public notice dated 24.1.1998. In other words, the appellant had not applied for the OBC certificate to the competent authority before 31.7.1996. What has to be considered is whether the denial of the appointment of the appellant on this ground was just, fair and reasonable. The admitted position is that there is no other impediment to the appellant for being considered for employment to the post of Assistant Teacher. Learned Counsel for appellant had drawn our attention to the judgment dated 24.12.1999 of a learned Single Judge of this Court in *Tej Pal Singh v Govt. of NCT Delhi* 83 (2000) DLT 649 and submitted that in the said case the prescribing of a cut-off date for the submission of OBC certificate was held to be unreasonable. He further submitted that this judgment was affirmed by a Division Bench on 15.12.2000 and the SLP filed there against, stood dismissed on 16.4.2001. It is accordingly submitted by the learned Counsel for the appellant that in accordance with the ratio of the judgment in *Tej Pal Singh* (supra) the present appeal requires to be allowed. This however, is contested by the learned Counsel for the respondent. Accordingly we proceed to examine at some length the judgment of the learned Single Judge in

Tej Pal Singh.

15. In Tej Pal Singh (supra) the Delhi Subordinate Services Selection Board(DSSB) had issued an advertisement on 12.6.1998 for various posts including that of Assistant Teacher to be appointed in various MCD and NDMC schools. As per that advertisement the last date for submitting the complete form was 30.6.1998. The advertisement further stipulated the number of posts reserved for SC/ST/OBC candidates. It appears that petitioners in those cases applied for the post submitting their respective SC/ST/OBC certificates and they were called for verification between 6.10.1998 to 20.12.1998 . Thereafter the DSSB issued call letters to the candidates for the purpose of verification stipulating therein that documents should be produced in original and in case of SC/ST/OBC candidates the certificate must be issued by the competent authority of NCTD. Subsequently, the petitioners came to know that their candidature had not been considered by the DSSB on the ground that their SC certificate was issued later than 30.6.1998 and only those candidates had been considered whose certificates were issued prior to 30.6.1998. The question that arose therefore, was whether the candidature of the petitioners could have been rejected only because their SC certificates had been issued after the cut off date for submitting the complete application form i.e. after 30.6.1998.

16. The learned Single Judge in Tej Pal Singh (supra) referred to certain prevailing instructions which had been reproduced in " Swami's Compilation of Rules " wherein it was prescribed that where a candidate belonging to SC/ST is unable to produce the requisite certificate from the prescribed authority, he may be appointed provisionally on the basis of whatever prima facie certificate is filed subject to his furnishing prescribed certificate within a reasonable time. It was stipulated that " appointment of a SC/ST candidate should not be delayed due to pending verification of caste status". The learned Single Judge in Tej Pal Singh v Govt. of NCT Delhi (supra) then held as under (DLT: p. 657)

In this case admittedly all the petitioners produced the certificate before 30th June, 1998 to the effect that they belong to SC category. However, these certificates were issued by other State Governments and not by government of NCTD. Thus

along with their application they submitted prima facie proof in support of their claim that they belong to SC category. Not only this they could even produce the certificate from competent authority of government of NCTD also much before the verification of the original certificates by the Board. Thus the appointment could not have been denied to the petitioners merely because the certificate issued by the competent authority of government of NCTD are dated after 30th June, 1998.

17. The learned Single Judge in Tej Pal Singh (supra) proceeded to consider the submissions of the respondent in that case and observed as under (DLT: p.659):

Admittedly, cut-off date of 30th June, 1998 for the purpose of submitting SC/OBC certificate was not mentioned in the advertisement. The only reason given by the respondents in the counter affidavit for fixing cut-off dates 30th June, 1998 is that since that was the last date for submission of application for various posts, it necessarily follows that the certificate to be produced by the petitioners should also have been issued before this date. The advertisement does not support the contention of the respondent. As already noticed above although cut-off date is fixed for issuing eligibility qua professional experience, educational qualifications, date of birth, etc. no such cut-off date is fixed for the purpose of submission of SC certificate. Moreover, even when this certificate was submitted later, the applications of the petitioners was still considered and they were short listed.

18. The learned Single Judge then considered the applicability of the judgments relied upon by the respondent i.e. Indian Railway Service of Mechanical Engineers Association v. Indian Railway Service Association 1993 Supp.(4)SCC 473, University of Cochin v. N.S. Kanjoonjamma (1997) 4 SCC 418 and Dr. Ami Lal Bhat v. State of Rajasthan : AIR 1997 SC2964 and concluded that none of these judgments were applicable for examining the reasonableness of fixing a cut-off date for submission of SC/ST/OBC certificate. What also weighed with the learned Single Judge was that several posts of SC category were still lying vacant and that little purpose would be served by re-advertising the posts if the candidates for those posts were otherwise qualified to be appointed. The learned Single Judge pointed out that there was a fallacy in proceeding on the footing that a person acquired a certain caste only from the date of issuance of caste certificate. The

caste certificate merely recognised the status of the person already acquired by birth.

Tej Pal Singh : Division Bench

19. As mentioned herein before the judgment of the learned Single Judge in Tej Pal Singh case was upheld by the judgment of the Division Bench dated 15.12.1990 Delhi Subordinate Service Selection Board v. Tej Pal Singh. Agreeing with the learned Single Judge, the Division Bench held as follows:

The cut-off date of 30th June, 1998 for the purpose of submitting SC/OBC certificate was not mentioned in the advertisement as correctly stated by the learned Single Judge. The only plea which is taken by the appellants is that since that was the last date for submitting the applications for various posts it necessarily followed that the certificates to be produced by the respondents/applicants should also have been issued before this date. The factual position, however, does not support the averments of learned Counsel for the appellants. Indeed we are surprised that this argument has been elaborately made when the Authority to issue the certificate is Government of NCTD. The respondents/applicants had already submitted their applications with the SC/ST/OBC certificates which were only required to be verified by the Government of NCTD.

20. The Division Bench further held as follows:

In this background, we cannot appreciate the argument raised by the learned Counsel that the certificate issued by Government of NCTD was also required to be submitted before 30th June, 1998 when their own officers were delaying the process of issuing these certificates. To exclude respondents merely on this ground will clearly be arbitrary and in direct conflict with the fundamental rights and directive principles as incorporated in various provisions of the Constitution of India.

The Hon'ble Supreme Court dismissed in liming the SLP filed against this judgment. Thus the decision of the Single Judge in Tej Pal Singh (supra) affirmed

by the Division Bench has attained finality.

21. This much is clear from the ratio of the judgment of Tej Pal Singh. It would be unfair to deny appointment to a candidate only on the ground that the SC/ST/OBC certificate issued by the authority in Delhi could not be submitted by a candidate belonging to those categories, before the cut off date for submitting the application. The candidates in those cases did possess caste certificates issued by States other than the NCTD and they were not considered for appointment only because they submitted the certificate issued by the Government of NCT of Delhi after the cut off date. This Court held that such denial of appointment was unreasonable and this view was affirmed by the Hon'ble Supreme Court.

Application of Tej Pal Singh to the instant case:

22. As far as the case on hand is concerned, there is not much distinction between the facts in the Tej Pal Singh, since even here the only ground on which the case of the appellant has not been considered is that he did not apply for the OBC certificate before 31.7.1996. We are of the view that the ratio of Tej Pal Singh could be extended to the present case also since it appears that the appellant is otherwise fully qualified to be appointed. It is nobody's case that he is not an OBC. The OBC certificate produced by him along with his application form was issued by the concerned authority in Saharanpur U.P and it is nobody's case that either that OBC certificate or the one now issued by concerned authority of the Govt. of NCT of Delhi on 2.5.1997 is not a genuine certificate. It is not in dispute that the certificate as required by the public notice dated 24.1.1998 was in fact obtained before prescribed date i.e. before 31.5.1997 and submitted to the MCD on 30.12.1997 at which time the selection process was still underway as is evident from the advertisement dated 24.1.1998 which extended the time for submitting the objection was extended till 12.2.1998. In these circumstances, it was unfair and unreasonable for the MCD to have rejected the candidature of the appellant on the sole ground that the appellant did not apply for such OBC certificate before the prescribed date i.e. before 31.7.1996.

23. Learned Counsel for the MCD is unable to show us any rational basis for insisting that such a certificate had to be applied for before 31.7.1996. His only

answer was that the original cut off date for submission of the complete application form as stipulated in the advertisement dated 16.7.1996 was 31.7.1996 and therefore, the caste certificate from the corresponding authority of Delhi should have been applied for before that date. It seems to us that fixation of a cut off date for applying for an OBC certificate is not on any rational basis particularly when MCD itself thought it fit to extend the time for such candidates applying under OBC category to obtain the OBC certificate till 31.5.1997. It was clear to the MCD that many of these candidates did possess a caste certificate but not one issued by the Government of NCTD. It is inconceivable that how the candidates could have anticipated this contingency before 31.7.1996, particularly when the advertisement does not mention that such caste certificate should have been obtained from an appropriate authority in the NCTD. To recall the condition stipulated in the main advertisement dated 16.7.1996, it only states that application should be accompanied by "attested copies of documents in favor of claim of SC/ST/OBC etc." and indicates that the "complete application " should reach the MCD by 31.7.1996. It is only in the advertisement dated 24.1.1998 that it was indicated for the first time that the OBC certificate should have been issued by the competent authority of NCT of Delhi and it was only in this advertisement there that cut off date of 31.7.1996 as the date before which an application for issuance of OBC certificate should have been made, was indicated.

24. This is yet another factor that requires to be considered while testing the reasonableness of MCD's action. It would be unreasonable to impose a condition, long after the first advertisement and subsequent to the submission of applications, and expect that the candidates who had applied should have complied with such a condition even on the date they first submitted the application. We are of the view that prescribing 31.7.1996 as a cut off date before which the application for an OBC certificate should have been made is neither reasonable nor fair.

25. Before parting with this part of the discussion, we are constrained to observe that the respondent MCD is facing a considerable shortage of qualified teachers. One would have expected, therefore, that the respondent would have looked upon this exercise as one for selecting qualified persons rather than for eliminating

qualified candidates. One could have appreciated the rejection of a candidate for furnishing a false or inadmissible caste certificate, but clearly that is not the case here. The respondent MCD proceeded to reject the candidature on an irrational criteria leading to the avoidable result of rejection of an otherwise qualified candidate. Ten precious years have been lost in the process!

26. Accordingly we hold that stipulation in the public notice dated 24.1.1998 issued by the MCD that the OBC certificate be submitted by a candidate applying under that category should have been applied for on or before 31.7.1996 is unreasonable. This condition in the said public notice is declared to be invalid and struck down as such. Since admittedly this is the only ground on which the appellant's candidature was rejected, the respondent/MCD is required to consider the appellant for the post of Assistant Teacher in terms of the advertisement dated 16.7.1996 ignoring this stipulation. If the appellant is found qualified in all other respects, the respondent/MCD is bound to offer him the post of Assistant Teacher . It is directed that the MCD will complete the exercise for considering the appointment of the appellant to the post of Assistant Teacher as directed hereinabove within four weeks from today and in any event not later than 15.9.2006. If there are no vacant posts of Assistant Teacher the respondent shall consider appointing the appellant to the first available vacant post of Assistant Teacher that may arise hereinafter. It is made clear that this will not entitle the appellant to any claim for retrospective seniority or emoluments and the seniority of the appellant shall reckon after the last person who already stands appointed as Assistant Teacher.

27. The impugned judgment of the learned Single Judge is consequently set aside. This appeal is allowed in the above terms with costs of Rs 5,000/- which shall be paid by the respondent to the appellant also within a period of four weeks from today and in any event not later than 15.9.2006.