

5th September,
2019

**Calcutta High Court
In the Circuit Bench At Jalpaiguri**

W.P.A. 323 of 2019

(48)
(BD)

Medhasree Goswami & Ors.
-vs-
State of West Bengal & Ors.

Mr. Jagriti Mishro
... for the Petitioners.

Mr. Debabrato Dhar
... for the State.

All three petitioners appeared in the National Eligibility Cum Entrance Test (NEET (UG)-2019. The petitioners were ranked at 314773, 325058 and 664781 respectively with a percentile of 77.5, 76.9 and 52.68 respectively. The corresponding State Wise ranking of the petitioners for the West Bengal UG State seats was 7286, 7338 and 8720 for the three petitioners.

Learned counsel for the petitioners places Memo dated 12th July, 2019 issued by the West Bengal University of Health Sciences with regard to a “a notice regarding reservation for Economically Weaker Section (EWS) in W.B.U.G. Counselling for Medical Seats, 2019”. It was stated that EWS reservation is expected to be implemented from Round-2 of the state quota-wise seats in medical colleges in NEET U.G 2019 Counseling. In other words candidates who have not qualified for a seat in round 1 to appear for round 2 and those who have not qualified in round 2 have a last opportunity to appear for the College MOP-UP.

Learned counsel for the petitioners submits that the examinations were taken by the petitioners

in May 2019 and the results were declared in 5th June, 2019. Counsel explains that the qualifying round involves two initial rounds of selection where the most eligible candidates are selected in Round-1 and the remaining go to Round-2. The last Round is a college MOP-UP. Counsel places the relevant part of the Memo dated 12th July, 2019, which is set out below:

“Candidates who are enrolled and verified in Round 1 as unreserved candidates in NEET UG 2019 State Quota counseling and who want to enroll at fresh in subsequent rounds shall apply to the appropriate authority as mentioned in such memorandum to obtain EWS eligibility certificate. After obtaining EWS certificate in prescribed format from the appropriate authority candidates have to appear for verification at the scheduled verification centers at pre-defined date/dates. The tentative dates of verifications will be between 22 to 25 July, 2019 for availing EWS reservation in Round 2.....Candidates are advised to obtain the EWS certificate as early as possible without waiting for the publication of the official dates of verification, so that they may be able to avail the EWS reservation in Round 2 after proper verification.

Such candidates will have to secure the Unreserved cut off that is 50 percentile in NEET UG 2019 for availing of such seats”.

It is submitted that pursuant to the Memo, all three petitioners applied for the EWS eligibility certificate in the prescribed format from the appropriate authority on 22nd July, 2019 which would appear from the acknowledgement slips given to the petitioners and annexed to the writ petition. Counsel submits that Round 1 of the selection process had already been completed before the Memorandum came into place on 12th July, 2019 and Round 2 was completed on 26th July, 2019. He

submits that by the time the writ petition was filed on 5th August, 2019, Round 2 had already been completed. It is further submitted that when the three petitioners who are based in Jalpaiguri, approached the concerned authorities for appearing in Round 2 Counseling of the selection process, the petitioners were informed that they were not eligible to appear for Round 2 since the EWS certificates had not been issued to them. The EWS certificates finally reached the petitioners on 8th August, 2019 by which time Round 2 counseling had already been completed. Counsel submits that the petitioners have suffered by reason of information not being conveyed to the appropriate authorities in Jalpaiguri which eliminated their chance in appearing for the second round of counseling. It is submitted that at the time of applying for the EWS certificates in the prescribed format, the concerned authorities were not even aware of the Memorandum pursuant to which the petitioners made the applications.

The other grievance raised by counsel for the petitioners is that candidates who have scored considerably lower marks than the three petitioners have been selected in Round 2 counseling and relies on a provisional eligible candidates list for W.B.UG State Quota Seats 2019 Round 2 which gives the serial number and other particulars of the candidates who have been admitted. At least two entries from this list would show that compared to the petitioners who secured ranks of 7286, 7338 and 8720 in the corresponding State ranking, candidates who have been found to be eligible in Round 2 have a ranking of 8009 and 8017. Counsel submits that the only recourse now left for the petitioners is to be

permitted to appear for the last round, namely, for the college MOP-UP.

Learned Government Pleader proposes that the case of the petitioners may be considered for eligibility in the appropriate stage of the counseling or as the case may be.

Having heard learned counsel for the parties, this Court is of the view that the three petitioners are victims of what may be termed as locational disadvantage. This is unfortunate since the examination in which the petitioners have secured high marks and have got good ranking in an All India Examination with a corresponding ranking for the State of West Bengal. In the facts of this case, it is clear that the petitioners took immediate steps after publication of the Memo for applying as EWS candidates but were not given the concerned Certificates within the cut off time namely before the completion of Round 2 of the counseling process. It may be reiterated that the petitioners applied on 22nd July, 2019, Round 2 was completed on 26th July, 2019 and the Certificate reached the petitioners on 8th August, 2019. The petitioners were therefore eliminated from Round 2 altogether by reason of the delay in the Certificate being issued to the petitioners. Moreover, the candidates who were initially placed much below the petitioners in terms of ranking ultimately got ranking above the petitioner Nos. 1 and 2, for no fault of the petitioners and which is because those candidates were issued the EWS Certificates on time. The unreported decision in the case of *Shivani -vs- Employee State Insurance Corporation* of the learned Single Judge of the Delhi High Court, relied upon by Counsel for the

petitioners although a case involving non-issuance of WIP certificate (Insured Person Certificate), the relief given in that case concerning granting admission to the petitioners to the MBBS/BDS course may not be wholly applicable in the facts of this case since the relief sought for by the petitioner is concerned with the selection process, prior to the actual admission of the petitioner.

Considering the inequities of the facts of this case, this Court deems it fit to direct the Registrar-in-charge, the West Bengal University of Health Sciences, being the respondent no.4, herein to allow the petitioners to appear in the MOP UP counseling for the WB UG MBBS State Quota Seats 2019, on the basis of the EWS Certificates which have been issued to the petitioners by the concerned authorities on 8th August, 2019. Since it has been submitted by Counsel that the MOP UP counseling has already commenced and is presently under way the respondent no. 4 is directed to comply with the direction as has been stated above within a fortnight from date but not beyond 23rd September, 2019.

W.P.A. 323/2019 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)