

**IA No : CAN 1 of 2020 (Old CAN No. 5290 of 2020)
with
W.P.A. No. 6532 of 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
Promoshi Podder
Vs.
The State of West Bengal & Ors.**

For the Petitioner	: Mr. Biswaroop Bhattacharya, Advocate Mr. Dipayan Kundu, Advocate
For the Respondent No. 1	: Mr. Sirsanya Bandopadhyay, Advocate
For the Respondent No. 3	: Mr. Sunit Kumar Roy, Advocate
For the University	: Mr. Supratic Roy, Advocate
Hearing concluded on	: September 3, 2020
Judgment on	: September 25, 2020

DEBANGSU BASAK, J.:-

1. Petitioner has sought allotment of a seat in her favour in her preferred subject of M.D. Pathology in WBPG 2020.
2. Learned Advocate appearing for the petitioner has submitted that, the petitioner was denied the preferred subject in the pathology in WBPG 2020 despite the petitioner having the requisite qualification and the merit rank for the same. He has submitted that, the petitioner passed Bachelor of Medicine and Bachelor of Surgery

(M.B.B.S.). After completion of the M.B.B.S. course along with internship training, the petitioner became registered associate of the West Bengal Medical Council with effect from April 25, 2018. The petitioner participated in NEET-PG-2020 for taking admission to the MD/MS/Post Graduate Diploma Courses of 2020 as a Schedule Caste candidate. The petitioner secured 263 marks out of 1200. In the selection process, the cut off pass for general EWS (50th percentile) was 230. Marks obtained by the petitioner was above the cut off percentile. The petitioner obtained All India Rank of 116765. The petitioner was placed in the West Bengal Merit List as Serial No. 1217 on the basis of her All India Rank.

3. Learned Advocate appearing for the petitioner has submitted that, the counselling process of West Bengal Post Graduate Course was divided into four compartments namely Round 1, Round 2, Mop Up Round of Counselling and College Level Counselling (on spot admission). The petitioner participated in the Round 1 and Round 2 of the West Bengal Post Graduate Counselling in 2020. She was not allotted any seat in any subject during such two rounds of counselling. The petitioner thereafter participated in the Mop Up counselling in terms of the notification dated July 17, 2020. The

respondent No. 2 thereafter published another notification for Mop Up Counselling dated July 25, 2020 in which the petitioner participated. The Mop Up Counselling was held on July 27, 2020. By a notification dated July 28, 2020, the admission for centralized manner Mop Up was extended till 6 p.m. of June 30, 2020 on account of the Covid-19 situation and the lockdown of the State of West Bengal on July 29, 2020. The petitioner having participated in the Mop Up Counselling was admitted to the Post Graduate Diploma Course in Anaesthesiology at R.G. Kar Medical College, Kolkata on July 30, 2020 for the academic session 2020-22. The Principal, R.G. Kar Medical College issued a joining letter in favour of the petitioner on July 31, 2020. Thereafter, the Hon'ble Supreme Court extended the cut off date for counselling of NEET PG 2020 till August 31, 2020 due to the Covid-19 situation. The counselling authority floated College Mop Up round seat matrix on July 30, 2020 at about 9 p.m. From such notification, the petitioner became aware that seats in M.D. Pathology were available for college round counselling within different Post Graduate Institution in the State of West Bengal. One seat under the Schedule Caste quota was available at R.G. Kar Medical College at the college level Mop Up. By a memo dated August 27, 2020 the

respondent No. 2 issued an urgent circular for extended college Mop Up. Such memo was issued to conduct an extended college level Mop Up to fill up the stray vacancies as the last date for filling up all such vacancies was extended till August 31, 2020 by the Hon'ble Supreme Court.

4. Learned Advocate appearing for the petitioner has submitted that, from such notifications, the petitioner became aware that, there were seats available in M.D. Pathology when the petitioner participated for the counselling. The availability of such seats was not disclosed. The petitioner therefore could not obtain admission to her chosen stream of M.D. Pathology. The respondents having acted arbitrarily in not disclosing the actual vacancy position of the seats in respect of the streams, the petitioner was denied equal opportunity to participate and secure such seat for herself. The petitioner therefore was wronged by the respondent authorities. Such wrong should now be corrected.

5. Learned Advocate appearing for the petitioner has relied upon **2019 SCC Online SC 1609 (S. Krishna Sradha v. State of Andhra Pradesh & Ors.)** in support of the contention that, a

deserving candidate should be granted the seat that such candidate deserved.

6. Learned Junior Standing Counsel appearing for the petitioners has submitted that, the process undertaken for counselling was transparent and that the counselling was done in the manner as was prescribed. He has referred to the various paragraphs of the affidavit-in-opposition filed on behalf of the State Authorities. In particular, he has drawn the attention of the Court to the various sub-paragraphs of Paragraph 4 of such affidavit. He has submitted that, counselling for the degree course was done prior to the counselling for the diploma course. Counselling for the degree course for Schedule Caste candidates ended on July 27, 2020 at 16:25:24 hours. The counselling for the diploma course for Schedule Caste candidates commenced after 8 p.m. on July 28, 2020. Two seats were vacated by candidates who initially opted for degree courses and thereafter diploma courses. In other words, candidates who initially obtained seats in the degree courses subsequently participated in the diploma course counselling and opted for the diploma course. Therefore, they vacated their seats in the degree courses. The degree seats so vacated were considered for allotment in the college Mop Up as and when the

vacancy in respect of such seats arose. The two degree course seats vacated were allotted to two candidates belonging to Schedule Caste, who participated in the college round counselling. The first M.D. pathology seat reserved for Schedule Caste category was released at 20:11:29 hours on July 28, 2020. Such seat was allotted to another candidate who secured a higher rank than that of the petitioner having All India Rank 105686 (S.C. Candidate). Thereafter, the petitioner opted a seat in Post Graduate Diploma Course in Anaesthesiology at 20:13:32 hours on July 28, 2020. As soon as the petitioner opted for such seat, she had marked as an allotted candidate in respect of such seat. As an allotted candidate, she is not eligible for allotment in future vacancy as, the candidate allotted the seat was the best possible seat on the basis of the candidate's merit at the specified period of time. The second seat reserved for Schedule Caste category was released at 20:13:44 hours on July 28, 2020. The petitioner having already secured a seat, could not be considered for the second M.D. Pathology seat. According to him, there is no infirmity in the actions taken by the authorities.

7. Learned Advocates appearing for the other respondents have adopted the submissions advanced on behalf of the State.

8. **S. Krishna Sradha (supra)** has considered the issue as to whether a student who has pursued his legal right expeditiously can be denied admission as a relief because the cut-off date for the admission has expired. It has also considered the issue as to what relief can be granted by the Court apart from appropriate compensation in such a situation. It has held as follows:-

“33. *In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:*

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the

complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30 th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an

appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

9. **S. Krishna Sradha (supra)** has noted that the right to equal and fair treatment is a component of Article 14 of the Constitution. A transparent and fair procedure is the duty of every legal authority connected with admissions. Denial of fair treatment to a candidate would not only violate his right under Article 14 but would seriously jeopardize his rights under Articles 19 and 21 of the Constitution.

10. In the facts of the present case, the petitioner has contended that, she was denied equal and fair treatment in the admission process. According to her, a seat in the degree course of her choice was vacant at the time when she chose another course. The facts of the present case however do not support her contention. She was given an equal and fair treatment in the admission process. The petitioner participated in the NEET PG 2020 as a scheduled caste

candidate. The All India Rank of the petitioner was 116765. The petitioner was placed in the West Bengal merit list as Serial No. 1217 on the basis of her All India Rank. The counselling process of West Bengal Post Graduate Course was divided into four compartments namely, Round 1, Round 2, mop up round of counselling and college-level counselling (on spot admission). The petitioner participated in the Round 1 and Round 2 of the West Bengal Post Graduate counselling and could not secure any seat. The petitioner participated mop up counselling for diploma courses. In the mop up counselling, the petitioner was allotted a seat in the diploma course. The same was done on July 28, 2020 at 20:13:32.080 hours. The degree course counselling was done prior to the diploma course counselling. As noted above, the petitioner could not secure a seat in the degree course during counselling due to her rank in the merit list.

11. The mop up round of counselling ended on July 27, 2020 at 16:2524.640 hours. The fate of the petitioner was decided on July 28, 2020. The petitioner not having secured admission in the three rounds of counselling participated in the last round being college-level counselling (on spot admission). During such counselling a seat

became available and the petitioner opted for the same. Such seat was allotted to the petitioner on July 28, 2020 at 20:13:32.080 hours. Upon the allotment of such seat the petitioner stepped out of the counselling. It is not the case of the petitioner that, despite allotment of a seat to her she was entitled to remain in the counselling or that she remained there. After the petitioner stepped out of the counselling a seat in the stream desired by the petitioner became available to the college at 20:13:44.640 hours. Such seat was allotted the next eligible candidate.

12. The petitioner has claimed a seat over which she did not have any right at the time when such seat was available to the authorities. In the facts of the present case, it cannot be said that the authorities had acted in a non-transparent or unfair manner. In fact the authorities had amongst themselves discussed the situation resulting in the petitioner not securing her desired stream, as will appear from the electronic mail exchanged between the authorities contemporaneously.

13. The petitioner is entitled to be treated fairly, equally and on the basis of pre-disclosed rules and regulations. Candidature of the petitioner in the counselling does not create any vested right in respect of any seat, in favour of the petitioner. In the facts of the present case, the petitioner being treated fairly, equally and on the basis of pre-disclosed rules and regulations, no relief can be granted to the petitioner.

14. In such circumstances W.P.A. No. 6532 of 2020 along with IA No: CAN 1 of 2020 (Old CAN No. 5290 of 2020) are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]