

20.01.2021.
Item No. 4 & 5

**M.A.T. 608 of 2020
C.A.N. 1 of 2020**

(Medical Council of India Vs. Arghya Das and others.)

with

**M.A.T. 609 of 2020
C.A.N. 1 of 2020**

(Medical Council of India Vs. Dwaipayan Guchait)

**Mr. Indranil Roy,
Mr. Sunit Kumar Roy.**

... for the appellant.

**Mr. Partha Sarathi Bhattacharya,
Mr. Ziaul Haque.**

... for the respondents in MAT 608 of 2020.

**Mr. Suddhasatva Banerjee,
Mr. Chandrachur Chatterjee,
Mr. Raushan Kumar Ray.**

... for the respondent in MAT 609 of 2020.

**Mr. Debaki Nandan Maity,
Mr. Supratic Roy.**

... for the W.B.U.H.S.

These two mandamus appeals have been taken up together though they arise from different order but on the identical issue projected by the writ petitioners in their respective writ petitions.

The matter pertains to an admission in a medical course after participating in the examination (NEET) and securing a rank under the general category.

The writ petition WP 17680 (W) of 2019 was filed way back in the month of September 2019 and an interim order impugned in the said application was passed on 24th February 2020. By the impugned

order, the court directed the provisional admission of the petitioner in any medical college within the jurisdiction of the University with categorical finding that such provisional admission shall not create any equity in favour of the writ petitioner and abide by the result of the writ petition.

The reason for passing the interim order of such nature was solely based upon the act of discrimination perpetrated against the petitioner when a candidate securing lower rank to the rank of the petitioner was allowed a provisional admission in the course. The aforesaid fact swayed the mind of the learned Single Judge that once a person is discriminated without having any reasonable classification, it offends the very fundamental principle of the Constitution.

The appellant, the Medical Council of India, submits before us that the provisional admission of the candidate securing lesser rank than the petitioner was on the teeth of an order of this Court and it was not an independent decision of the appellant and, therefore, the act of discrimination cannot be attributed to the conduct of the said authority. It is further submitted that the aforesaid order was passed in absence of the Medical Council of India and, therefore, the point, which is sought to be canvassed in the instant appeal, could not be addressed therein.

We are not unmindful of the proposition that the act of discrimination has to be viewed scrupulously when the authority, who owe to the Constitution, acted in contravention to the Article 14 of the Constitution of India. It is no gain saying that the examination is conducted by the authority to find out most suitable persons to be admitted in a medical course, particularly, for the reason that they have a direct interaction and interference with the human

well-being. The assessment is made in the form of the rank secured by the aspiring candidate and the vacancies are to be filled up moving from ascent to descent and will end at the cut off rank. It is not expected from an authority to permit the admission of a candidate securing lesser rank to the rank of the petitioner, as the petitioner would be construed to be more suitable and eligible than such candidate and precisely for such reason, the learned Single Judge passed an interim order permitting the provisional admission.

The other reason, which can be viewed from the fact of the impugned order that the academic career of the rightful candidate should not be wasted and/or jeopardized nor should be suspended till the final decision is taken, as the injury suffered for not passing such order would be immense to the rightful candidate.

A point is sought to be projected by the appellant that once the session has commenced, it would not be safe to permit the provisional admission in the midstream of such session nor the court should interfere in the academic field but should be left to the authority to judge and assess the same.

We have been shown another order of this Court passed on 2nd July 2018 in ASTA 16 of 2018 in AST 43 of 2018, when an appeal against the interim order was not entertained by the court and the writ petition was directed to be disposed of and/or decided on its merit.

While passing an interim order the court must strikes a balance between the rights of the warring parties and if the balance of convenience and irreparable loss tilts towards one of the same, there is no fetter on the part of the court to pass the interim order.

It has been brought to our notice that pursuant to the order impugned in the instant appeal the writ petitioners have been provisionally admitted in the course and participating in the virtual/physical classes and the final examination of such semester/session has been fixed to be held from 1st March 2021.

Since both the appeals arise from the interim order, it would not be proper for us to make any observations, which either have persuasive effect or swayed the mind of the learned Single Judge when the writ petitions are still pending and we feel that the justice would be sub-served if the same is disposed of on priority basis.

We appreciate the anguish and agony shown by the appellant that affirmation of the affidavit-in-opposition, as directed by the learned Single Judge, would further delay the process and disposal of the writ petitions and, therefore, we appreciate the suggestion mooted out by the Advocate-on-Record of the appellant that the stay application, which contains the entire facts, may be treated as affidavit-in-opposition to the writ petition.

Accordingly, we direct the stay application to the instant appeals to be treated as affidavit-in-opposition to the respective writ petitions. Since the University also intends to file affidavit-in-opposition, they are permitted to do so within two weeks from date. Liberty is granted to the writ petitioners to file reply/rejoinder to the stay application as well as the opposition filed by the University within four weeks from date.

The office is directed to detach the original stay applications from the instant file and shall place the same with the respective writ petitions so that all the facts disclosed therein shall be considered by the

learned Single Judge at the time of final disposal of the writ petitions.

We, thus, request the learned Single Judge to fix the respective writ petitions at an earliest and efforts shall be shown to dispose of the same within four weeks from the date of expiration of periods for exchange of affidavits.

With these observations, both the appeals are disposed of.

Since the stay application is treated to be an affidavit-in-opposition to the writ petition, no formal order of disposal of the stay application is recorded and the same shall not be shown pending in the docket of this Court.

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(Harish Tandon, J.)

(Kausik Chanda, J.)