

Form J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Bibek Chaudhuri

W.P.A. 284 of 2021

Sanjida Yasmin

-Vs.-

North Bengal Medical College and Hospital & Ors.

W.P.A. 285 of 2021

Saptarshi Mandal

-Vs.-

North Bengal Medical College and Hospital & Ors.

W.P.A. 286 of 2021

Ananya Rahaman

-Vs.-

North Bengal Medical College and Hospital & Ors.

W.P.A. 287 of 2021

Sayantani Mallick

-Vs.-

North Bengal Medical College and Hospital & Ors.

W.P.A. 288 of 2021

Agniv Bhunia

-Vs.-

North Bengal Medical College and Hospital & Ors.

W.P.A. 313 of 2021

Deblina Das

-Vs.-

North Bengal Medical College and Hospital & Ors.

For the petitioners

: Mr. Aniruddha Chatterjee,

Mr.Saptarshi Kumar Mal,

Mr. Debajit Kundu.

For the National Medical Commission: Mr. Sanjit Kumar Dey.

For the State Respondents: Mr. Subir Kumar Saha, Ld. A..G.P.

For the Respondent : Mr. D. N. Maiti.

Heard on : 08.02.2021.

Judgment on: 09.02.2021

Bibek Chaudhuri, J.

The above-mentioned writ petitions are taken up for hearing together as the same facts and circumstances and points of law are involved and those are disposed of by a common judgement as hereunder:-

The petitioner in W.P.A. 284 of 2021 appeared in the National Eligibility-cum- Entrance Test (Under Graduate), hereafter referred to as NEET (UG) held in the year 2019 as OBC candidate. The said examination was held on 5th May, 2019 and the result was published on 5th June, 2019. The petitioner secured All India Rank of 399588. After the result being declared, the petitioner registered herself for the counseling process conducted by the respondent authorities under the West Bengal State Quota. The whole process of counseling and admission process was completed by 31st August, 2019 as per the time limit fixed by the Medical Council of India. The petitioner, however, failed to get admission in the M.B.B.S. course in the Medical Colleges despite the seats in different Medical Colleges including North Bengal Medical College lying vacant due to non-joining and/or

surrender and those seats remained undisclosed. The petitioner came to know that several seats in the M.B.B.S. course are still lying vacant in the year 2019-20 in different Colleges under the West Bengal University of Health Sciences. She made representations before the respondent authorities on 19th August, 2019 and again on 30th September, 2019 praying for favourable consideration of her candidature for admission in any one of the vacant seats in MBBS Course, 2019-20. She also came to know that some students who obtained marks less than the petitioner was admitted even after cut off date of admission in MBBS Course by the order of this Court. She referred to four candidates who got admission in MBBS Course 2019-20 after cut off date on the strength of the order passed by the Hon'ble High Court at Calcutta. The petitioner also relies upon an order dated 13th October, 2020 passed by the Division Bench of this Court in MAT No.1202 of 2019 (Kaunain Nawaz Raza Vs. Union of India & Ors.) by virtue of which the said K.N.Raza was admitted in MBBS Course of 2019-20 on 10th January, 2021. The petitioner came to know about such admission of the said K.N.Raza and made a further representation on 20th January, 2021 seeking admission on the ground that she is more meritorious than the said K.N.Raza. but her prayer was not adhered to.

Under the above facts, the petitioner has prayed for issuance of a writ of mandamus directing the respondents to grant admission to her in any of the undisclosed vacant seats in MBBS Course (2019-20) in any of the colleges under the respondent authorities and other consequential relief.

On the same facts and circumstances, petitioner, Saptarshi Mandal has filed WPA 285 of 2021. It is sufficient to mention that he secured 144 marks out of 720 and was awarded All India Rank of 658689.

Petitioner, Ananya Rahaman has filed WPA 286 of 2021 who secured 153 marks out of 720 and she was awarded All India Rank of 621441.

Petitioner, Sayantani Mallick has filed WPA 287 of 2021 who secured 411 marks out of 720 and was awarded All India Rank of 118305.

Petitioner, Deblina Das has filed WPA 313 of 2021 who secured 220 marks out of 720 and was awarded All India Rank of 415573.

All the petitioners appeared in NEET (UG) MBBS Entrance Examination for the year 2019-20 and they were qualified for taking part in the counseling and they actually took part in the said counseling.

Mr.Aniruddha Chatterjee, learned Advocate for the petitioners submits before me that in WPA 364 of 2019, a Co-ordinate Bench of this Court passed an order allowing the petitioner to get admitted in MBBS Course by directing the respondent NO.2 to provisionally admit the petitioner in the college of the choice of the respondent No.2 under the University.

He also refers to the All India Rank of the candidates who were admitted on the basis of the order passed by this Court to show that the petitioners have secured better All India Rank and naturally they are more meritorious than the candidates who were admitted on the strength of the order passed by the High Court.

Mr.Chatterjee also refers to an unreported order passed by the Division Bench of the High Court at Calcutta on 2nd July, 2018 in ASTA No.16 of 2018 in AST 43 of 2018 (***The West Bengal University of Health Sciences and Others Vs. Dr. Paban Mandal & Ors.***). In the said order a Division Bench of this Court refused to grant stay of operation of an order passed by the Single Bench directing the respondents to admit the writ petition in MS(General Surgery) Course without prejudice to the rights and contentions of the appellants as well as the Medical Council.

With regard to WPA 288 of 2021, it is submitted by the Mr. Sanjit Kumar Dey, learned Advocate appearing for the National

Medical Commission, on production of a server copy of the order dated 19th February , 2020 passed in WPA 378 of 2020 (***Agniv Bhunia Vs. North Bengal Medical College and Hospital and Others***) that the said writ petition filed by him was dismissed. The petitioner filed an appeal before the Division Bench against the judgment passed in WPA 378 of 2020 and the said appeal was dismissed as withdrawn. Therefore, on the selfsame cause of action, the instant writ petition being WPA 288 of 2021 is not maintainable.

I have gone through the judgment passed in WPA 378 of 2020 and the order passed in CAN 1 of 2020 in MAT 22 of 2020 dated 13.03.2020.

In view of the fact that the writ petition filed by the petitioner, namely, Agniv Bhunia on selfsame cause of action was previously dismissed and the appeal preferred by him was also dismissed on being withdrawn, the instant writ petition is not maintainable. Hence, WPA 288 of 2021 is summarily dismissed on contest.

Mr.Maiti, learned Advocate for the respondent No.2 submits that final counseling for admission in MBBS Course was completed on 31st August, 2019 for the year 2019-20. Subsequently, the respondent No.2 admitted some students who filed writ petitions and obtained order from the High Court at Calcutta. It is also submitted by him that at present there are seven vacancies which are not filled

up during the academic year 2019-20. The respondent No.2 has no objection if this Court passes an order directing the respondent No.2 to admit the above-named writ petitioners in the MBBS Course so that no seat may remain vacant in a particular year.

Learned Advocate for the National Medical Commission submits that the instant writ petition cannot be entertained on the ground of delay. Petitioners were successful to take part in counseling in MBBS Course in the year 2019. The result was published on 5th June, 2019. The whole process of counseling and admission process was ended on 31st August, 2019 and the petitioners invoked the jurisdiction of this Court under Article 226 of the Constitution in the year 2021. Moreover, he refers to a decision of the Hon'ble Supreme Court in the case of ***S. Krishna Sradha Vs. State of Andhra Pradesh and Others***, reported in ***2019 SCC Online SC 1609***. Paragraph 33 of the said judgment is very relevant for adjudication of the *lis* in the instant case. Paragraph 33 of the aforesaid judgment is quoted hereinbelow:

"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 30th 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 restitutorial 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.”

It is contended by Mr. Sanjit Kumar Dey, learned Advocate for the National Medical Commission that the aggrieved candidate must approach the Court at the earliest and without any delay. Secondly, only under exceptional circumstances, if the Court finds that there is no fault attributable to the candidate and the candidate has persuaded his/her legal right expeditiously without any delay the Court can consider his/her case and relief can be granted only in **exceptional circumstances and in the rarest of rare cases.**

In reply to the submission recorded hereinabove, Mr. Chatterjee, learned Advocate for the petitioners submits that there was no delay in filing the writ petition. The process of counseling was completed on the last day of the month of August , 2019. The petitioner in WPA 284 of 2021 filed a representation before the competent authority on 19th August, 2019. She filed another representation on 30th August, 2019. Again, when she came to know that K. N. Raza was admitted by an order of the Court on 10th January, 2021 she made another representation stating, *inter alia*,

that her rank in All India Merit List is higher than that of K. N. Raza. When her representation was not considered, she filed the instant writ petition on 27th January, 2021. Thus, there was no delay on the part of the petitioner in approaching the Court for appropriate relief. The factual circumstance is the same and identical in respect of other petitioners.

Having heard the learned Counsels and on careful perusal of the materials-on-record as well as the judgments cited by the learned Advocate for the parties, I like to record at the outset that in ***S. Krishna Sradha*** (*supra*), the issue under consideration is whether a student, a meritorious candidate, for no fault of his/her and who has persuaded his/her legal right expeditiously without delay, can be denied admission as a relief because the cut off date of 30th September, 2019 has passed. In order to adjudicate the said issue, the Hon'ble Supreme Court had the occasion to consider as to whether the decision of the Supreme Court in ***Asha Vs. Pt. B. D. Sharma University of Health Sciences***, reported in **(2012) 7 SCC 389** or ***Chandigarh Administration Vs. Jasmine Kaur***, reported in **(2014) 10 SCC 521** will hold good. The Three-Judge Bench of the Hon'ble Supreme Court in the said decision was pleased to hold as hereunder:-

"32. *The right to equal and fair treatment is a component of Article 14 of the Constitution. As held by this Court Asha*

(Supra) that a transparent and fair procedure is the duty of every legal authority connected with admissions. In such cases, denial of fair treatment to the candidate would not only violate his/her right under Article 14 but would seriously jeopardize his/her right under Articles 19 and 21 of the Constitution of India. A natural corollary of declaring that an administrative act more particularly the denial of admission illegally and for no fault of a candidate/student violates principles of Article 14 is that the citizen injured must be put back to his/her original position. In that sense, the primary relief is restitutionary. As observed hereinabove, for a meritorious student seeking admission in medical course is very important in the life of student/candidate and denial of admission to a meritorious candidate though no fault of his/her violates his/her fundamental rights. Compensation could be an additional remedy but not a substitute for restitutionary remedies. In case of medical admissions, even the restitutionary remedy of providing a seat in the subsequent year would lead to loss of one full academic year to a meritorious candidate, which cannot be compensated in real terms. Thus compensation for loss of year could be provided, but denial of admissions to a meritorious candidate cannot be compensated in monetary terms. Thus denial of admission in medical course to a meritorious candidate for no fault of his/her and though he/she has approached the Court in time and despite the same not granting any just and equitable relief would be denial of justice. Therefore, the question is what relief the Court can grant by which right to equal and fair treatment to a candidate are protected and at the same time neither there is injustice to other candidate/student and even compromising with the

quality education. Therefore, a balance is required to be struck. However, at the same time it can safely be said that the view taken by this Court in Jasmine Kaur (Supra) that the only relief which can be granted to such a candidate would be the compensation only is not good law and cannot be accepted. Even granting a relief to such a candidate/student in the next academic year and to accommodate him/her in the next year and in the sanctioned intake may even affect the right of some other candidate/student seeking admission in the next academic year and that too for no fault of his/her. Therefore we are of the view that in the exceptional and in the rarest of rare cases and in case where all the conditions stipulated in paragraph 33.3 in the case of Jasmine Kaur (Supra) are satisfied, the Court can grant exceptional relief to the candidate of granting admission even after the cut off date is over"

Thus, the Hon'ble Supreme Court was pleased to hold that the decision in Asha is appropriate and applicable in the field.

This Court in an order dated 2nd July, 2018 in the case of **Dr. Paban Mandal & Ors.** (Supra) considered the case of Asha on the question as to whether a candidate can be admitted in MBBS course after the cut off date and held as hereunder:-

"We are conscious of the directions made by the Hon'ble Supreme Court in the aforesaid writ petition; however, prima facie, we are also of the opinion that such direction may not stand in the way of making a direction for admission in a case of the present nature. The Hon'ble Supreme Court may not have intended that a seat, which

*could not be filled up by admission before 31st May, 2018 because of laches of the authorities, should never be filled up; more so, when the writ petitioner is not at fault and the blame for omission to notify the surrendered vacancy for mop up counselling should be shouldered by the appellants who, despite having information from the writ petitioner on 30th May, 2018 at 3.28 P.M., were in deep slumber and did not take steps to upload such vacancy on its website so that the vacant seat in M.S. (General Surgery) which is in great demand, does not go waste. The view taken by us finds support from the decision of the Hon'ble Supreme Court reported in (2012) 7 SCC 389: **Asha -vs.- Pt. B.D. Sharma University of Health Sciences.**"*

For the reasons stated above and in view of the fact that this Court is bound by the decision delivered by the Division Bench of this Court in **Dr. Paban Mandal** (Supra), **K.N Raza** (Supra) as well as the decision of the Hon'ble Supreme Court in the case of **Asha** (Supra) and in view of the submission made on behalf of the West Bengal University of Health Sciences, respondent No.2 herein, that the above-named petitioners may be admitted to the MBBS course against seven vacancies for the academic year 2019-20 that are left to be filled up as yet, the instant writ petitions are allowed on contest, however, without costs.

The above-named petitioners, namely, Sanjida Yasmin, Saptarshi Mandal, Ananya Rahaman, Sayantani Mallick and Deblina Das shall be provisionally admitted to MBBS course for the academic year 2019-20 within fifteen days from the date of this order in the Medical Colleges according to the choice of the respondent No.3 and pursue their course which has already commenced from 1st February, 2021.

In view of such provisional admission being granted to the above-named petitioners, no vested right shall accrue to the petitioners in respect of the said vacant seats and their admission shall abide by the final decision of pending appeal before the Hon'ble Supreme Court over the selfsame issue.

(Bibek Chaudhuri, J.)

**Srimanta
A.R.(Court)**