

23-03-2021  
Court No.2  
Sh-7 & 8

**CIRCUIT BENCH OF CALCUTTA HIGH COURT  
AT JALPAIGURI  
(Through Video Conference)**

**W.P.A. 748 OF 2021  
With  
W.P.A. 750 OF 2021**

Mr. Aniruddha Chatterjee,  
Mr. Saptarishi Kumar Mal.

.. For the Petitioner in WPA 748/2021.

Mr. Subhasish Ghosh.

..For the Petitioners in WPA 750/2021

Mr. D. N. Maiti,

..For the respondent University in virtual  
mode

Mr. Sanjit Kumar Dey.

..For the N.M.C. in virtual mode,

Parties are represented through their learned advocates, the names of whom are shown above at the beginning of the order sheet.

Affidavit of service furnished by the petitioners today in Court be taken on record.

Since the issues involved in both the writ applications being common and the relief sought for also being same and identical, on the prayer of both the parties, both the writ petitions are taken up together giving a common hearing for the purpose.

Three writ petitioners involved in two writ applications referred to above, indisputably participated in the National Eligibility Cum Entrance Test (Under Graduate), in short NEET (UG), held on 5<sup>th</sup> May, 2019, following which result thereof was published on 5<sup>th</sup> June, 2019. In the result list, the writ petitioners,

namely, Koushiki Khakharia vide WPA 748 of 2021 found to have scored 208 marks with an all India rank of 446687, and the writ petitioner, namely, Spandan Pathak and Agniv Bhunia vide WPA 750 of 2021 scored 287 and 182 marks with an all India rank of 279521 and 520224 respectively.

The three writ petitioners thereafter got themselves registered for the counseling process conducted by the respondent authorities under the West Bengal State Quota. The process of counseling was completed on 31<sup>st</sup> August, 2019 as per the stipulation issued by the Medical Council of India.

The grievance of the three writ petitioners referred to above, is that in spite of having made participation in the counseling process after emerging out to be successful in the NEET held for the year 2019-2020, they could not be favoured with admission in MBBS course in the Medical Colleges, in spite of several seats in different Medical Colleges including the North Bengal Medical College lying vacant at the moment, either due to non joining or surrendering of those seats, still remaining undisclosed.

After an enquiry, the writ petitioners came to know that several seats in the MBBS Course are still lying vacant in the year 2019-2020 in different colleges under the West Bengal University of Health Science.

Several representations were then submitted by the writ petitioners seeking favourable consideration, which ultimately proved to be a futile exercise. While making enquiry, the writ petitioners also came to know

that students scoring less marks, compared to the writ petitioners, have also been favoured with admission even after the expiry of the last date or the cut off date of admission in the MBBS course, taking the order of this Court.

Incidentally, learned advocate for writ petitioners has referred decision rendered by the Division Bench of this Court in MAT 1202/2019 delivered in the case of **Kaunain Nawaz Raza Vs. Union of India & Ors.** in order to establish that the said candidate, mentioned in the decision, was admitted in MBBS Course in 2019-2020 on 10<sup>th</sup> January, 2021 receiving the direction of the Division Bench.

Reliance is placed on an un-reported decision of WPA 364/2019, given by a Co-ordinate Bench of this Court, whereby the petitioner was allowed to be provisionally admitted in the Medical College for pursuing MBBS course at the choice of the respondent no.2 under the University.

Reliance is further placed on a Division Bench Judgment of High Court, Calcutta in ASTA No.16 of 2018 in West Bengal Health Sciences and Others Vs. Paban Mandal & Ors., wherein Mr. Chakraborty representing the writ petitioners at the very threshold proposes for recording the similar order in terms of the decision reached by a Co-ordinate Bench of this Court on 9<sup>th</sup> February, 2021 in WPA 284/21, WPA 285/21, WPA 286/21, WPA 287/21, WPA 288/21 and WPA 313 of 2021. The operative portion of the decision rendered on 9<sup>th</sup> February, 2021 may be mentioned as hereunder:

" 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, Saptrashi Mandal, Ananya Rahaman, Sayantani Mallick and Deblina Das shall be provisionally admitted to MBBS course for the academic year 2019-2020 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 1<sup>st</sup> 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 seats and their admission shall abide by the final decision of pending appeal before the Hon'ble supreme Court over the self-same issue."

According to Mr. Aniruddha Chatterjee, learned advocate representing the writ petitioner, the writ petitioners are more meritorious than the petitioners favoaured with admission pursuant to the direction passed by a Co-ordinate Bench of this Court on 8<sup>th</sup> February, 2021 in WPA 284/21, WPA 285/21, WPA 286/21, WPA 287/21, WPA 288/21 and WPA 313 of 2021. More so, the writ petitioners involved in these cases have scored higher marks compared to the candidates referred to in the decision, delivered on 9<sup>th</sup> February, 2021.

Upon mentioning such grievance the writ petitioners have prayed for a direction for issuance of Writ of Mandamus requiring the respondents to allow admission to the writ petitioners involved in the three cases referred to above in any of the undisclosed vacancies/seats in MBBS course in the year 2019-2020 in any of the Colleges under the respondent authorities, together with other consequential relief.

Mr. D. N. Maiti, learned advocate representing the University frankly submits that as on date five vacancies/seats are still lying vacant, which may be filled up. According to Mr. Maiti, they participated in the hearing process involved in WPA 284/21, WPA 285/21, WPA 286/21, WPA 287/21, WPA 288/21 and WPA 313 of 2021.

Mr. Maiti is candid enough to concede that writ petitioners, namely, Koushiki Khakharia in WPA 748 of 2021 and the writ petitioners, Spandan Pathak and Agniv Bhunia in WPA 750 of 2021 indeed are better and meritorious candidates for their total score are 208,

287 and 182 respectively in the NEET (UG) held for the year 2019-2020.

Incidentally Mr. Maiti proposes that if any direction for admission is given in these cases upon consideration of the vacant seats still remaining unfilled, same may be directed to be filled up within a reasonable date, as the relevant course has already commenced, otherwise there will be delay resulting in some disturbance in the conduct of concerned MBBS course.

Mr. Sanjit Kumar Dey, learned advocate for the National Medical Commission, raises no objection in redressing the grievances of the writ petitioners merely upon visualization of their participation in the NEET held in the 2019, followed by their taking part in the counseling process, held for the purpose.

Incidentally, Mr. Dey representing National Medical Commission brings attention of the Court to a particular averment of the writ petitioners that there has been suppression of fact and previously the writ petitioner has filed a separate writ petition, which is pending in the Principal Court

Such contention of Mr. Dey appears to be not proper as that writ petition is relatable to 2020-21.

Learned advocate for the writ petitioners has submitted that on a different cause of action relatable to 2020-2021 there is another writ petition pending at the Principal Court. Therefore, there is no suppression of material facts.

That being the position these writ petitions being WPA 748/21 and WPA 750/2021 can hardly be regarded to be identical with the pending one, relatable to the year 2019-2020

There appears to be no controversy that the three writ petitioners, referred to above, already participated in the NEET (UG) held in the year 2019, and their names appeared in the final list. They also took part in the counseling process, but they could not be favoured with admission to pursue the concerned MBBS course despite availability of vacant seats remaining undisclosed.

Pursuant to the candid submission of Mr. Maiti, it appears five vacancies/seats are still lying vacant, which may be filled up. The objective purpose of the writ petitioners is very clear and conspicuous and revealing in nature for their respective score, together with their respective all India rank as already mentioned above. While coming to the decision, dated 9<sup>th</sup> February, 2021 in the case of WPA 284/21, WPA 285/21, WPA 286/21, WPA 287/21, WPA 288/21 and WPA 313 of 2021, the Learned Judge of Co-ordinate Bench of this 'court had taken into consideration the decisions rendered by another Co-ordinate Bench In WPA 364 of 2019, a Division Bench of High Court at Calcutta in ASTA No.16 of 2018, in AST No.43 of 2018 delivered in the case of **West Bengal University of Health Sciences and Others Vs. Dr. Paban Mandal & Ors.,** Division Bench judgment in MAT 1202/2019 delivered in the case of **Kaunain Nawaz Raza Vs. Union of India & Ors.** and the **Apex Court judgment** rendered in the case of **S. Krishna Sardha**

**Vs. State of Andhra Pradesh and Others reported in 2019, SC 1609** as was referred by the learned advocate for National Medical Commission/Respondent no.4 including the decision of WPA 288 of 2021 and WPA 378 of 2020 delivered in the case of **Agniv Bhunia Vs. North Bengal Medical College and Hospital and Others.**

The proposition of law laid down by the Hon'ble Apex Court in the case of **S. Krishna Sardha (Supra)** is very clear to reveal that it is only under exceptional circumstances, where there is no fault attributable to the candidate and the candidate had persuaded his /her legal right expeditiously without any delay, the Court can consider his/her case and the relief proposed may be granted only in an exceptional circumstances and also in the rarest of rare cases. While making adjudication of the issue raised in the case of **S. Krishna Sardha (Supra)**, the Apex Court had also taken notice of previous decision of Apex Court delivered in **Asha Vs. B.D. Sharma University Health Sciences**, reported in (2012) 7SCC. 389 or **Chandigarh Administration Vs. Jasmine Kaur**, reported in (2019) 10 SCC.521.

Learned advocate for the writ petitioners in terms of the proposition of law laid down in the case of **S. Krishna (supra)** submits that there has been no delay caused in coming to the Court for pursuing the desired relief expeditiously upon making exercise of their right in the given circumstances of the case.

When respondent authorities have accepted the decision delivered by a Co-ordinate Bench of this Court

on 9<sup>th</sup> February, 2021 and already allowed the candidates favouring admission to pursue their MBBS course for the year 2019 as it is disclosed from the submission from respective submissions of learned advocates for respondents, mentioned above, in the absence of anything others to the contrary being shown, the Court has least scope to give a contrary view, than that already decided on 9<sup>th</sup> February, 2021.

More so, when Mr. Maiti, learned advocate representing the respondent nos.1-3 candidly has made submission that five vacancies/seats are still lying vacant which may be filled up upon recording his submission, the Court is of the view that the relief proposed may be extended to, giving direction mentioned as hereunder:

The writ petitioners, namely, Koushiki Khakharia in WPA 748 of 2021 and the writ petitioners, Spandan Pathak and Agniv Bhunia in WPA 750 of 2021 shall be provisionally admitted to the MBBS course in the year 2019-2020 within 15 days from the date of this order in the Medical College, according to the choice of respondent no.3, for pursuing their course which has recently commenced on 1<sup>st</sup> February, 2021.

The concerned respondent is accordingly directed to allow provisional admission against five vacancies/seats as disclosed in Court for the year 2019-2020 still remaining unfilled to be filled up, to the writ petitioners named above, within the stipulated period of time, as mentioned hereinabove in the Medical Colleges according to the choice of the respondent no.3, so that the writ petitioners may pursue their course.

It is clarified that by reason of their provisional admission, 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 self-same issue.

With these observations and directions all the two writ petitions are disposed of.

There will be no order as to costs.

Urgent Photostat certified copy of this order, if applied for be supplied to the learned advocates appearing for the parties expeditiously on compliance of all requisite formalities.

**( SUBHASIS DASGUPTA, J.)**