

Ct. 05
Item Nos.
05 & 06
13.05.2022
(suvendu)

WPA 8033 of 2022
Sagnik Manna
Vs.
Union of India & Ors.

With
WPA 8039 of 2022
Suman Manna
Vs.
Union of India & Ors.

Mr. Subir Sanyal
Mr. Suddhasatva Banerjee
Mr. Supratic Roy
Mr. Amit Dey
.....for the petitioners

Ms. Amrita Pandey
.....for the Union of India

Mr. Swapan Kumar Datta
Mr. Rajat Datta
.....for the College (In WPA 8033/2022)

Mr. Indranil Roy
Mr. Sunit Kumar Roy
.....for the National Medical Commission

The petitioners in both the writ petitions pray for a mandatory order on the respondent authorities to grant provisional admission to the petitioners in Calcutta National Medical College and AIIMS, Kalyani in the MBBS Course 2021-2022.

The contention of the petitioners, as would appear from the submissions of learned

counsel appearing for the petitioners, is that there are vacant seats in both these Colleges and the petitioners therefore have a right to try their luck in getting admission to the MBBS Course against these seats. According to counsel, the seats cannot go waste since there is no provision for carrying over the seats to the next academic year. Counsel points to several defaults on the part of the concerned respondents with regard to disclosure of a Notification of the existing number of vacancies in these two Colleges.

Learned counsel appearing for the Union of India and the College submit that there are two vacant seats in Calcutta National Medical College and one vacant seat in AIIMS, Kalyani as of now. Counsel places an order of the Supreme Court passed in *Miscellaneous Application No. 1388/2021 in W.P.(C) No. 76/2015 (Ashish Ranjan & Ors. Vs. Union of India & Ors.)* dated 09.05.22 whereby the Supreme Court fixed 28.04.2022 as the cut off date for MBBS admission to the Undergraduate Medical Course.

Learned counsel appearing for the National Medical Commission submits that these petitions are not only a belated attempt in securing seats but are also speculative in nature since the petitioners' ranks in the All India Merit

List are in the six lakh and five lakh brackets respectively.

After hearing learned counsel, the controversy involved in the present matters appears to be two fold; first, whether the respondent authorities namely the Medical Counselling Committee has defaulted in discharging its obligations and second, whether the petitioners have been able to establish an existing legal right for being admitted against the three vacant seats in the Colleges of their choice.

With regard to the first issue, namely whether the concerned respondents have failed in discharging their obligation to disclose and notify the existing number of available seats, a Notice of the Directorate General of Health Services, Government of India, dated 25.04.2022 (the date printed in the Notice is incorrect as would be evident from the pleadings in the writ petitions) annexed to the writ petition may be taken into consideration. The said Notice clearly states that the MBBS seats of All India Quota Colleges of West Bengal have been published in the Seat Matrix of Stray Vacancy Round of UG Counselling 2021. The Notice proceeds to disclose that there were a certain number of seats in the Stray Vacancy which have been duly published in the Seat

Matrix. This document, therefore, belies the contention of the petitioners namely that the respondent authority has failed to discharge its obligation to disclose the existing number of seats which remain vacant after the final round of counselling.

With regard to the second issue, namely whether the petitioners are entitled to an order for provisional admission against the three vacant seats in two Colleges, the ranks obtained by the petitioners would be a relevant consideration, particularly when the petitioners are placed in the 6 and 5 lakh positions in the Merit List. The petitioners hence cannot claim an automatic right to these seats as there are a large number of students placed above the petitioners.

The petitioners are also late in approaching the Court. The Notice referred to in the preceding paragraph was published by Directorate General of Health Services on 25.04.2022, whereas the petitioners' representations are of 28.04.2022. There is no evidence on record to show that the petitioners have been vigilant in urging their rights, if any, before the counselling closed on 28.04.2022.

The Supreme Court by the order dated 09.05.2022 closed date for admission to the MBBS

Undergraduate Course on 28.04.2022. It is doubtful therefore whether the petitioners can claim any right to these seats after the Supreme Court fixed the cut off date as 28.04.2022. This Court is hence not the proper forum to unilaterally extend the date fixed by the Supreme Court for admission to the MBBS Undergraduate Course. The writ petitions were also affirmed on 29.04.2022 which is after the cut off date fixed by the Supreme Court.

The respondents have relied on an order of a 3 Judge Bench of the Supreme Court dated 16.12.2021 [*Petition(s) for Special Leave to Appeal (C) No(s). 10487/2021, Nihila P.P Vs. The Medical Counseling Committee (MCC) & Ors.*] which outlines the modified scheme of the four online rounds of counselling for the all India Quota in accordance with the prevailing norms. The outline indicates that all the rounds of counselling would be conducted in the online mode and that there is no scope of any manual processing of seats or otherwise at any stage of the counselling. This Court hence accepts the contention of the respondents that if there are any remaining vacant seats, there is no scope for any manual handing over of seats to any candidates including the petitioners.

Further, the petitioners would first have to discharge the onus of establishing that the petitioners have a better right than the other candidates who are placed above their ranks. The petitioners have not discharged such onus. The only contention advanced is that the petitioners have a right to try their luck for these vacant seats. This Court is of the view that no weight can be given to such argument since the petitioners are not and cannot be the sole claimants to these vacant seats. The stand of the petitioners is also impractical since if the three remaining seats are thrown open to the remaining number of candidates after the cut off date of 28.04.2022, it would result in immense uncertainty with no end in sight. This surely cannot be the intending result of any selection process where a large number of candidates have participated in the evaluation process.

DAR-US-SLAM Educational Trust & Ors.
Vs. Medical Council of India & Ors., being a decision of the Supreme Court dated 09.05.2017 in *Writ Petition(s) (Civil) No(s). 267/2017*, was concerned with the State Quota and not the all-India quota. In that decision, the Supreme Court also took into account the refusal of the Colleges in giving admission to worthy students on some

pretext or the other as well as the factually incorrect stand taken by the Colleges. The Division Bench decision of this Court, in *West Bengal University of Health Sciences & Ors. Vs. Dr. Paban Mandal & Ors.* passed in AST 43/2018 dated 02.07.2018, also cited by the petitioners, proceeded on the basis that there was an admitted inaction on the part of the appellant/University in the matter of notifying the surrendered vacancy for Mop Up Counselling. The Division Bench accordingly found that the writ petitioner could not be made to suffer for such inaction on the part of the appellant/University. In any event, the Supreme Court was pleased to dispose of the Special Leave Petition filed against the aforesaid order [*Petition(s) for Special Leave to Appeal (C) No(s). 23993/2018, Medical Council of India Vs. The Principal Secretary Health And Family Welfare Department & Ors.*] on 17.09.2018 by leaving open the question of law for being decided at a subsequent stage.

The order of a coordinate Bench passed on 20.08.2019 in WPA 347 of 2019 whereby the petitioner was given provisional admission in a College of choice cannot assist the petitioners before this Court as no cut-off date was fixed by the Supreme Court in the said matter. In the

present case, the petitioners have not shown any special equities for extending the cut off date on the ground of any deficiency on the part of the respondent authorities or otherwise.

For the above reasons, this Court is not inclined to grant any relief as prayed for in both the writ petitions and WPA 8033/2022 and WPA 8039/2022 which are accordingly dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)