

Court No. 22
24.11.2022
(Item No. 27)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 25722 of 2022

Smita Som
VS
The State of West Bengal & Ors

Mr. Suddhasatva Banerjee
Mr. Supratic Roy
.... For the petitioner

Mr. Indranil Roy
Mr. Sunit Kumar Roy
.... For National Medical Commission
Mr. Swapan Kumar Datta
Mr. Dipankar Das Gupta
... for the State

The petitioner is an aspirant for the **National Eligibility cum Entrance Test, (Under Graduate) 2022**. The petitioner had secured rank of **929813**. She applied under the General Quota to participate in the State quota. Subsequently, she intended to exercise her option for converting her candidature from **General Quota** to **Non Resident Indian (NRI) Quota**. The verification of the second round of counseling of the State quota was over and ended on November 23, 2022 and the final list shall be published of the verified candidates today i.e. November 24, 2022 at about 4.00 P.M.

Mr. Suddhasatva Banerjee, learned counsel appearing for the petitioner drawing attention to the notice for **NEET-UG 2022** dated **October 21, 2022**, **Annexure P-5** to the writ petition and specifically referring to the conversion Rule there under at **page**

50 to the writ petition submitted that, except the conversion to NRI Quota, the conversion in all other quota were permitted. He further submitted that, in the Central Counselling this conversion to NRI quota had also been permitted. Hence, the learned counsel submitted that, the State had acted in an arbitrary manner by not providing for conversion to NRI quota and thus acted completely in violation of the provisions laid down by under Article 14 of the Constitution of India.

Mr. Banerjee, learned counsel submitted that, the petitioner should be permitted to use her option for being converted to NRI Quota.

Mr. Swapan Kumar Datta, learned senior counsel submitted that, the petitioner had enrolled herself for participating in the counselling process under **Management Quota** and she remained as such and continued to participate till the second round of counselling. The second round of counselling had come to an end. The necessary document verification stage had been over and the verified list had already been published. The choice filling for institution shall commence soon and at this mop up stage, according to Mr. Datta, there can be no scope for allowing any change of candidature from Management Quota to NRI Quota.

He further submitted that, not to provide conversion into NRI Quota is a policy decision of the State and the same is not open to challenge.

Mr. Indranil Roy, learned counsel appearing for the respondent No. 3 referring **Annexure P-4** at **page 31** of the writ petition submitted that, the petitioner initially applied under the General Quota to avail of a seat at the State Quota with a specific mentioning of **Person with Disability (PWD)** category. Referring to **page 54** to the writ petition he pointed out that under her representation dated November 16, 2022 the petitioner claimed herself to be a Scheduled Cast candidate. Referring to the Conversion Rule at **page 50** to the writ petition Mr. Roy submitted that, the Conversion Rule was made applicable for the vacant **seats** and not for the **candidature**. It is the job of the State experts who are engaged to conduct the selection process to convert such **seats** wherever some seats are found to be vacant in a particular category and not being filled up then only such **seats** are allowed to be converted for a different **seats** and not the **candidature**.

Mr. Roy further submitted that, the notice for **NEET-UG 2022** containing Rule of the game, **Annexure P-5** to the writ petition is not under challenge.

It is, therefore, submitted that, the writ petitioner has not applied in the selection process

with clean hands and shifted her stand from one to another for selecting category for participation. He further submitted that, in any event, as a State policy **the conversion of any candidature from one particular class to another particular class is not permitted.**

After considering the rival contentions of the parties and the materials on record it appears that, since the mop up round for counselling will commence today at about 4.00 P.M. and now it is already 3.00 P.M. passed there is no reason to keep this writ petition pending and as such this Court thinks it fit to decided the same on merit on the available records.

The most significant factor for deciding the issue involved in this writ petition, is the **Conversion Rule**, which is a part of the **Rule of the game** at **page 50** to the writ petition. Such Rule admittedly shows on clear terms that, the conversion would be only in respect of the vacant **seats** in mop up round only and not for any **candidature**. From a plain reading of the said Rule harmoniously with the other provisions made in the said notice inviting candidature for the relevant examination, this Court is of the firm view that, it is purely the policy of the State, whether this conversion would be made available for seats or for candidature and then it appears to this Court that, for the relevant examination the State policy framers had

thought it fit that Conversion Rule will be only applicable for **seat** and not for **candidature**. This Court does not find any malice or arbitrariness attached to it neither any malice has been alleged by the writ petitioner. This Conversion Rule was also not challenged.

Whenever the seats are reserved or earmarked for specified classes of individuals by reserving a quota, then those seats are understood to be earmarked as reserved for those particular classes and not for any others. In the facts of this case, the petitioner initially applied under the General Quota. She secured her **rank 929813**. The second round of counselling had been over. In any event, if the petitioner is allowed to convert herself from the **General category** to **NRI category** it would amount to encroachment on the quota for NRI category, then such conversion would amount to violation of Article 14 of the Constitution. In that event, the Rule of game will be also changed. This Court in exercise of its jurisdiction under judicial review without finding any malice or arbitrariness attached with the discretion of the policy framers, should not intervene with such policy. The body of experts were engaged for framing the Rules. The policy framers in respect of the central quota might think in a particular way but that does not mean the policy framers of the State are bound to follow the same or cannot deviate from it.

In view of the above, this Court is of the considered view that there is no violation of Article 14 of the Constitution of India by not allowing the conversion of the candidature of the petitioner from **General Quota** to **NRI Quota**. There was no illegality in such decision.

In view of the foregoing discussions and reasons this writ petition being **WPA 25722 of 2022** stands dismissed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)