

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 568 of 2023

(Shaikh Adil Hasan Vs. Union of India & Ors.)

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Suhrid Sur
Mr. Ashmi Pradhan
.....For the petitioner

Ms. Sipra Chanda
..... For the respondent no. 1

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

Mr. Swapan Kumar Datta, Ld. AGP
Mr. Tapas Kumar Mondal
..... For the State

Mr. D. N. Maiti
..... For the respondent no. 4

The writ petitioner is an aspirant in the MBBS Course. The writ petitioner was admitted in the MBBS Course in or about August 2019. The writ petitioner was equally an aspirant for the **1st Professional MBBS Examination**. The writ petitioner appeared in the said 1st Professional MBBS Examination, but could not qualify after fourth attempt. The writ petitioner seeks to take support of the old regulation which was prevailing, according to the petitioner at the time of his admission in the MBBS Course under the **Indian Medical Council Act, 1956 (For short, 1956 Act)**. The petitioner contended that the new Act, namely, **National**

Medical Commission Act, 2019 (For short, 2019 Act) had been promulgated and came into force after the petitioner took admission in the MBBS Course with effect from September 2, 2019 **partially**.

Under the said 1956 Act, the relevant regulation was there which was of 1997. In exercise of power under Section 33 of the said 1956 Act, the Central Government amended the said 1997 Regulation with effect from November 4, 2019. The said 1997 Regulation provided for a provision that the entire MBBS, could have been completed by an aspirant within a total tenure of ten years and not beyond that. The amended 2019 Regulation under **Regulation 7.7**, *inter alia*, provided that not more than four attempts shall be allowed for a candidate to pass the 1st Professional MBBS Examination and the total period for successful completion of 1st Professional MBBS Examination shall not exceed four years. Partial attempts of examination in any subject shall be counted as an attempt.

Mr. Probal Kumar Mukherjee, learned senior counsel appearing for the writ petitioner referring to the said Regulation 7.7 of 2019 Regulation submitted that by virtue of engrafting this provision, the Central Government had taken away the vested right of the petitioner to complete the entire MBBS Course within the span of ten years. The writ petitioner, thus, challenged the legality and validity of the said Regulation 7.7 of 2019 Regulation by contending that the same is arbitrary, discriminatory and against the principle of equality.

Mr. Mukherjee, learned senior counsel, in his usual fairness, submitted that this particular issue which has been sought to canvassed through this writ petition had already been agitated before the Delhi High Court and the Delhi High Court by its judgment and order dated **November 17, 2022** passed in **W.P.(C) 13180/2022 & CM APPL. 39902/2022** had decided the issue negating the challenge there. The Delhi High Court had upheld the said 2019 Regulation in its entirety as it stands. Being aggrieved by the said judgment passed by the Delhi High Court, the writ petitioners therein preferred a Special Leave Petition being **Special Leave to Appeal (C) No. 22716/2022**. The said Special Leave Petition stood admitted and notice was directed to be issued by an order dated December 14, 2022 and the applications by the intervenors made therein were all allowed. The Special Leave Petition was directed to be listed on January 13, 2023 at **page-41** to the writ petition.

Mr. Mukherjee then relied upon an interim order passed by the High Court of Kerala at Ernakulum in **W.P. (C) No. 28714 of 2022, Annexure P-4 at page- 38** to the writ petition. Referring to the said Kerala High Court order, Mr. Mukherjee submitted that an interim order was passed whereunder the student petitioners were permitted to write the 1st Professional MBBS Course also, however, provisionally and results will be published only after obtaining orders from the Kerala High Court. Mr. Mukherjee prayed for an interim order in the same line.

Mr. Indranil Roy, learned counsel appearing for the respondent no. 2 submitted that the candidate was admitted

in August, 2019 when the said 1997 Regulation was in vogue. Referring to the provisions laid down in the amended Regulation of 2019, he submitted that the same shall govern the batches admitted in MBBS Course from academic year 2019-20 onwards. He, therefore, submitted that the petitioner shall be governed under this amended 2019 Regulation.

Drawing attention to page-43 to the writ petition, Mr. Roy submitted that the schedule for registration for the 1st Professional MBBS Examination was published way back on August 23, 2022 and the scheduled date for registration was fixed on January 19, 2023. He submitted that, since August 2022 the petitioner did not take any step whatsoever to agitate his grievance until the representation dated December 23, 2022 at page-27 to the writ petition, was submitted by the petitioner. He submitted that this is grossly a delayed writ petition and the Court of equity should not invoke its jurisdiction in the facts of this case.

Mr. Roy then placed the averments made and reliefs claimed in the writ petition and submitted that the submissions made on behalf of the petitioner challenging the legality and constitutional validity of the 2019 amended Regulation were merely from the bar and not a single whisper was there in the writ petition. The writ petitioner even did not make out such a case.

To counter the submission of Mr. Mukherjee, learned senior counsel that in view of the transitory provision made under sub-section (2) of Section 61 of the 2019 Act, the said amended 2019 Regulation cannot have any legal force, Mr.

Roy submitted that a saving clause is provided under the 2019 Act to the effect that till the time the new Regulation is not framed, the old Regulation of 1997 would hold the field and accordingly, he submitted that the 1997 Regulation with its 2019 amendment which is sought to be challenged by the writ petitioner, is not bad in law and shall hold the field.

Drawing further attention to the order dated December 14, 2022 at page-41 to the writ petition, Mr. Roy submitted that all these issues were there before the Hon'ble Supreme Court and after considering the submissions of the parties, the Hon'ble Supreme Court thought it fit not to pass any interim order on the issue.

He also submitted that the interim order passed by the Kerala High Court is a tentative measure and not a final adjudication.

On instruction from his clients, Mr. Roy further submitted that his clients are on the preparation of filing the Special Leave Petition from the said order of Kerala High Court. He further submitted that there are several other High Courts who have refused to grant any interim order on the selfsame issue as that of in this writ petition.

After considering the rival contentions of the parties and upon perusal of materials on record, at the threshold, it appears to this Court that, the legality, validity or constitutional validity of the said amended 2019 Regulation is concerned, as sought to be urged by Mr. Probal Kumar Mukherjee, learned senior counsel on behalf of the writ petitioner do not find place in his client's writ petition at all. There is not a single whisper on this validity or legality issue.

It is equally true that necessary notice was published on August 23, 2022 at page-43 to the writ petition when the schedule for registration for the 1st Professional MBBS Examination, registration was fixed on January 19, 2023, the petitioner having knowledge of the same only on December 23, 2022 submitted his representation after having been disqualified in the 1st Professional MBBS Examination after four attempts and then showing the said representation dated December 23, 2022 as a shield, filed this writ petition in January, 2023. Much prior thereto, the decision of the Delhi High Court came and the issue is already before the Hon'ble Apex Court in the Special Leave Petition as narrated above.

From the order of the Hon'ble Apex Court dated December 14, 2022 at page-41 to the writ petition, it is clear to this Court, that no interim order was passed and the issue is pending for final adjudication before the Hon'ble Apex Court. It also appeared that the intervenors' applications were allowed. The interim order passed by the Kerala High Court is a tentative view in law and the issue is now pending before the Hon'ble Supreme Court and the Hon'ble Supreme Court is in seisin of the issue. The petitioner can also agitate his grievance and join in the said pending Special Leave Petition, if so advised.

The judicial propriety also demands that an issue which is pending before and received the attention of the Hon'ble Apex Court, any question arising of such an issue should first be brought for consideration before the Hon'ble Apex Court.

In view of the foregoing discussions and reasons, this Court is of the firm view of not to pass any interim order in this writ petition.

Accordingly, the prayer for interim order as prayed for by Mr. Mukherjee, learned senior counsel, stands declined.

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.)