

Court No. 22

16.5.2023

(Item No. 34)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 8232 of 2023

Monalisha Kundu

VS

The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee

Mr. Sandipan Das

Mr. Badrul Karim

Ms. Indrani Roy

Mr. Dipankar Das

.... For the petitioner

Mr. Ashim Kumar Ganguly

Mr. Jaydip Banerjee

.... For the State

Mr. Nilotpal Chatterjee

.... For Indian Nursing Council

Pursuant to the direction made by this Court on May 12, 2023 Mr. Jaydip Banerjee, learned State counsel appearing for respondent Nos. 1, 2 and 3 placed a written instruction dated **May 15, 2023** issued by the **Deputy Director of Health Services (Nursing)** wherefrom it appeared that, the seat of this petitioner who was pursuing her nursing course at **NTS, Kalimpong** is still lying vacant. A copy of the said written instruction is taken on record.

This is an application under Article 226 of the Constitution of India invoking the High Prerogative Writ Jurisdiction of this Constitutional Court. The petitioner was an aspirant seeking admission in the **General Nursing and Midwifery (GNM)** course through the Joint Entrance Examination for the year 2022. The petitioner after attending the counseling successfully was selected in the queue. The position

and ranking of the petitioner was such that in the event one candidate is dropped out this petitioner would have an opportunity for admission to pursue the course. The petitioner was selected under the **Economically Weaker Section Category (EWS) with the rank 781**. The petitioner was then called upon by the relevant Nursing College, named **NTS, Kalimpong** to take admission to pursue her GNM Nursing course. The petitioner had deposited all the requisite fees and had complied with all the formalities and got admitted in the course. The petitioner had also started her classes. The petitioner then received two communications dated **March 21, 2023 at page 47** to the writ petition and **March 22, 2023 at page 46** to the writ petition. From the said communication dated **March 21, 2023** the relevant College was informed by the respondent No. 3 that the petitioner was enlarged on bail by an order dated **February 13, 2023** passed by the jurisdictional criminal Court in connection with a pending criminal case and the petitioner was advised to make an application for granting **permission to continue** with her studies, before the Court where the criminal case was pending. After obtaining suitable permission from such jurisdictional criminal Court the petitioner could resume her course for the session 2022-2023. The petitioner was arrested on February 1, 2023 in connection with **Maniktala Police Station Case No.**

232 dated September 26, 2022, inter alia, under Sections 120-B/420/467/468/471 of Indian Penal Code read with Sections 43/66/66C of the Information Technology Act, the relevant arrest memo would be available at **page 40** to the writ petition. The petitioner was then enlarged on bail as stated above.

In view of the above fact, the petitioner contended that, she was restrained from pursuing the nursing course though she had been validly and lawfully admitted in the course.

The petitioner through the instant writ petition had challenged the said impugned communication dated **March 21, 2023 Annexure P-4** at **page 46** to the writ petition. The petitioner had challenged the said restraint on the petitioner imposed by the respondent No. 3 where under the petitioner was not allowed to pursue her course further.

Mr. Sabyasachi Chatterjee, learned counsel for the petitioner submitted that, the petitioner might have suffered a custody but the criminal trial is pending and during pendency of such trial there could not be any conclusive finding that the petitioner was involved with the alleged offences or found guilty there under. He submitted that, during pendency of the trial if the petitioner is restrained from attending and pursuing her course, her educational career would be in jeopardy and the same shall amount to violation of

the provisions under Article 21 of the Constitution of India. Mr. Chatterjee further submitted that, it is a fit case where the petitioner would be allowed to pursue her course and the trial of the criminal case may proceed in accordance with law in its own motion.

Mr. Nilotpall Chatterjee, learned counsel appearing for the added respondent No. 7, the Indian Nursing Council submitted that, the matter had a chequered history. At the outset he referred to an order passed by this Court on **September 26, 2022** in a previous writ petition being **WPA 22182 of 2022** and relying upon the same he submitted that, one **Moutusi Mal** in whose writ petition the said order dated **September 26, 2022** was passed was initially a selected candidate for the course. At the time of her admission during the second counseling process it was found that her candidature was allegedly withdrawn. She received a phone call from the mobile number **9875317772** which was a call from the Principal of the ESI Nursing Training Centre, Kolkata informing her as to her alleged withdrawal of the candidature. Moutusi immediately denied this fact and ultimately lodged police complaint before the Maniktala Police Station, Kolkata. The Maniktala Police Station had initiated the relevant criminal case as described above. In such circumstance Moutusi requested the respondent No. 3 not to treat her candidature as cancelled or withdrawn but to give her

one opportunity to take an admission and pursue the course. Such request of Moutusi was denied. This had led Moutusi to file the said previous writ petition. Treating the admission of Moutusi as cancelled and/or withdrawn a vacancy arose, the turn of Monalisha came and she was admitted in the nursing course at **NTS, Kalimpong** against such vacancy.

When the said writ petition was moved this Court had directed the Cyber Crime department to cause necessary enquiry and proceed with the matter. An interim order was also passed directing the State respondent to keep one seat vacant for Moutusi.

The said previous writ petition being **WPA 22182 of 2022** was then disposed of by this Court by an order dated **February 6, 2023**. This Court directed to regularize the admission process of Moutusi. . On the strength of the said direction, this Court had informed by the learned counsel appearing for the parties that, Moutusi is successfully pursuing her nursing course from **ESI Nursing Training Centre, Maniktala, Kolkata**. It is an admitted position that, this petitioner, namely, Monalisha Kundu was not a party in the said previous writ petition.

In the light of the above, **the core issue for consideration in the instant writ petition arose, whether Monalisha would pursue her nursing course in view of the criminal trial being pending,**

inter alia, against her and she had suffered custody, though enlarged on bail and the vacancy having been filled up as Moutusi had been admitted in the course.

Considering the submissions made on behalf of the appearing parties and considering the materials on record, it appeared to this Court that, the admitted position that a criminal case being **Maniktala Police Station case No. 232 dated September 26, 2022** as mentioned above is pending before the learned **ACJM, Sealdah** with an alleged charges, inter alia, against the petitioner, inter alia, for alleged manipulation and hacking of the official result portal/website of the West Bengal Joint Entrance Board. The petitioner by an order dated **February 13, 2023** at **page 32** to the writ petition though had been enlarged on bail but it is trite that, an order of bail cannot be construed, as a conclusive decision pending the criminal trial, in favour of an accused enlarged on bail.

While adjudicating the issue, this Court is also not unmindful as to the ground reality of the situation that Monalisha being a student of nursing course who had secured a qualifying rank in a cut-throat competition, if shall has to wait for the final decision on the criminal trial, such waiting may be over a period of time might take away the valuable period from her life and ultimately she might not be able to pursue her nursing course. It might equally

be possible that, the jurisdictional criminal Court after reaching to its logical conclusion at the end of the criminal trial strictly in accordance with law might come to a finding for acquittal of the petitioner but by that time the petitioner might lose her opportunity to complete her education. At this juncture, the conscience of the Court of equity comes into play. This constitutional Court while exercising its jurisdiction under Article 226 of the Constitution of India exercises its equitable jurisdiction also. Of course equity shall depend on the facts of each case and there cannot be any straight jacket formula for exercising such equitable jurisdiction. Here, the balance of convenience and inconvenience shall have to be weighed equally.

Moutusi had already been admitted and has been pursuing her nursing course successfully. Monalisha merely is an accused but no guilt had been adjudicated as yet against Monalisha. The charges alleged had not yet been proved. Monalisha might be convicted or acquitted that would depend upon the pending criminal trial which requires a considerable period of time. In the process, if Monalisha is not allowed to pursue her course but ultimately receives an adjudication for acquittal after the trial of the criminal case, then her life and career will be jeopardized in such a manner which would be irretrievable and irreparable in nature. In the event,

Monalisha is convicted at the end of criminal trial, law shall take its own course and she will not be spared from the domain of law and whatever consequences she will have to face and will be bound to face in law. The acquittal, conviction or the admission in nursing course of Monalisha will not have any impact or effect on Moutusi and she will be able to pursue her nursing course without any fetter.

In view of the foregoing discussions and reasons this Court is of the firm and considered view that, Monalisha shall continue in pursuing her nursing course on and from the said **NTS, Kalimpong** as the vacancy is still available there. The relevant College authority and other relevant authorities shall give effect to this order with an immediate effect but positively **within seven days from the date of communication of this order.**

It is made clear that, any observation made in this order shall not influence and shall not have only bearing or relevance and binding effect on the criminal trial pending in connection with **Maniktala Police Station Case No. 232 of 2022** pending before the jurisdictional criminal Court in any manner whatsoever. It is made clear that, this order is being passed for the limited purpose of admission for pursuing the nursing course by Monalisha and her evaluation in the said course shall be strictly

adjudged on the basis of her merits and performance in the course.

This order shall not create any equity in favour of Monalisha other than that she can pursue her nursing course on the basis of her own merit and strictly in accordance with law. The jurisdictional criminal Court while conducting the trial of the pending criminal case shall proceed with its independent mind without being influenced by any observation made in this order, in any manner whatsoever and the conclusion thereof would lead to its result strictly in accordance with law.

Since affidavits are not called for, in view of the urgency involved in the matter, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations, this writ petition being **W.P.A. 8232 of 2023** stands disposed of.

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

This order being passed in presence of the counsel for the respective parties, they shall communicate the gist of this order to their respective clients, without even waiting for the server copy.

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.)