

Item-50. 17-10-2023

sg Ct. 8

FMA 2724 of 2016
CAN 1 of 2016 (old CAN 7228 of 2016)

St. Mary's Technological Foundation & Anr.
Versus
The State of West Bengal & Ors.

1. The parties are not represented nor any accommodation is prayed for on behalf of the parties.
2. The appeal had appeared in the warning list of cases on and from 19th September, 2023 with a clear indication that the said matter shall be transferred to the Regular Bench on 6th October, 2023. The appeal is again listed today in the main cause list. All the parties have sufficient notice about the listing of the matter before the Regular Bench on and from 6th October, 2023.
3. The appeal was filed on 22-06-2016. The record shows that no attempt has been made to move this appeal after it was filed. No step has been taken to serve notice and prepare paper books. It clearly shows that the appellants are not interested to proceed with the appeal and have virtually abandoned the appeal.
4. The appeal is arising out of an order passed by the learned Single Judge on 10th May, 2016. The issue was with regard to whether a minority institution, in the facts of the case, was right in applying its own procedure and method of admission to fill up vacancy in an Engineering and Technology Course and as to whether the students admitted on the basis of the entrance test conducted by the minority institution can be denied registration by the concerned university.

5. The learned Single Judge has considered the relevant pleadings and the arguments put forward by the parties. It appears that prior to commencement of the admission process pertaining to the academic session 2014-15 a proposal was submitted by an Association of five Minority Professional Private Self-financing Professional Academic Institutes (hereinafter referred to as AMPAI) to conduct a separate common entrance examination, namely, CEE-AMPAI-2014 for both minority and non-minority candidates for admission to 50% of their approved seats in Engineering and Pharmaceutical Courses. Upon receipt of such proposal a State level academic Advisory Committee was constituted by the higher education department, government of West Bengal for the purpose of examining the details of the proposal and thereafter a notification was issued on 7th March, 2014 accepting the proposal of AMPAI subject to the conditions specified therein. Thereafter a notification was issued on 8th June, 2014 prescribing the guidelines towards e-counselling and admission process for the academic session 2014- 15. Subsequent to completion of the admission process as prescribed in the guidelines by 31 July, 2014 there were 524 vacancies in the said institution and to fill up the said vacancies, the said institution published an admission notification on 1st August, 2014 and held the CEE AMPAI-2014 Decentralised Counselling (hereinafter referred to as the said entrance test) and out of 515 applicants, 471 candidates passed and ultimately 319 students took admission. Thereafter the said institution approached the said

university for registration but such prayer was not considered and aggrieved thereby the said institution approached this Court through a writ application being W.P. 31644 (W) of 2014 and by an order dated 2nd December, 2014 this Court requested the Vice-Chancellor of the said university to decide as to whether the students of the petitioner's institution can be allowed to take part in the ensuing examination. Pursuant to the said order of this Court the Vice-Chancellor of the said university passed an order dated 5th December, 2014 observing, inter alia, that the notification dated 7th March, 2014 did not provide for any decentralized counselling by any of the five minority institutions and the prayer for grant of registration and participation in the ensuing examination was refused. The said order was placed before the Court in W.P. No.31644 (W) of 2014 and the Court by an order dated 10th December, 2014 observed that in view of the order passed by the Vice-Chancellor nothing survives for decision and accordingly the writ application was disposed of with an observation to the effect that the said order shall not preclude the petitioners to question the legality of the order dated 5th December, 2014.

6. The learned Single Judge in paragraphs 28 to 31 has summarized the facts, which are undisputed. The said paragraphs are reproduced hereinbelow:

“28. In the backdrop of the said undisputed facts and particularly from the contents of the memoranda dated 7th March, 2014 and 18th June, 2014 it is explicit that no authority was conferred upon the said institution to conduct any further entrance test after the conclusion of

the decentralised admission process as provided under Clause 6 of the memorandum dated 18th June, 2014. No provision has been brought to the notice to this Court to the effect that irrespective of the regulations of AICTE and irrespective of the terms and guidelines, as incorporated in the memorandum dated 7th March, 2014 and 18th March, 2014, the said institution was authorised to conduct a fresh entrance test. Thus the argument of petitioners to the effect that for existence of a large number of vacancies after completion of decentralised admission process, the said institution earned a right to fill up the same, is not acceptable to this Court.

29. Even assuming the said institution had the jurisdiction to conduct such entrance test, it needs to be ascertained as to whether such entrance test satisfies the triple tests of being fair, transparent and non-exploitative. It is explicit from the admission notification issued by the said institution that the examination was held on 10th August, 2014 at 12.00 noon and the merit list was published in the evening on the self-same date at 8.00 p.m. and admission was completed within the period from 11.00 a.m. on 11th August, 2014 to 5.30 p.m. on 12th August, 2014. Such sequence clearly reveals that the said institution proceeded in hot haste and the averments in the writ application do not provide any acceptable explanation towards the process as adopted for filling up 369 Transparency and merit have to be unavoidably taken care of and cannot be compromised. Thus, in my opinion, the said entrance test conducted by the said institution does not satisfy the triple tests of being fair, transparent and non-exploitative.

30. The real import of Article 30(1) is that it contemplates a minority institution with a sprinkle of outsiders admitted into it. A perusal of the list of the candidates admitted after the entrance test, as annexed

at pages 211 to 223 of the writ application, would reveal that none of the candidates admitted belongs to the Christian minority and thus within the approved intake of 540 seats, the admission of 369 non-minority students, cannot, by the furthest of imagination be construed to be a "sprinkle of outsiders". In the backdrop of such factual scenario, this Court is of the view that the refusal of registration by the said university does not affect the autonomy or the rights guaranteed under Article 30(1) of the Constitution of India.

31. From the list of 285 students who have been denied registration, as produced, it appears that none of them are domiciled within the State of West Bengal. To establish a minority institution the same must primarily cater to the requirements of the minority of that State else its character of minority institution is lost. The right upon minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority."

7. Insofar as the collection of fees by the authorities are concerned, the learned Single Judge was of the view that the candidates who chose not to appear in the examination conducted by the competent authority and who had no avenue to avail admission in engineering courses were picked up by the said institution and were admitted by holding an entrance test in hot haste and upon collecting money from them. A perusal of the list of the candidates admitted after the entrance test, as annexed at pages 211 to 223 of the writ application, would reveal that none of the candidates admitted belongs to the Christian minority and thus within the approved intake of 540 seat, the admission of 369 non-minority students, cannot, by the furthest of

imagination be construed to be a “sprinkle of outsiders”. In the backdrop of such factual scenario, Justice Tapabrata Chakraborty opined that the refusal of registration by the said university does not affect the autonomy or the rights guaranteed under Article 30(1) of the Constitution of India.

8. Other relevant observations are reproduced hereinbelow:

“35. All the minority institutions constituting AMPAI consciously agreed to the admission process as framed. Save and except the said institution no other minority institution within the AMPAI conducted any separate entrance test for the purpose of filling up the remaining vacancies which in fact had been surrendered by the respective institutions in terms of the government memoranda. In such circumstances, if the prayer of the petitioners is allowed directing the university to register the illegally admitted students, the same would lead to discrimination and would cause gross injustice to those institutions, who have followed the admission guidelines of the higher education department and policy regulations of AICTE. Having consciously agreed to and accepted the procedure and guidelines as framed, the said institution cannot ask to read down the guidelines to legalise the irregularities perpetrated.

36. The fact that the students were permitted to participate in the semester examinations under interim orders of the Court or the fact that their irregular admission would ultimately be tested by their performance in the degree course are no consideration to allow the petitioners to continue their courses in the said institution and any direction upon the university to grant registration in their favour would stand out to be an instance of misplaced sympathy.”

9. The fact that the students were permitted to participate in the

semester examinations under interim orders of the Court or the

10. The facts as summarized by Justice Chakraborty and applied the principle of law to such facts in arriving at a conclusion in the absence of a new argument to be advanced on behalf of the appellants, we are not inclined to interfere with the order passed by the learned Single Judge.
11. The appeal fails. The appeal is, accordingly, dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)