

Item-1. 15-09-2023

MAT 1814 of 2023
CAN 1 of 2023

sg Ct. 8

JMN Medical College & Ors.
Versus
The State of West Bengal & Ors.

Mr. Pratik Dhar, Adv.
Mr. Ritwik Pattaanayak, Adv.
Mr. Samir Halder, Adv.
Mr. Shourya Vir Das, Adv.
Ms. C. Ray, Adv.

...for the appellants

Mr. Indranil Roy, Adv.
Mr. Sunit Kumar Roy, Adv.

...for the National
Medical Commission

Mr. D.N. Maiti, Adv.

...for the respondent no.10

Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Suman Dey, Adv.

...for the State

1. The refusal to pass an interim order has been carried in this appeal.
2. A consortium of Nirmala Foundation (Lead Member), JRS Educational Trust (Non-Lead Member) and Mainak Chakraborty (Non-Lead Member) applied for establishing of a Private Medical College under the name and style of JMN Education & Research Foundation. Their offer was accepted, consequent whereupon, on 10th August, 2022, the appellants were issued Essentiality Certificate by the Director of Medical Education. On 14th January, 2023, one of the members of the consortium, Mainak Chakraborty alleged to have resigned. The said resignation of Mainak was duly communicated to the Director on 20th February, 2023 and thereafter on 16th March, 2023, the appellants sought for consequent changes to be made in the consortium.

3. This prayer for approval seems to have culminated in the order passed by the Secretary, PPP, Department of Health and Family Welfare on 8th September, 2023. In between, on 13th April, 2023, the Director of Medical Education granted permission for dead body (candavers) for the medical college and a letter of permission was granted by the National Medical College for 150 MBBS seats. The West Bengal University of Health Sciences granted affiliation on 7th July, 2023 for 150 students intake and on 19th July, 2023, tentative schedule for admission by Director of Medical Education was published.
4. The appellants were surprised to find the exclusion of the name of its college in the list of colleges, where such counseling was allowed.
5. In between 26th July, 2023 and 4th August, 2023, there have been exchanged of correspondences with regard to fixation for fee and inclusion of name and forwarding of the audited accounts to facilitate a decision with regard to allowing the appellants to admit the students. In the meantime, it appears that Mainak Chakraborty engineered a public interest litigation alleging violation of provisions of West Bengal Land Refrorms Act, 1955 and West Bengal Panchayat Act, 1973. It was further alleged that respondent No.16/Medical College namely the appellant herein, are not entitled to get recognition nor admit any student.
6. Upon true colour of the litigation being revealed which gives enough indication that Mainak Chakraborty was behind the said litigation, namely, that the petitioner No.2 is the son of

Mainak Chakraborty's mother's sister and the petitioner no.3 was a caretaker employed by Mainak Chakraborty of a building developed by Mainak, the Hon'ble Division Bench presided over by the Hon'ble Chief Justice dismissed the writ petition with the observation that it is "not a genuine public interest writ petition but, it is with private motive".

7. Curiously, the order of the Secretary, PPP, Department of Health and Family Welfare declining permission on the ground that the entire Net worth of Rs.186.887 crore as on 31st March, 2022 pertains to one single entity i.e. JRS Educational Trust (Non-Lead member), thereby defeating one of the very basic essential financial criteria of EOI was issued after the public interest litigation was dismissed.
8. We could not find any reasonable explanation for keeping the application for approval in terms of 3.21 of the MOU dated 22nd August, 2022 pending till the impugned order was passed as the authority was aware that any adverse decision would ultimately affect the college with civil and dire consequences and they would be hardly left with any remedy. In fact, the order was passed when the counseling had already started.
9. Mr. Pratik Dhar, learned Senior Counsel appearing on behalf of the appellants has submitted that in the event there is any breach of MOU, clause 6.1 provides a 30 days time to remedy the breach. It is further submitted that the finding of the Secretary that a single entity i.e. Non-Lead Member cannot be allowed to run without equity participation of the other consortium members, may not be a valid interpretation

of clause 5.1 read with clause 5.9 of EOI.

10. In view of the fact that Rule 3.21 allow substitution we direct the Secretary PPP, Department of Health and Family Welfare, Government of West Bengal to reconsider the matter in the light of the documents submitted by the appellants and any further documents that may be required for consideration of the application and equally participants of all the members of the consortium is mandatory as one of the members may contribute skill that can be treated as capital.
11. Moreover, in case, the State Authorities are of the view that there are breaches, in terms of clause 6.1 there is a requirement to give a notice to remove the breach as the effect of the order of the Secretary Dated 8th September, 2023 is termination.
12. I view of the fact that counseling has already commenced, we direct the Principal Secretary, Department of Health and Family Welfare to reconsider the matter in the light of the aforesaid observations and all other relevant matters and factors that may be required to be considered in deciding the application for grant of approval consequent upon the resignation of Mainak Chakraborty including the financial involvement of consortium members after giving a reasonable opportunity of hearing to the College authorities only. The College authorities shall be entitled to represent by an Advocate of their choice.
13. We direct the Principal Secretary to take a decision in this regard within two weeks from the date of communication of

this order either of the parties. The letter of Mainak Chakroborty shall not be taken as a ground for not giving the approval. It is needless to mention that the appellant is required to satisfy the concerned authorities, in the extent, if any quarry is raised against them as observed by the Hon'ble Division Bench in its order dated 31st July, 2023.

14. With the above observations, the appeal and the application are accordingly, disposed of.
15. The learned Counsel for the parties have consented to the disposal of the writ petition in view of the order passed.
16. In view thereof, WPA 22124 of 2023 is treated as on the day's list and disposed of along with the appeal and the stay petition.
17. The department and the computer section are directed to record the disposal of the writ petition being WPA 22124 of 2023 in terms of this order and the said writ petition shall not be shows as pending.
18. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Rai Chattopadhyay, J.)

(Soumen Sen, J.)