

17.11.2023

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WPA 25897 of 2023

**Sanjana Samanta
Vs.
The Union of India & Ors.**

Mr. Srijib Chakraborty
Mr. Aditya Mondal
Mr. Deeptangshu Kar.
... For the petitioner.

Mr. Indranil Roy
Mr. Sunit Kumar Roy
... For NMC.

Mr. Tapan Mukherjee, Sr. Advocate,
Mr. Santanu Kumar Mitra
Mr. Amartya Pal
... For the State.

Mr. Indrajeet Dasgupta
Mr. Tapan Bhanja
... For Union of India.

Mr. D. N. Maiti
Mr. A. Singh
... For respondent no. 6.

Mr. Saptarshi Mal
... For Sanaka Hospital.

Let the supplementary filed by the petitioner be kept with the record.

The petitioner was a successful candidate in National Eligibility Entrance Test (Under Graduate 2023). She secured a rank of 7,73,351 under the General category.

It is not in dispute that the petitioner secured a seat in stray vacancy round counseling at Shri

Ramkrishna Institute of Medical Sciences and Sanaka Hospitals at Durgapur.

The petitioner suggests that due to her illness, despite securing a seat, she could not admit herself to the said college within the last date of admission in the Medical Colleges, i.e, September 30, 2023 as fixed by the Hon'ble Supreme Court.

Subsequently, the Supreme Court, on an application, extended the said cut-off date by an order dated October 30, 2023 in Miscellaneous Application No. 2166 of 2023 in connection with W. P. (C) 76 of 2015.

It is necessary to quote the order of the Hon'ble Supreme Court in-extenso:

1. *De-tagged.*
2. *List the Miscellaneous Application on 06 November 2023.*

MA Diary No 54004 of 2023

3. *On being mentioned by Ms Aishwarya Bhati, the Miscellaneous Application is taken on Board.*
4. *The Miscellaneous Application has been moved by the Secretary, Ministry of Health and Family Welfare and Director General of Health Services of the Union of India.*
5. *We have heard Ms Aishwarya Bhati, Additional Solicitor General in support of the Miscellaneous Application.*
6. *It has been stated in paragraph 4 of the Miscellaneous Application that 2182 seats for the MBBS Degree course are lying vacant*

across all States as on 25 October, 2023. The Union of India has received representations from all the States for permission to fill up these seats. Hence, the relief which has been sought in the Miscellaneous Application is in the following terms:

“(i) Permit the applicants to conduct an additional round (i.e., Special Stray Vacancy Round) by granting an extension of 02 weeks for NEET (UG)-2023 counselling in All India Quota and allowing modification in the existing Scheme and schedule as approved by this Hon’ble Court vide its Order dated 18.01.2016 passed in I.A. Nos. 7 & 8 in W.P. (C) No. 76 of 2015 in the interest of Justice.”

- 7. Bearing in mind the element of public interest in filling up the unfilled seats, we allow the Miscellaneous Application by permitting the applicants to conduct a Special Stray Vacancy Round for which purpose an extension of two weeks for NEET (UG)-2023 counselling in the All India Quota shall stand granted.*
- 8. The Miscellaneous Application is accordingly allowed in the above terms.*
- 9. MA Nos 2166 and 2238 of 2023 shall also stand disposed of, in view of the above order.”*

The petitioner, in view of the extension granted by this Court, sought admission in the relevant Medical College, but due to two notifications dated October 31, 2023 and November 03, 2023 issued by the Director General of Health Services, Ministry of Health & Family Welfare, MCC, Government of India and Director of Medical Education and Chairman WBMCC,

Government of West Bengal, respectively, the petitioner was not allowed to participate in the counseling.

The petitioner, thereafter, approached this Court by filing this writ petition seeking her admission to the said college.

On behalf of the College, it has been submitted that two seats are still lying vacant and the college has no objection if the petitioner is allowed to be admitted against the said vacant seats.

Mr. Indranil Roy, learned advocate appearing for National Medical Council vehemently opposes the prayer of the petitioner. The State also opposes the prayer.

It has been submitted by Mr. Roy that since the last date of the admission was lastly extended by the Supreme Court till November 15, 2023, the petitioner cannot be admitted to the College beyond such date without the intervention of Supreme Court.

I am of the view that the order dated October 30, 2023 extended the counseling for two weeks from October 30, 2023, so as to enable the students to participate in the counseling who had not been able to participate in the earlier round of counseling and also those who had participated in the earlier round of counseling but could not secure a seat.

The aforesaid view finds support from the order of the Karnataka High Court passed in W.P. 24508 of

2023 dated November 06, 2023. The said order is quoted below:

“Shri N.K.Ramesh, learned Advocate accepts notice for respondent No.2-KEA . Shri Sudev Hegde, learned AGA accepts notice for the State. Heard Shri Udaya Holla, learned Senior Advocate for the petitioner, Shri N.K.Ramesh, learned Advocate for the KEA, Shri Sudev Hegde, learned AGA for the State and Shri N.Khetty, learned Standing Counsel for the NMC . It is submitted that the second stray round of counseling will commence on 07.11.2023. Shri Khetty, learned Standing Counsel for NMC submitted that as the KEA is conducting second stray round of counseling, the candidates, who have not got seats in first, second, mop-up and first stray rounds; and those who have got seats but not completed admissions in first, second, mop-up and first stray round may also be permitted to participate in ‘second stray’ round of counseling. In our opinion, Shri Khetty is right in his submission because if the aforementioned candidates are not permitted, it would result in arbitrariness. Accordingly, we direct the KEA to issue an Online Notification permitting the aforementioned registered candidates to participate in the ‘second stray’ round of counseling, subject to such other terms and conditions which have been notified in the Circular dated 03.11.2023 as per Annexure-L. By interim direction, it is ordered that the petitioner and all similarly situated registered candidates who did not get admission in first, second, mop-up or first stray round counseling; or registered candidates who got the seats but did not complete the admission formalities shall be permitted to participate in the ‘second stray’ round of counseling subject to payment of prescribed fee and also security deposit as per norms.”

I am of the view that the petitioner, who secured her admission in the earlier stray round of counseling even before the extension of the last date by the

Supreme Court should not be deprived of her right to take admission in the relevant medical college within the extended period as fixed by the Supreme Court.

It should be noted that the petitioner approached this Court on November 08, 2023 well within the aforesaid extended period. Therefore, I cannot accept the contention of Mr. Roy that the petitioner sought admission after the last date of admission as fixed by the Supreme Court.

I am of the view that the facts involved in this case warrant an order in favour of the petitioner in the light of the judgment reported at (2020) 17 SCC 465 (S. Srishna Sradha Vs. State of Andhra Pradesh).

Mr. Roy, learned advocate for National Medical Council, sought to distinguish the judgment arguing that in the present case the respondent authorities are not at fault. The fact remains that by issuing the impugned notifications, the respondents have effectively prevented the petitioner from exercising her right to admission in the relevant medical college.

It will be open to the petitioner to approach the concerned medical college within ten days from date for her admission. Needless to mention that the college will be at liberty to admit the petitioner subject to compliance of all formalities.

Accordingly, WPA **25897 of 2023** stands allowed.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)