

**CALCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI**

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

WPA 2465 of 2023

Ritam Bakly & Ors.

Versus

The State of West Bengal & Ors.

For the Petitioners : Mr. Subham Chanda,
Ms. Somdutta Patra,
Ms. Bedashruti Bose
...Advocates

For the State : Mr. Subir Kumar Saha, AGP
Mr. Momenur Rahaman,
...Advocates

Heard on : 13.10.2023

Judgment on : 16.10.2023

AJAY KUMAR GUPTA, J.:

1. In this Writ Petition No. 2465 of 2023, the petitioners praying for directions upon the respondent authorities to grant admission to the petitioners in any of the undisclosed vacant seats in State Quota and All

India Quota in M.B.B.S. Course 2023 in any of the colleges under respondent authority and allow them to attend class with the students, academic year 2023 and/or also to provide or grant registration number to the petitioners.

2. Learned counsels appearing on behalf of the petitioners submit every year several seats for admission of M.B.B.S. Course fall vacant after the students got admission after final counselling process under the respondent universities. The present writ petitioners have appeared in the National Eligibility –cum- Entrance Test (Under Graduate) (hereinafter referred to as 'NEET-UG, 2023') under the different categories viz. OBC, General and Schedule Caste and they secured good marks in the said NEET UG-2023 and they have been awarded All India ranking on the basis of their marks. The petitioners were participated in all the rounds of counselling conducted by the respondent authorities in different phases and also enrolled for the MOP UP round of counselling. However, they have failed to obtain admission in M.B.B.S. Course even securing good marks and even seats are lying vacant due to non-joining of the successful candidates or remain undisclosed State Quota as well as All India Quota. It came to the knowledge of the petitioners that there are several seats lying vacant but despite of the said facts, the authorities had not disclosed the said vacancies. For that reasons, the petitioners made a written representation before the concerned authorities requesting them for their admission on such vacancies but no result and only if the Court directs the respondents can allow the petitioners to provisionally admit in the courses, in the event any seat found to have

fallen vacant otherwise, the vacant seat could not be left vacant without any justification and when the petitioners are ready to join the said vacant post. Seats are lying vacant due to non-notifying the vacancies by the authorities. Provisional admission is essentially meant in the event, a more meritorious or eligible candidate comes up for admission before the year ending then the provisionally admitted candidate has bound to vacate the seat in his or her favour.

3. In support of his contention, the learned counsel appearing on behalf of the petitioners relied on several decisions passed by the Hon'ble Single Bench of this High Court as follows:-

1. *WPA 234 of 2019 (Dr. Reetika Kapoor Vs. The West Bengal University of Health Sciences & Ors.),*

2. *WPA 801 of 2022 (Md. Akib Mistry & Ors. vs. North Bengal Medical College & Hospital & Ors.)* with *WPA 802 of 2022 (Rijia Sultana & Ors. Vs. North Bengal Medical College & Hospital & Ors.)* with *WPA 803 of 2022 (Shailyaja Saha & Ors. Vs. North Bengal Medical College & Hospital & Ors.).*

The learned counsel further submits that this High Court also confirmed provisional admission of the writ petitioner subsequently and shall treat as a student who took admission normally in the said medical college. He refers the decision of this High Court passed by the co-ordinate Bench in *WPA 680 of 2019 (Souvik Samanta Vs. The West Bengal University of Health Sciences & Others).* Accordingly, the similar order or direction may

be passed in the instant case for the career of the petitioners, who have got good marks in the National Eligibility –cum- Entrance Test.

4. On the other hand, learned counsels appearing on behalf of the respondent authorities submit that MOP-UP counselling for the course has already been over. No event can any admission be made beyond the cut off date. However, some vacancies could be found due to the reason that some of the students did not take admission. But it would nevertheless be difficult to accommodate all the petitioners keeping in mind of the other meritorious candidates.

5. Heard the submissions of learned counsels appearing on behalf of the parties and on perusal of the applications.

6. With regards to submission made by the Ld. counsel appearing on behalf of the respondents that no event can any admission be made beyond the cut off date in view of the orders passed by the Hon'ble Apex Court dated 25.05.2018 and 31.05.2018 in Writ Petition (Civil) No. 556 of 2018. The Division Bench of this Court held that such direction would not come in the way of making a direction for admission in a case of the present nature. The Hon'ble Supreme Court might not have intended that a seat, which could not be filled up by admission before a particular date because of laches of authorities, should never be filled up. The Division Bench further held that it was more so when the writ petitioner is not at fault and the blame for omission to invite the surrendered vacancy for mop up counselling should be borne by the appellants who, despite having information from the writ petitioner, did not take steps to upload such vacancy on its website. The

Division Bench went on to rely on a decision of the Hon'ble Apex Court in *Asha vs. Pt B.D. Sharma University Of Health Sciences*, (2012) 7 SCC 389. In the present case also the facts are quite similar. It is because of the non-notifying of the vacant seats that there is a chance of seats remaining vacant for the rest of the session. Among other things, seat/s in a medical college remaining vacant would be waste of resources.

7. Relying on the decision of the Division Bench of this Court and several subsequent decisions were passed by respective Single Judges of this Court allowing seats found vacant to be provisionally filled up. One may rely on one such decision passed by a Single Bench of this Court in *Sounak Mondal vs. West Bengal University of Health Sciences & Ors.* in WPA No. 343 of 2019. There the Single Judge also held as follows:

“It is fairly submitted on behalf of the petitioner that the provisional admission, which could be granted to the petitioner, cannot create any equity in favour of the petitioner and shall be subject to the ultimate availability of vacancies.”

.....

“In such view of the matter, in order to prevent unnecessary harassment to the petitioner in the event there are actually vacant posts to which the petitioner is entitled to get admitted, W.P.A. No. 343 of 2019 is disposed of by directing the respondent no. 2 to provisionally admit the petitioner in a college

of the choice of the respondent no. 2 under the University, being the respondent no. 1, within a week from date.”

.....

“Such admission will be on a provisional basis, subject to availability of vacancies for the post contended for by the petitioner.”

8. In view of the above, it would be expedient to allow the petitioners to be provisionally admitted to the course in question in the event actual vacant posts are found within fortnight from the date of communication of this order. However, such provisional admission would be given in terms of ranks obtained by the candidates inter se the writ petitioners.

9. In the interest of the justice, the following directions are passed:-

i) In the event there are actual vacant posts to which the petitioners are entitled to be admitted after fulfilment of all criteria as required, the respondents are directed to provisionally admit the petitioners in colleges of their choice within a fortnight from this date.

ii) Such admissions will be on a provisional basis subject to availability of vacancies for the post contended by the petitioners.

iii) This shall not create any equity in favour of the petitioners, even in the event they qualify or are allowed to take examinations by the University.

iv) As between the present petitioners, their respective ranks will determine which of the present petitioners, if not all, would get the benefit of such admission to be granted in terms of this order.

v) Provisional admission is essentially meant in the event, a more meritorious or eligible candidate comes up for admission before the year ending then the provisionally admitted candidate has bound to vacate the seat in his or her favour.

10. The University and Registrar being the respondent No.2 and 5 respectively directed to admit the writ petitioner provisionally following the aforesaid conditions and directions within fortnight from the date of communication of this order.

11. With these observations, the writ applications being **W.P.A. No. 2465 of 2023** is disposed of.

12. There shall be no order as to costs.

13. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

14. All parties shall act on server copy of this order downloaded from the official website of this Court.

(Ajay Kumar Gupta, J.)