

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 875 of 2024
+
IA No. CAN 1 of 2024 [Stay]
+
IA No. CAN 2 of 2024 [App. Order]

Saddam Hossain
Versus
The State of West Bengal & Ors.

For the Appellant : *Mr. Biswaroop Bhattacharya,*
Mr. K.M. Hossain,
Ms. Keya Sutradhar.

*For the State/
Respondents* : *Mr. Tapan Kumar Mukherjee, Ld. AGP,*
Mr. Suman Dey.

*For the Respondent
Nos. 3-5/WBMCC* : *Mr. Sirsanya Bandopadhyay,*
Mr. Arka Kumar Nag,
Ms. Debolina Ghosh.

*For the Respondent
No.6/NMC* : *Mr. Indranil Roy,*
Mr. Sunit Kumar Roy.

*For the Respondent
No.7* : *Mr. Tanoy Chakraborty,*
Mr. Chhandak Dutta.

For the Respondent : *Mr. Washef Ali Mondal,*
No.8 *Mr. Syed Nazmul Hossain,*
Mr. Syed Raihanul Hossain.

Hearing is concluded on : *5th November, 2024.*

Judgment On : **19th November, 2024**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging an order dated 19.04.2024 passed by the learned single Judge in a writ petition being WPA 24098 of 2023. By the said order, the appellant's prayer for issuance of necessary direction upon the respondents to allow the appellant to migrate from JIS School of Medical Science and Research (hereinafter referred to as JIS), a private institution, to any government medical college and to pursue the MBBS course, was refused and the writ petition was dismissed.

2. The appellant/ writ petitioner's case is that he hails from very poor minority community. He pursued his studies under extreme financial distress and participated in the National Eligibility-cum-Entrance Test (UG) (hereinafter referred to as NEET) under Economically Weaker Section (hereinafter referred to as EWS) Category. He was successful in securing a rank 52515 in NEET. Such ranking was much above other candidates under the EWS category, who got admission in government medical colleges to pursue the MBBS course. During the first round of counselling through online, the server of the West Bengal Medical Counselling Committee (herein after referred to as WBMCC) was not working properly and the appellant

could not register his name since no one time password (hereinafter referred to as OTP) was sent to his registered mobile number and email Id. He immediately made a phone call to the help line number of West Bengal Medical Counselling Committee (hereinafter referred to as WBMCC) on 28.07.2023 at about 7 pm and prayed for assistance but he was advised to participate in the second round of counselling. Aggrieved thereby, the appellant submitted a representation to the respondent no. 4 on 26.09.2023 followed by a demand notice through his learned advocate. Thereafter, he was called for a hearing on 29.09.2023 by the respondent no.4. At the time of hearing, he was verbally directed to take admission first at JIS as had been allotted to him in the subsequent counselling process and he was assured that thereafter the said respondent would arrange for his migration to any government medical college. On the basis of such assurance, the appellant took admission at JIS. On the instruction of the Nodal Officer, the appellant was granted admission without tuition fees. However, subsequent to such admission no steps were taken by the respondents to admit appellant in a government medical college.

3. In the said conspectus, Mr. Bhattacharya, learned advocate appearing for the appellant argues that mere sending of OTP does not prove that OTP was delivered. The appellant thus could not participate in the first round of counselling due to the laches on the part of the respondents. In the event he could have participated in the first round of counselling, he would have positively got admission in a government medical college on the basis of his rank in NEET. The EWS category of reservation was incorporated with the

sole object to uplift and accommodate brilliant students from the lowest strata of the society. It is the duty and responsibility of the State to ensure that such poor students do not succumb to the procedural rigmarole. The appellant had been victimized for no fault on his part and in such circumstances the learned single Judge ought to have exercised discretion in his favour and allowed him to take admission in any government medical college. Reliance has been placed upon a judgment delivered in the case of *S. Krishna Sradha versus State of Andhra Pradesh and others*, reported in (2020) 7 SCC 465.

4. He argues that *vide* memo dated 19.01.2024 the respondent nos. 4 and 5 removed three ST candidates, who got admitted in Medical College, Kolkata in the MBBS Course (session 2023-2024) and as such three vacancies had occurred in the said government medical college and the appellant can be admitted in any one of such vacancies.

5. *Per contra* Mr. Bandopadhyay, learned advocate appearing for the respondent nos. 3 to 5 submits that in the first of round counselling, registration started from 25.07.2023 and the process went on till 28.07.2023. The OTP for registration was sent to the appellant on 28.07.2023 at 09.48.00 hours, as would be explicit from the document annexed at page 15 of the affidavit-in-opposition (hereinafter referred to as A/O). The appellant tried to fetch the OTP only once and that too on the last date stipulated for first round counselling. There is no explanation as to why he waited for the last date to fetch the OTP. Furthermore, no representation alleging any inaction on the part of the respondents was submitted till

27.09.2023. Drawing our attention to the document annexed at page 41 of the A/O, he submits that the appellant without raising any objection participated in the subsequent rounds of counselling and locked his choice finally on 21.09.2023. He thereafter waited for about fifteen days, without any reason and ultimately affirmed the writ petition on 05.10.2023. In the midst thereof, admission in the academic session was over and the appellant had also not attended his classes at JIS. When an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, no discretion can be exercised by the Court in his favour.

6. Mr. Roy, learned advocate appearing for the respondent no. 6 submits that the appellant approached the writ court praying for issuance of necessary direction upon the respondents to allow him migration from a private institution to any government medical college. Such migration is a bar under clause 18 of the notification dated 02.01.2023 issued by the National Medical Commission. The period for admission in the academic session 2023-24 has already expired and the appellant had not even attended his classes in the 2023 academic session at JIS. In view thereof, question of grant of admission mid-stream in any government medical college, after the course has commenced, does not occasion. The Courts cannot be generous in issuing directions which in effect would amount to directing authorities to violate their own rules and regulations.

7. In reply, Mr. Bhattacharya submits that from the facts involved in the instant *lis* a general laxity can be attributed to the respondents especially when, at any given time, the respondents have greater resources

than the appellant, at their disposal. The writ petition was pending from 05.10.2023 till 19.04.2024 and the appeal was pending since 03.05.2024. Such delay in disposal of the proceedings is also not attributable to the appellant.

8. Heard the learned advocates appearing for the respective parties at length and we have given our anxious consideration to the facts and circumstances of the case.

9. To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. Justice cannot be forsaken on alter of technicalities. Judiciary has a strong sense of justice and it works to maintain social justice and fairness as distinguished from misplaced sympathy. Upon application of such proposition to the facts of the case, it needs to be ascertained as to whether the appellant can be admitted in any government medical college to pursue the MBBS Course in the academic session of 2023.

10. It is a real conundrum; we are considering as to whether a candidate under EWS Category, who had pursued his studies under extreme financial distress and had by the dint of his merit secured a rank much higher than many candidates under EWS Category, can be directed admission in a government medical college where he would be able to pursue his studies with lesser tuition fees. It has made and compelled us to pause, ponder and confer anxious consideration. The case may not warrant a zero-tolerance approach but the claim needs to be considered in the totality of the circumstances.

11. The appellant's claim for migration was rightly discounted by the learned single Judge in view of clause 18 of the notification dated 02.06.2023. The contention of the appellant that he would have positively got appointment in a government medical college had he participated in the first round of counselling is also not acceptable. The appellant had not attended the regular classes and today almost two semesters of the course are over. As per catena of decisions of the Hon'ble Supreme Court the time schedule relating to admissions to the professional courses should be strictly adhered to.

12. The photostat copy of the log obtained from the server of the National Informatics Centre (NIC), as annexed at page 15 of the A/O filed by the respondent nos. 3 to 5 would reveal that though the first round of counselling commenced from 25.07.2023, the appellant fetched the OTP only once and that too on the last date of the said counselling, i.e., on 28.07.2023. In response thereto, the OTP was sent to the appellant's mobile on 28.07.2023 at 09.48.00 hours. However, to participate in the second round of counselling the appellant logged in and fetched the OTP on multiple occasions from the date the second round of counselling commenced.

13. Records further reveal that having allegedly failed to obtain the OTP on 28.07.2023, the first representation was submitted about two months thereafter on 26.09.2023, i.e., after publication of the result of the Online Stray Round on 25.09.2023. The document annexed at page 41 of the A/O would reveal that the second round of counselling started on 14.08.2023 and the appellant waited till the fourth round which started on

18.09.2023 to get a seat at JIS. The locking date and time was 21.09.2023 at 20.41.00 hours. The writ petition was affirmed about fifteen days thereafter on 05.10.2023. The above sequence of facts clearly reveals that the appellant did not take immediate steps after having failed to register himself in the first round of counselling. Having not appeared in the first round of counselling, the appellant cannot even challenge the admission of other EWS category candidates in any government medical college, who may have obtained lesser rank than him in NEET.

14. The applicability of the doctrine of delay and laches cannot be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. A party aggrieved must move the Court and explain satisfactorily all semblance of the delay. We do not find any explanation as to why the appellant did not fetch the OTP immediately upon commencement of the first round of counselling on 25.07.2023. He unnecessarily waited till 28.07.2023 to obtain the OTP. There is no explanation as to why he participated in the second round of counselling without even submitting any representation contemporaneously alleging that for the fault of the respondents he could not register himself in the first round of counselling. An alleged assurance given by the respondent no.4 towards admission in a government college does not confer any legal right upon the appellant. In the case of *S. Krishna Sradha (Supra)* itself it has been observed *inter alia* that where the candidate is challenging the first round of counselling process then he/she must approach the Court immediately after the first round of counselling and before the commencement of the second

round of counselling. In such circumstances, this case cannot be construed as the rarest of rare cases for issuance of any direction upon the respondents for grant of admission to the appellant in any government medical college in the academic session of 2023-2024. Any such direction would be an instance of misplaced sympathy.

15. The appeal and the connected applications are, accordingly, dismissed.

16. There shall be no order as to costs.

17. Urgent Photostat certified copy of the order if applied for, be made over to the parties as expeditiously as possible.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)