

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

WPA 16357 of 2024

Sarfaraz Alam & Ors.

Vs

The State of West Bengal & Ors.

For the petitioner	:	Mr. Biswaroop Bhattacharya Mr. Golam Mohiuddin Mr. Anindya Bose	Advocates
For the State	:	Mr. Swapan Kr. Dutta Mr. Rajat Dutta	Advocates
For the College	:	Mr. Prasenjit Mukherjee Ms. Puja Mondal	Advocates
For the Council	:	Mr. Suman Dey	Advocate
Heard lastly on	:	28.08.2024	
Judgment on	:	26.11.2024	

Jay Sengupta, J:

1. This is an application praying for direction upon the respondents to issue registration numbers in their favour in respect of admission in the North Bengal Elite Pharmacy College, Uttar Dinajpur and to dispose of the representation dated 12.06.2024.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. The petitioners took admission in the respondent College for pursuing Diploma in Pharmacy Course for the Session 2023-2025, after having the knowledge that the respondent college was approved by the Pharmacy Council of India and affiliated to the West Bengal State Council of Technical and Vocational Education and Skill Development. From the Report as filed by the West Bengal State Council of Technical and Vocational Education and Skill Development it transpired that on 09.01.2024 affiliation was granted in favour of the subject college and link for admission was sent on 11.01.2024. Therefore, if the respondent Council had put any objection with regard to the admission of the petitioners in the said course that might be termed as irregular not as illegal. The college submitted the respective online admission form of the petitioners with the West Bengal State Council of Technical and Vocational Education and Skill Development and respective the acknowledgement receipts were issued by the West Bengal State Council of Technical and Vocational Education and Skill Development. The petitioners also deposited the 1st instalment of their admission fees to the said course with the college and the college issued money receipts against such payments. During the course of hearing of the writ petition which was

filed by the college being WPA 8860 of 2024 (North Bengal Elite Pharmacy College that the respondent College vs State of West Bengal and Ors.) it was pointed out that college could admit only 15 students in the course under reference, but at that point of time the respondent West Bengal State Council of Technical and Vocational Education and Skill Development did not raise any objection with regard to such admission. If any wrong had been committed by the college in admitting the petitioners in the course under reference, the petitioners might not suffer and moreover, semester examination also had not been commenced by the respondent Council. In the case of Rajendra Prasad Mathur vs Karnataka University and Another reported at AIR 1986 SC 1448, it was held that in a case of admission in affiliated Engineering College students not duly qualified were admitted and the facts appeared that the blame was put upon the College in respect of irregular admission and therefore, students were not to suffer for the sin of the College. The petitioners were undergoing course with necessary syllabus and they appeared in the internal examinations of the college, therefore, the claim of the petitioners for registration numbers ought not be discarded. The West Bengal State Council of Technical and Vocational Education and Skill Development conducted an inspection at the college on 16.07.2024 and during the course of inspection also the council had witnessed that petitioners were undergoing classes. In the case of Andhra Kesari Education Society vs. Director of School Education and Ors. reported at AIR 1989 SC 183 it was held that it would not be proper to drive the students to the streets if they had undergone the prescribed course with the necessary

syllabi and other matters relating thereto. But, it would be for the Director of School and the Registrar, Nagarjuna University to consider and satisfy themselves and not for this Court at once to permit them to appear in the examination. This Hon'ble Court would graciously be pleased to direct the respondents to issue registration numbers in favour of the petitioners in respect of their admission in the North Bengal Elite Pharmacy College, District – Uttar Dinajpur for pursuing Diploma in Pharmacy Course for the Session 2023-2025 after validating their said admission.

3. Learned counsel for the West Bengal State Council of Technical and Vocational Education and Skill Development submitted as follows. No pharmacy college could admit any student without obtaining final affiliation from the appropriate authorities. Here the affiliation of North Bengal Elite College of Pharmacy was rejected for the first time on 27.12.2023 due to lack of vital infrastructure. Therefore, the College had no authority to admit any student internally prior to affiliation as they had tried to contend. There was a specific Notification of Council dated 19.07.2023 which clearly stipulated that unless a college got affiliation from Council, it could not admit any student. A second chance was accorded in favour of the concerned College and after further inspection of the said Pharmacy College on 08.01.2024, affiliation was granted in favour of the concerned Pharmacy College on the very next day 09.01.2024. By an Email dated 11.01.2024 the concerned college got admission guidelines with link and login details for admission along with the institute code. However, despite the above, no admission for D.Pharm for the academic session 2023-24 was done by college in proper

manner pursuant to that. After they got affiliation, the College had to start admission following the notification for admission, wherein dates for admission were duly stipulated and following the time frames mentioned therein, the college got ample opportunity to admit students till 22.01.2024. The admission was required to be done through Council's designated online portal only. This was duly adhered to by all other bonafide Pharmacy Colleges in West Bengal. But, the North Bengal Elite Pharmacy College did not admit any student following the norms. What the college had submitted before the Hon'ble Court during hearing of WPA 8860 of 2024, did not match with the record of the Council, in as much as in the server of the council, in respect of North Bengal Elite College of Pharmacy with institute code 'NBEP' showed the available student as '0'. Now the petitioners, inter alia, prayed for issuance of registration numbers for the session 2023-2025. They alleged to have paid their online application fees and relied on certain money receipts which were appearing in of the writ petition. Those were for Rs.450/- and appeared to have been paid in the month of January and February, 2024. Importantly, the time period for making online application for admission in Diploma in Pharmacy for the academic session 2023-24 was from 28.02.2023 to 31.03.2023 upon payment of application fees for Rs.450/-, as per the Admission Notification for making online application for the academic session 2023-24. In January or February, 2024, there was no question of making any further online application for Diploma in Pharmacy Course for the session 2023-24. Only making payment of Rs.450/- at any time as per whims of someone did not ipso facto create any right in favour of that person

to get admission at any time of the academic session or at the verge of completion of a part of a course. Whoever filled up online application in terms of the above notification, they had appeared in PHARM-2023 Entrance Examination held on 12.08.2023. These petitioners could not be said to have taken part in those processes. The procedure for taking admission in D. Pharm Course might be stated concisely in the following manner: a) Students had to apply first fill up online application for admission in Diploma in Pharmacy for the concerned academic session after the advertisement of D. Pharm admission was notified with the application fees. b) They then appeared in the common Entrance Examination as per the schedule. c) After examination rank would be published as per merit list. d) Successful or merit listed candidates could fill their choices through online counselling as per the schedule. e) After choice filling, the Council provided allotment letter against successful candidate. f) With that allotment letter student had to report to that College in a stipulated time with all the prescribed documents. g) Head of the Institution (HOI) had to verify all the documents and then validated the student in the online portal of the Council within the prescribed date as per the respective notification as successful candidate for admission and thus the students got admitted. h) Again, during the online counselling process, (strictly on the dates mentioned in the relevant notification), a window was opened to allow the institute to admit candidates (15 out of 60) in management quota through online portal. i) Even in that case also the concerned Institute had to verify the documents and complete the admission process in the portal. Thereafter the admission process got completed. j) After

that the Council would publish the notification for registration and students had to register themselves through council's Portal which had to validate again by the HOI. After the successful payments of registration fees the name would reflect in the Portal at the Institution end. In the present case nothing was complied with. Herein the petitioners had prayed for registration but registration could be done in respect of any student who got admitted in the respective college (only through online portal of the Council). However, in the present case as stated hereinabove there was no admitted student in Council's portal with the instant college namely, 'North Bengal Elite College of Pharmacy'. All other pharmacy colleges who successfully admitted students following the notification dated 04.01.2024, their names were duly appearing in the portal college wise. Accordingly in the month of February those students who had been admitted online through Council's Portal appropriately were allowed to complete their online registration in the portal. Notification for registration was published in Council's portal on 09.02.2024. It was emphatically denied that the Council had issued any link to the concerned College for the 'DVOC' Course. The college had adopted illegal method in admitting students with a malafide intention that subsequently they would take plea of error and rectification. Forms which were relied on were improper. The Acknowledgment Receipts which were relied on by the petitioners were not for the D. Pharm Course for the academic session 2023-24. All those Acknowledgment Receipts were of DVOC' course for the session 2024-25. The college had got no authority to admit any student prior to the date of it's affiliation. The admission forms appearing at pages 18 to 47 were

all incomplete. Pages 18 to 45 bore no form number and dates and page 45 bore no admission number. Most of the money receipts which were shown in the writ petition are of October, 2023, when the College got no authority under the law to admit students. Even on 27.12.2023 the grant of affiliation of the said College got rejected. The document appearing at page 64 of the writ petition with date 07.10.2024 which had not yet come. There had been no inadvertence on the part of the West Bengal State Council of Technical & Vocational Education and Skill Development in the generation of any kind of acknowledgement receipts for DVOC course, that too for the session 2024-25 in favour of the petitioners. Acknowledgment receipts were system-generated in relation to the courses for which applications were filed. After the admission and registration process of the D.Pharm course for the academic session 2023- 24 got exhausted, the portal of the same was closed. The students of the concerned Institution had entered in the DVOC link at their own instance and filled in the application for DVOC purportedly and it was for that reason only they got the acknowledgement receipts for DVOC course for the session 2024-25. At that time Online Application for DVOC 2024-25 was going on. Registration came only after valid/proper admission but here no one from the concerned College had taken any valid admission for the D. Pharm Course for the session 2023-24 with the Council. It was stated before the Hon'ble Court that an enquiry was conducted at the College and it was found that the college was not being run properly and violation in several aspects were detected. As the concerned college failed to admit students within the stipulated time and in the portal any access for admission or any

sort of entry towards D. Pharm Course was in fact closed after expiry of the said prescribed time, the petitioners out of their own volition deliberately, purportedly entered their names with the 'DVOC' course for the session 2024-25. The money receipts shown in the writ application through 'SBIEPAY' could not be said to be admission fee. Only payment of online application fee after expiry nearly one year from the prescribed time could not give any right to a person to get admission or registration, particularly when the entire session was about to expire. Following the proper mechanism when any valid admission in D. Pharm Course for the academic session 2023-24 was done, the payment for the D.Pharm admission was accepted through 'Axis Bank Razorpay' payment link only and so was done by all the students of D. Pharma in respect of the respective Colleges in all over West Bengal. The fact remains that the petitioners were not the students of D. Pharm under the West Bengal State Council of Technical & Vocational Education and Skill Development as none of them were legally admitted students under the Council. Admission of Management quota for the concerned session was available from 02.01.2024 to 22.01.2024, which could be completed only after successful payment of proper admission fee. The instruction towards admission and tuition fee was available in the letter of Council to all Pharmacy Institution dated 02.01.2024. Whoever being a bonafide student had taken proper admission under management quota had paid Rs. 2700/- at the time of taking admission. A Co-Ordinate Bench of this Hon'ble Court had already decided the issue in WPA No. 8860 of 2024, inter alia, holding that as on the date of passing the order i.e., on 10.05.2024

no further admission of student could be allowed as it was an admitted position that the first internal examination had already been completed in the month of April, 2024. The second internal assessment was scheduled to be held in the month of July, 2024. The students could not be allowed to take part in the relevant examinations without attending the required number of classes and at this juncture, if the college was permitted fresh students, they would not be in a position to undergo the required number of classes. In the garb of registration, the petitioners herein in connivance of the college were in fact seeking admission at this stage and this had already been rejected by the Hon'ble Court in similar other matters. It was only during the hearing of the present writ application, when the Ld. Advocate for the Council pointed out the matter of admission in D.Voc course for the session 2024-25, the college purportedly during pendency of the writ application submitted a letter under memo no NBEPC/2024/Prin/02 dated 28.06.2024, portraying thereby that the Council had issued such Acknowledgment Receipts erroneously. What the college had claimed was non-est in the eye of law and not permissible under the law and the Council by it's letter dated 10.07.2024, clearly explained the actual facts and refused the claim of the college of issuance of fresh acknowledgement receipts and further clearly stated that under no circumstances at this stage these students could be accepted / admitted to the D. Pharm course for 2023-24. At this stage the 1st as well 2nd internal assessments were over and in September, 2024 there would be final Assessment. The petitioners could not be given admission and they were not eligible to take part in the relevant

examination as they did not have the requisite amount of attendance which was mandatory, being 180 days as per the Guidelines of the Pharmacy Council of India.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. It is pertinent to note that the affiliation of the North Bengal Elite Pharmacy College was rejected on 27.12.2003 due to lack of vital infrastructure. Therefore, as per the Council's notification dated 19.07.2023, the college could not admit any student unless it was granted an affiliation by the Council.

6. The college, however, did get a second chance. After a further inspection on 08.01.2024, affiliation was granted in favour of the Pharmacy College on 09.01.2024. By an email dated 11.01.2024 it was given admission guidelines with the link and login details for admission along with the institute code. Despite the above, no admission for D.Pharm for the academic session 2023-24 was done by the college in a proper manner. The dates of admission were stipulated in the notification and the college had ample opportunities to admit students till 21.01.2024. Incidentally, the admission was required to be done through the Council's designated online portal only. All the Pharmacy Colleges of the State apparently adhered to the Guidelines, but the college of the petitioners did not. The claims of the petitioners are contradicted by the records in as much as in the server of the

council, available students were shown as '0' in respect of the State college with the institute code "NBEP".

7. It is germane to mention that the time period for making online application in Diploma in Pharmacy for the academic session 2023-24 was from 28.02.2023 to 31.03.2023 upon payment of an application fee. Therefore, there was no question on making any further application online for such session either in January or February, 2024. Moreover, most of the money receipts for the College were allegedly executed by October, 2023 when the college had no authority under the law to admit students.

8. It was denied by the Council that any link was sent to the concerned college for DVOC course. In fact, the Council alleged that the college adopted illegal method in admitting students and subsequently took the plea of error and prayed for rectification. Moreover, the forms that were relied upon were not proper. The acknowledgement receipts that were relied upon by the petitioner were not for D.Pharm course for the academic sessions 2023-24. The receipts were for DVOC course for the session 2024-25. Furthermore, it has been alleged by the Council that most of the admission forms were incomplete and some bore no number or date.

9. Acknowledgement receipts were system generated in relation to the courses for which the applications were filed. Thus, the students of the institutions apparently entered DVOC link on their own and filled in the application forms for DVOC only for obtaining some kind of acknowledgement receipts, which in the instant case, happened to be of the

DVOC course for the sessions 2024-25. Such devious method cannot be applied to create a right.

10. In WPA 8860 of 2024, a Coordinate Bench of this Court held that no admission of students could be allowed as it was an admitted position that the first internal examination had already been completed earlier and the second internal examination was to be held soon. In the present case, at this stage, the first as well as the second internal assessments were over and the final assessment was scheduled to be done in September, 2024. Also, there is some merit in the contention that the students cannot be given admission for the said session on the ground that they would not be eligible to take part in the relevant examination for not having requisite amount of attendance of classes.

11. In view of the above discussions, this Court does not find any merit in the writ petition. Accordingly, the same is dismissed, however, without any order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)