

**2711
2024**

WEDNESDAY

Court : 08
Item : DL-08
Matter : FMA
Status : DISMISSED
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 1037 of 2023

SAYANTAN KABIRAJ

Vs.

THE STATE OF WEST BENGAL & ORS.

**MR. JAYANTA NARAYAN CHATTERJEE, ADVOCATE
MR. DEBASHIS BANERJEE, ADVOCATE
MR. SUPREEM NASKAR, ADVOCATE
MR. RAKESH JANA, ADVOCATE**

.....for the Appellants

**MR. SOUMYA MAJUMDAR, ADVOCATE
MS. SANJUKTA DUTTA, ADVOCATE
MR. KINNOR GHOSH, ADVOCATE**

.....for the Jadavpur University

**MR. AMITAVA CHAUDHURI, ADVOCATE
MR. N. ROY, ADVOCATE**

.....for the WBJEEB

MR. ARINDAM GHOSH, ADVOCATE

.....for the State

1. This appeal arises from an order dated 29.08.2023 passed in WPA 2602 of 2018 by the Single Bench whereby and whereunder the said writ-petition was dismissed on merit.
2. The dispute pertains to the Joint Entrance Examination conducted by the West Bengal Joint Entrance Examination Board for admission in Engineering and Pharmacy. According to the petitioner, he ranked 953 in Engineering and 383 in Pharmacy and, therefore, was called for a decentralized counseling by the Jadavpur University.
3. It is alleged that before he could embark his journey to the said University for the aforesaid purpose, he received a phone call, appears to

have been from the said University to disclose the ID as well as the Password, which out of sheer innocence was provided. But after reaching the Counseling Centre of the said University, he found that a person who allegedly secured 953 rank, was already admitted.

4. According to the petitioner, he was subsequently given a printout by the said University which evinced that his rank in the engineering and pharmacy are 18953 and 35383 respectively. However, an FIR was lodged by the officials of the University and investigation was done and a final report in the form of a charge-sheet has already been submitted.
5. We do not delve to go into the aforesaid aspect as we find that there is a serious dispute with regard to a forgery and the manipulation of the rank which needs to be decided in the criminal proceedings.
6. However, Mr. J.N. Chatterjee, learned Counsel for the appellant submits that it would impart justice if the OMR Sheet with the Answer Keys are directed to be produced before this Court which would indicate whether the petitioner secured 953 ranked in the engineering or not.
7. We have been taken to the application made under the Right to Information Act and the reply given by the Competent Authority. The marks secured by the petitioner in the respective subjects have already been disclosed and on

the basis of the total marks so obtained, the rank is further revealed therein. Whether there is any forgery having committed, cannot be gone into under Article 226 of the Constitution of India, more particularly, when the criminal proceeding has already been launched and the charge-sheet is submitted by the Investigating Officer.

8. We cannot, as a Court of Appeal, enlarge the scope of the dispute nor should venture to consider the facts which might have an impact at the time of conducting a fair trial. Whether the rule permits for bringing the OMR Sheet or the Answer Keya is to be seen in this regard and, in the event, it is found that the appellant is entitled to the same, there is no fetter on the part of the appellant to approach the authority in this regard. The Appellate Court should not permit a litigant to prevaricate its stand at the different stages of the proceeding and make a prayer which does not appear to have been made in the original proceeding.
9. We thus do not find any illegality in the order impugned.
10. Therefore, the appeal being **FMA 1037 of 2023** stands **dismissed**.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)

