

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE JAY SENGUPTA

WPA 26538 of 2024

JMN Education and Research Foundation & Anr.
Vs.
The State of West Bengal & Ors.

For the Petitioners	:	Mr. Srijib Chakraborty, Mr. Rittik Chowdhury, Mr. Mihir Saha.
For the State	:	Mr. Supriyo Chattopadhyay Id.AGP Mr. Sagnik Chatterjee
For the WBMCC	:	Mr. Sirsanya Bandopadhyay, Mr. Arka Kumar Nag, Ms. Deboleena Ghosh.
For the WBUHS	:	Mr. D. N. Maiti, Mr. Asumdipta Santra.
For the NMC	:	Mr. Sunit Kr. Roy
Heard on	:	26.11.2024
Judgment on	:	26.11.2024

JAY SENGUPTA, J:

1. This is an application praying for a direction upon the respondent authorities to cancel allotment of respondent no.7 and further allow the petitioners to give admission to any suitable candidate as per merit list.

2. Learned counsel appearing on behalf of the petitioners submits as follows. The petitioner no.1 is a registered Trust, which owns and manages the JMN Medical College. The petitioner no.2 is the Chairman of the petitioner no.1/Trust. The respondent no.7 had taken admission for the NEET-UG 2024, but expressed her willingness to surrender the seat only after the last date permitted for allowing such surrender. First, the petitioners would suffer from irreparable financial loss for this. Secondly, a valuable resource like a medical seat would go vacant if the seat is not permitted to be filled up through counselling. Reliance is placed on a decision of the Hon'ble Apex Court in ***Index Medical College, Hospital and Research Centre Vs. State of Madhya Pradesh & Ors.*** reported at (2023) 11 SCC 570 and it is submitted that a similar provision being Rule 12(8)(a) of the 2018 Rules of the ***State of Madhya Pradesh*** (supra) in this regard was struck down mainly on the ground that it would be against public policy not to allow all seats for Medical Education to be filled up.

3. Learned counsel appearing on behalf of the National Medical Commission relies on National Medical Commission Notification dated 02.06.2023 and relies on Clause 15 which allows the government to appoint a designated authority for common counselling. It is for the designated authority, thus, to frame necessary Guidelines and/or Bulletins for such purpose. He also relies on a decision of the Hon'ble Apex Court rendering on 07.11.2024 in ***Ramkrishna Medical College Hospital & Research Centre*** in Special Leave Petition (C) No.11785 of 2024. In the said decision the Hon'ble Apex Court deprecated the practice of keeping seats vacant by High Court by passing cryptic orders and expressed a view that if a seat remains vacant, the College can be compensated by increasing next year's

management quota fees as may be permitted by any Fee Fixation Committee for the State.

4. Learned counsel appearing on behalf of the State denies the allegations made in the writ petition and submits as follows. Reliance is placed on DU/AMU/BHU/BDS/B.Sc Nursing Counselling, 2024 Information Bulletin and Counselling and it is submitted that as per the Bulletin if allotted a seat in round three, a candidate who does not report will exit with forfeiture of security deposit and will get eliminated from further rounds of counselling. Learned counsel also places reliance on connected Query No. 16 at page 44 of the Information Bulletin. It stated that once a candidate joins third round seat, he/she will not be allowed to vacate from allotted third round seat. Even as per notice of the WBMCC dated 23.09.2024, the seat surrender was not allowed from round three counselling any further till the counselling process was over. The seats surrendered with payment of bond penalty was possible only after the counselling of the round three was over for the Session 2024-25.

5. It does not appear that the above-referred provisions of the Information Bulletin or Clause 15 of the Notification of the NMC dated 02.06.2023 or even the notice of the WBMCC dated 23.09.2024 has been challenged in this writ petition, unlike in ***Index Medical College*** (supra) where the specific provision of the Regulation was challenged.

6. It would have been open to the petitioners to insist upon some kind of bond or bank guarantee. In view of the decision in ***Ramkrishna Medical College Hospital and Research Centre*** (supra), in the event, a candidate would like to surrender a seat at a point when reviving the seat would not be possible as per

existing law, it will be for the Fee Fixation Committee for the State to consider this for the next year in order to compensate the petitioners.

7. The petitioners shall be at liberty to pray for the same before the concerned Fee Fixation Committee.

8. However, no further order need be passed in this regard in view of the foregoing discussions.

9. With these observations, the writ petition is disposed of.

10. As affidavits were not called for, the allegations contained in the writ petition are deemed not to have been admitted.

11. Parties shall act on the server copy of this order downloaded from the official website of this Court.

(Jay Sengupta, J)