

09.04.2025
SI No.2
Court No.8
(gc)

**MAT 472 of 2025
CAN 1 of 2025**

**West Bengal University of Health
Sciences service & Anr.
Vs.
Agragati Institute of Health Sciences
Nursing Education Unit & Ors.**

Mr. R. Chowdhury
Mr. D.N. Maiti
Mr. A. Santra

... for the appellants/applicants.

Mr. Kalyan Bandopadhyay, Sr. Adv.,
Ms. Pramiti Bandopadhyay
Mr. Rahul Kumar Singh

...for respondent no.1 & 2/writ petitioners.

Mr. Amitava Chaudhuri
Mr. Nirmalya Roy

...for the WBJEEB.

Mr. Abir Sarkar

...for the WBNC.

Mr. Nilotpal Chatterjee

...for the Indian Nursing Council.

Mr. Swapan Kr. Datta, Ld. A.G.P.
Mr. Tapas Kr. Dey

...for the State.

1. There are few inadvertent errors in the order dated 4th April, 2025.
2. In paragraph 4, first sentence, instead of the word “appellant”, it should be **“writ petitioners”**.
3. In paragraph 6, fourth line from the top, instead of “20 percentile”, it should be **“25th percentile”**.

4. Similarly, in paragraph 7, third line from the top, “20 percentile” should be replaced by **“25th percentile”**.
5. On 4th April, 2025, we granted stay of operation of the impugned order on being satisfied that the appellants were able to make out an arguable case on merits. Today is the returnable date.
6. We have heard Mr. Kalyan Bandopadhyay, learned Senior Counsel appearing on behalf of the respondent nos.1 and 2/writ petitioners, Mr. Nilotpall Chatterjee, learned Counsel appearing for the Indian Nursing Council, Mr. Swapan Kr. Datta, learned A.G.P. for the State and Mr. R. Chowdhury, learned Counsel appearing for the appellants/university.
7. Mr. Kalyan Bandopadhyay, learned Senior Counsel appearing for the writ petitioners has submitted that the learned Single Judge has not decided the matter on merits and only on a prima facie satisfaction that issues involved in the writ petition are required to be considered after exchange of affidavits, an interim protection was granted. Our attention is drawn to the observation of the learned Single Judge that whether the private colleges could have admitted students below the percentile fixed by the State within 30th November, 2024 and whether the date could at all be extended are the questions which should have been kept pending for final

decision. Moreover, the learned Single Judge has only permitted the students to sit for the forthcoming examination without creating any equity in favour of the writ petitioners. There was another issue left open to be decided by the learned Single Judge pertaining to the question of domicile of a particular State by placing reliance upon the case ***Dr. Pradeep Jain & Ors. Vs. Union of India & Ors.*** reported in ***(1984) 3 SCC 654***.

8. Mr. Bandopadhyay has referred to the exchange of correspondence between the Indian Nursing Council (in short “INC”) and the Government of West Bengal to demonstrate that the intention of the Government was to fill up vacant seats after Mop-Up Round (Govt. & Non-Govt. Institutions). Reference is made to the communication dated 21.11.2024 addressed by the Director of Health Services, West Bengal to the Secretary, Indian Nursing Council to show that 5963 vacant seats were there and the Directorate of Health Services, Health & Family Welfare Department of West Bengal requested the Director of Health Service to approach the Indian Nursing Council to reduce the percentile of admission eligibility in B.Sc. Nursing Course so that the candidates, who appeared in the JENPAS-UG, 2024 may be allowed for taking admission in the Non-Government Nursing Institutions.

9. Mr. Bandopadhyay submits that Indian Nursing Council has acceded to such request and has categorically stated that INC would have no objection in filling up the leftover seats of B.Sc. Nursing Course for candidates who appeared in the JENPAS-UG, 2024 for academic session 2024-2025 by percentile criteria. It is submitted that in the past few years, there has been a reduction in the percentile for admission in the said B.Sc. Nursing Course and there have been past instances where the State had allowed candidates to participate in the said examination with the zero percentile.
10. Mr. Bandopadhyay has also referred to the notification dated 22nd September, 2022 and 13th October, 2023 to show that the eligibility criteria for appearing in JENPAS-UG for the respective years have been reduced to zero percentile by the State Government and there could not be any reason for not following the past practice of reducing the percentile to zero as INC had no objection in reduction of the percentile. It was left to the discretion of the State. The writ petitioners/college was under the impression that by following the past practices, this year also having regard to the huge vacancy, the State would be reducing it to zero percentile so that all the seats could be filled up.
11. The learned Counsel has also referred to the decision of the Hon'ble Supreme Court in **Bannari**

Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors. reported at ***(2005) 1 SCC 625, Paragraph 8*** to demonstrate that the university and the candidates would have a legitimate expectation that a rational decision would be taken by the State with regard to the reduction in the percentile having regard to its past practices where it had reduced it to zero percentile. It was on the basis of such expectations, students even with reduced percentile, that is to say, below 50% marks were admitted and now having by reason of the notification of the Government dated 29th November, 2024, the candidate having scored upto 20.83 (25th percentile) marks would be eligible for participation in the examination.

12. Mr. Bandopadhyay further submits that it cannot, thus, be contended that the admissions of the students were illegal and irregular.
13. Mr. Swapn Kr. Datta, learned A.G.P. has referred to the report filed in the form of affidavit before the learned Single Judge to demonstrate that after exchange of communication with the INC and keeping in mind the decision of the INC as communicated in its letter dated 25th November, 2024 which emphasized that the INC guidelines as per B.Sc.(N) syllabus for admission terms and conditions to be strictly adhered to. The Director of Health Services has decided to permit the

candidates having scored up to 20.83 (25th percentile) to fill up the vacant seats in the B.Sc. Nursing Courses in the Non-Government Institutions. It is submitted that the said decision was taken keeping in mind the nature of the duty a candidate would be required to perform after successful completion of the course. It is a professional course and it is important that the academic quality and standard of the candidate are required to be considered properly before a cut-off mark is selected by the authority concerned. It is further submitted that the college authorities could not have admitted the students below 50% marks as the minimum qualifying marks for entrance test shall be 50% as per the Indian Nursing Council (Revised Regulations and Curriculum For B.SC. (Nursing) Program), Regulations, 2020.

14. Mr. Nilotpal Chatterjee, learned Counsel appearing on behalf of the INC has submitted that it was open for the State to decide on the percentile as there was no embargo imposed by the INC upon the State with regard to the minimum percentile. The learned Counsel has referred to the communication dated 25th November, 2024 to show that INC has categorically stated that it has no objection in filling up the leftover seats of B.Sc. Nursing for candidates who appeared in the JENPAS-UG Entrance test for

academic session 2024-25 by reduction the qualifying percentile criterion.

15. It is submitted that in terms of the judgment of the Hon'ble Supreme Court in Special Leave to Appeal No.10571 of 2022 dated 10th June, 2022, it has observed that the process of admissions in the educational institutions cannot be open ended. It must come to an end at a particular point of time and if there is any extension and/or deviation from the time schedule, that would ultimately affect the education. It is further submitted that in the instant case, the last date for admission of all nursing programmes for the year 2024-25 was 30th November, 2024.
16. The writ petitioner No.1 is the college running course of B.Sc. Nursing amongst others. The question that had fallen for consideration is whether the writ Court would permit the students of the said college to sit in the examination admittedly having percentile which is below 25th percentile. No candidates could have been admitted to any of the colleges where the minimum criteria, as laid down by the INC Regulations, are not fulfilled. Any candidate who is admitted having 50% marks cannot claim any right to be considered for admission as it is contrary to the eligibility criteria laid down under the Regulations. The candidate, however, can only expect that in the event any

relaxation is allowed in future, the candidate may be permitted to participate in the examination upon fulfilling all criteria at the relevant point of time. The college authorities, knowing fully well that no candidate under the Regulations could be sent up for examination, had allowed the candidates to be admitted having below 50% marks. It appears that there is a huge vacancy of 5963 seats after Mop-Up Round (for Govt. & Non-Govt. Institutions) and the Government had approached the INC with a request to reduce the percentile of admission eligibility in B.Sc. Nursing course so that the candidates who appeared in the JENPAS-UG, 2024 may be allowed in taking education in the Non-Government Nursing Institutions. No doubt, it creates an impression that the State wanted all the vacant seats to be filled up subject to reduction in the percentile is allowed by the INC. The INC in its notification dated 25th November, 2024 has categorically stated that it has no objection in the event the State decides to reduce the percentile for the purpose of filling up the leftover seats of B.Sc. Nursing for candidates who appeared in the JENPAS-UG Entrance test for academic session 2024-25. The INC has not put any restriction with regard to the percentile to be fixed by the State after such permission. The State, however, felt that instead of zero, it should be 20.83 (25th percentile) and has, accordingly, decided that

the candidates having score up to 20.83 (25th percentile) would be eligible for participation in the said examination for the academic session 2024-25.

17. The writ Court cannot discharge function of an academic council or an expert body who is competent to decide on the eligible criteria of a candidate keeping in mind the nature of the course and the nature of the duties a candidate would be required to perform after successful completion of the course. There is no doubt that in the past few years, candidates with zero percentile were allowed to sit in the examination for the academic session mentioned in such notifications. What should be the criterion or qualifying mark for a candidate to be eligible to participate in an examination is for the authority to decide. The college could not contemplate that percentile would be reduced for this academic sessions for the admitted students with reduced percentile. The college, in fact, has played with the future of the students by giving an impression that the college would be in a position to pursue the authorities to allow a candidate having reduced percentile to sit for the examination. The college could not have admitted the students below the minimum qualifying marks in terms of the INC Regulations having regard to the fact that on the earlier occasion, such reduction was made for the specific sessions and there was no assurance that

for the subsequent years, similar relaxation shall be made. In fact, the reduction of percentile is dependent upon a prior approval of INC. Legitimate expectation cannot be applied to make an ineligible candidate an eligible one by directing the Government to relax the rules. The power of relaxation is not an absolute right. In academic matters, the Court should be extremely chary to interfere with the decision of the expert bodies. The criteria for admission in a particular course should be left open to such expert bodies. The Court in a judicial review cannot decide the percentile of relaxation, as the Court is not an expert body to decide on the academic curriculum or the eligibility criterion for admission in an academic course. It is only in exceptional circumstances that the Court had interfered with the decision of the expert body and the present case is not one of such instances where the Court can direct the State to reconsider its decision. Moreover, the admission is closed for the academic session 2024-25 on 30th November, 2024 and this cannot be extended.

18. We appreciate the submission made by Mr. Bandopadhyay that relaxation from 50th percentile to 25th percentile was done by Director of Health Services, West Bengal on the evening of 29th November, 2024, that is, one day prior to the deadline fixed by the INC. This conduct of the State

cannot be appreciated as it left with no scope to review the decision by the State for further relaxation considering the left out vacancies.

19. We only record that the State should be more vigilant in future in approaching the INC with a request for reduction in the percentile adequately in advance.
20. In view of the fact that the Court is unable to decide on the percentile as not being expert on the subject, and the decision of the Government to reduce it to 20.83 (25th percentile) is to maintain an academic standard and quality, we allow this appeal and set aside the order passed by the learned Single Judge.
21. The appeal succeeds.
22. Accordingly, the appeal and the application are disposed of.
23. However, there shall be no order as to costs.
24. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)