

02.07.2025
SI No.4
Court No.8
(gc)

MAT 862 of 2025
CAN 1 of 2025
CAN 2 of 2025

**West Bengal Council of
Higher Secondary Education & Ors.**
Vs.
Book Syndicate Pvt. Ltd. & Anr.

Mr. Kishore Datta, Ld. Advocate General,
Mr. Avik Ghatak,
Mr. Ratikanta Pal
...for the Appellants.

Mr. Atanu Biswas,
Mr. Mrinal Saha
...for the Writ Petitioner/
Respondent No.1.

Mr. Swapan Kr. Dutta, Ld. A.G.P.,
Mr. Rajat Dutta
...for the State.

Soumen Sen, J. (Oral):

Re: CAN 1 of 2025

1. There is a delay of 53 days in filing the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the appeal within the period of limitation. The delay of 53 days is condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

Re: MAT 862 of 2025
CAN 2 of 2025

4. The learned Advocate General appearing on behalf of the appellants has submitted that the writ petition is not maintainable in view of Clause 14 of the Agreements dated 28th June,

2013 and 6th July, 2013 respectively. It is submitted that the dispute is arising out of buying of option mentioned in Clause 11(b) of the Agreement dated 28th June, 2013. It appears that the writ petitioner instead of invoking the arbitration clause had made series of representations to the Secretary, West Bengal Council of Higher Secondary Education.

5. Ordinarily, the Court would not exercise its high prerogative writ jurisdiction if the parties have agreed to resolve their dispute by way of arbitration. It is only in exceptional cases that the Writ Court may invoke its jurisdiction where manifest injustice is caused, like cancellation of a licence which affects functioning and livelihood of the licensee. Once it is established that there is a violation of Article 14 of the Constitution of India, the Writ Court would step in notwithstanding an alternative remedy is available by way of arbitration. In the instant case, we are unable to conclude that it is one of such exceptional cases where the parties should approach the Writ Court almost after five years. There cannot be any doubt that the dispute is arbitrable. The State also admits that the nature of the dispute is such which

can only be decided in an arbitration proceeding if initiated. Clause 14 of the Agreement does not refer to any person who shall be appointed as an arbitrator and thereby leaves it to the parties to approach the Court in case of any disagreement with regard to the arbitrator nominated or suggested by either of the parties. It appears that the writ petitioner instead of going through the arbitration process made a request to the Secretary, West Bengal Council of Higher Secondary Education and series of representations since 2013 till 23rd February, 2021 had remained unanswered. It cannot be denied that the Secretary, West Bengal Council of Higher Secondary Education was under a duty to reply to the said representation and not within a reasonable time so that the writ petitioner could know the reason for not allowing their claim.

6. Viewed from the said perspective, we feel that the order passed by the learned Single Judge is innocuous and it merely directs the Secretary to take a decision on the basis of the representation. In the event such representation is denied or the claim of the writ petitioner still subsists, it would be open for the writ petitioner to invoke Clause 14 of

the Agreement and refer the dispute to arbitration and not by way of a writ petition.

7. The time to comply with the direction of the learned Single Judge is extended by four weeks from the date of communication of this order.
8. We make it clear that we have not gone into the merits of the matter and we expect that the Secretary, West Bengal Council of Higher Secondary Education shall take an impartial and fair view in considering the representation of the writ petitioner.
9. Accordingly, the appeal and the application are disposed of.
10. However, there shall be no order as to costs.
11. 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.)