

2103
2025
FRIDAY

Court : 08
Item : DL-07
Matter : FMA
Status : DO
Bench ID : 266305
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1026 of 2022
WITH
CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2024
CAN 4 of 2024

RAIHAN UL HAQUE
Vs.
THE STATE OF WEST BENGAL & ORS.

MR. KALYAN BANDOPADHYAY, SR. ADVOCATE
MS. SUMITA SHAW, ADVOCATE
MR. NILENDU BHATTACHARYA, ADVOCATE
MR. SOUMEN CHATTERJEE, ADVOCATE

.....for the Appellant
MR. ACHINTYA KUMAR BHATTACHARYA, ADVOCATE
MR. MAHABOOB AHMED, ADVOCATE

.....for the University of Burdwan
MR. SWAPAN KUMAR DATTA, SR. ADVOCATE
MR. RAJAT DATTA, ADVOCATE

.....for the State

1. The dispute pertains to the registration of the students with the University. The students were admitted by the College having sanctioned seat of 40 students but due to some omission and or mistake committed by the college, the names of only 12 students were sent to the University for registration. Subsequently after detecting such omission, the 28 number of students who were admitted, their names were also sent for registration.
2. It is undeniable that the aforesaid 28 students were permitted to sit in the second semester examination, but after detecting such defects, they were not permitted to sit in the third semester examination. Ultimately, the matter reached to this Court at the behest of the College for redressal of the grievance.
3. According to them, there was no incongruity and/or illegality in admitting the aforesaid 28 students The interim order was passed at the time of admission of

the writ-petition directing the University to permit those 28 students to sit in the third semester examination which was duly complied with by the University. Subsequently, the writ-petition was dismissed and the said order is assailed in the instant appeal.

4. At the time of entertaining the instant appeal, the examination for the fourth semester was *going* to be held and the concern was raised in this regard, obviously, taking into account the plight of those students who are pursuing the course and qualified in first and second semester examination. The Appellate Court passed an interim order permitting them to sit in the fourth semester examination and the answer-scripts of those candidates was directed to be kept in a sealed cover.
5. On the last occasion when the matter appeared, the Division Bench directed evaluation of those answer-scripts and be produced in a sealed cover which, in fact, has been done.
6. The pith and substance of the entire episode leads to an apparent position that the aforesaid 28 candidates have been permitted to sit in third and fourth semester, may be by an interim order, passed by this Court and the evaluation of those answer-scripts have also been done.
7. According to Mr. Kalyan Bandopadhyay, learned senior Advocate appearing for the appellants, the aforesaid 28 candidates were admitted during the pandemic through an offline mode though the admission is required to be made through online mode and, therefore, such discrepancy and/or irregularity is not curable and flexible in nature and the University has to take a pragmatic view in this regard keeping in mind the academic future of the students pursuing such degree courses.

8. Mr. Bandopadhyay, learned Senior Advocate for the appellants further submits that those 28 candidates were included in the merit list and was not admitted in gross violation of the Rules and Norms and, therefore, the procedural lapses cannot be used as tyrant but as subservient to justice.
9. Mr. Achintya Kumar Banerjee, learned Advocate, submits that the answer-scripts were brought to the Court but for some reason or other the matter could not be taken and in terms of the last order passed in the instant appeal, the sealed cover have been sent back to the University for the purpose of safety and security of the said answer-scripts.
10. Mr. Banerjee, in his usual fairness submits that in a recent judgment rendered by the Apex Court in ***S.L.P.(C) Nos. 4361-4362 of 2019 (ZAID SHAIKH VS. THE STATE OF MADHYA PRADESH & ORS.)*** decided on 18.03.2025, the Apex Court has held that the moment the basic eligibility for admission, which appears to be *sine qua non*, the same would not be overlooked and ignored. The miniscule violation of the Rules does not make the basic principal underlying the said admission process as a barrier in dispensation of justice.
11. On the conspectus of the above, it appears from the record that those 28 candidates were included in the merit list and were admitted in the said degree course. The aforesaid students were permitted to sit in the first and second semester but the results were withheld because of the aforesaid irregularities detected by the University. Furthermore, by virtue of an interim order, the aforesaid 28 candidates were also directed to sit in the third and fourth semester examinations and the moment they have reached to the fag end of the courses, it would create a hardship upon them, if their registration is denied by the

University. It is not a case that the 28 number of students did not possess basic eligibility qualification for pursuing the said courses but the entire dispute hinges upon the mode and the manner of their admission which, in our view, should be considered in a more reasonable manner by the University.

12. The observations of the Apex Court in Zaid Shaikh (supra) can be gainfully applied wherein it is held:

“7. Though there can be no dispute with the proposition that fulfilling the basic eligibility for admission to a course is a sine qua non, which ought not to be overlooked or ignored, the peculiar facts of the case on hand ought to have weighed with the High Court while considering the plight of the appellant. His initial admission in the first College was in clear violation of the Madhya Pradesh Ayurveda/Unani/Homeopathy Undergraduate Entrance Examination Rules - 2008, which prescribed the eligibility condition that candidates of all categories and classes were required to have passed English as a subject in the qualifying examination of 10+2. However, the said College came to be de-recognized and all the students of that College were transferred to the Shaskiya Swasashi Dhanwantari Ayurvedic Medical College, Ujjain, and the appellant was allowed to pass English as a subject in Class 12, when he was provisionally admitted by the said College. That fact ought to have been given more weightage by the High Court. More so, as the appellant had acted upon the said Allotment Letter and reappeared for the Class 12 examinations, twice over, with English as a subject and had passed it.

8. Though, the interim order granted by the High Court on 30.10.2012 recorded that the appellant would not be entitled to claim equities, the fact that he was permitted to complete the entire course and had also finished part of his mandatory internship ought not to have been brushed aside lightly. Be it noted that the appellant had put in nearly 6 years by then in pursuing B.A.M.S. Degree Course and the end result of the High Court's order was to decimate his entire labour of all those years. An act of the Court should, ordinarily, not prejudice anyone (Actus curiae neminem gravabit). This is a fundamental principle of justice, but it was disregarded by the High Court while considering the case of the appellant. In any event, the appellant's so-called ineligibility, which was

not essential in the context of the course that he had taken, was cured by him thereafter owing to the liberty given by the College itself while provisionally admitting him to the course in September, 2012. Given these peculiar facts, we are of the opinion that this is a fit case for interference so that the appellant is not left out in the cold after completing almost the entire course."

13. Considering the above, we find that the approach of the Single Bench in dismissing the writ-petition is infirm. The order impugned is thus **set aside**.
14. The University is directed to accord registration to 28 candidates whose names have been disclosed in the instant proceeding. The University is further directed to evaluate the answer-scripts of all the semesters, if not already done, and shall publish the results of those candidates.
15. In the event, any of the candidates out of 28 candidates, could not qualify in any subject or any semester, the University shall permit them to clear those papers as permissible in law.
16. Without adieu, to the core issue, we feel that the College while taking admission should be more careful in future and follow the procedures as prescribed by the University for admission of the students.
17. So far as the deposit of Rs.10 lakhs with the University is concerned, the University is free to utilize the said amount for the benefit of the students of the University.
18. With these observations, the appeal being **FMA 1026 of 2022** and all the connected applications are **disposed of**.

(HARISH TANDON, J.)

(OM NARAYAN RAI, J)

