

27.02.2025
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RVW 372 of 2024
+
IA No.: CAN 1 of 2024
Saddam Hossain
– *Versus* –
The State of West Bengal & Others
in
MAT 875 of 2024

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Sampriti Saha,
Ms. Swati Dey
... for the Applicant/Appellant.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Suman Dey
... for the State/Respondents.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag,
Ms. Debolina Ghosh,
Ms. Ria Naskar
... for the WBMCC.

Mr. Indranil Roy,
Mr. Sunit Kumar Roy
... for the NMC.

Mr. Washef Ali Mondal,
Mr. Syed Nazmul Hossain,
... for the Respondent no.8.

Aggrieved by the judgment dated 19th November, 2024 passed in the appeal being MAT 875 of 2024, the writ petitioner/appellant/applicant has preferred the present review application, being RVW 372 of 2024 along with an application for appropriate order, being IA No.: CAN 1 of 2024.

Mr. Samim, learned advocate appearing for the applicant primarily argues that the Directorate of Medical Education, Government of West Bengal issued a memo

dated 24th July, 2023 directing the qualified candidates of NEET-UG, 2023, including the applicant to procure various documents, such as domicile certificate, medical certificate in order to participate in the counseling process. The said memo was issued just a day prior to the commencement of the first round of counseling. The procurement of the domicile certificate and medical certificate took a reasonable period of time due to which the applicant could not complete his registration for the first round of counseling on 28th July, 2023. Such fact though argued was not taken into consideration while delivering the judgment on 19th November, 2024. The said judgment, thus, suffers from patent error apparent on the face of the records.

He further argues that due to technical glitch the One Time Password (in short, OTP) was supplied to the applicant belatedly and for such delay on the part of the respondents, the applicant, a competent candidate having secured 52000th rank in NEET-UG, 2023, had suffered. Such argument as advanced was glossed over by the Hon'ble Court.

He submits that several OBCs candidates, who had participated in the NEET-UG, 2023 and could not get an MBBS seat in a Government Medical College in the first round of counseling, were permitted to change their category in the registration form *vide* memo dated 9th August, 2023 and as a consequence thereof, candidates

who have ranked lower than the applicant got admission. Such action of the respondents is *de hors* the provisions of the WBMCC Regulations operating in the field and was proved to be highly detrimental to the interest of the applicant. In the said conspectus, necessary direction ought to have been issued by the Hon'ble Court directing the respondents to grant admission to the applicant in a government college. The order of dismissal of the writ petition was thus erroneous on merits.

He further submits that the that the Hon'ble Court ought to have appreciated that it was an impossibility on the part of the applicant to continue with his studies in the private college due to the high fees. On similar facts, the Hon'ble Supreme Court in the case of *National Medical Commission – Vs. Mothukuru Sriyah Koumudi and Others*, reported in (2021) 14 SCC 805 not only directed creation of a seat and admission of the student to the MS (General Surgery) course in the next academic year but also an amount of compensation was imposed upon the respondent no.2 therein.

Mr. Roy, learned advocate appearing for the NMC submits that it is not a case that even after exercise of due diligence the facts argued now could not be brought to the notice to the Court. The argument that the delay which has occurred is attributable to the respondents was duly considered and answered and as such, since

review proceedings are not by way of appeal, similar argument cannot be re-urged in a review petition.

He further submits that the argument as advanced by Mr. Samim on the basis of the memo dated 9th August, 2023 is not acceptable since the said memo was neither challenged in the writ petition nor any copy of the same was brought on record, though he was aware of the said notification dated 9th August, 2023.

The issue urged as regards the delay on the part of the respondents to provide domicile certificate and other certificates as well as the alleged delay in furnishing OTP, was argued before Hon'ble Court at the time of hearing of the appeal. Considering such argument the Court observed that *'though the first round of counselling commenced from 25.07.2023, the appellant fetched the OTP only once and that too on the last date of the said counseling'*. From the documents annexed to the writ petition, the Court arrived at a finding that the second round of counselling started on 14th August, 2023 and the applicant waited till the fourth round which started on 18th September, 2023 to get a seat. The locking date and time was 21st September, 2023 at 20:14 hours but the writ petition was affirmed about 15 days thereafter on 15th October, 2023. In view thereof, it cannot be reargued that the delay, which occurred, is attributable to the respondents.

The argument of Mr. Samim as regards the issue of change of category by the candidates on the basis of a memo dated 9th August, 2023 is also not acceptable to this Court since the said memo was neither challenged in the writ petition nor was the said issue argued in appeal. It is also not a case that even after exercise of due diligence, the applicant could not challenge the said memo dated 9th August, 2023.

Matters which ought to have been urged in course of appeal have been sought to be agitated afresh. No patent error of law in the judgment impugned has been pointed out.

The arguments advanced by Mr. Samim and the grounds taken in the review petition do not in any manner establish any error whatsoever on the face of the records nor the application for review had been preferred upon discovery of new and important piece of evidence.

For the reasons discussed above, no interference is called for in the review application and the same, being RVW 372 of 2024 and the connected application, being IA No.: CAN 1 of 2024 are, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)

