

(2014) 03 CAL CK 0012
In the Calcutta High Court

Case No : M.A.T. No. 1813 of 2013 (C.A.N. No. 11562 of 2013)

Debsundar Mukherjee and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Citation : (2015) 3 WBLR 562

Hon'ble Judges : Jyotirmay Bhattacharya, J; Ishan Chandra Das, J

Bench : Division Bench

Advocate : Subir Sanyal and Alauddin Mandal, Advocate for the Appellant;
Jayanta Banerjee and Tulshi Das Ray, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.

1. This mandamus appeal is directed against the judgment and/or order passed by the learned Single Judge of this Court on 25th September, 2013 in W.P. No. 30114 (W) 2013 by which the writ petition filed by the appellants/petitioners was disposed of without allowing their prayer for admission in MBBS Course-2013 at this stage, however, with the observation, that in the event the admission process lingers on further for any reason, then the petitioners would be permitted to fill in the form and participate in such process of admission in future as per the applicable regulations. While disposing of the said writ petition, His Lordship did not think it necessary to examine the validity of the Notification dated 25th August, 2013 whereby fresh submission of registration fees through e-challan was permitted. Accordingly, the legality and the validity of the said notification was not considered by His Lordship while disposing of the writ petition.

2. The petitioners thus, felt aggrieved. Hence they preferred the instant Mandamus Appeal. After filing the said appeal, they filed an application for stay, praying for stay of the operation of the order impugned in this appeal and also

sought for direction upon the concerned authority for admitting the appellants/petitioners in MBBS Course-2013. The relief which the appellants claimed for stay is redundant as the petitioners will not be benefited in any way, if the impugned order is stayed. That apart the other interim relief which the appellants/petitioners have claimed in the said stay application seeking direction upon the concerned authority for admitting them in MBBS Course-2013 cannot be allowed at this stage keeping the appeal pending Accordingly, we felt the necessity of deciding the appeal itself the request of the learned Advocate of the parties.

3. Let us now consider the merit of this appeal in the facts of the instant case. The appellants/petitioners appeared in National Eligibility-cum-Entrance Test at the under graduate level for MBBS and BDS Course-2013. Both of them who were rank holders submitted e-challan for their registration in UG Counseling process within 8th July, 2013 as per the notification issued by the Director of Medical Education and Ex-Officio Secretary to the Government of West Bengal on 27th June 2013. Admittedly, both the appellants/petitioners appeared in the first round of counseling but became unsuccessful having regard to their position in the merit list. Since all the seats could not be filled up by the successful candidates in the first round of counseling, second round counseling was held with the wait-listed candidates. Admittedly, both the appellants, petitioners participated in the second round of counseling but were not successful. The appellants/petitioners have no grievance against the concerned authority for not selecting them for admission up to the second round of counseling. Problems started when the West Bengal Medical Counseling Committee published a notification on 21st August, 2013 inviting the candidates who did not submit their registration fees within the cut-off date i.e., 18th July, 2013, to submit registration fees through e-challan from 23rd August, 2013, 2 p.m to 2nd September, 2013, 2 p.m. Thus, by virtue of the said notice, another opportunity was given to the candidates who did not submit their registration fees earlier within the cut-off date to submit registration fees through e-challan within the extended period and thereby permitting them to compete with the other wait-listed candidates who submitted their registration fees within the cut-off date i.e., 8th July, 2013, The appellants/petitioners complaint that had this opportunity not been given to the defaulting candidates to submit registration fees through e-Challan within the extended period and the third round of counseling would have been restricted to the wait-listed candidates only, who registered themselves within the cut-off date i.e., 8th July, 2013, then the appellants/petitioners could have been selected for admission in MBBS Course- 2013. They thus, complained that by permitting the defaulting candidates to Submit registration fees within the extended period the concerned authority acted illegally and also defied the mandatory direction given by the Hon'ble Supreme Court in the case of Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, wherein it was held that the time schedule framed by the Medical Council of India at various stages of the selection process for admission in MBBS Course should be strictly adhered to by the concerned authority and in no circumstances violation of such time

schedule will be permitted.

4. Mr. Sanyal, learned Advocate, appearing for the appellants/petitioners submitted that since the State Authority, by issuing a notification dated 27th June, 2013 fixed the time schedule for submission of e-challan for registration in UG Counseling process fixing the cut-off date i.e. 8th July, 2013, the concerned authority ought to have followed the said time schedule strictly and ought not to have extended such time schedule for offering the defaulting candidates a fresh opportunity to submit e-challan for their registration. Thus, according to him the direction passed by the Hon'ble Supreme Court in the aforesaid case was not adhered to by the State Authority. Accordingly he invited this Court to quash the notification dated 21st August, 2013 issued by the Director of Medical Education and Ex-Officio Secretary to the Government of West Bengal appearing at page 28 of the stay application and also prayed for issuance of direction upon the State Authority to admit the appellants/petitioners in the said MBBS Course-2013.

5. Mr. Bhattacharya, learned Advocate, appearing for the Medical Council of India very seriously opposed such prayer of the appellants/petitioners by contending, inter alia, that the time schedule which was fixed for admission of the students in the said course by the Medical Council of India having expired on 30th September, there is no scope for admitting the appellants/petitioners in the MBBS Course 2013. By referring to the decision of the Hon'ble Supreme Court in the case of Medical Council of India Vs. Madhu Singh and Others, , he submitted that time schedule at different stages of the selection process up to admission in the MBBS Course was framed by the Medical Council of India by following the direction passed by the Hon'ble Supreme Court of India in the said decision and the justifiability of the schedule so framed by the Medical Council of India was examined and/or tested by the Hon'ble Supreme Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, wherein the Hon'ble Supreme Court held that the time schedule so fixed, appears to be justified and reasonable and accordingly direction was given to the State Respondents to follow such time schedule strictly. By referring to another decision of the Hon'ble Supreme Court in the case of Medical Council of Medical Council of India Vs. State of Karnataka and Others, , he further submitted that the time schedule which was so fixed on the basis of the regulation, has statutory force and as such the same should be mandatorily followed. He thus, contended that the petitioners' prayer for admission in MBBS Course - 2013 cannot be allowed in the midst of the academic session when not only the last date fixed for admission expired on 30th September, 2013 but also 9 months in the said course has already been completed by this time. He further submitted that the writ petition is not maintainable as the students who have already been admitted have not been joined in the writ petition. According to him the writ petition cannot be decided in the absence of those admitted students as in the event the petitioners have to be admitted then at least two students who had already got admission in the said course will have to be removed by cancellation of their admission. Thus, he raised an objection regarding maintainability of this

writ petition for non-joinder of necessary party. He further submitted that the petitioner having participated in the third round Counseling after completing the formalities in terms of the revised schedule for extended round through Online Counseling process of West Bengal State issued by the Special Secretary Government of West Bengal and the other formalities in terms of the instruction given by the Chairman, West Bengal Medical Counseling Committee on 10th September, 2013, cannot subsequently challenge the notification dated 21st August, 2013 issued by the Director of Medical Education and Ex-Officio Secretary to the Government of West Bengal, after being unsuccessful in the third round of Counseling. He thus, contended that had he been really aggrieved against the impugned notification dated 21st August, 2103 issued by the Director of Medical Education, as aforesaid, then he should have challenged the said notification instantly without participating in the said selection process by accepting the said notification and/or by completing the formalities as required under the revised schedule published by the Special Secretary, Government of West Bengal Medical Counseling Committee dated 10th September, 2013. For all these reasons as stated above, he prayed for dismissal of the appeal, as according to him, the appeal does not deserve any merit for consideration.

6. Mr. Tulshi Das Roy, learned Advocate, appearing for the State particularly adopted the submission made by Mr. Bhattacharya as mentioned above. In addition thereto he submitted that the last candidate who was allotted seat by the process of Online Counseling in General Category, in the State of West Bengal in the undergraduate MBBS Course at Haldia Medical College from the rank list of NEET UG 2013 was Priyadarshini Mishra whose West Bengal State Rank was 2264 and All India Rank was 35443. He informed this Court that the last candidate who was allotted seat by the process of Online Counseling in General Category in the State of West Bengal in the undergraduate BDS Course of Haldia Dental College from the rank list NEET UG 2013 was Sangita Rao whose West Bengal State Rank 3617 and All India Rank was 52997. We are further informed that the All India Rank of Debsundar Mukherjee, the appellant/petitioner No. 1 herein was 307106 and West Bengal State Rank was 23421 and the All India Rank of Rituparna Pal, the appellant/petitioner was 282360 and her West Bengal State Rank was 21509. He thus, contended that none of the appellants/petitioners came within zone of admission either in MBBS or in BDS Course through NEET UG 2013. We are further informed by him that all the undergraduate MBBS and BDS seats in the State of West Bengal in the year 2013 have already been filled up by the process of Online Counseling and as such presently there is no scope for admitting the appellants/petitioners in the said course. He also, thus, prayed for dismissal of the appeal

7. Let us now consider the merit of the instant appeal with reference to the submission made by the learned Counsel, appearing for the parties as recorded above. In the above context we are now required to consider as to the State Authority acted illegally by extending the time for submission of registration fees for the defaulting candidates for bringing them within the competition zone with

the wait-listed candidates who got themselves registered within the cut-off date finally fixed by the State Authority for submission of e-challan for their registration in UG Counseling process. As a matter of fact, Mr. Sanyal, learned Advocate, appearing for the petitioner laid much stress on such illegality which according to him ought not to have been committed by the State Authority resulting in the appellants"/petitioners" exclusion from the selection process and thereby they were deprived of an opportunity of getting admission in the third round of Counseling.

8. In this regard, it is rightly pointed out by Mr. Bhattacharya, learned Advocate, appearing for the Council that in fact, no time schedule was fixed by the Medical Council of India for submission of e-challan for registration of the candidates in UG Counseling process. The time schedule which was fixed by the Medical Council of India in pursuance of the aforesaid direction of the Hon"ble Supreme Court was as follows:-

9. On perusal of the said time schedule we find that though different dates were fixed at different stages of the selection process but no time schedule was fixed by the Medical Council of India for submission of e-challan for registration of the candidates for participating in the UG Counseling process. We find substance in the contention of Mr. Bhattacharya, that since no time schedule was fixed in this regard by the Medical Council of India, the State Authority was free to fix the time schedule according to its convenience within which the candidates were required to submit e-challan for registration in UG Counseling process. However, such time schedule under no circumstances could have been fixed beyond the ultimate date fixed for admission of students in the said course fixed by the Medical Council of India. In fact, even by extending the time limit for the aforesaid purpose, the ultimate date fixed for admission was not disturbed. On perusal of the decision of the Hon"ble Supreme Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, we find that the Hon"ble Supreme Court after considering the time schedule so fixed by the Council practically approved the same and as such the time schedule so fixed by the Medical Council of India which has its statutory force cannot be defied. Here is the case where we find the time schedule which was so fixed by the Medical Council of India had been adhered to by the State Authority. Since no time schedule was fixed for submission of e-challan for registration of the candidates in UG Counseling process, in our considered view, the State authority did not commit any illegality either in fixing a time schedule as per its convenience or by subsequently extending the said time schedule for accommodating more meritorious students than the petitioners in the third round of Counseling by inviting those meritorious students who defaulted earlier in submitting such e-challan for their registration within the cut-off date earlier fixed, without disturbing the time schedule fixed by Medical Council of India.

10. We are also informed by the learned Advocate, appearing for the State Respondents that third round of Counseling had to be conducted for filling up

large number of vacancies which, in fact, were released by the Central Quota and thereby number of seats in the State Quota were increased substantially. Be that as it may it is not the complaint of the appellants/petitioners that some less meritorious students than the appellants/petitioners were allowed admission in MBBS course in 2013 by the State Authority. Since, ultimately the students who are more meritorious than the appellants/petitioners and who occupied rank much higher than the rank occupied by the appellants/petitioners in the rank list, were admitted in the said course we do not find any reason either to disturb the admission of last two admitted candidates in the said course or to favour the appellants/petitioners on such a flimsy ground canvassed in the writ petition.

11. Thus, we safely conclude that this is not a rarest of rare case where interference is necessary to accommodate the appellants/petitioners who are less meritorious students than the last two candidates admitted in the said course in 2013. We further find that since the appellants/petitioners herein participated in the third round of counseling without questioning the legality of the impugned notification dated 21st August, 2013, they cannot be permitted to challenge the said notification in the instant writ petition after they became unsuccessful in the third round of counseling. That apart we agree with the submission of Mr. Bhattacharya, that the last two admitted candidates are necessary parties in this writ petition as in the event the appellants/petitioners are to be accommodated in the said course then we will have to cancel the admission of the last two candidates.

12. We thus, express our doubt about the maintainability of the writ petition in the absence of those last two-admitted candidates in the said course, in the writ petition.

13. In the facts and circumstances as stated above we hold that the appeal deserves no merit for consideration. The learned Single Judge was absolutely justified in rejecting the appellants"/petitioners" prayer for admitting them in the MBBS Course in 2013. In view of the disposal of the appeal no further order need to be passed of the application being C.A.N. 11562 of 2013 which will be deemed to be disposed of. The appeal thus, stand dismissed without any cost.

Ishan Chandra Das, J.

I agree.