

(2019) 05 CAL CK 0081

In the Calcutta High Court

Case No : Tender Of Md Appl (MAT) No. 716, 718 Of 2019 With Civil Application (CAN) No. 4876, 4877, 4878, 4879 Of 2019

Dr. Madhumita Basu & Ors Vs Dr. Md. Nazir Hossain & Ors ??

Date of Decision : 30-05-2019

Acts Referred:

Citation : (2019) 05 CAL CK 0081

Hon'ble Judges : Tirthankar Ghosh, J; Harish Tandon, J

Bench : Division Bench

Advocate : Kallol Basu, Suman Banerjee, Kartick Kr. Roy, Sumita Shaw, Kishore Dutta, Jaharlal Dey, Shamim Ul Bari, D.N. Maity, Supratik Roy, Mrinmoy Kr. Sahoo, Swadesh Priyo Ghosh

Final Decision : Disposed Off

Judgement

In Re. CAN 4877 of 2019

With

CAN 4878 of 2019

Both the applications are taken up together as it is filed by the respective appellants seeking leave to file appeals.

After perusing the averments made therein, we are satisfied that the appellants are vitally affected by the impugned order though they are not made parties in the writ petition.

Both the applications are thus allowed. The appeals may be formally registered.

In Re. : MAT 716 of 2019

With

CAN 4876 of 2019

With

MAT 718 of 2019

With

CAN 4879 of 2019

Both the appeals and applications are taken up together having initiated against the self-same order. It would unnecessary to quote and narrate the facts involved in both the appeals and the applications as it ends towards the admission in a Postgraduate Medical Course through All India NEET merit list. It is beyond cavil that the provision applicable thereto which has a statutory flavour contemplates two categories of candidates for admission in a Postgraduate Medical Courses. Some of the candidates have approached the Court who offered their candidature under the open category and the others under in-service category. The Medical Council of India, Postgraduate Medical Education Regulations, 2000 encompasses exhaustive provisions relating to the procedure for selection of the candidates for Postgraduate Medical Course and the privileges by way of weightage being given to in-service candidates who are placed in a remote and difficult area.

The writ petition was filed assailing the action of the State authorities in acting in contravention to the provisions of the Regulations, 2000 in preparing the Common Eligibility Test and earmarking the requisite numbers of seats for them. It was further alleged that the comprehensive representations were made to the State authorities but no fruitful action and/or decisions were taken. The Single Bench was swayed by the fact that the said Regulations, 2000 provides weightage in percentage but does not restrict the number of seats reserved for in-service candidates and passed an order directing the Medical Council of India to extend the date of admission in respect of all the students for MD and MS examination till 29th June, 2019 or until further order, whichever is earlier.

The counsel appearing for the appellants while assailing the said order submits that the order of injunction in such form clearly contravenes the order of the Hon'ble Supreme Court rendered in UP Unaided medical Colleges Welfare Association (Regd.) Vs. Union of India & Ors. (Writ Petition (Civil) No. 556 of 2018). According to the counsel the Apex Court in its order dated 25th May, 2018 extended the cut off date to 31st May, 2018. It is thus submitted on behalf of the appellants that the spirit of the said order as would be evident therefrom that no power is reserved and/or conferred upon the authorities to extend the time beyond 31st May. According to the appellants, the authorities have also accepted and understood the said order and published various circulars, notifications indicating the deadline as 31st May, 2019.

On the other hand, the successful writ petitioners submit that the order passed by the Hon'ble Supreme Court in above noted writ petition cannot be treated as a precedent that for each successive years such deadline is to be followed. In fact, the reliance is placed upon the certain materials disclosed before us where the candidate was permitted to be admitted in the Course beyond the said deadline.

The moot question which arises before us and in fact involved in the writ petition

is that whether the State Government can put a reservation on percentage basis for the candidates who offered their candidature as in-service candidate without any authority and/or power conferred under the said Regulations. It is manifest from the impugned order that the Single Judge noticed the list of in-service doctors claimed to have served in a remote, difficult, rural and distant area and held that such list does not indicate that the medical practitioners enlisted therein have actually served in remote, difficult, rural and distance area. Being swayed by such facts, the Single Bench found that the prima facie case has been made out and extend the date of admission in respect of students for MD and MS examination till 29th June, 2019 or until further order, whichever is earlier.

We do not find any reason assigned by the Single Judge extending the period simply because the list empanelling the medical practitioners in-service does not indicate whether they] served in a remote and difficult areas. However, our attention is drawn to Regulation 9 (4) where the weightage is required to be given to in-service medical practitioners intending to pursue the Postgraduate Courses and it is sought to be contended that power to give weightage does not empower the State Government to channelise another way of admission or restricting the number of seats.

We do not want to delve deep into such aspect as the writ petition is still pending. We are confining our consideration to a solitary issue as to whether it was proper for the Single Bench to extend the period beyond 31st May, 2019. Our attention is further drawn to Regulation 9 (10) of Regulations, 2000 which mandates that admission of the students in respect of any academic sessions beyond 31st May for Postgraduate Courses and 31st August for Super Speciality Courses shall not be made. The language put therein apparently makes the provision mandatory and it can further be corroborated from the other steps and/or actions of the statutory authorities putting a cut off date as 31st May, 2019. It is not in dispute that Regulations, 2000 has a statutory force and in fact the rival parties relied upon the provisions made therein and sought to interpret in their own way. It would be injustice enrichment upon the domain of the statutory authorities by extending the time when the statutory provisions mandate the entire exercise to be completed within the time frame. We are also not unmindful of the fact that the action of the State or its instrumentality is the subject matter of challenge in the writ petition which is still pending and the outcome may or may not affect the candidates if they are already admitted in such Courses. The education is one of the primary concern of the good governance and have a larger impact on the candidates who are in pursuit of excelling their knowledge, intelligence and therefore time limit is necessary to eradicate any sense of insecurity and to bring a uniformity in it. Equally we cannot overshadow the other legal rights of the aspiring candidates who may otherwise be found eligible.

To strike the balance and in order to bring equilibrium in the rights of the rival parties, we, therefore, feel that the extension of time for admission as directed in the impugned order would not subserve the justice but if the candidates who

have succeeded in two tier of counselling and succeeded therein should be admitted in the courses subject to outcome of the writ petition pending before this Court.

The order impugned is modified to the extent that the competent authority is directed to complete the process of admission strictly in conformity with the Regulations, 2000 and the candidates who are offered admission and if admitted in the respective colleges shall be made aware that such admission is subject to the result of the writ petition pending as of this date. Such candidates shall give an undertaking that they would not claim any equity in the event they are put out of the zone of consideration for being appointed in such courses or in the said colleges and the respective authorities shall ensure the strict compliance thereof.

With this observations, both the appeals are disposed of. Since the main appeals have been disposed of by this order, the connected applications have become infructuous and are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.