

(2020) 04 CAL CK 0035

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5365 (W) Of 2020, Civil Application (CAN) No. 3041 Of 2020

Dr. Manik Biswas & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 23-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Post Graduate Medical Education Rules, 2000 — Regulation 9(4)

Citation : (2020) 04 CAL CK 0035

Hon'ble Judges : Mousumi Bhattacharya, J

Bench : Single Bench

Advocate : Pratik Dhar, Kishor Dutta, Indranil Roy, Supratik Roy

Judgement

Mousumi Bhattacharya, J

The petitioners are eight doctors who are presently appointed in different hospitals in the State of West Bengal and who have all completed their MBBS course. The petitioners are presently rendering service in different Government hospitals in the State. The petitioners have challenged two notifications dated 26th February, 2020 and 4th March, 2020 issued by the Special Secretary to the Government of West Bengal. The said notifications relate to doing away with the reservation which had been enjoyed by the doctors engaged in Government hospitals in the State and in its place bringing in some relaxation and/or weightage in favour of the doctors working in Government hospitals placed in certain remote location.

Mr. Pratik Dhar, learned senior counsel appearing for the all eight writ petitioners submits that the two notifications which have cancelled the 40% reservation existing in favour of Government doctors are violative of Article 14 of the Constitution of India as the placement of the Government doctors is not a matter of choice but is decided by the State Government. Counsel relies on certain relevant dates to challenge the two notifications which include a decision of a

learned Single Judge of this Court dated 19th August, 2019 in a writ petition wherein the doctors engaged in the private sectors succeeded in challenging the reservation in favour of the Government doctors. The Division Bench by its judgment dated 1st October, 2019 upheld the decision of the learned Single Judge and on 8th November, 2019 the Supreme Court in a Special Leave Petition filed by the Government doctors passed an order of interim order of status quo and on 14th January, 2020 referred the matter to a five-Judge Constitution Bench. Counsel submits that the last examination of the NEET-PG Examination was held on 21st November, 2019 through 5th January, 2020 and the results were published on 13th January, 2020. Counsel submits that since the petitioners have all participated in the NEET-PG Examination for the academic year 2020, the State cannot change the Rules while the process was going on which the State did on 26th February, 2020 and 4th March, 2020 by way of the two notifications impugned in this proceedings. Counsel points to the imminent prejudice which would be suffered by the petitioners if the two notifications are allowed to hold the field since the provisional eligibility list of candidates would be published on 25th April, 2020 and the petitioners would lose their chance of being eligible for the reservation which had existed until the impugned notifications were issued by the State.

Learned Advocate General representing the respondent Nos. 1-4 of the State of West Bengal resisted the prayer of the writ petitioners by contending that there has not been any change in the Rules as urged by the petitioners but that the two impugned notifications have only sought to comply with the regulation 9, Sub-rules(4) of the Post Graduate Medical Education Rules, 2000 issued by the Medical Council of India and existing provisions relating to reservation of seats for in-service Government doctors issued on 18th April, 2013. The 2013 Regulations is mentioned in the notifications/memorandum dated 4th March, 2020. The learned Advocate General also refers to the judgment of the learned Single Judge delivered in W.P. No.8990(W) of 2019 which had specifically referred to Clause 9(4) of the Regulation relating to reservation of seats in medical colleges for respective categories which shall be as per applicable laws prevalent in the State/Union Territories. The learned Advocate General places emphasis on the applicable laws as including the 2013 notification. He, however, seeks some time to make more comprehensive submission in the matter and prays that the matter be kept for hearing on the next available date subject to the convenience of the court.

Mr. Indranil Roy, learned counsel appearing for the respondent No.9, Medical Council of India, raises a question as to the challenge to the two notifications issued by the State and whether such a challenge can be sustained in the absence of challenging the Rules made by the Medical Council of India which is, according to counsel, the source of the Rule making power of the Department of Health and Family Welfare of the State. Counsel raises the other issue of the Supreme Court proceedings not having any bearing with the present writ petition since a Constitution Bench of the Supreme Court is concerned with earlier

admission processes and not the academic session of 2020 which is the subject matter of the present writ petition. Counsel places an order dated 24th April, 2018 by which the Supreme Court decided against the reservation for Government doctors pursuing degree course and which is a reported decision of 2018 (17) SCC 426. Counsel refers to another decision reported in 2019(10) SCC 20 by which the cut off date was interpreted by the Supreme Court as the date of admission.

Mr. Supratik Roy, learned counsel appearing for the respondent Nos. 5-7, University of Health Sciences adopts the submission made on behalf of the State of West Bengal and urges the court not to halt the process which has already started and is nearing completion.

Having considered the submissions of counsel and also the prayer of the learned Advocate General that the matter may be take up for hearing on the next available date which is 28th April, 2020, and in particular the impugned notifications dated 26th February, 2020 and 4th March, 2020, this court is of the view that the condition of "weightage" to be given to in-service doctors who are the officers of West Bengal Health Service and "serving in rural ares and remote and/or difficult areas for each completed year of service in ascertained hospitals situated in remote and difficult rural areas and the fact that they shall be eligible for an incentive of 10% of the marks obtained in the NEET-PG Examination calls for interference of the court for the following reasons :

First, at the time the petitioners participated in the concerned examination which was in November, 2019 and continued till 5th January, 2020, the petitioners were under the belief that there was an existing reservation for Government doctors. The status quo order of the Supreme Court was passed on 8th November, 2019 and the earlier matter was referred to a Constitution Bench on 14th January, 2020. The impugned notifications which are of 26th February, 2020 and 4th March, 2020 were issued after the orders of the Supreme Court and more significantly after the petitioners had participated in the examination for the academic year 2020. Second, the notification of 26th February, 2020 makes it clear that the 10% incentive/weightage would be given only to those doctors who are serving in hospitals situated in remote and/or difficult rural areas. This particular condition is violative of Article 14 of the Constitution of India since the placement of the doctors and their location of service is a matter which is within the decision making power of the State and not one whether doctors can exercise any choice. Third, the Memorandum/Notification dated 4th March, 2020, however, makes a distinction between cancellation of reservation of seats for in-service Government doctors for admission into Post Graduate Degree Courses for the academic year 2020 while saving such reservation for Post Graduate Diploma Courses. Fourth, none of the two notifications have given any reasons for either doing away with the existing reservation or for making the notifications applicable also to doctors who have participated in the examination for the 2020 academic session. Fifth, it is also not clear as to why the State Government

would issue these two notifications when the entire matter of the constitutionality of the reservation in favour of Governments doctors is pending final decision in the Supreme Court.

However, having regard to the request of the learned Advocate General that he would need to make more comprehensive submissions in defence of the two notifications and the fact that the provisional list of eligible State candidates would be published on 25th March, 2020, this court is inclined to pass a limited interim order restraining the concerned respondents from proceeding with any stage subsequent to publishing of the provisional list on 25th April, 2020 until the writ petition is finally heard and decided. It is made clear that there shall be no restraint on the State publishing provisional list on 25th April, 2020 but it is also reiterated that before this matter is considered by the appropriate Bench on the next date as prayed for by the learned Advocate General, the State respondents shall not proceed or continue with any other procedural steps subsequent to the publishing of the provisional list. It is also made clear that if the writ petitioners finally succeed, the provisional list will be suitably altered in terms of the final decision in the writ petition.

List this matter on the next available date, subject to the convenience of the court and the concerned parties.