

(2019) 08 CAL CK 0135

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 11927, 11930 (W) Of 2019, 11930, Civil Application (CAN) No. 6615, 6616, 6619, 6621 Of 2019

Gitanjali College Pharmacy & Anr

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0135

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Rajmohan Chattoraj, Divya Tiwary, Neelendra Monimoy Banerjee, Kishore Datta, S. Sengupta, Souvik Nandy, Sirsanya Bandopadhyay, Arka Kr. Nag

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty, J

The first writ petition, being W.P. No.11927 (W) of 2019 has been preferred by Gitanjali College of Pharmacy (in short, the Gitanjali College) along with its Director and the second writ petition, being W.P. 11930 (W) of 2019 has been preferred by M.R. College of Pharmaceutical Sciences and Research (in short, the M.R. College) along with its Director, inter alia, praying for issuance of necessary direction upon the respondents to cancel the e-counselling process which commenced on and from 24th June, 2019 for allotment of students to first year of all the Degree Level Engineering, Technology, Architecture and Pharmacy courses through the West Bengal Joint Entrance Examinations Board (in short, the said Board) and to conduct e-counselling afresh upon enlisting the Gitanjali College and the M.R. College. As common issues are involved, both the writ petitions are taken up for analogous hearing. As the basic facts are not disputed by the parties to the writ petitions, no affidavits have been called for.

Records reveal that both the writ petitions were heard on 3rd July, 2019 but no interim order was passed observing, inter alia, that any interference with the

examination process would be detrimental to the students, who have already opted and participated in the same. In connection with each of the writ petitions, two applications have been preferred, one for impleading the National Informatics Centre (in short, N.I.C.), and the other for issuance of appropriate orders so as to protect the interest of the said Colleges from any future claim by the said Board that the order dated 3rd July, 2019 had been passed in the absence of the said Board.

Mr. Chatteraj, learned advocate appearing for the petitioners in both the writ petitions submits that the Gitanjali College and M.R. College were granted approval to start under-graduate courses in Pharmacy for the academic session 2019-20 by the respondent no. 5 in its meeting held on 9/10th April, 2019. The said Colleges were also granted approval by the All India Council for Technical Education (in short, A.I.C.T.E.) on 30th April, 2019. As demanded by the respondent no.3, the requisite fees for inspection was deposited on 3rd June, 2019 but issuance of "No Objection Certificate" was unnecessarily delayed and the said Colleges were not enlisted in the counselling process which commenced from 24th June, 2019. There was no fault on the part of the said Colleges and for the delay on the part of the State authorities to issue the "No Objection Certificates", the said Colleges have been ousted from the e-counselling process. In such circumstances, the authorities should permit supplementary online counselling processes by extension of time. In support of such contention, reliance has been placed upon the judgment delivered in the case of Varun Saini & Others - Vs - Guru Gobind Singh Indraprastha University, reported in (2014) 16 SCC 330.

Drawing the attention of this Court to a notification dated 21st June, 2019 issued on behalf of the Board, he submits that a single round of e-counselling was scheduled in complete violation of the mandatory guidelines and law laid down by the Hon'ble Supreme Court in the case of Parshvanath Charitable Trust and Others - Vs- All India Council for Technical Education & Others, reported in (2013) 3 SCC 385. He contends that in the year 2018, after the regular e-counselling and seat allotment was over, the said Board had conducted an additional round of "MOP Up" Counselling in which the students were required and allowed to re-register and log in their choices afresh due to vacancy existing even after the first round of e-counselling and subsequent allotment of seats. Surprisingly, this year, by a notification dated 17th July, 2019 guidelines have been framed for admission to vacancies through de-centralized counselling (institution) permitting the said Colleges to admit students in the relevant courses through de-centralized counselling in the academic session 2019-20. In the year 2018 the "MOP Up" round of counselling was conducted on the common platform of the said Board and was entirely a web based application so that all the candidates can participate through internet. The notification issued this year on 17th July, 2019 would reveal that the de-centralized counselling has been directed to be held at institutional level and not on the common platform of the said Board and such restrictions had minimized the chances of the said Colleges

to fill up their vacancies.

Per contra, the learned Advocate General appearing for the State respondents submits that it has been an endeavour of all the authorities to conduct the entire admission process in a fair and transparent manner with an object to ensure that candidates, on the basis of their merits, can secure admission. The grievance of the said Colleges is that they have been denied participation in the on line e-counselling process and have been severely prejudiced inasmuch as after huge investment they have not been able to fill up their vacancies. For such monetary loss, the said Colleges cannot seek intervention of this Court in exercise of its power of judicial review. No legal right of the said Colleges has been infringed warranting interference of this Court. The time schedule mandatorily fixed cannot be moulded to suit the convenience of any Institute. Mr. Datta denies the contention of the petitioners that the authorities have not conducted three rounds of counselling and submits that it would be explicit from the notification dated 21st June, 2019 that the results of the first round, second round and the third round of seat allotments were declared on 3rd July, 2019, 9th July, 2019 and 13th July, 2019 respectively.

He contends that excluding the seats of the said Colleges, the total number of seats for admission in Pharmacy was 1594. After counselling, 1573 candidates were allotted seats out of which 1335 candidates reported at respective Colleges but only 564 seats in Pharmacy were filled up. Even in the event the said Colleges had participated, the possibility of filling up their vacancies would have been meagre. Thus, there exists no pressing need to accommodate the candidates empanelled. The process adopted last year was not effective and did not enhance the number of admission.

In reply, Mr. Chattoraj denies the contention of Mr. Datta and submits that the data base of N.I.C. should be made available to the said Colleges so that they may reach out to the candidates who have already been empanelled by the Board and can conduct de-centralized counselling.

Heard the learned advocates appearing for the respective parties and considering the materials on record.

No mala fide can be attributed to the delay which occasioned towards issuance of "No Objection Certificate" to the said Colleges and the time schedule cannot be moulded at this stage. By notification dated 17th June, 2019 permission was granted to the said Colleges to admit students through de-centralized counselling at institution level but the same was not acceptable to the said Colleges. In the case of Parshvanath Charitable Trust (supra) it has been observed that there should be strict adherence to the time schedule for grant of approval as well as for admission without exception. Non-adherence to such time schedule would result in serious consequences and the time schedule cannot be disturbed. Admission is already over and the courses have already commenced from 1st August, 2019 following the mandatory time schedule and as such at this juncture

it is an impossibility to grant the relief, as prayed for by the said Colleges.

Accordingly, the writ petitions and the connected applications are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.