

(2022) 03 CAL CK 0008

In the Calcutta High Court

Case No : WPA No. 19993 Of 2021, IA No. CAN 2 Of 2021

Mallika Kar & Ors

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 01-03-2022

Acts Referred:

Citation : (2022) 03 CAL CK 0008

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Partha Sarathi Bhattacharyya, Kartick Kr. Ray, Debanish Banerjee, Raju Bhattacharyya, Swapan Kr. Dutta, Rajat Dutta, Amitava Chaudhuri, Moniruzzaman, Mololeena Chaudhuri, N. Roy

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

1. By an interim order dated 13th December, 2021, this Court had directed the West Bengal Joint Entrance Examinations Board to keep a certain number of seats vacant but had allowed the counselling process to continue. The parties were directed to file affidavits and the matter has now come up for final hearing. The question before the Court, at this stage, is whether, the affidavits filed by the State and the West Bengal Joint Entrance Examinations Board disclose any material grounds for vacating or modifying the interim order and whether the Reply of the petitioners call for further relief.

2. The writ petitioners before this Court are serving as nurses in government hospitals and seek to be placed in the Trainee Reserve category in colleges offering Post-graduate and graduate degree courses. A "Trainee Reserve" seat is a coveted post since the Trainee Reserve gets full pay from the Government and is not required to take leave from service for the duration of the course. In the present case, the petitioners have applied for Post Basic B.Sc. (Nursing) courses as Trainee Reserve candidates. The writ petitioners approached this Court being

aggrieved by reason of a notice cancelling a provisional eligibility list dated 23rd November, 2021 and the revised scores and ranks which were made available on the website of the Board on 3rd December, 2021. The writ petitioners challenged the unilateral cancellation of the list published on 9th November, 2021 and the consequential change of marks and rank in the revised Rank Card without notice to the petitioners. The interim order was passed upon the Court being convinced that the petitioners had made out a prima facie case for ad-interim relief pending affidavits.

3. The affidavit of the Board indicates that the Answer Keys sent by the West Bengal University of Health Sciences were not separated in two separate parts and that the Board decided to issue the notice dated 23rd November, 2021 cancelling the provisional list pursuant to considering the requests of candidates who had personally approached the Board on 18th November, 2021. The affidavit seeks to absolve the Board of any error or laches and puts the blame on the West Bengal University of Health Sciences. The Board also says that the writ petition suffers from misjoinder and non-joinder of necessary parties since the West Bengal University of Health Sciences has not been made a party to the Writ Petition. It is also the stated position of the Board that the petitioners cannot challenge the first round of counselling after having participated in the same.

4. The affidavit of the State contains a statement that a technical error took place at the time of evaluation of the OMR sheets. The position of the State respondent is also that the State was compelled to cancel the provisional list on 23rd November, 2021 since the Board cancelled the merit list.

5. Since several points have been raised on behalf of the Board as well as the State, the points are being dealt with in sequence.

6. The contention of the Board that the Writ Petition suffers from non-joinder of necessary party is a weak argument. By definition a necessary party is a party in the absence of who no decree can be passed. The State says that the Board has conducted the entire entrance examination of M.Sc. Nursing and the B.Sc. Post Basic Nursing courses for the relevant academic session and the decision to cancel the first provisionallist was entirely that of the Board. The role of the University, if any and at best, is that of a by-stander who has been nudged into relevance by the Board. The point of non-joinder is hence found to be without substance. In *Ram Janam Singh vs State of U.P.*; (1994) 2 SCC 622, the Supreme Court was of the view that the High Court should not proceed with a writ petition without insisting on persons to be joined as parties who would be affected by the outcome of the writ petition. The decision of a learned Single Judge, as His Lordship then was, in *Amarendra Kumar Singh vs Damodar Valley Corporation*; W.P No. 26829 (W) of 2013 proceeds on the mandatory requirement to implead a necessary party. These decisions do not assist the Board since it has been found that the West Bengal University of Health Sciences is not a necessary party in the present facts.

7. The point with regard to the petitioners not being entitled to approach the writ Court after having participated in the examination is also without merit. All the petitioners obtained marks and ranks which would have made them eligible for admission to the Post Basic B.Sc. and M.Sc. Nursing courses as Trainee Reserve candidates without any further evaluation. The petitioners' grievance arose out of the notice of the Director of Health Services cancelling the first provisional list in which the petitioners had all emerged successful. The grievance was exacerbated by the unilateral alteration of the petitioners' scores and rank in the revised list published on 3rd December, 2021. This is hence not a case of a disgruntled and unsuccessful candidate approaching the writ court for cancelling the selection process after having participated in the Selection; refer: *Ranjan Kumar vs State of Bihar*; (2014) 16 SCC 187 and *Madras Institute of Development vs K.V. Subramania*; (2016) 1 SCC 454.

8. The third issue is the point of the alleged mistake/error in the marking of the OMR sheet. The respondents submit that the petitioners cannot take the benefit of an admitted mistake. However, contrary to such allegation, the affidavits of the Board and the State do not spell out the exact mistake / error and at what stage such alleged mistake was committed. The Board states that the Answer Keys sent by the University were not separated in two separate parts namely, "Part-A" and "Part-B". The Board terms this failure to separate the Answer Keys as a "mistake". In the later part of the affidavit, the Board states that after publication of the first list on 9th November, 2021, a number of candidates visited the office of the Board on 18th November, 2021 to question the scores obtained by prompting the Board to call for re-confirmation of the Answer Keys.

9. The affidavit of the State does not say that there was any mistake or error in the calculation of the marks. The position of the State is the subsequent discovery of the Answer Keys not matching for the four sets of question papers. The State merely parrots the position taken by the Board in its affidavit. Moreover, the chain of correspondence between the Board and the University on 18th November, 2021 does not mention any error or mistake in the calculation of marks or the process of evaluation. The Board merely says that it has received complaints from candidates with regard to their scores and Answer Keys in the examination. Therefore, the argument of the petitioners taking advantage of a so-called mistake is without any factual basis. In fact, there is no stated position from either of the respondents as to what necessitated the unilateral cancelling of the first provisional list by the notice dated 23rd November, 2021. In the absence of any 'mistake' being spelled out the conclusion of this Court leans in favour of the petitioners and against the respondents. In fact, the respondents have also failed to disclose any basis for the revised assessment of answer-sheets/ fresh merit list which led to the unilateral alteration of marks. *Union of India vs S.R Dhingra*; (2008) 2 SCC 229 has been cited for the joint proposition that a mistake does not confer any right to any party and can be corrected and it does not apply to the specific facts of this case. Since, there is no specified mistake in the present case - in fact no stated mistake at all - the said decisions

do not come to the aid of the respondents.

10. The affidavits of the respondents do not disclose any further fact or material by reason of which the interim order passed by this Court on 9th December, 2021 should be vacated or modified. The direction on the Board to keep a certain number of seats vacant until the matter is considered on affidavits was given as a measure of protection to the petitioners. The petitioners' case, as substantiated in the writ petition, stands unaltered. The petitioners continue to face prejudice by reason of the unexplained, unilateral and sudden decision of the Board to cancel the provisional list and alter the marks to the detriment of the petitioners. Even if the case of the respondents of four marks being in the doubtful zone is accepted, that cannot lead to a drastic alteration of the petitioners' ranks and scores in the revised Rank Card published on 3rd December, 2021.

11. Moreover, the reason for withdrawing the first provisional list in which all the petitioners scored well, is not apparent from the affidavits of the respondents. There is no reason, intelligible or otherwise, forthcoming in the affidavits, as to why the first provisional list was cancelled and the marks altered thereafter. The impugned notice cancelling the eligibility list is abrupt, cryptic and without any reasonable explanation for such.

12. In view of the above reasons this court is of the considered view that the petitioners are entitled to the relief as prayed for. In this context, it should be reiterated that the petitioners' ranks and scores were sufficient to secure seats in the Trainee Reserve Category in the Government colleges even without the petitioners undergoing the counselling process. The affidavit of the Board contains a document dated 28th December, 2021 (which is after the interim order was passed by this court) stating that 219 vacant seats are being handed over to the University for the extended Mop-up counselling. This stand is to be read with the interim order which directed the Board to keep a certain number of seats vacant for the petitioners' till filing of affidavits. Hence, the position now taken by the respondents that seats have subsequently been filled up is of little relevance and runs counter to the direction passed by this Court. The respondents, particularly the West Bengal Joint Entrance Examinations Board, are hence directed to consider the ranks and scores of the petitioners as published on 9th November, 2021 (or on other dates) before the said list was cancelled by the notice dated 23rd November, 2021 for placement in the available vacant seats for admission to the Post Basic B.Sc (Nursing) and M.Sc (Nursing) courses. Needless to say, the respondents shall act in accordance with the statutory rules. The respondents shall also take into account the fact that the petitioners have missed the first 2 rounds of counselling and have had to forego the process by reason of pendency of the present proceeding.

13. W.P.A No. 19993 of 2021 along with CAN 2 of 2021 is disposed of in terms of the above.

Urgent photostat certified copy of this Judgment, if applied for, be given to the

parties on usual undertakings.