

(2020) 06 CAL CK 0126
In the Calcutta High Court

Case No : Writ Petitions (WP) No. 19900 (W) Of 2019, Civil Application (CAN)
No. 3200 Of 2020

Md. Garib Nawaz & Anr.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 23-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 142

Citation : (2020) 06 CAL CK 0126

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Arup Nath Bhattacharya, Sayani Das, Kumar Jyoti Tewary, Rajesh Shah, U.S. Menon, Abhirup Chakraborty, Supratik Roy, Sirsanya Bandyopadhyay

Final Decision : Disposed Of

Judgement

Petitioners are candidates seeking admission to undergraduate degree course study for Bachelor of Unani Medicine and Surgery (BUMS) and

Bachelor of Ayurvedic Medicine and Surgery (BAMS). Mr. Bhattacharya, learned senior advocate appears on their behalf and draws attention to

paragraphs 13 to 16 of the petition to demonstrate, there are clear statements of his clients not having had notice that for seeking admission for

academic year 2019-2020 they needed to appear in National Eligibility cum Entrance Test 2019 (NEET-2019). Notification regarding this test was

published in or about November, 2018 and the examination conducted on 5th May, 2019. In between this time there stood published notification dated

7th December, 2018 by Central Council of Indian Medicine, notifying Indian Medicine Central Council (Minimum Standards of Education in Indian

Medicine) Amendment Regulations, 2018. It is his specific submission that this

notification does not affect his clients nor was any notice issued

pursuant thereto, before holding of NEET-2019, to disentitle his clients from obtaining directions in terms of prayer. He relies on my order dated 5th

December, 2018 dealing with, inter alia, WP 22539 (W) of 2018 (Majda Humayun & Ors. vs. Union of India & Ors.) to submit, same directions

should be made in favour of his clients as they are similarly situate with petitioners therein. Mr. Ray, learned advocate appears on behalf of

respondent nos.11, 12 and 13 (colleges) and submits, seats are going vacant. There should be direction for those being filled up by admission given to petitioners.

Mr. Menon, learned advocate appears on behalf of respondent no.4 and opposes the petition. He submits, petitioners cannot urge for relief as their

contention has been negated by Supreme Court on judgment dated 20th February, 2020 in Civil Appeal 6032 of 2020 (Union of India vs. Federation of

Self-Financed Ayurvedic Colleges Punjab & Ors.). He submits, the test (NEET-2019) was duly held and petitioners not having appeared are not

eligible for admission, the courses being in Indian medicine. Mr. Supratik Roy, learned advocate appears on behalf of the university.

Mr. Tewary, learned advocate appearing on behalf of respondent nos.1 and 2 opposes the petition. He points out that my order is dated 5th December,

2018. Subsequent thereto the amendment regulations were notified on 7th December, 2018. He refers to sub-regulation (3) in regulation 1, which

makes the regulation apply to students who shall be admitted for, inter alia, BAMS and BUMS degree course studies from commencement of

academic session 2019-2020. He then refers to clause (d) in to be inserted regulation 2. Said clause is reproduced below.

â??There shall be a uniform entrance examination for all medical institutions at the under-graduate level, namely the National Eligibility Entrance Test

(NEET) for admission to under-graduate course in each academic year and shall be conducted by an authority designated by the Central

Government.â??

Referring to Ayurvedic Colleges Punjab (supra) he relies on paragraphs 9 and 10 in particular to submit, vires challenge to the amendment regulations,

failed. According to him contents of paragraphs 9 and 10 are views of Supreme Court, which negate contention of petitioners. Supreme Court held the

amendment regulations to be intra vires and dealt with the question or plea of filling up seats going vacant. As such the writ petition should be dismissed.

Court put queries to both Mr. Menon and Mr. Tewary regarding whether there was notice given to all candidates seeking admission to these

undergraduate courses, of being required to take the test for being considered on eligibility. Specifically their attention was drawn to Court's

enquiry regarding whether any notice subsequent to the amendment regulations was issued, with regard to impending NEET-2019 to be and held in

May, 2019. Nothing could be disclosed. However, Mr. Tewary's submission is that Central Government had given directives to States to notify

and the States had complied. This submission regarding compliance appears to have been dealt with in my order dated 5th December, 2018 (supra).

It appears, Union of India had challenged the judgment, by which the amendment regulations were interfered with in the interim. Supreme Court held

that the regulations were made with authority. So far as the fervent plea made on behalf of students, that they be permitted to continue as they had

already been admitted as also seats vacated by them cannot be filled up, said Court made clear its view but exercised power under article 142 of the

Constitution of India.

Petitioners' contention is not a challenge against the amendment regulations. Further query of Court put to Mr. Tewary was to obtain confirmation

that coming into effect of the amendment regulations was prospective. As such, action taken on the regulations could not have been in respect of

admission process commenced by the notification for holding NEET-2019. That appears to have been issued in November, 2018. The test was held in

May, 2019 and from materials on record and submissions, Court finds there was no notice given regarding the test as required to be taken also by

candidates wanting admission to, inter alia, BUMS and BAMS degree course study.

Petitioners are entitled to relief. It cannot be expected of them that they would engage themselves in looking up notifications regarding regulations

when they were concerned about obtaining admission to course studies, in respect of which there appears to have been no mention in the notification

concerning holding of NEET-2019. This entitlement of relief will not do away with the requirement of petitioners to otherwise demonstrate eligibility,

on academic credentials they possess. There will be direction in line with directions made in order dated 18th November, 2018 by Lucknow Bench of

Allahabad High Court, as made by order dated 5th December, 2018 (supra). Said directions are reproduced below and are to be read as made upon

State of West Bengal, in context of the facts.

State of U.P. is directed immediately to proceed to fill up the remaining vacancies of Ayush, which now remain vacant after completion of the

NEET process. It is made clear that now the merit of the NEET would not be lowered any further. Only those students, who have already qualified

NEET will be granted admissions in preference. After the said process, the remaining seats shall be filled up by the State Government by finding out

the meritorious students through the process, which the state deems fit. However, such process shall be completed and students be provided to the

colleges on or before 15-12-2018. In case, the state government fails to find out such students and provide them to colleges by 15-12-2018, it shall be

open for the Ayush colleges to take ;admissions of the students as per the directions given in the order of the Karnataka High Court as quoted above,

from 16-12-2018 onwards. The colleges shall complete such exercise, if required, between 16-12-2018 and 20-12-2018 onwards. The colleges shall

complete such exercise, if required, between 16-12-2018 and 20-12-2018. No admission shall be taken after 20-12-2018. The admissions, which are

given to the students under the orders of this court, shall be subject to final decision of these writ petitions and this fact shall be noted on every

admission given under this order. This order shall apply to all the Ayush colleges which are granted permission by the Central Government till today.

The writ petition and connected applications are disposed of.

Mr. Tewary prays for stay of operation of this order. Mr. Bhattacharya opposes the prayer. Court enquired of Mr. Tewary as to whether said order

dated 5th December, 2018 had been challenged by his clients. Mr. Tewary submits, no appeal was preferred.

Prayer for stay of operation of this order is considered and rejected.