
(2011) 08 GAU CK 0036
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 337 of 2011

Monali Debbarma and Ors.

APPELLANT

Vs

State of Tripura and Ors.

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2012) 1 GLR 734 : (2011) 5 GLT 77

Hon'ble Judges : U.B.Saha, J

Bench : Single Bench

Advocate : Mr. A.K. Bhowmik and Mr. M. Debbarma for the petitioners., Mr. D.P. Kundu, Mr. S. Chakraborty and Ms. R. Guha for the respondents., Advocates appearing for Parties

Judgement

1. The instant writ petition is filed by the seventeen petitioners students, who appeared in the joint entrance examination conducted by the Tripura Board of Joint Entrance Examination for selecting the candidates on the basis of their merit for allotting seats earmarked for the students of Tripura, for a direction to the respondents to allot seat for admission to MBBS course to each of the petitioners out of State quota against 25 seats reserved for the students belonging to schedule tribes and also an interim order directing the respondents to provisionally allot the seats for MBBS course against the reserve quota meant for the scheduled tribes in favour of each of the petitioner subject to final decision in the writ petition.

2. Heard Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. M. Debbarma, learned counsel appearing for the petitioners and Mr. D. P. Kundu, learned Advocate General assisted by Mr. S. Chakraborty, learned Addl. Government Advocate as well as Ms. R. Guha, learned Counsel appearing for the respondent No. 1,2,3 and 5. Also heard Mr. P.K. Biswas, learned Assistant SG appearing for the respondent Medical Council of India ("MCI").

3. At the very outset, the learned Advocate General of the State as well as Mr.

Biswas, learned Assistant SG would contend that the debate in the instant writ petition is relating to interpretation of Regulations on Graduate Medical Education, 1997 which is subsequently amended on 7.10.2010 by way of amendment Notification. Therefore, neither of the respondents will file any counteraffidavit and the matter can be disposed of at the motion stage as the petitioners admittedly appeared in the joint entrance examination and did not obtain a minimum of 40% marks in the joint entrance examination though they have obtained above 40% marks in the qualifying examination.

4. Mr. Bhowmik, learned senior counsel also conceded to the prayer for disposal of the writ petition at this motion stage.

5. As agreed to by the learned counsel of all the parties and considering the nature of the prayer, the instant writ petition is taken up for final disposal at this motion stage.

6. The facts, required to be narrated for disposal of the instant writ petition, are briefly stated as follows :

Out of 17 petitioners, nine petitioners appeared in the Tripura Board of Secondary Education ("TBSE"), six of them appeared in the Central Board of Secondary Education Examination ("CBSE") and rest two of them appeared in Indian School Certificate Examination CISCE"). All of them secured more than 40% aggregate marks in Physics, Chemistry and Biology, i.e., in the PCB group and also qualified to appear in the joint entrance examination conducted by the Tripura Board of Joint Entrance Examination for allotment of seat in the MBBS Course for admission in 2011 against 25 seats reserved for Scheduled Tribe candidates belonged to Tripura. But the respondent Tripura Board of Joint Entrance Examination, while invited the application for appearing at the joint entrance examination vide Notification dated 28.12.2010, Annexure 1 to the writ petition, nowhere mentioned that in the joint entrance examination, a student appeared as a Scheduled Tribe candidate has to secure 40% marks in the joint entrance examination which the petitioners were not aware and, as such, they also could not prepare themselves for getting 40% marks or above as required for allotment of seats in the MBBS course from the State quota.

7. It is stated that though the MCI prescribed for certain coaching for upgrading the Scheduled Caste and Scheduled Tribe candidates for enabling them to qualify in the joint entrance examination, but the said prescription was not followed and counselling was not provided to the present petitioners and other similarly situated persons.

8. It is further contended that on earlier years though there was prescription for cut off marks for allotment of seats to the intending candidates for admission in the MBBS Course as prescribed by the MCI, but the said prescription of cut off marks did not stand on the way of selection of Scheduled Tribe candidates for allotting seats to get admitted in the MBBS course. But in the instant case, all on a sudden, the State respondents at the time of counseling informed the

petitioners and other similarly situated candidates that none of them has secured 40% marks, the prescribed cut off marks, which is sine qua non for allotment of seats in the MBBS course earmarked for the Scheduled Tribe candidates belonged to State of Tripura and, as such, no seat for admission to MBBS course has been allotted in favour of the petitioners. Being aggrieved by the decision of the State respondents and also aggrieved by the prescription of the cut off marks as mentioned by the MCI in Para 5 (ii) of the MCI Regulation on Graduate Medical Education, 1997 as amended up to date, the petitioners preferred the instant writ petition and sought for relief as noted hereinabove.

9. Mr. Bhowmik, learned senior counsel while urging for relief sought for by the petitioners firstly contended that in Tripura, there is only one Medical College run by the Government and one Secondary Board and in the said Medical College, total seats available for first semester of MBBS course are 100 and out of 100, 15 seats will be allotted to the students to be nominated by other States on the basis of their merit in the all India Joint Entrance Examination in the PCB group and 10 seats will be filled up by the students to be nominated from four Northeast States and rest would go to the students belonged to Tripura State and out of which, 25 seats are kept reserved for the students belonged to the Schedule tribe community subject to they fulfilled the criteria prescribed for admission to MBBS Course.

10. In the instant case, as the prescription of MCI has not been informed as regards to obtain minimum 40% cut off marks in the Joint Entrance Examination, the State cannot ask for the same and they have to allot seats to the petitioners only on the basis of their qualifying marks obtained by them from their respective Board, not on the basis of the marks obtained in the Joint Entrance Examination.

11. Referring to para 5 of the writ petition, he further contended that as a matter of fact, the petitioners got much higher marks than 40% in aggregate in PCB group in the qualifying examination, i.e., Higher Secondary Examination. More so, some of them secured 72.30%, 60.66%, 74%, etc., but admittedly none of them has secured 40% marks in the Joint Entrance examination as prescribed by MCI for selection a candidate for admission to MBBS course as required by regulation 5 of the Regulations of MCI wherein selection procedure of the candidates for admission to MBBS course has been discussed. Referring to Regulation 5 of the MCI Regulations, Mr. Bhowmik would further contend that as the petitioners were not informed regarding the cut off marks prescribed by the MCI in its Regulations, Clause (i) of regulation 5 would be applied in the case of the present petitioners, not clause (ii) and in clause (i), there is no prescription for securing 40% mark in the joint entrance examination.

12. He finally contended that even if considered that the 40% marks has to be secured in the joint entrance examination for selection to admission in MBBS course, then also the said prescription is not mandatory, but directory. In support of his contention, he placed reliance in State of M.P. and Another v. Kumari

Nivedita Jain and Others, AIR 1981SC 2045, particularly, he referred to para 20 of the said judgment, wherein the Apex Court held, inter alia... It is well known that all over India candidates who aspire to get admission into medical colleges and who are otherwise eligible or qualified for admission to medical course on the basis of the provisions contained in regulation I of the Council, cannot all be admitted into the medical college or institution for dearth of seats. By way of solution of this problem, the Council appears to have thought it fit to suggest the procedure which will have the effect of selecting such candidates on the basis of merit only. The procedure suggested is intended to do away with nepotism and favoritism and any unfair practice in the matter of such admission, as the procedure recommends merit to be the criterion. The Council itself appears to have apprehended that what is contained in Regulation II is merely in the nature of a recommendation and this is evident from the language used in Regulation II particularly when the same is contrasted with the language used by the Council in Regulation I. Regulation II begins with the words "selection of students in a medical college should be based solely on merit".

13. While noting the aforesaid observation, the Apex Court further stated that the use of the words "should be" in regulation II is deliberate and is intended to indicate the intention of the Council that it is only in the nature of a recommendation. According to Mr. Bhowmik, the said recommendation is not mandatory, rather directory. Therefore, MCI has the power even to allow the State Government to select the candidate belonging to Schedule Tribe who has secured less than the cut off marks as prescribed and in view of the above, it would be proper for the court to direct the MCI to withdraw the cut off marks prescribed for the Scheduled Tribe candidates in clause (ii) of regulation 5.

14. Mr. Biswas, learned Assistant SG appearing for the respondent MCI has referred to the initial Notification dated 28.12.2010, Annexure 1 to the writ petition, issued by the Tripura Board of Joint Entrance Examination wherein it is specifically stated that the Tripura Board of Joint Entrance examination will conduct on the basis of syllabi of Tripura Joint Entrance Examination as updated in 2008 at Agartala, Udaipur and Kailashahar for preparing merit list for admission to Engineering, Medical, Technological and other professional Degree Courses against available seats reserved for the State of Tripura (Excluding seats reserved in NITs), meaning thereby, the petitioners were informed that the Joint entrance examination will be conducted only to prepare the merit list of the candidates who would appear in the Joint Entrance examination in their particular group and admittedly in this case, the petitioners appeared in the joint entrance examination held on 26 and 27th April, 2011 for selecting the candidates on the basis of their marks secured in the said examination, not on the basis of marks obtained in the qualifying examination.

15. He further contended that if a person has not secured the cut off marks as prescribed for, selection in the medical course, he has no right to approach a court of law for a direction either to the respondent MCI or to the State

respondents to admit him in the MBBS course excluding the policy decision of MCI which was constituted by the Central Government exercising its power under Entry 66 of List I in the seventh schedule wherein it is mentioned that "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions".

16. He further contended that being MBBS course comes within the purview of scientific and technical institutions, MCI is the authority to frame the policy as to whom should be provided seat in a medical college for MBBS course, not the State as the State Government has only power to frame policy relating to education including technical education and medical education and university subject to the provisions of 63,64,65 and 66 of the List I of the Seventh schedule of the Constitution. In the instant case, law laid down by the Central Government still prevails and no decision or policy of the State Government is called for so far as higher education is concerned. He further contended the MCI Regulations has already published in the Official Gazette, thus, the contention of Mr. Bhowmik that the petitioners were not aware about the cut of marks has no basis.

17. Admittedly, in this case, the petitioners though appeared in the joint entrance examination have not secured the minimum 40% cut off marks in the said examination. He finally contended that mere securing higher marks in the qualifying examination does not, if so facto, entitle a candidate to get seat either in the MBBS course or in any technical education if he does not get the minimum cut off marks in the joint entrance examination as prescribed by MCI. He also contended that the case in hand is fully covered by a decision of the Apex Court in *Chowdhury Navin Hemabhai and Ors. v. State of Gujarat and Ors.*, AIR 2011 SCW 1565, wherein the similar question came for decision before the Apex Court and the petitioners of that case also belonged to the same group in which the present petitioners belong. In that case also, the writ petitioners appellant have secured 40% marks in the common entrance test in the qualifying examination, but have not secured 40% marks in the common entrance test in Physics, Chemistry and Biology. So they were not eligible for admission to MBBS course as per the MCI regulation and the learned Single Bench of Gujarat High Court dismissed the writ petition, but the Division Bench in appeal set aside the order of the learned Single Judge. Ultimately, the matter went to the Apex Court and the Apex Court taking note of various decision of it in para 11 noted that "On a comparison of the minimum criteria for admission to the MBBS course laid down in the MCI Regulations and the State Rules, 2008, we find that both the MCI Regulations and State Rules, 2008 insist that a candidate must have obtained 40% marks in the Physics, Chemistry and Biology in the qualifying examination. The only difference between the MCI Regulations and the State Rules, 2008 is that while the MCI Regulations require the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes to secure in the competitive entrance examination for admission 40% marks in the Physics, Chemistry and Biology taken together, the State Rules, 2008 do not contain such a requirement. But as the State Rules had prescribed a qualification standard

which was less than that of MCI, the seven appellants, who took the Gujarat common entrance test for the academic year 200809, got selected on the basis of their merit for the seats in the MBBS course reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes and got admitted in the college even though they had not secured 40% marks in Physics, Chemistry and Biology in the Gujarat common entrance test. The qualification requirements prescribed by the State cannot be lower than those prescribed by the MCI. Therefore, in law, the order of the High Court is right."

18. Ultimately, the Apex Court held that "the appellants were not to be blamed for having secured admission in the MBBS course and the fault was entirely of the rulemaking authority in making the 2008 Rules and the appellants have gone through the pains of appearing in the common entrance test and have been selected on the basis of their merit and admitted into the MBBS course in the college in accordance with the State Rules, 2008 and have pursued their studies for a year. Hence, even though under the MCI Regulations the appellants were not eligible for admission to the MBBS course in the academic year 20082009, for the purpose of doing complete justice in the matter before us, we direct that the admissions of the appellants to the MBBS course in the college during the academic year 20082009 will not be disturbed. This direction, shall not, however, be treated as a precedent".

19. In view of the above decision, Mr. Biswas, submits that the ratio of the aforesaid decision is that qualification prescribed by the State cannot be lowered than that prescribed by the MCI and mere admission of a student on the basis of lower marks in the joint entrance and allotting seats by the State cannot be a precedent. He further contended that in the aforesaid case, the appellant writ petitioners were admitted in the College, for that reason they were allowed to proceed with their education by the Apex Court exercising its power under article 142 of the Constitution which power is not with the High Court and the fact remains in the instant case, the petitioners have not been selected on the basis of their merit in the joint entrance examination, far to admission to MBBS course. Therefore, they are not entitled to any relief sought for.

20. Mr. Kundu, learned Advocate General while adopting the submission of Mr. Biswas would contend that technical education and medical education cannot be considered at par with other education. A person after admission in the medical institution and technical institution has to deal with the human life and for which a special mechanism is necessary and education in those fields are clearly different than the education in other fields. In other fields, education is only for acquiring knowledge, but in the field of technical and medical education, the purpose is acquiring knowledge to serve the society dealing with technology and human life for which the Central Government constituted two different authorities for making policy in two different fields one is AIEEE and another is MCI. According to him, the similar question as arises in this case also came up before the Apex Court in the case of Chowdhury Navin Hemabhai (supra), and their

Lordship of the Apex Court rightly held that State policy cannot override the policy laid down by the MCI and in the State of Tripura as there is no policy MCI policy will cover the field. To emphasis his submission, he also relied upon Visveswaraiah Technological University and Another v. Krishnendu Haider and Ors., (2011) 4 SCC 606, particularly, paras 11 and 14, wherein taking note of paras 35 and 36 of Preeti Srivastava (Dr.) v. State of M.P, (1999) 7 SCC 120, a constitution Bench of the Apex Court while summarizing the law in question noted in para 14, inter alia, "(i) while prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term "adversely affect the standards" refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.

(ii) The observation in para 41(vi) of State of T.N. v. Adhiyaman Educational and Research Institute, (1995) 4 SCC 104, to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law."

21. Referring to the aforesaid observations of the Apex Court, Mr. Kundu tried to convince this court that Central body, AICTE in the case of Visveswaraiah Technological University (supra) is to be treated here as MCI and in that case, the qualification prescribed by the State Authorities was higher which would not affect the prescription of the Central body. In the instant case, the State did not prescribe any policy following the policy of the MCI Thus, the State has no other option I to follow the MCI guidelines.

22. Having heard the learned Counsel for the parties, and taking note of the facts and circumstances of the case and the law reports cited 1 the learned Counsel for the parties, it would be proper to reproduce relevant portion of the Notification issued by the Tripura Board of Joint Entrance Examination, Annexure to the writ petition, which excerpted hereunder.

"Notification No. 1/2011

No. F.I (DDHE/TBJEE/20092010 (Vol1)

Dated. Agartala, the 28th December, 2010.

The Tripura Board of Joint Entrance Examination (TBJEE) will conduct Joint Entrance Examination, 2011 on the basis of syllabi of Tripura Joint Entrance Examination as updated in 2008 at Agartala, Udaipur ; Kailasahar for preparing merit list for admission to Engineering, Medical, Technological and other Professional Degree Courses against available seats reserved for the State of

Tripura (Excluding seats reserved in NITs.), The programme of the examination is :

Date & Day 26th April, 2011 (Tuesday) 10 a.m. to 1 p.m. Physics 2 p.m. to 5 p.m. Chemistry

27th April, 2011 (Wednesday) Mathematics Biology

Each of the subject of Examination will be of 100 marks comprising of 60% Multiple Choice Questions (MCQ) type and 40% subjective questions, i.e., Short Answer Questions (SAQ). Candidates seeking admission to Engineering/ Technological Degree Courses (Group A) will have to appear in Physics, Chemistry and Mathematics and those seeking admission to Medical/Agricultural Courses, etc., (Group B) will have to appear in Physics, Chemistry and Biology. Those desiring to take chances in both the above groups (Group C) will have to appear in all the four subjects,"

23. Let us consider whether a candidate appearing in a examination like joint entrance examination can call in question the result of the said examination by way of filing the writ petition when there is no allegation of mala fide and perversity against any of the examiner. In the instant case, admittedly, the petitioners appeared in the joint entrance examination conducted by the Tripura Board of Joint Entrance Examination.

24. The question raised by Mr. Bhowmik, inter alia, the petitioners were not informed that they would be only guided by the result of the joint entrance examination is not correct. As it appears from the Notification dated 28.12.2010 (Annexure 1 to the writ petition) that it has been specifically stated that the entrance examination will be conducted for preparing the merit list for admission to the Engineering, Medical and Technological and other Professional Degree Courses, meaning thereby the petitioners were aware that they are sitting in the joint entrance examination and from the result of the said examination, the authority will prepare the merit list for admission to the medical course, etc., Therefore, it cannot be said that they were not aware about the fact that the result of the joint entrance would be decisive factor for selection in the merit list for admission in the medical college and allotting seat from the State quota for the students belonged to Schedule Tribe community.

25. Further more submission of Mr. Bhowmik is that the petitioners were not informed regarding the prescription of cut marks of 40% as prescribed by the MCI in their Regulation. This court is of considered opinion that when the Regulation has already been published in the Official Gazette, the same is not required to be informed separately and by this time it is settled that ignorance of law would not provide any benefit to any of the citizen. Therefore, the said argument of Mr. Bhowmik has also no force.

26. Now let us see whether the submission of Mr. Biswas in view of the decision in Chowdhury Navin Hemabhai (supra), inter alia, the State cannot make any

prescription for allotting any seat to a person secured less than 40% marks in a medical quota from the State quota ignoring the policy framed by the MCI has some force or not. As recognized by the MCI, the State is providing education to the students in the medical college. A medical college cannot run by any authority whether it is State or any other authority without sanction of the MCI. According to this court, the said submission of Mr. Biswas is a reasonable one and has some force. However, when the State is facing problem for admitting their students in the State in a college established by them, then obviously, the State has the power to take up the matter with the MCI and whether MCI will agree to the proposal of the State or not that is always with the MCI. But this court while exercising its power of a judicial review has not power to direct either to State or to the MCI to frame a particular policy lowering the cut off marks, then 40% as required as the same is a policy decision.

27. Now let us see whether subregulation (i) of regulation 5 of the MCI Regulation has any application in a case where the intending candidates appeared in the joint entrance examination conducted by the State Joint Entrance Board. To consider the aforesaid position, it would be proper to reproduce the Regulation 5 of the MCI Regulations. Accordingly, the same is reproduced hereunder :

"5. Procedure for selection to MBBS course shall be as follows :

In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above. In case of admission on the basis of competitive entrance examination under clauses (2) to (4) of this regulation, a candidate must have passed in the subject of Physics, Chemistry, Biology at the qualifying examination as mentioned in clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above :

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the

eligibility criteria under regulation 4."

28. From bare reading of subregulation (i) of regulation 5, it appears that the same is relating to only qualifying examination, not relating to person who has appeared in the joint entrance examination. Subregulation (ii) of regulation 5 discussed what should be the basis of competitive entrance examination and what should be qualifying mark and what mark has to be secured by the candidate appeared in the joint entrance examination in their respective group so far as PCB group is concerned. In respect of Scheduled Tribe candidates, qualifying marks is 40% instead of 50% and not lesser than that mark. In the said Regulation, particularly proviso to subregulation (ii) of regulation 5, it is stated that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfills the eligibility criteria under regulation 4. If we conjointly read subregulation (i) and (ii) of regulation 5 then we would see that subregulation (i) of regulation 5 of the MCI Regulations prescribed the cut off marks in the qualifying examination only to sit in the joint entrance examination.

29. In view of the above, this court is unable to accept the submission of Mr. Bhowmik when the submission of Mr. Kundu, learned Advocate General and Mr. Biswas, learned Assistant SG who is appearing for the MCI has some force.

30. Even from reading the regulation 5, it appears that for selection of students, the MCI have considered the merit and according to Mr. Bhowmik, subregulation (ii) of regulation 5, selection of students has no application in the instant case. In the subregulation (2), it is stated, inter alia, in states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control or one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

31. This court is unable to accept the aforesaid submission of Mr. Bhowmik on the ground that the petitioners who have approached this court, out of them, nine have completed their Higher Secondary Education, i.e., Class XII result from the Tripura Board of Secondary Education, six of them completed from Central Board of Secondary Education and two are from Board of Indian School Education Certificate.

32. Therefore, it appears that in the State of Tripura though it has only one Board of Secondary Education of its own, but the students intending for admission in the medical college are from various Board. Hence, the State has no other alternative except to go for a joint entrance examination what in fact in this case also the State authority did.

33. Even if on argument sake, this court accepts the argument of Mr. Bhowmik

that a person gets less mark in percentage as prescribed by the MCI, then also question will come up what should be the cut off marks for allotting a seat in favour of a student belonged to Scheduled Caste and Scheduled Tribes and who will fix that cut off marks whether the court or the State or by the MCI. According to this court, the court has no power to fix any cut off marks or qualifying marks, the court is only to see whether the authorities are acting on the basis of law prescribed by the Legislature or Rule made under the Act which covers the field.

34. Now question remains whether the State has the power to frame any rule prescribing any qualifying marks for allotting a seat to a person appeared in the joint entrance examination for admission in the medical course or engineering course or any other course. This court is of considered opinion that obviously the State has the power under Entry 25 of the List III of Seventh Schedule, but the State cannot frame any policy prescribing any qualifying marks contrary to the prescription of the authority constituted by the Central Government on the basis of law framed by them in view of entry No. 66.

35. Before concluding the judgment, this court is of further opinion that even when the heart and mind of a judge is with the petitioners who belonged to the Scheduled Tribe community for the interest of whom the Central and State are coming with so many legislation so that they can come within the main stream and get their share, but law does not authorize the court to take its mind and heart with the petitioners. Obviously, the State being a welfare State and MCI being the policy making authority may take the appropriate steps in this regard, not by this court, as the sympathy cannot substitute the place of law.

38. Admittedly in the instant case, the petitioners did not annex any representation made to either of the authorities, the State respondents or the respondent MCI. Therefore, the court is not in a position to give any direction to them, though at this stage, Mr. Bhowmik placed one representation addressed to the Chief Minister of the State, but it would not be proper on the part of this court to say anything at this belated stage as the same is not annexed to the writ petition and the other side did not get opportunity to see the same.

39. Mr. Bhowmik submits that even then the court may direct the MCI as well as the State respondents for relaxation of the conditions prescribed by MCI only for this year. With heavy heart, this court has to say that this court is not armed with law for asking the MCI for relaxation of their conditions as prescribed by them being the highest authority constituted by the Central Government as it is the matter of policy. It is only the Apex Court in exercising its power under article 142 of the Constitution while going to do complete justice can pass the necessary direction for framing a particular policy. Thus, the prayer of Mr. Bhowmik is rejected.

For the foregoing reasons and discussion, the writ petition is devoid of merit and the same is accordingly dismissed. No order as to costs.