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**(2006) 09 GAU CK 0097**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 353 of 2006**

Moutushi Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision :** 27-09-2006

**Acts Referred:**

**Citation :** (2006) GLT 339 Supp

**Hon'ble Judges :** A.B. Pal, J

**Bench :** Single Bench

**Advocate :** S. Talapatra and B. Banerjee, for the Appellant; T.D. Majumder, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.B. Pal, J.—The Petitioner Smti Moutushi Debnath passed H.S. (+2 stage) Examination from the Tripura Board of Secondary Education in 2005. She appeared in the Joint Entrance Examination, 2006 and her position in the merit list is 124 in PCB Group (Physics, Chemistry and Biology). She is an aspirant for admission in MBBS Course. But in the first round of counseling held on 22.07.2006 she was allotted, in accordance with her merit position a seat in B. Pharma Course in the Regional Institute of Pharmaceutical Science & Technology (for short "RIPSAT"). She, however, decided not to pursue B. Pharma Course and so on 26.07.2006 surrendered that seat allotted to her which was later, in the second round of counseling, allotted to one Smti Priyanka Chakraborty. As she continued to be an aspirant for admission in MBBS Course and expected that more seats for the said course might be available, she decided to wait and get her name entered in the wait list of PCB Group. She is aware that by virtue of the Tripura Board of Joint Entrance Examination (Second Amendment) Regulation-1999 she is entitled to be considered for admission in MBBS Course if she surrenders the seat allotted to her within a maximum period of 5 days from the date of issue of sponsorship, which she did. This position was clarified by the State Government by a memorandum dated 16th June, 2000 (Annexure-4). As

she was allotted a seat in B. Pharma on 22.07.2006, which she surrendered on 26.07.2006, within 5 days from the date of allotment, she considers herself eligible to be re-admitted in the wait list for MBBS Course. On 10.08.2006 she made a prayer to the Director of Health Services, the second Respondent herein, to re-admit her in the wait list as 15 more seats in MBBS Course were made available. On 17.08.2006, her father also submitted a representation to the Chairman, Tripura Board of Joint Entrance Examination to enlist his daughter's name in the wait list in view of the fact that his daughter surrendered the B. Pharma seat within 5 days and that seat was allotted to one Priyanka Chakraborty in second round of counseling. But, neither the prayer of the Petitioner to the Director of Health Services nor that of her father to the Chairman of Tripura Board of Joint Entrance Examination was acted upon.

2. On 04.09.2006 the Directorate of Health Services, Govt. of Tripura issued an "Educational Notification" published in the local daily (Annexure-9), which declared third round of counseling to be held on 8th September, 2006 at 11 a.m. for selection of candidates against additional 15 MBBS seats (ST-04, SC 03 and UR 08). The notification clearly provided that "The 3rd round Counseling for selection of the candidates against available additional 15(fifteen) MBBS seats (ST-04, SC-03 & UR-08) of Agartala Govt. Medical College from the candidates who appeared and registered their names in the waiting list in PCB Group of Tripura Board of Joint Entrance Examination, 2006 and those who surrendered seats within the time limit in order of merit position as stated therein for admission in MBBS Course will be conducted at Health Directorate, Gurkhabasti, Nehru Complex, Agartala on 8th September, 06 at 11 a.m." (Emphasis given). As her prayer for inclusion of her name in the wait list to the Director of Health Services and similar prayer by her father to the Chairman of the Board could evoke no favourable response, she personally approached, on 06.09.2006, the Director of Health Services to allow her to attend the counseling. But, one Dr. S. Das, who was In-charge of the Director of Health Services on 06.09.2006 categorically, told her that she would not be allowed to appear in the third round counseling. The Petitioner then approached the Member Secretary of the Tripura Board of Joint Entrance Examination, who however, confirmed that she was entitled to appear in the third round of counseling, though he could extend no tangible assistance. As the third round of counseling was going to be held on 8th September, 2006, the Petitioner after unsuccessfully knocking all the doors of the concerned authorities felt compelled to approach this Court by means of this writ petition filed on 8th September, 2006 with a prayer that the Respondents be directed to allow her to appear in the third round of counseling held on 08.09.2006 and select her in accordance with her position in the merit list against one of the 15 seats later made available for the students of Tripura.

3. On 11.09.2006, this Court in CM. Application No. 461 /2006 passed an interim order directing the Respondents to keep one seat reserved in the MBBS Course meant for UR Category, until further order and all admissions which may be granted pursuant to the third round of counseling, shall remain subject to and be

governed by any further or other orders that may be passed.

4. The State of Tripura, Director of Health Services, Govt. of Tripura and the Tripura Board of Joint Entrance Examination (for short "Board") have been arrayed as Respondents. The first and second Respondents have jointly filed counter-affidavit. The Board has, however, chosen not to file counter or contest the claim of the Petitioner. The contention, inter alia, of the answering Respondents is that only the candidates in the wait list are entitled to appear for counseling as per relevant regulations and practices. Candidates who have surrendered their seats allotted within time specified must get them readmitted in the wait list for participating in the counseling. It has, however, been admitted in para-6 of the counter-affidavit that as per the "Educational Notification" dated 04.09.2006, candidates whose names were in the wait list of PCB Group and those who surrendered seats within specified time are eligible to appear in the third round of counseling. But in the same paragraph a somewhat contradictory contention has been made by stating "therefore, it follows that only wait listed candidates in the first counseling as on 11.07.2006 by the Tripura Joint Entrance Board are alone eligible for counseling of the available 15 MBBS seats for admission. It is further provided that within the waitlisted candidates for MBBS seats who surrender seats within time limit are also eligible." The said Respondents further contended that the Petitioner did not register her name in the wait list for MBBS seats after the first round of counseling when the list of willing candidates were registered in the wait list. The Board being the only authority to record the name in the wait list she should have, well in time, approached the Board only. As it was not done at the time or after the first round counseling, there is now no scope for registering her name in the wait list for MBBS Course. To sum up, the contention of the Respondents, which create more confusion than clarity, is that the names of the candidates who surrendered their allotted seats in course other than MBBS within prescribed time get into the wait list prepared by the Board and as the same was not done, the Petitioner was rightly denied appearance for third round of counseling.

5. One Debamita Bhattacharjee is Anr. aspirant seeking admission in MBBS Course. In the merit list of the Joint Entrance Examination, 2006, her position in PCB Group appeared at S1. No. 143, far below the Petitioner. She appeared in first, second and also third round of counseling and against 8 seats (UR) out of 15 new seats made available, she has been selected for the 8th (UR) seat. If the Petitioner Moutushi Debnath gets a seat by virtue of her merit position at S1. No. 124, Debamita would automatically be out of the list. By means of a Civil Miscellaneous Application No. 495/2006, she sought to make her presence in this writ petition making several submissions against the claim of Moutushi. Most of her contentions are in pari-materia with those of the official Respondents.

6. I have heard Mr. S. Talapatra, learned senior advocate, assisted by Mr. B. Banerjee, learned Counsel for the writ Petitioner, Mr. T.D. Majumder, learned Addl. Govt. Advocate for the State-Respondents and Mr. D.K. Biswas along with

Mr. S. Lodh, learned Counsel for the applicant in CM. Appin. No. 495/2006.

7. Mr. Biswas, learned Counsel would argue on behalf of the applicant Debamita that as Moutushi did not personally participate in the second and third round of counseling, her claim to any of the 15 seats is not legally sustainable. In support of this contention, emphasis has been laid on the "Educational Notification" dated 04.09.2006, which specifically mentioned the categories of candidates not to be allowed to participate in the third round counseling. Such, category of candidates are:

- i) Seat offered and availed through TBJEE;
- ii) Seat offered but not availed/refused/not surrendered within the time limit; and
- iii) Not appeared personally in the counseling.

Mr. Biswas submits that as the Petitioner did not appear personally in the third round of counseling, she cannot now make a prayer to this Court for a direction to the Respondents to allot a seat in her favour.

8. Mr. Majumder, learned Addl. Govt. Advocate, however, takes a slightly different view on this excluded category of candidates. According to him, candidates who did not personally appear in the first or second round of counseling are forbidden to appear in the third round. In my considered view, this stand of Mr. Majumder is not consistent with the position pleaded in the counter-affidavit. The definite stand pleaded by the official Respondents is that unless a candidate, even after surrendering his/her seat within time limit, gets in to the wait list, no right accrues in his/ her favour for appearance in the next round of counseling. Mr. Majumder, however, has fairly admitted that no procedure or mechanism has so far been devised for reentry into the wait list after the name of a candidate is deleted from the merit list following allotment of a seat.

9. Mr. Talapatra, learned senior counsel for the Petitioner has strongly submitted that the Petitioner and her father approached the Director of Health Services and the Chairman of the Board on 10.08.2006 and 17.08.2006 respectively for re-entry of the name of the Petitioner in the wait list, which proved futile. There is no other authority except the Director of Health Services or the Board to whom the Petitioner could approach. This being the position, Mr. Talapatra argues, there is no fault on the part of the Petitioner in the matter of re-entry into the wait list as she unsuccessfully knocked every door after she had duly surrendered the seat allotted to her in the B. Pharma, which was in the second round of counseling, allotted to one Priyanka Chakraborty. The Respondents failed to answer why being approached by the Petitioner and her father, her name was not re-entered into the wait list if wait list alone is the only criteria for eligibility to appear in the counseling. Mr. Majumder could not clarify what else the Petitioner or her father could do except approaching the Director of Health Services and the Chairman of the Board for getting her name enlisted in the wait list.

10. Mr. Talapatra has laid much emphasis on the notification dated 04.09.2006, which according to him, leaves no doubt that a candidate who has surrendered his/her seat within time has definitely the right to appear for third round of counseling for fresh consideration against other available seats in accordance with his/her position in the merit list. This notification dated 04.09.2006 is not under challenge and has rather been relied on by the answering Respondents in the counter-affidavit itself. The time limit to surrender a seat allotted was specified long ago, on 16.06.2000, by a memorandum (Annexure-4) issued by the State Government in the Education Department. By that memorandum the provision of the Second Amendment of the Tripura Board of Joint Entrance Examination Regulation was clarified stating that the words "within specified time" will mean maximum of 5 days from the date of issue of sponsorship/allotment of seats. It is not in dispute that the Petitioner was allotted a seat in the B. Pharma Course on 22.07.2006, which she surrendered on 26.07.2006, within 5 days. Therefore, in view of the provisions in the said Regulations, she became eligible for consideration in accordance with her position in the merit list for allotment of a seat in MBBS Course, if available. Thus, the notification dated 4th September, 2006 and the memorandum dated 16th June, 2000 if read down conjointly, the irresistible conclusion would be that the Petitioner by virtue of her surrendering the seat in B. Pharma Course within 5 days became eligible for consideration in accordance with her position in the merit list for allotment of a seat in the MBBS Course.

11. An argument was placed by both Mr. Biswas and Mr. Majumder that a candidate who has surrendered a seat allotted in a particular year shall be eligible to appear in the Joint Entrance Examination in the subsequent year as provided in Clause (iv) of the Regulation of the Board. According to them, the said provision introduced in 1999 by Second Amendment of the Regulation, does not necessarily carry the implication that after surrender of such a seat the candidate would be eligible for consideration against other seats in the same year. Conversely, the eligibility shall be for the next year only. This submission is totally misplaced inasmuch as the said Regulation is in relation to eligibility of candidates for appearing in Joint Entrance Examination, not in relation to eligibility of a candidate to be considered against the seats available in accordance with the merit list in the same year. It is noticed that nowhere in the Regulation there is any express provision that if a candidate in the merit list of a particular year having allotted a seat surrenders it, being not of her choice, she disqualifies herself for any other seat available in the same year even though her merit position clearly shows her entitlement to a slot.

12. Other submission of Mr. Majumder and Mr. Biswas is that "Surrender of seat" would mean surrender in one Group and on production of a surrender certificate the candidate is eligible to be considered in the other Group in accordance with the merit position. In other words, if the name of a candidate finds place in the merit lists of both PCM & PCB Group and after allotment of a seat in one Group he/she surrenders the same, he/she would be considered for allotment of a seat

in the other Group in accordance with his/her position in the merit list, on production of a certificate of surrender. What Mr. Biswas and Mr. Majumder have tried to place on record is that a candidate who has surrendered a seat allotted in accordance with the merit list in one Group cannot claim Anr. seat in the same Group. As the Petitioner has obtained her position at S1. No. 124 of the merit list in PCB Group only and she was allotted a seat in B. Pharma, which she surrendered, she cannot after surrendering that seat within specified time claim a seat from same Group i.e. in MBBS Course even though in accordance with her position in the merit list she is otherwise entitled to get such a seat. According to them, once a seat is allotted, the candidate is completely out of the picture and if he/she surrenders the seat he/she would not be considered for any other seat by virtue of the position in the same merit list. If these submissions are accepted then the Petitioner has lost the B. Pharma seat allotted to her and shall also not be eligible for any other seat of the same Group whatever may be her merit position. A careful reading of the relevant provisions contained in the Regulation of the Board particularly the provision to surrender a seat within 5 days and the notification dated 04.09.2006 would unmistakably show that such submissions are totally misconceived and misplaced.

13. In order to buttress his above submissions, Mr. Biswas has sought to derive support from the following decisions:

1. Union of India v. R. Bhusal reported in AIR 2006 SCW 3854;
2. Dattatreya and Others Vs. Mahaveer and Others,
3. Medical Council of India Vs. Madhu Singh and Others,
4. Arvind Kumar Kankane. Vs. State of U.P. and Others,
5. R.N. Gosain Vs. Yashpal Dhir,

It is trite, a judgment is not to be read as a statute. The ratio-decidenti of a judgment is its reasoning. Application of the same in different facts situation must be different. A careful reading of the above noted decisions would show that the reasoning which can be deciphered therefrom cannot be pressed into the factual position of the present case.

14. What has emerged from the above discussion is that the Petitioner Moutushi Debnath obtained her position at SI. No. 124 of the merit list in PCB Group and at the time of first counseling she could not be given a seat in the MBBS Course having regard to the number of seats available at the first round of counseling. Though she was aspirant for studying MBBS, she had to be satisfied temporarily with the seat allotted to her in the B. Pharma, which, however, she surrendered within the stipulated period of 5 days making her eligible to re-entry into the wait list and appearance in next counseling. Her prayer as well as the prayer of her father for re-entry into the wait list were not acted upon wrongly and illegally. In my considered view, she has every right to be included in the wait list for second and third round of counseling. She became eligible for allotment of a seat in

MBBS Course when 15 more seats were released for the State on 10.08.2006. But taking a hyper-technical view that her name was not included in the wait list, she was denied appearance in third round of counseling. The Respondents have failed to show any good reason to deny her admission in the wait list. The submission that once a seat is surrendered, a candidate is completely out of picture for the said year is totally inconsistent with the notification dated 04.09.2006 and the defence stand taken in the counter-affidavit. Consequently, this submission is rejected. The Petitioner met the Director of Health Services to allow her to appear in third round of counseling. Her prayer was turned down illegally and arbitrarily. Her claim that she also met the Member Secretary of the Board, who told her that she was eligible for appearance in the third round of counseling has not been controverted. She has placed a document today that she attended the third round of counseling though she was not allowed to participate. Thus, a valuable right to be considered for allotment of a seat in MBBS Course in accordance with her position in the merit list has been wrongly and illegally denied to her.

15. For the reasons aforementioned, the writ petition has merit and the same is allowed directing the Respondents to allot her the seat in MBBS Course which has been reserved from 8 seats (meant for UR) by order of this Court passed on 11.09.2006 in C.M. Appl. No. 461/2006. If the procedure so requires, she may be asked to appear for counseling which should be done forthwith so that she can be admitted to the MBBS Course on or before 30th September, 2006, after which date, it has been brought to my notice, the un-utilised seats shall lapse. If for any reason Anr. counseling can not be held, she should be directly admitted. After all, counseling has nothing to do with the merit position of a candidate who is told at the time of counseling the seats available to her for exercising choice etc.

16. The CM. Application No. 495/2006 filed by Smti Debamita Bhattacharjee having no merit is hereby rejected. No cost.