

(2020) 08 CAL CK 0063

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 6441 (W) Of 2020

Rahul Manna

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 19-08-2020

Acts Referred:

Citation : (2020) 08 CAL CK 0063

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Subir Sanyal, Sumouli Sarkar, Sagnik Roy Choudhury, Srisanya Bandhopadhyay, Indranil Roy, Supratik Roy

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENTThe writ petitioner, Rahul Manna, has sought for issuance of mandamus commanding the respondents to forthwith grant upgradation to the petitioner to the subject MD, General Medicine in the seat lying vacant in the Institute of Post Graduate Medical Education & Research from the subject MD, Emergency Medicine in the Institute of Post Graduate Medical Education & Research and not to include the vacancy in the seat of MD, General Medicine in the Institute of Post Graduate Medical Education & Research in the seat matrix scheduled to be published on 17th August, 2020 for the extended college level mop up round of counseling scheduled to be held on 19th August, 2020.

The ground taken in this writ petition is that the respondent authorities in spite of being aware of the existing vacancy in the subject MD, General Medicine in the Institute of Post Graduate Medical Education & Research, remained silent while conducting the said counseling. They could have easily published a revised seat matrix before conducting the centralized mop up counseling. They have no reason to keep the seat vacant for the entire academic session by denying inclusion of such vacancy in the counseling process in as much as the respondent authorities still have time till 31st August, 2020 to fill in the vacant seats. The

petitioner ought to be given an opportunity to upgrade his subject to MD, General Medicine from MD, Emergency Medicine in the Institute of Post Graduate Medical Education & Research. The co-ordinate bench of this Hon ble Court has found an arguable case with regard to the non-reflection of the vacancy in General Medicine PG course in IPGMER and if such vacancies would have been notified, the aspirants like the petitioner would have opted for General Medicine as a stream of their choice above those streams which were allotted to them and those who had also given their willingness to upgrade, in the first, second and centralized mop up counseling, would have been allotted these vacancies as per their preferred choice.

A circular dated August 7, 2020 reflects that the vacant seat of MD, General Medicine in the Institute of Post Graduate Medical Education & Research would be included in the seat matrix for the said extended college level mop up counseling, in as much as the said Circular says in the very first paragraph that some stray vacancies have been reported by the colleges due to surrender of seats by the candidates after admission. However, such inclusion would be arbitrary, unjustified and discriminatory as the said seats ought to have been included in the centralized mop up round of counseling itself in which case the petitioner could have opted for the same.

The circular dated 17th July, 2020 reflects that if any seat remains not allotted in mop up after 27th July, 2020, i.e., after the centralized mop up, then such seat automatically goes to the college level mop up and the vacancy in the seat of MD, General Medicine in the Institute of Post Graduate Medical Education & Research is not a seat that remained non-allotted after the centralized mop up counseling. Rather, the said seat was not made available for being selected in the centralized counseling. Hence, the question of allotment or non- allotment to the said seat in the centralized counseling does not arise.

The petitioner specific case is that the said vacancy, having arose on 24th July, 2020, ought to have been included in the seat matrix for the centralized mop up itself that was held on 27th and 28th July, 2020. Had the said seat remained non-allotted after the centralized counseling even upon being made available to the candidates, only then could the said vacancy be included in the college level mop up and subsequently in the extended college level mop up, if it still remained non- allotted. Since the said seat ought to have been included in seat matrix for the centralized mop up round of counseling, it cannot be included in the extended college level mop up round without any valid reason. The said vacancy was not also included in the college level mop up. It is contended that the respondent authorities cannot suddenly wake up from slumber and start including vacancies for the extended college level mop up as per their own whims and pleasures.

In the context of the above, a co-ordinate bench of this Hon ble Court made certain query in its order dated 14.8.2020 that has been answered by the Director of Medical Education, Department of Health and Family Welfare to the

following:

a) Whether the seat in General Medicine PG course in IPGMER fell vacant on July 24, 2020 or on any date before the centralized mop up counselling held on July 27 and July 28, 2020.

Answer: as per reply received from IP GM ER Kolkata, the release formalities ended in late afternoon on 24 July 2020 and hence the seat remained vacant from 25th July onwards. As 25th and 26 July 2020 were Saturday and Sunday respectively, the seat could only be included in matrix in latter part of 27 July 2020 due to technical process but as the centralized mop up process started from early morning of 27 July 2020, the seat could not be included in the matrix else candidates who would opt for seats in before such seat would have been added, shall be prejudiced.

b) Whether apart from the petitioner there were other eligible candidates who had opted for General Medicine as a subject of higher preference in their forms during the two rounds counselling is also in the centralized mop up counselling and had further indicated their willingness throughout the process to upgrade their choice even upon the level of centralized mop up counselling.

Answer: The choice table suggests that above 495 candidates about the petitioner in West Bengal PG 2020 counselling Round 1 opted for IPGMER MD Medicine seat; 221 candidates above the petitioner opted for same seat in Round 2 with higher rank than petitioner; in centralized mop up the candidates had to choose at their rank once seat available in the choice matrix physically at the counselling venue and so the list is not possible to be prepared how many would have chosen MD Medicine seat at IP GMER Kolkata but it was evident from the allotment list that 70 candidates were above the petitioner in rank who chose and upgraded/fresh allotted in a seat.

In college mop up dated 31.07.20 20 there were 96 candidates above the petitioner who would have chosen the said seat and all are non-allotted.

In the list published for extended college mop up it is evident that 98 candidates (non-allotted) are above the rank of petitioner who may opt for the said seat if allowed leave by the Hon ble Court.

c) If it is found that the allegations of the petitioner are correct, steps that may be taken to rectify the situation and amend the same so that such candidates would get a preference to alleged vacant seat in accordance with the counselling rules over and above the candidates who were not allotted any seat whatsoever in any of the counselling rounds.

Answer: The steps that may be taken for the management of situation:-

Method A: The seat for IP GM ER MD medicine may be made available to non-allotted candidates above the rank of Dr. Rahul Manna only. Allotment shall be made as per rank and would be informed to Hon ble Court. If no such candidate

appears for taking the seat on 19th August 2020 by 12 noon at IPGMER Kolkata , then seat may be provided to Dr. Raul Manna if Hon ble Court so approves.

Method B: The seat may be opened for both allotted (except those who have told they are satisfied with the said seat and not wanted upgradation) and non-allotted as per rank. For the rest of the seats in seat matrix the non- allotted may be allowed only.

But if allotted candidate gets the seat then problem is, the said seat is filled up but another seat gets vacated which the candidate was already admitted into. That s it may be allowed to be filled by another round of counselling within 31 August 2020 (last date of admission as per Hon ble SC of India) from non-allotted candidate list by the Hon ble Court.

Learned counsel for the petitioner submits that the petitioner ought to be given an opportunity to participate as 71 candidates in the interest of justice as the petitioner candidature was placed on its merit when he had participated in the exam. The candidate namely Dr. Siladitya Dutta had not opted for the General Medicine and candidate who did not participate in the first, second and central mop up round, he cannot participate later and cannot be considered for admission.

In rebuttal, learned counsel for the State submits that merit could not be compromised in view of the direction made in this regard by the Hon ble Supreme Court. It is further submitted that seat matrix was published two days after due to technical process and for the reason that 25th and 26 July 2020 were Saturday and Sunday respectively although the seat was made available in the late afternoon on 24 July 2020 and one candidate who is more meritorious has been considered for provisional admission as he opted for General medicine. It is also pointed out that about 495 candidates above the petitioner have participated in first round, second-round and central mop up round and 211 candidates out of them opted for General Medicine and finally 70 candidates above the petitioner have opted for the General Medicine whereas other rankers are satisfied with the allotments of courses as per their choice. Thus it is submitted that petitioner being lower in rank cannot be considered for the allotment of the seat in General Medicine merit wise because Dr. Siladitya Mitra in rank at sl. 14409 has opted for the seat in General Medicine against the seat lying vacant whereas Dr. Rahul Manna, the petitioner who ranked at sl. 17791 cannot be considered for the seat in General Medicine now allotted on merit to Dr. Siladitya Mitra on 19th August 2020. It is reiterated that the seat could only be included in the seat matrix in the later part of 27th July, 2020 but as the centralized mop up process started from early morning 27th July 2020, so the seat could not be included in the matrix else candidates who had opted for seats in before such seat would have been added. It is also pointed that candidates who have participated in the final counselling held on 19 August 2020 have been given provisional admission and those candidates are above the petitioner by 3000 rank.

Learned counsel for Medical Council of India adopted the submission so made by learned counsel for the state and submits that interim order permitted provisional admission accordingly Dr Siladitya Mitra has been given provisional admission as the writ petitioner secured less merit than Dr Mitra. It is also submitted that Dr Mitra is similarly placed as the petitioner. So he is required to be heard before any final decision is taken since by virtue of his merit and higher in rank in merit, a right is created in his favour .

Contrary to the submissions of learned counsel for the respondents, on behalf of the petitioner it is submitted that the candidate who have not participated in the first round, second-round and Centralized mop up counselling could not be allowed to participate subsequently in view of Memo No. HFW-

23099/66/2020/M/683 dated 07.05.2020 issued by Directorate of Medical Education, Department of Health and Family Welfare, which provides that during admission, candidate has to state willingness for subsequent round/s which is must for all candidates whether they get admitted physically or send documents electronically. If candidate does not provide willingness for subsequent round during admission, then he /she cannot participate further in such round/s. It is also reflected from the said memo of Directorate of Medical Education that change of willingness once submitted cannot be altered later and if the candidate provides willingness for subsequent round/s and then does not fill fresh choice in such round, then the candidate retains the admitted seat of earlier round.

If the candidate provides willingness for next round and fills choice in next round but does not get any fresh allotment as per his/her rank and choice, then earlier round admitted seat is retained.

If a candidate provides willingness for next round/s and fills choice in next round/s and gets fresh allotment, then earlier round seat is automatically cancelled. Then candidate has to take back documents from the earlier college and take online release and get admitted in newly allotted institute within stipulated time.

My attention is also invited to a subsequent Memo No. HFW-23099/66/2020/M/1019 dated 07.8.2020 issued by Directorate of Medical Education depicting that the candidates who are qualified in NEET PG 2020 or NEET MDS 2020 and still remaining not allotted anywhere through counseling and not enrolled in WB PG Medical Counseling 2020 yet, can enroll by paying counseling fee online through website on 10th August, 2020 as per server time.

It reveals that after conduction of college level mop up on 31st July, 2020, it is found that few seats in PG Medical and Dental in West Bengal are still remaining vacant. Some stray vacancies are also being reported by the colleges in West Bengal due to surrender of seats by the candidates after admission. This memo has been countered by learned counsel for the petitioner to submit that this is an arbitrary act on the part of the Directorate of Medical Education having issued such notification for the reason, if the vacancy position could be displaced at the right time, the petitioner would have opted for General Medicine instead of

Emergency Medicine. Accordingly, it is submitted that the petitioner should be considered for his upgradation to the subject MD, General Medicine in the seat lying vacant, if he is found meritorious amongst 70 other selected candidates and be allowed to appear in the final selection and admission in MD, General Medicine.

Chronological events are required to be considered in the present case. The petitioner passed MBBS course from West Bengal University of Health Science in the year 2017. Pursuant to a notice published on March 18, 2020 by the respondent no.3 regarding enrolment for participation in Counselling of West Bengal PG medical/dental state quota, private and NRI quota seats 2020, the petitioner appeared for the NEET-PG, 2020 conducted by the National Board of examinations on January 5, 2020 and qualified in the same rank of 17791. On May 11, 2020, admission letter was issued by the respondent no. 5 in the Institute of Postgraduate Medical Education & Research and provisional admission allotment letter was issued. The petitioner participated in the second round of counselling on 9 July 2020 exercising his choice for MD, General Medicine in 11 colleges but could not get subject of his choice. Then the seat matrix for the centralized mop up round of counselling was published on July 21, 2020 and as on July 24, 2020 the seat for subject MD, General Medicine in IPGMER was lying vacant. The petitioner participated in the said mop up round on 27th and 28th July 2020 but he could not get admission to the subject MD General Medicine. The petitioner came to know only on 30 July 2020 that the seat of MD general medicine in the said Institute is lying vacant and the petitioner immediately sent two separate emails to the respondent no. 3 and also to the West Bengal University of Health Science requesting them to allow him to participate in the College level mop up counselling so that he could upgrade his stream to MD General Medicine in the Institute but no reply was received by him. The memo for final round of counselling was issued by the respondent no.3 on July 29, 2020 and pursuant thereto final round of Counselling was conducted by the respective colleges on July 31, 2020. Admittedly, given the COVID-19 situation, the Hon ble Supreme Court by its judgement dated 30th July 2020 in writ petition (civil) number 764/2020 (Telangana Private medical and Dental colleges Management Association & Anr. Vs. Union of India & Ors.) extended the cut-off date to 31 August 2020 for filling up the vacant seats both in the management quota as well as competent authority quota. Accordingly, Director of Medical Education issued memo no. DME-Spl. Corresp/2020/216 dated 29 July 2020 to the effect that college authority are to allot and admit eligible and willing candidates as per merit and as per caste and seat category remaining vacant in such stray vacancy round as per server time (till 6 pm of 31 July 2020) and report such admission to counselling authority of Department of Health and Family Welfare Govt. of WB. On 31 July 2020, final round of counselling has been conducted by the respective colleges and circular was published on 7 August 2024 extended college level mop up round by counselling.

Indubitably, if Dr. Siladitya Mitra rank in merit list is higher than the petitioner, the merit cannot be compromised but the fact remains that the petitioner was

not given opportunity to opt for his upgradation in MD general medicine for the reason discussed above that seat matrix was not published on 24 July 2020 when the same was vacant as on that day. There is no case made out on behalf of the respondents that said Dr Mitra had opted for counselling in the first round, second round and central mop up round counselling and for that the cause of action has arisen in favor of the petitioner to contend that since the petitioner had preferred and made the choice for MD General Medicine in the first round, second round and the central mop up counselling round, he should have been given an opportunity to participate against the vacancy which fell as on July 24, 2020 as he had given his willingness for subsequent rounds to fill his first choice for admission in MD General Medicine as per the updated notice on result, admission and of documents required for admission vide Memo. No. HFW-23099/66/2020/M/683 dated 07.05.2020 whereas Dr. Mitra had not given his choice in any of the said rounds for counselling or participated in first, second and centralized mop up rounds for counselling as per the notification dated 07.05.2020, and his candidature ought not have been considered for provisional admission for the General Medicine in view of Memo No. HF W-23099/60/2020/M/1060 of Director of Medical Education dated 17.08.2020 which is to the effect that A seat has been vacated at IPGMER Kolkata in MD General Medicine course UR category due to surrender of the admitted candidate after publication of seat matrix for Centralized Manual Mop Up. Such seat is being added in the seat matrix for Extended College Mop Up but no final allotment to this seat shall be made without the leave of the Hon ble High Court in W.P. No. 6441 (w) of 2020 with (CAN 5072 of 2020) Rahul Manna vs. The State of West Bengal & Ors. Order dated 14.8.2020. It is revealed from the order of a co-ordinate bench of this Hon ble Court that authorities were at liberty to continue with the entire counselling process. However, no final allotment to the alleged vacant seat in General Medicine (PG course) in IPGMER was to be made without the leave of Court. Therefore, the respondents should not have given provisional admission to the said Dr. Mitra because it does not create right in favour of Dr Mitra in the given case.

I am in agreement with learned counsel for the respondents that merit cannot be compromised. Having said that, if Dr Mitra has at all participated in the said rounds he has to be considered on the basis of the merit but at the same time the list of 70 candidates ought to have been displayed before this court. Ergo, the contention of the respondents has to be looked through askance. However, for the reason of default on the part of the respondent authority not having displayed the vacancies available as on 24th instant which ought to have been displayed even as on 25th July 2020 in the seat matrix prior to the centralized mop up around of counselling since such vacancy arose three days before such mop up counselling. Hence, non- inclusion of the vacant seat in the seat matrix has resulted in depriving an opportunity to the petitioner to study his choice of subject who might have had the opportunity to upgrade his stream of study to MD General Medicine. Be that as it may, final selection of the best candidate

amongst 70 short listed candidates does not appear to have been considered in the course of MD General Medicine. It is contended by the learned counsel that all rounds are required to be completed by 31st July, 2020.

This Court in order to tide over the situation in the given case, and bearing in mind the case of the petitioner and for the reason recorded in foregoing paragraphs, non-allotted candidate should not have been considered for provisional admission in MD General Medicine without giving any opportunity to the petitioner, ergo the petitioner be given an opportunity to participate in the final round counselling that is, extended college round for upgradation to MD General Medicine course in IPGMER as a special case along with all other 70 selected candidates and if the petitioner is found to be meritorious above all 70 candidates, then the petitioner can seek admission not otherwise. If the first candidate amongst 70 is found topper in the merit list then the petitioner cannot invoke his choice of subject in MD General Medicine course in IPGMER otherwise, it would amount to compromising with merit.

The respondent authorities are directed to complete all rounds counselling in respect of the vacancies in the seat matrix as displayed by the authority by admitting the topper in the merit list in MD, general medicine in IPGMER within 31 August 2020 as per the time limit prescribed by the Hon ble Apex Court.

Accordingly, Writ petition being WP 6441 (W) of 2020 is disposed of along with all other applications. All parties to act on the website copy of this judgement.