
(2017) 05 CAL CK 0059
In the Calcutta High Court
Case No : 29200 (W) of 2016

Samir Das

APPELLANT

Vs

The State of West Bengal & Ors.

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

Citation : (2017) 05 CAL CK 0059

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Debasish Banerjee, ?Rama Prasad Sarkar, ?Priyanka Mukherjee, Abhratosh Majumdar, ?T. M. Siddique, ?Nilotpall Chatterjee, ?Debasish Ghosh, ?Subhamay Bhattacharya, ?Arkajyoti Das, ?Shankar Mukherjee, ?L. K. Gupta, ?Ekramul Bari, ?Sougata Bhattacharya, ?Sunit Kumar Roy

Final Decision : Disposed off

Judgement

1. The instant public interest litigation has been preferred, inter alia, praying for a direction upon the Central Bureau Investigation to investigate into the illegalities perpetrated by the West Bengal Joint Entrance Examination Board (hereinafter referred to as the said Board) in conducting the West Bengal Joint Entrance Examination (Medical), 2016 (hereinafter referred to as WBJEEM) in collusion with the Al-Ameen Mission Study Circle being the respondent no.6 herein.

2. Mr. Banerjee, learned advocate appearing for the petitioner submits that though the WBJEEM examination was completed in the month of July, 2016, no steps were taken towards publication of the result. Aggrieved thereby, a public interest litigation was preferred being W.P. No.17757 (W) of 2016 and the same upon contested hearing was disposed of directing the said Board to publish the result within 10 days from date in accordance with Rule 8.2 published in the Information Brochure for WBJEE-2016 in respect of first 4000 candidates. In compliance of the said order, the merit list was published on 9th September, 2016. From the said merit list it transpired that from the examination centres,

namely, Satragachi Kedarnath Institution, Budge Budge Institution of Technology, Nehru Balika Vidyalyaya, Seacom Engg College Sakrail, Om Dayal Group of Institution and Centre Code No.581612, 117 candidates, 141 candidates, 98 candidates, 86 candidates, 118 candidates and 123 candidates from the respective examination centres were successful to find place in the final merit list. Astonishingly, all the said candidates were found to be students of a coaching centre, namely, Al-Ameen Mission Study Circle being the respondent no.6.

3. He further submits that the respondent no.6 is a coaching centre mainly for minority community students. The office address of the said respondent no.6 is at Park Circus whereas its registered office is at Howrah. The candidates of the respondent no. 6 hailed from various districts of the State. Surprisingly, though they were pursuing 10+2 course in schools within their respective residential districts, all of them appeared in WBJEEM only from the six specific examination centres stated above and the percentage of success of the said candidates is very high. It would also be alarming to note that the total number of students from the respondent no.6 who have qualified in WBJEEM Examination has enhanced from 49 candidates in 2009 to 1301 candidates in 2016. Such statistics leads to a strong presumption of connivance, conspiracy and a deep rooted unholy nexus among the said Board and the respondent no.6 warranting a detailed investigation by an independent authority.

4. Mr. Bhattacharya, learned advocate appearing for the respondent no.5 disputes the contention of the petitioner and submits that the allegations of connivance of the Board with the respondent no.6 are absolutely unfounded. There is no mechanism or possibility for the Board to know as to which tutorial home or coaching centre, a candidate is attached to. The entire examination process is conducted in a transparent and fair manner giving credence to the merit of the candidates.

5. He further submits that the figures given in the tabular statement at page 137 of the writ petition compared with the records of the Board as reflected in the tabular chart at page 12 of the affidavit would reveal that the contention of the petitioner to the effect that all the candidates appearing from the six examination centres named by the petitioner were successful is absolutely fallacious. All those who ranked within 4000 did not get admission in MBBS/BDS courses. It would also be explicit from the website of other coaching institutes, namely, Path Finder, Akash Medical IIT JEE Foundation that the success rate of the said coaching institutes is also very high and the same cannot lead to a conclusion that there is an unholy nexus among the Board and the respondent no.6.

6. He further submits that the OMR sheets of all the candidates were uploaded in the website enabling the candidates to scrutinise the same and the candidates who approached the Board were also provided the copies of the respective OMR sheets. Out of the total number of candidates, 12000 candidates who scored 50% or more marks were granted a rank which was published. Out of the said

12000 candidates only 1301 students of the respondent no.6 got more than 50% marks and amongst the first 4000 candidates in the merit list there were only 683 candidates who had appeared in the six examination centres referred to by the petitioner and such statistics do not lead to any alarming conclusion warranting an investigation by any independent authority on the basis of mere apprehension and surmises. The petitioner has approached this Court with the sole intent to stigmatise the examination process and as such same needs to be dismissed with costs.

7. Mr. L. K. Gupta, learned senior advocate appearing for the respondent no.6 submits that the petitioner has no locus standi to prefer the instant writ petition and the entire pleadings in the writ petition are founded on personal grievances. The respondent no.6 started its functioning from the year 1986 with an intent to cater to the needs of the students who are unable to pursue competitive courses for financial restraints. The said respondent no.6 is a charitable institution and it provides scholarship to the meritorious students and such scholarship is funded by the Al-Ameen Mission trust. In recognition of the educational facilities extended to the students in the lower rung of the society, the respondent no.6 has been conferred the prestigious award Banga Bhushan by the State of West Bengal. The respondent no.6 receives grant-in-aid under different schemes and such grants are sanctioned only upon proper inspection. It maintains a high level of integrity, excellence and honesty and in appreciation of such functions it has received assistance from the Central Government as would be explicit from the correspondence of the Ministry of Minority Affairs with the respondent no.6 as annexed to the affidavit-in-opposition.

8. Drawing the attention of this Court to a letter dated 6th October, 2015, Mr. Gupta submits that the respondent no.6 was sanctioned a grant of Rs.1,62,40,000/- on the basis of recommendation of the Government of West Bengal and the funds as and when released had been appropriately utilised and certificates towards such utilisation have been provided to the fund sanctioning authority.

9. He further submits that the respondent no.6 provides boarding facilities to the students and that the students have applied online for participation in the WBJEEM Examination of 2016 and pursuant to such applications the institutes and centres have been allocated automatically without any intervention of the respondent no.6. The allegation of nexus of the respondent no.6 with the respondent no.5 is absolutely unfounded.

10. In reply, Mr. Banerjee submits that in spite of service of notice, initially the respondent no.6 did not respond and was reluctant to appear. It is only after the Court directed for issuance of warrant, learned advocates appeared to represent the respondent no.6. The students availing coaching from the respondent no.6 in spite of having residence and pursuing 10+2 course in schools in different far-flung districts have been allotted seats in six specific examination centres which are located in Kolkata and Howrah. It is difficult to appreciate that a candidate

having his residence in the district of Murshidabad would be opting for an examination centre in the district of Kolkata and Howrah. The entire exercise of allotment of seats to candidates to appear in WBJEEM was carried out solely and exclusively by the said Board and hence the likelihood of connivance the officials and employees of the board with the respondent no. 6 cannot be ruled out.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. It had been the contention of the petitioner that all the candidates who appeared in the six specific examination centres emerged to be successful. Such contention is not acceptable to this Court inasmuch as out of the total number of candidates, 12000 candidates, who scored 50% or more marks, were granted a rank and out of the said 12000 candidates only 1301 students of the respondent no.6 got more than 50% marks and amongst the first 4000 candidates in the merit list there was only 683 candidates as would be explicit from the tabular chart annexed at page 12 of the affidavit-in-opposition filed by the said Board. From the said facts and figures it is difficult to construe that there exists some sort of nexus among the respondent no.5 and respondent no.6 to select only the candidates hailing from the said institute. Merely on the basis of suspicion and without any appropriate evidence to show that there had been an attempt on the part of the respondents to conceal particulars and facts, it would not be proper for the writ Court to direct an investigation into the affairs of the said respondent nos.5 and 6.

12. It appears from the correspondence made by the Ministry of Minority Affairs on and from the year 2008-2009 that the respondent no.6 was empanelled to avail grant-in-aid under "free coaching and allied scheme for the candidates belonging to minority community" upon scrutiny of the list of candidates selected by the respondent no.6 with break-up of local and outstation students and upon disclosure of the stipend amount paid by the institute. A letter dated 6th October, 2015 issued by the Under Secretary to the Government of India, Ministry of Minority Affairs reveals that an amount of Rs.1,62,40,000/- was approved and released on the basis of the recommendation of the State Government with a specific rider to the effect that the Al- Ameen Mission shall not divert the grant-in-aid and shall not entrust the execution of the project for which the grant is sanctioned to any other organisation or institute and that no fund out of the said grant shall be utilised for any new/other scheme for which prior approval of Government has not been obtained. It further appears from a letter dated 15th February, 2017 issued by the Under Secretary to the Government of India, Ministry of Minority Affairs that upon consideration of the application of the respondent no.6 for conducting coaching programme for the academic session 2016-17, it was selected for imparting coaching to 560 candidates. In the backdrop of such materials on record it cannot be contended that the respondent no.6 has obtained fund illegally or by suppression of any material fact. From the disputed facts and figures it is extremely difficult to arrive at any finding that the said respondent no.6 was functioning illegally or that the respondent no.5 was favouring the respondent no.6 in any manner warranting investigation by an

independent authority. It is difficult for a writ Court to take upon itself an investigative mantle to decide disputed questions of fact. There is also no material revealing that procedural impropriety is of such a magnitude that it has operated to the severe detriment and prejudice of the students at large. Generally speaking, it is better to err on the side of caution and to allow functioning of an institution catering to the needs of the minority students than to have the sword of Damocles hanging over the candidates who have already been selected through the concerned examination and have already been admitted in the courses and have pursued the same for more than a year.

13. For the reasons discussed above, we are of the opinion that the petitioner is not entitled to the reliefs as prayed for.

14. Human ingenuity has no limits in finding out the ways of avoiding and circumventing the provisions of law much more so in cases where there is scope of profit-making. As such, the correspondence of the Ministry of Minority Affairs speaks of online monitoring system enabled with GPS mobile handset and submission of undertaking by the institute as a precondition towards sanction of government grant. Thus, it would always be an obligation on the part of the Central and State authorities to monitor, to maintain surveillance and to ensure that the grants disbursed in favour of the respondent no.6 are utilised by it in strict consonance with the conditions subject to which the grants are sanctioned.

15. With the above observations and directions, the writ petition is disposed of.

16. There shall, however, be no order as to costs.

17. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.