

(2020) 07 CAL CK 0028

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5928(W) Of 2020, Civil Application (CAN) No. 4071 Of 2020

Souvik Sardar & Ors

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 13-07-2020

Acts Referred:

Citation : (2020) 07 CAL CK 0028

Hon'ble Judges : Subrata Talukdar , J

Bench : Single Bench

Advocate : Bikas Ranjan Bhattacharyya, Firdous Samim, Gopa Biswas, Kishore Datta, Sayan Sinha, Supratik Roy

Judgement

Subrata Talukdar , J

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

Ten petitioners are before this Court.

The ten petitioners claim to be the students of the 2nd Professional MBBS Examinations and the 3rd Professional MBBS Part-I Examinations

scheduled to be held in July-August, 2020.

Relying upon the disruptions which are commonly cited now a days connected to the ongoing pandemic situation, the petitioners seek a stay on the

conduct of the 2nd and 3rd MBBS Examinations (supra) to be held on and from tomorrow, i.e. the 14th of July, 2020 in terms of the instructions of the

Department of Higher Education, Government of West Bengal, following the Guidelines of the Ministry of Human Resources Development (MHRD),

Union of India and the University Grants Commission (UGC) dated 9th July, 2020.

Mr. Bhattacharyya, Learned Senior Counsel appearing for the petitioners, relies on a previous order of this Court dated 4th of July, 2020 In Re:

Indrajit Biswas and Ors. -vs.- State of West Bengal and Ors. [WP 5761(W) of 2020 with CAN 3740 of 2020] by which this Court was pleased to

stay the notice dated 10th of June, 2020 issued by the West Bengal University of Health Sciences (WBUHS) notifying the schedule of the 4th

Professional Ayurvedacharya (BAMS) Examination, March 2020, such stay to be operative till the 31st of July, 2020.

However, both Mr. Roy, Learned Counsel for the WBUHS and Mr. Datta, Learned Advocate General representing the State of West Bengal,

pointedly illumine before this Court the overwhelming fact that the petitioners are only 10 in number whereas the examinees for both the 2nd and 3rd

Professional Examinations (supra) are much higher in number and willing to participate in the Examinations.

By way of instances, Learned Advocate General cites compelling figures before this Court which read as follows:-

For the 2nd Professional MBBS Examinations out of a total of 650 examinees, only 45 may be described as unwilling candidates in the sense of being

unable to appear for the examinations to be held from tomorrow i.e. 14th of July, 2020 whereas 605 candidates have no grievances in taking the

Examinations.

Similarly, for the 3rd Professional Part-I MBBS Examinations, out of the 444 total candidates, 13 have expressed their unwillingness also in the sense

as stated above and, the remaining 431 are willing to appear in the Examinations.

Learned Advocate General submits that adequate physical arrangements have been made close to home centres for the benefit of the examinees

keeping in mind the containment policies as applicable to the present Unlock 2.0 period. Therefore, a majority of desirous students have opted to

appear in the said Examinations at examination centres nearest to and/or most convenient to their residence.

Mr. Roy, Learned Counsel, further points out that the transition from one year of the MBBS course to another is an all-India phenomenon incapable of

segregation and therefore the said Examination ought not to be readily interjected by this Court particularly when a majority of the examinees are

willing to appear at conveniently placed Examination centres.

Mr. Roy, however adds a caveat that in the event a student is not at all able to appear for the Examinations scheduled to be held from tomorrow for

bona fide reasons beyond his control, alternate arrangements to hold the Examination in future for such student shall be put into place.

Learned Advocate General adds the further caveat and, correctly to the mind of this Court at this stage, that failure to enrol for the Examinations shall

not amount to a bona fide reason for a candidate to avoid the Examinations.

Having heard the parties and considering the materials placed, this Court is not persuaded to stop the Examinations as scheduled to be commenced

from tomorrow, i.e. 14th of July, 2020.

This Court therefore permits all desirous students who have enrolled themselves for the Examinations scheduled from tomorrow, i.e. 14th of July, 2020

including the present petitioners, if enrolled, willing and able. All the candidates, who have enrolled themselves for the Examinations, but are unable to

appear in the Examinations due to bona fide reasons attributable to the present pandemic situation, shall have to justify their reasons for non-

appearance in the scheduled Examinations before the Controller of Examinations, WBUHS/the Respondent No.5 to this writ petition.

The Controller of Examinations, WBUHS shall be entitled to take a decision on a case by case basis for the purpose of putting into a place a

replacement examination for the deserving candidates.

List this matter before the appropriate Hon'ble Bench three weeks from this date to report subsequent developments. All parties to act on a server

copy of this order.