

---

**(2018) 05 CAL CK 0178**  
**In the Calcutta High Court**  
**Case No : W.P.S.T. No. 25 of 2018**

State Of West Bengal & Ors.

APPELLANT

Vs

Soumya Kundu & Ors.

RESPONDENT

---

**Date of Decision :** 14-05-2018

**Acts Referred:**

Constitution Of India, 1950 — Article 32, 226, 227, 323A, 323B

**Citation :** (2018) 05 CAL CK 0178

**Hon'ble Judges :** DEBASISH KAR GUPTA, J; SHAMPA SARKAR, J

**Bench :** Division Bench

**Advocate :** Amitesh Banerjee, T.M. Siddiqui, Prithwish Kumar Basu, Joydeep Kar, Indranil Roy, Kartik Kumar Roy, Supratic Roy, Sugata Mukherjee

**Final Decision :** Disposed Of

---

## **Judgement**

This writ application is directed against an order dated April 24, 2018 passed by the West Bengal Administrative Tribunal in connection with a

miscellaneous application arising out of the original application. By virtue of the order impugned to this writ application, the operation of a notice dated

April 21, 2018 issued by the Controller of Examinations of the respondent No.45 has been stayed till disposal of the original application. Having heard

the learned Counsel appearing for the respective parties as also after considering the facts and circumstances of this case, we find that the subject

matter for consideration of the learned Tribunal in the original application is the right of the respondent Nos.1 to 44 to get admission in postgraduate

courses under Trainee Reserved Scheme.

It is submitted by Mr. Amitesh Banerjee, learned Senior Standing Counsel, appearing for the petitioners, that the cut off date for closing the admission

in the course under reference is May 18, 2018. Therefore, in the event the above

date expires pending hearing of the original application before the learned Tribunal and in the event the original application ultimately fails, the petitioners will not be in a position to fill up the vacancies in respect of the course in the question after disposal of the original application. It is also submitted by him that in compliance of the order passed by the learned Tribunal the respondent Nos.1 to 44 were allowed to participate in the counselling. All of them got themselves admitted in the respective postgraduate courses without obtaining sponsorship certificate from the petitioners authority. It is further submitted by Mr. Banerjee that there was no delay in filing this writ application on the part of the petitioners because this writ application has been filed immediately after obtaining the certified copy of the order impugned on May 4, 2018. It is submitted by Mr. Joydeep Kar, learned Senior Advocate appearing on behalf of the respondent Nos.1 to 44, that the issue involved in this writ application has become an academic issue due to the passage of time. According to him, though the order impugned to this writ application was passed on April 24, 2018 no step was taken by the petitioners for early hearing of this writ application keeping in mind the cut off date of admission of the candidates in the postgraduate courses. It is also submitted by him that the order passed by the learned Tribunal has already been complied with. The counselling is over. The respondent Nos.1 to 44 got admission. It is further submitted by Mr. Kar, on instruction, that not a single candidate of any of the courses concerned received sponsorship from the petitioners authority. Therefore there was no departure from the procedure of getting admission to the postgraduate courses of any of the aforesaid respondents.

After hearing the learned Counsel carefully and after giving our thoughtful consideration to the facts and circumstances, we find that admittedly the counselling of the respondent Nos.1 to 44, amongst others, have already been completed. Therefore, even in the event this Bench interferes with the order impugned to this writ application, it is not possible to turn clock back staying operation of the order impugned to this writ application. So far as the hearing of the issue involved in the original application is concerned, we are afraid the same cannot be taken up by us at this stage in view of the principles of law settled by the Honâ??ble Apex Court in the matter of L. Chandrakumar vs. Union of India reported in AIR 1997 SC 1225 and the

relevant portion of the above decision is quoted below:

“99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude

the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the

Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same

extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of

the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may

perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution.

The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of

statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within

whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of

law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they

question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the

jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

Needless to point out that the subject matter involved in the original application is the validity of the action on the part of the petitioners to deprive the

respondent Nos.1 to 44 to participate in the second round of counselling in respect of their admissions in the postgraduate courses even after their

participation in the first round of counselling. That issue is yet to reach its finality so far as the original application is concerned. We are given to

understand that the next date of hearing of the above original application has already been fixed by the learned Tribunal on May 16, 2018, i.e. before

the last cut off date of getting admission of the selected candidates in the postgraduate courses.

We may make one observation with regard to the order impugned to this writ application that the above order was passed staying operation of the notice dated April 21, 2018 allowing admission of the respondent Nos.1 to 44 in postgraduate courses without obtaining sponsorship certificate subject to the final outcome of the original application. Therefore, the petitioners are at liberty to draw the attention of the learned Tribunal with regard to the above problem which may be faced by the petitioners in the event the issue involved in the original application does not reach its finality before the aforesaid cut off date of the admission. In the event the attention of the learned Tribunal is drawn towards the aforesaid fact, we direct the learned Tribunal to take a decision in this regard taking into consideration the urgency involved in the matter.

With the discussions and observations made hereinabove, this writ application stands disposed of without interfering with the order impugned to this writ application, since we are of the opinion that the issue involved in this writ application has become academic once after participation of the respondent Nos.1 to 44 in the counselling and their subsequent admission to the postgraduate courses without obtaining sponsorship from the petitioner authority in compliance of the order impugned to this writ application has been allowed, subject to outcome of the original application. There will be, however, no order as to costs. Photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the parties on usual undertakings.