
(2017) 05 CAL CK 0011
In the Calcutta High Court
Case No : 75 of 2017

The State of West Bengal & Anr.

APPELLANT

Vs

Dr.Arijit Roy & Ors.

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

Citation : (2017) 05 CAL CK 0011

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Joytosh Majumdar, Shamim ul Bari, Suddhasatva Banerjee, D.N. Maiti, Supratic Roy, D.N.Ray, Biswarup Nandy, Rajesh Kumar Shah, Arindam Mitra

Final Decision : Allowed

Judgement

1. The challenge in both these petitions is to the interim order passed by the West Bengal State Administrative Tribunal in O.A. 221 of 2017. The applicants before the Tribunal are all doctors engaged in the Health care facilities run by the State Government. They wished to pursue their Post Graduate courses under the West Bengal University of Health Sciences. They contended before the Tribunal that since they were eligible, they should be included in the list of candidates who could avail of the mandatory counselling prior to the commencement of the Post Graduate courses. They further contended that their names featured in the said merit list and, therefore, they were entitled to attend the counselling and were entitled to be sponsored by the State.

2. The Tribunal, on the basis of the contentions of the parties observed that the applicants, i.e. the respondent nos. 1 to 5 herein in both the writ petitions, should appear for off-line counselling, with the required duly filled in sponsorship form together with the requisite fees and such counselling availed of by the Respondents would have to abide by the decision in the original application.

3. Both the West Bengal University of Health Sciences and the State of West Bengal have filed these separate petitions challenging the interim order passed

by the Tribunal. The main contention of Mr. Banerjee, the learned counsel appearing for the West Bengal University of Health Sciences, is that the respondent nos. 1 to 5 in both the writ petitions have not qualified in the National Eligibility-cum- Entrance Test- Post Graduate (NEET-PG)-2017 and, therefore, they are not entitled to be present at the counselling. He submits that the eligibility criteria, inter alia, require a candidate to score 50 percentile and none of the respondents have acquired these qualifications. Relying on the provisions of the Indian Medical Council Act, 1956 and Information Bulletin for National Eligibility-cum-Entrance Test (NEET- PG) for 2017, Mr. Banerjee submits that it is only the Medical Council of India (in short, MCI) which can fix the eligibility criteria for counselling. As the respondent nos. 1 to 5 in both the writ petitions have not achieved that qualifying cut off score, they cannot be accepted for counselling.

4. The State of West Bengal and its officer, who are the petitioners in WPST 75 of 2017 and respondent no.6 in WPST 68 of 2017, has adopted the same arguments as those advanced on behalf of the West Bengal University of Health Sciences. The State has also contended that it does not have a separate merit list in which it can fix its own qualifying cut-off score. The State has adopted the cut- off score declared by the MCI in the all India ranking. Only those candidates, who are from the State of West Bengal and fulfil the necessary criteria of domicile and have graduated from the State institutes can be sent for counselling. It is pointed out that on 27th September, 2016 a public notice was issued clarifying all issues and therefore, the contention of respondent nos. 1 to 5 that since they figured in the State's merit list, they are entitled to be present for the counselling, is incorrect.

5. Mr. Bhattacharyya, the learned Counsel appearing for the MCI, points out that it is only the MCI, which can fix the criteria for qualification for the PG course and no other body. He submits that after the year 2000, the Post-Graduate Medical Education Regulations are in force and the procedure for selection of candidates for Post Graduate Courses is delineated in Regulation 9. According to Mr. Bhattacharyya, there can be no departure from these Regulations and once the eligibility criteria has been fixed, the States in India cannot have their own cut-off marks.

6. Mr. Roy, the learned Counsel appearing for respondent nos.1 to 5 in both the writ petitions submits that the States must have their own merit lists and they can decide their own cut- off marks. According to him, this is clear from provision 3(a) of the public notice dated 27th September, 2016. He then submits that since the Tribunal has permitted the respondent nos.1 to 5 to avail of the offline counselling without accruing any equity in their favour, no prejudice would be caused to the petitioners in both the writ petitions if the respondent nos.1 to 5 are permitted to do so.

7. The Tribunal, while passing the impugned order, has directed that the respondent nos.1 to 5 may avail of the off-line counselling, with the duly filled in

sponsorship form together with the requisite fees. We have been informed by the learned Counsel appearing for the respective petitioners as well as the MCI that there is no provision for off-line counselling. Furthermore, the sponsorship forms can be given only to those, who qualified in National Eligibility Cum Entrance Test (NEET) - PG, 2017 and not to anybody else. Therefore, the Tribunal's directions, in our opinion, cannot be sustained in the eye of law.

8. We have perused the material before us and it is evident that the NEET - PG examination has to be held in accordance with the Post-Graduate Medical Education Regulations, 2000.

9. Regulation 9 of the Post-Graduate Medical Education Regulations, 2000 provides for a single eligibility cum entrance examination namely "National Eligibility-cum-Entrance Test for admission to postgraduate medical courses" in each academic year. Such an examination cannot be conducted by different States and it is only a National Board for all India examinations which is competent to hold such examinations. Regulation 9(III) provides that in order to be eligible for admission to any postgraduate course in a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50 percentile in National Eligibility-cum-Entrance Test for post-graduate courses held for the particular academic year. This criterion is reduced for those candidates from the reserved categories. The percentile is determined on the basis of the highest marks secured in the All India common merit list in the National Eligibility-cum-Entrance Test for post-graduate courses in that particular year. The proviso to Regulation 9(III) stipulates that if there are insufficient number of candidates in the respective categories in the NEET ? PG held for any academic year who secure the minimum marks prescribed, the Central Government in consultation with the MCI may at its discretion lower the minimum marks required for admission to the Post-Graduate Courses for candidates belonging to respective categories and marks so lowered by the Central Government are applicable only for that academic year. Thus, it is evident that the State or the Health University of the State has no role to play, at all, in the admission to post-graduate medical education. Once, an All India National Eligibility cum Entrance Test (NEET- PG) merit list is drawn up, those candidates, who achieve the minimum percentile as set for that academic year and above, are eligible for counselling. The term "merit list" means a list of candidates who appeared for the examination in a particular academic year along with their marks obtained in the examination. The term "merit list" mentioned in the Regulations of 2000 does not mean only a list of candidates who have qualified and scored 50 percentile. It includes the names and the marks obtained by every candidate who appeared for the examination. Out of the All India merit list every State may draw up its own merit list, paying heed to and abiding by the same cut-off marks as mentioned in the All India merit list. The State merit list is to be drawn up only so that counselling of the candidates may be organized through the respective States. Candidates can be considered for admission to the State Quota Seats based on certain criteria like domicile of the candidate, the State/Institute of Graduation,

reservation status etc. Regulation 3 (c) of the public notice dated 27th September, 2016 makes it clear that even if a person qualifies in the NEET-PG for 2017 by securing the required marks, he/she is not entitled to a State Quota Seat unless he/she is eligible for the same.

10. Thus, in our view, the Tribunal has erred in permitting the persons, who have not qualified in the National Eligibility Cum Entrance Test (NEET- PG), 2017 by scoring a minimum of 50 percentile marks to avail of the off-line counselling. The impugned interim order is set aside. Both the writ petitions are allowed and disposed of accordingly.

11. Photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.