

**(2018) 11 CAL CK 0017**  
**In the Calcutta High Court**

**Case No :** Writ Petition No. 13937 (W) Of 2018

Washim Akram Hossain

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

**Date of Decision :** 20-11-2018

**Acts Referred:**

**Citation :** (2018) 11 CAL CK 0017

**Hon'ble Judges :** Arindam Sinha, J

**Bench :** Single Bench

**Advocate :** Subir Sanyal, Tanmay Mukherjee, Alauddin Mondal, Vipul Kundalia, Subhankar Chakraborty, Saptarshi Bhattacharya, Sougata Bhattacharya, Sunit Kumar, U. S. Menon, Abhirup Chakraborty, Supratic Roy, D. N. Maity, Chama Mookherji, Manika Pandit

## **Judgement**

Mr. Sanyal, learned advocate appears on behalf of petitioner and presses for hearing. He submits, facts in this writ petition are distinguishable from

those in pending Civil Appeal before Supreme Court in which judgment of Madras High Court stands impugned. In that case maximum marks per

erroneous question was directed by said High Court to be given to all examinees. In this case petitioner's grievance is that when under direction of

Supreme Court level playing field was created between examinees taking the test in English and Vernacular, errors of translation made the test unfair

as against his client who took it in Bengali. His client approached Court on 1st August, 2018. Interim order for keeping one seat vacant in a

Government College in current academic year was made on 21st August, 2018. This really is of no use to his client since he is being deprived of

benefit of attending classes by reason of pending litigation, which period is being extended on adjournments prayed for and obtained by respondents.

Mr. Sanyal submits, interim order be modified to also direct provisional admission, without accrual of any equity in favour of his client to continue attending classes on dismissal of this writ petition. This prayer for provisional admission is vehemently opposed by appearing respondents.

Mr. Menon, learned advocate appears on behalf of the Board and hands up communication received by him on 29th September, 2018 which says, inter alia, as follows:-

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3. Honâ??ble Court was also informed about the matter pending before the Honâ??ble High Court Kolkata on similar matter.

4. Honâ??ble Supreme Court of India informed that they are not going to interfere in the matter. Only for future they will take up the matter.

5. CBSE has been directed to submit affidavit to make the translation work more robust.

6. As next NEET will be conducted by National Testing Agency, hence, after discussion with them, CBSE will filed an affidavit informing about further strengthening of the translation work.

7. You may accordingly, request the Honâ??ble High Court to wait till the decision by Apex Court and based the the decision by the Honâ??ble

Supreme Court, Honâ??ble High Court may decide the matter.â??

Referring to order dated 11th October, 2018 made in this writ petition he submits, petitioner has clarification that in event ground for adjournment is

removed, at hearing petitioner will not be burdened by delay regarding entitlement to relief. Hence, as per his instructions he submits, his clientâ??s

prayer is for adjournment, for this Court to wait and decide this writ petition in terms of awaited judgment in Civil Appeal pending before Supreme

Court.

Mr. Roy, learned advocate appears on behalf of the University and on query from Court submits, he will take instructions regarding whether extra

classes can be specially provided to petitioner in event Court finds him entitled to relief.

Perusal of Mr. Menonâ??s instructions in extract reproduced above indicate that impugned judgment of Madras High Court is not likely to be

interfered with. Supreme Court will only give directions regarding procedure, to be made more robust in future for translating question papers by

examining authority. However, instructions also are that decision of Supreme Court be awaited for this writ petition to be decided in terms thereof,

pendency of which has been informed to Supreme Court.

Petitioner approached Court well within time. He has been consistently diligent and insisting for hearing his writ petition on merits. It is the respondents

who prayed for and obtained adjournments. Court in trying to preserve a situation for enabling petitioner to be restored thereto cannot prevent passage

of time eating into current academic year. Still, Court presumes the authorities have best interest of petitioner, being a candidate who is confident of

his merit, and is inclined to adjourn hearing. Court has already expressed intention of restoring petitioner to his claimed position if it is convinced about

his merit and to that end Court will hear submissions, if any, regarding extra classes being provided to him in what will be an exceptional case.

Mr. Menon submits, judgment of Supreme Court is expected any day. Let writ petition go out of list with liberty to parties to mention.