

(1976) 03 CAL CK 0030

Calcutta High Court

Case No: Matter No 128 of 1975

Sri Ranjan Kumar Saha

APPELLANT

Vs

Principal, Medical College,
Calcutta and others

RESPONDENT

Date of Decision: March 25, 1976

Acts Referred:

- West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 11, 3, 4, 5, 6

Citation: AIR 1976 Cal 63

Hon'ble Judges: Sabyasachi Mukharji, J

Bench: Single Bench

Advocate: S.C. Bhattacharjee, for the Appellant; Manotosh Mukherjee with S.K. Gharai, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sabyasachi Mukharji, J.

The petitioner in this application challenges the order or notice dated 1st of April, 1975, as well as the show cause notice issued prior thereto on 25th March, 1974. The case of the petitioner is that he belongs to the Suri Community of Scheduled Caste and, according to him, the said Community is recognised by the Government of West Bengal as a Scheduled Caste Community. The petitioner passed his Higher Secondary Examination from Belagachia Monohar Academy School, Calcutta, in the year 1973. Thereafter he applied for admission to the pre-medical Course in the Medical College of West Bengal on February 23, 1973. The petitioner was asked by the Selection Board to appear in the Joint Entrance Examination and he did appear in the said examination on May 9, 1973. On the 16th August, 1973, the result of the Joint Entrance examination was published and the petitioner got the required marks. On the 3rd November, 1973, the petitioner applied for admission to the pre-medical course and the petitioner was further required to deposit along with

this application form the residential certificate, school leaving certificate by the Headmaster of the School and the Scheduled Caste certificate. The petitioner claimed admission by virtue of being a member of the Scheduled Caste community. It may be mentioned, the medical education in India, specially in West Bengal, is difficult and there is great demand for such education. The State spends a considerable portion of public money on educating the medical students and like the other fields of higher education there is a tremendous demand for the opportunity for such education. This problem is accentuated by the problem of providing equal opportunities to the backward communities like Scheduled Castes and others. In order to regulate the said problem the West Bengal Medical and Dental Colleges (Regulation of Admission) Act, 1973, was introduced. The said Act was to ensure adequate medical education facilities in the districts and for the advancement of socially and educationally backward classes of citizens by regulating admission in the Medical and Dental Colleges in West Bengal and to provide for matters connected therewith or incidental thereto. The Act provides for a Central Selection Board and Section 3 enjoins how the constitution of the said Selection Board will be framed. Section 4 of the Act provides for the functions of the Board. Sub-section (3) of Section 4 after making certain provisions for admission provides: Out of the remaining seats, that is, after taking into account seats excluded under sub-section (2), 15 per cent, and 5 per cent, of the seats shall be reserved for candidates belonging to Scheduled Caste and Scheduled Tribes respectively of this State.

2. It is not necessary to deal with Section 5 of the Act for the purpose of this application.

3. Section 6 of the Act provides, in order that a candidate may be considered eligible for admission in any of the seats referred to in sub-section (6) of Section 5, he shall submit his application in such form, deposit such fees and comply with such other formalities as may be prescribed. Section 7 deals with the admission. Section 8 provides that the decision of the Central Selection Board in the matter of selection and allotment of candidates or in the preparation of the waiting lists shall be final. Section 11 authorises the State Government to make rules for carrying out the purposes of the Act, and, provides making of the rules regarding the form of application, amount of the fees and other formalities and other matters,

4. Pursuant to the said authority the rules have been framed. It appears that the form of application, as framed obliges the applicant and his guardian to give a declaration, in a statement contained in the said application form and to state that the same is true and correct. Then a form of the certificate is provided as to what kind of certificate has to be given in case of Scheduled Caste and after selection what intimation has to be given to the candidate concerned is also provided in the form. The intimation of selection is provisional.

5. The petitioner, as mentioned hereinbefore, obtained selection and he was provisionally selected as appears from the Intimation Card which is to the following effect:

INTIMATION CARD

No. CNMC/135

You have been provisionally selected for admission to the Pre-Medical Course for the session 1973-74 in the Calcutta National Medical College, subject to the following conditions:

(1) All original documents, viz., proof of age, Mark-sheet, certificate from Heads of Institution, certificate of residence, certificate of SC/ST, to be produced by you to the office of the Principal of the Medical/Dental College concerned, are found to be in order.

(2) That you are found physically fit on medical examination to be arranged by the Principal of the Medical College in which you have been provisionally selected.

You should contact the office of the Principal, Calcutta National Medical College with the above mentioned certificates not later than 29-12-1973 failing which your provisional selection will be cancelled without further reference to you,

Sd/- Illegible

Secretary,

Central Selection Board,

Medical College, Calcutta,

Calcutta-12.

Date:

On the reverse:

Sri Ranjan Kumar Saha,

374/F, D. K. D. Rly. Colony,

P. O. Belgachia,

Calcutta-37.

Thereafter, it appears that the petitioner joined the pre-Medical Course in the R. G. Kar Medical College where the pre-medical classes of the National Medical College were being held.

6. On or about the 27th of March, 1974, the petitioner received a Show Cause Notice to the following effect:

GOVERNMENT OF WEST BENGAL OFFICE OF THE PRINCIPAL, MEDICAL COLLEGE,
CALCUTTA.

No. SA/3616/2641/1

D/- 25-3-1974.

To,

Sri Ranjan Kr, Saha, s/o Sri Prabhat Kr. Saha, 374/F, D. K. D. Rly. Colony, Cal-37.

You have been provisionally selected for admission to the Pre-Medical Course in the Calcutta National Medical College, against a reserved seat for Scheduled Castes for the session 1973-74 on the strength of a Scheduled Castes certificate issued in your favour by the Deputy Secretary D. V. C. which has been submitted by you to this office with your Application Form. The Scheduled Castes and Tribes Welfare Department of this Government have, on enquiry, found that you do not belong to any Community of the Scheduled Castes of this State and your admission to the Pre-Medical Course against the seats reserved for Scheduled Castes and Scheduled Tribes on production by you of the said Scheduled Caste certificate, was not regular and it has therefore been decided that the following actions should be taken against you immediately:

- (1) Disciplinary action in the shape of cancellation of your provisional selection to the pre-medical course for the session 1973-74.
- (2) The Scheduled Caste certificate already issued to you be withdrawn immediately.
- (3) Financial benefit payable to Scheduled Castes and Tribes candidates granted to you, if any, should be recovered from you.

You are, therefore, directed to show cause positively within 4th April, 1974, why disciplinary action as stated above including cancellation of your selection will not be taken against you. You should note that in case no reply is received from you within the date fixed above, the decision of the Board will be final.

Sd/- B. Chakraborti.

23-3-1974.

(B. Chakraborti)

Principal, Medical College,

Calcutta and Chairman, Central Selection Board.

7. The petitioner showed cause by the letter dated 1st April, 1974, whereby the petitioner intimated that the petitioner had met the Regional Officer of the Directorate of the Scheduled Castes Welfare Department of the Government of West Bengal and the petitioner was asked to submit his school and college certificates

indicating that the petitioner belonged to the Scheduled Caste Community. The petitioner stated that in none of those certificates the petitioner's caste was mentioned and as such was unable to produce such certificates. The petitioner further informed the Principal, Medical College that apart from the certificate issued by the Deputy Secretary, Damodar Valley Corporation, he had no other documents to establish that he belonged to the Scheduled Caste community. The petitioner, therefore, requested the authorities to permit him to continue his studies.

8. Thereafter it appears that on the 14th February, an order was passed, which was produced before me, by the Chairman of the Central Selection Board and it was communicated to the petitioner. It appears further that the Deputy Secretary of the Damodar Valley Corporation was also informed. Thereafter the petitioner's name was struck off by the notice issued by the Principal, National Medical College, Calcutta. The petitioner is challenging the said show cause notice and the notice by the Principal, National Medical College, Calcutta on the 1st of April, 1975. The first challenge was that the Principal, Calcutta National Medical College was not the proper authority because the Central Selection Board was the proper authority for provisional selection for admission to the pre-Medical Course, according to the petitioner. The petitioner's contention is based on misapprehension about the order in question. It appears from the order produced before me being Order No. CSB/120 dated 14-2-1975 that the same was passed by the Chairman, Central Selection Board that the order was communicated to the petitioner. Counsel for the petitioner, however, in Court denied receipt of this order by his client. When I asked him if his client was present in Court to give him instruction about denial of this order, I was informed that his client was not present. Therefore, I cannot place any reliance upon this denial in Court of the order and the non-sanction by the Chairman, Central Selection Board. This denial appears to me to be a usual legal plea, taken without any factual basis, a phenomenon which has lamentably increased lately. Therefore, not only the first point that the Principal, National Medical College, Calcutta was not the authority was irrelevant but the position is that the petitioner having not challenged the impugned order passed by the Chairman, Central Selection Board, cannot challenge the consequential communication by the Principal, National Medical College, Calcutta. The impugned challenge is with regard to the communication of the order which has been passed by the Chairman of the Central Selection Board.

9. The second ground of challenge was that there was no provision in the Act to make provisional selection. The petitioner's selection was provisional. The petitioner got admission on the basis of the rules framed under the authority of the Act. The term "provisional selection", as a matter of fact, had to be introduced because it takes time to scrutinize the application. The education of all the students could not be held up on that score. Therefore, in this case when the petitioner got himself admitted on the basis that his admission was provisional in my opinion, the petitioner cannot challenge on the ground that there was no scope of provisional

admission. Provisional selection was permissible under the rules.

10. The next ground of challenge was that the petitioner did not have reasonable opportunity and natural justice was violated. There was no question of violation of natural justice. The petitioner was given a show cause notice after an enquiry being made by the Scheduled Castes and Tribes Welfare Department of the Government of West Bengal.

Counsel on behalf of the petitioner criticised the show cause notice by stating that the show cause notice was an empty formality. I am unable to accept this contention. What was meant by the impugned show cause notice was that the petitioner was informed about the offence of the petitioner charged against him and was given an opportunity to show cause why the consequence of imposing disciplinary proceeding should not be followed. I do not find any defect in the show cause notice. If the petitioner belongs to the Baishya community which is not considered to be the Scheduled Caste in West Bengal, and that was found on enquiry it had to be intimated to the petitioner. Therefore, the admission of the petitioner obtained was on a wrong basis, and the admission for selection to the Pre-Medical Course being provisional, in my opinion, the authorities have jurisdiction to cancel the selection.

11. Counsel for the petitioner then contended that after the show cause notice the petitioner was allowed to join the pre-medical classes of the National Medical College, Calcutta. Therefore the respondents were estopped from taking any action against the petitioner. I am unable to accept this contention. If the petitioner's admission was on a wrong basis, the petitioner does not acquire any right by attending any classes. There was no period of limitation as such provided in the Act during which action against the petitioner had to be taken. Admission itself was provisional. There cannot be any estoppel against respondents in the facts of this case. Reliance was placed on a decision in the case of [Shri Krishnan Vs. The Kurukshetra University, Kurukshetra](#). There the appellant, a Government servant, was pursuing the course of LL. B. as an evening student. He failed in three subjects at the Part I examination but was promoted to Part II with option to clear those subjects. He was refused permission for Part II examination which was ultimately given on his giving an undertaking to secure his employer's permission. After the examination he demanded that his results be declared as the permission was not necessary. He was informed that since his percentage in Part I was short his candidature stood cancelled and his petition to the High Court was dismissed. The Supreme Court held that the University authorities having had acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in the examination, then by force of the University statute the University had no power to withdraw the candidature of the appellant. The Supreme Court, however, clearly observed that this was not a case where the admission was given on a provisional basis. Therefore the Supreme Court decision would not apply if the

admission was provisional as in this case.

12. In the aforesaid view of the matter, the contentions urged in support of this application must fail.

13. Before I conclude, I must observe that this case has caused me some anxiety. Even though the petitioner might have got admission by making a statement which turns out to be incorrect that is to say, he belonged to a Scheduled Caste, while did not do so, the position is that he has advanced some years in his medical studies. If his studies are now stopped, his own carrier will be seriously hampered which is a punishment he might well deserve but at the same time nobody else would be benefited because nobody else can be given the seat which he has occupied so long. If it was possible to allot the seat to another Scheduled Caste or a reserved candidate, perhaps then the punishment upon him would have been well deserved. But punishing the petitioner would not help the Scheduled Caste community, would cause waste of public money spent so far on the medical education of the petitioner. Therefore in a case like this though the action of the Central Selection Board cannot be considered to be bad, in view of the facts and circumstances of this case I should think if the petitioner makes an application to the appropriate authority for permitting him to continue his studies the authorities would do well to consider that application favourably.

With these observations the Rule is discharged. The interim order is vacated. There will be no order as to costs.