

Jui Chatterjee Vs State of West Bengal & Ors.

Court: Calcutta High Court

Date of Decision: Aug. 30, 2018

Hon'ble Judges: ARINDAM SINHA, J

Bench: Single Bench

Advocate: Biswaroop Bhattacharya, Reshmi Ghosh, Supratic Roy, Sougata Bhattacharya, Sunit Kumar Roy, Tapan Kumar Mukherjee, hamim-ul-Bari

Judgement

Petitioner is a candidate who opted for and got allotment of a Bachelor of Dental Science (BDS) seat in Kusum Devi Sunderlal Dugar Jain Dental

College & Hospital. This happened in manual round of counselling following two rounds of on-line counselling. In this context averments in paragraph

25 of the writ petition is reproduced below:-

“25. The petitioner submits that the petitioner was more desirous of getting a seat in the MBBS College over the BDS and had such opportunity

being extended to her considering her present rank, she shall be getting admission in any MBBS college under manual counseling.”

Mr. Bhattacharya, learned advocate appearing on behalf of petitioner is clear in his submission, his client wants to study MBBS course. Having

secured merit position in NEET UG “2018, she participated in two rounds of on-line counselling and manual counselling where no seat for

undertaking course study in MBBS degree was offered to her. At this stage she was offered BDS seat and she opted for it. As required she

deposited fees in advance as well as her documents and executed bond undertaking to pay the college balance fees for entire academic period of

course study in BDS. He refers to information published by West Bengal University of Health Sciences (WBUHS) regarding NEET “2018 Rules

for Manual Counselling as conducted by the University.

This information was uploaded in the server on 28th August, 2018 at 10:24:56 IST. Mr. Bhattacharya demonstrates from page 56, being the

information disclosed, by analysis, his client was not rendered ineligible thereby. He submits, when this writ petition was sought to be moved but could

not be moved, by reason of paucity of time, he had made this submission of his client being eligible for this manual counselling. He submits, this is

second round of manual counselling pursuant to order dated 9th May, 2017 of Supreme Court in Writ Petition (Civil) 267 of 2017 (Dar-US-Slam

Educational Trust and Ors. versus Medical Council of India and Ors.).

He hands up more information published by the University under the same heading and cause of the second round of manual counselling pursuant to

said order by Supreme Court. This information was uploaded by the University at server time 15:56:56 IST. He demonstrates there is additional

information specifically directed against his client as was not there in earlier information published. This additional information as appearing from print

downloaded and disclosed is reproduced below:

“ 4. Students holding BDS seats are not eligible for MBBS college round, they will be eligible for further BDS round. List has been updated

accordingly. (List-of-Eligible-Candidates-College-Round. Pdf.)

Particulars of students ineligible to participate in this round of counselling have been given to include his client. He submits, the University has tried to

overreach Court. This is because his client is higher in merit rank than students enlisted in this round of counseling, to be allotted MBBS seat, of which

no seat was offered to his client.

Mr. Roy, learned advocate appears on behalf of the University. He refers to earlier information published in on-line West Bengal State Quota and

Private Management Quota UG Medical and Dental Counselling Process-2018. There is no dispute this information was uploaded prior to

commencement of counselling process. He relies on print downloaded and disclosed at page 37 to that which is reproduced below:-

“Reporting at allotted institute, by each candidate, after each round of allotment, is mandatory, otherwise the candidate shall forfeit the allotted seat

and would not be allowed to participate in further rounds of counselling.”

He submits, petitioner has complied with the mandate. She upon exercising option was allotted BDS seat. She has reported after which she is to

continue course study in the college where she has taken admission. If she did not report then too she would not be allowed to participate in this

present round of manual counselling to fill up stray vacancies. On query from Court regarding what is stray vacancy he submits, the vacancies that

are now sought to be filled up before cut-off date are, per his instructions, vacancies arisen on surrender. On further query from Court he submits,

these vacancies were not available at the time of manual counselling undertaken earlier where petitioner exercised option.

These vacancies have arisen after earlier round of manual counselling was over and tentative figure of 64 vacant seats in MBBS course is on offer.

On yet further query from Court he submits, petitioner opted on 21st August, 2018 and list of eligible candidates for present round of manual

counselling was published on 25th August, 2018. He has no submission to make regarding cause for omission of additional information that compelled

publication of it.

From perusal of materials on record and considering submissions made at the Bar this Court finds petitioner was eligible for this present round of

counselling to be held, as not rendered ineligible by information uploaded by the University as on 28th August, 2018 at 10:24:56 IST. As of now she is

ineligible per said additional information uploaded by the University. Court has also not been given a satisfactory answer regarding what is a stray

vacancy. Paragraph 7 in Dar-US-Slam Educational Trust (supra) having been placed and submissions made, it is necessary to reproduce the same.

“In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the

State Government shall conduct manual counselling for allotment of students. After the completion counselling, the State Government shall determine

the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant

seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.

Court’s attempt at interpreting this term “stray vacancy” is, it is a vacancy that was not filled up till before this round of counselling to be

undertaken for filling up the same. It may or may not include vacancy on surrender. Submission at this stage has also been made on behalf of the

University that there were some vacant management seats till the time petitioner exercised option. Further submission is, in all probability petitioner

declined to opt for management seat since costs for undertaking course study in private colleges is prohibitive. Mr. Bhattacharya disputes this

submission to submit, cost component in BDS seat in college where his client has taken admission (a private college) is not so low for it to be said

MBBS course study in a private college cannot be afforded by petitioner.

Service has not been made on the College and dispensation of requirement under Rule 26 of Writ Rules prayed for. The requirement is dispensed

with. In the facts and circumstances discussed above this Court is inclined to grant interim order directing the University to allow petitioner to

participate in this counselling. It goes without saying her participation if results in an offer of seat to her will be on basis of merit. In the event

petitioner gets allotment of seat she might take admission complying with process required in counselling. In that event she has to fulfill her obligations

regarding surrender of her seat in the College where she has already taken admission.

The College is directed to act expediently upon petitioner's request for surrender of seat and release her documents to enable her to take

admission if she gets admission to MBBS course. This Court on query has ascertained that BDS seat presently occupied by petitioner should not go

vacant since cut-off date of admission to BDS course is 4th September, 2018. Petitioner might plead mitigation regarding her obligations, to her

present college, for consideration. The college will consider her plea if it is made before 4th September, 2018 and it is able to have the surrendered

seat allotted to some other candidate. Copy of this order and writ petition is to be served on the College and affidavit of service be filed.