
(1980) 09 CAL CK 0043

Calcutta High Court

Case No: Writ Application No. Nil

Dr. Dhiman Kahali

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Sept. 25, 1980

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1981 Cal 1

Hon'ble Judges: B.C. Ray, J

Bench: Single Bench

Advocate: S.B. Bhunia and A.K. Maity, for the Appellant; N. Roy and S. Parmar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.C. Ray, J.

In this writ application the subject matter of challenge is the refusal on the part of the Respondents to Include the petitioners

name in the list of successful candidates for admission to M.D. Course in Medicine to commence in 1980. The petitioner's grievance, in short, is

that he applied for admission in this discipline pursuant to the admission rules framed by the Calcutta University Council inviting applications from

qualified candidates who desire to seek admission in various disciplines in M.D. Course, Undoubtedly, the petitioner sat for the written test and

obtained 41 1/2 marks in the written test. It is not disputed that he secured 9 1/2 marks on assessment of his merit Thus total marks secured by the

petitioner are 51. The only grievance of the petitioner is that he secured two medals; one college silver medal in Ophthalmology (1977) standing

first among all students of the College which is equivalent college gold medal, This merit, it has been stated, has been awarded for securing the

highest marks in related subject and due to paucity of fund the gold medal could not be awarded: hence silver medal was awarded in its place. It

has been stated that he secured Prosanna Kumar Lahiri gold medal on the result of the Final M.B.B.S. examination held in 1977. This gold medal

was awarded by the Calcutta University. His claim is that in accordance with the rules framed by the admission Board and subsequently approved

by the Calcutta University Council as referred to in Annexure 'B' to the petition he is entitled to get five marks for having secured the above-

mentioned two awards in view of the rules provided in Academic Merit Assessment which runs as follows:

1. (a) College Career --- 7 marks

Gold Medal --- 3 marks

Silver Medal --- 2 marks

Assistantship-Certificate of Honours --- 1 mark

(b) University awards (1) 1st stand in the --- 5 marks

subject of choice-3, N. B. In the subjects for

which there are no separate examinations in

M.B.B.S. performance in allied subject will

be considered.

2. Other prizes --- 2 marks

According to the petitioner, he has been wrongly deprived from being given five marks specified for securing scholarship, that is, gold medal and

silver medal in accordance with the rules framed by the admission Board and approved by the Calcutta University Council. As against this in

paragraph 3 (e) of the Affidavit-in-Opposition sworn by Dr. Ajit Kumar Dutta, the respondent No. 4, that is, Secretary, Council for Post-graduate

Studies in 'Medicine in Calcutta University stated, inter alia, that the petitioner secured 4l 1/2 marks in the written test and on the basis of the past

career mark assessment he was awarded 9 1/2 marks, thus his total marks came to 51. The twenty candidates who were selected obtained 52

marks in total. It is further averred in paragraph 4 (i) of the said affidavit that the petitioner is not entitled to the benefit of college silver medal for

standing first which he obtained in his Pharmacology examination in 1975, as he made a choice for admission to M.D. General Medicine and not in

M.D. Pharmacology for which four seats are provided as will appear from Annexure 'B' to the petition. In sub-paragraph (ii) of the said paragraph

it has been averred that the petitioner is also not entitled to have the benefit of his college career silver medal in Ophthalmology (1077) as his

subject of choice was General Medicine and not M.S. Course in Ophthalmology.

2. In support of this averment the learned Advocate, Mr. Roy, has drawn my attention to Annexure 'B', that is, the proceedings of the meeting of

Post-graduate admission Board held on 22nd July, 1980. Paragraph 9, Clause (iii) runs as follows :

Resolved further marks on awards/ prizes, of College/University be given in subject of choice/alliance"". This proceeding was approved by the

Chairman as late as on 6th August, 1980. It is curious to know in this connection that from this very proceeding it appears that the results of the

admission test have been assessed after consideration by the members of the admission Board and results have been adopted about the selection

of candidates in some of the disciplines in M.D. Course.

3. The question for consideration is whether the rules framed by the University or by the Council do specify that the marks for obtaining gold medal

and silver medal in the college career of an applicant should be given only if he has secured those medals in the subjects of his choice. On a plain

reading of the rules and also on a plain construction of the words or in other words the terminology expressed in Clause A, it has not referred to

any such conditions as tried to be contended in the above paragraphs of the affidavit-in-opposition. The note appended below Clause B, in my

view, only qualifies so far as the assessment of marks with regard to University awards; it does not refer nor its meaning can be stretched to apply

to marks as yardstick for college career in item No, A of the said career merit assessment. This will be more clear on a reference to Annexure B,

that is, proceedings of the meeting held on 22nd July, 1980 of the Post-graduate admission Board. If the members of the admission Board were clear and certain in their mind that the note applies equally to A and B then they would not have taken the responsibility of considering this matter and providing for the same in a resolution which was passed as late as on 8th August, 1980, when already applications for admission had been considered and assessed on merits on the basis of the then existing rules and undoubtedly this resolution purporting to change, vary or modify rules on the basis of which the applications were invited from intending candidates was not there at the relevant time.

4. This being the position, in my opinion, there is no doubt that this note was not applicable while assessing merit in awarding marks on the basis of the college career for obtaining gold medal and silver medal and as such the petitioner is certainly entitled to get those five marks. Therefore, if these five marks are taken into consideration, the total marks obtained by the petitioner will come to 56, that is, his marks will exceed the marks obtained by 20th candidate viz., S. Mukherjee who secured only 52 marks and therefore the petitioner is entitled to get admission for this discipline viz., M.D. Course in General Medicine.

5. An argument has been advanced on behalf of University by Mr. Roy, the learned Advocate, that if the note is held to be not applicable to the candidates who have obtained gold and silver medals then the opportunity be given to the admission Board to review the entire matter. It is not for this Court to give honorary advice to the admission Board as to what they will do. It is for the writ Court only to consider and decide whether the statutory authority has discharged its duties and obligations in accordance with the rules or in other words in accordance with the standard which they have laid down for admission into different courses of M.D. In my view, I am supported by the pronouncement of the Supreme Court reported in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, where it has been held in a very clear language which is as follows:

It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its action to

be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them"".

The same view has been reiterated in a later decision of the Supreme Court in Rajamalliah and Another Vs. Anil Kishore and Others, .

6. For the reasons aforesaid, I deem it fit and proper to dispose of this application with this direction that a writ of Mandamus be issued

commanding the Respondents to open an additional seat to provide admission to the petitioner in M.D. Course (General Medicine) for the current

year. The application is thus disposed of without any order as to costs. A signed copy of the order be handed over to both the learned Advocates.