

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No. 7 of 2022

Date of order: 25.03.2022

North Eastern Indira Gandhi
Regional Institution of Health
and Medical Sciences & Anr.

vs.

Bisakha Goenka

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Dr. N. Mozika, Sr. Adv. with
Ms. S. Rumthao, Adv.

For the Respondent(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Ms. P. Biswakarma, Adv.

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The challenge here is to an order of March 15, 2022 by which the respondent writ petitioner has been permitted to participate in the counselling process for obtaining admission to the MBBS course at the North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences (NEIGRIHMS).

2. The facts are not in dispute. The writ court noticed the case to be that the writ petitioner was not aware that she had been forwarded the link for e-counselling as the same did not appear in the regular inbox of her e-mail. However, after the initial round of e-counselling was held, the writ petitioner discovered that the link sent by NEIGRIHMS via mail had lodged in her spam mail instead of showing up in the inbox.

3. It appears that the petitioner did not participate in the initial counselling and was duly marked as absent. Upon such initial e-counselling, 14 of the 18 seats reserved for the relevant category to which the writ petitioner belongs were filled up and a notice was issued for further e-counselling to be held on March 7, 2022 for the remaining four seats in the category.

4. It was at this stage that the writ petitioner approached the Court. The impugned order records that on March 9, 2022, the writ court had directed that the case be kept on hold to await the final acceptance of the seats for which the candidates would have to indicate their preference by March 11, 2022. On March 14, 2022 when the matter was taken up again, the writ petitioner filed an affidavit stating therein that the fourth of the

remaining four candidates, one Arkajyoti Debnath, did not report for the e-counselling as he had already secured admission elsewhere.

5. An affidavit was filed on behalf of the appellants herein which, according to the writ court, did not “dispute the fact that one seat is still vacant.” It is in such circumstances that the writ court, upon being satisfied that the writ petitioner had been prevented by sufficient cause from tendering her candidature at the initial e-counselling, directed that the appellants herein shall facilitate counselling for the writ petitioner within a week from the date of the order, upon notice to the writ petitioner. The appellants were, thereafter, directed to take into consideration the merit of the writ petitioner and complete the process of selection for the fourth seat expeditiously, keeping in mind that the session had already commenced.

6. The principal ground urged by the appellants is that there is no dispute that the appellants had forwarded the information in time to the writ petitioner and it is the petitioner’s case that the mail sent by the appellants had gone to her spam mail folder. The appellants submit that the writ petitioner ought to have been vigilant as the writ petitioner could have got the information otherwise from the first appellant’s website as

to the date of initial e-counselling. The appellants say that when the candidate was careless and had missed the bus, other candidates in whom a right may have vested to participate in the process of obtaining a seat, could not have been prejudiced.

7. Ordinarily, when there is no mistake on the part of an authority to do a thing that it was required to do, the indulgence shown to the writ petitioner as in this case may not have been warranted. However, as it transpires, the last of the four remaining candidates did not opt for the final seat in the reserved category at NEIGRIHMS. There is no doubt that the wait-listed candidates would, thereupon, be offered a chance to apply for and obtain such seat. However, in such scenario no right vested in the wait-listed candidates. In the peculiar facts of the case, the writ court exercised its discretion, particularly since no right had vested in any other, to allow the writ petitioner to be offered an opportunity to participate in a further process of counselling.

8. In an intra-court appeal, the element of interference with the discretion exercised is much more restricted than when appellate authority is exercised over orders emanating from the district judiciary. There was an element of discretion available to the writ court, considering

the peculiar facts of this case; and, though the fundamental principle that ought to have guided the writ court was that upon a default being committed by a candidate, whatever be the circumstances, the consequences of the default must rest with the candidate, since the last placed candidate among the remaining four in this case, quite fortuitously, did not accept the seat, a window opened up for the writ petitioner which has been offered by the writ court in exercise of its discretion. In the circumstances in which the discretion has been exercised, it cannot be said to be perverse. As such, the order impugned does not call for any interference.

9. The grounds urged by the appellants that a right had vested in the wait-listed candidates, does not hold much water. A right inheres in a wait-listed candidate for his candidature to be considered, upon the original list not being filled up or one or more from the original list opting out. In this case, when it was fairly obvious that if the writ petitioner had merely attended the e-counselling, she would have obtained the seat, and there is no reason to believe that the writ petitioner would have deliberately acted to her detriment, the window that opened up fortuitously permitted the exercise of the discretion by the writ court.

However, though it does not appear that any right vested in any wait-listed candidate that has been prejudiced as a result of the impugned order, if any of them lodges a challenge and succeeds, the consequences have to be borne by the writ petitioner. To such extent, the writ petitioner's admission, if at all, will be provisional for a period of six months from date.

10. WA No. 7 of 2022 is disposed of on the above basis.

11. There will be no order as to costs.

(W. Diengdoh)
Judge



HIGH COURT OF MEGHALAYA

(Sanjib Banerjee)
Chief Justice

Meghalaya
25.03.2022
"Sylvana PS"