



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.09.

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.A.No.28 of 2015

Selvi Nivetha B.

... Appellant

Vs.

- 1 The Vice Chancellor
Tamil Nadu Dr. M.G.R. Medical University
69 Anna Salai Guindy Chennai-32.
- 2 The Governing Council
Tamil Nadu Dr. M.G.R. Medical University
69 Anna Salai Guindy Chennai-32.
- 3 The Chairman
Standing Academic Board
Tamil Nadu Dr. M.G.R. Medical University
69 Anna Salai Guindy Chennai-32.
- 4 The Dean
Government Thoothukudi Medical College
Thoothukudi.
- 5 The Chairman
Medical Council of India
Sector-8 Pocket-14 Dwarka,
New Delhi-110077
- 6 The Director of Medical Education,
Chennai.

... Respondents

[R5 impleaded as party respondent vide order of court dt.5/8/2015 in M.P.No.2 of 2015.

R6 suo motu impleaded vide order of court dt.21/9/2015 made in W.A.No.28 of 2015 and M.P.No.1 of 2015]

Prayer: This Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the judgment made in WP 18623/2014 dated 05.11.2014 and allow the writ petition as prayed for. Petition under Article 226 of the Constitution of India for the issuance of a Writ



of Mandamus directing the respondents 1 to 3 herein to grant exemption to the attendance prescribed by Regulation for academic year 2013-2014 to the writ petitioner to write 1st year MBBS University academic examinations to be held in August 2014 along with other students at the 4th respondent college invoking the provisions of Sec.36(2) of the Tamil Nadu Dr. M.G.R. Medical University Act 1987.

For Appellant : Mr.T.P.Kathiravan
For Respondents : Mr.Sanjay Ramasamy (for R1 to R3)
Mr.P.H.Arvind Pandian, AAG,
Assisted by Mr.K.Karthikeyan
Government Advocate (for R4)
Mr.V.P.Raman (for R5)

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this Writ Appeal is to the order made in W.P.No.18623 of 2014 dated 05.11.2014, by which, the writ court has refused to grant a mandamus directing the respondents 1 to 3 herein to grant exemption to the attendance prescribed by the Regulation, for the Academic Year 2013-2014, to the writ petitioner/appellant to write the 1st year MBBS Examinations conducted in the year August 2014, in Government Thoothukudi Medical College, Thoothukudi, by invoking Section 36(2) of the Tamil Nadu Dr.M..G.R. Medical University Act, 1987.

2. Material on record discloses that earlier, when the Government published a notification for selection of eligible candidates for the 1st year MBBS Course, for the Academic Year 2013-14, Throwball Federation of India, one of the recognised bodies by the Ministry of Youth Affairs & Sports Government of India & Indian Olympic Association, was included in the notification 2013-14. But on the premise that recognition by the Ministry of Youth Affairs & Sports Government of India & Indian Olympic Association, was withdrawn, the Selection Committee, did not consider the candidature of the writ petitioner/appellant, which constrained her to prefer W.P.No.16866 of 2013, for a writ of certiorarified mandamus, calling for the records relating to the selection list dated 16.06.2013, for sports quota issued by the Chairman, Anna University, Sports Board, Chennai, the 1st respondent therein and to quash the same. Consequently, the writ petitioner/appellant, has prayed for a direction to the Chairman, Anna University, Sports Board, to include her in the selected list of candidates, for sports quota, admission for the Academic Year 2013-14, taking into consideration the points awarded for National Level participation in Throw Ball, for the last year.



3. After adjudication, a learned Single Judge of this Court vide order dated 09.07.2013 in W.P.No.16866 of 2013, has directed the Chairman, Anna University, Sports Board, Guindy, 1st respondent therein to receive the certificates produced by the writ petitioner/appellant in the typed set of papers filed therein and more particularly, certificates issued by the Throwball Federation of India for her participation in the 21st Junior National Throwball Championship, 2010, and to consider her claim for admission, against the seats reserved for eminent sports persons.

4. The learned Single Judge has further directed the respondents therein to call the petitioner for the next counselling for admission to the MBBS Course, under the sports category, on the basis of the certificates produced by her, and in the light of the observations made in the writ petition. Thus, the learned Single Judge, allowed the writ petition.

5. Being aggrieved by the decision of the learned Single Judge, directing verification of the certificate only upto the year 2010, writ petitioner has filed W.A.No.1775 of 2013, praying for a direction that the Certificate of participation at the National Level Throwball Tournaments upto 2011 be taken into consideration, for the purpose of considering her candidature against the seats earmarked for eminent persons under sports quota. The Hon'ble Division Bench, vide order dated 19.11.2013, at paragraph No.10, disposed of the appeal as hereunder.

"In the result, the writ appeal is disposed of with a direction to the respondents to consider the certificate which is available at page no.10 of the typed set of documents along with the certificates already considered by them for selection and admission of the petitioner to MBBS under Sports Quota for the academic year 2013-2014, subject to the fulfillment of other eligibility criteria and the said exercise is to be done within a period of four weeks from the date of receipt of a copy of this order."

6. While doing so, the Hon'ble Division Bench, has made it clear that the time limit prescribed by the Hon'ble Supreme Court of India, need not be put against the writ petitioner/appellant.

7. Despite the directions granted by the Hon'ble Division Bench as early as on 19.11.2013, with a further direction that the time limit prescribed by the Hon'ble Supreme Court of India, need not be put against the writ petitioner/appellant, the directions were not complied with and thereby, the writ petitioner/appellant was constrained to file Contempt Application No.595 of 2014.



WEB COPY

8. After taking notice in the Contempt Application, the Secretary, Selection Committee, Directorate of Medical Education, Chennai, has issued an allotment order dated 03.03.2014, to the writ petitioner/appellant, for admission to the 1st year MBBS Course for the Academic Year 2013-14.

9. One of the reasons assigned by the Director of Medical Education (OSD), Selection Committee, Chennai, for the delay, is that based on the orders of the Hon'ble Division Bench in W.A.No.1775 of 2013 dated 19.11.2013, Common Committee of the Anna University sent a revised rank list for MBBS/BDS for the year 2013-14 and as per the revised rank list, the writ petitioner/appellant, became eligible for admission to MBBS Course under Sports Quota for the Academic Year 2013-14 and as no seat was available under Sports category, the Government was addressed vide Office Ref.No.243/SCS1(2)/2014 dated 26.12.2013, for necessary action and thereafter, the Government has informed that one seat at Thoothukudi Medical College, Thoothukudi, fell vacant, a further reminder was sent to the Government on 24.02.2014 and after all these exercise, the Government in their letter No.43372/MCA-2/2013-4, dated 28.02.2014, issued directions to the Directorate of Medical Education (OSD), Secretary, Selection Committee, Chennai to provide a seat to the writ petitioner/appellant, which was done on 03.03.2014. Thus, on the abovesaid lines, the Director of Medical Education (OSD), has filed a counter affidavit to the contempt petition. Thereafter, the contempt application has been closed.

10. When the Tamilnadu Dr.MGR Medical University, proposed to conduct the 1st year University Examinations for theory and practical, in 2014, petitioner was not permitted to take up the examinations, on the ground of lack of attendance. Therefore, she has started her second round of litigation in W.P.No.18623 of 2015 for a mandamus directing the respondents 1 to 3 therein to grant exemption of attendance to take up the 1st year examination by invoking the provisions of Section 36(2) of the Tamil Nadu Dr.MGR Medical University Act, 1987.

11. In M.P.No.1 of 2014 in W.P.No.18623 of 2014, the writ petitioner/appellant has prayed for an interim direction to the respondents 1 to 3 therein, to issue hall ticket and permit her to take up 1st year MBBS examination alongwith other students for the Academic Year 2013-14. Taking into consideration the judgment made in W.A.No.1775 of 2013 dated 19.11.2013 rendered by the Hon'ble Division Bench in the earlier round of litigation and of the fact that the admission of the petitioner/appellant to the Course was only after moving the contempt Application in Cont. Appln. No.595 of 2014 and having regard to the averments made in the supporting affidavit that the writ petitioner/appellant had attended the model examinations conducted by the Department and was fully prepared to take up the 1st year examinations to be conducted in August 2014 and also of the fact that the examination fee had been collected from her, a learned



Single Judge by order dated 25.07.2014 in M.P.No.1 of 2014 in WP No.18623 of 2014 has permitted the petitioner to take up the aforesaid examinations. But, directed that the results not to be declared until further orders.

WEB COPY

12. From the material on record, it could be deduced that results of other 1st year MBBS students for the Academic Year 2013-14, were announced by the University on 11.10.2014. Owing to the direction of this Court in M.P.No.1 of 2014, in W.P.No.18623 of 2014, results of the writ petitioner/appellant, were not published. Thereafter, she had taken out M.P.No.3 of 2014, for a direction to the respondents therein, to receive the examination fees from the petitioner to write the supplementary examination from 06.11.2014 for the 1st year MBBS Course.

13. It is the submission of Mr.T.P.Kathiravan, learned counsel for the writ petitioner/appellant that at one stage, when one of the learned Judges, who heard the Miscellaneous Petitions, was about to direct the respondents for publication of results and at that juncture, adjournment was taken by the junior counsel attached to the office of the learned counsel for the University and thereafter, the matter was not listed. Material on record discloses that after nearly an year, W.P.No.18623 of 2014 has been finally disposed of on 05.11.2014.

14. Though, having regard to the plight of the writ petitioner/appellant, the learned Single Judge, who finally disposed of W.P.No.18623/14, has started the judgment with the following sentence that 'this is a very unfortunate case of a girl student admitted to first year of the MBBS Course in the Government Tuticorin Medical College, by virtue of the orders of this Court, after five months of commencement of the curriculum', and in the later portion of the judgment, has also observed that the petitioner was not at fault and it was only the respondents who had faulted in granting belated admission, declined to grant the relief sought for in the writ petition on the grounds that two faults cannot lead to another fault and allowing a person to complete the course despite lack of attendance, solely on the ground that the University was at fault, the Court will only be allowing a half baked person to come out of a medicine course.

15. From the material on record and the observations of the learned single Judge, it could be deduced that it was the respondents, who have committed a mistake in not considering the candidature of the writ petitioner/appellant and that she was constrained to file W.P.No.16866 of 2013, for appropriate relief and thereafter, to pursue the same, by way of an appeal. Writ Appeal was disposed of in the year 2013. Government has taken four months time for issuing an allotment order for admission. The student has joined



16. According to Dr.B.Santhakumar, Dean of Government Thoothukudi Medical College & Hospital, present in Court, if the attendance is calculated from 06.03.2014 in all the three subjects viz., Anatomy, Physiology and Bio-Chemistry, including Theory and Practical, then the attendance of the student would be above 90%.

18. On the observation that the writ petitioner/appellant was not at fault and that the respondents were at fault, there is no appeal by the official respondents. Ultimately, at the end of the judgment, the learned Single Judge has observed that the grievance of the writ petitioner/appellant could be redressed by directing the respondents therein to allow her to complete the required number of classes and thereafter, to take up the examinations and at the most, the University can be penalised for their mistake and some compensation can be awarded to the petitioner.

20. Mr.P.H.Arvind Pandian, learned Additional Advocate General, Government of Tamilnadu, further submitted that supplementary examinations for the 1st year MBBS students 2013-14 batch, would be conducted in November 2015. He also submitted that the issue relating to lack of attendance for taking up the 1st year supplementary



examinations, if required to be taken up by the writ petitioner/appellant, will not be resurrected, once again. In view of the statement made by the learned Additional Advocate General, Government of Tamilnadu, both on behalf of the Directorate of Medical Education, Chennai, as well as Tamilnadu Dr.MGR Medical University. Submission of the learned Additional Advocate General is placed on record.

21. In the light of the above discussion and recording the submission of the learned Additional Advocate General, the Tamilnadu Dr.MGR Medical University, respondents 1 to 3, are directed to publish the results of the writ petitioner /appellant for the 1st year examinations for the Academic Year 2013-14, within two days from the date of receipt of a copy of this order. The petitioner/appellant be permitted to take up the supplementary examination in November' 2015, if required, without going into the issue of attendance.

22. Dean, Government Thoothukudi Medical College, Thoothukudi and Director of Medical Examination, Chennai, respondents 4 and 6 respectively, shall make necessary arrangements for compliance of the directions issued stated supra.

23. In the result, the Writ Appeal is disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

ars/skm

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1 The Vice Chancellor
Tamil Nadu Dr. M.G.R. Medical University
69 Anna Salai Guindy Chennai-32.
- 2 The Governing Council
Tamil Nadu Dr. M.G.R. Medical University
69 Anna Salai Guindy Chennai-32.
- 3 The Chairman
Standing Academic Board
Tamil Nadu Dr. M.G.R. Medical University
69 Anna Salai Guindy Chennai-32.
- 4 The Dean
Government Thoothukudi Medical College
Thoothukudi.



5 The Chairman
Medical Council of India
Sector-8 Pocket-14 Dwarka,
New Delhi-110077

WEB COPY

6 The Director of Medical Education,
Chennai.

+ 1 cc to Mr.I.Paul Noble Devakumar, Advocate, SR 52606

+ 1 cc to Mr.Sanjay Ramaswami, Advocate, SR 52497

+ 1 cc to Mr.V.P.Raman, Advocate SR 52358

+1 ccs to Mr.T.P.Kathirraavan, Advocate, sr.52378 (1/10/2015)

mp(co)
prk29/9

W.A.No.28 of 2015