

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.06.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.15908 of 2015

Christian Medical College
Vellore Assn. Ida Scudder Road
Vellore
632004 rep. by its
Council Secretary ... Petitioner
Versus

- 1 The Secretary
Ministry of Health &
Family Welfare Nirman
Bhavan New Delhi 110 001
- 2 Medical Council of India
Pocket-14 Sector 8
Dwarka Phase I New
Delhi 110 077 ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the respondents to accept the application dated 29.4.2015 submitted by Christian Medical College, Vellore for increase of seats from 1 seat to 3 seats in MD- Geriatric Medicine and grant permission for the increase of seats if the application is otherwise in order.

For Petitioner : Mr.Krishna Srinivasan
for M/s. S. RamaSubramanian Associates

For Respondents: Mr.S.Arokiyam (for R1)
Central Government Standing Counsel
Mr.V.P.Raman (for R2)

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O R D E R

By consent, the writ petition is taken up for final disposal.

2. The Secretary to the Governing Council of Christian Medical College Vellore Association, Vellore, has sworn to the affidavit in support of this writ petition and he would state that the said association is a Minority, Charitable Educational Society, registered under the Societies Registration Act, 1890 in the year 1947 and it runs "The Christian Medical College", Vellore. According to the petitioner, it is a well recognised and reputed, Unaided, Christian Minority and Non Capitation fee educational institution

3. The petitioner would further state that the Post Graduate Medical education was started in the year 1950 and over the last six decades, a large number of post graduate programs have been approved by the 2nd respondent viz., Medical Council of India and the institution is also affiliated to Tamil Nadu Dr.MGR Medical University (in short Medical University). The institution is currently running 11 Post Graduate Medical Diploma Courses, 23 Post Graduate Medical Degree Courses and 17 higher Specialty Courses approved by the 2nd respondent as well as by the Medical University. The petitioner institution is also imparting education in M.Sc. (Epidemiology) and 16 departments are recognised for Ph.D. training and even in the year 1958, Higher Specialty surgery training viz., M.Ch. Neurosurgery and Cardio-thoracic surgery, programmes were started.

4. The petitioner institution submitted an application dated 05.01.2015 to the Medical University, requesting for increase in seats in MD Geriatric Medicine Course from 1 to 3 seats for the Academic Year 2016-17, with a further request to process the same and inform the institution about the guidelines.

5. The Medical University sent a communication dated 29.04.2015 to the Principal of Christian Medical College Vellore, enclosing the 'Letter of Consent for Affiliation' in Form-3, as prescribed by the 2nd respondent for increase in seats in MD Geriatric Medicine Course from 1 to 3 seats for the Academic Year 2016-17, so as to enable them to apply to the 1st respondent for formal permission and it has also been indicated that the 'Letter of Consent for Affiliation' shall be valid for the entire duration of the Course and issue of 'Letter of Consent for Affiliation', alone will not confer any right on them to increase of seats from 1 to 3 in respect of the said Course. The Medical University has also given its Letter of Consent for Affiliation in Form-3, in favour of the petitioner institution.

6. The Christian Medical College, Vellore, on receipt of the above said letters, had immediately applied to the 1st respondent on 29.04.2015, itself, by enclosing a demand draft for a sum of Rs.4,00,000/-, towards application fee as well as, other required documents and it was sent by Courier on that date itself.

7. In Paragraph No.9 of the affidavit, it is stated that the institution also spoke to the officials of the 1st respondent Ministry over Telephone and explained to them in detail in respect of the application submitted by them for increase of seats in the above said course and also specifically informed them that permission from the Medical University was received by them only on 29.04.2015 and the application was also sent by Courier on the very same date without any delay. The Ministry officials instructed the Institution to send the application by fax and email, the details of which were also provided to them and accordingly, the

institution has also sent the application by facsimile transmission as well as by email, the receipt of which was also confirmed by the 1st respondent on 30.01.2015 and they in turn informed the institution that the status of the application will be intimated at a later date.

8. The hard copy of the application was received by the 1st respondent Ministry on 01.05.2015. The petitioner in Page Nos.97 to 100, has enclosed the copies of email as well as the communication sent through electronic message, which evidence the fact that the 1st respondent Ministry, has received the copy of the application along with the enclosures, as well as the information pertaining to the submission of the application on 30.04.2015, itself.

9. Since, the petitioner institution has not been favoured with any response with regard to the receipt of the above said application, it is constrained to file the present writ petition praying for issuance of writ of mandamus directing the 1st respondent to accept the application dated 29.04.2015 for increase of seats from 1 to 3 in MD. Geriatric Medicine and grant permission for the increase of seats, if the application is otherwise in order.

10. The matter was listed for admission on 05.06.2015 and on that date, Mr.S.Arockiam, learned Central Government Standing Counsel, accepted notice on behalf of 1st respondent and Mr.V.P.Raman, learned standing counsel for Medical Council of India, accepted notice on behalf of the 2nd respondent and the learned standing counsel for the 1st respondent sought time to get instructions. This Court, taking into consideration the plea made by the learned counsel for the petitioner with regard to the urgency of the matter directed the listing of the matter on 11.06.2015. at the end of the motion list and since, the matter did not reach, once again a request was made and it was directed to be listed on 25.06.2015 after admission cases and thereafter, 'for orders', today.

11. The learned counsel appearing for the 1st respondent, has produced the proceedings of the 1st respondent in No.U.12012/258/2015-ME(P.II) dated 02.06.2015 addressed to the Principal of the Christian Medical College, Vellore, stating that on scrutiny, it is found that the proposals were received after the cut off date for receiving the proposals by the Ministry, viz., between 1st April and 30th April, 2015 and in view of the above, the proposals were returned along with enclosures as well as Demand Draft with further request to strictly adhere to the time schedule prescribed under the Regulations of Indian Medical Council Act, 1956.

12. Mr.Krishna Srinivas, learned counsel appearing for the petitioner, would contend that the petitioner institution is not at all at fault for the reason that it submitted the application to the Medical University as early as on 05.01.2015 and the Medical

University took nearly three months time to process the application and gave the Letter of Consent for Affiliation, only on 29.04.2015 and immediately on that date, itself, the institution submitted the application along with the prescribed fee as well as enclosures to the 1st respondent through Courier and simultaneously, contacted the officials of the 1st respondent Ministry, who instructed the institution to send the application copy by fax and email and accordingly, it was sent by facsimile transmission as well as by email and receipt of which was also confirmed by the Ministry on 30.04.2015, itself and therefore, it is not open to the 1st respondent to contend that since, the hard copy of the application along with the enclosures and prescribed fee was received only on 01.05.2015, it was not in a position to process the application as it was beyond the prescribed time schedule and prays for appropriate orders.

13. Per contra, Mr.Arockiam, learned Central Government Standing Counsel appearing for the 1st respondent would submit that in the light of the regulations of Indian Medical Council Act, 1956, the cut off date for receiving the proposals by the 1st respondent Ministry is between 1st April and 30th April 2015 and it should be sent by Registered Post and in the case on hand, the application along with the enclosures were sent only by Courier and hard copy of the same were received by the Ministry only on 01.05.2015 and therefore, they have returned the application vide communication dated 02.06.2015 and prayed for dismissal of the writ petition.

14. Mr.V.P.Raman, learned counsel appearing for the 2nd respondent would submit that at present the 2nd respondent has no role to play and unless the 1st respondent forwards the application to the 2nd respondent, and in that event only, it has to deal with the application, in accordance with law.

15. The Court has carefully considered the rival submissions and also perused the materials placed before it.

16. It is not in serious dispute that the petitioner Institution submitted its application on 05.01.2015 to the Medical University for increase in seats in MD Geriatric Medicine Course from 1 to 3 seats for the Academic Year 2016-17 and it took nearly three months for the Medical University to process the application and they issued the Letter of Consent for Affiliation only on 29.04.2015 and immediately, on that date itself, the institution vide its Letter No.ACO/00046/2015 dated 29.04.2015 has sent the application with enclosures and application fee of Rs.4 Lakhs by Courier and also contacted the officials of the 1st Respondent Ministry, who asked the institution to send the copy of the application with enclosures by way of fax and email and the same were also sent by fax as well as by email and it was received by the 1st respondent Ministry on 30.04.2015. No doubt, the hard copy of the application/originals were sent by Courier post and it was received by the Ministry only on 01.05.2015 i.e., one day after the cut off date.

17. A careful scrutiny of the materials placed before this Court in the form of typed set of documents, would clearly disclose the fact that the institution are not at all, at fault and the Medical University took three monthly time to process the request and gave its Letter of Consent for Affiliation only on 29.04.2015, which is one day prior to the cut off date and on that date itself, the petitioner institution submitted the application along with enclosures and prescribed fee to the 1st respondent.

18. The issue with regard to relaxation of cut off date for MBBS Course counselling came up for consideration before the Hon'ble Supreme Court of India in the judgment reported in 2012 (4) LW 681(SC). [Asha Vs. Pt. B.D.Sharma University of Health Sciences & Ors.], it is relevant to extract the following.

"30. All these clauses are in accordance with the regulations framed by the Medical Council of India or the notifications issued by the concerned State Government. Relaxation of the Rule of Merit for reason of non-appearance is not permissible. In the present case, there is no dispute that the appellant was present at the place and on the date of the second counseling but the dispute relates to her absence at the particular time when her name was called out for the purpose of counseling. As far as this issue is concerned, we have already expressed the opinion that there is no substance in the defence taken by the respondents and the appellant should be entitled to the relief prayed for. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for admissions. The respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in Medical Council of India v. Madhu Singh and Others [(2002) 7 SCC 258], Ms. Neelu Arora and Another v. Union of India and Others [(2003) 3 SCC 366], Aman Deep Jaswal v. State of Punjab and Others [(2006) 9 SCC 597], Medical Council of India v. Naina Verma and Others [(2005) 12 SCC 626], Mridul Dhar and Another v Union of India and Others [(2005) 2 SCC 65], Medical Council of India v Madhu Singh and Others [(2002) 7 SCC 258].

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the

merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the Courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer *Arti Sapru and Others v. State of J & K and Others* [(1981) 2 SCC 484]; *Chavi Mehrotra v. Director General Health Services* [(1994) 2 SCC 370]; and *Aravind Kumar Kankane v. State of UP and Others* [(2001) 8 SCC 355]. " (Emphasis Supplied)

19. Admittedly, the Hon'ble Supreme Court of India has granted the relief in favour of the appellant therein by directing the respondents therein to grant admission to her in the MBBS Course in the current Academic year subject to the condition that she will pursue her MBBS Course right from the beginning without any advantage of her course in BDS.

20. In the considered opinion of the Court, the said judgment is squarely applicable to the facts of this case for the reason that the petitioner institution is not at all at fault as it belatedly received the Letter of Consent for Affiliation from the Medical University only on 29.04.2015 and on that date itself, it has submitted the application to the 1st respondent as well as sent the copies of the same by fax as well as email, which were acknowledged by them on 30.04.2015 itself. Though, the hard copy of the same was received by the 1st respondent only on 01.05.2015, in the light of the above said peculiar facts and circumstances, the time limit prescribed under the Regulations of Indian Medical Council Act, 1956, cannot be put against the petitioner institution.

21. This Court, taking into consideration of the fact, the humane and wonderful service rendered by the petitioner Institution to the poor, needy and downtrodden, who are visiting the hospital from all over India and considering the quality of education imparted by them, is of the view that the application submitted by the petitioner to increase the seats in M.D. (Geriatrics), have to be processed by the 1st respondent.

22. No doubt, after the filing of the writ petition, the 1st respondent vide order dated 02.06.2015 in No.U.12012/258/2015-ME (P.II), has returned the application for non adhering to the time schedule.

23. However, in the light of the above facts and circumstances, this Court, is of the considered view that even without making a challenge to the said order the writ petition is to be ordered in the light of the reasons assigned above.

24. In the result the writ petition is disposed of and petitioner is permitted to resubmit the application along with necessary fees and enclosures, within a period of two weeks from the date of receipt of a copy of this order to the 1st respondent, who on receipt of the same, is directed to consider the application in accordance with law, without putting the issue of time schedule and dispose of the same as expeditiously as possible and not later than six weeks, thereafter, and communicate the decision taken to the petitioner. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Secretary
Ministry of Health & Family Welfare Nirman
Bhavan New Delhi 110 001

2 Medical Council of India
Pocket-14 Sector 8 Dwarka Phase I New
Delhi 110 077.

+1cc to M/s. S. Ramasubramanian, Associates, S.R.No.32071
+1cc to M/s. S. Arockiam, Advocate, S.R.No.32114
+1cc to Mr.V.P.Raman, Advocate S.R.No.32325

VSN(CO)
EU(10/07/2015)

W.P.No.15908 of 2015