

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.07.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.Nos.19270 to 19273 of 2015

and

M.P.Nos.1 to 1 and 2 to 2 of 2015

1. S.Arun Prasath Petitioner in W.P.No.19270/15
2. E.J.Saravanan Petitioner in W.P.No.19271/15
3. K.R.Saravanan Petitioner in W.P.No.19272/15
4. M.Jayamalini Durga Petitioner in W.P.No.19273/15

Versus

- 1 The Principal Secretary to
Government Government of Tamilnadu Higher
Education Including Technical Education
Science & Electronics Secretariat Fort St.
George Chennai 9
 - 2 The Secretary
Health and Family Welfare Department
Secretariat Fort St. George Chennai 9
 - 3 The Chairman
Medical Council of India Pocket 14 Sector
8 Dwaraka Phase 1 New Delhi 110 077
 - 4 The Director
Directorate of Medical Education No.162 E.
V.R.Periyar Salai Kilpauk Chennai 10
 - 5 The Secretary
Selection Committee Directorate of Medical
Education No.162 E.V.R.Periyar Salai
Kilpauk Chennai 10
 - 6 The Principal
Tamil Nadu Government Dental College and
Hospital Dr. Muthusamy Road
Chennai 3
- ... Respondents 1-6 in all W.Ps.

7 The Dean
Government Vellore Medical College
Adukkamparai
Vellore 632 011

...7th Respondent in
W.P.Nos.19270 & 19271/15

8. The Dean
Chengalpattu Medical College GST Road
Chengalpattu
Kanchipuram District 603 001

...7th Respondent in
W.P.No.19272/15

9. The Dean
Government Medical College Omandurar
Government Estate
Chennai 2

...7th Respondent in
W.P.No.19273/15

Prayer in all W.Ps.: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th respondent to issue allotment order without insisting upon payment of Rs.5,00,000/- as penalty for having discontinuing the BDS Course in the midway as per agreement bond for joining the MBBS Course to which they have been selected consequently direct the 6th respondent to return all the original certificates of the petitioners received from them to the petitioners.

For Petitioner : Mr.S.Ayyadurai
in all W.Ps. for Mr.S.Pushpakaran

For Respondents : Mr.D.Krishnakumar (for R1, 2 & 4 to 7)
in all W.Ps. Spl. Government Pleader (Edn.)
Assisted by Mrs.P.Rajalakshmi
Government Advocate
Mr.V.P.Raman (for R3)

C O M M O N O R D E R

By consent, these writ petitions are taken up for final disposal and as the facts pleaded and the submissions made are one and the same, all these writ petitions are disposed of by a common order.

2. The petitioner in W.P.No.19270 of 2015, claims that he belongs to Backward Class community and he applied for admission to MBBS/BDS course for the academic year 2014-15 and unfortunately, he was not selected for the said course in Government colleges and on account of his economic conditions, he cannot join self financing colleges also, though plenty of seats were available.

Therefore, the petitioner has opted to join BDS Course in the 6th respondent Government College for the academic year 2014-15. The petitioner once again applied for counselling for MBBS Course for the Academic Year 2015-16 and attended the counselling on 21.06.2015 and he has been selected for joining MBBS Course in Government Medical College at Vellore.

3. Similarly, the petitioners in W.P.Nos.19271 and 19272 of 2015, also belong to Backward Class community and they joined BDS Course in the 6th respondent College, during the Academic year 2014-15 and now they attended the counselling for MBBS Course for the Academic Year 2015-16 and they have been selected to the said Course in Government Medical College, Vellore and Chengalpattu, respectively.

4. The petitioner in W.P.No.19273 of 2015, belongs to Scheduled Caste Community and she joined BDS Course during the Academic year 2014-15 in the 6th respondent College and now she attended the counselling for MBBS Course for the Academic Year 2015-16 and she has been selected to the said Course in Government Medical College, Omandurar, Chennai.

5. The petitioners at the time of joining the BDS Course during the last Academic year i.e., 2014-15, have executed a bond in Annexure-VII and it is relevant to extract Cl.Nos.6 & 8.

"6. Candidates who discontinue the course between 25th September and 29th September, 2014 are bound by the bond and thereby they shall have to pay a sum of Rs.50,000/- (Rupees Fifty Thousands Only) as penalty for having breached the contract in the bond and the candidates who discontinue the course on or after 30th September, 2014 and in any date of the subsequent years shall have to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) as penalty.

8. If any dispute shall arise between the parties hereto in respect of this agreement or any of the provisions herein contained or anything arising hereunto except in respect of matters on which decision of the Government under clause (6) is declared to be final and binding, the same shall be referred to the arbitration of Director of Medical Education whose decision thereon shall be final and binding on the parties."

6. It is the case of the petitioners that the agreement bond at the time of joining BDS Course during the academic year 2014-15, is unilateral one and not in accordance with strict rule of law. The petitioners have approached the 6th respondent for getting back the original certificates such as transfer certificates, community certificate, Higher Secondary and SSLC Mark

sheets and they were informed that unless they produce the allotment order and proof for payment of penalty of Rs.5,00,000/- in terms of the above said clause, the certificates will not be returned and hence these writ petitions.

7. Learned counsel appearing for the petitioners has drawn the attention of this Court to the order dated 05.11.2014, made in W.P.Nos.27809 to 27811 and 27973 to 27975 of 2014 and would submit that this Court, in the above said cases has considered the execution of bond similar to one executed by the petitioners herein and held that the certificates belonging to students cannot be retained as a security by the universities or colleges and that the petitioners therein are entitled to take back their certificates as the certificates belong to them and no security is created on such property and by reserving the rights of both parties including monetary aspect, has allowed the writ petition by directing the University, to return the certificates and since the petitioners are similarly placed, same order can be passed.

8. Per contra, Mr.Krishnakumar, learned Special Government Pleader (Education), has drawn the attention of this Court to a judgment of this Court, reported in (2010) 4 MLJ 656, which also dealt with admission to Super Specialty Medical Course and considering the binding nature of prospectus, it has been clearly observed that the terms and conditions of instructions etc., to candidates as well as information brochure of Tamilnadu Public Service Commission have the force of law and have to be strictly complied with and no modification / relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language and in the light of the said decision, this Court, may not interfere with the terms of the prospectus under which, the petitioners had got admission to BDS Course during the Academic Year 2014-15 and also voluntarily executed an agreement bond in Annexure - VII and prays for dismissal of this writ petition.

9. The learned counsel appearing for the petitioners in response to the said submission would submit that the parents of the petitioners are having poor economic background and with the fond hood that they would get admission in the current academic year, they attended the counselling and they are successful in getting admission in MBBS Course in various Government Medical Colleges for the Academic Year 2015-16 and they are also willing to pay the bond amount, if sufficient time is granted to them. The petitioners also undertake to file and affidavit to that effect and submit the same to the 5th respondent.

10. In response to the said submission, the learned Special Government Pleader (Education), appearing for the respondents 1, 2 and 4 to 7, on instructions, would submit that the admission for this Academic Year, closes by 30.09.2015 and in the event of certificates being returned to the petitioners and if they fail to make the bond amount beyond the date and in that event of they being sent out of the Course / College, the said seats cannot be filled up for the entire 4 ½ years and therefore, the petitioners may be directed to pay the bond amount, either in lumpsum or in instalments on or before 25.09.2015.

11. It is the specific case of the petitioners that they are having poor background and despite their prudence and hard work and performing well in the examinations, on account of higher cut off marks, they could not get admission in MBBS Course in anyone of the Government Colleges during the Academic Year 2014-15 and for this year, they once again applied and got admitted by various Government Colleges .

12. This Court, taking into consideration the above facts and circumstances, is of the view that the petitioners be permitted to pay the bond amount of Rs.5,00,000/-, each either in instalment or in lumpsum before 25.09.2015.

13. In the result, all the writ petitions are disposed of and the 6th respondent is directed to return all the original certificates / testimonials to the respective writ petitioners, forthwith. The respective petitioners shall file the affidavit of undertaking to the 5th respondent within a period of one week from the date of receipt of a copy of this order and the 5th respondent is directed to accept the same, if the relevant papers are otherwise in order, and permit the petitioners to join the respective Government Medical Colleges and till 26.09.2015, the respective 7th respondent in these writ petitions, shall keep the seats allotted to the petitioners, as vacant.

14. The writ petitions are disposed of, accordingly. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

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Government of Tamilnadu Higher
Education Including Technical Education
Science & Electronics Secretariat Fort St.
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 - 2 The Secretary
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Chengalpattu Kanchipuram District 603 001
 9. The Dean
Government Medical College Omandurar
Government Estate Chennai 2
- 5 CCs to Mr.S.Pushpakaran, Advocate SR.No. 32444

W.P.Nos.19270 to 19273 of 2015

CA (CO)
PSI (02.07.2015)