

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2015

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THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.24366, 24784 & 24785 of 2015

W.P.No.24366 of 2015

S.S.Shrinidhi, Minor
Rep., by her Father and Natural Guardian,
Mr.R.Srikanth,
No.73, GPM Street,
Ambapuram, Gudiyatham,
Vellore District - 632 602. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Health and Family Welfare Department,
Fort St., George,
Chennai - 600 009.

2.The Selection Committee,
Rep., by its Secretary,
Directorate of Medical Education,
No.162, Periyar E.V.R., High Road,
Kilpauk, Chennai - 600 010.

3.K.Ramkumar ... Respondents

W.P.Nos.24784 & 24785 of 2015

R.Vasanthakumar ... Petitioner in both W.Ps.,
Vs.

1.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Health and Family Welfare Department,
Fort St., George,
Chennai - 600 009.

2.The Selection Committee,
Rep., by its Secretary,
Directorate of Medical Education,
No.162, Periyar E.V.R., High Road,
Kilpauk, Chennai - 600 010.

3.The Medical Council of India,
Rep., by its Secretary,
New Delhi.

... Respondents in both W.Ps.,

Prayer in W.P.No.24366 of 2015:-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare that Section 3 of the Tamil Nadu Admission in Professional Educational Institutions Act, 2006 (Act 3 of 2007) is unconstitutional and arbitrary in so far as it states that admission to every Government seat in every professional educational institution shall be made on the basis of marks obtained by a student in the relevant subjects in the qualifying exam without disabling students who have already applied for and admitted and undergoing any one of the professional courses like BDS, B.Pharmacy, B.Sc (Nursing), Veterinary, BPT, BOT, BSMS, BHMS, Engineering, Law, Agriculture from applying for MBBS course in the year 2015-16 notwithstanding their marks in the qualifying exam and declare clause 6(c) and (d) of the prospectus of the year 2015-16 issued by the second respondent selection committee is also invalid and unconstitutional in so far as it suffers from the vice of under inclusion classification by not including candidates who are already undergoing any one of the professional courses like BDS, B.Pharmacy, B.Sc (Nursing), Veterinary, BPT, BOT, BSMS, BHMS, Engineering, Law, Agriculture along with MBBS students as ineligible to apply for MBBS course and consequently declare that the admission of students from other professional courses to MBBS course in the academic year 2015-16 as invalid.

Prayer in W.P.No.24784 of 2015:-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare that Section 3 of the Tamil Nadu Admission in Professional Educational Institutions Act 2006 (Act 3 of 2007) is unconstitutional violative of article 14 of the constitution and arbitrary in so far as it states that admission to every government seat in every professional educational institution shall be made by the appropriate authority on the basis of marks obtained by a student in the relevant subjects in the qualifying examination without disabling students who have already applied for and admitted and undergoing any one of the Professional Courses like BDS B.Pharmacy B.Sc. (Nursing) Veterinary BPT BOT BSMS BHMS Engineering law Agriculture from applying for MBBS Course in the year 2015-2016 notwithstanding their marks in the qualifying exam and consequently issue a direction directing the official respondents 1 and 2 to direct the students who were undergoing other professional

courses and got admitted to MBBS course in the academic year 2015-16 to surrender their MBBS seats to enable the respective deans of the colleges of other professional courses to readmit the students, who have discontinued their old professional courses and obtained their transfer certificate to join the MBBS course in the academic year 2015-16, to their respective courses.

Prayer in W.P.No.24785 of 2015:-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare clause 6 (c) and (d) of the prospectus of the year 2015-16 issued by the 2nd respondent Selection Committee is invalid and unconstitutional violative of article 14 of the constitution and arbitrary in so far as it suffers from the vice of under inclusion classification by not including candidates who are already undergoing any one of the Professional Courses like BDS B.Pharmacy B.Sc. (Nursing) Veterinary BPT BOT BSMS BHMS Engineering law Agriculture along with MBBS students as ineligible to apply for MBBS Course during 2015-16 and consequently declare that the admission of students from other professional courses to MBBS course in the academic year 2015-16 as invalid and bad in law.

For petitioner ..Mrs.Nalini Chidambaram Sr. Counsel for
Ms.C.UMa in all W.Ps.,
For Respondents ..Mr.S.T.S.Moorthy G.P.,
Assisted by
Mr.V.Shanmugasundar for RR1 & 2 in all W.Ps.
C O M M O N O R D E R

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

The prayers sought for in all these three Writ Petitions are identical and were heard together.

2. The petitioners are aspirants to join the M.B.B.S., course in the State of Tamil Nadu for the 2015-16 session and have filed these Writ Petitions challenging Section 3 of the Tamil Nadu Admission in Professional Educational Institutions Act, 2007 (Act 3 of 2007). The provision which is subject matter of challenge in these Writ Petitions, reads as under:-

Admission to Government Seat	Notwithstanding anything contained in any relevant law or any rules, regulations or by laws made thereunder, admission to every Government seat in every professional educational institution shall be made, by the appropriate authority, on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.
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3. Mrs. Mrs.Nalini Chidambaram, learned Senior counsel assisted by Ms.C.Uma learned counsel appearing for the petitioners submitted that though the petitioners and other similarly placed persons had approached this Court earlier by filing Writ petitions, which were dismissed by the Division Bench of this Court by common judgment, dated 26.06.2015 that by itself will not prevent the petitioners from challenging Section 3 of the said Act. In this regard, the learned Senior counsel drew the attention of this Court to the observations contained in paragraph 20 of the judgment of the Division Bench, dated 26.06.2015 and submitted that those Writ Petitions and Writ Appeal were dismissed, as there was no challenge to the provisions of the Act and therefore, the petitioners have approached this Court by way of these Writ Petitions challenging Section 3 of the said Act. It is further submitted that there can be no case of res judicata as the present challenge is to the validity of a statutory provision. The learned Senior counsel referred to the decision of the Division Bench of this Court in Maria Arul Rex.C & Ors., vs. State of Tamil Nadu reported in 2007 (4) CTC 553 and submitted that the Division Bench upheld clause 6 of the prospectus for M.B.B.S., and B.D.S. Course for 2007-08, which declared ineligible all candidates who are undergoing M.B.B.S., B.D.S., B.Pharmacy, B.Sc., (Nursing), B.P.T., B.O.T., B.S.M.S., B.H.M.S., Engineering, Law, Agriculture, Veterinary etc. in the previous years to apply for being considered for the M.B.B.S., and B.D.S. courses for the academic year 2007-08. It is submitted that the Division Bench upheld the said condition of the prospectus as, if such candidates are allowed to join M.B.B.S.,/B.D.S., course in the next year, the seats in the other professional courses in which they have joined would be wasted and cannot be filled up and are to be treated as lapsed seats. Therefore, it is submitted that this Court should examine the validity of Section 3 of the Act independently as more than 500 students from the previous year would discontinue their respective courses of study in other professional courses and join M.B.B.S.,/B.D.S. courses thereby depriving the candidates like the petitioners who have become eligible to apply for M.B.B.S.,/B.D.S., courses for the academic session 2015-16. Therefore, the learned counsel submitted that Section 3 of the Act is liable to be struck down.

4. We have heard Mr.S.T.S.Moorthy learned Government Pleader appearing for the first and second respondents on the above submissions and perused the materials placed on record.

5. After hearing the learned counsels for the parties and perusing the judgment of the Division Bench dated 26.06.2015, we are of the firm view that challenge to Section 3 of the said Act on the grounds stated by the petitioners has to necessarily fail for more than one reason.

6. The petitioners and other similarly placed persons filed the batch of Writ Petitions before this Court praying for varied reliefs;

the sum and substance of the relief sought for was to prevent the candidates who have completed their Higher Secondary Examination prior to the year 2014-15 for admission to M.B.B.S.,/B.D.S. courses. The petitioners and others had completed their Higher Secondary Examination during the year 2014-15 and had applied for selection for M.B.B.S.,/B.D.S. courses for the 2015-16 session and they sought to prevent the students who have completed the Higher Secondary examination during the academic years 2012-13 and 2013-14. On a perusal of the judgment dated 26.06.2015, it is seen that various contentions were raised by the learned counsels and the contention as regards the validity of Column 6(c) of the prospectus and as to why the students who have completed the Higher Secondary Examination during the previous academic years should not be permitted to apply for admission for M.B.B.S.,/B.D.S. courses in 2015-16 session, were placed before the Division Bench. The State defended those cases contending that identical grounds were raised in S.Narasimman vs. State of Tamil Nadu reported in 2007-5-MLJ-15 and were repelled by a Division Bench of this Court, apart from relying upon other decisions of the Bombay High Court and that of the Gujarat High Court. It was further contended that the same examination conducted in different years by the same Board is to be treated as a single examination and as such, it does not fall within the category of separate class and the only distinction in the qualifying examination is that the qualifying examination is conducted by different Boards, for which the Act contemplates normalisation. The Division Bench elaborately considered and paragraph 28 of the judgment summed up the grounds of challenge as hereunder:-

28 In sum and substance, the challenges to the scheme of admission permitting even those candidates, who had obtained qualifying examination certificate in the previous years, are as under:

i The candidates, obtaining qualifying examination certificate in different years form a separate class as the standard of examination and valuation vary from year to year. Sometimes, like in the current academic year, awarding of marks was on a low ebb, whereas, the candidates who appeared for the examinations in the previous year could secure higher marks and as such, treating all the candidates at par is discriminatory, arbitrary and irrational.

ii The normalisation of marks is defective. The method applied by AIIMS, New Delhi, wherein, even for the candidates of the same year, if examination is held in two shifts, normalisation of marks is applicable. In the case on hand, normalisation of marks be made applicable in respect of all the candidates of previous years also vis-a-vis, the candidates of the current year.

iii Dispensing with the common entrance test which ensures fair merit selection replacing by admission to

MBBS/BDS courses on the basis of qualifying marks is violative of well settled principles of law and also the mandate laid down by the Supreme Court.

iv Permitting the candidates who had joined professional courses last year for participating for admission in the current year would entail huge loss of seats in the professional courses and the public exchequer. Thus, there should be a restriction on their participation in the counselling or admission to the MBBS/BDS courses in the current year.

7. Ultimately the Division Bench dismissed the batch of cases and the Special Leave Petition filed before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos.20959 to 20962 of 2015 were also dismissed by the Hon'ble Supreme Court, by order dated 03.08.2015. It is after the dismissal of the Special Leave Petition by the Hon'ble Supreme Court, the petitioners have come forward with these Writ Petitions challenging Section 3 of the said Act.

8. As mentioned above, the Division Bench considered the entire matter and it is not as if the cases were dismissed solely on the ground that there was no challenge to the statutory provision. The settled legal principle is to read the judgment as a whole. We may note that paragraph 20 of the judgment of the Division Bench, which was referred to by the learned senior counsel for the petitioners, are the contentions raised by the learned Advocate General one among which being that there was no challenge to the statutory provision. The operative portion of the judgment is from paragraph 27 onwards and the Division Bench had dealt with the entire issue and we may quote certain paragraphs of the decision of the Division Bench:-

30....The contention of the learned counsel for the petitioners that almost 50% of seats would go to the previous year candidates is not a relevant and rational criterion, when it is the common examination conducted by the State Board. The year of obtaining qualifying examination certificate is irrelevant.

43 In the Prospectus of the current year, there is a restriction only in respect of those candidates who are pursuing MBBS course for admission to MBBS course and for dental course who are pursuing BDS course and as such, the same cannot be widened as the students, who could not be admitted in professional course of their liking in the previous year, had every right to compete with the fresh candidates for the desired professional course, when there is no bar under the provisions of the Act as well as the provisions of the Prospectus. The decision of this Court in Maria Arul Rex (supra) and the Division Bench judgment of the Gujarat High Court referred to hereinabove are based on the rules and Prospectus applicable in the said cases.

9. It is to be noted that the decision relied on by the petitioner in the case of Maria Arul Rex.C & Ors., (supra) was taken note of by the Division Bench and the above finding in paragraph 43 was rendered. Therefore, we are not inclined to entertain a piecemeal challenge to the admissions for the M.B.B.S./B.D.S., course for the 2015-16 session by way of these Writ Petitions. The learned Senior counsel for the petitioners submitted that the cut off date for closure of admission is 30th September 2015 and therefore, this Court can examine the issue. We are not persuaded by this submission, as we are inclined to hold that this is the second round of litigation arising out of a same cause of action. Furthermore, all the candidates who have been selected, have joined the course and we are not inclined to entertain these Writ Petitions nor disturb the selection which has already been finalised.

10. In the result, the Writ Petitions are dismissed. However, the legal issue raised by the petitioners regarding the challenge to Section 3 of the said Act is left open as we have non-suited the petitioners on other grounds. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St., George,
Chennai - 600 009.

2.The Secretary,
The Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R., High Road,
Kilpauk, Chennai - 600 010.

3.The Secretary,
The Medical Council of India,
New Delhi.

2 cc to Mr.C.Uma , Advocate Sr.No.41680 & 41681

2 cc to Government Pleader.Sr.No.41884 & 41885

W.P. Nos.24366, 24784 & 24785 of 2015

rj(co)pmk.26.8.2015