

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

W.P.No.31473 of 2015

R.Sankari

.. Petitioner

Vs.

1. The Union of India,
represented by the Secretary to
Government, Health Department,
Government of Union Territory
of Puducherry, Puducherry,
 2. Mahatma Gandhi Post Graduate
Institute of Dental Sciences,
represented by its Dean,
Government of Union Territory of
Puducherry,
Puducherry - 605 006,
 3. The Dental Council of India,
Aiwan E Galib Marg,
Kotla Road,
New Delhi - 110 002,
 4. Pondicherry University,
represented by its Registrar,
Kalapet,
Puducherry - 605 014.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of mandamus directing the respondents to admit the petitioner into MDS Post Graduate Course in the 2nd respondent institution in the available seat of Oral Pathology for the academic year 2015-2016.

For Petitioner : Mr.Bharathachakravarthi for
M/s.Sai Bharath and Ilan

For Respondents : Mr.A.Tamilvanan, Govt. Advocate
(Pondicherry) for RR1 and 2
Ms.S.Seethalakshmi,
Standing Counsel for R.3
Ms.A.V.Bharathi for R.4

ORDER

There are about 14 seats available with the 2nd respondent for the MDS Post Graduate Course for the academic year 2015-2016. The petitioner is one of the candidate, who attended the examination conducted. Of the 14 seats, 7 have been ear-marked for All India Quota and the remaining 7 seats have been ear-marked for Pondicherry Quota. The petitioner comes under Pondicherry Quota. Out of the 7 seats earmarked for All India Quota, 6 have been filled up, meaning thereby the remaining 1 seat has to be filled up under the Pondicherry Quota. Thus, of the 8 seats, 1 seat has been earmarked for the NRI quota, which has been duly filled up.

2. Of the 7 seats under the Pondicherry quota, 1 seat is reserved for the Scheduled Caste category. The eligibility criteria fixed in the examination for consideration under the said category is 40%. It appears one student viz., B.Priakardiya got 39.50%. Claiming that the said percentage would be termed on par with 40% and thus having eligibility criteria, a writ petition was filed by her in W.P.No.11096 of 2015. The said writ petition was allowed, which has been reversed by the Division Bench of this Court on appeal in W.A.No.754 of 2015. Resultantly, the candidate who sought to fill up the one seat under the Scheduled Caste Category did not get the seat. As per the Regulations, the said seat ought to have been filled up from the open category.

3. It is not in dispute that the petitioner would have come under the Open category and secured admission, but for the writ petition No.11096 of 2015 at the instance of the Scheduled Caste candidate. The said writ petition has been allowed and the appeal preferred thereon by the respondents was allowed. These are the admitted facts.

4. Now, claiming to fill up the said vacancy with the inclusion of petitioner, the petitioner has come forward to file this writ petition.

5. Learned counsel appearing for the petitioner submitted that due to the pendency of the proceedings before this Court, the petitioner was not admitted. This is not a case of fresh admission. The petitioner would have been included, but for the challenge made by a Scheduled Caste candidate, who lost before this Court on appeal. Therefore, the cut-off date fixed as per

the order passed by the Apex Court does not have any application to the case on hand. Coming to the question of attendance and the resultant delay, it is submitted that the Course, being MDS course, no class room system involved. Similarly, there is no semester system involved. What the petitioner has to do is to submit the papers and journals by conducting research in the field of Dentistry. She has to attend only clinical trials. Only at the end of the 3rd year, she has to appear for written examination. Therefore, there is no question of attendance being lacking in the case on hand.

6. Learned counsel appearing for the 3rd respondent submitted that the petitioner having breached the cut-off date fixed by the Apex Court, no relief can be granted.

7. The facts as stated above are not in dispute. The decision of the Apex Court cannot be read like a Statute. This is a case in which the petitioner is otherwise entitled to in law. Merely because a third party has filed a writ petition, the entitlement of the petitioner would not get erased automatically by efflux of time. Furthermore, the rationale behind the Schedule having been fixed by the Apex Court is with respect to the en masse admission by the College concerned. It is also with respect to the admission from the waiting list afresh. That is not the fact situation here. It is not in dispute that the petitioner must be studying Course now, but for the challenge made by the 3rd party who was found not suitable. There is no question of petitioner losing any attendance also. Therefore, the Schedule fixed by the Apex Court has to be seen in the context in which it has been stated. In the case on hand, as submitted by the learned counsel for the petitioner, neither the semester system is involved nor the class room system. What the petitioner requires is, she has to submit research papers and journals after attending clinical trials, which she would certainly do before taking examination at the end of completion of 3rd year. It is also to be noted that even the judgments of the Apex Court in ASHA VS. PT.B.D.SHARMA UNIVERSITY OF HEALTH SCIENCES AND OTHERS, ((2012) 7 SCC 389) and CHANDIGARH ADMINISTRATION AND ANOTHER VS. JASMINE KAUR AND OTHERS, ((2014) 10 SCC 521) have been construed subsequently to mean that they do not apply to the fact situation.

8. Accordingly, the writ petition stands allowed directing the respondents to issue admission to the petitioner into MDS post Graduate Course in the 2nd respondent Institution forthwith. No costs.

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-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to
Government, Health Department,
Government of Union Territory
of Puducherry, Union of India,
Puducherry,
2. The Dean,
Mahatma Gandhi Post Graduate
Institute of Dental Sciences,
Government of Union Territory of
Puducherry,
Puducherry - 605 006,
3. The Dental Council of India,
Aiwan E Galib Marg,
Kotla Road,
New Delhi - 110 002,
4. The Registrar,
Pondicherry University,
Kalapet,
Puducherry - 605 014.

+ 1 cc to Spl.Govt.Pleader SR 58683

+ 1 cc Dr.S.Seethalakshmi, Advocate SR 58523

+ 1 cc to Mrs.A.V.Bharathi, Advocate SR 58502

+ 1 cc to M/s.Sai, Bharath and Ilan, Advocate SR 58496

prk29/10

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