

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.32397 of 2015

and

M.P.No.1 of 2015

S.Viji

... Petitioner

- Vs -

1.The Medical Council of India,
Represented by its Secretary,
Pocket-14, Sector-8,
Dwaraka Phase-1,
New Delhi-110 077.

2.The Secretary,
Selection Committee for MBBS/BDS 2015-2016
No.162, Periyar EVR High Road,
Kilpauk, Chennai-10.

3.The Directorate of Medical Education,
Kilpauk, Chennai-10.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, directing the respondents to admit the petitioner for the BDS Course for the academic year 2015-2016 in any one of the available 111 seats in the private dental colleges under the Scheduled Caste quota or SC(A) quota.

For Petitioner : Mr.V.Vijayashankar

For 1st Respondent : Mr.V.P.Raman

For Respondents

2 and 3 : Mrs.P.Rajalakshmi, Govt.Advocate

O R D E R

Heard the learned counsel for the petitioner, the learned counsel for the first respondent as well as the learned counsel for the respondents 2 and 3.

2. The petitioner belonged to Scheduled Caste Community. He is one of the students who applied for MBBS/BDS course for the academic year 2015-2016. The petitioner's community ranking is 2485 and the cut off fixed is 174.75 and the petitioner's cut-off marks is 174.25. It appears that there are other persons in between cut-off marks from 174.75 and the petitioner's cut-off marks i.e.174.25. The petitioner along with the other candidates attended counseling on 05.10.2015 and 07.10.2015. It appears that after 5.00 P.M., the remaining candidates were not called for counseling though seats were very much available. Though, the seats were available, the counseling was concluded and the seats available were not filled up. The petitioner has come forward with the grievance that if seats under the Scheduled Caste (A) quota were not filled, it has to be given to the Scheduled Caste general quota as per roster and thus the petitioner ought to have been given one of them. This is the sum and substance of this case.

3. In the counter affidavit filed two objections were raised. The first objection is that there are candidates above the petitioner having scored the marks between 174.75 and 174.25 which is said to be the cut-off obtained by the petitioner. The second objection is with regard to cut-off date i.e. on 07.10.2015. Therefore, nothing can be done.

4. The said objections cannot be accepted. It is the mistake committed by the respondents. If the petitioner has appeared for counseling i.e. on 05.07.2015 and 07.07.2015 along with others, the respondents ought to have filled up all the vacancies with the available candidates. There is no limit fixed but only the dates. It is the misconception by the respondents. The decision of the Apex Court in Priya Gupta Versus State of Chhatisgarh and others (AIR 2012 SC 2413) and Mrilandar case have been read in the context by the subsequent decisions by applying them to the facts of the case. Thus a decision cannot read like a statute. It is the question of entitlement of students to be considered in the vacancies. In other words the respondents ought to have filled up the vacancy as on 07.10.2015. Admittedly, there is no candidate seeking admission in the vacant seat. To put it differently, even by dismissing the writ petition other candidates are not likely to get seats. The petitioner was called for counseling and he was present for the same. The other students have not made any grievance till now. Admittedly the seat has not been filled up.

5. This Court is also trying to see from the public interest as filling the available seat nobody would be affected and no third party interest is also involved. In fact there is also one more seat available but not filled up till now in the same category. It is not as if the petitioner is grabbing the

other candidates seat. Looking from any angle, this Court is unable to dismiss this Writ Petition.

6. Hence, this Writ Petition is allowed and the second respondent is directed to admit the petitioner for the BDS Course for the year 2015-2016 in one of the three colleges viz., Best Dental College, Adhiparasakthi Dental College and Madha Dental College as the respondent chooses, subject to the availability of the vacancies and appropriate orders shall be passed within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

arr

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

- 1.The Medical Council of India,
Represented by its Secretary,
Pocket-14, Sector-8,
Dwaraka Phase-1,
New Delhi-110 077.
 - 2.The Secretary,
Selection Committee for MBBS/BDS 2015-2016
No.162, Periyar EVR High Road,
Kilpauk, Chennai-10.
 - 3.The Directorate of Medical Education,
Kilpauk, Chennai-10.
- + 1 cc to Mr.V.Vijayashankar, Advocate SR 58904
- + 1 cc to Govt.Pleader SR 59231

rsi(co)
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