

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM

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

W.P.Nos.32588 and 32598 of 2015
and M.P.No.1 of 2015

W.P.No.32588 of 2015:

E.Swetha

.. Petitioner

Vs.

1. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 10,
 2. The Chairman,
Medical Council of India,
Pocket - 14, Sector - 8,
Dwaraka Phase 1,
New Delhi - 110 077,
 3. The Annamalai University,
represented by its Registrar,
Annamalai Nagar,
Chidambaram - 608 002,
 4. The Secretary,
Tagore Medical College & Hospital,
Melakkottiyur Post,
Vandalur-Kelampakkam Road,
Rathinamangalam - 600 127,
Chennai - 600 127,
 5. The Vice-Chancellor,
Tamilnadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 02.
- .. Respondents

W.P.No.32598 of 2015:

K.Jairamkumar

.. Petitioner

Vs.

1. The Director of Medical Education,
Kilpauk,
Chennai - 600 010,
2. The Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010,
3. The Registrar,
Annamalai University,
Annamalai University Campus,
Annamalai Nagar - 608 002,
Chidambaram,
Cuddalore District,
4. The Medical Council of India,
Pocket - 14, Sector - 8,
Dwarka Phase-I,
New Delhi - 110 077. ... Respondents

Prayer: Writ Petition in W.P.No.32588 of 2015 is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the 4th respondent to admit the petitioner for M.B.B.S Course without insisting upon the original certificates and consequently direct the 3rd respondent to handover all the original certificates either to the petitioner or 4th respondent within a time to be specified by this Hon'ble Court.

Writ Petition in W.P.No.32598 of 2015 is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to grant admission to MBBS Course to the petitioner in the reserved category of Scheduled Caste Arunthathiyar (SCA) in the Medical College run by the 3rd respondent University forthwith with effect from 07.10.2015.

For Petitioner : Mr.L.Chandrakumar
in WP.No.32588 for Mr.E.D.Sethupathi
of 2015

For Petitioner : Mr.G.Sankaran
in W.P.No.32598
of 2015

For Respondent : Mrs.P.Rajalakshmi, Govt. Advocate
No.1 in W.P.No.
32588 of 2015
and respondents
No.1 and 2 in

W.P.No.32598
of 2015

For Respondent : Mr.V.P.Raman
No.2 in W.P.No.
32588 of 2015
and respondent
No.4 in W.P.No.
32598 of 2015

For Respondent : Mr.R.Suresh Kumar
No.3 in both W.Ps

For Respondent : Mr.Anand David
No.5 in W.P.No.
32588 of 2015

For Respondent : No Appearance
No.4 in W.P.No.
32588 of 2015

COMMON ORDER

As the issue involved in W.P.No.32598 of 2015 depends upon the fate of the order that can be passed in W.P.No.32588 of 2015, it is appropriate to pass a common order covering both the cases. For the sake of convenience, the parties are referred to as arrayed in W.P.No.32588 of 2015.

2. The petitioner in W.P.No.32588 of 2015 was admitted to the 3rd respondent based upon the marks obtained. Thereafter, certain seats were surrendered under All India Quota. The time given by the Apex Court governing medical admission - 30.09.2015 has been extended giving time for the purpose of filling up All India Quota by the Order passed by the Apex Court in I.A.Nos.2-5 of 2015 in W.P.(Civil) No.629 of 2015 dated 1.10.2015. The petitioner in W.P.No.32588 of 2015 got admission under the All India Quota though she was admitted earlier to the 3rd respondent University. The subsequent admission was to the College of the 4th respondent. The counselling was conducted by the 1st respondent based upon the merit list under the State Quota. Thus, on facts, there is no dispute that the petitioner in W.P.No.32588 of 2015 got admission based upon the surrendered seats coming under the All India Quota filled by the State of Tamil Nadu by treating them under the State list. However, the certificates pertaining to the petitioner have not been given. Thus, seeking appropriate prayer, though the 4th respondent has admitted the petitioner, for release of the original certificates, the writ petition in W.P.No.32588 of 2015 has been filed, though it has been couched in a different language.

3. W.P.No.32598 of 2015 has been filed by the petitioner, who is waiting in the wings, seeking admission to the 3rd respondent in any vacancy that would arise. To put it correctly without any ambiguity, the said petitioner, based upon his merit list, would be entitled to be admitted in the vacancy created by the petitioner in W.P.No.32588 of 2015, who has since joined the 4th respondent. There is no dispute on this position.

4. The objections raised by the learned counsel appearing for the 3rd respondent - Annamalai University are to the effect that the cut-off date has exceeded and therefore the petitioner in W.P.No.32598 of 2015 cannot be accommodated, even assuming the petitioner in W.P.No.32588 of 2015 is allowed to join before the 4th respondent. Similar is the submission raised by the learned counsel appearing for the 2nd respondent - Medical Council of India. The other objection raised by the learned counsel appearing for the 3rd respondent University are that the prospectus, being binding on the petitioner in W.P.No.32588 of 2015, she has to comply with the same by making the appropriate payment. On such compliance, the certificates would be given to her. Incidentally, the learned counsel submitted that the relief sought for W.P.No.32598 of 2015 cannot be considered on mere anticipation.

5. The fact that the petitioner in W.P.No.32588 of 2015 has got admission on merit through the third counselling with the 4th respondent is not in dispute and she has been admitted in pursuant to the order passed by the Apex Court referred supra extending the time. Therefore, the reliance of the learned counsel appearing for the 3rd respondent on the prospectus cannot be accepted, since it is not a case of discontinuance in the strict sense of the term, rather it is a case of student opting for a better college of her choice, based upon merit. The question of discontinuance would come when an action is totally voluntary on the part of the candidate concerned. Therefore, the said clause cannot be pressed into service as against the petitioner in W.P.No.32588 of 2015. Thus, if there is no objection in law, which can be sustained, the petitioner in W.P.No.32598 of 2015 would automatically come into picture. Thus, he would fill in the vacancy created by the exodus of the petitioner in W.P.No.32588 of 2015 through her entry into the 4th respondent College. If that is done, the petitioner in W.P.No.32598 of 2015, having been a student of the 3rd respondent, would automatically pay the requisite fees as required by such student. Therefore, there cannot be any loss that would accrue to the 3rd respondent. Even in that score, this Court is of the view that the clause containing payment of Rs.50,000/- and Rs.5,00,000/-, as the case may be, on discontinuance, cannot be invoked in the case on hand. The object to the said clause is to compensate the institute concerned, which otherwise, also, would be done by the entry of

the petitioner in W.P.No.32598 of 2015. After all, what is to be seen is the public interest involved as against the commercial one. While the seat would not become vacant, the 3rd respondent can never be said to be aggrieved.

6. On the objections raised regarding the cut off date fixed, the decision of the Apex Court has also been clarified by subsequent decision. The cut-off date fixed - 30.9.2015 has to be seen contextually. It was fixed taking into consideration of the scheme of admission, by fixing the responsibilities of each of the authorities concerned. In the case on hand, the present situation has arisen in pursuant to the order passed by the Apex Court in the decision referred supra. It is a single case involving one candidate. There is no dispute on his entitlement. By not considering the petitioner in W.P.No.32598 of 2015, not only the said petitioner, but the 3rd respondent also would be affected apart from the element of public interest involved. The matter can be seen from a different angle. Admission by the 3rd respondent is already over. It is a question of replacing one with the another. Therefore, there is a difference between process and replacing candidate with another. Therefore, even on facts, the cut-off date fixed by the Apex Court does not have any application.

7. Accordingly, both the writ petitions stand allowed. The 3rd respondent - Annamalai University is directed to furnish all the certificates to the petitioner in W.P.No.32588 of 2015 within a period of two weeks from the date of receipt of copy of this order. Consequently, the said respondent is directed to admit the petitioner in W.P.No.32598 of 2015 forthwith. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

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s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 10,

WEB COPY

2. The Chairman,
Medical Council of India,
Pocket - 14, Sector - 8,
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 3. The Registrar,
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 5. The Vice-Chancellor,
Tamilnadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 02
 6. The Director of Medical Education,
Kilpauk, Chennai - 600 010
- + 2 ccs to Mr.E.D.Sethupahy, Advocate SR 56206
+ 1 cc to Mr.G.Sankaran, Advocate SR 56157
+ 2 ccs to Mr.V.P.Raman, Advocate SRs 56578 and 56579
+ 2 ccs to Mr.R.Suresh Kumar, Advocate SR 56189 and 56191

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W.P.Nos.32588 and 32598
of 2015

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