

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.9841 of 2015

and

M.P.No.3 of 2015

Dr.M.Kingston Vijay Asir

... Petitioner

Vs.

1. Medical Council of India,
Rep. By its Secretary,
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110074.
2. The Government of Tamil Nadu
Represented by its Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai-9.
3. The Director of Medical Education,
162, E.V.R. Periyar High Road,
Kilpauk, Chennai-600 010.
4. The Selection Committee,
Represented by its Secretary,
Director of Medical Education,
162, E.V.R. Periyar High Road,
Kilpauk, Chennai-600 010.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the amended Clause No.40 of the prospectus for Post Graduate/Degree/Diploma/6 year M.Ch (Neuro-Surgery) Courses for the academic year 2015-2016 on the basis of G.O.(D.)No.367 dated 19.03.2015 is quashed and direct the respondents to conduct the counseling on the basis of the original prospectus relating to prospectus for Post Graduate/Degree/Diploma/6 year M.Ch. (Neuro -Surgery) Courses for the academic year 2015-2016 issued by the fourth respondent published in their official website on 20.01.2015 as per G.O(D). No.58/H&FW(ME) Department dated 14.01.2015.

For Petitioner : Mr.R.Krishnamurthy, Senior Counsel
for Mr.Um.Ravichandran

For Respondents : Mr.V.P.Raman for R1

Mr.V.Subbiah,
Special Government Pleader for R2 and R3

Mr.D.Krishnakumar,
Special Government Pleader(Edn.) for R4

O R D E R

By consent, this writ petition is taken up for final disposal.

2. The petitioner would state that he has completed his M.B.B.S. degree course in the year 1996 in the Government Medical College at Thirunelveli and in the year 1999, he completed Diploma in Radio Diagnosis at Tanjore Medical College and after completing the diploma course, the petitioner has been doing private practice at various places including Chennai. The petitioner would further state that between 2002-2015, he had applied seven times for the common entrance examination for the Post Graduate Degree in Radio Diagnosis conducted by the fourth respondent, but he was unsuccessful. It is further averred by the petitioner that the prospectus for the year 2015-2016 was uploaded in the website of the fourth respondent on 20.01.2015 and according to the prospectus, the application can be downloaded on 21.01.2015 and the last date for downloading the application was mentioned as 04.02.2015 and the final date for submission of the same was given as 05.02.2015. It is the specific case of the petitioner that entrance examination was conducted on the basis of the prospectus which came to be issued at the earliest point of time and the results were published in the official website and his name was found place in Sl.No.78 and the common rank at No.43, securing 69.40 % marks. The petitioner attended the first phase of counseling on 24.03.2015 and opted for M.D. (Radio Diagnosis) and during the counseling, he was informed that he can opt only in the General Waiting List and not in the Specialty Waiting List as per the procedures prescribed in the new prospectus in Clause 40, published by the fourth respondent and according to the petitioner, at the time of counseling he was the first person who sought for M.D. (Radio Diagnosis) Specialty Waiting List and he was asked by the Counselor to contact the Secretary for further clarifications.

3. The petitioner would further state that as per the first phase of counseling, it has been indicated that "options once exercised during the counseling cannot be changed later". However,

before the second phase of counseling, the said condition has been altered stating that "allotment and re-allotment will be conducted and the candidates can opt for change of course and change of college" and before the third phase of counseling, once again it was altered reiterating the same thing. It is the specific case of the petitioner that during the first phase of counseling, Sl.No.1 - Dr.Karpagavalli - Private Candidate, Sl.No.4 - Dr.S.Kanagadurga - Service Candidate, Sl.No.8 - Dr.Infant Pushpa Venish -Service Candidate, Sl.No.12 - Dr.K.Abirami- Service Candidate, Sl.No.15- Dr.M.Saranya - Service Candidate and Sl.No.36- Dr.T.Ramya - Service Candidate had opted for M.D.(Radio Diagnosis) and the petitioner, who has made very many attempts earlier, has also exercised his option to join the said course. Sl.No.15 namely Dr.M.Saranya did not join M.D.(Radio Diagnosis), though she was selected and since the petitioner, who is at Sl.No.78 has specifically opted for the said post, would have got that seat, however, on account of the amendment/alterations made during the second and third phase of counseling, the petitioner is not in a position to get the seat for the reason that taking advantage of the said condition, the persons who have already joined in other Post Graduate courses have started opted for M.D. (Radio Diagnosis) and hence, the petitioner came forward to file this writ petition.

4. Mr.R.Krishnamurthy, learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the typed set and additional typed set of documents and relied on the decisions viz., (1) Maharashtra State Road Transport Corporation and Others v. Rajendra Bhimrao Mandve and Others [(2001) 10 SCC 51], (2) Mohd. Sohrab Khan v. Aligarh Muslim University and Others and (3) Parmender Kumar and Others v. State of Haryana and Others [(2012) 1 SCC 177] and would submit that once the selection process has started based on a particular rule, it cannot be changed to the detriment of the concerned persons and would further contend that in the light of the amendment/alteration made during second and third phase of counseling, the petitioner would be deprived of the seat, in which he has opted in terms of the condition prescribed during first phase of counseling and prays for quashment of the impugned amendment clause.

5. Per contra, Mr.D.Krishnakumar, learned Special Government Pleader appearing for the fourth respondent would contend that as per Clause 12 of the prospectus, it has been mentioned that "Government Orders issued and to be issued from time to time pertaining to any of the matters contained in the prospectus should be read as part and parcel of this prospectus and such terms and conditions in the Government Order are deemed to have been incorporated in this prospectus" and in the light of the same, it is open to the Government to change the conditions during various phases of counseling and taking into consideration the interest of private and service candidates, alternations/amendments were came

to be made and it cannot be faulted with and hence, prays for dismissal of the writ petition. The learned Special Government Pleader has also invited the attention of this Court to the counter affidavit filed on behalf of the respondents 2 to 4 and would submit that even on merits, the petitioner is not entitled to get the seat as a matter of right for the reason that there are other meritorious candidates who have exercised their option to join M.D. (Radio Diagnosis).

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. Admittedly, at the time of first phase of counseling, the condition imposed was that "option once exercised during the counseling cannot be changed later" and the petitioner has exercised his option to join M.D. (Radio Diagnosis), however, on account of alternations/amendments made during second and third phase of counseling to the effect namely, "allotment and re-allotment will be conducted and candidates can opt for change of course and change of college", candidates who have already exercised their option to other subjects in the Post Graduate courses, started exercising their option and the result being, once again recounseling has to be done in respect of the seat vacated by students who have joined in other Post Graduate courses. In the considered opinion of the Court, amendment/alteration of the conditions during second and third phase of counseling is unsustainable in the light of the pronouncements made by the Hon'ble Supreme Court of India in the above cited decisions.

8. In Parmender Kumar and Others v. State of Haryana and Others [(2012) 1 SCC 177], the facts of the case would disclose that the case pertains to members of the Haryana Civil Medical Services (HCMS), to be admitted to the postgraduate courses conducted by Pandit B.D. Sharma University of Health Science, Rohtak and what is of importance is the method of selection and admission which was made a part of the prospectus, wherein, in Clause No.6 of the prospectus it has been indicated as follows:

"6.(iii) The conditions for NOCs fixed by the Government of Haryana vide Letter No.2/123/05/I-HB-I dated 5.12.2008 for HCMS doctors who want to join PG courses are given at Annexure D. (However, latest government instructions issued from time to time will be followed.).

Further Clause No.3 stipulates that the basic condition for eligibility is three years regular service with successful completion of probation period out of which two years service is essential in rural areas for both reserved and open seats in the case of HCMS doctors and however, the condition of rural service will not be applicable in the case of a member of the HCMS. The appellant before the Hon'ble Supreme Court were allowed to

participate in the selection process on the basis of merit list published on 03.03.2011, however on 31.03.2011, the Government of Haryana issued an instruction, which was circulated on its website on 05.04.2011, which changed the eligibility condition, that too one day before the date of counseling on 06.04.2011 and challenging the same, writ petitions were filed before the High Court of Punjab and Haryana and an interim order was passed permitting the appellants to take part in the counseling, however the results of the appellants should be kept in a sealed cover and would be subject to the outcome of the writ petition. Aggrieved by the interim order passed, Letters Patent appeals were filed before the Hon'ble Division Bench, which uphold the order passed by the learned Single Judge and it was put to challenge before the Hon'ble Supreme Court in the above cited judgment. The Hon'ble Supreme Court, taking into consideration of its earlier decisions, observed as follows:

"26. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the postgraduate or diploma courses in the different disciplines in medicine which had earlier been indicated in the Prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the Prospectus, was it within the competence of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the Prospectus been started, but also when counselling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing the postgraduate or diploma courses in the reserved HCMS category.

27. Although Mr Patwalia had placed a good deal of reliance on the decision of this Court in Rajiv Kapoor case [(2000) 9 SCC 115] wherein the facts were almost similar to the facts of this case, there is a singular distinction between the two. It has, no doubt, been held by this Court in Rajiv Kapoor case that the High Court fell into serious error in sustaining the claim of the petitioners before the High Court that selection and admissions for the course in question had to be only in terms of the stipulations contained in Chapter V of the prospectus issued by the University. It was further held that (SCC p. 120, para 9) such an error had been committed by

"assuming that the Government had no authority to issue any directions laying down any criteria other than the one contained in the prospectus and that the marks obtained in the written entrance examination alone constituted proper assessment of the merit performance of the candidates applying for selection and admission".

This Court also observed that the High Court in allowing the writ petitions had purported to follow an earlier judgment of the Full Bench of the same High Court in *Amardeep Singh Sahota v. State of Punjab* [(1993) 4 SLR 673 (P&H)], which, in fact, did not doubt the competency or authority of the Government to stipulate procedure for admission relating to courses in professional colleges, particularly, in respect of reserved category of seats. This Court also observed that (Rajiv Kapoor case, SCC p. 120, para 10) ultimately the Full Bench had directed in the case decided by it

"that selections for admission [should] be finalised in the light of the criteria specified in the government orders already in force and the prospectus, after ignoring the offending notification introducing a change at a later stage".

.....

29. As has also been pointed out hereinbefore, this Court in *Rajiv Kapoor* case took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the government orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage". (emphasis supplied) In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the postgraduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by government orders to alter the provisions contained in the prospectus. If such government orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses."

The appeals were allowed and since some time had passed, the Court directed the appellants to be admitted to Post Graduate degree or diploma course for which they have been selected for the new academic year without any further test or selection.

9. In the case on hand, this Court, vide interim order dated 28.04.2015, has passed the following order:

"3. This Court, taking into consideration the submissions made by the learned Senior Counsel appearing for the petitioner and upon perusal of the affidavit filed in support of the petition and typed set of documents, is inclined to grant interim orders. Accordingly, the fourth respondent is directed to keep one seat of M.D. (Radiology) in the second counselling for the academic year 2015-2016 vacant till 09.06.2015 and it is also made clear that the petitioner shall not claim any equity by virtue of this interim order."

10. Admittedly, the conditions prescribed during first phase of counseling has been completely changed to the detriment of the petitioner. The learned Senior Counsel appearing for the petitioner is right in his submission that but for the change, the petitioner could have got M.D. (Radio Diagnosis) on account of the fact of non-joining of the said course by a candidate in Sl.No.15, namely Dr.M.Saranya. The rules have been changed during the middle of the selection process diametrically opposite to the conditions prescribed during first phase of counseling and hence, on that sole ground, the impugned amended Clause No.40 of the prospectus warrants interference.

11. In the result, this Writ Petition is allowed and amended Clause No.40 of the prospectus for Post Graduate/Degree/Diploma/6 year M.Ch (Neuro-Surgery) courses for the academic year 2015-2016 on the basis of G.O.(D.)No.367 dated 19.03.2015 is quashed and the the respondents are directed to conduct the counseling on the basis of the original prospectus relating to Post Graduate/Degree/Diploma/6 year M.Ch. (Neuro -Surgery) Courses for the academic year 2015-2016 issued by the fourth respondent published in their official website on 20.01.2015 as per G.O(D). No.58/H&FW (ME) Department dated 14.01.2015 and pass appropriate orders. No costs. Consequently, connected miscellaneous petition is closed.

10.06.2015

JVM

The abovesaid W.P.No.9841 of 2015 listed on 12.06.2015 under caption for being mentioned and pursuant to the order of this Court dated 10.06.2015 and made herein and in the presence of abovesaid advocate the Court made the following Order.

The matter is listed under the caption "For Being Mentioned" at the instance of Mr.D.Krishnakumar, learned Special Government Pleader [Education]. It is the submission of the learned Special Government Pleader [Education] that this Court, vide interim order dated 28.04.2015, has directed the 4th respondent to keep one seat of M.D. [Radio Diagnosis / Radiology] in the second counseling for the academic year 2015-2016, and also made it clear that the petitioner shall not claim equity by virtue of this interim order. Thereafter, the writ petition was taken up for final hearing by consent, on 10.06.2015 and this Court, has recorded the findings that the conditions prescribed during the first phase of the counseling has been completely changed to the detriment of the petitioner and therefore, the petitioner's claim has to be considered only on the basis of the conditions prescribed in the first counseling.

2.It is also brought to the knowledge of this Court that in pursuant to the above said interim order, one seat of M.D. [Radio Diagnosis/Radiology] is being kept vacant at Annamalai University and the claim of the petitioner would be considered for that seat. According to the learned Special Government Pleader, by virtue of the prayer sought for by the petitioner, some confusion has been created as if the entire selection process has been set aside by this Court and hence, prays for an appropriate direction, directing the 4th respondent to consider the claim of the petitioner for admission to M.D. [Radio Diagnosis/Radiology] in respect of a seat being kept vacant at Annamalai University, in terms of the first prospectus.

3. Hence, it is clarified that the claim of the petitioner have to be considered in accordance with the conditions prescribed in the first Prospectus/first phase of counseling in respect of the course, M.D. [Radio Diagnosis/Radiology] on account of the non-joining of the said course by a candidate in Sl.No.15, viz., Dr.M.Saranya.

4.The writ petition is allowed with the above clarification.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary,
Medical Council of India,
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110074.
 2. The Secretary,
The Government of Tamil Nadu
Department of Health and Family Welfare,
Fort St.George, Chennai-9.
 3. The Director of Medical Education,
162, E.V.R. Periyar High Road,
Kilpauk, Chennai-600 010.
 4. The Secretary,
The Selection Committee,
Director of Medical Education,
162, E.V.R. Periyar High Road,
Kilpauk, Chennai-600 010.
- +1cc to Mr.V.P.Raman, Advocate, S.R.No.28862
+1cc to Mr.U.M.Ravichandran, Advocate, S.R.No.28294
+2cc's to the Government Pleader, S.R.No.28239 & 28765

WP.No.9841/2015

RV(CO)
CA(15/06/2015)

सत्यमेव जयते

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