

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18-08-2016

DELIVERED ON: 14-09-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM
AND
THE HONOURABLE MR. JUSTICE P. KALAIYARASAN

W.A.No.2007 of 2012
and M.P.No.1 of 2012

Medical Council of India
Represented by its Director
Pocket - 14, Sector - 8
Dwarka, New Delhi - 110 077 ... Appellant/Respondent

Vs.

Sri Muthukumaran Educational Trust
Rep. by its Managing Trustee
R. Gomathi, No.61 (Old No.641)
Ramasamy Salai, K.K. Nagar
Chennai- 600 078 ... Respondent/Petitioner

Writ Appeal under Clause 15 of the Letters Patent against
the common judgment and order dated 27-07-2011 in W.P.No.16688
of 2011.

Writ Petition filed u/a.226 of the Constitution of India,
praying for the issuance of a writ of certiorari calling for
the records relating to the Communication bearing MCI No.34
(MC)/ 2010-TN-34 dated 23.6.2011 on the file of the respondent
and quash the same.

For appellant :: Mr. V.P. Raman
For respondent :: Mr. T. Meikandan

JUDGMENT

(Order of the Court was made by A. SELVAM, J.)

This writ appeal has been directed against the order
dated 27-07-2011 passed in W.P.No.16688 of 2011 by the learned
Single Judge of this Court.

2. The respondent herein as petitioner has filed
W.P.No.16688 of 2011 on the file of this Court under Article
226 of the Constitution of India praying to issue a Writ of

Certiorari calling for the records relating to the communication bearing No.MCI No.34(MC)/2010-TN-34 dated 23-06-2011 and quash the same wherein the present appellant has been shown as respondent.

3. The appellant herein has sent a communication to the Director of Medical Education, Tamil Nadu wherein it is stated that,

"in the light of the aforesaid decision of the competent authority, you are requested to reduce the admission in the Management quota in respect of Sri Muthukumaran Medical College, Hospital & Research Institute, Chennai during the academic year 2011-12 and increase allocation of free seats in Government Quota during the academic year 2011-12".

The said communication has been challenged in W.P.No.16688 of 2011.

4. The learned Single Judge after considering the divergent contentions raised on either side has allowed the writ petition in view of the decision reported in 2011 (1) CTC 41(Medical Council of India V. The Chairman, Sree Mookambika Institute of Medical Sciences), by way of passing the impugned order and the same is being challenged in the present writ petition.

4. The learned counsel appearing for the appellant/respondent has repeatedly contended that the Management has no power to interfere with the Government quota in the matter of admission of medical seats. But the respondent/petitioner during the relevant year has admitted students more than that of the requisite quota. Under the said circumstances, the communication in question has been issued. But the learned Single Judge without considering the interference made by the respondent/petitioner has erroneously allowed the writ petition in view of the decision reported in 2011 (1) CTC 41(cited supra) and therefore, the conclusion arrived at by the learned Single Judge is liable to be set aside and the W.P.No.16688 of 2011 is liable to be dismissed.

5. Per contra, the learned counsel appearing for the respondent/petitioner has sparingly contended that the appellant/respondent has no locostandi to question the alleged interference of admission of students in the Medical College and the Division Bench of this Court has categorically held that the appellant is not having power to question the same and the learned Single Judge after considering the rival contentions put forth in the present writ petition and also after following the decision reported in 2011 (1) CTC 41(cited supra) has rightly allowed the petition and therefore, the

order passed by the learned Single Judge is not liable to be set aside.

6. The learned counsel appearing for the appellant/respondent has drawn the attention of the Court to the following decision:

In 2005 (2) SCC 65 (Mridul Dhar (Minor) Vs. Union of India and others) the Honourable Supreme Court in Paragraph No.11 has observed as follows:

"If any private medical college in a given academic year for any reason grants admission in its management quota in excess of prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year."

7. Even from a cursory look of the observation made by the Honourable Supreme Court, it is clear that if admission is made in Medical College in excess of prescribed management quota for a particular academic year, the number of seats in management quota for the next academic year will be reduced so as to set off excess admission made in the management quota in the previous academic year.

8. In 2011 (1) CTC 41(cited supra), the Division Bench of this Court has analysed similar issue. In Paragraph Nos.12 to 14 it is observed as follows:

"12.By virtue of the above power, the Medical Council, with the previous sanction of the Central Government, made The Medical Council of India (Criteria for Identification of Students Admitted in Excess of Admission Capacity of Medical Colleges) Regulations, 1997. Regulation 3(b) relates to 'Admission Capacity' as referred to in Explanation 2 of Section 10A of the Act relating to permission for establishment of new medical college, new course of study, etc. Regulation 3(c) relates to the competent authority to implement the Regulations meaning thereby the Central Government or State Government or medical college to allot students for admission to various medical colleges in a State or Union Territory. Regulation 4 relates to sanctioned intake capacity in medical colleges. By that regulation, the Council shall every year, prior to the start of undergraduate/postgraduate academic medical course, intimate the medical colleges and State/Union Territory Governments, the sanctioned intake capacity of the students for undergraduate/postgraduate courses in medical colleges. In terms of Regulations 5 and 7, the medical colleges shall furnish year-wise

list of students admitted to the council within three months from the closure of admission. Regulation 8 relates to matters relating to excess admission to be decided by the Council. That regulation contemplates that all matters relating to excess admission of students shall be decided by the Council.

13. Going by the above provisions, the Medical Council would certainly have the power to regulate the admissions of students in the medical colleges within the sanctioned intake capacity and if the admission is made over and above the sanctioned strength, it would certainly have the power to take appropriate action against the concerned. In our opinion, these regulations would be available to the Medical Council only in the event the admission is made over and above the sanctioned strength. For example, if an institute had admitted more than 100 candidates, namely the sanctioned strength, it would certainly refuse to recognise the admissions made over and above the sanctioned intake. The power to take such action is not available if the seats are filled within the sanctioned strength.

14. The question of 50% of seats to be considered as Government quota is only by virtue of the agreement between the institute and the State Government. That seat sharing is entirely between the institute and the Government and for that purpose the Medical Council has no role to say that as to whether such seat sharing could be made or not and if such seat sharing could be made what is the percentage of seat sharing, etc. The power that will be available to the Medical Council is not to find out as to whether the institute admits students according to the seat sharing agreement entered with the State Government but only to the extent as to whether the institute has admitted more than the sanctioned strength. To this extent, the Medical Council has power and not otherwise."

9. From a close reading of the observations made by the Division Bench of this Court, it is easily discernible that as per Indian Medical Council Act, 1956(102/1956), the Indian Medical Council has power to interfere in a matter where admission has been made in excess of allowed limit. But at the same time, with regard to Government quota and Management quota, it is a matter between the concerned Government and Management and if there is any infraction, only the concerned Government is the competent authority to make interference.

10. In the instant case, the specific contention of the appellant/respondent is that during academic year 2010-2011,

the respondent/petitioner has admitted medical students in excess of management quota. Under the said circumstances, the communication in question has been issued.

11. As adverted to earlier, there is no specific provision in the Medical Council Act, 1956 which enables the Indian Medical Council to make interference in a matter like this and at the most, the Indian Medical Council can make its interference if there is any excess admission. Since there is no explicit provision either in Medical Council Act, 1956 or in some other Act, so as to permit Indian Medical Council to make interference in a matter like this, this Court is of the considered view that a power/right which is not permissible under law cannot be created in favour of the appellant/respondent and at the most in the present issue only the State Government is having power/right to make interference and therefore, it is needless to say that the impugned communication has been issued without having locostandi and therefore, the contentions put forth on the side of the appellant/respondent cannot be accepted and the learned Single Judge after considering the observations made in the judgment passed by the Division Bench of this Court has rightly allowed the writ petition and in view of the discussions made earlier, this Court has not found any force in the contentions urged on the side of the appellant and altogether, the present writ appeal deserves to be dismissed.

In fine, the writ appeal is dismissed without costs. The order dated 27-07-2011 passed in W.P.No.16688 of 2011 by the learned Single Judge is confirmed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To
The Director
Medical Council of India
Pocket - 14, Sector - 8
Dwarka, New Delhi - 110 077

+1 cc to Mr.V.P.raman,advocate,sr.51832

+1 cc to Mr.T.Manikandan,advocate,sr.52420.

nrjk(co)
krd 26/9

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