

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.24995 of 2016
and
W.M.P.No.21353 of 2016

S.Santhalakshmi

... Petitioner

Vs.

1. The Controller of Examinations
Tamil Nadu Dr. MGR Medical University
Guindy, Chennai-600 032.

2. Government Mohan Kumaramangalam Medical College
Salem-636 030,
Rep by its Dean.

3. State Level Committee
Rep by its Chairman/Secretary to Government
Adi Dravidar and Tribal Welfare Department
Fort St George,
Chennai - 600 009.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 and 2 to issue hall ticket to the petitioner (Roll No. 2K15077) and permit her to write all examinations including practical examinations for the 1st year M.B.B.S August 2016 examinations scheduled to be commenced from 01.08.2016.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.G.Hari Hara Arun Soma Sankar
for R1

Mr.P.Sanjai Gandhi for R2 and R3
Additional Government Pleader

O R D E R

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

2.The petitioner claims that her parents as well as she belongs to Hindu 'Kurumans' Scheduled Tribe Community and such entry has been made in her all school records and the petitioner's father was also issued with community certificate dated 13.08.2014 by the Revenue Divisional Officer, Thiruvannamalai. The petitioner has passed the Higher Secondary Course and secured 1123 out of 1200 marks and even prior to that, for getting the community certificate, her father had applied to the District Collector, Thiruvannamalai and it was forwarded to the jurisdictional Revenue Divisional Officer for taking appropriate action, but however, no orders have been passed and therefore, the father of the petitioner filed W.P.No.10928 of 2015 praying for appropriate direction, directing the jurisdictional Revenue Divisional Officer to consider his application for issuance of community certificate and this Court vide order dated 16.04.2015, has directed the said official to pass orders within a stipulated time frame in accordance with law and however, the Revenue Divisional Officer did not pass any orders.

3.In the meanwhile, the petitioner submitted application for admission to the first year MBBS course with cut off mark as 193.25 and since the petitioner did not enclose the community certificate, as it is yet to be issued, she was treated as General Category candidate and therefore, she filed W.P.No.17063 of 2015 praying for entertainment of her application under the Scheduled Tribe category and admit her accordingly and this Court vide interim order dated 16.06.2015, has granted an order of ad interim direction, directing the first respondent to consider her application under the Scheduled Tribe Category for admission to the first year MBBS/BDS course for the academic year 2015-2016 and also made it clear that the interim order is subject to the result of the writ petition and accordingly, she has joined the first year MBBS course at Government Mohan Kumaramangalam Medical College, Salem and also successfully completed the first year course.

4.The petitioner would further state that in the meanwhile, the jurisdictional Revenue Divisional Officer has rejected the request for issuance of community certificate and hence, the father of the petitioner filed writ petition in W.P.No.21875 of 2015 and the Division Bench of this Court vide order dated 22.07.2015, has set aside the order passed by the Revenue Divisional Officer and directed him to consider the matter

afresh and hence, the Revenue Divisional Officer has forwarded the same to the State Level Scrutiny Committee and though, notice has been issued and father of the petitioner also participated in the enquiry, no final orders are passed.

5.The learned counsel appearing for the petitioner submitted that the respondents 1 and 2 had insisted for the production of community certificate for registration with the University and since the State Level Scrutiny Committee is yet to complete its exercise, she is yet to be issued with the community certificate and therefore, she has come forward with this writ petition and prayed for appropriate orders.

6.Per contra, Mr.G.Hari Hara Arun Soma Sankar, learned counsel who accepts notice on behalf of the first respondent would vehemently contend that as per the first year MBBS Course Revised (Non-Semester) Regulations, a candidate admitted to the course in any of the affiliated colleges shall apply for registration with the University within three months from the date of joining in the college and for the purpose of registration, the petitioner has to produce community certificate and admittedly, the petitioner is yet to produce the community certificate. It is his further submission that as per the schedule for examination, even the last date for submission of examination fee with penalty of Rs.2000/- was also over on 18.07.2016.

7.The learned counsel appearing for the first respondent has also drawn the attention of this Court to the decision of the Hon'ble Supreme Court of India reported in (2011) 14 SCC 227 (Secretary, Union Public Service Commission and Another Versus S.Krishna Chaitanya) and would submit that the Hon'ble Supreme Court of India had deprecated the practise of allowing the writ petition even at an interim stage and only endeavour shall be made to dispose finally on merits. It is relevant to extract paragraph no.30 of the above cited decision hereunder:

"30.We may add here that this Court has observed time and again that an interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage. We reiterate that normally at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. We, however, find that very often courts are becoming more sympathetic to the students to take an

examination without ascertaining whether the candidate concerned had a right to take the examination. For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result. In the instant case, we have found that the respondent not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations. In our opinion, grant of such interim orders should be avoided as they not only increase the work of the institution which conducts the examination but also give a false hope to the candidates approaching the court."

8.This Court has also raised a specific question to the learned counsel appearing for the first respondent as to whether in the absence of registration, the petitioner will be able to pay the examination fees and the learned counsel answered in negative.

9.This Court also heard the submissions of Mr.P.Sanjai Gandhi, learned Additional Government Pleader who accepts notice on behalf of the respondents 2 and 3 and also perused the materials placed before it.

10.The fact remains that the father of the petitioner has been issued with community certificate stating that he belongs to Hindu Scheduled Tribe 'Kurumans' community in certificate no.365644 dated 13.08.2014 and according to the learned counsel appearing for the petitioner, it is yet to be cancelled. The endeavour made by the father of the petitioner in getting the community certificate, was initially rejected by the Revenue Divisional Officer, Tiruvannamalai and a challenge was made by filing writ petition in W.P.No.21875 of 2015 and the matter was allowed and remanded back, for fresh adjudication and he inturn forwarded the papers to the State Level Scrutiny Committee and the said Committee is yet to dispose of the matter.

11.In the light of the above said fact, this Court is of the view that the petitioner cannot be faulted with for non production of the community certificate for the reason that the State Level Scrutiny Committee is yet to pass final orders and only in the event of positive final order being passed, the petitioner may be in a position to get community certificate.

12. Insofar as the submission made by the learned counsel appearing for the first respondent unless the petitioner registers with the University and thereafter, pay the fees within the prescribed time limit, she cannot be allowed to write the examination, the fact remains that unless community certificate is issued, she will not be allowed to register herself and only after registering herself, she may be allowed to apply for the examination.

13. However, the facts of the case extracted above would disclose that the petitioner is not at fault for not having the community certificate for the reason that it is yet to be issued in the light of the pendency of the proceedings pending before the State Level Scrutiny Committee.

14. There cannot be any difficulty in the preposition laid down by the Hon'ble Supreme Court of India cited above, for the reason that this Court in the guise of passing interim orders cannot dispose of the main writ petition itself and the only endeavour which shall be made is to finally dispose of the writ petition on merits.

15. In the event of the petitioner succeeds in her endeavour in getting the community certificate, but she is not permitted to write the examination for want of community certificate, then her academic career will be ruined and on the contrary, if she is permitted to write the examinations and in the event if she succeeds in her endeavour before the State Level Scrutiny Committee, she is entitled to get the community certificate and she will realize the fruits of hard work and even otherwise, if she fails in her endeavour, in the light of the additional affidavit filed by her, dated 20.07.2016, she has to forego the benefits of her admission to MBBS Course under Scheduled Tribe category and therefore, the interest of the first respondent is protected.

16. Therefore, this Court is of the view that the balance of convenience lies clearly in favour of the petitioner. Therefore, the writ petition is disposed of and de hors the registration of the petitioner for want of community certificate, the Registrar, Dr.M.G.R.Medical University, Guindy, Chennai - 600 032 is directed to accept the examination fee along with penalty fee by 22.07.2016 and thereafter, issue hall-ticket and permit the petitioner to write/ participate in the first year MBBS examination. It is also made clear that this order is subject to the decision of the State Level Scrutiny Committee and also in the light of the additional affidavit of the petitioner dated 20.07.2016.

17.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Controller of Examinations
Tamil Nadu Dr. MGR Medical University
Guindy, Chennai-600 032.
2. The Dean,
Government Mohan Kumaramangalam Medical College
Salem-636 030,
3. The Chairman/Secretary to Government
State Level Committee
Adi Dravidar and Tribal Welfare Department
Fort St George,
Chennai - 600 009.
4. The Registrar,
Dr.M.G.R. Medical University,
Guindy, Chennai 600 032.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.41129

+1cc to Mr.G.Hari Hara Arun Soma Sankar, Advocate, S.R.No.41249

+1cc to the Government Pleader, S.R.No.41310

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and
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VS(CO)
CA(21/07/2016)

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