

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.24996 of 2016

And

W.M.P.No.21354 of 2016

R.E.Inbhamugil ... Petitioner

Vs.

- 1 The Controller of Examinations
Tamil Nadu Dr. MGR Medical University
Guindy, Chennai-600 032.
- 2 Karpagam Faculty of Medical Science & Research,
Coimbatore - 641 032,
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 (Register I.D.No.521525043) and permit him 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 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 he belongs to Hindu 'Kurichan' Scheduled Tribe Community and his mother was also issued with the said community certificate dated 29.01.1996 by the Revenue Divisional Officer, Dharmapuri and her service records also disclose the fact that she belong to the said community.

3.The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that the mother of the petitioner had approached the Revenue Divisional Officer for issuance of community certificate of her two sons namely, R.E.Nanda Akash and R.E.Inbha Mugil (the petitioner herein) and it was rejected by the Revenue Divisional Officer, Dharmapuri and it was put to challenge in W.P.No.8963 of 2014 and the Division Bench of this Court vide order dated 02.07.2014, has directed the State Level Scrutiny Committee to cause an enquiry and pass appropriate orders

and the said exercise is yet to be completed by the said Committee.

4.It is the further submission of the learned counsel appearing for the petitioner that the petitioner has applied for first year MBBS course with cut off mark as 183.25 and in the absence of the community certificate, apprehending that his application is likely to be rejected has approached this Court by filing W.P.No.17577 of 2015 and vide interim order dated 19.06.2015, this Court has directed the concerned respondent to entertain the application submitted by the petitioner under Scheduled Tribe category for admission to the MBBS 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, the petitioner joined the first year MBBS course. The learned counsel appearing for the petitioner on instructions would submit that the petitioner has put in the required attendance and he has not produced the community certificate for registration with the University and since the State Level Scrutiny Committee is yet to complete its exercise and he is yet to be issued with the community certificate and therefore, he has come forward with this writ petition and prayed for appropriate orders.

5.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.

6.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."

7.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.

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

9.The fact remains that the mother of the petitioner has been issued with the community certificate stating that she belongs to Hindu Scheduled Tribe 'Kurichan' community and her service records also reflects the same. The mother of the petitioner submitted application to the Revenue Divisional Officer, Dharmapuri for issuance of community certificate and it was rejected and it was put to challenge in W.P.No.8963 of 2014 and vide order dated 02.07.2014, this Court has directed the State Level Scrutiny Committee to consider and pass orders and the said Committee is yet to complete its exercise and as a consequence, the petitioner is yet to be issued with the community certificate.

10.In the light of the above said facts, 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.

11.It is the submission of the learned counsel appearing for the petitioner that the petitioner is having required attendance and therefore, he is eligible to participate in the first year MBBS examination and however, it is the submission made by the learned counsel appearing for the first respondent that the Registrar, Dr.M.G.R.Medical University, Guindy, Chennai - 600 032 is the proper and necessary party in terms of clause 13(8) of the Tamil Nadu Dr.M.G.R.Medical University, Chennai, 1987 and since he is not added as a party, the writ petition is not maintainable.

12.Insofar as the submission made by the learned counsel appearing for the first respondent that unless the petitioner registers with the University and thereafter, pay the fees within the prescribed time limit, he cannot be allowed to write

the examination, the fact remains that unless community certificate is issued, he will not be allowed to register himself and only after registering himself, he 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 produced 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 his endeavour in getting the community certificate, but he is not permitted to write the examination for want of community certificate, then his academic career will be ruined and on the contrary, if he is permitted to write the examinations and in the event if he succeeds in his endeavour before the State Level Scrutiny Committee, he is entitled to get the community certificate and he will realize the fruits of hard work and even otherwise, if he fails in his endeavour, in the light of the additional affidavit filed by him, dated 20.07.2016, he has to forego the benefits of his 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1 The Controller of Examinations
Tamil Nadu Dr. MGR Medical University
Guindy, Chennai-600 032.
 - 2 State Level Committee
The Chairman/Secretary to Government, State Level Committee
Adi Dravidar and Tribal Welfare Department
Fort St George,
Chennai - 600 009.
 3. TheRegistrar, Dr.M.G.R.Medical University,
Guindy, Chennai - 600 032 .
- +1 cc to S.Doraisamy Associates sr.41128
+1 cc to G.Harihara Arunsoma Sankar sr.41250
+1 cc to Government Pleader sr.41309

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