

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.25000 of 2016

And

W.M.P.No.21361 of 2016

K.Vasanth

... Petitioner

Vs.

- 1 The Registrar
The Tamilnadu Dr.M.G.R.Medical University,
Guindy, Chennai - 32.
- 2 The Controller of Examinations
The Tamil Nadu Dr. MGR Medical University
Guindy, Chennai-600 032.
- 3 The Dean
Vellammal Medical College and Hospital,
Madurai. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to permit the petitioner to attend and complete the M.B.B.S course in the 3rd respondent college and to appear for the annual examinations and to declare the results therefor.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.G.Hari Hara Arun Soma Sankar
for R1 and R2

O R D E R

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

2.The petitioner would state that his family belongs to Hindu Scheduled Tribe 'Konda Reddy' Community and his father has been issued with community certificate in June, 1975 by the jurisdictional Tahsildar and it is yet to be cancelled and so also his cousin brothers and sisters and the documents of title which are anterior in nature, also reflect that the family members of the petitioner belong to Hindu Scheduled Tribe Community.

3.The father of the petitioner on an earlier occasion, approached the Revenue Divisional Officer, Salem District for issuance of community certificate for his son/ the petitioner herein and since no orders have been passed had filed W.P.No.4327 of 2014 and the Division Bench of this Court vide order dated 14.02.2014, has directed the said official to pass orders on the application filed by the petitioner's father on merits, within a stipulated time and it is yet to be complied with, though the father of the petitioner had approached the official very many times.

4.The learned counsel appearing for the petitioner would submit that the petitioner after successfully passing the Higher Secondary Course, had applied for the MBBS course for the academic year 2015-2016 under the Scheduled Tribe category and since on account of the pendency of the proceedings before the jurisdictional Revenue Divisional Officer, he is yet to get the community certificate and therefore, apprehending that his application is likely to be rejected, has approached this Court by filing W.P.No.17047 of 2015 and vide interim order dated 16.06.2015, this Court has directed the Secretary, Selection Committee MBBS, Directorate of Medical Education, Kilpauk, Chennai to consider the claim of the petitioner for admission to MBBS Course under Scheduled Tribe category 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 and also successfully completed the same, by complying with all the procedural formalities.

5.It is also the submission of the learned counsel appearing for the petitioner that for want of community certificate, he is yet to be registered and as a consequence, he is not permitted to write the examination and therefore, he is constrained to approach this Court by filing this writ petition. The learned counsel also drawn the attention of this Court to the additional affidavit and would submit that the petitioner has given an undertaking that in the event of he not being able to get the community certificate from the Revenue Divisional Officer, he will not claim any right on the basis of having secured admission to the MBBS course under Scheduled Tribe category and therefore, prays for appropriate orders.

6.Per contra, Mr.G.Hari Hara Arun Soma Sankar, learned counsel who accepts notice on behalf of the respondents 1 and 2 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 respondents 1 and 2 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 respondents 1 and 2 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 has carefully considered the rival submissions and also perused the materials placed before it.

10.The fact remains that the father of the petitioner has been issued with the community certificate stating that he belongs to Hindu Scheduled Tribe 'Konda Reddy' community and it is yet to be cancelled and according to the learned counsel appearing for the petitioner, the endeavour made by the petitioner to get the community certificate is yet to be fructified for the reason, the jurisdictional Revenue Divisional Officer is yet to dispose of the application submitted for issuance of community certificate, despite the order made in W.P.No.4327 of 2014 dated 14.02.2014.

11.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 jurisdictional Revenue Divisional Officer is yet to dispose of the application submitted for issuance of community certificate.

12.Insofar as the submission made by the learned counsel appearing for the respondents 1 and 2 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.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.

14.It is also pertinent to point out at this juncture, that 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 to get the community certificate, 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 respondents 1 and 2 is very well protected.

15. 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 first respondent namely, 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 Revenue Divisional Officer, Salem District and also in the light of the additional affidavit of the petitioner dated 20.07.2016.

16. 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 Registrar
The Tamilnadu Dr.M.G.R.Medical University,
Guindy, Chennai - 32.
- 2 The Controller of Examinations
The Tamil Nadu Dr. MGR Medical University
Guindy, Chennai-600 032.
- 3 The Dean
Vellammal Medical College and Hospital,
Madurai.

+1cc to Mr.V. Vijay Shankar, Advocate, S.R.No.41214

+1cc to Mr.G. Hari Hara Arun Soma Sankar,
Advocate, S.R.No.41251

NM(CO)
EU(21/07/2016)

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