

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI

AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.Nos.112 & 113 of 2016 and
C.M.P.Nos.1628 & 1629 of 2016

1.The Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

2.The Secretary to Government,
Health and Family Welfare (ME) Department,
Fort St. George, Chennai - 9.

... Appellants in both WAs/
Respondents 1 and 2

V.

1.P.Ramya ... 1st Respondent in WA.No.112/2016
/Petitioner in WP.17612/2015

1.Fenila Bell.E ... 1st Respondent in WA.No.113/2016
/Petitioner in WP.17613/2015

2.The Dean,
Karpaga Vinayaga Institute of Medical
Science and Research Centre
GST Road, Chinna Kolambakkam,
Palayanoor PO, Madhuranthagam TK,
Kanchipuram 603 308.

3.The Medical Council of India
Rep. By its Secretary,
Dwaraka, New Delhi. ... Respondents 2 & 3 in both WAs./
Respondents 3 & 4 in both WPs

Prayer: Writ Appeals filed under Clause 15 of the Letters
Patent, against the order of this Court dated 18.09.2015 made in
W.P.Nos.17612 & 17613 of 2015.

Prayer in W.P.No.17612 of 2015 & 17613 of 2015:

Writ Petition filed under Article 226 of The Constitution of India praying to issue Writ of CERTIORARIFIED MANDAMUS to call for the records from the 1st & 2nd Respondents relating to the prospectus for the admission to MBBS/BDS courses 2015 - 2016 session and quash the same in so far as clause 6(c) of the Prospectus for the Admission to MBBS/BDS courses 2015-2016 session as illegal arbitrary vindictive without jurisdiction and consequently direct the Respondents 1&2 to consider the Petitioner for MBBS admission for 2015-2016 also calling her for counseling as per her rank grant admission.

For Appellants : Mr.T.N.Rajagopalan
(in both WAs) Special Government Pleader

For 1st Respondent : Mr.R.Muthukumarasamy
(in both WAs) Senior Counsel
for Ms.I.Bobby Portia

For 3rd Respondent : Mr.V.P.Raman
(in both WAs) Standing Counsel for Medical
Council of India

COMMON JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellants have preferred the instant Writ Appeals as against the common order dated 18.09.2015 in W.P.Nos.17612 & 17613 of 2015 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned common order on 18.09.2015, in W.P.Nos.17612 & 17613 of 2015 [filed by the 1st Respondents (in both the Writ Appeals)/Petitioners], at paragraphs 8 & 9, had observed the following:

"8. Admittedly, the petitioners got admission with the 3rd respondent college under the Government Quota based upon their merit. When there are vacancies available with the Government colleges, there is no difficulty in considering their request. The absence of the 3rd respondent college before this court is taken as a no objection certificate from it. The official respondents cannot have any objection for the petitioners being accommodated in the Government colleges. The Migration if granted is restricted to 5% intake. The

inability of the students to pay the fees as submitted by the learned Senior Counsel for the petitioners would be a genuine ground especially when seats are available in the Government College. There is a difference between a student admitted in the management quota and on merit. It is not a mere migration of a private college student to Government College, since the admission was in the Government quota. Between the financial interest of an institution and the education of students the later should be given primacy. The very fact that the petitioners want themselves to be considered on merit in the ensuing academic year would show the situation in which they are placed. They are even willing to forego one year of studies and instead want an accommodation in the Government College due to their inability to continue. Thus, this court is of the view that the applicability of the Regulation 6 of the Medical Council of India to the facts of this case itself is in doubt, since the petitioners were admitted in the Government quota. Though the applications for amendment have been filed subsequently, the position appears to be the same, as even if the original prayer is there and in the event of that being allowed, the 3rd respondent college would be losing two students.

9. Considering the above, this court is of the considered view that it is a case where the petitioners being Medical students will have to be given appropriate orders by this court to enable them to pursue their studies, particularly, when there are available seats with the Government colleges, which are otherwise not likely to be filled up and thus go unfilled. Accordingly, a direction is issued to the respondents 1 and 2 to consider the case of the petitioners and accommodate them either at Stanley Medical College, Chennai or at Coimbatore Medical College, within a period of four weeks from the date of receipt of a copy of this order. "

and accordingly, disposed of the Writ Petitions without costs.

3.Challenging the correctness of the common order dated 18.09.2015 in W.P.Nos.17612 & 17613 of 2015 passed by the Learned Single Judge, the Learned Special Government Pleader for the Appellants contends that the 1st Respondents/Petitioners had opted to undergo their MBBS course in the 2nd Respondent/Institution during 2014 - 2015 academic session.

4.Further, it is represented on behalf of the Appellants that the 1st Respondents/Petitioners were fully aware of the fact that the 2nd Respondent/Institution is a self-financing institution and the fees structure are different from the Government College. That apart, it is the 1st Respondents/Petitioners choice to undergo their MBBS course at the 2nd Respondent/Institution and that the Appellants/Respondents 1 & 2 are in no way responsible for their choice. Unfortunately, these vital aspects were not taken note of by the Learned Single Judge at the time of passing the impugned common order in the Writ Petitions.

5.The Learned Special Government Pleader for the Appellants submits that the Learned Single Judge should have seen that the last candidate allotted to the Stanley Medical College, Chennai, general rank was 389 and cut off mark was 199.50 and the last candidate allotted to the Coimbatore Medical College, general rank was 675 and cut off mark was 199.25. As a matter of fact, in between these candidates and the 1st Respondents/Petitioners there were around 1000 candidates. Moreover, if the 1st Respondents/Petitioners are given admission in Government Stanley Medical College, Chennai or in Coimbatore Medical College, as ordered by the Learned Single Judge, then, the eligible candidates would be deprived of the chance of securing admissions and great injustice would be done to the remaining candidates who are studying in other far away Medical Colleges in spite of their marks and ranks.

6.According to the Appellants, the Learned Single Judge should have seen that 'Migration' is not a right of a medical student.

7.The Learned Special Government Pleader for the Appellants proceeds to take a plea that migration of second year student from one Medical College in Government or in Private is effected by strictly following the Medical Council of India rules and the Government Order issued from time to time.

8.The Learned Special Government Pleader projects an argument that 'migration' is permitted only in exceptional circumstances by following the rules and regulations of Medical Council of India and the State concerned.

9.The Learned Special Government Pleader for the Appellants relies on G.O.(Ms).No.4, Health and Family Welfare (MCA 1) Department, dated 02.01.2012 of the Government of Tamil Nadu and submits that the said G.O. framing certain guidelines for migration was issued based on the Government of India Notifications and in terms of the said Government Order, the migration shall be considered on certain grounds such as : (i) Death of supporting parent/guardian; (ii) illness of the candidate causing disability; and (iii) Disturbed conditions as declared by Government in the Medical College area. Further, he refers to Annexure I (Procedure/Guidelines) of Clause 8 of the aforesaid G.O. wherein it was mentioned as follows:

"No migration will be permitted from the Private Medical College to Government Medical College."

10.Apart from the above, the Learned Special Government Pleader for the Appellants seeks in aid of the G.O.Ms.No.68, Health and Family Welfare (MCA.1) Department, dated 24.02.2012 wherein Annexure I - Clause 8 mentioned in G.O.(Ms).No.4, dated 02.01.2012, was amended as under:

"No migration will be permitted from the private Medical College to Government Medical College and from one private Medical College to another private Medical College."

11.At this juncture, this Court aptly points out that Clause 6(1) of the Medical Council of India Regulations on Graduate Medical Education, 1997 which reads as follows:

"6(1) Migration of students from one medical college to another medical college may be granted on any genuine ground subject to the availability of vacancy in the college where migration is sought and fulfilling the other requirements laid down in the Regulations. Migration would be restricted to 5% of the sanctioned intake of the college during the year. No migration will be permitted on any ground from one medical college to another located within the same city."

12.On a careful consideration of the contentions advanced on behalf of the Appellants and this Court taking note of the fact that admittedly when there are two seats available one at

Stanley Medical College, Chennai and another at Coimbatore Medical College and also bearing in mind the attendant facts and circumstances of the entire conspectus of the present case in an encircling fashion and also this Court, upon perusing the impugned order of the Learned Single Judge dated 18.09.2015 in W.P.Nos.17612 & 17613 of 2015 in regard to the issuance of direction inter alia to the effect that '... the Respondents 1 and 2 (Appellants herein) to consider the case of the Petitioners (1st Respondents herein) and accommodate them either at Stanley Medical College, Chennai or at Coimbatore Medical College, within a period of four weeks from the date of receipt of a copy of the order', is of the considered opinion that the same does not suffer from any material irregularities or legal infirmities in the eye of Law. Looking at from any angle, the Writ Appeals fail. Before parting with the case, this Judgment shall not be treated as precedent and it is abundantly made quite clear that the present Judgment is passed taking into account of the attendant facts and circumstances of the instant case, leaving the question of Law open to be decided in an appropriate case.

13.In the result, the Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Medical Council of India
Rep. By its Secretary,
Dwaraka, New Delhi.

2.The Selection Committee,
Directorate of Medical Education,
162,Periyar EVR High Road, Kilpauk,
Chennai-10.

3.The Secretary to Government,
Health of Family Welfare (ME) Department
Fort St.George,
Chennai-9.

+3cc to M/s.Bobby Portia, Advocate, S.R.No.11189,11190
+2cc to Mr.V.P.Raman, Advocate, S.R.No.11254 & 11255
+1cc to the Government Pleader, S.R.No.11408

W.A.Nos.112 & 113 of 2016

gj (CO)
srg (26/02/2016)



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