

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.9.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.583 of 2016
and
C.M.P.No.7643 of 2016

- 1 The Government of Tamil Nadu
Rep. by its Secretary
Health and Family Welfare (ME) Department
Secretariat Chennai-600 009.
 - 2 The Selection Committee
Directorate of Medical Education
Kilapauk Chennai-600 010.
 - 3 The Director
Directorate of Medical Education
Kilpauk Chennai-600 010. ...Appellants/Respondents
- Versus
- 1 S.Rathish ...Respondents/Petitioner
 - 2 Tamil Nadu Dr.M.G.R. Medical University
Rep. By its Registrar
No.69 Anna Salai Guindy Chennai-32.
 - 3 Dental Council of India
Rep. By its Secretary
Aiwan-E-Galib Marg Kotla Road
Temple Lane New Delhi-110 002.
 - 4 RVS Dental College and Hospital
rep by its Principal
Kumaran Kottam Campus
Kannampalayam
Coimbatore 641 402 ..2 to 4 Respondents/ 4 to 6
Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 23.11.2015 passed in W.P.No.17231 of 2015 on the file of this court.

WP.No.17321/2015: Filed under 226 of the Constitution of India for issuance of Writ of Certiorarified mandamus, to call for the records from the 1st & 2nd Respondents relating to the Prospectus for Admission to MBBS/BDS courses 2015-2016 session and quash the same in so far as clause 6(c) & (d) of the Prospectus for 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 BDS admission for 2015-2016 also by calling him for counseling as per his rank grant admission or in the alternative direct the Respondents 1 to 5 to consider the Petitioner for transfer to the BDS seat in the Government Dental College Chennai or any other place in Tamil Nadu remained unfilled in the year 2014-2015.

For appellants : Mr.T.N.Rajagopalan,
Special Government Pleader

For R1 : Mr.N.Thiyagarajan, Senior Counsel for
Ms.I.Bobby Portia

For R3 : M/s.Dr.S.Seethalakshmi

Reserved on : 3.8.2016
Pronounced on : 26.9.2016

JUDGMENT

HULUVADI G.RAMESH, J.

Heard the learned counsel appearing for the parties.

2. The writ appeal is filed challenging the order of the learned Single Judge dated 23.11.2015 passed in W.P.No.17231 of 2015 whereby the first respondent herein, being a Dental Student of fourth respondent herein, was granted the relief of transfer to any one of Government Dental Colleges at Chennai.

3. The case of the writ petitioner/first respondent herein is that he had applied for MBBS/BDS admission in the year 2014, and he had secured 195 marks and he was allotted 5753 rank. The grievance of the petitioner is that though he is eligible to get a seat in Government Dental College, he was offered a seat only in a private college which was only due to improper selection procedure adopted by the respondents and hence, he sought for migration/transfer to any one of Government Dental Colleges.

4. The learned Single Judge, relying upon the orders passed in W.P.Nos.17612 and 17613 of 2015 dated 18.9.2015, disposed of the writ petition with a direction to appellants 1 and 2 herein to consider the case of the petitioner and accommodate him in any one of the Government Dental Colleges for BDS course, This order is under challenge in the writ appeal.

5. Counters have been filed by respondents 1, 2 and 4. It is the contention of the appellant that the first respondent has sought transfer from Private Dental College to Government Dental College. It is submitted that the first respondent was allotted

seat on the basis of merit, wherein the first respondent had secured 5753 rank with a cut off mark of 195. The last of the candidate admitted to the Government Dental College under the BC quota secured 1791 rank and the general candidate secured 2551 rank with a cut off of 197.5 marks. It is the submission of the appellant that there are 1751 candidates between the first respondent and the last candidate, who was offered seat in the Government College. In such circumstances, it is submitted by the appellant that the relief of transfer sought for by way of migration from private dental college to Government Dental cannot be granted.

6. Heard the learned Special Government Pleader appearing for the appellant and the learned senior counsel appearing for the first respondent and the learned counsel appearing for the third respondent and perused the materials available on record.

7. The facts, as narrated above, are not in dispute. It is trite law that no vested right is created on a student to claim migration from one private college to a Government College. In the case on hand, migration is sought for by the first respondent. Chapter IV of the 2007 Regulations of the Dental Council of India prescribes exceptional circumstances whereby migration is permitted on compassionate grounds. It further mandates that routine migrations on grounds other than what has been enumerated cannot be granted. The compassionate grounds under which migration is permissible are :-

- i) Death of supporting guardian ; and
- ii) Disturbed conditions as declared by Government in the Dental College area;

8. A cursory perusal of the Regulations coupled with the documents available in the typed set of records reveal that neither of the conditions enumerated under the head of compassionate appointment is attracted to the case of the first respondent. The first respondent does not come within the zone of consideration of compassionate appointment for being considered for migration.

9. Be that as it may. It is to be further pointed out that even with regard to the cut off marks and the rank obtained on the basis of merit, the 1st respondent does not fall within the bracket that would entail him a chance to seek for migration. The 1st respondent not having satisfied any of the conditions stipulated for compassionate consideration for migration to a Government Dental College and at the same stretch having not come within the cut off marks/ranks in the merit list cannot seek for a direction from this Court to have his case considered for migration to a Government College under merit quota.

10. We do not see how the learned single Judge had legitimately entertained the petitioners' plea in the case on hand, as the plea of the petitioner, if upheld, it would really mean that what the petitioner cannot achieve directly, can be

achieved by him indirectly by knocking the doors of this Court, which would set a bad precedent.

11. In E.S.P.Rajaram - Vs - Union of India & Ors. (2001 (1) SCT) 759) the Supreme Court held as under :-

"The following passage from the headnote of the case of Supreme Court Bar Association v. Union of India(supra) was quoted with approval :

"However, the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to 'supplant' substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by 'ironing out the creases' in a cause or matter before it."

12. In the case on hand, though this Court is clothed with inherent powers under Article 226 of the Constitution for the purpose of doing substantive justice, while dealing with a cause pending before it, the said power cannot be used to supplant substantive law applicable to the case or cause under consideration of the Court. Article 226 cannot be used to build an edifice ignoring the express statutory provisions so as to entitle the petitioner to achieve something indirectly. In essence, what the petitioner/1st respondent could not achieve directly, he cannot try to achieve the same indirectly by approaching this Court. When the provisions regarding migration on compassionate grounds bars migration of the petitioner/1st respondent, the petitioner/1st respondent cannot seek to thwart the said statutory provision by approaching this Court under Article 226.

13. What could not be achieved by the first respondent through the direct method is sought to be achieved by the first

respondent through indirect method by filing the present case. When the mandate of the Regulations of the Dental Council of India bars migration of the candidates other than those falling under the above exceptional categories, it is not open to the first respondent to seek for migration pleading otherwise. Further the first respondent also does not come within the zone of fulfilling the cut off marks envisaged for the particular category and also does not rank higher than the person, who has been allotted the last seat in the Government Dental College. That being the factual position, without considering the above aspects, learned single Judge had misdirected himself in directing the authorities to consider the case of the first respondent.

For the reasons aforesaid, the prayer as made by the writ petitioner cannot be granted. Accordingly, the order of the learned single Judge is set aside and this writ appeal stands allowed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

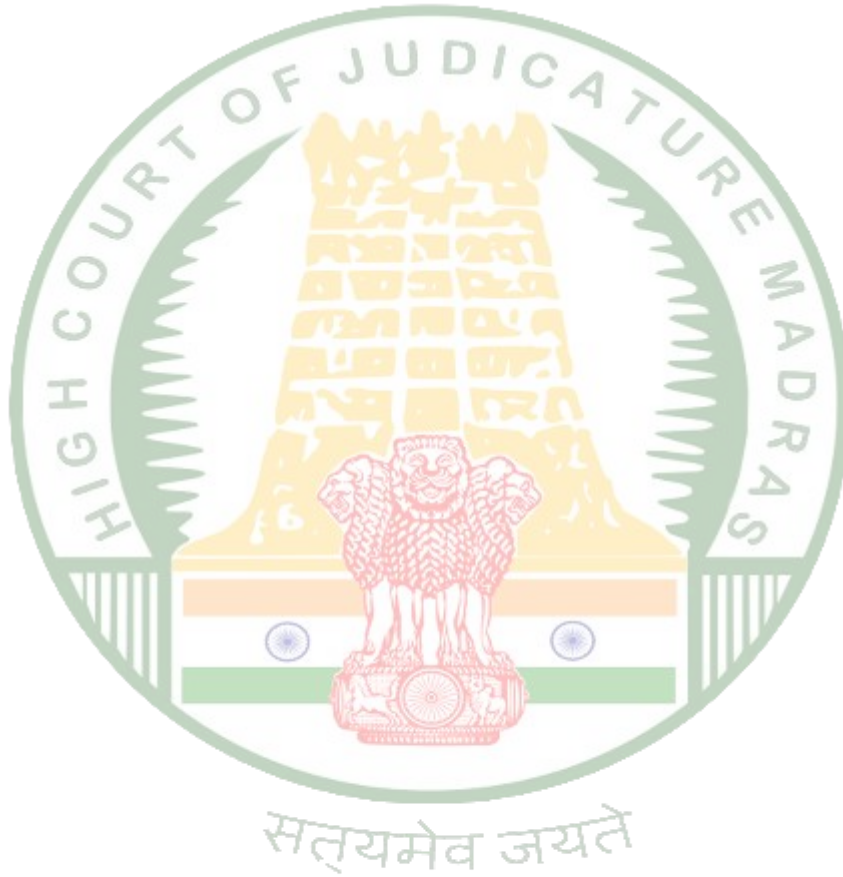
To:

- 1 Government of Tamilnadu,
rep by its Secretary,
Health and Family Welfare (ME)
Department, Secretariat, Chennai-9.
- 2 The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai.
- 3 The Director,
Directorate of Medical Education,
Kilpauk, Chennai.
- 4 Tamil Nadu Dr.M.G.R. Medical University
Rep. By its Registrar
No.69 Anna Salai Guindy Chennai-32.
- 5 Dental Council of India
Rep. By its Secretary
Aiwan-E-Galib Marg Kotla Road
Temple Lane New Delhi-110 002.

+1 cc to M/s.Isaac Mohanlal, advocate,sr.54581
+1 cc to M/s.I.Bobby Portia, advocate,sr.54748
+1 cc to M/s.S.Seethalakshmi,advocate,sr.54761.
+1 cc to Government Pleader,sr.55063.

Sm(co)
krd 24/10

W.A.No.583 of 2016



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