

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.03.2016

Pronounced on : 28-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 8132 of 2016

and

W.M.P. No. 7234 of 2016

Dr. A.T. Indhumathi

.. Petitioner

-Versus-

1. The Medical Council of India
represented by its Secretary
Sector-8, Dwaraka Phase-II
New Delhi - 77.
 2. The Secretary
The Selection Committee
Directorate of Medical Education
Kilpauk, Chennai - 600 010.
 3. Dr. M.G.R. University
rep. by its Registrar
Guindy, Chennai - 600 032.
 4. The Employees State Insurance Corporation
Medical College & Post Graduate Institute
of Medical Science & Research
K.K. Nagar, Chennai.
 5. The Tamil Nadu Medical Council
rep. by its Registrar
New No.914, Old No.569
Poonamallee High Road
Arumbakkam, Chennai - 600 106.
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the fifth respondent herein to register the P.G. Degree of the petitioner issued by the third respondent University forthwith enabling her to participate in her further educational programmes within a reasonable time as may be fixed by this Court.

For Petitioner : Mr. S.Parthasarathy

For Respondents : Mr. V.P. Raman for R1

Mr. Hariharan Arun for R3

ORDER

The petitioner seeks for issuance of a Writ of Mandamus to direct the fifth respondent to register the PG Degree awarded to her by the third respondent forthwith so as to enable her to participate in further educational programmes within a time to be prescribed by this Court.

2. According to the petitioner, she has completed M.B.B.S. course in Madras Medical College during 2004 and she is a registered medical practitioner under the fifth respondent. During July 2011, the fourth respondent commenced UG and PG courses such as MD General Medicine, MS General Surgery, MS OG, MD Pediatrics and MD Anaesthesia. According to the petitioner, the fourth respondent is a Medical College started by the Employees State Insurance Corporation owned by the Union of India and duly administered by the Government of Tamil Nadu. The first respondent is the Apex Body which grants approval for conducting programme in medical education. According to the petitioner, the first respondent has issued a letter of permission enabling the fourth respondent to commence and conduct PG Programmes both by All India Quota and State Quota in the ratio of 50 : 50. According to the petitioner, she applied for PG Programme (Padiatrics) course conducted by the fourth respondent and admitted under the service quota of the State. The petitioner also completed the PG course during April 2015. According to the petitioner, on the date of her admission, the first respondent has issued a Letter of Permission and on the basis of the same the petitioner was admitted in the Post Graduate Course. It is the grievance of the petitioner that the fifth respondent, being a statutory body for registering all the UG and PG degree courses and such registration is a condition precedent to participate in the future educational programmes. According to the petitioner, she is not at fault in any manner and she cannot be deprived of the registration of the PG Degree. For the reasons best known, the fifth respondent is refusing to register the PG Degree course awarded in favour of the petitioner. In such circumstances, the petitioner has come up with this writ petition.

3. The learned counsel for the petitioner would submit that due to alleged non-compliance of the provisions of the Indian Medical Council Act and other Regulations, the fifth respondent did not consider the degree awarded by the fourth respondent in favour of the petitioner. By reason of such refusal, the petitioner is indirectly affected. The petitioner, after having completed the course could not register the Post Graduate degree purportedly on the ground of delay in grant of recognition to the candidates pursued the PG course through the fourth respondent. The first respondent, after having issued the letter of permission in favour of the fourth respondent, has kept the issue of recognition of MD course pursued by the students through the fourth respondent institution under consideration for a long time by which the petitioner is subjected to grave prejudice. The petitioner can

in no way be faulted for having pursued the post graduate course with the fourth respondent especially when the first respondent has issued the letter of permission in favour of the fourth respondent. In any event, at the time of admission of the petitioner, the Letter of permission given by the first respondent in favour of the fourth respondent was in force and valid. It was on the basis of such letter of permission, the petitioner was given admission by the fourth respondent.

4. The learned counsel for the petitioner relied on the order passed by this Court in an identical circumstances on 04.01.2016 in WP Nos. 26326 to 26331, 26333 and 26334 of 2014 wherein this Court has held that for no fault of the petitioners therein, they cannot be made to suffer. Relying on the aforesaid order, the learned counsel for the petitioner prayed for issuing appropriate direction to the respondents as prayed for.

5. The learned counsel appearing for the first respondent opposed the writ petition on the ground the procedure for starting a new or higher course, establishment of new medical college, opening of higher course of study or increase of admission capacity has been provided in Medical Education Regulations, 1993 under Section 10-A read with Section 33 of the Medical Council of India Act. A medical institution is entitled to make admission to higher course only after it has been granted permission for the same in accordance with the aforesaid Regulation. Thereafter, the Medical Council of India is required to make an application under Section 11 (2) of the Indian Medical Council Act, 1956 to the Central Government to have such higher qualification recognised and the Central Government, after consulting the Medical Council of India, may by notification recognise such medical qualification. The statutory scheme so incorporated under the provisions of Section 10-A and the regulations made thereunder have clearly provided for grant of permission by Central Government. Thereafter, at the time of final examinations, the Medical Council of India will conduct inspection for consideration and grant of recognition to such post graduate course. According to the counsel for the first respondent, only in case where a medical college has obtained the initial permission under Section 10-A of the Act, those institutions will be inspected again for consideration of grant of recognition for a post graduate medical course. Therefore, based on the outcome of the inspection and after complying with various other formalities, the claim of the fourth respondent institution has to be taken into consideration. Therefore, the learned counsel for the first respondent prayed this Court for dismissal of the writ petition especially when the fourth respondent institution has not been granted recognition as required.

6. I heard the counsel for the petitioner and the learned counsel for the first respondent as well as the third respondent. On appreciation of the above factual position, it is clear that at the time when the petitioner was admitted in the post graduate course, the first respondent has given a

letter of permission in favour of the fourth respondent institution and it was in force at that time. It is on the basis of the said Letter of Permission, the petitioner has joined the PG course in the fourth respondent institution. Therefore, the petitioner cannot be faulted for the non-compliance or otherwise of the various provisions of the Act or Regulations by the fourth respondent.

7. It is pertinent to point out here that the issue involved in this writ petition is no longer res integra. This Court, in identical circumstances, passed an order dated 04.01.2016 in WP Nos. 26326 to 26331, 26333 and 26334 of 2014 wherein this Court has held that for no fault of the petitioners therein they cannot be made to suffer. In the order dated 04.01.2016, this Court also placed reliance on the order passed by the Apex Court in WP No. 16812 of 2015. Para No.5 and 6 of the order dated 04.01.2016 shall be usefully extracted as under:-

5. This Court, while considering a similar issue in W.P. No. 16812 of 2015, after taking note of the earlier decision of the Apex Court and the judgement of the Division Bench of the Bombay High Court, by judgement dated 11.09.2015, was pleased to hold as follows:

"16. Thus, it is clear that for a similarly placed students, though studying in a different College, recommendations were indeed made by the 2nd respondent and accepted by the Government viz., the 6th respondent (since impleaded). There is no reason why the said yardstick shall not be adopted to the students of the 5th respondent. There is no material to hold that case of the petitioners is different with that of the students in that case. Hence, this decision coupled with the observation in paragraph No. 42 of the judgment of Apex Court in Medical Council of India Vs. M.G. R. Educational and Research Institute University and another, ((2015) 4 SCC 580) would certainly come to the aid of the petitioners. Though in the said decision, the facts would reveal the illegality committed by the College, the present case is a better one as at the time of entry of the petitioners, there was indeed a proper permission and hence, the ratio laid down therein would apply to the case on hand with all fours. For the same reasoning, this Court is of the view that the direction given thereunder to the students to undergo the examination once over again may not have an application to the case on hand, since in that case, examinations have been conducted by the Management as against the present case, when it was done by the 4th respondent University. There is also no quarrel about the

nature of examinations conducted by the 4th respondent University. Perhaps, that is the reason why even the 2nd respondent did not impose any condition on the students of Shri Satya Sai Medical College. Therefore, this Court is of the view that the petitioners are entitled to succeed.

17. Accordingly, the 2nd respondent is directed to send his recommendations to the 6th respondent by only taking into consideration of the piquant situation in which the petitioners and other students joined in the year 2009-10 are placed, within a period of four weeks from the date of receipt of a copy of this order and based on the same, the 6th respondent will have to pass appropriate orders to include the petitioners along with the 5th respondent for the relevant year within a period of eight weeks thereafter, thus making it clear that it is applicable only to the students, who joined in that particular year. The order passed in the writ petition may also be made applicable to the students who joined in the year 2008-09, as they are also similarly placed. This direction, though positive in nature, is passed also by taking note of the decision taken by the 2nd respondent in respect of Shri Satya Sai Medical College, which was duly accepted by the 6th respondent. Insofar as the next batch of students after the petitioners are concerned, the respondents viz., particularly, the 2nd respondent will have to take appropriate decision in consultation with the other respondents, if so required. As the petitioners would be deprived from being considered for the P.G. Course, the respondents are directed permit the petitioners to take part in the selection process of the said P.G. Course, as if they have valid and recognised degree. Considering the facts of the case, this Court is of the view that the 2nd respondent could have been more diligent while deciding not to recognise the degrees, by taking appropriate steps to protect the interests of the students and so is the case of the other respondents. Therefore, this Court deems fit that it would be appropriate for the 2nd respondent to take appropriate steps much in advance in future when a similar situation might arise."

6. The ratio laid down in the aforesaid judgement shall be applicable to the case on hand. It is not as if, the petitioners are at fault. The facts as narrated are not in dispute. In such view

of the matter, this Court is of the considered view that the writ petition will have to be allowed. Accordingly, a direction is issued to the respondent Nos. 2 and 3 to register the name of the petitioners in respective courses being M.D.Forensic Medicine, M.D. Community Medicine and M.D.Microbiology, within a period of eight weeks from the date of receipt of copy of this order. It is hereby made clear that the order passed by this Court will not stand in the way of the respondent No. 2, while taking appropriate action, in accordance with law, against the respondent No. 4."

10. In the light of the above decision of this Court, I have no hesitation to hold that the petitioner is entitled for issuance of a Mandamus as prayed for. Accordingly, the writ petition is allowed. No costs. The fifth respondent is directed to register the name of the petitioner for M.D. Paediatrics within a period of eight weeks from the date of receipt of a copy of this order. This order will not in any way prevent the first respondent from taking any action in accordance with law as against the fourth respondent institution for violation of any statutory provisions, if any. Consequently, connected miscellaneous petition is closed.

rsh.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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represented by its Secretary
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The Selection Committee
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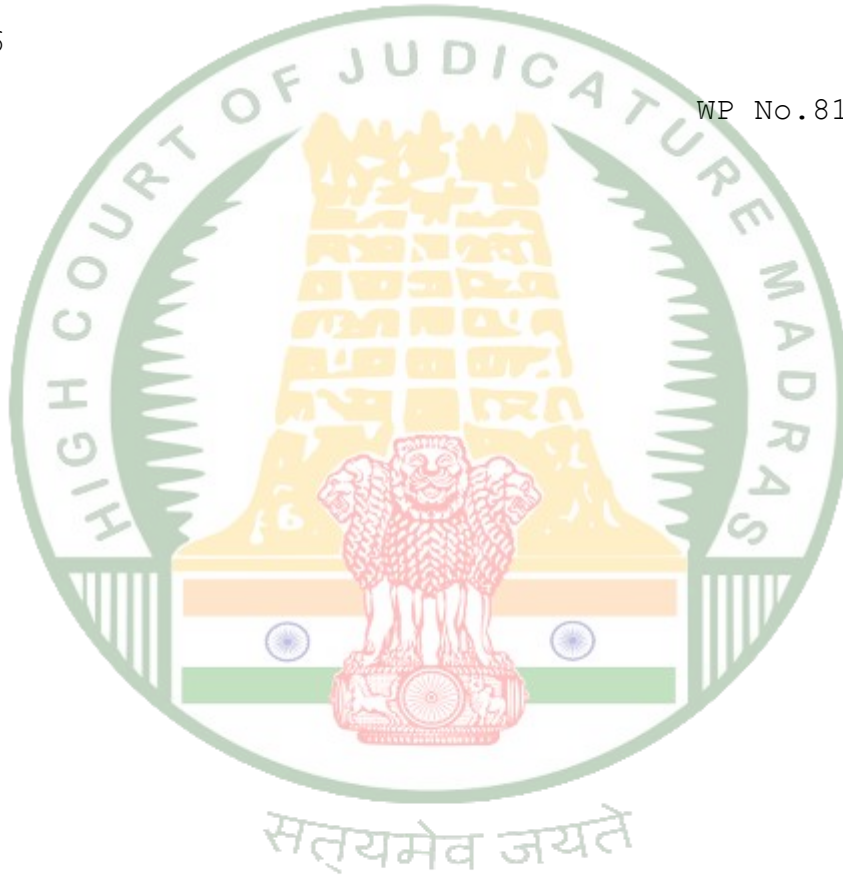
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+ 1 cc to The Govt.Pleader, Sr 19374

+ 1 cc to M/s.B.Damodaran, Advocate Sr 19221

KR/28/4/16

WP No.8132 of 2016



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