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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.11803 of 2016

and

WMP(MD) No.9057 of 2016

M.Ayyanar

..Petitioner

vs.

1.The State of Tamil Nadu

Represented by the
Secretary to Government,
Health Department,
Secretariat, Chennai.

2.Selection Committee,

Represented by its Secretary,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Director of Medical Education,

Directorate of Medical Education,
Kilpauk, Chennai 600 010.

4.The Principal,

Tamil Nadu Government Dental College,
Chennai.

5.The Dean,

Government Sivagangai Medical College,
Sivagangai,
Sivagangai District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing (i) the 2nd Respondent to issue allotment order to the Petitioner's son A.Siva Subramanian allotting one seat in MBBS course at 5th Respondents Govt. Sivagangai Medical College Sivagangai within the time stipulated by this Court; ii) the 4th Respondent to issue necessary certificates such as Transfer Certificate +2 Mark Statement and others to the Petitioners son within the time stipulated by this Court enabling his son to be admitted in 5th respondent College; iii) the 5th Respondent to admit Petitioner's son as per the allotment granted by the 2nd Respondent without insisting to pay the penalty.



For Respondents : Mr.A.Muthu Karuppan
Additional Government Pleader

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O R D E R

Heard the Learned counsel for the Petitioner and the Learned Additional Government Pleader for the Respondent Nos.1 to 5.

2. According to the Petitioner, his son A.Siva Subramanian had completed his Higher Secondary Examination in March 2015 and he secured total marks of 1122 out of 1200. In fact, he possessed the cut off mark for admission to medical education is 191.75. As such, he applied to the Second Respondent/Selection Committee, represented by the Secretary, Directorate of Medical Education, Kilpauk, Chennai for the admission of MBBS/BDS Courses during the academic year 2015-2016 with an expectation of securing MBBS Course. Accordingly, the Petitioner's son was allotted BDS Course in the fourth Respondent College/Tamil Nadu Government Dental College, Chennai, as per allotment order dated 25.06.2015 and he was ordered to join in the said Course on or before 02.07.2015.

3. The stand of the Petitioner is that although his son was disappointed in not getting MBBS Course, he joined in the BDS Course during 2015-2016 Sessions by paying the necessary fees. Indeed his son's aspiration was to secure an MBBS seat. Further, he is having a good academic carrier in his school studies and aimed to secure MBBS Course. Out of his hard studies and considering the poor family background, he aimed to get MBBS seat. Therefore, he attempted again and applied to the Second Respondent for admission to MBBS Course in the academic year 2016-2017. He was placed in General Rank No.7254 in A.R.No.19305 and fortunately, he was able to secure an allotment of one seat in MBBS Course at Fifth Respondent's college and was advised to pay the tuition fees/processing fees. As such, a sum of Rs.9,600/- was remitted through Indian Bank Demand Draft in favour of the Second Respondent through receipt dated 28.06.2016.

4. The real grievance of the Petitioner is that the officer of the Second Respondent had refused to issue allotment order saying that his son is to pay penalty of Rs.10 lakhs to get an allotment order for MBBS Course by discontinuing the BDS Course. In fact, the Petitioner's son is the first generation in getting such a wonderful and noble professional Course of MBBS in their family. Also that he belongs to Schedule Community and the Petitioner is working as a driver in Government Transport Corporation, Madurai. The Petitioner's income is the only source of survival for their family and therefore, he could not able to arrange such huge penalty and requested the Second Respondent to reduce the same reasonably and to pay the same in instalments. But the Second Respondent had refused and cautioned that if the penalty



amount is not paid shortly in one payment, then the Petitioner's son's allotment of MBBS seat will be considered as vacant.

5. The Learned Counsel for the Petitioner submits that the Second Respondent is to announce further counselling for admission to medical courses and the seat allotted to the Petitioner's son will be considered as vacant and listed in the further counselling. Hence, the Petitioner has filed the present writ petition seeking for passing of an order by this Court in directing the Second Respondent to issue allotment order to the Petitioner's son A.Siva Subramanian allotting one seat in MBBS course at 5th Respondents Govt. Sivagangai Medical College Sivagangai within the time stipulated by this Court. Also the Petitioner has sought for passing of an order by this Court in directing the 4th Respondent to issue necessary certificates such as Transfer Certificate, +2 Mark Statement and others to the Petitioner's son within the time stipulated by this Court. That apart, the Petitioner has also sought for passing of an order by this Court in directing the Fifth Respondent to admit Petitioner's son as per the allotment granted by the Second Respondent without insisting to pay the penalty.

6. Per contra, it is the submission of the Learned Additional Government Pleader for the Respondent Nos.1 to 5 that the first phase of counselling for admission to MBBS/BDS Course for 2016-2017 session was conducted from 20.06.2016 to 25.06.2016 and according to the Petitioner's son's rank, he had attended the counselling on 25.06.2016 and opted for admission to MBBS Course at Sivagangai Medical College, Sivagangai.

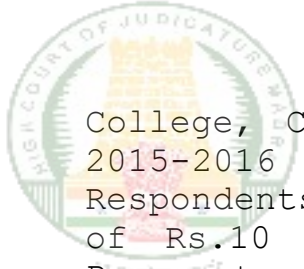
7. At this stage, the Learned Additional Government Pleader for the Respondent Nos.1 to 5, brings it to the notice of this Court that the Petitioner's son was already selected to undergo BDS Course in 2015-2016 Session and he is currently undergoing BDS Course at Tamil Nadu Government Dental College and Hospital, Chennai.

8. At this juncture, the Learned Additional Government Pleader for the Respondent Nos.1 to 5 seeks in aid of Clause 46(ii) of the Prospectus under the caption 'BOND', for admission to MBBS/BDS Course for 2015-2016, which runs as under:-

"Candidates who discontinue the course between 25th September and 29th September of the year of admission are bound by the bond and they shall have to pay a sum of Rs.1,00,000/- as a penalty for having breached the contract in the bond and the candidates who discontinue the course on or after 30th September 2015 of the year of admission and in any date of the subsequent years shall

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pay a sum of Rs.10,00,000/- as penalty." and contends that the Petitioner's son based on the aforesaid clause had executed a bond at Tamil Nadu Government Dental



College, Chennai at the time of his admission to BDS Course in 2015-2016 Session. Therefore, it is projected on the side of the Respondents that the Petitioner's son is liable to pay the penalty of Rs.10 lakhs in terms of the conditions prescribed in the Prospectus for admission to MBBS/BDS Course 2015-2016 Session.

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9.The Learned Additional Government Pleader for the Respondent Nos.1 to 5 refers to the decision in *Dr.N.SIVAKUMAR v. SECRETARY, SELECTION COMMITTEE* reported in (2010) 4 MLJ 656, whereby and where under, it is observed as follows:-

"When a candidate having applied for the Course as per the instructions contained in the Prospectus, which is the rule of selection, the same is binding upon him and he cannot challenge the same in future."

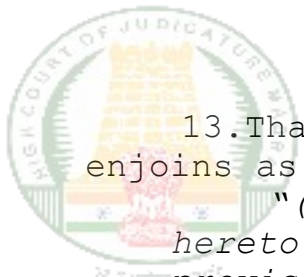
10.The Learned Additional Government Pleader for the Respondent Nos.1 to 5 takes a prime stand that the Petitioner's son is bound by the conditions of the Prospectus, on the basis of which, he secured admission to MBBS/BDS Course and further that there is no provision in the Prospectus for admission to MBBS/BDS Course 2016-2017 for reduction of payment of penalty amount and therefore, the Petitioner's request to reduce the penalty sum is not correct.

11.Apart from that, at the time of issuance of allotment order, the Petitioner's son was advised to pay the penalty of Rs.10 lakhs as per Clause 46(ii) and so far nearly 32 candidates, who are similarly placed like Petitioner's son have paid the penalty sum of Rs.10 lakhs for taking admission to MBBS/BDS Course 2016-2017 session. If the Petitioner's prayer is considered by this Court, then it will breach the contract/bond already executed during admission to BDS Course 2015-2016 session and it will open flood gate to similarly placed persons.

12.As far as the present case is concerned, it is to be pointed out that the Prospectus for MBBS/BDS admissions 2016-2017 Annexure-VII under the Head 'AGREEMENT BOND FORM FOR CANDIDATES ADMITTED FOR M.B.B.S/B.D.S COURSE FOR 2016-2017 ACADEMIC YEAR, read as under:-

"(6) Candidate who discontinue the course between 28th August and 30th August, 2016 are bound by the bond and thereby they shall have to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) as penalty for having breached the contract in the bond and the candidates who discontinue the course on or after 31st August, 2016 and in any date of the subsequent years shall have to pay sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) as penalty.

(7) Any sum falling due from the candidate under the agreement shall be recovered from him/her as an arrear of land revenue."



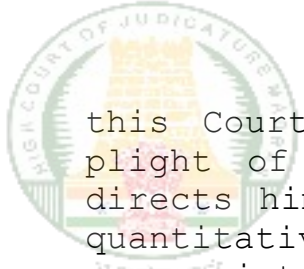
13. That part in the aforesaid Annexure-VII, Serial No.8 enjoins as follows:-

"(8) If any dispute shall arise between the parties hereto in respect of this agreement or any of the provisions herein contained or anything arising hereunto except in respect of matters on which decision of the Government under clause (6) is declared to be final and binding, the same shall be referred to the arbitration of Director of Medical Education whose decision thereon shall be final and binding on the parties."

14. In the instant case on hand, it is to be pointed out that the Petitioner's son had joined the BDS Course in the year 2015-2016 by paying necessary fees. Now, the Petitioner being the father, had filed the present writ petition before this Court seeking a relief for passing of an order by this Court in directing (i) the Second Respondent to issue allotment order to the Petitioner's son A.Siva Subramanian allotting one seat in MBBS course at 5th Respondents Govt. Sivagangai Medical College Sivagangai within the time stipulated by this Court; (ii) the 4th Respondent to issue necessary certificates such as Transfer Certificate +2 Mark Statement and others to the Petitioner's son within the time stipulated by this Court; (iii) the 5th Respondent to admit Petitioner's son as per the allotment granted by the 2nd Respondent without insisting to pay the penalty.

15. Admittedly, the Petitioner's son is bound by the conditions of the prospectus on the basis of which he secured admission to MBBS/BDS Course. In fact, both the Petitioner and his son are very well aware of the conditions that if the Petitioner's son is selected for MBBS Course for the academic year 2016-2017, then, he is to discontinue the BDS Course and he would be liable to pay the penalty as per the prospectus referred to supra. Since the Agreement Bond Form in Annexure-VII of the Prospectus in respect of MBBS/BDS admissions for the academic year 2016-2017 has the force of Law, it is to be followed in letter and spirit. But in the present case, the grievance of the Petitioner is that since he is working as a driver in the Government Transport Corporation, Madurai and his income is the only source of survival for his family, he could not arrange such a huge penalty sum of Rs.10 Lakhs and therefore, on his behalf, a request is made before this Court that the said amount of Rs.10 lakhs towards penalty may be paid by the Petitioner in instalments. In this regard, even though the request of the Petitioner as father of the ward, who got admission in MBBS/BDS Course appears to be a genuine, reasonable one, yet, this Court is of the considered view, the same will have to be considered by the First Respondent/State Government, in a humane and sympathetic manner.

<https://hcservices.courts.gov.in/> 16. In the above perspective, this Court comes to a resultant conclusion that the three reliefs sought for by the Petitioner in the present writ petition, are not acceded to by



this Court. However, this Court taking note of the sympathetic plight of the Petitioner and also his occupational background, directs him to make a detail representation, in a qualitative and quantitative manner explaining his position and to seek appropriate remedy before the First Respondent/State Government for paying the penalty amount of Rs.10 lakhs in instalments, if he so desires/advised. In this connection, it is needless for this Court to make a significant mention that if such a representation is projected by the Petitioner, in writing addressed to the First Respondent, then the First Respondent/State Government of Tamil Nadu shall consider the same in a practical, purposeful, meaningful and pragmatic manner, as it deems fit and proper based on facts and circumstances of the case, which float on the surface.

17. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To:

1. The Secretary to Government, Health Department,
Secretariat, Chennai.
2. The Secretary, Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.
4. The Principal, Tamil Nadu Government Dental College,
Chennai.
5. The Dean, Government Sivagangai Medical College,
Sivagangai, Sivagangai District.

+1cc to M/s.R.Narayanan, Advocate in SR.39660

+1cc to the Special Government Pleader, in SR.39742

W.P. (MD) No.11803 of 2016
26.07.2016