

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-04-2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.7144 of 2017

and

WMP.No.7742 of 2017

E. Gaudam (Minor aged about 17 years)
Rep. by his father and natural guardian Mr. P.N.P. Elango
No.1/365, Mudalaipatty
Namakkal District - 637 003. Petitioner

-Vs-

1. The Government of India
Rep. by its Secretary
Ministry of Health & Family Welfare
New Delhi
2. The Director
Medical Council of India,
New Delhi
3. The Director,
Central Board of Secondary Education
National Eligibility -cum- Entrance Test Unit
Shiksha Kendra - 2,
Community Centre,
Preet Vihar, New Delhi
4. The Government of Tamilnadu
Rep. by its Principal Secretary
Health & Family Welfare Department
Fort St. George, Chennai - 600 009.
5. The Director of Medical Education
DMS Compound,
Teynampet, Chennai Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 3 in particular the third respondent to allow the petitioner to submit his application for taking up National Eligibility cum Entrance Test (NEET) for the academic year 2017-2018 based on the representation of the petitioner dated 17.03.2017.

For Petitioner : Mr.C.D. Sugumar

For Respondents : Mr. J. Madanagopal Rao (R1)
Senior Central Government
Standing Counsel
Mr. V.P. Raman(R2)
Mr. G. Nagarajan (R3)
Mr. V. Anandhamurthy(R4 & R5)
Additional Government Pleader

O R D E R

This Writ Petition has been filed seeking for a direction to the respondents 1 to 3 in particular the third respondent to allow the petitioner to submit his application for taking up National Eligibility cum Entrance Test (NEET) for the academic year 2017-2018 based on the representation of the petitioner dated 17.03.2017.

2. The facts of the case are as follows:

(a) The petitioner's son is the XII Standard student of S.R.V.Boys Higher Secondary School, Rasipuram, Namakkal District and he aspires to pursue his further studies in medicine. In this regard, the Hon'ble Supreme Court was pleased to deliver a verdict that an Uniform Entrance Test should be conducted for admission into medical courses. It was also held that the common examination will be conducted by the Central Board of School Education, the 3rd respondent herein for the Undergraduate Courses. Subsequently, the 3rd respondent conducted National Eligibility-cum-Entrance Test (NEET) across the country.

(b) However, certain State Governments including the State Government of Tamil Nadu, the 4th respondent herein, had objected against the NEET for admission in medical courses and had requested the Government of India, the 1st respondent herein, to grant exemption for the aspirant students of the State of Tamil Nadu appearing for the NEET. The State Legislature of Tamil Nadu had passed two Bills called as "The Tamil Nadu Admission to M.B.B.S., and BDS Courses Bill 2017" seeking to admit students to Undergraduate Medical Courses based upon the marks secured by them in the plus Two Examinations. Similarly, "The Tamil Nadu Admission to Post Graduate Courses in Medicine and Dentistry Bill 2017" was passed seeking to admit students for Post Graduate Medical and Dental Courses based upon the marks secured by them in their qualifying Undergraduate Examinations. However, the Bills passed by the State Government have not been granted assent by the President and the same are pending.

(c) In the meantime, the 3rd respondent announced that the NEET will be conducted on 07.05.2017 and also called for applications from the aspiring students to participate in the NEET for the admission into the Undergraduate Medical Courses

for the Session 2017-18. The last date for the submission of the applications is on 01.03.2017. Since the State Government had taken steps to do away with the NEET for the aspirant students from the State of Tamil Nadu, the petitioner did not apply for appearing in the NEET to be conducted by the 3rd respondent on 07.05.2017. Further, the 3rd respondent did not provide time for submitting the applications belatedly. Hence, the present Writ Petition.

3. A detailed Counter affidavit has been filed by the 3rd respondent wherein it has been stated as follows:

(a) The CBSE is only an examining body for NEET. All the rules and regulations and scheme falls under Medical Council of India, Dental Council of India and Ministry of Health & Family Welfare. Based on the approved scheme, CBSE is holding NEET-UG 2017. Further, as per the approval of the Ministry of Health and Family Welfare, the Government of India, the applications were launched for NEET-(UG) 2017 from 31.01.2017 to 01.03.2017.

(b) It is further stated that the CBSE makes preparation for the conduct of this examination, almost a year before, in order to ensure smooth and fair conduct of examination. Any change in the administrative set up of this examination at this stage is not feasible as this affect the very purpose of this examination i.e., admission to MBBS and BDS Courses. The entire scheme is approved by Hon'ble Supreme Court of India and there are specific time limit fixed for conduct, declaration, conseling and admission etc. The CBSE has to declare the result of this examination latest by 10th June 2017. The counseling has to be done by DGHS for the All India Quota seats thereafter and the admission process has to be completed by 31st August 2017. Any deviation from the above schedule may disturb the entire arrangement and require Hon'ble Apex Court's approval.

(e) Further, there will be a lot of difficulties in adding of more number of candidates and extension of time for submission of application and the CBSE is only an examining body and NEET is being conducted as per the scheme approved by the Ministry of Health and Family Welfare meant for MBBS and BDS. The last date for submission of application form was 01.03.2017. Applications were called for one month period. This time 11,35,104 candidates have applied in NEET which is the highest number in medical entrance examination since its inception. There is a hike of 41.42% from NEET-2016 (Both NEET-I & NEET-II combined). The exam is scheduled for 07th May, 2017. All the activities and preparations based on the above dates are in final stage. Any extension in date for submission of application form will disturb the schedule for NEET which is fixed on 07th May 2017.

(f) It is further stated that the question of entertaining the application of the petitioner for NEET examination to be held on 07.05.2017 after the last date of 01.03.2017 for receipt of the application form from the eligible candidate does not arise. The aforesaid notification was issued clearly specifying the schedule of dates and fee details and the submission of application form through online was on 31.01.2017 to 01.03.2017 midnight. Further last date for successful final transaction of fee was on 01.03.2017 and the date of test is on 07.05.2017. Hence, prays to dismiss the writ petition.

4. Learned Counsel appearing for the petitioner would mainly contend that no prejudice would be caused to the respondents 1 to 3 by allowing the petitioner to submit his application for taking up NEET Examination 2017 as no third parties rights are involved. Therefore, according to the learned Counsel, a Mandamus as sought for by the petitioner has to be issued.

5. Learned Counsel for the 3rd respondent would contend that by giving extension to the petitioner for applying for NEET Examination 2017, lot of difficulties would arise which includes requirement of lot of man power. Further, according to him, the CBSE is only an Examining Body and NEET is being conducted as per the scheme approved by the Ministry of Health and Family Welfare meant for MBBS and BDS. Hence, according to the learned Counsel for the 3rd respondent, the question of entertaining the application of the petitioner for NEET Examination to be held on 07.05.2017 after the last date of 01.03.2017 does not arise.

6. In support of his contention, the learned Counsel for the 3rd respondent has relied upon a decision of the Hon'ble Supreme Court in Mridul Dhar (Minor) and another vs. Union of India and others reported in (2005) 2 Supreme Court Cases 65. In this decision, the Hon'ble Apex Court, while dealing with elaborately for adhering time schedule for admissions to MBBS/BDS Course has held as follows in para No.7:

'...The observance of the time schedule is paramount for effective utilisation to all India Quota of medical and dental seats....'

7. Further in para 8 of the said decision, it is held as follows:

'8. In Medical Council of India v. Madhu Singh, while making it clear that no admissions can be granted after the scheduled date, which essentially should be the date for commencement of the course, MCI was directed to ensure that the examining bodies fix a time schedule specifying the duration of the course, the date of its commencement and the last date for admission. It was further

directed that different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time and no variation of the schedule so far as the admissions are concerned shall be allowed. In case of any deviation by the institution concerned, action as prescribed shall taken by MCI.''

8. Heard the submissions of the learned Counsel appearing for the other respondents and this Court has carefully considered the same and also perused the materials available on record.

9. In this subject matter, the Hon'ble Supreme Court in Raj Sabyasachi and another vs. Union of India in W.Ps. (Civil) 98/2017 and 194/2017, while dealing with maximum age of 25 years as eligible for candidates to undergo NEET Examination has relaxed the upper age limited and also has extended the time for application on the Online portal of CBSE on or before 05.04.2017, by order dated 31.03.2017. In the same order, it is held that if any High Court has passed any order contrary to the present order, the CBSE shall be bound by the order passed by this Court, as far as cut off date is concerned.

10. Therefore, when the Hon'ble Supreme Court has strictly held that the extension of time for applying Online is not possible, the relief sought for by the petitioner cannot be granted as any relief granted should be logical and tenable within the framework of the law. In the light of the above, any order that may be passed would justify the criticism that the Courts tend to degenerate misplaced sympathy.

11. In the result, the Writ Petition fails and the same is, accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Secretary, Government of India
Ministry of Health & Family Welfare
New Delhi

2. The Director
Medical Council of India,
New Delhi

3. The Director,
Central Board of Secondary Education
National Eligibility -cum- Entrance Test Unit
Shiksha Kendra - 2,
Community Centre,
Preet Vihar, New Delhi

4. The Principal Secretary,
Government of Tamilnadu
Health & Family Welfare Department
Fort St. George, Chennai - 600 009.

5. The Director of Medical Education
DMS Compound,
Teynampet, Chennai.

+1 cc to Mr.C.D.Sugumar, advocate, sr.22645

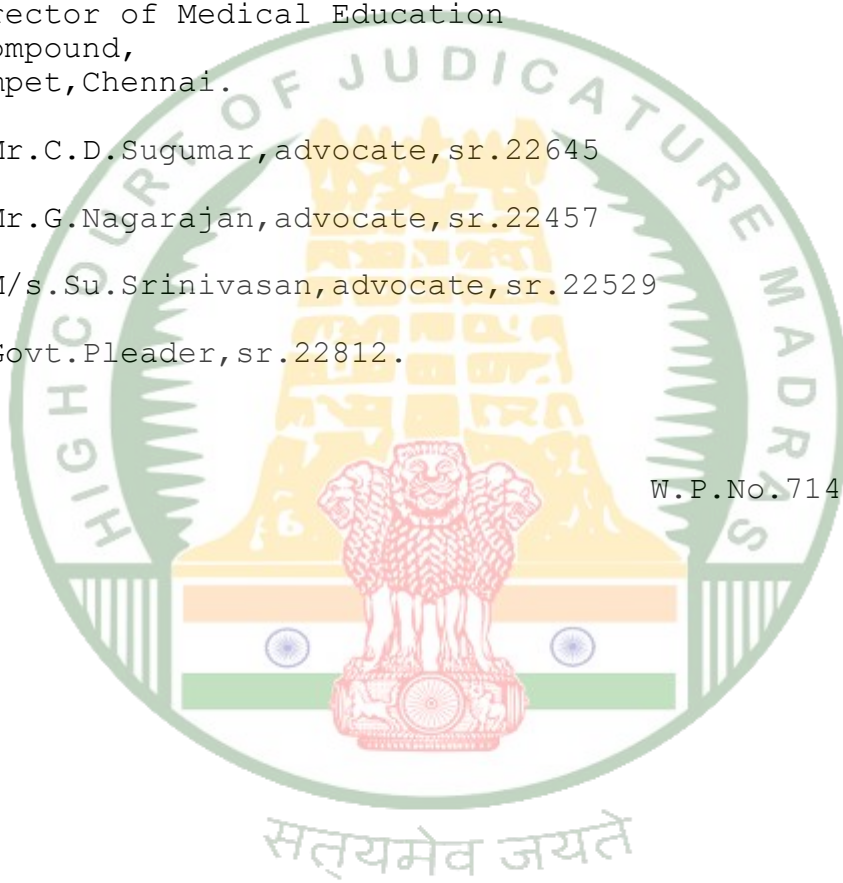
+1 cc to Mr.G.Nagarajan, advocate, sr.22457

+1 cc to M/s.Su.Srinivasan, advocate, sr.22529

+1 cc to Govt.Pleader, sr.22812.

ad(co)
krd 18/4

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