IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2017

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

W.P.No.6760 of 2017 and
WMP.No.7315 of 2017

Malar Kanni .. Petitioner

vs

1. The Secretary,
   Ministry of Health and Family Welfare,
   Government of India, 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,
   Health and Family Welfare Department,
   State Government of Tamil Nadu,
   Fort St. George, Chennai-600 009.

5. The Director of Medical Education,
   State Government of Tamil Nadu,
   DMS Complex, Teynampet, Chennai. .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to accept the belated application of the petitioner with the fee and further to allow the petitioner herein to appear for the National Eligibility-Cum-Entrance Test for the Session 2017-18.

For Petitioner : Mr.F.Terry Chella Raja

For Respondents : Mr.J.Madanagopal Rao for R1
Mr.V.Anandamoorthy, AGP
for R4 & R5
Mr.C.Nagarajan for R3
Mr.V.P.Raman for R2

ORDER

The Writ Petition has been filed to issue a Writ of Mandamus, directing the respondents 1 to 3 herein to accept the belated application of the petitioner with the fee and further to allow the petitioner herein to appear for the National Eligibility-Cum-Entrance Test for the Session 2017-18.

2. The facts of the case are as follows:

(a) The petitioner has taken Nursing as one of the subjects in his Higher Secondary Course at Government Higher Secondary School, Sivagangai District and she intends to do 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 is conducting 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 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 with late fee. 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) At the outset, the Writ Petition is not maintainable, since the petitioner has not scored a minimum of 50% marks. Further, the reason stated by the petitioner for not applying within the cut off date for NEET Examination that she got married on 07.03.2017 is unsustainable.

(b) The CBSE is only an examining body for NEET. 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. It is further stated that the entire Online application was developed based on the requirement of NEET and nearly 11.35 lakhs candidates have applied for the NEET Examination this year. The CBSE Board is, accordingly, making preparations for MBBS/BDS Courses only. Any change in the administrative set up of this examination at this stage is not feasible as this would affect the very purpose of this examination.

(c) It is also submitted that the CBSE has to declare the results of this examination latest by 10th June 2017. The Counselling has to be done by the DGHS for the All India Quota seats thereafter and admission process has to be completed by 31st August 2017. Any deviation from the above schedule may disturb the entire arrangement and require Apex Court's approval. It is also to be noted that CBSE is conducting the AIPMT/Pre-Dental Examination from 1988 as per the orders of the Supreme Court of India for 15% All India Seats.

(d) The CBSE is entrusted with the responsibility of

conducting NEET UG-2017 Examination for the admissions to all seats of MBBS/BDS Courses and the seats are classified as All India Quota Seats, State Government Quota Seats, State/Private/Management/NRI Quota Seats in all Private Medical/Dental Colleges or any Private/Deemed University and Central Pool Quota Seats.

(e) Further, there will be a lot of difficulties in addition 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. Hence, prays to dismiss the writ petition.

4. Learned Counsel appearing for the petitioner would mainly contend that the petitioner could not apply for NEET Examination as she got married on 06.03.2017 and no prejudice would be caused to the respondents 1 to 3 by allowing the petitioner to submit her belated application with

the fee as well as the late fee for 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 with late fee, 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.

PUSHPA SATHYANARAYANA,J.,

tsi

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

Miscellaneous Petition is also closed.

13.04.2017

Index: yes/No

Internet: yes
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