

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Thirty First day of July Two Thousand Seventeen

PRESENT

THE HON`BLE MS INDIRA BANERJEE THE CHIEF JUSTICE

AND

THE HON`BLE MR JUSTICE M.SUNDAR

WMP NO.20951 & 13738 OF 2017

IN WP.12882 OF 2017

THE DIRECTOR,
AARUPADAI VEEDU MEDICAL COLLEGE
& HOSPITAL, CUDDALORE MAIN ROAD,
KIRUMAMPAKKAM,
PUDUCHERRY-607 403.

[PETITIONER IN WMP.20951/17
IN WP.NO.12882/17]

DR.K.BRINDA

[PETITIONER IN WMP.13738/17 IN
IN WP.NO.12882/17]

Vs

1 DR.K.BRINDA

[1 TO 4 RESPONDENTS IN WMP.20951/17
IN WP.NO.12882/17]

2 GOVERNMENT OF PUDUCHERRY
REP BY SECRETARY TO GOVERNMENT (HEALTH),
CHIEF SECRETARIAT,
PUDUCHERRY 605 001.

3 DIRECTOR
HEALTH AND FAMILY WELFARE, SERVICES (DHFWS),
VICTOR SAMUEL STREET, PUDUCHERRY 605 001

4 THE CONVENOR
CENTAC (CENTRALISED ADMISSION COMMITTEE) PEC
CAMPUS, ECR ROAD, PILLAICHAVADI,
PUDUCHERRY 605 014

1 GOVERNMENT OF PUDUCHERRY [1 TO 4 RESPONDENTS IN WMP.13738/17
REP BY SECRETARY TO GOVERNMENT (HEALTH), IN WP.NO.12882/17]
CHIEF SECRETARIAT,
PUDUCHERRY 605 001.

2 DIRECTOR
HEALTH AND FAMILY WELFARE,
SERVICES (DHFWS),
VICTOR SAMUEL STREET,
PUDUCHERRY 605 001

3 THE CONVENOR
CENTAC (CENTRALISED ADMISSION COMMITTEE)
PEC CAMPUS, ECR ROAD,
PILLAICHAVADI,
PUDUCHERRY 605 014

4 THE DIRECTOR,
AARUPADAI VEEDU MEDICAL COLLEGE
& HOSPITAL, CUDDALORE MAIN ROAD,
KIRUMAMPAKKAM, PUDUCHERRY-607 403.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

To Recall the Order dated 21.07.2017 made in WMP No.13738 of 2017 in WP No.12882 of 2017 (in WMP.No.20951/17) and;

(ii) to issue an interim direction directing the respondents to reserve one seat for the petitioner in the 4th respondent College in respect of M.S.General Surgery for the academic year 2017-18 in WMP.No.13738/17 pending disposal of the writ petition 12882/17 respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of Mr.V.KARTHICK Senior Counsel for M/S.L.SWAMINATHAN, Advocate for the petitioner and of Mr.K.M.VIJAYAN SENIOR COUNSEL FOR C.M.KRISHNAKUMAR Advocate for the 1st respondent and of Mr.A.GANDHIRAJ, Government Advocate for the 2 to 4 respondents (in WMP.No.20951/17 in WP.No.12882/17) and Mr.C.M.KRISHNAKUMAR, Advocate for the Petitioner (in WP.No.13738/17) the court made the following order:-

(Order of the Court was made by Hon'ble The Chief Justice)
This is an application for recalling of the order dated 21.07.2017 passed by this Bench in W.P.No.12882 of 2017.

2. By an order dated 17.05.2017 passed in the writ petition filed by the petitioner, an aspirant for the Post Graduate course in General Surgery in the fourth respondent University, the learned Single Bench directed the respondents to keep one post (sic seat) vacant in the category of M.S. (General Surgery) for the academic year 2017-18. That interim order is still in force and was served on the fourth respondent University on 22.05.2017.

3. As recorded in our order dated 21.07.2017, now sought to be recalled, the petitioner had undergone counselling and had been recommended for admission. This would be evident from the list of admitted candidates published by the Centralized Admission Committee (CENTAC).

4. In a public interest litigation instituted by Mr.V.B.R.Menon (W.P.No.14232 of 2017), this Court passed an interim order on 16.06.2017, the relevant paragraphs whereof are extracted herein below:

'22. We, therefore, deem it appropriate to pass an interim order directing the deemed Universities to admit the students provisionally selected and successful in the admission tests/counselling to the vacant seats in order of their merit, subject to the condition that the students shall each deposit Rs.10.00 lakhs at the time of admission towards the annual fee for the first year with CENTAC (third respondent) and subject to the further condition that in the event the fees determined by the Fee Committee that may be constituted by the University Grants Commission (seventh respondent) and Ministry of Human Resource Development (sixth respondent) to study the fee structure of the deemed Universities is higher, they shall pay the differential amount. Needless to mention that those students who have already taken admission by depositing the full fees will, if necessary, be entitled to refund/adjustment of the difference between the fees that might be determined by the Committee and the amount paid by them. Such admission shall be effected within 5 P.M. on 19th June 2017 and the students will be allowed to provisionally attend their classes from 20th June 2017. Needless to mention that the admission of students pursuant to this interim order shall abide by the result of the writ petition.

23. We are informed that there are some non-clinical courses in the deemed universities for which the fees varies between Rs.3 to 4 Lakhs. In such case, the students will be required to pay the amount of fees charged and not Rs.10 Lakhs.

24. Considering that the future of the students who are admitted pursuant to this interim order remains uncertain, there is an immense urgency and we expect that the University Grants Commission (seventh respondent) and Ministry of Human Resource Development (sixth respondent) shall forthwith constitute a Committee to regulate the fees chargeable by the self-financed deemed Universities, after giving all stakeholders including the

Universities adequate opportunity of representation. The decision of the Fee Committee shall abide by the result of the writ petition.

25. Counter-affidavits be filed within two weeks.

26. Rejoinder thereto, if any, be filed within one week thereafter.

27. List on 14.07.2017.

28. CENTAC (third respondent) shall communicate this order to the students individually. The learned Government Pleader (Puducherry) appearing for the Union Territory of Puducherry and CENTAC undertakes to notify this order by publication in the print and electronic media also. The petitioner also undertakes to communicate this order.'

5. On a conjoint reading of the order dated 16.06.2017 with the order dated 17.05.2017 of the learned Single Bench, the petitioner was entitled to be admitted on condition of payment of fee of Rs.10 lakhs as an interim measure.

6. The fourth respondent University authorities, however, did not admit the petitioner when she reported for admission offering Rs.10 lakhs in terms of the order passed by this Court on 16.06.2017. It is the case of the fourth respondent University that the seat was filled up as the petitioner had not been able to pay the requisite fee as prescribed by the fourth respondent University. However, pursuant to our order dated 16.06.2017, the petitioner offered to pay Rs.10 lakhs and sought admission.

7. Although the order dated 17.5.2017 passed by the learned Single Bench was still subsisting and in terms thereof, a seat was required to be kept vacant in M.S. (General Surgery) for the academic year 2017-18, the petitioner was not given admission.

8. It was contended before us that the vacancy had been filled up. It would perhaps be pertinent to record that divergent and inconsistent submissions were made before us on behalf of the CENTAC. It was contended that the petitioner had been offered and had actually taken admission in Ophthalmology. It is not clear, on what basis the submission was made. Today, it was submitted on behalf of the fourth respondent Deemed University that it does not offer any Post Graduate course in Ophthalmology.

9. Be that as it may, let us now consider the contentions advanced today. Reliance is placed on the judgment of the Supreme Court in *Asha v. PT.B.D.Sharma University of Health Sciences and others*, reported in (2012) 7 SCC 389, where the Supreme Court held as under:

"39. With all humility, we reiterate the request that we have made to all the High Courts in *Priya Gupta v. State of Chhattisgarh*, (2012) 7 SCC 433, that the Courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction."

10. One of the questions before the Supreme Court was whether there was any exception to the principle of strict adherence to the rule of merit for preference of courses and preference of colleges for admission. In the aforesaid case, after participation in the second counselling, the concerned candidate did not succeed. The finding of the learned Single Judge of the High Court in favour of the candidate had been upset by the Division Bench and the finding of the Division Bench of the High Court was upheld by the Supreme Court. It was in the context of the facts of that case, where the petitioner had not been selected after the second counselling, that the Supreme Court reiterated the request that it had made to all the High Courts in *Priya Gupta case* [(2012) 7 SCC 433] to avoid giving interim orders where admissions were the matter of dispute before the Court.

11. This is not a case where admission in the sense of eligibility of the petitioner is in dispute. It is the inability of the petitioner to pay the fee demanded, which even this Court found to be *prima facie* exorbitant and extortionary, and accordingly referred the fixation of fees to a Fee Fixation Committee constituted by the DGHS and the UGC.

12. Counsel appearing for the fourth respondent being the Deemed University concerned cited *Priya Gupta v. State of Chhattisgarh and others*, reported in (2012) 7 SCC 433. The relevant portion of the judgment is set out herein below:

"40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government,

university or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations."

The judgment which was rendered in the context of cancellation of admission by the Government to MBBS course. In paragraph 50, the Supreme Court observed as under:

"50. The High Court had cancelled the admission of the appellants by a detailed and well-reasoned judgment. However, as a result of interim orders granted by the Court, both the appellants had already completed four years of the studies at the time of the High Court decision. They are stated to have completed their final exam now. Despite having lost their case before the High Court, the appellants continued to pursue their professional courses because of the interim orders of the Court. Now, the plea of inequities is being raised."

13. Even though the Supreme Court found no merit in the appeal preferred by the appellant and held that the judgment of the High Court did not suffer from any infirmity, in the peculiar facts and circumstances of the case, the appellants before the Supreme Court were permitted to complete their MBBS course as general candidates in Government Medical College, Jagdalpur, subject to their paying a sum of Rs.5 lakhs each within a week from the date of the order of the Court. The aforesaid judgment is also clearly distinguishable.

14. In the instant case, the petitioner approached this Court well before the last date of admission which was on 30.5.2017. The interim order of this Court was passed on 17.5.2017. For reasons not attributable to the petitioner, the writ petition could not be taken up for hearing before 16.06.2017. On 16.06.2017 there was an order in the writ petition being W.P.No.14232 of 2017 directing that admission be given to candidates recommended for admission upon counselling subject to deposit of adhoc amount of Rs.10 lakhs. Be it noted that the respondent authorities did not file any application for vacating/ modifying/varying the order dated 17.5.2017 nor filed any appeal therefrom. The order is binding.

15. As observed by us in our order dated 21.7.2017, the act of filling up of the seat is nullity in the eye of law, the same being patently in violation of orders of this Court. It is strenuously argued on behalf of the fourth respondent that the seat had been filled up pursuant to orders of the CENTAC. The action was pursuant to the second list forwarded by the CENTAC. The fact

remains that the fourth respondent authorities were well aware of the order of this Court. In their own letter No.AVMC/DEAN/MD/MS/2017, dated 26.5.2017, the list of students provisionally admitted and the list of students not admitted/not reported were given as annexure and as against the name of the petitioner it was noted "kept vacant as per the Hon'ble High Court of Madras vide W.P.No.12882 of 2017 and WMP.No.13738 of 2017 dated 17.5.2017". Therefore, the faint attempt to say that the petitioner forfeited her right of admission on 15.05.2017 fails.

16. Even assuming that the order of this Court was wrongly passed, the order was still valid and subsisting and had not been set aside/ modified/varied by any higher forum. The said order was binding. The applicant i.e., the fourth respondent University and/or its authorities are apparently in contempt. There is no question of recalling the order dated 21.7.2017 passed in W.P.No.12882 of 2017. Accordingly, this miscellaneous petition is dismissed. The fourth respondent University shall forthwith admit the petitioner to M.S. (General Surgery) on condition of depositing adhoc amount of Rs.10 lakhs by the petitioner as per the interim order dated 16.6.2017 in W.P.No.14232 of 2017 and report compliance before this Court.

17. List for compliance on 02.08.2017.

-sd/-
31/07/2017
/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 DR.K.BRINDA
NO.1, SHANTHI NAGAR,
ARTS COLLEGE ROAD,
LAWSPET, PUDUCHERRY 605 008

2 GOVERNMENT OF PUDUCHERRY
REP BY SECRETARY TO GOVERNMENT (HEALTH),
CHIEF SECRETARIAT, PUDUCHERRY 605 001

3 DIRECTOR
HEALTH AND FAMILY WELFARE,
SERVICES (DHFWS), VICTOR SAMUEL STREET,
PUDUCHERRY 605 001

4 THE CONVENOR
CENTAC (CENTRALISED ADMISSION COMMITTEE) PEC
CAMPUS, ECR ROAD, PILLAICHAVADI,
PUDUCHERRY 605 014.

C.C. to M/S.L.SWAMINATHAN Advocate SR.No.9988

The Government Advocate, High Court, Madras - 104.

Order

in

WMP NO.20951 & 13738 OF 2017

IN WP.12882 OF 2017

Date :31/07/2017

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SDR 01.08.2017