

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.A.No.242 of 2017
and
CMP.3924/17

M.Pratibha Roshini
Minor aged about 17 years
rep. by father and natural guardian
N.T.Murugananthan
No.51, Manoranjitham Street
Kaviya Garden, Manapakkam
Chennai - 600 0125. ...Petitioner

vs.

- 1 The State of Tamil Nadu
rep. by its Secretary
Health & Family Welfare Department
Fort St. George, Chennai - 9.
- 2 The Secretary
Medical Council of India
Pocket 14, Sector 8
Dwarka Phase I
New Delhi - 110 077.
- 3 The Registrar
The Tamil Nadu Dr.M.G.R.Medical University
No.69, Anna Salai
Guindy Chennai - 600 032.
- 4 The Director of Medical Education
Directorate of Medical Education
No.162, Periyar E.V.R. High Road
Kilpauk, Chennai - 600 010.
- 5 The Secretary
Selection Committee
No.69 Anna Salai
Directorate of Medical Education
No.162, Periyar E.V.R.High Road
Kilpauk, Chennai - 600 010.

6 The Chairman
Ponnaiyah Ramajayam Institute of Medical Science
Manamai Nellur
Kancheepuram District.

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 23.1.2017 passed by the learned Single Judge in W.P.No.1605 of 2017.

WP Prayer:-

Writ Petition filed under article 226 of the Constitution of India prayed to issue a writ of Mandamus to call for records from the 3rd respondent pertaining to the orders passed on 29/11/2016 in vide proceedings No.Ex.1(3)/158835/2016 and quash the same. Consequently issue Mandamus directing the 2nd respondent to extent the benefits granted under section 10-D of the Indian Medical Council Act, to the Petitioner regarding NEET examination, without distinguishing the students under Government quota and Management Quota and this render Justice.

For Appellant : Mr.T.S.N.Prabhakaran

For Respondents : Mr.T.N.Rajagopalan
Spl. Government Pleader
for respondents 1 and 4

JUDGMENT

(Delivered by the Acting Chief Justice)

Aggrieved by the order dated 23.1.2017 passed by the learned Single Judge in W.P.No.1605 of 2017, the unsuccessful petitioner therein had preferred the instant appeal.

2.1. The facts in a nutshell are as under: It is the case of the appellant that she had successfully completed her Higher Secondary Course and secured a seat in the sixth respondent/College under the "Government Quota's Lapsed Seat" to pursue M.B.B.S. Course. It is alleged that all of a sudden the sixth respondent/college, by proceedings dated 29.11.2016, discharged the petitioner from the college, as she has not qualified in UG-NEET, 2016 examination.

2.2. It is the case of the appellant that the second respondent passed an ordinance and incorporated Section 10-D in the Indian Medical Council Act, 1956 which stipulates that students who have got admission to government seats need not undergo NEET, whereas the students admitted to the management

seats must necessarily succeed in the said examination. Therefore, it is pleaded by the appellant, who had secured a seat under the Government Lapsed Seat Quota, that she need not undergo the NEET examination. It is alleged that without considering the said fact, the sixth respondent/college passed the order dated 29.11.2016 discharging her from the college.

2.3. Calling into question the said order dated 29.11.2016 and seeking to extend the benefits granted under Section 10-D of the Indian Medical Council Act to all students regarding NEET Examination, without distinguishing them under Government Quota and Management Quota, the appellant filed the writ petition.

2.4. The learned Single Judge, by order dated 23.1.2017 passed in W.P.No.1605 of 2017, dismissed the writ petition observing as under:

"8. Since the issue in question is already covered by an order dated 09.01.2017 in W.P.No.335 to 339 of 2017, etc batch of cases, nothing survives for consideration in this case. For better appreciation of the case, relevant portion of the said order is extracted hereunder:

'13. It is very clear that admission to Private Colleges is made only on the basis of NEET examination. There is no other mode provided. Further, merely because the students who were allotted under the Government did not join the Government Seats, it does not mean that the Private College is entitled to fill the Government Lapsed seats. They cannot take the Government criteria to fill such lapsed seats. In fact, they should immediately intimate the Government about the non-joining of the students and such seats would be filled by the Government. Instead, they have taken law into their own hands and filled up the seats for reasons best known to them, without even fulfilling the main criteria for admission, i.e. the NEET examination.

14. Further, the very same College in a Writ Petition filed earlier has stated that there were no seats available as on 29.09.2016. In fact, it was brought to the notice of the Supreme Court on 01.10.2016, that all the vacant seats in India have been filled up and as far as Tamil Nadu is concerned, it was mentioned that only one

seat was vacant and that the same is also filled up as per the directions of this Court on 07.10.2016, as per the extension date given by the Supreme Court. In that view of the matter, the 6th respondent College unilaterally giving admission to students under the Government Lapsed Seats Quota is untenable and hence, the petitioners cannot seek remedy from this Court.

15. In view of the above, when 53 seats out of 150 seats to the 6th respondent College have been allotted under the Management quota and the remaining 97 seats have been allotted to Tamil Nadu State Government Counselling allotment, and that the College has surrendered 30 seats to the Government, there is no question of challenging the impugned order now. The 3rd respondent/University has clearly informed the Dean of the 6th respondent College that NEET qualified candidates alone are eligible for MBBS Degree Course, for the academic year 2016-2017.

16. Hence, this Court holds that private Colleges are prohibited from claiming seats under the Government Lapsed Seats Quota and accordingly, these Writ Petitions are dismissed. However, the petitioners are at liberty to get compensation from the 6th respondent College. No costs. Consequently, connected Miscellaneous Petitions are closed.'

9. Hence, this Court holds that private Colleges are prohibited from claiming seats under the Government Lapsed Seats Quota and accordingly, this Writ Petition is dismissed. However, the petitioner is at liberty to claim compensation from the 6th respondent College, if he is so advised. No costs. Consequently, connected W.M.P.No.1563 of 2017 is closed."

2.5. Assailing the said order, the present appeal is filed on the ground that the Section 10-D of the Indian Medical Council Act is violative of Article 14 of the Constitution of India inasmuch as there is no equality among the students. In other words, it is the plea of the appellant that the said

provision has caused disparity between the students who were admitted under government quota and those admitted under management quota.

3. We have heard the learned counsel for the parties and perused the impugned order and the documents filed in support of this appeal.

4. At the outset, we would like to observe that the sixth respondent/private college cannot unilaterally admit students under the Government Seats Lapsed Quota and, therefore, the appellant, who was admitted under such quota, cannot seek redressal of her grievance before this Court and any direction passed by this Court against the sixth respondent would be similar to passing an order against private parties, which is uncalled for exercising the power under Article 226 of the Constitution of India.

5. With regard to plea of discrimination between students who were admitted under government quota and management quota in appearing for NEET, we hold that the Government has taken a policy decision to the effect that the students admitted to State Government Seats need not undergo NEET and this Court finds no justifiable reason to interfere with such policy decision.

For the foregoing reasons, this appeal is dismissed and the order passed by the learned Single Judge is confirmed. No costs. Consequently, C.M.P.No.3924 of 2017 is closed.

sd/
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1 The Secretary
State of Tamil Nadu
Health & Family Welfare Department
Fort St. George, Chennai - 9.
- 2 The Secretary
Medical Council of India
Pocket 14, Sector 8
Dwarka Phase I
New Delhi - 110 077.

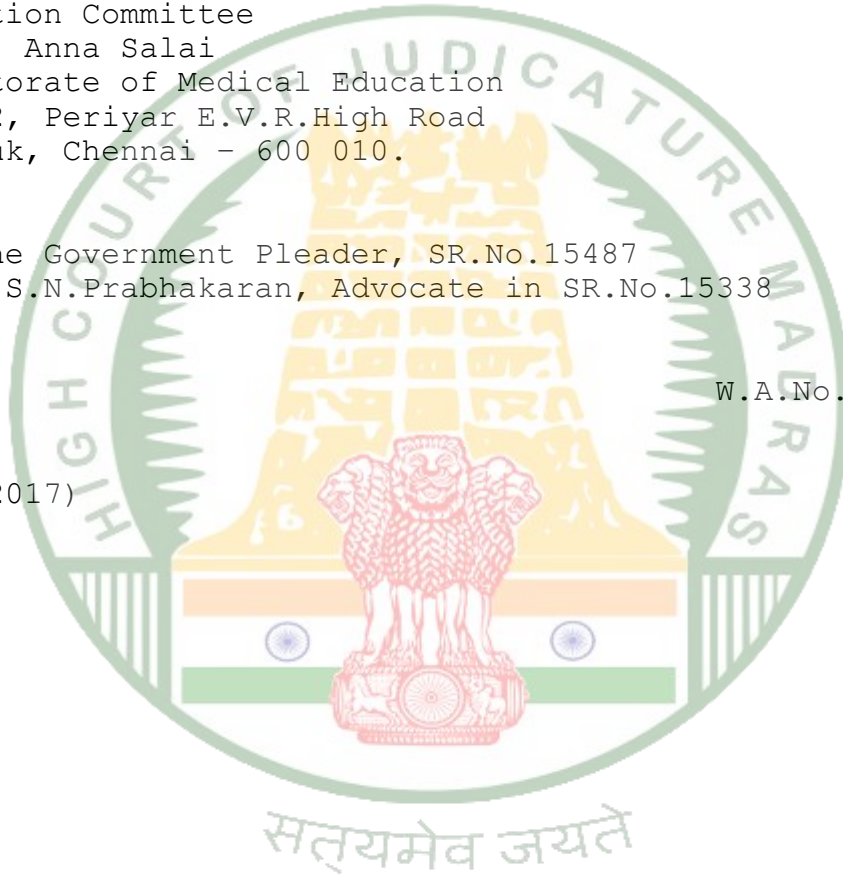
- 3 The Registrar
The Tamil Nadu Dr.M.G.R.Medical University
No.69, Anna Salai
Guindy Chennai - 600 032.
- 4 The Director of Medical Education
Directorate of Medical Education
No.162, Periyar E.V.R. High Road
Kilpauk, Chennai - 600 010.
- 5 The Secretary
Selection Committee
No.69 Anna Salai
Directorate of Medical Education
No.162, Periyar E.V.R.High Road
Kilpauk, Chennai - 600 010.

+1cc to the Government Pleader, SR.No.15487

+1cc to T.S.N.Prabhakaran, Advocate in SR.No.15338

W.A.No.242 of 2017

EV(CO)
GN(28/03/2017)



WEB COPY