

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM:

THE HON 'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition Nos.12347 and 14393 of 2017 and

WMP.No.13110/2017 in W.P.No.12347/2017 and

WMP.Nos.15608 and 15609 of 2017

W.P.No.12347/2017

Dr.P.Sidharthan

... Petitioner

Versus

1. Government of Puducherry
rep. by Secretary to Government (Health),
Chief Secretariat,
Puducherry-605 001.
2. Director,
Health and Family Welfare Services
(DHFWS), Victor Samuel Street,
Puducherry-605 001.
3. The Convenor,
CENTAC (Centralized Admission Committee),
PEC Campus, ECR Road,
Pillaichavadi,
Puducherry-605 014.
4. The Director,
Pondicherry Institute of Medical Sciences
(PIMS), Ganapathi Chettikulam,
Puducherry-605 014.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Declaration, declaring the non-implementation of selection of the petitioner in accordance with merit to the Government counselling conducted on 4.5.2017 based on the G.O.No.F.No.V-11025/NEETPG/26-1-BOME/DHFWS/2017/232 as illegal and unconstitutional and consequently, admit the petitioner in terms of the allotment order dated 04.05.2017 for M.S.General Surgery Course for the academic year 2017-2018 in accordance with law.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel
for M/s.C.M.Krishnakumar

For Respondents : Mr.R.Ghandiraj,
Government Pleadere (Pondicherry)
for R1 to R3
Mr.R.Muthukumarasamy,
Senior Counsel
for Mr.A.Jenasenan for R4

W.P.No.14393/2017

Dr.P.Sidharthan ... Petitioner
Versus

1. The Director,
Pondicherry Institute of Medical Sciences (PIMS),
Ganapathi Chettikulam,
Puducherry-605 014.
2. The Convenor,
CENTAC (Centralized Admission Committee),
PEC Campus, ECR Road,
Pillaichavadi,
Puducherry-605 014.
3. Government of Puducherry
rep. by Secretary to Government (Health),
Chief Secretariat,
Puducherry-605 001.
4. The Secretary to Lt. Governor,
Puducherry,
Raj Nivas, Puducherry.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a writ of Certiorarified Mandamus to call for the records relating the rejection letter of the first respondent dated 2.6.2017 and quash the same and consequently, direct the respondents to admit the petitioner to the 1st respondent college in terms of allotment order without imposing any onerous condition of serving bond.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel
for M/s.C.M.Krishnakumar

For Respondents : Mr.R.Muthukumarasamy,
Senior Counsel
for Mr.A.Jenasenan for R1

Mr.R.Ghandiraj,
Government Pleader (Pondicherry)
for R2 to R4

Mr.P.R.Gopinathan for UGC

C O M M O N O R D E R

The petitioner has filed a Writ of Declaration in W.P.No.12347/2017, declaring that the non-implementation of selection of the petitioner in accordance with the merit to the Government Counselling conducted on 4.5.2017 based on the G.O.No.F.No.V-11025/NEETPG/26-1-BOME/DHFWS/2017/232 as illegal and unconstitutional and consequently, admit the petitioner in terms of the Allotment Order dated 04.05.2017 for M.S. General Surgery Course for the academic year 2017-2018.

2. The petitioner has filed a Writ of Certiorarified Mandamus in W.P.No.14393/2017, challenging the letter of the first respondent dated 2.6.2017, cancelling the admission/allotment made to the petitioner by the 2nd respondent and to admit the petitioner in the 1st respondent college in terms of the allotment order, without expressing any condition of serving bond.

3. The petitioner in both the cases is one Dr.P.Sidharthan, who is a service candidate in Puducherry Health Services, Puducherry. It is stated that he has put in 5 years of service in rural area. He had applied for the Post Graduate Medical Course and attended the NEET Examination and qualified in the same. Pursuant to the qualification, he attended the Common Counselling conducted by the 3rd respondent (CENTAC) for the academic year 2017-18. The petitioner had secured 41st rank and it is complained that the 4th respondent college denied admission and demanded Rs.13,00,000/- as fees, even before the fee fixation. It is submitted by the petitioner that there was a direction passed by the Hon'ble Supreme Court on 04.05.2017 to the effect that a common counselling for all courses will be conducted. It is stated by the petitioner that without any reference to Puducherry Government Gazette Notification reserving 50% of the private college seats for the Government seats, the Supreme Court has specifically directed to conduct a Common Counselling. The petitioner has applied for P.G. Medical Course and any selection should be based on the MCI Regulations. As per the Supreme Court decision in State of Uttar Pradesh and Others v. Dinesh Singh Chauhan reported in 2016 (9) SCC 749, the institutional reservation by the State is impermissible under the Constitution and the State has no authority to issue any such order when the MCI regulation itself is a self-contained Code and nothing under the regulation granting separate channel for admission to in-service candidates.

4. So far as the admission to P.G. Medical Courses are concerned, any deviation or violation from the MCI regulations will result in discrimination which will affect the uniformity in selection procedures. The object of the conduct of the NEET Examination itself is to maintain an uniformity in selection procedures and prescription of regulations by MCI is to maintain the standards of admission for P.G. Courses. Therefore, the declaration that the non-implementation of the selection of the petitioner in accordance with merit as prayed for by the petitioner cannot be entertained.

5. So far as W.P.No.14393/2017 is concerned, the challenge is with respect to the letter of the 1st respondent dated 02.06.2017. The petitioner, admittedly, was issued a Provisional Allotment Order in the 1st respondent Medical College for M.S. General Surgery P.G. Course and admittedly, the allotment was only based on the Common Counselling through CENTAC. It is alleged that the 1st respondent had demanded Rs.33,50,000/- as prescribed in their College Prospectus which

is pasted in the website. The petitioner contends that on the date, the allotment order was given to the petitioner, the Fees Committee, Puducherry had not fixed the fees payable. It is, at this point, the petitioner had filed W.P.No.12347/2017 and obtained an interim order from this Court to reserve one seat for the petitioner in the respective allotted category before the 1st respondent college. On 14.05.2017, the Fee Fixation Committee had fixed Rs.3,00,000/- for P.G. Medical Degree (Clinical). Immediately, the petitioner approached the respondent and to receive the fees of Rs.3,00,000/-. Since they did not receive it, it is stated to have been sent through Speed Post which was received by the college. The said fees fixed by the Fee Committee on 14.05.2017 was subsequently superceded by the Fee Committee by its own order dated 24.05.2017. By virtue of the said order, the fee was raised from Rs.3,00,000/- to Rs.5,50,000/- for P.G. Medical (Clinical) for the respondent college and this notification was dated 24.05.2017 and it was immediately realised. As there was a balance of Rs.2,50,000/-, additional fee for the revised fixation of fees, the petitioner claims to have sent the same to the 2nd respondent Centralized Admission Committee. However, the respondent had returned the fees paid by the petitioner. On 31.05.2017, the petitioner had addressed to the 1st respondent college stating that he had paid required fees of Rs.5,50,000/-. The petitioner had paid a sum of Rs.3,00,000/- by way of Demand Draft on 15.05.2017 and the balance amount was paid drawing a Demand Draft only on 31.05.2017. The petitioner also had sent a Demand Draft for the additional sum to the 2nd respondent only on 31.05.2017 which was received by them on 02.06.2017 which is now impugned in this Writ Petition.

6. The impugned letter reads as follows:

'With reference to the above letters, it is noted that Dr.P.Sidharthan (JAC No.30280) was allotted MS. (General Surgery) at this Institute vide their order dated 04/05/2017, with the note that the last date of joining was 15th May, 2017. However, as the fees of Rs.5.5 Lakhs (as fixed temporarily by the Fee Committee, Government of Puducherry) for all Government Quota candidates nor the undertaking received regarding payment of the fees as decided by the Hon. High Court, Chennai and neither was an undertaking for 1 year service obligation to the Institute received by us before the last date of PG admissions. i.e. 31 May 2017 (as fixed by the Hon.

Supreme Court of India). Therefore, it is regretted that the admission of the candidate (Dr.Siddharthan P.) JAC No.30280 cannot be made as the last date of admission to the PG (MD/MS) courses at this Institute was 31st May, 2017. We are returning back the Demand Drafts and Letters received in original.''

As per the above letter, the petitioner has to give an undertaking regarding payment of fees as may be decided by the Fee Committee and an undertaking for one year service obligation to the Institute before the last date for P.G. admission i.e. on 31.05.2017.

7. It is submitted by the learned Counsel appearing for the 1st respondent college that even as per the College Prospectus, the Management reserves the right to insist for a service obligation at Pondicherry Institute of Medical Sciences from those PG candidates who complete the course successfully. Therefore, it is stated by the 1st respondent that those students seeking admission in the P.G. Courses will have to give an undertaking for one year service obligation to the institution failing which the students shall not be admitted. It was well within the knowledge of the general public and in particular, the candidates aspiring admission for Post Graduation with the 4th respondent.

8. The learned Senior Counsel appearing for the college invited the attention to the judgments rendered by the Hon'ble Supreme Court in TMA. Pai Foundation vs. State of Karnataka reported in (2002) 8 SCC 481 as clarified by Islamic Academy of Education and another vs. State of Karnataka and others reported in (2003) 6 SCC 697 and thereafter P.A.Inamdar and others vs. State of Maharashtra and others reported in (2005) 6 SCC 537, stating that the private unaided institutions are free to fix their own fees including collecting a reasonable surplus as profit subject only to the condition that such institutions do not collect capitation fees or indulge in profiteering. In line with the above rulings of the Hon'ble Apex Court, the respondent institution claims to have fixed his Annual Tuition Fees for MD General Surgery Course. It is further submitted by the learned Senior Counsel that the concept of 50% Government Seat in the 4th respondent institution does not arise as the institution never offered to surrender any seat to the Government. Even

presuming that the seats were surrendered to the Government, it is stated that the fee fixed by the institution alone would apply.

9. It is not in dispute that the petitioner was allotted seat by provisional allotment letter dated 04.05.2017. The Fee Committee had fixed the fees payable to the respondent college as Rs.3,00,000/- on 14.05.2017. Immediately, the petitioner said to have paid the said fees of Rs.3,00,000/- by post. Thereafter, when the Fee Committee issued another order on 25.04.2017 superceding its earlier order dated 14.05.2017, refixing the provisional fees to be collected by the respondent institution at Rs.5,50,000/- for the Government Quota and Rs.14,00,000/- for Management Quota. The petitioner has paid the balance of Rs.2,50,000/- once again by post. A perusal of the material filed along with the Writ Petition shows that the demand draft for Rs.2,00,000/- was taken by the petitioner in favour of the respondent institution only on 31.05.2017 and it is an admitted case that the said draft was sent only by Speed Post to the Selection Committee and not to the college. The Selection Committee forwarded the Demand Draft which reached the hands of the college on 02.06.2017. The last date for admission is only on 31.05.2017. Hence, the respondent Institution had rejected the claim of the petitioner, firstly, on the ground that the fee even though not admitted to be correct was paid only beyond the date of admission and the same was not supported by the undertaking for service obligation.

10. It is interesting to note that even in the Second Notification issued by the Fee Fixing Committee, it is specifically mentioned that the said arrangement is purely temporary and it is provisional only till the Fee Committee, Puducherry meets and fixes the Fee Structure permanently. The said Notification further mentioned that the said Fee Structure was subject to an undertaking to be obtained from the students/parents that the fee collected is subject to the fees that would be permanently be fixed by the Fee Committee, Puducherry. Therefore, it is evident from the material available on record that the petitioner was expected to give an undertaking even as per the Fee Committee dehors the fact that the admission granted to him provisionally was under the Government Quota or the Management Quota. Secondly, during the Counselling, the petitioner has opted to join the respondent college on his own volition. It is expected for a candidate joining the Post Graduate Professional Course to be aware of the conditions of the Institution, he is joining. The respondent

institution has specifically stated in the Prospectus that the admitted students are expected to give an undertaking of service obligation for one year after completion of the course. Even though the petitioner may claim that he is employed with the Government and he is an in-service candidate when his seat is allotted in a private institution, it is obligatory on his part to comply with those conditions. Admittedly, the petitioner had neither given an undertaking for payment of fees that may be finally fixed by the Fee Committee nor given an undertaking for service obligation as required by the Respondent Institution. Therefore, the respondent had rightly rejected the admission of the petitioner.

11. In the light of the above discussions, there is no merit in the case of the petitioner and the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

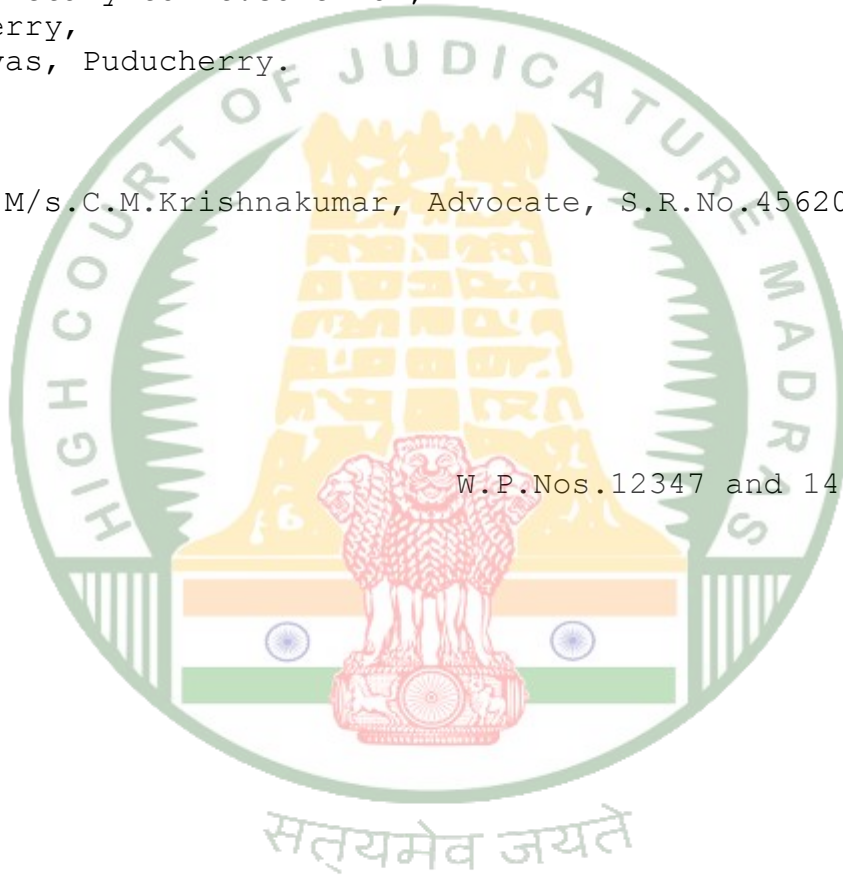
- सत्यमेव जयते
1. Secretary to Government (Health),
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Puducherry-605 001.
 2. Director,
Health and Family Welfare Services
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Puducherry-605 014.
5. The Secretary to Lt.Governor,
Puducherry,
Raj Nivas, Puducherry.

+2cc's to M/s.C.M.Krishnakumar, Advocate, S.R.No.45620 & 45621

W.P.Nos.12347 and 14393 / 2017



SKS (CO)
CU(10/07/2017)

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