

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-12-2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.32669 of 2017
and
W.M.P.No.35997 of 2017

Fenila Bell.E ... Petitioner

vs

1.The Director,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

2.The Secretary to Government,
Health and Family Welfare (ME) Dept.,
Fort St. George, Chennai 600 009.

3.The Medical Council of India,
Rep. by its Secretary,
Dwaraha, New Delhi.

4.The Dean,
Stanley Government Medical College,
Chennai 600 013.

.... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, after calling for the entire records from the fourth Respondent for the order passed in Ref.2184/ME4/2017 dated 14.11.2017 and quash the same.

For Petitioner : Mr.K.P.Satish Kumar
For Respondent : Mr.T.M.Pappiah (for R1, R2 & R4)
Special Government Pleader
Mr.V.P.Raman, (for R3)
Standing counsel

O R D E R

Sympathy which was unduly shown to the Petitioner by this Court is taken advantage of, by the petitioner, who has approached this Court, without any justification, which needs to

be deprecated and condemned. A medical seat is a precious seat and it is a life time ambition for many students. Having got the seat under Government quota in a private Medical College, the petitioner got migrated to the Stanley Medical College from Karpaga Vinayaka Institute of Medical Sciences and Research Centre, Kanchipuram, by virtue of orders passed by this Court, which is only based on sympathy, she has again approached this Court challenging the payment of Rs.3,00,000/- being the tuition fee for the academic year 2017-2018.

2.The petitioner had obtained 1177 marks out of 1200 in the +2 examination held in March 2014. The petitioner was allotted medical seat in Karpaga Vinayaka Institute of Medical Sciences and Research Centre, under Government quota. The petitioner joined and underwent the first year course and thereafter, filed a writ petition challenging clause 6(c) of the Prospectus for the admission to MBBS/BDS courses 2015-2016 session, which prohibits a student, who got admitted for the previous year for being considered for the next year. Subsequently, the said prayer was given up. The petitioner filed an amendment application seeking for migration. The learned Single Judge taking into consideration the availability of two seats in the Government College namely Coimbatore and Stanley Medical College, directed the authorities to pass an order of migration in favour of the petitioner from Private Medical College to Stanley Medical College. The said order was also confirmed by the Division Bench of this Court in W.A.No.112 and 113 of 2016 on 23.02.2016. Accordingly, the petitioner was accommodated in Stanley Medical College and has been pursuing medical course and she is in the third year. For the third year, by virtue of the impugned order, a sum of Rs.3,00,000/- has been demanded towards tuition fee for the academic year 2017-18. The said order is being challenged before this Court.

3.The learned counsel for the petitioner would submit that the petitioner already got migrated from Private Medical College to Government Medical College and fees applicable to the Government college student alone should be demanded and not Rs.3,00,000/-, which is payable by a student admitted in Government quota in a private college. Because of the inability of the petitioner only, she had got an order of migration from this Court earlier.

4.Mr.T.M.Pappiah, learned Special Government Pleader for the respondents 1, 2 and 4 would contend that the petitioner was migrated to Stanley Medical College only as per the directions of this Court and she has to be treated as a student admitted under the Government quota in a private Medical College and the fee applicable to the said quota alone is rightly prescribed and it is Rs.3,00,000/-. Therefore, he justified the demand.

5. Heard Mr.V.P.Raman, learned counsel for the third respondent.

6. A perusal of records would reveal that the petitioner was given a lenient order which would not have been done usually. Though, the order passed by this Court is strictly not in consonance with the regulations, it has attained finality. Therefore, this Court is not inclined to express any opinion in this regard. The petitioner was admitted in private Medical College under Government quota and she underwent the first year of the course and again, she applied for medical seat afresh as she thought that cut off mark for the next year for admission into Government Colleges would enable her to get a Government seat. Since there was a prohibition under regulation 6(4), the same was challenged. The petitioner underestimated the very value of the medical seat, when the people are dying to get a medical seat and students are compelled and forced to study round the clock to get high marks by way of tuition and coaching class. Here is a person, who having obtained a medical seat, has not considered the seat as a seat and intended to waste the said seat and grab a seat reserved for future students mindlessly. In spite of magnanimity shown by this Court by passing an order, which is not in consonance with law and having got the benefit outside the regulations, the petitioner is still not satisfied and has approached this Court that she should not be demanded a sum of Rs.3,00,000/- and she would pay only Rs.12,290/-, which is the tuition fee applicable to a student of Government Medical College. The petitioner has forgotten the fact that she paid Rs.2,80,000/- in the previous year in the Private Medical College. Not only tuition fee, other fees also, which will be more than a lakh will have to be paid by the petitioner under various heads, if she had continued in the Private Medical College.

7. The very purpose of prohibition under regulation 6(4) is to prevent the student, who already obtained a medical seat from getting a medical seat again in the next year. If that is allowed, seat already occupied by the petitioner would go waste through out the course and also the seat, which is meant for some deserving students in the next year, would also be encroached upon by the petitioner unjustifiably. The said regulation is only in the interest of the students.

8. A perusal of the migration G.O.(D). No.651, Health and Family Welfare (ME) Department, dated 17.05.2016, by which the petitioner was given transfer from Karpaga Vinayaka Institute of Medical Sciences and Research Centre, Kanchipuram District to Stanley Medical College, Chennai, would reveal that she has been transferred, subject to payment of fees fixed by the committee for fixation of fee in respect of Self Financing Medical

Colleges for the year 2014-2015 for the remaining years. Paragraph 5 of the said G.O., is extracted as follows:

"5.As per the orders of the Hon'ble High Court of Madras in the reference first and third read above and based on the opinion of the Advocate General of Tamil Nadu to the reference fourth read above, the Government have decided to comply with the above orders of Hon'ble High Court and direct the Director of Medical Education to take necessary action to transfer Selvi P.Ramya and E.Fenila Bell, 2nd year MBBS students of Karpaga Vinayaka Institute of Medical Sciences and Research Centre, Kancheepuram to Stanley Medical College, Chennai and Coimbatore Medical College, Coimbatore subject to charging fee fixed by the Committee on Fixation of fee in respect of Self Financing Medical Colleges for the year 2014-2015 for the remaining years"

9.From the above, it is clear that though the petitioner has been transferred from private Medical College to Government Medical College and undergoing course in Stanley Medical College, the petitioner, by no stretch of imagination, could be termed as a student under Government quota and still wish to be treated as a student admitted in the Government quota in private Medical College. That apart, in the conditional transfer order, it has been stated that she should pay fees fixed by the committee for fixation of fee in respect of self financing Medical Colleges for the year 2014-2015 for the remaining years. When the conditional order has been passed, the same is binding on the petitioner and the petitioner cannot wriggle out of the same. The impugned order has been passed not only based on the transfer order, but also the admission into Private Medical College under Government quota, which cannot be challenged at any point of time, till the course is over.

10.Normally, migration is not a matter of right and that too no migration will be permitted from private Medical College to Government Medical College as evident from G.O.(Ms). No.4, Health and Family Welfare (MCA 1) Department, dated 02.01.2012. Annexure I-Clause 8 mentioned in G.O.(Ms).No.4, dated 02.01.2012 reads as follows.

"No migration will be permitted from the private Medical College to Government Medical College and from one private Medical College to another private Medical College"

11.Therefore, Government Order, in force, which prohibits the migration of a student from private Medical College to Government Medical College has to be scrupulously followed

unless it is set aside. When that is the G.O., which is in force governing all the medical students including the petitioner, taking into consideration the alleged poor status of the petitioner, the extraordinary relief was granted by this Court, which this Court would not have granted otherwise. That only encouraged the petitioner to come before this Court by way of this Writ Petition.

12.This Court by an earlier order took note of the vacancy available in Stanley Medical College and Coimbatore Medical College and thought that those seats would go waste and therefore, the petitioner and another student could be accommodated. But in reality there should have been many students, who would have applied for migration from Government Medical College to another Medical College and if seats are available, the students in the Government Medical Colleges, who have given application for migration on the grounds which have been stated in G.O. namely (i)Death of supporting parent/guardian; (ii)Illness of the candidate causing disability; and (iii)Disturbed conditions as declared by Government in the Medical College area, would have got the benefit. Without even seeking for those details, this Court has shown magnanimity and straightaway entertained the petitioner's plea.

13.This Court has to regret for the sympathy shown to the petitioner, which is being taken advantage of, by the petitioner unjustifiably. The writ petition is nothing but abuse of process of law, contrary to the conditional order passed by the Government. Therefore, the Writ Petition is liable to be dismissed.

14.Accordingly, this Writ Petition is dismissed. Though, the present writ petition is an abuse of process of Court and an exemplary costs of Rs.1,00,000/- has to be imposed on the petitioner, considering the fact that the petitioner is a student, this Court is not imposing any costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Director,
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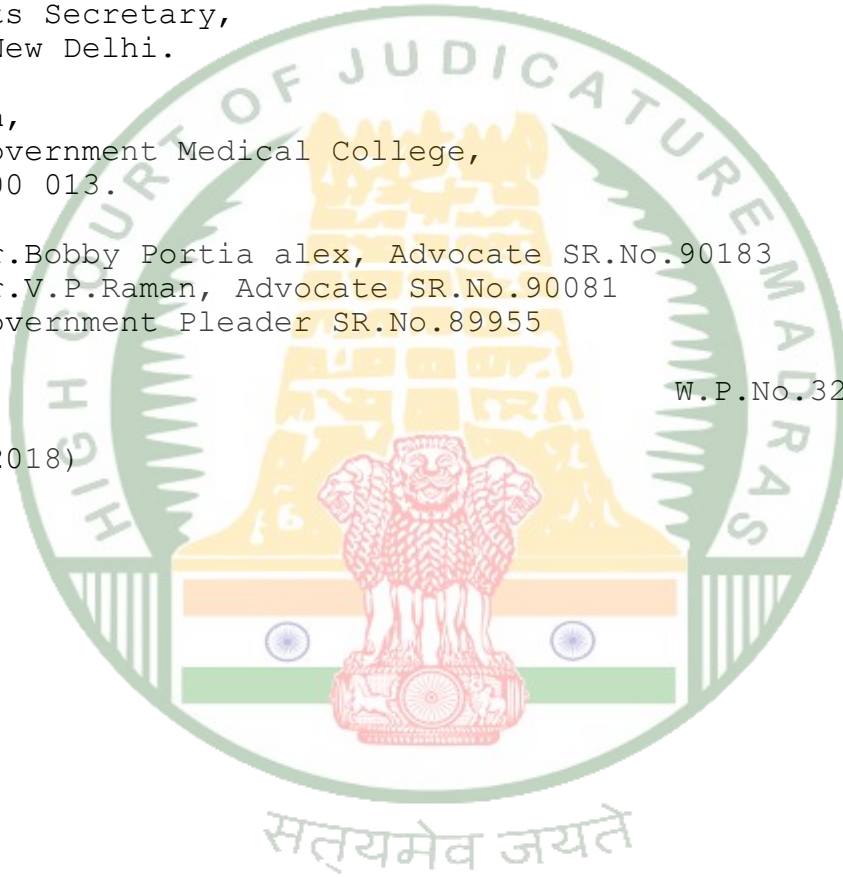
+1cc to Mr.Bobby Portia alex, Advocate SR.No.90183

+1cc to Mr.V.P.Raman, Advocate SR.No.90081

+1cc to Government Pleader SR.No.89955

W.P.No.32669 of 2017

GN(25/01/2018)



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