

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-06-2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.32981 of 2016

Dr.R.Divya

-Vs-

...

Petitioner

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Secretariat,
Chennai - 600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010.
3. The Secretary,
Selection Committee,
Director of Medical Education
Kilpauk,
Chennai - 600 010.
4. The Dean
Madras Medical College,
EVR Periyar Salai,
Park Town,
Chennai - 600 003.
5. The Chairman
National Board of Examinations
Ansari Nagar,
Mahatma Gandhi Marg (Ring Road),
New Delhi - 110 029.

... Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 3rd Respondent to

refund the amount of Rs.15,00,000/-(Rupees Fifteen Lakhs Only) to the petitioner which was paid by the petitioner on 02.06.2016 towards the discontinuation fees of the All India Merit Quota Seat of Non Service - DGO Course within a reasonable time as this Hon'ble Court may deem fit.

For Petitioner	:Mr.M.K. Kabir, Senior Counsel for Mr.S.Sivakumar
For Respondents-1 to 4	:Mr.V.Anandhamurthy Additional Government Pleader
For Respondent- 5	: No appearance

ORDER

The Writ Petition has been filed seeking for a direction to the third respondent to refund the sum of Rs.15,00,000/-(Rupees Fifteen Lakhs Only) collected from the petitioner towards the discontinuation fees of the All India Merit Quota Seat of Non Service - DGO Course.

2. The facts are not in dispute. The petitioner who had completed her undergraduate degree in M.B.B.S Course in the year 2015 and registered as a Medical Practitioner, had applied for All India Post Graduate Medial Examinations and DNB-CET 2016 conducted by the National Board of Examinations. The petitioner applied for both the examinations and they were conducted with the same Testing Identification Number. The petitioner joined Post

Graduate Diploma in Obstetrics and Gynecology (Non Service - DGO) in Madras Medical College, Chennai 600 003 on 28.03.2016 as per the allotment of All India Merit quota by the Medical Counseling Committee, National Board of Examinations, Government of India. Besides AIPGMEE 2016 examination, the petitioner had also attended the Diploma of National Board Centralized Entrance Test, 2016.

3. After joining the DGO Course in Madras Medical College, the petitioner had attended the DNB Centralized Merit Counseling on 31.05.2016 along with the bona-fide certificate issued by the fourth respondent. The petitioner was allotted Diploma of National Board in Obstetrics and Gynecology (DNB-OG) seat in Southern Railway Headquarters Hospitals, Perambur, Chennai 600 023, on All India Merit Quota basis. The NBE authorities also obtained the resignation of the petitioner from the DGO course. After allotment order was issued by DNB, the petitioner was directed to produce the original certificates for verification. Immediately, the petitioner approached the fourth respondent requesting him to return the original certificates and documents to submit the same before the NBE authorities. While submitting the requisition on 01.06.2016, the fourth respondent directed the petitioner to pay a sum of Rs.15,00,000/- (Rupees fifteen lakhs only) in favour of the

Secretary, Selection Committee, Kilpauk, Chennai 600 010 as discontinuation fees of DGO Course. Despite the petitioner explaining to them that even the bona-fide certificate issued by the fourth respondent permitted the petitioner to resign from the DGO Course and opt for confirmed DNB seat, the fourth respondent insisted on payment of Rs.15,00,000/- as discontinuation fees, failing which, certificates will not be handed over to her. Left with no other option, the petitioner claims to have paid Rs.15,00,000/-, for which, no receipt was given. Only after receipt of the said sum of Rs.15,00,000/-, the fourth respondent issued the discontinuation order dated 02.06.2016 and returned all the original certificates to the petitioner. It is specifically stated by the petitioner that at the time of joining the DGO Course in the fourth respondent-College, no undertaking or declaration or bond was executed by the petitioner. As the petitioner was allotted seat through All India Post Graduate Medical Examinations Merit Rank, the fourth respondent had not taken any undertaking or declaration or bond. The petitioner states that she had attended the DNB Centralized Merit Regular and Extended Counseling with the permission of the fourth respondent. The bona-fide certificate dated 21.04.2016 was also issued by the fourth respondent. As the allotment of DNB(OG) seat to the petitioner was on 31.05.2016 in Southern Railway Headquarters Hospital, Perambur, Chennai by the Medical

Counseling Committee, Government of India through All India Merit Quota and thereby upgrading from DGO Course to DNB (OG) PG Course which is equivalent to Master degree in Obstetrics and Gynecology, M.D.(OG), there is no question of discontinuation of DGO Course as stated by the fourth respondent.

4. The second respondent has filed counter affidavit stating that as per Clause 45 of the Policy / Prospectus relating to Post Graduate Degree Diploma in Medical Colleges, it is stated that the candidates who discontinue the course after the last date of allotment of seats in final phase of All India Quota Counseling, shall pay the discontinuation fees to the Deans of the respective Colleges the said sum in total by way of Demand Draft in favour of the Secretary, Selection Committee, Kilpauk, Chennai. The date given is 31.05.2016 for P.G. Degree /Diploma for Rs.15,00,000/-.

5. Heard Mr.M.K.Kabir, learned Senior Counsel who appeared on behalf of the learned counsel for the petitioner and Mr.V.Anandhamurthy, learned Additional Government Pleader appearing on behalf of the respondents 1 to 4.

6. Admittedly, the petitioner got allotment through All India Quota. Clause 45 of the prospectus cannot have any application, as

there is no expressed prohibition for a candidate, who has already been selected for a Diploma course from being considered for a Post Graduate Degree course. That is the reason why the fourth respondent also has issued the bona-fide certificate, which specifically contains the clause that in the event of Selection Committee confirmed DNB seat, the candidate will be relieved from Diploma in Obstetrics and Gynecology course immediately on receipt of her resignation from the Course and that the Medical College has got no objection for the candidate even to attend the common Entrance Test centralized counseling conducted by DNB. Therefore, Clause 45 of the prospectus cannot have any application, since no discontinuation is involved. When the petitioner had been given the seat based on the merit through different counseling, it cannot be found fault with. The undertaking given by her is that she would resign from Diploma in Obstetrics and Gynecology, when she opts for confirmed DNB seat. A right coupled with the corresponding duty cannot be evaluated in terms of money.

7. The question now involved is only with respect to refund of the discontinuation fees collected by the third respondent and not with respect to the monetary loss of the fourth respondent.

8. The petitioner has specifically stated that at the time of joining the DGO course through All India Quota on 28.03.2016 in Madras Medical College, no undertaking or declaration or bond was executed by her as it was through All India merit list. The College authorities have permitted the petitioner to attend the counseling conducted by the NBE. When the petitioner approached the fourth respondent for return of the certificates, the discontinuation fees of Rs.15,00,000/- was collected from her. When it is held that Clause 45 of the Prospectus has no application, as no discontinuance is involved, the petitioner is entitled to get back the money paid by her for the above said reasons.

9. In view of the foregoing reasons, this Court is inclined to allow this Writ Petition and accordingly, the same is allowed, with a direction to the third respondent to return the discontinuation fees of Rs.15,00,000/- to the petitioner received from her. In any case, the question of penalty does not arise, as the petitioner did not discontinue the earlier course, but she opted for a better one and therefore, no penalty need be paid by the petitioner. No costs.

21.06.2017

Index:Yes/No
Internet:Yes/No
srn

To

1. The Ministry of Human Resource Development,
127-C, Shastri Bhawan,
New Delhi.
2. The All India Council for Technical Education,
Southern Regional Office,
'Shastri Bhavan', 26, Haddows Road,
Nungambakkam,
Chennai - 600 006.
3. The Chairman
University Grants Commission
Represented by its Secretary,
Bahadur Shah Zafer Marg,
New Delhi - 110 002.
4. The Controller of Examination,
Anna University,
Guindy, Chennai - 600 025.
5. The Principal
Dhaanish Ahmed College of Engineering
Dhaanish Nagar,
Padappai,
Chennai - 601 301.

PUSHPA SATHYANARAYANA, J

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