

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.960 of 2016

Ramya

... PETITIONER

Vs

1.The Director of Medical Education
O/o. Directorate of Medical Education
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

2.The Secretary
Selection Committee
O/o.Directorate of Medical Education
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

3.The Principal
Sri Karpaga Vinayagar Dental College,
Kancheepuram.

... RESPONDENTS

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the records of 1st respondent in his proceedings L.No.48642/ME.II/2/2015 dated 15.7.2015 and quash the same in so far as it compels petitioner to pay discontinuation fees of Rs.5,00,000/- and direct 3rd respondent to collect fees due from petitioner and further direct the respondents to return the petitioner any amount collected from her in pursuance of said order.

For Petitioner : Mr.S.Sounthar

For R-1 & R-2 : Mr.P.Sanjay Gandhi
Addl. Govt. Pleader

For R-3 : Mr.A.Udhayakumar

O R D E R

The petitioner obtained aggregate marks of 195.250% in the higher secondary examination and she was allotted BDS seat during the academic year 2014 - 2015. She joined the 3rd respondent College under the Government quota. Subsequently, she got admission in Medical Course in Raja Muthiah Medical College, Annamalai Nagar, Chidambaram for the academic year 2015-16, as per the counselling held in July 2015. Since the petitioner got better course, she joined in the Rajamuthaiah Medical College, Annamalai Nagar, Chidambaram. The 3rd respondent collected a sum of Rs.3,90,000/- on 04.07.2015 itself, while issuing bonafide certificate to enable the petitioner to join the medical course. Further, a sum of Rs.50,000/- was collected by the 3rd respondent on 07.07.2015 while issuing Transfer Certificate. Further, a Demand Draft for a sum of Rs.5,00,000/- in favour of the 1st respondent towards course discontinuation fee was insisted by the 3rd respondent and the same was also paid by the petitioner on 06.07.2015. After collecting a sum of Rs.4,40,000/- towards fees for the remaining three years of BDS course by the third respondent and also Demand Draft for a sum of Rs.5,00,000/- in favour of the first respondent, the petitioner was allowed to join in Raja Muthiah Medical College, Annamalai Nagar, Chidambaram, by virtue of the first respondent's order dated 15.07.2015. The said order not only gives permission to join the MBBS Course but also make a condition that Rs.5,00,000/- collected by the first respondent cannot be claimed in future. The said condition alone is being challenged before this Court.

2. Mr.S.Sounthar, learned counsel appearing for the petitioner would submit that as per the clause 46 of the prospectus for admission to M.B.B.S./BDS Course 2014 - 2015, if any of the student discontinues after 30th September 2014, Rs.5,00,000/- has to be paid as a penalty and the said condition would not be applicable for those candidates who discontinues the course and it is not applicable for re-allotment and movement from one category to another category. Therefore, he would submit the petitioner is entitled to claim the amount of Rs.5,00,000/- which was wrongly collected from the petitioner by the first respondent.

3. Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for first and second respondents would submit that as per clause 46 of the prospectus, the respondent rightly collected Rs.5,00,000/- and therefore she is not entitled to claim the said amount. Further, he would rely upon page 6 of the counter affidavit, wherein it has been stated only for the

death of the parent, illness of the candidate and disturbance in the area, as declared by the Government would enable the candidate to get back the money. Further, it is stated that the petitioner moved from BDS course to M.B.B.S. course on her own in the next academic year and it would not come under migration and there was no compulsion for her to discontinue the B.D.S. course. Hence, discontinuation fees of Rs.5,00,000/- paid to the first respondent could not be returned.

4. Since clause 46 of the prospectus is relied upon by both the parties, it is appropriate to extract clause 46 which is usefully extracted as follows :

"X. BOND :-

46. (i) Candidates selected for admission and his/her parent Guardian will have to execute an Agreement Bond during admission to College as prescribed in Annexure VII. Failure to execute the Agreement Bond will lead to cancellation of selection.

(ii) Candidates who discontinue the course between 25th September and 29th September of the year of admission are bound by the bond and thereby they shall have to pay a sum of Rs.50,000/- as a penalty for having breached the contract in the bond and the candidates who discontinue the course on or after 30th September 2014 of the year of admission and in any date of the subsequent years shall have to pay a sum of Rs.5,00,000/- as penalty.

Note:- This penalty is only for candidates who discontinue the course and not for re-allotment and movement from one to another category.

(iii) Those candidates who fail to comply with clause 3(i) of the bond in Annexure VII of the prospectus shall have to pay a sum of Rs.3,00,000/- as penalty for having breached the contract in the bond".

5. A perusal of the above said clause 46 would make it very clear that Rs.50,000/- has to be paid, if a candidate discontinues the course between 25th September & 29th September of the year of admission and Rs.5,00,000/- as penalty, if the candidate discontinues the course on or after 30th September 2014. However, the said clause has got an exception, namely the note. The note declares that the penalty is only for the candidates who discontinues the course and is not applicable for re-allotment and movement from one category to another category.

6. The petitioner fits into the second condition of the note i.e. movement from one category to another category namely from BDS to MBBS course. Therefore, when the prospectus itself permits movement from one category to another category stating that the penalty is not applicable to the said candidates, the question of charging Rs.5,00,000/- either as penalty or as discontinuation fees is illegal.

7. Though it is stated that since the petitioner voluntarily discontinued from the BDS course, her seat has been kept vacant and there is no compulsion for the petitioner to discontinue the BDS Course, one should not lose sight of the fact that when the petitioner got better course, she rightly chose the better course for which there is no prohibition. Therefore, only for a better course, that too, as per the counselling conducted by the respondents themselves, the petitioner was allotted the Medical Course. Hence, the bond clause, namely Clause 46 of the prospectus is not applicable to the petitioner and could not be employed against her to collect a sum of Rs.5,00,000/-. Hence, collection of Rs.5,00,000/- from the petitioner is illegal and same has to be returned by the 1st and 2nd respondents along with interest, within a period of six (6) weeks from the date of receipt of copy of the order.

8. In the peculiar circumstance of the case, the above order is passed and it should not be treated as a precedent for other cases.

9. This Writ Petition is allowed with above direction. No costs.

10. Call the matter for compliance on 01.06.2017.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rsi/rgr

To

1.The Director of Medical Education
O/o. Directorate of Medical Education
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

2.The Secretary
Selection Committee
O/o.Directorate of Medical Education
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.S.Sounthar, Advocate Sr.19273
+1cc to Mr.S.Udayakumar, Advocate Sr.19161
+1cc to the Government Pleader Sr.18809

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