



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P (MD) No.14175 of 2017

and

WMP (MD) Nos.11090 and 11091 of 2017

The Chairman,
Sree Mookambika Institute of Medical Sciences,
Velayutham Pillai Memorial Hospital Complex,
Padaninalam, Kulasekharam,
Kanyakumari District,
run by Padaninalam Welfare Trust,
Kulasekharam, Kanyakumari District. : Petitioner

Vs.

1.The State of Tamil Nadu
rep, by its Secretary,
Department of Health & Family Welfare,
Fort St. George, Chennai-600 009.

2.The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.

3.The Secretary,
The Selection Committee,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.

4.Tamil Nadu Dr.M.G.R. Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai - 600 032.
rep. by its Registrar : Respondents

PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the 4th respondent TN Dr.M.G.R. Medical University in Lr. No.EX1 (6)/47893/2017, dated 20.07.2017, quash the same in so far as the petitioner's college is concerned.

For Petitioner	: Mr.Isaac Mohanlal, Senior Counsel for M/s.Isaac Chambers
For R1 to R3	: Mr.A.Muthukaruppan Additional Government Pleader
For 4 th Respondent	: Mr.AR.L.Sundaresan, Senior Counsel for Mr.C.Karthick

O R D E R

The petitioner has come up with the present writ petition for issuance of a Writ of Certiorari, challenging the order of the 4th respondent in Lr. No.EX1(6)/47893/2017, dated 20.07.2017, in so far as the petitioner's college is concerned.

2.The brief facts of the case are that the petitioner is a Charitable and Educational Trust and it owns and administers three educational institutions in the district of Kanyakumari, namely (i) Sree Mookambika Institute of Medical Sciences (ii) Sree Mookambika Institute of Dental Sciences and (iii) Sree Mookambika College of Nursing. All the three institutions are affiliated to the Tamil Nadu Dr.M.G.R. Medical University and they do not receive any grant-in-aid or financial assistance from the State and they are all recognized minority educational institutions.

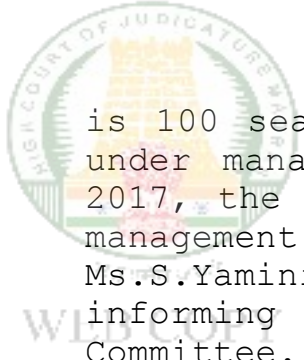
3.The petitioner would further state that as per Article 30(1) of the Constitution of India, the petitioner is entitled to fill up all 100 seats of its own, however, the college shared 50% of the seats with the Government by consensus. As per the agreement, the Government would forward the candidates through Single Window for the said 50% seats and the remaining 50% seats would be filled up by the college from the merit list approved by the Admission Monitoring Committee constituted by the State Government.

4.The petitioner would claim that the admissions are made on the basis of the merit assessed in a fair, transparent and non-exploitative manner. While so, for the academic year 2016-2017, the Government forwarded the candidates of its share of 50 seats and one Mr.V.Sithardhan was allotted the petitioner college on 28.09.2016 with an instructions to join the college on or before 30.09.2016, but he did not turn up till 5.00 p.m., on that day. Thereafter, the petitioner admitted Miss.S.Yamin, after 5.00 p.m., on 30.09.2017 from the merit list approved by the Admission Monitoring Committee. The petitioner collected only the fee prescribed for Government candidates and the same was intimated to the 4th respondent on 03.10.2016 as well as to the Medical Council of India on 07.10.2016.

5.Later the said V.Sithardhan filed a writ petition in W.P.No.35892 of 2016 seeking direction to the college to admit him for 2016-2017 academic year and the writ petition was dismissed on 10.04.2017. Thereafter, the 4th respondent sent a letter, dated 02.06.2017 seeking explanation for filling up the lapsed Government seat, for which the petitioner sent an explanation on 07.06.2017. The impugned order came to be passed rejecting the explanation. Hence, the present writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>

6.The 4th respondent filed a counter stating that the sanctioned seats for MBBS degree course in the petitioner college



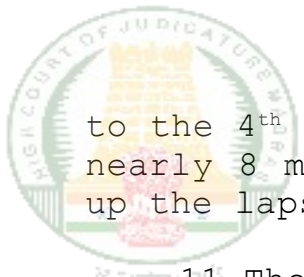
is 100 seats and the petitioner is entitled to fill up 50 seats under management quota, however, during the academic year 2016-2017, the petitioner institution has admitted 51 candidates under management quota and 49 candidates under Government quota and one Ms.S.Yamini was admitted in the place of V.Sithardhan without informing or getting prior permission from the Selection Committee. So, in the meeting of the Registration Sub Committee held on 25.01.2017, it was decided that one candidate filled by the management in the Government lapsed seat may be registered after getting approval from the Governing Council and the Government lapsed seat filled by the management should be adjusted in the next academic year 2017-2018. Based on the recommendation of the Registration Sub Committee, a letter, dated 02.06.2017 issued seeking explanation for the excess admission made under the management quota. Since, the explanation of the petitioner, dated 07.06.2017 was not satisfactory, an Agenda was placed before 253th meeting of the Governing Council of the University held on 29.06.2017 and it was resolved to ratify the action of the University in having registered the MBBS candidates admitted by the management in the Government lapsed seats for the academic year 2016-2017 and the number of seats filled should be adjusted in the management quota in the year 2017-2018.

7.It is further contended that based on the resolution of the Governing Council, a letter impugned in this writ petition was issued on 20th July 2017 to adjust the Government lapsed seats filled by the management from the management quota of the institution in the subsequent year of admission.

8.I have heard Mr.Isaac Mohan Lal, learned Senior counsel appearing for the petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader for the respondents 1 to 3 and Mr.AR.L.Sundaresan, learned Senior counsel appearing for Mr.C.Karthick, learned standing counsel for the 4th respondent and perused the materials available on record.

9.Learned Senior counsel for the petitioner submitted that admittedly, the petitioner is a minority educational institution, so the right of admission is guaranteed under Article 30(1) of the Constitution of India. Though, the petitioner is entitled to admit the entire sanctioned seats, it had agreed to share 50% with the Government by consensus and the petitioner is entitled to fill up 50% remaining seats.

10.The learned Senior counsel further submitted that the last candidate forwarded by the 3rd respondent Selection Committee namely Mr.V.Sithardhan was directed to join the college on or before 30.09.2016, which was the closing date for the admission. Since the institution did not turn up, the institution waited till 5.00 p.m on that date and only thereafter admitted Ms.S.Yamni. The list of candidates admitted in the petitioner institution was communicated



to the 4th respondent University on 03.10.2016 and after a lapse of nearly 8 months, the 4th respondent sought explanation for filling up the lapsed government seats.

11. The learned Senior counsel further contended that the seat sharing adjustment is only between the Government and the petitioner's institution and the 4th respondent has no right to poke its nose in that issue and in similar circumstances, in respect of the petitioner's institution, the Division Bench of this court in the decision reported in 2011(1) CTC 41 [Medical Council of India vs, Chairman Sree Mookambika Institute of Medical Sciences] held that the petitioner is entitled to fill up the Government lapsed seats.

12. Per contra, the learned Senior counsel for the 4th respondent by placing reliance on the decision of the Hon'ble Supreme Court reported in (2005)2 SCC 65 [Mridul Dhar vs. Union of India] contended that if any private medical college in a given academic year admits excess of its prescribed quota, the management quota for the next academic year should be adjusted. It is further submitted that though the impugned letter was passed by the 4th respondent, it came to be passed pursuant to the decision taken by the Registration Sub Committee consisting of Secretary to the Selection Committee, Deputy Director of Selection Committee, and the Director of Medical Education. It is also contended that the decision relied on by the learned Senior counsel for the petitioner has no application to the facts of this case.

13. In the above case, the Hon'ble Apex court in paragraph 35 has held as follows:-

"35(11). If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year."

14. In the instant case, it is not in dispute that the petitioner institution is sanctioned with 100 seats for the admission of MBBS Degree course. It is also not in dispute that the petitioner is a minority institution, hence, it is entitled to fill up 50% seats under management quota and the remaining 50% seats under Government quota.

15. The case of the petitioner is that they waited till 5.00 p.m on 30.09.2016 and since, it was the last date for admission, the petitioner institution admitted one Ms.S.Yamini from the merit list approved by the Admission Monitoring Committee and the writ petition filed by the said V.Sithardhan was dismissed, since, he



approached the institution belatedly after the cut off date. Hence, the petitioner is entitled to admit students for the lapsed seat.

16. It is to be seen that for the academic year 2008-2009, the petitioner institute filled 50 seats under the management quota. Five candidates sponsored by the Selection Committee did not join before the cut off date and two students, who joined later left the college. In the above facts, the petitioner institute admitted 7 candidates under lapsed seats.

17. The Medical Council of India, by an order, dated 23.07.2009 directed the petitioner institute to surrender seven seats to the Government in addition to 50 seats for admission for the next academic year 2009-2010. Challenging the order, the petitioner institute filed a writ petition. The learned single Judge allowed the writ petition holding that the candidates sponsored by the Selection Committee did not join within the cut off date, those seats were filled up by the institute. The matter was taken up to the Division Bench by the Medical Council of India.

18. The Division Bench in the judgment reported in 2011(1) CTC 41 [Medical Council of India vs. The Chairman, Sree Mookambika Institute of Medical Sciences], after considering the decision of the Mridul Dhar held that the excess seats were filled by the institution after the cut off date, as the seats should not go waste and it is further observed that if the management has filled more than 50% under management quota apart from filling up earmarked for the Government quota, which would result in the admission of more students than sanctioned strength of 100 seats. The relevant paragraph is extracted below:-

"8. In the instant case, for the academic year 2008-2009, the institute, though is entitled to admit 100 seats by itself, by virtue of the agreement with the State Government, had surrendered 50 seats to be filled-in among the candidates sponsored by the Selection Committee constituted by the State Government for the purpose. Those seats can be called as "Government quota" and the institute is entitled to fill-up 50 seats as management quota. There is no dispute that for the academic year 2008-2009, the institute had filled initially only 50 seats available under management quota. The Selection Committee sponsored 50 seats as agreed upon between the institute and the Government. By some reason or the other, five candidates did not join the college. The last date for filling-up of all the seats, as directed by the Supreme Court, was



30.09.2008. The management had also periodically intimated the Selection Committee as to the vacancy in the Government quota. Even after the candidates sponsored by the Selection Committee, there were seven lapsed seats on the last date of admission, namely the cut-off date for admission fixed by the Hon'ble Apex Court. These seats were filled by the institute as the seats should not go waste. It is the specific contention of the institute that only the fee applicable to the Government quota seats alone were collected. In that view, it cannot be called that the institute had filled more than 50% of the seat to which it was entitled to fill as management quota. The institute had admitted only 50 candidates as against management quota and the remaining seven seats should be considered as lapsed seats which were available to the Government and only for the reason that the candidates sponsored by the Selection Committee did not join within the last date for joining, those seats were filled-up by the institute."

19.The Division Bench further held that seat sharing adjustment is only between the institution and the Government and the Medical Council has no role to say in that matter.

20.On the other hand, it is contended by the learned Senior counsel for the 4th respondent that in the case before the Division Bench, the seats were filled by the petitioner institution after periodical intimation to the Selection Committee, but for the previous academic year, the petitioner admitted the students without permission from the Selection Committee and without intimation. So, the Division Bench judgment would not apply to the facts of this case.

21.I am unable to agree with the contention of the learned counsel appearing for the 4th respondent for the reasons that for the academic year 2008-2009, the Government sponsored 50 candidates informing them to join the petitioner institution on or before 20th July 2008. Since, 11 students did not join in time, the same was intimated to the Selection Committee. Thereafter, the Selection Committee sponsored another set of candidates on 26.09.2008 informing the joining date as 29.09.2008. As there were still vacancies, a further list was sponsored by the Selection Committee on 29.09.2008 informing the joining date as 30.09.2008, which was the last date of admitting the students. Even thereafter, there were seven lapsed seats. However, in the instant case, the Selection Committee sponsored the last candidate V.Sithardhan, on 28.09.2016 informing him to join the institution on 29.09.2016 and after having waited till 5.00 p.m, the



petitioner institution filled the lapsed seat. At that juncture, the petitioner cannot be expected to seek permission from the respondents, which in my view, is humanly impossible.

22. It is not the case of the respondents that the petitioner institute refused admission to the candidates sponsored by the Committee and admitted students of their choice. Indisputably, the last candidate namely V.Sithardhan did not join the petitioner institution on or before 30.09.2017 at 05.00 p.m., as per the orders of the above Selection Committee.

23. It is pertinent to note that the Additional Director of Medical Education/Secretary, Selection Committee, Chennai, has sent a letter, dated 01.02.2008 to the Secretary, Medical Council of India, New Delhi, which reads as follows:-

"Further, I would like to state that the Selection Committee of the Directorate of Medical Education will allot the candidates to the Self-Financing Institutions and if the candidates do not join, the unfilled vacancies if any, will be filled up by the management before the cut off date fixed by the Tamil Nadu Dr.M.G.R. Medical University, Medical Council of India and Director General of Health Services."

24. Though, the respondents have contended that the petitioner institution has no right to admit the students under the lapsed seats without permission from the Selection Committee, there is no order or rule to that effect, as on date. Therefore, in my considered opinion, the decision of the Division Bench of this court referred to supra would squarely apply to the facts of this case and in that view, the order impugned in this writ petition is liable to be set aside.

25. In the result, this writ petition is allowed and the impugned order of the 4th respondent is set aside. In view of the quashment of the impugned order, the petitioner institution is entitled to fill up 50 seats for the academic year 2017-2018, however, if the Government had already filled 51 seats in pursuance of the impugned order, the petitioner institution is entitled to admit 51 candidates for the next academic year 2018-2019. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/



To,

1. The Secretary,
Department of Health & Family Welfare,
Fort St. George, Chennai-600 009.

2. The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.

3. The Secretary,
The Selection Committee,
Directorate of Medical Education,
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.

4. The Registrar,
Tamil Nadu Dr.M.G.r. Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai - 600 032.

+1cc to M/S.Isaac Chambers, Advocate SR.No. 75974

+1cc to M/S.C.Karthick, Advocate SR.No. 75963

W.P(MD)No.14175 of 2017
01.09.2017

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