

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.7.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.1590 of 2018
and
C.M.P.Nos.12763 & 12764 of 2018

S.A.Charumathi (Minor)
rep. by her mother and guardian
K.Saraswathi Appellant/Respondent

Versus

1. Government of India,
rep by the Director General of Health
Services,
Ministry of Health and Family Welfare,
Room No.446A Nirman Bhavan,
Maulana Azad Road, New Delhi 110 108.
2. The Medical Council of India,
Pocket-14, Sector-8, Phaze-I,
Dwaragha New Delhi 110 077. Respondents/Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters
Patent against the order dated 12.7.2018 passed in W.P.No.17412
of 2018 on the file of this court.

Writ Petition filed Under Article 226 of the constitution
of India For issuance of a Writ of Mandamus to Direct the
respondent to include the petitioners name in the 2nd Round
online counselling (Allotment process) for NEET 15% All India
Quota/ DEEMED/ CENTRAL Universities & ESIC (MBBS/ BDS) Seats
2018, consider the same along with the candidates in the 2nd
round and allot her MBBS seat commensurate to the ranking she
obtained in the NEET 2018 exams taking into consideration that
she belongs to SC category if required by extending the time for
registration for 2nd round.

For appellant : Mr.N.G.R.Prasad for
Mr.S.Saravanakumar

For R1 : Mr.Kumaraguru, CGSC

For R2 : Mr.V.P.Raman

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant, Mr.Kumaraguru, learned Central Government Standing Counsel for the first respondent and Mr.V.P.Raman, learned counsel for the second respondent, who take notice on behalf of their respective parties.

2. The writ appeal has been filed by the writ petitioner challenging the order passed by the learned Single Judge in dismissing the writ petition filed by her seeking indulgence of the court in consideration of her candidature for counselling for MBBS course.

3. It appears that the appellant, had secured overall rank of 172129 and category rank of 12596 in the NEET exam held on 6.5.2018, however, she had not registered through online for counselling, and one day later viz., on 9.7.2018, she had rushed to the authorities with a representation to consider her candidature as she had not registered through online due to lack of knowledge about the time limit prescribed for such registration and subsequently, she had come up with the writ petition.

4. The stand of the appellant is that she is a meritorious candidate having secured high rank in her category and therefore, she has got a bright chance of getting a seat for MBBS course, however, due to her inadvertence and also due to lack of information about registration for counselling through any other media or newspapers except the website information, she had missed the chance to register through online. It is the further stand of the appellant that the second round of counselling is also stalled now on the basis of the order passed by the Madurai Bench in W.P. (MD) No.11916 of 2018 and therefore, she craves indulgence of the court by way of a direction to the authorities to show some leniency in considering her candidature or by extending the last date of registration for counselling and thereby, her candidature could be considered in the second round and such event, no one would be prejudiced.

5. In such a backdrop, the learned Single Judge has held in para 11 of the order as under:-

"If a candidate has not applied within the cut-off date, that candidate's candidature need not be considered at all. If the second counselling is stalled, the petitioner may be entitled to avail the benefit, provided she has

made an application before the cut-off date of the extended date, if any given. If the students who have not applied earlier, is going to be considered afresh in the second counselling, it is needless to mention that the candidature of the petitioner may also be considered. If the respondents are not going to extend the time for submitting the application, then the petitioner has no valid and legal right to insist that the petitioner may be permitted to make an application, as she did not apply for the counselling. A candidate has no right and as a matter of right, the candidate cannot demand that the application after cut-off date will be entertained."

6. Of course, the court is vested with vast powers under Article 226 of the Constitution of India to grant such a relief exercising its discretionary power, but, it appears that it ultimately, if such a relief is granted, it may lead to multifarious litigations and as a matter of fact, whenever calendar of events are maintained by the authorities, sofar as extending time for accommodating any candidates, who had moved after the last date is over, it could be done only by the policy maker, looking into the fact situation depending upon various other factors, and the court cannot interfere with such a decision unless gross injustice has been done or patent illegality is there to be set right by the orders of the court. As such, policy decision should be taken by the appropriate authority and not by the subordinate authorities, who are not left with the discretion to be exercised.

7. It is also submitted by the learned counsel appearing for the appellant that counselling is still going on, but, for want of application for registration, which the appellant could not submit through online due to lack of information/knowledge or by oversight, and therefore, he seeks for for extension of one day to file application and ultimately filed the writ petition.

8. Even assuming that as contended by the learned counsel appearing for the appellant, counselling is still going on for the academic year and no prejudice would be caused either to the Department or to any other person if the claim of the appellant is considered, we are of the view that in order to maintain the discipline and calendar events such a stipulation of time limit might have been made by the authorities in registering for counselling and if the claim of the appellant is considered by the court, it would lead to multifarious litigations and opening of pandora's box as such persons, who lost the opportunity, would come up before the court with similar claims.

9. In the circumstances, we are of the view that it is for the decision making authorities to examine the situation by looking into the fact situation and if necessary, the time limit can be extended so that interest of justice could be protected. Therefore, such a decision would be taken by the first respondent viz., Director General of Health Services by considering the similar cases or precedents, if any, to relax the condition or extend the time for filing application. In this regard, it is submitted that the applicant had already submitted a representation on 9.7.2018. If it had not reached the authority properly, the appellant is permitted to furnish one more copy of her representation immediately and in any of such event, the representation of the appellant shall be considered looking into various factors and a decision shall be arrived on the same in the interest of justice, as expeditiously as possible. The order passed by the learned Single Judge is modified to the above extent. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Director General of Health Services, (Govt. of India)
Ministry of Health and Family Welfare,
Room No.446A Nirman Bhavan,
Maulana Azad Road, New Delhi 110 108.
2. The Medical Council of India,
Pocket-14, Sector-8, Phaze-I,
Dwaragha New Delhi 110 077.

+1cc to Mr.S.SARAVANAKUMAR, Advocate, S.R.No.49715
+1cc to Mr.A.KUMARAGURU, Advocate, S.R.No. 49681

W.A.No.1590 of 2018

RSI (CO)
TR(26/07/2018)