

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P. VELMURUGAN

W.A.No.612 of 2017
and C.M.P.No.8509 of 2017

- 1.The Director of Medical Education
O/o The Directorate of Medical Education
Poonamallee High Road, Kilpauk,
Chennai - 10.
- 2.The Secretary,
Selection Committee,
O/o The Directorate of Medical Education
Poonamallee High Road, Kilpauk,
Chennai - 10. Appellants

-vs-

- 1.Ramya
2.The Principal
Sri Karpaga Vinayagar Dental College
Kanchipuram Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.960 of 2016 dated 24.03.2017.

WP.No.960 of 2016 filed under Article 226 of the constitution of India praying for issuance of writ of a certiorarified mandamus calling for the records of 1st respondent in his proceedings L.No.48642/ME.II/2/2015 dt.15.7.2015 and quash the same in so far as its 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 Appellants : Mr.V.Anandhamurthy
Addl.Govt.Pleader

For Respondents: Mr.S.Sounthar for R1
Mr.S.Udayakumar for R2

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN,J.]

The first respondent joined the BDS Course in the 2nd respondent College during the academic year 2014-15 under the Government quota and executed a bond that in case she discontinues the course, a sum of Rs.5 lakhs would be paid for breach of the essential terms of the contract. The first respondent in the subsequent academic year left the course and joined M.B.B.S. Course offered by the Annamalai University by paying a sum of Rs.5 lakhs to the Director of Medical Education pursuant to the agreement. Thereafter, more particularly, after joining the M.B.B.S. Course at Annamalai University, the first respondent filed a writ petition for refund of the amount. The writ petition was allowed by the learned single Judge with an observation that the order should not be treated as a precedent for other cases. Feeling aggrieved by the order directing refund of the amount, the appellants are before this Court.

2. We have heard the learned Additional Government Pleader on behalf of the appellants. We have also heard the learned counsel for the first respondent.

3. The first respondent submitted an application for admission to M.B.B.S./BDS course for the academic year 2014-2015 pursuant to the prospectus issued by the Selection Committee, Directorate of Medical Education, Chennai. The prospectus contained a provision, which is in the nature of a bond agreeing to pay a sum of Rs.5 lakhs as penalty in case, the candidate discontinues the course after the cut-off date.

4. The first respondent accepted the terms and conditions of the Prospectus and submitted an application for allotment. The first respondent was selected for the BDS course for the academic year 2014-2015. She executed a bond agreeing to pay penalty in case, she discontinues the course after 30 September 2014. The first respondent joined the BDS course for the academic year 2014-2015. She was allotted to Karpaga Vinayagar Dental College, Chinnakolambakkam, Kanchipuram District. She continued the course for the first year. Subsequently, she made an application along with discontinuation fees of Rs.5 lakhs to join the M.B.B.S. Course offered by Annamalai University. The application was processed by the Directorate of Medical Education. Since the first respondent paid the penalty for discontinuation of the course after 30 September 2014, the appellants permitted her to discontinue the course and join Annamalai University.

5. The first respondent after joining the Annamalai University for the academic year 2015-2016 filed a writ petition for refund of the amount paid by her.

6. Before the Writ Court, the Director of Medical Education filed a counter affidavit, wherein, it was contended that the bond was executed with a specific purpose. The seat should not be wasted by joining another college after the cut-off date. According to the Director of Medical Education, the first respondent voluntarily paid the amount in accordance with the agreement executed by her. She filed the writ petition only after joining the M.B.B.S. course at Annamalai University.

7. The learned single Judge by misinterpreting the Note appended to clause 46 allowed the writ petition. According to the learned single Judge, penalty is not applicable for reallotment and movement from one category to another category. The learned Judge considered the case of the first respondent as movement from one category to another category and more particularly, from BDS to M.B.B.S. Course. The learned Judge therefore directed the appellants to refund the penalty paid by her.

8. Clause 46 of the prospectus provides for payment of penalty in case the candidate discontinues the course on or before the cut-off date viz., 30 September 2015. The Note appended to Clause 46 provides that penalty is only for candidates who discontinue the course and not for reallotment or movement from one category to another category. The Note clearly indicates that in case re-allotment is made and consequently, the candidate moved from one category to another category, there is no need to pay penalty. Movement would be necessitated by re-allotment made by the Director of Medical Education and that also would confine to the relevant academic year. It would not apply to a case wherein, a candidate after joining the course discontinued the particular course and joined another college in another category.

9. The first respondent was selected for the academic year 2014-15. She joined the BDS course under the Government quota. She voluntarily executed a bond agreeing to pay penalty in case she discontinues the course and joins another course. The first respondent left the college only during the academic year 2015-16. It was not on account of re-allotment or movement from one category to another category. She joined the Annamalai University for the MBBS course and that too during the next academic year viz., 2015-16. The case of the first respondent would not come within the purview of the Note appended to clause 46 of the Prospectus. We are therefore of the view that the learned single Judge was not correct in allowing the writ petition by taking into account the note referred to above.

10. The execution of the bond was made a condition to serve a larger purpose. The students should not opt a particular course in a casual manner. They should take a decision as to whether they would continue the course. Such a

decision should be taken on or before the cut-off date. In case, a decision is taken to discontinue the course on or before the cut-off date, it would enable the Director of Medical Education to allot the seat to another candidate in the waiting list. In case, a decision is taken after the cut-off date, it would not be possible for the Directorate to give the seat to another candidate in view of the time schedule prescribed by the Supreme Court. The Government exempted the students from payment of penalty in case re-allotment and movement from one category to another category was necessitated on account of the decision taken by the Director of Medical Education. It is so because re-allotment made subsequently should not cause prejudice to the candidate. However, in a case wherein, movement from one category to another category was the act of the candidate herself, necessarily she is liable to pay the penalty. It was not a unilateral action taken by the Director of Medical Education to collect the penalty. The first respondent knowing fully well the terms and conditions of the prospectus agreed to pay the penalty in case of discontinuing the course after the cut-off date. This aspect was not considered by the learned single Judge. We are therefore of the view that the impugned order is liable to be set aside.

11. In the result, the order dated 24 March 2017 is set aside. The writ petition in W.P.No.960 of 2016 is dismissed.

12. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.The Director of Medical Education
O/o The Directorate of Medical Education
Poonamallee High Road, Kilpauk,
Chennai - 10.

2.The Secretary,
Selection Committee,
O/o The Directorate of Medical Education
Poonamallee High Road, Kilpauk,
Chennai - 10.

+1cc to Government Pleader SR.No.2982

+1cc to Mr.S.Sounthar, Advocate Sr.No.2917

KAN(CO)

sm:21.02.2018