

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.21477 of 2018  
and  
W.M.P.No.25227 of 2018

Dr.Ponneyin Chelvi, A.S.

.... Petitioner

Versus

1. Director of Medical Education  
EVR Salai, Kilpauk,  
Chennai 600 008.

2. The Registrar,  
Annamalai University,  
Annamalai Nagar,  
Chidambaram - 608 002,  
Cuddalore District.

3. The Dean  
Rajamuthiah Medical College,  
Annamalai Nagar,  
Chidambaram,  
Cuddalore District.

4. Medical Council of India,  
Diwaraka phase,  
New Delhi

Suo Moto impleaded as per Court  
order date 01/10/2018 by SSCJ in WP.21477/18

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Original Writ of Certiorarified Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ of Certiorarified Mandamus calling for the records of the proceedings of the 2<sup>nd</sup> respondent made in Roc.70/AU/S-1/17841-1/2017 dated 11.08.2017 and quash the same, consequently direct the respondents to release the petitioner's HSC, MBBS and MD(Pathology) Certificates, Community

Certificates and other Certificates forthwith without insisting a sum of Rs.5,00,000/- from the petitioner.

For Petitioner : Mr.S.Thirumavalavan  
For R1 : Ms.V.Annalakshmi  
Government Advocate  
For R2 & R3 : Mr.K.Sathish Kumar (for R2 & R3)  
for R4 V.P.Raman

#### O R D E R

The writ petition is filed for issuing Certiorarified of Mandamus to quash the proceedings of second respondent dated 11.08.2017 and to direct the respondents to release the petitioner's HSC, MBBS and MD(Pathology) Certificates, Community Certificates and other certificates forthwith without insisting the payment of a sum of Rs.5,00,000/- by the petitioner.

2. The petitioner completed MBBS during the year 2004 to 2009 in a private Medical College at Chennai. Thereafter, the petitioner wrote All India Medical Entrance Examination for the purpose of joining Post Graduate course in India. After successfully completion of all the examination, counselling was conducted among the candidates and the petitioner got a seat for the course in Post Graduate Diploma in Clinical Pathology at Madras Medical College, Chennai under all India quota by the counselling body.

3. The petitioner paid necessary fees and joined the Post Graduate Diploma course in clinical pathology at Madras Medical College. Thereafter, the petitioner participated in the open counselling further and the petitioner was allotted a seat in MD (Pathology) (three year degree course) in Rajamuthiah Medical College, Chidambaram, under open category purely on merits, as there was vacancy in the discipline of MD (Pathology) in Rajamuthiah Medical College, Chidambaram.

4. When the petitioner approached the Dean in Madras Medical College for issue of original certificates so as to enable her to join the private medical college namely [Rajamuthiah Medical College, Chidambaram] to pursue MD (Pathology) (three year degree course), the third respondent namely the Dean of Rajamuthiah Medical College insisted the petitioner to pay a sum of Rs.5,00,000/- on the ground that the petitioner is liable to pay the amount as per the prospectus in case the petitioner discontinue his studies in this course. Thereafter it is stated that the writ petition filed by petitioner in W.P.No.23931 of 2015 was allowed and certificates were released.

5. The petitioner thereafter pursued the course in the new college and completed the course. The petitioner has paid necessary fees for the entire three year course to Rajamuthiah Medical College, Chidambaram. It is thereafter stated that the petitioner is entitled to get her certificates when the petitioner made a representation for release of certificates, it appears that the third respondent insisted the petitioner to work in their institution for a period of one year or else to pay a sum of Rs.5,00,000/-. It is contended that the petitioner cannot be asked to pay a huge sum of Rs.5,00,000/- for getting back the certificates which she requires from the third respondent. The petitioners case is that the demand for a sum of Rs.5,00,000/- is not only illegal but also contrary to regulations of Medical Council of India.

6. It is the case of the petitioner that the medical institution cannot compel the petitioner to work in their institution. It is specifically stated that the prospectus does not have any such clause requiring the petitioner to pay a sum of Rs.5,00,000/- in case she does not want to work for the respondent. The second respondent has filed a counter specifically referring to clause 4 of the prospectus which read as follows.

"Non-Service candidates shall execute the bond with three sureties for a sum of Rs.5,00,000/- (Rupees Five Laksh Only) for Post Graduate Degree Programmes and Rs.3,00,000/- (Rupees Three Lakhs Only) for Post Graduate Degree Programmes of the year 2014-2015 session with an undertaking, that they shall serve Annamalai University for a period not less than one year, if required. During the above bond period, they will be paid the salary on consolidated basis on par with that of fresh recruits as in force at the time of completion of Post Graduate Degree/Diploma. Two sureties should be provided, one of which should be a permanent government/public servant in the same or higher rank than the candidate and other surety should be the spouse/parent of the candidate. PAN number of the sureties should be furnished.

The prescribed form of bond will be made available by the Annamalai University at the time of admission. The bond will become infructuous on serving the RMMCH for a minimum period of one year."

7. In view of the prospectus issued by the University, it is contended that the writ petitioners should execute a bond by

giving an undertaking to serve for one year and that the petitioner is bound to serve the University for a period of one year as per the prospectus and the bond.

8. The learned counsel appearing for the petitioner stated that no bond was insisted from the petitioner and that, he never executed any bond as per the terms of the prospectus. He further contended that Clause 4 of the prospectus was never intended to be applicable to a candidate, like petitioner, who got admission as against All India Quota, which was of course surrendered to the State Government. To sustain his arguments, the learned counsel appearing for the petitioner has also reiterated that the selection committee called for an open counselling for the purpose of admission. It is further stated that the petitioner has participated in the counselling and that the selection committee allotted the seat in M.D Pathology (3 years degree course) in the third respondent college.

9. The learned counsel appearing for the third respondent relied upon the Judgement of a learned Single Judge of this Court in Dr.S.Rajesh Vs. State of Tamil Nadu reported in [2009] 1MLJ 1103 equivalent to 2009 Writ LR 223, Wherein it has been held as follows:

"23. Thus it is beyond doubt that the prospectus is the rule of selection, which is binding on the parties. Thus, the students admitted under the Non-Service Quota other than All India Quota are bound to comply with the conditions contained in the prospectus and the bond executed, that they shall serve for 3 years, failing which they have to remit a sum of Rs.2/Rs.3 lakhs respectively to the respondents. The challenge made by the petitioners, who were selected under the State Quota are rejected."

10. He also relied upon the Judgement of the Honourable Supreme Court in Writ Petition in W.P.(C). No.398 of 2017 in the case of Dr.Imam Azam vs. Director of Medical Education Research and others, dated 01.06.2017. It was a case where similar writ petition was filed before the Honourable Supreme Court for issuance of a direction against the Director of Medical Education, who is the first respondent before the Hon'ble Supreme Court to release the original educational certificate of the petitioner. The petitioner therein was selected for MDS course in the first respondent institution. The Original Educational Certificate of the petitioner was retained by the first respondent and refused to hand over to the petitioner, when the petitioner got selected in the second respondent before the Hon'ble Supreme Court, namely, AIIMS. When it was contended by the petitioner that the Director of Medical



Education had no reason to refuse to release the original educational documents of the petitioner submitted by him at the time of admission in the institution, without going into any factual issues or arguments, the writ petition was disposed of by the Honourable Supreme Court with an observation that the writ petitioner is liable to pay any amount of fees that will be found due to be paid by the petitioner, as per the regulations of the first respondent. It was thereafter held that the petitioner therein was given liberty to seek release of his original educational documents upon payment of such amount to the respondent. The operative portion of the order of Hon'ble Supreme Court reads as follows.

"We accordingly direct respondent No.1 to immediately release the original educational documents of the petitioner, after completing all the formalities and clearing all the dues, as per the regulations of the first respondent, without any delay."

11. From the nature of the order passed by the Hon'ble Supreme Court, it appears that an order has been passed by the Hon'ble Supreme Court by consent of parties and that there was no adjudication of any issue or point raised for consideration. It is well settled that a judgement or a precedent is an authority for what it decides but not for something that flows from it. This Court is of the view that the judgement of Honourable Supreme Court relied upon by the petitioner may not be helpful in the present situation to the respondent.

12. The learned counsel appearing for the petitioner states that the petitioner's admission into the third respondent was pursuant to her participation in the open counselling. It is not in dispute that the selection committee constituted by the State Government for the purpose of admission to the Post Graduate medical courses in the Government and Private Medical Colleges found the petitioner eligible to get the admission in the third respondent college for the course (M.D. Pathology) under Government Quota.

13. The peculiar situation in this case is that the petitioner though was allotted in one of the seats reserved under All India Quota, the allotment can be treated only as the allotment under state quota in view of the fact that the Central Government has surrendered the seats to the State Government at the last minute. It was thereafter by the open counselling, the petitioner was given admission purely on merits. Hence, it cannot be asserted by the first respondent or the third respondent that the petitioner was given admission on any other consideration than on merits. Though it is settled

that the candidate, who seeks admission to the institution is Governed by the prospectus and that it is not open to disclaim any terms and conditions prescribed in the prospectus, it is also well settled that the prospectus containing the terms and conditions contrary to regulations prescribed by the Central Government or Medical Council of India cannot be enforced. Neither the State Legislature or the State Government by Legislative or Executive order can over ride any specific provision of the Central Legislation or the regulations framed. In this case, it is not in dispute that the petitioner got admission purely on merits and not under the mercy of the respondents.

14. In such circumstances, the petitioner even if there is a clause in the prospectus requiring the successful candidate to execute a bond undertaking to serve in the third respondent college for a period of one year or otherwise should pay a substantial amount of Rs.5,00,000/-, in view of the obvious repugnancy and the principal object being maintenance of standard such clause or bond is unenforcible as it is void and unethical. When the admission is supposed to be purely on merits and in accordance with the regulations, the admission on the basis of a bond condition cannot be valid and it will go against the objects with which the regulations as to the qualification of candidates for joining Post medical courses are framed.

15. It is also admitted before this Court that the petitioner, who has got admission under state quota, has paid full fees, which is applicable for any one, who get admission under management quota in a private self financing Medical College. Absolutely, there is nothing on record and no material is placed to show that the third respondent has conferred some benefit to the candidate. The University Grand Commission has time and again issued instruction preventing the institutions to retain or withhold or impose bond condition with a profit motive. The third respondent for the purpose of making profit cannot have re-course to the clause incorporated in the prospectus. This Court find that there is no justification for the third respondent to insist the petitioner either to serve or to pay the substantial amount of Rs.5,00,000/-.

16. It is brought to the notice of this Court by the learned counsel appearing for the Medical Council of India that the petitioner is appointed to the post of Lecturer by the impugned order. It is made clear that the appointment of petitioner who is holding only a Post Graduate Diploma as Lecturer is contrary to the Medical Council of India's regulations. Hence, the bond condition is invalid because the

purpose and intention behind insisting the bond is only to collect a sum of Rs.5/- lakhs from the candidate and not for getting his service.

17. The learned counsel appearing for the petitioner relied upon the judgement of a learned Single Judge in W.P.No.7930 of 2017 dated 30.07.2018 in the case of M.Aarthi Vs The Director of Medical Education wherein it has been held as follows:

"The learned Additional Government Pleader for the respondents also attempted to derive the second respondent's right through the Prospectus, in which Clause-45 states that unless the penalty amount is paid in total, the candidate will not be relieved. I am not in agreement with the said submission. The clause relied upon by the learned Additional Government Pleader is from the Prospectus for the candidates, who seek admission to Post-Graduate Degree. The said clause is an unilateral clause and the petitioner has no other option of joining the Post-Graduate Course, unless such a Prospectus is purchased. There is no mutual agreement between the petitioner and the second respondent with regard to this clause in the Prospectus. As such, the said clause may not have the binding effect of an agreement or a contract and hence is unenforceable."

18. As observed earlier, the criteria for admitting the student cannot be fixed contrary to the regulation of MCA. If a clause in the prospectus is incorporated restricting the admission to only those who execute a bond or to undertake one year service in the college which gives them admission. Such admission is nor based on merit and will be contrary to the MCA regulations. That would be certainly a factor which would invalidate the admission process undertaken by the respondents on the basis of prospectus.

19. This Court, therefore, find no merits in the contention of the second respondent relying upon the prospectus or the bond executed by the petitioner. The Writ Petition is allowed. The respondents are directed to hand over the original certificates forthwith without insisting the payment of a sum of Rs.5,00,000/- or any other conditions. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. Director of Medical Education  
EVR Salai, Kilpauk,  
Chennai 600 008.

2. The Registrar,  
Annamalai University,  
Annamalai Nagar,  
Chidambaram - 608 002,  
Cuddalore District.

3. The Dean  
Rajamuthiah Medical College,  
Annamalai Nagar,  
Chidambaram,  
Cuddalore District.

4. Medical Council of India,  
Diwaraka phase,  
New Delhi

+1cc to Mr.V.P.Raman, Advocate, S.R.No.68701

+1cc to Mr.S.Thirumavalavan, Advocate, S.R.No.68450

+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No.68440

+1cc to the Government Pleader, S.R.No.68569

W.P.No.21477 of 2018  
and

W.M.P.No.25227 of 2018

KAN(CO)  
GSP(/04/2017)

सत्यमेव जयते

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