

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED : 26.09.2018

ORDER PRONOUNCED : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No. 22400 of 2018

And

W.M.P.Nos. 26243 & 26244 of 2018

Mithuna

... Petitioner

Vs.

1. Government of Puducherry
Rep., by Secretary to Government
(Higher & Technical Education)
Chief Secretariat,
Puducherry.
 2. Centralised Admission Committee
Rep., by Co-ordinator (Admission)
Government of Puducherry
Pondicherry Engineering College Campus
Puducherry - 605 014.
 3. Medical Council of India
Represented by Secretary
Sector VIII
Dwaraga Phase II
New Delhi - 110 077.
 4. Sri Vengadeshwara Medical College Hospital
& Research Centre (SVMCH)
Rep., by Managing Director Ariyur Puducherry
No.13A, Pondy-Villupuram Main Road
Ariyur, Puducherry - 605 102.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent herein pertaining to Notification/Press release issued in proceedings No. CENTAC/Admn/2018 dated 27.08.2018 and to quash the same to the limited extent of allotting all the three vacancies in the fourth respondent college to be filled up by Ratio of 1:10 and to allot seat in UG

Medical course of the fourth respondent college to the petitioner for admission to UG Medical Course (2018-19) immediately and in any event prior to 31.08.2018.

For Petitioner :: Mr. M. Ravi

For 3rd Respondent :: Mr.V.P.Raman

For 2nd Respondent :: C.T.Ramesh
Additional Government
Pleader (Pondy)

For R1 and 4th Respondent :: Mr. T.V. Lakshmanan

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent pertaining to Notification/Press release issued in proceedings No. CENTAC/Admn/2018 dated 27.08.2018 and to quash the same to the limited extent of allotting all the three vacancies in the fourth respondent college to be filled up by Ratio of 1:10 and to allot seat in UG Medical course of the fourth respondent college to the petitioner for admission to UG Medical Course (2018-19) immediately and in any event prior to 31.08.2018.

The brief facts set out in the affidavit filed in support of this Writ Petition are as follows:-

2. The petitioner, by virtue of her NEET score of 156 marks, is fully qualified and eligible to get admission to UG Medical Course during the year 2018-2019. She has applied for admission in the fourth respondent College. The second respondent, by notification dated 20.08.2018 notified the Mop-up Counseling Schedule for MBBS, Puducherry under Government Quota as well as under Management Quota. The date for Mop-up Counseling was fixed on 22.08.2018. Along with the notification, the second respondent has issued instructions to the candidates pertaining to payment of fee through the Coordinator, CENTAC and the same runs as follows:-

"..... Full fee should be paid at the time of allotment and no seat will be allotted if full fee is not paid. However, the candidates seeking admission to any particular Institution can also bring demand draft in favour of Coordinator CENTAC. "

3. The petitioner has paid the full fee of Rs.16.0 Lakhs prescribed under Management Quota through NEFT from her father's bank account. An amount of Rs.50,000/- was remitted in favour of Coordinator, CENTAC Account on 26.07.2018 and Rs.15.50 Lakhs was remitted to CENTAC Account on 18.08.2018 and the copy of the payment and details have been filed in the typed set of documents.

4. The petitioner has duly attended the Mop-up Counseling for admission to the fourth respondent College under Management quota. She came to know that 95 seats were sought to be filled up by the fourth respondent College through Mop-up Counseling held on 22.08.2018. It is stated by the petitioner that 94th seat was given to a person, who scored 157 marks and that therefore, the petitioner was the person next to him with 156 marks in NEET examination.

5. It is the specific case of the petitioner that one of the candidate, who was placed at serial No. 37, in the list of provisional allotment by name, Ms. Madhu Ranjani, had not complied with the conditions imposed by CENTAC. It is asserted that the said candidate did not pay full fees before allotment of the seat. The said candidate though paid a sum of Rs.4.0 lakhs out of total amount of Rs.16.0 Lakhs, only by way of a cheque and hence it is stated that she was not eligible for allotment of seat. It is further stated that the second respondent for the reasons best known to him, allotted a seat to the said candidate and placed her at Sl.No. 37 in the provisional allotment list after the mop-up phase for the year 2018-2019 to the fourth respondent College. The petitioner further states that three other candidates, who were given provisional allotment in the fourth respondent College, have not joined within the prescribed time. It is further stated that one candidate, by name N.Sriram, who had paid fee got the same refunded, and had joined some other College. Even his name is included in the provisional allotment list after mop-up Counseling dated 22.08.2018. The petitioner states that right from the childhood, he has an ambition for joining MBBS course and that she was not given admission even though she is an eligible candidate. Since at least three persons, who have got allotment by CENTAC in the fourth respondent College, have been illegally admitted and one of them, who has paid fee, has joined in some other College, the petitioner has approached this Court by alleging that the second respondent ought to have given allotment to the petitioner and that the petitioner is entitled to get allotment as per the norms and the prospectus issued by CENTAC. The petitioner has also raised some other grounds.

6. As per the procedure, the vacancies after the Mop-up Counseling in the fourth respondent College should be filled up by the fourth respondent out of the list prepared by the second

respondent and handed over to the fourth respondent.

7. It is relevant to mention that the last date for closing admission in medical Institution is 31.08.2018. The mop-up Counseling was held only on 22.08.2018. There was some practical constraints to the petitioner to approach the Court earlier. Considering the specific stand taken by the petitioner and the materials placed before this Court and after hearing the learned counsel appearing for the second respondent, this Court has passed the following order on 30.08.2018:-

"It is admitted by the learned counsel for CENTAC that one of the students who was given admission did not join the course and the other candidates have not paid fees before allotment which is contrary to prospectus. However, it is stated that CENTAC has completed the process of admission and that as per the direction of Hon'ble Supreme Court, they have surrendered the vacancy to the fourth respondent so that the vacancies can be filled up by the College under the Management Quota as per the merit list prepared by CENTAC. That fact that atleast two seats have now been given to the fourth respondent College on account of improper admission/allotment is not disputed and it is the basis on which the petitioner seeks admission by CENTAC. The petitioner, who stands next in the order of merit is entitled to be considered under Government quota by CENTAC. Hence, CENTAC is directed to provisionally give admission to the petitioner out of the three seats which has now been forwarded to the fourth respondent College. It is made clear that the fourth respondent - College is not entitled to fill up the seat which is now reserved for the petitioner by this order.

2. Post the matter next week."

8. The petitioner has filed an affidavit before this Court on 07.09.2018 recording the following facts:-

a) The copy of the order passed by this Court on 30.08.2018 was uploaded in the High Court Website. In the meanwhile, the petitioner has rushed to CENTAC Office along with the order on 31.08.2018 and produced the same to the authorities concerned. On the same day at 11.30 a.m., the petitioner has produced the order copy of this Court to the fourth respondent and requested

not to fill up one of the three vacancies in compliance of the order passed by this Court dated 30.08.2018.

b) Though the fourth respondent College assured not to fill up the vacancies, the fourth respondent refuses to acknowledge the letter given by the petitioner stating that it would take some time to produce acknowledgment. Though the petitioner tried to mail the letter to E-mail id available in the College Website, the same was also got bounced. On the same day, the petitioner once again contacted the second respondent and informed about the incidents at fourth respondent Institution. The authorities of the fourth respondent has also informed the petitioner that they had already informed the fourth respondent College about the order passed by this Court.

c) The second respondent has given the provisional allotment to the petitioner on 31.08.2018 itself and the same was communicated to the fourth respondent. As per the direction of this Court and as per the allotment order, the fourth respondent has to give accommodation to the petitioner or out of the 40 candidates in the list sent by CENTAC to the second respondent to the fourth respondent. The fourth respondent thereafter informed the petitioner that though the CENTAC had provisionally admitted the petitioner, they could allow the petitioner to join the college only upon a further direction of this Court.

9. It is also stated in the affidavit that the stray vacancies has not been filled up by the fourth respondent out of the list submitted by the second respondent. Though the fourth respondent cannot illegally admit any other students apart from the candidates mentioned in the list forwarded by the second respondent on 27.08.2018, it is stated that the fourth respondent has neither given admission to the petitioner nor to candidates in the list of 40 candidates sent by CENTAC. In these circumstances, the petitioner has sought for a specific direction to the fourth respondent College so as to ensure the petitioner's admission.

10. The fourth respondent has filed a counter denying the averments in the affidavit filed by the petitioner on 07.09.2018. The specific stand taken by the fourth respondent is that except the mail that was sent by the second respondent on 31.08.2018 at 4.15 p.m., the fourth respondent had no other information either about the order passed by this Court on 31.08.2018 or about the provisional allotment of the second respondent as per the direction of this Court.

11. The contention of the petitioner that she rushed to the fourth respondent at 11.30 a.m., on 31.08.2018 has been denied. The petitioner is put to strict proof of the information of the incident to the second respondent. The only information from

the CENTAC according to fourth respondent was the email dated 31.08.2018 at 4.15 p.m and it is further stated that this e-mail was opened by the staff of the fourth respondent only the next morning and that the seats were already filled up by the fourth respondent before the working hours. It is contended that the fourth respondent is not responsible and the order of this Court could not be implemented as admission has already been given to other persons filling up all the stray vacancies.

12. In the counter affidavit, it is further alleged that no provisional allotment order was given by the second respondent. Further, it was stated that the petitioner actually reached the college only at 5.15 p.m., on 31.08.2018 and by that time, the office working hours was over after completing the admission process. The second respondent has questioned the conduct of the petitioner by stating that the petitioner did not communicate the order dated 30.08.2018 either on 30.08.2018 or on 31.08.2018 by email or by other mode. It is also stated that the petitioner did not approach the second respondent to get provisional allotment order. Though the petitioner knows very well about the admission process, it is stated that she has deliberately kept silence till the last moment. Further it is stated that she knew that she would not get admission without the provisional allotment order issued by the second respondent, but she did not produce the allotment order.

13. It is stated that the fourth respondent is neither responsible nor answerable and it is because of the petitioner's own making she could not get admission despite an order of this court dated 30.08.2018. The learned counsel for the fourth respondent submitted that the Writ Petition may be dismissed as infructuous.

14. The learned counsel for the petitioner submitted that the petitioner was waiting in the fourth respondent college from the morning till evening and that the fourth respondent assured the petitioner to give admission once the order of allotment is issued by the second respondent. However, the provisional allotment order though communicated to the fourth respondent on 31.08.2018, it is stated by the learned counsel for the petitioner that the fourth respondent has filled the stray vacancies from the candidates chosen by the fourth respondent and not from the list of candidates sponsored by CENTAC.

15. From the sequence of events, this Court is able to see that the petitioner has shown much interest in pursuing the medical course and she has been following not only in the fourth respondent college, but also the second respondent not only pursuant to the order of this Court, but also from day one for

collecting the information for her to make out a case before this Court on 30.08.2018.

16. The fact that atleast three candidates were given illegal allotment in the fourth respondent college, is not disputed. Hence, the petitioner is entitled to get a seat in the fourth respondent college as she being the next in the order of merit with 157 marks in NEET examination. The position that the petitioner is entitled to get admission in the fourth respondent college as per the prospectus issued by the second respondent is not in dispute. As a matter of fact, the learned counsel for the fourth respondent has fairly admitted this position as he has no issue against the stand taken by the petitioner as to her eligibility. Despite an order passed by this Court on 30.08.2018, unfortunately this Court is facing another situation by which the petitioner is denied the benefit of the order passed by this Court by reporting that admission process is over even before the order of this Court is communicated.

17. The controversy at this stage is now on the fourth respondent college. The specific case of the petitioner is that she reported the college on 31.08.2018 in the morning and communicated the order passed by this Court. After communicating the order passing by this Court to the fourth respondent college, the petitioner has once again approached the second respondent to get the allotment order in favour of the petitioner. After getting allotment order, the petitioner states that she has approached the fourth respondent with the allotment order and the fourth respondent, who promised to give the petitioner's admission on 31.08.2018 refused to give admission finally by stating that the process of admission was over before the provisional allotment order was issued by the second respondent and the order of this Court was communicated to the fourth respondent. The second respondent has taken a stand supporting the petitioner vouching the prompt communication of the order of this Court and this allotment order in time.

18. Prima facie the stand of the fourth respondent appears to be unbelievable and the conduct is improper and contumacious for extraneous reasons and it is quite surprising to note such a conduct from the fourth respondent. The fact that the petitioner has approached the fourth respondent on 31.08.2018 is not in dispute. However, it is stated that the petitioner conducted the fourth respondent only at 5.30 p.m., by which time the process of admission was over. The factual assertion of the fourth respondent cannot be believed. Of-course, the petitioner is expected to approach the fourth respondent even on 30.08.2018. Since the fourth respondent was not heard by this

Court at the time of passing the order, the petitioner is decided to approach the respondents after getting the copy of the order passed by this Court to avoid any unpleasant situation. The second respondent has also admitted that on 31.08.2018, the allotment order was given to the petitioner. The petitioner has produced before this Court the communication sent by CENTAC to the fourth respondent on 31.08.2018 at 4.15 p.m. The message given to the fourth respondent is as follows:-

"1) In WMP.No. 26244 of 2018 in W.P.No. 22400 of 2018, Honble High Court, Madras has passed order on 30.08.2018 directing CENTAC to provisionally give admission to the petitioner - Mithuna D/o M.Saravanan (Centac No. 70632). The Court has also directed the college to allot one seat out of the 3 stray vacancies to the writ petitioner. Therefore, you are requested to admit the candidate as per court's direction subject to the outcome of the W.P.

2) It is further informed that TWO seats under Govt. Quota had been reserved in your college in compliance of the orders of the Honble High Court, Madras. The Court vide Orders in WMP Nos. 20942 of 2018 in W.P.No. 17672 of 2018 and WMP.Nos. 18838, 18839 of 2018 in WP 15839 of 2018 dt. 24/08/2018 has directed that the petitioners - J.Yuvaraj and N R Prahash be provisionally admitted in your college, subject to the outcome of the WPs. This will also be subject to the Appeal/SLP filed/being filed by CENTAC / Health Department Government of Puducherry.

In compliance of the order of the High Court, and in response to your Lr.No. 1227/ME-1 (B)/SVMCH&RC /2018 dt. 30/08/2018 these two candidates have been provisionally allotted against the seats reserved in your college.

3) Regarding your Lr.No. 1227/ME-1(B)/SVMCH&RC/2018 dt. 30.08.2018 seeking additional list of candidates over and above the 1:10 list already furnished on 27-Aug-2018, it is informed that the same could not be done in the absence of enabling guidelines from the Ministry of Health and Family Welfare."

19. From the above communication one significant aspect is that the fourth respondent has by communication dated

30.08.2018, sought for additional list of candidates over and above the list already furnished to the fourth respondent by the second respondent on 27.08.2018. It is now admitted before this Court by fourth respondent that the candidates, who were given admission by fourth respondent on 31.08.2018 are not from the list of candidates furnished on 27.08.2018. Hence, the fourth respondent is not supposed to admit a student beyond the list of candidates to fill the stray vacancies before the communication dated 31.08.2018 extracted in the previous para. The information sought for from the second respondent reached the fourth respondent on 31.08.2018 along with further intimation about the order passed by this Court on 30.08.2018.

20. The fourth respondent has taken a stand that no provisional allotment order was given in the case of petitioner by the second respondent. However the provisional allotment was promptly communicated by the second respondent. The specific stand of the petitioner that she produced the allotment order to the fourth respondent cannot be discarded. The case of the petitioner that she approached the fourth respondent college on 31.08.2018 and produced the order of this Court and that she then approached the second respondent to get the provisional allotment order is natural. The fact that the fourth respondent come up with a false case stand proved by the contents in the communication sent to the fourth respondent by the second respondent on 31.08.2018 as explained in the previous para.

21. The fact that the fourth respondent has admitted students not from the list of candidates to fill up stray vacancies is not disputed. There is no explanation in the counter affidavit filed by fourth respondent as to how and why stray vacancies were filled by candidates, who were not in the list meant for filling up stray vacancies.

22. From the sequence of events and the stand taken by petitioner and respondents 2 and 4, this Court conclude that the petitioner has been illegally denied admission by the fourth respondent in utter disregard to the order of this Court and that the fourth respondent has come up with a false case by stating that the order of this Court was communicated on 31.08.2018 only after the admission was closed in the afternoon on 31.08.2018.

23. Directing the fourth respondent to give admission this year may not be appropriate in view of the time schedule fixed by Hon'ble Supreme Court and regulations of MCI. However, taking into consideration the facts and circumstances of this case, this Writ Petition is disposed of with the following directions:-

(a) The second respondent is directed to allot a seat to UG Medical Course for the year 2019-2020 under management quota in any other self financing private medical College in Pondicherry out of the seat permitted to be filled up by fourth respondent under Management quota. This one seat will be filled up by second respondent under State quota in fourth respondent as the State quota will be reduced by one seat in the other college when the petitioner is given admission;

(b) The fourth respondent shall pay a sum of Rupees One Lakh to the petitioner by way of compensation for illegally denying admission to the petitioner during this academic year;

(c) In view of the conduct of fourth respondent to deny admission circumventing the order of this Court, on flimsy grounds, the number of seats reserved under Management Quota for the fourth respondent for the year 2019-2020 shall be reduced by 5 seats (for ex. If the fourth respondent is entitled to admit 35 students under Management Quota, for the year 2019-2020, the number of seats under Management Quota shall be reduced to 30 and the 5 seats can be filled up by second respondent under State Quota; and

(d) since stray vacancies have been filled up by fourth respondent contrary to the regulations outside the list furnished by the second respondent, it is open to the third respondent or second respondent to cancel the admission of students in stray vacancies on 31.08.2018 after affording an opportunity to the fourth respondent and the students in accordance with law.

Consequently, connected Miscellaneous Petitions are closed.
No costs.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

vsg

To

1. The Secretary to Government
Government of Puducherry
(Higher & Technical Education)
Chief Secretariat,
Puducherry.

2. The Co-ordinator (Admission)
Centralised Admission Committee
Government of Puducherry
Pondicherry Engineering College Campus
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3. The Secretary
Medical Council of India
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Ariyur, Puducherry - 605 102.

+1cc to Mr.V.P.Raman, Advocate SR.No.68977

+1cc to Mr.M.Ravi, Advocate SR.No.69069

+1cc to Government Pleader SR.No.69356

W.P.No. 22400 of 2018
And

W.M.P.Nos. 26243 & 26244 of 2018

GMY (11/10/2018)

सत्यमेव जयते

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