

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.15598 of 2018

and

W.M.P.Nos.18508 to 18510 of 2018

Sri Venkateswara Medical College
Hospital and Research Centre,
Rep. by its Chairman,
No.13-A, Pondy-Villupuram Main Road,
Ariyur, Puducherry-605 102. ... Petitioner

Vs.

1. The Convener,
Centralized Admission Committee (CENTAC),
PEC Campus, ECR Road,
Pillaichavadi, Puducherry-605 104.
2. The Government of Puducherry,
Represented by its Chief Secretary,
Higher Education Department,
Office of the Chief Secretariat,
Puducherry-605 001.
3. Medical Council of India,
Represented by its Secretary,
Pocket-14, Sector-8,
Dwarka Phase-I, New Delhi-110 077.
4. The Union of India, सत्यमेव जयते
Rep. by its Secretary,
Ministry of Health and Family Welfare,
(Dept. of Health - DE Section),
Maulana Azad Road, New Delhi-110 011. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent in its proceedings being impugned Information Bureau for 2018-19 (Common Admission Prospectus to Under Graduate Professional Courses in the Union Territory of Puducherry) Volume-III, page 6, Sl.No.6, and quash the same as invalid, arbitrary, ultra-

vires the powers of the first respondent, unconstitutional and violative of Proviso to Article 15(5), 19(1)(g) and 30 of the Constitution of India.

For petitioner : Mr.T.V.Lakshmanan

For respondents: Mr.C.T.Ramesh, Addl.G.P.

(Puducherry) for

RR-1 and 2

Mr.V.P.Raman for R-3

Mr.J.Madana Gopal Rao, SCGSC for R-4

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent in its proceedings being impugned Information Bureau for 2018-19 (Common Admission Prospectus to Under Graduate Professional Courses in the Union Territory of Puducherry) Volume-III, page 6, Sl.No.6, and quash the same as invalid, arbitrary, ultra-vires the powers of the first respondent, unconstitutional and violative of Proviso to Article 15(5), 19(1)(g) and 30 of the Constitution of India.

2. It is the case of the petitioner-College that it is an unaided recognized Telugu linguistic minority Medical College in the Union Territory of Puducherry. In the impugned Information Brochure in Volume-III, page 6, Sl.No.6, dealing with the admission for Under Graduate Professional Courses, the number of seats available in the Government quota was shown as 55 in the petitioner-College. This information is wrong, as it cannot impose seat sharing in a compulsory manner. The reservation is not applicable in the case of minority institutions. The petitioner being a minority professional institution, the respondents cannot demand any seats under the Government quota. It is further submitted by the petitioner that the Apex Court in the decisions reported in 2002 (8) SCC 481 (T.M.A.Pai Foundation Vs. State of Karnataka) and 2005 (6) SCC 537 (P.A.Inamdar Vs. State of Maharashtra), held that the seat sharing cannot be compulsory, but it can only be adopted in a concessional method, even for the non-minority colleges. The condition of seat sharing imposed as a part of recognition of minority status, as compulsory, is arbitrary and unconstitutional. The first respondent is not empowered to regulate the admission procedure and on the other hand, only the third respondent can lay down the standards under Section 20 of the Indian Medical Council Act. The first respondent has no authority to demand seats from the petitioner-College. Hence, the impugned Brochure to the extent of Sl.No.6 in page 6, Volume III, is invalid, unconstitutional, arbitrary and ultra-vires the powers of the first respondent and violative of proviso to Article 15(5), 19(1)(g) and 30 of the Constitution of India.

3. The respondents have not filed counter affidavit. It is contended by the learned counsel for the respondents that it is not out of compulsion that there is seat sharing and that there is a Memorandum of Agreement dated 16.04.2015 between the parties and thereafter, the approval letter, dated 09.06.2015 is issued. The contention that there was a compulsion with regard to the seat sharing, may not be correct. It is further contended that the decision of the Apex Court reported in 2002 (8) SCC 481 (T.M.A.Pai Foundation Vs. State of Karnataka), more particularly, paragraph 68, is not applicable to the facts of this case and it is distinguishable on the facts of this case, more particularly, when there is a consensus between the parties. It is useful to extract paragraph 68 of the T.M.A.Pai Foundation case (cited supra) as follows:

"68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and post-graduation non-professional colleges or institutes."

It is also useful to extract paragraphs 126 to 128 of the P.A.Inamdar case (cited supra):

"126. The observations in paragraph 68 of the majority opinion in Pai Foundation (T.M.A.Pai Foundation Vs. State of Karnataka - 2002 (8) SCC 481) on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in Pai Foundation if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter-comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in Pai Foundation) in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give freeships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society.

127. Nowhere in Pai Foundation either in the majority or in the minority opinion, have we found any justification for imposing seat-sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

128. We make it clear that the observations in Pai Foundation in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual

arrangements which can be reached between unaided private professional institutions and the State."

4. In reply, learned counsel for the petitioner drew the attention of this Court to the abovesaid decisions of the Apex Court and contended that there cannot be any compulsion with regard to the seat sharing and that it runs counter to the decisions of the Apex Court stated supra and that the Court should lift the veil and see the reasons behind the Memorandum of Agreement. Even though no additional affidavit has been filed, learned counsel for the petitioner contended that the Memorandum of Agreement, dated 16.04.2015 has been cancelled and it no longer exists. Hence, when once the agreement is no longer there, the condition with regard to the seat sharing, cannot stand in the eye of law, more particularly, when much water has flown after the introduction of NEET and the counselling held thereafter.

5. Heard both sides and perused the materials available on record.

6. The aforesaid facts are not in dispute. The only issue that arises for consideration is as to whether there was a compulsion on the part of the respondents with regard to the seat sharing. The petitioner's case would have been accepted, if, by means of a letter, there was a demand and thereafter, the agreement was entered. In this case, by means of the consensus, the Memorandum of Agreement was entered into between the parties on 16.04.2015, which was duly signed by the parties, and thereafter, in the approval letter, dated 09.06.2015, the conditions have been imposed. Even though it has been contended by the learned counsel for the petitioner that paragraph 3(vi) of the approval letter dated 09.06.2015 imposed in the communication is wrong/illegal, this Court cannot accept the said contention, as there was a Memorandum of Agreement as on 16.04.2015, based on which, the approval was given, and that the conditions have been imposed. For clear understanding, the said paragraph 3(vi) of the approval letter is extracted below:

"As regards the medical admission is concerned, the benchmark of 53 MBBS seats against the total intake of 150 in the academic year 2014-15 shall be the minimum threshold limit for future seat allocations and this ratio shall also be the guide for proportionate additional seat allocations in case of enhancement of intake, whenever it happens. Further, over and above the 53 seats, the institute shall also offer 1

(one) additional MBBS seat every alternate year commencing from 2015-16."

7. That apart, paragraph 3(vi) of the said approval letter, extracted supra, is very clear that there was a mutual agreement between the parties. The Memorandum of Agreement precedes the approval letter and that the petitioner has also contended that the Memorandum of Agreement and the approval letter have got to be read together and they cannot be read in isolation. In such an event, only after the consensus/agreement, the seat sharing was done. If the Memorandum of Agreement is read in isolation, then the entire Memorandum of Agreement has to go; so also the consequential approval letters. The approval letter cannot stand alone, but for Memorandum of Agreement.

8. Further, there is no evidence to the effect that the meritorious students are not going to be considered on account of the seat sharing. The decisions of the Supreme Court, quoted above and relied on by the learned counsel for the petitioner, are against the petitioner itself and it is clear that the Apex Court has categorically held that there can be a seat sharing with consent.

9. Hence, for the reasons stated above, I find that there is no reason to grant the relief sought for by the petitioner. The Writ Petition is accordingly dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

CS

To

1. The Convener,
Centralized Admission Committee (CENTAC),
PEC Campus, ECR Road,
Pillaichavadi, Puducherry-605 104.

2. The Chief Secretary,
Higher Education Department,
Office of the Chief Secretariat,
Puducherry-605 001.

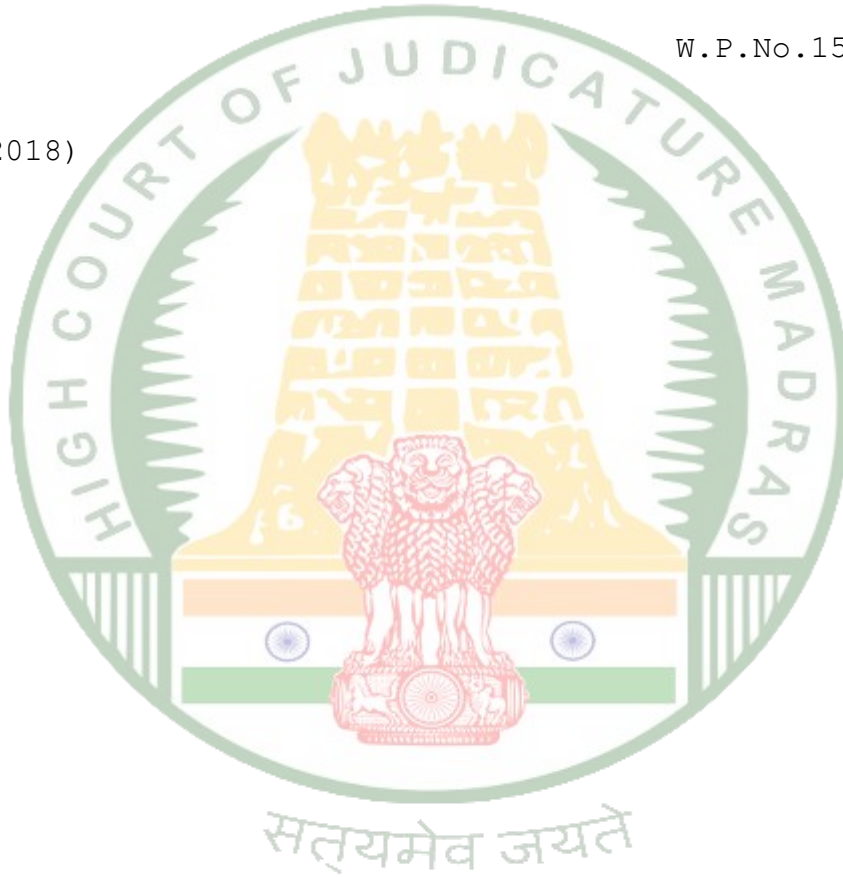
3. The Secretary, Medical Council of India,
Pocket-14, Sector-8,
Dwarka Phase-I, New Delhi-110 077.

4. The Secretary,
Ministry of Health and Family Welfare,
(Dept. of Health - DE Section),
Maulana Azad Road, New Delhi-110 011.

+ 1 cc to Mr. T.V. Lakshmanan, Advocate Sr.40677
+ 1 cc to Mr. V.P. Raman, Advocate Sr.40599
+ 1 cc to Government Pleader Sr.41166

W.P.No.15598 of 2018

(CS-IV)
EU(10/07/2018)



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