

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.1.2019

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.23029 and 24275 of 2011

Dr.B.Sneha Chitra ... Petitioner in W.P.No.23029/2011

Dr.R.Elanchezian ... Petitioner in W.P.No.24275/2011

Vs.

- 1 State of Tamilnadu
Rep. By the Secretary to Government,
Ministry of Health & Family Welfare,
Fort St. George, Chennai 600 009.
- 2 The Director,
Directorate of Medical Education,
162, E.V.R.Periyar Salai,
Kilpauk, Chennai 600 010.
- 3 The Secretary,
Selection Committee,
162, E.V.R.Periyar Salai,
Kilpauk, Chennai 600 010. Respondents in both W.Ps.

Prayer in W.P.No.23029 of 2011:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration declaring Clause 48 of the prospectus and the notification for II phase counselling published in the internet for Tamil Nadu PG Degree/6 year M.Ch. (Neuro Surgery)/MDS Administration 2011-2012 in so far as the payment of discontinuation fees by the candidates who discontinue the courses as ultra vires to the Constitution of India and consequently, direct the third respondent to refund the discontinuation fee of Rs.4,00,000/- paid by the petitioner in favour of the third respondent.

Prayer in W.P.No.24275 of 2011:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration

declaring Clause 48 of the prospectus and the notification for II phase counselling published in the internet for Tamil Nadu PG Degree/6 year M.Ch. (Neuro Surgery)/MDS Administration 2011-2012 demanding discontinuation fee for surrendering M.D.Geriatrics seat obtained on merits from All India Institute of Medical Sciences for taking up M.D.General Medicine seat from Tamil Nadu P.G.Degree/ 6 year M.Ch (Neuro Surgery)/MDS Admission 2011-2012 as ultra vires to the Constitution of India and consequently, direct the third respondent to refund the discontinuation fee of Rs.4,00,000/- paid by the petitioner in favour of the third respondent.

For Petitioners in both W.Ps. : Mr.M.Deivanandam

For Respondents both W.Ps. : Mr.V.Annalakshmi, G.A.

COMMON ORDER

According to the petitioner Dr.B.Sneha Chitra in W.P.No.23029 of 2011, petitioner was selected for Post Graduate in M.S.(General Surgery) - Non service candidate for the academic year 2011-12 under All India Quota - Rank number UR 545 in All India Counselling held on 26.2.2011 and she joined the Course on 28.2.2011 at Madras Medical College, Chennai. Subsequently, in the first counselling held on 31.3.2011, for 6 years M.Ch. (Neuro Surgery), the petitioner was ranked Wait list No.1 under BC - Private - General Rank 372. In the Second Counselling held on 28.6.2011, the petitioner was selected for 6 years M.Ch. (Neurosurgery) at Madras Medical College, Chennai. Hence, the petitioner surrendered M.S.(General Surgery) seat. However, the petitioner was asked to pay discontinuation fees of Rs.4.00 lakhs for discontinuation of P.G. M.S.(General Surgery) Course. After payment of discontinuation fees, the allotment order was issued. The petitioner after joining 6 years M.Ch. (Neurosurgery) course, made a representation to the Government for refund of Rs.4.00 lakhs paid by her towards discontinuation fees. Since there is no reply for the said representation, the petitioner approached this Court for the aforesaid prayer.

2 Similarly, the petitioner Dr.R.Elanchezian in W.P.No.24275 of 2011 was selected for Post Graduate in M.D. (Geriatrics) - Non service candidate for the academic year 2011-12 under All India Quota (Rank - UR2068) in the counselling held on 10.3.2011 and he joined the course on 16.3.2011 at Madras Medical College, Chennai. In the Phase II Counselling held on 28.6.2011, the petitioner was selected for M.D.(General Medicine) at K.A.P.V. Govt. Medical College, Trichy and he joined the new course by paying discontinuation fees of Rs.4.00 lakhs for discontinuation of P.G. Course in M.D.(Geriatrics). On 12.7.2011, the petitioner made a representation to the third

respondent for refund of Rs.4.00 lakhs paid by him towards discontinuation fees. Since there is no reply for the said representation, the petitioner has approached this Court for the aforesaid prayer.

3. According to the learned counsel for the petitioners, Phase II Counselling was held on 28.6.2011 and 29.6.2011 for 6 years P.G. Degree in M.Ch. (Neurosurgery)/MDS Admission 2011-12 whereas last date for surrendering seats allotted for M.S. (General Surgery) and M.D. (Geriatrics) was fixed on 25.6.2011. and charging discontinuation fees of Rs.4.00 lakhs for discontinuing the course after the stipulated date i.e. 25.6.2011 is unconstitutional and contrary to principles of natural justice. A candidate who is going to attend the counselling will not have any idea about the prospective chance of getting allotment of the preferred course in the counselling till he/she knows the vacancy position. In such circumstances, fixing the last date i.e. on 25.6.2011 for surrendering the allotted seat before knowing the vacancy position or demanding huge sum of money as discontinuation fees is opposed to the fundamental rights enshrined in the Constitution of India. Further, it is submitted that at the time of admission, the petitioners were issued allotment orders by the third respondent under State quota. Therefore, the petitioners have paid the discontinuation fees of Rs.4.00 lakhs and joined M.Ch. Course and M.D. (General Medicine) respectively. Therefore, Clause 48 of the Prospectus would not be applicable to the case in hand and prays this Court to direct the respondents to refund the discontinuation fees of Rs.4.00 lakhs paid by them.

4. The learned Government Advocate appearing for the respondents would submit that the petitioners have applied for P.G. Course as per Prospectus for the academic year 2011-12 and the petitioner accepted the Clause 48 in the Prospectus. Further, it is submitted that the petitioners have already paid discontinuation fees to the selection Committee. The petitioners have approached this Court after the lapse of nearly four months. Therefore, the writ petition cannot be entertained and the same is liable to be rejected.

5. Heard the learned counsel for the petitioners, learned Government Advocate appearing for the respondents and perused the materials available on record.

6. Clause 48 in the Prospectus for admission to P.G.Diploma/Degree/M.D.S./6 Year M.Ch. (Neurosurgery) Courses for the academic year 2011-2012 reads as under:

"48. The Candidates (including the candidates selected under All India Quota) who

discontinue the course shall pay as discontinuation fees to the Deans of the respective Colleges the sum as specified below by way of Demand Draft drawn in favour of the Secretary, Selection Committee, Kilpauk, Chennai - 10 payable at Chennai.

From 20.5.2011 to 25.5.2011

For P.G. Diploma Courses : Rs.1 lakh

For P.G.Degree/6 Year M.Ch. : Rs.2 lakhs
(Neurosurgery) Courses/M.D.S.

After 25.5.2011

For P.G.Diploma Courses : Rs.2 lakhs

For P.G.Degree/6 Year M.Ch. : Rs.4
lakhs''
(Neurosurgery)/M.D.S.Courses

7. A perusal of the Clause 48 in the Prospectus for admission to P.G.Diploma/ Degree/M.D.S./6 Year M.Ch. (Neurosurgery) Courses for the academic year 2011-2012 would show that if the candidate opt for discontinuation of course, he/she shall pay discontinuation fees to the Deans of the respective Colleges, the sum as stated supra, by way of demand draft in favour of the Secretary, Selection Committee, Kilpauk, Chennai 10 payable at Chennai. The petitioners have paid Rs.4.00 lakhs each as per Clause 48 of the Prospectus and relieved from the Madras Medical College, Chennai and joined new course under the State quota. After accepting the terms and conditions in the Prospectus, the petitioners are estopped from challenging Clause 48 of the Prospectus in the writ petitions. The next contention raised by the learned counsel for the petitioner is that there is delay on the part of the third respondent in conducting Counselling, resulting in payment of discontinuation fees made by the petitioners. The petitioners having chosen to join new Course viz., M.Ch.(Neurosurgery) and M.D.(General Medicine) respectively under the State Quota in the Phase II Counselling, by paying discontinuation fees without any protest, the writ petitioner cannot claim refund of the discontinuation fee, nearly after four months as the same is barred by laches especially in education matter. Under these circumstances, the contention of the petitioners cannot be accepted and therefore, the writ petitions are liable to be rejected.

Accordingly, the writ petitions are dismissed. No Costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

- 1 The Secretary to Government,
State of Tamil Nadu,
Ministry of Health & Family Welfare,
Fort St. George, Chennai 600 009.
- 2 The Director,
Directorate of Medical Education,
162, E.V.R.Periyar Salai, Kilpauk, Chennai 600 010.
- 3 The Secretary,
Selection Committee,
162, E.V.R.Periyar Salai, Kilpauk, Chennai 600 010.

+1cc to the Government Pleader Sr.1046
+2cc to Mr.M.Deivanandam, Advocate sr.435, 436

W.P.No.23029 and 24275 of 2011

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srg 20/02/2019

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