

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18 /11/2019

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

a n d

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.13299 of 2018

Minor Kavitha
rep. by her Father and Natural Guardian
Mr.V.Srinivasan
No.17 Kuppiar Street
Kondithope
Chennai 600 001.Petitioner

Vs

1. Union of India
rep. by its Cabinet Secretary
New Delhi 110 001.
2. The Director
National Eligibility-cum-Entrance Test
Shiksha Kendra
No.2 Community Centre
Preet Vihar
Delhi 110 092.
3. The Deputy Secretary (Examination)
National Eligibility-cum-Entrance Test Unit
Central Board of Secondary Education
Shiksha Kendran
No.2 Community Centre
Preet Vihar
Delhi 110 092.
4. The State of Tamil Nadu
rep. by its Secretary to Government
Fort St. George
Chennai 600 009.Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration, declaring Section 10 D of the Indian Medical Council Act, 1956 as unconstitutional, ultra virus, to the Constitution of India.

For petitioners

... Mr. K. Shanmugakani

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Instant writ petition challenges the vires of Section 10D Indian Medical Council Act, 1956.

2. Petitioner is represented by her father. Petitioner is an aspiring Doctor. Petitioner challenges constitutionality of Section 10D of the Indian Medical Council Act, 1956 which reads as under: -

"10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination."

3. Section 10D was brought into force Indian Medical Council (Amendment) Act, 2016. By this amendment a common entrance examination will be held for admission to Medical Colleges all over the Country.

4. Though the Petitioner in the Writ Petition has challenged that this amendment is contrary to Article 14 of the Constitution of India in as much as the Section does not take care of the interests of persons from remote areas, mofusil areas, hilly areas, do not have an opportunity to equip themselves, to compete with the students, studying in urban areas and that unequals are being treated equally the only argument raised before us is that Section 10 - D of the Act, is contrary to the mandate of the Hon'ble Supreme Court, in Dr.Pradeep Jain and Others Vs. Union of India and Others {(1984) 3 SCC - 654}, wherein, the Hon'ble Supreme Court, held that there should be reservation, on the basis of residence requirement within the State. Petitioner would state that in

the said judgment the Hon'ble Supreme Court was of the view that there are States where, level of educational development is woefully low and there are comparatively inadequate opportunities for training in the medical speciality and there is a large scale social and economic backwardness. The Supreme Court therefore accepted that there is justification of fixing a higher percentage of seats in Medical Colleges in a State of students belonging to that State. The Hon'ble Supreme Court had fixed an outer limit of 70% reservation of seats. According to the petitioner, Section 10 - D does not prescribe any such criteria and is therefore deserves to be set aside.

5. Heard Mr. K. Shanmugakani, learned counsel for the petitioner.

6. In view of the fact that Medical colleges were admitting students, based on their own entrance examination or sometimes without even conducting any entrance examination which was affecting the standard of education. The Hon'ble Supreme Court had opined that there was a need for regulating admissions to all the medical colleges throughout the Country. In view of the directions/recommendations of the Hon'ble Supreme Court of India, the Medical Council of India, brought out Notifications by amending the regulations on Graduate Medical Education, 1997 for holding a single eligibility cum entrance examination for MBBS known as National Eligible-cum-Entrance Test. The regulations prescribe that in order to be eligible for admission to MBBS courses, in a particular academic year, it shall be necessary for a candidate, to obtain minimum 50% of marks in each paper of the National eligibility-cum-entrance test held for the academic year. However, in respect of the candidate belonging to SC and ST and other backward classes, minimum percentage was fixed at 40%. Notifications to the same effect were also brought in for admission to Post-Graduate Courses. The Dental Council of India also brought in similar Notifications for the BDS and MDS courses.

7. The said Notifications were challenged in the Hon'ble Supreme Court in Christian Medical College, Vellore and Others Vs Union of India and Others {(2014) 2 SCC - 305} held that the Regulations cannot prevail over the Constitutional guarantees under Articles 19 (1) (g), 25, 26 (a), 29 (1) and 30 of the Constitution of India, since they have the effect of denuding the States, State-run Universities and all Medical Colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their MBBS, BDS and postgraduate courses, according to their own procedures, beliefs and dispensations. The Hon'ble Supreme Court, therefore, held that Medical Council of India is not empowered to conduct NEET examination.

8. Review petitions were filed by the Medical Council of India challenging the judgment of Christian Medical College supra and the Hon'ble Supreme Court by its order dated 20.03.2013 issued notice on the Review Petitions and also permitted oral hearing (Medical Council of India vs. Christian Medical College (2014) 2 SCC 392).

9. The Review Petitions were allowed in (2016) 4 SCC 342 Medical Council of India Vs. Christian Medical College, Vellore, and the judgment in Medical Council of India Vs. Christian Medical College, Vellore, (2014) 2 SCC 305 has been recalled. The Writ Petitions will be heard on merits by the Hon'ble Supreme Court.

10. Entry 66 List I of the Seventh Schedule to the Constitution of India gives power to the Parliament to enact legislations for coordination and determination of standards in Institutions for higher education or Research and Scientific and Technical Institutions. Entry 25 of List 3 gives power to both the parliament and the State to bring out legislation of education, including technical education, medical education and Universities, subject to the provisions of entries 63, 64, 65 and 66 of List I, vocational and technical training of Labour. In exercise of the power under Entry 66 List I in Indian Medical Council Act, 1956 was enacted. The Counsel for the Petitioner has not challenged the competence of the Parliament to bring out the Indian Medical Council Act.

11. The only submission of the Petitioner is that Section 10 D of the Indian Medical Council Act is contrary to the judgment of the Hon'ble Supreme Court in Dr.Pradeep Jain and Others Vs. Union of India and Others (1984) 2 SCC - 654 cannot be accepted. Section 10D only provides for holding a Common Entrance Examination for admission to Graduate and Post Graduate Courses. It has got nothing to do with reservations on the basis of residence as laid down in Dr.Pradeep Jain and Others Vs. Union of India and Others (1984) 2 SCC - 654.

12. In any event, since the matter is pending in the Supreme Court, it will not be proper for this Court to adjudicate on the very same issue. Proprietary demands that when identical matter is pending in the Hon'ble Supreme Court, High Courts must desist from pronouncing any judgment on the very same issue.

13. In view of the above, writ petition is dismissed. No costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

mvs.
To

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RR (CO)
SP (20/12/2019)