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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

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THE HONOURABLE Dr. Justice G.JAYACHANDRAN

W.P.No.14840 of 2019
and W.M.P.No.14819 of 2019

Dr.R.Aashritha

... Petitioner

vs.

1. The Secretary
Selection Committee
Directorate of Medical Education
162, Periyar E.V.R.High Road,
Kilpauk, Chennai 600 010.
2. The Dean
Madras Medical College,
Chennai 600 003.
3. Director General of Health Services,
Government of India,
Nirman Bhawan,
New Delhi 110 108.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to hand over the original certificates submitted to the second respondent college to the petitioner in view of the letter dated 03.05.2019 submitted by the petitioner without insisting payment of penalty.

For Petitioner : M/s.Sudharshana Sundar

For Respondents : Mr.Abdul Saleem for R1
Mr.V.Kathirvelu
Special Government Pleader for R2



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O R D E R

The prayer in the writ petition is for issue of a Writ of Mandamus directing the respondents to hand over the original certificates submitted to the second respondent college by the petitioner without insisting for the payment of penalty.

2. The petitioner herein has completed MBBS course in the year 2018 and took NEET examination for getting admission in PG Medical Course. She applied for Central Government All India Quota for the admission to PG Medical Course 2019. During the second round online counselling, she was given admission in the Madras Medical College, Chennai for MD (Tuberculosis & Respiratory diseases)/Pulmonary Medicine UR/MD (Respiratory Medicine) under All India Quota. She joined the course in the Madras Medical College on 17.04.2019 by paying the tuition fees and submitted her original certificates to the college authority. Due to personal reasons, she thought fit to discontinue the course. Therefore on 03.05.2019, she submitted a letter to the second respondent informing her discontinuation of the course. The second respondent office refused to hand over the original certificates in spite of several requests, demanding penalty of Rs.15 lakhs. Hence, she has filed this writ petition seeking direction to the respondents to return her original certificates submitted by her to the second respondent college without insisting upon payment of penalty of Rs.15 lakhs.

3. In the counter filed by the third respondent on behalf of the first and second respondents, it is stated that under clause 24(C) of the prospectus "The candidates (All India Quota/State Quota) who discontinue the course on or after the last phase of counselling should pay the Discontinuation fees besides foregoing tuition fees already paid by them as specified in Clause 37, to the Deans of the respective Colleges, the sum as specified below in total by means of a Demand Draft drawn in favour of "The Secretary, Selection Committee, Kilpauk, Chennai-10" payable at Chennai". The discontinuation fees for PG Course as per clause 37 is Rs.15 lakhs. In the prospectus it is clearly stated that unless the discontinuation fee as penalty amount is paid in total, original documents of the candidates will not be returned. In view of the above condition, the petitioner's certificate has not been returned. If she pay the penalty of Rs.15 lakhs the certificates will be returned.



4. The learned counsel for the petitioner submitted that collection of discontinuation fees will arise only if the candidate discontinues after the last phase of counselling. According to the schedule of counselling conducted by the first respondent, first round of counselling for All India Quota ended on 24.03.2019 and the second round of counselling for All India Quota ended on 12.04.2019. Thereafter, the selection committee is supposed to conduct Mop-Up Counselling for the unfilled seats which was scheduled to take place between 13.05.2019 and 28.05.2019. The petitioner herein who got admission under the All India Quota participated in the second round of counselling on 17.04.2019 and was allotted MD seat in the Madras Medical College, on the same day she paid the tuition fees and joined the college. The second round of counselling ended on 12.04.2019. The last date for reporting was 22.04.2019. She submitted her discontinuation letter on 03.05.2019. Thus the petitioner has discontinued before the last phase of counselling therefore she need not pay the penalty.

5. The learned counsel for first respondent and learned Special Government Pleader for second respondent would submit that the counselling for All India Quota/State Quota commenced during second week of March 2019 and the last phase of counselling for All India Quota/State Quota ended on 22.04.2019. The MOP-UP counselling is only for Central/deemed University. As far as MOP-UP counselling is concerned, under clause 26(a) after completion of second round of counselling, if there is any vacancy, that will be filled by mop-up round.

6. As far as this case is concerned on 03.05.2019, the petitioner herein has informed the college that she wants to discontinue. Thereafter, the selection committee on completion of the second round by 22.04.2019 had an opportunity to ascertain whether there is any vacancy in the college to be filled up so as to add it under the Mop-Up round. The learned Special Government Pleader appearing for the second respondent, referring to the communication from the Government of India, Director General of Health Services, would submit that any All India Quota seat remaining vacant after last date of counselling will be deemed to convert into state quota. However, the vacancy should arise due to non joining/non reporting as on 22.04.2019, whereas the petitioner herein joined the course on 17.04.2019 and as on 22.04.2019, she was in the rolls. She submitted her discontinuation letter only on 03.05.2019, since, the said seat which was



Clause 24 (c), 26(a) and 27(a) of the prospectus are extracted as hereunder:-

"The candidates (All India Quota/State Quota) who discontinue the course on or after the last phase of counselling should pay the Discontinuation Fees besides foregoing tuition fees already paid by them as specified in Clause 37, to the Deans of the respective College, the sum as specified below in total by means of a Demand Draft drawn in favour of "The Secretary, Selection Committee, Kilpauk, Chennai 10" payable at Chennai".

MOP-UP Counselling

"26(a) After completion of second round of counselling if there is any vacancy that will be filled by mop-up round".

Other Instructions:-

"27(a) If the candidates discontinue the course within the stipulated date after any round of counselling, they will have to forfeit the tuition fee paid by them. Provided that the candidates who have discontinued their course after the cut-off date (i.e., 31.05.2019) to pay the penalty as mentioned in the Clause 24(c) of the prospectus".

7. A combined reading of clause 24(c), 26(a) and 27 (a) gives an impression that if a candidate who joined in course pursuant to the counselling discontinue the course before last phase of counselling, she has to forfeit the tuition fee paid [clause 24(c)]. If the candidate discontinues the course after the cut-off date i.e., 31.05.2019, they have to pay penalty as mentioned in the Clause 24(c) of the prospectus [Clause 27(a)]. Therefore, if the respondent wants to invoke clause 24(c) and demand Rs.15 lakhs as a discontinuation fee, it must be subject to clause 27(a). Unless 27(a) is applied, they cannot demand Rs.15 lakhs under clause 24(C).



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8. The communication of the Government of India dated 24.04.2019, referred by the respondent counsel permits the State Government to convert the lapsed seats of All India Quota to State quota. It bars the All India Quota candidate who was allotted seat in the second round and joined the course later discontinue it and participate in further round of counselling. This communication has no relevance for the return of documents to the candidate who discontinue the course. According to the said communication the petitioner herein might have lost her opportunity to participate in the further round of counselling, but having tendered her discontinuation letter on 03.05.2019, before cut off date (31.05.2019), the first respondent has to adhere to clause 27(a) and cannot read 24(C) in isolation and demand Rs.15 lakhs as penalty.

9. Therefore, the second respondent is directed to return the educational documents submitted by the petitioner herein immediately.

10. Accordingly the writ petition stands allowed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

dpq

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Selection Committee
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162, Periyar E.V.R.High Road,
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2. The Dean

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3. Director General of Health Services,
Government of India,
Nirman Bhawan, New Delhi 110 108.

+1cc to M/s.Sudharshana Sundar , Advocate SR.No.53620

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A.SK(13/08/2019)