

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.2429 of 2018
and
C.M.P.Nos.19576, 19580 and 20412 of 2018

M.Pratibha Roshini ... Appellant/Petitioner

-vs-

- 1.The State of Tamil Nadu,
Rep., by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai-600 009.
- 2.The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
- 3.The Secretary,
The Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
- 4.The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Guindy, Chennai-600 032.
- 5.The Chairman,
Ponnaiyah Ramajayam Institute of Medical Science,
Manamai Nellore, Kancheeruram District.
- 6.The Medical Council of India,
Rep., by its Board of Governors,
Pocket 14 Sector 8, Dwarka Phase I,
New Delhi-110 077. ... Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 22.10.2018, passed by this Court in W.P.No.27265 of 2018 filed to issue a writ of mandamus, directing the respondents to treat the petitioner's admission as being

admitted under the Government quota seats category for the year 2016-17 in the 5th respondent college and consequently direct the 4th and 6th respondents to register the petitioner herein as a student of the University in the said category and consequently direct the respondents to permit the petitioner to continue her 2016-2017 MBBS course by taking all the necessary examinations and publishing the results as a regular student of MBBS course.

For Appellant : Mr.Silambanan,
Senior Counsel
for Kaavya Silambanan

For R1 : Mr.P.S.Siva Shanmuga Sundaram,
Special Government Pleader

For R2 and R3 : Mr.V.Kathirvelu,
Special Government Pleader

For R4 : Mr.D.Ravichander

For R5 : Mr.R.Periyakumar

For R6 : Mr.V.P.Raman

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the appellant/writ petitioner challenging the order passed in W.P.No.27265 of 2018, dated 22.10.2018.

2.The appellant sought for a direction upon the respondents to treat her admission as being admitted under the Government quota seats category for the year 2016-17 in the 5th respondent college and consequently, direct the 4th and 6th respondents to register the appellant/writ petitioner as a student of the University in the said category and consequently, direct the respondents to permit the appellant/writ petitioner to continue her 2016-17 M.B.B.S., course by taking all the necessary examinations and publishing the results as a regular student of M.B.B.S., course.

3.The present round of litigation has been initiated by the appellant/writ petitioner fully being conscious of the fact that she miserably lost in the first round of litigation before this Court.

4.Earlier, the appellant/writ petitioner had approached this Court and filed W.P.No.1605 of 2017 challenging an order passed by the Medical Council of India on account of serious illegality being committed by the institution in admitting the

students under the management quota without NEET qualification. The said writ petition was dismissed by order dated 23.01.2017. The appellant carried the matter by way of appeal before the Hon'ble Division Bench in W.A.No.242 of 2017, which was dismissed by the Hon'ble Division Bench, by judgment dated 10.03.2017. Thereafter, the appellant did nothing and probably was watching other proceedings initiated by the other students of the same institution, which stood on a similar or on a same pedestal as that of the appellant. Those students were also unsuccessful before this Court and ultimately, the matter was dealt with by a Full Bench, to which one of us (TSSJ) was a party, in a batch of appeals in W.A.Nos.406 of 2017 and etc., batch, in which, certain other writ petitions were tagged along with the said batch. The Division Bench, which heard the matter thought fit to refer the matter to a Larger Bench for adjudication of three questions, which are as follows:-

"(i) Whether the seats filled up by the sixth respondent Management under the category of Government Lapsed Seats Quota requires Plus-two examination as the qualifying examination or NEET examination, for the academic year 2016-2017?

(ii) If the seats have to be filled up by the Government against the Lapsed Seats, what would be situation and how the seats would be filled up, viz., whether based on NEET examination or Plus-two examination?

(iii) Pending the appeals, a decision has to be taken by the Larger bench with regard to allowing the candidates to appear for the ensuing examinations since they have completed the academic year, after having admitted to the sixth respondent College?"

5. So far as the third question is concerned, at the request made by the learned counsels, who had appeared for the appellants and the writ petitioners before the Full bench, we passed an order on 01.11.2017, answering the question against the candidates and the Management, and held that they cannot be permitted to sit for the supplementary examination commencing on 02.11.2017. Subsequently, the Full Bench took up for consideration the questions, which were referred, and by judgment dated 05.06.2018, answered the questions against the candidates/Management. At this juncture, it would be worthwhile to refer to certain paragraphs of the judgment, which would be a direct answer to the plea raised by the appellant before us:-

"32. Thirdly, the Tamil Nadu Dr.M.G.R. Medical University in their communication dated 14.11.2016, 29.11.2016 and 30.11.2016 had declined to register the aforementioned 36 candidates, as they had not qualified the NEETUG16 and are ineligible to be granted admission in the MBBS course. The University

further directed that all these 36 students shall be discharged from the MBBS course, since the admission in the private medical college for the management quota ought to be granted only on the basis of the marks obtained in the NEET-UG16. This apart, the writ petition filed by one of the 36 students viz., Ms.P.Ratiba Roshni in W.P.No.1605 of 2017 challenging the communication of the respondent University dated 29.11.2016 was dismissed. Again the Writ Appeal No.242 of 2017 filed against the order passed by the learned single Judge dated 23.1.2017, was also dismissed confirming the order passed by the learned single Judge. When the discharged students have not appeared for the NEET-UG16 and wrongly obtained admissions in the sixth respondent college, the reasons for discharge stated in the order dated 29.11.2016 issued by the respondent University are exactly the same as mentioned in the impugned communication dated 1.2.2017 issued by the Medical Council of India. Since the respondent college, after surrendering both the seats under the management quota and the government quota, had no authority to fill up any seats for the academic year 2016-17, the impugned order directing the college to discharge all the 36 students cannot be found fault with, since they have been admitted on the basis of the marks secured in the +2 examination.

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34.Though we had granted liberty to the management and the other parties to give their response to the audit report, they have not done so till the arguments were concluded. The forensic audit report of the Principal Accountant General, is a 12 page report with 27 annexures and 4 exhibits. We perused the report to ascertain as to what is the outcome of the forensic audit with regard to the fee collected by the management from the 36 candidates, as the management stated that they had collected fee as fixed by the Government for Government quota seats. The forensic audit report shows that excess fee ranging upto Rs.11,65,000/- excluding hostel rent, caution deposit have been collected; bank statements disclosed collection of fees amounting to Rs.49.50 lakhs from four students through RTGS, which were not accounted for in the receipts books made available to audit, which indicates that the college had collected excess fees ranging from Rs.11.65 lakhs to Rs.27.65 lakhs. Further, the report states that refund of fees were made by the college to 11 discharged students amounting to Rs.3.05 crores ranging between Rs.15 lakhs to Rs.40

lakhs, as against Rs.1.51 crores shown as receipts from those students, as per receipt books and fees credited in RTGS. The report further states that the excess between the refund amount and actually recorded receipt amounted to Rs.1.54 crores, ranging between Rs.7.50 lakhs to Rs.31.25 lakhs. Further, the report went on to speak that the fees collected by the college from each of the 36 students, were upto Rs.40 lakhs from the records made available. The report of the forensic audit speaks for itself and the plea raised by the college/management that they have collected the fees fixed by the Government from the 36 students is false.

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37. Moreover, the argument of the appellant management that they are entitled to fill up the 36 seats based on the marks secured in the +2 examination is to be outrightly rejected, because the management had no authority to fill up these seats once they surrendered to the Government. Yet another plea that the management had admitted the students collecting the fee prescribed by the Government for Government quota candidate has been found to be false, as per the forensic audit conducted by the office of the Principal Accountant General, pursuant to the directions of the Division Bench. The Monitoring Sub-committee of the MCI after having been informed about the admissions made by the appellant Management, admitting 36 candidates without NEET-UG-2016 qualification placed its recommendations before the Executive Committee of the MCI, which after deliberations approved the decision of the Monitoring Sub-Committee of MCI to discharge 36 candidates, who had been granted admission in the first year MBBS course for the academic session 2016-17 in the appellant medical college, as they had not qualified NEET-UG-2016. In this context, it is beneficial to refer to the decision of the Constitution Bench of the Hon'ble Supreme Court in Dr. Preeti Srivastava vs. State of M.P & Ors., [(1999) 7 SCC 120], wherein it has been observed that the MCI has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. That the MCI has implicit power to supervise the qualification or eligibility standards for admission into medical institutions. Thus, there is, under the Indian Medical Council Act, 1956, an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical

courses. Further, it was observed that while considering the standards of education in any college or institution, calibre of students, who are admitted to that institution or college, cannot be ignored. It was further held that if the students are of a high calibre, training programmes can be suitably moulded, so that they can receive the maximum benefit out of a high level of teaching. On the other hand, if the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; it may not be possible to reach the levels of education and training which can be attained with a bright group. Here again it is apt to refer to the observations made by the Hon'ble Supreme Court in the case of MCI vs. State of Karnataka, [(1998) 6 SCC 131], wherein the Hon'ble Supreme Court held that the country does not want half-baked medical professionals. Though this observation was made by the Apex Court in the context of the infrastructural and teaching facilities to be made available in medical colleges, we would be fully justified in adopting the very same reasoning in the cases on hand, as our nation does not want half-baked medical professionals, who have not achieved the bench mark qualification for being eligible to be considered for admission to the medical courses.

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41. In view of the aforesaid reasons, we answer the questions referred for consideration as follows:-

"(1) The seats filled up by the sixth respondent Management (Ponnaiyah Ramajayam Institute of Science, Kancheepuram District) cannot be categorised as Government Lapsed Seats and could not have been filled up by the Management by candidates who do not have NEET-UG-2016 qualification.

(2) The expression used by the Management that the 36 seats are lapsed seats is a misnomer, as the correct expression would be unfilled/unutilised seats and such position will arise only after 30.09.2016 and not prior to the same. For such a situation to arise, it is incumbent upon the Management to report to the Selection Committee/Government about the names of the candidates, which were forwarded by the Selection Committee, who did not join

the course before the cut off date, namely, 30.09.2016. Therefore, neither the Government nor the Selection Committee, much less, the management have any jurisdiction to extend the time for admitting candidates beyond 30.09.2016 and therefore, the question No.2 as framed does not arise for consideration. Even assuming there were lapsed seats (i.e.,) after 30.09.2016, without the permission of the Hon'ble Supreme Court, the Government/Selection Committee would not be entitled to fill up the same and in any event could never be done by the Management.

(3) Question No.(3) was answered vide our order dated 01.11.2017, holding that pending decision of the Writ Appeals, the candidates admitted by the Management cannot be permitted to sit for supplementary examination commencing from 02.11.2017."

6.We may be fully justified in observing that the appellant/writ petitioner cannot feign any ignorance about the litigations, which were commenced at the instance of the other students after knowing fully well that the appellant had failed in her attempt to get herself somehow admitted to the M.B.B.S. Course.

7.The learned Senior Counsel submits that the appellant does not feign ignorance of the litigations initiated by the other students and the judgment of the Full Bench answering the questions referred above. The submission of the learned Senior Counsel is that the appellant has secured 191.75% marks and having secured more marks than the other candidates, who were admitted in Government quota, she is entitled to be admitted to the M.B.B.S., course for the academic year 2016-2017.

8.In our considered view, the learned Single Bench rightly held that the appellant is estopped from raising such a plea having never raised such a plea at any earlier point of time. The plea raised by the learned Senior Counsel for the appellant appears to be drawing inspiration from cases in respect of another Medical College. Unfortunately, such a plea can never be considered in the present case, on account of what was the case of the management and more particularly, what was the case of the appellant before this Court in the earlier round of litigation.

9.Thus, we find that the learned Single Bench was fully justified in dismissing the writ petition filed by the appellant/writ petitioner. We could have been well justified in imposing costs, but considering the fact that the appellant is a student, we refrain from doing so.

10. In the result, this writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

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- +1 CC to Mr.D.Ravichander, Advocate sr 13520.
+1 CC to M/s. Kaavya Silambanan Associates sr 13564.
+1 CC to Govt. Pleader sr 12862.

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SP(22/02/2019)