



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.371 of 2019

1.The Director of Medical Education,
Kilpauk, Chennai-600 010.

2.The Dean,
Madurai Medical College,
Madurai.

... Appellants/Respondents

Vs.

M.Aarthy

..Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order made in W.P.(MD)No.7930 of 2017, dated 30.07.2018 on the file of this Court and allow this writ appeal.

Prayer in WP(MD). 7930/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order in Na.Ka.No.3228/M.K.4/2017 dated 17.04.2017 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction, directing the Respondent Nos.1 and 2 relieve the Petitioner and return her original educational certificates such as 1) 12th standard mark sheet, 2) M.B.B.S First Year, Second Year, Third Year, Fourth Year Mark Sheets 3) M.B.B.S. Degree Certificate, 4)C.R.R.I.(House Surgeon) Completion Certificate, 5) Medical Council Permanent Registration Certificate, 6) Community Certificate 7) Course cum Conduct Certificate issued by Kanyakumari Government Medical College within a stipulated time.

For Appellants

: Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.A.K.Baskara Pandian

For Respondent

Special Government Pleader
: Mr.T.Lajapathi Roy



JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

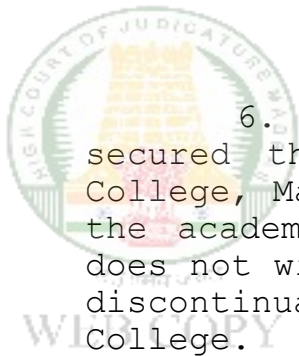
Heard Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.A.K.Baskara Pandian, learned Special Government Pleader for the appellants and Mr.T.Lajapathi Roy, learned counsel for the respondent.

2. The Director of Medical Education and the Dean of Madurai Medical College are the appellants in this appeal. The appellants have challenged the order and direction issued in W.P.(MD)No.7930 of 2017, dated 30.07.2018 filed by the respondent. For easy reference the parties are referred to the rank in the writ petition.

3. The petitioner sought for issuance of certiorarified mandamus to quash the proceedings of the second respondent, dated 17.04.2017, by which the petitioner was informed that she has to pay discontinuation fees as stipulated in the prospectus for Medical Education and Admission of PG degree / Diploma-2016-17. In other words, it was informed that unless discontinuation fees is paid, education certificates of the petitioner cannot be returned.

4. The learned Single Bench, by the impugned order, held that the Clause-45 in the prospectus, which insists upon payment of discontinuation fee is unilateral clause and the writ petitioner has no option of joining PG Course, unless such a prospectus is purchased and there is no mutual agreement between the petitioner and the second respondent with regard to the said clause in the prospectus and the said Clause may not have the binding effect of an agreement or a contract and hence, it is unenforceable. Accordingly, the writ petition was allowed and the certificate was directed to be returned. Correctness of the said order is challenged before us by way of this appeal.

5. The settled legal position is that the prospectus for any course is a rule of appointment. This has been settled in several decisions of the Hon'ble Supreme Court and this Court and there can be no quarrel on the said legal proposition. In such circumstances, we hold that the learned writ Court has erred in holding that Clause 45 of the prospectus is not binding on the candidate and it is not an agreement or a contract. What is important to note is that the prospectus is not contract or agreement and it is a Rule of Selection and the candidate, who submits an application pursuant to the prospectus is deemed to have agreed of the conditions contained in the prospectus. Therefore, we have no hesitation to set aside the order and direction issued by the learned writ Court. If we do so, we have to necessarily interfere with the directions issued by the learned Single Bench directing to return the original certificates to the writ petitioner.



6. The petitioner has been clearly informed that she has secured the PG Degree Course in MS Anatomy at Madurai Medical College, Madurai as an Non Service Candidate by all India Quota for the academic year 2016-2017 and if for any reason, the candidate does not wish to pursue the course, then in terms of the prospectus, discontinuation fee has to be paid to the Dean of the respective College.

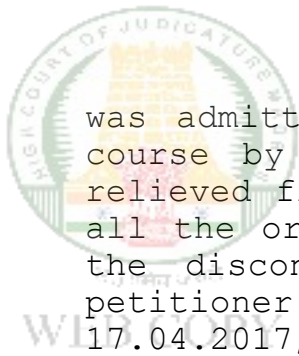
7. It is necessary to note the object behind such condition. We find that the condition is within reasonable remarks. Admittedly, admission, which the petitioner sought for is PG Degree Course in Tamil Nadu Government Medical Colleges / Self Finance Institution. The prospectus is drawn by the Government of India and the selection is done by the selection committee of the Directorate of Medical Education.

8. The candidate, if for any reason, does not wish to pursue the course, to which she was admitted as in the instant case in all India quota seat, the seat allotted to the candidate will remain vacant and no other candidate can be accommodated in the seat. Therefore, a lot of thought process has gone into the aspect, as to why such condition has to be imposed. Further more, it cannot be denied by the petitioner that medical education in the Government Medical Colleges is highly subsidised and asking the petitioner to pay the discontinuation fee is as compensation for the seat, which will go waste. As rightly pointed out by the learned Additional Advocate General that the MD Anatomy course is very rare course and there is a dearth of teaching faculty, who is competent to teach anatomy.

9. In the memorandum of the grounds of appeal it has been mentioned by the respondents / appellants that the Government is spending Rs.1 crore for each candidate per year approximately from the public exchequer and by virtue of the conduct of the petitioner not only deprived the next eligible candidate but the seat has gone waste and the public exchequer has been wasted in the process.

10. The learned counsel for the petitioner submitted that on account of the peculiar family circumstances, the petitioner could not pursue the course and she was compelled to discontinue the course. When it comes to higher education, more particularly in the course relating to medical education, we cannot be guided by sympathies. Because, we have called upon to decide the correctness of the conditions imposed in the prospectus. Further more, we have find that there are other conditions in the prospectus for non service candidates, which stipulates bond to be executed and if non service candidates discontinue the course, they will have to pay the entire amount and the stipend received. Apart from that there is also other conditions, which have been stipulated in the prospectus as to how and what manner bond has to be executed.

11. The writ petitioner was admitted in PG Degree course in MS Anatomy at Madurai Medical College, Madurai as a Non Service Candidate by all India Quota for the academic year 2016-2017. She



was admitted in the course on 09.05.2016 and has to complete the course by May 2019. On 11.04.2019, she requested that she may be relieved from the course and also requested the authority to return all the original certificates. The petitioner was directed to pay the discontinuation fees and the stipend received by the writ petitioner as per the prospectus by the notification, dated 17.04.2017, which was impugned in the writ petition. A sum of Rs.2,64,000/- and Rs.28,100/- has been drawn for the first and second year and has been paid to the petitioner.

12. In such circumstances, we do not agree with the direction issued by the learned Single Bench for return of certificates. Very recently one of us (Hon'ble MR.JUSTICE T.S.SIVAGNANAM) rendered a decision, where all India quota candidate had contended that no bond has been executed and therefore he will not pay the discontinuation fee and should be returned the original certificates. After taking note of the recent decision of the Hon'ble Supreme Court in the case of **Association of Medical Super Speciality Aspirants and Residents and others vs. Union of India and others** in W.P.(MD)No.376 of 2018 dated 19.08.2019 the writ petition was dismissed.

13. The learned counsel for the writ petitioner would submit that the factual situation in the decision of the Hon'ble Supreme Court is quite different, since no bond has been executed by the petitioner. As held by us in the preceding paragraph, the prospectus is the rule of selection. The petitioner having fully aware of the conditions stipulated therein, has to necessarily pay the discontinuation fees. Therefore, there can be no second opinion on this aspect.

14. In view of the above, this writ appeal is allowed and consequently the writ petition is dismissed. In the event the petitioner desires to pursue the course as of now, it will be open to her to approach the appellants with representation, which shall be considered by the appellants in accordance with the prevailing regulations.

15. In the event the petitioner pays the discontinuation fee, the respondent shall return all the original certificates within a period of one week from the date on which the payment is made. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

The Chairman-cum-Director General of Police,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai,
Chennai-02.

+1 CC to Mr.T.LAJAPATHI ROY, Advocate (SR-95072[F]dated
31/10/2019)

+1 CC to SPL GP (SR-95139[F] dated 31/10/2019)

ORDER MADE IN
W.A. (MD) No.371 of 2019
30.10.2019

VB(11.12.2019) 5P 4C