

THE HIGH COURT FOR THE STATE OF TELANGANA
*** THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
+ WRIT PETITION No.32984 OF 2018

% Date:20.03.2019

Between:

% Janagam Advaita, aged 17 years,
Occ:Student, being minor represented by
Her father and natural guardian Janagam Naresh,
R/o.Ajaynagar Colony, Bandalguda, Nagole,
Hyderabad.

... Petitioner

v.

\$ The State of Telangana, Rep. by its
Principal Secretary, Medical & Health Department,
Secretariat, Hyderabad and others.

... Respondents

! For Petitioner : Sri C. Damodar Reddy

^ For Respondent Nos.1 and 2 : Government Pleader for Medical
Health and Family Welfare, T.G.,

For Respondent Nos. 3 and 4 : Sri A. Prabhakar Rao

For Respondent No.5 : Sri Gandra Mohan Rao

< Gist :

> Head Note :

? Cases Referred : Nil

**HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
WRIT PETITION No.32984 OF 2018**

ORDER: *(Per V. Ramasubramanian, J)*

The petitioner, who was granted admission on provisional basis to the first year of the MBBS Course in the 5th respondent College, has come up with the above writ petition complaining that she was not permitted to join and undergo the course by the 5th respondent College.

2. Heard Mr. C. Damodar Reddy, learned counsel for the petitioner, learned Government Pleader appearing for respondent Nos.1 and 2, Mr. A. Prabhakar Rao, learned counsel appearing for the respondent Nos.3 and 4 and Mr. Gandra Mohan Rao, learned counsel appearing for the 5th respondent.

3. The case of the petitioner is that pursuant to an application submitted by her online on 27.06.2018, she was invited by the 3rd respondent for counseling on 28.08.2018 and that she was issued with a provisional order of admission to the 1st year MBBS Course in the 5th respondent College under the NRI quota. The petitioner claims that she paid the University fee of Rs.70,000/- on the date of counseling and that she also took a Demand Draft for a sum of Rs.23,10,000/- on 30.08.2018 in favour of the 5th respondent towards tuition fee and approached the 5th respondent before 4.00 p.m., on 30.08.2018 and submitted relevant documents along with the demand draft. According to the petitioner, the Principal and the Management of the

5th respondent College made the petitioner wait till evening and later directed the petitioner to approach the Chairman of the 5th respondent College. It is the further case of the petitioner that in the early hours on 31.08.2018, she again approached the Principal of the 5th respondent and that the Principal demanded the petitioner to furnish Bank guarantee for an amount of Rs.23,10,000/-. According to the petitioner, after driving her again to the Chairman of the 5th respondent College, she was informed that the seat was sold out to some other candidate. Therefore, the petitioner has come up with the above writ petition directing the respondent to honour the provisional admission granted to her.

4. The Principal of the 5th respondent College has filed a counter affidavit contending *inter alia* that the father of the petitioner approached the staff of the College in the afternoon of 30.08.2018 and requested for some concession in the tuition fee; that the petitioner's father was informed that the fee for candidates admitted under the 'C' category is fixed by the Government; that no concessions can be given in the matter of tuition fee and that thereafter neither the petitioner nor her father approached the 5th respondent College and that all the other averments contained in the affidavit in support of the writ petition are cooked up.

5. At the outset, it should be pointed out that the matter relates to admission to the 1st year of the MBBS Course for the academic year 2018-19. The last date for admission, as fixed by the Supreme Court was 31.08.2018.

6. There is no dispute about the fact that the petitioner was granted provisional admission under 'C' category, by virtue of an allotment letter dated 28.08.2018. The allotment letter clearly stipulates that the candidate should report to the Principal in person before 4.00 p.m. on 30.08.2018 along with the provisional admission order, the requisite bond and the demand draft towards tuition fees.

7. The petitioner claims to have reported before the Principal of the 5th respondent College before 4.00 p.m. on 30.08.2018 along with the provisional admission order, the bond and the requisite demand draft towards tuition fee. To prove that she did infact report before the Principal before 4.00 p.m. on 30.08.2018, the petitioner relies upon the Xerox copy of the demand draft issued by the State Bank of India on 30.08.2018 for a sum of Rs.23,10,000/- in favour of the 5th respondent College. In fact, the demand draft was issued by the Nakkagutta Branch, Hanamkonda in Warangal District and the 5th respondent College is in Karimnagar at a distance of about 70 kms. Therefore, it can be safely presumed that it was possible for the petitioner to have gone to the College with the demand draft, before 4.00 p.m.

8. Mr. C. Damodar Reddy, learned counsel for the petitioner contended that if the CCTV footage available in the College or the Register of visitors maintained in the College is summoned, the same would establish the presence of the petitioner in the College on 30.08.2018 before 4.00 p.m. But we do not think that summoning of these documents is necessary to show the actual presence of the

petitioner in the 5th respondent College on 30.08.2018. This is in view of one important admission made by the Principal of the 5th respondent College in paragraph Nos.2 and 4 of their counter affidavit. In paragraph No.2 of the counter affidavit, the Principal of the 5th respondent College has stated as follows:

“..... It appears the petitioner’s father approached the office of the college in the afternoon of 30.08.2018 and requested for concession in the Tuition Fee for the entire course. The office staff intimated to the father of the petitioner that the fee payable by the candidates under C-Category (NRI) is fixed by the Government, as such no concession can be given by the College. It is relevant to point out that no DD was produced on 30.08.2018 as stated by the petitioner.”

9. Again in paragraph No.4 of the counter affidavit, the Principal of the 5th respondent College has stated as follows:

“.... As stated supra, the father of the petitioner approached the college on 30.08.2018 and requested for concession in the tuition fee, which was refused.”

10. Therefore, (1) the fact that the petitioner had taken a demand draft for Rs.23,10,000/- in favour of the 5th respondent College stands established by the demand draft itself, and (2) the fact that the petitioner’s father was in the college in the afternoon of 30.08.2018 is established even by the counter affidavit of the 5th respondent college. Therefore, it is possible to draw an inference that the petitioner had gone to the 5th respondent College along with the documents and the demand draft, before the appointed time on the appointed date.

11. But, the 5th respondent has categorically denied the averment that a demand draft was produced before the Principal. Both in paragraph No.2 and in paragraph No.4 of the counter, the 5th respondent has contended that no demand draft was produced. It is the contention of the 5th respondent that the petitioner's father bargained for a reduction in the fee and that the demand draft was not offered. Therefore, the subject matter of the controversy actually lies in the realm of disputed questions of fact. If what is before us is a civil case, we could have taken evidence and drawn inferences and presumptions as permitted by the provisions of the Indian Evidence Act. But in a writ petition under Article 226 of the Constitution of India, it is not possible to record a categorical finding of fact, merely on the basis of affidavits and counter affidavits.

12. In fact, at the time when the writ petition came up for admission on 17.09.2018, we passed an interim order directing the 5th respondent to permit the petitioner to attend classes, since we were *prima facie* of the opinion that the petitioner could have complied with the requirements mentioned in the provisional admission order. But, the 5th respondent has taken a stand in the counter affidavit that on 31.08.2018 the seat was allotted to some other candidate, in view of the failure of the petitioner to join on 30.08.2018. In such circumstances, we cannot today grant the relief of admission of the petitioner to the Course. As an alternative, it is possible for this Court to consider the grant of compensation, if there was a mistake on the part of the 5th respondent College.

13. To hold the 5th respondent guilty of preventing the petitioner from joining the course, we need to go into the allegations and counter allegations and record a finding of fact. Though the petitioner has successfully established that she was ready with the necessary documents including the demand draft and that her father did in fact reach the College in time, the question whether they offered documents and demand draft has become a subject matter of serious dispute. This cannot be resolved unless the truth is found out through oral and documentary evidence.

14. Hence, leaving it open to the petitioner, if she so chooses, to go to the civil Court seeking compensation, the writ petition is dismissed.

The miscellaneous petitions, if any, pending shall stand closed.
No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI

March 20, 2019
KTL

