

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7582 of 2020

and

WMP.No.8915 of 2020

Dr.A.Dhanasekaran,
S/o.Alagappan,
Assistant Surgeon,
Government Primary Health Centre,
Siruvalur,
Erode District.

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai 600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai 600 010.

...Respondents

Prayer:- The Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents to permit the petitioner to participate in the selection for admission to Post Graduate Medical Courses for the academic session 2020-21 based on NEET-PG-2020 marks secured by the petitioner, without reference to the conditions stated in the Prospectus for admission to P.G. Medical course for 2018-19 academic session issued by the 3rd respondent, by considering the representation submitted by the petitioner dated 26.04.2020 forthwith.

For Petitioner: Mr.G.Sankaran

For R 1 & R2 : Mr.Vijay Narayan, Advocate General,
assisted by Mr.E.Manoharan,
Special Government Pleader

For R 3 : Mr.Abdul Saleem,
learned Standing Counsel

ORDER

This Writ Petition has been filed for the issuance of a writ of mandamus directing the respondents to permit the petitioner to participate in the selection for admission in the PG Medical Course for the academic year 2020-2021 based on the representation made by the petitioner on 26.04.2020.

2.The case of the petitioner is that he completed MBBS degree in the year 2008 and thereafter he joined as an Assistant Surgeon in the year 2011. The petitioner applied for PG Medical Course in the academic year 2018-2019 and the petitioner was also allotted a seat in MD Forensic Medicine at Coimbatore Government College. This fact is substantiated by the letter of allotment issued by the Selection Committee on 22.05.2018. The petitioner took a decision to surrender the seat and not to continue with the Post Graduation Course and therefore a representation was made to the Dean of the Coimbatore Medical College on 05.09.2018 and the said representation was accepted. The petitioner also paid the discontinuation fee of Rs.15 lakhs as per Clause 27 of the prospectus.

3.The petitioner thereafter again took the NEET Examination in the year 2020 and wanted to participate in the admission to the Post Graduate Course in the academic year 2020-2021. There was a stumbling block for the petitioner to participate in the selection since Clause 6 of the prospectus specifically stipulates at where a candidate discontinues the course on any ground after the cut-off date, he/she will not be eligible to apply for the course for two subsequent academic years. In view of this stipulation made under the prospectus, the petitioner who had discontinued after the cut-off date during academic year 2018-2019, cannot participate in the admission to the Post Graduate Course for two subsequent academic years.

4.In view of the above predicament, the petitioner made a representation to the respondents on 27.04.2020, to permit the

petitioner to participate in the selection for admission in the PG Medical Course during the counselling. This representation was not considered which made the petitioner approach this Court seeking for appropriate directions.

5.Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that even though the petitioner got the admission during the academic year 2018-2019, the petitioner was relieved from the Government service only on 30.05.2018 and the petitioner joined the course on 31.05.2018. The learned counsel for the petitioner submitted that as per the notification, the last date for the withdrawal or discontinuation was fixed on 21.05.2018 and the petitioner did not get sufficient time to take a decision for withdrawal from the course since he was relieved from the Government service only on 30.05.2018. It was further submitted that if the petitioner had been allowed to join the course before 25th of May by relieving him on time, it would have enabled the petitioner to take a decision before the cut-off date. This peculiar situation faced by the petitioner due to the delay in relieving him from the Government service, should not be put against the petitioner and the petitioner must be allowed to participate in the selection for the academic year 2020-2021. The learned counsel for the petitioner further submitted that the petitioner has scored 547 marks in the NEET examination and he has very good chances of getting the seat in the PG Course.

6.Per contra, the learned Advocate General appearing on behalf of respondents 1 and 2 submitted that the petitioner is bound by the conditions imposed in the prospectus. The learned Advocate General submitted that the terms and conditions stipulated in the prospectus will have the force of law as per the judgments of the Hon'ble Supreme Court and no one can be allowed to wriggle out of the conditions stipulated in the prospectus. The learned Advocate General by placing specific reliance upon Clause 6(a) and 6(b) of the prospectus submitted that once a candidate discontinues the course on any ground after the cut-off date, he will not be eligible to apply for the course for two subsequent academic years.

7.The learned Advocate General further brought to the notice of this Court the fact that the petitioner had also paid the discontinuation fees as per Clause 27 of the prospectus and had taken a conscious decision to discontinue the course and therefore, the petitioner is bound by the condition stipulated in the prospectus. It was submitted that no useful purpose will be served in directing the respondents to consider the

representation made by the petitioner since the petitioner is not entitled to participate in the selection for admission to the Post Graduate Medical Course during the academic year 2020-2021. Therefore, the learned Advocate General sought for dismissal of the writ petition.

8.Mr.Abdul Saleem, learned Standing Counsel appearing on behalf of the 3rd respondent adopted the submissions made by the learned Advocate General.

9.It is an admitted fact that the petitioner participated in the selection for PG Course during the academic year 2018-2019 and he was also allotted a seat at Coimbatore Government Medical College. The petitioner also joined the course on 31.05.2018. Subsequently, the petitioner decided to discontinue the course and made a representation to the Dean of the Coimbatore Medical College on 05.09.2018 and surrendered his seat. The representation made by the petitioner was accepted and the petitioner also paid the discontinuation fee of Rs.15 lakhs as per Clause 27 of the prospectus.

10.At this juncture, it would be beneficial to extract Clause 6 (a) and Clause 6(b) of the prospectus hereunder:

"6(a). Candidates who join a Post Graduate Degree/Diploma courses in any branch and discontinue the course on any grounds after the cut-off date fixed by the Medical Council of India are not eligible to apply for two subsequent academic years.

(b). The candidates who take an allotment for PG Decree/Diploma courses in any branch in the final phase counseling and does not join the course are not eligible to apply for two subsequent academic years".

11.The above Clauses makes it very clear that the candidate who discontinue their course on any grounds after the cut-off date will not be eligible to apply for two subsequent academic years. In the present case, the cut-off date was fixed as 25.05.2018 and the petitioner had discontinued the course only in September 2018. The petitioner took a conscious decision to discontinue the course and that is the reason why even he was prepared to pay the discontinuation fee of Rs.15 lakhs as per Clause 27 of the prospectus.

12.The law on this issue is no longer res integra and it is now settled that where a candidate has applied for a course as per the instructions contained in a prospectus, he is bound by the same and he will not be allowed to challenge the same in future. Useful reference can be made to the judgments in Dr.N.Sivakumar .vs. Secretary, Selection Committee, Directorate of Medical Education, Chennai 600 010 and Another reported in [2010 4 MLJ 656] and in V.Sumathiben Meganlal Manani (dead) by L.Rs. .vs. Uttamchand Kashiprasad Shah and Another reported in [2011 7 MLJ 1433].

13.The prospectus is in the nature of an agreement which provides for conditions and the same binds both the parties and none of the parties can wriggle out of the terms and conditions of the prospectus at a future date. In the present case, the petitioner has no grievance on the Clauses that stares against him since the petitioner has not chosen to even challenge those Clauses. Of course, it is again a settled law that a candidate who accepts the terms and conditions of prospectus and applies under the same, cannot not be allowed to turn around to challenge the prospectus at a future date.

14.In the considered view of this Court, the petitioner having taken a conscious decision to discontinue the PG Course during the academic year 2018-2019, will have to necessarily wait for two subsequent academic years to again participate in the selection for Post Graduation course. The petitioner cannot be allowed to disregard this mandatory stipulation and be permitted to participate in the academic year 2020-2021.

15.In view of the above discussion, this Court does not find any ground to grant the relief sought for by the petitioner and accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

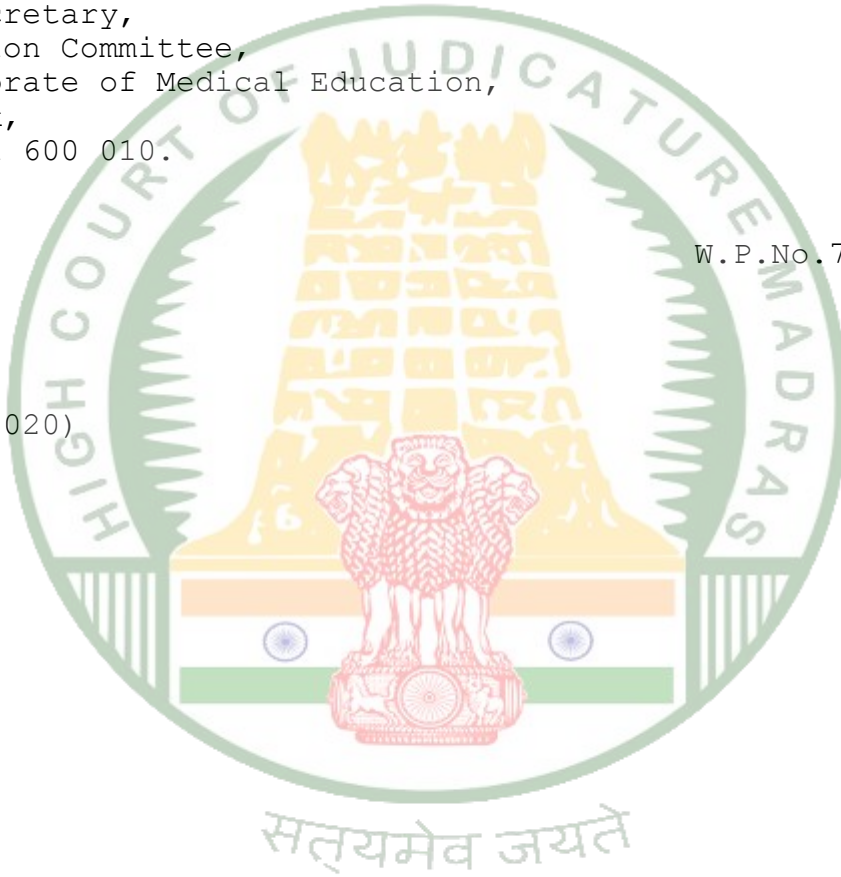
KP

To

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai 600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai 600 010.

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SKS (CO)
SP(08/10/2020)



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