

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7586 of 2020
and
WMP Nos.8917 to 8920 of 2020

Swetha Shri Selvakumar,
111, 2nd Avenue, Defence Colony,
Ekkatuthangal,
Chennai - 600032.

..Petitioner

.Vs.

- 1.Union of India,
Rep. by its Secretary,
Ministry of Human Resource Development,
"Shastri Bhawan", New Delhi - 110001.
2. Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi - 110011.
- 3.Directorate General of Health Services,
Ministry of Health & Family Welfare,
Government of India,
Rep. by its Additional Director General of Medical Education,
Nirman Bhawan, Central Secretariat,
New Delhi 110001.
- 4.Medical Council of India,
MCI Building, Pocket-14, Sector-8,
Dwarka Phase- 1,
New Delhi - 110 077.
- 5.Chettinad Hospital and Research Institute,
Rep. by its Registrar, 'Chettinad Health City',
SH 49A, Kelambakkam,
Tamil Nadu- 603 101.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 3rd and 5th respondents to confirm the admission of the petitioner in the MD Dermatology Course in the 5th Respondent college, pursuant to the NEET PG counseling results dated 10.04.2020 and further, direct the Respondents to give effect to the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr.Sathish Parasaran,
Senior Counsel
for Mr.C.P.Vishnu Mohan

For R 1 : Mr.G.Karthikeyan
Addl. Solicitor General

For R 2 & R 3 : Mr.Dinakaran

For R 4 : Mr.V.P.Raman

For R 5 : Mr.Pandarinath Dakshinamurthy

O R D E R

This writ petition has been filed for the issue of a writ of mandamus directing the 3rd and 5th respondents to confirm the admission of the petitioner in the "MD Dermatology" course in the 5th respondent College and to give effect to the counselling results that was declared on 10.04.2020.

2.The brief facts of the case was succinctly captured by this Court while passing the interim orders on 06.05.2020 and it will suffice to extract the same to hereunder:

C O M M O N O R D E R

1) W.M.P.Nos.8919 of 2020:

(i) Heard Mr.Vishnu Mohan, learned counsel for the writ petitioner through Mobile Phone.

(ii) It is contended that the petitioner had appeared for the counseling and upon declaration of results of the first round of counseling on 10.04.2020, the petitioner was allotted with a seat in "MD Dermatology" Course in the 5th respondent College / Chettinad Hospital and Research Institute at Kelambakkam under the 'NRI' Quota. The petitioner received her allotment letter in this regard for admission into the P.G. Course.

(iii) The learned counsel for the petitioner made a submission that the last date for payment of fee was fixed as 24.04.2020. The petitioner had already paid the part-fee amount on 17.04.2020 and the further fee amount on 24.04.2020. The fee deposited by the petitioner on 24.04.2020 in the Bank, reached the 5th respondent College on 27.04.2020. In view of the fact that 25.04.2020 and 26.04.2020 are Saturday and Sunday, the money reached the 5th respondent College on 27.04.2020 and further, on account of the COVID-19 pandemic situation, the 3rd respondent also issued a Circular on 13.04.2020 to take a lenient view in this regard. In spite of all these facts, the respondents 3 and 5 had not permitted the petitioner to join the P.G. Course and declared the allotted seat in favour of the petitioner as vacant, enabling the wait list candidates to get admission.

(iv) The learned counsel for the petitioner reiterated that the petitioner had already submitted all the documents and on account of certain difficulties during the Lockdown period, such communication gap aroused and therefore, the actions of the respondents in declaring the allotted seat as vacant, is arbitrary and in violation of the Circular issued by the 3rd respondent.

(v) The petitioner was allotted with a seat for admission to the P.G. Course of Dermatology, pursuant to the "National Eligibility and Entrance Test" (NEET) Examination. Under these circumstances, the respondents 3 and 5 are directed to reserve the seat already allotted in favour of the petitioner in the "MD Dermatology" Course in the 5th respondent College until further orders.

3. After the notice was served on the respondents, they have entered appearance and separate counter affidavits have been filed by the 2nd and 3rd respondents and also the 5th respondent. It will be relevant to extract the portions of the counter affidavit filed by the 2nd and 3rd respondents hereunder:

6. I submit that, it is pertinent to mention herewith that, the role of the answering respondent No.2 & 3 is limited to allotment of seat and once the allotment is made, the onus of confirmation of allotted seat is at the college level after fulfilling the admission formalities including payment of fee by the candidate. Hence, the allotted college is in a better position to confirm the seat of the petitioner/Candidate and to defend the claims of the Petitioner/Candidate.

7. I submit that, furthermore, keeping in view the arduous situation / lockdown prevailing in the Country due to the COVID-19 outbreak, the answering respondent had issued an advisory No.U-12021/44/2019/18-MEC dated 13.04.2020 stating that, "if there is deficiency of one or two non-essential documents or payment of complete fees, the college may take an undertaking from the Candidates that he/she will be depositing the remaining fee or documents when the Candidate(s) will be physically reporting at the college" (Annexure-II).

4.It will also be relevant to extract the portions of the counter affidavit filed by the 5th respondent hereunder:

13. It is submitted that the averments and allegations made in paras 13 to 23 with regard to 5th Respondent Institution are all denied as false, incorrect and misleading. The petitioner is pt to strict proof of the same. It is submitted that as stipulated by the Govt. norms, the 5th respondent has acted fairly in handling the petitioner's issue whereby it has refunded the initial fees amount of US\$8000 to the same source account from where the amount was credited to this respondent. The 2nd transaction fees amount of US\$ 1,50,000 which was received on 27.04.2020 in the bank account of the 5th respondent was also refunded to the same source account by the 5th Respondent Institution.

14. It is further submitted in the interest of justice that the 5th Respondent has acted in all fair manner as it is mandatory for the 5th respondent to take the admission letter of the petitioner from the Portal within the last date as prescribed as norms by the 3rd Respondent DGHS herein. If the admission letter was not generated from the Portal, then the seat will have to be automatically forfeited and surrendered to 3rd Respondent DGHS herein. In this regard, the 5th Respondent has no say to the facts of the case as the delay and non-timely performance is totally attributable to the petitioner alone and the 5th respondent shall no way be held liable or responsible for the same.

15. I respectfully submit that the Petitioner has requested the 5th Respondent

vide letter dated 20.05.2020 seeking for a No Objection Certificate (NOC) in admitting the petitioner upon approval and recommendation from the 3rd Respondent DGHS / concerned authorities on payment of the required tuition fees. The 5th Respondent herein has also issued No Objection Certificate (NOC) to the petitioner on 22.05.2020.

5. Heard Mr. Sathish Parasaran, learned Senior Counsel appearing on behalf of the petitioner, Mr. Karthikeyan, learned Additional Solicitor General appearing on behalf of the respondents 1 to 3, Mr. V. P. Raman, learned counsel appearing on behalf of the 4th respondent-Medical Council of India and also Mr. Pandarinath Dakshinamurthy, learned counsel appearing for the 5th respondent.

6. There is no serious dispute with regard to the facts of the case and therefore this Court wants to directly go into the issue that is involved in the present case. It is not in dispute that the petitioner took part in the "National Eligibility and Entrance Test" (NEET) PG exam held on 05.01.2020 and cleared the same and was allotted during counselling a seat in "MD Dermatology" Course in the 5th respondent College under the NRI quota. It is also not in dispute that the petitioner completed all the formalities in terms of documentation on 13.04.2020.

7. It is seen from records that as per the circular published by the 5th respondent College, the total fee payable by the petitioner is USD 2,25,000/-. This amount is payable in two trenches namely; USD 1,68,750/- was to be remitted at the time of admission and the remaining amount of USD 56,250/- was to be remitted at the time when the course commences. During the interregnum, Corona virus COVID 19 struck the entire world and the operation of the bank account became a herculean task. This was recognised by the 3rd respondent and a circular was also issued on 13.04.2020. by the 3rd respondent whereby advisory was given to all the Medical Colleges to sympathetically deal with the issues faced by the candidates in view of the prevailing situation and wherever there are deficiencies or delay in payment of the entire fees, the Colleges were advised to get an undertaking from the candidates and complete the admission formalities. The issuance of this circular and the directions given to the Medical Colleges has been admitted in the counter affidavit filed by the 2nd and 3rd respondents.

8. In the present case, it is clear from the counter affidavit filed by the 5th respondent that the 5th respondent had received the initial fees of USD 8,000/- and the subsequent fees

of USD 1,50,000/-. The dispute arose due to the delay that was caused while receiving the 2nd portion of the payment made by the petitioner. The 5th respondent has stated in the counter affidavit that since the payment was received beyond the time limit, the 5th respondent had no other go except to surrender the seat to the 3rd respondent. The 5th respondent has also further stated that the amount received from the petitioner was also refunded.

9.The 3rd respondent has taken a very definite stand in the counter affidavit acknowledging the fact that the petitioner was allotted "MD Dermatology" Course in the 5th respondent College. The 3rd respondent has also taken a stand that advisories were given to the Medical Colleges by letter dated 13.04.2020, to the effect that if there is a delay in the payment of the complete fees, the Colleges were directed to take an undertaking from the candidate to the effect that he/she will deposit the remaining fees while reporting to the College when the course begins. The 3rd respondent has also specifically stated in the counter affidavit that it is for the 5th respondent College to take a call with regard to the admission formalities of the petitioner. It is therefore clear from the counter affidavit that the 3rd respondent wants the 5th respondent to act in accordance with the advisory issued by the 3rd respondent.

10.The 5th respondent at paragraph 15 of the counter affidavit has taken a stand that if the 3rd respondent approves and recommends the petitioner for admission, the 5th respondent has no objection to admit the petitioner to the said course subject to the payment of the required fees.

11.The Medical Council of India is only a formal party in the present writ petition and they will not have anything more to say beyond the stand taken by the 3rd respondent.

12.The right of the petitioner was safeguarded by this Court while passing the interim orders on 06.05.2020 and the 3rd and 5th respondents were directed to reserve the seat already allotted in favour of the petitioner.

13.In view of the above, this writ petition is allowed with the following directions:

[a] The 5th respondent is directed to proceed further with the process of admission of the petitioner in the "MD Dermatology" Course.

[b] The petitioner is directed to pay the entire fees fixed by the 5th respondent on or before 08.07.2020.

[c] The 5th respondent after receiving the course fees from the petitioner shall permit the petitioner to undergo the "MD Dermatology" Course in the 5th respondent College.

No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

20

To

- 1.The Secretary, Union of India,
Ministry of Human Resource Development,
"Shastri Bhawan", New Delhi - 110001.
- 2.The Secretary, Union of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi - 110011.
- 3.Additional Director General of Medical Education,
Directorate General of Health Services,
Ministry of Health & Family Welfare,
Government of India, Nirman Bhawan,
Central Secretariat,
New Delhi 110001.
4. Medical Council of India, MCI Building,
Pocket-14, Sector-8, Dwarka Phase- 1,
New Delhi - 110 077.
5. The Registrar, Chettinad Hospital and Research Institute,
'Chettinad Health City', SH 49A,
Kelambakkam,
Tamil Nadu- 603 101.

WEB COPY

W.P.No.7586 of 2020

PVS (CO)
SP(04/08/2020)