

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 05.03.2020
Pronouncing orders on : 11.03.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.15095 of 2019
and W.M.P.Nos.15075 & 27203 of 2019

Sri Venkateshwaraa Medical College Hospital
And Research Centre,
Represented by its Chairman B. Ramachandran,
No.13-A, Pondy-Villupuram Main Road,
Ariyur, Puducherry - 605 102

...Petitioner

vs.

1. Medical Council of India,
Represented by Secretary,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 007.
2. Government of Puducherry,
Represented by its Secretary,
Health Department,
Chief Secretariat,
Puducherry.
3. Centralized Admission Committee,
Rep. by Coordinator (Admission)
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.
4. The Pondicherry University,
Represented by its Registrar,
RV Nagar, Kalapet,
Puducherry - 605 014.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd and 3rd respondent to approve the admission of candidates (i) Bollini Damu V., (ii) Mahesh M.R.S., (iii) Sabari Ganesh P. and (iv) Shri Preethi M in the MBBS course offered by the Petitioner Institution during the Academic Year 2018-19.

For Petitioner : M/s.Abishek Jenasenan
For Respondents : Mr.V.P.Raman for R1
Mr.Stalin Abhimanyu
Government Advocate
for R2 & R3

: Mrs.A.V.Bharathi for R4

O R D E R

This writ petition has been filed for issuance of a writ of mandamus directing the 2nd and 3rd respondents to approve the admission of 4 candidates who were offered MBBS course in the petitioner Institution during the academic year 2018-19.

2.The case of the petitioner is that 150 seats were allotted to the petitioner Institution in the MBBS course and out of the same, 55 seats are allotted to Government quota and 95 seats are treated as Management quota. The counselling is conducted by the CENTAC, the 3rd respondent herein. The counselling was conducted during the year 2018-19 which consisted of two rounds of regular counselling and one mop-up round of counselling, to fill up both the Government quota and the Management quota. Totally four seats remained vacant in the petitioner Institution after the counselling conducted by the CENTAC. The same was informed and the 3rd respondent sent a list of 40 candidates to fill up the four vacancies. This list was sent by the 3rd respondent on 27.08.2018. The last date for filling up of the seats was 30.08.2018. According to the petitioner, none of the 40 candidates expressed any interest and this was informed by the petitioner to the CENTAC on 30.08.2018. Since there was no response from CENTAC, the petitioner has proceeded to admit four students on their own. The 4th respondent is the affiliating College for the petitioner. The grievance of the petitioner is that the 4th respondent did not approve the candidature of the four students admitted by the petitioner, since, they were not admitted through CENTAC. As a result of the same, they were also not permitted for the exam that was conducted in June 2019. Therefore, the present writ petition has been filed before this Court seeking for appropriate directions.

3.Each of the respondent has filed a counter affidavit in this case. A common stand that has been taken by the respondents is that the petitioner had no authority to fill up the four vacant seats and therefore, the same cannot be approved. Therefore, according to the respondents, the admission of four candidates is entirely illegal and was done for extraneous consideration. The categorical stand that has been taken by the respondents is that the counselling for admission can be

conducted only by CENTAC and only those candidates recommended by CENTAC can be admitted in the petitioner College.

4.The 2nd and 3rd respondents in their counter affidavit have stated at Paragraph 12 as follows:

12. I respectfully submit that Sri Venkateswara Medical College Hospital & Research Centre is having the practice of willful violation of the regulations of Medical Council of India and directions of Hon'ble Supreme Court of India. The college had admitted 38 candidates to MBBS course for academic year 2017-18 of its own method and the Medical India vide letter No.MCI-(MCI-UG)/2017-2018/155472, dated 21.11.2017 had discharged the 38 candidates who have illegally admitted by the College. These 38 illegally admitted candidates had filed a W.P.No. 12506 of 2018 before this Hon'ble Court praying for a direction to quash the order of discharge issued by the Medical Council of India vide letter 21.11.2017 and the case is under adjudication. The College has also admitted 5 students in the current academic year 2019-2020 against the stray vacancy arised after mop-up counseling ignoring the merit list of 1:10 furnished by the CENTAC and admitted students against the regulations of the Medical Council of India, directions of the Hon'ble Supreme Court of India and instructions of the Government of India.

5.The learned counsel for the petitioner submitted that if the petitioner Institution had not admitted four meritorious students, the seats would have gone waste and no one will be benefited out of the same. The learned counsel submitted that the students have been allowed to write the examination by virtue of the interim orders passed by this Court and their results have been withheld. Therefore, the learned counsel submitted that in the interest of the students, respondents can be directed to approve the candidature of the four students.

6.The learned counsel appearing on behalf of the respective respondents vehemently opposed the claim made by the petitioner. It was submitted that the petitioner is trying to legalize a completely illegal action by filing this writ petition. It was further submitted that the petitioner Institution regularly indulges in admitting students without authority and the said attitude of the Institution should not be encouraged. It was submitted that the petitioner Institution is now trying to use the students as a shield to cover up its illegal action.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.There is no controversy on the facts of the present case and therefore, this Court can directly go into the issue that has been raised in the writ petition. The centralized and single window common counselling was conducted by CENTAC, which is the 3rd respondent in this writ petition. In the 1st and 2nd rounds of general counselling, 146 seats were filled up through CENTAC. The remaining four seats have been filled up by the petitioner unilaterally without permission of any of the authorities. This was not approved by the respondents and therefore, the petitioner Institution has filed the present writ petition.

9.Clause 5(7) of the Regulations of the Medical Council of India provides as follows:

No authority/institution shall admit any candidate to the MBBS course in contravention of the criteria/procedure as laid down by these Regulations and/or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention/violation of aforesaid shall be discharged by the Council forthwith. The authority/institution which grants admission to any students in contravention/violation of the Regulations and/or the judgments passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.

10.The Hon'ble Supreme Court of India in the order dated 09.05.2017 in Writ Petition(C) No.267 of 2017 (Dar-Us- Slam Educational Trust & Ors. Vs. Medical Council of India & Ors.) had held that "Common counseling for State Quota in Government as well as Private Medical Colleges including colleges/institutions run by religious and linguistic minorities affiliated to State Universities shall be conducted by the State Government or the authority designated by the State Government." The Apex Court further directed in the above said order that "in order to ascertain the number of seats that still remain vacant after the counseling the State Government or the authority designated by the State Government shall conduct manual counseling for allotment of students. After the completion of counseling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to 10 times the number

of vacant seats to the medical colleges so that in case of any stray vacancy arising in any college, the said seat may be filled up from the said list".

11.It is an admitted case of the petitioner Institution that the four candidates have been admitted unilaterally without any authority. It is further seen that the petitioner Institution has a pattern of admitting candidates for MBBS course in violation of the Regulations of the Medical Council of India and directions of the Hon'ble Supreme Court. The same is clear from Paragraph 12 of the counter affidavit filed by the 2nd and 3rd respondents and which has been extracted supra.

12.Ultimately in this case, four students have got into the trap and their admission in the petitioner Institution is per se illegal. The Hon'ble Supreme Court has categorically held in all cases concerning medical seats that no misplaced sympathy can be shown by the Court in exercise of its power under Article 226 of the Constitution of India and illegal selection cannot be sanctified by this Court. The Regulations of the Medical Council of India makes it very clear that no Institution should admit any candidate to the MBBS course in contravention of the procedure laid down by the Regulations and in violation of the judgment of the Hon'ble Supreme Court. If any Institution violates, the same will be also be subjected to serious action.

13.In the considered view of this Court, the petitioner Institution ought not to have filled up the four vacant seats since it had no authority to do so. Due to the illegal action of the petitioner Institution, four poor students are going to loose their chances of continuing with the course in the petitioner Institution.

14.In view of the above discussion, this Court is not inclined to grant the relief sought for by the petitioner Institution and this Court strongly feels that the petitioner Institution is using the four students as a shield to get over their illegal action. This Court cannot exercise its jurisdiction under Article 226 of the Constitution of India to sanctify an illegal act and such directions cannot be issued on misplaced sympathies.

15.This Court does not find any merits in the present writ petition and accordingly, the same is dismissed. The 1st respondent is directed to immediately initiate action against the petitioner Institution for having violated Clause 5(7) of the Regulations. The petitioner Institution is further directed to refund the entire amount received from the four students at the time of their admission. The petitioner Institution shall further pay a compensation of rupees One Lakh to each of the

four students for having put them under mental agony and hardship. The official respondents are also requested to see if those four students can be accommodated in any other Institution during the selection in the coming academic year based on their merits. Consequently, connected miscellaneous petitions are closed. No Costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

ssr
To

1. The Secretary,
Medical Council of India,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 007.
2. The Secretary, Government of Puducherry,
Health Department,
Chief Secretariat,
Puducherry.
3. The Coordinator (Admission)
Centralized Admission Committee,
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.
4. The Registrar,
Pondicherry University,
RV Nagar, Kalapet,
Puducherry - 605 014.

+2 CCS to M/s. Abishek Jenasenar, Advocate sr 21503.

+1 CC to Mr.A.V. Bharathi, Advocate sr 21481

+1 CC to Mr.V.P.Raman, Advocate sr 21510

W.P.No.15095 of 2019
and W.M.P.Nos.15075 & 27203 of 2019

NRL (CO)
SP(21/05/2020)