

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.2.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.3234 of 2021
and
W.M.P.No.3671 of 2021

Sri Muthukumaran Medical College
Hospital & Research Institute,
Chikkarayapuram
Near Mangadu, Chennai 600 069.
Rep. By Chairperson Tmt.Gomathi Ammal

...Petitioner

vs.

1. The Registrar,
The Tamil Nadu Dr.MGR Medical University,
No.169, Anna Salai,
Guindy, Chennai 600 032.

2. The Secretary,
Selection Committee,
Directorate of Medical Education,
Chennai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 1st and 2nd respondents to issue hall tickets for the above said 9 students admitted in the petitioner college Sri Muthukumaran Medical Hospital and Research Institute to write the Examination to be held on 15.2.2021 onwards.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.M.Vishnu Venkatesh

For R1 : Mr.D.Ravichandran, Standing Counsel
For R2 : Mr.Abdul Saleem

ORDER

The writ petition has been filed seeking a mandamus directing the 1st and 2nd respondents to issue hall tickets for 9 students, who were not approved but, admitted in the petitioner college Sri Muthukumaran Medical Hospital and Research Institute to write the Examination to be held on 15.2.2021 onwards.

2. The case of the petitioner is that the petitioner Medical College, running under a public Charitable Trust called Sri Muthukumaran Educational Trust and having been approved by the Medical Council of India and affiliated to the first respondent, Tamil Nadu Dr.MGR Medical University, Chennai, has started functioning from the Academic Year 2010-2011 with an annual intake of 150 students. On completion of 5 years viz., after February 2015, it was recognized by a Notification of Government of India, Ministry of Health and Family Welfare vide notification dated 3rd January 2017 for a period of 5 years and to be renewed thereafter.

3. The admission of the students to the MBBS course in the Petitioner college is being regulated by the second respondent, Selection Committee, Directorate of Medical Education, Chennai. That being the case, in respect of Academic year 2019-2020, the name of the petitioner College was not found in the list of Medical Colleges without any reason and hence, the petitioner had filed a writ petition in W.P.No.23726 of 2019 and based on the order dated 19.8.2019 passed in that writ petition, the name of the petitioner college was included in the list and due to the delay in getting the order copy in that writ petition, an exclusive counselling had to be conducted on 27.8.2019 and 28.8.2019 as the final counselling for allotment of seats by the Secretary, Selection Committee was over on 8.8.2019.

4. The second respondent selected the students from the NEET merit based and directed the students to report before the petitioner college before 5.00 pm on 29.8.2019, whereas, out of the students allotted by the second respondent, seven students did not report on 29.8.2019 and therefore, those vacancies were notified on the petitioner college's website and the eligible students were advised to report to the college on 30.8.2019 and among the students,

who appeared on that date, the vacancies were filled according to NEET merit list in accordance with Government Notification. The petitioner had also sent the list of admitted students to the second respondent by email on 30.8.2019 at 5.16 pm, however, the second respondent vide letter dated 3.9.2019 directed the petitioner college to admit 2 students viz., Manikandan and V.C.Praveen and informed that they would send the list of allotted students, but, the petitioner did not receive any such list thereafter till the last date for completion of admission viz., 31.8.2019. Ultimately, as on 29.8.2019, 4 seats in Government Quota out of 75 seats and 5 seats in Management Quota out of 75 seats remain vacant and hence, the petitioner college had notified such vacancies in its website and selected nine students from the NEET merit list on 30.8.2019 and filled up those vacancies.

5. This being the position, the grievance of the petitioner is that nearly after a year, when the students of the petitioner college had to undergo the first year examination, which is scheduled to begin by 15.2.2021, the said nine students alone were not issued with Hall tickets and despite the representation made by the petitioner to the second respondent on 1.2.2021, no reply nor any action is taken on the part of the second respondent and hence, the petitioner has come up with the present writ petition.

6. Mr.D.Ravichandran, learned Standing Counsel appearing for Dr.MGR Medical University takes notice for the first respondent and Mr.Abdul Saleem, learned counsel for the Selection Committee takes notice for the second respondent.

7. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner would submit that there is no irregularity on the part of the petitioner college and only to meet out the exigency as the nine seats remain vacant, the petitioner had filled up such vacancies only after notifying such vacancies in their website and the candidates selected only from the NEET merit list and therefore, prays for indulgence of this court in permitting the nine students to sit for the examination.

8. The learned Standing Counsel Mr.D.Ravichandran appearing for the first respondent University and Mr.Abdul Saleem, learned counsel for the second respondent Selection Committee would submit that the petitioner college had acted arbitrarily without following the directions of the second respondent, Selection Committee in admitting the said nine students. They would further submit that exigency cannot be claimed as a ground for admitting the

students by the college itself without there being a direction from the Selection Committee and moreover, in the present case, there happens to be a direction from two aggrieved students viz., K.Manikandan and V.C.Praveen, who had filed writ petitions in W.P.Nos.26968 and 26969 of 2019 which were allowed by this court on 24.9.2019 and subsequent to that, the second respondent, Selection Committee, by its communication dated 3.9.2019, had also directed the petitioner college to permit the said two candidates in their college, however, the petitioner college has denied seats for the said students and had finalised the selected candidates according to their whims and fancies which cannot be entertained as held by the First Bench of this court in W.A.Nos.494 and 500 of 2020 dated 13.8.2020.

9. The learned Senior Counsel Mr.AR.L.Sundaresan appearing for the petitioner in reply, would submit that the said two candidates had visited the college belatedly and therefore, their case could not be considered and to finalise the list before the last date prescribed, they had not notified the vacancies in their website and there is no mistake or any irregularity on the part of the petitioner college and therefore, the students had to be issued with hall tickets.

10. In addition to their submissions the learned counsel for the Respondents relied on the orders of this Court in W.P.No.26969 of 2019 dated 24.9.2019.

11. This court paid its anxious consideration to the rival submissions and also perused the materials placed on record.

12. This writ petition is filed by the petitioner College for a mandamus directing the respondents to issue Hall Tickets to those students who were admitted by the petitioner College in filling up the stray vacancies.

13. In Daru-us-Slam Educational Trust and others v. Medical Council of India and others (W.P.(Civil) No.267/2017 dated 9.5.2017, the Hon'ble Supreme Court has passed an order prescribing certain guidelines on filling up of stray vacancies arising after the completion of counselling. The relevant portion of the order is extracted hereunder:-

"6. The students who secure admission in MBBS course pursuant to the Common Counselling conducted by the State Government, at the time of common counselling itself should be made to deposit with the admission/counselling committee the Demand Draft towards the fees payable to the institution College/University. The admission/counselling committee shall

forthwith forward the Demand Draft to the respective Institution/Colleges/University. The necessity for including the above-mentioned requirement has arisen as it has been time and again noticed that when students report to the college after the counselling they are refused admission by the colleges on some pretext or the other and it is shown by the college as if the student never reported to the college for admission. If the Demand Draft is deposited by the admission/counselling committee then there would be no scope for colleges to refuse admission to any student.

7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion 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, equalling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list."

14. As per the Supreme Court's direction in Dar-Us-Slam Educational Trust case, the second respondent Selection Committee is the Authority designated by the State Government to conduct the counselling and allot the seat to the Colleges. Accordingly, in the present case, it is seen that one Praveen who was selected for admission in the petitioner College was issued with an allotment order by the Selection Committee on 30.8.2019 on payment of fees and he was directed to appear before the petitioner college. But, when the candidate approached the petitioner institution, he was made to wait and sent away without admission. He reported the incident to the Selection Committee and the officials of the Selection Committee have also spoken to the petitioner college, but, even then, he was not admitted. Therefore, he filed a writ petition before this court in W.P.No.26969 of 2019.

15. In the said writ petition, the Selection Committee has taken a stand that the action of this College in admitting some other candidates in the place of the writ petitioner Praveen is highly irregular. It is further averred that this petitioner college admitted the candidates without bringing into the notice of the

Selection Committee and these stray vacancies can be filled up only after informing it to the Selection Committee and from the list of candidates forwarded by the Selection Committee prepared on the order of merits in the ratio of 1:10.

16. This court, by order dated 24.9.2019 allowed the said writ petition with a direction to the petitioner college to admit the said Praveen to the MBBS Course for the Academic Year 2019-2020. The relevant portion of the said order is extracted hereunder for ready reference:-

"18. The Apex Court in DAR-US-SLAM Educational Trust case, has in unambiguous term given direction to the Institutes how the seat allotment should be made and they cannot deny admission to the candidates who were allotted seat by the Selection Committee and paid the fees. It has also directed that the stray vacancies ought to be filled only from the list of candidates forwarded by the Selection Committee in the ratio of 1:10 in the order of merits. The 5th respondent has flagrantly violated the dictum of Hon'ble Supreme Court, by denying admission to the petitioner/V.C.Praveen and also filling up the stray vacancies on their own without intimating the selection committee and without involving them while filling up the vacancies as per the guidelines of the Supreme Court. Hence, any admission alleged to have been made by the 5th respondent without adhering to the guidelines of the Supreme Court is non-est and void."

17. According to the learned Senior Counsel appearing for the petitioner, as against this order of this court in W.P.No.26969 of 2019, the petitioner college has filed a Writ Appeal before this court and the same is pending before this court and therefore, pending the Writ Appeal, the nine students admitted by the petitioner college have to be permitted to writ their examination and therefore, the petitioner has approached this court.

18. In a similar writ petition filed for approval of admission of four candidates admitted in a Private Medical College in violation of Clause 5(7) of the MCI Regulations was dealt with by the First Bench of this Court in W.A.No.494 and 500 of 2020 and the First Bench, by order dated 13.8.2020 dismissed the Writ Appeals filed by the Educational Institution in the following terms:-

"69. The stand taken by the Medical Council of India has been explained and we find that the Medical Council of India had promptly filed its

counter-affidavit disputing the claim of the College in proceeding to fill up four unfilled seats without following the procedure prescribed by law.

70. Further from the entire scheme of holding of the NEET examinations and counselling, it is clear that the examinations and admissions through counselling are a continued process squarely within the domain of the examination/counselling agencies as prescribed under the Regulations. Whatever the activity pertaining to the preparation of the merit list and its consequential execution is concerned, is entirely within the control of such agencies and the allotment of seats has to be carried out by the Colleges accordingly. The contention raised on the strength of paragraph (9) of the counter affidavit of the Medical Council of India therefore has to be understood in the light of above. The Medical Council of India has nowhere stated that the College is free to admit any student bereft of the procedure as already prescribed. The Institutions have to abide by the allocations made and they cannot be permitted to create a situation so as to foster litigation as a parallel method of seeking permission to admit students beyond the directives of the Apex Court and the Regulations.

71. Consequently, for all the reasons stated herein above, we find no merit in these appeals insofar as the appellant Institution is concerned. To that extent the students also cannot succeed and we cannot permit extension of any such benefit to the students through a patently illegal process of admission adopted by the Institution. We also do not find any justification for the learned Single Judge at the interim stage to have granted an interim order nor does the interim order passed in these proceedings in anyway come to the aid of the students. If their admissions are illegal, then any consequential pursuit of study or attending the examinations are of no avail. 72. However, if the students were put in jeopardy by the College, then they can claim their entire refund of fee from the College as well as compensation awarded by the learned Single Judge. The College was absolutely at fault in proceeding to undertake the exercise of

admission unilaterally, for which it had no authority. 73. We may reiterate that the appellant Institution was informed as early as on 4.4.2019 by the Pondicherry University that only 146 students for the first year MBBS course as per the list enclosed were recognized and registered, whereas the other four candidates having not been admitted through the CENTAC will be considered only if the approval is given by the CENTAC. Thus, the College knew that these four students have not been admitted through the procedure prescribed and therefore, the College is squarely to blame for kindling this fond hope or expectation in the four students for admission in the Institution. The damage caused therefore is on account of the action of the appellant Institution, hence, there is neither any equity nor any law so as to justify any protection to the appellant Institution. To the contrary, the appellant Institution must compensate the students.

74. So far as the students are concerned, they have been put to a loss on account of this exercise, but the legal battle does not enure any benefit to them as held by us herein above. They can approach the Medical Council of India and the CENTAC authorities for any such redressal, keeping in view the fact that they have spent almost two years in pursuing a course, which they otherwise were not entitled to be admitted into through a faulty process adopted by the College."

19. In yet another similar issue, a reference has been made to the Hon'ble Full Bench of this court in allowing the candidates to appear for the ensuing examinations since they have completed the Academic Year who were admitted against their marks, the Full Bench has answered the reference as under:-

"39. Apart from all of the above, if we examine the stand taken by the management, it would clearly show that it is contradictory and mostly destructive. So to say, the management's case is that 36 seats are Government seats, which remained unfilled at 5.00 PM on 30.09.2016 and such Government seats can be filled up without insisting upon NEET-UG-2016 scores. Assuming for the sake of arguments, this plea is acceptable, then the question would be as to who could fill up those seats.

40. Answer to the argument should be against

the management as a Government seat can be filled up only by the Government through the method of counselling conducted by the selection committee. Therefore, the MCI was justified in stating that the admission of the 36 candidates were illegal and they have to be discharged forthwith. In the light of this factual position, reliance placed on the decision in the case of P.A.Inamdar etc., and various provisions of the Tamil Nadu Act 2 of 2007 are inapplicable to the cases on hand.

41. In view of the aforesaid reasons, we answer the questions referred for consideration as follows:-

(1) The seats filled up by the sixth respondent Management (Ponnaiyah Ramajayam Institute of Science, Kancheepuram District) cannot be categorised as Government Lapsed Seats and could not have been filled up by the Management by candidates who do not have NEET-UG-2016 qualification.

(2) The expression used by the Management that the 36 seats are lapsed seats is a misnomer, as the correct expression would be unfilled/unutilised seats and such position will arise only after 30.09.2016 and not prior to the same. For such a situation to arise, it is incumbent upon the Management to report to the Selection Committee/Government about the names of the candidates, which were forwarded by the Selection Committee, who did not join the course before the cut off date, namely, 30.09.2016. Therefore, neither the Government nor the Selection Committee, much less, the management have any jurisdiction to extend the time for admitting candidates beyond 30.09.2016 and therefore, the question No.2 as framed does not arise for consideration. Even assuming there were lapsed seats (i.e.,) after 30.09.2016, without the permission of the Hon'ble Supreme Court, the Government/Selection Committee would not be entitled to fill up the same and in any event could never be done by the Management.

(3) Question No.(3) was answered vide our order dated 01.11.2017, holding that pending decision of the Writ Appeals, the candidates admitted by the Management cannot be permitted to sit for supplementary examination commencing from

02.11.2017."

20. Considering the above materials, it appears that these nine candidates are admitted by the petitioner college on their own without admitting the candidates who were referred by the Selection Committee and as against the Regulation.

21. This court has also held as against this petitioner institution in W.P.No.26969 of 2019. Since the petitioner college has filed a Writ Appeal and the same is pending the students cannot be permitted to sit for the examination as per the dictum laid down by the Division Bench and Full Bench of this court cited supra. Accordingly, this writ petition is dismissed. No order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Registrar,
The Tamil Nadu Dr.MGR Medical University,
No.169, Anna Salai,
Guindy, Chennai 600 032.
 - 2.The Secretary,
Selection Committee,
Directorate of Medical Education,
Chennai.
 - 3.Sri Muthukumaran Medical College
Hospital & Research Institute,
Chikkarayapuram
Near Mangadu, Chennai 600 069.
Rep. By Chairperson Tmt.Gomathi Ammal
- +1 cc to M/s.Abdul Saleem, Advocate Sr.8328
+1 cc to M/s.D.Ravichander, Advocate Sr.No. 8082
+2cc to M/s.Vishnu Venkatesh, Advocate Sr.7922

W.P.No.3234 of 2021

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SRG 12/02/2021