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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE S.KANNAMMAL

W.A.No.823 of 2021
and C.M.P.No.4628 of 2021

J.B.Berlin Suja

.. Appellant/Petitioner

Vs.

- 1.The Director(National Eligibility cum Entrance Test),
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi - 110 092.
 - 2.The Public Information Officer - Deputy Secretary,
(National Eligibility cum Entrance Test),
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi - 110 092.
 - 3.The Senior Director,
National Testing Agency,
Block C-20, 1A/8 Sector 62,
IITK Outreach Centre,
Gautam Buddh Nagar,
Noida - 201 309, Uttar Pradesh.
 - 4.The Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R.High Road,
Kilpauk, Chennai - 600 010.
 - 5.The National Medical Commission,
Pocket 14, Section 8,
Dwarka, Phase 1,
New Delhi - 110 077.
- ..Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 16.12.2020 made in W.P.No.16725 of 2020.

Prayer in WP.16725 of 2020: This Petition filed under Article 226 of the Constitution of India for issuance of Writ of



Mandamus directing the respondents 1 and 2 to issue the Optical Mark Recognition (OMR) Answer Sheet pertaining to the petitioner roll number 4107005405 and application number 200410232161 and consequently direct the respondents 1 to 3 to re-assess the petitioner's OMR and award marks based on the relevant key issued by the 3rd respondent and direct the 4th respondent to rank the petitioner's name based on the newly awarded marks for the admission MBBS degree courses for the years 2020-2021 within the time limit stipulated.

For Appellant : Mr.C.Christopher
For Respondents : No appearance for R1,R2 and R4
Ms.Sunita Kumari for R3
Ms.Shubaranjani Ananth for R5

JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

The appellant filed writ petition in W.P.No.16725 of 2020 seeking a writ of mandamus directing the respondents to issue Optical Mark Recognition (OMR) answer sheet pertaining to her with the other direction to re-assess the same and award marks.

2. An interim order was passed to facilitate the appellant to peruse the original records by coming to the office of the third respondent. This was not complied with by the appellant. Taking note of the said attitude of the appellant, the learned Single Judge passed the following order while disposing of the writ petition on 16.12.2020:

"Even when the matter came up for hearing on 07.12.2020, this Court was not inclined to grant the relief sought for by the petitioner. However, the learned counsel for the petitioner was insisting that the petitioner along with her parents want to verify the original records by going to the office of the third respondent. This Court in order to give an opportunity, took pains to write an order on 07.12.2020 by giving appropriate directions to the third respondent. The learned standing counsel appearing on behalf of the third respondent was also requested to inform the third respondent in advance and keep some official ready to attend to the petitioner and her parents and show them the original records. Considering the urgency, the order copy was also furnished on 08.12.2020.

2.When the matter was called for hearing



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today, the learned counsel for the petitioner makes a statement that the petitioner was not able to go over to Delhi because of some ailment. The learned Standing Counsel appearing on behalf of the third respondent submitted that all arrangements were made by assigning an Officer to show the original records to the petitioner and her parents on 14.12.2020 and the petitioner did not turn up on that day. Since there was absolutely no communication on the part of the petitioner, the learned Standing Counsel had to get in touch with the counsel for the petitioner and only thereafter, the learned Standing Counsel was informed that the petitioner has not gone to meet the third respondent.

3.It is unfortunate that the petitioner took the time of this Court and also wasted the time of the third respondent and did not even bother to inform the third respondent or the Standing Counsel that the petitioner will not be able to meet the third respondent on 14.12.2020. This attitude of the petitioner is reprehensible and the petitioner does not deserve any sympathy of this Court and accordingly, the present Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs."

3. The appellant strangely filed another writ petition before the Madurai Bench of this Court seeking the very same relief. The learned Single Judge disposed of the writ petition filed in W.P.(MD)No.2431 of 2021 inter alia holding that the conduct of the writ petitioner cannot be condoned and, therefore, the same requires dismissal with exemplary costs. However, the learned Single Judge ultimately took a lenient view and permitted the appellant to withdraw the petition. We only record the order passed by the learned Single Judge:-

"When this Court expressed its displeasure about the fact that the petitioner has once again approached this Court for the same relief, which was in fact granted earlier by the learned Single Judge of this Court by passing extraordinary interim order. But the petitioner for some reason could not comply with the interim order passed by this Court. However, the petitioner has chosen to approach this Court second time for the same relief and this Court strongly is of the view that these



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kind of cases must be strongly dealt with and to be dismissed with exemplary cost. However, considering the submission of the learned counsel for the petitioner and also the age of the petitioner, this Court has taken a lenient view allowing the petitioner to withdraw this writ petition.

2. In view of the above, this writ petition stands dismissed as withdrawn. No costs. Consequently, connected miscellaneous petitions are closed."

4. Now, the present appeal has been filed after the disposal of the second writ petition in W.P.(MD) No.2431 of 2021, challenging the order dated 16.12.2020 passed in W.P.No.16725 of 2020.

5. Learned counsel appearing for the appellant submitted that the learned Single Judge has not gone into the merits of the case. There are manipulations and corrections in the OMR answer sheet. The subsequent writ petition filed and dismissed as withdrawn will not take away the right of the appellant to seek adjudication on merit.

6. Learned counsel appearing for the third respondent submitted that there is absolutely no merit in this appeal. The allegations are not backed by any evidence. There is no material to substantiate that the respondents did any interpolations and corrections. Hence, the appeal will have to be dismissed.

7. In academic matters, this Court is not expected to interfere and pass orders. Until and unless the appellant has a right enured to her benefit flowing from the relevant rules and regulations, a writ of mandamus as sought for cannot be granted. The appellant did not take advantage of the interim orders passed. The allegations made are not substantiated. We also take note of the subsequent orders passed by the learned Single Judge commenting upon the conduct of the appellant.

8. Thus, we do not find any merit in this appeal. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

mmi/ssm



To

1.The Director(National Eligibility cum Entrance Test),
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi - 110 092.

2.The Public Information Officer - Deputy Secretary,
(National Eligibility cum Entrance Test),
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Pocket 14, Section 8,
Dwarka, Phase 1,
New Delhi - 110 077.

+1cc to Mr.C.Christopher, Advocate, S.R.No.42735
+1cc to Mr.Sunita Kumari, Advocate, S.R.No.42819
+1cc to Mr. Shubaranjani Anand, Advocate, S.R.No.42982

W.A.No.823 of 2021

PVS (CO)
GN(20/09/2021)