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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.13648, 13652, 16297, 16301, 16306,
16309, 16317, 16324, 16328,
16497 and 16506 of 2019

And

W.M.P.Nos.13713, 13716, 15979, 15980, 15983,
15984, 15989, 15994, 15995, 16063,
16136 and 16147 of 2019

YAKALA SHREYAS	... PETITIONER IN W.P.13648 OF 2019
RINILDA RAJEE MATHEW	... PETITIONER in WP No.13652 of 2019
R.PRABU	... PETITIONER in WP No.16297 of 2019
OVIYAA MANIMARAN	... PETITIONER in WP No.16301 of 2019
V. RAJASREE	... PETITIONER in WP No.16306 of 2019
R.ROHITH	... PETITIONER in WP No.16309 of 2019
MUSHKAN SHYAMSUDNAR AGARWAI	... PETITIONER in WP No.16317 of 2019
R.HARISHMAA	... PETITIONER in WP No.16324 of 2019
P.NARENDIRAN	... PETITIONER in WP No.16328 of 2019
A.KESHAV DEV	... PETITIONER in WP No.16497 of 2019
N.DINESH	... PETITIONER in WP No.16506 of 2019

Vs.

1.THE SECRETARY TO GOVERNMENT (HEALTH),
GOVERNMENT OF PUDUCHERRY,
HEALTH SECRETARIAT,
PUDUCHERRY.



2.THE DEPUTY SECRETARY TO GOVERNMENT (HEALTH),
GOVERNMENT OF PUDUCHERRY,
HEALTH SECRETARIAT,
PUDUCHERRY.

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3.THE DIRECTOR OF HEALTH,
FAMILY WELFARE DEPARTMENT AND NODAL OFFICER,
STATE MEDICAL EDUCATION DIRECTOR
FOR UNION TERRITORY OF PUDUCHERRY,
PUDUCHERRY.

4.THE REGISTRAR
BALAJI VIDYAPEETH UNIVERSITY,
(DEEMED UNIVERSITY),
CHENNAI.

5.THE REGISTRAR
MAHATMA GANDHI MEDICAL COLLEGE AND RESEARCH INSTITUTE,
(DEEMED UNIVERSITY),
KIRUMAMBAKKAM,
PUDUCHERRY.

... RESPONDENTS 1 to 5 IN ALL WPs

6.CENTAC
REP. BY THE CONVENOR,
PONDICHERRY ENGINEERING COLLEGE CAMPUS,
PUDUCHERRY. ...6TH RESPONDENT in W.P.Nos.13652, 16297,
16497, 16324, 16506 of 2019

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in No. 510/Health/H5/NEET/2018-UG/PF/201 dated 11.01.2019 on the file of second respondent and quash the same and also to direct the respondents to pay Rs.40 lakhs the excess fees paid by the petitioner over and above the fees fixed by the fee committee along with interest from October 1, 2016 till the date of payment or realization.

For Petitioner : M/s.R.Rajarajan

For Respondents : Mr.C.T.Ramesh for R1 to R3
Additional Government Pleader
(Puducherry)
Assisted by
Mr.A.Alexdar
Government Advocate
Mr.L.Swaminathan for R4 and R5



C O M M O N O R D E R

Since the issue involved in all these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

2.The petitioners have completed their Higher Secondary Examination with good marks. During the academic year 2016-17, the Central Government decided to make amendment in the Indian Medical Council Act in pursuance to the directions given by the Hon'ble Apex Court in the NEET review judgment and introduced common entrance examination for the entire nation for getting admission into the medical Colleges. The aforesaid amendment has introduced Sec.10 (D) and the ambit and meaning of the aforesaid amendment introducing Sec.10(D) to the Indian Medical Council Act is that the common entrance examination has to be applied throughout the territory of Union of India.

3.There is only one exemption that has been given from filling up the seats without having recourse to the common entrance examination. The said exemption is that the State Government seats in Government Medical College as well as the Private Medical College could be exempted from being filled up through the common entrance examination on such State opt out by way of an ordinance. The concerned State Government shall issue ordinance in that regard to fill up the seats in the Government College and Government seats in the Private College on the basis of the scores obtained in the Higher Secondary Examination without referring to the ranks and marks obtained by the candidates in the common entrance examination.

4.As far as the Union Territory of Puducherry is concerned, the Government of Puducherry did not obtain any exemption or pass any ordinance exempting the seats in the Government College and the Government seats in the Private College from being filled up without having recourse to the common entrance examination introduced by virtue of Sec.10 (D) of Indian Medical Council Act, 2016. In this regard, the petitioners applied to the respondents under the Right To Information Act and they obtained information from the respondent that the Government of Puducherry has not passed any ordinance or obtained any exemption to opt out from the common entrance examination for the academic year 2016-17. Therefore the seats have to be filled up based on the merit list/ rank of the candidates in the common entrance examination.



5.The petitioners appeared in the common entrance examination and scored high marks, however, they were not given admission on the basis of their merit and rank obtained in the common entrance examination. Hence, they along with similarly situated candidates gave complaint to the Permanent Admission Committee and a meeting was convened on 29.09.2016. The minutes of the meeting of the Permanent Admission Committee is dated 29.09.2016 i.e., only one day before the date on which the admission will be closed in both the Government College as well as the Private Medical Colleges including the medical Colleges run by the deemed Universities.

6.Though clear cut directions were given by the Committee, the respondents failed to comply with the directions. The petitioners were told by the Government as well as by the Colleges that the rank and merit finalized by the Permanent Admission Committee on the basis of common entrance examination would not be given any effect and hence the petitioners were compelled to join the Private College and were forced to pay a huge amount of Rs.11 Lakhs as fees per academic year.

7.In the meanwhile, similarly situated persons approached this Court by filing W.P.Nos.35895 and 35923 of 2016 for securing seats on the basis of the merit/ rank list published for the academic year 2016-17 published after the common entrance examination and the said writ petitions came to be admitted and ultimately all the petitioners therein were given seats for the academic year 2017-18 on the basis of the rank list published for the academic year 2016-17 in the common entrance examination. Aggrieved by the same, the Union Territory of Puducherry filed W.A.Nos.996 and 997 of 2017 and the said appeals were disposed of with a direction that the candidates have to pay only the fees of Rs.3.35 Lakhs prescribed by the fee committee.

8.Hence, the petitioners made representation claiming parity in the fee structure in similar lines with the petitioners in W.P.Nos.35895 and 35923 of 2016, however, their claim was rejected stating that the directions in the aforesaid writ petition and writ appeals are confined only to the petitioners in the said writ petitions and the same could not be extended to the petitioners herein. Hence, the petitioners have filed these writ petitions.

9.The learned counsel appearing for the petitioners would submit that without passing any ordinance or obtaining any exemption to opt out from the common entrance examination for



the academic year 2016-17, denying the petitioners admission in the Government College or in the Government seats in the Private College and compelling to join the Private College is non est in law. Further, the Permanent Admission Committee after considering the genuine reason of the candidates issued direction to accommodate the students in Government Colleges and similarly situated students were accommodated during the academic year 2017-18 and since the petitioners did not want to waste one year, they joined the Private College and paid the fees. Hence, this Court may issue direction to the respondents to reimburse the excess fees paid by the petitioners.

10.The learned Additional Government Pleader would submit that the grievance of the petitioners is that without passing any ordinance or obtaining any exemption to opt out from the common entrance examination for the academic year 2016-17, denying the petitioners admission in the Government College or in the Government seats in the Private College and compelling them to join in the Private College is non est in law. However, the fact remains that the Union of India passed Ordinance No.4 of 2016, wherein in clause 2 it is clearly mentioned that there shall be a uniform entrance examination to all the medical educational institutions at the undergraduate level and post graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner, provided that notwithstanding any judgment or order of any court, the provisions of the section shall not apply in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-2017 conducted in accordance with any regulations made under this Act in respect of State Government seats (whether in Government medical college or in a private medical college) where such State has not opted for such examination. Further, the petitioners have joined in the Private College on their own volition. Hence, the request of the petitioners cannot be considered.

11.The learned counsel appearing for the Private College would submit that Private Colleges Fees Committee will not come under the purview of the deemed Universities. Hence, deemed University College fees vest with fees structure fixed by the deemed Universities. Since the petitioners themselves opted for the Private Colleges, later on they cannot claim exemption or reimbursement in the fees.



12.The facts of the case is not in dispute. Admittedly, the petitioners secured eligible marks. The mooted question that arises for consideration is whether the petitioners are entitled to be admitted based on the NEET marks or marks they secured in the Higher Secondary Examination. The grievance of the petitioners is that the Union Territory of Puducherry without passing any ordinance or obtaining any exemption to opt out from the common entrance examination for the academic year 2016-17, denied the petitioners admission in the Government College or in the Government seats in the Private College and thereby compelled them to join in the Private College which is non est in law.

13.However, the Ministry of Law and Justice (Legislative Department) on 24.05.2016 passed The Indian Medical Council (Amendment) Ordinance, 2016 (No.4 of 2016) and for better appreciation, the relevant portion of the same is extracted hereunder:

"THE INDIAN MEDICAL COUNCIL (AMENDMENT)
ORDINANCE, 2016
No.4 of 2016

Promulgated by the President in the
Sixty-seventh Year of the Republic of India.

An Ordinance further to amend the Indian
Medical Council Act, 1956.

WHEREAS Parliament is not in session and
the President is satisfied that circumstances
exist which render it necessary for him to
take immediate action;

NOW, THEREFORE, in exercise of the
powers conferred by clause (1) of article 123
of the Constitution, the President is pleased
to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the
Indian Medical Council (Amendment) Ordinance,
2016.

(2) It shall come into force at once .

2. In the Indian Medical Council Act,
1956 (hereinafter referred to as the
principal Act), after section 10C, the
following section shall be inserted, namely:-



be extended to the petitioners herein since the petitioners on their own volition got admission in the Private College during the academic year 2016-2017.

18. In view of the above, these writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Secretary to Government (Health),
Government of Puducherry,
Health Secretariat,
Puducherry.
2. The Deputy Secretary to Government (Health),
Government of Puducherry,
Health Secretariat,
Puducherry.
3. The Director of Health,
Family Welfare Department and Nodal Officer,
State Medical Education Director
for Union Territory of Puducherry,
Puducherry.
4. The Registrar
Balaji Vidyapeeth University,
(Deemed University),
Chennai.
5. The Registrar
Mahatma Gandhi Medical College and Research Institute,
(Deemed University),
Kirumambakkam,
Puducherry.



6.The Convenor,
CENTAC

Pondicherry Engineering College Campus,
Puducherry.

+3cc to Mr.Rajarajan, Advocate Sr.63947 to 63949
+1cc to the Government Pleader Sr.63730 and 63731
+1cc to Mr.L.Swaminathan, Advocate Sr.62932

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srg 08/02/2022