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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 29.09.2021

PRONOUNCING ORDERS ON : 30.09.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.18154 and 19256 of 2021

and

WMP Nos.20569 and 20570 of 2021

R.Siranjith

...Petitioner in Both WPs

.Vs.

1.The Dean

Government Pudukottai Medical College
Pudukottai 622 044.

2.The Registrar

Tamil Nadu Dr.M.G.R.Medical University
No.69, Anna Salai,
Guindy, Chennai-32.

..Respondents in Both WPs

PRAYER in W.P.No.18154 of 2021: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to return the Xth, XIIth mark sheet (originals), XII Transfer Certificate and XIIth hall ticket immediately to the petitioner so as to enable the petitioner to join any other college or course during the academic year 2021-22.

PRAYER in W.P.No.19256 of 2021: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in its Na.Ka.No.06/MC1/2019 dated 12.03.2021 and quash the same and consequently direct the respondents to continue the petitioner in the MBBS course by treating him as open category candidate.

For Petitioner : Mr.V.Vijay Shankar
(in Both WPs)

For Respondents: Mr.A.Selvendran
(in Both WPs) Government Advocate
for R 1

Mr.S.Wilson
Standing Counsel



for R 2 in

COMMON ORDER

The issue involved in both the writ petitions are common and hence they are taken up together, heard and disposed of through this common order.

2.W.P.No.18154 of 2021, has been filed for the issue of a writ of Mandamus directing the respondents to return the original certificates to the petitioner in order to enable the petitioner to join some other course during the academic year 2021-2022.

3.W.P.No.19256 of 2021, has been filed challenging the impugned proceedings of the first respondent dated 12.03.2021 and for a consequential direction to the respondents to permit the petitioner to continue the MBBS course.

4.The petitioner was admitted in the first respondent Medical College to the MBBS course during July 2018 under the Scheduled Tribe Quota.

5.The application that was made by the petitioner before the Revenue Divisional Officer seeking for Community Certificate was rejected. The same became the subject matter of challenge before this Court in W.P.No.12354 of 2019. This writ petition was disposed of by an order dated 05.09.2019, by the Division Bench of this Court. The relevant portions in the order are extracted hereunder:

"10. On a careful reading of the above judgment of the Supreme Court, it is seen that in cases where the mother's Community Certificate is available and not yet cancelled, there should be evidence available before the authority concerned to show that the child was brought up by the mother who belongs to ST community.

11. In such circumstances, this Court is not conducting any roving enquiry in this Writ Petition, and therefore, we are not inclined to accept the submission made by the learned counsel for the petitioner that based on the mother's Community Certificate, having not been cancelled, the child could be issued with Community Certificate.

12. Moreover, there is an alternative statutory remedy of appeal as against the impugned order. Hence, it is open for the petitioner to file appeal as against the impugned order, before the appropriate authority and in such event of filing of



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appeal, the concerned authority shall conduct enquiry only as to whether the children of the petitioner had been brought up by the petitioner- mother, and if really the children of the petitioner were brought up by the petitioner-mother, then provisional Community Certificates shall be issued to the children of the petitioner, and on such provisional Community Certificate, an endorsement shall be made therein to the effect that the same is subject to verification by the State Level Scrutiny Committee. After issuing such provisional Community Certificate, the authority concerned shall refer the same to the State Level Scrutiny Committee for testing its veracity and genuineness. If the said Committee finds that the said provisional Community issued to the petitioner's children, is genuine, then a permanent Community Certificate shall be issued to the children of the petitioner by the concerned authority.

6. In the meantime, the petitioner was denied permission to appear in the first year examination that was held during July 2019. The petitioner filed a writ petition in W.P.No.21860 of 2019 and the same came to be dismissed. Aggrieved by the same, the petitioner filed an appeal in W.A.No.3546 of 2019. The Division Bench passed an interim order on 23.10.2019 and directed the respondents to permit the petitioner to write the examination. But, however the results were directed not to be published. Accordingly, the petitioner also appeared in the first year examination.

7. The District Collector, Salem considered the appeal filed by the petitioner through her mother and the appeal came to be dismissed by an order dated 25.09.2020. By virtue of this order, the rejection order passed by the Revenue Divisional Officer came to be confirmed. As a consequence of this order, the first respondent through proceedings dated 12.03.2021, cancelled the admission that was given to the petitioner for the MBBS course under the Scheduled Tribe Quota.

8. The petitioner has therefore questioned this order and in the alternative, he is seeking for the return of all the original certificates to enable the petitioner to at least pursue some other course.

9. Heard Mr.V.Vijay Shankar, learned counsel for the petitioner, Mr.A.Selvendran, learned Government Counsel for the first respondent and Mr.S.Wilson, learned Standing Counsel appearing on behalf of the second respondent.



that, the petitioner had already been admitted in the MBBS course and he has also completed the first year and therefore, the petitioner can be allowed to continue the course by treating him as a candidate belonging to the general category and the petitioner is willing to pay the fees that is payable by the candidates who are admitted in a private college under the Government Quota. The learned counsel submitted that if this Court is not inclined to grant such a relief, at least the respondents can be directed to return back all the original certificates to enable the petitioner to pursue with some other course. The learned counsel for the petitioner in order to substantiate his submissions, relied upon the judgment of the Hon'ble Supreme Court in Yogesh Ramchandra Naikwadi .vs State of Maharashtra and Others reported in 2008 (4) SCC 652 and I Melwin Chiras Kujur .vs State of Maharashtra and Others reported in 2015(17) SCC 549.

11.Per contra, the learned Government Counsel appearing on behalf of the first respondent submitted that, the petitioner has deprived an opportunity to a genuine candidate belonging to the Scheduled Tribe community by knocking off the seat and hence the petitioner cannot be permitted to take advantage of the admission given in the first respondent college and the admission itself is vitiated due to the fact that the petitioner does not belong to Scheduled Tribe community. The learned counsel further submitted that, if the petitioner is allowed to continue the MBBS Course as a General Category candidate, it will set a bad precedent and persons who are similarly placed will start claiming for such a relief in future by citing this order. The learned Government Counsel further submitted that, as per the Prospectus that was issued during the relevant academic year 2018-2019, Clause 40 of the Prospectus clearly stipulates that, the candidates who discontinue the course after 19.08.2018, shall have to pay a sum of Rs.10,00,000/- as penalty. For proper appreciation, Clause 40 in the Prospectus is extracted hereunder:

"40. BOND:-

[i] Candidates selected for admission and his/her parent/guardian will have to execute an Agreement Bond during admission to the College as prescribed in Annexure VII. Failure to execute the Agreement Bond will lead to cancellation of selection.

[III] Candidates who discontinue the course between 02.08.2018 and 19.08.2018 are bound by the bond. Accordingly, they shall have to pay a sum of Rs.1,00,000/- [Rupees One Lakh only] as a penalty for breaching the contract signed. Those candidates who discontinue the course after 19.08.2018 of the year of admission and on any date of subsequent years shall have to pay a sum



of Rs.10,00,000/- [Rupees Ten Lakhs Only] as penalty.

[iii] Those candidates who fail to comply with clause 3[i] of the bond in Annexure VII of the Prospectus shall have to pay a sum of Rs.10,00,000/- [Rupees ten lakh only] as penalty for having breached the contract in the bond."

12.The learned Government Counsel further submitted that, if the petitioner wants the original certificates to be returned to him, he has to necessarily pay a sum of Rs.10,00,000/- as per the bond and thereafter the original certificates will be returned back to the petitioner. In the absence of the same, the petitioner is not entitled for the original certificates and that the petitioner is bound by the bond condition.

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

14.There is no dispute with regard to the fact that the petitioner got the admission for the MBBS Course only under the Scheduled Tribe Quota. At the time when the petitioner was given admission, there was no community certificate available in the name of the petitioner. The petitioner was only relying upon the community certificate that was given in the name of his mother. The application made by the petitioner for community certificate was rejected by the Revenue Divisional Officer and the same has also been confirmed by the District Collector by order dated 25.09.2020, wherein a finding has been given to the effect that, the community certificate issued to the mother of the petitioner itself is not genuine and a direction was also given to initiate criminal proceedings in this regard. It is therefore clear that the petitioner is not entitled for admission to the MBBS Course under the Scheduled Tribe Quota.

15.The policy of reservation was brought in only to ensure that persons who belong to the backward sections of the society are given an opportunity to join the mainstream and therefore, this privilege should be given only to deserving candidates who actually belong to the Scheduled Caste or Scheduled Tribe community. A particular percentage is reserved for this purpose and therefore, if the seat is allotted to a person not belonging to the Scheduled Caste / Scheduled Tribe community, it will result in depriving a candidate who actually belongs to these communities from getting a seat. That is the reason why the Hon'ble Supreme Court in Kumari Madhuri Patil and Another .vs. Addl. Commissioner, Tribal Development and Others reported 1994 (6) SCC 241, while issuing directions, had made it very clear that, any candidate who gets a seat under the Scheduled Caste / Scheduled Tribe Quota, without being entitled for the



same, has to necessarily face the consequences.

16.The submission made by the learned counsel for the petitioner to the effect that the petitioner should be permitted to continue the course by recognizing him as a General Category candidate, is liable to be rejected outright. Such leniency can never be shown by the Court since the petitioner has literally knocked off the seat which could have otherwise gone

in favour of a genuine candidate belonging to Scheduled Tribe community. It should be borne in mind that the petitioner would not have been even in the zone of consideration if he had been treated as a candidate falling under the General Category. The entitlement of the petitioner was purely based on the claim made by the petitioner that he belongs to Scheduled Tribe Community. This Court exercising its jurisdiction under Article 226 of the Constitution of India cannot be swayed by such misplaced sympathy and cases of this nature can never be handled with kid gloves. A candidate who has secured the seat under the Scheduled Tribe category without being entitled for the same, has to necessarily face the consequences and they cannot be let out freely.

17.The judgments that were cited by the learned counsel for the petitioner and which has been referred supra, will not apply to the facts of the present case. Those were orders passed by considering the peculiar facts of the case and after taking into consideration the fact that the candidate had either completed the course or was in the verge of completion. In the present case, the petitioner had only completed the first year. Therefore, there is no question of permitting the petitioner to undergo the MBBS course any further. There is absolutely no ground to interfere with the impugned order dated 12.03.2021, passed by the first respondent and the said order is the natural consequence of the order passed by the District Collector dated 25.09.2020, rejecting the appeal filed by the petitioner seeking for Scheduled Tribe Community Certificate.

18.Insofar as the alternate relief that was sought for by the petitioner, this Court was initially inclined to grant such a permission. However, subsequently the attention of this Court was drawn to the specific Clause contained in the Prospectus. Clause 40 in the Prospectus which has been extracted supra, provides for payment of money towards penalty where a candidate discontinues the course after 19.08.2018. There is a reason for imposing such a penalty. If the seat that was given in favour of the candidate for MBBS Course is discontinued, the seat will go waste for the entire course period. That is why such discontinuance is penalised by imposing a penalty.



19. In the present case, the petitioner has not technically discontinued the course and on the other hand, he has been sent out of the institution by cancelling his admission. This Court had already held that, such cancellation of admission is perfectly in order and it requires no interference.

20. The petitioner is aged about 21 years and he has to pursue further in his career. The petitioner was under the impression that he belongs to the Scheduled Tribe Community based on the Community Certificate that has been issued in favour of his mother. It is not the case of the respondents that the petitioner has obtained a community certificate by playing fraud. In fact the petitioner was never given the community certificate and his claim was rejected. In view of the same, this Court has to strike a balance by taking into consideration the interest of the petitioner and at the same time by not compromising the stand taken by the respondents. In other words, the petitioner has to pay some amount towards penalty to enable the petitioner to get back the original certificates that were surrendered at the time of admission in the first respondent Institution.

21. Considering the facts of the present case, Clause 40 of the Prospectus may not have a strict application. However, this Court can take a cue from this Clause while fixing the penalty that must be imposed on the petitioner. The reason being that, the effect of both discontinuing the course as well as cancelling the admission of the petitioner has the same consequence and the seat will go waste. That apart, if candidates are allowed to get back the certificates without paying any penalty, that will also set a bad precedent in similar cases.

22. In view of the above discussion, this Court is of the considered view that the petitioner must be directed to pay a penalty of Rs.5,00,000/- [Rupees Five Lakhs Only] before the first respondent in order to enable the petitioner to get back the original certificates. By imposing such a penalty, the entire financial burden as per Clause 40 of the Prospectus is not put against the petitioner and at the same time, the petitioner is also not allowed to go scot-free and is made to face the consequences.

23. In the result, the W.P.No.19256 of 2021 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. W.P.No.18154 of 2021, is disposed of with a direction to the petitioner to pay a sum of Rs.5,00,000/- [Rupees Five Lakhs Only] before the first respondent and on such payment being made, the respondents



are directed to return back all the original certificates to the petitioner so as to enable the petitioner to join some other course and pursue further with his career.

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Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

KST/KP

To

1.The Dean
Government Pudukottai Medical College
Pudukottai 622 044.

2.The Registrar
Tamil Nadu Dr.M.G.R.Medical University
No.69, Anna Salai,
Guindy, Chennai-32.

+1cc to Mr.V.Vijay Shankar, Advocate SR.No.50671

+1cc to Government Pleader SR.No.51303

W.P.Nos.18154 and 19256 of 2021

NK (CO)
GMY (22/10/2021)