



WEB COPY

W.P.(MD) No.1055 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.02.2021**

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THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P.(MD) No.1055 of 2021

and

W.M.P.(MD) No.911 of 2021

M.Pratibha Roshini

.. Petitioner

vs

- 1.The State of Tamilnadu,
represented by its Secretary,
Health and Family Welfare Department,
Fort.St.George,
Chennai-9.
- 2.The Secretary,
Madical Council of India,
Pocket 14, Sector 8,
Dwarka Phase-I,
New Delhi 110 077.
- 3.The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar EVR.High Road,
Kilpauk,
Chennai 600 010.
- 4.The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR.High Road,
Kilpauk,
Chennai 600 010.
- 5.The Registrar,
The Tamil Nadu Dr.MGR.Medical University,
No.69, Anna Salai,
Guindy,
Chennai 600 032.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 4th respondent Selection Committee Secretary to consider the Petitioner's representations dated 23.10.2020 and 09.12.2020 (seeking to give admission to the petitioner in any one of the Government or Private Medical Colleges to pursue her MBBS degree Course from the academic year 2020-2021) by considering the

<https://hcservices.ecourts.gov.in/hcservices/>



petitioner's earlier admission in the erstwhile Ponnaiyah Ramajayam Institute of Medical Science, Kancheepuram.

For Petitioner : Mr.B.Christopher

For R1 & R5 : Mr.Sricharan Rangaraj
Additional Advocate General for
Mr.C.Ramesh
Special Government Pleader

For R2 to R4 : Mr.V.P.Raman

ORDER

The brief facts which are necessary for adjudication of the writ petition are stated hereunder:

2.The petitioner completed her Higher Secondary Course in March, 2016 and she has secured 1106 marks out of 1200 marks in her Higher Secondary Course. According to the petitioner she participated in the competitive examination for medical admission under Government quota, since she wants to become a medical Doctor and appears to have secured a cut-off mark 192 out of 200 (96%) and was placed at Rank No.4229. According to the petitioner, she failed to secure the necessary cut-off marks for medical admission under Government Quota in terms of her performance.

3.The 5th respondent Selection Committee conducted the 1st and 2nd phase of counselling on 21.09.2016 and 28.09.2016 and in that counselling, the petitioner was offered BDS course, but the petitioner did not opt for the same, as she was interested only in joining the MBBS Course. According to the petitioner, the counselling during that time was not conducted properly, as the 5th respondent committee had not called the candidates beyond the 3000th rank. According to the petitioner, if only had the Selection Committee conducted counselling after 3000th rank in favour of all eligible candidates, she would have been able to secure her medical admission under Government quota. The petitioner has stated several facts in regard to the improper conduct of the counselling during that time.

4.Thereafter, the petitioner averred in the affidavit in regard to the introduction of National Eligibility cum Entrance Test (herein after referred to as 'NEET') and she appears to have participated in the examination and then, followed by counselling. She has also referred to number of writ petitions, which have been filed in regard to certain controversies in 2017.

5.The grievance of the petitioner is that ultimately she was denied admission to MBBS course and therefore, she appears to have filed a writ petition in W.P.(MD) No.27265 of 2018 and the same was



dismissed by this Court on 22.10.2018, against which, W.A.No.2429 of 2018 was filed by the petitioner herein and the same was also dismissed by the Hon'ble Division Bench of this Court on 12.02.2019 and challenging the same, she also approached the Hon'ble Supreme Court in SLP (Civil) Diary No.29898 of 2019 and the same was also dismissed on 02.09.2019. From going through the plethora of averments contained in the affidavit what could be deduced is the simple case of the petitioner that she got admission in the Ponnaiyah Ramajayam Institute of Medical Science Manamainellur, Kancheepauram District against her expectations and she appears to have been aggrieved by certain discrepancies in the allocation of MBBS seats under Government quota and she felt with the wrong assessment of vacancies under the Government quota, she was forced to opt for the above said institution.

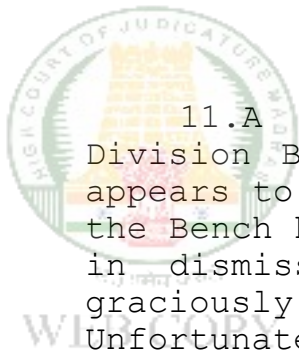
6.After a lapse of some time, the petitioner appears to have participated in the NEET examination in 2020 and secured 197 marks and submitted a fresh representation, dated 23.10.2020 to the respondents 1 and 3 to 5, requesting them to accommodate her in any one of the Government or private Medical Colleges and to permit her to take up the 1st year professional MBBS Course examinations. Since the representation has not been evoked any response from the respondents 1 and 3 to 5, the petitioner is before this Court.

7.According to the petitioner, the college, in which she joined originally under the management quota was a substandard institution without proper infrastructure and she could not pursue her studies there effectively and therefore, now she wants to pursue her studies in any one of the Government or private Medical institutions, considering the earlier admission gained by her in Ponnaiyah Ramajayam Institute of Medical Science Manamainellur, Kancheepauram District, which institution was stated to be closed already.

8.The learned counsel appearing for the petitioner would reiterate the facts contained in the affidavit filed in support of this writ petition, which, in the opinion of this Court, do not coherently make out any legal sense pointing towards any specific cause of action for this Court to entertain the writ petition.

9.Be that as it may, the petitioner appears to be an unrepentant student, who has been approaching this Court for the same grievance repeatedly from 2016-2017 onwards and despite her earlier unsuccessful attempts, she would not reconcile to the fact that that the Courts have consistently discarded her pleas as being without merits.

10.In fact a Division Bench of this Court in respect of the same petitioner as could be seen from the factual narrative of the judgment in W.A.No.2429 of 2018, has reprimanded the conduct of the petitioner for repeatedly approaching this Court.



11.A few paragraphs of the said judgment passed by the Division Bench would reveal the conduct of the petitioner as she appears to have not learned any caution by the Division Bench, where the Bench had restrained itself from imposing cost on the petitioner in dismissing the appeal filed by the petitioner herein, by graciously considering the status of the petitioner as a student. Unfortunately, despite the explicit warning as reflected in the judgment passed by the Division Bench of this Court, the petitioner appears to have not been deterred and has come up with the present writ petition exhibiting refractory conduct is needlessly and vexatiously engaging this Court's attentions and wasting its time.

12.The facts and the observations referring to the petitioner's earlier round of litigation, which culminated in filing of the writ appeal in W.A.No.2429 of 2018, are extracted hereunder in order to appreciate the reprehensible and impertinent conduct of the petitioner herein:-

"2.The appellant sought for a direction upon the respondents to treat her admission as being admitted under the Government quota seats category for the year 2016-17 in the 5th respondent college and consequently, direct the 4th and 6th respondents to register the appellant/writ petitioner as a student of the University in the said category and consequently, direct the respondents to permit the appellant/writ petitioner to continue her 2016-17 M.B.B.S., course by taking all the necessary examinations and publishing the results as a regular student of M.B.B.S., course.

3.The present round of litigation has been initiated by the appellant/writ petitioner fully being conscious of the fact that she miserably lost in the first round of litigation before this Court.

4.Earlier, the appellant/writ petitioner had approached this Court and filed W.P.No.1605 of 2017 challenging an order passed by the Medical Council of India on account of serious illegality being committed by the institution in admitting the students under the management quota without NEET qualification. The said writ petition was dismissed by order dated 23.01.2017. The appellant carried the matter by way of appeal before the Hon'ble Division Bench in W.A.No.242 of 2017, which was dismissed by the Hon'ble Division Bench, by judgment dated 10.03.2017. Thereafter, the appellant did nothing and probably was watching other proceedings initiated by the other students of the same institution, which stood on a similar or on a same pedestal as that of the appellant. Those students were also unsuccessful before this Court and ultimately, the matter was dealt with by a Full Bench, to which one of us (TSSJ) was a party, in a batch of appeals in W.A.Nos.406 of 2017 and etc., batch, in which, certain other



writ petitions were tagged along with the said batch. The Division Bench, which heard the matter thought fit to refer the matter to a Larger Bench for adjudication of three questions, which are as follows:-

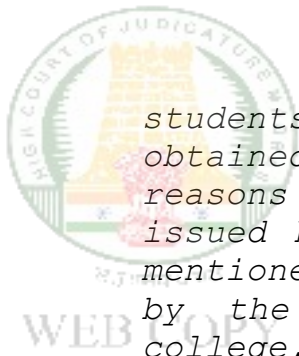
"(i) Whether the seats filled up by the sixth respondent Management under the category of <http://www.judis.nic.in> Government Lapsed Seats Quota requires Plus-two examination as the qualifying examination or NEET examination, for the academic year 2016-2017?

(ii) If the seats have to be filled up by the Government against the Lapsed Seats, what would be situation and how the seats would be filled up, viz., whether based on NEET examination or Plus-two examination?

(iii) Pending the appeals, a decision has to be taken by the Larger bench with regard to allowing the candidates to appear for the ensuing examinations since they have completed the academic year, after having admitted to the sixth respondent College?"

5. So far as the third question is concerned, at the request made by the learned counsels, who had appeared for the appellants and the writ petitioners before the Full bench, we passed an order on 01.11.2017, answering the question against the candidates and the Management, and held that they cannot be permitted to sit for the supplementary examination commencing on 02.11.2017. Subsequently, the Full Bench took up for consideration the questions, which were referred, and by judgment dated 05.06.2018, answered the questions against the candidates/Management. At this juncture, it would be worthwhile to refer to certain paragraphs of the judgment, which would be a direct answer to the plea raised by the appellant before us:-

"32. Thirdly, the Tamil Nadu Dr.M.G.R. Medical University in their communication dated 14.11.2016, 29.11.2016 and 30.11.2016 had declined to register the aforementioned 36 candidates, as they had not qualified the NEETUG16 and are ineligible to be granted admission in the MBBS course. The University further directed that all these 36 students shall be discharged from the MBBS course, since the admission in the private medical college for the management quota ought to be granted only on the basis of the marks obtained in the NEET-UG16. This apart, the writ petition filed by one of the 36 students viz., Ms.P.Ratiba Roshni in W.P.No.1605 of 2017 challenging the communication of the respondent University dated 29.11.2016 was dismissed. Again the Writ Appeal No.242 of 2017 filed against the order passed by the learned single Judge dated 23.1.2017, was also dismissed confirming the order passed by the learned single Judge. When the discharged

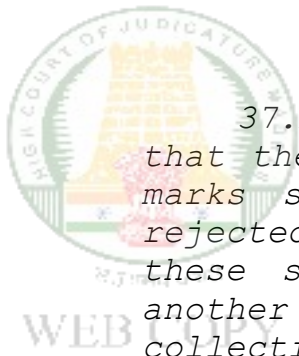


students have not appeared for the NEET-UG16 and wrongly obtained admissions in the sixth respondent college, the reasons for discharge stated in the order dated 29.11.2016 issued by the respondent University are exactly the same as mentioned in the impugned communication dated 1.2.2017 issued by the Medical Council of India. Since the respondent college, after surrendering both the seats under the management quota and the government quota, had no authority to fill up any seats for the academic year 2016-17, the impugned order directing the college to discharge all the 36 students cannot be found fault with, since they have been admitted on the basis of the marks secured in the +2 examination.

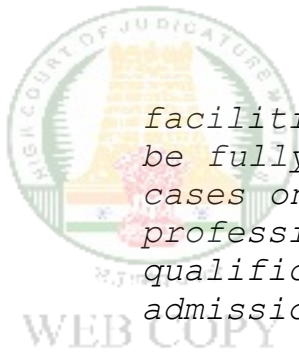
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34. Though we had granted liberty to the management and the other parties to give their response to the audit report, they have not done so till the arguments were concluded. The forensic audit report of the Principal Accountant General, is a 12 page report with 27 annexures and 4 exhibits. We perused the report to ascertain as to what is the outcome of the forensic audit with regard to the fee collected by the management from the 36 candidates, as the management stated that they had collected fee as fixed by the Government for Government quota seats. The forensic audit report shows that excess fee ranging upto Rs.11,65,000/- excluding hostel rent, caution deposit have been collected; bank statements disclosed collection of fees amounting to Rs.49.50 lakhs from four students through RTGS, which were not accounted for in the receipts books made available to audit, which indicates that the college had collected excess fees ranging from Rs.11.65 lakhs to Rs.27.65 lakhs. Further, the report states that refund of fees were made by the college to 11 discharged students amounting to Rs.3.05 crores ranging between Rs.15 lakhs to Rs.40 lakhs, as against Rs.1.51 crores shown as receipts from those students, as per receipt books and fees credited in RTGS. The report further states that the excess between the refund amount and actually recorded receipt amounted to Rs.1.54 crores, ranging between Rs.7.50 lakhs to Rs.31.25 lakhs. Further, the report went on to speak that the fees collected by the college from each of the 36 students, were upto Rs.40 lakhs from the records made available. The report of the forensic audit speaks for itself and the plea raised by the college/management that they have collected the fees fixed by the Government from the 36 students is false.

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37. Moreover, the argument of the appellant management that they are entitled to fill up the 36 seats based on the marks secured in the +2 examination is to be outrightly rejected, because the management had no authority to fill up these seats once they surrendered to the Government. Yet another plea that the management had admitted the students collecting the fee prescribed by the Government for Government quota candidate has been found to be false, as per the forensic audit conducted by the office of the Principal Accountant General, pursuant to the directions of the Division Bench. The Monitoring Sub-committee of the MCI after having been informed about the admissions made by the appellant Management, admitting 36 candidates without NEET-UG-2016 qualification placed its recommendations before the Executive Committee of the MCI, which after deliberations approved the decision of the Monitoring Sub-Committee of MCI to discharge 36 candidates, who had been granted admission in the first year MBBS course for the academic session 2016-17 in the appellant medical college, as they had not qualified NEET-UG- 2016. In this context, it is beneficial to refer to the decision of the Constitution Bench of the Hon'ble Supreme Court in Dr.Preeti Srivastava vs. State of M.P & Ors., [(1999) 7 SCC 120], wherein it has been observed that the MCI has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. That the MCI has implicit power to supervise the qualification or eligibility standards for admission into medical institutions. Thus, there is, under the Indian Medical Council Act, 1956, an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. Further, it was observed that while considering the standards of education in any college or institution, calibre of students, who are admitted to that institution or college, cannot be ignored. It was further held that if the students are of a high calibre, training programmes can be suitably moulded, so that they can receive the maximum benefit out of a high level of teaching. On the other hand, if the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; it may not be possible to reach the levels of education and training which can be attained with a bright group. Here again it is apt to refer to the observations made by the Hon'ble Supreme Court in the case of MCI vs. State of Karnataka, [(1998) 6 SCC 131], wherein the Hon'ble Supreme Court held that the country does not want half-baked medical professionals. Though this observation was made by the Apex Court in the context of the infrastructural and teaching



facilities to be made available in medical colleges, we would be fully justified in adopting the very same reasoning in the cases on hand, as our nation does not want half-baked medical professionals, who have not achieved the bench mark qualification for being eligible to be considered for admission to the medical courses.

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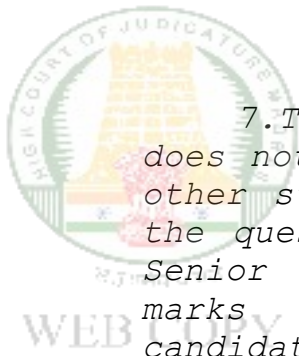
41. In view of the aforesaid reasons, we answer the questions referred for consideration as follows:-

"(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."

6. We may be fully justified in observing that the appellant/writ petitioner cannot feign any ignorance about the litigations, which were commenced at the instance of the other students after knowing fully well that the appellant had failed in her attempt to get herself somehow admitted to the M.B.B.S. Course.



7.The learned Senior Counsel submits that the appellant does not feign ignorance of the litigations initiated by the other students and the judgment of the Full Bench answering the questions referred above. The submission of the learned Senior Counsel is that the appellant has secured 191.75% marks and having secured more marks than the other candidates, who were admitted in Government quota, she is entitled to be admitted to the M.B.B.S., course for the academic year 2016-2017.

8.In our considered view, the learned Single Bench rightly held that the appellant is estopped from raising such a plea having never raised such a plea at any earlier point of time. The plea raised by the learned Senior Counsel for the appellant appears to be drawing inspiration from cases in respect of another Medical College. Unfortunately, such a plea can never be considered in the present case, on account of what was the case of the management and more particularly, what was the case of the appellant before this Court in the earlier round of litigation.

9.Thus, we find that the learned Single Bench was fully justified in dismissing the writ petition filed by the appellant/writ petitioner. We could have been well justified in imposing costs, but considering the fact that the appellant is a student, we refrain from doing so."

13.The above extract almost would fully highlight the conduct of the petitioner. The present writ petition is one more imprudent attempt by the petitioner to keep her so called grievances active in Court proceedings without focusing on her studies and her future. The petitioner is either blissfully ignorant of her conduct in trifling with the serious constitutional jurisdiction of this Court or she must be an obsessive youngster in pursuing her remedies regardless of her failure to secure any direction in the earlier attempts not willing to accept that she did not come up with any claim worth the merit for this Court to grant her any relief in the past.

14.In the said circumstances, the earlier warning appears to have been made no impact at all on this petitioner and the only way to deter her from needlessly approaching this Court is to impose exemplary cost, while dismissing the writ petition.

15.In the said circumstances, the writ petition stands dismissed with a cost of Rs.50,000/- to be payable by the petitioner within a period of 4 weeks from the date of receipt of a copy of this order to the credit of Rajiv Gandhi Government Hospital, Chennai, for treatment of COVID-19 patients.



16.A copy of this order shall be communicated to the District Collector, Thanjavore and in case, the cost is not paid by the petitioner within the time stipulated by this Court, the District Collector, Thanjavore District shall initiate the recovery proceedings under Revenue Recovery Act and the recovered amount shall be deposited as directed above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary,
Health and Family Welfare Department,
Fort.St.George,
Chennai-9.
- 2.The Registrar,
The Tamil Nadu Dr.MGR.Medical University,
No.69, Anna Salai,
Guindy,
Chennai 600 032.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-5044[F] dated 15/02/2021)

+1 CC to M/s.GP (SR-5123[F] dated 15/02/2021)

W.P. (MD)No.1055 of 2021
12.02.2021

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