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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.A.NOS.604 OF 2021
against
W.P.No.3234 of 2021

Sri Muthukumaran Medical College Hospital
and Research Institute,
Chikkarayapuram, Near Mangadu,
Chennai-600 069,
Rep. by Managing Trustee, Gomathi Ammal

...Appellant / Petitioner

Vs

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

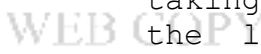
2.The Secretary,
Selection Committee,
Directorate of Medical Education,
Chennai.

...Respondents / Respondents

Prayer : Appeal under Clause 15 of the Letters Patent against
the order dated 11.2.2021 passed in W.P.No.3234 of 2021.

Prayer in W.P.No.3234 of 2021 : 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
15.02.2021 onwards.

For the Appellant : Mr.Vishnu Venkatesh
For the Respondents : Mr.P.Muthukumar
State Government Pleader
assisted by
Mr.K.M.D.Muhilan
Government Advocate
for 1st respondent



5. Learned Counsel for the appellant submits that without taking note of the bona fide of the appellant medical college, the learned Single Judge dismissed the writ petition and, therefore, this appeal has been preferred. It is stated that when the nine students did not report till 5 pm on 29.8.2019 and the last date to complete the process of admission was 31.8.2019, the appellant was having only two intervening days and, thus, they immediately called for applications from eligible candidates by hosting it on their website. Pursuant to the same, many students reported for admission, but the appellant medical college gave admission to meritorious candidates only. It is not that the appellant medical college was having sufficient time to report the vacant seats to the Selection Committee so as to get a list of students in the ratio of 1:10 to give admission to them by 31.8.2019. In view of the time constraint, the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors vs. Medical Council of India & Ors. (W.P. (Civil) No.267 of 2017 - Dated 09.05.2017) could not be applied. Therefore, the prayer is to set aside the judgment of the learned Single Judge and to permit the nine students to complete their studies. They have already suffered in their studies because despite being students of the academic year 2019-2020, they could not write a single examination of MBBS course till date, though a period of one year and ten months has already lapsed, out of the total course period of five years.

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



7. Learned Additional Advocate General further submits that the medical course is not to be considered at par with any other course, rather it is such a course where a qualified person would serve the public, where merit cannot be compromised, because in that case, he would be playing with the life of a patient. It is, therefore, that the Apex Court has issued directions from time to time to adhere to the merit, after taking note of the fact that even after counselling and recommendation of the names of meritorious candidates, medical colleges somehow show absence of the students and fill few seats on their own by sacrificing the merit. It is, therefore, that in the year 2017 the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, gave a specific direction that the fees should be deposited with the Selection Committee upon counselling and thereupon also if vacancy remains and it is reported by the appellant college, it should call for merit list from the Selection Committee, which would be furnished in the ratio of 1:10. The directions given by the Apex Court have been flouted and now the prayer is to issue hall tickets to write examination, which would not be permissible and, accordingly, the prayer is to dismiss the writ petition. It is more so when the appellant had deliberately denied admission to nine students recommended by the Selection Committee, out of whom two had to approach the court, wherein directions have been given for their admission.

8. We have considered the rival submissions of the parties and perused the records.

9. The facts in brief have already been referred in the preceding paragraphs. Those facts would reveal that pursuant to the counselling held on 27.8.2019, 150 students were recommended for admission, out of which 141 took admission according to the appellant and nine students did not report. It was subsequently that two students filed writ petitions when they were denied admission, despite their reporting to the appellant medical college and today those appeals [W.A.Nos.3706 and 3709 of 2019] were considered and dismissed holding the direction of the learned Single Judge to admit the two students to be legal and justified.

10. The main question for our consideration is as to whether the action of the appellant medical college to admit nine students without calling for the list of the meritorious candidates from the Selection Committee was proper or not.

11. To answer the question, we would first refer to the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, and the relevant paragraphs of the said judgment are quoted hereunder:



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"23.6. 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/colleges/university. The Admission/Counselling Committee shall forthwith forward the demand draft to the respective institution/colleges/university. The necessity for including the abovementioned 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.

23.7. 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 of counselling, 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."

[emphasis supplied]

12. A Division Bench of this court had thereupon given a detailed judgment in regard to the same issue referring to Regulation 5(7) of the MCI Regulations, by judgment dated 13.8.2020 in W.A.Nos.494 and 500 of 2020 [Sri Venkateshwaraa Medical College Hospital and Research Centre v. Medical Council of India and others], it was held as under:

"57. Coming to the legal issues, Regulation 5(7) of the Medical Council of India Regulations in relation to Under Graduate admissions categorically provides that no admissions shall be made except in accordance with the procedure prescribed and the directions of the Apex Court. Regulation 5(7) is extracted herein below:

"5. Procedure for selection to MBBS course shall be as follows:-



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(1)

(2)

(3)

(4)

(5)

(6)

(7) No authority/institution shall admit any candidate to the MBBS course in contravention of the criteria/procedure as laid down by these Regulations and/or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention/violation of aforesaid shall be discharged by the Council forthwith. The authority/institution which grants admission to any student in contravention/violation of the Regulations and/or the judgments passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years."

.....

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



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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



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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."

13. The judgment referred to above shows how the seats in MBBS course are to be filled. If any seat remains vacant, the medical college should have informed the Selection Committee to enable them to forward the list of students in the ratio of 1:10, but, in the instant case, the medical college failed to inform the Selection Committee about the vacant seats, rather Selection Committee had directed the appellant medical college to admit two students who would report on 30.8.2019, but they were refused admission. In view of the above, the action of the appellant medical college to admit nine students was grossly in violation of the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, and Regulation 5(7) of the MCI Regulations, referred by the Division Bench in the case cited supra.

14. The appellant medical college to show its bonafide stated that they filled the nine vacancies from and amongst the meritorious candidates, which includes five seats of the government quota, for which they have absolutely no authority to give admission. Thus, even without having the authority to fill the government quota seats, admissions were given in an illegal manner and, that too, not from and amongst the meritorious candidates, but going much below the merit, which would be reflected from the list of candidates admitted by them along with their merit position and marks submitted by the appellant medical college on an affidavit filed in the connected appeals, which is as under:

S.No.	Rank	AR No.	Student Name	Total Marks	Date of Joining
1	273941	57123	Pooja Chakravarthi.K	290	30.08.2019
2	481342	55501	Gopala Krishnan.S	195	30.08.2019
3	505123	52189	Murali Krishna.N	187	30.08.2019
4	502943	50797	Aishwarya.R	187	30.08.2019
5	515757	52314	Mohamed Aashiq Samsudin.U	183	30.08.2019

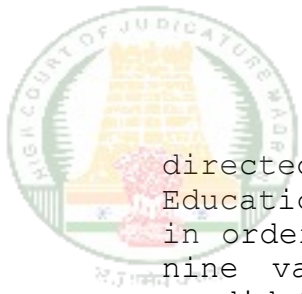


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S.No.	Rank	AR No.	Student Name	Total Marks	Date of Joining
6	515445	63236	Jai Adithya	183	30.08.2019
7	563619	60837	P.Soundarya	169	30.08.2019
8	728529	57402	G.R.Harsha	128	30.08.2019
9	816246	55113	Hariharan.V	112	30.08.2019

15. A perusal of the list given above shows that as against the last candidate given admission by the Selection Committee who secured 326 marks, a student who had secured 112 marks was given admission by the appellant medical college. Thus, the bona fide of the writ appellant in filling up the nine vacancies is not borne out even going by their own affidavit. It is more so when the appellant college was having opportunity to furnish the list of all the candidates who reported pursuant to the information given on their website to indicate that from and amongst the the candidates who reported for admission, nine meritorious candidates were given admissions. The appellant failed to submit names of those candidates and further the affidavit submitted in the connected appeals pursuant to the direction of this court shows that fee from students, not in thousands but in lakhs, was collected in cash, which is not legally permissible as per the Reserve Bank of India guidelines. The fee in cash could have been accepted even beyond the date of admission and thereupon shown to have been received on or before the date. It is also a matter of record that one student was given admission by accepting fee on 31.8.2019, while the Selection Committee had directed the appellant medical college to admit the petitioners in connected writ appeals on 30.8.2019 itself, yet, they were denied admission.

16. From the facts given above, the bona fide of the appellant medical college is not coming out and otherwise they cannot go against the judgment of the Apex Court in Dar-Us-Slam Educational Trust & Ors, supra, and judgment of the the Co-ordinate Bench of this court in Sri Venkateshwaraa Medical College Hospital and Research Centre, supra. Thus, we find no reason to cause interference in the judgment of the learned Single Judge. We cannot show sympathy to the medical college or on the students, so as to sacrifice merit and arrive at a conclusion contrary to the law laid down by the Apex Court, as medical profession is a noble profession and any disregard to merit will have drastic consequences on the patients at large. The appellant medical college was having two intervening days to complete admissions. If nine candidates did not report on 29.08.2019 till 5 pm, they should have informed the same to the the Selection Committee on 29.08.2019 itself with a request to send the list of meritorious candidates in 1:10 ratio as



directed by the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, so as to make admission strictly in order of merit. The list of candidates in 1:10 ratio against nine vacancies would not have gone below so as to admit a candidate having only 112 marks or even 290 marks, because the last candidate recommended by the Selection Committee had secured 326 marks. The admission could not have been given in violation of the judgment of the Apex Court. If we allow those admissions, then, it would be going against the direction of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra.

For the foregoing reasons, the writ appeal is dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.2592 and 2593 of 2021 are closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

sasi

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.

+2ccs to Mr.Vishnu Venkatesh, Advocate Sr.No.38715

+1cc to M/s.M.Sneha, Advocate Sr.No.38489

+2ccs to M/s.Ramalingam & Associates, Advocate Sr.No.39371

W.A.No.604 of 2021

NR(CO)
RVM(08/07/2022)