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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.5181 OF 2022

&

W.M.P.NO.5280 OF 2022

Dr.M.Keethanjali

... Petitioner

.Vs.

1. The Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
F-17, Karakardooma,
New Delhi - 110 032.
2. The Director,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
4. The Dean,
PSG Institute of Medical
Science and Research,
Off: Avinashi Road,
Peelamedu, Coimbatore - 641 004.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus, directing the respondent authorities to allot the petitioner a Post Graduate medical seat i.e., MD-Pediatrics or MD-Radiology or MD-General Medicine in the management quota in the 4th respondent college or in any other private medical colleges by strictly adhering the fee structure fixed by the statutory fee fixation committee in the forthcoming academic year.



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For Petitioner : Mr.S.Thankasivan

For Respondents : Mr.Subbu Ranga Bharathi
Central Government
Standing Counsel
For R1

Mr.Jayaprakash
Government Advocate
For R2 & R3

Mr.Bharamdaran
For R4

O R D E R

Read this order in conjunction with order dated 07.03.2022, reading as follows:-

Mr.Subbu Ranga Bharathi, learned Central Government Standing Counsel accepts notice for R1 and Mr.Jayaprakash, learned Government Advocate accepts notice for R2 and R3 and both learned counsel seek some time to obtain instructions and file a counter.

2. Notice to R4 through Court as well as privately, returnable 29.03.2022. Let proof of service be placed on file.

3. Admittedly, the petitioner missed the bus for admission to a PG seat in the last year on account of the flaws that were committed by the respondents in the conduct of PG admissions. The procedure that was followed has been deprecated by this Court and the matter was referred to CBCID enquiry.

4. Based upon the enquiry, compensation was ordered to be paid to the petitioner and yet another candidate, both of whose cases were decided by a common order passed on 25.02.2022 in W.P.No.11963 of 2020. The third petitioner dealt with under the aforesaid order appears to have secured admission last year itself.

5. Liberty was granted to the petitioner under Clause (v) of Paragraph-48 to the effect that she



may also explore and seek any other option to which she may be entitled, similar to the case of the petitioner in S.Krishna Sradha Vs. The State of Andhra Pradesh & Ors. [(2020) 17 SCC 465].

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6. The petitioner thus, filed a representation before the respondents seeking consideration of her candidature in the upcoming counseling for the present academic year and allotment of seat in the categories of MD-General Medicine/Pediatrics/Radio Diagnosis in R4 college or in any other institutions coming under the Tamil Nadu MGR Medical University.

7. I am of the view that a prima facie case is made out by the petitioner upon a reading of paragraph 13 of the judgment in S. Krishna Sradha (supra). The operative portions are extracted below:-

13. In light of the discussion/ observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1 That in a case where candidate/ student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

13.2 Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if



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the time schedule prescribed - 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3 In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next



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academic year out of the seats allotted in the management quota.

13.4 Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5 It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.

8. In this case as well, there is no fault attributable to the present petitioner for her non-selection in the previous year. The candidate had appeared for the examinations on time, performed meritoriously, pursued her rights vigorously and expeditiously and the denial of the candidature in the last academic year is solely attributable to the acts of omission and commission perpetrated by the respondents.

9. This is evident from the report of CBCID as well as the consequential action that is stated to have been taken as against the officials.

10. Thus, the observations of the Court at Para 13.3 to the effect that Court can well mould the relief to such a candidate and direct admission in the next academic year would be, prima facie applicable in the present case as well. As far as her eligibility in the present year is concerned, a position note has been circulated by the respondents to the effect that her performance does not fall within the zone of consideration on merits of seat. Be that as it may, her entitlement to a seat, as crystallized in the previous year, would, prima facie, continue in the present year as well. Thus, let a seat be reserved for the petitioner.

2. There are some developments thereafter and the petitioner has participated in the second round of counselling. She has been allotted a seat in M.S.(Pediatrics and Gynecology) in Tagore Medical College Chennai, and expresses satisfaction with the



allotment. She has also exercised the option for up upgradation of PG seat in the mop-up counselling, subject to such availability.

3. The petitioner has filed two memos both dated 11.03.2022 that read as follows:

"Memo I :

The petitioner above named submits that she has filed the above writ petition in view of the fact that the respondent authorities did not conduct Mop-up counselling for management seat during 2020 according to the judgment of the Hon'ble Supreme Court and therefore she could not get MD-Pediatrics in the said academic year 2020-21 in the 4th respondent college. In the earlier round of counselling she was allotted with MD-Microbiology seat in the 4th respondent college and she has paid the first year fee of Rs.4,50,000/- to the 4th respondent. Subsequently in view of the irregularity committed by the respondent authorities in not conducting Mop-up counselling, petitioner took MD-Microbiology subject to her right to upgrade my course in the Mop-up counselling.

Subsequently due to failure on the part of respondents in not conducting Mop-up counselling, she could not get MD-Pediatrics which was available in the 4th respondent college till 31.08.2020 and the said seat was given to a candidate having 298 marks only. Thereafter this Hon'ble Court by its orders dated 28.10.2020 passed in her writ petition W.P.No.11963 of 2020 in permitted her to withdraw from the 4th respondent college and granter her liberty to participate in the next years's counselling. Therefore, the petitioner withdrew herself from the 4th respondent college.

But unfortunately the 4th respondent college did not allow the petitioner to withdraw from the MD-Microbiology seat unless she pays the entire course fee for three years. Ultimately, they permitted her to withdraw only after compelling her to pay Rs.4,35,000/- and totally she had paid a sum of Rs.8,85,000/- (Rupees eight lakhs eighty five thousand only) to the 4th respondent college and the 4th respondent college has not refunded the said amount till date.



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Unless the 4th respondent college is directed to refund the total sum of Rs.8,85,000/- (Rupees eight lakhs eighty five thousand only) collected from the petitioner during the year 2020, grave prejudice and irreparable loss will be caused to the petitioner.

In these circumstances, it is prayed that this Hon'ble Court may be pleased to direct the 4th respondent college in the above writ petition to refund the total fee of Rs.8,85,000/- (Rupees eight lakhs eighty five thousand only) collected from the petitioner during the year 2020 and thus render justice.

Memo II :

The petitioner above named submits that she participated in the second round of PG counselling 2022 conducted by the selection committee on the basis of her merits in NEET-PG 2021 examination and she has been allotted with a PG Medical seat in M.S.Obstetrics and Gynecology in Tagore Medical College, Chennai. According to the option exercised by her, she will have an opportunity for upgrading her PG Medical seat in the Mop-up counselling also, subject to the availability of seats in the PG Course to her choice.

In the above circumstances, the petitioner is not pressing the above writ petition and this Hon'ble Court may be pleased to close the above writ petition and thus render justice."

4. In light of Memo II to the effect that the petitioner does not press the writ petition, the writ petition is closed as not pressed. As regards the request under Memo II for refund of fees paid to R4, Mr.R.Bharanidharan, learned counsel appearing for R4 would state that the college would consider such request if and when made by the petitioner.

5. Hence, the petitioner is permitted to file a representation before R4 college seeking refund of the fee paid by her for the year 2020 and such representation will be considered by the college and disposed within a period of two weeks from the date of representation. Orders will be passed on merit and in accordance with applicable rules and regulations having regard to trajectory of events that have been occasioned in this matter and the checkered history of the petitioner's career.



6. The writ petition is closed as above. Consequently connected miscellaneous petition is also closed. There shall be no order as to costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nst/ska

To

1. The Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
F-17, Karakardooma,
New Delhi - 110 032.
2. The Director,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk,
Chennai - 600 010.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk,
Chennai - 600 010.

+1cc to Mr.S.Thankasivan, Advocate, S.R.No.17405
+1cc to the Government Pleader, S.R.No.17063

W.P.NO.5181 OF 2022 &
W.M.P.NO.5280 OF 2022

PA(CO)
PBS/04/04/2022