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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No. 9245 of 2022
WMP.Nos.9007 to 9009 of 2022

Dr.S.Santhoshkumar

...Petitioner

Vs.

1.The Principal Secretary to Government of Tamil Nadu
Health and Family Welfare Department,
Secretariat,
Chennai-600 009

2.The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai-600010

3.The Dean,
Coimbatore Medical College and Hospital,
Coimbatore, 641018

4.The Dean,
Trivandrum Medical College,
Medical College Post,
Thiruvananthapuram,
Kerala State-6950 11

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in GO (Ms)No.185 Health and Family Welfare (MCA 1) Department, dated 13.04.2020 and quash the same insofar as it directs the furnishing the Bank Guarantee in the place of execution of bond and consequently direct the 3rd respondent to return all the original certificates of the petitioner by accepting an extension surety bond.

For Petitioner : Mr.S.Kamadevan

For Respondents: Mr.D.Ravichander [R1 to R3]
Special Government Pleader



ORDER

Mr.D.Ravichander, learned Special Government Pleader accepts notice for R1 to R3 and is armed with sufficient instructions to proceed with matter finally. In light of the order, which is passed now and bearing in mind the urgency, no notice is issued, at this juncture, to R4.

2. I have had occasion to consider the similar request made by this petitioner in W.P.Nos.7596 of 2022 and batch vide order dated 12.04.2022. Insofar as it relates to students who have secured admission in other States, the aforesaid order is applicable to this petitioner as well.

3. For convenience, order dated 12.04.2022, in entirety, is extracted below:

All petitioners were initially aspiring for seats for super speciality courses. Pending Writ Petitions, 6 out of 7 have been successful in securing admission. The petitioner in W.P.No.7588 of 2022 awaits selection and his case has thus been de-linked and listed for hearing on 19.04.2022.

2. Of the remaining, the case of the petitioners in W.P.Nos.7599 of 2022 and 7600 of 2022, Dr.R.Deepika and Dr.T.Raajaneesh are liable to be accepted in line with letter dated 10.02.2022 of the Principal Secretary to Government, Health and Family Welfare Department that relaxes the condition of bank guarantee in respect of doctors who have secured admission in a Government Medical College within the State of Tamil Nadu.

3. The case of the petitioners in W.P.No.7596 of 2022 - Dr.S.Shayanthini, W.P.No.7683 of 2022 - Dr.J.Sakthi venkatesh, W.P.No.7607 of 2022 - Dr.S.Mohamed Nidhal, W.P.No.7589 of 2022 - Dr.N.Khamini are distinguishable in that they have secured admission in Institutions in other States as well as private colleges.

4. The details of admissions secured are tabulated below:

SL.NO	WRIT PETITION	PETITIONER'S NAME	ALLOTED INSTITUTIONS
1.	7596 OF 2022	DR.S.SHAYANTHINI	Sri Jayadeva Institute of Cardiovascular Science & research, Bangalore, Govt. of Karnataka



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2.	7683 OF 2022	Dr.J.SAKTHI VENKATESH	Osmania Medical College, Hyderabad, Govt. of Telangana
3.	7607 OF 2022	DR.S.MOHAMED NIDHAL	DrNB NeuroAnaesthes ia, Global Hospitals, Chennai, under National Board of Education (NBE), Govt. of India.
4.	7589 OF 2022	DR.N.KHAMINI	DrNB Nephrology, Apollo Hospitals, Chennai, under National Board of Education (NBE), Govt.of India.
5.	7599 OF 2022	DR.R.DEEPIKA	Stanley Medical College, Chennai, Govt. of Tamil Nadu.
6.	7600 OF 2022	DR.T.RAJNEESH	Madras Medical College, Chennai, Govt. of Tamil Nadu
7.	7588 OF 2022	DR.M.VIGNESH KUMAR	Awaiting 2 nd round.

5. All petitioners challenge G.O.Ms.No.185, Health and Family Welfare (MCA1) Department dated 13.04.2020 and clarification issued by the first respondent, i.e., the Principal Secretary to Government, Health and Family Welfare Department dated 10.02.2022. The aforesaid G.O. dealt with a condition imposed by the State upon the request of students who had sought return of their certificates for continuance of higher speciality/fellowship course.

6. In paragraph 2, the Secretary to Government states as follows:

2. The Director of Medical Education has stated that the Non-Service Post Graduate Board



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Speciality (Degree/Diploma)/Higher Speciality candidates who have studied in State of Tamil Nadu and have selected to Higher Speciality/Fellowship courses in other States/Private Self Financing/Deemed University before getting posting order for starting their bond service and the Candidates who have joined the service in State of Tamil Nadu (before completing their bond period) are requesting to return their original certificates to continue their Higher Speciality/Fellowship courses in other states/ Private Self Financing/ Deemed University.

7. Based on the experience of the State that non-service post graduate candidates more often than not, do not comply with the service conditions imposed on them and breach the bond conditions, the State had decided to obtain bank guarantees from candidates aspiring for higher studies. This is the sum and substance of paragraph 3 of the G.O., extracted below:

3. In order to prevent the Non Service Post Graduate Broad Speciality/Degree/Diploma/Higher Speciality candidates from escaping the bond conditions, the Director of Medical Education has decided to obtain Bank Guarantee from those candidates before leaving to service and requested the Government to issue necessary order in this regard.

8. The proposals as aforesaid were examined by the State and the following orders issued:

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4. The Government have examined the proposal of the Director of Medical Education and decided to accept the same. Accordingly, the Government do hereby issue orders to the Director of Medical Education as detailed below:-

I). to permit the Non service Post Graduate candidates who have completed their Broad Speciality (MD/MS/Diploma) Course in State of Tamil Nadu (not completed their bond condition) and have selected for Higher Speciality courses through entrance examination (either/neither NEET-SS) in other State/Private self-financing/Deemed University to pursue the Higher Speciality course after obtaining the Bank Guarantee equivalent to the bond amount as prescribed in the respective



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year prospectus during the admission to Broad speciality courses from the academic year 2016-2017.

II). to permit the Non service Post Graduate candidates who have competed their Higher Speciality (DM/M.Ch) Course in State of Tamil Nadu (not completed their bond condition) and have selected for Fellowship Course through entrance examination (either/neither NEET-SS) in other State/ Private self-financing/Deemed University to pursue the Fellowship course after obtaining the Bank Guarantee equivalent to the bond amount as prescribed in the respective year prospectus during the admission to Higher speciality courses from the academic years 2016-17.

9. After issuance of G.O.185 dated 13.04.2020, the State considered the position of those students who continue to study in the State of Tamil Nadu even for post graduate/super speciality courses and since the State continues to retain control, as the students are continuing their education in Government colleges within the State, the rigour of G.O.185 was relaxed to this limited extent.

10. This was based upon several representations from post graduate students who continued in the State who pointed out that their certificates were being held by the Government Institutions within the State control and thus some measure/degree of control is retained to ensure that they do not breach the bond conditions. The logic of their request found acceptance in letter dated 10.02.2022.

11. The relevant portion of letter dated 10.02.2022 is extracted below:

2. A number of Post Graduate students represented that when they have to join Super Speciality or from Diploma to Post Graduate Seats in Government medical institutions within the State, citing G.O.Ms.No.185, Health and Family Welfare Department, dated 13.04.2020, bank guarantee is being insisted upon.

3. The G.O.Ms.No.185, Health and Family Welfare Department, dated 13.04.2020 referred to students joining other State/Private Self financing and Deemed University without completing bond criteria whereas these students are joining Government Colleges within the State and not



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other State/Private Self-financing/Deemed University. Thus the bond criteria and the bank guarantee is not applicable to them.

4.I am to state that the Director of Medical Education need not insist upon bank guarantee and sent the certificate of such candidates (who are going to join in Government Medical Institutions within the State) to the institution to which the candidates are going to join and to ensure that the students pursuing Post Graduate and Super Speciality are not forced to obtain a bank guarantee. Instead, a simple undertaking may be obtained that on completion of the Super Speciality course/Post Graduate course, the respective conditions of agreeing to serve in the State, as the case may be, depending on the availability of the vacancies within the time frame may be obtained.

12. Pending Writ Petitions, all petitioners were permitted to participate in counselling to ascertain the success of their candidature as this would have a bearing on the decisions to be made. This is for the reason that prima facie I had felt that a distinction ought to be made between Government Colleges not just in the State of Tamil Nadu but in any part of the Country, vis-a-vis private institutions within and without the State.

13. The petitioners are thus participated in the counselling and the result of the counselling is that Dr.R.Deepika and Dr.T.Raajnesh have been successful in securing seats in Stanley Medical College, Chennai and Madras Medical College, Chennai respectively. Being Government Institutions, there is no necessity for them to pursue their challenge to G.O. 185 as modified by letter dated 10.02.2022, as they fall within the exempted category, and benefit from clarification dated 10.02.2022.

14. Hence, W.P.Nos.7599 and 7600 of 2022 are closed recording the above position. There is no hurdle to their certificates being returned forthwith upon their complying with the conditions as applicable to them and I order so.

15. Adverting to the case of the other four petitioners, clearly, the imposition of, or exemption from any condition, falls within the domain of the State. This position has been settled by the Hon'ble Supreme Court in the case of Association of Medical Super Speciality Aspirants and Residents & Others V.



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Union of India and others (W.P.(C) No.376 of 2018) decided on 19.08.2019).

16. The challenge in that case related to compulsory bonds to be executed for admission to post graduate medical courses and super speciality courses. The petitioner association had sought a mandamus quashing such compulsory bond conditions as imposed in the States of Andhra Pradesh, Goa, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Orissa, Rajasthan, Tamil Nadu, Telengana and West Bengal.

17. A consequential direction had been sought by the members of the petitioner association seeking return of their original mark sheets, certificates and other documents that had been retained by the respective States post completion of the speciality courses, insisting upon and invoking the bond conditions.

18. The restrictions imposed by the different States are of various hues and not all uniform in nature. The basis of the imposition was however for the same reason, to retain some degree of control over the candidates/doctors, to ensure that they serve the State for a given, stated period.

19. All the States invest substantially in setting up and maintaining the medical colleges, and the uniform thinking was that having benefitted from the resources of the State, the candidates must be prevailed upon to give back to the State, some of the expertise gained by them.

20. The Hon'ble Court held that the conditions imposed fell within the permitted authority that vested in the State, and was reasonable and not in violation of any constitutional principle. Such policy, to permit the States to engage in the exercise of imposing reasonable restrictions upon those candidates who were the beneficiaries of State sponsored infrastructure, was premised on the minimum need of deprived sections of society to have access to proper health and tertiary care.

21. The laudable object is thus that health care must not be restricted only to those who have the resources to visit speciality and corporate hospitals, but must be available even to those living in the remote areas of a State. In the upshot, the claim of the Association was dismissed and all doctors who had executed the bonds were held to be bound by the conditions contained therein.

22. A suggestion was made by the Hon'ble Bench in conclusion that, bearing in mind the rigour imposed by



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the States and the need for uniformity in the matter relating to compulsory bonds, suitable steps be taken by the Union of India and the Medical Council of India to formulate a uniform policy regarding the compulsory service to be rendered by doctors trained in Government Institutions.

23. Though rendered on 19.08.2019, nothing is placed before me by learned counsel for the respondents to show that the suggestion of the Hon'ble Supreme Court has borne any fruit. As a result, the disparity in bond conditions continues.

24. The common counter of the respondents, sets out at paragraph 5, the estimate of costs incurred by the State in running the medical colleges, that is in excess of Rs.10 crores per year. This is quantified approximately at a sum of Rs.27.00 lakhs per student per annum. On the other hand, the fee structure is extremely subsidized and reasonable and some of the petitioners were also paid stipend by the Government.

25. It is best to extract the defence of the State in its own words.

"It is further submitted that every Department in the government Medical Colleges requires the following doctors, besides other staff and infrastructural facilities.

Sl. No.	Name of the Post	No.of Posts	Approximate Total Annual Pay	
1.	Professor	8	Rs.	18305760
2.	Associate Professor	14	Rs.	24136728
3.	Assistant Professor	28	Rs.	44462544
4.	Senior Resident	4	Rs.	6254208
		Total	Rs.	93159240

The salary of Staff and other infrastructural facilities provided to every Department would cross about Rs.10,00,00,000/- (Rupees Ten Crores) per year. Thus for each petitioner to undergo the course, the Government incurs Rs.27,00,000/- (Rupees Twenty Seven Lakhs) approximately per annum and similar amount for the 2nd and 3rd year also whether they continue their study or not. Whereas the petitioners are required to pay the tuition fees of Rs.30,000/- per year and special fee of Rs.500/- per year, in all a total of



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Rs.30,500/- only for their one year course. Apart from that, the petitioners were paid stipend by the Government to the tune of Rs.11,71,500/- from May-2018 to May-2021.

The candidates trained at such low cost with stipend must utilize their knowledge gained for the benefit of the poor patients coming for treatment at Government Medical College Hospitals. The Government is offering all such speciality courses at a very low cost when compared to the private institutions with a fond hope that he/she will serve the poor. The prime objective of the Government is to provide specialized treatment to the poor people who are unable to afford the high cost involved in treatments outside Government Institutions, and to increase the availability of skilled manpower.

Hence, it is natural that the Government desires to ensure that these doctors who have undergone Post Graduate training at a very low cost by utilizing the poor people to serve the poor and the needy of this country at large and this State in particular. The public have the right to expect the Specialists to utilize the skills they acquired during their training for the benefit of the sick, the poor and the needy. To ensure that the services of trained Post Graduate Doctors are made available to the poor and needy patients, a bond signed by the candidate with 3 sureties is obtained from the candidates at the time of their admission. The candidate is a well qualified registered medical practitioner with adequate knowledge and only after carefully reading the bond condition and understanding it and after being fully aware of the terms and conditions of the bond he/she has signed the bond and he/she has not been forced to sign the bond. It is sincerely believed that if allowed this will encourage an attitude of not paying attention to those poor people at whose expense they have been educated which is not good and acceptable."

26. The State also points out that some of the petitioners have engaged in COVID duty on contract basis for some time. The legitimate claim of the respondents is that in spite of executing a bond, as admittedly enforcement of the bond is almost non-existent, many of the candidates do not come back to serve the State. Thus, the purpose of the bond is defeated resulting in considerable shortage in the number of doctors employed in Government Institutions



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in the State.

27. I am now faced with the situation where the State of Tamil Nadu has made a distinction between those candidates who continue to study in Government colleges within the State and those who had opted to leave the State to continue their studies elsewhere. In the latter case, and if the bond conditions have not been fulfilled thus far by the doctors, such conditions will spill over and merely be deferred to after the completion of the super speciality courses.

28. In such an event, it becomes imperative for the State to, as rightly contended by them, retain some measure/degree of control upon the students, as in the alternative, there is every possibility that the doctors would continue to greener pastures without feeling the need to return to the State to serve.

29. Admittedly, the machinery for enforcement of the bond conditions is not just poor but non-existent. It is, in such a situation that the State has created an exemption from G.O.185 dated 13.04.2020 in permitting continuance of original bond conditions in the cases of those students who continue their studies in the State of Tamil Nadu.

30. However, the rigour of the Government Order continues in the cases of those students who have secured admission outside the State or in private institutions within the State. In such cases, the requirement of a bank guarantee for a sum of Rs.40,00,000/- (Rupees forty lakhs only) is insisted upon. Learned single Judges of this Court have considered the pleas of candidates that the condition of bank guarantee is onerous. Such consideration was prior to issuance of clarification dated 10.02.2022.

31. Ultimately, those petitioners were directed to furnish guarantees for amounts less than the original liabilities which, as per G.O.185 requires the bank guarantee to be equivalent to the bond amount as prescribed in the prospectus in the respective year. (See orders dated 16.10.2020, 30.11.2020 and 03.12.2020 in W.P.Nos.14906 of 2020, 16849 of 2020 and 16842 of 2020 respectively). I am also told that the aforesaid orders have been accepted by the State and bank guarantees accepted for the negotiated amounts stated therein.

32. Having heard learned counsel, I am of the view that the primary demarcation made under impugned Government Orders read with clarification dated 10.02.2022 has some basis. I am also supported in this view by the decision of the first Bench of this Court in Writ Appeal No.799 of 2019 and a batch of Writ



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Petitions delivered on 06.10.2020. The conclusion of the Bench at paragraph 103 (v) specifically takes note of the judgment of the Apex Court in the Association case reiterating that that judgment laid down the law in regard to the binding nature of bond/contract obligations.

33. The candidates in W.P.Nos.7607 and 7589 of 2022 have secured admission in private institutions and hence are bound by G.O.Ms.No.185 dated 13.04.2020 and clarification dated 10.02.2022. Their writ petitions are dismissed, subject to relief as under.

34. The State has revealed its inclination to engage in negotiation of the appropriate amount of bank guarantee to be executed by the candidate opting for study in private institutions, both within and without the State.

35. I thus direct Respondent 2, the Director of Medical Education, to engage in a deliberation of the amount of bank guarantee to be furnished by these petitioners, bearing in mind orders passed in W.P.Nos.14906 of 2020, 16849 of 2020 and 16842 of 2020 as aforesaid and decide the same within 24 hours from now.

36. The process of admission in the seats secured by these candidates will be subject to this deliberation. It is made clear that the candidates in question are bound by all conditions under G.O.185 dated 13.04.2020, including the furnishing of the bank guarantee, except for the quantification of the bank guarantee to be furnished.

37. As regards those candidates who have secured admission in Government Institutions in other parts of the Country, I am of the considered and categorical view that the benefit of waiver of bank guarantee extended by the State of Tamil Nadu to students studying in Tamil Nadu, must be extended to those candidates as well. Learned counsel for the respondents expresses some reservations on this score, pointing out the absence of control that they hold in such matters.

38. Let us bear in mind that we are one unified Country and the common aim of all State Governments is to improve the access of underprivileged in their States to health care. A balance has to be achieved as between the aforesaid object and the interests of the Doctors upon whom the condition of bank guarantee is imposed.

39. Moreover, the direction of the Hon'ble Court in the case of the Association (supra) is that a uniform set of conditions must be customised that would operate across all the States. To my mind, there



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is a cue to be taken from this suggestion which is that some reciprocity must be devised by States to enable quality medical education pan India while at the same time, availing the benefit of the doctors who have been the beneficiaries of such training.

40. There is no such mechanism available as of now to provide for such reciprocity. However, bearing mind the compulsions of the States, on the one hand, and students, on the other, a harmonious balance must be struck and the States governments must reciprocally assist each other in this respect.

41. The NEET prospectus contains a categorical condition to the effect that students admitted must produce the certificates in hard copy, and a declaration or certificate to the effect that they possess the required qualification issued by other Institutions would not suffice. This condition is evidently to get over the difficulties caused by breach of bond conditions.

42. This condition has not however, conceived of the certificates being held securely by the States themselves, albeit other States, by putting in place an inter-State mechanism that would enable candidates to avail opportunities in other States while still being bound to return to the Home State to serve. That is, and to clarify, the Home State must retain lien over the certificates of the candidates in question.

43. In addition, what is required is a mechanism whereby the certificates of a Student from Tamil Nadu who has obtained admission to a Government college in Karnataka, for example, may be securely held, so as to satisfy the prospectus conditions, the requirements of the admitting college (in Karnataka) and the Home State (TamilNadu).

44. Had such a mechanism been in place, which I believe will be in the best interests of all stakeholders in the system, candidates who have secured admission in Government Institutions though in other States will also be entitled to the benefit of dispensation of the bank guarantee too. Let such a mechanism be put in place forthwith to enable such reciprocity.

45. The Director General of Health Services (DGHS), Ministry of Health and Family Welfare, Government of



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India, Nirman Bhawan, Maulana Azad Road, New Delhi - 110 011 is suo moto impleaded as 5th respondent in the above Writ Petitions. Mr.V.Chandrasekaran, learned Senior Panel Counsel accepts notice for DGHS and undertakes to convey this order to the DGHS forthwith. The DGHS will appoint a Nodal officer who will facilitate the process as indicated in the paragraphs as above for the present academic year. Let this process be completed latest by 14.04.2022.

46. The admission secured by the petitioners in W.P.No.7596 of 2022 and W.P.No.7683 of 2022, will await completion of this process and further action in terms thereof. G.O.185 dated 13.04.2020 will be read down to the extent as indicated in this order, and the aforesaid Writ Petitions are ordered in the aforesaid terms.

4. G.O.(Ms) No. 185, Health and Family Welfare (MCA 1) dated 13.04.2020 will be read down to the extent in order dated 12.04.2022.

5. This writ petition is ordered in the aforesaid terms. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government of Tamil Nadu
Health and Family Welfare Department,
Secretariat,
Chennai-600 009
- 2.The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai-600 010
- 3.The Dean,
Coimbatore Medical College and Hospital,
Coimbatore-641 018.



4.The Dean,
Trivandrum Medical College,
Medical College Post,
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+1cc to Mr.S.Kamadevan, Advocate, S.R.No.24993

W.P.No. 9245 of 2022
WMP.Nos.9007 to 9009 of 2022

NMI (CO)
CB(12/04/2022)