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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.43464 of 2016

Dr.R.Keerthana

...Petitioner

Vs.

1.The Principal Secretary to Government
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Medical Education
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Secretary
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

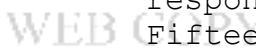
4.The Dean
Madras Medical College,
EVR Periyar Salai,
Park Town,
Chennai - 600 003.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 3rd respondent to refund the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the petitioner which was paid by the petitioner on 08.06.2016 towards the discontinuation fees of the All India Merit Quota Seat of MD Anaesthesia (Non-Service) Course within a reasonable time.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.D.Ravichander
Special Government Pleader
For [Higher Education]



O R D E R

The Writ of Mandamus has been filed to direct the 3rd respondent to refund the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the petitioner which was paid by the petitioner on 08.06.2016 towards the discontinuation fees of the All India Merit Quota Seat of MD Anaesthesia (Non-Service) Course within a reasonable time.

2. The petitioner passed undergraduate Degree in M.B.B.S in the year 2015 and registered as a Medical Practitioner before the Medical Council of Tamil Nadu. The petitioner applied for All India Post Graduate Medical Examinations (AIPGMEE-2016) conducted by the National Board of Examinations and All India Institute of Medical Sciences test (AIIMS-2016). The petitioner wrote both the Post Graduate Examinations. AIPGMEE results were announced at the earliest, the petitioner was qualified and allotted to MD Anaesthesia course at Madras Medical College, Chennai.

3. On 01.05.2016, the petitioner had joined Post Graduate course in MD Anaesthesia (Non Service) in Madras Medical College, Chennai, as per the allotment of All India Merit Quota by the Medical Counseling Committee, National Board of Examinations, Government of India based upon the merit rank secured by her in the All India Post Graduate Medical Entrance Examination, January 2016.

4. Subsequently, the petitioner came out successfully in AIIMS test and she attended for AIIMS Centralized Merit Counseling on 06.06.2016 along with the Bonafide Certificate dated 30.05.2016 issued by the Dean, Madras Medical College, Chennai. The petitioner was allotted (Obstetrics and Gynecology) (MD OG) seat on All India Merit Quota basis. The AIIMS authorities directed the petitioner to produce the original certificates for verification on or before 10.06.2016. The petitioner rushed to Chennai and submitted a requisition on 08.06.2016 to the 4th respondent to return the original certificates / documents.

5. However, the 4th respondent directed the petitioner to pay the discontinuation fees of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) for the purpose of return of certificates. In view of the urgency, the petitioner had deposited the said amount and received her certificates and joined the Post Graduate Course at AIIMS. After depositing the discontinuation fees, the petitioner had chosen to file the present writ petition.



6. The learned counsel for the petitioner mainly contended that the discontinuation fees contemplated is not applicable to the petitioner and even in the Bonafide Certificate issued by the 4th respondent on 30.05.2016, no condition was imposed. The bonafide certificate was issued based on the fact that the petitioner was allotted with the seat to pursue Post Graduate Medical course. Therefore, the discontinuation fees paid by the petitioner must be returned.

7. The learned counsel for the petitioner relied on the order of this Court dated 12.10.2015 in W.P.No.23931 of 2015, wherein, it is observed that "there is no question of penalty involved as the petitioner did not discontinue the earlier course but opted for a better one and as such no penalty need be paid by the petitioner."

8. Relying on the said judgment, the learned counsel for the petitioner reiterated that the said case is also relating to the payment of discontinuation fees and the Court allowed the claim of the petitioner. Further, the judgment of the Hon'ble Division Bench dated 01.11.2019 in W.A.No.985 of 2017 was also relied upon, wherein, the Hon'ble Division Bench on a similar case held that, "in the absence of any prohibition in the bonafide certificate issued by the 4th appellant and when the 1st respondent was allowed to attend the counseling, the appellants could not charge any discontinuation fees of Rs.15,00,000/-. At the time of issuance of bonafide certificate itself, if the 4th appellant had made a condition that she had to pay a sum of Rs.15,00,000/- towards discontinuation fees, the 1st respondent would have had a second thought about discontinuing the course or would not have discontinued from the course. No such condition had been imposed in the bonafide certificate."

9. The learned counsel for the petitioner relying on the said judgment reiterated that in the present case also the bonafide certificate was issued without any condition and therefore discontinuation fees needs to be refunded.

10. The learned counsel appearing on behalf of the respondent objected the said contentions raised by the petitioner by stating that bonafide certificate is absolutely irrelevant and only the prospectus is relevant. The bonafide certificate was issued for the purpose of participating in the counseling by the petitioner for All India Institute of Medical Sciences. The said bonafide certificate states that the petitioner is under going 1st year Post Graduate Degree course in MD Anaesthesiology and further, it states that the 4th respondent



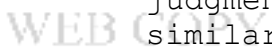
is possessing the original certificates. Therefore, the bonafide certificate is no way connected with the counselling attended by the petitioner before the AIIMS.

11. The very purpose of issuing bonafide certificate is to inform that the petitioner is pursuing MD course at Madras Medical College and the college is in possession of the original certificates and not for any other purpose. Thus, the reliance placed on by the petitioner on the bonafide certificate is insignificant and cannot support her case.

12. The learned counsel for the respondents relying on the counter affidavit has categorically stated that "as per clause 45 of the policy / prospectus approved by the Government Tamil Nadu, the Candidates who discontinue the course after the last date of allotment of seats in final phase of All India Quota counseling shall pay the Discontinuation Fees to the Deans of the respondent colleges the sum as specified below in total by way of Demand Draft drawn in favour of the Secretary, Selection Committee, Kilpauk, Chennai 10 payable at Chennai."

13. The respondents have further stated that the last date for PG admission is 31.05.2016 as per the MCI regulations. The Government have offered PG courses at a very affordable cost to the benefit of the poor public. If the petitioner had discontinued the degree course prior to the cut-off date, there would have been a fair chance to fill up the vacant seat within the cut-off date. As the petitioner had submitted her representation to discontinue the Degree Course only on 07.06.2016. i.e. after the cut off date for admission, the PG seat in MD Anesthesiology became vacant and could not be filled up either by All India Quota or by State Quota. As the MD Anesthesiology seat become vacant after 31.05.2016, the MD Anaesthesia seat could not be filled up by meritorious candidate.

14. If the candidate surrendered the seat within the stipulated time, that seat would have been filled by a meritorious candidates and their services can be utilized for the welfare of the needy poor patients. The MCI have recognized 18 No. of seats in Madras Medical College, Chennai for the year 2016-2017 session. Teaching faculty sanctioned by the Government for Anaesthesia department for conducting classes for 18 Nos. of P.G. seats sanctioned in M.D. Anesthesiology is one Professor and 10 Associate Professors along with the infra structure facilities. 11 Professors are conducting the classes for 18 students as per MCI norms. The salary and other allowances are sanctioned to the Teaching Faculties by the Government for teaching the 18 candidates. Due to discontinuation by the petitioner, the faculties are taking classes only for the



15. The learned counsel for the respondent relied on the judgment of the Hon'ble Division Bench of this Court in a similar case, more specifically, in the case of the Director of Medical Education and Another Vs. M.Aarthy reported in 2019 SCC Online Mad 28115, wherein, the Hon'ble Division Bench with reference to the very same clause i.e., clause 45 of the prospectus dealt with the issues as follows:

6. The petitioner has been clearly informed that she has secured the PG Degree Course in MS Anatomy at Madurai Medical College, Madurai as an Non Service Candidate by all India Quota for the academic year 2016-2017 and if for any reason, the candidate does not wish to pursue the course, then in terms of the prospectus, discontinuation fee has to be paid to the Dean of the respective College.

8. The candidate, if for any reason, does not wish to pursue the course, to which she was admitted as in the instant case in all India quota seat, the seat allotted to the candidate will remain vacant and no



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other candidate can be accommodated in the seat. Therefore, a lot of thought process has gone into the aspect, as to why such condition has to be imposed. Further more, it cannot be denied by the petitioner that medical education in the Government Medical Colleges is highly subsidised and asking the petitioner to pay the discontinuation fee is as compensation for the seat, which will go waste. As rightly pointed out by the learned Additional Advocate General that the MD Anatomy course is very rare course and there is a dearth of teaching faculty, who is competent to teach anatomy.

9. In the memorandum of the grounds of appeal it has been mentioned by the respondents / appellants that the Government is spending Rs.1 crore for each candidate per year approximately from the public exchequer and by virtue of the conduct of the petitioner not only deprived the next eligible candidate but the seat has gone waste and the public exchequer has been wasted in the process."

16. The question arises before this Court is that whether the discontinuation fees already paid by the petitioner has to be refunded and the petitioner is entitled for the same or not?

17. It is not in dispute that the petitioner secured admission to the MD. Anaesthesiology course at Madras Medical College, Chennai. While she was pursuing the course, bonafide certificate was issued by the Madras Medical College, Chennai. Thereafter, she appeared in the counseling conducted by the AIIMS and there also she secured admission. Thus, the petitioner has chosen to discontinue the Post Graduate course with Madras Medical College, Chennai and joined AIIMS at New Delhi. Thus, it is an admitted fact that the petitioner has discontinued the Post Graduate course and joined AIIMS at New Delhi.

18. Further, the fact remains that the last date of Post Graduate admission was on 31.05.2016 as per the MCI regulations. The petitioner had discontinued the course after the cutoff date for admission. The cutoff date was 31.05.2016 and the petitioner submitted a representation to discontinue the Post Graduate degree course only on 07.06.2016, after the cut off date for admission in the Post Graduate seat in MD Anaesthesiology. Thus, the seat for Post Graduate MD Anaesthesiology filled up either by All India Quota or by state quota became vacant after 31.05.2016 and the seats could not be filled by meritorious candidates.



19. In this back drop, let us now look into the prospectus and its clause. Clause 45 of the prospectus issued for admission to Post Graduate Degree/ Diploma /Year M.Ch.(Neuro-surgery) Courses 2015-2016 had states that "The candidates who discontinue the course after the last date of allotment of seats in final phase of All India Quota Counselling shall pay the Discontinuation Fees to the Deans of the respective Colleges the sum as specified below in total by way of Demand draft drawn in favour of the Secretary, Selection Committee, Kilpauk, Chennai".

20. Agreeing the prospectus, the petitioner had secured admission to the PG medical course in MD Anaesthesiology at Madras Medical College, Chennai. Further, she discontinued the course and secured admission at AIIMS, New Delhi. It is not in dispute that clause 45 of the prospectus provides Discontinuation Fees to be paid by the candidates who discontinue the course after the last date of allotment of seats.

21. In the present case, the last date was 31.05.2016 and the petitioner submitted a representation to discontinue the PG degree course only on 07.06.2016.

22. The Hon'ble Apex Court of India held in many decisions that the terms and conditions stipulated in the prospectus of the course are binding on the parties. It is a rule of selection in respect of the student for admission to various courses and once the prospectus is issued the same cannot be modified with regard to the disadvantage of the students as also by the Institution. Thus, the prospectus is binding on the parties and the rule of admission has to be followed by the parties to the prospectus.

23. The Hon'ble Division Bench of this Court in the case of Director of Medical Education and Another Vs. M.Aarthi cited supra, extracted the principles that prospectus is a rule of selection and the candidates who submitted an application pursuant to the prospectus is deemed to have agreed the condition contained in the prospectus. Therefore, the rule of selection has to be followed in the event of any discontinuation of courses at the instance of the students.

24. The very purpose and object of such conditions in the prospectus is that, once a seat became vacant after the last date, the same cannot be filled up by meritorious candidates. The Government is spending huge amount for the PG Medical courses and in the event of allowing PG Medical course to lapse, undoubtedly, huge loss is created for the State. Further, the next meritorious candidate is also deprived from securing seat to the PG Medical course.



25. Considering these situations and to discourage students from securing admission in other College and submitting discontinuation letter, such conditions are stipulated. Once a decision is taken agreeing the prospectus, they cannot turn around and say that they will discontinue the course and will not pay Discontinuation charges. Such a stand if taken by the students at no circumstances be accepted. Every student is expected to take one stand, either to pursue the course or in the event of securing better course or better college, they must be ready to pay discontinuation charges as the discontinuation is causing huge loss to the state.

26. Further, the discontinuation is resulting in denial of seat to the next meritorious candidates who is longing to secure Post Graduate course. It is not as if a student can secure PG Medical Course in two or more colleges and discontinue the course from one college and such discontinuation would cause loss to the State and deprive the other candidates from getting admission. Such an idea of students can never be appreciated.

27. This being the facts and circumstances, the judgments relied up on by the petitioner is of no avail to her. Contrarily, the judgment of the Hon'ble Division Bench in the case of Director of Medical Education and Another Vs. M.Aarthi cited supra held that the prospectus is a rule of selection of candidates. Therefore, the said proposition has to be followed and consequently, the writ petitioner has not made out any acceptable grounds for considering the relief as it sought for in the present writ petition.

28. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Principal Secretary to Government
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.



2.The Director of Medical Education
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

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3.The Secretary
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

4.The Dean
Madras Medical College,
EVR Periyar Salai,
Park Town,
Chennai - 600 003.

+lcc to Mr.S.Sivakumar, Advocate Sr.2327
+lcc to the Government Pleader Sr.2733

W.P.No.43464 of 2016

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