



W.P.No.24671 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.24671 of 2023
and W.M.P.No.24112 of 2023

VELS Medical College and Hospital,
represented through its Dean
Dr.KumudhaLingaraj
Under Vels Institute of Science,
Technology and Advanced Studies,
(VISTAS) deemed to be University,
12/123, Velan Nagar, Manjankaranai Village,
Uthukottai Taluk, Tiruvallur District,
Tamil Nadu-601102.

... Petitioner

-Vs-

1. Union of India,
represented by its Under Secretary,
Govt of India,
Ministry of Health and Family Welfare,
Medical Education-I,
NirmanBhawan,
New Delhi-110 001.
2. National Medical Commission,
Through its Chairman,
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110 017.



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3. Medical Assessment and Ratings Board,

Through its President,

Pocket-14, Sector-8,

Dwarka Phase-I,

New Delhi-110 017.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent No.C.18018/16/2023-ME-I (FTS No.8233845) dated 10.08.2023 and quash the same and consequently direct the first respondent to pass order on merits on the appeal preferred by the petitioner dated 28.07.2023.

For Petitioner : Mr.N.Murali Kumaran, Senior Counsel
for MC Gan Law Firm

For Respondents

R1 : Mr.AR.L.Sundaresan, ASGI
assisted by
Mr.K.Srinivasamurthy, SPC

R2 and R3 : Mrs.Subharanjani Anandh

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 10.08.2023, thereby advised the petitioner to file a second appeal strictly adhering the provisions of National Medical Commission Act, 2019.



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2. For the Academic Year 2021-2022, the petitioner challenged an order passed by the third respondent, reducing the permission from 150 seats to 100 seats by way of writ petition in W.P.No.22750 of 2022 before this Court. For the Academic Year 2022-2023, the renewal of permission was granted to the petitioner Institution by the third respondent for 150 students. However, there was no separate communication from the third respondent. For the Academic Year 2023-2024, the petitioner submitted an application for renewal of permission for 150 seats. However, the third respondent by an order dated 14.07.2023 disapproved the renewal of permission for 3rd Batch for the year 2023-2024 and not to grant permission for any MBBS admission for the Academic Year 2023-2024. Aggrieved by the same, the petitioner filed a writ petition before this Court in W.P.No.22352 of 2023.

3. Pending the writ petition, the respondents filed counter and specifically contended that as against the order passed by the third respondent, there is an appeal remedy under the statute. Therefore, while pending the writ petition itself, without even withdrawing the said writ petition, the petitioner filed an appeal before the first respondent instead



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of filing before the second respondent as per the National Medical Commission Act, 2019. Therefore, it was returned for the reason that without exhausting the first appeal remedy before the second respondent, the appeal cannot be entertained and thereby advised the petitioner to file an appeal before the second respondent along with relevant documents.

4. Mr.N.Murali Kumaran, learned Senior Counsel appearing for the petitioner submitted that the remedy of appeal before the appellate authority under the statute is futile and time consuming and would render the relief sought by the petitioner become infructuous, as the appeal would be heard by a committee constituted by the second respondent, which had a member of the third respondent which passed the impugned order. The appeal before the second respondent would be exercised in futility to challenge the order passed by the third respondent which functions under the second respondent. In fact, after returning the appeal by the first respondent, the petitioner already submitted a detailed representation before the second respondent and the same may be treated as an appeal and the second respondent may be directed to dispose the same, within a stipulated time, since the admission for MBBS itself will



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have to be completed by 31.08.2023.

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5. Mr.AR.L.Sundaresan, the learned Senior Counsel appearing for the first respondent submitted that the statute provides an appeal remedy before the second respondent as against the order passed by the third respondent. If at all the petitioner felt any bias at the hands of the second respondent, the petitioner ought to have challenged the statute in the manner known to law. Without even filing any appeal, the petitioner cannot say that the second respondent had acted in a biased manner.

6. Mrs.Subharanjani Anandh, learned counsel for the second and third respondents submitted that without exhausting the appeal remedy before the second respondent, the petitioner cannot be permitted to file any appeal before the first respondent. The statute provides the appeal remedy under Section 28(6) of the National Medical Commission Act, 2019. In fact, the petitioner ought to have filed an appeal as against the order of the third respondent, within a period of fifteen days from the date of the order of the third respondent. The petitioner missed the bus by without filing any appeal, within a period of fifteen days from the date



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of the order passed by the third respondent before the second respondent.

Instead of filing an appeal before the second respondent, on one hand, the petitioner had challenged the said order by way of writ petition before this Court in W.P.No.22352 of 2023 and by another hand, pending the said writ petition, he had also filed an appeal before the first respondent on 28.07.2023. Therefore, the representation submitted by the petitioner dated 18.07.2023 cannot be treated as an appeal, since it was not annexed on any material to consider the same as an appeal.

7. Admittedly, the writ petition filed by the petitioner as against the order passed by the third respondent dated 14.07.2023 is pending in W.P.No.22352 of 2023. Only on the basis of the counter filed by the respondents, the petitioner filed an appeal before the first respondent. Whereas, the first appeal remedy is available under the statute before the second respondent.

8. It is relevant to extract the provisions under Section 28(5) of National Medical Commission Act, 2019 as follows:-



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“28. Permission for establishment of new medical

College:

(5) Where a scheme is disapproved under sub-section (3), or where no decision is taken within six months of submitting a scheme under sub-section (1), the person concerned may prefer an appeal to the Commission for approval of the scheme within fifteen days of such disapproval or, as the case may be, lapse of six months, in such manner as may be specified by the regulations.”

Accordingly, the petitioner ought to have filed an appeal, within a period of fifteen days from the date of the order passed by the third respondent before the second respondent.

9. It is also relevant to extract the provisions under Section 28(6) of the National Medical Commission Act, 2019 as follows:-

“28. Permission for establishment of new medical College:

(6) The Commission shall decide the appeal received under sub-section (5) within a period of forty-five days from the date of receipt of the appeal and in case the Commission approves the scheme, such approval shall be the permission under sub-section (1) to establish a new medical college and in case the Commission disapproves the scheme, or fails to give its decision within the specified period, the person concerned may prefer a second appeal to the Central Government within thirty days of communication of such disapproval or, as the case may be, lapse of specified period.”

Accordingly, the appellate authority i.e., the second respondent ought to have disposed the appeal, within a period of 45 days from the



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date of receipt of the appeal.

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10. The petitioner instead of filing an appeal before the second respondent, filed an appeal before the first respondent. Therefore, the first respondent had rightly returned the appeal and advised to file a second appeal before the appellate authority i.e, the second respondent. Further, in an earlier round of litigation, the petitioner suffered with the order passed by the third respondent dated 30.05.2022, thereby reduced the letter of permission by 50 seats making it from 150 to 100 MBBS admissions for the academic year 2021-2022 and thereafter per annum subject to the annual verification as well as Renewal of Permission till the recognition is granted for 100 seats. Aggrieved by the same, the petitioner filed an appeal before the second respondent. By an order dated 27.06.2022 the appeal filed by the petitioner was dismissed.

11. The second respondent constituted a committee consisting of Under Graduate Medical Education Board, Post Graduate Medical Education Board and Ethics and Medical Registration Board excluding the third respondent. Though the third respondent is connected under the



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second respondent, when the appeal arise as against the order passed by the third respondent, the second respondent would constitute a committee consisting of Under Graduate Medical Education Board, Post Graduate Medical Education Board and Ethics and Medical Registration Board and dispose the appeal. Therefore, it cannot be said that the second respondent would act in a biased manner while considering the appeal as against the order passed by the third respondent. In fact, in the earlier round of litigation, the petitioner rightly filed an appeal before the second respondent. Therefore, the petitioner ought to have filed an appeal before the second respondent. Hence, this Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and is liable to be dismissed.

12. Though the petitioner did not file any appeal in the form of an appeal as required under the statute, he submitted a representation on 18.07.2023 before the second respondent. Therefore, the second respondent is directed to dispose the representation submitted by the petitioner, on or before 31.08.2023.



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13. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
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1. The Under Secretary,
Union of India,
Govt of India,
Ministry of Health and Family Welfare,
Medical Education-I,
NirmanBhawan,
New Delhi-110 001.
2. The Chairman,
National Medical Commission,
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110 017.
3. The President,
Medical Assessment and Ratings Board,
Pocket-14, Sector-8,
Dwarka Phase-I,
New Delhi-110 017.



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G.K.ILANTHIRAIYAN, J.

mn

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