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W.P.No.27360 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.27360 of 2023
and WMP.No.26789 of 2023

Dr.M.Balaji

... Petitioner

Vs

1.State of Tamil Nadu

Represented by its Principal Secretary
Health and Family (MCA-I) Department
Fort St.George, Chennai - 600 009.

2.The Director of Medical Education

Directorate of Medical Education
Kilpauk, Chennai - 600 010.

3.The Selection Committee

Represented by its Secretary
Directorate of Medical Education
162, Periyar E.V.R. High Road
Kilpauk, Chennai - 600 010.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to permit the petitioner to resign/discontinue from the M.S.Orthopaedics seat in Mohan Kumaramangalam Medical College, Salem, allotted to him in Round No.1 of State Counselling for P.G. Degree Courses 2023 without payment of



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discontinuation fees and without forfeiture of security fee and tuition fee and consequently, re-introduce petitioner's seat to the seat matrix for allotment in the State Round No.3 / Mop-up counselling for P.G. Degree Courses 2023.

For Petitioner : Mr.E.Manoharan

For Respondents : Mr.V.Manoharan
Additional Government Pleader for R1,R2
Mrs.M.Sneha for R3

ORDER

The petitioner has applied for post-graduate course in Medicine in M.S.Orthopaedics. He obtained a seat even in the first round of counselling, and joined the course in Mohan Kumaramangalam Medical College, Salem. The petitioner states that he is a asthmatic, and on the first day, when he entered the operation theatre which is fully air-conditioned, he developed severe wheezing. Since the petitioner did not anticipate this turn of events, he appears to have realised that he might not be able to complete the course and decided to give up his dreams of doing M.S.Orthopaedics. Indeed, the petitioner wanted to shift his area of specialisation to M.D. General Medicine, and wants to try for it atleast in the mop-up counselling.



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2. Mr.V.Manoharan, learned Additional Government Pleader takes notice for respondents 1 and 2, and Mrs.M.Sneha, learned counsel takes notice for the third respondent.

3. The learned counsel for the third respondent submitted that according to the petitioner, he was diagnosed with Bronchial asthma and opted to resign his seat (M.S.Orthopaedics) allotted to him in his first round of counselling, and now in his second round of counselling for post-graduation course, he has choice locked the first eight choices for M.D.Radio Diagnosis in multiple Government Medical Colleges, and this course requires a continuous stay in airconditioned ambience, and it clearly establishes the falsity of petitioner's claim. To be precise, the working atmosphere in M.D.Radio Diagnosis is worse than M.S.Orthopaedics, as it requires the petitioner's stay always in the airconditioned room. In short, the third respondent raises an issue doubting the very bonafides of the statement made by the petitioner.

4. The issue involved in this case is short and straight. Should the petitioner be permitted to resign, and participate either in the mop-up



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counselling or stray counselling, depending on the availability of seats? As to why he could not continue his post-graduation in M.S.Orthopaedics where he has secured a seat for him even in the first round of counselling matters less, since in the current academic year a window indeed has been provided for resignation.

5.1 The learned counsel for the petitioner circulated an order of the Hon'ble Supreme Court in ***Kevin Joy and Others Vs The Government of India & Others*** [W.P(Civil) No.106/2023 dated 13.02.2023], where the Hon'ble Supreme Court has permitted resignation of seat opted by a candidate and thereby filling up those vacancy by the Selection Committee with another candidate, and it has kept the issue open regarding the petitioner's right to seek refund of amount he had paid, and it has also underscored that this will not be a precedent.

5.2 The learned counsel for the petitioner also submitted that even though this Court is under a bar not to rely on the aforesaid order of the Supreme Court as a precedent, it may appreciate the rationale of the Supreme Court in letting a candidate to resign from the course he joined, and let another



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candidate to fill it up. The learned counsel wondered what will happen in this scenario is that, neither the petitioner will be benefited because he has decided not to prosecute the course, and none will be benefited either.

6. This Court finds considerable merit in the submissions of the counsel for the petitioner. A post-graduation seat in medicine is like a gold mine for aspiring doctors, that for few seats, thousands flock and compete. In a scenario such as this, it will be a crime to see a seat go wasted if none is allowed to benefit out of it. At least from the stand point of the petitioner, he has taken a call not to continue his studies, but compelling him to stay in the course which is not going to benefit any one.

7. Therefore, even *de hors* the order of the Hon'ble Supreme Court in ***Kevin Joy and Others Vs The Government of India & Others***, referred to above, this Court finds that there are strong reasons why this Court necessarily need to allow the petitioner to resign from his post-graduation course in M.S.Orthopaedics. The issue relating to payment of discontinuation fees to the tune of Rs.15.0 lakhs, or payment of penalty and forfeiture of security is left open, and the petitioner is free to make his claim as and when the



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Hon'ble Supreme Court resolves the issue pending before it in **Kevin Joy**

case. The **third** respondent, the Selection Committee is now directed to accept the resignation of the petitioner, and it is at liberty to fill up the seat if it considers it necessary to fill up that seat for any other candidate.

8. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2023

Index : Yes / No

Speaking order / Non-speaking orders

To:

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N.SESHASAYEE.J.,



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