



WEB COPY



W.P.No.19482 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.19482 of 2017

Dr.Anees Rahman, M.A.,

.. Petitioner

VS

1.Government of Tamil Nadu
Rep. By Principal,
Secretary to Government,
Health and Family Welfare,
(MCA-1) Department,
Secretariat, Chennai – 600 009.

2.The Medical Council India,
Rep. By its Secretary,
Pocket – 14, Sector – 8,
Dwaraka Phase – I,
New Delhi – 77.

3.The Director of Medical Education,
Chennai – 600 010.

4.The Dean (Principal)
Government Mohan Kumaramangalam
Medical College Hospital,
Salem – 636 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the letter No.48314/MCA-1/2016-2 dated 19.05.2017 issued by the 1st respondent quash the same and consequently direct the 3rd and 4th respondents to return all the original certificates viz., 10th CBSE, Plus Two Certificate, Travancore Cochin Medical Council Registrarion Certificate, CRRRI Certificate, Degree Certificate, MBBS Course Certificate, Disability Certificate, MBBS Exam. Certificates First Year



W.P.No.19482 of 2017

(two certificates), Second Professional MBBS Certificate, Third Professional MBBS Part-I Certificate and Part-2 Certificate, Community Certificate submitted by the petitioner at the time of admission for M.S.(Orthopedic) in Government Mohan Kumaramangalam Medical College, Salem.

For Petitioner : Mr.Abdul Lathief
for Mrs.D.Revathi Karthik

For Respondents : Mr.Balamurugan
Government Advocate
for R1,R3 and R4
Mr.K.Mondala Anand
for Ms.Shubaranjani Ananth
Standing Counsel for R2

ORDER

1. The petitioner is a Doctor and an aspirant to higher studies. Upon completion of his M.B.B.S. course from the Government Medical College, Thiruvananthapuram, in 2009, he had appeared for the NEET examination for Post-Graduate studies. He is, admittedly physically handicapped having a disability in the lower left limb in excess of 50%. He secured admission in the quota earmarked for students with locomotive disability. There is no dispute on this aspect of the matter.

2. In the course of the counselling, he obtained admission initially for M.S.(Surgery) in Government Medical College, Trichur, Kerala and was admitted on 20.06.2013. He continued participating in the counselling in the hope that he secures admission to a course



W.P.No.19482 of 2017

which is more conducive to his physical abilities and in the second round of counselling obtained admission for M.S.(Orthopaedic) in the Government Mohan Kumaramangalam Medical College, Salem, arrayed as R4. He joined on 01.07.2013.

3. To be noted, that the admission is under All India Quota (AIQ) and in line with the procedure that was followed by the Director General of Health Services (DGHS) for seat allocation under this quota, he joined in R4 college after remitting the fee payable of a sum of Rs.30,020/-. This aspect of the matter is also not in dispute.

4. Thereafter, the petitioner states that he experienced difficulties in the M.S.(Orthopaedic) course, since it involves procedures that were cumbersome bearing in mind his disability. Hence and reaching a position where he was unable to continue the course, he discontinued from November, 2013 onwards. While there is some dispute on whether he discontinued unilaterally or whether he put the college to notice of it, I leave this aspect at that, since it is not relevant to decide the question that arises in this writ petition.

5. Suffice it to say that he made a request for the return of



W.P.No.19482 of 2017

his original certificates being (i) 10th CBSE, (ii) Plus Two Certificate, (iii) Travancore Cochin Medical Council Registration Certificate, (iv) CRRI Certificate, (v) Degree Certificate, (vi) MBBS Course Certificate, (vii) Disability Certificate, (viii) MBBS Exam. Certificates First Year (two certificates), (ix) Second Professional MBBS Certificate, (x) Third Professional MBBS Part-I Certificate and Part-2 Certificate and (xi) Community Certificate.

6. His request was kept pending, constraining him to approach this Court in W.P.No.10367 of 2016 seeking a mandamus directing the respondents, specifically R4, to return all original certificates to him. However, writ petition was disposed on 28.04.2016 with a direction to R3 being the Secretary to Government, Health and Family Welfare, Tamil Nadu, to consider the representation and pass appropriate orders on merits and in accordance with law.

7. It is thus, the present writ petition has come to be filed challenging the impugned order issued by the respondents wherein representation of the petitioner has been rejected citing the applicable clause in the prospectus for admission to P.G. Degree / Diploma courses, which provides for dis-continuation fees.



W.P.No.19482 of 2017

WEB COPY

8. According to the respondents, unless the said discontinuation fees are paid, the certificates are not liable to be returned. They also draw support from the position that the Government expends a significant amount in the impartation of medical education including at the P.G. levels, while parallelly collecting a very nominal fee from the students. Thus, the imposition of dis-continuation fee, according to them, is to compensate the State for the expenditure on the seats. They pointed out that with the dis-continuation of the course, one valuable seat has been left vacant, both depriving the State of revenue and some other student of a medical education.

9. Mr.Abdul Lathief appearing for the petitioner would submit that, at the outset, the prospectus issued by the State of Tamil Nadu is of no consequence in this matter seeing as the petitioner has secured admission in All India Quota. The clauses thereof would thus not bind the petitioner. Secondly, he would submit that even assuming that the prospectus did apply, no where in the prospectus does it provide for retention of certificates and Clause 45 of the prospectus which has been cited by the respondents only states that unless dis-continuation fees are paid,



W.P.No.19482 of 2017

the candidates will not be relieved. Thus, the fact that the respondents have been holding on to the original certificates of the petitioner are contrary to the very Clause that contained in the prospectus.

10. He draws attention to Regulation 9 of the Post-Graduate Medical Education Regulations, 2000 that provide for the procedure for selection of candidate for P.G. Courses. The aforesaid regulation details the conduct of NEET for admission to P.G. courses and the reservations that are stipulated therein. There is no reference anywhere in the Regulations for admissions under the All India Quota and the students that are admitted in the course would only be bound by the Information Bulletin for conduct of NEET examination. He relies on a decision of a learned Single Judge of this Court in the case of *Dr.S.Rajesh v State of Tamil Nadu and ors* (W.P.No.12923 of 2008 dated 12.12.2008).

11. Mr.Balamurugan, learned Government Advocate appears for respondent nos. 1,3 and 4 and would vehemently support the impugned order reiterating the binding nature of the prospectus. He relies on the decision of a Division Bench of this Court in the case of the *Director of Medical Education and another v*



W.P.No.19482 of 2017

M.Aarthy (W.A.(MD) No.371 of 2019 dated 30.01.2019).

WEB COPY

12. Having heard learned counsel and their respective rival contentions as well as said case laws that have been supplied, I am of the categoric view that the petitioner must succeed. My reasons are adumbrated in seriatim in the following paragraphs.

13. Firstly, as rightly pointed out by learned counsel for the petitioner, the prospectus issued by the State Government is of no relevance in this case seeing as the petitioner has secured admission in Government College in Tamil Nadu based on All India NEET Examination. He had appeared in the counselling conducted by DGHS.

14. No doubt, this Court has consistently been taking the view that the prospectus issued by the State is in the nature of a contract between the State / the respective Medical Institutions and the candidate. However, such an embargo does not stand in the way of the petitioner succeeding in this writ petition simply for the reason that no application has been submitted by the petitioner qua that prospectus and hence Clause 45 that provides for discontinuation fees or any clause for that matter, is irrelevant.



W.P.No.19482 of 2017

Reference to Clause 45 in the impugned order is thus misconceived and for this reason, the impugned order fails.

15. As regards the decision of the Division Bench in the case of *M.Aarthy*, the candidate in that case appears to have been informed by that college as recorded at paragraph 6 of the order that in event of dis-continuation, the applicable clause in the prospectus would apply and she would have to pay dis-continuation fee to the Dean of the respective college.

16. In this case, this is not the case before me and nowhere in the counter or in the oral submissions before me, have the respondents brought on record any such intimation having been given to the petitioner. It is solely based on the aforesaid information that was placed as pre-condition before that candidate that the Division Bench concluded adverse to her, holding that the prospectus would apply. In light of the distinction in facts, the case of *M.Aarthy* is of no assistance to the respondents.

17. On the other hand, the decision in the case of *Dr.Rajesh* was concerned with two groups of candidates (i) candidates in Non-Service Quota and (ii) candidates in All India Quota. Therein as well,



W.P.No.19482 of 2017

the candidates in the latter category have put forth an argument that the prospectus will not bind them and thus the clauses, pre-condition, and the restrictions that were placed in the prospectus could not be called into aid by the respective educational institutions.

18. Their argument was accepted by learned Judge, who at paragraph 30, draws a distinction in his conclusions between the two batches of candidates, as follows:-

"30. In fine, all the writ petitions are disposed of on the following terms:

(1) The PG Degree/ Diploma Holders, who applied for their Degree/Diploma course through All India Entrance Examination for selection to All India Quota seats and admitted to Tamil Nadu Government Medical Colleges are not bound by the terms and conditions issued by the respondents through their prospectus. Even if any candidate executed bond, it will have no effect since they have not applied for admission under the impugned prospectus.

(2) The candidates admitted in the State Quota under the Non-Service category are bound by the terms of the bond executed by them pursuant to the prospectus Clause 68(d) and on completion of their course, they are bound to serve in Government Colleges/ Hospitals according to the availability of posts for three years, failing which it is open to the respondents to recover the sum of Rs.2/Rs.3 lakhs as the case may be, as per the bond conditions."



W.P.No.19482 of 2017

19. As a consequence thereof, learned Judge had directed that the candidates shall not be constrained to their as the respondents had no jurisdiction to retain them and they were to return the same within time frame that the Hon'ble Court fixed.

20. In similar situations, this Court has also been taking the consistent view that even in the face of arrears or any charges that remain unpaid by the candidates, the educational institution cannot proceed to withhold the certificates of the candidates, though they are certainly entitled to take any other measures that may be available to them in law to pursue the collection of their outstandings.

21. Thus, accepting the prayer of the petitioner and quashing the impugned order, there is a direction to R4 / Institution to return the certificates detailed in paragraph 5 of this order (supra) within a period of two weeks from the date of receipt of a copy of this order. This writ petition is allowed in the above terms. No costs. Connected miscellaneous petitions are closed.

31.01.2023

Index:Yes
Neutral Citation:Yes
ssm



W.P.No.19482 of 2017

WEB COPY

To

- 1.The Principal Secretary to Government,
Health and Family Welfare,
(MCA-1) Department,
Secretariat, Chennai – 600 009.
- 2.The Medical Council India,
Rep. By its Secretary,
Pocket – 14, Sector – 8,
Dwaraka Phase – I,
New Delhi – 77.
- 3.The Director of Medical Education,
Chennai – 600 010.
- 4.The Dean (Principal)
Government Mohan Kumaramangalam
Medical College Hospital,
Salem – 636 001.



WEB COPY



W.P.No.19482 of 2017

DR. ANITA SUMANTH,J.

ssm

W.P.No.19482 of 2017

31.01.2023