



W.P.(MD) No.17987 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.02.2023

PRONOUNCED ON : 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.17987 of 2014

M.S.Muhammed Sheik Abdullah

... Petitioner

/vs./

- 1.The Secretary to Government of Tamil Nadu,
Health Department,
Secretariat,
Chennai 09.
- 2.The Secretary to Government of India,
Department of Health,
Central Secretariat,
New Delhi.
- 3.The Medical Council of India,
Sector -8, Pocket -14,
Dwarka-1,
New Delhi 110 077.
- 4.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai.



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5.The Principal,
Sri Moohambigai Medical College,
Kulasekaram,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 3 to take necessary action against the 4th respondent and the 5th respondent college and also direct them to pay compensation of Rs.50 lakhs and refund the fees of Rs.7.5 lakhs paid by the petitioner to the 5th respondent .

For Petitioner : Mr.R.Narayanan

For R1 & R4 : Mr.S.Kameswaran
Government Advocate

For R2 : Mr.S.Jeyasingh
Senior Panel Counsel, Government of India

For R5 : Mr.ISSAC Mohanlal for
M/S.ISSAC Chambers

ORDER

This writ petition has been filed seeking for a direction to the respondents 1 to 3 to take necessary action against the respondents 4 and 5 and to direct them to pay compensation of Rs.50,00,000/- and to refund the fees of Rs.7,50,000/- paid by the petitioner to the fifth respondent college.



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2.Heard Mr.R.Narayanan, learned counsel for the petitioner, Mr.S.Kameswaran, learned Government Advocate for the respondents 1 and 4, Mr.S.Jeyasingh, learned Senior Panel Counsel, Government of India for the second respondent and Mr.Issac Mohanlal, learned Senior Counsel for ISSAC Chambers for the fifth respondent.

3.Mr.R.Narayanan, learned counsel for the petitioner would submit that the petitioner had been allotted a seat in the fifth respondent college in the counselling that was held at Chennai on 30.09.2009. The fifth respondent college was situated at Kulasekaram in Kanyakumari District and therefore, it was not possible for the petitioner to immediately rush to the fifth respondent college to gain admission. During the course of selection, the petitioner had paid the admission fee. But however, when the petitioner had gone to the fifth respondent college, they had refused admission on the ground that some one else was given admission under the lapse category. Hence, the petitioner had approached this Court by way of filing a writ petition in W.P.(MD) No.9979 of 2009.



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4. In the said writ petition, this Court by order dated 04.11.2009, had directed the selection committee to protect the interest of the petitioner by making alternative arrangements and to report compliance. Thereafter, the fifth respondent college admitted the petitioner and the selection committee sought to ratify the excess one seat and thereafter, the petitioner was permitted to attend the college from 12.11.2009 onwards. The petitioner was also permitted by an order of this Court dated 14.05.2010 to sit for the examinations. When the petitioner had moved this Court for publishing of the results, this Court had dismissed the writ petition filed by the petitioner. Hence, he had preferred a writ appeal in W.A. (MD) No.278 of 2011.

5. By order dated 28.02.2011, this Court had permitted the petitioner to continue the MBBS course. By further order dated 27.07.2011, this Court had directed the selection committee to keep one seat in Government quota in the 1st year course of the academic year 2011-2012. By order dated 04.08.2011, this Court had directed the respondents to admit the petitioner as a fresh student from the academic year 2011-2012. That order was challenged by the selection committee before the Hon'ble Apex Court and the same was dismissed. However,



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being aggrieved against the directions issued by the Division Bench of this Court to treat the petitioner as a new student, the petitioner had preferred SLP (Civil) No.31539 of 2013 and the Hon'ble Apex Court was pleased to permit the petitioner to continue in the 2nd year MBBS course.

6. Infuriated with the order that had been passed in favour of the petitioner, the fifth respondent college started to harass the petitioner. In spite of such torture, the petitioner continued to attend the college. The said SLP (Civil) No. 31539 of 2013 was finally disposed of by the Hon'ble Apex Court by its order dated 16.04.2012, wherein the interim order dated 16.12.2011 was confirmed. Hence, the petitioner would have to continue in the college. Due to the pressure that has been exerted by the fifth respondent college, the petitioner chose to withdraw from the college and sought the fifth respondent college to issue 'Transfer Certificate'. The entire scenario had been caused, because the fourth respondent had issued the allotment order at the last minute and the fifth respondent refused to admit the petitioner. Therefore, he would submit that the petitioner is entitled for compensation as sought for in this writ petition as also the refund of fees.



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7. Countering his arguments, Mr. ISSAC Mohanlal, learned Senior Counsel for the fifth respondent college would heavily contend that the entire case of the petitioner is false. He would submit that there was no pressure that has been exerted by the respondent college on the petitioner. The petitioner had approached this institution on 31.08.2012 and had submitted a request to issue 'Transfer Certificate', to return the original documents submitted at the time of admission along with the 1st year MBBS mark sheet, to issue the 'No Objection Certificate' and attendance certificate, as he was not willing to continue his studies in the fifth respondent college.

8. On the next day, the petitioner's father had approached the fifth respondent and had also reiterated his request. It was orally informed by the petitioner that he had obtained an admission overseas and that he is going to join the college overseas. Pursuant to the request of the petitioner, the fifth respondent college had also issued the various certificates as requested by the petitioner. But however, after a period of one year, the petitioner had made a complaint to various authorities and the fifth respondent college was called upon to submit their explanation to the complaints made by the petitioner.



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9.He would further submit that the fifth respondent college was not at fault in failing to admit the petitioner after the last date of admission, namely 30.09.2009. According to him, it is an admitted case that the petitioner was issued with an allotment order only on 30.09.2009 at 01.15 pm. The last date of admission as per the MCI regulations as approved by the Hon'ble Apex Court in *Mirduldar's case* is 30.09.2009. Thereafter, the fifth respondent college cannot make any admission. Therefore, the fifth respondent college has filled the vacancy as a lapsed seat and had filled it up under the management quota as per the regulations prevailing at that point of time.

10.He would further submit that pursuant to the orders passed by this Court and also the Hon'ble Apex Court, the fifth respondent college had permitted the petitioner to continue in the fifth respondent college. The only single allegation that the petitioner has made is that, the petitioner was tortured immediately after an interim order was passed by the Hon'ble Apex Court on 16.11.2011. There were no other allegations made by the petitioner either in his representation or in the writ affidavit. He would also submit that the petitioner had left the college during the month of September, 2012 and he had made a representation for



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compensation only in the month of October, 2013 and had approached this Court only in November, 2014. Therefore, he would submit that the petitioner's claim is purely an afterthought. The petitioner had left the college only on securing an admission overseas and not on the alleged pressure exerted by the fifth respondent institution. Hence, he would pray this Court to reject the claim of the petitioner.

11.Mr.S.Kameswaran, learned Government Advocate for the respondents 1 and 4 would submit that since the person, who was originally allotted, did not join the college and the college has notified the vacancy, a further counselling was conducted on 30.09.2009 and the fifth respondent college filled the vacancy. They cannot be held responsible for the failure on the part of the fifth respondent in refusing to admit the petitioner. He would also contend that the petitioner should have made necessary arrangements to reach the fifth respondent college for getting admission within the prescribed time. If the petitioner had felt it could have been not possible to reach the fifth respondent college at the end of the day, he should have refused to take the allotment.



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12.I have considered the rival submissions made by the learned counsels appearing on either side.

13.The petitioner was given an allotment on the last date of admission, namely 30.09.2009 and even though he was originally refused admission in the fifth respondent college pursuant to the interim orders passed by this Court, he was given an admission and continued his studies. While he was in the 2nd year of the college, a Division Bench of this Court in a writ appeal filed against the order of the learned single Judge dismissing his case has directed the selection committee to allot him a seat in the 1st year for the academic year 2011-2012.

14.Being aggrieved, the petitioner had preferred SLP (Civil) No.31539 of 2013 before the Hon'ble Apex Court and the Hon'ble Apex Court had directed the petitioner to be continued in the 2nd year course. Hence, he had been continuing in the 2nd year course. However, after a period of four months from the date of the Hon'ble Apex Court order, he had sought to leave the college and made an application. The various certificates as requested by the petitioner were also handed over to him by the fifth respondent college. Only in the month of



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November, 2013, the petitioner had made a complaint alleging that the petitioner was harassed during the month of November, 2011. Even in the representation and the affidavit filed before this Court, except the allegation, no other allegations have been made against the fifth respondent college.

15.The contention of the learned counsel for the petitioner that it was only due to the fault of the respondents 4 and 5 the petitioner had taken this decision, is, in my view, without any basis. I come to such conclusion, as the petitioner had been protected by various orders of this Court as well as the Hon'ble Apex Court. Hence, the agony caused to the petitioner had been remedied and therefore, he cannot be treated to be an aggrieved person on that aspect.

16.The allegation that the petitioner was harassed by the fifth respondent institution is also not supported by any materials. Such harassment complaint in the affidavit filed in support of the writ petition is said to have taken place on 20.11.2011. No other allegation has been made against the fifth respondent college. In fact, the petitioner had completed his 1st year course and was in the 2nd



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year, when the petitioner decided to leave the college. The contention of the learned Senior Counsel for the fifth respondent college that the said request was made by the petitioner on the basis that he had obtained an admission overseas has not been disputed by the learned counsel for the petitioner.

17.I find that the said allegation is only an afterthought as rightly contended by the learned Senior Counsel for the fifth respondent college. I also find that the petitioner had approached the respondents 1 to 3 and as also this Court much belatedly. The allegation of harassment was in November, 2011 and the first complaint was made in November, 2013, much after the petitioner left the college. Atleast such a complaint should have been made immediately when he had left the college. Hence, in my view, the allegation made by the petitioner in the affidavit filed in support of this writ petition as against the fifth respondent college is only an afterthought. Hence, I do not find any merits in this writ petition.



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18.In fine, the Writ Petition is dismissed. However, there shall be no order as to costs.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No

22.02.2023

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To

1.The Secretary to Government of Tamil Nadu,
Health Department,
Secretariat,
Chennai 09.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai.



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K.KUMARESH BABU, J.

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order made in
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