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W.P.No.10916 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. No.10916 of 2024

N. Thendral

... Petitioner

Vs.

1. The Director and Superintendent
Institute of Obstetrics and Gynaecology (I.O.G)
Government Hospital for Women and Children,
Egmore, Chennai – 600 008.

2. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 10.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, for issuance of writ of Mandamus, directing the first respondent herein to return back the original certificate to the petitioner received at the time of Admission.

For Petitioner : Mr.K.Venkatasubban
for M/s. Saravabhauman Associates

For R1 : Mr.K.Tippu Sulthan
Government Advocate

For R2 : Mrs.M.Sneha

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Standing Counsel

ORDER

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The writ of mandamus has been instituted to direct the 1st respondent to return back the original certificates of the petitioner received at the time of admission.

2. Admittedly, the petitioner applied for the Post Doctoral Fellowship in Gynae-Oncology at the first respondent/Institution, which is a two-year course in the academic year 2019 – 2020 and 2020-2021. The petitioner was selected under the NEET merit list and got allotment order dated 27.09.2019. She was provisionally selected for admission to the Post Doctoral Fellowship Programme in Gynae-oncology for the academic year 2019-2020. The petitioner attached a sum of Rs.1,00,000/- towards admission fees. She joined the course. The petitioner discontinued the course on account of health issues. The petitioner was permitted to take leave. However, the petitioner admittedly has not completed the two year course and discontinued.

3. The petitioner has taken a decision not to continue the course



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thereafter and submitted an application to return the original certificates. The respondent/institution demanded a sum of Rs.5,00,000/- as per the clause 26(a) of the prospectus issued for the academic year 2019 – 2020.

4. Mr.K.Venkatasubban, learned Counsel for the petitioner would submit that if at all the respondents have to recover the amount of Rs.5,00,000/- as per the conditions stipulated in the prospectus, they have to approach the Civil Court for such recovery. However, the respondent is not empowered to retain the certificates. After releasing the certificates, the respondent have to approach the Civil Court for recovery of money, since it is a money claim. Learned Counsel for the petitioner relied on the order dated 26.04.2023 passed in W.P.(MD)No.1619 of 2023 stating that it is a money claim and therefore the Government Medical Institutions have to approach the Civil Court for recovery of money.

5. Mrs.M.Sneha, learned Standing Counsel for the 2nd respondent would oppose by stating that the conditions stipulated in the prospectus are binding on the students. They have agreed the conditions and signed the declaration and secured admission for medical courses. Once they have



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agreed the conditions and discontinued the course, the seat became a loss to the institutions and there is a substantial financial loss caused to the institution. Therefore, discontinued student is bound to comply with the agreed conditions by paying a sum of Rs.5,00,000/- for the purpose of returning the original documents.

6. This being the agreed terms and conditions between the parties, the petitioner cannot turn around and suggest the respondent that they have to approach the Civil Court for the purpose of recovery of money claim.

7. Considering the arguments, this Court is of the considered opinion that the conditions stipulated in the Prospectus for admission to Post Doctoral Fellowship Programme in Gynae-oncology cannot be construed as a money claim akin to that of a civil disputes. It is an admission to the medical course and the terms and conditions stipulated in the prospectus are binding on the parties. On the one hand, the petitioner states that the respondent has to approach the Civil court for recovery of money, since it is a money claim. On the other hand, the petitioner states that certificates are to be returned immediately to the petitioner. The petitioner cannot approbate and reprobate



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for their personal gains. It is a mutual obligation between the parties and the conditions stipulated in the Prospectus issued for admission to medical course cannot be construed as money claim, so as to approach the civil court. It is a statutory obligations contemplated under the Rules, through which the Prospectus are issued. Such statutory liabilities cannot be construed as a money claim, which is a civil dispute between the private parties.

8. Clause 26 (a) of the Prospectus reads as under:

“26.a) The candidates who discontinue the course after the cut off date fixed by The Tamilnadu Dr.MGR Medical University shall pay Rs.5,00,000/- (Rupees Five Lakh Only) as discontinuation fees as specified below by way of Demand Draft drawn in favour of “The Secretary, Selection Committee, Kilpauk, Chennai – 10” payable at Chennai.

b) Candidates who join the Post Doctoral Fellowship Programme in Gynaec-Oncology and discontinue the course on any grounds after the cutoff date are eligible to apply only after a period of 2 years from the date of discontinuation of the course.”

9. Clause 33 of the Prospectus reads as under:

“33.Any candidate who apply for this course is deemed to have read the content in this prospectus and agrees with all the



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conditions and clauses and will not have the right to challenge any of the clauses contained in this Prospectus and agree that the same is binding upon them.”

10. The petitioner has agreed the conditions and clauses, will not have the right to challenge any of the clauses contained under the Prospectus and agreed that the same is binding on them. When the petitioner has voluntarily agreed stating that the conditions stipulated in the Prospectus are binding on her, now she cannot turn around and say that the respondents have to approach the Civil court for compliance of Clause 26 (a) of the Prospectus. But, she is entitled to get back her original certificates. When the petitioner has failed to perform her obligations, she has no right to enforce the obligation on the part of the opposite party.

11. Right and duty are corresponding and the persons, who have performed his duty alone is entitled to claim his/her right. When a person failed to perform his duty, he/she has no authority to claim the right based on the same conditions. Once, the conditions stipulated in the Prospectus are agreed between the parties, it is implied that both the parties have to perform



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their part of obligations as contemplated under the Prospectus. When the rights and duties are mutual obligations, one party cannot claim right by not performing the duties and that being the basic legal principles to be followed, the arguments as advanced by the petitioner that the implication stated in Clause 26 (a) is to be executed through competent Civil Court of law. Such an argument is untenable.

12. In the present case, the petitioner admittedly dis-continued the course and she is not willing to continue the course due to personal reasons. Therefore, the petitioner is at liberty to pay the agreed sum of Rs.5,00,000/- (Rupees Five Lakhs) as per Clause 26 (a) of the Prospectus and on such payment, the respondents shall return the original documents without causing any undue delay.

13. With this liberty, this Writ Petition stands **disposed of**. There shall be no order as to costs.



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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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