



W.P.No.25453 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.25453 of 2017

Dr.N.Jeshwanth

...Petitioner

Vs.

1. The Government of Tamilnadu,
Rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St. George Chennai – 5.
2. The Director of Medical Education,
Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.
3. The Selection Committee,
Rep. by its Secretary,
Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.
4. The Dean,
Madras Medical College,
Chennai – 600 003.



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5. Medical Counseling Committee,
Director General of Health Services,
Ministry of Health & Family Welfare,
Govt. of India, Nirman Bhavan,
Maulana Azad Road, New Delhi – 110 108.
6. National Board of Examinations,
Rep. by its Chairman,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road),
New Delhi – 110 029.
7. The Medical Council of India,
Rep. by its Secretary,
Pocket 14, Sector 8, Dwarka Phase – I,
New Delhi – 110 077.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to repay the amount Rs.15,00,000/- collected from the petitioner in the name of discontinuation fee from the Course of D.Ortho at Madras Medical College during Academic year 2017-2018 within a stipulated period.

For Petitioner : Mr.K.Krishnamoorthy

For Respondent : Mr.E.Sundaram, Ga, for R1 to R4
: Mr.B.Sudhir Kumar, for R5
: Mrs.Shubharanjani Ananth, for R7
: No Appearance, for R6



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ORDER

WEB COPY The petitioner has filed this Writ petition seeking to direct the respondents 1 to 4 to repay the amount Rs.15,00,000/- collected from the petitioner in the name of discontinuation fee from the Course of D.Ortho at Madras Medical College during Academic year 2017-2018.

2. It is the case of the petitioner that he participated in the selection process under the All India quota as well as State quota through common entrance examination and the petitioner appeared in NEET examination conducted on 5.12.26 and the 5th respondent on the basis of the percentage obtained by the petitioner has allotted the petitioner with Diploma in Ortho in MMC and accordingly he joined the course on 8.5.17 by paying Rs.11,575/- and subsequently he was selected for MS GS course in AIIMS on 5.6.17. Thereby, he sent resignation letter to the 4th respondent and the same was forwarded to the 3rd respondent, who insisted the petitioner to pay a sum of Rs.15 lakhs towards discontinuation fee as per clause 27 of the prospectus issued by the state government for the academic year 2017-18. Challenging the same, the present Writ petition is filed.



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3. Learned counsel for the petitioner submitted that, the respondent insisted the petitioner to pay a sum of Rs.15,00,000/- towards discontinuation fee on the basis of the prospectus issued by the State Government. However, the said prospectus is applicable to the candidates who got admission under the State quota, Government seats in self financing medical colleges affiliated to the Dr.MGR Medical College, Raja Muthaiah College and Annamalai University and the said prospectus, particularly clause 27 of the said prospectus, is not applicable to the candidates who have secured admission through all India quota and 50% all India quota is meant for entire country and the remaining 50% meant for State quota in the self financing college. Relying upon the clause 27 and collecting Rs.15 lakhs from the petitioner towards discontinuation fees is not sustainable. For better appreciation, Clause 27 of the prospectus is extracted hereunder:

27. The Candidates who discontinue the course after the last date of allotment of seats in final phase counseling shall pay the Discontinuation Fees to the Deans of the respective Colleges the sum as specified below in total by way of Demand Draft drawn in favour of the Secretary, Selection



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Committee, Kilpauk, Chennai-10, payable at Chennai.

For P.G. Degree / Diploma Courses 15 lakhs

Unless the penalty amount is paid in total, the candidates will not be relieved.

4. Learned counsel further submitted that, the very same issue came up for consideration before this court in W.P.No.32981 of 16 and this Court, vide order dated 21.6.17 ordered for refund of the said amount to the candidate and the same was challenged before this Court in W.A.No.985 of 2017 and the same was dismissed by this court on 01.11.2019 against which no appeal has been preferred and thereby the same became final and further, the respondents have complied with the order of this court by refunding the discontinuation fee collected from the candidate/petitioner therein. Accordingly, learned counsel seeks for appropriate directions.

5. Per contra, learned Government Advocate appearing on behalf of the respondents 1 to 4 submitted that, as per Clause 27 of the Policy/ Prospectus for admission to Post Graduate course 2017-2018 session issued by the Government of Tamil Nadu *the Candidates who discontinue the*



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course after the last date of allotment of seats in final phase of All India

Quota counseling shall pay the Discontinuation Fees to the Dean of the

respective colleges the sum as specified below in total by way of Demand

Draft drawn in favour of the Secretary, Selection Committee, Kilpauk,

Chennai 10, payable at Chennai". For P.G. Degree/Diploma Courses Rs.15

Lakhs and unless the penalty amount is paid in total, the candidate will not

be relieved. It is further submitted that the last date of allotment for PG

admission 2017-2018 session is 31.05.2017. Learned counsel further

submitted that, the Government have offered PG courses at a very

affordable cost for the benefit of the poor public and if the petitioner had

discontinued the Diploma course prior to the cut-off date, there would have

been a fair chance to fill up the vacant seat within the cut-off date. However,

as the petitioner had submitted his representation to discontinue the

Diploma Course only on 06.06.2017. i.e. after the cut off date for admission,

the PG seat in D.Ortho became vacant and could not be filled up either by

All India Quota or by State Quota and the D.Ortho seat could not be filled

up with a deserving merit candidate. Further, the candidate made application

based on the conditions laid down in the prospectus for admission to PG



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course during 2017-2018 session and he paid discontinuation fees on 07.06.2017 as per the clause '27' of the prospectus. Considering the request of the petitioner will pave way for similar candidates who have discontinued the course for their personal interest. Hence, the prayer of the petitioner to refund the discontinuation fees paid by him as penalty is not acceptable as per the rules and regulations in force and accordingly, he prayed for dismissal of this Writ petition.

5. On the above said contentions, heard learned counsel appearing on behalf of the respective respondents 5 and 7 and perused the material documents placed on record.

6. Though notice was served and the name of the 6th respondent was printed in the cause list, none appeared on its behalf. Considering the period of pendency of this Writ petition, this Court is inclined to dispose of this petition, based on the materials available on record.



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7. The petitioner participated in the selection process under the all India quota as well as State quota through common entrance examination and the petitioner appeared in NEET examination conducted on 5.12.26 and the 5th respondent on the basis of the percentage obtained by the petitioner has allotted the petitioner with Diploma in Ortho in MMC and accordingly he joined the course on 8.5.17 by paying rs.11,575 and subsequently he was selected for MS GS course in AIIMS on 5.6.17. Thereby, he sent resignation letter to the 4th respondent and the same was forwarded to the 3rd respondent, who insisted the petitioner to pay a sum of Rs.15 lakhs towards discontinuation fee as per clause 27 of the prospectus issued by the state government for the academic year 2017-18.

8. However the issue arises for consideration in the present Writ petition is *whether the State prospectus is applicable to the candidate who got admission through all India quota.*

9. It is pertinent to note that the very same issue was considered by this court in W.P.No.32981 of 2016 dated 21.06.2017 and the same was



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confirmed by the Division Bench of this court in W.A.No.985 OF 2017 dated 1.11.19 and it was held that the state prospectus is not applicable to the candidates who got admission through all India quota. For better appreciation the relevant paragraphs of the orders passed in the writ petition and the writ appeal are extracted hereunder:

W.P. No.32981/2016

7. The question now involved is only with respect to refund of the discontinuation fees collected by the third respondent and not with respect to the monetary loss of the fourth respondent.

8. The petitioner has specifically stated that at the time of joining the DGO course through All India Quota on 28.03.2016 in Madras Medical College, no undertaking or declaration or bond was executed by her as it was through All India merit list. The College authorities have permitted the petitioner to attend the counseling conducted by the NBE. When the petitioner approached the fourth respondent for return of the certificates, the discontinuation fees of Rs.15,00,000/- was collected from her. When it is held that Clause 45 of the Prospectus has no application, as no discontinuance is involved, the petitioner is entitled to get back the money paid by her for the above said reasons.



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9. *In view of the foregoing reasons, this Court is inclined to allow this Writ Petition and accordingly, the same is allowed, with a direction to the third respondent to return the discontinuation fees of Rs.15,00,000/- to the petitioner received from her. In any case, the question of penalty does not arise, as the petitioner did not discontinue the earlier course, but she opted for a better one and therefore, no penalty need be paid by the petitioner. No costs.*

W.A.No.985/2017

12. *There is another way of considering scope of clause 45 of the prospectus. It is to be noted that it would not have application to the first respondent as she was selected for DNB PG course under All India Merit list through DNB counselling which continued till 02.06.2016 and there was no discontinuation. Hence the learned Single Judge rightly held that there was no discontinuation and held that first respondent is entitled to get back Rs.15 lakhs collected from the first respondent as discontinuation fee.*

13. *The learned single Judge rightly gave reasoning for not taking undertaking or bond from the first respondent, as the first respondent joined DGO course in Madras Medical College, Chennai through All India Post Graduate Medical Examination merit list. The <http://www.judis.nic.in> W.A.No.985 of 2017 learned Judge justifiably has given reasoning that the first respondent only got upgradation*



from two years DGO course to three years DNB (OG) through All India Merit Quota and therefore there is no question of discontinuation of DGO course as contended by the Appellant.

14.It is evident from the records that counselling for National Board of Examinations had been conducted from 31.05.2016 to 02.06.2016 and the 1st respondent was called by the authorities in New Delhi for counselling on 31.05.2016 and was allotted DNB (OG) course in Southern Railway HQ Hospitals, Perambur on 31.05.2016, after getting resignation from DGO course. On 31.05.2016 itself, the 1st respondent did not have any time to come down to Chennai from New Delhi and to file resignation before 31.05.2016 and so on the very next date possible viz., 01.06.2016, the 1st respondent has submitted her resignation. In the absence of any prohibition in the bonafide certificate issued by the 4th appellant and when the first respondent was allowed to attend the counselling, the appellants could not charge any discontinuation fees of Rs.15,00,000/-. At the time of issuance of bonafide certificate itself, if the 4th appellant had made a condition that she had to pay a sum of Rs.15,00,000/- towards discontinuation fees, the first respondent would have had a second thought about discontinuing the course or would not have discontinued from the course. No such condition had been imposed in the bonafide certificate.



15. *When the National Board of Examination extended the counselling date for DNB course at New Delhi till 02.06.2016, the benefit of attending the said counselling should be available to all meritorious candidates. There is some justification for the appellants to collect money, if the DNB centralized counselling had been over before 31.05.2016, whereas the counselling for National Board of Centralized Entrance Test was conducted upto 02.06.2016. Therefore, there is nothing wrong on the part of the 1st respondent in attending the counselling, getting seat on merit through All India Quota and joining the course through DNB Centralized Merit Counselling. Hence, the learned Single Judge held that the appellants are not justified in collecting Rs.15,00,000/- from the 1st respondent, as there was no discontinuation involved. The learned single Judge was right in allowing the Writ Petition stating that no undertaking or declaration or bond was executed by the first respondent at the time of joining DGO course through All India Quota on 28.03.2016.*

16. *Accordingly, the Appeal fails. The appellants are directed to repay the amount within a period of four weeks from the date of receipt of a copy of this order, failing which, all the appellants shall appear before this Court on 04.01.2020. The Appeal is dismissed. No costs.*



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10. The facts in the present issue is squarely covered by the decisions relied upon by the learned counsel for the petitioner and, therefore, this court is inclined to allow this petition. Accordingly this Writ petition stands **allowed** and the respondents 1 to 3 are directed to return the amount in favour of the petitioner within a period of two weeks from the date of receipt of a copy of this order. No costs.

06.08.2024

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To:

1. The Government of Tamilnadu,
Rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St. George Chennai – 5.
2. The Director of Medical Education,
Directorate of Medical Education,
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M.DHANDAPANI, J.

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