



W.P(MD)No.2267 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.06.2024

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2267 of 2024

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... Petitioner

Vs.

- 1.The Secretary,
The Selection Committee,
Directorate of Medical Education
162, Poonamalle High Road,
Kilpauk, Chennai-600 010.
- 2.Tamil Nadu Dr.M.G.R.Medical University,
Rep. by its Registrar,
No.69, Anna Salai, Guindy,
Chennai-600032.
- 3.The Secretary,
Annapoorna Medical College and Hospital,
Sankari Main Road, Salem,
Salem District-636 308.
- 4.The Chairman,
Sree Mookambika Institute of Medical Sciences,
Padanilam, Kulasekharam,
Kanyakumari District-629 161.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to transfer the petitioner from the 3rd respondent college to the 4th respondent college by way of migration, and permit the petitioner to undergo her M.D



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(Physiology) Course in the 4th respondent college from the academic year 2023-2024 to 2025-2026.

For Petitioner : Mr.S.Xavier Rajini

For Respondents : Mrs.M.Sneha for R1

: Mr.A.S.Vaigunth for R2

: Mr.K.Ragatheesh Kumar
for M/s.Isaac Chamber for R4

: No appearance for R3

ORDER

The petitioner completed MBBS course and obtained her degree in the year 2020. She joined MD (Physiology) in the third respondent college in the academic year 2023-2024. Her specific allegation is that there is demand of capitation fee from the third respondent to the tune of Rs.10,00,000/- over and above the regular course fee. She claims to have paid a sum of Rs.5,00,000/- and is unable to pay the balance amount. The petitioner would further allege that classes are not being properly conducted. In these circumstances, the petitioner wants to be transferred to the fourth respondent college. There is vacancy in the fourth respondent college and they are willing to accommodate the petitioner. But permission is required from the second respondent. The standing counsel for the University submits that unlike the 1997 Medical



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Regulations, the current Regulations do not provide for migration from one college to another.

2.Regulation 6 of the Medical Council of India Regulations on Graduate Medical Education, 1997 provided for migration of students from one medical college to another medical college on any genuine ground. Several conditions were however stipulated. If a student could fulfil them, there was scope for migration. The 1997 Regulations were repealed and Post-Graduate Medical Education Regulations, 2023 have come into force. In the new Regulations, Regulation 4.7 categorically states that no student designated to a medical institution, notwithstanding anything stated in these Regulations, shall be permitted migration to any other medical institution. The question that calls for consideration is whether the writ Court can grant the relief of migration to the petitioner in the face of the aforesaid provision.

3.Before I answer this question, I must take note of the ambience in which the petitioner is placed. It is unenviable to say the least. The third respondent has not appeared before this Court notwithstanding the service of notice on them to rebut the allegation made against them. The rule of non-traverse will apply. One can take judicial notice of the fact that capitation fee



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is demanded by many a private educational institutions. That is why, Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee), Act, 1992 was enacted. The Hon'ble Supreme Court of India in ***Rashtreeya Sikshana Samithi Trust Vs. Committee for Fixation of Fee Structure of Private Professional Colleges (AIR 2022 SC 2434)*** had held that the management of private medical colleges have been strictly prohibited from accepting the payment of fees in cash in order to avoid the charging of capitation fee. The petitioner is obviously unable to pursue her post-graduate studies in the third respondent college.

4.Right to education is a basic right. The petitioner's right cannot be frustrated in this fashion. In order to effectuate the fulfilment of the petitioner's right, the writ Court will be justified in invoking the doctrine of necessity. The Hon'ble Supreme Court in *Lalit Kumar Modi v. BCCI* (2011) 10 SCC 106 held that the aforesaid doctrine is a common law doctrine and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum and a solution has to be found out rather than allowing the problem to boil over. The Hon'ble High Court of Telengana vide order dated 27.10.2022 in Writ Petition No.23420 & 35173 of 2022 granted the relief of migration in another context. I am inclined to adopt the very same approach in this case. The



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petitioner has passed NEET and she was selected by the selection committee and was allotted to the third respondent college. The situation prevailing there is not conducive. In the fourth respondent college, seats are available. MD (Physiology) is a three year course. The respondents 1 & 2 are directed to issue proceedings within a period of four weeks from the date of receipt of a copy of this order to enable the petitioner to pursue her MD (Physiology) in the fourth respondent college for the academic session 2023-2026. The petitioner will have to pay the course fee as fixed by the fourth respondent.

5.The Writ Petition is allowed accordingly. No costs.

07.06.2024

Index : Yes / No

Internet : Yes/ No

rmi/skm

Issue order copy on 12.06.2024

To

1.The Secretary, The Selection Committee,
Directorate of Medical Education
162, Poonamalle High Road, Kilpauk, Chennai-600 010.

2.Tamil Nadu Dr.M.G.R.Medical University,
Rep. by its Registrar, No.69, Anna Salai, Guindy,
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G.R.SWAMINATHAN, J.

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