



W.P.(MD) No.844 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	11.07.2024
Pronounced On	24.07.2024

CORAM :

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.844 of 2018

and

W.M.P.(MD)No.893 of 2018

V.P.Arunagiri

... Petitioner

Vs.

1.The Director of Medical Education,
No.162, Periyar E.V.R.High Road,
Kilpauk,
Chennai - 600 010.

2.The Registrar,
Annamalai University,
Rajah Muthiah Dental College & Hospital,
Chidambaram.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to pay a sum of Rs.50,00,000/- as compensation in favour of the petitioner for their unethical and unprofessional act committed in the MBBS/BDS selection process in the year 2017-18 which affected the petitioner's daughter A.D.Keerthana's future carrier based upon the petitioner's representation sent to the 1st respondent, dated 05.12.2017.

For Petitioner : Mr.K.Sudalaiyandi



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For R1 : Mr.Ajmadkhan
Government Advocate

For R2 : No Appearance

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus to direct the respondents to pay a sum of Rs.50,00,000/- as compensation to the petitioner for their alleged unethical and unprofessional act committed in the MBBS / BDS selection process during the year 2017-2018, which according to the petitioner, had adverse impact on his daughter's future based on his representation, dated 05.12.2017.

2. The case of the petitioner is that the petitioner's daughter, namely, A.D.Keerthana, who belongs to Kattunayakan [Scheduled Tribe] Community, completed her schooling and had written CBSE - National Eligibility-cum-Entrance Test [UG] - 2017 [NEET] and had secured 136 marks. The petitioner's daughter had secured 1124 marks in her +2 examination. After results were announced, the petitioner was called for counselling by the first respondent on 30.08.2017. She stood at Serial No.43 out of 46 seats that were earmarked for the candidates belonging to Scheduled Tribe Community.



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3. It is the specific case of the petitioner that out of last three seats available for the Government Colleges, the first respondent through the Selection Committee had accommodated S.Subisha, K.Srimathi and P.Kavitha under the ST Category on 27.08.2017, 29.08.2017 and 30.08.2017 respectively, though these three persons belong to Open Category [OC] and SC Arunthathiyar.

4. The petitioner attended the counselling before the Selection Committee appointed by the Directorate of Medical Education, the first respondent herein and was selected in the second respondent College for BDS Course, as it was listed under the Government College Category as per the vacancy list. The petitioner paid a sum of Rs.9,600/- before the Selection Committee on 31.08.2017, for which, a receipt has been issued by the Selection Committee. In the said receipt, the above said amount has been shown as tuition fees payable by the petitioner for MBBS / BDS Course Government. The petitioner was asked to report before the second respondent College on 31.08.2017. Thereafter, the petitioner learnt that the second respondent was a self-financing College and not a Government College. Further, a sum of Rs. 3,70,000/- was demanded towards the Course fees and a sum of Rs.75,000/- towards Hostel fee.



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WEB COPY 5. Considering his daughter's future and with the hope of switching over from the self-financing College in the second round of counselling, the petitioner claims he was asked to pay a sum of Rs.3,70,000/-. According to the petitioner, he paid a sum of Rs.3,50,370/- by way of RTGS on 01.09.2017 to the second respondent over and above Rs.9,600/- that was collected by the Selection Committee on 31.08.2017.

6. It is submitted that the petitioner's daughter attended the second round of counselling on 03.09.2017 and requested the authorities to re-allot BDS in any of the Colleges, which the authorities refused stating that the petitioner's daughter could opt for BDS course only in self-financing Colleges, as she has already been allotted BDS in Government College.

7. It is further submitted that as it was not possible for the petitioner to pay higher tuition fee than that has been stipulated in the prospectus, the petitioner requested the authorities to cancel the allotment. However, they refused the same stating that since the petitioner had paid the fees, cancellation of allotment could not be done and advised the petitioner to give request for cancellation of admission to the Registrar of Annamalai University.



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WEB COPY **8.** It is further submitted that during the second round of counselling, one R.Jeevanantham, who belonged to Open Category, was also accommodated under the ST Category, even though the said R.Jeevanantham was not eligible for reservation meant for the students belonging to ST Community.

9. Further, as per the condition stipulated in the Prospectus for Admission to MBBS / BDS Courses 2017-2018, if a candidate has failed to attend the counselling when MBBS / BDS seats available during the first phase of counselling in their respective community, is to be allotted only to those who are eligible under the respective category. However, the Selection Committee has violated the above condition and has allotted the MBBS seat to the said R.Jeevanantham during the second phase of counselling, even though the said candidate has not been present during the first phase of counselling on 30.08.2017.

10. It is further submitted that in view of non-allotment of BDS in self-financing College though the petitioner's daughter had eligible NEET score and vacancies were existing in self-financing Colleges at the time of second round of counselling, the petitioner was forced to withdraw / discontinue and gave an



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application to the Registrar, Annamalai University, on 03.09.2017 and return the amount paid by him.

11. It is further submitted that this Court has already held that the University could not be treated as a Government Institution and therefore, the action of the Selection Committee in putting the names of both Rajah Muthiah Medical College and Hospital and Rajah Muthiah Dental College and Hospital under the Government College Category and thereby, creating a false belief for the students and parents attending the counselling that it is a Government College, is illegal.

12. It is further submitted that if the first respondent had clearly indicated that it is a self-financing Institution, the petitioner would have definitely chosen a better self-financing College for his daughter at the time of counselling. Further, he would not have been denied the option for re-allotment to the desired self-financing College for admission to BDS course for her daughter. Thus, the action of the first respondent has affected the career of the petitioner's daughter and has caused pain and suffering to his daughter and thereby, her dream to become a Doctor has been broken despite her hard work in her Higher Secondary and NEET Examinations.



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13. It is therefore submitted that a sum of Rs.50,00,000/- may be directed to be awarded as compensation for spoiling the petitioner's daughter's career.

14. Though the Writ Petition is of the year 2018, no counter affidavit has been filed by the first respondent so far.

15. On behalf of the first respondent, the learned Government Advocate for the first respondent submitted that the Writ Petition is not maintainable, as the Selection Committee has not been impleaded and therefore, the Writ Petition is liable to be dismissed.

16. Today, when the matter is taken up for hearing, there is no representation on behalf of the second respondent. The second respondent filed counter affidavit stating that the Government of Tamil Nadu had taken over the administration of the Annamalai University after noticing various irregularities in the administration of the University by the then Management. In 2013, Annamalai University Act, 2013 was enacted by the State Legislature and the said Act provides for direct control of the administration of the University by the State Government. The State Government appointed a senior I.A.S. Officer as Administrator of this University on 04.04.2013 to streamline the administration of the University.



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17. It is further stated that the petitioner's daughter A.D.Keerthana was called for counselling for admission to MBBS / BDS Courses for the Academic Year 2017-2018 by the Selection Committee, Directorate of Medical Education, Chennai, on 30.08.2017 based on her community rank. During the counselling, she had opted and joined BDS Course in the second respondent Institution through the Selection Committee during the Academic Year 2017-2018 and she has remitted a sum of Rs.3,50,370/- at the time of admission.

18. It is further stated that the petitioner's daughter in her letter dated 03.09.2017 had clearly stated that she decided to discontinue the course due to personal reasons and requested to refund the fees. Based on her letter dated 03.09.2017, the Dean, Faculty of Dentistry has forwarded her request with a note that she has not attended any class and the last date of counselling was on 06.09.2017.

19. It is further stated that the norms followed for refund of the fee for BDS course as per prospectus of the Annamalai University reads as under:-

"5. Security Bond:-

(i) Candidates selected for admission and his/her



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parent/Guardian will have to execute an Agreement Bond during admission to college as prescribed in Annexure-I. Failure to execute the agreement Bond will lead to cancellation of selection.

(ii) The seat vacated by the candidate on re-allocation and subsequently if the seat is filled before the last date of admission as directed by the DCI is Rs.10,000/- (service charges)

(iii) The seat is resigned by the candidate and subsequently if the seat is filled before the last date of admission as directed by the DCI is Rs.10,000/- (service charges)"

20. It is further stated that the petitioner's daughter falls under the category of Clause 5 (ii) of the prospectus and thus, after deducting a sum of Rs.10,000/- as service charges from the fees paid by the petitioner, a sum of Rs.3,40,370/- was refunded to the petitioner. Therefore, the petitioner is not entitled to refund of the service charges.

21. It is further stated that the contention of the petitioner that he is entitled for compensation for unethical and unprofessional act of the respondents in the selection process is fallacious. The second respondent University is no way connected with the selection process.



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WEB COPY 22. According to the second respondent, the petitioner is bound by the Prospectus issued by him. In Clause VIII of the said Prospectus, it has been categorically stated that Rajah Muthiah Dental College, Annamalai University comes under the self-financing Dental College with 85% of seats for Government quota in self-financing Dental Colleges. The categories of seats as follows:-

"VIII. CATEGORIES OF SEATS

38. (iv) Category-IV-Government Quota in Self-Financing Dental Colleges:-

(a) 65% of the total BDS seats in Self-Financing Non- Minority Dental Colleges.

(b) 50% of the total BDS seats in Self-Financing Minority Dental Colleges.

(c) 85% seats in Rajah Muthiah Dental College, Annamalai University

Note:-

(?) Selection Committee will allot seats to the candidates as per their choice of the college based on merit following the rule of reservation and subject to availability.

(b) The seats offered by self-financing Medical/Dental Colleges will be filled up on merit basis from the merit list published by the selection committee for 2017-2018 following the rule of reservation in force in Tamil Nadu.

(c) The fee structure for self-financing Medical and Dental Colleges will be adopted as fixed by the Committee constituted by the Government of Tamil Nadu for that purpose."



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WEB COPY 23. The method of selection is described in Clause 4 of the Prospectus as follows:-

"4. Method of Selection:-

Candidates who are interested in joining these courses at Rajah Muthiah Dental College, Annamalai University, for the academic year 2017-2018 must have secured the minimum qualification score in National Eligibility Entrance Test (NEET) held on 07th May 2017 conducted by the National Board of Examination, New Delhi. The candidates should apply and also appear for the counselling to be conducted by the Selection Committee, Directorate of Medical Education, Government of Tamil Nadu, Kilpauk, Chennai, the dates of which will be announced by the Selection Committee."

24. In view of the above clause, it has been categorically stated that the Selection Committee of the Directorate of Medical Education alone conducted the counselling for MBBS / BDS Courses. All the allegations set out in the affidavit are answerable only by the Selection Committee. However, the said Selection Committee was not made as necessary party in the present Writ Petition and therefore, this Writ Petition is not maintainable and liable to be dismissed on the sole ground of non-joinder of necessary parties.

25. It is further stated that it is the duty of the petitioner to be vigilant before choosing the College during the course of counselling and therefore, the second respondent is no way connected in the selection process and the fees



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remitted by the petitioner's daughter was also refunded after deducting the service charges as per the DCI Norms. Hence, the petitioner is not entitled for any refund of service charge and therefore, he cannot seek compensation for the mistake committed by him during the course of counselling for her daughter's admission in BDS Course and therefore, prayed for dismissal of the Writ Petition.

26. I have heard the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first respondent and perused the averments made in the counter affidavit filed by the second respondent.

27. At the outset, I wish to state that the first respondent has been negligent in not filing their counter affidavit. With the advent of the National Eligibility cum Entrance Test (NEET) for entrance into Medical and Dental Colleges in the Country, deserving students having domicile in the States have been at a partial disadvantage, as seats are allocated based on national ranking as per merits in the test and may be allotted seats in far-flung areas in the Country, some times in remote parts of State. The inevitable result is that Government Medical and Dental Colleges in the State are compelled to accommodate students from all over the Country, leading to a scarcity of seats



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for students who are domiciled in the State. To compound the woes of students aspiring to enter the Medical and Dental Professions, there appears to be a trend of seat swapping among candidates, not due to any fault of their own but perhaps from the scarcity of seats and systemic defects in the current practice of allotment of seats to deserving candidates.

28. Since no counter affidavit has been filed by the first respondent, it has to be construed that the first respondent has admitted to the mistakes committed in accommodating the above-named S.Subisha, K.Srimathi, P.Kavitha and R.Jeevanantham by overlooking the legitimate rights of the petitioner's daughter namely, A.D.Keerthana. However, the Writ Petition is silent as to what the petitioner's daughter did after 2017, specifically whether she qualified in the ensuing years or completely gave up her hope of pursuing medicine after a bitter experience in 2017.

29. Jurisdiction of the Writ Courts cannot be used for claiming compensation for huge amounts without any evidence. The summary procedure under Article 226 of the Constitution of India is neither a substitute for a full-fledged trial nor a summary trial. The procedure adopted is summary in nature while disposing of the Writ Petition. Therefore, the relief sought in this Writ Petition cannot be granted to the petitioner. At the same time, this



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Court is of the view that costs can be imposed on the first respondent for torturing both the petitioner's daughter and the petitioner by accommodating the petitioner's daughter in a College where fees payable are over and above the normal fees payable in any Government Medical Colleges.

30. In this Writ Petition, this Court could have ordered compensation, if there had been a clear admission of liability and fault by the first respondent. Since the first respondent has not filed their counter affidavit, I am inclined to order cost of Rs.5,00,000/- to be paid by the first respondent to the petitioner, leaving it open for the petitioner to file a suit for compensation on account of mental agony the petitioner's daughter would have suffered on account of the purported illegality committed by the first respondent. The first respondent shall pay the said sum of Rs.5,00,000/- within a period of 30 days from the date of receipt of a copy of this order.

31. In fine, this Writ Petition stands disposed of with liberty to the petitioner's daughter to file a suit to recover the compensation, as she would be a major at this distant point of time. Consequently, connected Miscellaneous Petition is closed.

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

24.07.2024



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To

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C.SARAVANAN, J.

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Pre-delivery order in
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