

W.A(MD)Nos.1780 and 1781 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.03.2025

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)Nos.1780 and 1781 of 2024
and
CMP(MD)Nos.13599 and 13601 of 2024**

W.A(MD)No.1780 of 2024:

The Secretary,
Annapoorna Medical College and Hospital,
Sankari Main Road (NH-47), Kombadipatti Village,
Veerapandi Union, Salem South Taluk,
Salem(dt) 636 308.

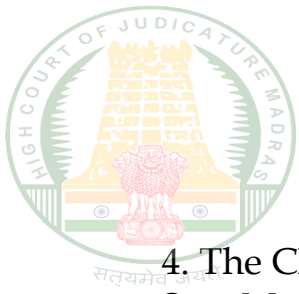
... Appellant

vs.

1. Dr.Iswarya US

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

3. Tamil Nadu Dr.M.G.R. Medical University,
Rep. by its Registrar,
No.69, Anna Salai, Guindy,
Chennai - 600 032.



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4. The Chairman,
Sree Mookambika Institute of Medical Sciences,
Padanilam, Kulasekharam,
Kanyakumari District - 629 161.

... Respondents

W.A(MD)No.1781 of 2024:

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

... Appellant

vs.

1. Dr.Iswarya US

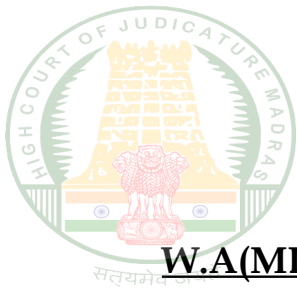
2. Tamil Nadu Dr.M.G.R. Medical University,
Rep. by its Registrar,
No.69, Anna Salai, Guindy,
Chennai - 600 032.

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 in both Appeals : Writ Appeals filed under Clause 15
of the Letters Patent, against the order dated 07.06.2024 made in
W.P(MD)No.2267 of 2024.



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W.A(MD)No.1780 of 2024:

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For Appellant : Mr.S.Kumar
For R1 : Mr.Xavier Rajini
For R2 : Mr.J.Ashok, Additional Government Pleader
For R3 : No appearance
For R4 : Mr.K.Ragatheesh Kumar for
M/s.Isaac Chambers

W.A(MD)No.1781 of 2024:

For Appellant : Mr.J.Ashok, Additional Government Pleader
For R1 : Mr.Xavier Rajini
For R2 : No appearance
For R3 : Mr.S.Kumar
For R4 : Mr.K.Ragatheesh Kumar for
M/s.Isaac Chambers

COMMON JUDGMENT

(Judgment of the Court was made by J.NISHA BANU, J.)

These writ appeals are filed against the order dated 07.06.2024 made in W.P(MD)No.2267 of 2024.

2. The facts leading to the filing of the writ appeals are as follows:

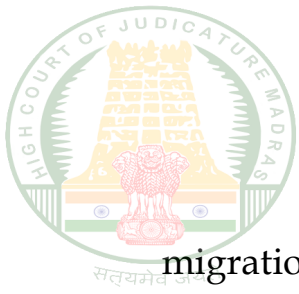
The 1st respondent in both the appeals / writ petitioner completed MBBS course and obtained her degree in the year 2020. She joined MD



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(Physiology) in Annapoorna Medical College and Hospital, Salem, in the academic year 2023-2024. According to the writ petitioner, only two seats were sanctioned to Annapoorna Medical College, in which, she joined and another seat is vacant and the college instructed her to pay capitation fee of Rs.10,00,000/-, in addition to the regular course fee. According to the writ petitioner, she paid a sum of Rs.5,00,000/- and was unable to pay the balance amount. Finding that because of non payment of balance capitation fee, she was not permitted to attend the classes, the writ petitioner sought migration to Sree Mookambika Institute of Medical Sciences/4th respondent in both the appeals and the Annapoorna Medical College replied that if the writ petitioner is ready to pay Rs.30 Lakhs towards three years course fee including capitation, they would give willingness for her migration to the 4th respondent college. Hence, the 1st respondent/writ petitioner filed the writ petition.

2.1. Before the Writ Court, the learned standing counsel for the University contended that though Regulation 6 of the Medical Council of India Regulations on Graduate Medical Education, 1997 provided for

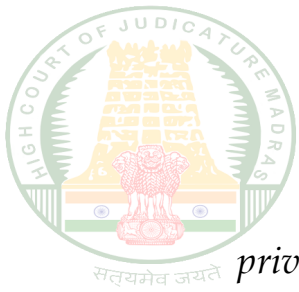


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migration of students from one medical college to another medical college on any genuine ground, it was repealed and the Post-Graduate Medical Education Regulations, 2023, have come into force and Regulation 4.7 categorically states that no student designated to a medical institution, notwithstanding anything stated in these Regulations, shall be permitted migration to any other medical institution.

2.2. However, the Writ Court, taking note of the ambience, in which, the 1st respondent was placed and observing that the right to education is a basic right and such right of the 1st respondent cannot be frustrated in this fashion, allowed the writ petition by impugned order. The relevant passage of the order passed by the Writ Court is extracted hereunder:

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 is demanded by many a

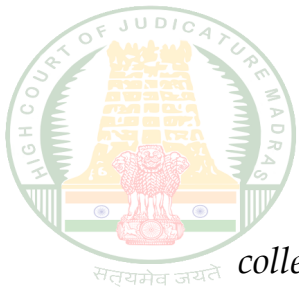


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private educational institutions. That is why, Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee), Act, 1992 was enacted. The Hon'ble Supreme Court of India in Rashtreeya Sikshana Samithi Trust Vs. Committee for Fixation 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 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



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college, seats are available. MD (Physiology) is a three year course.

WEB COPY *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.'

2.3. Aggrieved by the said order, Annapoorna Medical College and Hospital, Salem and the Secretary, Selection Committee, Directorate of Medical Education, Chennai have filed these appeals.

3. Assailing the order passed by the Writ Court, the learned counsel for Annapoorna Medical College / appellant in W.A(MD)No. 1780 of 2024 would mainly rely upon Regulation 4.7 of the abovesaid 2023 Regulations and submitted that when the said Regulation totally prohibits migration of the student from one college to another, the Writ Court ought not to have traversed beyond the said Regulation to allow the writ petition, which is *ex facie* illegal. He would deny the allegation

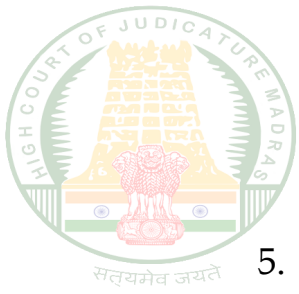


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of alleged demand of Rs.30 Lakhs by the college for permitting migration and also the demand of Rs.10 Lakhs towards capitation fee.

He would also state if the 1st respondent is allowed to migrate, it would cause hardship to the college and the seat may go waste for the relevant academic year. Thus, he would pray for setting aside the impugned order.

4. The learned Additional Government Pleader appearing for the Selection Committee, Directorate of Medical Education, Chennai / appellant in W.A(MD)No.1781 of 2024 would submit that the Writ Court failed to see that migration is not a right of a medical student and that the request for migration is against the counselling procedure. He would further state that as per the registration of the National Medical Commission, which is the body supervising the entire selection process, the 1st respondent has been registered in Annapoorna Medical College and Hospital and therefore, migration of the 1st respondent would cause hardship to the college and the seat will go waste. Thus, he would pray for setting aside the impugned order.



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5. Per contra, the counsel for the 1st respondent / writ petitioner would state that because of non payment of balance capitation fee, the petitioner was not permitted to attend the classes and that the classes were also not being properly conducted in Annapoorna Medical College. Thus, finding that her academic atmosphere in the said college is not conducive, the writ petitioner sought for migration. Though it was rejected by the authorities, the Writ Court, considering the ambience of the writ petitioner, in which she was placed and finding that the situation in the college was not conducive to pursue her course, rightly allowed the writ petition applying doctrine of necessity. Thus, the learned counsel submitted that the order of the Writ Court does not call for interference.

6. Heard both sides.

7. The crux of the contention made by the Annapoorna Medical College / appellant in W.A(MD)No.1780 of 2024 is that when Regulation 4.7 of the Post-Graduate Medical Education Regulations, 2023 prohibits migration, the Writ Court out not to have allowed the writ petition allowing migration. Though Regulation 6 of the Medical

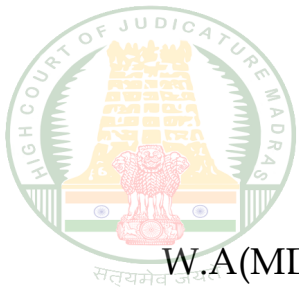


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Council of India Regulations on Graduate Medical Education, 1997

provided for migration of students from one medical college to another medical college on any genuine ground, the said Regulations were repealed by 2023 Regulations totally barring migration. Such being the Regulations, if a medical student is put in an inconducive situation because of the action of the college in not permitting the student to attend classes citing non payment of capitation fee and not providing the basic requirements to the student, then such student will be remediless and the student's academic career will be totally spoiled and he / she will not be able to concentrate on studies resulting in failure of the course which he / she joined. Considering the situation, in which, the writ petitioner was placed, the Writ Court rightly applied the doctrine of necessity to tide over the difficult situations and allowed the writ petition granting migration.

8. Though Annapoorna Medical College / appellant in W.A(MD)No.1780 of 2024 strenuously objected to migration, they did not appear before the Writ Court to canvass their case. The appellant in



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W.A(MD)No.1781/2025 / Selection Committee themselves have stated in their grounds of appeal that transfer of college does not come under their purview and therefore, they cannot be said to be aggrieved. Once the selection is over and the candidate is allotted to the college, the role of the Selection Committee is over.

9. Apart from the above reasons, we are of the view that paramount importance should be given to the 1st respondent's education. Therefore, we are not inclined to interfere with the order passed by the Writ Court.

10. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B, J.] [S.S.Y, J.]
17.03.2025

Index : Yes / No
Neutral Citation : Yes / No
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J.NISHA BANU, J.
AND
S.SRIMATHY, J.

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To

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

2. The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai, Guindy,
Chennai - 600 032.

COMMON JUDGMENT MADE IN
W.A(MD)Nos.1780 and 1781 of 2024
DATED : 17.03.2025