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W.A.No.810 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.810 of 2023
and C.M.P.No.7731 of 2023

1. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R High Road,
Kilpauk, Chennai - 600 010.
2. The Dean,
Madras Medical College,
Chennai - 600 033. .. Appellants

Versus

1. Dr.R.Aashritha
2. Director General of Health Services,
Government of India,
Nirman Bhawan,
New Delhi - 110 108. .. Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 27.06.2019 in W.P.No.14840 of 2019.

For Appellants : Mrs.N.Sneha,
for Selection Committee



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WEB COPY For Respondents : M/s.Sudharshana Sundar
for R1

JUDGMENT

(Made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

The first respondent in the Writ Appeal, *Dr.R.Aashritha*, was granted admission to the prestigious Madras Medical College, Chennai in the second round of counseling on 17.04.2019 in MD (Tuberculosis and Respiratory diseases) / Pulmonary Medicine UR/MD (Respiratory Medicine) pursuant to her score in the P.G NEET, 2019. She paid her tuition fee on the same day i.e., on 17.04.2019 and joined the course on 01.05.2019. However, within two days, she submitted a letter and discontinued the course. It is stated in paragraph No.6 of the affidavit filed in support of the Writ Petition that she had to discontinue the course for sudden change of events in her personal life viz., fixing of her marriage. Thereafter, when she was ready to forego her tuition fee, the certificates which includes her M.B.B.S., Degree Certificate, Registration Certificate, Transfer Certificate etc., which she handed over at the time of joining of the college, were not returned to her insisting that she has to pay the discontinuation fee of Rs. 15,00,000/- besides the tuition fee. Aggrieved by the same, the present Writ Petition is filed.



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2. The Writ Petition was resisted by the respondents therein by submitting that as per Clause - 24(c), the petitioner, being a candidate under All India Quota, if discontinues the course after the last phase of counseling, is liable to pay the discontinuation fee. The learned Single Judge, after considering the submissions on both sides, considered the instructions contained in Clauses - 24(c) & 27(a) and upon a cumulative reading, found that as per Clause - 27(a), if only the discontinuation had taken place after the cut-off date for admission, i.e., after 31.05.2019 which is specifically mentioned in Clause - 27(a), the liability to pay the sum of Rs.15,00,000/- arises. But, in this case, the discontinuation had taken place on 03.05.2019 i.e., before the cut-off date for the admission and the liability of payment of Rs.15,00,000/- does not arise and allowed the Writ Petition by directing the second respondent to return the educational documents. Aggrieved by the same, the present Writ Appeal is filed by the said authorities.

3. Heard *Mrs.N.Sneha*, learned Counsel appearing on behalf of the appellants and *Mr.Sudharshana Sundar*, learned Counsel appearing on behalf of the first respondent.



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4. *Mrs.N.Sneha*, learned Counsel appearing on behalf of the appellants, taking this Court through the schedule for counseling, submitted that the first phase of counseling took place between 27.03.2019 to 03.04.2019 and the second phase of counseling took place between 13.04.2019 to 22.04.2019. As per the said schedule, the non-reported seats, non-joined seats and vacant seats would be transferred to the State Quota by 6.00 P.M on 22.04.2019 and only such of those seats which are transferred to the State Quota can be thereafter filled up by way of mop up counseling. In the case of the petitioner, the petitioner was allotted P.G seat in the second round of counseling. As per the decision of the Director General of Health Services, Government of India, Nirman Bhavan, New Delhi, the candidates, who got admitted under All India Quota in the second round, will not be able to resign from their allotted seats or participate in any further counseling. This being the situation, the petitioner cannot resign and even if she resigns, the seat will not be reverted to the State and accordingly, one precious P.G Medical Seat at the Madras Medical College went waste on account of the resignation of the petitioner.



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5. It is in this context, she would further submit that the State maintains all facilities including Professors for teaching P.G students who are limited in number and if the petitioner, in a casual manner, vacates her seat and leaves it vacant, then the Clauses in the Prospectus cannot be read in the manner as read by the learned Single Judge. She would submit that while Clause - 24(c) expressly mentions the candidates of All India Quota. It can be seen that there is no such express mention of All India Quota students in Clause - 27(a). Therefore, the mention of the cut-off date i.e., 31.05.2019 can only be applicable for the State Quota students and as far as the petitioner, who is a candidate from All India Quota, once she vacates the seat after the last phase of counseling, which is second round of counseling in the instant case i.e., after 22.04.2019, then, she is liable to pay a sum of Rs.15,00,000/-. The State has clearly been put to loss, besides the national resource of one P.G. Medical Seat had also gone waste.

6. Opposing the said submissions, *Mr.Sudharshana Sundar*, learned Counsel appearing on behalf of the first respondent, would submit that even as per the schedule, it can be seen that there are three phases in the counseling. Accordingly to her, the first round is the first phase, the second



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round is the second phase and the mop up round is the third phase. The cut-off date / last date for admission for P.G. Medical students was only on 31.05.2019, whereas, the petitioner resigned and discontinued on 03.05.2019 itself. Thereafter, the respondents had ample time to allot the seat to any other candidate in the mop up counseling. Therefore, in that view of the matter, on a clear and plain reading of Clause - 27(a) of the Prospectus, it would be clear that if only the first respondent had discontinued after the cut-off date i.e., on 31.05.2019, she is liable to pay the discontinuation fee of Rs.15,00,000/-. Therefore, she would pray that the learned Single Judge has rightly interpreted the terms of the Prospectus and rendered the decision which does not warrant any interference.

7. We have considered the rival submissions made on either side and perused the material records of the case. The matter has to be decided only as per the terms contained in the Prospectus issued by the appellants which governs the respective rights and liabilities of the parties. It is essential to extract Clause – 24(c) & 27(a) of the Prospectus which read as hereunder:-

"24.(c). The candidates (All India Quota / State Quota) who discontinue the course on or after the last phase of counselling should pay the Discontinuation Fees besides foregoing tuition



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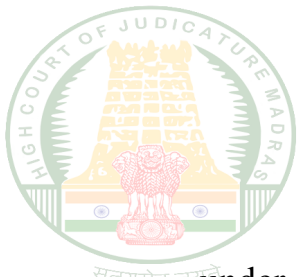
fees already paid by them as specified in Clause 37, to the Deans of the respective Colleges, the sum as specified below in total by means of a Demand Draft drawn in favour of "The Secretary, Selection Committee, Kilpauk, Chennai - 10", payable to Chennai.

*For P.G. Diploma Course Rs.10 lakh /Degree
Course Rs.15 Lakh*

Unless the aforesaid discontinuation fee as penalty amount is paid in total, the candidates will not be relieved and original certificates produced by the candidates at the time of admission will be retained by the concerned institutions.

*27.(a). If the candidates discontinue the course within the stipulated date after any round of counselling, they will have to forfeit the tuition fee paid by them. Provided that the candidates who have discontinued their course after the cut-off date (i.e., 31.05.2019) to pay the penalty as mentioned in the Clause 24(c) of the Prospectus."
(emphasis supplied)*

8. Though in the teeth of the circular dated 24.04.2019, one can appreciate the arguments of *Mrs.N.Sneha*, learned Counsel appearing on behalf of the appellants that the second round, in this case, is the last phase of counseling and the mop up counseling, being an exception which is conducted by the Central Authorities if the admission relating to Deemed Universities / Central Universities and the State authorities, if the seat fell



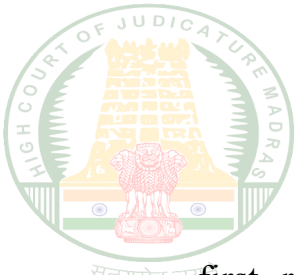
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under the State Quota. Therefore, strictly going by the Clause - 24(c), it would be clear that the first respondent has to pay the discontinuation fees of Rs.15,00,000/- since she has discontinued the course on 03.05.2019 after the last phase of counseling on 22.04.2019. But, the Prospectus also contains Clause - 27(a) which is extracted above. A plain reading of the said Prospectus does not make any difference between the State Quota or All India Quota and it simply provides that if only the candidates who discontinue their course after the cut off date i.e., after 31.05.2019, they have to pay the discontinuing fees, otherwise, they will only forfeit their tuition fees. In that view of the matter, there is apparent conflict and ambiguity between Clauses - 24(c) and 27(a) of the Prospectus. That being the situation, it is the appellants who are the authors of the Prospectus and as per the *contra proferentem* rule enunciated by the Hon'ble Supreme Court of India in ***United India Insurance Co. Ltd. Vs. Pushpalaya Printers***¹ and ***Central Bank of India Vs. Virudhunagar Steel Rolling Mills Limited and Ors.***², the benefit enures to the first respondent and adversity has to be borne only by the author of the document and we accordingly hold that the

1 (2004) 3 SCC 694

2 (2015) 16 SCC 207



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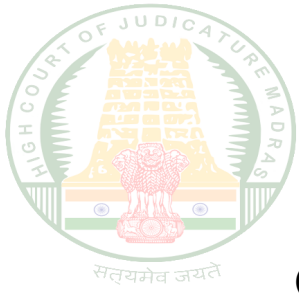
first respondent will not be liable to pay the discontinuation fees of
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Rs.15,00,000/-.

9. We also add that the first respondent seems to be a meritorious candidate and she pleads that she had to discontinue on account of the personal front. She got admission on 17.04.2019. She even joined college on 01.05.2019, but within two days, she had decided to discontinue the course for her own personal reasons, leading to the present situation. Candidates like the first respondent also should consider that a Post Graduation Medical seat is a national resource by itself and that there was another candidate who missed the seat just by a fraction of marks and therefore, should be more careful in planning their career and personal life. Only because of the ambiguity in the prospectus, the appeal is dismissed.

10. In the result,

(i) W.A. No.810 of 2023 is dismissed;

(ii) The appellants shall hand over the original certificates of the first respondent within two weeks from the date of receipt of the copy of the order;



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(iii) There shall be no orders as to costs;

(iv) Consequently, connected miscellaneous petition is closed.

(T.R., ACJ.)

(D.B.C., J.)

31.03.2023

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Index : yes

Speaking order

Neutral Citation : yes

grs

To

The Director General of Health Services,
Government of India,
Nirman Bhawan,
New Delhi - 110 108.



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**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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