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W.A.Nos.861 & 862 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 01.09.2023	Delivered on 27.09.2023
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CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

W.A.Nos.861 & 862 of 2017
and
C.M.P.Nos.11843 & 11842 of 2017

W.A.No.861 of 2017

Dr.P.Sidharthan

...Appellant

Vs.

- 1.The Government of Puducherry,
Rep. by Secretary to Government (Health),
Chief Secretariat,
Puducherry - 605 001.
- 2.The Director,
Health and Family Welfare Services (DHFWS),
Victor Samuel Street,
Puducherry - 605 001.
- 3.The Convenor,
CENTAC (Centralised Admission Committee),
PEC Campus, ECR Road,
Pillaichavadi,
Puducherry - 605 014.

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4. The Director,
Pondicherry Institute of Medical Sciences (PIMS),
Ganapathi Chettikulam,
Puducherry - 605 014.

5. Medical Council of India (MCI),
New Delhi.
(R5 added as a party respondent vide order of Court
dt. 05.09.2017 by RSAJ & AQJ made in
W.A.Nos.861 & 862 of 2017 and CMP.No.14841 to
14843 of 2017)

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the
order in W.P.Nos.12347 of 2017 passed on 30.06.2017.

W.A.No.862 of 2017

Dr.P.Sidharthan

...Appellant

Vs.

1. The Director,
Pondicherry Institute of Medical Sciences (PIMS),
Ganapathi Chettikulam,
Puducherry - 605 014.

2. The Convenor,
CENTAC (Centralised Admission Committee),
PEC Campus, ECR Road,
Pillaichavadi,
Puducherry - 605 014.



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3. The Government of Puducherry,
Rep. by Secretary to Government (Health),
Chief Secretariat,
Puducherry - 605 001.

4. The Secretary to Lt. Governor,
Puducherry, Raj Nivas,
Puducherry.

5. Medical Council of India (MCI),
New Delhi.
(R5 added as a party respondent vide order of Court
dt. 05.09.2017 by RSAJ & AQJ made in
W.A.Nos.861 & 862 of 2017 and CMP.No.14841 to
14843 of 2017)

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the
order in W.P.Nos.14393 of 2017 passed on 30.06.2017.

For Appellant : Mr.V.B.R.Menon in both Writ Appeals

For Respondents : Mr.R.Sreedhar

Additional Government Pleader for R1 to R3

Mr.Abishek Jenasenan for R4

Ms.Shubaranjani Ananth for R5

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

These two appeals arise out of two Writ Petitions filed by the
appellant / petitioner in W.P.Nos.12347 & 14393 of 2017.



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2. In W.P.No.12347 of 2017, the petitioner sought for a declaration

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that non-implementation of the selection of the petitioner in accordance with merit under the Government counselling conducted on 04.05.2017 is illegal and unconstitutional and consequently, admit the petitioner in terms of the allotment order dated 04.05.2017 in M.S.(General Surgery) for the academic year 2017-2018 in the 4th respondent Institute / Pondicherry Institute of Medical Sciences.

3. The other Writ Petition in W.P.No.14393 of 2017 has been filed by the petitioner in W.P.No.12347 of 2017 seeking a Writ of Certiorarified Mandamus, challenging the rejection letter dated 02.06.2017 issued by the 1 respondent therein namely, the Pondicherry Institute of Medical Sciences (PIMS) and to direct the 1st respondent to admit the petitioner in terms of the allotment order without imposing an onerous condition of serving bond.

4. The above two Writ Petitions demonstrate a very sad state of a slip between the cup and the lip. The slip has proved to be a very costly slip for the petitioner, an aspiring young medical graduate.



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5.The background facts are as follows:-

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The parties are referred as per their ranking in W.P.No.12347 of 2017.

5.1.The petitioner, who is a medical graduate and serving as an Assistant Surgeon with the Government of Puducherry took the first ever National Eligibility-cum-Entrance Test (NEET) held in the year 2017 and was successful. He appeared for common counselling before Centralized Admission Committee (CENTAC) formed by the Puducherry Government on 04.05.2017. He was allotted a seat in M.S.(General Surgery) in the Pondicherry Institute of Medical Sciences (PIMS) and he was required to join by 3.00 p.m. on 15.05.2017.

5.2.According to the petitioner, he approached the Pondicherry Institute of Medical Sciences the very next day but, he was required to pay an enormous fee of Rs.30,00,000/-. Being a Government sponsored candidate, the petitioner felt that fee demanded is exorbitant and he wrote to CENTAC on 06.05.2017, informing them that the Pondicherry Institute of Medical Sciences is demanding a huge fee and has not admitted him based



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on the allotment made by the CENTAC on 04.05.2017.

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5.3.The petitioner also moved this Court in W.P.No.12347 of 2017 and an interim order was granted, directing the Pondicherry Institute of Medical Sciences to keep one seat vacant in M.S. (General Surgery). The said order came to be passed on 11.05.2017. Notice was made returnable by 05.06.2017. Subsequently, during the pendency of W.P.No.12347 of 2017, the Fee Committee constituted by the Puducherry Government fixed fee for seats in Post Graduate courses that fall under the 50% Government quota at Rs.3,00,000/- per year. Soon thereafter, as on 15.05.2017, the petitioner paid the said sum of Rs.3,00,000/- by way of Demand Draft.

5.4.It is to be noted here that the order fixing fee made by the Fee Committee was challenged by another Institution and this Court by order dated 18.05.2017 granted stay of the said order in W.P.No.12912 of 2017. It should also be noted that the Pondicherry Institute of Medical Sciences, the contesting respondent in these appeals did not challenge the fee fixation made by the Fee Committee on 14.05.2017. However, the Fee Committee



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itself revised the fee and issued another order on 24.05.2017, requiring the candidates, who have been allotted PG courses in medicine to pay Rs.5,50,000/- towards the fee.

5.5.The petitioner would claim that he had offered a Demand Draft for the balance of Rs.2,50,000/- to the Pondicherry Institute of Medical Sciences on 31.05.2017 but the Institute refused to receive the said fee and hence, the petitioner had sent it to the CENTAC on the said date.

5.6.Even during the pendency of the said Writ Petition and despite the fact that the interim order granted by this Court was in force, the Pondicherry Institute of Medical Sciences sent a letter dated 29.05.2017 returning the Demand Draft for Rs.3,00,000/-, which was tendered by the petitioner on 15.05.2017. Reliance was placed on the interim order of this Court obtained by another Institute on 18.05.2017, staying the fee fixation made on 14.05.2017. Subsequently, on 02.06.2017, the Pondicherry Institute of Medical Sciences wrote to the petitioner stating that his nomination is rejected and returned the Demand Draft for Rs.2,50,000/-.



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Three grounds were made the basis for the said rejection, which are as

follows:-

i) The petitioner has not undertaken to pay the fees as decided by this Court.

ii) The petitioner has not executed one year service obligation bond, agreeing to serve the Institute before the last date of PG admissions namely, 31.05.2017.

iii) The petitioner has not paid the fee of Rs.5,50,000/- on or before 31.05.2017.

6.It was this letter that was subject matter of challenge in W.P.No.14393 of 2017. We feel compelled to point out that all this was done when interim order, directing the Pondicherry Institute of Medical Sciences to keep one seat vacant made in W.P.No.12347 of 2017 was in force and no attempt was made to have the said order vacated.

7.Not stopping there, the College admitted one Arun Sundaram in the place of the petitioner on 31.05.2017, collecting a sum of Rs.25,00,000/-



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from him towards fees. It will not be out of place to point out that Dr. Arun Sudaram was allotted to another Medical College, which was run by a deemed University by CENTAC and the said Arun Sundaram paid the fees on 19.06.2017 and on 29.06.2017 in two instalments of Rs.15,00,000/- and Rs.10,00,000/- respectively. The Government of Puducherry, the Director of Health and Family Welfare Services, Puducherry and the CENTAC, Puducherry surprisingly did not file any counter to the Writ Petitions. They maintained complete silence, which, in our opinion, was only to support the illegal actions of the Institute. Unfortunately, the Medical Council of India (now renamed as National Medical Commission (NMC)), a body which is to oversee the process of admission in medical Colleges across country was not made a party to the Writ Petitions.

8.The Pondicherry Institute of Medical Sciences alone resisted the Writ Petition contending that the petitioner had foregone or lost his right to claim a seat in the Institute for the reasons, which were set out by it in the letter dated 02.06.2017. It was further claimed that since a prospectus was issued by the Pondicherry Institute of Medical Sciences on 02.05.2017



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fixing the fee at Rs.30,00,000/- for M.S. (General Surgery), students seeking

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admission to the said course should be deemed to have been aware of the fact that they are bound to pay Rs.30,00,00/- *de hors* the fact whether they are sponsored by the CENTAC or not.

9. Reliance was also placed on the judgment of the Hon'ble Supreme Court in *TMA.Pai Foundation Vs. State of Karnataka* reported in (2002) 8 SCC 481 and *Islamic Academy of Education and another Vs. State of Karnataka and Others* reported in (2003) 6 SCC 697 in support of the said contention. It was also contended that the Institute has not surrendered any seat to the Government and hence, the candidate cannot contend that he is a Government candidate and therefore, he would pay only the fee fixed by the Fee Fixation Committee. It was also pointed out that on the day when the petitioner was allotted to the said Institute, there was no order of the Fee Fixation Committee and the very order fixing fee was made only on 14.05.2017. It was also claimed that even if the seats were surrendered, the fee fixed by the Institution alone would be applicable.



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10. Reliance was also placed on the order obtained by the other

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Institution in W.P.No.12912 of 2017, staying the recommendation of the Fee Fixation Committee. Indirect challenge was mounted on the orders of the Fee Fixation Committee in the counter affidavit filed in the Writ Petition. The order rejecting admission to the petitioner is subject matter of W.P.No.14393 of 2017. No separate counter was filed in W.P.No.14393 of 2017. The Hon'ble Single Judge, who heard the Writ Petitions together dismissed both of them on the ground that the petitioner had not complied with the requirements of the admission process and that having opted for the Pondicherry Institute of Medical Sciences during counselling, the petitioner will not be entitled to seek admission without complying with the requirements set out in the prospectus of the said Institute. Aggrieved, the petitioner has come up with these appeals.

11. We have heard Mr.V.B.R.Menon, learned counsel for the appellant, Mr.R.Sreedhar, learned Additional Government Pleader for the respondents 1 to 3, Mr.Abhishek Jenasen, learned counsel for the 4th respondent and Ms.Shubaranjani Anand, learned counsel for the 5th



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respondent namely, National Medical Commission, who was impleaded by

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12.Mr.V.B.R.Menon, learned counsel for the appellant would vehemently contend that the Writ Court was in complete error in dismissing the Writ Petitions, overlooking the fact that the PG Medical Education Regulations, 2000 as they stood on 04.05.2017, when the petitioner had attended the counselling, required 50% of the total seats to be filled up by the State Government or the Authority appointed by the State Government in non-governmental Medical Colleges and Institutions under Clause VI of Regulation-9.

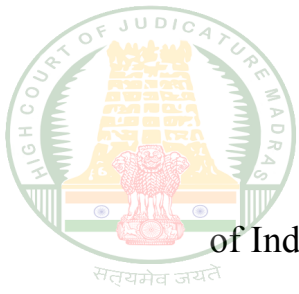
13.Drawing our attention to Regulation 9-A, inserted with effect from 11.03.2017, which provides for a common counselling the learned counsel would contend that under Clause-(iii) of the said regulation, candidates should be allotted to the Institutes only by way of a common counselling to all PG courses in medicine. Therefore, according to Mr.V.B.R.Menon, *de hors* the contents of the prospectus, which was issued



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in February, 2017 mandate of the Regulations, which was made during
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under the Government quota, he is entitled to admission on the payment of
fee prescribed by the Committee.

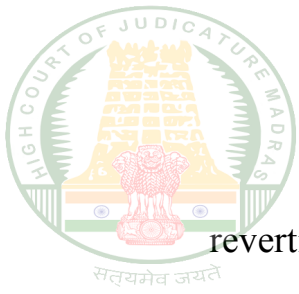
14.Mr.V.B.R.Menon would also draw our attention to the judgment of the Constitution Bench of the Hon'ble Supreme Court in *State of Madhya Pradesh Vs. Jainarayan Chouksey and Others* reported in (2016) 9 SCC 412 wherein, it was clarified that the mandate of the judgment in *Modern Dental College and Research Centre* reported in (2016) 7 SCC 353 was that Centralized Entrance Test followed by a Centralized State counselling by the state to make it a one composite process. He would also rely upon the further direction, which reads as follows:- “We are therefore, direct the admission to all medical seats shall be conducted by a Central counselling only by the State Government and none else” to impress upon us that the insertion of Rule 9-A in the PG Medical Education Rules, 2000 was pursuant to the direction of the Hon'ble Supreme Court made above. He would also draw our attention to the notification of the Medical Council



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of India dated 10.03.2017, in and by which the Medical Council of India has introduced Rule 9-A, requiring all counselling to be done only by a Centralized Admission Committee constituted by the State Government for the said purpose. He would also point out that the Hon'ble Supreme Court on 04.05.2017 in the order rendered by it in *Education Promotion Society of India Vs. Union of India* issued directions for including deemed Universities also in the Government Counselling by the State Government.

15. Mr.V.B.R.Menon would also draw our attention to the Office memorandum issued by the Government of India, requiring Government servants, who are seeking study leave to execute a bond to serve the Government after they had completed the leave. Reliance is placed by Mr.Menon on this requirement to contend that a private Institution, in which a Government servant is allotted a seat cannot insist upon execution of a service bond, since the said Government servant would be required to serve the Government after completion of the study leave. He would also point out that a Government servant cannot be accepted to give an undertaking to a private Institution to serve it after completion of the course without



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reverting back to Government services. The learned counsel for the

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appellant would further contend that in-service Doctors, who were admitted to PG courses in private Medical Institutions are not paid stipend, since they receive salary from their employer namely, the Government. Therefore, according to the learned counsel for the appellant, Writ Court was not justified in relying upon the conditions in the prospects, which are issued prior to the introduction of Rule 9-A and which was in violation of Clause-VI of Rule-9 of the PG Medical Education Regulation.

16. Mr.V.B.R.Menon would point out that the seat that was allotted to the petitioner / appellant was not surrendered to the Government but a candidate, who was allotted to a completely different College, that too, after collecting a sum of Rs.25,00,000/- on 19.06.2017 and 29.06.2017. This, according to Mr.Menon, having been done in the teeth of the interim order that was granted by this Court on 11.05.2017 would amount to *per se* contempt of Court.



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17. Mr.R.Sreedhar, learned counsel appearing for the respondents

1 to 3 namely, Authorities of the Puducherry Administration would by and large adopt the submissions of the learned counsel for the appellant. He would however, point out that the situation particularly, in the year 2017, being the first year when a common entrance test was conducted for Post Graduate courses in medical colleges across the country and various orders were issued by the Hon'ble Supreme Court and this Court regarding admissions to be made through a Centralized Admissions Committee, confusion prevailed and the Pondicherry Institute of Medical Sciences has taken advantage of the said confusion and refused the seat to the petitioner. He would also point out that the petitioner had however, joined the same M.S.(General Surgery) Course in the very next academic year in another Institution and he has now completed the same. Therefore, according to Mr.R.Sreedhar, the denial of a seat to the petitioner for the academic year 2017-2018 has not resulted in a huge damage as claimed by the counsel for the appellant.



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18. Ms.Shubaranjani Ananth, learned counsel for the National Medical Commission (formerly known as Medical Council of India) has filed an affidavit stating that the Medical Council of India has not fixed any regulations regarding the requirement of bond by serving Government Doctors to private Institutions. She would also submit that being the first year, when completely new procedure was introduced for admission, confusion prevailed and the same resulted in certain unwanted results and one such is the denial of admission to the petitioner. She would also draw our attention to the fact that prior to 2017, there was no fee fixation done and Institutes were free to collect whatever fee they had fixed.

19. The under Secretary to Government of Puducherry has filed a reply affidavit in these Writ Appeals setting out the bond to be executed by a Government servant, who goes on study leave. Reference is also made to various candidates, who are from Government service, who had joined the Pondicherry Institute of Medical Sciences without furnishing bonds.



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20. Mr.Abhishek Jenasen, learned counsel appearing for the 4th

respondent / Pondicherry Institute of Medical Sciences would contend that the Writ Court was right in concluding that the prospectus would prevail and therefore, the petitioner cannot demand a seat. He would however, submit that the demand for a bond from a serving Government Doctor may not be justified and he would also point out that in such cases, whenever the student, who is a serving Government Doctor sought for exemption from execution of the bond, the 4th respondent Institute has readily granted such exemption.

21.The learned counsel would also point out that the admission was refused, since the entire situation was nebulus and on the day when the petitioner approached the 4th respondent Institution namely, 04.05.2017 or 05.05.2017, there was no fee fixation done by the Fee Committee appointed by the Government of Puducherry and therefore, he was liable to pay the fee fixed by the College in the prospectus. It was also pointed out that the candidates, who are serving Government Doctors, who had joined the course had also given a letter informing the College that, since they are paid



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salary by the Government, they will not be in a position to receive the

stipend.

22.Mr.Abhishek Jenasenar would submit that the rejection of the petitioner's candidature is an unintentional aberration that had occurred due to the nebulous situation that prevailed and the 4th respondent Institution cannot be entirely blamed. He would also point out that atleast seven other Government Doctors, who have sponsored by the CENTAC were admitted during the academic year 2017-2018 on receipt of the fee fixed by the Fee Committee namely, Rs.5,50,000/-. Upon our direction, he had also produced all fees paid by those candidates, who are admitted during the academic year 2017-2018.

23.We have considered the rival submissions and perused the affidavit filed on behalf of the National Medical Commission (formerly Medical Council of India) and on behalf of the Government of Puducherry.



24.The undisputed facts are as follows:-

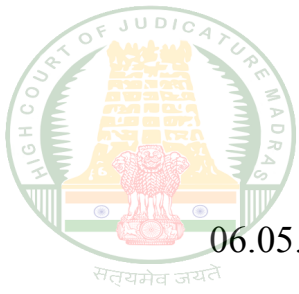
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i) The petitioner was successful in the first ever NEET Examination conducted for PG Medical admissions in the year 2017. As mandated by the orders of the Hon'ble Supreme Court, Rule 9-A was introduced to the PG Medical Education Regulations, 2000 on 11.03.2017, which required a common counselling to be held for all Post Graduate medical courses in all Medical Institutions.

ii) Irrespective of the fact that whether they are private or Government run Institution, Rule 9(vi), which was introduced by the notification of the Medical Council of India dated 15.02.2012 with effect from 27.02.2012 required the State Government or the Authority appointed by the State Government to fill up 50% of the PG seats from and out of the candidates based on the merit list prepared as per the marks obtained in the National Eligibility-cum-Entrance Test (NEET).

iii) The petitioner was allotted a seat in M.S.General Surgery in the 4th respondent / Pondicherry Institute of Medical Sciences.

iv) The petitioner approached the 4th respondent Institution and on it refusal to grant admission, the petitioner had written to CENTAC on



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06.05.2017, pointing out that the 4th respondent Institution had not honoured the allotment and admitted him.

v) Immediately thereafter, the petitioner had approached this Court by filing W.P.No.12347 of 2017 and had obtained a direction for one seat to be kept vacant on 11.05.2017. The petitioner has paid the fee fixed by the Committee on 14.05.2017 by way of a Demand Draft on 15.05.2017. The said Demand Draft was received on 16.05.2017 by the 4th respondent and the same was retained.

vi) On 18.05.2017, another Institute challenged the fee fixation and this Court had granted stay of the fee fixation.

vii) On 24.05.2017, the Fee Committee re-fixed the provisional annual fee at Rs.5,50,000/-.

viii) While the petitioner claims that he tendered Demand Drafts on 31.05.2017, such a claim is disputed by the 4th respondent, but the Demand Draft for Rs.2,50,000/- was sent to the CENTAC on 31.05.2017.

ix) In the interregnum, even on 31.05.2017, the 4th respondent Institution admitted the Doctor Arun Sundaram, who was not sponsored to the 4th respondent Institute by the CENTAC in the seat that was allotted to



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the petitioner.

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x) On 02.06.2017, the 4th respondent wrote the petitioner informing him that his selection has been cancelled giving out three reasons, which have already been set out.

25.Unfortunately, there is no provision in the regulations framed by the Medical Council of India regarding the right of a private medical Institutions to demand a bond from PG Medical student, who is assigned / allotted to it in the common counselling. The absence of such regulation in the year 2017 is understandable in as much as common counselling for PG admission was introduced only in the year 2017 by insertion of Rule 9-A pursuant to the judgment of the Constitutional Bench of the Hon'ble Supreme Court in *State of Madhya Pradesh Vs. Jainarayan Chouksey* reported in *(2016) 9 SCC 412*.

26.The list of candidates admitted to PG medical courses sent by CENTAC to Medical Council of India contains the name of the petitioner as a candidate, who has been admitted in M.S.(General Surgery) for the year

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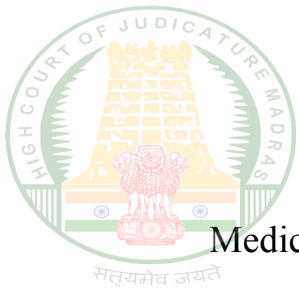
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2017. Unfortunately, either CENTAC or the Directorate of Health Services, Government of Puducherry took up the matter seriously and left it to the petitioner to defend himself against a mighty Medical College namely, the Pondicherry Institute of Medical Sciences.

27. The above facts would demonstrate that a nebulus or an uncertain situation that prevailed in the year 2017 regarding PG Medical admissions has been taken advantage of by the 4th respondent to deny a seat to the petitioner and accommodate another student, who was allotted to another Medical College at a higher fee. The Writ Court had upheld the actions of the 4th respondent on the ground, its prospectus provided for payment of fee fixed by it and for execution of a service bond.

28. We are unable to subscribe to the views of the Hon'ble Judge, who decided the Writ Petitions. The prospectus was issued on 06.02.2017. Thereafter, there was a complete change in the admission process to PG Medical seats. Rule 9-A was introduced in March 2017, which made it mandatory for all State Governments to conduct counselling for all PG



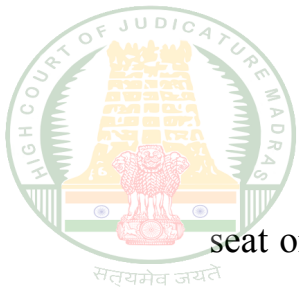
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Medical seats, irrespective of the fact whether they are in private medical institutions or Government medical institutions. Rule 9(vi) provided for allotment of seats in Private or Government Medical Institutions by a Centralized Admission Committee. These regulations have been totally overlooked by the Writ Court resulting in the Writ Court applying the well settled law that the prospectus will be binding on the students.

29. We are not for a moment disputing or doubting the correctness of the rule relating to the binding nature of the prospectus. At the same time, when regulatory bodies, which have the power to regulate admissions, frame certain regulations after the issuance of the prospectus and before the admission happens, those regulations will have to be implemented by the Institutions and if the regulations contain a different procedure, then the prospectus, which is a contract between the parties will have to definitely take the back seat.

30. As we have already pointed out, the notification issued by the Government of India, requires a Government servant, who has obtained a



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seat on study leave to rejoin service after completion of the leave and work for the Government. Therefore, he is prevented by law from undertaking to serve any other authority in the interregnum. The other students, who are from Government service, who had been admitted by the 4th respondent itself, have been exempt from executing a bond allowing after their admissions. In fact, the petitioner himself has executed a bond to serve the Government of Puducherry after completing his study holidays. This by itself would show that the insistence of a bond to serve the Institution by the 4th respondent Institution is wholly impermissible and against the service regulation of the Government servant.

31. Mr.Abhishek Jenasenan, learned counsel for the 4th respondent would however point out that wherever the Government doctors have been allotted by CENTAC, they have been exempted from executing a bond subsequently. The same yardstick has not been, unfortunately, applied to the petitioner. The 4th respondent hurriedly, probably because there was a demand for the seat at a higher price, sent a letter dated 02.06.2017 denying admission to the petitioner. This, in our opinion, is wholly unjust



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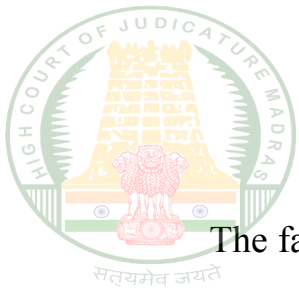
and cannot at all to be approved by us.

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32. In fact, as regards students admitted to PG medical courses in State run Hospitals and Institutions, the Hon'ble Supreme Court in *Association of Medical Superspeciality Aspirants and Residents and Others Vs. Union of India and Others* reported in (2019) 8 SCC 607 upheld the right of the Government to demand a bond for service. The said decision of the Hon'ble Supreme Court was based on the fact that State run Institutions are offering Medical Course at a highly subsidised rates and therefore, they have the right to insist upon a bond for service. The same cannot be applied to a private Institution, which collects a higher fee when compared to a State run Institution.

33. The fact that the serving Doctors take up higher education on study leave are not paid stipend since they are receiving salary from the State Government, is also a factor that should be taken into account in considering the question whether such Institutions would be entitled to demand a bond for service from the Doctors in Government employment.

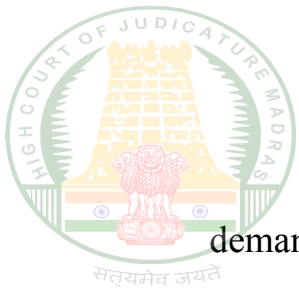
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The fact that the right of the Government to insist a bond has been approved will not automatically extend the right to Private Institutions also. Today, when education has become a subject matter of commerce and all private educational Institutions demand a higher fee from the students, permitting them to insist upon a bond for service particularly, from persons, who are serving in Government employment would be a traversity of justice. The absence of any regulation regarding such requirement in the year 2017 can be accepted in as much as Centralized Admission Process itself was only commenced in the year 2017 but, continuance of such absence, even today, surprises us and we would only implore the National Medical Commission, which is a body invested with all the powers to regulate Medical Education in the country, which is today a pure commerce, to provide for regulations regarding the rights of medical Institutions conducting Post Graduate courses regarding service bonds.

34. We therefore, conclude that a demand for a service bond from a Doctor, who is serving the Government, who undertakes PG Education on study leave cannot be accepted and Institutions do not have a right to

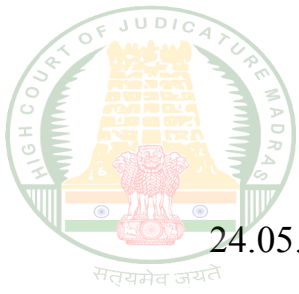


demand such bond.

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35. As regards the non-payment of fee, we are unable to accept the submissions of the 4th respondent. The fee fixed by the Fee Committee on 14.05.2017 was paid by way of Demand Draft on 15.05.2017 and the Demand Draft was received by the 4th respondent on 16.05.2017. We find that the 4th respondent has received the fees of Rs.3,00,000/- from atleast two Government Doctors, who are admitted to PG courses in the year 2017, after 15.05.2017. It also received the balance of Rs.2,50,000/- as per the fixation done by the Fee Committee on 24.05.2017 and on 31.05.2017. Therefore, the communication issued by the 4th respondent on 02.06.2017 that the allotment of the petitioner stands cancelled due to non-payment of fees is wholly unsustainable.

36. We find that as on 15.05.2017 the fee payable, as per the Fee Committee's recommendation, was only Rs.3,00,000/- and the same was paid on 16.05.2017. Therefore, the admission of the petitioner stood completed on that date. The revision of fee by the Committee on



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24.05.2017 will not have the effect of nullifying the admission that happened on 16.05.2017. Even otherwise, this Court by its order dated 11.05.2017 made in W.P.No.12347 of 2017 had directed the Institute to keep one seat vacant. That order was in force on 02.06.2017 namely, the day on which, the order impugned in W.P.No.14393 of 2017 was made. There is not only an infraction of order of this Court but there is also an infraction of procedure by the 4th respondent. The refusal by the 4th respondent to admit the petitioner even in a seat that was available on 31.05.2017 is illegal. The admission granted to Doctor, Arun Sundaram on 31.05.2017, when the petitioner's admission remained in force is another illegality committed by the 4th respondent.

37. To our surprise, we find that Doctor, Arun Sundaram was permitted to pay fee on 19.06.2017 and on 29.06.2017 in two instalments. We are at a loss to understand as to how the College, which was very strict about non-payment of fee by the petitioner, allowed another person admitted on 31.05.2017 to pay the fees sometime in June, 2017. This conduct, in our opinion, is highly condemnable. We are, therefore, unable to subscribe the

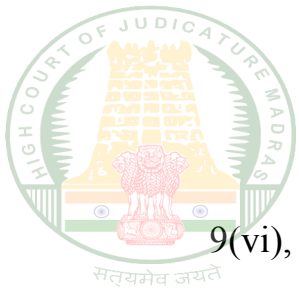


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conclusions of the Writ Court that the petitioner had not paid his fees within the due date and therefore, the cancellation of the allotment by the 4th respondent was correct.

38. As far as non-submission of bond to pay the balance fees as may be directed by this Court, we do not find any demand by the 4th respondent to the petitioner, asking him to provide such undertaking before 02.06.2017. In fact, right to make such a demand did not arise on 02.06.2017. An undertaking to pay the fees as decided by the High Court in a Writ Petition filed by the different Institution cannot be demanded by the 4th respondent. *De hors* such undertaking, any candidate, who is admitted shall be liable to pay the fees prescribed by this Court, if at all there is an increase. We are therefore of the opinion that all the three reasons cited by the Institution in the letter dated 02.06.2017 are make believe reasons, which cannot be sustained at all.

39. Unfortunately, the attention of the Writ Court has not been drawn to the introduction of Regulation 9-A and the existence of Regulation



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9(vi), which provided for allotment of seats in Private Institutions by the Centralized Admission Committee. We are therefore, of the considered opinion that the action of the 4th respondent in denying a seat to the petitioner is illegal and the fact that the petitioner has been able to secure a seat in a different Institution in the next academic year will not absolve the 4th respondent by its liability to compensate him for the injustice that has been committed to him. It will not be out of place to point out that other Government Doctors, who were admitted for the Post Graduate courses in 2017 would steal a march over the petitioner in the seniority and the same will have its effect till the petitioner retires on attaining superannuation.

40. We find that the Puducherry Health Department and the CENTAC have acted in a very irresponsible manner in not addressing the grievance of the petitioner immediately. The petitioner had wrote to CENTAC on 06.05.2017 informing that the Institution had denied him admission. Surprisingly, there was no reaction. Again, the petitioner has wrote to the CENTAC on 15.05.2017 informing the Chairman of the CENTAC, the Convenor of CENTAC and the Government of Puducherry

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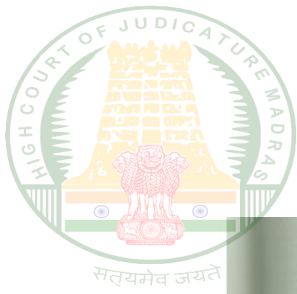
that the Institute has refused to receive the Demand Draft offered by him

and he was forced to send it by post. Even, this was not taken seriously. We

sincerely hope and pray that the Officials of these Centralized Admission Committees are a little more sensitive when such matters are brought to their attention, since they are dealing with lives of students.

41. We are of the opinion that only if our action or our decision serves as a penalty for such erring Officers, they will be careful in future and also the persons who follow suit will not emulate their predecessors in being an insensitive to the needs of the students.

42. Yet another aspect which shows the determination on the part of the 4th respondent on somehow get rid of the petitioner is, its letter dated 29.05.2017, we find that the said letter emanates out of heights of arrogance and absolute insensitivity. This letter dated 29.05.2017 reads as follows:-



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PONDICHERRY INSTITUTE
OF MEDICAL SCIENCES



Prof. RENU G'BOY VARGHESE
Director-Principal

FIMS/DP/MC/2017 (56)

29th May 2017

To

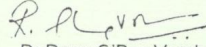
Dr.P Sidharthan
9 A, Narayanadas Street,
Kamaraj Nagar,
Puducherry – 605 011

Sub : Return of Demand Drafts (No.268965 dt.15-5-2017) received from
Dr.Sidharthan – Reg.

Ref: The High Court of Judicature at Madras wp No.12912 of 2017 &
wmp.13777 of 2017 dated 18-05-2017.

Dr.Sidharthan,

This is to inform you that based on the High Court order dated 18-05-2017 (copy enclosed), we are hereby returning Demand Draft (in original) that was delivered to our office on 16-5-2017.


Dr.Renu G'Boy Varghese
Director-Principal

Encl.

1. High court order dated 18-5-2017
2. Demand Draft No No.268965 dt.15-5-2017

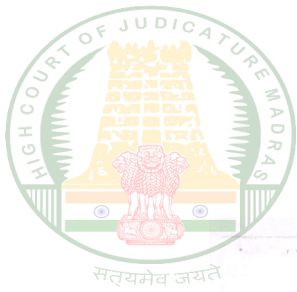
Kalapet, Puducherry - 605014.



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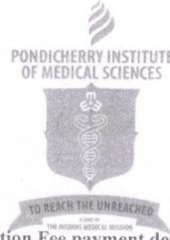
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43.As we have already pointed out, the 4th respondent Institute had not challenged the fee fixation but, it has chosen to return the Demand Draft for Rs.3,00,000/- received from the petitioner even before the last date for admission. The learned counsel for the 4th respondent has filed a memo showing the fees paid by the other students, who were allotted seats under the Government quota along with the date of payment. The said list is as follows:-



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PG 2017 Batch-State Govt. Students Tuition Fee payment details for the Academic year 2017-18

2. Regarding the list of candidates that we have submitted in 2017-18 in various PG courses upon payment of Rs. 5.5 lakhs fees, we have mentioned the DD number through which the payments were made.

Sl. No	CENT AC Reg. No	Name of the PG' Students	Admitted into Course / Specialty	Tuition Fees as per Fee Committee Order	Total Fees	Tuition fee payment details	Date of DD	Amount in Rs.
1	30081	Dr. M.Archana	MD. Anaesthesiology	5,50,000	6,85,000	DD. No. 210461 DD. No. 287694 DD No. 534965 (Hostel fees)	15.05.17 25.05.17 12.06.17	3,50,000 2,50,000 85,000
2	30271	Dr. R.Abinaya	MD. Anaesthesiology	5,50,000	5,50,000	DD. No. 226979 DD No. 572500	15.05.17 25.05.17	3,00,000 2,50,000
3	30158	Dr. Arulmozhi	MS. ENT	5,50,000	5,50,000	D.D. No. 210471, 210533, 210472	15.05.17 26.05.17	3,00,000 2,50,000
4	30044	Dr. Inparasi.G	MS. OBG	5,50,000	5,50,000	DD. No. 473777, DD. No. 409491	18.05.17 31.05.17	3,00,000 2,50,000
5	30198	Dr. Manimegalai	MD.Paediatrics	5,50,000	5,50,000	D.D. No. 507686 SBIN617172195 001	15.05.17 31.05.17	3,00,000 2,50,000
6	30118	Dr. K.Ponnillavan	MS. Orthopedics	5,50,000	5,50,000	D.D. No. 274444, 274526	15.05.17 25.05.17	3,00,000 2,50,000
7	30019	Dr. Kavivendhan Djea	MD. Dermatology	5,50,000	5,50,000	D.D. 230727 D.D. No. 230826	17.05.17 31.05.17	3,00,000 2,50,000

Prof. (Dr.) MURUGAN. N. MD.,
ASSOCIATE REGISTRAR
Pondicherry Institute of Medical Sciences
Kalapet, Puducherry - 605 014.

Kalapet, Puducherry - 605014.
Telephone : 91 - 413 - 2651111 2651152, Fax 0413-2656273



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44. On 29.05.2017, atleast three of these students have not paid

the remaining Rs.2,50,000/-. The letter refers to the order dated 18.05.2017, which is an order of this Court staying the fee fixation but, by 29.05.2017, the Fee Committee had already reviewed the fees and refixed the fees at Rs.5,50,000/-. This in our opinion, leads to the irresistible conclusion that the 4th respondent was looking for an opportunity to deny a seat to the petitioner so that it can offer the seat to another person and receive a higher fee.

45. We therefore, find that the action of the 4th respondent to say the least is reprehensible. Having held that the 4th respondent and the Officials of the CENTAC, Puducherry are responsible for the petitioner being denied admission during the academic year 2017-2018, we are now called upon to decide as to what should be the compensation that should be paid to the petitioner. The petitioner has been unjustly denied admission and fortunately, he was able to secure admission in another College in the very next year and he has now completed his PG and he has rejoined service with the Puducherry Government. That by itself will not cure the injury that has been inflicted on the petitioner by the 4th respondent.



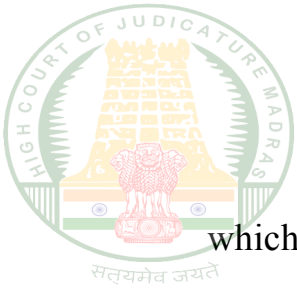
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46. We are therefore of the opinion that the petitioner is atleast entitled to a monetary compensation, which we fix at Rs.15,00,000/-. Of the above said sum of Rs.15,00,000/-, the College namely, the 4th respondent will pay a sum of Rs.10,00,000/- as it is primarily responsible for rejecting a seat unjustly to the petitioner. The CENTAC will pay a sum of Rs.5,00,000/- as compensation for its inaction, despite having been informed about the plight of the petitioner. The above amounts shall be paid within a period of four weeks from today.

47. In fine, the Writ Appeals are partly allowed, the judgment of the Writ Court are set aside. The prayer for admission of petitioner has become infructuous, since he has completed the PG medical course subsequently.

48. Before parting with this case, we only express our anguish at the manner in which education has been commercialized by unscrupulous private individuals or institutions, who claim themselves to be serving the cause of the society. We are only reminded of the couplet in Thirukkural,



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which reads as follows:-

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எண்என்ப ஏனை எழுத்தென்ப இவ்இரண்டும்
கண்என்ப வாழும் உயிர்க்கு.

Meaning:- That numbers and letters are two eyes of a living creature.

49.It is rather unfortunate that the eyes have been made a commercial commodity, which can be acquired at a very high cost. We hope and expect that National Medical Commission takes appropriate action to prevent recurrence of such aberrations at the instance of private educational Institutions.

Post for “reporting compliance” regarding payment of penalty after four weeks.

(R.S.M.,J.) (R.K.M.,J.)
27.09.2023

kkn

Internet: Yes

Index: Yes

Speaking

Neutral Citation : Yes

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WEB COPY To:-

1. The Government of Puducherry,
Rep. by Secretary to Government (Health),
Chief Secretariat,
Puducherry - 605 001.
2. The Director,
Health and Family Welfare Services (DHFWS),
Victor Samuel Street,
Puducherry - 605 001.
3. The Convenor,
CENTAC (Centralised Admission Committee),
PEC Campus, ECR Road,
Pillaichavadi,
Puducherry - 605 014.
4. The Director,
Pondicherry Institute of Medical Sciences (PIMS),
Ganapathi Chettikulam,
Puducherry - 605 014.
5. Medical Council of India (MCI),
New Delhi.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

KKN

W.A.Nos.861 & 862 of 2017
and
C.M.P.Nos.11843 & 11842 of 2017

27.09.2023