

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 6TH DAY OF NOVEMBER 2020/15TH KARTHIKA, 1942

WP (C) .No. 24628 OF 2019 (C)

PETITIONERS:

- 1 TRIVEDI MAHARSHI DINESHBHAI,
AGED 29, D/O. DINESHBHAI TRIVEDI,
3RD YEAR, D.M. PEDIATRIC ONCOLOGY,
RCC, THIRUVANANTHAPURAM.
- 2 DR. FAHAD BIN ABDUL MAJEED, AGED 32,
S/O. T.K. ABDUL MAJEED, 3RD YEAR
MCH. SURGICAL ONCOLOGY, R.C.C.,
THIRUVANANTHAPURAM.
- 3 DR. UNNIKRISHNAN P., AGED 31,
S/O. SANKARAN EMBRANTHIRI P.K.,
3RD YEAR, D.M. MEDICAL ONCOLOGY,
R.C.C., THIRUVANANTHAPURAM.
- 4 DR. SRINIDHI M., AGED 32, 3RD YEAR,
M.CH TRAINEE, R.C.C., THIRUVANANTHAPURAM,
RESIDING AT #3, BLOCK 5,
HEALTH DEPARTMENT LAYOUT,
DETTAGALI 2ND STAGE, RAMAKRISHNA NAGAR
U BLOCK, MYSORE, KARNATAKA DISTRICT - 22.
- 5 DR. SANDEEP KUMAR BEHERA, AGED 31,
S/O. MANNAS KUMAR BEHERA, 2ND YEAR,
MCH SURGICAL ONCOLOGY, R.C.C.,
THIRUVANANTHAPURAM, RESIDING AT
A1/PU-AMARDA ROAD, DIST - BALASORE,
STATE ODISHA - 756 030.
- 6 DR. HARISH KUMAR L., AGED 30,
2ND YEAR, M.CH SO TRAINEE, R.C.C.,
THIRUVANANTHAPURAM, RESIDING AT 146A,
VELAYUDHA NAGAR, AMBASAMUDRAM,
TIRUNELVELI DISTRICT, PIN - 627 401.
- 7 DR. PRABHAKARAN U., AGED 30,
2ND YEAR, MCH SO TRAINEE, R.C.C.,

THIRUVANANTHAPURAM, RESIDING AT 226,
NAANITHAM NAGAR, PERIYAR NAGAR (NORTH),
VRIDHACHALAM - 606 001,
CUDDALORE DISTRICT, TAMIL NADU.

- 8 DR. RAGHWESH RANJAN, AGED 29,
2ND YEAR, DM PEDIATRIC ONCOLOGY,
R.C.C. THIRUVANANTHAPURAM, RESIDING AT
B26/24-7, DFNDAYAL NAGAR, DURGAKUND,
VARANASI - 221 010.
- 9 DR. MOPURI CHAITANYA KUMAR REDDY,
AGED 31, 2ND YEAR MCH PS, R.C.C.,
THIRUVANANTHAPURAM, RESIDING AT 3/107A,
GURIJALA (VPP), SESHADESHAM (E),
KADAPA DISTRICT, ANDHRA PRADESH - 516 454.
- 10 DR. GAYATRI GOPAN, AGED 33,
2ND YEAR DM MEDICAL ONCOLOGY, R.C.C.,
THIRUVANANTHAPURAM, RESIDING AT DWARAKA,
NEXT TO SBI, SASTHAMANGALAM,
THIRUVANANTHAPURAM - 695 010.
- 11 DR. GARIMA NIRMAL, AGED 30,
2ND DM PEDIATRIC ONCOLOGY, R.C.C.,
THIRUVANANTHAPURM, RESIDING AT 1258,
BLOCK-D, SECTOR 7, FARIDABAD,
HARAYANA - 121 006.
- 12 DR. TANDRA HARISH VARMA, AGED 30,
2ND YEAR DM PEDIATRIC ONCOLOGY, R.C.C.,
THIRUVANANTHAPURAM, RESIDING AT FLAT NO.328,
B BLOCK, BK SHAH TOWER, SAPTAGIRI NAGAR,
KURNOOL, A.P. - 518 003.
- 13 DR. ANJU ANNA ABRAHAM, AGED 32,
D/O. ABRAHAM GEORGE, 2ND YEAR DM TRAINEE,
R.C.C., THIRUVANANTHAPURAM,
RESIDING AT ANUGRAHA COTTAGE,
PUNNAPRA P.O., ALAPPUZHA - 688 004.
- 14 DR. ABDULLA K.P., AGED 32,
S/O. AKBAR P.K., 2ND YEAR MCH. R.C.C.,
THIRUVANANTHAPURAM, RESIDING AT
MARWA MANZIL, MOUVERY P.O.,
KOTTAYAM MALABAR, KANNUR DISTRICT - 670 643.

- 15 DR.ARUN V. ,AGED 32,S/O.K.C.VARUDEVAN,
2ND YEAR DM MEDICAL ONCOLOGY, R.C.C. ,
THIRUVANANTHAPURAM, RESIDING AT
KUMARASSERIL HOUSE, MULAKULAM NORTH P.O. ,
PIRAVOM - 686 664 .
- 16 DR.VENKATA NAGAR SRINIVAS M. ,
AGED 32,S/O.VENKARA RATNM MALLINENI ,
2ND YEAR, MCH SO TRAINEE, R.C.C. ,
THIRUVANANTHAPURAM, RESIDING AT
31-12-3/1, DBK STREET, MACHAVARAM ,
VIJAYAWADA - 520 004 .
- 17 DR.STEFFI CHACKO,AGED 29,3RD YEAR
MEDICAL ONCOLOGY, R.C.C. ,
THIRUVANANTHAPURAM, RESIDING AT
NJALIATH HOUSE, MOOKKANNOOR P.O. ,
ANGAMALY, ENAKULAM - 683 577 .

BY ADVS .
SRI .V.PHILIP MATHEW
SRI .GIBI .C.GEORGE

RESPONDENTS:

- 1 STATE OF KERALA,REPRESENTED BY
ITS SECRETARY, DEPARTMENT OF
HEALTH AND FAMILY WELFARE, KERALA
GOVERNMENT SECRETARIAT ,
THIRUVANANTHAPURAM - 695 001 .
- 2 THE DIRECTOR OF MEDICAL EDUCATION ,
THIRUVANANTHAPURAM - 695 001 .
- 3 THE DIRECTOR, REGIONAL CANCER CENTRE (RCC) ,
THIRUVANANTHAPURAM - 695 001 .
- 4 THE MEDICAL COUNCIL OF INDIA ,
POCKET 14, SECTOR 8, DWARAKA PHASE-I ,
NEW DELHI - 110 077 .
- 5 NATIONAL BOARD OF EXAMINATIONS ,
MEDICAL ENCLAVE, ANSARI NAGAR ,
MAHATMA GANDHI MARG ,
NEW DELHI - 110 029 .

R1 BY GOVERNMENT PLEADER SMT.DEEPA NARAYANAN
R3 BY ADV. SRI.ATHUL SHAJI
SPL.G.P. M.A.ASIF,
R4 BY SRI TITUS MANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 06-11-2020, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

N. NAGARESH, J.

W.P.(C) No.24628 of 2019

Dated this the 6th day of November, 2020

J U D G M E N T

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The petitioners, who are Doctors pursuing Post Graduate Super Specialty Course (DM/M.Ch.) at Regional Cancer Centre, Thiruvananthapuram, are before this Court seeking to quash Exts.P1 and P2 and certain Clauses in Exts.P3 and P4 and to declare that the petitioners are not liable to compulsorily serve/work under respondents 1 to 3 for any period based on any conditions in Exts.P1 to P4. Certain consequential reliefs have also been sought.

2. The petitioners state that they are Doctors presently pursuing Post Graduate Super Specialty Courses at Regional Cancer Centre, Thiruvananthapuram. They participated in National Eligibility cum Entrance Test for securing admission to Post Graduate Super Specialty Courses. Based on allotment of seats, the petitioners

secured admission in Regional Cancer Centre, Thiruvananthapuram.

3. Clause 10 of Exts.P1 and P2 prospectus provided as follows:-

“All students of Regional Cancer Centre – Thiruvananthapuram shall do compulsory service of not less than 1 year after their Post Graduate course in Regional Cancer Centre/MCC or Oncology Department of a Government Medical College.”

As per the prospectus, the tuition fees stipulated in RCC, Thiruvananthapuram is ₹3,50,000/- per annum. The fees prescribed for other Government Medical Colleges in Kerala is ₹1,25,000/- or ₹1,37,500/-.

4. The fee prescribed in RCC is exorbitant compared to the fees of other Medical Colleges, contend the petitioners. Clause V(b) of Ext.P3 deals with “Liquidated Damages and Execution of Bond”. Clause V(b) of Ext.P3 reads as follows:-

“Clause V(b): He/She shall serve RCC TVM/Government of Kerala for a continuous period of not less than one year immediately after the completion of the course without break. Terms and

conditions including remuneration will be decided by Government of Kerala/RCC TVM. If the candidate violates the terms of the bond, it will be construed as Professional Misconduct and the fact reported to the T.C. Medical Council for suitable action including cancellation of Registration by the Council and a sum of Rs.1 Crores (Rupees One Crore only) (in addition to the stipend/salary drawn during the period of the course and the amount spent by Government for their studies with interest as fixed by Government) will be levied as liquidated damages from those who fail to do the service as stipulated”.

5. Clause VI(b) of Ext.P4 deals with “Liquidated Damages and Execution of Bond”. The said Clause VI(b) of Ext.P4 reads as follows:-

“Clause VI(b): He/She shall serve RCC TVM/Government of Kerala for a continuous period of not less than one year immediately after the completion of the course without break. Terms and conditions including remuneration will be decided by RCC TVM/Government of Kerala. If the candidate violates the terms of the bond, it will be construed as Professional Misconduct and the fact reported to the T.C. Medical Council for suitable action including cancellation of Registration by the Council and a sum of Rs.1 Crores (Rupees One Crores only) (in addition to the stipend/salary drawn during the period of the course and the amount spent by Government for their studies with interest as fixed by Government) will be levied as liquidated damages from those who fail to do the service as stipulated.”

The petitioners are highly aggrieved by the onerous

conditions stipulated in Exts.P1 to P4.

6. Advocate Sri.Philip Mathews, learned counsel appearing for the petitioner argued that in respect of their Courses, the Government has not extended any concessional or subsidised fees to the petitioners. The fees in RCC is ₹3,50,000/- per annum, where as the fees in other Government Medical Colleges in Kerala is ₹1,25,000/-. Therefore, forcing the petitioners to execute a bond of one year is illegal and unjustified.

7. The learned counsel for the petitioner is insisted that insistence on bond period after levying huge amount of fees from the petitioners, is illegal and is against Article 23 of the Constitution of India which prohibits forced labour in any form. The insistence goes against Section 23 of the Indian Contract Act, 1872 also. There is no rationale for the insistence of bond after accepting huge fees from the petitioners.

8. The learned counsel for the petitioner further pointed out that the petitioners are in receipt of stipend now

while undergoing Post Graduate studies. Once they are put under compulsory service, the monthly salary that will be paid to them, will be less than the stipend which they are in receipt now. This will be grossly arbitrary and discriminatory.

9. The learned Government Pleader Smt. Deepa Narayanan appearing for respondents 1 to 4 resisted the writ petition. The learned Government Pleader submitted that admission to Super Specialty Courses in Government Medical Colleges including RCC is governed by Exts.P1 to P4. In terms of those prospectus, candidates admitted to Super Specialty Courses in RCC shall do compulsory service in RCC/MCC or in an Oncology Department in any of the Government Medical College for a period of not less than one year after the completion of the course.

10. The learned Government Pleader pointed out that this system of compulsory bonded service for Super Specialty Doctors who complete their courses from Government Medical Colleges at a subsidised tuition fee, is prevalent throughout the country. In most of the States, the

compulsory bonded service range from two years to seven years. The Government have an obligation to provide quality medical aid to its citizen.

11. To train the students in RCC, the Government is incurring expenditure of an average of ₹25 lakhs. However a nominal fee of only ₹3,50,000/- is charged from the students. The learned Government Pleader further pointed out that the tuition fee in Self Financing Colleges for this Super Specialty courses is ₹18,50,000/-. In Government Medical Colleges, where the fee is ₹1,50,000/- per annum, the bond period is two years. In the RCC, the bonded period is only one year. The petitioners are therefore bound to discharge their obligation under the bond.

12. Heard the learned counsel for the petitioner, the learned Government Pleader for the respondents 1 and 2 and the learned Standing Counsel appearing for respondents 3 to 5.

13. The contention of the petitioners that they are paying exorbitant fees and therefore are not liable to execute

any bond for service, is incorrect. It is evident from the pleadings that in the case of the petitioners the Government is spending about ₹25 lakhs per annum for their studies. Even in the Self Financing Colleges which have lesser facilities and faculty, the annual tuition fee is ₹18,50,000/-. Therefore, it is evident that the studies of the petitioners are subsidised.

14. The petitioners are trying to make a comparison with the fees in Government Medical Colleges. In Government Medical Colleges the yearly tuition fee is ₹1,50,000, but the bond period is two years. In the case of the RCC where the petitioners are undergoing studies, the tuition fee is ₹3,50,000/- whereas the bond period is only one year. As long as the petitioners' education is subsidised, they cannot be heard to contend that they are not bound to execute bond.

15. The petitioners secured admission on the basis of the prospectus issued by the respondents and were fully aware of the conditions therein. After getting admission in

the college, the petitioners cannot turn around and contend that they are not bound to discharge their obligation under the bond. The Hon'ble Apex court, in the judgment in ***Association of Medical Super Specialty Aspirants and Residents and Others v. Union of India and others*** [(2019) 8 SCC 607] has held that service bond to serve particular number of years, do not violate Articles 14, 19, 21 or 23 of the Constitution of India. Such provision does not violate Section 27 of the Indian Contract Act, 1872 either.

In the circumstances, this Court does not find any merit in the writ petition filed by the petitioners. The writ petition is accordingly dismissed. However, it is made clear that if the petitioners have any grievance relating to lesser salary that will be paid to them during the period of their bonded service in comparison to the stipend they are in receipt now, they will be at liberty to take up the matter before the appropriate authorities in accordance with law.

Sd/-

N. NAGARESH, JUDGE

aks/04/11/2020

APPENDIX

PETITIONERS' EXHIBITS:

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| EXHIBIT P1 | COPY OF THE PROSPECTUS FOR ADMISSION TO THE POST GRADUATE SUPER SPECIALITY COURSES 2017 PUBLISHED BY THE DIRECTOR OF MEDICAL EDUCATION. |
| EXHIBIT P2 | COPY OF THE PROSPECTUS FOR ADMISSION TO THE POST GRADUATE SUPER SPECIALITY COURSES 2018 PUBLISHED BY THE DIRECTOR OF MEDICAL EDUCATION. |
| EXHIBIT P3 | COPY OF THE PROSPECTUS FOR ADMISSION TO THE POST GRADUATE SUPER SPECIALITY COURSES 2017-2018 PUBLISHED BY THE DIRECTOR OF RCC, THIRUVANANTHAPURAM. |
| EXHIBIT P4 | COPY OF THE PROSPECTUS FOR ADMISSION TO THE POST GRADUATE SUPER SPECIALITY COURSES 2018-2019 PUBLISHED BY THE DIRECTOR OF RCC, THIRUVANANTHAPURAM. |
| EXHIBIT P5 | COPY OF THE REPRESENTATION OF POST GRADUATE SUPER SPECIALITY STUDENTS INCLUDING PETITIONERS HAD SUBMITTED TO THE THIRD RESPONDENT REQUESTING TO REDUCE THE FEES. |