

The Principal, Vs. 1.S.Samuthabanu

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Court : Chennai

Decided On : Dec-01-2014

Judge : V.Dhanapalan

Appellant : The Principal,

Respondent : 1.S.Samuthabanu

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

01. 12.2014 CORAM THE HONOURABLE MR.JUSTICE V.DHANAPALAN AND THE HONOURABLE MS.JUSTICE V.M.VELUMANI W.A.(MD).No.1253 of 2014 and M.P.No.1 of 2014 The Principal, Best Dental College, 169/1A, Madurai Chennai Highways, Madurai. : Appellant Vs. 1.S.Samuthabanu 2.The Dental Council of India, Represented by its Secretary, Aiwan-E-Galimarg, Kotala Road, Temple Lane, New Delhi 110 002. 3.The Secretary, Selection Committee, Directorate of Medical Education, 162, Periyar E.V.R.High Road, Kilpauk, Chennai. 4.The Registrar, Dr.M.G.R.Medical University, Guindy, Chennai. : Respondents PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the Order, dated 08.10.2014, made in M.P.No.1 of 2014 in W.P.(MD).No.16539 of 2014 on the file of this Court. !For Appellant : Mr.V.T.Gopalan Assisted by Mrs.B.Saraswathi ^For Respondents : Mr.M.Mahaboob Athiff For M/s.Ajmal Associates For Respondent No.2 : Mr.G.R.Swaminathan Assistant Solicitor of India For Respondent No.3 :

Mr.M.Alagadevan Special Government Pleader For Respondent No.4 :
Mr.C.Karthick Standing Counsel :

JUDGMENT

***** [Judgment of the Court was delivered BY V.DHANAPALAN, J.]. Heard Mr.V.T.Gopalan, learned Senior Counsel for the appellant, Mr.M.Mahaboob Athiff, learned counsel for the first respondent, Mr.G.R.Swaminathan, learned Assistant Solicitor General of India for the second respondent, Mr.M.Alagadevan, learned Special Government Pleader for the third respondent and Mr.C.Karthick, learned Standing Counsel for the fourth respondent. By consent, the main Writ Appeal itself is taken up for final disposal.

2. Challenge in this Writ Appeal is to the interim order passed by the learned Single Judge, dated 08.10.2014, made in M.P.No.1 of 2014 in W.P.(MD).No.16539 of 2014.

3. The first respondent/Writ Petitioner, who secured 190.25 marks, applied for BDS Course, as per the prospectus issued by the Selection Committee, Directorate of Medical Education, Chennai, the third respondent herein, for the academic year 2014 ?.

2015. She was called for to participate in the Counselling. She took part in the Counselling held on 30.09.2014, in the office of the third respondent herein. The first respondent/Writ Petitioner came out successful and opted for joining the BDS Course in the appellant college. She was also issued with an allotment order by the third respondent herein at 03.30 PM, on 30.09.2014. As the first respondent/Writ Petitioner was not given admission in the appellant college, she approached this Court by filing a Writ Petition in W.P.[MD]..No.16539 of 2014, seeking a Writ of Mandamus directing the fourth respondent college to admit the first respondent/Writ Petitioner in the first year BDS course in the fourth respondent college, as per the order of allotment issued by the second respondent therein.

4. The first respondent/Writ Petitioner filed M.P.[MD]..No.1 of 2014 directing the fourth respondent college to permit her to attend the classes for the first year BDS

Degree Course pending disposal of the above Writ Petition.

5. The first respondent/Writ Petitioner also filed M.P.[MD]..No.2 of 2014 directing the fourth respondent college to keep one seat of BDS Degree Course for the academic year 2014 ?. 2014 in her favour pending disposal of the Writ Petition.

6. The learned Single Judge, by order dated 08.10.2014, after elaborate discussion and taking note of the factors and the Judgments of the Hon'ble Supreme Court, has allowed M.P.[MD]..No.1 of 2014, directing the appellant college to admit the first respondent/Writ Petitioner in BDS Course for the academic year 2014 ?. 2015, forthwith, on receipt of a copy of the order and further directed the Registry to list the Writ Petition for final disposal after three weeks.

7. Challenging the said order, dated 08.10.2014, the appellant college has come up with the present Writ Appeal.

8. Mr.V.T.Gopalan, learned Senior Counsel appearing for the appellant, would vehemently contend that on two grounds, the interim order passed by the learned Single Judge is liable to be interfered with. Firstly, the Writ Court has decided the main relief in the Miscellaneous Petition itself and allowed the main relief in toto. Secondly, as the last date for admission of students in M.B.B.S/B.D.S Course, as laid down by the Hon'ble Supreme Court is 30th September of the concerned year, the interim order passed by the learned Single Judge is vitiated in law.

9. Refuting the said submissions, Mr.M.Mahaboob Athiff, learned counsel appearing for the first respondent, would contend that there was a Counselling held on 30.09.2014 and as per the allotment order issued by the Selection Committee, the first respondent/Writ Petitioner is entitled to get admission in BDS Course. The learned Single Judge, taking into consideration the above aspects, has allowed the relief sought for by her and accordingly, directed the appellant college to admit the first respondent/Writ Petitioner in BDS Course for the academic year 2014 ?.

2015. Therefore, when there is no fault on the part of the first respondent/Writ Petitioner, it would not be a bar for admitting her even after the cut-off date.

10. Mr.G.R.Swaminathan, learned Assistant Solicitor General of India appearing for the second respondent, would submit that the cut-off date fixed by the Hon'ble Supreme Court is a mandatory requirement and therefore, the institutions coming under the ambit of the Dental Council of India shall necessarily follow the guidelines issued by the Supreme Court in this regard and the cut-off date fixed by the Hon'ble Supreme Court for admission has to be taken into consideration by the Court concerned.

11. The stand of the Selection Committee is reflected in Paragraph Nos.6 and 7 of the counter affidavit, which read as follows:- "6. It is further submitted that all the Self-Financing Dental Colleges were informed over phone on 29.09.2014 itself that the Counselling would be conducted on 30.09.2014. All the Self-financing Dental Colleges were directed to be present on 30th September 2014 before the Selection committee for obtaining allotment orders and certificates of the candidates.

7. It is submitted that based on the above instructions, some of the colleges have sent their representatives and collected the allotment order for giving admissions. But, the Appellant did not respond to the above directions of the third respondent."

Denying the above averments, the appellant college filed a reply affidavit, wherein in Paragraph Nos.4 and 5 it has been stated as follows:- "4. As regards Paragraph 5 of the counter affidavit under reply the Hon'ble Supreme Court was concerned with the Medical Colleges where the renewal of permission as well as permanent recognition came to be refused for some deficiency or other and there was no time to complete the formality of compliance before 30.09.2014. In view of that extreme situation, the Hon'ble Supreme Court was pleased to pass the order permitting further admissions observing no more counselling and at the same time there can be no admissions beyond 30.09.2014. When this is the purport of the order of the Hon'ble Supreme Court, as to how the respondent can conduct Counselling on 30.09.2014 and impose students selected on such Counselling on 30.09.2014 on the college by inventing a story that the colleges were informed on 29.09.2014

about the Counselling on 30.09.2014 and to send their representatives on 30.09.2014. This had been stated by the students who filed the Writ Petitions, presumably on the instructions of the respondent herein and what the students have stated is being repeated by the respondents therein. Even in the affidavits filed in the Writ Petition the said story had been totally denied as false and never happened. If the authority still persist in their stand, it will not be difficult to prove that they are false and the authorities apart from committing contempt will also stand exposed to the charge of perjury. The appellant again emphatically deny the said story put up by the respondent in Paragraph Nos.6 to 9 of the counter affidavit under reply.

5. The respondents are also imposing their illegally selected students on 30.09.2014 on the University by forcing to tow the stand of the respondents and thereby the University is also forced to commit a contempt. The University is an autonomous body and they will only be concerned with the list of names put up on the website and sent to the Dental Council of India on 30.09.2014 and whether the numbers selected for admission is within the authorized admission capacity of the college. Beyond this, the University is not concerned as to how they came to be selected. If the University succumbs to what has been stated in Paragraph 8 of the counter affidavit under reply they will also be equally liable and guilty of contempt of the order of the Hon'ble Court. The stand of the respondents can never be countenanced in law. The admission of students within 100 by 30.09.2014 by the college is perfectly in order and cannot be disturbed."

12. We have considered the above submissions made by the learned counsel for the parties and perused the records carefully, including the interim order passed by the learned Single Judge.

13. The interim order, under Writ Appeal, passed by the learned Single Judge is on a Miscellaneous Petition in M.P.No.1 of 2014, seeking for a direction to the appellant college to admit the first respondent/Writ Petitioner in BDS Course for the academic year 2014 ?.

2015. The main relief sought for in the Writ Petition is to admit the first respondent/Writ Petitioner in the first year BDS course in the fourth respondent

college, as per the order of allotment issued by the second respondent therein. The relief sought for in the Miscellaneous Petition and the relief sought for in the main Writ Petition are similar in nature. If that could be the position, law is well settled that when the main relief is pending, it is not open to a Writ Court to look into the interim relief, which is similar in nature as that of the main relief and to grant the same. Therefore, we are of the considered view that there is a flaw on the part of the Writ Court in granting the interim direction, as prayed for by the first respondent/Writ Petitioner.

14. The law laid down by the Hon'ble Supreme Court in W.P.[C]..No.433 of 2013, dated 19.05.2014, [Lipika Gupta and another Vs. Union of India]., clearly indicates that the last date, up to which the students can be admitted against the vacancies arising due to any reason, is 30th September of every year. In the said Judgment, the Hon'ble Supreme Court, while approving the said time schedule, has made it clear that all the authorities shall follow the said schedule, for the academic year 2014 ? 2015, without any deviation and if there is any deviation by any agency, it will tantamount to contempt of the Court.

15. If that could be the position, the learned Single Judge, without noticing the above Judgment and without even putting the appellant college on notice, has come to the conclusion that the first respondent/Writ Petitioner is entitled to be admitted in the BDS Course.

16. The learned counsel appearing for the first respondent/Writ Petitioner would submit that if this Court comes to a conclusion that the interim order passed by the Writ Court is liable to be set aside, a direction may be issued to the Writ Court to take up the matter on priority basis and dispose of the same, on merits and in accordance with law and the parties may be permitted to agitate the grounds, urged before this Court, in the pending Writ Petition.

17. In the light of the above, the order dated 08.10.2014, made in M.P.No.1 of 2014 in W.P.(MD).No.16539 of 2014 is set aside and the learned Single Judge is requested to take up the matter on priority basis and dispose of the same on merits and in accordance with law.

18. The Writ Appeal is allowed, as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed. [V.D.P.J.,] & [V.M.V.,J]. 01.12.2014
Index :Yes/No Internet :Yes/No NB To 1.The Dental Council of India, Represented by its Secretary, Aiwan-E-Galimarg, Kotala Road, Temple Lane, New Delhi 110 002. 2.The Secretary, Selection Committee, Directorate of Medical Education, 162, Periyar E.V.R.High Road, Kilpauk, Chennai. 3.The Registrar, Dr.M.G.R.Medical University, Guindy, Chennai. V.DHANAPALAN, J.

AND V.M.VELUMANI, J.

NB

JUDGMENT

MADE IN W.A.(MD).No.1253 of 2014 01.12.2014

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