

(2014) 11 MAD CK 0353
In the Madras High Court

Case No : Writ Petition No. 26792 of 2014 and M.P. Nos. 1, 3 and 4 of 2014

A.E. Durgaa

APPELLANT

Vs

The Directorate of Medical Education

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2015) 1 MLJ 890

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The petitioner applied for admission to M.B.B.S or B.D.S Course, for the Academic year 2014-15. The petitioner belongs to the Scheduled Caste. It appears that she received a text message on 28.09.2014, from the Selection Committee of the State Government, calling upon her to appear for counselling at 11.00 A.M. on 30.09.2014. Her turn came at 1.30 PM on 30.09.2014. As per the Cut-off Mark that she had secured, she was allotted to the Best Dental Science College, which is the fourth Respondent herein, for admission to the first year of the B.D.S. Course. Therefore, she was issued with a letter of allotment at 3.00 P.M. on 30.09.2014 asking her to go and join the fourth Respondent College at Madurai on the same day. Since it was impossible for anyone to reach Madurai within the short duration of time that was available, the petitioner appeared before the fourth Respondent College on 01.10.2014 with necessary fee. But the fourth Respondent College informed the petitioner that all seats had been filled up and that the admission was closed as per the directives of the Supreme Court on 30.09.2014. Therefore, the petitioner has come up with the above writ petition seeking the issue of a writ of mandamus to direct the Respondents, more particularly the fourth Respondent to admit her to the first year B.D.S. Course for the Academic year 2014-15.

2. Heard Mr. V.N. Venkatakrishnan, learned counsel for the petitioner, Mr. P. Sanjay Gandhi, learned Additional Government Pleader, appearing for the Respondents 1 and 2, Mr. V.P. Raman, learned counsel appearing for the third

Respondent and Mr. V.T. Gopalan, learned counsel appearing for the Respondents 4 and 5.

3. The writ petition was filed on 07.10.2014 and it came up for orders as to admission before me on 08.10.2014. Upon finding that the Respondents were at fault, I passed an interim order directing the fourth Respondent to keep one seat vacant, even while ordering notices to the Respondents.

4. Subsequently, the matter came up for hearing on 20.10.2014. On the said date, I passed the following interim order:-

"Heard Mr. V.N. Krishnan, learned counsel for the petitioner, Mr. P. Sanjay Gandhi, learned Additional Government Pleader for the Respondents 1 and 2. The counsel for the Respondents 4 and 5 are absent.

In the Single Window Counselling, the Selection Committee selected the petitioner and allotted her to the 4th Respondent College for admission to the first year of the B.D.S. Course. But, unfortunately, the allotment order was issued by the Selection Committee on 30.09.2014, at Chennai, asking the petitioner to join the course at Madurai on the same day which happened to be the last date. Since it was impossible of being complied with, the petitioner is before this Court.

The only objection raised by the Secretary of the Selection Committee in his written instructions to the learned Additional Government Pleader is, that beyond 30.09.2014, there can never be an admission. But this is a fact which the Selection Committee itself should have taken note of that that they issued the order on 30.09.2014 at Madras asking the petitioner to join on the same day at Madurai. The petitioner is not at fault.

Therefore, if there are seats in the 4th Respondent College, the petitioner shall be admitted and shall be allowed to be continued.

Post after vacation for further orders."

5. Thereafter, the fourth Respondent College came up with two Miscellaneous Petitions, one in M.P. No.3 of 2014 to vacate the interim order passed on 08.10.2014 and another in M.P. No.4 of 2014 to vacate the interim order passed on 20.10.2014. The Secretary of the Selection Committee also filed a counter affidavit and hence I took the main writ petition itself for disposal.

6. It is seen from the counter affidavit filed by the Director of Medical Education who also happens to be the Secretary of the Selection Committee that all the averments made by the petitioner on facts are true and correct. In his counter affidavit, the Secretary of the Selection Committee has stated certain crucial facts which are as follows:-

(1) that counselling for the available vacancies and existing vacancies in respect of the Government quota for B.D.S. Course in Self-Financing Dental Institutions was conducted only on 30.09.2014;

(2) that as per the Medical Council of India's letter dated 22.05.2014 the last date upto which the students can be admitted against the vacancies is 30th September, 2014;

(3) that all the Self-Financing Dental Colleges were informed over phone on 29.09.2014 that the counselling would be conducted on 30.09.2014 and the list of allotted candidates would be sent to them immediately;

(4) that some of the Self-Financing Colleges sent their staff and collected the list;

(5) that as per Clause 43(c) of the Prospectus, all selected and allotted candidates had paid the deposit of Rs.25,000/- and hence they are deemed to have joined on that day itself;

(6) that except for the 4th Respondent College and two more Colleges, namely KSR Dental College, Tiruchengode and J.K.K Nataraja Dental College, Komarapalayam, all other self financing Dental Colleges had admitted the students allotted by the Selection Committee as on 30.09.2014;

(7) that all Colleges had already been informed that only those candidates allotted by the Selection Committee against the Government Quota will be registered with the University;

(8) that the counselling on 30.09.2014 was necessitated on account of the order passed by the Supreme Court in W.P.(Civil) No. 469 of 2013 dated 18.09.2014; and

(9) that the failure of the fourth Respondent to admit the allotted candidate was not correct.

7. The fourth Respondent has filed a counter affidavit. In para 4 of the counter affidavit, the fourth Respondent has also admitted the fact that the writ petitioner was called for counselling by the Selection Committee at 3.00 P.M. on 30.09.2014 and that she was allotted to the fourth Respondent College at 3.30 P.M. The fourth Respondent has also admitted that since the allotment was made at Chennai at 3.30 P.M. on 30.09.2014, it would be humanly impossible to go and report to the College at 4.30 P.M. at Madurai, which is about 450 Kms. away. The fourth Respondent has also admitted that the petitioner reported to them with the order of allotment on 01.10.2014. However, the fourth Respondent refused admission to the petitioner, on the ground that as per the decision of the Supreme Court in *Lipika Gupta v Union of India*, dated 19.05.2014, (W.P.(Civil) No. 737 of 2013), no student can be admitted after 30.09.2014.

8. In paragraph 11 of the counter affidavit, the fourth Respondent has admitted that the Selection Committee of the Government of Tamil Nadu held the First Counselling on 21.07.2014, Second Counselling on 05.09.2014 and Third Counselling on 30.09.2014. But according to the fourth Respondent, the third Counselling should have been conducted on or before 10th September 2014 and the students should have joined before 17th September, 2014. The fourth

Respondent has claimed in the counter affidavit that after the Third Phase of Counselling, whatever seats were left unfilled, were filled up by the Managements, as per the decision of the Supreme Court in T.M.A. Pai Foundation and others Vs. State of Karnataka and others, etc., and that therefore, the fourth Respondent College filled up the lapsed vacancies also by 30.09.2014.

9. From the pleadings on record, the admitted position that emerges is:-

(1) that the Selection Committee of the State of Tamil Nadu actually conducted the last Counselling on 30.09.2014;

(2) that the Selection Committee at Chennai, actually allotted the petitioner to the fourth Respondent College located at Madurai only by 3.30 p.m. on 30.09.2014; and

(3) that even according to the respondents, it was humanly impossible for anyone to report to the fourth Respondent College on the same day namely 30.09.2014.

10. Though the fourth Respondent claims that they have filled up the vacancies arising due to non-allotment of candidates after 17th September, 2014, by treating them as lapsed vacancies, on the basis of the decision of the Supreme Court in T.M.A. Pai Foundation, I do not think that the fourth Respondent was right in doing so. Paragraph 31 of the decision in T.M.A. Pai Foundation and others Vs. State of Karnataka and others, etc., reads as follows:-

"So far as engineering and other colleges are concerned, the rules, regulations and orders made by the council, Government concerned and this Court shall continue to govern for this academic year. There shall be no change insofar as these colleges are concerned. In short, the position obtaining in the Academic Year 1994-95 shall apply and continue for Academic Year 1995-96. The allotment of students to these colleges shall be completed by 30-9-1995. Any seats remaining unallotted - or any seats remaining unfilled on or after 16-10-1995 shall be allowed to be filled by the Management."

As seen from the above, the direction issued in that decision was confined only to the Academic year 1994-95. Much water has flown under the bridge, after the aforesaid decision. In Lipika Gupta v Union of India (W.P.(Civil) No. 737 of 2013), the Supreme Court drew a schedule on 14.03.2014, fixing the time for admissions to Post-Graduate Medical Courses for the Academic year 2014-15. On 11.04.2014, the Supreme Court cautioned that any violation of the time schedule fixed on 14.03.2014, will tantamount to contempt. Again on 09.05.2014, a time schedule for completion of the admission process for the first year of the M.B.B.S. Course for the Academic year 2014-15 was presented to the Supreme court. It was as follows:-

" "Time schedule for completion of the admission process for first MBBS Course.

(Proposal for making it applicable from Year 2014... onwards)

The above proposed schedule for admission may also be made applicable for BDS admission."

The above schedule was approved on 19.05.2014 by the Supreme Court.

11. Therefore, it is true that the third round of counselling ought to have been completed between 6th September and 10th September 2014 and those students should have joined the course by 17th September 2014. But the last column of the above table shows 30th September 2014 as the last date up to which students can be admitted against vacancies arising due to any reason. It is nowhere stated that the seats falling under the Government Quota, which if left unfilled by 17th September, 2014 would automatically lapse, so as to entitle the Managements to fill them up under the Management Quota up to 30.09.2014. It is only the Government which is competent to allot candidates for the Quota reserved for the State. Therefore, the fourth Respondent has committed an illegality by filling up those seats which come under the Government Quota, but to which the Government did not allot candidates up to 17th September, 2014.

12. Just as the fourth Respondent committed an illegality by filling up the seats intended for the Government Quota by their own candidates, on the ground that the Government Quota was not filled up by 17.09.2014, the Selection Committee was also equally at mistake in issuing an order of allotment at 3.30 p.m. on 30.09.2014 at Chennai asking the petitioner to join the fourth Respondent College at Madurai on 30.09.2014 itself. Even if the petitioner owned a private jet, it would not have been possible for her to reach Madurai before the closing hours of the office of the fourth Respondent on the same day.

13. Therefore, I find:-

(i) that the Selection Committee, committed a blunder in conducting a counselling beyond the cut-off date stipulated by the Supreme Court and in issuing an order of allotment at 3.30 p.m. at Chennai on 30.09.2014 asking the petitioner to report at Madurai on the very same day; and

(ii) that the fourth Respondent committed an illegality in filling up the seat as a lapsed seat.

14. Therefore, under normal circumstances, the petitioner should be entitled to the relief prayed for. But in the case on hand, there are 2 difficulties for me to issue a direction to the respondents to admit the petitioner at this stage. They are:-

(a) that there are no vacancies as on date in the fourth Respondent College; and

(b) that apart from the direction issued in Lipika Gupta on 19.05.2014, not to admit any student beyond 30.09.2014, the Supreme Court has reiterated the same position even in its order dated 18.09.2014 in W.P.(Civil) No. 469 of 2014 filed by the Hind Charitable Trust Shekhar Hospital Private Limited v. Union of India.

15. In the first line of the last but 4th paragraph of its order dated 18.09.2014, in Hind Charitable Trust, the Supreme Court has stated " In no case, the admission shall be given after 30th September, 2014." In the paragraph immediately preceding the above extracted portion, the Supreme Court also made it clear that there would be no further counselling in respect of the students who are to be given admission, even if it might result into some heart burn among other students.

16. However, it appears that in on 01.9.2014, the Supreme Court considered in Chandigarh Administration Vs. Jasmine Kaur, , the effect of the time schedule fixed in the previous decisions of the Supreme Court. After taking note of various earlier decisions, a two member Bench of the Supreme Court deduced in paragraph 30 of the report, the principles that could be culled out, as follows:

"(1) The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the courts or the Board and midstream admission should not be permitted.

(2) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.

(3) If a candidate is not selected during a particular academic year due to the fault of the Institutions/Authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.

(4) When a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission.

(5) If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non-selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

(6) If it is found that the candidate acquiesces or waives his/her right to claim relief before the Court promptly, then in such cases, the legal maxim *vigilantibus non dormientibus aequitas subvenit*, which means that equity aids only the

vigilant and not the ones who sleep over their rights, will be highly appropriate.

(7) No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

(8) There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply next academic year.

(9) There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

(10) Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical."

17. Therefore, it appears that the Supreme court itself carved out exceptions to the general mandate. The case on hand will fall squarely under the category of exceptional cases carved out by the Supreme court in the aforesaid case. But, even then, the cut off date cannot be transgressed.

18. Moreover, unfortunately for the writ petitioner, the fourth respondent claims that all vacancies are already filled up. Today, it is not within the competence of this Court to create one additional seat in the fourth Respondent College, so as to give admission to the petitioner. I cannot also cancel the admission given by the 4th respondent to a wrong candidate, for the purpose of accommodating the writ petitioner. That candidate is not before me. Therefore, though the petitioner has suffered on account of the blunder committed by the Selection Committee, I cannot grant her the relief of admission to the B.D.S. Course.

19. Though the petitioner is not entitled to the relief of admission to the Course, in view of non availability of vacancies, she cannot be left without a remedy, especially after I have found that she was not at fault and that the Selection Committee was at fault. The petitioner is a candidate belonging to the Scheduled Caste. Her dreams of a great future, was lit up for a short while, by the order of allotment issued on 30.09.2014, but it was blown off within a few hours. The conduct of a counselling on 30.09.2014 and the issue of an allotment order on the same day at 3.30 p.m., at Chennai directing the petitioner to report at Madurai on the same day, are clearly in violation of the orders of the Supreme Court. Therefore, the Selection Committee is obliged to compensate the petitioner in monetary terms.

20. The quantum of compensation is something that cannot be arrived at in such

cases with any mathematical precision. Considering the background of the petitioner and considering the course to which she would have legitimately gained admission, I am of the view that a compensation of Rs.5,00,000/- would be just and proper.

21. Therefore, the writ petition is disposed of, rejecting the prayer of the petitioner for a direction to the fourth Respondent College, to admit her to the B.D.S. Course for the Academic year 2014-15. But a direction is issued to the Respondents 1 and 2 to pay monetary compensation of Rs.5,00,000/- to the petitioner within a period of four weeks from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, M.P. Nos. 1, 3 and 4 of 2014 are closed.