
(2003) 12 MAD CK 0147
In the Madras High Court
Case No : Writ Petition No. 27645 of 2003

G. Udhaya Bharathi

APPELLANT

Vs

State of Tamil Nadu and Ors

RESPONDENT

Date of Decision : 09-12-2003

Acts Referred:

Citation : (2003) 12 MAD CK 0147

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : C. Selvaraju, for the Appellant; V.R. Rajasekaran, Special Govt. Pleader for R1 and R2 and T.R. Rajagopalan for V. Sairam, for R5, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—By consent of parties, the main writ petition itself is taken up for hearing and disposal.

2. This writ petition exposes the plight of a student who is otherwise entitled to be admitted to the MBBS Degree course was denied such admission solely due to the fault of the Selection Committee. The Petitioner after successfully completing his +2 examination appeared for entrance examination for admission to the first year MBBS degree course of the academic year 2003-2004. He has secured an aggregate of 290.54 marks. The second Respondent by call letter dated 28.8.2003 called the Petitioner for counseling for admission to the first year BDS course, as there was no vacancy for MBBS course on that day. The counseling was held on 6.9.2003. Since the Petitioner wanted to join only MBBS degree course, he did not attend the counseling. The call letter is relevant for the disposal of this writ petition and the same reads as un-den-Intimation for Counseling for Exercising option for BDS seats in self-financing dental colleges 2003-2004 Session Ref. No. 45/SC SI/2/2003 dated 28.8.2003 E.E. No. 4731295 A.R. No. : 1531 Community: MBCT. Mark: 290.54 General Rank: 2677 Community Rank: 479 Thiru Udhaya Bharathi.G is informed that vacancies are

available in various self-financing dental colleges. If interested, you are requested to report on 6.9.2003 at 10.00 AM with all original certificates or bonafide certificate from the institution where the candidate is presently studying, for counseling for exercising their option for BDS seats in self-financing dental colleges. The candidates are advised to bring a Demand Draft for Rs. 5,000/- (Rs. 2,500/- for SC/ST candidates) drawn in favour of Secretary, Selection Committee, Chennai-10, failing which they will not be allowed to attend the counseling. The candidates who exercise their option to take BDS seats in self-financing dental colleges have to deposit the Demand Draft with Selection Committee. The final allotment order will be issued only during the second week of September 2003 as per merit and subject to the availability of the seats. Candidates have to exercise their option only to the category of seats and not to the particular self-financing dental colleges. The Demand Draft will be returned back to the candidates who could not get the seats for want of vacancies, during September 2003. The Demand Draft will not be re-turned to the candidates who opt out of BDS course because of non-availability of seats in the college of their choice at the time of issuing the final allotment orders during September.

Candidates who are absent will not be considered any further for BDS seats in self-financing institutions and your absence will not alter wait list position in MBBS course. This is only an intimation for counseling for exercising option for BDS seats in self-financing institution and does not guarantee admissions, which is subject to the availability of seats. If any revaluation/retotalling candidates are added on the day of counseling it may alter the position on the day. Postal delay will not be condoned.

Deputy Director of Medical Education (UG) Selection Committee, Chennai-10"

From the said call letter it is clear that the Petitioner was directed to report at 10.00 a.m. on 6.9.2003 for consideration against the vacancies available in self-financing dental colleges. The Petitioner was also informed that the absence of the Petitioner will not alter wait list position in the MBBS course. After the counseling was over, it appears that the Selection Committee, the second Respondent called some more candidates including the fifth impleaded Respondent for admission to BDS Degree course on 19.9.2003. In the meantime, a vacancy for MBBS degree course arose in the Meenakshi Medical College, the third impleaded Respondent. The Selection Committee without calling the eligible candidates from the waitlist in the order of merit, proceeded to consider the applicants who have secured lesser marks and who attended the counseling on 19.9.2003 for admission to the said one seat. Accordingly, the fifth Respondent who has secured 289.20 marks was selected and allotted to the Meenakshi Medical College. In the circumstances, the Petitioner has approached this Court by way of this writ petition on 30.9.2003 seeking for a direction to the first and second Respondents to admit the Petitioner to the MBBS Degree course for the academic year 2003-2004.

3. The Petitioner has also filed W.P.M.P. Nos. 41128 and 41356 of 2003 seeking

for impleading (1) Meenakshi Medical College, Enathur, Kancheepuram, (2) Tamil Nadu Dr. MGR Medical University, Chennai and (3) H. Sruthi, a candidate admitted in the place of the Petitioner, as Respondents 3 to 5 in the writ petition. this Court, by order dated 24.11.2003, permitted the Learned Counsel for Petitioner to take private notice on the proposed Respondents. Accordingly, the proposed Respondents were served privately and the proof of service is filed. Since they are considered as necessary parties to the writ petition, W.P.M.P. Nos. 41 128 and 41356 of 2003 are ordered and they are impleaded as Respondents 3 to 5 in the writ petition.

4. It is not in dispute that the Petitioner is the next candidate in the order of merit to be considered for admission to MBBS degree course. Admittedly, he was not called for counseling to MBBS degree course either on 6.9.2003 or on 19.9.2003. Equally it is not in dispute that the fifth Respondent was called for counseling on 19.9.2003 only for consideration to BDS course and not for MBBS course. Had the Petitioner been called for counseling on 19.9.2003, he would have been selected on the basis of his seniority in the merit list and for the fault of the Selection Committee, he was neither called for counseling nor for selection to the MBBS course. In this regard, the call letter dated 28.8.2003 is relevant wherein the second Respondent has made it clear that by calling the candidates for counseling to BDS course, the waitlist positions in MBBS course are not altered. While that be so, in all fairness, the second Respondent ought to have called the Petitioner also for counseling. In that view of the matter, I find every force in the grievance of the Petitioner seeking for a direction to the Respondents 1 and 2 to admit the Petitioner for MBBS degree course for the academic year 2003-2004.

5. Though a detailed counter affidavit is filed, the lapse and default committed by the second Respondent Selection Committee are not disputed. The only reason adduced is that the fifth Respondent was admitted for want of time to call the meritorious candidates in the order of merit for counseling to MBBS degree course. This contention of the Selection Committee to justify the admission of the fifth Respondent is totally unsustainable and is liable to be deprecated, as by faulty procedure adopted by the selection committee, a meritorious candidate who is otherwise eligible to be selected and admitted, as he is the next meritorious candidate in the merit list, has been denied a seat to MBBS degree course. Hence, the Petitioner is entitled to succeed in the writ petition.

6. There is one more aspect of the matter. All the seats under the control of the second Respondent had been filled up. In fact this Court directed Mr. V.R. Rajasekaran, learned Special Government Pleader to find out as to any vacancy in any of the medical colleges including private medical colleges so that the Petitioner could be accommodated as he was unjustly denied a seat. On verification the learned Special Government Pleader submitted that there are no vacancies. In the circumstances, the usual course to be adopted by this Court is only to unseat the last candidate selected and admitted with a further direction

to accommodate the affected party like the Petitioner in that seat.

7. Mr. T.R. Rajagopalan, learned Senior Counsel for the fifth Respondent, on the other hand, would submit that there is no fault on the part of the fifth Respondent in getting admission in the Meenakshi Medical College. She attended the counseling, though for BDS course, on 19.9.2003. She was selected for MBBS Degree course and allotted to Meenakshi Medical College. Immediately she has paid a sum of Rs. 5,87,000/- in the said college towards tuition fee, hostel fee. etc. She has undergone the course for two months so far. Had the Petitioner approached this Court in time, she would not have joined the course.

8. Insofar as the question of delay pleaded against the Petitioner in approaching this Court, it is seen that the last date for admission of the candidates selected by the Selection Committee was 25.9.2003. After the said date the respective management are entitled to fill up the seats from among the meritorious candidates. Such admission could be made upto 30.9.2003. The Petitioner, immediately after coming to know of the admission of the fifth Respondent, has filed this writ petition on 30.9.2003. I find no delay on the part of the Petitioner. However, the fact remains that after the admission, the fifth Respondent has paid the tuition fee, hostel fee and other fees applicable and has also undergone two months course. In the circumstances, I do not propose to unseat the fifth Respondent, as there is no fault on the fifth Respondent in getting the seat. Hence, I am inclined to safeguard the interest of the fifth Respondent also. Accordingly, the writ petition is allowed and there will be a direction to the Respondents 1 and 2 to admit the Petitioner to MBBS Degree course for the academic year 2003-2004 in the last seat, which became available in Meenakshi Medical College, in which the fifth Respondent was admitted with a further direction to permit the fifth Respondent also to continue the course. The first Respondent shall address both the Medical Council of India for permission to create additional seat and the Tamil Nadu Dr. MGR Medical University for grant of affiliation. this Court is oblivious of the fact that in professional courses that too for admission to MBBS degree course, direction for creation of additional seat is not proper, as the strength is determined by the Government and approved by the Medical Council of India considering the availability of infrastructural facilities. However, only in the facts and circumstances of this case and with a view that a meritorious candidate who is otherwise entitled to be admitted cannot be deprived of the seat, the above direction is issued.

9. With the above direction, the writ petition is allowed. No costs. Consequently, W.P.M.P. No. 33781 of 2003 is closed. In view of the above directions, amendment petition in W.P.M.P. No. 41355 of 2003 is dismissed.

After delivering the order, Mr. C. Selvaraju, Learned Counsel appearing for the Petitioner requested this Court to fix the time limit for complying with the order of this Court. Accordingly, the Respondents 1 and 2 are directed to select the Petitioner and allot to Meenakshi Medical College within a period of three days from the date of receipt of copy of this order.