

(2002) 10 MAD CK 0133

In the Madras High Court

Case No : Writ Petition No. 31954 of 2002 and WPMP No. 46528 of 2002

P. Ilamparithi

APPELLANT

Vs

The Secretary, Selection Committee for MBBS/BDS Courses

RESPONDENT

Date of Decision : 22-10-2002

Acts Referred:

Citation : (2002) 10 MAD CK 0133

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : G. Justin, for the Appellant; V.R. Rajasekaran, Spl. GP, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned counsels appearing for the parties.

2. This writ petition is an instance of how judicial rectification of wrong committed to a person by authorities proves futile because of the apathetic attitude of powers that be.

3. The petitioner, who is a student belonging to the Backward Community, started her sojourn to the law courts about a year back. The petitioner passed Plus Two Examination held in the month of March 2000. Subsequently, with a view to improve her marks in respect of Physics, Chemistry and Biology, she again appeared in March 2001. Even though, in other two subjects she secured better marks, she had not secured any higher marks in Biology. Since the mark secured in Biology in the improvement examination was much below the expected marks, the petitioner applied for revaluation as per the permissible guidelines. On revaluation it was found that she was entitled to 6 marks more in biology. Since the revaluated marks were also not upto the expectation of the petitioner, she filed writ petition in WP No. 14147/2001 and the same was allowed and it was directed that the marks may be revised. Since no further marks were awarded by the respondent, she again filed writ petition in WP No.

4742 of 2002, and this court, after considering the matter, by order dated 12.3.2002 allowed the writ petition and directed that the marks obtained in Biology should be 191/200. The petitioner had already appeared in the Entrance Examination for admission to MBBS Course in the year 2001-2002. After the marks were finally revised by this Court, the petitioner again approached the authorities for considering her case for admission to MBBS Course, even against payment seats on the basis of the revised marks. Incidentally, it is to be noticed that the cut off marks for admission to MBBS Course against payment seats was 289 and as per the revised marks, the petitioner had secured 289.68. Since the petitioner's application for admission to MBBS Course in payment seat proved futile, the petitioner had approached this court again by filing writ petition in WP No. 11892/2002 and the said writ petition was allowed on 24.6.2002 and a direction was given to consider the question of admission of the petitioner against payment seat. Thereafter, a fresh order has been passed stating that the last date for admission to MBBS Course was 15.10.2001 and as such, the petitioner cannot be admitted. The present writ petition has been filed seeking for a direction to the respondent to provide a seat to the petitioner.

4. A separate petition for taking action on Contempt of Courts Act has also been filed.

5. Even though, counter has been filed only in the contempt application, the learned Special Government Pleader has submitted that the stand taken in the counter filed in contempt application may also be taken as the stand in the writ petition.

6. In the counter, it has been indicated that all the seats had been already filled up and as such, it was not possible to admit the petitioner in any of the colleges. In the course of hearing of this writ petition, the learned Special Government Pleader has submitted that seats for the academic year 2002 have already been filled up and therefore, no relief can now be granted to the petitioner.

7. The learned counsel appearing for the petitioner has relied upon a decision reported in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, , wherein, a similar situation arose and a direction was given for creation of additional seats over and above the sanctioned strength

8. In Mrs Sheela Ashok Patwardhan Vs. Dean, Dr. V.M. Medical College and others, , in order to render justice, the Supreme court directed for creation of one extra seat in MD Course.

9. In Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , it was directed, after considering all the aspects of the case, that "admission to the medical colleges for the year 1995-1996 in the State of Maharashtra is already over and we are not inclined to interfere with the admissions already made, but we do commend that while deciding and publishing the rules for admission in the next academic session, directions given in this judgement should be borne in mind and the rules should be made accordingly. Since the petitioner is a single applicant before us,

we direct that the petitioner be admitted to any one of the colleges where he can be so admitted to the MBBS Course where seat is still available and if no seat is available then he may be admitted by increasing one seat in any of the colleges."

It was further observed that "Needless to mention that if there is any prohibition under any university regulation for such admission since the course has already started, such prohibition should be condoned and admission should be given."

Such a direction was given long after the academic session had commenced.

10. It is to be emphasised that in the present case, the only reason for not giving admission to the petitioner is that "last date for admission to MBBS Course is 15th October 2001 or "admissions were already closed on 31.12.2001". However, it is to be noticed that in the month of February itself 11 other candidates have been admitted, of course, pursuant to the direction given by the High Court in some other case. In the present case, I am constrained to give a direction for giving admission to the petitioner as I am convinced that the petitioner has suffered either due to inevitable delay in law courts or due to the negligent act of the authorities.

11. In May 2001, the petitioner had appeared at the improvement examination, and thereafter in spite of the High Court's order, the authorities had not revised the mark, and the petitioner was forced to approach this court.

12. It is not disputed that if the petitioner would have been awarded marks deserved by her initially and which she got only after prolonged litigation in the High Court, she would have been admitted in the year 2001 itself in normal course, of course against the payment seat.

13. It is stated by the learned Special Government Pleader that in 2002, the seats are already filled up and the petitioner can be accommodated in self-financing colleges. The learned counsel for the petitioner has submitted that 2 self-financing colleges are in the State, one is PSG Medical and Research Institute, Coimbatore and the other is Vinayagam Medical College, Salem. Since, Coimbatore is nearer to the place of the petitioner, the learned counsel for the petitioner has submitted that she may be permitted to take admission in PSG Medical College, Coimbatore and this admission should be taken for the academic year 2002-2003. It goes without saying that after such college grants admission, the college shall write to the University and to the Medical Council for raising of the additional seats by pointing out the order passed by this court and such an application shall be routed through the Government and the Government shall make necessary recommendations in this matter.

14. Even if the College and other authorities are not parties, such a direction is given as they would not be prejudiced in any manner. Necessary steps for admission shall be taken by the College against the payment seat on the basis of this order within a period of 10 days from today. Copy of this order shall be forwarded to the College as well as Dr. MGR Medical University, Chennai and the

Medical Council of India, New Delhi.

15. The writ petition is allowed subject to the aforesaid observations. No costs. Consequently connected WPMP is closed.