
(2011) 01 MAD CK 0228

In the Madras High Court

Case No : W.A. No. 2240 of 2010 and M.P. No. 1 of 2010

S. Kiruthika

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 1 CTC 385 : (2011) WritLR 100

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : R. Singaravelan, for the Appellant; G. Sankaran, Spl. G.P. (Edn.) for RR-1 and 2, V.P. Raman, for R-3 G. Masilamani, SC for T. Meikandan, for R-4, K.R. Ramesh Kumar, for R-6 and M.A. Mohamed Ali, for R-7, for the Respondent

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—This case is a classic example of how a Private Medical College like the fourth Respondent, Sri

Muthukumaran Medical College herein, deprived a genuine candidate in getting admission for unlawful gain.

2. The Appellant, a girl, belonging to a backward community, secured 1137 marks out of 1200 marks in the Plus Two (+2) examination

conducted in March, 2010. Initially, she was selected for BDS Course in the 5th Respondent-Ragas Dental College, where she joined. However,

on extension of second counseling, the Appellant appeared on the date fixed i.e., 26.9.2010, and she was re-allotted a seat of MBBS course in

the 4th Respondent college namely, Sri Muthukumaran Medical College at Mangadu. Immediately, on 27.9.2010, the Appellant went to the 5th

Respondent college to collect her original certificates and transfer certificate, which were given to her on the same day. The Appellant's case is that

on 28.9.2010, she along with her father approached the 4th Respondent-college

for admission to MBBS course and they were asked to pay a sum of Rs. 4 lakhs and Rs. 2.19 lakhs towards fee and other charges. In order to arrange for money, the Appellant and her father went to their native place at Tanjore and arranged to get a bank draft for a sum of Rs. 4 lakhs dated 29.9.2010 drawn in favor of the 4th Respondent-college from Indian Bank, Easwari Nagar Branch, and Tanjore. On the same night i.e., 29.9.2010, the Appellant's father left Tanjore and reached Chennai on the morning of 30.9.2010. He reached the College on the same day i.e., 30.9.2010 at about 10.00 a.m. along with the draft of Rs. 4 lakhs and Rs. 2.19 lakhs towards admission fee and other charges. The Appellant could not accompany her father, as she was unwell due to tension and continuous traveling. Hence, she started in the early morning of 30.9.2010 in order to reach the College for admission by 5.00 p.m. on the same day. Although, she started from Tanjore, but she could not reach in time because the car in which she was travelling met with an accident and for that some time was consumed in the process of lodging First Information Report with the Police Station. From the certificate issued by the D-6, Maraimalai Nagar Police Station, it is seen that the accident took place on 30.9.2010 at 4.45 p.m. opposite S.R.M. University, Potheri. However, she managed to reach the College at 5.45 p.m. and requested the authorities to receive the fees and complete the admission process. But she was denied admission on the ground that she could not reach the College within 5.00 p.m. The Appellant, therefore, when not succeeded in impressing the authority of the college, immediately moved this Court by filing a writ petition for a mandamus directing the Respondents to admit her as per the re-allotment order dated 26.9.2010 issued by the second Respondent namely, the Selection Committee, rep. by its Secretary to Medical Education, Chennai. It appears that the writ petition was filed on 3.10.2010 and it is stated that despite opportunity being granted, the fourth Respondent college did not file counter affidavit, but contested the matter through their counsel. In the affidavit filed in the writ petition, the Appellant's father has averred that he was present in the college from 11.00 am onwards with a demand draft for Rs. 4 lakhs and Rs. 2.50 lakhs in hand, along with the original certificates of his daughter, but the college refused admission since the Appellant reached the college only by 5.45

p.m.

3. The 4th Respondent-college opposed the prayer of the Appellant in the writ petition on the ground that as per re-allotment order, the college

had to wait only till 5.00 p.m. on 30.9.2010. Since the Appellant had not reach the College within the time prescribed, as per the re-allotment

order, the College, instead of allowing the seat to get lapsed, filled the seat by admitting another candidate. The learned single Judge, relying upon

the decisions of the Supreme Court in the case of Medical Council of India v. Naina Verma reported in 2005 (12) SCC 626 and Mridul Dhar

(Minor) and Another Vs. Union of India (UOI) and Others, took a view that since the Appellant had gone to College on 30.9.2010 only after

5.00 p.m. no direction can be issued to the College for admitting the Appellant, although the court is very sympathetic to the Appellant.

Consequently, the writ petition was disposed of with an observation that the fifth Respondent-College may consider the feasibility to accommodate

the Appellant in BDS course in which she had already joined.

4. This appeal was listed for the first time before this Bench on 1st November, 2010. This Court passed orders directing the Respondents to file

their counter affidavits. Thereafter, the case was adjourned on several dates with certain directions. The details of the order passed on various

dates and the stand taken by the Respondents are reproduced herein below :

The Hon"ble CJ & TSSJ

The Appellant is permitted to impale the candidate who has been admitted in her place and serve papers. The Appellant shall also serve copies to

the learned Counsel, who appeared for the Respondents before the learned single Judge. Private Notice is also permitted. Put up the matter on

15.11.2010.

Sd/- 01.11.2010

The Hon"ble CJ & TSSJ

The fourth Respondent is directed to file counter affidavit within a week, and file all supporting documents to show that admission to a different

person, other than the Appellant, was done on the same date by receiving amount in cash or cheque. The fourth Respondent shall also file

documents to show that the amount so received in cash on that date, was, in

fact, deposited in the respective bank or treasury.

Before we pass any harsh orders against the Respondents on the next hearing date i.e., 29th November, 2010, we direct the Respondents to file

their respective counters.

In the meantime, the validity of the admission of the sixth Respondent, who is now impleaded, shall be subject to the result of the writ petition. Post

on 29th November, 2010.

Sd/ 15.11.2010

The Hon"ble CJ & TSSJ

It appears that after the sixth Respondent was impleaded, no notice was served on him. Let this case be listed after ten days i.e., 13.12.2010. In

the meantime, the Petitioner shall serve notice on the sixth Respondent both through Court, as also privately. List the case on 13.12.2010 at the

top.

Sd/ 02.12.2010

The Hon"ble CJ & TSSJ

Heard the learned Counsel for the Appellant and perused the application seeking to implead the seventh Respondent in M.P. No. 3 of 2010 as the

seventh Respondent in the writ appeal. Having regard to the statements made in the affidavit filed in support of the impleading petition, we direct

one of the Trustees of the fourth Respondent-College to personally swear an affidavit by way of reply to the said petition and state as to why in the

facts of the case, the Management Quota reserved for admission be not declared illegal and cancelled. It is made clear that any admission made as

against the Management Quota after 5.00 p.m. on 30.9.2010 shall also be subject to the result of the writ appeal. In the meantime, let notice be

issued to the proposed seventh Respondent. Private notice is also permitted. Put up this case on 21st December, 2010 within the first five cases.

Sd/ 08.12.2010

The Hon"ble CJ & TSSJ

After hearing the learned Counsel for the parties, prima facie, it appears that the Petitioner arrived at the college after 5.00 p.m. but before 5.45

p.m. on 30.9.2010. But she was refused admission and in her place, the college admitted the seventh Respondent herein. Further, it appears that

after 5.00 p.m. on the same day, as many as eight candidates were admitted including the seventh Respondent herein.

2. In spite of service of notice on the seventh Respondent, no affidavit has been filed. The learned Counsel appearing for the Respondent-Medical

College is directed to accept notice on behalf of the seventh Respondent and file an affidavit stating as to how much time it took after 5.30 p.m. to

complete the formalities of admitting eight more candidates under the management quota.

3. The learned Counsel appearing for the third Respondent-Medical Council of India submits that the Regulation does not provide for any such

time limit viz., 5.00 p.m. before which all candidates should get admission. If that is so, why not the Respondent college admitted the Petitioner also

after 5.00 p.m. that too when as many as eight candidates were admitted under the management quota including the seventh Respondent herein,

who was admitted in the place of the Petitioner. If factually this is correct, then what action the Medical Council of India will take against the

College, this Court wants to know it. Let the third Respondent-Medical Council of India file a counter affidavit.

4. Put up this case on 03.01.2011. If the affidavit is not filed by the Medical Council of India before 03rd January, 2011, we shall pass orders for

the personal appearance of the authority concerned.

Sd/- 21.12.2010

5. By order dated 1st Nov., 2010, the Appellant was permitted to implead the candidate, who was admitted in her place and by order dated 15th

Nov., 2010, the 4th Respondent college was directed to file counter-affidavit and all supporting documents to show that admission of different

candidates other than the Appellant was taken on the same date by receiving the amount. The Court further ordered that the admission of the 6th

Respondent, who was then impleaded, shall be subject to the result of the writ appeal.

6. In the first counter affidavit filed by the Respondent college, it was stated that in the allotment order issued to the Appellant on 26th Sept., 2010,

it was categorically mentioned that the Appellant and others have to join the institution before 5.00 p.m. on or before 30th Sept., 2010 and since

the Appellant did not approach the college for admission till the last minute, i.e.,

till 5.00 p.m. on 30th Sept., 2010, the college is not accountable for that. It was stated that the Appellant's father, who was allegedly present in the college on 30th Sept., 2010, had not made any attempt to approach the college authorities to inform the fact that the arrival of his daughter had been delayed due to alleged accident. Since the Appellant did not approach the college till 5.00 p.m. on 30th Sept., 2010, the seat allotted to the Appellant reverted back to the management to be filled up by the management as management quota seat and the management was constrained and forced by the circumstances to fill up that seat after 5.00 p.m. on 30th Sept., 2010 with the available candidates in the management quota. The counter affidavit further discloses that as many as 8 candidates were allotted seats under the Government Quota by the Directorate of Medical Education, including the Appellant, but all of them did not report to the college for joining before 5.00 p.m. on 30th Sept., 2010 and, therefore, the management was constrained to fill up the 8 seats from out of the applications received by the college for admission under the management quota after 5.00 p.m. on 30th Sept., 2010. Hence, there was no illegality or impropriety in admitting the students under the management quota since the Government quota seats had lapsed at 5.00 p.m. on 30th Sept., 2010. According to the Respondent college, the late arrival of the Appellant after 5.00 p.m. on 30th Sept., 2010 because of the fact that the Appellant's car met with an accident cannot be a ground for alleging that the college had committed an illegality in not admitting the Appellant after 5.00 p.m. on 30th Sept., 2010.

7. On the other hand, the 3rd Respondent, Medical Council of India, in its first affidavit dated 2nd Dec., 2010, simply highlighted the decisions rendered by the Supreme Court, from time to time, in the matter of fixing the time limit within which admission to MBBS and PG Courses should be completed. However, on 21st Dec., 2010, when the appeal was heard, it was argued on behalf of the learned Counsel for the Medical Council of India that the Regulation does not provide for any such time limit, viz., 5.00 p.m., before which all candidates should get admission. On this submission, this Court observed that if no time was fixed in the regulation, why not the Respondent college admitted the Appellant after 5.00 p.m. when as many as 8 candidates were admitted under the management quota

after 5.00 p.m. The Medical Council of India was therefore directed to file affidavit as to what action the Medical Council will take against the college for admitting 8 candidates under the management quota after 5.00

p.m. while denying admission to the Appellant. In compliance of the aforesaid direction, the Medical Council of India filed affidavit stating inter alia

that the Council, vide letter dated 1st Oct., 2010, directed the 4th Respondent college to furnish the following information in respect of the 1st year

MBBS students admitted for the academic year 2010-2011:

1. Total No. of students admitted.
- 2 Total No. of students admitted under Govt. quota.
- 3 Total No. of students admitted under Management quota.
- 4 Total No. of students admitted under NRI/Foreign/PIO quota.
- 5 Total No. of students admitted under General category.
- 6 Total No. of students admitted under SC category.
- 7 Total No. of students admitted under ST category.
- 8 Total No. of students admitted under OBC category.
- 9 Total No. of students admitted under others.
- 10 Total No. of female students admitted.
- 11 No. of students admitted after 30.09.2010, if any.
12. No. of students admitted with less percentage of marks as prescribed in the Graduate Medical Education Regulations, 1997.

8. In the affidavit it is categorically mentioned that although the college forwarded the list of students admitted in the first year MBBS course, but

the college had not furnished satisfactory information as sought for by the Council. Consequently, the Council, vide letters dated 8th Sept., 2010,

1st Nov., 2010 and 27th Dec., 2010, sought information from the State Government and the Directorate of Medical Education, Tamil Nadu about

the ratio fixed by the State Government for Government and Management quota for unaided self-financing medical colleges for the academic year

2010-2011. Lastly it is stated that if the Medical Council finds that the 4th Respondent college granted admission in excess of its management

quota for any academic year, the Council shall take action to the effect that the management quota for the next academic year shall stand reduced

so as to set off the effect of excess admission under the management quota in the previous academic year.

9. On 21st Dec., 2010, this Court, after hearing the parties directed the 4th Respondent college to file additional affidavit stating as to how much

time the college took after 5.00 p.m. on 30th Sept., 2010 to complete the formalities of admitting the 8 candidates under the management quota. In

compliance of that order, the Respondent college in the affidavit has stated that the Respondent college completed the process of admission of 8

candidates under the management quota by 5.40 p.m. on 30th Sept., 2010.

10. From the facts narrated hereinabove, the following undisputed facts emerge:

a) In the Respondent medical college, out of the total seats under the 1st year MBBS course, 50% was earmarked as Government quota seats

and 50% was earmarked as management quota seats. However, no document has been produced before us to show that if a candidate who is

allotted seat in the Government quota fails to report for admission on or before the time fixed in the allotment order, the seat would automatically

revert back to the management quota and will be considered as lapsed seat and such lapsed seats are to be treated as management quota seats.

b) According to the Respondent college, when 8 candidates out of the total seats allotted under the Government quota did not turn up on 30th

Sept., 2010 till 5.00 p.m., the college treated all the 8 seats as management quota seats and took admission of the candidates waiting for admission

against the management quota seats. This admission process commenced after 5.00 p.m. and the college took admission of the 8 candidates after

5.00 p.m., but denied admission to the Appellant in the college, who reached the college after 5.00 p.m.

c) At this juncture it would be pertinent to mention here that the learned Counsel appearing for the Medical Council of India vehemently opposed

the contention made by the Respondent college that any time limit was fixed for admission. In other words, learned Counsel for the Medical

Council of India submitted that there is nothing mentioned in the regulation or any instruction issued by the Medical Council of India to take

admission of the candidates under the Government Quota, who reached on the last date after 5.00 p.m.

11. It cannot be disputed that the fee structure for admission under the

Government quota and under the management quota is different. For admission of candidates, who are allotted seats under the Government quota, the college has no option but to accept the fees as provided under the fee structure; but for admission of the candidates under the management quota, although the fee structure is provided, but how much amount is collected by the college from the candidates for admission under the management quota, it cannot be brought to the notice of the court.

12. Considering all these facts it is evidently clear that the Appellant was denied admission by the 4th Respondent college only because she reached the college after 5.00 p.m. on 30th Sept., 2010. The only purpose of denial was to get the seat reverted to the management quota and to accommodate the candidates as per the choice of the college and on receipt of fee or donation as fixed by the college. Such procedure for reverting back Government quota seat under the management quota on the same day after 5.00 p.m. and taking admission of the candidates under the management quota is highly illegal, arbitrary, malicious and unjustified. Although such practices are prevalent in unaided medical colleges in the country, especially in the State of Tamil Nadu, where there is a mushroom growth of private medical and engineering colleges, which has become a business, but the Medical Council of India is not taking any action against those medical colleges.

13. This is such a heart burning case where a minor girl, after securing highest marks i.e., 1137 out of 1200 was allotted a seat in MBBS course under the Government quota in the 2nd counseling, but was denied admission only because of her late arrival after 5.00 p.m. The career of the Appellant, a village girl, hailing from backward community has been ruined because earlier she got admission in the BDS course in the 5th Respondent college, wherefrom she obtained transfer certificate and other documents in order to get admission in the MBBS course.

14. Learned Counsel appearing for the Respondent college gave more emphasis on the decisions rendered by the Supreme Court to the effect that no admission could be taken in the medical college after the date as specified in the judgment. There is no dispute with regard to the proposition of law laid down by the Supreme Court in the matter of admission in the medical colleges. But here is a case where the Appellant was denied

admission when she reached the college on the last date, only on the ground that she reached the college after 5.00 p.m., when admittedly after

5.00 p.m. 8 candidates were given admission treating those seats as management quota, who have admittedly secured lesser marks than the

Appellant, who was a meritorious candidate.

15. The malafide of the fourth Respondent-college is manifestly apparent and the conduct of the college cannot be approved. However, following

the ratio decided by the Supreme Court, we do not think it proper to cancel the admission of the candidates, who were taken after 5.00 p.m. on

30th Sept., 2010, treating them as candidates under the management quota. But, prima facie, we are of the view that admission to the Appellant

under Government Quota was deliberately denied so also her request for admission under Management Quota, so that the candidates under the

Management Quota could be accommodated on extraneous consideration. The denial of admission led to frustration and resulted in serious

injustice to the Appellant, who is a minor girl hailing from a backward community, and has also adversely affected the career of the Appellant, as

she will not only lose one year, but also it will have a bearing in her future career. Hence, in our view, it is a fit case where the Appellant should be

adequately compensated for the illegality committed by the Respondent college in denying admission to the Appellant in the medical college. We,

therefore, hold that the Appellant shall be entitled to a compensation of Rs. 10 Lakhs (Rupees Ten Lakhs only) and Rs. 50,000/-as litigation

expenses from the 4th Respondent college, which shall be paid to the Appellant within two weeks from today. We further hold that the Appellant

shall be entitled to join the BDS course in the 5th Respondent college where she got admission, if the seat remains vacant. The Appellant shall also

be entitled to appear in the next selection for admission to the MBBS/BDS course for the academic year 2011-2012. The writ appeal is disposed

of with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed.