

(2011) 07 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 16688, 16695 of 2011 and M.P. No's. 1, 1, and 2 of 2011

Sri Muthukumaran Educational Trust

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0086

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Masilamani for T. Meikandan, for the Appellant; V.P. Raman in W.P.No.16688/2011 and 2nd respondent in W.P. No. 16695/2011, E. Sampathkumar, Spl. G.P. and S.T.S. Moorthy, Spl.G.P. for 1st Respondent W.P.No.16695/2011, for the Respondent

Final Decision : Allowed

Judgement

1. By consent of all parties, both the writ petitions are taken up for final disposal.
2. In W.P. No. 16688 of 2011, the Petitioner has challenged the order of the Medical Council of India dated 23.6.2011. In W.P. No. 16695 of 2011 the consequential order passed by the Selection Committee, Directorate of Medical Education dated 11.7.2011 is challenged by the same Petitioner.
3. Both the impugned orders are passed on the ground that Sri Muthukumaran Medical College Hospital and Research Institute, Chennai-69 (hereinafter called as "Medical College"), which was established by the Petitioner Trust as a Self-financing Linguistic Minority Medical College, admitted eight students in excess than the permissible strength of 75 seats allotted to the management quota and therefore the said eight

seats have to be surrendered by the management back to the Government for selection of candidates for admission under the Government Quota

for the academic year 2011-2012.

4. The facts necessary for disposal of these writ petitions are as follows:

(a) The Medical College was granted approval for conducting M.B.B.S. Course by the Medical Council of India for the academic year 2010-2011

by order dated 14.5.2010 for an intake of 150 students. The Tamilnadu Dr. M.G.R. Medical University also granted affiliation for the academic

year 2010-2011. The Petitioner College is granted minority (linguistic) status by the Government of Tamilnadu.

(b) As per the seat arrangement 50% of the sanctioned intake of the students shall be admitted under the management quota and the remaining 50%

of the seats are to be surrendered to the Government of Tamilnadu for filling up of the seats under Government quota for the academic year 2010-

2011. Accordingly, the management surrendered 75 seats to the Government of Tamilnadu and filled up the remaining 75 seats under the

management quota before the last date of admission, that was on 30.9.2010.

(c) The Selection Committee allotted 75 candidates to the Petitioner Medical College, admitted through counselling under the Government quota,

and out of the 75 seats, 67 students alone approached the College with allotment letters upto 5.00 p.m. on 30.9.2010 and eight students did not

report for admission before the prescribed time. The College waited till 5.00 p.m. on 30.9.2010 and the 8 students having not reported for

admission, the management treated the said eight seats as lapsed seats and admitted eight other students under the lapsed seats category.

(d) According to the Petitioner, if the lapsed seats are not filled up, the management will incur huge loss of income for the whole period of course of

4 1/2 years, which will not be compensated by the Government. Therefore, it is the contention of the Petitioner that the Petitioner had not admitted

students in excess of the management quota.

(e) The Petitioner received a communication dated 27.4.2011 from the Medical Council of India stating that the management had admitted eight

students in excess of its management quota and called upon to clarify along with documentary proof. The Petitioner submitted

a representation/clarification stating that till 5.00 p.m. on 30.9.2010 eight

students selected through counselling have not turned up and therefore the seats were filed up under lapsed seats category, which shall not be treated as management quota seats.

(f) On 23.6.2011 the impugned order was passed by the Medical Council of India stating that the eight seats having been filled up in excess of the management quota for the academic year 2010-2011, the management should restrict its admission of students to 67 i.e., reducing 8 seats for the academic year 2011-2012.

(g) The Directorate of Medical education issued consequential order dated 11.7.2011 giving direction to the management to surrender eight seats to the Government quota so as to have 83 seats for allotment by the Government through single window system for the academic year 2011-2012.

(h) The above said orders are challenged in these writ petitions on the ground that the management having admitted eight students under the lapsed

seats category due to non-joining of the Government sponsored students, the said admissions cannot be treated as management quota seats and

should be treated as lapsed seats category and non-consideration of the said aspect in spite of submission of representation to the Medical Council

of India is arbitrary and violative of Article 14 and 19(1)(g) of the Constitution of India. The Medical College being a linguistic minority Medical

College is entitled to admit 75 students under its management quota for the academic year 2011-2012 and if eight seats are surrendered to

the Government, serious prejudice would be caused to the Petitioner and therefore the impugned orders are to be set aside.

5. The Directorate of Medical Education filed a counter affidavit stating that in G.O. (D) No. 557 Health and Family Welfare (MCI-1) Department,

dated 7.6.2011 apportionment of seats between Government and Management of Unaided Medical, Dental Colleges for 2011-2012, was

issued fixing 65% seats to Government and 35% seats to the management for non-minority institutions; and 50% seats for minority institutions and

the remaining 50% be treated as Government quota. In this regard a communication was sent to the Colleges on 10.6.2011 and the Petitioner

medical college also sent a reply surrendering 50% of seats (75 seats). The order issued by the Medical Council of India dated 23.6.2011 was

received by the Directorate of Medical Education as well as by the Government

and it was noticed that for the academic year 2010-2011 the management admitted students in excess of the management quota and as per the Supreme Court judgments, the excess admissions made shall be surrendered to the Government for admission in the next academic year 2011-2012. The order passed by this Court in W.P. No. 15651 of 2009 is also relied on to sustain the impugned orders. It is further stated that against the Petitioner Medical College, one S. Kiruthika filed W.P. No. 22760 of 2010 and complained about the denial of admission; so also one J.E. Ramjee filed W.P. No. 22754 of 2010 seeking refund of Rs. 25,000/- as he was not permitted to join the course; 10. Mr. S.T.S. Moorthy, one V. Sindhu also gave a complaint to the Honourable Chief Minister stating that she was not permitted to join in the college; and one S.P. Murali also alleged irregularities of admission in the management quota through consortium and a complaint to that effect was given to the Principal Secretary to the Government, Health and Family Welfare Department, Chennai-9. Stating all the above said reasons it is contended that the Respondents are justified in giving direction to surrender eight seats to the Government by reducing the management seats to 67 for the academic year 2011-2012.

6. No counter affidavit is filed by the Medical Council of India. Mr. V.P. Raman, learned Standing Counsel appearing for the Medical Council of India argued the legal points.

7. Mr. G. Masilamani, learned Senior Counsel appearing for the Petitioner Trust argued that as per the selection order issued by the Selection Committee, all the students selected through counselling have to report and get admitted by remitting the fees before 5.00 p.m. on 30.9.2010, but eight candidates failed to report for admission before that time and hence after 5.00 p.m. the management treated the said eight seats as lapsed seats and immediately admitted eight other candidates under lapsed seats category on 30.9.2010 itself as the said date being the cut-off date for admission for MBBS course fixed by the Honourable Supreme Court. The learned Counsel submitted that the writ petition filed by the said S. Kiruthika was dismissed, against which she filed W.A. No. 2240 of 2010 and the Division Bench of this Court though not approved the denial of admission to the said S. Kiruthika, taking note of the admission of other candidates, ordered to pay a compensation of Rs. 10 lakhs and Rs. 50,000/- as

litigation expenses by the management and she was permitted to appear for selection in the next selection to MBBS course for the academic year

2011-2012. The learned Senior Counsel also submitted that as against the said Division Bench order, SLP. No. 2197 of 2011 was filed and

the payment of compensation and cost ordered by the Division Bench was stayed on 8.2.2011. Another interim order was passed by the

Honourable Supreme Court on 13.5.2011 giving direction to the management to admit the said S. Kiruthika in the first year MBBS course during

the academic year 2011-2012 against non-government quota, subject to the final decision in the matter.

8. The learned Senior Counsel further submitted that the said S. Kiruthika has not approached the management till date and if she approaches the

management, she has to be provided with a seat under the management quota. The learned senior Counsel further argued that the writ petition filed

by the said J.E. Ramjee is for compensation and the six other students have not complained and the management has no knowledge about the

complaint said to have been given to the Honourable Chief Minister or to the Health Secretary. The learned Senior Counsel also submitted that the

Division Bench of this Court in the decision reported in 2010 WLR 1107 (Medical Council of India v. The Chairman, Sree Mookambika Institute

of Medical Sciences and Ors.) considered similar issue regarding the power of the Medical Council of India giving direction to adjust admission

given by the management more than the prescribed quota of 50% in respect of Sree Mookambika Institute of Medical Sciences and others, which is

also a linguistic minority college wherein 11 candidates failed to join the course till the last date and thereafter the management filled up the 11

vacancies by admitting the students therein. The said judgment was pronounced by the Division Bench considering the judgments of the

Supreme Court viz., Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and (2005) 13 SCC 466 (Al-Karim Educational

Trust v. Medical Council of India). According to the learned Senior Counsel the order of the Medical Council of India to surrender 11 seats for the

next academic year was set aside by the learned single Judge, which was confirmed by the Division Bench. The learned Senior Counsel further

submitted that even though SLP was filed against the said decision in SLP No. 9 of 2011, no stay of the operation of the judgment of the Division

Bench was granted by the Honourable Supreme Court and the SLP was admitted on 14.1.2011. Therefore the matter in issue is covered by the said

Division Bench Judgment.

9. Mr. V.P. Raman, learned Counsel appearing for the Medical Council of India submitted that the judgments of the Supreme Court reported in

Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and (2005) 13 SCC 466 (Al-Karim Educational Trust v. Medical

Council of India) even though were referred in the decision of the Division Bench, the findings therein are not properly appreciated by the Division

Bench and therefore the Division Bench decision may not be applied and the impugned order passed by the Medical Council of India is valid.

The learned Counsel further submitted that even assuming that the Medical Council of India is not having power to issue the impugned order, the

State Government has got every power to give direction to surrender eight seats as the management admitted 83 students, though it was entitled

to admit only 75 seats.

10. Mr. S.T.S. Moorthy, learned Special Government Pleader supported the submissions of the learned Counsel for the Medical Council of India

and submitted that the order passed by the Directorate of Medical Education is to be treated as independent one without reference to the order of

the Medical Council of India and the Directorate/Government has got every right to direct the management to surrender eight seats as the

management admitted more than its allotted seats 2010-2011.

11. I have considered the rival submissions of the learned Senior Counsel for the Petitioner Trust, learned Standing Counsel for the Medical Council

of India and the learned Special Government Pleaders for the Directorate of Medical Education.

12. The facts in these cases i.e., the Petitioner management admitted 83 students in the first year MBBS course during the academic year 2010-

2011 under its discretion is not in dispute. The contention of the management is that eight students allotted by the Selection Committee, constituted

by the Government of Tamil Nadu, have not turned up before the stipulated time and date forgetting themselves admitted and remitted their fees,

that was before 5.00 p.m. on 30.9.2010 and therefore the management treated the said eight seats as lapsed seats after 5.00 p.m. as no other

students were sponsored/sent by the Selection Committee for admission under the Government quota. All the eight seats which were vacant by 5.00

p.m. on 30.9.2010 were filled up by the management and there is factually 83 admissions made by the management, i.e., 75 under management

quota and 8 under the lapsed seats category.

13. The Honourable Division Bench of this Court in W.A. No. 2240 of 2010, judgment dated 7.1.2011 gave a finding that the admission to the

Appellant therein (S. Kiruthika) under the Government quota was deliberately denied by the Petitioner management. The Division Bench after

narrating the facts of the said case in paragraphs 12, 13 and 15 held as follows:

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 fees 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 counselling, 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.

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

Ultimately the Division Bench was of the view that the admission given to the

candidates under the management quota after 5.00 p.m. on 30.9.2010 cannot be cancelled and the Appellant was awarded with a compensation of Rs.10,00,000/- and Rs. 50,000/- towards litigation expenses. The said finding given by the Division Bench was challenged in SLP and the order granting compensation and cost to the said candidate was stayed by the Honourable Supreme Court in SLP No. 2197 of 2011 by order dated 8.2.2011. The candidate was given interim relief by giving direction to the Petitioner management to admit her under the management quota during the academic year 2011-2012 by order dated 13.5.2011. Thus, it is manifest that out of the 75 seats available for the management for the academic year 2011-2012, one seat gets reduced by accommodating the said S. Kiruthika. The said SLP is still pending before the Honourable Supreme Court and the findings arrived at by the Division Bench has not been stayed. The said aspect, namely reduction of one seat under the management quota for the academic year 2011-2012 was not considered by the Medical Council of India as well as the Directorate of Medical Education while passing the impugned orders.

14. The issue as to the candidates selected under the Government quota if not turned up for admission before the time granted for admission, whether such seats could be treated as lapsed seats or not was considered in the decision reported in (2010) 1 MLJ 923 (Chairman, Sree Mookambika Institute of Medical Sciences Velayutham Pillai Memorial Hospital Complex v. Union of India). The Medical Council of India having aggrieved, filed writ appeal before the Division Bench and the said judgment is confirmed in the decision reported in 2010 WLR 1107 (Medical Council of India v. The Chairman, Sree Mookambika Institute of Medical Sciences and Ors.). In the said decision also the two decisions of the Supreme Court reported in Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and (2005) 13 SCC 466 (Al-Karim Educational Trust v. Medical Council of India) were considered and held that the Medical Council of India can verify whether any institution has admitted more than the sanctioned strength or not and it has no role to say regarding the seat sharing arrangement between the State Government and the management. In terms of the said judgment the excess admission made, claiming it as lapsed seats category by the management of Sree

Mookambika Institute of Medical Sciences was not allowed to be admitted under Government quota in the subsequent year 2010-2011. It is

admitted by all the learned Counsels that though SLP No. 9 of 2011 was admitted, no stay of the operation of the said judgment was ordered by the

Honourable Supreme Court. As a single Judge dealing with identical issue, I am bound by the judgment of the Division Bench, particularly when no

stay is granted by the Honourable Supreme Court.

15. The decision cited by the learned Special Government Pleader in W.P. No. 15651 of 2009 dated 16.9.2009 relating to excess admission made

by Melmaruvathur Adhiparasakthi Institute for the year 2008-2009 was rendered prior to the Division Bench judgment reported in 2010 WLR

1107 (Medical Council of India v. The Chairman, Sree Mookambika Institute of Medical Sciences and Ors.). Therefore I am unable to follow the

said judgment in this case.

16. It is worthwhile to point out that this kind of situation could have been avoided if the Selection Committee was vigilant enough to allot the

Government quota students to the Private Medical Colleges, by giving sufficient time for the candidates to join, at least ten days before the cut-off

date for admission into MBBS Course, i.e., before 30th September of the calendar year, so that if any candidate selected through counselling failed

to join, the managements will be compelled to report the matter to the Selection Committee and the Selection Committee will have sufficient time to

send candidates, who are waiting for admission. If such procedure is adopted, all the seats under the Government quota can be filled up every year

without any difficulty. Since the candidates selected through counselling are not given sufficient time, such kind of complaints are raised against the

managements enabling the managements to accommodate the candidates of their choice on extraneous circumstance as observed by the Division

Bench in W.A. No. 2240 of 2010 dated 7.1.2011. It is also an admitted fact that in every academic year, admission of candidates for M.B.B.S.

Course commences at least in the month of July and the admission need not be delayed till the last moment i.e., till the end of September every year.

The classes for the course also commence in the first weeks of August every year. If filling up of all the Government quota seats are completed in

advance, i.e., prior to the cut-off date of 30th September every year, this kind of

complaints against the managements can be avoided and

meritorious students waiting for admission under Government quota will be in a position to get seats in private medical colleges according to their

rankings. The Selection Committee, Government and Medical Council of India are very much aware of loss of 11 seats to Sree Mookambika

College for admission in the academic year 2009-2010 and 8 seats in the case of the Petitioner College in the academic year 2010-2011. Hence a

direction is issued to the Selection Committee to see that the admissions in all medical colleges including the self-financing colleges under the

Government quota are completed well in advance as far as possible, though 30th September of each academic year is fixed as the last date.

17. These writ petitions are allowed by following the Division Bench judgment reported in 2010 WLR 1107 (Medical Council of India v. The

Chairman, Sree Mookambika Institute of Medical Sciences and Ors.). If the SLP filed against the said judgment viz., SLP No. 9 of 2011 is

allowed by the Honourable Supreme Court, the said management will be forced to surrender 11 seats. Therefore it is observed that if SLP No. 9

of 2011 is allowed, it is open to the Respondents herein to pass appropriate orders directing adjustment of seven (7) seats in future in respect of the

Petitioner College also. No costs. Connected miscellaneous petitions are closed.