

SUPREME COURT OF INDIA

Medical Council of India

Vs.

G. Udhaya Bharathi

S.L.P.(C) No. 7491 of 2004

(Mrs.Ruma Pal and Arun Kumar JJ.)

12.07.2004

ORDER

1. Leave granted.

2. The respondent No. 1 had filed a writ petition wherein he claimed that although he was more meritorious, he was not granted admission to the M.B.B.S. course whereas (H. Sruthi, the respondent No.5 in the writ petition) who had only applied for B.D.S. course had been granted admission to the M.B.B.S. course. The High Court disposed of the writ petition by upholding the contention of the respondent No. 1 and directing that the State Government should ask the Medical Council of India for permission to create an additional seat and the Tamil Nadu M.G.R. Medical University for grant of affiliation. Admittedly, the sanctioned strength of the college in question is 100 and if the respondent-writ petitioner is admitted it would become 101, i.e., beyond the sanctioned capacity. Sanction of a vacancy must precede the admission against it. Despite this the High Court directed the respondent-writ petitioner to be admitted for the Academic Year 2003-04 on the assumption that the sanction would be granted by the Medical Council of India.

3. The Respondent No.1 submitted an undertaking which has been set out at page 198 of paper book in which he has said that his admission was subject to obtaining permission from the M.C.I. for the creation of an additional seat and that he would not hold the Management of the college responsible for cancellation of his admission. It is also noted in that undertaking that the Respondent No. 1 was aware of this Court's order dated 29.10.2003.

4. The order dated 29.10.2003 was the decision of this Court which dismissed the writ petition filed by the M.N.R. Medical College and Hospital regarding extension of time for admitting students. The order was passed in keeping with the earlier decision of this Court dated 11.9.2002 in Medical Council of India vs. Madhu Singh by which this Court had said that the schedule for admission fixed by the Medical Council of India should be adhered to. The writ petitioner was admitted in December, 2003 much after the last date for admission. The High Court's order is not only contrary to the directions given in Madhu Singh's case but also directs admission, beyond the sanctioned capacity of the college, a course of action

which the High Court itself had correctly deprecated by saying that directions for creation of an additional seat were not proper as the strength is determined and approved by the Medical Council of India considering the availability of infrastructural facilities.

5. However, the Respondent No. 1-writ petitioner has been pursuing his studies pursuant to the impugned order at-least from the beginning of this year. In that view of the matter, we are of the view that the respondent- writ petitioner should be granted admission for the academic year 2004-05 without any further counselling within the permissible intake limit. #

6. This order is being passed in the presence of all the authorities in question including the State of Tamil Nadu which will abide by this direction without any further demur or delay.

7. The Civil Appeal is accordingly disposed of.

No costs.