

SUPREME COURT OF INDIA

S.Nihaal Ahamed

Vs.

Velammal Medical College Hospital and Research Institute & Ors.

C.A.No.8067-8068 of 2015

(M.Y.Eqbal and C.Nagappan,JJ.,)

30.09.2015

JUDGMENT

C.Nagappan,J.,

SLP(Civil) Nos.3139-3140 of 2015

1. Leave granted.

2. All these appeals have been preferred against the common judgment dated 25.9.2014 passed by the Madurai Bench of Madras High Court in Writ Appeal (MD)Nos. 794, 898, 921 and 923 of 2014.

3. The facts are briefly as follows: The appellants passed Higher Secondary examination in March 2013 and submitted application for admission to M.B.B.S. Course to the Consortium of Tamil Nadu Private Professional Colleges Association, affiliated to the Tamil Nadu Dr. M.G.R. Medical University which is one of the respondents herein, and both of them had preferred the same Private Medical College which is also one of the respondents herein, as their first choice. On 23.9.2013 results were published in which appellant-Nihaal Ahamed was placed in Rank No. 731 and appellant-Gayathri in Rank No. 551 in the merit list. According to them, they went to the respondent-Medical College on 24.9.2013 and sought admission and they were directed to come after 26.9.2013. Both of them made complaints against respondent-Medical College to the Monitoring Committee which is one of the respondents herein and the said Committee called for remarks from the Medical College. Meanwhile the respondent-Medical College drafted letters dated 24.9.2013 addressed to both the appellants which were posted on 29.9.2013 directing them to appear for counselling on 26.9.2013. The appellants received the said letters on 1.10.2013 and 30.9.2013 respectively and immediately approached the respondent-Medical College to allot seats and same was refused on the ground that they did not approach them within the stipulated time. Both the appellants filed independent writ petitions on the file of the Madurai Bench of Madras High Court seeking for issuance of writ of mandamus to direct the respondent-Medical College to admit them in the first year M.B.B.S. Course for the academic year 2013-14 in their college.

Learned Single Judge heard both the writ petitions and by common order held that the appellants- writ petitioners were not entitled for admission in the M.B.B.S. Course and on the other hand they are each entitled to a sum of Rs. 3 lakhs as compensation payable by the respondent-Medical College within a period of 8 weeks. Challenging the denial of relief of admission, both the appellants preferred independent writ appeals and challenging the grant of compensation, the respondent-Medical College preferred two writ appeals. The Division Bench affirmed the view of the learned Single Judge that the appellants were not entitled for the admission in the M.B.B.S Course and dismissed the writ appeals preferred by them. It further held that the appellants are not entitled for compensation and allowed the writ appeals preferred by the respondent-Medical College. Aggrieved by the same, appellants have preferred the present appeals.

4. Mr. M. Ajmal Khan, learned senior counsel appearing for the appellant-Nihaal Ahamed contended that the appellants approached the respondent-Medical College on 24.9.2013 itself and the college with a malafide intention directed them to come after 26.9.2013 and on the complaint lodged by the appellants with the Monitoring Committee, in order to wriggle out, the respondent-Medical college drafted ante dated letters dated 24.9.2013 and posted it calling upon the appellants to appear for counselling at a prior date and in fact the college had given admission to students who had secured lesser marks than that of the appellants and the appellants are entitled for the relief sought for in the writ petitions. We also heard the submission of the learned counsel appearing for the appellant-Gayathri. Mr. Krishnan Venugopal, learned senior counsel appearing for the respondent-Medical College contended that the appellants were orally told on 24.9.2013 to report on 26.9.2013 in the college and the call letters dated 24.9.2013 were also sent and since they were not present in the college on 26.9.2013, the vacancies were filled up according to merit list and there is no denial of admission to the appellants and they are not entitled to any relief. We also heard learned counsel appearing for the other respondents.

5. It is not in dispute the Consortium of Medical Colleges issued a prospectus for admission to the M.B.B.S. Course and as per the instruction therein, preference would be given to first choice opted by the candidate. In the merit list published by them on 23.9.2013 the names of the appellants found place at Sl. Nos. 731 and 551 respectively. It is also not in dispute that both the appellants had opted the respondent-Medical College as their first choice. Both of them had in fact approached the respondent-Medical College on 24.9.2013 for admission and they were directed to come after 26.9.2013. Annoyed by the reply they immediately sent complaints to the Monitoring Committee which now in turn called for the remarks of the respondent-Medical College. The learned Single Judge in his order has observed that the respondent-Medical College admitted the receipt of the communication from the Committee on the very same day in the evening and there is also a specific admission to that effect in the counter affidavit filed by them. Thereafter the respondent-Medical College drafted letters dated 24.9.2013 directing the appellants to appear for counselling on 26.9.2013 and marked copy of the same to the Monitoring Committee. The said letters have been posted only on 29.9.2013 as evident from the post office seal affixed on the envelope produced by the appellants. The finding of the learned Single Judge that the respondent-Medical College is at fault in not sending call letters in time is based on proper appreciation of factual matrix.

6. After having culled out the broad principles from the previous decisions, this Court in the decision in *Chandigarh Administration and another Vs. Jasmine Kaur and others*¹; held as follows:

“If a candidate is not selected during a particular academic year due to the fault of the institutions/authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimized for no fault of his/her and the court may consider grant of appropriate compensation to offset the loss caused, if any.”

The appellants herein though placed in the merit list could not secure admission due to the fault of the respondent-Medical College. As rightly held by the High Court they are not entitled to the relief of admission sought for by them in the writ petition due to lapse of time.

7. Reliance was placed by the appellants on the order of this Court dated 2.9.2014 in *Krina Ajay Shah and Ors. Vs. The Secretary, Association of Management of Unaided Private Medical and Dental Colleges, Maharashtra and ors*². The said bunch of SLPs was filed in 2013 and the petitioners therein were students who appeared for the entrance examination conducted by the Association of Private Medical Colleges and Dental Colleges, Maharashtra and the petitioners were heard together and this Court held that inspite of the pendency of the SLPs for over a year, the State of Maharashtra never thought it fit to file any affidavit explaining its stand in the matter and the grievance of the petitioners was fully justified but the petitioners cannot be granted admission in view of the long lapse of time but they are entitled to public law damages and awarded a sum of Rs. 20 lakhs to each one of the petitioners as public law damages. In the present case the learned Single Judge after elaborately considering the facts and circumstances held that the appellants-writ petitioners are entitled to a sum of Rs. 3 lakhs each as compensation payable by the respondent-Medical College and directed to pay within a period of 8 weeks. The said direction has been erroneously reversed by the Division Bench. In our view the order of the learned Single Judge has to be restored.

8. In the result the appeals are partly allowed and the impugned judgment in so far as setting aside the order of the Single Judge awarding compensation to the appellants is, set aside and the order of the Single Judge awarding compensation of Rs. 3 lakhs to each of the appellants is restored alongwith time schedule for payment.

¹(2014) 10 SCC 0521

²SLP No. 31900 of 2013