(2011) 08 MAD CK 0357

Madras High Court (Madurai Bench)

Case No: W.A. (MD) No. 278 of 2011

M.S. Muhammed Sheik Abdullah		APPELLANT
	Vs	
The Secretary Selection Committee Director of Medical Education and Others		RESPONDENT

Date of Decision: Aug. 23, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 142, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 302

Citation: (2011) WritLR 924

Hon'ble Judges: P. Jyothimani, J; M.M. Sundresh, J

Bench: Division Bench

Advocate: K. Duraisamy for M. Muthumani Doraisami, for the Appellant; K. Mahendran, for Respondent 1, Issac Mohanlal, for Respondent 2, V.P. Raman, for Respondent 3, C. Karthick, for Respondent 4 and K.K. Senthilvelan, ASGI for Respondent 5, for the Respondent

Judgement

M.M. Sundresh, J.
Before dwelling upon the issues involved in this appeal, the factual matrix involved requires a thorough narration.

2. The Honorable Apex Court in Medical Council of India Vs. Madhu Singh and Others, in order to regulate, avoid and prevent admission of students in the midstream of a medical course had issued certain directions. The directions as issued are apposite and they are extracted hereunder:

23. There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should

be the date for commencement of the course.

In conclusion

(i) there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;

(ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;

(iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

(v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time;

(vi) no variation of the schedule so far as admissions are concerned shall be allowed;

(vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.

3. The said directions have been issued in the appeal filed by the Medical Council of India, the third Respondent herein in a case involving admissions made to the seats available for the academic year 1997-98.

4. Seemingly complying with the directions issued by the Honorable Apex Court referred supra, the Respondent No. 5 has published the following time schedule for the completion of the admission process for Medical and Dental Courses. The same is extracted hereunder:

Schedule for Admission	First MBBS/BDS Course		Post graduate Courses		Super-Specialty Courses
	All India Quota	State Quota	All India Quota	State Quota	
Conduct of Entrance Examination:	Month of May	Month of may	2nd Sunday of January	Mid-Jan. To Mid-Feb.	May-June

Declaration of Result of Qualifying Exam./Entrance Exam.:	By 5th June	By 15th June	3rd week of Feb.	By 28th February	By 30th June
1st round of counseling/admission:	20th to 29th June	To be over by 17th July	5th March to 22nd March	To be over by 25th April	To be over by 25th July
Last date for joining the allotted College and Course:	18th July @	29th July	7th April	1st May	31st July
2nd round of counseling or allotment of seats from Waiting List:	01st August to 08th August	25th to 28th August	No 2nd Counseling	No 2nd Counseling	No 2nd Counseling

Last date for joining for candidates allotted seats in 2nd round of Counseling or from the Waiting List:	22nd August (Seats vacant after this date will be surrendered back to the States/Colleges)	30th August	After 7th April, vacant seats will stand surrendered back to the States/ Colleges	Not Applicable	Not Applicable
Commencement of academic session:	Between 01st August to 31st August		02nd May		01st August
Last date up to which students can be admitted against vacancies arising due to any reason:	30th September		31st May		30th September

NOTE: @ Head of the Colleges should intimate the vacancies existing after 15th July in respect of the All India Quota of seats to the DGHS latest by 25th of July.

5. The said time schedule has been circulated to all the Government authorities dealing with the admission process in various parts of the country.

6. The Appellant belonging to a backward class (Muslim Community) made an application for MBBS Course for the academic year 2009-2010. In the merit list published by the first Respondent, he was shown as 2215 covering the general

category and 99 covering his community status. He was called for the counseling on 14.07.2009 and was waitlisted for the MBBS Course. In the subsequent counseling also, he was not selected in the Self Financing Medical Colleges for want of vacancies. On 29.09.2009, another candidate, by name, Selvi.Shafeequa Jammal expressed her unwillingness to join the medical course and hence, the Appellant was called on 30.09.2009. The seat available in the Government quota with the respondent No. 2 was filled up by way of allotment in favour of the appellant. The Appellant paid a sum of Rs. 25,000/- towards the partial amount of the tuition fee for admission with the second Respondent after paying the processing fee of Rs. 500/-. The allotment order was issued on 30.09.2009.

7. After the admission was made, the Appellant duly sent a fax message to the second Respondent which was received at about 3.30p.m. An intimation was also sent by the first Respondent to the second Respondent. The Appellant could reach the second Respondent which is situated at Kulasekaram, Kanyakumari District only during night time, as the allotment and admission was made in the afternoon at Chennai by the first respondent. In the meanwhile, the second Respondent has filled up the vacancy after 5.00p.m. on the same day - 30.09.2009. When the Appellant approached the second Respondent, he was informed that the seat has been filled up as he failed to turn up to the College on 30.09.2009.

8. The Appellant filed a Writ Petition in W.P. No. 9979 of 2009, seeking a direction to the second Respondent to admit him as per the order dated 30.09.2009. An order was passed by the learned single Judge in M.P.(MD) No. 1 of 2009 dated 28.10.2009 to protect the interest of the appellant by making alternative arrangements. Thereafter, by order dated 11.11.2009, based upon the submission made by theLearned Counsel appearing for the second Respondent a direction was issued to admit and permit the Appellant and attend classes from 12.11.2009 onwards. By a subsequent order in M.P.(MD) No. 1 of 2010 dated 14.05.2010, the Appellant was permitted to write the examinations. However, the writ petition was dismissed by the learned single Judge holding that the Appellant having been admitted after 30.09.2009 contrary to the directions issued in Medical Council of India Vs. Madhu Singh and Others, the relief sought for cannot be granted.

9. Challenging the dismissal of the writ petition, the Appellant filed this Writ Appeal. At the time of admitting the Writ Appeal, the appellant was permitted to continue the course. Thereafter, the Appellant filed another application to publish the results. Since all the counsels appearing for the parties requested this Court to take up the main appeal itself, by consent we have taken it and a final order are passed.

10. Heard the learned senior counsel appearing for the Appellant as well as the Learned Counsels for Respondents.

11. Ratio decidendi in Medical Council of India Vs. Madhu Singh and Others,

11.1. The Honorable Apex Court has expressed its concern about the midstream admissions in a professional College. The issue involved before the Honorable Apex Court was as to whether the midstream admission can be made. A reliance was made upon the judgment rendered in Dr. Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, in which it has been held that there is a necessity for providing the specific time schedule for the medical course. A further observation was made to the effect that the period will have to be fixed during which admission can take place and no admission can be made after the schedule date which should be the date of commencement of the course. Accordingly, directions were issued towards the fixing of a time schedule specifying the duration of the course, date of commencement and the last date of admission.

11.2. We have perused the judgment of the Honorable Apex Court in detail. It makes it very clear that an admission cannot be made in the midstream. Therefore, the Honorable Apex Court was concerned with the admission and not the actual attendance of the class. That is the reason why the time schedule was prescribed. However, we find that the third respondent has misconstrued the ratio laid by the Honorable Apex Court.

11.3. It is trite law that a judgment cannot be read like a statute. A ratio laid down in a decision must be culled out from a entire reading of it and not from a part. It has been held in Som Mittal Vs. Government of Karnataka, that "words and phrases" in a judgment cannot be interpreted like provisions of statute as they should be read and understood contextually. The following paragraph in the said judgment is apposite:

9. When the words "rarest of rare cases" are used after the words "sparingly and with circumspection" while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words "sparingly and with circumspection". They mean that the power u/s 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences u/s 302 Indian Penal Code, but to emphasise that the power u/s 482 Code of Criminal Procedure to quash the FIR or criminal proceedings should be used sparingly and with circumspection. judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasising a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation.

11.4. Similarly the Hon''ble Supreme Court in Commissioner of Central Excise Bangalore v. Srikumar Agencies etc. AIR 2009 SCW 942 has held in the following manner:

4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid''s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Company Ltd. v. Horton 1951 AC 737 at p.761, Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes,J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office v. Dorset Yacht Company 1970 (2) All ER 294 Lord Reid said, "Lord Atkin''s speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537 Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

5. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." *** *** ***

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

11.5. A perusal of the schedule provided by the fifth Respondent would show that it is only a time schedule for completion of admission process for medical course. It has been mentioned therein that the last date up to which a student can be admitted against the vacancies arising due to any reason is 30th September. Therefore, it makes it clear that 30th September as a last date for admission and not the date for joining. However, the same time schedule speaks about the commencement of academic session as between 1st August to 31st August. We find that the commencement of academic session is made much prior to the last date of admission and hence not in consonance with the ratio laid down by the Honorable Apex Court. However, as it has not been put into challenge, we do not wish to go into the same except by observing that for the next academic year starting from 2012-2013, the third and fifth Respondents will have to apply their mind and comply with the directions issued by the Honorable Apex Court in the decision referred supra, in letter and spirit by preparing a time scale for the completion of the admission process before the starting of the course.

12. Definition of admission, joining and attending:

12.1. In the present case on hand, the order dated 30.09.2009 issued by the first Respondent speaks about the date of joining the College as 30.09.2009 at 10.00 a.m. It is not in dispute that the said order was issued after 10.00 a.m. The payment of Rs. 500/- by the Appellant was for a processing fee for admission. The subsequent payment of Rs. 25,000/- is a part of a tuition fees for admission. The second Respondent can only fill up all the seats in the management quota alone meaning thereby the remaining 50% has to be filled up under the state quota. Therefore, the second respondent has got no choice to accept the list of admission provided by the first Respondent. When the Appellant has paid the admission fees in pursuant to the order dated 30.09.2009 it would certainly amount to an admission into the second Respondent College. The word ''admission'' is nothing but an act of allowing a student to enter into college. It has been defined in the Oxford Dictionary as, "the act of allowing to enter a school - college to be placed etc." Similarly, Webster''s Dictionary defines the word "admission" in the following manner:

1. to allow to enter, grant or afford entrance to;

2. to admit a student to college;

3. to give right or means of entrance; and

4. to permit.

12.2. The above said definition of the word ''admission'' would leave no doubt in our mind that once a student pays the part of the fees and when a management does not have any role in the process of allotment, it cannot be said that it doesn''t amount to admission. The compliance of subsequent process is nothing but a consequential or incidental action on the part of the student. When once a student pays the amount though in part then he cannot be denied the seat. It is trite law that while interpreting a word the Courts will have to give its actual, natural, simple, logical and clear meaning, when it is not ambiguous.

13. Admission is followed by joining the course:

13.1. Therefore, joining in a course is totally different from admission. There may be a case in which after admission a student may not join the course. The Honorable Apex Court was concerned with the admission and not the joining in a course. There is no law which enjoins a duty of a student to join on the same day of admission. The Honorable Apex Court was concerned with the admission because joining is consequential. Therefore, in a case where an admission is permissible in law then merely because a student has not joined on the very same date of admission, the admission made already would not be nullified. When a student once gets admitted then after joining he would start attending the course. Therefore, the word admission, joining and attending are to be read one after another.

13.2. Hence, we are of the view that a cumulative consideration of the allotment order, payment of processing fee and a part of fee would certainly lead to the irresistible conclusion that the Appellant was in fact admitted on 30.09.2009 but only could join on 01.10.2009 as it was impossible for him to do so on the same day.

14. Role of Respondent No. 2:

14.1. The matter can be looked from a different angle as well. The second Respondent was aware of the admission of the Appellant as discussed above. What was required to be done is only a reporting. It is the case of the second Respondent that an admission was made by admitting another candidate in the management quota. However, even that candidate admittedly did not attend the class on 30.09.2009. In other words, the candidate who has been admitted and permitted to attend the class was given such a permission only on the next day in which the Appellant was also ready. Further, such a student could have been admitted only after 5.00 P.M. on 30.09.2009. The second Respondent has presumed that the admission has got cancelled automatically whereas when two candidates were reporting on the same day, the candidate seeking admission under the management quota was given permission to attend the class as against the Appellant. The admission of the Appellant has not been acknowledged and the second respondent has got no power to cancel such an admission. Hence, we are of the view that the second Respondent has totally misconstrued the entire issue to the suffering and misery of the Appellant.

14.2. The Appellant admittedly gave a fax message on 30.09.2009 intimating about his admission. The message was also received by the second Respondent before 5.00 p.m. on the same day. It is the case of the first Respondent also that an intimation has in fact been given. When that is the position, the second Respondent ought not to have admitted another student in the management quota. In all fairness, the second Respondent ought to have waited for the Appellant to join on the next day of the admission. As a result, the Appellant could not join the course and he was constrained to file the writ petition. The Appellant was permitted to attend the classes only in pursuant to the orders of this Court in the month of November, 2009 and thereafter permitted to write the examinations.

15. Now, it has been informed by theLearned Counsel for the fourth Respondent that the Appellant did not have the adequate attendance, for the first year course conducted in the year 2009-2010 as he is said to have secured 75% as required the mandatory attendance of 80%. Even though the second Respondent has acted fairly before the learned single Judge and before us through its counsel, we feel that the Appellant has been wronged as he was made to lose the attendance by the wrong approach committed by it. The Appellant should have been in the place of candidate who has admitted under the management quota from the date of his reporting for joining the course. Hence, we hold that the second Respondent is responsible for the creation of present scenario as the Appellant is not in a position to continue his course due to lack of attendance over which a court of law has no role to play.

16. Nature of relief:

As discussed above, the records would reveal that the Appellant lacks the required attendance which cannot be condoned. The statute, neither provides for such a procedure nor this Court can take the role of an authority which deals with the academic standard of education. Therefore, the only question to be considered is the nature of relief that can be given to the Appellant who has been wronged for the no fault of his. The Appellant would be losing two years for the mistake committed by others. We have directed the Respondents to produce the examination results attended by the Appellant. We found that the Appellant has cleared all the examinations. The Appellant has complied with all the requirements as required by him. He paid the part of the tuition fees and was ready to pay the remaining amount. He promptly reported to the second Respondent College the very next day. He attended the course continuously from the date of directions issued by this Court. Hence, we are of the view that the Appellant is entitled to get appropriate and adequate relief at the hands of this Court.

17. Law and Equity:

17.1. When an action of an authority is unreasonable leading to an irreparable injury to the person wrong then this Court can step in and try to redress the same to the extent possible. A relief under Article 226 of the Constitution of India can also be

moulded when a higher relief sought for cannot be granted. When there is a civil wrong committed by way of a violation of law, the same can be remedied as enforcement of a legal right. Therefore, a right of a litigant to get the redressal through a court of law is a legal right so also the violation of a legal right. Thus a equitable right in a given case becomes a legal right.

17.2. Equity becomes part of the law when granting a relief is not forbidden or contrary to any law. In fact equity is inherent in law and it is ingrained in the conscience of a man. Therefore, it forms part of a natural law. That is the reason why equity plays a major role in the enforcement of fundamental rights under the Constitution of India. Hence, as we feel that the Appellant has clearly made out a case that his legal rights are violated and he has got a legal right to get it remedied before this Court and the relief to be granted is not forbidden by law, the relief to the Appellant will have to be suitably modified as a writ court is a court of law and equity.

18. Scope of a writ of mandamus:

18.1. A writ of mandamus can be issued wherever there is an irreparable loss committed by a party by the violation of a legal right. The power under Article 226 of the Constitution of India is rather wide. When this Court finds that the Appellant has been wronged and an irreparable loss has been committed then as a necessary concomitant the appropriate relief will have to be given. Considering the scope of Article 226 of the Constitution of India in relation to the relief to be granted it has been held in Food Corporation of India and Another Vs. SEIL Ltd. and Others, .

23. Article 14 of the Constitution of India has received a liberal interpretation over the years. Its scope has also been expanded by creative interpretation of the court. The law has developed in this field to a great extent. In this case, no disputed question of fact is involved.

24. The High Court, in an appropriate case, may grant such relief to which the writ Petitioner would be entitled to in law as well as in equity.

25. We do not, thus, find any substance in the contention of Mr Sharan that while exercising its review jurisdiction, no interest on the principal sum could have been directed to be granted by the High Court. A writ court exercises its power of review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity.

18.2. Similarly, in Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, it has been held by the Honorable Apex Court that a writ of mandamus can be granted when there is a statutory duty is imposed upon the authority concerned and there is a consequential failure. Therefore, in such a situation,this Court can compel the performance of public duties. The following paragraph of the judgment referred supra is apposite.

12. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh1 after referring to the earlier decisions in Lekhraj Sathramdas Lalvani v. N.M. Shah, Rai Shivendra Bahadur (Dr.) v. Nalanda College3 and Umakant Saran (Dr.) v. State of Bihar4 this Court observed as follows in para 15 of the Reports (SCC): (Sipahi Singh case, SCC pp. 152-53)

15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party? has a legal right under the statute to enforce its performance.

18.3. The facts narrated above would clearly demonstrate that in pursuant to the admission made there was a corresponding duty which is a public duty fastened upon the second Respondent to complete the process and permit the Appellant to continue the course and for the failure of the same, this Court can certainly issue appropriate directions.

18.4. Admittedly, the Appellant does not have the attendance for the academic year 2009-10. When the statute prescribes minimum attendance then this Court cannot issue any direction over the same which is impermissible in law. However, the Appellant was admitted to the second respondent College and underwent the course. As discussed above, absolutely there in no fault on the part of the Appellant. Considering the identical situation the Honorable Apex Court in Medical Council of India v. G. Udhaya Bharathi and Ors. and Medical Council of India v. Naina Verma and Ors. has held that the students involved in those cases will have to be given a seat in the next academic year. In fact, the third Respondent was a party in all those cases as found in the counter affidavit filed by it. Even though the said judgments have been rendered in exercise of the power under Article 142 of the Constitution of India, considering the peculiar facts of the case, coupled with the further fact that the third Respondent was also a party and after taking note of the submissions made by theLearned Counsel for all the parties, we are of the view that the Appellant will have to be provided a medical seat for the ensuing year 2011-2012 in the Government quota in the second Respondent College.

18.5. When this Court in S. Kiruthika Vs. The State of Tamil Nadu and Others, imposed a cost of Rs. 10,00,000/- on the management for not providing a seat and issued a direction permitting the student to appear for the next academic year, the Honorable Apex Court in Civil Appeal No. 2197 of 2011 has issued a direction to admit the student concerned to the MBBS Course during academic year 2011-2012.

Considering the fact that the second Respondent has in fact admitted only 99 students in the year 2010-2011 and also taking note of the further fact that the Appellant cannot continue in pursuant to the admission made the year 2009-2010, we are of the view that the Respondents 1 and 2 will have to admit him in the Government quota for the academic year 2011-2012.

19. Conclusion:

Considering the over all situation and taking note of the plight of the Appellant who being a student having been put into untold misery and in the interest of justice, we issue the following directions which we feel would be the appropriate relief.

(i) The Respondents 1 and 2 shall admit the Appellant in the Government quota in the second Respondent college for the academic year 2011-2012.

(ii) The fees paid by the Appellant already will have to be adjusted for the fees payable by him.

(iii) As there was a mistake on the part of the second respondent resulting in the present situation and the Appellant has lost two valuable years in his career with the mental agony of redoing the course done already, we direct the second respondent not to charge any tuition fees from the Appellant till the completion of the course. Insofar as the fee payable by the Appellant to the university is concerned, the same shall be paid by him.

(iv) A direction is issued to the 3rd and 5th Respondents to take appropriate steps to comply with the directions issued by the Honorable Apex Court in Medical Council of India Vs. Madhu Singh and Others, for the academic year 2012-2013 onwards, so as to avoid any such anomalous situation like the case on hand.

21. The Writ Appeal is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.