

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION NO: 1715 OF 2024

Between:

1. Dr. D. Anvesh Kumar Reddy, S/o D. Krishna Reddy,
2. Dr. Neelakanth U Parappanavar, S/o Uday S.Parappanavar,
3. Dr. B. Susruth kumar, S/o B. Srinivas,
4. Dr. Kaknale Harish Kumar, S/o Suryakant,
5. Dr. Netala Simhachala Varaprasad, S/o N. Appa Rao,
6. Dr. P. Naveen Chandratej, S/o P Narasimham,
7. Dr. Manigonda Ganesh, S/o Somasekhar,
8. Dr. Harshavardhan Guptha, S/o Narasimha murthy,
9. Dr. Pabba Anish, S/o Pabba Kailash,
10. Dr. Prafulla Kumar Singh, S/o T. N Singh,
11. Dr. Jawahar Shaik, S/o Abdul Salam,
12. Dr. Chandrashekhar Bhandiwad, S/o Siddappa Bhandiwad,
13. Dr. Palle Sharmila, D/o Palle Narasimhulu,
14. Dr. Surepally Arpitha, D/o S.Krishaniah,
15. Dr. Srilatha Jamm, D/o J. Chandra Rao,
16. Dr. Sanujit Pawde, S/o Apury Pawde,
17. Dr. Yogesh Ramesh Jadhav, S/o Ramesh Jadhav,
18. Dr. Tanniru Siva Kumar, S/o T Nageshwar Rao,
19. Dr. Addagarla Varun, S/o A Venkataramana,
20. Dr. S. Nevin, S/o M.S.Sadeep,
21. Dr. P. Sudarshan Reddy, S/o P. Damodar Reddy,
22. Syed Zia Hussain, D/o Yed Saleem Pasha hussaini
23. Dr A Mahendra Varadhan, S/o A Asokan

Petitioners

AND

1. Union of India, Represented by its Secretary, Department of Health and Family Welfare, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi - 110011.
2. State of Telangana, Represented by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat, Hyderabad.
3. Directorate General of Health Services, Represented by its Director, Ministry of Health and Family Welfare, Nirman Bhawan, Rajpath Area, Central Secretariat, New Delhi, Delhi-110001.
4. National Medical Commission, Represented by its Chairperson, Satarkta Bhawan, G.P.O. Complex, Block A, INA, New Delhi-110023.
5. Directorate of Medical Education, Represented by its Chairman, Government of Telangana Koti, Hyderabad, Telangana.

6. Telangana State Medical Council, Represented by its Chairman, P. B. 523, Sultan Bazaar, Near Post Office, Opposite Womens College, Hyderabad, Telangana 500095.
7. Kaloji Narayana Rao University of Health Sciences, Represented by its Vice Chancellor, Warangal, Telangana- 506007.
8. Osmania Medical College, Represented by its Principal, 5-1-876, Turrebaz Khan Rd, Troop Bazaar, Koti, Hyderabad, Telangana 500095.
9. Gandhi Medical College, Represented by its Principal, Musheerabad, MIGH Colony, Walker Town, Padmarao Nagar, Secunderabad - 500003, Telangana

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any writ, order or direction, more particularly in the nature of writ of mandamus declaring that the G.O. Ms. No. 165 of 2017 dated 06.09.2017 issued for Compulsory Resident Specialist postings for Super Speciality Post Graduates and thereby withholding the Original Degree Certificate of Super Speciality as illegal, arbitrary and in violation of Article 14, 19, 21, 254 of Constitution of India;

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the G.O. Ms. No. 165 of 2017 dated 06.09.2017 in lieu of the observations by the Respondent No. 4 i.e., National Medical Commission vide Letter bearing F. No. NMC/Secy-2021/19/029791 dated 27.10.2021 Pending disposal of WP 1715 of 2024, on the file of the High Court.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to forthwith release the original certificates of the Petitioners and exempt the Petitioners from the requirement of undergoing compulsory Government Service for the purpose of registration and practice in the State of Telangana Pending disposal of WP 1715 of 2024, on the file of the High Court.

IA NO: 3 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents not to impose the Guideline No. 7 of Notification for Compulsory Government Service for Super-Speciality, 2024 dated 18.01.2024 for reporting before 25.01.2024 to the principal of the allotted place of posting Pending disposal of WP 1715 of 2024, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of M/s SAGARIKA KONERU Advocate for the Petitioner, Sri GADI PRAVEEN KUMAR (Dy. SOLICITOR

GEN. OF INDIA) for the Respondent No.1 and GP FOR FAMILY & HEALTH, for Respondent No.2, the Court made the following;

ORDER

The present writ petition is filed challenging G.O.No.165/2017 dated 06.09.2017 issued for a Compulsory Resident Specialist postings for Super Specialty Post Graduates and thereby withholding the original degree certificate of Super Specialty.

The petitioners are 23 in number. Respondent No.2 has issued G.O.Ms.No.165, Health, Medical and Family Welfare (C1) Department dated 06.09.2017 mandating Government service for a period of 2 years, after the completion of the course by the super specialty Post Graduate students. The petitioners are Doctors who have completed super specialty courses in accordance to the Post Graduate Medical Regulations, 2022 and are waiting for award of certificates. The Government *vide* G.O.Ms.No.165 of 2017 Health, Medical and Family Welfare (C1) dated 06.09.2017 has issued orders to incorporate the bond of Rs.50,00,000/- on Rs.100/- stamp paper to the candidates who are taking admissions in the Super Specialty Courses from the academic year 2017-18. The said G.O. is extracted for ready purpose;

“ORDER:

In the circumstances reported in the letters 2nd and 3rd above, and after careful examination of the matter, the Government hereby order to incorporate the bond of Rs.50,00,000/- on Rs.100/- stamp paper to the candidates, who are taking admissions in the Super Specialty Courses from the academic year 2017-18, that in case of failure to serve the Government for a period of 2 years, after the completion of the course, he/she shall pay Rs.50,00,000/- to Government. The same shall be applicable to NIMS University also.

2. The Director of Medical Education, TS, Hyderabad/Director, NIMS, Hyderabad shall take necessary further action in the matter accordingly.”

A notification was issued by Director of Medical Education/respondent No.5 herein on 12.01.2024 calling for the counseling of super specialty residents who have passed in December 2023 from Government Medical Colleges which would be held as per

the scheduled date i.e., 18.01.2024 onwards and as per the guidelines issued therein, it is stated that Doctors should report before 25.01.2024 to the Principal of the allotted place of posting.

Mr.L.Ravichander, learned senior counsel appearing on behalf of petitioners would submit that the condition of signing the bond imposed on the petitioners at the time of taking admission in G.O.Ms.No.165 of 2017 was passed against the spirit of Telangana Medical Practitioners Registration Act, 1968 wherein Section 15B of the said Act was omitted which mandated compulsory Government service but did not mandate signing of surety bond of Rs.50,00,000/- and that Telangana Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 2017 do not provide for any regulations with regard to 'Super Specialty Courses' and the above-referred Rules only govern Post Graduate medical courses and the Government without any jurisdiction has regulated the admission of Super Specialty courses which is arbitrary and illegal and the bonds which were executed by the petitioners at the time of admission are only as a result of coercion.

Learned senior counsel would further submit that as per Section 3 of Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act has no power to regulate the manner in which the curriculum is decided and more particularly mandating Government service. Section 3 of the said Act reads as follows:

3. Regulation of admission into educational institutions.

(1) [Subject to such rules] as may be made in this behalf, admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed;

[Provided that admission into Agriculture, Dental, Engineering, Medical, Pharmacy and Veterinary Colleges shall be made on the basis of ranking assigned by giving weightage to the marks secured in the relevant group subjects namely, Biology, Physics, Chemistry or Mathematics, Physics, Chemistry, as the case may be, in the Intermediate Public Examination or equivalent examination and weightage to the marks secured in the common entrance test as may be prescribed.]

(2) The admission into educational institutions under [sub-section (1)] shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes [and other categories of students as may be notified by the Government in this behalf] and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974.

(3) Notwithstanding anything in sub-sections (1) and (2), it shall be lawful for the Government, to admit students belonging to other States on reciprocal basis and the nominees of the Government of India, into Medical and Engineering Colleges in accordance with such rules as may be prescribed:

Provided that admission of students into the Regional Engineering College, Warangal to the extent of one-half of the total number of seats shall be in accordance with the guidelines issued by the Government of India, from time to time.”

The above-referred Act was enacted only for the purpose of regulating admissions to the educational institutions and for prohibiting collections of capitation fee across Telangana and the impugned Government Order passed by the respondent is against the spirit of the said Act, which was enacted only for the purpose of preventing the institutions from such kind of activities and the statute also prohibits collection of capitation fee. However, in the impugned G.O., it is in the other way that if the condition of 2 years of Government service is not met by the candidate, they are threatened to collect with compensation of Rs.50,00,000/- which is nothing but collecting capitation fees and against the provisions of the statute. That apart, the introduction of compulsory bond can only be done by means of legislation and not by an executive order.

Learned senior counsel in support of his case has placed reliance on W.P.Nos.21989, 22281, 22322 and 27274 of 2013 dated 13.07.2013 wherein under similar circumstances, this Court has passed the following order:

“However, laudable the attempt of the State is to secure qualitative improvement in the public health delivery system, however, I can only observe that otherwise than by the known mode of law, particularly, when the State is not empowered to insist upon any

such requirement, when the field is occupied by a Parliamentary Legislation.”

Learned senior counsel would further submit that the Government for the first time for this academic year is insisting on the conditions of G.O.Ms.No.165 dated 06.09.2017 and for the earlier years such conditions were not imposed.

As per notification issued by the Director of Medical Education dated 12.01.2024, certain conditions are stipulated, and the necessary conditions are extracted herein:

“6. If the violate the bond condition either by not joining or by not completing the stipulated service period of one year after obtaining the super-specialty degree Rs.50,00,000/- shall be levied as penalty from those who violate the bond conditions as per G.O.Ms.No.165, HM&FW (C1) Department dated 06.09.2017.

7. The Doctor should report before 25.01.2024 to the Principal of the allotted place of posting.”

Learned senior counsel would submit that in majority of the posting places allotted to the Doctors, no professors are available and as such it may not be possible for the Doctors/petitioners to report to the Professors and they may end up as general medical practitioners. The skills acquired by the petitioners all these years would not be effectively utilized in treating those patients. He would further submit that the said Government Order issued on 06.09.2017 is only executive order and has been issued without any source of power and the same cannot be considered as the G.O. issued with statutory force.

Per contra, learned Government Pleader for Medical and Health submits that in similar circumstances, this Court dismissed the writ petition in W.P.No.33966 of 2022 by referring to the judgment of the Hon'ble Supreme Court in the case of *Association of Medical Super Specialty Aspirants v. Union of India*. He would further submit that the notification is not challenged and that the Doctors have signed the bonds at the time of admission itself. Further in the bonds signed, it is mentioned that if the Doctors/petitioners fails to join as Senior Resident or in case of not completing two year service within a

maximum period of 36 months, the petitioners shall pay an amount of Rs.50,00,000/-.

Contrarily, learned senior counsel would submit that the Doctors have signed the bond under coercion and that very signing of the bond is being illegal at this point of time. Learned senior counsel would rely on the above cited judgment of the Hon'ble Supreme Court and would submit that the Apex Court has suggested that suitable steps be taken by the Union of India and Medical Council of India to have a uniform policy regarding the compulsory service to be rendered by the Doctors. The relevant paragraph is extracted herein:

“41. Taking note of the fact that certain State Governments have rigid conditions in the compulsory bonds to be executed by the appellants and the felt need of uniformity in the matter pertaining to the compulsory bonds, we suggest that suitable steps be taken by the Union of India and Medical Council of India to have a uniform policy regarding the compulsory service to be rendered by the Doctors.”

Learned senior counsel would draw the attention of this Court to letter dated 27.10.2021 in which it is stated that the National Medical Commission has deliberated upon the issue of uniform bond policy and mandatory rural service scheme during its second meeting held on 16.03.2021 and third meeting held on 16.06.2021 and it has opined that the medical graduates, post graduates and super specialists pursuing any course should not be burdened with any bond conditions as that may run contrary to the principles of natural justice. It is also stated that medical graduates who are admitted to institutions of the Central Government and the institutes of National importance such as AIIMS, PGIMER, NIMHANS, JIPMER etc., do not have bond conditions, even though in these institutions the course fees are much lower and the Central Government bears full expenditure on teaching and non-teaching faculty, staff members and hospital services. In view of the above, during the second National Medical Commission meeting held on 16.03.2021 as well as during the third meeting held on 14.06.2021, all the members unanimously proposed for doing away with the bond

policy and mandatory rural service scheme. Further, all members were of the opinion that implementation of the bond policy was under the purview of the Government of India/State Government/ Union Territory Administration concerned and no further action was required to be taken by NMC in this matter.

It is pertinent to note that the National Medical Commission has formulated mandatory rural service scheme and uniform bond policy by policy dated 27.10.2021 i.e., after passing of the order of the Hon'ble Supreme Court in *Association of Medical Super Specialty Aspirants and Residents (supra)* and has also observed that there are certain practical difficulties being faced by the State Governments in implementing the uniform policy bond conditions.

The Government Order dated 06.09.2017 and the conditions stipulated therein were not backed by any statutory power and the National Medical Commissioner in its meeting also held that the medical graduates and post graduates pursuing any course should not be burdened with any bond conditions which is contrary to the principles of natural justice.

In view of the above, there shall be interim suspension of condition Nos.6 and 7 issued in notification and guidelines dated 12.01.2024 issued by Director of Medical Education viz., "6. If the violate the bond condition either by not joining or by not completing the stipulated service period of one year after obtaining the super-specialty degree Rs.50,00,000/- shall be levied as penalty from those who violate the bond conditions as per G.O.Ms.No.165, HM&FW (C1) Department dated 06.09.2017; 7. The Doctors should report before 25.01.2024 to the Principal of the allotted place of posting" is suspended for a period of three (3) weeks. However, if any of the super specialists intend to join the mandatory rural service scheme they are liberty to do so.

The above suspension of condition Nos.6 and 7 issued in notification and guidelines dated 12.01.2024 is only confined to the

petitioners in the present writ petition, as the counseling has already been commenced.

Learned Government Pleader for respondents seeks time to file counter.

Respondents shall file counter within a period of two weeks and petitioners shall file reply, if any, within a period of one week thereafter.

Post the matter on 14.02.2024 for filing counter.

//TRUE COPY//

SD/- V.KAVITHA
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Secretary, Department of Health and Family Welfare, Ministry of Health and Family Welfare, Union of India, Nirman Bhawan, New Delhi - 110011.
2. The Principal Secretary, Health, Medical and Family Welfare Department, State of Telangana, Secretariat, Hyderabad.
3. The Director, Directorate General of Health Services, Ministry of Health and Family Welfare, Nirman Bhawan, Rajpath Area, Central Secretariat, New Delhi, Delhi-110001.
4. The Chairperson, National Medical Commission, Satarkta Bhawan, G.P.O. Complex, Block A, INA, New Delhi-110023.
5. The Chairman, Directorate of Medical Education, Government of Telangana Koti, Hyderabad, Telangana.
6. The Chairman, Telangana State Medical Council, P. B. 523, Sultan Bazaar, Near Post Office, Opposite Womens College, Hyderabad, Telangana 500095.
7. The Vice Chancellor, Kaloji Narayana Rao University of Health Sciences, Warangal, Telangana- 506007.
8. The Principal, Osmania Medical College, 5-1-876, Turrebaz Khan Rd, Troop Bazaar, Koti, Hyderabad, Telangana 500095.
9. The Principal, Gandhi Medical College, Musheerabad, MIGH Colony, Walker Town, Padmarao Nagar, Secunderabad - 500003, Telangana
(for 1 to 9 by RPAD)
10. One CC to M/s. SAGARIKA KONERU Advocate [OPUC]
11. One CC to SRI. GADI PRAVEEN KUMAR Dy. SOLICITOR GEN. OF INDIA Advocate [OPUC]
12. Two CCs to GP FOR FAMILY & HEALTH, High Court at Hyderabad [OUT]
13. One spare copy

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HIGH COURT

NVSKJ

DATED:24/01/2024

POST ON 14.02.2024



ORDER

WP.No.1715 of 2024

INTERIM SUSPENSION