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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF APRIL, 2017

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

**W.P.No.54413/2016 (EDN-EX)**

**BETWEEN :**

DR. NAGESH M.,  
S/O. Sri. DR. MRUTHYUNJAYA.N  
AGED 31 YEARS  
No.32, 2<sup>ND</sup> CROSS, SWASTHI ROAD  
SHANTHI NAGAR  
BANGALORE - 27 ...PETITIONER

(BY Smt. AKKAMAHADEVI HIREMATH, ADV.)

**AND :**

- 1 THE MEDICAL COUNCIL OF INDIA  
REP. BY ITS SECRETARY, POCKET No.14,  
SECTOR - 58, DHWARAKA PHASE - I  
DELHI - 110 077
- 2 THE RAJIV GANDHI UNIVERSITY  
OF HEALTH SCIENCES  
REP. BY ITS REGISTRAR [EVALUATION]  
4<sup>TH</sup> 'T' BLOCK, JAYANAGAR,  
BANGALORE - 560 041
- 3 THE M.V.J. MEDICAL COLLEGE  
AND RESEARCH HOSPITAL  
REP. BY ITS DEAN & PRINCIPAL  
DR. T.S. RAGHURAMAN  
DANDUPALYA, 30<sup>TH</sup> KM STONE,  
NH-4, KOLATHUR POST,  
HOSKOTE - 562 114 ...RESPONDENTS

(BY Sri. N. KHETTY, ADV. FOR R1; Sri. YOGESH NAIK, ADV., FOR  
Sri. S.G. PANDIT, ADV., FOR R2;  
Sri. AMIT MANDGI, ADV., FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ANNEX-T THE LETTER DTD. 28.9.2016 WRITTEN BY THE R3 TO THE R2 AND ETC.

THIS PETITION COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The Petitioner has challenged the letter dated 28.9.2016 written by the Respondent No.3/Institution to the Respondent No.2/University marked at Annexure-T to the writ petition, *inter alia*, seeking a direction to the Respondents 2 and 3 to permit the petitioner to appear for Post Graduate MD Radio Diagnosis ['PG-MDRD', for short] examination which was scheduled to commence from 7.11.2016 and to declare the results etc.

2. The Petitioner joined MDRD Course in the Respondent No.3/Institution during the academic year 2013-14 under the Management quota on 29.6.2013 and completed the course during April/May 2016. The petitioner submitted the thesis to the Respondent

No.3/Institution and after acceptance was forwarded to the Respondent No.2 which was accepted by the University on 20.11.2015. The Thesis submitted by the petitioner was valued and accepted by the Core Examiners appointed by the Respondent No.2/University. It is the case of the petitioner that he completed the PG-MDRD course by fulfilling the eligibility criteria fixed by the Respondent No.1/Medical Council of India [‘MCI’, for short] and the Respondent No.2/University during April 2016. The petitioner paid the fees for the course to the Respondent No.2/University for June 2016 examinations and sent a representation to the Respondent No.3/Institution to forward the examination application form to the Respondent No.2/University to permit the petitioner to write the PG-MDRD course June 2016 examination. The examination Notification dated 19.8.2016 was issued by the Respondent No.2/University for PG-MDRD course commencing from 7.11.2016. The Respondent No.3

denied the opportunity to write the PG-MDRD examination. However, the petitioner downloaded the examination application form released by the Respondent No.2/University for PG-MDRD examination and paid requisite examination fee and submitted the application form. It is the allegation of the Respondent No.3/Institution that the petitioner has shortage of attendance in the first year during the extended examination ending October 2016. The same was communicated by the Respondent No.3 to Respondent No.2 as per Annexure-T which is impugned herein.

3. In pursuance to the interim order passed by this Court on 28.10.2016, the petitioner appeared for PG-MDRD examination conducted by the Respondent No.3/University during November 2016 and his results are also announced. The petitioner has passed the said examination. However, the same is subject to the result of the writ petition in terms of the interim order passed

by this Court. Hence, marshalling of the facts is necessary.

4. Learned Counsel appearing for the petitioner would contend that the documents obtained by the petitioner through Right to Information Act, 2005 from the MCI and the University, clearly establishes that the petitioner had the requisite attendance as per the MCI Regulations. Learned Counsel inviting the attention of this Court to Annexure-G/Assessment Form for admission report of MCI, submits that the petitioner joined the PG-MDRD Course on 29.6.2013. The said Assessment Form is signed by the Head of the Department, Teacher, Principal and the Assessor, besides the declaration made by the petitioner. The attendance abstract for PG-MDRD [2013-2016] at Annexure-M discloses total classes attended and the percentage of attendance wherein the petitioner's attendance abstract is as under:

| Sl. No. | Name of the Student | Course           | Academic year                 | Total Classes attended | Total Classes attended | %              |
|---------|---------------------|------------------|-------------------------------|------------------------|------------------------|----------------|
| 1       | xxx                 | xxx              | xxx                           | xxx                    | xxx                    | xx             |
| 2       | xxx                 | xxx              | xxx                           | xxx                    | xxx                    | xx             |
| 3       | Dr.Nagesh N         | MD-<br>Radiology | 2013-14<br>2014-15<br>2015-16 | 365<br>365<br>335      | 291<br>355<br>307      | 80<br>97<br>92 |

5. The petitioner was coerced to write the letter dated 4.4.2014 addressed to the Principal and Dean on the instruction of the Chairman of the Respondent No.3/Institution. The lis started between the petitioner and the Chairman of the Respondent No.3/Institution due to some financial aspects and being unable to bear the harassment made by the Chairman of the Respondent No.3/Institution, the petitioner approached the University complaining against the Respondent No.3/Institution, particularly, the Chairman. On the complaint made by the petitioner, the University constituted a three man Committee to investigate the matter. Two Members of the Committee visited the College and submitted the report as per Annexure-Z.

The Enquiry Report suggests that there was misunderstanding between the Chairman and the student which has led to the untoward events and the incidents. The Committee report, indeed, is in favour of the petitioner. Suppressing the same, the Respondent No.3 has filed the Minutes of the Meeting signed by the Principal of the College to suggest that the petitioner had shortage of attendance and was not eligible to appear for the examination.

6. Yet another document of the Head of the Department dated 5.4.2014 is referred to point out that the HOD has observed that the petitioner was victimized and has categorically further observed that the letter dated 4.4.2014 cannot be taken any cognizance and the same has to be treated as invalid. It is certified that the petitioner had attended classes between October 2013 and April 2014. The documents now relied upon by the Respondent No.3/College are fabricated to deny the

petitioner his legitimate right to acquire the Post Graduate Degree.

7. Learned counsel appearing for the respondent No.1/MCI supporting the arguments advanced at the hands of learned counsel appearing for the petitioner submits that the documents submitted by the Respondent No.3-College to the MCI clearly discloses that the petitioner had the required attendance whereas the documents now furnished before this Court reflects contrary to what has been placed before the MCI which has no value and requires to be ignored. It is the documents placed before the MCI that indicates the true facts. The report of the Committee also supports the version of the petitioner, in as much as, the dispute between the Chairman and the petitioner, causing unnecessary inconvenience and hardship to the petitioner.



8. Learned counsel appearing for the respondent No.2 placing reliance on the Committee Report submits that the Committee observed that there was an office order which states that the Chairman of the College has directed the Principal not to allow the student to attend the classes. Hence, the Committee feels there is *prima facie* evidence that there was misunderstanding between the Chairman and the student and that has led to the above events. Further, the Committee expressed that it is prudent to allow the student to write the examination pending legal enquiry if deemed fit if the University wants to get legal enquiry to be conducted. Thus, the learned Counsel also supports the views of the petitioner and the Respondent No.1 as regards the lis subsisting between the petitioner and the Chairman of the College.

9. Learned counsel appearing for the respondent No.3 submits that the petitioner was

irregular in attending the classes which is evidenced by his letter dated 4.4.2014. The shortage of attendance of the petitioner is manifest from the attendance register maintained by the College. The petitioner in order to make the benefit of appearing to the PG examination is making frivolous allegations against the College and the Chairman. On the other hand, the documents speaks that the petitioner was not eligible to write the post graduate examination during November 2016 for shortage of attendance. The petitioner made complaints against the College before the University and as a result of which, the Committee constituted by the University visited the College and noticed discrepancies found in the attendance register and observed to hold legal enquiry allowing the petitioner to write the examinations pending legal enquiry. The documents placed by the Respondent No.3/College are obtained from the registers maintained by the College. The College cannot be blamed for the fault committed by the

petitioner, in not attending the classes regularly. The Chairman has no enmity or personal vendetta against the petitioner. The allegations made by the petitioner are totally false, not supported by any material evidence. The truth was discerned by the Enquiry Committee and the Minutes of the Enquiry Committee report indicates shortage of attendance of the petitioner.

10. Heard the learned Counsel for the parties and perused the material on record.

11. Adverting to the submissions made by the respective parties as aforesaid, it is manifest that the allegations and counter allegations are made by the petitioner and the 3<sup>rd</sup> respondent inasmuch as the attendance aspect of the petitioner is concerned. It is an undisputed fact that the petitioner submitted the attendance abstract of the students of the college to the 1<sup>st</sup> respondent in

compliance of the Regulations of MCI. MCI is a Statutory Body constituted under the Indian Medical Council Act, 1956 to regulate the process of admission into medical colleges and institutions run by the State Governments, Private individuals (Aided and Unaided), educational institutions run by Religious and Linguistic minorities. In adherence to the regulations framed by the MCI, the college has to maintain the attendance register and has to submit the same during the inspection by MCI Assessors. The document, Annexure-M, attendance abstract submitted by respondent No.3 to the MCI-respondent No.1 categorically speaks that the petitioner possessed the requisite attendance.

12. The letter now impugned herein speaks contrary to Annexure-M. There cannot be two

attendance registers or abstracts maintained by the college to suit the convenience and use to control the students of the college. The documents submitted to the MCI, a body constituted under the Indian Medical Council Act, 1956 prevails over any other document now placed on record by respondent No.3. It is the obligation cast upon respondent No.3 to adhere to the rules and regulations framed by the MCI and to stick to the documents placed before it. A different stance now taken by respondent No.3 altogether different from that was placed on record before the MCI would not inspire any confidence. The significant aspect is, the Enquiry Committee constituted by the University to inquire into the issue on the complaint lodged by the petitioner, the enquiry conducted by the Committee and the report plays a major role. The purpose of constituting an Enquiry Committee

is to analyse the factual aspects and to discern the truth. The Committee having inspected the college found that the issue herein stemmed due to the lis between the petitioner and the Chairman of the 3<sup>rd</sup> respondent-college. It is to settle the dispute between the petitioner and the Chairman of the college, in support of the Chairman, the Principal has issued the letter at Annexure-T, impugned herein, to respondent No.2 bringing to the notice of the University that the petitioner has shortage of attendance, which is apparently against Annexure-M. The report of the Enquiry Committee based on the enquiry held, discloses that the petitioner is eligible to appear for the P.G. examination. Given the circumstances, the arguments of the learned counsel for the 3<sup>rd</sup> respondent placing reliance on the letter dated 4.4.2014 of the petitioner would not lend any credence for the reason that the HOD, by

his letter dated 5.4.2014 observed that the petitioner was victimized and coerced to write the letter dated 4.4.2014. Indeed, the said letter dated 4.4.2014 was not taken cognizance by the HOD himself, who is the right person to know whether the petitioner attended the classes or not. The case of the respondent No.3 revolves round the admission made by the petitioner in the letter dated 4.4.2014. If that letter itself not to be considered, the entire edifice built on the said letter falls. It is obvious that the Management is the custodian of the attendance register. Manipulation of the attendance register to suit the convenience of the Management cannot be ruled out. Issue of attendance cannot be taken as a tool to settle the disputes between the Management and the students. If there is` any manipulation found in the attendance register, as observed by the Enquiry

Committee, that would not lend any credence and requires to be ignored considering the attendance abstract placed before the MCI. As aforesaid, the Enquiry Committee report is in favour of the petitioner. Considering all these aspects, the allegation of respondent No.3 as regards the shortage of attendance of the petitioner cannot be countenanced. It has to be viewed as mere allegation made against the petitioner in retaliation to some personal enmity or dispute. Viewed from any angle, the 3<sup>rd</sup> respondent-college denying the petitioner to appear for P.G. examination is wholly untenable and cannot be sustained. It is a classical case of a student suffering in the hands of the Management.



13. In view of the petitioner having appeared for the P.G. examination and the results being announced, the same deserves to be confirmed.

14. For the reasons aforesaid, the petition is allowed. Annexure-1 is quashed.

Respondent No.3-college shall return/issue all the original marks cards/testimonials/certificates of the petitioner, forthwith.

**Sd/-  
JUDGE**

AN/-, ln