



W.P(MD)No.7224 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7224 of 2023

and

WMP(MD)Nos.6813, 6815 & 6817 of 2023

S.Preethi

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep.by its Principal Secretary,
Department of Health and Family Welfare,
Fort.St.George, Chennai – 9.
- 2.The Medical Services Recruitment Board,
Rep.by its Member Secretary,
7th Floor, DMS Building, 359,
Anna Salai, Teynampet,
Chennai – 600 006.
- 3.The Commissioner,
Food Safety and Drug Administration
Department, Teynampet, Chennai – 6.
- 4.M.Savithra, Roll No.201012082,
Register No.100542,
C/o.Medical Services Recruitment Board,
7th Floor, DMS Building, 359,
Anna Salai, Teynampet,
Chennai – 600 006.



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5.E.Vimalraj, Roll No.201011638,
Register No.122883,
C/o.Medical Services Recruitment Board,
7th Floor, DMS Building, 359,
Anna Salai, Teynampet,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notification in Notification No.02/MRB/2021 dated 16.02.2023 and the consequential impugned Provisional Selection List in No. 02/MRB/2021 dated 13.03.2023 on the file of the respondent no.2 and quash the same as illegal and consequently for a direction, directing the respondent no.2 to provide 2 additional marks for the Question nos.16 and 62 (Batch-1)by considering the representation of the petitioner dated 27.03.2023 and to revise the Selection List for the post of Food Safety Officer by following the law laid down by the Hon'ble Supreme Court in Rajesh Kumar Daria v. Rajasthan Public Service Commission reported in (2007) 8 SCC 685 within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
for M/s.Lajapathi Roy and Associates

For Respondents : Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.G.Suriyanath,
Additional Government Pleader
for R1 & R3

Mr.T.S.Mohamed Mohideen for R2



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ORDER

Medical Recruitment Services Board issued notification dated 13.10.2021 calling for applications from eligible candidates for the post of Food Safety Officer. Totally, 131 vacancies were notified. The petitioner was one of the applicants. The petitioner belongs to Scheduled Caste community. In the provisional list, the petitioner's name was not included. Hence, this present writ petition has been filed challenging her non-selection.

2.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned selection list insofar as the non-selection is concerned and grant relief as prayed for. The second respondent has filed counter affidavit. The learned Additional Advocate General took me through its contents. He called upon this Court to dismiss this writ petition.

3.I carefully consider the rival contentions and went through the materials on record. Two issues have been projected for consideration. The first issue has two parts : A) Whether the key answer given in respect of Question No.16 is correct. B) Whether Question No.62 has been correctly



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framed. The second issue is whether the reservation policy has been applied correctly. Question No.16 is as follows :

“..... film is not to be used for wrapping sweets

- (A) Polyethylene (B) Petroleum
(C) Polyvinyl Chloride (PVC) (D) Polymer”

The correct final key answer is option “C”. The learned Additional Advocate General would submit that in view of the recent decisions of the Hon'ble Supreme Court, it is not open to the writ court to second guess the correctness of the key answers. In my view, this objection must be rejected in those cases where the final key answer is demonstrably and palpably wrong. My attention is drawn to the Schedule IV of the Food Safety and Standards (Packaging) Regulations, 2018. Column No.4 of the said Schedule IV as follows :

4.	Sweets and Confectionery	• Metal Containers with plastic polypropylene (PP) caps or metal or plastic lid Plastic based multilayered laminated Heat sealed pouches. • Composite containers made up of Paper Board or Alumunium foil or plastic base films with plastic or metal lids. • Plastic based rigid containers • Foil wrap • Plastic film based twist wraps (Polyethylene terephthalate (PET) or polypropylene (PP) or Poly Vinyl Chloride (PVC). • Theremoformed tray and punnet with lid. • Glass bottle with metal or plastic caps. • Plastic cups with lid.
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It is obvious that PVC is a permitted packaging material. Therefore, on the own showing of the respondents, the key answer to Question No.16 is erroneous. The petitioner is said to have given option “B”. Therefore, in my view, the petitioner has to be necessarily awarded one mark for this question.

Question No.62 is as follows :

“As per PFA Rules 1955, the maximum limit of artificial sweetener in carbonated water and soft drink concentration is

- (A) 100 ppm (B) 200 ppm
(C) 300 ppm (D) 400 ppm”

My attention is drawn to the table annexed to the Prevention of Food Adulteration Act & Rules, 1955. The relevant table is as follows :

Sl No.	Name of Artificial Sweetener	Article of Food	Maximum Limit of Artificial Sweetener
1	Saccharin Sodium	Carbonated Water	100 ppm
		Soft Drink Concentrate	*100 ppm
		Supari	4000 ppm
		Pan Masala	8000 ppm
		Pan Flavouring Material	8.0 per cent
		Synthetic Syrup for dispenser	450 ppm
		Sweets (Carbohydrates based and milk products based)- Halwa, Mysore Pak, Boondi Ladoo, Jalebi, Khoya Burfi, Peda, Gulab Jamun, Rasogolla and Similar milk product based sweets sold by any name.	500 ppm
		Chocolate (White, Milk, Plain, Composite and Filled)	500ppm
		Sugar based/Sugar free confectionery	3000 ppm
		Chewing fum/Bubble gum	3000 ppm



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2.	Aspertame (methyl ester)	Carbonated Water	700ppm
		Soft Drink Concentrate	7000ppm
		Biscuits, Bread, Cakes and Pasteries	2200 ppm
		Sweets, (Carbohydrates based and milk products based)	200ppm
		Halwa, Mysore Pak, Boondi Ladoo, Jalebi	200ppm
		Khoya Burfi, Peda, Gulab Jamun, Rasogolla and Similar mil product based sweet sold by any name	200 ppm
		Jam, Jellies, Marmalades	1000 ppm
		Chocolate (White, Milk, Plain, Composite and Filled	2000 ppm
		Sugar based/Sugar free confectionery	10000 ppm
		Chewing gum/Bubble gum	10000 ppm
		Synthetic Syrup for dispenser	3000 ppm
3.	Acesulfame Pottassimm	Carbonated water	300ppm
		Soft Drink Concentrate	*300ppm
		Biscuits, Bread, Cakes and Pasteries	1000ppm
		Sweets (Carbohydrates based and milk products based)- Halwa, Mysore Pak, Boondi Ladoo, Jalebi, Khoya Burfi, Peda, Gulab Jamun, Rasogolla and Similar milk product based sweets sold by any name.	500 ppm
		Chocolate (White, Milk, Plain, Composite and Filled)	500ppm
		Sugar based/Sugar free confectionery	3000 ppm
		Chewing fum/Bubble gum	3000 ppm
		Synthetic Syrup for dispenser	1500 ppm
4	Sucralose	Carbonated water	300ppm
		Soft Drink Concentrate	*300ppm
		Biscuits, Bread, Cakes and Pasteries	1000ppm
		Sweets (Carbohydrates based and milk products based)- Halwa, Mysore Pak, Boondi Ladoo, Jalebi, Khoya Burfi, Peda, Gulab Jamun, Rasogolla and Similar milk product based sweets sold by any name.	750 ppm



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It can be seen from the above that the maximum limit of artificial sweetener will vary from one sweetener to another sweetener. In this case, the very framing of the question is erroneous. The petitioner will have to be awarded one mark. The first issue is thus answered accordingly in favour of the petitioner.

4. According to the respondents, the petitioner had scored 69.3745. In the counter affidavit, it has been fairly stated that the last candidate selected under General category scored 77.76 marks. But at least three candidates belonging to SC category who have scored 78.69, 78.00 and 77.76 marks have been selected under General category. It is well settled that the more meritorious candidates must be adjusted against the general turn category. In this view of the matter, I hold that the petitioner's non-selection is bad in law. The second respondent is directed to re-visit the selection process in favour of the petitioner in the light of the what has been held above. The revised selection list shall be published by the second respondent within a period of four weeks from the date of receipt of copy of this order.



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5.This writ petition is disposed of. No costs. Connected miscellaneous petitions are closed.

06.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

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Department of Health and Family Welfare,
Fort.St.George, Chennai – 9.
- 2.The Medical Services Recruitment Board,
Rep.by its Member Secretary,
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G.R.SWAMINATHAN, J.

SKM

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