

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1492 of 2015

& MP.NO.1/2015

1.The State of Tamil Nadu,
rep. By its Secretary,
Ministry of Health and Family Welfare,
Secretariat,
Chennai - 9.

2.The Selection Committee,
rep. By the Director of Medical Education,
Kilpauk,
Chennai -10.

...Appellants/Respondents 5 & 6

versus

1. R.Santosh

...1st Respondent/Petitioner

2. Union of India,
rep. By its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.

3.The Medical Counselling Committee,
rep. By its Director General,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.

4.The Medical Council of India,
rep. By its Secretary,
Pocket 14, Sector 18,
Dwaraka Phase 1, New Delhi.

5.The Central Board of Secondary Education,
rep. By its Secretary,
Shiksha Kendra, 2, Community Centre,
Preet Vihar,
Delhi.

... Respondents 2 to 5/Respondents 1 to 4

Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court dated 5.10.2015 passed in W.P.No.31391 of 2015.

WP.No.31391/2015:- Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, to direct the 5th and 6th respondent herein to give priority to the candidates of All India Merit List 2015 in the extended Third Phase Counseling Scheduled to be held on 4th and 5th of the October 2015 for admission under All India Quota

For appellants : Mr.AL.Somayaji
Advocate General
Assisted by Mr.D.Krishnakumar
Spl. Govt. Pleader

For Respondents : Mr.V.T.Gopalan,
Senior counsel,
for Mr.S.V.Karthikeyan, for 1st respondent

Mr.V.P.Raman, for 4th respondent

Mr.Su.Srinivasan, Assistant Solicitor General of
India for R-2 and R-3

J U D G M E N T

SATISH K. AGNIHOTRI & K.K.SASIDHARAN, JJ

Introductory:

Whether the State Government is entitled to fill up the vacant/left over All India Quota seats, which have been surrendered to the respective States within the extended period, pursuant to the order passed by the Supreme Court on 1 October 2015, is the core issue that arises for consideration in this intra court appeal.

Brief facts :-

2. The first respondent filed a Writ Petition in W.P.No.31391 of 2015 for issuance of a Writ of Mandamus directing the State of Tamil Nadu and the Secretary, Selection Committee, Directorate of Medical Education, Chennai to give priority to the candidates of All India Merit List 2015 in the extended Third Phase Counselling scheduled to be held on 4 and 5 of October 2015, for admission to the professional course under All India Quota.

3. Before the writ court, the first respondent contended that the

Supreme Court passed two orders - one on 28 September 2015 and another on 1 October 2015, permitting the State Governments to fill up the remaining seats by taking into account the merit list prepared by the Central Board of Secondary Education (CBSE) with respect to All India Quota. In view of the said direction, seats should be given at the first instance to the candidates included in the All India Merit List.

4. The Writ Petition was opposed by the appellants primarily on the ground that the Supreme Court pursuant to the application in I.A.Nos.2 and 3 of 2015, in W.P.(Civil) No.629 of 2015, permitted them to fill up the vacant/ left over All India Seats without reference to the merit list prepared by CBSE.

5. Though the first respondent wanted a positive direction to consider him for admission, the learned Single Judge was of the view that no such direction could be given. The writ court indicated that the case of the first respondent should be considered along with similarly placed candidates for admission under All India Quota. Feeling aggrieved, the appellants are before us.

Summary of Submissions:

6(a). The learned Advocate General appearing on behalf of the appellants contended that the Medical Council of India published a notice on its website dated 17 September 2015, indicating the list of surrendered seats under the All India Quota. According to the learned Advocate General, altogether, 63 MBBS and 7 BDS seats were surrendered out of 15% All India Quota. The Supreme Court initially passed an order on 28 September 2015 in W.P.(Civil) 629 of 2015 with respect to All India Quota. Subsequently, the State Government moved an application in I.A.Nos.2 to 5 of 2015 in W.P.(Civil) No.629 of 2015 to permit them to fill up the surrendered seats. The Supreme Court was pleased to pass an order granting such permission. It was contended that the order is very clear that the State Government is permitted to complete the admission process by filling up the seats surrendered by the Directorate General of Health Services. This aspect was not considered by the learned Single Judge.

(b). The learned Advocate General further contended that the list published by CBSE does not contain the relevant details of the candidates including rank on the basis of communal reservation. It would not be possible for the State Government to take up the said list and grant admission in view of the fact that the students are from different States and that their reservation status are not in public domain. Therefore it would not be possible for the State to consider the case of students like the first respondent for admission.

(c) The learned Advocate General by placing reliance on the rank list published by CBSE submitted that the overall Rank of the first respondent in the All India Quota is 12,485, which is 7,717 ranks below the last person allotted to the State of Tamil Nadu from OBC quota by DGHS. Therefore, in any event, the first respondent would not qualify

for admission under 15% All India Quota.

7. The learned Senior Counsel for the first respondent justified the impugned order. According to the learned Senior Counsel, the first respondent moved the Supreme Court to direct the State Government to grant him admission under the All India Quota and fill up the entire 15% All India Quota seats from the list published by CBSE. According to the learned Senior Counsel, the appellants interpreted the order passed by the Supreme Court to its advantage without understanding the background facts. The learned Senior Counsel fairly admitted that the first respondent was not given allotment letter by the Director General of Health Services. The learned Senior Counsel submitted that it is the responsibility of the State Government to hold Counselling taking into account the list published by CBSE and grant admission to the candidates like the first respondent against 15% All India Quota seats.

The issue:

8. The only question that arises for consideration is whether the State Government should be permitted to fill up the vacant/left over All India Quota Seats which have been surrendered on 17 September 2015, without reference to the merit list prepared by CBSE.

Discussion:

9. There is no dispute that the State Government have to earmark 15% of the total seats for admission under All India Quota. The information Bulletin published by DGHS, with respect to 15% All India Quota shows that all the seats remaining vacant after the whole process of allotment on third round of counselling or falling vacant thereafter, due to any reason, shall be deemed to have been surrendered back to the respective States/ colleges/ institutions.

10. Clause 15(iii) of the information bulletin relating to All India Pre Medical/Pre Dental Entrance Test, 2015 published by CBSE, deals with merit list for counselling under 15% All India Quota. The relevant clause reads thus:-

(iii) Merit List for Counselling under 15% All India Quota:

The merit list of the eligible and successful Candidates who have opted for 15% All India quota seats will be prepared by the CBSE on the basis of score obtained in the AIPMT 2015. The merit list will be equal to the number of seats available for allotment in MBBS/BDS courses under 15% All India Quota. There shall also be a waiting list equal to 4 times of the merit list. The list of successful candidates (Merit List) shall be forwarded to the Directorate General of Health Services (Medical Examination Cell), Ministry of Health and Family Welfare, Government of India for the purpose of allotment of seats by Online Counselling.

11. The Central Board of Secondary Education (CBSE) was given the task of holding All India Pre Medical/Pre Dental Entrance Test - 2015. The CBSE after conducting the Entrance Test forwarded the merit list to the DGHS. The DGHS Medical Counselling Committee thereafter conducted online counselling and issued allotment orders to the candidates in respect of All India Quota Seats. Subsequently, on 17 September 2015 the DGHS published notice on its website indicating the surrender of vacant/left over seats of All India Quota to the respective States/Universities. Insofar as Tamil Nadu is concerned, 63 seats were surrendered with respect to MBBS course out of 15% All India Quota.

12. Though the State Government made an attempt to operate the surrender list containing the lapsed seats, counselling could not be held on account of the interim order granted by the Supreme Court on 15 September 2015 in W.P.(Civil) No. 659 of 2015. The said writ petition was filed by none other than the first respondent.

13. The Supreme Court passed an order on 28 September 2015 in Writ Petition (Civil) Nos.629/2015, 659/2015, 670/2015 and 688 of 2015. The following directions were issued:

"1. All India Quota shall remain 15%.

2. The admissions shall be strictly in accordance with merit as stipulated in para 15 of the Information Bulletin/Rules.

3. While making the admissions the directions contained in para 19 of Mridul Dhar (Minor) & Anr. v. Union of India & Ors. (2005) 2 SCC 65 shall be borne in mind.

The Medical Counselling Committee shall ensure the compliance of the aforesaid directions."

14. Paragraph 19 of the judgment in Mridul Dhar v. Union of India,¹ was quoted by the Supreme Court in its order dated 28 September 2015. It reads thus:

"19. For utilisation of all-India quota to its fullest extent, another vital stage of admission process is timely reporting to DGHS by Deans or any other authority, whatever be the designation, responsible for giving information as to the joining and/or non-joining of students after first round of counselling/admission of the State quota seats. The counselling for allocation of seats of all-India quota is conducted by DGHS at Delhi. The reporting to be made to DGHS has to be sincere and accurate as wrong reporting has chain reaction. As per the time schedule, the first round of counselling for the State quota is to be over by 17th July. There is no

¹ (2005) 2 SCC 65

reason why this time schedule shall not be adhered to. After this counselling, the last date for joining the allotted college and course under the State quota is 29th July. The object of the admission and last date of joining college in State quota before the start of second round of counselling or allotment of seats from waiting list in all-India quota clearly is that the correct factual position as to the availability of the seats ought to be known to the DGHS before the start of second round of counselling. If it is not done, number of seats would be lost to the merit-ranking candidates from All-India Entrance Examination. They, though otherwise entitled, would be deprived of those seats and to that extent all-India 15 per cent quota would stand reduced. Such seats get reverted to State quota for no fault of the candidates on all-India quota, thus, reducing the all-India quota and increasing the State quota. The Heads of the colleges are required to intimate their vacancies existing after 18th July in respect of all-India quota seats to the DGHS by 25th July. This gives about a week to the DGHS before it starts second round of counselling on 1st August. This year (2004) it was found that the time schedule in this regard by most of the States, was not complied with. As per Appendix E to the notification dated 25-2-2004, the first round of counselling/admission of seats filled up by the State Governments/institution is to be over by 25th July. For State quota seats, one week after completion of first round of counselling to join the allotted college is sufficient. The date 29th July, mentioned in the time schedule attached to the directive dated 14-5-2003 shall be suitably

(emphasis supplied)

changed and the date 25th July shall be mentioned to make it consistent with the date mentioned in the notification dated 25-2-2004. The intimation is required to be sent to the DGHS well before the commencement of second round of all-India quota counselling by it. The details about the vacancy position shall be signed/countersigned by three top functionaries responsible for admission of State quota seats."

15. The State of Tamil Nadu thereafter moved the Supreme Court by filing interlocutory applications in W.P.(C) No.629 of 2015. The State requested the Supreme Court to permit it to fill up the left over/vacant All India Quota Seats which were surrendered by the DGHS to the respective States.

16. The Supreme Court passed an order on 1 October 2015 permitting the State Governments to complete the admission process by 7 October 2015 by filling up the vacant/left over All India Quota Seats. The order reads thus:

ORDER

The Interlocutory Application Nos.2-5 of 2015 are taken on board.

The applications for impleadment are allowed.

Having regard to the peculiar facts of this case wherein initially the States were restrained from giving any admissions from All India Quota seats and thereafter, final orders were passed only on 28th September, 2015, the prayer made in these applications is allowed and we permit the State Governments to complete the admission process with the extension of period by one week from today, i.e., by 07th October, 2015, by filling up the vacant/left over All India Quota seats which have been surrendered to the respective States.

Needless to mention this process shall be undertaken in accordance with the directions issued by this Court vide orders dated 28th September, 2015 in Writ Petition No. 629 of 2015.

We also direct the Director General of Health Services to inform all the States about this order today itself to avoid any such applications from other States for further extension of time. We also make it clear that no further extension shall be granted.

The interlocutory applications are disposed of accordingly."

(emphasis supplied)

17. Since the first respondent was not given any positive direction for admission in his writ petition in W.P.(C) No.659 of 2015, he moved the Writ Court in W.P.No.31391 of 2015 for issuance of a Writ of Mandamus directing the appellants to give priority to the candidates of All India Merit List - 2015 in the extended Third Phase Conseling Scheduled to be held on 4th and 5th October 2015.

18. The learned Single Judge considered the order dated 1 October 2015 in the light of the earlier order dated 28 September 2015 and held that the State Government should at the first instance fill up the seats on the basis of the merit list prepared by CBSE with respect to 15% All India Quota.

19. It is not in dispute that the DGHS out of 15% All India Quota seats surrendered 63 MBBS seats and 7 BDS seats to the State Government. Since there was a stay in W.P.(C) No.659 of 2015, the appellants were not in a position to fill up the seats. The stay was vacated only on 28 September 2015. It was only under the said circumstances, the appellants filed the interlocutory applications before the Supreme Court

to extend the time to complete the admission process. The Supreme Court taking into account the peculiar facts of the case viz., order restraining the States from giving admissions from All India Quota seats, permitted the States to complete the admission process within a period of one week. The State Governments were specifically directed to complete the admission by today i.e. 7 October 2015. In view of the time schedule, DGHS was directed to inform the States about the order without making them to file individual applications for extension of time.

20. The first respondent has no case that the State Government used to conduct Counselling for filling up 15% All India Quota seats. It is essentially the function of DGHS to conduct online Counselling and allot students to various States across India. It is also an admitted position that allotments would be made by indicating the name of the institution in a particular State. In short, the State have no choice in respect of 15% All India Quota till seats are surrendered by DGHS. Even in the notice dated 17 September 2015, the DGHS has indicated the lapsed seats of all the States and Union Territories by mentioning the names of the concerned Medical Colleges.

21. The DGHS was under an obligation to issue allotment orders for filling up 15% All India Quota seats pursuant to the order passed by the Supreme Court on 28 September 2015, which was not done. Since no such allotments were made before the cut off date prescribed for completing admission, the State of Tamil Nadu moved the Supreme Court to extend the deadline for the purpose of completing the admission process by filling up the seats surrendered by DGHS. The Supreme Court granted permission to complete the process. The State is therefore entitled to make admission from the State list and fill up the vacant seats, in accordance with the permission given by the Supreme Court.

22. The DGHS has made it clear in the Bulletin that after the third round of counselling, the remaining seats would be surrendered back to the respective colleges/States. The relevant clause contained in the information bulletin is extracted below:

"(iii) all the seats remaining vacant after the whole process of allotment of 3rd round of counselling or falling vacant thereafter due to any reasons shall be deemed to have been surrendered back to the respective States/ Colleges/ institutions."

23. The first respondent has no case that after the order passed by the Supreme Court on 28 September 2015 Counselling was conducted by DGHS and he was given allotment letter. The first respondent wanted to interpret the order passed by the Supreme Court on 1 October 2015 as a direction to the State Government to hold Counselling for admission to 15% All India Quota Seats. The Supreme Court order is very clear that the State Governments were permitted to complete the admission process

within a period of one week by filling up the vacant/left over All India Quota Seats which have been surrendered to the respective States.

24. In case the argument of the first respondent is accepted, the State must conduct Counselling today taking into account the merit list published by CBSE. The State Government has no authority to hold such Counselling in view of the information bulletin published by CBSE and DGHS. It is the prerogative of the Directorate General of Health Services Medical Counselling Committee to conduct online Counselling with respect to 15% All India Quota seats on All India Basis. However, no such counselling was conducted before 30 September 2015, pursuant to the order dated 28 September 2015.

25. The State having found that no admission could be made beyond 30 September 2015, rightly moved the Supreme Court for extension of time to fill up the vacant/left over All India Quota seats. The Supreme Court taking into account the peculiar facts of the case, and the interim order granted earlier restraining the States from giving admission from All India Quota, permitted the State Governments to fill up the vacant / left over seats of All India Quota which have been surrendered to the respective States by fixing 7 October 2015 as the cut off date.

26. The first respondent is not armed with an allotment letter issued by DGHS, to accommodate him against 15% All India Quota. There is no question of issuing a direction to the appellants to consider the case of a candidate who was not sponsored by DGHS, by issuing allotment letter indicating the institution. The fact that subsequent to the order passed by the Hon'ble Supreme Court on 1 October 2015, the DGHS has not given allotment letters, to admit in any of the institution in Tamil Nadu, gives an indication that the sponsoring authority also correctly understood the scope of the order permitting the State Governments to fill up the vacant/left over All India Quota Seats which have been surrendered to the respective States.

27. It was only on the basis of the permission granted by the Supreme Court vide order dated 1 October 2015, the State Government initiated action to conduct counselling on 4 and 5 October 2015. The permission given by the Supreme Court cannot be construed to be a direction to the State Government to cancel the surrender list and fill up the left over All India quota seats once again from the merit list published by CBSE. No such interpretation is possible in the subject case. We are therefore of the view that the learned Single Judge was not correct in allowing the Writ Petition. The appellants are therefore entitled to succeed.

Disposition:

28. In the result, the order dated 5 October 2015 in W.P.No.31391 of 2015 is set aside. The Writ Petition is dismissed. It is open to the State Government to fill up the vacant/ left over All India quota seats which have been surrendered to the State pursuant to the order dated 1

October 2015 in I.A.Nos.2 to 5 of 2015 in W.P.(Civil) No.629 of 2015. The admission process shall be completed today i.e., 7 October, 2015. In no event, there shall be further extension of time.

29. In the upshot, we allow the intra court appeal. Consequently, the connected MP is closed. No costs.

-Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tar/tr

To

- 1.The Secretary, Union of India
Ministry of Health and Family Welfare,
Secretariat, Chennai-7
2. The Director of Medical Education,
The Selection Committee, Kilpauk, Chennai-10
- 3.The Secretary, Union of India
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.
- 4.The Director General,
Medical Counselling Committee,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi.
- 5.The Secretary,
Medical Council of India,
Pocket 14, Sector 18,
Dwaraka Phase 1, New Delhi
- 6.The Secretary,
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi.

+1 CC to MR.S.V.Karthikeyan Advocate. Sr.No.54572
+1 CC to MR.SU.Srinivasan Advocate. Sr.No.54957
+1 CC to Govt Pleader. Sr.No.54530

W.A.No.1492 of 2015

CO-GR
JD(08/10/2015)