

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.No.30904 of 2015

S.Kaviraj
rep by his Natural Guardian/Father
R.Saminathan ... Petitioner

-Vs-

- 1.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
- 2.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents to allot the petitioner to BDS course in Private Dental Colleges on merit and on the basis of marks secured by the petitioner forthwith to enable the petitioner to join BDS course for the academic year 2015-2016.

For Petitioner : Mr.G.Sankaran

For Respondents : Mrs.P.Rajalakshmi,
Government Advocate

O R D E R

This Writ Petition has been filed by the petitioner, being minor, having completed +2 examination, seeking admission to BDS course in Private Dental Colleges based upon the marks secured by him. The petitioner hails from a remote village, belonging to the Backward community. He did attend the first counseling. As the marks obtained by him were not within the cut off marks fixed either for medical or BDS, he was not considered. It appears that the petitioner has not marked the counseling form with WL (Waiting List).

2.The first counseling was held on 21.07.2015, in which the petitioner participated. The second counseling was conducted between 21.08.2015 to 24.08.2015. It is the case of the petitioner

that he was not issued with any intimation and there is no internet facility in the village to download the official website of the respondents. The petitioner's father is stated to be a poor agriculturist, not in a position to have any electronic equipments. However, the petitioner did attend the third counselling. He was not considered for the available vacancies in the Private Dental Colleges in view of Clause - 35 (d) of the prospectus for admission to MBBS/ BDS courses. Thereafter, the petitioner has come forward to file this Writ Petition seeking the aforesaid prayer.

3.The learned counsel for the petitioner submitted that as per marks, the petitioner is entitled to be considered even in the Government Colleges, though not called for in the second counselling. Now, what the petitioner seeks is to provide a seat in the Private Dental Colleges. Clause - 35 (d) of the prospectus, read with Clause - 50, cannot be put against him, as he did not receive the intimation for the second counselling and in any case, the failure to mark WL will not non-suit the petitioner from being considered for the third counselling.

4.The learned Government Advocate, on instructions, submitted that in view of the statutory prescription as mandated in Clause - 35 (d) and 50 (a), the petitioner cannot be considered.

5.The fact that the petitioner is entitled to be considered for a seat even in the Government Colleges, had he attended the second counselling on merit, is not in dispute. Now, what the petitioner seeks is an admission to the available seat in the Private Colleges. Clause - 35 (d) can be pressed into service in so far as the second counselling alone is concerned. It is the specific case of the petitioner that he was not informed about the second counselling. There is no material to the contra. Though Clause - 50 (a) speaks about the postal delay and non-viewing of website, the same cannot be put against the candidate, when he seeks to be eligible for the third counselling under the Government quota in a Private College. After all the said Clause has to be seen from the point of view of presumption in law.

6.It is not in dispute that the petitioner did attend the third counselling. If that is the case, he ought to have been considered based upon the merit and not on the failure to mark WL in the first counselling. The subsequent counselling is meant to be filled up by taking into consideration the merit of the candidates concerned. While it can be justified for not considering the petitioner when he has not marked WL in the second counselling, the same cannot be put against him for the third counselling, especially when he did attend the same. It is also the specific case of the petitioner that there are 11 seats available in the Backward Community category.

7.For the aforesaid reasons, a direction is issued to the respondents to accommodate the petitioner in anyone of the Private Colleges in the Backward Community category, based upon his merit, provided there are any available seats in the said category, under

the payment quota. The said exercise shall be completed forthwith. The learned Government Advocate is also directed to communicate the order to the respondents forthwith.

8.The Writ Petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.

2.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk,
Chennai - 600 010.

+1 cc to M/s.G.Sankaran, Advocate, 53024

+1 cc to The Government Pleader, sr.53408 (19/10/2015)

ad co
kra 30/09

W.P.No.30904 of 2015

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