

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

Coram:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 8765 of 2015

And

M.P.Nos. 1 and 2 of 2015

Dr.Divya Elizabeth George

...Petitioner

-Vs-

1. The State of Tamil Nadu
Rep. by its Secretary
Health and Family Welfare Department
Fort St. George
Chennai - 600 009.
2. The Tamil Nadu Dr.M.G.R.Medical University
Rep. by its Vice Chancellor
No.69, Anna Salai, Gindy
Chennai - 600 032.
3. The Addl. Director of Medical Education/
Secretary of Selection Committee
No. 162, EVR Periyar Salai
Kilpauk
Chennai - 600 010.
4. The Dental Council of India
Rep. by its Secretary
Aiwan-E-Galibmarg, Kotla Road
New Delhi - 110 002.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the third respondent from conducting counseling to the post graduation MDS Courses for the academic year 2015-2016, except based on the merit based rank list to be published by the third respondent for the admission to MDS Course for the academic year 2015-2016 as per the decision of the Supreme Court in Sudhir N & Ors Vs. State of Kerala & Ors., in Civil Appeal Nos. 297-298 of 2015 dated 12.01.2015 and after the publication of

the seat matrix as per the Revised MDS Course Regulations, 2007.

For Petitioner : Mr.S.D.Venkateswaran

For RR 1 & 3 : Mr.V.Jaya Prakash Narayanan
Special Government Pleader

O R D E R

Heard Mr.S.D.Venkateswaran, learned counsel appearing for the petitioner; Mr.V.Jaya Prakash Narayanan, learned Special Government Pleader appearing for the respondents 1 and 3.

2. The petitioner viz., Dr.Divya Elizabeth George after having completed her BDS from Manipal College of Dental Sciences, Mangalore during 2014, appeared for the post graduate MDS entrance examination conducted by the third respondent for the academic session 2015-2016. The petitioner secured 138th rank and the counseling for selection is to commence from 28.03.2015. The petitioner would state that there are two categories of institutions, namely, the Government institution and the non-Governmental institution. The non-governmental institutions include private, self-financing, unaided, minority and non-minority institutions. It is submitted that the post graduate courses in Dental Surgery offered by institution has to be in accordance with the Dentists Act, the rules and regulations framed therein and the notifications and circulars issued by the Dental Council of India from time to time. It is further submitted that regardless of the classification of the institution, they are governed by the statutory provisions, the regulations and circulars etc. It is submitted that the admission to the post graduate MDS course in all institutions fall within the control of the second respondent University has to be solely based on merit which can be determined only by way of a competitive test or a common admission test. Further the petitioner submitted that the seat matrix has not been published by the third respondent which according to the petitioner is due to connivance with the management of the colleges falling under the second respondent University. The petitioner would further state that upon perusal of the seat matrix for the previous year revealed that surrendering of Government quota of 50% was never done and few seats surrendered by them were non clinical subjects and the other seats were retained by the Managements. Further the petitioner would state that the weightage given to the service candidates up to 10% is illegal and contrary to the dictum of the Hon'ble Apex Court in Sudhir N & Ors Vs. State of Kerala & Ors., in Civil Appeal Nos. 297-298 of 2015 dated 12.01.2015.

3. By referring to the said decision, the learned counsel for the petitioner submitted that the Hon'ble Supreme Court categorically held that the merit shall be the sole criteria which shall be based on the marks obtained in the common entrance Test and no weightage can be given for seniority. Therefore, it is submitted that the respondents 2 and 3 have adopted a procedure contrary to the decision of the Hon'ble Supreme Court. Further it is submitted that the private Managements have not surrendered 50% seats towards the Government quota in respective disciplines and this is contrary to the directions issued by this Court in a Writ Petition filed by the Indian Dental Association during the previous year. Further it is submitted that the admission process has to be channalised and it has to be conducted with full co-operation and co-ordination between the Government of India, State Government, Universities, Dental Council of India and the authorities concerned and they are bound to act in tandem and strictly as per the prescribed schedule. It is further submitted that unless the respondents are directed to prepare the seat matrix as per the guidelines framed by the Dental Council of India and conduct counselling, the petitioner would be put to irreparable hardship and prayed for issuance of writ of Mandamus as sought for in this Writ Petition.

4. Heard the learned Special Government Pleader on the above submission and perused the "Position Note" submitted by the third respondent.

5. The learned counsel for the petitioner has raised two contentions before this Court. Firstly by relying upon the decision of the Hon'ble Supreme Court in the case of Sudhir N & Ors Vs. State of Kerala & Ors., in Civil Appeal Nos. 297-298 of 2015 dated 12.01.2015 and the second contention is regarding the non publication of seat matrix. So far as the first contention is concerned it is seen that the Hon'ble Supreme Court in the said decision was considering an appeal arising out of a Judgement of the High Court of Kerala whereby the High Court allowed the Writ Petitions with a direction that the selection of in-service medical officers for post-graduate medical education under Section 5(4) of the Kerala Medical Officers' Admission to Postgraduate Courses under Service Quota Act 2008 (Kerala Act 29 of 2008), shall be made strictly on the basis of inter se seniority of the candidates who have taken the common entrance test for post-graduate medical education and have obtained the minimum eligibility bench mark in that test in terms of the Regulations framed by the Medical Council of India. In the background of such fact and taking note of the grounds of challenge, the Hon'ble Supreme Court pointed out that a meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit and that it is fairly well

settled that merit and merit alone can be the basis of admission among candidates belonging to any given category and their inter-se merit cannot be overlooked only to promote seniority which has no place in the scheme MCI Regulations. Therefore, the decision rendered by the Hon'ble Supreme Court is already distinguishable on facts and is of a little assistance to the case of the petitioner and has absolutely no application to the facts of the present case. Therefore, the contention raised by the petitioner by relying upon the said decision is thorough misconceived. Therefore, the first contention raised by the petitioner stands outrightly rejected.

6. The second contention raised by the petitioner is that the seat matrix has not been published and this according to the petitioner is in collusion with the private Managements. Further it is submitted that there are more number of seats available and only 46 seats have been disclosed in the prospectus and this is not full disclosure of the number of seats available with the Government and the private institutions.

7. In order to ascertain the correct facts, the learned Special Government Pleader was directed to get written instructions from the third respondent. Accordingly, the third respondent has given a "Position Note" that it has been proposed to conduct the counseling for admission to MDS Course on 28.03.2015 and as per clause 52 of the Prospectus seat matrix will be displayed during counseling. It is further stated that as on date there are 15 seats in Tamil Nadu Government Dental Colleges and 55 seats in Self-Financing Colleges, totally 70 recognised seats are available and the seat matrix will be displayed today (26.03.2015) evening in the official websites. Further it is stated that since the status of recognition in respect of seats given by the Self-financing Colleges have to be verified with Dental Council of India and the Tamil Nadu Dr.MGR Medical University in order to avoid hardships to students. Thus the information regarding the seat matrix will be displayed today (26.03.2015) in the official websites and it is for the petitioner to verify the same. However, it has to be seen as to whether the petitioner is entitled to raise such an objection at this point of time.

8. Clause 52 of the Prospectus deals with admission to MDS Course in Self-financing Institutions and under Sub-clause (a) of Clause 52 it is stated that the seat matrix for these institutions will be displayed during counselling. The petitioner received the prospectus along with the application form which was issued during January 2015 applied for being selected to the post graduate course appeared for the entrance examination and just prior to the counseling, the petitioner now seeks to take a stand which is wholly

contradictory to the prospectus. In fact the contention raised by the petitioner in effect is a challenge to Clause 52(a) of the Prospectus which cannot be permitted as the petitioner is estopped from doing so having participated in the selection process. Furthermore, in terms of Annexure - III of the Prospectus, the seat matrix is only tentative and the petitioner will know the full details which will be published in the website and also available at the time of counseling. Therefore, the petitioner cannot now come forward with a plea of seat matrix should have been published earlier.

9. The reference to the earlier orders passed by this Court during the previous years said to have been filed by the Indian Dental Association can hardly have any impact on the present selection, more so when the petitioner has not moved this Court earlier prior to her participation in the selection process. Hence, the present attempt made by the petitioner is not maintainable and the petitioner is estopped from challenging the Prospectus which is binding on the petitioner as she has submitted herself to the selection process in accordance with the Prospectus.

10. In the light of the above, the petitioner has not made out any case and accordingly, the Writ Petition fails and the same is dismissed. However, this will not prevent the petitioner from attending the counseling. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Secretary
State of Tamil Nadu
Health and Family Welfare Department
Fort St. George
Chennai - 600 009.

2. The Vice Chancellor
The Tamil Nadu Dr.M.G.R.Medical University
No.69, Anna Salai, Gindy
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4. The Secretary
The Dental Council of India
Aiwan-E-Galibmarg, Kotla Road
New Delhi - 110 002.

1 CC to Mr.S.D.Venkateswaran, Advocate SR.No. 17228

1 CC to the Government Pleader, SR.No. 17315

W.P.No. 8765 of 2015

And

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SR (CO)
PSI (10.04.2015)



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