

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

WRIT PETITION No.4781 of 2017

S.Kumar

... Petitioner

vs.

1. Union Territory of Pondicherry,
rep. by the
Secretary to Her Excellency Lt. Governor
Union Territory of Puducherry,
Raj Nivas,
Puducherry - 605 001.
2. The Chief Secretary to Government-cum-
Chief Vigilance Officer,
Government of Puducherry,
Secretariat,
Beach Road,
Puducherry - 605 001.
3. The Secretary to Government (Health),
Government of Puducherry,
Secretariat,
Beach Road,
Puducherry - 605 001.
4. The Secretary to Government (Education) - cum
Chairman, (CENTAC),
Government of Puducherry,
Secretariat,
Beach Road,
Puducherry - 605 001.
5. The Convenor,
Centralized Admission Committee (CENTAC),
Pondicherry Engineering Campus,
Kalapet,
Puducherry 605 014.
6. The Director (Higher Education) (PIPMET),
Education Department,
Government of Puducherry,
Puducherry.

7. The District Collector of Pondicherry,
Government of Puducherry,
Collectorate,
Revenue Complex,
Saram, Pondicherry - 605 013.
8. The Director,
Central Bureau of Investigation (CBI),
Shasthiri Bhavan,
Nungambakkam,
Chennai 600 006.
9. The Secretary to Government (Education),
Government of India,
Ministry of Human Resources Development,
Shastri Bhavan, New Delhi.
10. The Secretary to Government (Health),
Government of India,
Ministry of Health & Family Welfare,
'A' Wing, Nirman Bhavan,
New Delhi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records relating to the impugned Notice vide No.1-240/SECY/EDN/PA/2015/51, dated 02.07.2015, passed/issued by the 4th respondent and quash the same and consequently direct the 9th respondent to enquire/investigate into the matter and file a Report on the complaint lodged by the petitioner and also direct respondents Nos.1 to 4 to award compensation to the petitioner for loss caused to the petitioner due to improper and illegal procedure followed by the respondents Nos.4 and 5 in the matter of allotting seats under Government Quota.

For Petitioner सत्यमेव जयते : Mr.Prakash Adiapadam

For Respondents 1 to 4, 6 & 7 : Mr.C.T.Ramesh,
Additional Govt. Pleader

WEB COPY O R D E R

The petitioner has come up with this Writ Petition seeking to quash the impugned Notice vide No.1-240/SECY/EDN/PA/2015/51, dated 02.07.2015, passed by the 4th respondent and for a consequential direction to the 9th respondent to enquire into the matter and file a Report on the complaint lodged by him and also direct respondents 1 to 4 to award him compensation for the loss caused to him due to improper and illegal procedure

followed by the respondents Nos.4 and 5 in the matter of allotting seats under Government Quota.

2. According to the petitioner, he is a permanent resident of Nallvadu Village, Ariyankuppam Commune Panchayat, which comes within the Union Territory of Puducherry. He belongs to 'Fisherman Community', which is treated/recognised as EBC (Extreme Backward Class). It is the case of the petitioner that his daughter viz. K.Krithisha submitted an application for getting Medical College admission for M.B.B.S. Course under Government Quota through the 5th respondent/Convenor (CENTAC), as he is the authorized sponsoring agency. In the Union Territory of Puducherry, there are totally eight Medical Colleges and the total number of M.B.B.S. Seats for eight Medical Colleges are 415. He pointed out that as per G.O.Ms.No.9/2010/WEL/SW-V, dated 28.08.2010 issued by the 1st respondent, 2% reservation should be given to EBC category candidates in matters of both public employments as well as education and as such, EBC category candidates are entitled for 8 seats under the Government Quota for M.B.B.S. courses. Therefore, according to the petitioner, respondents 4 to 6 ought to have notified 8 seats under EBC Quota, but, they have initially notified only 7 seats under EBC Quota. After carefully scrutinizing his daughter's application form, the 5th respondent published merit list, wherein, his daughter's name was found at Serial No.8 against EBC Quota.

3. Pursuant thereto, the 5th respondent issued two Counselling Call Letters to the petitioner's daughter on two different dates, on 03.07.2012 and 07.07.2012, asking her to appear for counselling along with all original Certificates for getting admission for biology based courses on 12.07.2012 at Counselling Hall, Pondicherry Engineering College Campus, Kalapet, Puducherry. Accordingly, the petitioner's daughter attended the counselling with original Certificates along with other EBC candidates. After the first counselling which was held on 12.07.2012, respondents 4 and 5 filled up only four seats and the remaining four seats were kept unfilled and that the petitioner's daughter was forced to take seat for M.B.B.S. Course in Mahatma Gandhi Medical College, Puducherry and the petitioner was constrained to pay double fees, i.e. Rs.5,00,000/- to the Management. Hence, the petitioner's daughter submitted a detailed representation to the respondents praying for allotment of admission to first year MBBS course in anyone of the Private Medical Colleges in Puducherry with tuition fees of a sum of Rs.2,25,000/- per annum. But, the respondents neither considered nor disposed of the said representation, instead, they filled up the 8th seat on 06.08.2012, by giving admission to one S.Soundaria, who belongs to EBC Quota.

4. Hence, having no other alternative remedy, the petitioner's daughter filed a Writ Petition in W.P.No.28417 of 2012 seeking a direction to the 1st respondent to allot admission to first year MBBS Course to her in any one of the Medical Colleges in Puducherry with tuition fees of a sum of Rs.2,25,000/- per annum and also for a direction to the respondents to strictly follow the procedure while conducting counselling for allotting seats under Government Quota in respect of admission to MBBS courses. According to the petitioner, the said Writ Petition is pending till date and while so, on 26.09.2012, he submitted a detailed representation to the 1st respondent, requesting him to intervene in this matter and take appropriate action. But, the 1st respondent forwarded the petitioner's complaint to the 4th respondent herein and directed him to dispose of the same and pass speaking orders on it. Thereafter, the 4th respondent conducted an enquiry and passed the impugned order dated 02.07.2015 vide No.1-240/SECY/EDN/PA/2015/51, rejecting the claim of the petitioner that the 8th Seat was filled up by way of All India Quota. Aggrieved by the same, the petitioner sent a detailed representation on 17.12.2014 to the Hon'ble Prime Minister of India and the Secretary to the Hon'ble Prime Minister of India forwarded the petitioner's complaint to the 2nd respondent and directed him to look into the matter and take appropriate action. Since no action is taken on his complaint, the petitioner is once again before this Court.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Pondy) appearing for the official respondents.

6. It is seen that even though the petitioner has given such a complaint, the authority concerned has conducted an enquiry, in which the petitioner participated and Enquiry Report was filed and final order was passed by the 4th respondent on 02.07.2015. Relevant portion of the said order reads thus:

"(4) The matter has been examined in the light of the provisions of Law, under reservation aspects, and it is found that the argument of the petitioner herein that his daughter would have got the Medical College seat in Venkateshwara Medical College, due to the fact that Selvi D.Dhivya had opted for BDS seat in the 1st counseling itself but had returned during the 2nd counseling and she should have not been considered for the MBBS seat, is not correct. At the time of first counselling the total number of seats allotted for MBBS course is 105 in Govt. Institution and 264 seats in Private Medical

institutions. The reservation of region-wise quota is as follows - Karaikal - 18% (19 seats), Mahe - 4% (4 seats) and Yanam. - 3%(3 seats). The remaining norms, 2% seats were allotted to Pondicherry region is (105-26) 79. As per the reservation norms, 2% seats were allotted to EBC category candidates i.e. 7 at the time for first counselling. During the subsequent 2nd counselling, seat matrix was re-allotted based on the unfilled seats from All India Quota and hence 1 more seat was allotted to EBC category candidates. As per the argument of the petitioner herein, 8 seats were to be notified in the first counselling itself. But this is not possible as per the reservation percentage and only during the situation arising of surrender of more seats from All-India quota only, one more seat would become available. The petitioner's argument that Shri D.Dhivya had opted for Dental seat in the first counselling and need not have been offered another MBBS seat in the 2nd counselling, is denial of merit. As per existing Law, every candidate has a right to come and participate in the subsequent counselling to opt for a seat of his / her chance of College. This cannot be denied. Had another seat been available during the 1st counseling itself, Selvi D.Dhivya could have opted for Manakula Vinayagar Medical College itself which she subsequently opted for during 2nd counselling. It is purely her wish and desire and argument that she had already opted for BDS and may not have opted for a MBBS seat in Manakular Vinayagar Medical College is only hypothetical and a wish by the petitioner. This belief is negated by Selvi D.Dhivya opting for MBBS seat in 2nd counselling, as per her wish and not by anybody's pressure or arbitrary decision.

(5) The petitioner's daughter Selvi K.Krithisha would not have had a chance of getting the Venkateshwara Medical College at all. In the result the argument on hypothetical reasoning does not carry any weight or merit and the fact that Centac had given one or more seat during the 2nd counselling by working out the percentages properly to make it 2% in the E.B.C. category, is proper and justified as additional seat could have come owing to the surrender of seats by the All-India quota only and argument of

Thiru.S. Kumar that had eight seats been allotted in the 1st counselling itself, does not merit any consideration. "

7. In the said order, the authority concerned has clearly stated that as per the reservation norms, 2% seats were allotted to EBC category candidates, i.e. 7 at the time of first counselling and that during the subsequent second counselling, seat matrix was re-allotted based on the unfilled seats from All India Quota and hence one more seat was allotted to EBC category candidates. He further made it clear that CENTAC had given one more seat during the second counselling by working out the percentages properly to make it 2% in the E.B.C. category.

8. Furthermore, the petitioner has not challenged the impugned order for more than two years. Though the petitioner contends that subsequent to the impugned order, he has preferred an appeal on 21.09.2015 to the 1st respondent and made representations to various authorities, that cannot be a valid reason for the delay in challenging the impugned order. In any case, the petitioner's daughter having obtained an M.B.B.S. seat and completed her course now, challenging the impugned order at this distant point of time is of no avail to them.

9. Hence, this Writ Petition is dismissed, however with notional costs of Rs.1,000/- (Rupees One Thousand only) payable by the petitioner to the Mediation and Conciliation Centre, High Court, Madras, within a period of one week from today. Consequently, connected W.M.P.Nos.5021 and 5022 of 2017 are closed.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

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To:

1. The Secretary to Her Excellency Lt. Governor
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Government of India,
Ministry of Health & Family Welfare,
'A' Wing, Nirman Bhavan,
New Delhi.
10. The Section Officer,
Mediation & Convation Complex, High Court, Madras 104.

+1cc to M/s.Prakash Adiapadam, Advocate SR.No.12758

+1cc to Government Pleader, SR.No.13068

W.P.No.4781 of 2017

RSK(CO)
GN(04/04/2017)