

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM:

THE HON'BLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
AND
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Appeal Nos. 27 and 53 of 2017

Minor S.Prashanth ... Appellant in W.A.27/2017

Versus

1. The Medical Counselling Committee
rep. by its Director General, Ministry
of Health & Family Welfare,
Nirman Bhavan, New Delhi.
2. The Medical Council of India (MCI)
rep. by its Secretary, Pocket-14,
Sector 18, Dwarka Phase 1,
New Delhi.
3. The State of Tamil Nadu,
rep. by its Secretary, Ministry of
Health and Family Welfare,
Secretariat, Chennai 600 009.
4. The Selection Committee,
rep. by the Director of
Medical Education,
Kilpauk, Chennai 600 010.

... Respondents in
W.A.27/2017

M.Rithika (Minor)

... Appellant in W.A.53/2017

Versus

1. The Medical Council of India (MCI)
rep. by its Secretary,
New Delhi-110 011.
2. The Director,
The Directorate of Medical Education,
Govt. of Tamilnadu, No.162,
E.V.R.Periyar Salai,
Kilpauk, Chennai - 600 010.

3. The Secretary,
The Selection Committee,
The Directorate of Medical Education,
Govt. of Tamilnadu,
No.162, E.V.R.Periyar Salai,
Kilpauk, Chennai - 600 010.

... Respondents in
W.A.53/2017

Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 24.10.2016 made in W.P.No.33945 of 2016 and W.P.No.34523 of 2016 by the learned single Judge.

W.P.No.33945 of 2016 : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to fill up the 91 seats returned from out of the 15% All India Quota by following the NEET Merit List with domiciled candidates from Tamilnadu in consonance with the ratio laid down in the Sankalp Charitable Trust case as reported in (2007) 7 SCC 487 and in compliance of The Indian Medical Council (Amendment) Ordinance Act 2016 dated 24.5.2016.

W.P.No.34523 of 2016 : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the petitioner representation dated 26.09.2016 and consequently direct the respondents to consider the NEET exam qualified candidates for the State counseling for the surrendered seats of 15% All India Quota for MBBS course for academic session 2016-17.

For Appellant in W.A.27/2017 : Mr.Karthik
For Appellant in W.A.53/2017 : Mr.V.Muthuvelan
For R1 in W.A.27/2017 : Mr.D.Rameshkumar
For R2 in W.A.27/2017 & For R1 in W.A.53/2017 : Mr.V.P.Raman

For R 3&4 in W.A.27/2017 & : For R2 & 3 in W.A.53/2017
Mr.R.Muthukumarasamy,
Advocate General assisted by
Mr.K.Venkataramani,
Additional Advocate General &
Mr.P.S.Sivashanmugasundaram,
Special Government Pleader &
Mr.R.Prathapkumar,
Government Advocate

COMMON JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao,J)

These Clause 15 Letters Patent Appeals are directed against the order rendered on 24.10.2016, by our learned brother Justice B.Rajendran, declining to grant relief prayed for in the writ petitions. Hence, the Writ Petitioners have preferred these Appeals.

2. The case of the Writ Petitioners/Appellants is that they appeared at the All India National Eligibility Entrance Test (NEET) 2016. After two rounds of Counselling/ admission process undertaken by the Director General, Central Government Health Services (CGHS), little more than 1000 seats across the country remained vacant and unfilled. From the State of Tamil Nadu 82 seats were found vacant. In these circumstances, they prayed for a direction to the State and its subordinate agencies in-charge of the admission process to the 1st year MBBS Courses, to grant admission against the vacant 82 seats which have been reverted back to the State Pool upon getting reverted from 15% All India Pool.

3. The contention urged before us by the learned counsel appearing for the appellants was, that, these seats form part of 15% All India Quota. The admission to these seats is regulated by the ranking secured at NEET. Therefore, even if those seats reverted back to the State Pool, the same shall be filled in by following the NEET ranking only and they cannot be filled on the basis of merit list drawn by the State Government for regulating the 85% of seats for which it has published the merit rank list separately. The learned counsel for the appellants have also drawn our attention to an order passed by the Supreme Court on 06.10.2016, clarifying the position that the admissions to be undertaken against the reverted seats from the All India Pool have to be filled in by following the NEET based merit ranking, but not based upon the State Government Merit List.

4. Per contra, the learned Advocate General, appearing for the State would contend that once the seats have been filled in by following the NEET based merit ranking and if the students opt out of such admission leaving the seats vacant, such seats revert back to the State Pool. Once the seats revert back to the State Pool, they are required to be filled based on the merit ranking of the State, which is the criteria to be adopted for admission against the seats available in various Medical Colleges in the State. Learned Advocate General would point out that when a similar question has cropped up last year, this Court has given such a direction and hence this time around the State has followed the same system.

5. The learned Advocate General would further point out that eighty two vacant seats have in fact been filled up on 26.09.2016 itself as the deadline for completion of the admission process for the 1st MBBS ends with 30th September of each year and not to allow such large number of seats to go unfilled and they were filled up by following the same principles/criteria adopted by the State for filling up the 85% State Quota seats. It is therefore urged that the order passed by the Supreme Court on 06.10.2016 would be of no avail to the cause of the present writ petitioners/appellants.

6. The learned Standing Counsel for the Medical Council of India would also contend that the admission process to the 1st MBBS Course and for the matter BDS Course as well has to be accomplished latest by 30th September of the year. Unless this deadline is stuck to by all concerned, it will be difficult for the Medical Council of India to monitor and maintain Uniform Standards of Education and Research in this field. Therefore, the admission process undertaken by the State on 26.09.2016 cannot be valid. But however, the learned counsel for the Medical Council of India would urge that so long as a fair and transparent procedure is adopted for regulating the admission process, the Medical Council of India normally maintains the 'arms length distance' except watching for the faithful implementation of any such procedure/criteria either based on the State merit ranking or based on NEET ranking.

7. The fact remains that the controversies arising out of admission process to the 1st MBBS/BDS Courses have now turned out to be an annual affair in every Constitutional Court available in the country without fail, as one complication or the other is sought to be projected for making a departure from one policy or the other. As a consequence thereof certain element of unpredictability is also creeping in.

8. Undoubtedly Section 10 of the Medical Council of India Act was introduced to ensure that uniform standard of education and research is carried on so that a fully equipped and well trained student will be rolled out of the Medical College as a full fledged professional at the end. Any dilution of the standards of admission is likely to result in making available not so fully prepared and not so fully well equipped professionals to emerge. Such professionals will not be in a position to effectively and confidently participate in health care delivery, either organized by the State or privately. It is the consumers of such service, who might get exposed quite unwittingly to a halfhearted approach of disease tackling. Therefore, with a view to achieve a uniform standard across the breadth and length of this massive country, and also to relieve

the student community of the stress of facing more than one competitive examination for securing admission, one standard test is sought to be introduced, performance at which will ultimately hold the key for unlocking the admission process in one Medical College or the other. The minimum benefit out of this system was the student Community at large may not have to face quite unnecessarily number of competitive examinations. This apart, opportunities for admission, particularly against the institutions receiving aid and support of the State shall, to the extent feasible, be thrown open. Article 29(2) of the Constitution clearly mandated that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. The expression used towards the end of this Article "or any of them" does not necessarily confine itself only to the religion, race, caste or language. But even on the pretext of not having passed an examination conducted by a particular State as well, admission may not be denied. When every endeavour is to be made for securing uniform development of the country and particularly standardization of professional education, the admission process to the prestigious Professional Courses such as MBBS/BDS, Engineering, Science, Law Colleges etc., holding an even platform for all to compete and stake their claim should be made available. For achieving this broader objective, and also to relieve the student community of the relentless pursuit on every Sunday for a couple of months period annually to face one competitive examination or the other, only for purpose of securing admission, is not perhaps an ideal that should be followed, one National Level Competitive Examination is required. The associated stress symptoms emanating from the failure is mostly remaining unredressed. There are, in few cases, leading to extreme complications and irreversible actions. But failures are not uncommon at any examination all the more so if it is a competitive one. Addressing all these issues only, an All India Examination was contemplated to be put in place. That is how NEET was brought to the Center stage.

9. By directing each State Government throughout to make available 15% of the seats to the All India Pool, it is only expected that a cross border pursuit of Professional Courses would bring forth the much desired respect for the best practices adopted and followed in the other States. The competitiveness amongst peers will take them to a higher level on All India basis ultimately.

10. But however, such a system has its own associated problems. Some of the students who take NEET exam and secure a good rank that would fetch them a seat in a State other than their home State would initially stake a claim for such

admission and as soon as the admission process is finalized in their home States, where they are following their own merit rank at the State level, if they could secure admission in one Medical College or the other in their home State, such students, prefer admission at the Medical College situated within their home State rather than locate themselves in some other State. Thus, they leave the Admission secured, based upon their All India Rank. The reasons are not far to seek. The logistics and the economic factors associated in pursuits of education at places far away from home are certainly some of the impeding factors. This apart, India being a country having divergent cultures and languages, student community from one Region seldom prefer to live, in other regions. Particularly students hailing from those States where Hindi is fluently spoken to or written, express certain reservation to live for the sake of education in down South India, where each of the States has a distinct language of its own and Hindi is hardly in use in semi-urban areas there. Particularly for the students who pursue MBBS and BDS Course, at the initial phases of the academic life, they require additional efforts to put in to draw comfort from hitherto unknown place. They also need extra effort to get adjusted to the special requirements emanating from the exposure to new language etc. and to get used to the support rendering infrastructure as well. And when they get over these problems, comes calling closely the need for them to pick up proficiency in the native language, as they need to interact with the patients as part of their bedside study program. Unless the students are exposed to bedside class one will not be able to gain 'hands on' experience. These factors act as effective deterrent in majority of the cases of the students coming from different regions and different language backdrops. This causes a good numbers from dropping out of the college concerned. Those seats in Medical Colleges and Dental Colleges become suddenly vacant particularly when the admission schedule was drawing to a close towards the end of September. This makes/calls for a hectic effort to be put in place to ensure that no seat in a Medical College remains vacant.

11. This was throwing up a challenge as to how those vacant seats should be filled up and another round of Counselling is required to be undertaken or sliding procedure from one course to other should be undertaken or an open advertisement process has to be resorted to providing for at least 48 hours duration for student community to come to know of the information relating to the vacancies available and then respond and if for any reasons if a meritorious student is virtually prevented from responding to any such notification, should his right for admission be allowed to be lapsed or only such students who have necessary financial support and wherewithal to approach a Constitutional Court should be preferred for such an admission

process irrespective of their relatively low merit ranking in comparison to the others who secured better ranks than them. These are some of the most important questions that require balancing the competing rights of the students particularly guaranteed by Part III of the Constitution. That is becoming some what stressful job even for the Constitutional Courts. The stress being supplied essentially because of adherence to the deadline drawn for the admission process. It is these factors, which contribute in equal measure, a semblance of justification for the States concerned to treat the vacant 15% All India Quota seats also as liable to be filled in by following the State merit ranking list. After all the seat which has now become vacant is the one which is available in one Medical College or the other in the State, which might belong to the Government or private sector as the case may be. When once the vacant 15% All India Quota is reverted back to the State Quota, there appears to be some justification to think that they are liable to be filled in by following the State merit ranking for, All India merit rankers have not turned up to take up the admission there against such seats.

12. At the same time, when we look at the order passed by the Supreme Court on 06.10.2016, we cannot miss the following:

"I.... Needless to say, the State quota also includes the seats that have been reverted from All India Quota. The rest of the seats which find mention in the chart not belonging to the four States shall be filled up by the concerned States by adopting transparent procedure, regard being had to the criteria followed for filling up All India Quota seats. We may hasten to clarify, the States shall not treat them as the seats which have been reverted to the State Quota from All India Quota but fill them up by taking the merit in All India Quota. Needless to say the whole thing shall be completed by 07.10.2016....."

13. If the seats which remain unfilled in 15% All India Quota and they reverted back to the State Pool, the contention of the learned Advocate General for the State proceeds that they are liable to be treated as State Quota seats is a contention which cannot be brushed aside lightly. The first sentence from the above quoted passage of the order of the Supreme Court also lent some support to the above thought process, when the Supreme Court observed that the State quota also includes the seats reverted from All India quota. But it is the latter part of the order dated 06.10.2016 which made it clear that the remaining vacant 15% All India Quota seats shall be filled up, regard being had to the All India merit. It is not in doubt that State of Tamil Nadu is not one of those four States mentioned in the

above passage of the order of the Supreme Court. But however, going by the earlier order of the Supreme Court dated 23.09.2016, where the following direction appeared:

".....They are reverted to the State.
Let these seats be reverted and counselling be held
as per schedule....."

14. For the remaining vacant 15% All India Quota seats, the State of Tamil Nadu went ahead and filled up the All India quota reverted seats duly following the State Merit Ranking, which admittedly does not take into account All India Merit and those vacant seats are to be filled by undertaking a transparent counselling process, respective States could not have undertaken any such exercise having regard to All India Merit Ranking for the reason that it is not the State which prepared the All India merit ranking but it is the Director General of Health Services, Government of India who did that. There may not be available a separate mini merit ranking list of All India, confined to the students inter se hailing from a particular State. By mentioning that the remaining vacancies to be filled up by undertaking a counselling process by the Supreme Court, perhaps, the States respectively may have understood that the counselling process contemplated and provided for by the State concerned i.e. State selection criteria should be followed while filling up the vacant seats out of 15% All India Quota. This apart the State Government has filled up the remaining seats on 26.09.2016 to ensure that the admission process gets completed by 30th September, 2016. Particularly when viewed in the context of the State of Tamil Nadu not moving an application before the Supreme Court seeking extension of time for completing the admission process beyond 30th September, 2016, in our humble opinion, it will be too harsh for us to characterise the admission process undertaken by the State against remaining vacant seats of All India Quota as of 26.09.2016 by following State merit rank as unfair or unreasonable.

15. By this action of the State one set of 82 students got admitted to 1st MBBS Course and those students are not at fault. They made no misrepresentation in the matter of securing admission but however, either those 82 students should be allowed to pursue the course or they should be replaced by another set of 82 students who have secured merit ranking at the NEET. Virtually one set of 82 students will have to eventually make way for the other set, if the order of the Supreme Court dated 06.10.2016 is to be carried to its logical end.

16. The students at 10+2 are competing so enormously for securing admission to one Medical College or the other. As low as 0.25% mark is making or marring their chance of such admissions. Such was the competitiveness prevailing. It is good

in the national interest because the best of the students alone are getting admitted to one Medical College or the other. But the whole question is when a student who missed the bus initially, rakes up a legal issue, the difficulty to find a satisfactory solution in real quick time within the four corners of the legal framework prevailing is causing any amount of difficulties. As the present case has disclosed, much could be said on both sides. But however, the concern of the Medical Council of India that the admission process must be brought to an end latest by 30th September for ensuring proper quality training to be received by the students concerned, cannot be found fault with at all. It was a statutory obligation to be carried out by the Medical Council of India. Admission process can not be dragged on endlessly. First of all Medical Council of India is required to maintain the minimum standards of education. But however, where, for an altogether wrong reason, if a student has been denied admission, such a student cannot be left high and dry. He can nonetheless be granted admission but subject to a condition that he will not be entitled to take first year end examinations with the rest of the students of the same batch, (regularly admitted before 30th September of the year) but can only take the examination along with the supplementary batch of students. Supplementary examinations are conducted by maintaining a minimum of 6 months gap so that such of those students who could not measure up to the required grade earlier, can once again prepare properly and face the examination after 6 months. By following this principle, the student perhaps might lose the benefit of only 6 months but the improper denial of admission to him can be remedied. At the same time the anxiety of Medical Council of India to secure full fledged training before the students walk out of Medical Colleges can also be got accomplished. Where there is a choice between a larger and lesser evil, it is only appropriate that the lesser evil should be allowed to prevail while the larger evil is cured and or curtailed.

17. We express our total unhappiness about the State of Tamil Nadu for not participating in the inquiry before the Supreme Court. It ought to have brought to the notice of the Supreme Court promptly and faithfully, the fact that it has filled up the vacant reverted seats from 15% All India Quota by adopting the State criteria of admission but not based on All India merit ranking of NEET. They should have invited the attention of the Supreme Court for an authoritative pronouncement as to which course of action on procedure for admission should be followed in such a situation i.e., the All India merit ranking or the State merit ranking should be followed. Such a question could, in all probability, have been decided, authoritatively, by the Supreme Court. The State of Tamil Nadu, hence, has to share the blame for its inability to

comply with the order passed by the Supreme Court on 06.10.2016. Even now it would not be too late, perhaps, for the State to seek the necessary guidance from the Supreme Court.

18. In fact, the Supreme Court after reviewing various earlier decisions of it, in *Asha vs. PT.B.D.Sharma University of Health Sciences and others* (2012) 7 SCC 389), has furnished answers to some of the vexed questions posed repeatedly, in paragraph 38 in the following manner:-

" 38. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

38.1. Question (a): The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and authorities concerned are required to follow this rule strictly and without demur.

38.2. Question (b): 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counselling by 15th September of the relevant academic year (in terms of the decision of this Court in *Priya Gupta*). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, only be done if the conditions stated by this Court in *Priya Gupta* and this judgment are found to be unexceptionally satisfied and the reasons there for are recorded by the court of competent jurisdiction.

38.3. Questions (c) & (d): Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring

authorities irrespective of their stature and empowerment. Where the admissions given by the authorities concerned are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course."

19. We find that the present set of cases are perhaps the kind which the Supreme Court wanted to brand them as 'rarest of rare cases'. As it is not possible to list out what the rarest of rare cases are all about and perhaps there could not have been an exhaustive list of such contingencies either. Let us hope so.

20. As of now, we are informed that there is only one seat available in the MBBS Course at the Government Medical College, Thiruvavur. The Appellant in Writ Appeal No.27 of 2017 (Minor S.Prashanth) is the next meritorious All India ranker. Therefore, subject to any orders that might be passed by the Supreme Court, the Appellant in Writ Appeal No.27 of 2017 is directed to be granted admission against the vacant seat in the Government Medical College of Thiruvavur with a condition that he shall not be permitted to appear for the first year end examinations along with those who have been admitted on or before 30th September, 2016. But however, he shall be allowed to appear for the supplementary examination that might be conducted by Dr.MGR University of Health and Science subsequently. However, his admission will abide by the orders that might be passed by the Supreme Court in that regard henceforth.

21. For the foregoing reasons, Writ Appeal No. 27 of 2017 stands disposed of while the Writ Appeal No.53 of 2017 fails as there is no seat available in any other Government/Private Medical College in the State, to accommodate the Appellant.

22. We only hope that the State Government would immediately move the Supreme Court and seek appropriate directions in the presence of the Medical Council of India in that regard.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General,
Medical Counselling Committee
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi.
2. The Secretary,
Medical Council of India (MCI)
Pocket-14, Sector 18, Dwarakha Phase 1,
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6. The Secretary,
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7. The Dean,
Government Medical College,
Thiruvavarur.

+1cc to M/s.Menon, Karthick, Mukundan, Advocate, S.R.No.9407
+1cc to Mr.V.Muthuvelan, Advocate, S.R.No.9310
+1cc to Mr.D.Rameshkumar, Advocate, S.R.No.9736
+1cc to the Government Pleader, S.R.No.9577

W.A.Nos. 27 and 53 of 2017

CA(20/02/2017)