IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.22589 of 2017
and
W.M.P.No.23708 of 2017

Minor S.Kiruthika
Rep by her next friend
Guardian and father S.Selvaraj ... Petitioner

-Vs-

1. Government of Tamil Nadu
   Rep by the Principal Secretary
   Department of Higher Education
   Secretariat, Chennai - 600 009.

2. The Secretary to Government
   Department of Health and Family Welfare
   Government of Tamil Nadu
   Secretariat, Chennai - 600 009.

3. The Director of Medical Education
   No.162, Poonamallee High Road
   Chetpet
   Chennai - 600 031.

4. The Secretary
   Selection Committee
   Directorate of Medical Education,
   No.162, Periyar E.V.R High Road
   Kilpauk, Chennai - 600 010.

5. Medical Council of India
   Rep by its Secretary
   Dwaraka Phase, New Delhi. ... Respondents

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Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 3 and 4 to issue application to the petitioner for admission to MBBS I year course for the academic year 2017-2018, enabling her to participate in the forthcoming counselling for the current year, for admission based on her cutoff marks.

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For Petitioner : Mr.R.Neelakandan

For Respondents : Mr.T.N.Rajagopalan,
Special Government Pleader
for R1 to R4

Mr.V.P.Raman for R5

O R D E R

"தும்பை விட்டு வாலைப் பிடிப்பது போல" goes a tamil saying.

This Court is reminded of this proverb while considering the last minute efforts taken by the State Government to get NEET exemption without properly giving coaching as per MCI core syllabus. "The dream of becoming a doctor still remains as dream" for the petitioner in spite of securing 1184 marks in the qualifying examination. The amount of hard work and thought process involved in securing such a high mark, would reveal that she should have worked round the clock to achieve this mark. Though, she obtained 1184 marks out of 1200 marks in the +2 examination and 199.25 marks out of 200 marks for medical admission, she could secure only 154 marks out of 720 marks in the NEET examination.

2.This Court is aware that the conducting of NEET Examination has been approved by the Hon'ble Supreme Court of India. Though challenge was made by various parties questioning NEET, it was negatived and only after the approval of the Hon'ble Supreme Court of India, the NEET Examination is being conducted.

3.The very purpose of uniform entrance examination and the Centralized admission process is to make merit as basis and to eliminate corruption and circulation of heavy money in Medical Education which is a laudable step. The admission into Under Graduate Medical Courses is based on the uniform examination conducted as per Regulation 5 of the Regulations on Graduate Medical Examination, 1997. The amendment introducing sub-clause 5 in Clause 5 in the notification dated 31.12.2010 was made vide notification dated 15.02.2012. Though the Hon'ble Apex Court had set aside the said notification in Christian Medical College, Vellore and Others v. Union of India and Others reported in (2014) 2 SCC 305, the said regulation was revived by virtue of the order dated 11.04.2016 made in Review Petition Nos.2159 to 2268 of 2013. Subsequently, the Hon'ble Court in Sankalp Charitable Trust and Another v. Union of India and others reported in (2016) 7 SCC 487 directed the Central Government as well as the Medical Council of India to conduct NEET examination

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for admitting the students in medical colleges. Section 10(d) has been introduced in Indian Medical Council Act, 1956 for conducting uniform entrance examination for Under Graduate and Post Graduate level.

4.It is a fact that the State of Tamil Nadu made an endeavor to get complete exemption from NEET for admission to medical colleges in Tamil Nadu. Though the State assembly passed an unanimous Bill Viz., Tamil Nadu Admission to MBBS and BDS Courses Act, 2017 [TNLA Bill No.7 of 2017] seeking total exemption and the same was sent to the Central Government, it did not respond positively. Subsequently, two draft ordinances seeking exemption from NEET examination for medical and dental admission for the academic year 2017-18 was sent to Central Government. Though certain departments reportedly opined positively, finally the Central Government rejected the ordinances on the ground that other States would seek similar request. Thereafter, the Hon'ble Apex Court on 22.08.2017 directed the State Government to make admission to medical colleges in Tamil Nadu as per the marks obtained in the NEET examination. In the above scenario, the present writ petition has been filed seeking for issuance of a writ of mandamus directing the respondents 3 and 4, namely Director of Medical Education and The Secretary, Selection committee, Directorate of Medical Education to issue application to the petitioner for admission to MBBS I year course for the academic year 2017-18.

5.Heard Mr.R.Neelakandan, learned counsel appearing for the petitioner, Mr.T.N.Rajagopalan, learned Special Government Pleader who explained in detail about the efforts taken by the State Government seeking exemption and Mr.V.P.Raman, learned counsel appearing for the 5th respondent, Medical Council of India.

6.It is evident from the records that the petitioner obtained 1184 marks out of 1200 marks which comes to 98.66% and the break up of the marks is as follows:

Subject	Theory	Practical	Marks obtained for 200
Tamil			195
English			192
Physics	149	50	199
Chemistry	148	50	198
Biology	150	50	200
Mathematics			200
Total Marks			1184

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Thus, the petitioner secured 199.25 cut off marks for MBBS admission based on the marks secured in the higher secondary examination, whereas she obtained only 154 marks out of 720 marks in the NEET examination. It is impossible to secure such a high mark, unless the child had strained through out the two years and burned midnight oil. However, the hard work put in by the petitioner has become futile, as she is unable to secure a medical seat in the changed scenario, whereas CBSE students have been taught as per MCI core syllabus equipping them well to get more marks in NEET examination. Therefore, there is a gap between State Board students and CBSE students who are also our children.

7.When NEET based rank list was released yesterday (23.08.2017), it is understood from media reports that CBSE students are likely to get 1310 seats out of 3382 CBSE students who featured in the merit list under Government quota whereas approximately 2220 seats would go to State Board students out of 23,830 eligible State Board students. What is to be noted is that out of top 20 rank holders, 15 students are from the CBSE and only 5 students are from State Board. Though it may appear that State Board students got more medical seats viz., 2220 (63% of medical seats), the following details (approximately) would reveal that the State Board students got lesser number of seats, given the number of eligible applicants (23,830).

	State Board	CBSE & Other Board
No. of eligible merit list candidates	23,830	3382
No. of seats likely to be obtained	2220	1280
Percentage of seats	63%	37%
Percentage of eligible merit list candidates	9.3%	38.73%

From the above, it is clear that less number of CBSE and other Board students viz., 3382 are likely to get more number of seats, whereas 23,830 State Board students would approximately get lesser seats, viz., 2220. Even out of 2220 seats available to the State Board students, only 1281 students wrote the examination for the first time, whereas 943 students are old students from the State Board. The old students would have prepared subsequently for the NEET examination throughout the year and obtained more NEET marks and they cannot be treated on par with the 1281 fresh students. If closely examined, the State Board students who got admission as per NEET marks would have, mainly, come from the urban and semi-urban areas and this Court

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feels that only a few students from the rural areas would have made it, as they lack sufficient infrastructures and guidance.

8.As already observed, there is something wrong basically with the curriculum of the State Board as the State Government failed and neglected to revamp the syllabus on par with other systems and to teach as per core syllabus given by Medical Council of India for NEET exams. Well trained and qualified teachers have not been appointed and the teachers who are working were not given appropriate training to impart education. The Central Government could have avoided appointing the CBSE to conduct NEET examination, especially when the students from the CBSE are also writing the NEET examination. In that event, the Central Government should have appointed a neutral agency to conduct NEET examination in order to avoid any allegations in this regard.

9.It has been a wrong practice in Tamil Nadu that many of the Schools, especially private schools have been teaching XII syllabus throughout the two year course viz., XI and XII to secure higher marks in Higher Secondary public examination. The schools deliberately failed to teach XI syllabus to the students and therefore, the students who qualified in +2 examinations do not have idea about XI syllabus and this is said to be the major reason for poor performance in the NEET examination in which questions were asked from XI syllabus also. "INFORMATION BULLETIN" released by CBSE for NEET (UG) (Session 2107-18) clearly states in page 4 of the bulletin about the "Syllabus for the Test" which is extracted as follows:

"The question paper for the test shall be based on syllabus modified by the Medical Council of India. Please see Appendix-I for details. Pages 29 to 39 of the CBSE bulletin, clearly gives the details about "core syllabus for NEET" as recommended by MCI. A close scrutiny of the above core syllabus would reveal that it consists of both class XI and XII syllabus and the contents of the syllabus XI and XII syllabus prescribed have been elaborately described."

10.Atleast after seeing the "Information Bulletin" the schools as well as the State Government should have woken up and addressed the lacuna. However, it seems, nothing has been done constructively sensitizing the schools and students about the necessity to study XI subjects atleast thereafter. Therefore, the schools, especially private schools which have been only teaching XII syllabus and the failure of the educational authorities in the State to ensure that XI syllabus is also taught to the students are responsible for the present situation. A Division Bench of this Court castigated the State Government for revising and updating the syllabus, in the judgment dated 31.07.2017 made in W.A.No.838, 843 to 856, 870,

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872 of 2017 in the case of State of Tamil Nadu v. V.S.Sai Sachin and others, while dealing with the G.O passed by the Tamil Nadu Government prescribing 85% of medical seats to State Board students and 15% for the CBSE students. Paragraph 63 of the order is as follows:

> "63.The factual analysis of this case has brought forth the unequal distribution and non availability of the infrastructural facilities in equal measure across the entire State. Schools are not established particularly up to +2 stage in adequate numbers. Even where they are available, the standards of instructional and infrastructural facilities have not been either monitored or updated. Apparently, there was lack of supervision on the instructors, who were entrusted with the task of teaching 10 + 2 students in the Government schools. Most of the students, it looks like, are made to fend for themselves. No responsibility is shared by the instructors for the rapid fall of standards of the students, in spite of being well paid for. This malady has to be addressed and redressed by the State Government by taking meaningful and substantive measures by creating a check on the failure of performance of duties and fixation of responsibilities on the teachers on the one hand and failure on their part to improve upon the lot of students, on the other, while, at the same time, the best amongst them should be appropriately rewarded. This apart, the State shall also endeavour to ensure that all the students get their knowledge updated by constant revision of the syllabus prescribed by the State. The State has an obligation to ensure that a competent academic body comprising of academicians only shall periodically undertake a review of the syllabus preferably once in 3 to 5 years# span, so that the students of Tamil Nadu do not lag behind on the national scale in studying the 10 + 2 course, as 10 + 2 course is a gateway for all higher education. We only hope that the State Government will endeavour to ensure that the infrastructural facilities provided by them are effectively utilized for securing imparting of the latest knowledge on the subjects and it will not go a waste."

11.That apart, if the State Government and Schools have been serious enough, atleast, they would have circulated "Frequently Asked Questions" as stated in "Chapter 13 sending various requests/grievances to CBSE" at page no.27 of "Information Bulletin" which reads as follows:

> "Frequently Asked Questions
> Frequently asked questions have been hosted on web-site.

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These have been prepared based on the previous years experience on the query raised by the candidates and also based on new information for NEET-2017."
If the frequently asked questions had been circulated to the students and the concerned lessons had been taught by the schools, there would not have been any problem now.

12.Though this Court could not find fault with the sincere efforts made by the State Government in getting exemption from NEET examination as done in the last year, the State Government should have prepared the students right from the commencement of academic year 2016-17 to face the NEET examination by appropriate coaching and special classes in the core syllabus as prescribed by MCI, as the questions would be asked from that only. It has to be remembered that the State of Tamil Nadu alone is seeking exemption from NEET examination, when all other States and Union Territories have not sought such exemption. The irony is that Tamil Nadu is a highly literate State having more number of higher education institutions than other states and inspite of that, the State is seeking exemption. Even the economically and educationally backward states like Jharkand, Odissha, Bihar and North East states have not sought such exemption.

13.As the State Government has been making various efforts to get exemption, probably it would have given an impression to the Students as well as the parents that the NEET would be exempted for this year also and therefore, they would not have prepared for the NEET examination very seriously. What the State Government should have done is while taking steps to get exemption on one hand, it should have prepared the students to face the NEET examination on the other hand simultaneously. However, the State Government had neglected to do it. Even the Central Government has not rejected the State Government's request for NEET examination at the threshold. After alleged positive stand regarding TN Government's NEET examination exemption as reported in the media on 16th and 17th August, 2017, the Central Government made its negative stand clearly only before the Hon'ble Apex Court on 22.08.2017. Till that time, the students have been under the impression that NEET exemption would be given. The conduct of the Central Government is also in a way responsible for this position. Though this Court was of the initial impression that Central Government and MCI, apart from State Government are responsible, a close consideration of the issue would reveal that it is only the State Government's failure.

14.Therefore, the following are the reasons for present situation:

(a)Non-teaching of XI syllabus to the higher secondary

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students by the Schools, especially private schools in Tamil Nadu and resultantly, the students are unable to answer questions from XI syllabus in NEET exam.

(b) Teaching XII subjects alone for two years to the students to get higher marks in the XII public examination.

(c) Failure of the educational authorities to ensure that XI syllabus is taught in XI standard in the schools.

(d) Non-conducting of examination for XI subjects at the end of academic year by the State Government.

(e) Failure to teach the syllabus as recommended by Medical Council of India for NEET examination as stated in MCI letter dated 15.12.2016 which is incorporated in page 29 to 39 of "Information Bulletin" NEET (UG) (Session 2017-18) issued by CBSE, as it is clearly stated in page 4 of the "Information Bulletin" that Question papers for the test shall be based on a common syllabus notified by MCI in Appendix-I.

(f) Failure of the State Government and private schools to circulate "Frequently Asked Questions" to the students and accordingly teach them and prepare the students for NEET examination.

(g) Failure of the State Government to revise and update syllabus for the past 10 years atleast in terms of core syllabus as prescribed by MCI in 2016.

(h) Poor quality and pattern of teaching in Government Schools, especially in rural areas and lack of in service training to the teachers.

(i) Lack of infrastructures and facilities available in the State Board schools, especially in the Government schools functioning in the rural areas.

(j) Failure of the State Government to prepare the students for NEET examination from the commencement of academic year 2016-17, when NEET Qualification has become basis for medical admission.

(k) The genuine steps taken by the State Government to get NEET examination for T.N students, gave an impression to the students that NEET exams would be exempted and made them not to prepare for NEET exam very seriously as they have been seriously preparing for XII examination.

(l) The Central Government instead of rejecting the request for NEET exemption through ordinances at the threshold itself, it belatedly stated its negative stand only before the Hon'ble Apex Court on 22.08.2017 after its alleged positive stand regarding NEET exemption ordinances initially.

15.Though Mr.R.Neelakandan, learned counsel appearing for the petitioner and Mr.Velmurugan and Mr.Suryaprakasam, learned counsels who prayed for impleading would strongly contend for increasing the number of medical seats to meet out the extra ordinary situation relying upon the judgment of the Hon''ble

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Apex Court made in the case of Prithipal Singh and others v. State of Punjab and another reported in (2012) 1 SCC 10, this Court cannot given such a direction as it is a long process requiring the approval from Medical Council of India which only after getting convinced that necessary infrastructure are available for increasing the seats would pass the appropriate orders. The said step would not meet the present situation. No doubt, it is an extra ordinary situation which requires extra ordinary remedy. However, this Court cannot go beyond the order passed by the Hon'ble Apex Court and it is only for the State Government to consider and take necessary action.

16.In view of the direction of the Hon'ble Apex Court, the prayer sought for by the petitioner cannot be granted and the writ petition is liable to be dismissed. Consequently, connected miscellaneous petition is closed. No costs.

17.The State Government has already appointed a ten member Curriculum Frame Work Committee comprising of experts in education by G.O.Ms.No.146, dated 30.06.2017 and another thirteen member high level committee consisting of eminent educationalists in various fields through G.O.Ms.No.147, dated 30.06.2017 to revamp the curriculum and circulate questions for ensuing NEET examination to the students. Subsequently, in this regard, the Secretary, School Education Department has also filed an affidavit before this Court on 22.08.2017 in Writ Petition No.21600/2017 giving the details of steps taken by him to revamp and update the curriculum for standards I to XII from the academic year 2018-19 to 2020-21. Special teachers have to be appointed in the Schools only for preparation of the students for NEET examinations. More Government coaching centres have to be established to avoid fleecing by private coaching centres. Special care should be taken while giving coaching to the rural students who are not much equipped.

18.This Court is only concerned with the mindset of the children and their parents who were all along been dreaming and working tirelessly to secure a seat in medical college. When the goal already fixed has become impossible, definitely one would feel let down and frustrated and would be compelled to think as if the whole world has come to an end, which is quite natural.

19.Non-achieving one goal itself is not an end. The children and parents should feel that the God has reserved something great for children in future and that is the reason why they are placed in this unavoidable situation. Therefore, the children and parents should not feel let down and they themselves should realize the reality and march forward. Though it is very difficult, they should fix other goals which could be easily achieved by them in their life. This Court wants to remind the

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students like the petitioner who could not get a medical seat and their parents of a proverb "Failure is the stepping stone of success".

20.Thinking that getting a medical seat itself is life, the children or their parents should not take any wrong step like suicides, as a few cases are also reported in the media. The world is big and the avenues and chances are very many. The world has become a small global village. Chances are available not only in the State or in the Nation but throughout the world. Therefore, this Court appeals to the parents and children not to lose their heart and not to take any wrong decisions. If they are very much particular about medical course alone, they can very well prepare themselves for future NEET examinations and be successful.

21.Definitely, the children and their parents would have been frustrated and this Court understands the sorrow and pain of the children for having not achieved their life's ambition. Before anybody could take away wrong decision, it is the duty of the Government to give counselling to those children and parents identifying them through their application. The Government can also rope in prominent personalities through the media and advice the children not to take any wrong steps and to motivate them appropriately.

22.This alone is the need of the hour. This Court appeals to the educationalists and cinema personalities, to give advisory to the affected students to overcome the frustration and to motivate them. The political leaders, instead of continuing the issue as political one, they are also expected to make appeal to the affected students and parents and counsel them and it would have soothing effect.

23.Education is a tool for empowerment of human beings and it is a basic necessity in the modern day life. It is the duty of the Government to impart education to its citizens and that is the reason why the right to education has been considered as a facet of Article 21 and it is recognized as fundamental right under Article 21-A of the Constitution of India. Therefore, every endeavor should be made by the State to give appropriate education with modern curriculum. The Hon'ble Apex Court had also insisted about the importance of education in the decision reported in (2017) 4 SCC 449, Mahatama Ganshi Mission v. Bhartiya Kamgar Sena and paragraphs 35 and 36 of the said decision are usefully extracted hereunder:

> "35.Education is one of the most vital elements for preservation of the democratic system of Government. The Supreme Court of America in Wisconsin v. Yoder observed:

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"25. ...some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence."

36.Education becomes a basic tool for individuals to lead an economically productive life. An economically productive life of the individual not only improves the quality of life of the individual and his family but also contributes to some extent to the benefit of the society at large. Production of goods and services to a large extent depend upon the availability of technically qualified human resources. Technical education therefore has the potential to directly contribute to the economic prosperity of a technically qualified individual as well as the society."

24.In view of the above stated position, this Court hopes that from the experience gained in the NEET issue, the State Government would give top most priority to education, especially the School education.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

maya/pgp

To

1. The Principal Secretary
   Government of Tamil Nadu
   Department of Higher Education
   Secretariat, Chennai - 600 009.

2. The Secretary to Government
   Department of Health and Family Welfare
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+1cc to Mr.R.Neelakandan, Advocate, S.R.No.61923
+1cc to Mr.V.P.Raman, Advocate, S.R.No.61211
+1cc to the Government Pleader, S.R.No.61303

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