

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. Nos.335 to 339 of 2017, W.P.Nos.309 to 314 of 2017,
W.P.Nos.453 to 459 of 2017, W.P.Nos.159 to 163 of 2017,
W.P.Nos.197 to 202 of 2017 & W.P.Nos.291 to 296 of 2017

Venba, V.S.Petitioner in WP.335/17
Shree Pragathi G.U.Petitioner in WP.336/17
Aadhitya Srinivasan S.Petitioner in WP.337/17
viney Chowdary V.Petitioner in WP.338/17
Krithika A.Petitioner in WP.339/17
Raj Kiran K.S.Petitioner in WP.309/17
Minor Pramoth Prakash S.Petitioner in WP.310/17
Madhu Mitha M.Petitioner in WP.311/17
Kavithra B.Petitioner in WP.312/17
Shaik Ali IdrusPetitioner in WP.313/17
Darryl Gibson EdwinPetitioner in WP.314/17
Minor Pratibha Roshini M.Petitioner in WP.453/17
Sai Nikhil Reddy C.Petitioner in WP.454/17
Gayathri C.Petitioner in WP.455/17
Elamathi M.Petitioner in WP.456/17
Raksaivarth S.Petitioner in WP.457/17
Sarabjeet KaurPetitioner in WP.458/17
Minor.Jaswanth AsirvathamPetitioner in WP.459/17
Minor Charumathi B.Petitioner in WP.159/17
Manoj Loganathan A.L.K.Petitioner in WP.160/17
Minor RaghuldavisPetitioner in WP.161/17
Minor. Sandhiya R.Petitioner in WP.162/17
Mohamed Irfan S.Petitioner in WP.163/17
Sharmila T.Petitioner in WP.197/17
Kekhrieneizo SuohuPetitioner in WP.198/17
Namala Sriram Praveen KumarPetitioner in WP.199/17
Wabangsenla LongkumarPetitioner in WP.200/17
Lokesh J.Petitioner in WP.201/17
Bhuvan Tej MandavaPetitioner in WP.202/17
Udit Surya K.V.Petitioner in WP.291/17
M.AbiramiPetitioner in WP.292/17
Arunkumar R.Petitioner in WP.293/17
Bharath S.Petitioner in WP.294/17
Asif Mohammed P.Petitioner in WP.295/17
Viju V.Petitioner in WP.296/17
vs.

1. The State of Tamil Nadu,
rep. by the Secretary,
Health & Family Welfare Department,
Fort St. George,
Chennai 600 009.
2. The Secretary,
Medical Council of India,
Pocket - 14, Sector - 8,
Dwarka Phase - I,
New Delhi - 110 077.
3. The Registrar,
The Tamil Nadu Dr. M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai,
Tamil Nadu - 600 032.
4. The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai 600 010.
5. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai 600 010.
6. The Dean,
Ponnaiyah Ramajayam Institute of Medical Science,
Manamai Nellur,
Kancheepuram District. ... Respondents in all the
Petitions

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 of the impugned order passed by the 3rd respondent in his proceedings Ref.No.EX1(3)/58835/2016, dated 29.11.2016 and quash the same and consequently direct the respondents to approve the petitioner's admission in M.B.B.S. Course in the 6th respondent's College by registering the petitioner's name in the 3rd respondent University register.

For Petitioner : Mr.M.Venkatachalapathy,
Senior Counsel
for Mr.S.I.A.K.Bagadur Sha
in WP.335 to 339/17
WP.197 to 202/17 & 291 to
296/17

Mr.M.Venkatachalapathy, Senior
Counsel for Mr.M.Saravana kumar in
WP.309 to 314/17
WP.453 to 459/17 & WP.159 to 162/17

For Respondents 1, 2, 4 & 5: Mr.S.Rajeswaran,
in all the Petitions Special Government Pleader

For 3rd Respondent : Mr.Harihara Arun Somashankar
in all the petitions

C O M M O N O R D E R

Since the issue involved in all these Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

2. The petitioners herein are unfortunate students of the 6th respondent College. They are before this Court challenging the impugned communication dated 29.11.2016 of the 3rd respondent, which states that the petitioners are not qualified to register in the 3rd respondent M.B.B.S. course degree on the basis of the admission made in the 6th respondent College.

3. According to the petitioners, the 6th respondent College got approval from the Ministry of Health and Family Welfare (MHFW), Government of India (MHFW) vide communication dated 20.08.2016 and the MHFW, after granting the approval, admitted the petitioners in the available 150 M.B.B.S. seats for the academic year 2016-2017. Thereafter, on 21.09.2016, the 3rd respondent gave provisional affiliation for starting MBBS Course and also authorised to admit 150 students in the MBBS Course for the academic year 2016-2017.

4. As per the prevailing seats sharing arrangement between the 1st respondent and the 6th respondent College, out of 150 seats, 53 seats have been allotted under the Management Quota and the remaining 97 seats have been allotted to the Tamil Nadu State Government Counselling allotment. As per the admission procedure of the Medical Council of India, 2016, the 6th respondent ought to have selected 53 candidates under the Management Quota to admit the students from the successful candidates passed in the National Eligibility Examination Test (NEET) conducted by the CBSE Board. The remaining 97 seats allotted to the State Government of Tamil Nadu, are to be filled through the counselling conducted by the 5th respondent without NEET qualification, i.e. based on +2 ranking.

5. The State Government conducted first counselling on 27.09.2016 and the second and last phase of counselling were conducted on 29.09.2016. Thereafter, no counselling was conducted, as the last date for admission was 30.09.2016. It is the further case of the petitioners that as per Section 10D of the Indian Medical Council (Amendment) Act, 2016, dated 04.08.2016, NEET is not applicable to the Government seats for the year 2016-2017.

6. Pursuant thereto, the 6th respondent College surrendered the 30 Management seats to the Government of Tamil Nadu and requested to conduct the counselling for the said Management seats by treating the Management Seats as Government Seats. The Government accepted the said offer of surrender of the Management seats and allotted the candidates for 121 seats under the Government seats. The 121 seats were selected from the merit list of candidates published by the 3rd and 4th respondents. Among the 121 seats, more than 41 persons were not reported to the 6th respondent College and hence, the 41 Government seats lapsed. Since 41 persons allotted under the Government seats did not join in time, the petitioners approached the 6th respondent College seeking admission under the Government Lapsed Seats. Since the petitioners possessed eligibility as prescribed by the State Government, they sought admission in the 6th respondent College and they were admitted in the 6th respondent College by giving consent letter to them.

7. While so, the 3rd respondent passed the impugned order dated 29.11.2016, directing the 6th respondent to discharge the admission of the petitioners herein, without considering the subsequent act of the respondent Government to treat the 30 seats of Management surrendered by the 6th respondent College as Government Seats, which do not require pass in the NEET examination as per the amended Section 10D of the Indian Medical Council (Amendment) Act, 2016. Hence, challenging the same, the petitioners are before this Court.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Learned counsel for the petitioners contended that the 3rd respondent failed to consider that once the Government accepted the surrender of the Management seats and treated as Government seats, there was no requirement to fulfil the NEET examination by the 6th respondent College and hence, the impugned order discharging the petitioners' admission from the 6th respondent College and refusing to register on the ground that the petitioners did not pass the NEET examination is not legally correct.

10. On the other hand, learned counsel appearing for the University submitted that Private Colleges are not applicable for Government Lapsed Seats and that too without NEET Marks. Therefore, according to the learned counsel, petitioners herein, who are admitted in a Private College, cannot be admitted under the Government Seats Lapsed Quota, just because those seats have lapsed.

11. Moreover, the 6th respondent Institute, viz. Ponnaiyah Ramajayam Institute of Science and Technology Trust, Vallam, Thanjavur District, has approached this Court in W.P.No.42883 of 2016, challenging the proceedings dated 14.11.2016 passed by the 3rd respondent therein and for a consequential direction to the respondents therein to approve the admission of 36 students of their College. But, the said Writ Petition stood dismissed already.

12. Learned Special Government Pleader submitted that the 6th respondent College has no right to appoint any student other than the quota allotted to them.

13. It is very clear that admission to Private Colleges is made only on the basis of NEET examination. There is no other mode provided. Further, merely because the students who were allotted under the Government did not join the Government Seats, it does not mean that the Private College is entitled to fill the Government Lapsed seats. They cannot take the Government criteria to fill such lapsed seats. In fact, they should immediately intimate the Government about the non-joining of the students and such seats would be filled by the Government. Instead, they have taken law into their own hands and filled up the seats for reasons best known to them, without even fulfilling the main criteria for admission, i.e. the NEET examination.

14. Further, the very same College in a Writ Petition filed earlier has stated that there were no seats available as on 29.09.2016. In fact, it was brought to the notice of the Supreme Court on 01.10.2016, that all the vacant seats in India have been filled up and as far as Tamil Nadu is concerned, it was mentioned that only one seat was vacant and that the same is also filled up as per the directions of this Court on 07.10.2016, as per the extension date given by the Supreme Court. In that view of the matter, the 6th respondent College unilaterally giving admission to students under the Government Lapsed Seats Quota is untenable and hence, the petitioners cannot seek remedy from this Court.

15. In view of the above, when 53 seats out of 150 seats to the 6th respondent College have been allotted under the

Management quota and the remaining 97 seats have been allotted to Tamil Nadu State Government Counselling allotment, and that the College has surrendered 30 seats to the Government, there is no question of challenging the impugned order now. The 3rd respondent/University has clearly informed the Dean of the 6th respondent College that NEET qualified candidates alone are eligible for MBBS Degree Course, for the academic year 2016-2017.

16. Hence, this Court holds that private Colleges are prohibited from claiming seats under the Government Lapsed Seats Quota and accordingly, these Writ Petitions are dismissed. However, the petitioners are at liberty to approach the appropriate forum to get compensation from the 6th respondent College. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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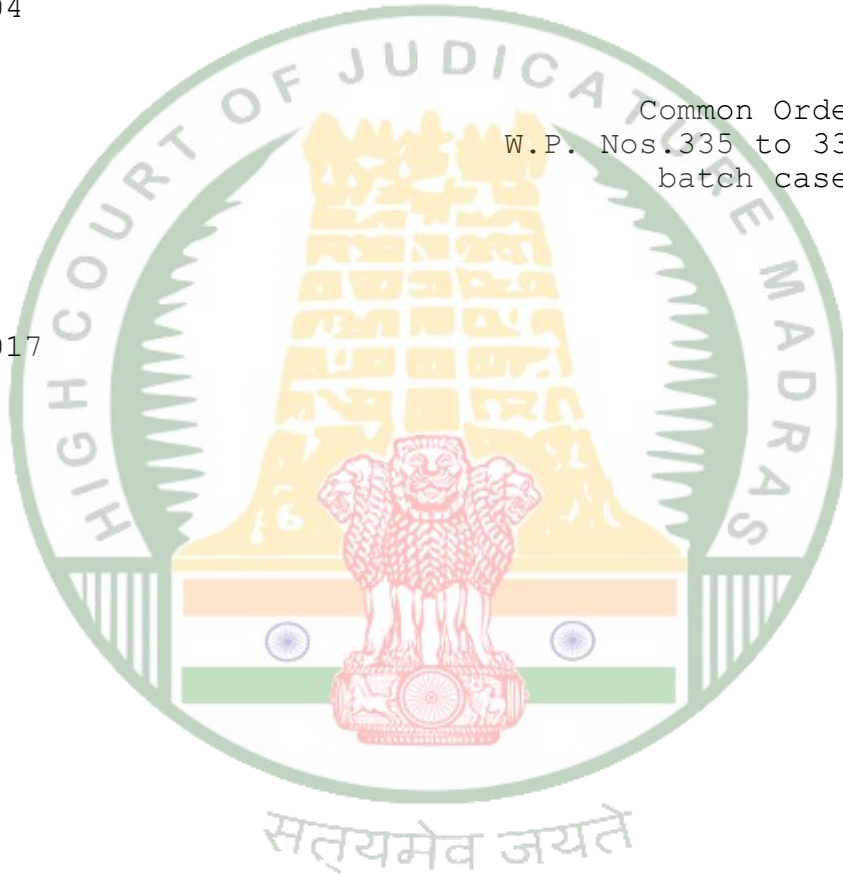
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5. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai 600 010.

+1 cc to the Government Pleader sr 2227,2233 & 2234
+18 ccs to Mr.M.Saravanakumar Advocate sr 1903,1905,
1902
+17 ccs to Mr.S.I.A.K.Bagadursha Advocate sr 1900,
1901 & 1904

Common Order in
W.P. Nos.335 to 339 of 2017,
batch cases

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