

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4911 of 2018

and

W.M.P.No.6057 of 2018

J.T.Harini (Minor),
D/o C.Jeyakumar,
No.121, Sripi Nagar Extn.II,
Guduvancherry-603 202,
Rep. by Father & Natural Guardian,
C.Jeyakumar ... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Medical Education,
Secretariat, Chennai-600 009.
2. The Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010,
Rep. by its Secretary.
3. Department of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010,
Rep. by its Director.
4. Medical Council of India,
Sector 8, Pocket-14, Phase-I,
Dwarka, New Delhi-110 077,
Rep. by its Secretary.
5. Dental Council of India,
Aiwan-E-Galib Marg, Kotla Road,
Temple Lane, New Delhi-110 002,
Rep. by its Secretary.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, to declare that the petitioner has qualified in +2 by treating the appearance of the petitioner during March 2017 and in the special examination conducted on 29.06.2017, 01.07.2017 and 06.07.2017 combined together in first appearance and entitled to admission in Medical courses such as MBBS/BDS, etc., through competitive examination, i.e. through NEET etc. and direct the respondents to permit her to attend the counselling process under the Government Medical Colleges/Management Quota for the year 2018-2019 and subsequent years, if any.

For petitioner : Mr.R.Malaichamy

For respondents : Mr.A.Raja Perumal, Addl.G.P.for RR-1 to 3

Mr.V.P.Raman for R-4

Ms.S.Seethalakshmi for R-5

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Declaration that the petitioner has qualified in +2 by treating the appearance of the petitioner during March 2017 and in the special examination conducted on 29.06.2017, 01.07.2017 and 06.07.2017 combined together in first appearance and entitled to admission in Medical courses such as MBBS/BDS, etc., through competitive examination, i.e. through NEET etc. and direct the respondents to permit her to attend the counselling process under the Government Medical Colleges/Management Quota for the year 2018-2019 and subsequent years, if any.

2. The affidavit in support of the petition is filed by the father of the student, stating that his minor daughter (student) had appeared for +2 examination during March 2017 while doing her course in the State Board stream at Bharathiyar Matriculation Higher Secondary School, Guduvancherry and that she was afflicted with Chicken Pox and hence, she could not appear for the +2 examinations in three subjects, namely Physics, Chemistry and Zoology. According to the petitioner, his daughter was down with Chicken Pox and that she could not appear for the exams scheduled on 21.03.2017, 13.03.2017 and 31.03.2017. After recovery, she has appeared for Botany Examination. She submitted that she is eligible for admission to the course of MBBS/BDS in 2017-2018 and in that regard, W.P.No.23754 of 2017 was filed, which was pending. It is further submitted that the petitioner appeared in the supplementary examinations scheduled in June and July 2017, i.e. on 29.06.2017, 01.07.2017 and 06.07.2017 and cleared those subjects. It is further stated that the petitioner has applied for admission to MBBS/BDS for 2017-2018. Though the application form was submitted within the stipulated time, the marks

published in Physics, Chemistry and Zoology were not entered in the application forms, as the results were not declared by the Board at that time.

3. It is the further case of the petitioner that the above non-appearance of the petitioner in the exams, is due to act of God and she suffered from Chicken Pox and that she could appear only in the supplementary exams in those three subjects and that the request of the petitioner has been rejected by the respondents and hence, the petitioner prayed that there shall be a declaration as stated supra.

4. The respondents 1 to 3 have filed counter affidavit stating that in terms of the Prospectus for admission to MBBS/BDS courses for the year 2017-2018, more particularly, in Clause 5 in P.No.9, there is a Note to the effect that, "(i)only the marks obtained in the relevant science subjects in the H.S.C. qualifying examinations as a whole in the first appearance will alone be taken into consideration for the allotment of seats to the candidates and the improvement marks in +2 examinations of any year will not be considered, also the marks obtained through part by part appearance in +2 examinations will not be considered (as per G.O.Ms.No.184, HE (B2) Department, dated 09.06.2005 and G.O.(Rt).No.143, HE (B2) Department, dated 06.05.2008)". Hence, according to the respondents 1 to 3, the candidate is ineligible and so her name was not available in the Merit List released on 23.08.2017. According to the respondents 1 to 3, the earlier Writ Petition filed by the petitioner in W.P.No.23754 of 2017 was closed by this Court on 16.03.2018 observing that the relief sought for herein has become infructuous and hence, nothing survives for adjudication in the matter. It is the further stand of the respondents 1 to 3 in the counter that the candidate has cleared the qualifying examination in two separate sittings instead of a single sitting. Hence, the candidate was made ineligible and her name was not included in the Merit List, which was released on 23.08.2017. It is also stated by the respondents 1 to 3 in the counter that permitting the candidates for the counselling for MBBS/BDS will pave way for misusing the relaxation by completing the course belatedly at their own choice.

5. Learned counsel appearing for the fourth respondent/MCI submitted that the counselling for the year 2017-2018 is already over and it is represented that the NEET examination for the present academic year was also over and the he further submitted that the petitioner's candidature cannot be considered for the academic year 2017-2018, but if she is otherwise eligible for the academic year 2018-2019 and if she succeeds in the NEET of that year, her candidature will be considered, subject to the orders of this Court in this Writ Petition, as the candidate has not cleared the examination in one attempt.

6. Heard both sides and perused the materials available on record.

7. On a reading of the said G.O.Ms.No.184 and G.O.(Rt). No.143, it is clear that the marks obtained in the relevant science subjects in the H.S.C. qualifying examinations as a whole in the first appearance alone will be taken into consideration for the allotment of seats to the candidates and the improvement marks in +2 examinations of any year and also the marks obtained through part by part appearance in +2 examination, will not be considered.

8. In this case, the petitioner was down with Chicken Pox and that the Medical Certificate had also been produced, which is not disputed by the respondents 1 to 3. If the student/candidate is unable to appear for the reason beyond his/her control, certainly, the appearance cannot be taken as part by part. The candidate/student could not appear for the examinations as she was afflicted with Chicken Pox and certainly if she had entered the examination hall, the teachers would have surely prevented her from appearing in the exams, as there is possibility of the infectious disease being spread to others. It is to be noted that every Rule has an exception and in this case, the petitioner has got the genuine reason for not appearing in those examinations and that her appearance in the subsequent examination, will have to be taken into account as the first appearance.

9. Since the entire examinations have been written by the petitioner in the supplementary exam pattern, her appearance in the supplementary examination shall be considered as the first attempt, even though it is styled as supplementary examination, and in case the petitioner is found successful in the NEET examination, and the counselling that follows therefrom, the candidature of the student shall be considered, if she is otherwise eligible without any hindrance of two different appearance in the examinations held in 2017.

10. With the above observations, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Principal Secretary,
Department of Medical Education,
Secretariat, Chennai-600 009.
2. The Secretary, Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010,
3. The Director of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010.

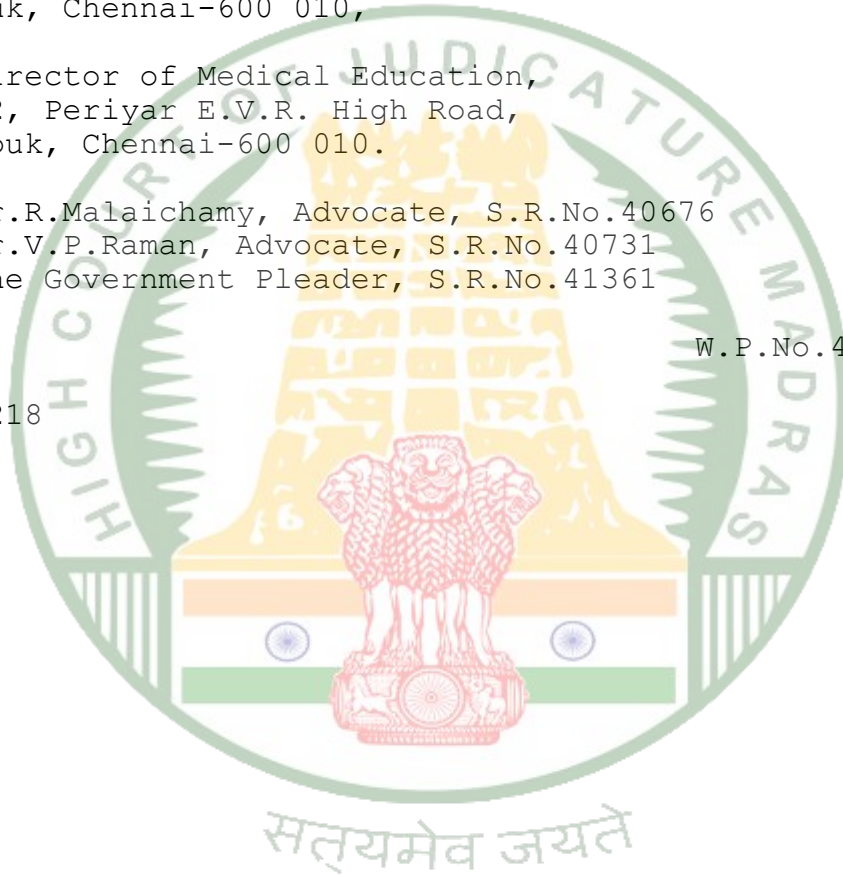
+1cc to Mr.R.Malaichamy, Advocate, S.R.No.40676

+1cc to Mr.V.P.Raman, Advocate, S.R.No.40731

+1cc to the Government Pleader, S.R.No.41361

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VBA (CO)
BM 23/07/218



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