

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16811 of 2018

and

W.M.P.Nos.20000 and 20001 of 2018

G.Dhanush

Rep by His Father D.Gurumurthy

.. Petitioner

Vs.

1. Government of Tamilnadu,
Represented by the Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai-600 010.

2. Medical Council of India,
Rep. by its Secretary,
Pocket-14, Sector No.8,
Dwarka, Phase-I,
New Delhi-110 077.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to implement the Rule in Serial No.36 in page 25 of the Prospectus for admission to MBBS/BDS Degree courses (under Special Category) in Tamil Nadu Government Medical/Dental Colleges and Govt. Seats in self-financing Medical/Dental Colleges affiliated to the Tamil Nadu Dr.M.G.R. Medical University & Rajah Muthiah Medical/Dental College affiliated to Annamalai University 2018-2019 session (As per G.O.(Ms).No.210, Health and Family Welfare Department, dated 04.06.2018 and as amended from time to time) and allot the left out 101 seats to the other Special Categories in proportionate ratio to the number of seats earmarked for their respective categories during the counselling that is to be held in July or August 2018 and/or in the alternative to direct the respondents to consider the case of the petitioner in the Government Quota/Management Quota in the Private Colleges in the State of Tamil Nadu affiliated to the Tamil Nadu Dr.M.G.R. Medical University & Rajah Muthiah Medical College.

For Petitioner : Mr.Silambanan,
Senior Counsel for M/s.B.Barathkumar

For Respondent : Mrs.V.Annalakshmi, Govt. Advocate for R-1
Mr.V.P.Raman for R-2

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to implement the Rule in Serial No.36 in page 25 of the Prospectus for admission to MBBS/BDS Degree courses (under Special Category) in Tamil Nadu Government Medical/Dental Colleges and Govt. Seats in self-financing Medical/Dental Colleges affiliated to the Tamil Nadu Dr.M.G.R. Medical University & Rajah Muthiah Medical/Dental College affiliated to Annamalai University 2018-2019 session (As per G.O.(Ms).No.210, Health and Family Welfare Department, dated 04.06.2018 and as amended from time to time) and allot the left out 101 seats to the other Special Categories in proportionate ratio to the number of seats earmarked for their respective categories during the counselling that is to be held in July or August 2018 and/or in the alternative to direct the respondents to consider the case of the petitioner in the Government Quota/Management Quota in the Private Colleges in the State of Tamil Nadu affiliated to the Tamil Nadu Dr.M.G.R. Medical University & Rajah Muthiah Medical College.

2. The petitioner applied for MBBS course under the special category in the Sports Quota in the Tamil Nadu Government Medical Colleges affiliated to Tamil Nadu Dr.M.G.R. Medical University for the year 2018-2019 as per G.O.Ms.No.210, Health and Family Welfare Department, dated 04.06.2018, as amended from time to time. The petitioner's Date of Birth is 14.02.2001 and the petitioner's father (natural guardian) has filed the present Writ Petition. The petitioner is a sports player under the game TAEKWONDO and practising the game from his childhood. He started participating in various tournaments and competitions since 2008. He was conferred with 14 medals in KYORUGBY matches and conferred with 8 medals in the KATA(POOMSAE). He had played in District, State and National level tournaments conducted by the TAEKWONDO Association and also played in CBSE School Tournaments in South Zone and Nationals.

3. The petitioner applied for MBBS as stated above under Sports Quota, but he has not got a call letter for counseling and that there are 101 seats left out from Orthopaedically and physically disabled persons. In this regard, it is worthwhile to quote Clause 36 of the Prospectus for admission to MBBS/BDS Degree courses in Tami Nadu Government Medical/Dental Colleges, as follows:

"36. Special Categories:

(a) Seats Reserved for Special Categories in Government Colleges:-

Seats earmarked for the special categories will be allotted following the Horizontal Reservation. The Seats will be allotted as per merit in the concerned special category and those seats will be deducted in the concerned compartment (OC / BC / BCM / MBC / DNC / SC / SCA / ST) and the remaining seats will be allotted to the General Category.

If adequate number of eligible candidates are not available under Special Category, then the earmarked seats will be reverted back to general category.

Candidates who got selected under this category and not joined/discontinued the course at a later date will not be eligible to apply under this category.

... ..

(a)(i)

(ii) Seats Reserved for Eminent Sportsperson:

(with reference to the orders issued by the Government of Tamil Nadu prescribing the priority in G.O. (D).No.976/H&FW Department, dated 01.06.2018).

NO. OF SEATS RESERVED: M.B.B.S.-7 and B.D.S-1

Merit list for this category will be done by the Common Committee constituted for this purpose at Anna University, Chennai. The mode of selection will be made as per the guidelines given in Annexure-III(a).

If the Original Certificates are not produced in person directly to the Common Committee at the time of scrutiny for Sports Quota, the candidates will not be considered under that category without any intimation to the candidate. Subsequent production of original certificate or sending photo copy of sports evidence by post/courier will not be accepted under any circumstances.

Sports Quota rank list will be furnished by the Common Committee at Anna University. Decision of the Common Committee shall be final and which will be intimated to the Selection Committee. The candidates are requested to arrange the certificates as per the serial number starting from June 2014 as given in the Annexure III (b) and submit them along with the application in person. All the particulars are to be filled up as per the guidelines given in the Annexure III (a). The other eligibility conditions for admission to MBBS course will be applicable as in the case of General Category.
"

4. From the above extract of the Prospectus relating to MBBS/BDS admissions of the year 2018-2019, it is clear that there is percentage of reservation with regard to the Special Category. It is also to be noted that percentage of seats are reserved for children of ex-servicemen and also for eminent sports-persons, apart from the seats being reserved for Orthopaedically and physically disabled persons. The petitioner's case is that out of 122 seats reserved for sports-persons, less than 21 seats have been filled up and that more than 100 seats are available as on date and that those 100 seats have to be distributed among the various categories mentioned in Clause 36 of the Prospectus.

5. This Court is of the view that converting the earmarked seats that are not filled up, to General Category, cannot be termed illegal. The purpose of granting a certain percentage of seats to various categories mentioned in Clause 36 of the Prospectus, is to encourage them to ensure that they are not non-suited on the ground of participation in sports. If the reserved seats are going to be distributed among various categories like Special Category of persons mentioned in Clause 36, certainly, unfilled seats can be taken to the General Category for the purpose of allotting it to the other candidates.

6. Even though the respondents have not filed counter, it is contended on behalf of the respondents that there are 8 seats reserved for eminent sports-persons, which have been filled up. 10+1 (MBBS 10 and BDS 1) seats are reserved for children of ex-servicemen and 5% of the seats is reserved for physically disabled persons.

7. It may be true that there are 100 vacancies in the Special Category, as long as the contents of Clause 36 of the

Prospectus are not arbitrary, violative of statutory provisions and unreasonable or colourable exercise of power, certainly, this Court cannot interfere with the same. In this case, the candidate/petitioner who was a minor represented by the father and natural guardian, must understand that the distribution of seats vest with the respondents, and it is the policy decision of the Government with regard to the allotment of seats, more particularly, with regard to the distribution of seats in professional courses.

8. When there are seats that are not filled up in any of the categories mentioned in Clause 36, the respondents/Government can take those seats to the General Category and it can be filled up from and out of the eligible candidate in the General Category. This Court cannot set at naught the decision taken by the respondents/Government, as it would amount to interfering with the policy decision of the Government, and that this Court is stepping into the shoes of the administration activities of the respondents/Government.

9. For the reasons stated supra, the relief sought for by the petitioner cannot be granted. Hence, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed. If the petitioner is otherwise eligible for any other category, it is needless to mention that this order will not preclude the respondents from considering the case of the petitioner in that category.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

CS

To

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

+1cc to M/s.B.Barathkumar, Advocate, S.R.No.43727
+1cc to the Government Pleader, S.R.No.44036

W.P.No.16811 of 2018

SKV(CO)

CS/19/07/18