

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17412 of 2018
and
W.M.P.No.20697 of 2018

S.A.Charumathi (minor),
aged 17 years, Rep. by her mother and guardian
K.Saraswathi

.. Petitioner

Vs.

1. Government of India,
Rep. by the Director General of Health Services,
Ministry of Health and Family Welfare,
Room No.446A, Nirman Bhavan,
Maulana Azad Road,
New Delhi-110 108.

2. The Medical Council of India,
Pocket-14, Sector-8, Phase-I,
Dwaragha, New Delhi-110 077.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to include the petitioner's name in the second round online counselling (Allotment process) for NEET 15% All India Quota/Deemed/Central Universities & ESIC (MBBS/BDS) Seats 2018, consider the same along with the candidates in the second round and allot her MBBS seat commensurate to the ranking she obtained in the NEET 2018 exams, taking into consideration that she belongs to SC category, if required by extending the time for registration for second round.

For Petitioner : Mr.S.Saravana Kumar

For Respondents : Mr.Kumaraguru, CGSC 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 direct the respondents to include the petitioner's name in the second round online counselling (Allotment process) for NEET 15% All India Quota/Deemed/Central Universities & ESIC (MBBS/BDS) Seats 2018, consider the same along with the candidates in the second round

and allot her MBBS seat commensurate to the ranking she obtained in the NEET 2018 exams, taking into consideration that she belongs to SC category, if required by extending the time for registration for second round.

2. The mother of the petitioner has sworn to the affidavit filed in support of the Writ Petition stating that the petitioner belongs to SC community and that the petitioner's intention is to study medicine. The petitioner made application for NEET (UG) Exam in Application No.40701593 and her NEET Roll Number is 511503315 and she participated in the exam held on 06.05.2018. Her percentile score is 86.381043, her overall Rank is 172129 and category rank is 12596. The petitioner submitted that she is not aware about the second counselling and through her friends, on 09.07.2018, she came to know about the second counselling and that the second round of registration for filling up 15% All India Quota was over on 08.07.2018. The petitioner made a representation on 09.07.2018 to the first respondent to consider her case and it is stated that the respondents are in the process of filling up of the seats. The petitioner stated that there are more than 10 seats lying vacant in Government Medical Colleges in Chennai under All India Quota and that as the petitioner belonged to SC community, her candidature will not be considered either in the Madras Medical College or Stanley Medical College. It is further submitted that the candidate who has been placed in 178870 th rank and 211464th rank in the General Category had been accommodated. It is further submitted by the learned counsel for the petitioner that it is not suffice to make the details available only in the web-site and there is no advertisement either in the newspapers or through any other media. The minor child who is aspiring to become a Doctor, shall not be thrown out on the ground that she has not made application within the stipulated date and she however has applied subsequent to the last date, which has got to be considered.

3. The respondents have not filed counter, but however, the learned counsel for both the respondents submitted that the petitioner has not applied at all and that she was not even called for counselling. It is further submitted that the candidate who has secured 51117th rank in the SC category, was the last one to be called for in the first round of counselling and that the petitioner may not have a chance to be considered, apart from the fact that the petitioner's daughter/candidate has not applied for the second counseling.

4. Learned counsel for the petitioner drew the attention of this Court to the petitioner's representation, dated 09.07.2018 with regard to the filling up of 15% of All India Quota, wherein they have categorically reiterated her contention that there was no advertisement in the newspapers both in English and in the vernacular languages, and there was no sufficient awareness in

connection with the academic year. When Saturday and Sunday being holidays, asking the candidate to apply only based on the information in the web-site advertisement, will eliminate the aspirants who may not know the actual date that is fixed for counselling.

5. It is to be noted that when there is a specific date fixed for counselling process, the petitioner ought to have applied. There are only two counselling permitted and that the petitioner has not applied at all. If the petitioner's request is acceded to, it would amount to interfering with the order of this Court and the Supreme Court dealing with the matters of education, more particularly, the cases relating to medical counselling. Only two rounds of counselling are permitted and that the petitioner has not applied for the counselling and it is stated that she has applied only after the expiry of the time stipulated. When this Court posed a question to the respondents as to whether the petitioner's candidature would be considered atleast in Open Category, it is stated that it is not possible, as the petitioner has not applied at all.

6. The petitioner, in reply, drew the attention of this Court with regard to the ranking list and submitted that the candidate with Sl.No.2520 with ranking No.178870 of All India Quota, has been accommodated in Stanely Medical College, Chennai. Since the petitioner has not applied, her candidature cannot be considered at all, and in case the petitioner/candidate's request is accepted, it would amount to opening the Pandora's Box and that the other persons who have not applied, will knock at the doors of the Court, thereby would try to water down the purpose of NEET, as also the decision of the Supreme Court and this Court.

7. Moreover, the petitioner in this case, has not applied within the cut-off date prescribed. Registered candidates who did not get any seat allotment in the first round of counselling, would be eligible for allotment in the second round of counselling. In this case, the petitioner has not at all applied and was not called for in the first round of counselling. Since she has not registered, she will not be entitled to get any seat or even being called for in the second round of counselling.

8. It is to be observed that we are in the age where there is technological advancement, and hence, the contention of the petitioner that she is not aware of the information in the web-site regarding second counselling, cannot be countenanced.

9. After pronouncement of the order, learned counsel for the petitioner brought to the notice of this Court that the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, Medical Counselling

Committee (MCC), has issued a notice dated 12.07.2018, which reads as follows:

"All the participating candidates / institutes / colleges / universities of Online Undergraduate (MBBS and BDS) Courses: Counselling: 2018 are hereby informed that in compliance of the directions of Hon'ble High Court of Madras, Madurai Bench, in W.P.(MD). No.11916, 10872, 10873 and 10874. Online undergraduate counselling for the session: 2018 including the declaration of 2nd round result will be kept in abeyance till further orders. Candidates are advised to keep in touch with the website for latest updates."

10. In this connection, it is worthwhile to note the following order passed by this Court (Madurai Bench) in W.P.(MD). No.11916 of 2018 and W.M.P.(MD).Nos.10872, 10873 and 10874 of 2018, dated 10.07.2018:

"26. In the result, this writ petition is partly allowed. We direct the 2nd respondent/CBSE to grant 4 marks for each of the 49 erroneous questions, that is in all 196 marks to the candidates who took the NEET (UG)-2018-19 examination in Tamil medium. Consequently, the 2nd respondent/CBSE shall revise the list of qualified candidates and publish the same afresh within a period of two weeks from today. It shall then be open to the authorities concerned to go about counselling eligible candidates. As a necessary corollary to the above, the list of qualified candidates shall be kept in abeyance as would the counselling sessions, pending publishing details of the qualified candidates afresh in keeping with the above order. Connected Miscellaneous Petitions shall stand closed. No costs."

11. If a candidate has not applied within the cut-off date, that candidate's candidature need not be considered at all. If the second counselling is stalled, the petitioner may be entitled to avail the benefit, provided she has made an application before the cut-off date or the extended date, if any given. If the students who have not applied earlier, is going to be considered afresh in the second counselling, it is needless to mention that the candidature of the petitioner may also be considered. If the respondents are not going to extend the time for submitting the application, then the petitioner has no valid and legal right to insist that the petitioner may be permitted to make an

application, as she did not apply for the counselling. A candidate has no right and as a matter of right, the candidate cannot demand that the application after cut-off date will be entertained.

12. Further, it is to be observed that the petitioner/candidate/parent(s) have to wait for the updates that may be made by the authorities in the web-site that may be based on the orders of the Court and hence, the unawareness of the advancement in technology is a lame excuse and the petitioner has to follow the web-site for any updates regarding the education matters, more particularly, with regard to the counselling.

13. With the above observations, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

cs
To

1. Government of India,
Rep. by the Director General of Health Services,
Ministry of Health and Family Welfare,
Room No.446A, Nirman Bhavan,
Maulana Azad Road,
New Delhi-110 108.

2. The Medical Council of India,
Pocket-14, Sector-8, Phase-I,
Dwaragha, New Delhi-110 077.

+1 CC to Mr.S. Saravana Kumar, Advocate sr 46029.

+1 CC to Mr.Kumaraguru, Advocate sr 45868(26/07/2018)

WEB COPY

W.P.No.17412 of 2018

SP(18/07/2018)