

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.10.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.27006 of 2018
and WMP Nos.31410, 31417 and 31419 of 2018

Selvi.Unnamalai Prasanthi

... Petitioner

vs.

1. The Chairman,
Selection Committee for BSMS/ BAMS/
BNYS/BUMS/BHMS/
for the Sessions 2018-19,
Off of the DIM & H Arumbakkam,
Chennai - 600 106.

2. The Director,
Office of the Directorate of Indian Medicine
& Homeopathy,
AAGHIM Campus,
Chennai - 600 106.

3. The Government of Tamil Nadu,
The Secretary,
Department of Health & Family Welfare,
Fort St. George, Chennai - 600 009.

4. The President,
Central Council for Indian Medicine,
New Delhi - 110 058.

5. The Government of India,
The Secretary,
Ministry of Ayush,
Ayush Bhawan, B Block,
GPO Complex, INA, New Delhi - 110 023.

6.The Registrar, Tamil Nadu Siddha
Medical Counsel Anna Hospital Campus
Arumbakkam Chennai-106

... Respondents

WRIT Petition filed under Article 226 of the Constitution of
India, praying for the issuance of a writ of certiorarified

Mandamus, calling for records relating to the impugned order more particularly clause 3(a) of the Regulation of the 4th respondent the Central Council of Indian Medicine, Government of India, Minimum Standards for Education in Indian Medicine Regulation dated 12.10.2006 and the confirming portion of the Prospectus of Admission to Indian Medicine and Homeopathy for the Sessions 2018-2019 issued by the 1st respondent more particularly Clause 6 therein and quash the same in so far as it relates to the SC, SC Arunthathiyars and ST and direct the 1st respondent to follow the eligibility criteria for Indian Medicine and Homeopathy Under Graduate Course as issued by the 3rd respondent department Health & Family Welfare, Government of Tamilnadu in Cl 5A (iv) (a) & (b) in so far it relates to the SC, SC Arunthathiyar & ST.

For Petitioner : Mr.Vasudevan

For Respondents : Mr.S.R.Rajagopalan,
Additional Advocate General - IX
Assisted by
Mr.C.Munusamy, (for R1 to R3 and R6)
Special Government Pleader.(Edu)
Mr.S.Haja Mohideen Gisthi (for R4 & R5)
(No Appearance)

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has sought for a writ of certiorarified Mandamus, calling for the records relating to the impugned order, more particularly, clause 3(a) of the Regulation of the 4th respondent, the Central Council of Indian Medicine, Government of India, Minimum Standards for Education in Indian Medicine Regulation dated 12.10.2006 and the confirming portion of the Prospectus of Admission to Indian Medicine and Homeopathy for the Sessions 2018-2019 issued by the 1st respondent, more particularly Clause 6 therein and quash the same, in so far as it relates to SC, SC Arunthathiyars and ST and direct the 1st respondent to follow the eligibility criteria for Indian Medicine and Homeopathy Under Graduate Course as issued by the 3rd respondent department Health & Family Welfare, Government of Tamilnadu in Cl 5A (iv) (a) & (b) in so far it relates to the SC, SC Arunthathiyar & ST.

2. On 11.10.2018, we passed the following orders.

"Clause 3(a) of the Central Council of Indian Medicine (Minimum Standards of Education in Indian Medicine) Regulation dated 12.10.2016 issued by the President, Central Council for India Medicine, New

Delhi, the 4th respondent herein, reads thus.

"3 (a). The candidates belonging to all categories for admission to the Siddha Maruthuva Arignar Course must have passed 12th standard with Science with at least 50% marks in aggregate in the subjects of Physics, Chemistry and Biology."

2. Instructions to the Candidates, issued by the Directorate of Indian Medicine and Homeopathy Education, as regards minimum eligibility marks for B.S.M.S./ B.A.M.S./ B.N.Y.S./ B.H.M.S. Courses, reads thus.

(i) Other Communities

(a) A minimum of 50% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 50% marks aggregate in Physics and Chemistry.

(ii) Backward Communities / BC (MUSLIM)

(a) Minimum of 45% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 45% marks aggregate in Physics and Chemistry.

(iii) Most Backward Classes and Denotified Communities

(a) A minimum of 40% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 40% marks aggregate in Physics and Chemistry.

(iv) Scheduled Caste, Scheduled Caste Arunthathiyar, Schedule Tribe

(a) Minimum of 35% marks in Biology or Botany and Zoology taken together.

(b) Minimum of 35% marks aggregate in Physics and Chemistry.

(v) The candidates under Physically Challenged Category - (Locomotor disability of Lower Limbs alone). OC/BC/BCM/MBC/DC should have obtained a minimum of 40% marks in each prescribed subject in the qualifying examination.

5(B) Minimum Eligibility Marks for B.U.M.S. Course

Candidates should have passed Higher Secondary Course (Academic) with Science subjects (Physics, Chemistry and Biology or Botany and Zoology) or its equivalent examination.

NOTE:

(i) The Marks obtained in the qualifying examination in the relevant science subjects in the first appearance only will be taken into

consideration for the allotment of seats to candidates and the improvement marks in +2 examination of any year will not be considered.

(ii) Candidates who have passed any other equivalent examinations in the first attempt with the same group of subjects as mentioned above should produce the eligibility certificate from the Tamil Nadu Dr.M.G.R. Medical University before attending the counseling.

(iii) In the case of candidates who have furnished the mark-sheets of the qualifying examination, only in GRADES, the minimum marks of the grades alone will be taken into consideration while determining the marks in the Science subjects of Physics, Chemistry and Biology or Botany and Zoology.

(iv) Candidates who have submitted marks sheets with GRADES and without mentioning the range of marks for each grade should obtain the marks equivalent certificates from the examination authority and attach a certified copy along with their mark sheet as an enclosure with the application.

(v) Normalization method will be adopted for calculating the minimum eligibility mark for the candidates who have passed any other equivalent examination."

3. Inviting the attention of this Court to the abovesaid regulations issued by the Central Council of Indian Medicine, New Delhi and the instructions of the Government, Mr.Vasudevan, learned counsel for the petitioner submitted that when there is a provision in the regulations issued by the Central Council of Indian Medicine, New Delhi to grant relaxation of minimum marks prescribed in regulation No.3(a) of the Central Council of Indian Medicine (Minimum Standards of Education in Indian Medicine) Regulation dated 12.10.2016, Section Committee, Directorate of Indian Medicine and Homeopathy, Chennai, 1st respondent herein has issued a prospectus for admission to Medical Decree Courses in Siddha, Ayurveda, Yoga & Naturopathy, Unani and Homeopathy Systems of Medicine, for the academic year 2018-19 wherein in, Clause 6 of the prospectus prescribes the minimum eligible marks for B.S.M.S./ B.A.M.S./ B.N.Y.S./ B.U.M.S./ B.H.M.S. Courses, in respect of all communities as 50% aggregate marks in the subjects Physics, Chemistry and Biology or Botany and Zoology taken together.

4. Clause 6 of the prospectus issued by the Directorate of Indian Medicine and Homeopathy Education, Chennai for admission to the abovesaid Courses for the Academic year 2018-19 is extracted.

"6. Minimum eligibility marks for B.S.M.S./ B.A.M.S./ B.N.Y.S./ B.U.M.S. and B.H.M.S. Courses in respect of all communities:-

12th standard with science or any other equivalent examination recognized by University or Boards with Fifty percent aggregate marks in the subjects of Physics, Chemistry and Biology or Botany and Zoology taken together.

Note:-

(i) The marks obtained in the qualifying examination in the relevant science subjects in the first appearance only will be taken into consideration for the allotment of seats to candidates and the improvement marks in +2 examination of any year will not be considered.

(ii) Candidates who have passed any other equivalent examinations in the first attempt with the same group of subjects as mentioned above should produce the eligibility certificate from the Tamil Nadu Dr. M.G.R. Medical University before attending the counselling.

(iii) In the case of candidates who have furnished the mark-sheets of the qualifying examination, only in GRADES, the minimum marks of the grades alone will be taken into consideration while determining the marks in the Science subjects of Physics, Chemistry and Biology or Botany and Zoology.

(iv) Candidates who have submitted marks sheets with GRADES and without mentioning the range of marks for each grade should obtain the marks equivalent certificates from the examining authority and attach a certified copy along with their mark sheet as an enclosure with the application.

(v) Normalization method will be adopted for calculating the minimum eligibility mark for the candidates who have passed any other equivalent examination."

5. Said clause fixing 50% aggregate in the abovesaid subjects insofar as Scheduled Caste, Scheduled Caste Arunthathiyar, Scheduled Tribe, is stated to be treating unequals as equals and hence, violative of Article 14 and Article 15 of the

Constitution of India.

6. Mr.C.Munusamy, learned Special Government Pleader takes notice on behalf of respondents 1, 2, 3 and 6.

7. Mr.S.Haja Mohideen Gisthi, learned standing counsel takes notice for respondents 4 and 5.

8. Post on 12.10.2018 in the motion list.

3. Subsequently, on 12.10.2018, further orders were passed, details of which are extracted.

" By Inviting the attention of this Court, to Regulation 6, for Minimum Standards for Siddha Maruthuva Arignar Course, Notification dated 02.05.2013, issued by the Central Council of Indian Medicine, Mr.S.R.Rajagopal, learned Additional Advocate General submitted that, eligibility for admission, as per the Regulation 6 Clause 2, reads thus:-

"2. Eligibility for admission: (a) 12th standard with science or any other equivalent examination recognised by University or Boards with fifty per cent. aggregate marks in the subjects of physics, Chemistry and Biology.

(b) Provided that for foreign students any other equivalent qualification to be approved by the concerned authorities will be allowed.

(c) Candidates should have passed Tamil as one of the subjects in the 10th Standard or in Higher Secondary course.

(d) Candidates who are not covered under clause (b) above, have to study Tamil as a subject during the First Professional session."

2. However, when confronted with a subsequent notification, dated 07.11.2016, by which the Central Council of Indian Medicine, has prescribed an eligibility criteria, for admission to 'Bachelor of Siddha Education', which mandates that reserved category or special category like physically handicapped students in 10+2, shall be given relaxation in marks for admission in Bachelor of Siddha Medicine and Surgery as per rules for time being in force, there is no answer.

3. Reference has been made to G.O.Ms.No.755 Health and Family Welfare [IM-1(2)] Department, dated 14.06.2016, as regards the minimum eligibility marks, by which the minimum eligibility in clause (f), reads thus:-

"The minimum eligibility marks for admission to BSMS/BAMS/BNYS/BUMS/BHMS courses may be fixed as follows as per Central Council of Indian Medicine Norms.

"12th standard with science or any other equivalent examination recognized by University or Boards with fifty percent aggregate marks in the subjects of Physics, Chemistry and Biology or Botany and Zoology taken together."

Reference has also been made to G.O.(D) No.1434 of the Health and Family Welfare [IM-1(2)] Department, dated 14.07.2017, as regards the minimum eligibility marks, by which the minimum eligibility in clause (f), reads thus:-

"Clause f - The minimum eligibility marks for admission to BSMS/BAMS/BNYS/BUMS/BHMS courses may be fixed as follows as per Central Council of Indian Medicine Norms "12" standard with science or any other equivalent examination recognized by University or Boards with fifty percent aggregate marks in the subjects of Physics, Chemistry and Biology or Botany and Zoology taken together".

4. There is a similar clause, 2(i) in G.O.(D) No.1373, dated 01.08.2018 of the Health and Family Welfare [IMI-2] Department, which reads thus:-

"(i) The minimum eligibility marks for admission to BSMS/BAMS/BNYS/BUMS/BHMS courses may be fixed as follows as per Central Council of Indian Medicine Norms "12th standard with science or any other equivalent examination recognized by University or Boards with fifty percent aggregate marks in the subjects of Physics, Chemistry and Biology and Zoology taken together"

5. When, Central Council of Indian Medicine, New Delhi, namely, the competent authority, has prescribed the minimum standards of education in Indian Medicine, and issued regulations in exercise of the powers conferred by Classes (i), (j) and (k) of sub section (1) of Section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), stating that relaxation has to be given to the candidates belonging to the reserved category or special category like differently abled students, in class 10+2, for admission in Bachelor of Siddha Medicine and Surgery, as per the rules for time being in force, apparently, the said regulation has not been followed and it is reflected in the Government orders.

6. On instructions from Mr.S.S.Ravishelvan, Secretary, Selection Committee, Directorate of Indian Medicine, Mr.S.R.Rajagopal, learned Additional Advocate General, submitted that merit list has been drawn and video conference is scheduled, for fixing the date for counselling.

7. From the submission, it could be deduced that scrutiny of the applications submitted by the reserved category/special category students, with marks less than 50%, in aggregate would have been rejected, and that they will not have any chance to take part in counselling.

8. On instructions from Mr.S.S.Ravishelvan, Secretary Selection Committee, Directorate of Indian Medicine, Mr.S.R.Rajagopal, learned Additional Advocate General, submitted that all those rejected applications, are in the office of the Directorate of Indian Medicine and can be scrutinised again, subject to the decision of the Government and orders to be passed by this Court.

9. Learned Additional Advocate General, further submitted that he would get suitable instructions from the Government.

10. Regulations issued by the competent authority, namely, the Central Council of Indian Medicine, are binding on Government and institutions, which apparently, in the case on hand, has not been followed.

11. In view of the foregoing reasons, the respondents should not be allowed to proceed further, in the matter of selection of the students for admission to B.S.M.S./B.A.M.S./B.N.Y.S./B.H.M.S. courses, for the academic year 2018-19. All proceedings are directed to be kept in abeyance.

12. Respondents are directed to produce the original Government Orders.

13. Post on 22.10.2018. "

4. On this day, when the writ petition came up for further hearing, on the basis of G.O.(D) No.1802, Health and Family Welfare [IMI-1] Department dated 16.10.2018, Mr.C.Munusamy, learned Special Government Pleader submitted that Government have issued revised eligibility criteria viz., Minimum Eligibility Marks for B.S.M.S. / B.A.M.S. / B.N.Y.S. / B.H.M.S. / B.U.M.S. Courses, in respect of various communities, details of which contained, in the said Government order, are reproduced.

ABSTRACT

Medical Education - Indian Medicine and Homeopathy - Admission of candidates in the Government / Self financing Indian System of Medical Colleges Under Graduate Courses namely BSMA/BAMS/BNYS/BUMS/BHMS Courses 2018-19 session - Prospectus Approved - Orders issued - Eligibility criteria - Amendment Issued.

HEALTH AND FAMILY WELFARE [IMI-1] DEPARTMENT
G.O.(D) No.1802
Dated:16.10.2018

திருவள்ளூர் ஆண்டு - 2049

விளம்பி - புரட்டாசி - 30

Read:

1. G.O.(D) No.1373 Health and Family Welfare [IMI-2] Department, dated 01.08.2018.
2. From the Director of Indian Medicine and Homeopathy Ref.No.7112/P&DII/2018 dated 15.10.2018.

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ORDER:-

In the circumstances stated by the Director of Indian Medicine and Homeopathy in his letter second read above, the following amendment is issued to G.O.(D) No.1373, Health and Family Welfare [IMI-2] Department dated 01.08.2018:-

AMENDMENT

Clause No.6 of the approved Under Graduate Prospectus for the academic session 2018-19 shall be substituted as follows:

"6. MINIMUM ELIGIBILITY MARKS FOR B.S.M.S. / B.A.M.S. / B.N.Y.S. / B.H.M.S. / B.U.M.S. COURSES.

I. OTHER COMMUNITIES

12th standard with science or any other equivalent examination recognized by University or Boards with Fifty percent aggregate marks in the subjects of Physics, Chemistry and Biology or Botany and Zoology taken together.

II. BACKWARD COMMUNITIES / BC (MUSLIM)

12th standard with science or any other equivalent examination recognized by University or Boards with Forty five percent aggregate marks in the subjects of Physics, Chemistry and Biology or Botany and Zoology taken together.

III. MOST BACKWARD CLASSES AND DENOTIFIED COMMUNITIES:

12th standard with science or any other equivalent examination recognized by University or Boards with Forty percent aggregate marks in the subjects of Physics, Chemistry and Biology or Botany and Zoology taken together.

IV. SCHEDULED CASTE, SCHEDULED CASTE (ARUNTHATHIYAR), SCHEDULED TRIBE:

12th standard with science or any other equivalent examination recognized by University or Boards with Thirty Five percent aggregate marks in the subjects of Physics, Chemistry and Biology or Botany and Zoology taken together.

(v) The candidates under Physically Challenged Category - (Locomotory disability of Lower Limbs alone). OC/BC/BCM/MBC/DC should have obtained a minimum of 40% marks in each prescribed subject in the qualifying examination.

NOTE:

(i) The Marks obtained in the qualifying examination in the relevant science subjects in the first appearance only will be taken into consideration for the allotment of seats to candidates and the improvement marks in +2 examination of any year will not be considered.

(ii) Candidates who have passed any other equivalent examinations in the first attempt with the same group of subjects as mentioned above should produce the eligibility certificate from the Tamil Nadu Dr.M.G.R. Medical University before attending the counseling.

(iii) In the case of candidates who have furnished the mark-sheets of the qualifying examination, only in GRADES, the minimum marks of the grades alone will be taken into consideration while determining the marks in the Science subjects of Physics, Chemistry and Biology or Botany and Zoology.

(iv) Candidates who have submitted marks sheets with GRADES and without mentioning the range of marks for each grade should obtain the marks equivalent certificates from the examination authority and attach a certified

copy along with their mark sheet as an enclosure with the application.

(v) Normalization method will be adopted for calculating the minimum eligibility mark for the candidates who have passed any other equivalent examination.

(BY ORDER OF THE GOVERNOR)

J.RADHAKRISHNAN
PRINCIPAL SECRETARY TO GOVERNMENT"

5. Added further Mr.C.Munusamy, learned Special Government Pleader submitted that Government would issue a Corrigendum to the Prospectus dated 14.08.2018 for admission to the abovesaid courses for the Academic Year 2018-19, within one week from today i.e. by 29.10.2018.

6. Learned Special Government Pleader further submitted that candidates, who have applied earlier, pursuant to the prospectus dated 14.08.2018, need not apply afresh and their applications would be scrutinized in terms of G.O.(D) No.1802, Health and Family Welfare [IMI-1] Department dated 16.10.2018. He also added that those who belong to Scheduled Caste, Scheduled Caste (Arunthathiyar), Scheduled Tribe and satisfy clause 6(4) of the new eligibility marks for B.S.M.S. / B.A.M.S. / B.N.Y.S. / B.H.M.S. / B.U.M.S. Courses, can submit their applications within two weeks from the date of publication ie. before 12.11.2018. Submission is placed on record.

7. Selection and admission procedure have to be finalized within one month from the last date of receipt of application from the candidates ie. 12.12.2018.

8. With the above directions, the Writ Petition is allowed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Selection Committee for BSMS/ BAMS/
BNYS/BUMS/BHMS/
for the Sessions 2018-19,
Off of the DIM & H Arumbakkam,
Chennai - 600 106.

2. The Director,
Office of the Directorate of Indian Medicine
& Homeopathy,
AAGHIM Campus,
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3. The Government of Tamil Nadu,
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6. The Registrar, Tamil Nadu Siddha
Medical Counsel Anna Hospital Campus
Arumbakkam Chennai-106

+1cc to Mr.Vasudevan, Advocate, S.R.No.71832

+1cc to the Government Pleader, S.R.No.72005

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WP.No.27006 of 2018
and WMP Nos.31410, 31417
and 31419 of 2018

ARI (CO)
GSP (23/10/2018)