

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2018

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.No.27265 of 2018
and W.M.P.No.31701 of 2018

M.Pratibha Roshini

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai-600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
3. The Secretary,
The Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai-600 010.
4. The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Guindy,
Chennai-600 032.
5. The Chairman,
Ponnaiyah Ramajayam Institute of Medical Science,
Manamai Nellore, Kancheepuram District.
6. The Medical Council of India,
Rep.by its Board of Governors,
Pocket 14 Sector 8,
Dwarka Phase I,
New Delhi-110 077.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus, directing the respondents to treat the petitioner's admission as being

admitted under the Government quota seats category for the year 2016-2017 in the 5th respondent college and consequently direct the 4th and 6th respondents to register the petitioner herein as a student of the University in the said category and consequently direct the respondents to permit the petitioner to continue her 2016-2017 MBBS course by taking all the necessary examinations and publishing the results as a regular student of MBBS course.

For Petitioner : Mr.Silambanan, Senior counsel

For R1 to R3 : Mr.A.Rajaperumal
Additional Government Pleader

For R4 : Mr.D.Ravichandran,
Standing counsel

For R6 : Mr.V.P.Raman

O R D E R

The petitioner was admitted in the fifth respondent institution in 2016-17. It is stated that the petitioner secured the medical cut off marks 192 out of 200 and attended counseling conducted by the fourth respondent on 29.09.2016. It is the case of the petitioner that the fifth respondent college was entitled to admit 150 seats for the first year and out of this 97 seats was reserved for Government quota and the remaining 53 seats were filled up by the Management quota.

2 In the year 2016-17, the management could not fill up all the 53 seats and surrendered 30 seats out of its quota to the Government. It is admitted that the students get admission in Government quota were not required to pass NEET examination in the year 2016-17. It is also admitted that the petitioner did not take NEET in 2016. Many seats though filled, were vacant in the Government quota as well as in the Management quota as students did not join. It is the case of the petitioner that 11 Government seats were vacant under the Government Quota and that she was also in the Government merit list and approached the college on instructions from the selection committee.

3 It is also the case of the petitioner that she paid fees fixed by the Government quota seats and joined the fifth respondent college on 30.09.2016 and attended the classes from the second week of October 2016. However, by a letter dated 29.11.2016, the fourth respondent university directed the fifth respondent college to discharge 36 candidates including the petitioner, who have been admitted for the first year MBBS degree course for the academic year 2016-17 under the management

quota without NEET examination.

4 It is not in dispute that the petitioner challenged the order of the fourth respondent in a writ petition filed by her in W.P.No.1605 of 2017. The said writ petition is also for a consequential direction to the second respondent to extend the benefit granted under Section 10-D of the Indian Medical Council Act to all students regarding NEET examination without discriminating her on the basis that she was admitted under Management quota. A similar writ petition filed by another student was dismissed by the learned single Judge of this Court specifically holding that the fifth respondent was not supposed to fill up the seats under Government Quota and that the petitioner cannot contend that he should be treated as a candidate under the Government quota. Since, the private institutions are prohibited from claiming seats under Government Lapsed Seats Quota, the writ petition was dismissed. However, an opportunity was given to the petitioner to get compensation from the fifth respondent institution.

5 Following the judgment passed in a batch cases, the petitioner's writ petition in W.P.No.1605 of 2017 was also dismissed. The petitioner thereafter filed an appeal in W.A.No.242 of 2017 and the appeal was also dismissed after holding that the fifth respondent herein cannot admit the students under the Government Lapsed Seats Quota and that therefore, the admission of the petitioner cannot be sustained. With regard to the requirements of NEET examination for all the candidates admitted under Management quota, the Hon'ble Division Bench of this Court while dismissing the appeal has held that the Government has taken a policy decision to the effect that the students admitted to State Government seats need not undergo NEET and the Court do not find any justification to interfere with such policy decision.

6 After the disposal of several batch of writ petitions, once again the issue was raised before this Court in yet another batch of case and the matter was referred to a Full Bench of this Court. The Hon'ble Full Bench of this Court by judgment dated 05.06.2018 has again confirmed and reiterated the earlier view in several cases. The questions referred to were answered by the full bench of this Court in the following lines:

"41. In view of the aforesaid reasons, we answer the questions referred for consideration as follows:-

- (1) The seats filled up by the sixth respondent Management (Ponnaiyah Ramajayam Institute of Science, Kancheepuram District) cannot be categorised as Government Lapsed Seats and could not have been filled up by the Management by

candidates who do not have NEET-UG-2016 qualification.

(2) The expression used by the Management that the 36 seats are lapsed seats is a misnomer, as the correct expression would be unfilled/unutilised seats and such position will arise only after 30.09.2016 and not prior to the same. For such a situation to arise, it is incumbent upon the Management to report to the Selection Committee/Government about the names of the candidates, which were forwarded by the Selection Committee, who did not join the course before the cut off date, namely, 30.09.2016. Therefore, neither the Government nor the Selection Committee, much less, the management have any jurisdiction to extend the time for admitting candidates beyond 30.09.2016 and therefore, the question No.2 as framed does not arise for consideration. Even assuming there were lapsed seats (i.e.,) after 30.09.2016, without the permission of the Hon'ble Supreme Court, the Government/Selection Committee would not be entitled to fill up the same and in any event could never be done by the Management.

(3) Question No.(3) was answered vide our order dated 01.11.2017, holding that pending decision of the writ appeals, the candidates admitted by the Management cannot be permitted to sit for supplementary examination commencing from 02.11.2017."

7 Despite the fact that the petitioner's writ petition was dismissed and the dismissal was confirmed by the Division Bench in the writ appeal filed by her, the petitioner herein submitted a representation on 29.07.2018. In the representation, the petitioner compared herself with one Yamini, a candidate who was admitted in another private college in Kanyakumari District and submitted that the said candidate, who secured marks less than the marks obtained by the petitioner was given admission and therefore, the petitioner is entitled to get admission under Government quota on merits. It is represented that the petitioner though was admitted by the management directly, her admission should be taken as admission given to a student under the Government quota on merits and that therefore, the impugned letter dated 29.11.2016, which is impugned in the writ petition filed by the petitioner should be re-called and that the petitioner should be allowed to appear for the examination and to continue her MBBS course.

8 It is to be seen that the petitioner has filed a writ

petition challenging the order passed by the fourth respondent university directing the institution to discharge the petitioner and others who have been given admission in the first year MBBS course for the academic year 2016-2017 under the Management quota. The said order was challenged by the petitioner in the earlier writ petition. All the grounds raised by the petitioner has been considered by this Court and ultimately the writ petition was dismissed on merits. Earlier, the petitioner submitted before this Court that though the petitioner was admitted under Management quota, her admission should be treated as one under the Government Lapsed Seats Quota and that therefore, the NEET qualification is not required.

9 It is not the case of the petitioner in the earlier writ petition that the petitioner is also otherwise entitled to get admission on merits under Government quota. From the judgment of Full Bench of this Court, it is seen that the seats filled up by the fifth respondent Management cannot be categorised by the Government Lapsed Seats Quota and could not even filled up by the Management by candidates without NEET qualification. The second issue that was answered by the Full Bench is regarding the authority of the fifth respondent Management to extend the time for admitting the students beyond 30.09.2016. Even assuming that the petitioner is entitled for admission under Government quota, the first time the petitioner has come up with this new place and idea is long after the legal battle in the earlier round of litigation for quite a long time.

10 In such circumstances, this Court is of the view that the point, which was not raised by the petitioner in the earlier writ petition, which is for similar prayer cannot be agitated by the petitioner in a subsequent writ petition. It is well settled that the principles of constructive res judicata can be applied in writ petition and as such this Court cannot entertain this writ petition for similar prayer on a new ground which was not raised by the writ petitioner earlier. Secondly, in view of the time stipulation by the Hon'ble Supreme Court, as reiterated by the Full Bench of this Court, the petitioner cannot be given admission. At best, the petitioner can file a review petition on discovery of an important material or fact as against the order of Division Bench dismissing her writ appeal. Hence, this writ petition is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//
Sub Assistant Registrar

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To

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State of Tamil Nadu
Health and Family Welfare Department,
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Chennai-600 009.
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Rep.by its Board of Governors,
Pocket 14 Sector 8,
Dwarka Phase I, New Delhi-110 077.
- +lcc to Mr.V.P.Raman, Advocate, S.R.No.71931
+lcc to M/s.Kaavya Silambarasan Associates, S.R.No.72304
+lcc to the Government Pleader, S.R.No.72006

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CS/26/10/2018

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