



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
29.10.2018	19.11.2018

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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) Nos.7516 & 13135 of 2018andW.M.P. (MD) Nos.7179, 7180 & 12005 of 2018

The Chairman
SreeMookambika Institute of Dental Sciences
Velayutham Pillai Memorial Hospital Complex
Padaninalam, Kulasekharam
Kanyakumari District
Run by Padanilam Welfare Trust
Kulasekharam, Kanyakumari District

... Petitioner in in W.P.(MD)
No.7516 of 2018

The Chairman
Sree Mookambika Institute of Medical Sciences
Velayutham Pillai Memorial Hospital Complex
Padaninalam, Kulasekharam
Kanyakumari District
Run by Padanilam Welfare Trust
Kulasekharam, Kanyakumari District

... Petitioner in in W.P.(MD)
No.13135 of 2018

vs.

1. The State of Tamil Nadu
rep.by its Secretary
Department of Health & Family Welfare
Fort St.George, Chennai-600 009
2. The Director of Medical Education
Directorate of Medical Education
162, Poonamalle High Road
Kilpauk, Chennai-600 010
3. The Secretary
The Selection Committee
Directorate of Medical Education
162, Poonamalle High Road
Kilpauk, Chennai-600 010
4. Tamil Nadu Dr.M.G.R.Medical University
P.B.NO.1200, No.69, Anna Salai
Guindy, Chennai-600032
Rep. by its Registrar

... Respondents in
W.P. (MD) No.7516 of 2018



5. The Union of India
Rep.by its Secretary
Department of Health
Central Secretariat, NewDelhi
6. The Medical Council of India
Pocket 14, Sector 8
Dwaraka, New Delhi-110 077
Rep by its Secretary
7. The State of Tamil Nadu
Rep.by its Secretary
Department of Health &
Family Welfare, Fort St George
Chennai-600 009
8. The Director of Medical Education
Directorate of Medical Education
162, Poonamalle High Road
Kilpauk, Chennai-600 010
9. The Secretary
The Selection Committee
Directorate of Medical Education
162, Poonamalle High Road
Kilpauk, Chennai-600 010
10. Tamil Nadu Dr.M.G.R.Medical University
P.B.NO.1200, No.69, Anna Salai
Guindy, Chennai-600032
Rep.by its Registrar

... Respondents in W.P.(MD)
No.13135 of 2018

PRAYER (in W.P.(MD) No.7516 of 2018): Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned proceedings issued by the 4th respondent TN Dr.M.G.R.Medical University inRef No.ExIII(4)/21818/2017 dated 12.03.2018, quash the same in so far as the petitioner's college is concerned.

PRAYER (in W.P.(MD) No.13135 of 2018): Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned proceedings issued the 2nd respondent Medical Council of India vide Ref. No.MCI-34 (MC-UG)/2017-18/113759 dated 07.06.2018, quash the same.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
(in both W.Ps) for M/s.Isaac Chambers

For Respondents :Mr.K.Chellapandian
(in W.P.(MD) No.7516 of 2018) Additional Advocate General



Assisted by Mr.A.Muthu Karuppan
Additional Government Pleader for
R1 to R3
Mr.S.Gomathinayagam, Senior
Counsel for Mr.C.Karthik for R4

For Respondents
(in W.P.(MD) No.13135 of 2018)

:Mr.G.Rajaraman
Central Government Standing
Counsel for R1
Mr.P.Mahendran
Standing Counsel for M.C.I.
for Mr.V.P.Raman for R2
Mr.A.Muthu Karuppan
Additional Government Pleader
for R3 to R5
Mr.S.Gomathinayagam, Senior
Counsel
Mr.C.Karthik for R6

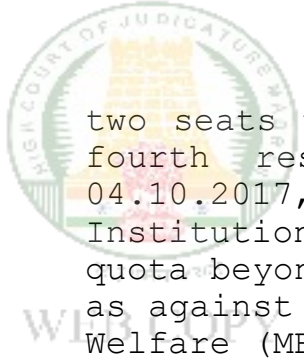
C O M M O N O R D E R

The issues raised in both the writ petitions relate to the admission of students to the medical course by the petitioner - Institution in excess of Management quota towards unfilled seats earmarked to the Government by consensual arrangement between the petitioner - Institution and the Government.

2. The facts as narrated in W.P.(MD) No.7516 of 2018 are stated hereunder and the findings to be rendered in respect of the said writ petition will hold good for the other writ petition, namely, W.P.(MD) No.13135 of 2018, as well.

3. The petitioner - Institution is a total intake of 16 seats for MDS Course, out of which, five seats were given to the Government by way of mutual arrangement, for the academic year 2016 - 2017. During admission for the said academic year, the Government was able to sponsor only three candidates through the Counselling i.e. Single Window System, till the last date of admission. Since two seats were likely to be lapsed, the petitioner - Institution was able to fill-up only one seat from the merit list maintained by the Association of Colleges and one seat was allowed to go lapsed. As far as the Management quota was concerned, all the 11 seats were filled-up. Thereafter, the students joined the course and took their regular classes and were continuing therein, without any protest from the Government or any other Authority concerned.

4. Subsequently, for the academic year 2017 - 2018, the petitioner - Institution had agreed to allot 50% of the Post-Graduate seats i.e. eight seats out of 16 seats permitted to intake insofar as their College is concerned. Out of eight seats allotted to the Government, only five seats were sponsored and the petitioner - Institution filled-up one lapsed seat from the merit list published by the Admission Monitoring Committee and the remaining



two seats were lapsed being unfilled. In these circumstances, the fourth respondent - University issued a communication, dated 04.10.2017, calling for explanation from the petitioner - Institution for having admitted four candidates under Management quota beyond the sanctioned strength for the academic year 2016-2017 as against the Government Order in G.O.(Ms) No.76, Health and Family Welfare (ME) Department, dated 23.02.2016, without getting any prior permission from the Selection Committee.

5. In response to the above communication, on 09.10.2017, the petitioner - Institution submitted an explanation to the fourth respondent - University, explaining that five seats only were surrendered to the Government for the academic year 2016 - 2017 and the Government had only sponsored only three seats and for the remaining two seats, the Management admitted one candidate from the merit list maintained by the Association of Colleges. When the petitioner - Institution was submitted a list of candidates admitted to the respondents on 01.06.2016 and 15.07.2016, there was no objection and the same was approved.

6. Not being satisfied with the reply given by the petitioner - Institution, the fourth respondent - University issued an order, on 12.03.2018, directing the petitioner - Institution to surrender the excess admission made in the academic year 2016 - 2017 from the Management quota to the Government quota in the academic year 2018 - 2019 and further, the petitioner - Institution was directed to admit only one seat and the remaining 15 seats were to be filled-up by the Government. The said order, dated 12.03.2018, is put to challenge in W.P.(MD) No.7516 of 2018.

7. Likewise, in the other writ petition, namely, W.P.(MD) No.13135 of 2018, the seat sharing arrangement between the petitioner - Institution and the Government was 50 : 50 and the total intake of the students in M.B.B.S. Course was 100 per year. For the subject year, the Government could sponsor only 44 candidates out of 50 seats allotted to them and the Management had filled the entire quota allotted to them i.e. 50 seats. As regards the remaining six seats, which were allowed to go lapsed due to non-sponsoring of candidates by the Government, the Management filled the same. In the said circumstances, the Medical Council of India issued a communication, dated 07.06.2018, directing the petitioner - Institution to admit six seats less in the Management quota for the academic year 2018 - 2019 and increase the Government quota accordingly. The said communication of the Medical Council of India is put challenge in W.P.(MD) No.13135 of 2018.

8. Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner - Institution, would at the outset submit that there was no compulsion on the part of the Unaided Minority Institution to earmark any particular percentage of seats to the Government and it was always on the basis of consensual arrangement arrived at between the Institution concerned and the Government. When such being the



factual position, he would submit that the question of directing the petitioner - Institution to admit less students for the present academic year, on the basis that the Institution had admitted students in excess of the Management quota in the earlier academic year, would not arise.

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9. The learned Senior Counsel would submit that the impugned order, dated 12.03.2018, was issued on the premise that there was a compulsion to share 50% of the seats of the total intake that is admissible to the petitioner - Institution with the Government in terms of G.O.(Ms) No.76, Health and Family Welfare (ME) Department, dated 23.02.2016. According to the said Government Order, a direction was issued for apportionment ratio of 50 : 50 fixed between the Management of Unaided, Non-Minority and Minority Medical / Dental / Para Medical / Indian System of Medicine Colleges in the State as ordered in G.O.(Ms) No.87, Health and Family Welfare Department, dated 16.03.2007. In view of the above Government Order, the petitioner - Institution had to necessarily share 50% of the seats of the total intake admissible to the Institution and in view of the Institution admitting students in respect of the quota meant for the Government, the impugned order was issued directing the petitioner - Institution to admit less number of students for the present academic year proportionate to the number of excess students admitted by the petitioner - Institution in excess of the Management quota.

10. The learned Senior Counsel for the petitioner - Institution would submit that the principal Government Order, which is referred to in G.O.(Ms) No.76, dated 23.02.2016, was G.O.(Ms) No.87, dated 16.03.2007, which was issued in furtherance of implementation of the Tamil Nadu Admission in Professional Educational Institutions Act, 2006. According to the learned Senior Counsel, the Government Order, which was issued under certain provisions of the Act, 2006 Act, was no more valid for the simple reason that the provisions, which gave rise to the principal Government Order, had been struck down as unconstitutional by the Honourable Division Bench of this Court in the case of **Madha Engineering College vs. State of Tamil Nadu**, reported in (2007) 6 MLJ 1. Once the particular provisions of the Act itself were declared as unconstitutional, the principal Government Order has become null and void and in which an event, the present G.O.(Ms) No.76, dated 23.02.2016, which is based on G.O.(Ms) No.87, dated 16.03.2007, cannot hold water any more. Therefore, the compulsory nature of seat sharing arrangement of 50%, as prescribed in the Government Order, is invalid and unsustainable in law.

11. The learned Senior Counsel for the petitioner - Institution would further submit that even otherwise, such a prescription of compulsory seating sharing arrangement is also against the law of the land declared by the Honourable Supreme Court of India in the case of **P.A.Inamdar and others vs. State of Maharashtra and others**, reported in (2005) 6 SCC 537. The



Constitution Bench of the Honourable Supreme Court of India has clearly held, in Paragraph No.128 of the Judgment, that the seat sharing arrangement is on the basis of consensual arrangement. The observations of the Honourable Supreme Court of India, as found in Paragraph Nos.128 and 130, read as under:

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"128. We make it clear that the observation in *Pai Foundation* in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.

129. ...

130. For the aforesaid reasons, we cannot approve of the scheme evolved in *Islamic Academy* to the extent it allows the States to fix quota for seat sharing between the management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That apart of the judgment in *Islamic Academy* in our considered opinion, does not lay down the correct law and runs counter to *Pai Foundation*."

Therefore, the learned Senior Counsel would submit that in any event, such a prescription of compulsory seat sharing arrangement is contrary to the above decision of the Constitution Bench of the Honourable Supreme Court of India.

12. According to the learned Senior Counsel for the petitioner - Institution, this Court has taken a similar view even recently by a learned Single Judge of this Court in the case of ***Dr.M.Hemalatha vs. State of Tamil Nadu***, reported in **2017 (3) CTC 225**. He would particularly refer to Paragraph Nos.91(e) and 95(3) of the decision, which read as under:

"91. The conclusions reached by this Court, in nutshell, are as follows:

(a) ...

(b) ...

(c) ...

(d) ...

(e) *Minority Institutions/Colleges need not share 50% of their seats to State, as it would affect their Minority status in view of Articles 15(5) & 30.*

92. ...

93. ...

94. ...



95. In view of the above reasons, by moulding the prayer, in the Public interest, this Court passes following Directions/Orders:

(1) ...

(2) ...

(3) Minority Institutions/Colleges need not share 50% of their seats to the State Government except by voluntary share, in view of Articles 15(5) and 30 of the Constitution.

13. The learned Senior Counsel would, therefore, submit that in the absence of any compulsion on the part of the petitioner - Institution to share seats to the Government, the impugned order, 12.03.2018, passed by the fourth respondent - University is *ex facie* illegal and liable to be set aside.

14. Apart from the above contentions, the learned Senior Counsel would also submit that the fourth respondent - University or the Medical Council of India have no authority or power to issue any orders of seat sharing arrangement and this aspect is also well settled in favour of the petitioner - Institution. In support of his contentions, the learned Senior Counsel for the petitioner - Institution would draw the attention of this Court to a decision in the case of **Chairman, S.M.I. of M.S.V.P.M.Hospital Complex vs. Union of India**, reported in (2010) 1 MLJ 923. The learned Judge of this Court, after adverting to various decisions, has clearly held in Paragraph Nos.42 to 46 as follows:

"42. Mr.V.P.Raman, the learned counsel appearing for the 2nd respondent submitted that the management should not have filled those seven seats and they must allow seven seats to lapse and having filled those seven seats, they are bound to reduce their intake correspondingly in the next academic year.

43. In other words, the management has to suffer for filling those seven seats, which would have otherwise lapsed or would have gone waste without any use to any body. It reminds me, the famous case that came up before King Solomon, where two women claimed right over a child contending that they are the natural mother of the child. When King Solomon wanted to settle that issue and to find out the real natural mother he devised a plan and ordered that the child be cut into two pieces and hand over one piece to each of the woman. The real



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mother did not permit that to happen and pleaded with the King to give the baby to other woman though she is not the real mother. King Solomon then was able to find out the natural mother and handed over the child to the natural mother. In this case, the stand of the 2nd respondent is that the seats can be allowed to go waste or lapse but the management should not be permitted to fill those seats and the stand of the 2nd respondent is just similar to the case of the woman who was not the natural mother of that child. The management instead of allowing those seats to go waste or lapse gave opportunity to seven deserving candidates and collected only the fee prescribed by the Government and hence, it cannot be construed that the management has filled more than its quota prescribed to the management, by filling those 7 seats.

44. According to me, as per the Supreme Court, the Mridul Dhar (Minor) case only when the management grants admission in its management quota then only they will have to surrender those seats. When the management has not granted admission in its management quota and only filled those seats, which would have otherwise lapsed, those seats cannot be taken as management quota and therefore, there is no need for the management to surrender the seven seats for the academic year 2009-2010.

45. As a matter of fact the stand of the management is also accepted by the State Government and they have only claimed two seats, for the academic year from the management quota and so far as the 5 seats are concerned, the State Government did not object to the management, filling those seats in the previous year. In so far as two seats are concerned, it is only claimed by the State Government on the basis that management has not followed the procedures. Therefore, in other words, the State Government has accepted that the management has not filled up seven seats in its management quota and the State Government has only appreciated the act of the management in filling those seats, which would otherwise have gone waste.



applicability of the judgment of the Apex Court in **P.A. Inamdar case**. To decide the issue, we may also consider those submissions.

6. The Apex Court in **Mridul Dhar case**, while considering a similar question, in paragraph 35 (11) of its Judgment has observed that-

"If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year."

In **Al-karim case** also, the Apex Court has made a similar finding.

7. Placing reliance on the above two judgements, Mr.V.P.Raman, learned Counsel appearing for the Appellant, would submit that inasmuch as the institute had filled 57 seats during the academic year 2008-2009, it should surrender seven seats to the Government for the subsequent academic year. This submission did not find favour in the Writ Petition. According to the learned Single Judge, only in the event the management had filled-up the candidates over and above the management quota, the proportionate number of seats should be surrendered to the Government in the subsequent academic year. In our opinion, the said finding needs no interference. Sub-paragraph (11) of paragraph 35 of **Mridul Dhar's case** directs that only when a management grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set-off the effect of excess admission in the management quota for the previous academic year. In other words, the reduction of seats to set-off the effect of excess admission will be necessary only in the event any excess admission is made over and above the management quota.

8. ...

9. By applying paragraph 35(ii) of **Mridul Dhar case**, the excess admission must be over and



above the management quota. For instance, if the management had filled more than 50 seats under Management quota apart from filling-up the entire seats earmarked for the Government quota which will result in the admission of more than sanctioned strength of 100 seats. In view of the specific directions of the Supreme Court, by which the question of reduction of seats so as to set-off in the subsequent year, would be available only when there was excess of admission in the management quota, we do not find any reason to interfere with the finding of the learned Single Judge in this regard.

10. ...

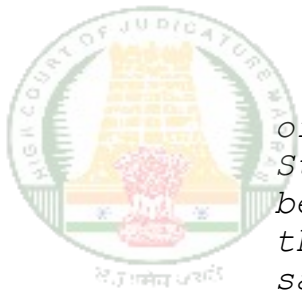
11. This takes us to the next submission as to whether the Medical Council of India has any role to play in regulating the admission in medical colleges. In exercise of the power under Section 33(fc) of the Indian Medical Council Act, 1956, the Medical Council, with the previous sanction of the Central Government, may make regulations to provide the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of Section 10-B of the Act. Section 10-B of the Act relates to non-recognition of medical qualifications in certain cases. Sub-section (1) of that Section states that where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college shall be a recognized medical qualification for the purposes of the Act. Explanation to the said Section says that-

"for the purposes of this Section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed."

12. ...

13. ...

14. The question of 50% of seats to be considered as Government quota is only by virtue



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of the agreement between the institute and the State Government. That seat sharing is entirely between the institute and the Government and for that purpose the Medical Council has no role to say that as to whether such seat sharing could be made or not and if such seat sharing could be made what is the percentage of seat sharing, etc. The power that will be available to the Medical Council is not to find out as to whether the institute admits students according to the seat sharing agreement entered with the State Government but only to the extent as to whether the institute has admitted more than the sanctioned strength. To this extent, the Medical Council has power and not otherwise."

16. The Honourable Division Bench, according to the learned Senior Counsel, has held that the seat sharing arrangement is only between the Government and the Institution concerned and the Medical Council of India cannot have any role in such matters. This aspect has been reiterated by the another Honourable Division Bench of this Court in the case of **Medical Council of India v. Muthukumaran Educational Trust**, reported in **2016 SCC OnLine Mad 25304**. The learned Senior Counsel has drawn the attention of this Court to Paragraph Nos.10 and 12 of the said decision, which read as under:

"10. From a close reading of the observations made by the Division Bench of this Court, it is easily discernible that as per Indian Medical Council Act, 1956(102/1956), the Indian Medical Council has power to interfere in a matter where admission has been made in excess of allowed limit. But at the same time, with regard to Government quota and Management quota, it is a matter between the concerned Government and Management and if there is any infraction, only the concerned Government is the competent authority to make interference.

11. ...

12. As adverted to earlier, there is no specific provision in the Medical Council Act 1956 which enables the Indian Medical Council to make interference in a matter like this and at the most, the Indian Medical Council can make its interference if there is any excess admission. Since there is no explicit provision either in Medical Council Act, 1956 or in some other Act, so as to permit Indian Medical Council to make

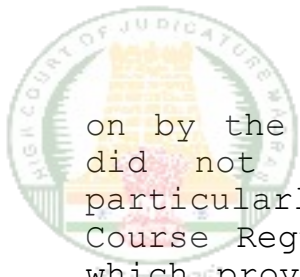


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interference in a matter like this, this Court is of the considered view that a power/right which is not permissible under law cannot be created in favour of the appellant/respondent and at the most in the present issue only the State Government is having power/right to make interference and therefore, it is needless to say that the impugned communication has been issued without having locostandi and therefore, the contentions put forth on the side of the appellant/respondent cannot be accepted and the learned Single Judge after considering the observations made in the judgment passed by the Division Bench of this Court has rightly allowed the writ petition and in view of the discussions made earlier, this Court has not found any force in the contentions urged on the side of the appellant and altogether, the present writ appeal deserves to be dismissed."

17. The learned Senior Counsel for the petitioner - Institution would, therefore, submit that the impugned order is passed on the basis of misconception that the seat sharing arrangement is mandatory to the extent of 50 : 50 ratio and therefore, filling-up of excess seats by the petitioner - Institution in breach of their quota, shall be compensated by them in the future academic years. The learned Senior Counsel would, therefore, submit that the basic understanding of seat sharing arrangement has been flawed. In the absence of seat sharing arrangement, as being one of compulsory in nature, the petitioner - Institution cannot be found fault with in admitting students against the lapsed seats. The petitioner - Institution has not filled-up seats deliberately in order to exclude the Government from admitting their quota students, but only when the Government failed in its duty to sponsor enough number of candidates, in order to provide opportunity to the meritorious students, the Management had admitted the students out of the total quota prescribed by the Authority concerned. He would further submit that in fact, the students, who were admitted against the Government quota, had been charged only the fees prescribed by the Government and therefore, there cannot be any cause for complaint on that score. Even otherwise, those students were selected from the merit list maintained by the Association of Colleges on the basis of their own entrance test. The learned Senior Counsel would submit that the lapsing of seats is not in the interest of any stakeholders and therefore, the petitioner - Institution thought fit to admit the students to the extent possible.

18. Per contra, Mr.S.Gomathinayagam, learned Senior Counsel, appearing for the University in respect of W.P.(MD) No.7516 of 2018 would vehemently opposed the grant of relief to the petitioner - Institution. He would submit that the orders of this Court relied



on by the learned Senior Counsel for the petitioner - Institution did not consider certain vital factual matters. He would particularly draw the attention of this Court to the Revised MDS Course Regulation, 2007, published by the Dental Council of India, which provides for 50 : 50 ratio between the Unaided Institutions and the Government. He would draw the attention of this Court to the particular clause of the Notification, dated 20.11.2007, issued by the Dental Council of India, which reads as under:

"Provided further that in non-Governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent, by the management of the institution on the basis of merit."

According to the learned Senior Counsel for the University, unfortunately this was not brought to the knowledge of the learned Judges and therefore, the decisions relied on by the learned Senior Counsel for the petitioner - Institution rendered by this Court do not lay down the correct position of law.

19. The learned Senior Counsel for the University would rely on the decision in the case of **Mridul Dhar vs. Union of India**, reported in **(2005) 2 SCC 65**. He would draw the attention of this Court to Paragraph Nos.32 and 35 (11), which read as under:

"32. Having regard to the professional courses into consideration, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges, new or old, students, Boards, universities, examining authorities etc. are required to strictly adhere to time schedule wherever provided for; there should not be mid-stream admission; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether State or Management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.

33. ...

34. ...

35. Having regard to the aforesaid, we issue the following directions:

1. ...

2. ...

...

...

11. If any private medical college in a given academic year for any reason grants admission in



its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year."

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20. The learned Senior Counsel for the University would heavily rely on the above observations of the Honourable Supreme Court of India. He would, therefore, submit that the University has followed the dictum laid down by the Honourable Supreme Court of India and hence, the same cannot be faulted with.

21. At this juncture, the learned Senior Counsel for the petitioner - Institution would submit that the above cited decision passed by the Honourable Supreme Court of India was dated 12.01.2005 and passed by a Bench consisting of three Judges. On the other hand, subsequently, the Seven Judges Constitution Bench of the Honourable Supreme Court of India in the case of **P.A.Inamdar** (cited supra), has declared the law on 12.08.2005 i.e. subsequent to the above decision rendered in the case of **Mridul Dhar** and the operative portion of the decision of the Honourable Supreme Court of India, as found in Paragraph No.128 relied on by the learned Senior Counsel for the petitioner - Institution, has been extracted above. Therefore, in view of the decision passed by the Constitution Bench, the decision relied on by the learned Senior Counsel for the University was incorrect and the same cannot be applied after the decision of the Constitution Bench.

22. The learned Senior Counsel for the University would also rely on the conditions of the Affiliation Order issued by the University, dated 30.05.2012, in which, he would draw the attention of this Court to Clause No.23, which reads as under:

"23. As per DCI norms, provide 50% of the seats for counseling under the single window system of the Government and the remaining fifty percent to be admitted by the management of the institution on the basis of merit."

The learned Senior Counsel would, therefore, submit that the University has every right to impose conditions and the petitioner - Institution has accepted the conditions and got affiliation from the University. Therefore, it is not open to the Institute to turn around today and say that the seat sharing arrangement for admission to M.D.S.Course is only consensual and not obligatory or mandatory.

23. The learned Senior Counsel for for the University would further rely on a decision of the Honourable Full Bench of this Court in the case of **Managing Trustee, Ponnaiyah Ramajayam Institute of Science and Technology Trust vs. State of Tamil Nadu**, reported in **2018 (5) CTC 241**. The learned Senior Counsel would draw the attention of this Court to Paragraph Nos.39 and 40 of the said decision, which read as under:

"39. Apart from all of the above, if we



examine the stand taken by the management, it would clearly show that it is contradictory and mostly destructive. So to say, the management's case is that 36 seats are Government seats, which remained unfilled at 5.00 PM on 30.09.2016 and such Government seats can be filled up without insisting upon NEET-UG-2016 scores. Assuming for the sake of arguments, this plea is acceptable, then the question would be as to who could fill up those seats.

40. Answer to the argument should be against the management as a Government seat can be filled up only by the Government through the method of counselling conducted by the selection committee. Therefore, the MCI was justified in stating that the admission of the 36 candidates were illegal and they have to be discharged forthwith. In the light of this factual position, reliance placed on the decision in the case of P.A.Inamdar etc., and various provisions of the Tamil Nadu Act 2 of 2007 are inapplicable to the cases on hand."

24. The learned Senior Counsel for the University would submit that the Government seats can be filled-up only by the Government and the same cannot be filled-up by the Management, whatever may the circumstances.

25. The learned Senior Counsel for the University would also rely upon an unreported decision rendered by a learned Single Judge of this Court in W.P.No.28020 of 2014, dated 23.08.2016. He would draw the attention of this Court to Paragraph No.14 of the said decision, which reads as under:

"14. The fourth respondent University, taking note of the same, called upon the petitioner to adjust 18 seats from Management Quota in the future academic years and accordingly it executed a letter of undertaking, though according to him, such undertaking came into being on account of compulsion and coercion. It is the submission of the learned counsel appearing for the petitioner that fixation of Government quota and Management quota is on account of agreement between the institution and the State Government and the State Government alone is entitled to question them and not the respondent University. The fourth respondent University while granting provisional affiliation in its proceedings dated 10.08.2007 had also indicated that the Trust and its college shall abide by the provisions of the Tamil Nadu Dr.M.G.R.Medical University Madras Act, 1987 and



by the Statutes, Ordinances, Regulations and Rules made thereunder applicable to the Siddha Medical Colleges framed from time to time and also abide by any other conditions which the University considers necessary to impose from time to time. Therefore, the fourth respondent is entitled to insist the petitioner to surrender/adjust the excess admissions made by them in the Government Quota during the academic year 2012-13 in the future academic years and it cannot be faulted with. The fourth respondent did not want to punish the students who have been admitted in excess in the petitioner institution under Management Quota and therefore, thought fit to adjust the seats in the future academic years and accordingly, issued the impugned communication and in the considered opinion of the Court, it had acted fairly."

26. The learned Senior Counsel for the University would also rely on yet another decision in the case of **Medical Council of India vs. The Chairman, Sree Mookambika Institute of Medical Sciences**, reported in **2011 (1) CTC 41**. He would particularly draw the attention of this Court to Paragraph No.10, which reads as under:

"10. Mr. Isaac Mohanlal, learned counsel appearing for the institute, also submitted that after the judgment of the Supreme Court in *Islamic Academy of Education vs. State of Karnataka*, reported in (2003)6 SCC 697, the institute need not even admit the 50% of the seats as Government quota as it has been held that it would be an interim arrangement. In our opinion, the said submission cannot be accepted for the simple reason that it is the 1st respondent institute which had entered into an agreement with the Government for seat sharing and such arrangement is certainly binding on the 1st respondent institute. Having entered into an agreement, the institute cannot now turn around and say that it would not entertain the Government seats in view of the subsequent judgment of the Supreme Court. Hence the said contention cannot be entertained."

27. The learned Senior Counsel appearing for the University would, therefore, submit that once there is an agreement, which is consensus or otherwise, the Management is bound by the arrangement and for any deviation from such an agreement, the Management is responsible and therefore, the impugned orders issued by the both Medical Council of India as well as the University in respect of both the writ petitions cannot be assailed successfully. He would submit that the petitioner - Institution having violated the arrangement deliberately should not be allowed to deprive the



Government of the seats allotted to them and if such an action of the petitioner - Institution is condoned, it will only result in less meritorious students being admitted on the basis of the selection by the Management itself from their own list.

28. The learned Senior Counsel for the petitioner - Institution, by way of reply, would object to the above submission saying that since the Association of Colleges has its own merit list and only among the merit list, the students would be selected, it is not for the Management can pick and choose randomly and admit the students.

29. As regards the decision of the Honourable Full Bench of this Court is concerned, the learned Senior Counsel for the petitioner - Institution would submit that it was passed in the peculiar circumstances of the case, where the Institution therein had played fraud on the Government and admitted the students in excess of its quota. According to him, for a particular time, the Government did not sponsor enough number of students and many seats were left unfilled and the said Institution filled-up the seats by non-NEET candidates as it was meant for the Management quota. Therefore, in the said context, whether the students of NEET or Non-NEET to be admitted, the Honourable Full Bench has rendered the decision and the same cannot be applied to the factual matrix of the present case. He would, therefore, sum up his arguments that the law is well settled that the seat sharing arrangement was only consensual and neither the University nor the Medical Council of India has any power or authority to regulate or insist on seat sharing arrangement and such an arrangement is only between the Government and the Institution concerned.

30. Mr.P.Mahendran, learned counsel appearing for the Medical Council of India / second respondent in W.P.(MD) No.13135 of 2018, would submit that although the Medical Council of India cannot disagree with the law laid down by the Honourable Division Bench of this Court as relied on by the learned Senior Counsel appearing for the petitioner - Institution, yet he would submit that when the seat sharing arrangement was in place, the same has to be honoured and there is nothing wrong on the part of the Medical Council of India in insisting for seat sharing arrangement.

31. This Court has given its anxious consideration to the rival submissions of the learned counsel on either side and perused the materials and pleadings placed on record.

32. The issues as raised in both the writ petitions are no more *res integra*, in the considered opinion of this Court, for the following reasons.

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33. The Constitution Bench of the Honourable Supreme Court



of India in the case of **P.A.Inamdar** (cited supra), has clearly held, in Paragraph No.128, that any seat sharing arrangement must be consensual and the Government cannot impose any such conditions making it mandatory. In fact, the said decision has been followed even recently by a learned Single Judge of this Court in the case of **Dr.M.Hemalatha** (cited supra), wherein the learned Single Judge of this Court has held, in Paragraph Nos.91(e) and 95(3) of the Judgment, that such a mandatory prescription is unconstitutional, which are extracted supra.

34. The argument advanced by the learned Senior Counsel for the University that the Government has prescribed 50% ratio as between the Institution concerned and the Government by G.O.(Ms) No.76, Health and Family Welfare (ME) Department, dated 23.02.2016, is not an acceptable argument for the reason that the said Government Order was issued on the basis of the principal Government Order in G.O.(Ms) No.87, Health and Family Welfare Department, dated 16.03.2007, and the said Government Order was issued in pursuance of the Tamil Nadu Admission in Professional Educational Institutions, Act, 2006. The relevant provision, which gives rise of the said Government Order, has been struck down by this Court in a decision made in the case of **Madha Engineering College** (cited supra). When that being the position, the mandatory nature of seat sharing arrangement stood removed once the relevant provisions of the Act have been held illegal and unconstitutional. The submissions regarding the prescription of such ratio in the conditions for granting affiliation by the University and also in the regulation of the Dental Council of India are concerned, such a prescription cannot be held valid in view of the law laid down by the Honourable Supreme Court of India in the case of **P.A.Inamdar** (cited supra). The decision of the Honourable Constitution Bench of the Supreme Court of India is a law declared under Article 141 of the Constitution of India and therefore, any regulation contrary to that has to be treated as null and void.

35. Once the seat sharing arrangement is consensual in nature depending upon the arrangement made from time to time, the question of exceeding the quota and for which compensating the same does not arise, particularly in the instant case, where the Government has failed to sponsor enough number of candidates for fulfilling its quota. Only when the Government failed to fulfil its full obligation, the petitioner - Institution felt that in the interest of meritorious students, the seat must be thrown open for admission as allowing the seats to go lapsed would be a non-academic waste. Moreover, the students, who were admitted against the Government quota, were charged only the fees prescribed by the Government, which fact has not been disputed. In such view of the matter, this Court does not find anything amiss or wrong in the quota admitting the students in excess to the Management quota. But, admission of students within the total quota is concerned, once the seat sharing arrangement is not mandatory, this Court is unable to appreciate as to how either the University or the Medical Council

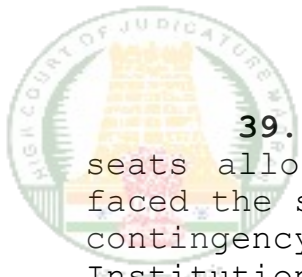


of India can insist on making up the loss of seats for the future academic years and direct the Institution to admit less number of students corresponding to the number of students admitted to the Institution in the earlier academic years. Having failed to sponsor sufficient number of candidates, it is certainly not open to the University or Government to insist and direct that the Institue should admit less number of students.

36. As regards the other submissions such as neither the University nor the Medical Council of India has no authority or power to issue any direction in regard to the seat sharing arrangement are concerned, the learned Single Judge of this Court has clearly held that Medical Council of India has no role to play in the matter of admission in the Medical Colleges. The said decision is reported in **(2010) 1 MLJ 923**. In fact, the Honourable Division Bench of this Court in the case of **Medical Council of India** (cited supra), as relied upon by the learned Senior Counsel for the petitioner - Institution, has clearly held that the Medical Council of India has no role in seat sharing arrangement and it is entirely between the Institution concerned and the Government. The operative portion of the said decision has been extracted above. In fact, on the same aspect, yet another Division Bench has also held in support of the contentions of the learned Senior Counsel appearing for the petitioner - Institution.

37. From the above, it is very clear that the seat sharing arrangement is entirely within the domain of the Institution concerned and Government and neither the Medical Council of India nor the University has any say in the matter. In regard to such a seat sharing arrangement, the University and the Medical Council of India are considered to be aliens as their primary and principal role is only to regulate the academic programmes and functioning of the Institution and not seat sharing arrangement. In any event, the Government is not complaining about the filling-up of seats in excess of the Management quota by the Institution. If at all any person is aggrieved by such an Act on the part of the Institution, it is only the Government. But, the affidavit filed on behalf of the Government in the present proceedings admits the factual position as averred in the affidavit filed in support of the writ petitions.

38. The case of the petitioner - Institution, in the above circumstances, is clearly covered by various decisions relied on their behalf and the impugned orders passed in both the writ petitions are, therefore, liable to be quashed on the ground that neither the Medical Council of India nor the University has any authority or power to insist on particular seat sharing arrangement, which is only a consensual arrangement between the petitioner - Institution and the Government as well as on the ground that there cannot be any mandatory provision that 50% of the seats to be allotted to the Government under any provision of law.



39. Further, the Government has failed to fill-in any of the seats allotted to them and only when the petitioner - Institution faced the situation that the seats were going to be lapsed as such a contingency would not be in the interest of any stakeholders, the Institution had admitted the students that too from the merit list maintained by the Association of the Colleges and the students, who were admitted, were charged only the fees prescribed by the Government and therefore, there cannot be any cause of action for either the Government or any other body, like the University or Medical Council of India to comply with any such action taken by the petitioner - Institution to admit the students.

40. For the above said reasons, this Court finds that the petitioner - Institution has made out a case in all fours and therefore, both the writ petitions are allowed as above and the impugned proceedings, in W.P.(MD) No.7516 of 2018, issued by the fourth respondent / Tamil Nadu Dr.M.G.R.Medical University, vide Ref.No.ExIII(4)/21818/2017, dated 12.03.2018, and the impugned proceedings, in W.P.(MD) No.13135 of 2018, issued the second respondent / Medical Council of India vide Ref.No.MCI-34 (MC-UG)/2017-18/113759, dated 07.06.2018, are quashed insofar as both the impugned proceedings relate to the petitioner - Institution. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Secretary,
Union of India,
Department of Health,
Central Secretariat,
New Delhi.
2. The Secretary,
State of Tamil Nadu,
Department of Health & Family Welfare,
Fort St.George, Chennai-600 009.
3. The Director of Medical Education,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai-600 010.
4. The Secretary,
The Selection Committee,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai-600 010.



5. The Secretary, The Medical Council of India
Pocket 14, Sector 8
Dwaraka, New Delhi-110 077

6. The Registrar, 10.Tamil Nadu
Dr.M.G.R.Medical University
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+2cc to Mr.C.Karthik, Advocate Sr.No.96070&96069
+3cc to M/s.Isaac Chambers,Advocate Sr.No.96147
+1cc to Mr.P.Mahendran,Advocate Sr.No.95892

KRK

KM/BK/SAR3/19.12.2018/22P/13C

COMMON ORDER
IN
W.P. (MD) Nos.7516 & 13135 of 2018
and
W.M.P. (MD) Nos.7179, 7180 & 12005 of
2018
19.11.2018