



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.05.2018

CORAM:

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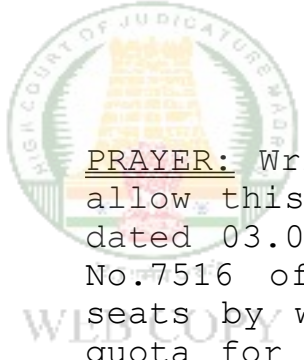
**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE R. SURESH KUMAR**

**W.A. (MD) No. 782 of 2018
and
C.M.P. (MD) Nos. 4582, 4583 and 4620 of 2018**

Tamil Nadu Dr.M.G.R.Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai - 600 032,
Represented by its Registrar. ... Appellant / 4th respondent

Vs.

1. The Chairman,
Sree Mookambika Institute of Dental Sciences,
Velayutham Pillai Memorial Hospital Complex,
Padanilam, Kulasekaram,
Kanyakumari District,
Run by Pandanilam Welfare Trust,
Kulasekharam,
Kanyakumari District. ... 1st Respondent / Petitioner
2. The State of Tamil Nadu,
Represented by its Secretary,
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. ... Respondents 2 to 4/Respondents 1 to 3



PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent, to allow this Writ Appeal by modify the order passed by this Court dated 03.05.2018 passed in W.M.P.(MD)No.7180 of 2018 in W.P.(MD) No.7516 of 2018 by permitting to fill 4 additional government seats by way of adjustment from the first respondent management quota for the academic year 2018-19 in Sree Mookambika Institute of Dental Sciences.

For Petitioner : Mr.S.Gomathinayagam
Senior Counsel
for M/s.C.Karthik

For Respondent No.1 : Mr.Issac Mohanlal
Senior Counsel for
M/s.Issac Chambers

For Respondents 2 to 4 : Mr.K.Chellapandian
Additional Advocate General
assisted by
Mr.A.K.Baskara Pandian
Special Government Pleader.

JUDGMENT

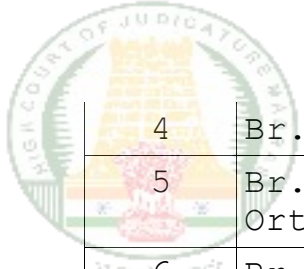
[Judgment of the Court was made by **R.SURESH KUMAR, J.**]

This intra-Court appeal is directed against the order passed by the learned Judge in W.M.P.(MD)No.7180 of 2018 in W.P.(MD)No.7516 of 2018 by order dated 03.05.2018.

2. In the said order, the learned Judge passed the following order:

"4. Having regard to the rival submissions, this Court is able to see that several factual and legal issues are involved and prefers to reserve the bigger issues involved in this matter to be considered at the time of final hearing. Since admission of students in this academic year cannot wait, this Court is inclined to modify the earlier order of stay, dated 06.04.2018, so as to enable the petitioner - Institution to admit 50% of the Management quota, namely, eight seats in the following manner:

Sl.No.	Branch No. & Name	Management Quota
1	Br.I Prosthodontics & Crown and Bridge	1 (One)
2	Br.II Periodontology	1 (One)
3	Br.III Oral and Maxillofacial Surgery	1 (One)



4	Br.IV Conservative Dentistry & Endodontics	1 (One)
5	Br.V Orthodontics and Dentofacial Orthopaedics	1 (One)
6	Br.VI Oral Pathology & Microbiology	1 (One)
7	Br.IX Oral Medicine & Radiology	2 (Two)
	Total	8 (Eight)

5. This arrangement is only for this academic year and it will be subject to the outcome of the writ petition and in case the petitioner is found to be not entitled to fill up the seats during the previous years and that the excess seats filled up by the petitioner - Institution have to be adjusted as per the Judgment of the Honourable Supreme Court in the case of Mridul Dhar (cited supra), of course subject to the other issues and the contentions of the learned counsel appearing for the petitioner - Institution with regard to the nature of agreement on sharing of seats between the Government and the petitioner - Institution during previous years.

6. Post the writ petition during second week of June, 2018."

Feeling aggrieved over the said order passed by the learned Judge as an interim arrangement, the appellant University preferred this appeal.

3. Mr.S.Gomathinayagam, learned Senior Counsel, appearing for the University would submit that, the apportionment of seats between the Management of the first respondent Institute and the Government, according to him is 50% : 50% . In support of this, he relied upon a Government Order in G.O.(Ms)No.76, Health and Family Welfare (ME) Department, dated 23.02.2016.

4. The learned Senior counsel would further submit that the first respondent Institute was having the sanctioned strength of 16 seats in MDS course for the academic year 2016-2017. Therefore, out of the 16, 8 seats being 50%, shall be surrendered to the Government and only the remaining 8 seats being 50% shall be filled up in the Management quota.

5. While that being the position, during the academic year 2016-2017, the first respondent Institute surrendered only five seats to the Government instead of eight seats. Out of five seats, three seats were filled up by the Government and the remaining two seats were either unfilled or re-surrendered to the Management.



6. Only in this aspect, with regard to the non-surrendering of the remaining three seats to the Government, out of the 50% quota for the academic year 2016-2017, as per the arrangement, which is in fact pursuant to the Dental Council Regulations, it is the claim of the appellant University that, the first respondent Institute, in lieu of non-surrendering three seats for the academic year 2016-2017, should set off the same by not filling three seats in the Management quota by giving three more seats to the Government quota for the academic year 2018-2019. In other words, in order to set off the non-surrendering of three seats for the academic year 2016-2017, the first respondent Institute shall give or surrender 11 seats in total to the Government, eight seats already earmarked for Government quota and three more seats by way of set off. It is the further case of the appellant University that the one lapsed seat also should be set off by surrendering one more seat, totally, twelve seats for the academic year 2018-2019 shall be given to the Government quota by the first respondent Institute.

7. In order to resolve the controversy, the issue was raised before this Court by filing Writ Petition. In the said writ petition in W.P.(MD)No.7516 of 2018, the learned Judge, before whom the writ petition came up for hearing, after hearing both sides, has passed an interim order in W.M.P.(MD)No.7180 of 2018 on 03.05.2018 and the said order has already been extracted herein above. Challenging the said order, the appellant University preferred this appeal. While this writ appeal came up for admission before this Court, the following interim order was passed by our predecessor's Bench, by an order dated 16.05.2018.

"This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/s C.Karthik, Advocate for the petitioner, the court made the following order:-

Interim order as prayed for till 23.05.2018"

8. The learned Senior Counsel appearing for the appellant University would submit that $3+1=4$ seats should have been surrendered to the Government for allotting students and the said seats since have not been surrendered, they shall not be permitted to fill up those seats and therefore against the interim arrangement made by the learned Judge, the present appeal was directed.

9. Per contra, Mr.Issac Mohanlal, learned Senior Counsel, <https://hcc.myservices.in/> appearing for the first respondent Institute would submit that, insofar as the apportionment quota on seats are concerned, pursuant to the judgment of the Hon'ble Supreme Court in the case

of **Mridul Dhar (Minor) and another Vs. Union of India and others** reported in **(2005) 2 SCC 65**, there cannot be any quota for the Government and if at all, there can be an apportionment of seats between the Government and Management, that can be made only pursuant to the agreement or concession between the Management and Government. The learned Senior counsel would further submit that, as per the concession reached between the Government and the first respondent Institute for the academic year 2016-2017, only five seats were surrendered by a written communication dated 14.03.2016, which reads thus:-

"Sir/Madam,

Sub: Medical Education -Admission to Post Graduate Degree/Diploma/MDS - surrender of seats by self Financing Colleges to Government for the academic year 2016-17-reg.

Ref: No3716/SCSII(1)/2014, dated 02.03.2016

We wish to share the following seats in the academic year 2016-17 with the state

Sl.No.	PG Course	No. of Seats
1	MDS (Oral Medicine & Radiology)	2
2	MDS (Oral Pathology & Microbiology)	3
3	MD (Anatomy)	1
4	MD (Physiology)	1
5	MD (Biochemistry)	1
6	MD (Pharmacology)	1

Thanking You

Yours Sincerely,

DIRECTOR."

On surrendering five seats to the Government, the Government allotted only three seats, remaining two seats either unfilled or re-surrendered by the Government to the Management, out of which, only one seat was filled as lapsed and another one was remained vacant for the whole course as the Management was not able to fill up.

10. The learned Senior Counsel appearing for the first respondent Institute would further submit that, since the very five seats for the academic year 2016-2017 were surrendered to the Government, out of five seats, three seats were filled up, out of remaining two seats, only one seat was filled and remaining one seat was kept vacant as unfilled, the question of apportionment of further quota does not arise. The learned Senior counsel would further submit that, having accepted five seats for the academic year 2016-2017, the Government allotted the students, therefore, the question of any set off for the alleged non-surrender of three



more seats for the academic year 2016-2017 also does not arise. Therefore the interim arrangement made by the learned single Judge through the impugned order is the workable order and if at all any right accrued to the parties on quota that can be resolved by the Writ Court in the pending writ petition.

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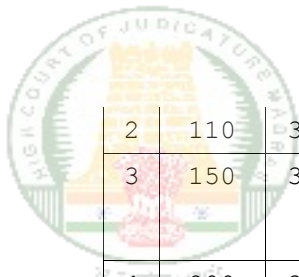
11. On the other hand, Mr.K.Chellapandian, learned Additional Advocate General, assisted by Mr.A.K.Baskara Pandian, learned Special Government Pleader, appearing for the respondents 2 to 4, on instructions, would submit that, insofar as the academic year 2016-2017 is concerned, though the first respondent Institute surrendered only five seats as Government quota by letter dated 14.03.2016 and based upon the seats surrendered, merely because it acted upon, it cannot be construed that, the Government, only after having accepted the said surrender as quota, acted upon, as there was no written communication from the Government accepting five seats alone as Government quota to the first respondent Institute.

12. The learned Additional Advocate General would further submit that, insofar as the academic year 2018-2019 is concerned, since an interim arrangement was made by the learned Judge in the impugned order and pursuant to which, all arrangements were made for counselling for filling up the seats for various institutes including the first respondent Institute, and accordingly, the counselling was conducted on 24.05.2018. Being a single day counselling, all the available seats under Government quota as well as the Management quota were considered by the Selection Committee and allotment had been given and seats were filled up for both Government quota as well as the Management quota.

13. In this regard, order of allotment made for the eight seats for the Government quota as well as other eight seats for Management quota, insofar as the first respondent Institute is concerned, produced by the learned counsel for the first respondent Institute, retrieved from the official website of the Selection Committee has been accepted to be true one by the Government, and based on such arrangement, students were given allotment and the seats were filled up. For the sake of convenience, the said information retrieved from the website of the Selection Committee produced by the learned Senior counsel for the first respondent Institute, accepted by the learned Additional Advocate General on behalf of the Government, is extracted here under:-

Sree Mookambika Institute of Medical Sciences, Kanniyakumari

S. No	RANK	AR.No.	NAME	SERV/ PRIV	COM	T.MARK	SPECIALITY	JOINED DATE
			Dr.NANDHINI G	Priv	BC	509	Operative Conservative Dentistry	



2	110	30105	Dr.NAVEENA G	Priv	BC	503	Orthodontics	
3	150	30036	Dr.SARAVANA KUMAR S	Priv	BC	479	Oral and Maxillofacial Surgery	
4	200	30493	Dr.MITHA MATHEW	Priv	OC	446	Periodontics	
5	202	30300	Dr.LEEMA R K	Priv	BC	445	Oral Medicine and Radiology	
6	303	30046	Dr.PERCY IDA A	Priv	BC	387	Oral Pathology	
7	404	30104	Dr.CLAUDIA PETER	Priv	MBC /DN C	328	Prosthodontics	
8	520	30014	Dr.SHELESA JEGADISH	Priv	MBC /DNC	286	Oral Pathology	

Sree Mookambika Institute of Medical Sciences, Kanniyakumari

S.N o.	RANK	AR.No .	NAME	T.MARK	SPECIALITY	JOINED DATE
1	518	40572	Dr.HARSHINI A K	214	Prosthodontics	
2	577	40617	Dr.HUDSON JONATHAN T	197	Periodontics	
3	442	40103	Dr.TAMIIL SELVAN C	235	Oral and Maxillofacial Surgery	
4	356	40183	Dr.RAJESH S	260	Operative Conservative Dentistry	
5	213	40105	Dr.KRISHNA DHARANI B N	310	Orthodontics	
6	619	40704	Dr.JEYA PRIYA S	182	Oral Pathology	
7	272	40243	Dr.RESHMI M	290	Oral Medicine and Radiology	
8	504	40308	Dr.ABIJAH R S	216	Oral Medicine and Radiology	

14. However, the learned Senior counsel appearing for the appellant University, on hearing the stand taken by the Government on the production of list of students allotted for both the quota to the first respondent Institute for the academic year 2018-2019, would vehemently contend that, this Court, by an order dated 16.05.2018, had granted an interim order staying the operation of the impugned order passed by the learned Judge, making the interim arrangement of filling the seats under both quota, and the said interim order granted upto 23.05.2018, was specifically extended by this Court on 23.05.2018 itself, till 25.05.2018. The allotment made for both quota to the first respondent Institute on 24.05.2018 by the Selection Committee is complete violation of the orders of this Court, for which, the appellant University will reserve its rights to proceed against the erring persons.



15. We have heard the learned Senior counsel as well as the Additional Advocate General for the parties.

16. This Writ Appeal itself is directed against the interim order passed by the learned Judge only as an interim arrangement with regard to the allotment of seats for both Government as well as Management quota in the first respondent Institute. According to which, 50% quota shall be for the Government and the remaining 50% shall be for the Management and based on which, allotment had been made and seats had been filled up for both quota by the Selection Committee on 24.05.2018, since that was the one day counselling fixed in this regard.

17. We are of the view that the said arrangement made by the Selection Committee need not be disturbed at this stage. At the same time, whether the first respondent Institute shall set off three or four more seats as claimed by the appellant University is the core issue, that has to be decided in the main Writ Petition, which is still pending before this Court, where the learned Judge has already given a direction to list the writ petition in the 2nd week of June for final hearing.

18. That being the position, in view of the aforesaid development, by recording the same, this Court is inclined to dispose of this Writ Appeal with the following observations:-

(1) that the Selection and allotment made by the Selection Committee on one day counselling dated 24.05.2018 under both Government quota as well as the Management quota in respect of the first respondent Institute shall not be disturbed for the time being.

(2) all issues raised in the writ petition filed by the first respondent Institute shall be resolved by the Writ Court, where the issue with regard to the apportionment of seats as well as the set off claimed by the appellant University shall also be taken care of.

(3) The appellant is permitted to raise all the grounds raised herein before the Writ Court by filing additional affidavit, in case if it is needed.

(4) It is needless to mention that once the issue is resolved by the Writ Court, the parties shall abide by the same and accordingly, the present selection and allotment given to 8+8 students, totally 16 students for both quota to the first respondent Institute shall be decided and also the claim of set off of seats shall be resolved depending upon the result of the Writ Petition.



19. This Writ Appeal is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed. In view of the above developments, we expect that the writ petition shall be heard as expeditiously as possible positively before the end of June, 2018.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of Health & Family Welfare,
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai - 600 010.
3. The Secretary,
The Selection Committee,
Directorate of Medical Education,
162, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

Copy to : The Section officer, Writ Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

- +1. C.C. to M/S.Isaac Chambers, Advocate SR.No.66216
- +1. C.C. to Mr.C.Karthik, Advocate SR.No.66212
- +1. C.C. to The Special Government Pleader, SR.No.66218

W.A. (MD) No.782 of 2018
and

C.M.P. (MD) Nos.4582, 4583 and 4620 of 2018
25.05.2018

sm/ta

PK/CM-VR/RNB/13.06.2018 : 9P/9C