

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.06.2019

DATED: 01.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 861 of 2019

Minor Miss. Monica Rajendran
aged 17 years, DOB: 30.05.2001
Rep. by Father and Natural Guardian
Mr.Rajendran Chingaravelu
H.No.6, Laliltha Bloomfield,
Khajaguda, Hyderabad. ... Appellant/Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Secretary
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.
2. The Secretary
Selection Committee
Directorate of Medical Education
#162, Periyar E.V.R. High Road,
Kilpauk,
Chennai - 600 010.
3. The Dean
PSG Institute of Medical Sciences & Research
Off Avanashi Road, Peelamedu
Coimbatore - 641 004.
4. The Dean
Trichy SRM Medical College
Hospital and Research Centre,
Irugalur, Trichy - 621 105.

5. Korla Dhanushya Subrahmanya Shasank
NEET Management Rank No. 2665
(Through: The Secretary, Selection Committee,
Directorate of Medical Education
162, Periyar EVR. High Road, Kilpuak,
Chennai - 10.
6. The Dean
Velammal Medical College Hospital and Research Institute
Velammal Village, Madurai-Tuticorin Ring Road
Anuppanadi, Madurai - 625 009.
7. Medical Council of India
Pocket - 14, Sector - 8
Dwarka, New Delhi 110 077.

(R7 as a necessary party as per Order impleaded made in
W.A.No. 861 of 2019 and C.M.P.No. 6630 of 2019 dated 12.06.2019.)

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the Order passed by the learned Single Judge dated 21.01.2019 in
W.P.No. 22112 of 2018.

Prayer in W.P.No. 22112 of 2018: Writ Petition filed under
Article 226 of the Constitution of India, praying for the
issuance of a Writ of mandamus directing the respondents to
cancel the MBBS (Management Quota) seat allotments made to the
third respondent College during the second counselling held on
24.08.2018 and direct the respondents to re-allot the same in
strict accordance with the NEET Management-quota rank merit list
by allotting one MBBS (Management Quota) seat therein to the
petitioner for the academic year 2018-19.

For Appellant : Mr. Giridhar and Sai

For R1 : Mr. V.Kathirvelu

For R2 : Mr. Abdul Saleem

For R3 : Mr. Abishek Jenasen

For R4 : Mrs. B. Saraswathi

For R5 : Mr. Venkataseshan

For R6 : Mr. R. Nepoliyan

For R7 : Mr. V. P. Raman

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J.)

The Appellant, Monica Rajendran, has filed the present Appeal calling into question the Order of the learned Single Judge dated 21.01.2019 in W.P.No. 22112 of 2018 whereby the learned Single Judge dismissed the Writ Petition filed by the Appellant.

2. In the Writ Petition, the appellant had sought a Mandamus to direct the first and second respondents, namely, the State of Tamilnadu represented by the Secretary, Health and Family Welfare Department and the Secretary, Selection Committee, Directorate of Medical Education to cancel the MBBS (Management Quota) Seat allotments made to the third respondent College, namely, PSG Institute of Medical Sciences & Research, Coimbatore, during the second counselling held on 24.08.2018 and direct the first and second respondents to re-allot the same in accordance with the NEET Management-quota rank merit list by allotting one MBBS (Management Quota) Seat in the third respondent PSG College to the petitioner for the academic year 2018-2019.

3. The appellant had qualified in the NEET examination for admission to MBBS Seat for the academic year 2018-2019 by securing 386 marks. The results were published on 04.06.2018. The first counselling for Government Quota undertaken by the second respondent, namely, Selection Committee, Directorate of Medical Education Seats took place on 04.07.2018. The petitioner was allotted a Government Quota Seat in the sixth respondent, Velammal Medical College Hospital and Research Institute, Madurai. The appellant thereafter also participated in the first round of counselling on Management Quota Seats, held on 30.07.2018. She had shown as her college preference, the third respondent College, namely, PSG Institute of Medical Sciences & Research. The qualifying mark obtained by her was not sufficient for allotment in the said College. She did not thereafter seek re-allotment.

4. It is the case of the appellant that the second round of counselling for Management Quota seats took place on 24.08.2018. However, the second respondent did not permit her to attend the said round of counselling claiming that she had not opted for any seat in the first round of counselling. Thereafter, the fifth respondent, Korla Dhanushya Subrahmanya Shasank was allotted the Management Quota seat in the third respondent College. He had been originally allotted a seat under the Management Quota in the fourth respondent College, namely, Trichy SRM Medical College Hospital and Research Centre,

Trichy. Aggrieved by the non allotment of seat in the third respondent College and also by the allotment of seat to the fifth respondent, the writ petitioner had filed the writ seeking the reliefs stated above.

5. The learned Single Judge, had dismissed the Writ Petition. The relevant portion containing the reasonings for the said finding rendered by the learned Single Judge are extracted below for ready reference:-

"6.It is an admitted fact that the petitioner has secured 386 marks in the NEET examination and based on the marks obtained, she was allotted a seat in Vellammal Medical College Hospital, Madurai under Government quota. However, the petitioner participated in the first round of counseling took place under the management quota, but for the reasons best known to her, has not opted any College shown in the first round of counselling. Therefore, the issue to be decided in this writ petition is whether the petitioner be permitted to the second round of counselling, when she has not opted any college in the first round of counselling under Management quota. In this context, it is pertinent to refer to the Clauses 33 (a) and (b) of the Prospectus for admission to M.B.B.S./B.D.S. Degree courses under Management quota in Self Financing Medical/ Dental Colleges in Tamil Nadu, 2018- 19 Session which reads as follows:

'33.(a)Candidates who have opted seats in first phase of counselling and not joined the course are not eligible to attend the subsequent phase of counselling.

(b)During the second phase of counselling, all candidates except those mentioned in clause 33(a) can attend the counselling for the available vacancies.'

7.A careful reading of the above prospectus clearly shows that a candidate who has opted seats in the first phase of counselling and not joined the course, is not eligible to attend the subsequent phase of counselling and when it is made

clear that all candidates except those mentioned in clause 33(a), can attend the second phase of counselling for the available vacancies, disagreeing with the submission made by the petitioner that a mere taking part in the first phase of counseling but not opting to join any college will not disqualify the petitioner will run contra to clause 33(a) of the prospectus. I agree with clause 33(b), hence, the petitioner is not entitled to attend the subsequent phase of counselling.

8. Moreover, the petitioner also has given her declaration. The declaration in counselling form, signed by the petitioner reads as under:

'I am fully aware that seats are available in self-financing medical colleges, I am not willing to join in self-financing medical colleges and I declare that I will not claim the self-financing medical seat in the subsequent phase of counselling even if seats are available.'

9. A perusal of the same would reveal that the petitioner is fully aware of the seats that are available in self financing medical colleges and she is not willing to join the said self financing medical colleges and that she would not claim the self financing medical seats in the subsequent phase of counselling even if seats are available. When the petitioner herself declared that she would not claim the self financing medical seat in the subsequent phase of counselling even if seats are available and Clauses 33(a) and (b) of the prospectus clearly show that the candidates, who have opted seats in the first phase of counseling and not joined the courses, are not eligible to the subsequent phase of counselling, she should have opted any college in the first round of counselling under management quota, which has not been done by the petitioner. Therefore, this Court is not inclined to entertain this writ petition, hence, the same is dismissed.

Consequently, connected W.M.P. Is closed.
No costs."

6. Mr. P.V.S.Giridhar, learned counsel for the appellant stated that the rationale given by the learned Judge was on a wrong interpretation of Rule 33(A) of the Prospectus for admission to MBBS Course under Management Quota in Self Financing Medical College. The learned counsel stated that the appellant had been allotted Government Quota seat in the sixth respondent Velammal Medical College Hospital and Research Institute. However, she had subsequently opted for a Management Quota seat in PSG College, Coimbatore. No such seat could be allotted to the appellant in the first round of counselling held on 30.07.2018. The learned counsel stated that in the procedure followed for filling up Government Quota seats a wait list is prepared. A similar wait list is not prepared for filling of Management Quota seats. The learned counsel stated that this permitted the flood gate to be opened and alleged that candidates with lesser mark than the petitioner had been allotted Management Quota seat in the third respondent PSG College overlooking the merit and the higher rank of the appellant. The learned counsel also stated that the appellant had actually went with intention to participate in the second round of counselling held on 24.08.2018 but was not permitted to participate in the counselling session. It was specifically alleged that there were three vacancies available in the PSG College and atleast two candidates, who had secured less than marks than the petitioner were allotted seats under the Management Quota in the said PSG College. The learned counsel insisted that the petitioner had been deprived of the privilege of studying in the meritorious PSG College though she had secured more marks than the candidates, who had actually been subsequently admitted. At the conclusion of his arguments, learned counsel forwarded a set of case laws relied on by him. However, he actually relied on two case laws, namely (1) Asha Vs. Pt. BD. Sharma University reported in 2012 (7) SC 389; and (2) Punjab Engineering College Vs. Sanjay Gulati reported in AIR 1983 AIR SC 580.

7. In Asha referred above, particular reference was drawn to paragraph Nos. 21 and 24, which are as follows:-

"22. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states,

if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. Ref. Priya Gupta Vs. State of Chhatisgarh & Anr. [CA @ SLP(C) No. 27089 of 2011, decided on 8th May, 2012], Harshali v. State of Maharashtra and Others [(2005) 13 SCC 464] Pradeep Jain v. UOI[1984 (3) SCC 654], Sharwan Kumar and Others v. Director of Health Services and Another [1993 Supp (1) SCC 632], Preeti Srivastava v. State of MP [(1999) 7 SCC 120], Guru Nanak Dev University v. Saumil Garg and Others [2005 (13) SCC 749], AIIMS Students' Union v. AIIMS and Others [(2002) 1 SCC 428].

25. The Court cannot ignore the fact that these admissions relate to professional courses and the entire life of a student depends upon his admission to a particular course. Every candidate of higher merit would always aspire admission to the course which is more promising. Undoubtedly, any candidate would prefer course of MBBS over BDS given the high-competitiveness in the present times, where on a fraction of a mark, the admission to course could vary. Higher the competition, greater is the duty on the part of the concerned authorities to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to the appropriate course and college, as per his preference. We are not oblivious of the fact that the process of admissions is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The concerned authorities are expected to perform certain functions, which must be performed in a fair and proper manner i.e. strictly in consonance with the relevant rules and regulations."

8. In Sanjay Gulati referred above, our attention had been drawn to para 5, which are as follows:-

"We find that this situation has emboldened the erring authorities of educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the Court will leave the admissions in fact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the roll of the institution. We might have been justified in adopting this course in this case itself, but we thought that we may utter a clear warning before taking that precipitate step. We have decided, regretfully, to allow the aforesaid sixteen students to continue their studies, despite the careful and weighty finding of the High Court that at least eight of them, namely, the seven wards of employees and Ashok Kumar Kaushik, were admitted to the Engineering Course in violation of the relevant rules and regulations. "

The learned counsel summarised his arguments stating that merit should be the only criteria for admission and that students who have been wrongly admitted should be removed from the rolls of the Institution.

9. Mr. Abdul Saleem, learned counsel for the second respondent, namely, the Selection Committee, Directorate of Medical Education, placed strong reliance on the guidelines issued in the prospectus for MBBS selection under Management Quota in Self Financing Colleges. The learned counsel stated that under Rule 33(A) of the prospectus, candidates, who have not joined the course in the first phase of counselling would not be permitted to attend the second phase of counselling. More over, in the specific form that was filled up and submitted by the appellant, which was also counter signed by her parent, she had specifically not indicated either 'yes' or 'no' in the relevant box with respect to consent for joining Management Quota seat in Self Financing Medical Colleges. The

learned counsel pointed out that in the very same form, it had been stipulated that if this particular column is not filled up then it would be considered as 'No'. It was therefore urged that having not expressed specific willingness to participate in the second round of counselling, the petitioner was naturally prevented from participating. It was also pointed that unlike Government Quota seats, the issue of maintaining a waiting list was not followed in so far as the Government Quota seats were concerned. The learned counsel justified the reasons given by the learned Single Judge for dismissing the Writ Petition.

10. Mr. Abishek Jenasen, learned counsel for the third respondent, PSG Institute of Medical Sciences & Research, Coimbatore, stated that candidates are allotted to particular Colleges by the second respondent, Selection Committee. The third respondent does not individually do the counselling work. It is undertaken only by the second respondent. Candidates are thereafter allotted to Colleges and since the name of the fifth respondent was proposed by the second respondent, the third respondent had no other option but to admit the fifth respondent. The learned counsel took pains to submit that the College was not responsible for admission / non admission of any candidate either in the Government Quota or under the Management Quota. It was also submitted that as on date, one academic year had been completed and there were no seats available under the Management Quota.

11. During the course of hearing, this Court had suo motto impleaded as the seventh respondent, the Medical Council of India, since it was felt that they were a necessary party and it would only be prudent to seek their assistance in deciding the issue raised in the Writ Appeal.

12. Mr. V. P. Raman, learned counsel for the seventh respondent Medical Council of India, stated that any direction to increase the number of seats in the middle of the academic year and particularly when one year of course had already been completed would not be appropriate and increasing the number of sanctioned seats in a particular College was exclusively in the realm of the Medical Council of India. This position has also been affirmed by the Supreme Court. The learned counsel placed reliance on (2014) 10 SCC 521 Chandigarh Administration and Another Vs. Jasmine Kaur and others, wherein in paragraph No. 33.9, the Supreme Court has held as follows:-

"There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India." [Emphasis supplied]

13. The learned counsel specifically stated that the Judgement relied on by the learned counsel for the appellant in Asha referred supra had been specifically considered by the Supreme Court before issuing the above specific direction. It was held that the decision in Asha was only with respect to the facts of that case. The candidate in that case was unlawfully denied a seat. The learned counsel stated that the Court could not give any direction to increase the number of seats in the third respondent PSG College and also pointed out that this would also lead to a situation where the sixth respondent, Velammal College would be deprived of a seat in the further academic years of the MBBS course. It had been stated that by that deprivation, a Government seat would fall vacant and this would also mean that had the appellant be very vigilant in filling up the forms diligently, any other deserving candidate would have availed of the Government Quota seat in Velammal College. The learned counsel insisted that the Appeal has to be rejected.

14. We have considered the arguments advanced.

15. Admittedly, the appellant had obtained 386 marks in the All India NEET Examination for admission to MBBS seat for the academic year 2018-2019. On the strength of that mark, she had attended the first round of counselling on 04.07.2018 for allotment of Government Quota seat. She was allotted Velammal College, Madurai. She joined the College and paid the fees and is as on date pursuing her studies. Her dreams of qualifying to be a Doctor has been realised. However, she also attended the first round of counselling for allotment of Management Quota seat held on 30.07.2018. On that date, the marks she had obtained were not sufficient to allot her a seat under the Management Quota in the College of her choice, namely, PSG College. She had to submit a form and she was directed to specifically state whether she was willing to join the Management Quota in any Self Financing Medical College. For reasons best known to her and also only to her parents, she did not fill anything in the said box. She had the option to fill either 'yes' or 'no'. She did not exercise either one of the two options. The rules stipulate that if she does not exercise any option, it would be considered as 'No'. Consequently, the second respondent, Selection Committee was of the bonafide belief that she did not opt for Management Quota seat. Consequently, she was not permitted to participate in the second round of counselling. Reliance for this is placed on rule 33 which is as follows:-

"33.(a) Candidates who have opted seats in first phase of counselling and not joined the course are not eligible to attend the subsequent phase of counselling.

[Emphasis supplied]

**TECHNICAL COMMITTEE, DIRECTORATE OF MEDICAL EDUCATION, KILPAURHIGERARAI,
COUNSELLING FORM FOR M.D.B.S. MANAGEMENT QUOTA IN SELF-FINANCING COLLEGES
IN S.F. COLLEGES 2018-2019 SESSION**

Roll No. 12031 Name KUMAR RAJEEVAR Date 01/07/2018

Date of Birth	SHEET No.	SHEET Page	SHEET ROLL NO.	INSTITUTION	WETTER TOWN
10/07/2004	308	2/22	120310221	HKLU	Tamil

KHSC Equivalent Qualification Details:

Class	Reg. No.	Std. Year	Maths	Physics	Chemistry	Biology	English	Others
OTHERS	1202203000	2013	150	140	14		140	140

NATIVITY TAMILNADU

Signature of Candidate [Signature] CATEGORY 1
MANAGEMENT QUOTA IN SELF-FINANCING MEDICAL COLLEGES

MBBS

10. Name of the College 120310221

Phone 944211914 Address 120310221, J. Nagar, HKLU, J. Nagar District 2018

College 120310221 Branch 120310221 Branch 120310221

It is certified by the committee of the DMC of the following:

(1) If you are waiting for any category, please write YES. If you are not waiting, please write NO. In the subsequent space, if not filled it will be considered as "NO".

(2) College name, size, and location for placement during counselling can be changed at any point of time.

[Signature] Signature of the Parent

[Signature] Signature of the Candidate

For Office Use Only

College Address _____ Date _____

College _____ Date _____

A cursory glance of scanned document printed above shows that she had not specifically expressed willingness for Management Quota and on the other hand had left the relevant box in column 9 blank. This has to be construed only as 'not willing'. The letters 'PSG' on the top of Box and not inside the same at appropriate place in 'yes' or 'no' form also does not have any effect. It does not fulfill the requirement of option or information sought for management seat.

17. Therefore, we hold that the second respondent was perfectly justified in preventing the appellant from participating in the second round of counselling held on 24.08.2018. We are conscious of the fact that both the appellant and the fifth respondent, whose seat the appellant wants to unseat have completed one year of education in their respective colleges. The entire concept of admission through NEET is a procedure evolved by the Hon'ble Supreme Court and we are conscious that we should be very circumspect in interfering with the allotment of medical seats leading to increase in sanctioned strength, which are in exclusive the realm of the Medical Council of India. The policy of a common entrance test for admission to MBBS Course was to provide an equal platform for all candidates across the country and when a procedure has been upheld in law, it would be in the fitness of things that we adhere to the procedure laid down. We are also conscious of the fact that the appellant herein is already pursuing her MBBS course in the sixth respondent Velammal College and consequently would not be seriously prejudiced in any manner. On the other hand, the fifth respondent would be seriously prejudiced, for he had been rightfully allotted a seat in Management Quota to PSG College.

18. For the reasons stated above, we hold that the Writ Appeal is devoid of merits and accordingly, it is dismissed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vsg

To

- 1) The Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2. The Secretary
Selection Committee
Directorate of Medical Education
#162, Periyar E.V.R. High Road,
Kilpauk,
Chennai - 600 010.

3. Medical Council of India
Pocket - 14, Sector - 8
Dwarka, New Delhi 110 077.

+1 cc to Mr.S.A.Gandhi, Advocate, S.R.No.54810

+1 cc to Mr.Abdul Saleem, Advocate, S.R.No.54271

+1 cc to M/s.Giridhar & Sai, Advocate, S.R.No.54433

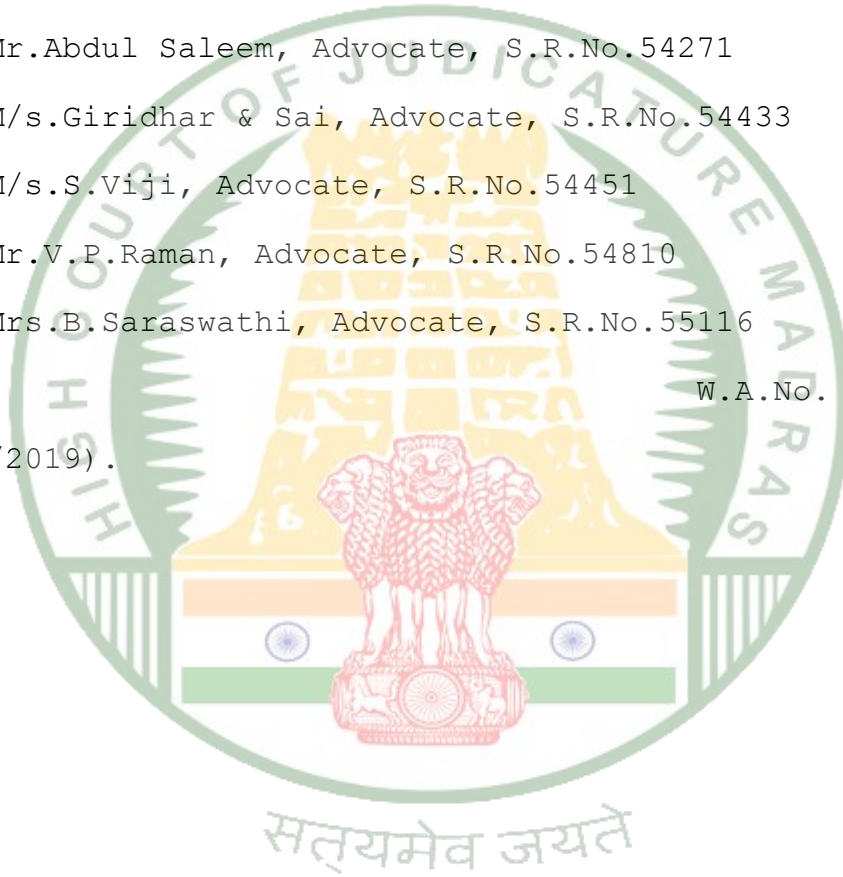
+1 cc to M/s.S.Viji, Advocate, S.R.No.54451

+1 cc to Mr.V.P.Raman, Advocate, S.R.No.54810

+1 cc to Mrs.B.Saraswathi, Advocate, S.R.No.55116

W.A.No. 861 of 2019

PA (CO)
SSM(29/07/2019).



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