

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.8555 of 2019
& WMP Nos.9072 and 9074 of 2019

Pondicherry Institute of Medical Sciences
rep. by its Chairman Dr.K.Jacob,
Kalapet, Puducherry-605 014. .. Petitioner

Vs.

1. The Government of Puducherry
rep. by the Under Secretary to Government (Health),
Chief Secretariat, Puducherry.
2. Central Admissions Committee (CENTAC)
Rep. by Chairman/Convener,
Pondicherry Engineering College Campus,
Puducherry - 605 014. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in order dated 07.03.2019 in Ref.No.27209/Health/H5/2019-20/PG-Medicine/229, quash the same.

For Petitioner : Mr.AL.Somayaji, Senior Counsel
for M/s.A.Jenasenan

For Respondents: Mr.T.P.Manoharan, Senior Counsel
Mr.C.T.Ramesh,
Additional Govt. Pleader(Puducherry)

O R D E R

The challenge in the writ petition is to the Seat Matrix, i.e., College-wise Minority quota (Religious/Linguistic) seats for admission of students in Post Graduate (PG) Medical Courses for the academic year 2019-20 issued by the Government of Puducherry dated 07.03.2019.

2. By virtue of the said order, of the total seats available in the petitioner medical institute, 50% of the seats go to the Government quota and the petitioner, being a Minority

(Christian) Institute, is bound to admit 50% of the total intake from the Religious Minority (Christian) students of the State/Union Territory of Puducherry.

3. According to the petitioner, right from its inception, it has been admitting the students into the PG Medical course from across the country without any restriction on domicile, as long as the students are eligible to be admitted as per the Regulations of the Medical Council of India (in short, "MCI"). The petitioner claims that it had admitted Christian students from across the country based on their merit on a preferential basis in exercise of its constitutional right as a minority institution. However, the first respondent has imposed a condition that the petitioner institute should admit only Christian students within the State of Puducherry, which is now under challenge.

4. Earlier, the Government of Puducherry issued G.O.Ms.No.10, Chief Secretariat (Health) dated 04.04.2018, stating that the petitioner has to fill up 50% of the total intake available in the PG Medical Courses with the students of the religious minority of Union Territory of Puducherry and that any vacant minority quota seats will be filled up as open merit management quota seats from among the Puducherry domicile students. Challenging the said Government Order, as violative of protection guaranteed to the petitioner under Article 30(1) of the Constitution of India, the petitioner laid W.P.No.8669 of 2018 seeking to quash the above mentioned Government Order and this Court on 12.04.2018 had issued an interim order of stay of the operation of the impugned G.O.Ms.No.10, dated 04.04.2018 in so far as it restricted the intake of the candidates only from the Union Territory of Puducherry. The said order of stay is still in force and the writ petition is also pending.

5. Admittedly, admission to PG Medical Courses is done by the Central Admissions Committee (CENTAC). The fee is also collected by the CENTAC. The eligibility of the candidates to the seats in PG Medical Courses is decided based on the NEET Examination. While so, the first respondent issued the impugned order dated 07.03.2019 indicating that the College-wise Minority quota (Religious/Linguistic) seats for admission of students in Post Graduate Medical courses for the Academic Year 2019-20 and stating that the petitioner is bound to admit 50% of the total intake of the students from the Religious Minority (Christian) students from the Union Territory of Puducherry.

6. The Government of Puducherry filed its counter-affidavit on behalf of the CENTAC also, which is the second respondent. It is stated that the Essentiality Certificate dated 07.12.2000

was issued to the petitioner for establishing a Medical College in Puducherry, subject to various conditions including that the students sponsored against Government quota in the petitioner College should be domiciled in the Union Territory of Puducherry. On such condition, the petitioner College was granted the Religious (Christian) Minority Status on 04.03.2002. In so far as admission to M.B.B.S. degree course is concerned, the Government has been selecting the students domiciled in the Union Territory of Puducherry for admissions to the said Government quota seats and the petitioner College has been admitting those candidates from the Academic year 2002-2003 to 2016-2017. Thereafter, the selection has been based on the merit score in the NEET Examination.

7. It is stated in the counter that based on the decision of the Hon'ble Apex Court in P.A.Inamdar and others V. State of Maharashtra and others, reported in (2005) 6 SCC 537, the Government of Puducherry with the consensual arrangement with the Medical Colleges, including the petitioner College, fixed the quota for the Government and the Management quota in the PG Medical Course at 50% each, including the PG Degree Courses in the petitioner College and prepared the seats matrix for the Academic Year 2018-2019. After the first and second round of counseling conducted by the second respondent - CENTAC in accordance with the merit score obtained by the candidates in the NEET Examination, a consolidated list of Government quota and the Management quota was published and also hosted in the website. In the impugned seats matrix dated 07.03.2019, all 56 seats, i.e., 33 seats in the clinical subjects and 23 seats in the non-clinical subjects in the petitioner College, 28 seats have been allotted to the Government of Puducherry and the remaining 28 seats have been allotted to the Petitioner College and they are bound to admit 50% of the total intake from the Religious Minority students, to maintain its Minority (Christian) status, in accordance with the merit rank in the NEET Examination. It is specifically stated that in the event, the minority quota seats are not filled after the two rounds of counseling, those unfilled seats will be converted under the General management quota seats and filled up on All India basis.

8. Therefore, the question that arises for determination in this writ petition is whether the petitioner College being a Minority (Christian) institute is bound to admit 50% of the total intake from the Religious Minority (Christian) students of the Puducherry Union Territory or from other States also ?

9. The learned Senior Counsel appearing on behalf of the petitioner College contended that the first respondent has no power to direct the petitioner Institution to fill 50% of the seats from the Christian Minority students from Puducherry, as

the same will amount to reservation of seats based on residence, which has been specifically barred by the Hon'ble Supreme Court. Hence, it is contended that the impugned seats matrix issued by the first respondent is contrary to the law and deserves to be set aside.

10. On the contrary, the learned Senior Counsel representing the Union Territory of Puducherry drew the attention of this Court to Rule 9 (VI) of the Post Graduate Medical Education Regulations, 2000, which is as follows :

"(VI) In non-governmental medical colleges/institutions, 50% (fifty per cent) of the total seats shall be filled by the State Government or the Authority appointed by them, and the remaining 50% (fifty per cent) of the seats shall be filled by the medical colleges/institutions concerned on the basis of the merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test."

11. Challenging the above said provisions, the petitioner filed W.P.No.9113 of 2018 before this Court for a declaration declaring the above Regulation as unconstitutional and null and void. Two other colleges have also filed W.P.Nos.9592 and 10756 of 2018 for the same relief. There was no interim order passed. However, the writ petitions are pending before this Court.

12. When the PG Medical Education Regulations specifically direct that the Merit list be prepared as per marks obtained in NEET Examination, the claim of the petitioner to expand the scope of admitting the minority students outside the Union Territory would defeat the above said provision. In this regard, it will be useful to advert to the following portion of the judgment of the Hon'ble Apex Court in T.M.A.Pai Foundation case (cited supra) :

"153. We would, however, like to clarify one important aspect at this stage. The aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated. If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the State in which the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that State is concerned. In other words, the predominance of linguistic students hailing from the State in which the minority educational

institution is established should be present. The management bodies of such institutions cannot resort to the device of admitting the linguistic students of the adjoining State in which they are in a majority, under the façade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), which we have done above, may be distorted."

13. Following the said judgment, a 9-Judge Bench in P.A.Inamdar and others V. State of Maharashtra, (2005) 6 SCC 537, has held as follows :

"133. So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

134. However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised by or affiliated with any competent authority created by law, such as a university, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfil these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

135. Pai Foundation, [(2002) 8 SCC 481] has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a "sprinkling" of such admissions, the term we have used earlier borrowing from Kerala Education Bill, 1957 [1959 SCR 995 : AIR 1958 SC 956] . In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured."

14. The right guaranteed under Article 30(1) of the Constitution is a right not conferred on individuals, but on religious denomination or section of such denomination. Needless to say that the petitioner medical college is established to sub-serve or advance the purpose for its establishment. The minorities also have the right to establish and administer medical colleges of their choice with the desire to cater to their children to reach intellectual attainments. Therefore, the petitioner also in order to cater to the needs of the minority community had established the institution. However, the State Government has the power to regulate the percentage of the minority community to be admitted in the petitioner/minority institution, considering the population and educational needs of the area, in which, the College is located. There cannot be a common rule or regulation or order in respect of the minority institutions in fixing the ceiling in the matter of admission of minority students.

15. The right of the minority institution to admit students of their own religion and that of admitting "sprinkling of outsiders" in the institution is subject to the condition that the number of such admission should not violate the minority character of the institution.

16. As referred to above, even during the Academic Year 2018-2019, G.O.Ms.No.10, was passed and this Court had stayed the operation of the said G.O. in so far as it restricted the admission of students into the PG Degree course only from those domiciled in Union Territory of Puducherry. The admissions have been made to the PG Courses based on the interim order obtained from this Court. Neither the petitioner nor the Government had cared to get W.P.N.8669 of 2018 decided finally. Now for this Academic Year, i.e., 2019-20, to by-pass its earlier order, the impugned order of seat matrix has been passed. Though it is argued by the learned Senior counsel for the petitioner that the present impugned notification would tantamount to contempt of the earlier order passed, the petitioner cannot proceed with the admission only based on the interim orders.

17. The object of Article 30(1) of the Constitution is to enable the minorities to conserve its religion and language and to give a thorough good education to children belonging to minority. Therefore, a minority institution would be entitled to have the right of admission of students belonging to the minority group and at the same time would be required to admit a reasonable extent of non-minority students so that, as has been held in P.A.Inamdar case (cited supra), "rights under Article 30 (1) are not substantially impaired and further the citizens rights under Article 29(2) are not infringed. What would be a reasonable extent would vary from the types of institution, the

course of education for which admission is being sought and other factors like educational need. The State Government concerned has to notify the percentage of the minority students to be admitted in the light of the above observations."

18. It has been categorically held that though the minority institute is free to admit the students of its own religion, the institute cannot admit the students from neighbouring states, wherein, the same religion may not be a minority. It cannot be generally stated that the Christians are minorities throughout the length and breadth of the country and that the petitioner should be permitted to admit the students from across the country.

19. The Analogy would be if the petitioner admits students from across the country giving preference to Christian students as long as they fulfill the minimum eligibility criteria fixed by the MCI, it would take away the rights of the better qualified students from general quota, whereas, when the petitioner institution is permitted only to those minority students within the Union Territory of Puducherry and the balance seats have to be given back to the All India quota, whereupon, the meritorious students from all categories can be considered.

20. When the Hon'ble Supreme Court specifically stated that it should not spill out to other states, the notification of the first respondent cannot be said to be violative of any law or it is illegal.

21. With the above observations, the writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.9072 and 9074 of 2019 are closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Under Secretary to Government (Health),
Government of Puducherry,
Chief Secretariat, Puducherry.

2. The Chairman/Convener,
Central Admissions Committee (CENTAC),
Pondicherry Engineering College Campus,
Puducherry - 605 014.

+2cc to Mr.A.Jenasensna, Advocate SR.No.35664

+1cc to Government Pleader SR.No.35909

W.P.No.8555 of 2019

VSN-II (CO)
GMY (25/04/2019)



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