

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.27343 of 2016

Dr.Nithya, M.

.. Petitioner

Vs.

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat,
Fort St. George,
Chennai-9.
2. The Director of Medical Education,
The Directorate of Medical Education,
Kilpauk, Chennai-10.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-10.
4. Dr.Nandini, N.
1st year MS (Ophthalmology),
Tirunelveli Medical College,
Palayamkottai,
Tirunelveli,
Tirunelveli District-627 011.
5. The Director General of Health Services,
Ministry of Health & Family Welfare,
Government of India,
Room No.446-A, Nirman Bhawan,
Maulana Azad Road, New Delhi-110 108. ** .. Respondents

** R5 impleaded as per order dated 30.10.2017
passed in WMP No.29345/2017
in WP No.27343/2016

* * *

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Declaration declaring the selection and allotment of seat in MS

Ophthalmology course in Government Medical College, Tirunelveli to the fourth respondent as illegal, and consequently direct the respondents 1 to 3 to re-allot the said seat to the petitioner.

* * *

For Petitioner : Mr.G.Justin

For Respondents : Ms.Narmadha Sampath,
Additional Advocate General
assisted by Mr.V.Kadhirvelu,
Special Government Pleader
for RR 1 to 3

Mr.V.Raghavachari for R4

Ms.Sunitakumari,
Central Government Standing
Counsel for R5

O R D E R

The petitioner seeks a declaration of the selection and allotment of seat in MS Ophthalmology course in Government Medical College, Tirunelveli to the fourth respondent as illegal, and consequently direction to the respondents 1 to 3 to re-allot the said seat to her.

2. The petitioner is a MBBS Doctor and she got registered with the Tamil Nadu Medical Council on 07.07.2014. She secured 67.52 marks and ranked 474 in General and 288 in B.C. Community category under 50% private non-service quota in the Tamil Nadu Post Graduate Entrance Examination conducted for the Academic Year 2016-2017. In the first counseling held on 04.04.2016, she was allotted with the DGO Course in the Madras Medical College. However, in the second phase of counseling conducted on 12.05.2016, she was re-allotted M.S. (Ophthalmology) in Rajah Muthiah Medical College and Hospital being run by the Annamalai University. Now she is about to complete the said course.

3. It is claimed by the petitioner that the official respondents deliberately failed to display the third vacant seat surrendered from the All India Quota in the second counseling held on 12.05.2016. Had it been shown as the vacant seat, she would have secured a seat in Government Medical College, Tirunelveli and would have saved from incurring huge expenditure for studying P.G. Course in a private medical institution. It is her further claim that official respondents wantonly failed to follow the Rules of Reservation stricto sensu, preventing the petitioner from securing the said seat and thus, they paved way for the fourth respondent to get the said seat. She alleges that

had the respondents followed the rules of reservation, she would have alone got the seat. With the above allegations, she is before this Court seeking the relief of declaration stated supra.

4. Refuting the allegations of the petitioner, counter affidavits have been filed by the official respondents as well as the fourth respondent seeking dismissal of the writ petition on the ground that the counseling was held transparently and the rules of reservation were followed *stricto sensu*.

5. The learned counsel for the petitioner contended that the official respondents failed to maintain transparency in displaying the vacant seats at the time of second counseling, which necessitated the petitioner to opt for a private medical college. The official respondents wantonly contravened the rules of reservation to favour the fourth respondent. Hence, the petitioner is entitled for the relief claimed. In support of the said submission, learned counsel for the petitioner relied on the judgment of the Apex Court in *Asha V. Pt.B.D.Sharma University of Health Sciences*, (2012) 7 SCC 289.

6. The learned Additional Advocate General submitted that the respondents 1 to 3 acted transparently at each and every stage of the selection process following the rule of reservation to make it sure that the students have been admitted to P.G. Course only based on their merit in accordance with their communal roster.

7. The learned counsel for the fourth respondent, while adopting the arguments of the learned Additional Advocate General, submitted that it is the petitioner who misinterpreted the reservation rules to grab the P.G. Medical seat lawfully secured by the fourth respondent and sought for dismissal of this writ petition.

8. Heard the learned Central Government Standing Counsel appearing on behalf of the fifth respondent.

9. At the outset, it is to be stated that from the materials produced before this Court, the following undisputed facts could be culled out for better appreciation of the instant case :

(i) The petitioner, a MBBS Doctor, secured 67.52 marks and ranked 474 in General and 288 in B.C. Community category under 50% private non-service quota in the Tamil Nadu Post Graduate Entrance Examination conducted for the Academic Year 2016-2017.

(ii) She was allotted with the DGO Course in the Madras Medical College in the first phase of counseling held on 04.04.2016.

(iii) There were 28 seats available for M.S. (Ophthalmology), of which, 50%, i.e., 14 seats are meant for the All India Quota, while the remaining 50% (14 seats) is given under the State Quota. Out of the 14 seats that come under the State Quota, 7 were allotted to Service candidates and balance 7 were allotted for Non-Service candidates.

(iv) Two doctors, who were originally allotted with the M.S. (Ophthalmology) course in the first phase of counseling, did not join the course. Due to non-joining of two doctors under the All India Quota two more seats were surrendered to the State. Hence, for those four seats counseling was conducted in the second phase.

(v) Accordingly, the said seats were filled in the second phase of counseling held on 12.05.2016 and 13.05.2016, wherein, the petitioner, having left with no seat to opt in Government Medical Colleges, opted the private medical college.

10. At this juncture, it is to be stated that the respondents 1 to 3, claimed to have got one more seat surrendered from the All India Quota, conducted the third phase of counseling on 28.05.2016, wherein, the fourth respondent secured the seat at the Tirunelveli Government Medical College in M.S. (Ophthalmology). However, the allegation of the petitioner in this regard is two fold : (i) firstly, the said vacancy was not shown in the second counseling held on 12.05.2016 and 13.05.2016, though the State would have got the same surrendered on 10.05.2016, after 5.00 p.m., as per the time schedule for online All India Quota 50% PG Counseling ; and (ii) secondly, the official respondents wantonly applied the rules of reservation wrongly favouring the fourth respondent.

11. As far as the first allegation is concerned, it is pertinent to mention that since in the counter affidavit dated 06.04.2017, the respondents 1 to 3 categorically stated that they have got two seats surrendered from the All India Quota, this Court gave a direction to the petitioner to implead the necessary party. Consequent to such a direction only, the fifth respondent was impleaded in this writ petition vide order dated 30.10.2017. Though the fifth respondent addressed a communication dated 23.11.2017 in File No.C-18018/12/2017-MEC, to the then Assistant Solicitor General annexing the list of college/subject wise surrendered seats, there is no specific mention about the time, on which, the seats were reverted to the State Quota.

12. The petitioner produced a tabular column of seat matrix for Government Colleges as on 11.05.2016 at 8.40 pm, wherein, only two seats surrendered from the All India Quota along with

two vacancies on the ground of non-joining of candidates under the State Quota totaling to four seats were shown as vacant seats. The time schedule for online All India Quota 50% PG Counseling issued by the Medical Counseling Committee (MCC) would make it amply clear that the transfer of vacant seats to State Quota would take place on 10.05.2016 at 5.00 pm. However, the claim of the official respondents is that they received the communication from the Dean, Tirunelveli Medical College, Tirunelveli, in Ref.No.10101/ME3/2015, dated ..05.2016 signed on 23.05.2016, annexing the reporting list of joining of the candidates, wherein, only it is stated that one candidate did not join the course in M.S. (Ophthalmology), which was included in the seat matrix for Government Colleges as on 27.05.2016 at 3.42 p.m. for conducting the third phase of counseling, which was held on 28.05.2016. Accordingly, in the third counseling, following the rules of reservation/roster, the fourth respondent was re-allotted with the said vacant seat. There is some force in the said explanation of the official respondents, which cannot be found fault with.

13. Now coming to the second crucial question of application of rules of reservation, it is claimed by the petitioner that the officials respondents have not followed the Rules of Reservation for each category in accordance with clause 51.b of the prospectus. As per the said clause, if the seats are 8 and more, the rule of reservation shall be as follows :

Open Competition	- 31%
Backward Class	- 30%
Most Backward/Denotified Community	- 20%
Scheduled Caste	- 18%
Scheduled Tribe	- 1%

It is further stated in the said clause that within the 30% reservation for Backward Classes 3.5% reservation will be provided for Muslims and 16% of seats out of 18% quota earmarked to SC shall be allocated to the Schedule Caste Arunthathiyar Community. Clause 52 b. of the Prospectus says that "any remaining reserved seats in ST Quota for want of adequate number of eligible candidates belonging to ST community shall be allotted to candidates belonging to SC Community as per merit" as per G.O.(Ms)No.77, Health and Family Welfare (MCA.1) Department, dated 24.02.2011. If the 17 seats, i.e., 14 seats under the State Quota and 3 seats surrendered from the All India Quota, are filled as per the above rules of reservation/roster, number of seats available to each category have to be : 5.27% for OC ; 4.51 for BC ; 0.60 for BCM ; 3.4 for MBC ; 3.06 for SC, of which, one seat shall be given to SCA ; and 0.17 for ST. Since there is no ST candidates available, SC candidates would get 3.23 seats.

14. It is submitted by the learned Additional Advocate General that applying the above roster system, up till the second phase of counseling, 5, 4, 1, 3 and 3 seats were allotted to OC, BC, BCM, MBC and SC candidates respectively. It is submitted that if the third All India Quota surrendered seat is allotted to a BC candidate, BC candidates including BCM will get 6 seats, which will be 35.29%, i.e., 5.29% over and above the seats reserved for BC, whereas, if the said seat is allotted to a SC candidate, SC candidates will get 23.53, which is only 4.53% above the seats reserved for SC and ST candidates. Hence, if the action of the official respondents in earmarking the third surrendered vacant seat for a SC candidate is tested with the above touchstone of aforesaid roster system, there is no infirmity in the said action. Hence, the allotment of the said vacant seat to the fourth respondent, as stated supra, could not be found fault with.

15. In view of the above factual finding, the proposition enunciated in the judgment of the Apex Court relied on by the learned counsel for the petitioner in Asha V. Pt.B.D.Sharma University of Health Sciences, (2012) 7 SCC 389 is of no help to the petitioner.

16. For the foregoing reasons, this writ petition fails and the same is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat,
Fort St. George,
Chennai-9.

WEB COPY

2. The Director of Medical Education,
The Directorate of Medical Education,
Kilpauk, Chennai-10.
3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-10.
4. The Director General of Health Services,
Ministry of Health & Family Welfare,
Government of India,
Room No.446-A, Nirman Bhawan,
Maulana Azad Road, New Delhi-110 108.

+1 cc to Mr.G.Justin, Advocate, S.R.No.16088

+1 cc to Mr.V.Raghavachari, Advocate, S.R.No.15849

+1 cc to M/s.Sunita Kumari, Advocate, S.R.No.15926

W.P.No.27343 of 2016

KS (CO)
SSM(18/03/2019).



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