

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04/04/2019

CORAM

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.12879 of 2018

Sri Venkateswara Medical College
Hospital and Research Centre
rep by its Chairman
Mr.B.Ramachandran
Puducherry 605 102.

... Petitioner

Vs

1. Medical Council of India
rep. By its Secretary
Pocket 14 Sector B
Dwarka Phase - 1
New Delhi 110 077.
2. The Union Territory Puducherry
rep. By its Under Secretary to Government
Health & Family Welfare Services Department
Beach Road, White Town
Puducherry 605 001.
3. The Convener
Centralized Admission Committee (CNTAC)
PEC Campus, ECR Road,
Pillaichavadi
Puducherry 605 104.

... Respondents

PRAYER:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration, declaring that the Notification No.MCI-18(1)/2017-Med./174626 dated 20/2/2018, as arbitrary and unreasonable and makes a hostile discrimination against the petitioner in so far as it provides for a schedule admission process whereby the dates from mop-up counselling stage, for the counselling for the seats reserved for the State quota precedes the counselling for the seats reserved under all India quota contrary to the existing

policy as approved by Hon'ble Supreme Court in W.p.(C) No.76/2015, dated 18/1/2016 (Ashish Ranjan Vs. Union of India) and in so far as it arbitrarily permits 1:10 ratio list being restricted from the top most rank instead of the proper and reasonable method of starting from the bottom rank after mop-up counselling and in so far as it does not provide for going into larger NEET List, if 1:10 ratio list is not sufficient.

For petitioner ... Mr.T.V.Lakshmanan

For respondents ... Mr.N.V.Seshadri
for Mr.V.P.Raman
for R.1

No appearance
for R.R.2 and 3.

ORDER

(Order of the Court was delivered by Subramonium Prasad,J)

Petitioner, an Unaided Private Linguistic Minority College, in Puducherry, has filed a writ of declaration, declaring that Notification No.MCI-18(1)/2017-Med./174626, dated 20/2/2018, as arbitrary and unreasonable and makes a hostile discrimination against the petitioner, in so far as it provides for a schedule admission process whereby the dates from mop-up counselling stage, for the counselling for the seats reserved for the State quota precedes the counselling for the seats reserved under all India quota contrary to the existing policy, as approved by the Hon'ble Supreme Court, in W.P.(C) No.76/2015, dated 18/1/2016 (Ashish Ranjan Vs. Union of India) and in so far as it arbitrarily permits 1:10 ratio list, being restricted from the top most rank instead of the proper and reasonable method of starting from the bottom rank after mop-up counselling and in so far as it does not provide for going into larger NEET List, if 1:10 ratio list is not sufficient.

2. Averments in the writ petition are as under:-

Medical Council of India, introduced National Eligibility-cum-Entrance Test (hereinafter referred to as NEET) in the year 2010, for admission to P.G courses, in Medicine. This test was introduced by inserting Section 10 D, in Indian Medical Council Act, 1956. The Hon'ble Supreme Court, in W.P.(Civil) No.76/2015, vide, order, dated 18/1/2016, Ashish Ranjan Vs. Union of India, gave a time schedule for admission to MD course, which have to be followed by all the States.

S. No.	Schedule for admission	Broad Speciality	
		All India Quota	State Quota
1	Conduct of Entrance Examination	Month of December	Month of January
2	Declaration of result of the qualifying Exam/ Entrance Exam	By 15 th of January	By 15 th of February
3	1 st round of counselling/admission	Between 12 th March to 24 th March	Between 4 th April to 15 th April
4	Last date for joining/reporting the allotted college and the course	By 3 rd April	By 22 nd April
5	2 nd round of counselling/admission for vacancies	Between 23 rd April to 30 th April	Between 11 th May to 20 th May
6	Last date of joining for the second round of counselling/admission	By 10 th May	By 27 th May
7	Commencement of the academic session/term	1 st May	1 st May
8	Last date upto which students can be admitted/joined against vacancies arising due to any reason	-----	By 31 st May

This schedule has become a part of the regulation for admission to the P.G. Courses.

3. Petitioner states that the Hon'ble Supreme Court, vide order dated 9/5/2017, in W.P.(C) No.267/2017 (Dar-Us-Salam Educational Trust Vs. Medical Council of India), directed that

"7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion of counselling, the State Government shall determine the number of seats that are still vacant and thereafter, shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.

9. During the common counselling conducted by the State Government, the representatives of the medical colleges particularly representative of minority institutions should be a part of the admission/counselling committee, as the case may be.

10. Common counselling conducted by the DGHS/State Government will not in any manner affect the rights of minority institutions to admit students of their respective minority community. The minority quota seats, if any, in institutions run by minorities will be filled up by minority students only. Therefore, the rights of minority institutions are fully protected."

4. Petitioner states that the respondents thereafter, brought out the impugned Notification No.MCI-18 (1)/2017 - Med.174626, dated 20/2/2018, which reads as under:-

Medical Council of India
Notification
New Delhi, the 20th February 2018

No.MCI-18 (1)/2017-Med.174626 - In exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following regulations to further amend the "Postgraduate Medical Education Regulations, 2000", namely:-

1 (i). These regulations may be called the "Postgraduate Medical Education (Amendment) Regulations, 2018."

(ii). They shall come into force from the date of their publication in the Official Gazette.

2. In the "Postgraduate Medical Education Regulations, 2000", the following additions/modifications/deletions/substitutions, shall be as indicated therein:-

3. In the Appendix in "Postgraduate Medical Education Regulations, 2000", the time schedule for completion of admission process for postgraduate courses (Broad Speciality) stands substituted by the following:-

Admission schedule from the academic year 2018 - 2019 onwards for Postgraduate courses (broad speciality):-

S.No	Schedule for Admission	counselling for the seats reserved under all India quota		counselling for the seats reserved for the State quota
		All India Quota	Deemed + Central Institute	
1	Conduct of Exam	By 10th January		
2	Declaration of Result	By end of January		
3	I round counselling	of 12 th March - 24 th March	12 th March - 24 th March	25 th March - 5 th April
4	Last date of joining	3 rd April	3 rd April	12 th April
5	2 nd round counselling	of 6 th April - 12 th April	6 th April - 12 th April	15 th April - 26 th April
6	Last date of joining	22 nd April	22 nd April	3 rd May
7	Mop up round		12 th May - 22 nd May	4 th May
8	Last date of joining		26 th May	8 th May
9	Forwarding the list of students in order of merit equalling to ten times the number of vacant seats to the medical colleges by the Counselling Authority		27 th May	12 th May
10	Last date of joining		31 st May	18 th May

5. According to the petitioner, with regard to an Un-aided Linguistic Minority Deemed to be University, the dates for the first counselling and second counselling, is the same as it is the seats reserved under all India quota. This counselling precedes the counselling for the seats reserved for the State

quota and are conducted by the State Government. However, after the second round of counselling, for the mop-up round and the post mop-up counselling, the dates of counselling for the seats reserved under the State quota precedes the counselling, for the deemed to be Universities and Central Universities. According to the petitioner, this causes great prejudice to the deemed to be Universities because the better candidates opt, for the seats available, in the State quota in Government Colleges and private colleges.

6. Petitioner would state that there is no rational to reverse the order of counselling and it is not necessary to reverse the schedule by having the dates of counselling for the deemed to be University, after the dates fixed for the State Government to conduct their counselling.

7. According to the petitioner, before the introduction of NEET, the private institutions had a right to fill up their seats with students of their own choice. Now that is restricted by having a common examination. The counselling for the seats reserved under the all India quota and the seats in deemed Universities and Central Universities and is conducted prior to the counselling seats reserved under the State quota. Resultantly, the deemed Universities have the benefit of having better students in their institutions. According to the petitioner, during the mop-up round, the students are aware that certain seats in which have to be filled by the State Government are lying vacant and they, do not opt to go to the deemed Universities in the mop-up counselling and wait for the seats which gets opened in the post mop-up round, because of which, better students do not come to the deemed Universities and further, the seats go vacant. According to the petitioner, reversing the dates of counselling, because of which, the Counselling for seats in deemed Universities, is conducted after the State Counseling, negates the object and purpose of counseling schedule.

8. Petitioner also would contend that the amended schedule only states at S.No.9 "forwarding the list of students in order of merit equalling to 10 times the number of vacant seats to the Medical Colleges by the counseling authority". The regulation itself is vague as it fails to take into account that in case of Post Graduation in Medicine, there are different disciplines and students' preference would vary. Secondly, the counselling schedule of the third respondent, would show that as the counselling process, progresses, the rank of the eligible candidates also gets lowered. Even at the stage of 1st counselling NEET rank gets lowered as the counseling proceeds.

9. Medical Council of India has filed a counter. In the counter, Medical Council of India states that after mop-up counseling, for seats which are still left. Medical Council of India sends the list of students, for filling up the seats in a 1:10 ratio, which has to be done purely on merit. Medical Council of India states that in view of the introduction of NEET as well as Common Counselling, for admission, in Postgraduation Medical Courses, Government of India, vide letter, dated 10/10/2017, informed the Medical Council that, an internal meeting, chaired by the Joint Secretary (Medical Education) was called, on 27/9/2017, to discuss the issue, pertaining to the conduct of NEET examination, as well as review of counselling and admission process and also forwarded the Minutes of the Meeting of the said meeting. The said Minutes of the Meeting included the proposed time schedule for counselling/admission, in Postgraduate Medical Courses as well as the clause, providing that any student, who occupies medical seats in the post second counseling shall be ineligible, for taking part in further counselling. Letter, dated 10/10/2017 as well as the Minutes of Meeting, dated 27/9/2017, containing time schedule were placed before postgraduate Committee of the Council, in its meeting held on 27/10/2017. The postgraduate Committee, considered the new time schedule, for admission, in postgraduate Medical Courses and after due deliberation and discussion decided to approve the same. The decision of postgraduate Committee was placed before the General Body of the Council, in its meeting held on 31/10/2017, wherein the General Body, after deliberation and discussion, decided to approve the same. The decisions, dated 27/10/2017 of the postgraduate Committee as well as General Body were communicated to the Hon'ble Supreme Court mandated Id, Oversight Committee, for approval.

10. Government of India, vide, letter, dated 31/1/2018, informed the Council that the time schedule, decided in the meeting, held on 27/9/2017, has been approved by the competent authority and requested the Medical Council, to publish Notification, for amendment, in the time schedule.

11. Medical Council, vide, letter, dated 9/2/2018, forwarded the draft Notification to the Government of India, for approval and authentication. The Central Government, vide, letter, dated 16/2/2018, authenticated and approved the said draft Notification. Thereafter, the same was sent to Government of India Press, for publication.

12. Accordingly, a Notification, dated 20/2/2018 and 5/4/2018 was published, thereby, amending the Postgraduate Medical Education Regulations, 2000 and the time schedule appended, therewith. By way of the said Notification, a clause was also inserted in the said Regulations that after the second

round of counseling, those students who have joined the course, shall become ineligible for taking part in further counseling and those who were allotted seats but not joined the course shall be permitted to take part in further counseling, subject to forfeiture of registration fee, as specified, therein.

13. Decision for modifying the time schedule by way of Notification, dated 20/2/2018, was necessitated in view of introduction of NEET and common counseling and duly approved by the postgraduate Committee of the Council, General Board, Government of India, as well as the then Hon'ble Supreme Court appointed Oversight Committee.

14. Direction sought for by the petitioner, in the present petition, is contrary to the Indian Medical Council Act, 1956 and statutory regulations framed by the MCI, with the prior approval of the Central Government, under Section 33 of the Act, and the law laid down by the Hon'ble Supreme Court, from time to time.

15. It is further stated that the case of the petitioner that the merit list, to be sent to the Medical Colleges, after the mop-up round of counseling, in the ratio of 1:10 should be created from the bottom of the merit list, will be in violation of rule of merit and hence not maintainable. The list which is sent, in the ratio of 1:10 to the medical college, for filling the stray vacancies, is created from the wait listed candidates, who have not been admitted to any medical college.

16. Heard Mr.T.V.Lakshmanan, learned counsel for the petitioner and Mr.V.P.Raman, learned counsel for the first respondent.

17. Courts can take judicial notice that the number of students taking NEET examination is always much more than the number of seats available. Court can also take judicial notice of the fact that if a College offers good medical education, then, it is preferred by the students. It therefore, does not lie in the mouth of the petitioners that seats are going vacant. If seats are going vacant then the College has to blame itself. The seats do not go vacant because of lack of students.

18. Learned counsel for the petitioner has not made out any case of prejudice that is being caused to them because of the reversal in the date of counseling i.e., counseling for the seats in the deemed Universities being done, after the counseling of seats by State Government. If the students feel that particular seat in a deemed to be University is available and the faculty and the infrastructure is good, then the Court can take judicial notice of the fact that the students will wait

to approach the deemed to be University, after the State counseling. It is well known that after the second round of counseling, the students know the seats in the courses available and the Colleges in which these seats are available. Student makes his choice at that point of time for taking admission. Seats are filled merits and as stated earlier, there is no dearth of students. In fact, the number of seats available are far less than the number of students, who are waiting for admission, in medical Colleges. Case of the petitioner that merit list which has to be sent to the medical Colleges in the first round of counseling in the ratio 1 : 10 should be created from the bottom of the merit list, cannot be accepted. There is no fallacy in the scheme wherein counseling by the State Government precedes the counselling to the seats in deemed to be Universities, for the simple reason that fee structure in the Colleges, which are offered by the Government Colleges and Government quota seats, in private colleges are much lesser than the seats available in the deemed to be Universities. This schedule is no way inconsistent with the object of introducing NEET, which is filling up of seats, on merits. The deemed Universities cannot demand that, first their seats must be offered to the candidates first.

19. In view of the above observation, writ petition does not deserve merit acceptance and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs/Pkn

To

1. The Secretary
Medical Council of India
Pocket 14 Sector B
Dwarka Phase - 1
New Delhi 110 077.
2. The Secretary to Government
Union Territory Puducherry
Health & Family Welfare Services Department
Beach Road, White Town
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PEC Campus, ECR Road,
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+1cc to Mr.T.V.Lakshmanan, Advocate, S.R.No.33114
+1cc to Mr.V.P.Raman, Advocate, S.R.No. 32929

W.P.No.12879 of 2018

RSI (CO)
CS/14/06/2019



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