

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.22112 of 2018 and W.M.P. No.25919 of 2018

Minor Monica Rajendran
rep. by father and natural guardian
Rajendran Chingaravelu .. 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,
No.162, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.

3.The Dean,
PSG Institute of Medical Sciences and 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,
Kilpauk, Chennai-10.

6.The Dean,
Velammal Medical College Hospital and
Research Institute,
Vellammal Village,
Madurai-Tuticorin Ring Road,
Anuppanadi, Madurai-625 009.

... Respondents

(R6 impleaded as per Court order
dated 08.10.2018 by SSSJ
in W.M.P. No.30882 of 2018)

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 Petitioner :: Mr.Sai Srujan Tayi
for M/s.Giridhar and sai

For Respondents :: Mr.C.Munusamy,
Special Government Pleader
for R1 and R2
Mr.Abishek Jenasenan for R3
Mr.B.Saraswathi for R4
Mr.T.S.Venkatesan for R5
Mr.S.A.Gandhi for R6

ORDER

The petitioner has come to this Court seeking a direction to the respondents to cancel the M.B.B.S. (Management Quota) seat allotments made to the third respondent College during the second counselling held on 24.08.2018 and direct them to re-allot the same in accordance with the NEET Management-quota rank merit list by allotting her one M.B.B.S. (Management Quota) seat for the academic year 2018-19.

2.Learned counsel appearing for the petitioner would submit that the petitioner is a NEET qualified candidate for admission to M.B.B.S seat for the academic year 2018-19 by securing 386 marks vide results published on 04.06.2018. While so, on 04.07.2018, the first counselling for Government quota took place and the petitioner was allotted a seat in Vellammal Medical College Hospital, Madurai, which is a private college. According to the learned counsel for the petitioner, Government quota seats in CMC, Vellore and PSG Institute of Medical Sciences, Coimbatore were filled up in the first round of counseling itself. He would further submit that the candidates, who were allotted a seat in the Government quota, were permitted to participate in the counselling for management quota. Accordingly, the petitioner participated in the first round of counselling for Management quota which was held on 30.07.2018

and she did not get an allotment in any of the above said two colleges and as such she did not opt for re-allotment.

According to the learned counsel for the petitioner, a wait list of candidates was prepared in so far as CMC, Vellore is concerned and the candidates, who were not selected in the first round of counselling, enlisted in the wait list for consideration of allotment in the event of non-joining of any of the candidates originally allotted. Though the petitioner did not have a chance to secure admission in CMC Vellore, she had a chance to secure admission in PSG Institute of Medical Sciences, Coimbatore in the event of the candidates non joining in the first counselling. Though the respondents maintained a wait list for CMC, Vellore, they did not create/maintain a wait list of candidates in so far as PSG Institute of Medical Sciences is concerned.

Learned counsel appearing for the petitioner would further submit that on 24.08.2018, the second round of counselling for Management quota was scheduled and three vacancies in PSG Institute of Medical Sciences, Coimbatore were notified. However, the second respondent did not permit the petitioner to attend the second round of counselling stating that she did not opt for any seat in the first round of counselling conducted for the Management quota. According to the learned counsel for the petitioner, Korla Dhanushya Subrahmanya Shasank, the fifth respondent herein having secured less mark than the petitioner, has got admission in the PSG Institute of Medical Sciences, Coimbatore. If the petitioner was permitted to take part in the second round of counselling, she could have definitely get a chance to join in the PSG Institute of Medical Sciences, Coimbatore under Management quota. Merely for the reason that the petitioner failed to opt any of the colleges in the first round of counselling, the respondents cannot refuse the petitioner to take part in the second round of counselling under management quota.

Referring to 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, learned counsel appearing for the petitioner would submit that the said clauses permit the petitioner to attend second and subsequent phases of counselling. When the petitioner has got higher rank than the fifth respondent, she cannot be denied the seat in the PSG Institute of Medical Sciences, Coimbatore under Management quota.

3.Reiterating the averments made in the counter affidavit, Mr.C.Munusamy, learned Special Government Pleader, urging this Court to dismiss the writ petition, would submit that the

applications for admission to M.B.B.S./B.D.S. Course 2018-19 session for management quota seats in Self Financing Medical/Dental Colleges were invited from eligible candidates based on the prospectus/Policy vide G.O. Ms. No.212, Health and Family Welfare (MCA1) Department dated 04.06.2018. However, the petitioner has been allotted general rank namely 1579 for Government seat and 2032 for management quota seat.

Referring to Clause 31 of the above Prospectus, learned Special Government Pleader would submit that if a candidate chooses a Government quota seat in self financing medical/dental college when seats are available in Government Medical and Dental Colleges, he/she has to give a declaration to the effect that he/she will not be permitted to claim the government seats later during re-allotment/subsequent phase of counselling. He would further submit that if a candidate opts out of government quota in self-financing medical/dental college, when seats are available in self financing medical/dental colleges, he/she cannot claim during the subsequent phase of counselling and if the candidates opt out, they must mark as 'NO' in the column provided in the counseling form and if not marked in the counselling form, it will also be considered as 'NO'. Adding further, he would submit that if seats are not available in a particular category at the time of counselling and candidates are willing to be wait listed in that category of seats, they must mark 'WL' in the column provided in the counselling form and if not marked in the counselling form, they will not be considered as wait listed in that category.

Learned Special Government Pleader would further submit that the petitioner has attended the first phase of counselling session on 04.07.2018 and she has been allotted M.B.B.S. Seat under Government quota at Vellammal Medical College, Madurai and she neither opted nor wait listed for Government Colleges/Self Financing Colleges/ESI and Rajah Muthiah College for M.B.B.S./B.D.S. Courses on 04.07.2018. However, during her turn, even though there were seats available in other Self financing medical colleges, she herself has opted for Vellammal Medical College, Madurai and thereafter, she attended the 1st phase of management quota counseling for M.B.B.S course on 30.07.2018 and 24.08.2018. As the rules are not permissible, she was not allowed to attend the counselling and she is now pursuing her M.B.B.S. Course at Vellammal Medical College, Madurai under Government quota allotted on 04.07.2018. Therefore, as per Clause 31 of the above prospectus, she was ineligible to take part in the subsequent counselling.

4.Learned counsel appearing for the third respondent, by filing a counter affidavit, would submit that for the academic year 2018-19, after the two rounds and mop-up round of

counselling conducted by the State Government, 98 students under the Government quota, 30 students under the management quota and 20 students under the NRI quota were allotted. Except two students in the NRI quota, all other students joined the third respondent Institution. He would further submit that there were four stray vacancies arose in the third respondent institution and an unfilled NRI Quota seats are reverted to the management quota and therefore, as per the directions issued by the Hon'ble Apex Court, the State Government sent a communication to the third respondent stating that the counseling process conducted by the State Government is over as on 26.08.2018 and forwarded a list of candidates in 1:10 ratio and directed the third respondent to fill up the stray vacancies from the said list. Pursuant to the same, the third respondent Institution filled up the four seats from and out of the candidates who formed part of the 1:10 merit list and reported to the Institution for admission on 27.08.2018 and therefore, the entire process of admission and all the seats available in the third respondent Institution were filled up as on 27.08.2018. Hence, the third respondent is not in a position to answer the prayer in favour of the petitioner.

5.Learned counsel appearing for the fourth respondent would submit that the fourth respondent have also filled up all the posts on 27.08.2018.

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.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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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,
No.162, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.

+1cc to Mr.S.Viji, Advocate SR.No.4175

+1cc to Mr.S.Bhargavan, Advocate SR.No.4314

+1cc to Mr.A.Jenasenan, Advocate SR.No.5141

+1cc to M/s.B.Saraswathi, Advocate SR.No.4167

+1cc to Government Pleader, High Court, Madras SR.No.5065

W.P. No.22112 of 2018 and
W.M.P. No.25919 of 2018

MP (CO)
GMY (14/02/2019)



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