



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.07.2019

Pronounced on: 05.07.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

W.P.Nos.13757, 14140, 14144, 14164, 14165 of 2019
& W.M.P.Nos.13836, 13837, 13839, 13840, 14199, 14200 to 14202,
14204, 14208, 14209, 14211, 14217 to 14219, 14222 to 14266 of 2019

Minor J.Arun Prakash,
Represented by Father and Natural Guardian,
M.Jayaprakash,
48/1B, Vaithialingam Street, Perumbakkam,
Medavakkam Post, Chennai - 600 100. ... Petitioner
in W.P.No.13757 of 2019

Minor T.Vishal,
Represented by Father and Natural Guardian,
K.P.Thirumoorthy,
1/259, Vaikkal Road, Kullampalayam Post,
Erode District - 638 476. ... Petitioner
in W.P.No.14140 of 2019

Minor S.Pranesh,
Represented by Father and Natural Guardian,
P.Senthil Murugan, Navaluthu,
Puliyamarathukottai Village,
Oddanchatram, Dindigul - 624 710. ... Petitioner
in W.P.No.14144 of 2019

Minor VRT. Elumalayam,
Represented by Father and Natural Guardian,
K.P.Thangaraju. ... Petitioner
in W.P.No.14164 of 2019

Minor Sriman Jayapathy,
Represented by Father and Natural Guardian,
N.Saravana Kumar,
No.41, 2nd Street, Musiri,
Tiruchirapalli - 621 211. ... Petitioner
in W.P.No.14165 of 2019

/versus/

1. The Secretary to Government of India,
Ministry of Defence,
101 - A, South Block,
New Delhi.

2. The Sainik Schools Society,
Represented by its Executive Chairman,
Room No.101, D-1 Wing,
Sena Bhawan, New Delhi - 110 011.

3. The Principal,
Sainik School, Amaravathinagar,
Udumalpet Taluk,
Tiruppur District - 642 102.

... Respondents
in all WP's

Prayer in W.P.No.13757 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent issued vide proceedings in SSA/108/Adm/2019-20 dated 06.03.2019 and quash the same in so far as declaring medically unfit due to the reason of obesity consequently direct the respondents herein to admit the petitioner in Class VI under SC category in the 3rd respondent school as per the provisional merit list issued.

Prayer in W.P.Nos.14140, 14144, 14165 of 2019: Writ Petitions are filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent issued vide proceedings in SSA/108/Adm/2019-20 dated 06.03.2019 and quash the same in so far as declaring medically unfit due to the reason of obesity consequently direct the respondents herein to admit the petitioner in Class VI under General category in the 3rd respondent school as per the provisional merit list issued.

Prayer in W.P.No.14164 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent issued vide proceedings in SSA/108/Adm/2019-20 dated 06.03.2019 and quash the same in so far as declaring medically unfit due to the reason of obesity consequently direct the respondents herein to admit the petitioner in Class IX under General Category in the 3rd respondent school as per the provisional merit list issued.

For Petitioner : Mr.G.Arul Murugan
in all WP's

For R1 : Mr.V.Chandrasekaran
in W.P.No.13757 of 2019

For R1 : Mr.K.B.Arul, ACGSC
in W.P.Nos.14140, 14144,
14164 & 14165 of 2019

For R3 : Mr.P.Raja
in all WP's

For R2 : No appearance

C O M M O N O R D E R

Heard the Learned Counsel for the petitioner and the Learned Counsel for the respondents.

2. The grievance of the petitioners herein are being common and the relief sought for are one and the same. By consent, all the five cases are taken up together and the common order is passed.

3. The petitioners herein are young boys applied for admission into the Class-VI in the Sainik School, Amaravathi run by the 2nd respondent/Society. Though, they have scored sufficient mark in the entrance exam conducted by the 2nd respondent/Sainik Schools Society, they are dis-qualified, since they are declared medically unfit. All these five writ petitioners were found obese according to the respondents. Whereas, the petitioners claim that the prospectus issued by the 2nd respondent under Clause 35 state that "in view of the tender age of the boys, no standards of height, weight and chest measurement will be applicable at the time of admission". While so, when the candidates were specifically made to understand that no standards of Height, Weight, Chest measurement will be applicable taking into consideration of the tender age of the boys, the respondents now cannot dis-qualify, the candidates on the ground of obesity. Therefore, the petitioners seeks interference by this Court, to issue Writ of Certiorarified Mandamus and quash the order of declaring them as medically unfit due to the reason of obesity and consequently direct the respondents to admit the petitioners in Class - VI.

4. The 3rd respondent/Sainik Schools, has filed counter, wherein, the communication of the respondents declaring the petitioners medically unfit is justified. According, to the respondents, as per the rules laid down by the 2nd respondent/Sainik School Society under Para 3.09 & 3.10 of the candidates who want admission to Sainik Schools shall be subjected to medical examination by the Board consisting of Military or Civil Doctors. Any candidates declared unfit by the Military Hospital, Chennai, they have a right to seek review by the Command Hospital, Pune. The opinion of the Doctor at Command Hospital, Pune in the review petition will be final.

5. As far as, the Sainik Schools are concerned, it is a public school, different from the rest of the regular schools. The normal activities of the students will be as per the following schedule.

- | | |
|--|------------------------|
| a. Morning Physical Training/exercises | : 0600 hrs to 0700 hrs |
| b. Evening Games | : 1600 hrs to 1730 hrs |
| c. NCC Parades/Drill | : Two days in a week |
| d. Swimming/Horse Riding Class | : Once in a week |

6. The candidates admitted in the Sainik Schools are required to learn/undergo various physical activities such as running, swimming, horse riding, mountain climbing, NCC drills and

parades etc. Therefore, the candidates should be medically fit to undergo the physical activities as mentioned above. Considering the tender age of the boys, the standards prescribed under National Defence Academy not applicable to the candidates admitted in the Sainik Schools but, nowhere the prospectus indicates that medical fitness of the candidates is not required.

7. As far as the candidates who are the petitioners before this Court, their Height and Weight measurements were done by the Military Hospital, Chennai, initially and later on review by the Command Hospital, Pune.

The Particulars about the Candidates Height and Weight are as below:-

S. No.	Roll No.	Name of the Candidates	Class	Category	Rank	Height (in cm)	Weight as per MH Chennai Report (in Kg)	Weight as per CH Pune report	WP. No.
1.	668429	J. Arjun Prakash	VI	SC	06	150	60	57.5	13757/19
2.	650367	S. Praneesh	VI	Gen	25	142	54	46	14144/19
3.	650602	T. Vishal	VI	Gen	10	149	54	53	14140/19
4.	350495	Sriman Jayapathy	VI	Gen	63	157	70	62	14165/19
5.	912168	VRT Elumalaiyan	IX	Gen	10	152.5	66	64	14164/19

8. The learned counsel appearing for the respondents would submit that from the above chart, it is obvious that the petitioners herein are over-weight comparing to their height with reference to Body Mass Index, so they are found to be unfit. The students of Sainik School are expected to undergo rigorous physical training apart from the academic training. The petitioners herein were found not medical fit to endure physical training, so they are declared medically unfit by the Military Hospital, Chennai and on review the Command Hospital Pune has reiterated the same view. There is no malafide or improper exercise of the guidelines provided for admission to the Sainik School.

9. Heard the learned counsels and perused the records.

10. During the Month of September 2018, the Board of Governors Sainik School Society has released notification for the Sainik School entrance examination for the academic year 2019-2020. The last date for receiving the applications was fixed as 01.12.2018, for the exam held on 06.01.2019. After entrance exam, results were published on 04.02.2019, short-listed candidates were called for medical examination.

10.1. The petitioner/J.Arul Prakash in W.P.No.13757 of 2019 was called for medical exam held on 20.02.2019. The Medical Board of Military Hospital, Chennai has declared him medically unfit due to a). obesity, b).Spike ankle (LT).

10.2. The petitioner/T.Vishal in W.P.No.14140 of 2019 was called for medical exam held on 15.02.2019. The Medical Board of Military Hospital, Chennai has declared him medically unfit due to a). Obesity with Acanthosis Nigricans, b). Phimosis.

10.3. The petitioner/S.Pranesh in W.P.No.14144 of 2019 was called for medical exam held on 15.02.2019. The Medical Board of Military Hospital, Chennai has declared him medically unfit due to a). Phimosis, b). Obesity.

10.4. The petitioner/Sriman Jayapathy in W.P.No.14145 of 2019 was called for medical exam held on 15.02.2019. The Medical Board of Military Hospital, Chennai has declared him medically unfit due to a). Knock Knee, b).Obesity.

10.5. The petitioner/VRT.Elumalayan in W.P.No.14146 of 2019 was called for medical exam held on 25.02.2019. The Medical Board of Military Hospital, Chennai has declared him medically unfit due to a). Obesity, b).Knock Knee, c). Phimosis, d). Restricted movement of right leg.

11. The medical report was communicated to the petitioners on 06.03.2019, they were also intimated that they are given chance to go for review Medical Board by producing the competent medical opinion with evidence from the competent medical Authority, the report given by Military Hospital, Chennai. The Principal will examine the appeal and decided with reference to the evidence produced before him. If the case calls for a review Medical Board, the petitioners herein having declared unfit by the Military Hospital, Chennai, has given a request for review. Accordingly, the Principal has permitted the petitioners to appear for review medical Board at Command Hospital, Pune. The Command Hospital Pune, after reviewing the medical conditions of the petitioner has opined medically unfit.

12. Relying upon the judgment of Hon'ble Kerala High Court in Union of India & others Vs. Sreekumar, the learned Counsel for the respondents would submitted that "Once the expert body like the medical board expresses an opinion, it is entitled to great weight age. Unless the medical findings are utterly perverse, Court cannot exercise jurisdiction under Article 226 of the Constitution. The

Court cannot go beyond the opinion of the expert and substitute its own opinion for that of the expert body'. When the disability has been accessed by the competent expert body, based on cogent evidence, Court under Article 226 of the constitution cannot sit as an Appellate Authority and interfered with the expert opinion, unless it is palpably wrong.

13. In the light of the above submissions, the contention of the petitioners are analysed by this Court, regarding the medical examination and standards, the prospectus of the Sainik School reads as below:

Medical Examination & Standards:

34. Boys are called for Medical Examination as per Merit list of the entrance exam marks. The order of merit for admission.

35. All candidates before admission to Sainik School shall be subjected to a medical examination by a Board consisting of Military or Civil Doctors. The standards of health and medical fitness would be the same as laid down for the NDA examination. In view of the tender age of the boys, however, no standards of height, weight and chest measurement will be applicable at the time of admission.

14. The above clause in the prospectus indicates that the standards of health and medical fitness would be the same as laid down for the NDA exam, except in respect of Height, Weight and Chest measurement, considering the tender age of the boys. As far as, the NDA examination is concerned, it is for the candidates who wants to join in the National Defence Academy, which prescribes standards for Height and Weight for the candidates above the age of 16 years. As far as the Sainik Schools are concerned, it is for the boys who are at the age of 10 to 12 years for getting admitted in Class - VI and between the age of 13 to 15 years for getting admitted in Class - IX. For the said purpose, in the prospectus it is mentioned that standards prescribes for NDA boys, above the age of 16 years will not apply. It does not mean that de hors of medical issues, pertaining to Height and Weight, the candidates should be admitted in Sainik Schools.

15. As pointed out in the counter, when the physical fitness to endure rigorous training being prescribed in the prospectus and the expert body had found that the candidates is not medically fit,

the Court cannot sit upon the expert opinion as an Appellate body. It is not the case of the petitioners that the measurements found by the Command Hospital, Pune, which is the Appellate Body is erroneous or their finding is perverse. The case of the petitioners is that even if they are obese, they are eligible to be admitted in the Sainik Schools. This contention cannot be countenanced, when the expert body in its wisdom with their expertise has found that the petitioners are not medically fit. This Court, cannot interfere such decisions.

16. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To,

1. The Secretary to Government of India,
Ministry of Defence,
101 - A, South Block, New Delhi.
2. The Sainik Schools Society,
Represented by its Executive Chairman,
Room No.101, D-1 Wing,
Sena Bhawan, New Delhi - 110 011.
3. The Principal,
Sainik School, Amaravathinagar,
Udumalpet Taluk,
Tiruppur District - 642 102.

+5ccs to Mr.G.Arul Murugan , Advocate SR.No. 56631

+5ccs to Mr.P.Raja , Advocate SR.No. 56332&56336

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14164, 14165 of 2019

& W.M.P.Nos.13836, 13837, 13839,
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A.SK(31/07/2019)