

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 05.10.2018
DELIVERED ON: 07.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.Nos.35853 of 2016 and 17948 of 2017
and
W.M.P.Nos.19477, 19478 and 25896 of 2017

W.P.No.35853 of 2016:-

M.Rithika (Minor)
represented by her Father & Guardian
Mr.R.Muthukumar Petitioner

Vs.

- 1.The Medical Council of India,
represented by its Secretary,
Pocket 14, Sector-18,
Dwarka Phase 1, New Delhi-110 011.
- 2.The Director,
Directorate of Medical Education,
162, EVR Periyar Salai, Kilpauk,
Chennai - 600 010.
- 3.The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
- 4.The Director General,
Head Quarters Office,
Employees State Insurance Corporation,
Panchadeep Bhavan,
New Delhi - 110 002
- 5.M.Shradha
- 6.The Director General of Health Service,
New Delhi.

7.The Government of Tamil Nadu,
represented by its Secretary,
Higher Education Department,
Chennai -5.

8.The Union of India,
represented by its Secretary,
Ministry of Labour and Employment,
Ministry of Labour and Employment,
Social Security Division,
Shram Shakthi Bhawan, Rafi Marg,
New Delhi.

... Respondents

(R6 and R7 were suo motu
impleaded as per order
dated 20.10.2017)

(R8 was suo motu impleaded
as per order dated 10.11.2017)

PRAYER:- Petition filed under Article 226 of the
Constitution of India seeking a Writ of Certiorarified Mandamus,
to call for the records relating to the impugned allotment order
of MBBS seat for the ESIC Medical Colleges under the insured
persons Quota passed by the fourth respondent, on 23.09.2016 and
quash the same as illegal and contrary to the Honourable Apex
Court orders, dated 22.09.2016 in the Contempt Petition (C)
No.584 of 2016 in C.A.No.4060 of 2009 for filing up the 2016-17
medical seats all over India and consequently to direct the
fourth respondent to transfer the minimum of 20% seats meant for
the Insured Person Quota in ESIC medical colleges to be filled
up by conducting fresh counselling by the 2nd and 3rd respondents
in accordance with NEET All India Rank holders merit list.

For Petitioner : Mr.S.N.Ravichandran

For R1 : Mr.V.P.Raman

For R2, R3 and R7 : Mrs.V.Annalakshmi

For R4 : Mr. K.Prabakar

For R6 : Mr.G.Rajagoplan
Additional Solicitor General
assisted by Mrs.Sunitha Kumari
Senior SGSC

W.P.No.17948 of 2017:-

M.Rithika

... Petitioner

.Vs.

1.The Secretary,
Medical Council of India,
Pocket 14, Sector 8,
Dwarka, Delhi-110 077.

2.The Director General of Health Services,
Ministry of Health & Family Welfare,
Government of India, Nirman Bhawan,
New Delhi - 110 108.

3.The Director General,
Head Quarters Office,
Employees State Insurance Corporation,
Panchadeep Bhawan,
New Delhi, - 110 002.

4.The Director,
Directorate of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai-600 010.

5.The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai -600 010.

6.The Union of India,
represented by its Secretary,
Ministry of Labour and Employment,
Social Security Division,
Shram Shakthi Bhawan, Rafi Marg,
New Delhi.

... Respondents

(R4 and R5 were impleaded as per
order dated 20.10.2017 in W.M.P.No.25895 of 2017)

(R6 was suo motu impleaded as per order
dated 10.11.2017)

PRAYER:- Petition filed under Article 226 of the
Constitution of India seeking a Writ of Certiorarified Mandamus,
to call for the records relating to the impugned notification
issued by the first respondent through their website

www.mcc.nic.in, dated 05.07.2017, and quash the same as illegal and contrary to the orders passed in U.P. Unaided Medical Colleges vs Union of India, dated 15.09.2016 by the Honourable High Court of Judicature at Allahabad and further violating the Clause 6(iii) 2010 of the first respondent's notification, dated 21.12.2010 and consequently permit the petitioner to participate in the online counselling process.

For Petitioner : Mr.S.N.Ravichandran
For R1 : Mr.V.P.Raman
For R4 and R5 : Mrs.V.Annalakshmi
For R3 : Mr. K.Prabakar
For R2 and R6 : Mr.G.Rajagoplan
Additional Solicitor General
assisted by Mrs.Sunitha Kumari
Senior SGSC

COMMON ORDER

These two writ petitions have been filed by the same petitioner. She appeared for the All India National Eligibility-cum-Entrance Test (in short NEET)-2017 conducted by the Central Board of School Education (CBSE) and she was declared as qualified. It is stated that she secured 71.96% with 223 marks and her General NEET All India rank is 207127.

2.It is the grievance of the petitioner that the fourth respondent has released the list of few candidates, who were selected in the reserved category, namely, wards of Insured Persons, known as ESIC Management quota. From the list of candidates, the petitioner would point out that the candidates, who were placed in lower rank than the petitioner, have been selected in the SC community reserved category, because of the selection process providing 20% reservation for Insured Persons of the fourth respondent. The petitioner, therefore, filed the first writ petition in W.P.No.35853 of 2016 for issuance of Writ of Certiorarified Mandamus to quash the allotment of MBBS seats in the Employees' State Insurance Corporation Medical Colleges under the Insured Person Quota, by order, dated 22.09.2016 and to direct the fourth respondent to transfer the minimum of 20% seat meant for the Insured Person Quota in Employees' State Insurance Corporation Medical Colleges to be filled by conducting fresh counselling by the second and third respondents in accordance with NEET All India merit list.

3.The Employees' State Insurance Corporation (in short ESIC) released the MBBS admission notification for the seats exclusively for the wards of Insured Persons (20% of the seats) in all the ESIC Medical Colleges in the country on 28.06.2017. Again, the Medical Council Committee released online notification regarding counselling for the 322 medical seats exclusively reserved for Insured Person Quota in ESIC Medical Colleges on 05.07.2017. The petitioner made a representation to the respondents on 07.07.2017 to cancel the counselling or withdraw the counselling notice issued by the Director General, Health Services, Ministry of Health and Family Welfare Department, restricting the Counselling to the wards of Insured Persons in ESIC Medical Colleges in the country. In the representation, the petitioner, further requested the second respondent to allow all the NEET qualified candidates to register for the 20% quota earmarked for wards of Insured Persons in the ESIC Medical Colleges. Thereafter, the petitioner filed the second writ petition in W.P.No.17948 of 2017 to quash the impugned notification issued by the first respondent through their website, on 05.07.2017 and to permit the petitioner to participate in the online counselling process.

4.The petitioner in both writ petitions contended that the admission to medical seats shall be done by the centralised counselling based on NEET All India Rank only and that providing 20% reservation to the Insured Person under ESIC or for wards of employees, who have registered under the Employees Insurance Scheme, is illegal and contrary to the orders of the Honourable Supreme Court. It is further contended that a vertical reservation of 20%, exclusively for the wards of Insured Person in ESIC Medical Colleges, is in gross violation of Constitutional provisions.

5.The Director General of ESIC, the fourth respondent in W.P.No.13589 of 2017 and third respondent in W.P.No.17943 of 2017 has filed elaborate counter. The contentions found in the counter have been summarized as follows:

a)The Employees' State Insurance Corporation (ESIC) is a Statutory Body created under the Employees' State Insurance Act, 1948. The object of the enactment was to provide certain benefit to employees in case of sickness, maternity, employment injury, etc.

b)The Corporation does not receive any financial support from the Central Government and it is fully funded by the contribution of both employees as well as the employers.

c)Section 59(B) was inserted into the said Act by Act 18 of 2010 and thereafter, ESIC set up several Medical Educational Institutions across the country to ensure availability of adequate manpower for its health care institutions to improve

the quality of service to the beneficiaries.

d)The admission policy for all the Medical Colleges established by ESIC was formulated with the approval of Ministry of Labour and Employment, Government of India.

e)After deliberation, an admission policy was formulated, as per letter, dated 17.06.2013 and it was also modified by subsequent order, dated 12.08.2013, whereby, ESIC management quota was made open to the wards of Insured Person at All India level and the admission notice for the academic year 2017-18 was issued thereafter, strictly in accordance with the policy approved by Government. As per the policy of Government, the candidates, who satisfied the eligibility norms alone, are entitled to avail the reservation quota. The Insured Person quota meant for wards of Insured Person on all India basis. The reserved quota should also filled up through merit-cum-preference basis after following the reservation policy of the Central Government.

f)The wards of person, who had association of minimum 5 years with ESIC scheme and subject to other conditions, are alone eligible to apply under the said quota. The availability of seats in ESIC management quota (Insured Person Quota) are pooled and filled up on All India basis for amongst the eligible wards of Insured Person by the counselling done by the Director General of Health Services. Accordingly, the allotment to the seats is done group wise in the order of inter-se merit in NEET examination, depending on seats left over. Since the petitioner, who does not come under the wards of Insured Person, is not eligible to apply for MBBS seat under the wards of Insured Person quota. Therefore, these writ petitions are liable to be dismissed.

g)ESIC Educational Institutions are entirely funded and run by the contribution made on behalf of the insured person, whose total emoluments per month is less than Rs.15,000 (now it is Rs.21,000/- with effect from 01.01.2017). The allotment of seats to ESIC management quota is only to the wards of Insured Person. Since the employees covered and registered with ESIC constitute a separate class reservation of 20% to the wards of Insured Persons for the advancement of socially and economically backward class citizen cannot be faulted and there is no violation of Article 14 of Constitution of India.

6.The Union of India, the 6th respondent in W.P.No.17948 of 2017 has filed a counter affidavit, supporting the stand taken by the third respondent. In the counter affidavit, it is stated that the provision of 20% seats in ESIC Medical Colleges for wards of Insured Persons are well within the power available to fill up the seats in furtherance of the avowed policy contained in Section 59-B of Employees' State Insurance Act, 1948. It is further stated that the selected candidates had undergone the NEET Examination and therefore, there is no compromise of merit

as alleged by the petitioner. It is also stated that the fee for seats reserved for wards of Insured Person are very nominal and there is no profit for the Corporation by admitting the wards of Insured Person under the reserve category. Since the reservation is to benefit the economically weaker section of the Society, who are registered with EISC, there is no violation of any Rule or order of Honourable Supreme Court in the admission procedure adopted by the third respondent. It is also admitted that the petitioner cannot compare herself with the students admitted under the quota meant for wards of Insured Person and that therefore, these writ petitions are liable to be dismissed.

7.The second respondent, namely, the Director General, Ministry of Health and Family Welfare, Government of India filed a counter affidavit stating that the petitioner has appeared in NEET-2017 Examination conducted by CBSE, New Delhi and obtained All India Rank No.4,06,176. Though in the writ petitions, the petitioner has stated that she was aspiring for medical seat in ESIC Medical Colleges, she was not allowed to register for online counselling for 322 medical seats reserved for wards of insured person, as per the written intimation of third respondent, dated 28.06.2017. It is further stated that the petitioner had registered herself for 15% All India Quota on 17.05.2017 and no seat could be allotted to the petitioner on merit.

8.The Medical Council of India, the first respondent in both petitions has filed an elaborate counter in W.P.No.17948 of 2017. Surprisingly, the counter affidavit of the first respondent is not specific with regard to the reservation policy adopted by the respondents 1 and 6 providing 20% reservation for wards of Insured Person of ESIC. However, the consequential prayer in the writ petitions was seriously opposed by the first respondent by referring to the direction of Central Government as well as the Honourable Supreme Court in the matter of admission. Since the third respondent has specifically stated that the availability of MBBS seat under ESIC Management in the various Medical Colleges across the country are filled based on All India NEET Rank, it is contended that the petitioner cannot be considered or granted admission in MBBS course for the academic year 2017-18 after 31.08.2017.

9.The only issue that arise for consideration in these two writ petition is whether 20% reservation provided by the respondents 3 and 6 in W.P.No.17948 of 2017 for the wards of Insured Oerson of ESIC in ESIC Medical Colleges is valid and sustainable.

10.The learned Counsel for the petitioner relied upon a judgment of learned Single Judge of this Court in a batch of

writ petitions in W.P.No.16341 of 2017 and connected cases, wherein, the prospectus for MBBS/BDS admission for the academic year 2017-18 insofar as it relates to reservation of 85% of seats to the students, who have studied in the Tamil Nadu State Board was under challenge. Clause IV (19) of the prospectus for MBBS/BDS admission for the academic year 2017-18 dealing with the impugned reservation was held to be bad in law and the writ petitions were allowed. After referring to several judgments of Honourable Supreme Court, it is observed by the learned Single Judge that Government is not justified in projecting their case, as if, they are creating only a level playing field among the unequals by reservation.

11.As against the order allowing the writ petitions, the matter was taken up before the Division Bench of this Court in W.A.No.838 of 2017 and batch and the appeals were also dismissed. The Division Bench of this Court after referring to the judgment of Honourable Supreme Court in the case in Medical Council of India vs State of Karnataka, reported in 1998 (6) SCC 131 held that the State has virtually provided for reservation of 85% to the students of State Board, after making 15% of seats available to All India Quota. The Division Bench has categorically held that such a decision providing reservation is unconstitutional and in violation of Article 14 of Constitution of India.

12.The respondents 2 and 6 in W.P.No.17948 of 2017 and respondent 6 in W.P.No.35853 of 2016, however, relied upon a judgment of Division Bench of Karnataka High Court, dated 24.09.2013 in W.P.No.38261 to 38263 of 2013 and batch, wherein, 20% reservation for wards of Insured Person of ESIC, which is known ESIC management quota for the academic year 2013-14, was upheld by stating that the reservation of seats is meant for poor workmen, who are economically backward and that the reservation is in accordance with the policy of the Government and it serves the object for which these medical colleges were established.

13.This Court is of the view that this issue is no more res integra in view of the categorical pronouncement of Honourable Supreme Court in several judgments. In the case of K.Sujatha vs Marathwada University, reported in 1995 Supp (1) SCC 155, wherein, the Honourable Supreme Court considered the scope of admitting 20% of the seats at the discretion of the management of the medical college. The Honourable Supreme Court categorically held that there cannot be different eligibility rules for candidates admitted from different sources.

14.In the case of State of Gujarat vs Meghji Pethraj Shah Charitable Trust, reported in (1994) 3 SCC 552, the Honourable

Supreme Court had an occasion to consider the arrangements of admitting students nominated by the Founder of Medical College, known as "M.P.Sha Medical College" in Jamnagar. The Government of Gujarat by an order, discontinued the reservation of seats to persons nominated by the Founder of M.P.Sha Charitable Trust, who donated major funds for establishing the College. The discontinuation of seats reserved for the donor was challenged by the Trust in a writ petition before the Gujarat High Court. Though the writ petition was allowed, the decision of the High Court was reversed by the Honourable Supreme Court, after holding that it is inconceivable that a person or a body, which has assisted in setting up of a medical college would be permitted to have a quota of its own to which it can nominate students of its own choice. It is further observed by the Honourable Supreme Court that there is no room for such an arrangement in law.

15. The judgment of Honourable Supreme Court in the case above referred to was by relying upon the judgment of Honourable Supreme Court in the case of J.P. Unni Krishnan and others vs State of Andhra Pradesh and others, reported in (1993) 1 SCC 645. The Honourable Supreme Court while dealing with several issues in Unni Krishnan's case, has held as follows:

"The allotment of students against payment seats shall also be done on the basis of inter-se merit determined on the same basis, as in the case of free seats. There shall be no quota reserved for the management or any family, caste, or community, which may have established such college."

16. The issue whether reservation in the matter of admission is permissible for wards of employees of the institutions arose before the Honourable Supreme Court in the case of Chairman/Director, Combined Entrance Examination (CEE) 1990 vs Osiris Das, reported in (1992) 3 SCC 543. The matter relates to G.B. Pant University, which is aided and financed by the Government of Uttar Pradesh. The University made a provision for reservation of 5% seats over and above the sanctioned strength of seats for sons and wards of employees of the University for admission to B.Tech course. Based on the direction of State Government, the University decided to withdraw this reservation. The withdrawal of reservation was challenged by the students, who claimed admission against the quota earlier reserved for wards of employees of the University. Though the Allahabad High Court granted an interim order for giving provisional admission, the Honourable Supreme Court has held as follows:

"There is no dispute that the G.B. Pant University is aided and financed by the State

Government and the University is an instrumentality of the State. Any instrumentality of the State cannot give preferential treatment to a class of persons without there being any justification for the same. The reservation of seats for admission to the B. Tech course in favour of the sons and wards of the employees of the University is violative of the doctrine of equality enshrined under Article 14 of the Constitution. There is no rational for the reservation of the seats in favour of the sons and wards of the employees of the University nor any such reservation has any rational nexus with the object which is sought to be achieved by the University....."

17. Similar issue arose before the Honourable Supreme Court in a batch of cases in Thapar Institute of Engineering and Technology vs State of Punjab and another, reported in (1997) 2 SCC 65. Wherein, the Honourable Supreme Court considered several judgments including the judgments above referred to. One of the appeals before the Honourable Supreme Court relates to Technological Institute of Textile and Science (in short TIT & S) at Bhiwani in the State of Haryana. TIT & S was registered as a society and run a technical institution to impart education/training in textile Technology, Textile Chemistry, Computer Science and Management Science. The Society known as TIT & S also own and run a textile mill, employed about 1500 workers, wherein, the students also received practical training. In addition to the sanctioned strength, TIT & S provided four additional seats for the wards of the employees of the TIT & S. The seats earmarked for wards of the staff was justified by institution under the pretext that they do not receive any financial aid either from the State Government or from the Central Government. However, the University directed the institution not to continue reservation seats for the wards of staff of TIT & S. The order of University was challenged by the TIT & S in a writ petition before the High Court of Punjab and Haryana and the High Court dismissed the writ petition. The Honourable Supreme Court upheld the order of High Court in Civil Appeal No.4101 of 1995.

18. In the same judgment, the Honourable Supreme Court disposed of two other appeals relating to THAPAR Institute of Engineering and Technology and others vs State of Punjab and another. In THAPAR Institute of Engineering and Technology (in short TIET), 2% of seats were reserved for the children of employees of TIET and 5% reservation was made for children of employees of THAPAR Group of Companies. The Government of Punjab passed an order directing the TIET that there should not be reservation in admission for wards of employees of Department/institution. The order of Government was challenged

by TIET by filing a writ petition before the High Court of Punjab and Haryana. The writ petition was dismissed and the Honourable Supreme Court upheld the same and dismissed the appeal in Civil appeal Nos.507 and 4101 of 1995 in the following manner:-

"16. In so far as Civil Appeal No. 4101 of 1995 is concerned, the letter of respondent-University dated January 15, 1993 directing the T.I.T. & S. not to continue with the reservation of seats for wards of the staff of the T.I.T. & S. in the B. Tech. Court was taken in pursuance of the decision of this Court in J.P. Unni Krishnan (supra) and is in consonance with the law laid down in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors. (supra) since the T.I.T. & S. is affiliated to the respondent-University. It is no doubt true that the four additional seats for which reservation was made for the wards of the college and mill/school staff of the T.I.T. & S. are in addition to 90 seats and admission is made on the basis of marks obtained in the Entrance Examination conducted by the respondent-University. But for the purpose of admission to these four seats a separate merit list is drawn in respect of the candidates who are eligible for these seats and admission is not made according to merit as reflected in the common merit list. Such reservation in favour of wards of the college and mill/school staff of the T.I.T. & S. does not satisfy the test of admission being given strictly on the basis of merit as laid down by this Court and has been rightly held to be impermissible by the High Court. The said appeal is, therefore, liable to be dismissed.

17. In Civil Appeal arising out of S.L.P. (Civil) No. 10132 of 1995 there was reservation to the extent of 2% of seats for wards of the employees of the T.I.E.T. and the Patiala Technical Education Trust and there was reservation to the extent of 5% of seats for wards of the employees of the Thapar group of industries. In Civil Appeal arising out of S.L.P. (Civil) No. 10224 of 1995, there was reservation to the extent of 2% of seats for wards of employees in the Thapar Polytechnic and the Patiala Technical Education Trust. The T.I.E.T. and the Thapar Polytechnic receive maintenance grants from the Government of Punjab and are Government aided educational institutions. It is no doubt true that the T.I.E.T. has been declared to be a "deemed university" by the Central Government under the provisions of the University Grants Commission Act, 1956. But this downs

not mean that it is permissible for the T.I.E.T. to depart from the principle laid down by this Court that admission should be made strictly on the basis of merit. The position of the T.I.E.T., a deemed University, cannot be better than that of the G.B. Pant University which is a full fledged University and in view of the decision of this Court in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors. (supra) it must be held that it was not permissible for the T.I.E.T. to reserve 2% of the seats for the wards of the employees of the T.I.E.T. and the Patiala Technical Education Trust and 5% of seats for the children of employees in the Thapar group of industries. The reservation of 2% of seats in the Thapar Polytechnic for wards of employees in the Thapar Polytechnic and the Patiala Technical Education Trust was also impressible in view of the law laid down by this Court in J.P. Unni Krishnan (supra) and Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors. (supra). The directions contained in letter of the Government of Punjab dated September 16, 1991, being in consonance with the said decisions, have been rightly upheld by the High Court and both the appeals are, therefore, liable to be dismissed.

Writ Petition No. 507 of 1995 has been jointly filed by the T.I.E.T. and the Patiala Technical Education Trust under Article 32 of the Constitution for quashing Memo dated June 6, 1995 addressed by the Director, Technical Education and Industrial Training, Punjab (Technical Education Wing) to the Co-ordinator, Punjabi University, Punjab and a copy is endorsed to the Director of the T.I.E.T. In the said Memo dated June 6, 1995, issued by the Director of Technical Education and Industrial Training, Punjab, to the Punjabi University, Patiala, it is stated that reservation proposed by the T.I.E.T. in respect of 10 seats under paragraph 3(d) of the Brochure-cum-Application form for admission on CET - 1995 providing for 10 seats for Thapar Organisation is not legally sustainable and should not be reflected in the Admission Brochure and reference has been made to the judgment in J.P. Unni Krishnan (supra). The said Memo is challenged in the writ petition on the ground that the T.I.E.T. is a "deemed university" under the University Grants Commission Act and that the decision in J.P. Unni Krishnan (supra) has no application to university employees. While dealing with Civil Appeal arising out of S.L.P. (Civil) No.10132 of 1995, we have considered this submission and have held that the

such reservation of seats in the T.I.E.T. is not permissible. For the same reasons, it must be held that the direction contained in the Memo dated June 6, 1995 does not suffer from any infirmity and the Writ Petition is also liable to be dismissed."

19. From the judgments of Honourable Supreme Court above referred to, this Court is of the view that there cannot be any quota reserved for the management or for the wards of employees of founder, who may have established the college itself. In this case, the reservation is made for wards of insured person of ESIC. Merely because, the ESIC established the colleges out of the contribution from the persons insured, there cannot be any reservation for wards of Insured Persons in admission in the medical colleges of ESIC. This Court do not find any rational for the reservation of seats in favour of the wards of Insured Person. Such reservation has no nexus with the object sought to be achieved. The wards of Insured Person may belongs to families of economically weaker section. However, the reservation of seats cannot be made to advance the economical condition of a particular class.

20. The Medical Council of India has prescribed the procedure for selection to MBBS course. As per the policy of Central Government, NEET is conducted for admission to MBBS course for each academic year. The Government of India brought an amendment to the India Medical Council Act, 1956 (Act 3 of 2013), whereby, Section 10D was introduced. As per Section 10(D), there shall be a uniform entrance examination to all medical educational institution in under graduate level and post graduate level and that the deciding authority, who conduct the examination, should ensure the conduct of uniform entrance examination. It is now became clear that the admission to medical colleges is given based on the State wide merit list of eligible candidates, which is prepared on the basis of marks obtained in NEET. Providing reservation for wards of Insured Person of ESIC will certainly distract the merit list, prepared State wise on All India basis. The wards of insured person of ESIC cannot be treated as a class by themselves in the matter of giving admission to medical colleges of ESIC. As pointed by the Honourable Supreme Court, such reservation if permitted, that will lead to depreciation of standard in medical education.

21. As in the case of State of Gujarat vs Meghji Pethraj Shah Charitable Trust, reported in (1994) 3 SCC 552, if promoter of college or a person, who established the medical college is permitted to nominate students for admission to Medical Colleges or a founder of a College is given a privilege to admit a percentage of students of their choice unmindful of the consequences, there is no scope for maintainability of standard

by any amount of regulation by Medical Council of India under the Indian Medical Council Act.

22. Insofar as W.P.No.38583 of 2016 is concerned, the prayer is for issuing a Writ of Certiorari Mandamus to quash the allotment order of MBBS seats in the ESIC Medical Colleges under the wards of Insured Person Quota passed by the ESIC, dated 23.09.2016. In the counter affidavit filed by the respondents, particularly, Medical Council of India, the whole process of admission in the Medical College for the academic year 2016-17 is over and therefore, this Court though found that the quota reserved for wards of Insured Person of ESIC is unconstitutional and illegal, there is no scope for granting of any relief, after this length of time and this Court is not inclined to disturb the admission, that was completed for the academic year 2017-18.

23. Insofar as W.P.No.17948 of 2017 is concerned, the prayer is to quash the impugned notification issued by the first respondent through their website on 05.07.2017. By the impugned notification issued by the first respondent, counselling for 332 MBBS seats identified for accommodating the wards of Insured Person under the ESIC scheme was proposed. During the pendency of the writ petition, the candidates, who were selected under the reserved category got admission. Hence, there is no purpose will be served by granting any relief by quashing the impugned notification now. It is true that the petitioner has established that the policy of respondents 2, 3 and 6 providing reservation to wards of Insured Person of ESIC is unconstitutional. However, the petitioner has not impleaded the candidates, who have now been admitted for the academic year 2017-18, pursuant to the counselling conducted for wards of Insured Person.

24. Having regard to the specific stand taken by the Medical Council of India, it is not possible for accommodating the petitioner, after 30th August 2017 for the academic year 2017-18. In the counter affidavit filed by the 3rd and 6th respondents, it is stated that the 6th respondent has approved the reservation policy of 3rd respondent and that a revised admission policy was formulated, as set out in the letter, dated 17.06.2013. It is further stated that the policy was later modified by the subsequent order, dated 12.08.2013. Having regard to the facts and legal position argued before this Court, this Court declare the reservation policy of respondents 3 and 6 in W.P.No.17948 of 2017 providing 20% reservation to wards of Insured Person of ESIC as unconstitutional and illegal. The respondents 2 and 6 are directed not to provide any reservation for wards of Insured Persons of ESIC, while admitting students in Medical Colleges of EISC. However, the admission granted to the wards of employees registered under ESIC till date need not be disturbed on the basis of this judgment. In tune with the regulations of Medical

Council of India, the admission in ESIC Medical Colleges shall be based on the marks obtained in NEET and students shall be strictly admitted to MBBS course from the list prepared purely on merits and as per the reservation of seats in Medical Colleges for respective categories as per the law prevailing in State and Union Territory and there shall not be any reservation for wards of insured person of ESIC.

25. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

cmr

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Director,
Directorate of Medical Education,
162, EVR Periyar Salai, Kilpauk,
Chennai - 600 010.
2. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
3. The Secretary,
The Government of Tamil Nadu,
Higher Education Department,
Chennai -5.
4. The Secretary,
Medical Council of India,
Pocket 14, Sector - 18,
Dwarka Phase - 1,
New Delhi - 110 011.

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5. The Director General,
Head Quarters Office,
Employees State Insurance Corporation,
Panchadeep Bhavan,
New Delhi - 110 002.
6. The Director General of Health Services,
Govt.of Tamil Nadu,
Higher Education Dept.,
Chennai - 5.
7. The Secretary,
Govt. of Tamil Nadu,
High Education Dept.,
Chennai - 5.
8. The Secretary,
Union of India,
Ministry of Labour and Employment,
Social Security Division,
Shram Shakthi Bhawan,
Rafi Marg, New Delhi.
9. The Secretary,
Medical Council of India,
Pocket 14, Sector - 18,
Dwarka Phase - 1,
New Delhi - 110 077.
10. The Director General of Health Services,
Ministry of Health & Family Welfare,
Govt. of India,
Nirman Bhawan,
New Delhi - 110 108.

+2cc to Mr.K.Prabakar, Advocate, SR.No.45896 & 45897
+1cc to Mr.S.N.Ravichandran, Advocate, SR.No.45599
+1cc to Mr.V.P.Raman, Advocate, SR.No.46077
+1cc to M/s.Sunita Kumari, CGSC, vide SR.No.45748
(dated : 25.09.2019)

W.P.Nos.35853 of 216 and 17948 of 2017

Kak(26/06/2019)