

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Writ Petition No.16752 of 2019
and
W.M.P.No.16361 of 2019

P.Chozhan Petitioner

Vs

1. Union of India,
Rep. by the Assistant Director General (ME)
Directorate General of Health Services,
Room No.352, 'A' Wing,
Nirman Bhawan, New Delhi.
2. The Secretary,
Department of Health and Family Welfare,
Fort St. George,
Chennai 600 009.
3. The Director,
(Public Health and Preventive Medicine)
Directorate of Health Services,
No.359, Anna Salai,
Teynampet, Chennai 600 006.
4. The Chairman,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.
5. The Chairman,
Medical Council of India,
MCI Building
Dada Dev Mandir Road,
Pocket - 14, Sector - 8,
Dwarka Phase - 1,
New Delhi - 110 077.

6. The Registrar,
The Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai,
Little Mount, Gunidy,
Chennai 600 032.

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus or any other appropriate writ, or direction or order in the nature of a Writ, directing the respondents to permit the petitioner's son Master.Kavin Sharas, to participate in the counseling process by permitting him to submit all the necessary particulars along with the available mark sheet of the qualifying CBSE Examination and the admission be reserved subject to him clearing the physics exam to be held on 02.07.2019.

For petitioner : Mr.M.K.Kabir, Senior Counsel
for M/s.M.Shajahan
M.K.Padma

For Respondents : Mrs.Narmatha Sampath
Additional Advocate General Asstd. By
Mr.V.Kathirvelu,
Special Government Pleader for R2&R3
Mr.Abdul Saleem,
Standing Counsel for R4

ORDER

The Writ Petitioner herein is the student, who has taken his 12th standard examination. Unfortunately due to some ill health beyond his control he could not taken up his physics examination. However, being aspiring to become a Doctor he has taken up his NEET Examination and has secured 368 marks out of 720 in the NEET UG 2019, National Eligibility cum Entrance Test.

2.The problem now faced by the petitioner is that having secured substantially good marks in the NEET examination, his prospects of getting admitted in the Medical College is likely to be affected due to non attending of physics paper in the qualification examination.

3.Since the petitioner has applied for supplementary examination to be held in the Month of July, and the result is expected to be declared immediately before the counseling process gets completed. Therefore, if he is permitted to apply for the admission in MBBS/BDS 2019 by the time the admission closes, he will get qualified to apply by clearing his physics exam.

4. In the counter, the Secretary Selection Committee has stated that the last date for making application for MBBS/BDS degree course is 20.06.2019. On the date of application, the candidate must have obtained a minimum mark of 50% taken together in Physics, Chemistry and Biology or Bio-technology, at the qualifying examination. Since the petitioner has not cleared his physics examination before the last date of application he is not qualified to apply.

5. The qualifying criteria for admission as mentioned in the prospectus of NEET UG 2019, reads as follows:

(e) Provided that a candidate who has appeared in the qualifying examination, the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS/BDS Courses, he/she shall not be admitted to that course until he/she fulfils the eligibility criteria as specified above. For details candidates may refer to Graduate Medical Education Regulations, 1997 and BDS Course Regulations, 2007.

A list of the successful candidates in order of All India Rank based on the marks obtained in the National Eligibility Cum Entrance Test (NEET) UG - 2019 will be prepared by the NTA.

6. The learned counsel for the petitioner submits, to take up NEET examination, which is the competent entrance examination, the candidates, who have appeared in the qualifying examination and the result not declared, are fully eligible. It is sufficient for the candidate to clear the qualifying examination with prescribed marks before getting admission in the MBBS/BDS course. Pass in qualifying exams is not a mandatory requirement for applying and to participate in the selection process. Only before getting admitted in the course, pass is required. Therefore, the petitioner who is likely to take up his physics exam in July has to be permitted to apply.

7. Contrarily, the learned counsel appearing for the respondent would submit that the eligibility for admission to the MBBS/BDS course, the candidate must have passed in the subject of Physics, Chemistry, Biology with 50% mark. Mere clearing NEET examination will not entail him/her to seek admission. On the date of application for admission the candidate should have passed the qualifying exams with minimum 50%, since the petitioner is not qualified before the cut off date, he is not eligible to apply.

8. The learned senior counsel appearing for the petitioner relied upon the three judgments, wherein the High Courts based on the relevant admission process have found that when a candidate who is awaiting results is eligible and to be given a

provisional admission in the higher studies. Same advantage cannot be deprived for the person, who has taken up compartmental examination and awaiting results. Observations made by the High Court of Delhi in *Abhishek Verma Vs. National Law School of Delhi* [W.P.(C) 5269 of 2008 Judgment dated 01.08.2008]

"13. Admittedly, in the admission notice 2008-2009 issued by the respondents while laying down the eligibility criteria, the respondent did not debar any student, who has passed qualifying senior secondary school 10+2 examination with compartment, from seeking admission to the said five year B.A., L.L.B., (Hons.) programme/course. That being the position, in my view it is not open to the respondent to subsequently alter the eligibility condition so as to exclude those students who appear in the aforesaid qualifying examination in the year 2008 and who pass the said examination with compartment. Pertinently, the impugned condition does not debar all candidates who have passed senior secondary school 10+2 examination with compartment. It is only those candidates who have appeared in the said qualifying examination in the year 2008 and have secured a compartment who are sought to be barred from seeking admission by the impugned condition contained in the communication dated 11.06.2008 issued by the respondent. Therefore, students who have passed the qualifying senior secondary school 10+2 examination or any other equivalent examination with compartment in any earlier year are not sought to be altogether excluded from the process of admission by the respondents."

Deep Gupta Vs. Guru Gobind Singh Indrapastha University [W.P.(C). 4585 of 2008 Judgment dated 22.07.2008]

"12. The question which arises for consideration is whether candidates who are awaiting their result of the compartment examination fall in a different class when compared to those candidates whose total result of the qualifying examination has not been declared, for the purpose of grant of provisional admission by the respondent University in the professional programmes run by it.

13. The respondent University does not discriminate between candidates who clear the qualifying examination in the first attempt and those who clear the same with a compartment. For the purpose of determining the eligibility of a candidate, his result in the qualifying examination is to be seen, irrespective of whether the said result is the original/first attempt result of the candidate or is a result compiled after taking the compartment examination. So long as a candidate has obtained 50% marks in aggregate in the qualifying examination (45% in the aggregate for a candidate belonging to one of the reserved categories) with pass marks in English (Core or Elective or Functional) as a subject, the respondent considers the candidate as eligible to undertake Bachelor of Journalism (Mass Communication) Course.

14. That being the position, in my view, there is merit in the submission of the petitioner that the respondent cannot create a further sub-classification within the class of those candidates whose total result has not been declared till the time when their turn for counseling arrives, by treating candidates who are awaiting the total result of the qualifying examination after appearing in compartment examination as one class, and candidates whose total result is awaited as another class.

15. Since a compartment is not considered as a taboo and candidates with a compartment are also eligible to apply and be considered for the Course, inter alia, of Bachelor of Journalism (Mass Communication), there can be no justification to treat such candidates any less considerately when compared to those whose result of the qualifying examination is not at all declared. Pertinently, a candidate with a compartment who passes the compartment examination with the requisite percentage is not excluded from consideration if his result is declared by the time his turn for counseling arrives. Whether it is a candidate who is awaiting result of his compartment examination, or a candidate who is awaiting the result of his qualifying examination, they all stand on the same footing. The object of the rule, which allows candidates whose results of the qualifying examination are not declared by the time their turn for counseling arrives to furnish their result of the qualifying examination by 31.10.2008, is to save them from being deprived of admission to the concerned course for reasons beyond their control, as it is the concerned Board, examining body who has to declare the results of the qualifying examination. The purpose is also to grant admission to the more meritorious students as found on the basis of the entrance test result, and not allow those lower in merit to steal a march over them merely because the more meritorious ones do not have the result of the qualifying examination in their hands when they are called for counseling. The further classification sought to be created by the respondents between those who are awaiting the compartment examination results of the qualifying examination and those whose qualifying examination results are not declared has no rational nexus with the object sought to be achieved as aforesaid. When, therefore, the respondent University permits students, who are awaiting their result for the qualifying examination to take provisional admission by fulfilling certain requirements, it does not stand to reason that candidates who are also awaiting their result of the qualifying examination on account of having secured a compartment result, should be treated differently."

Km. Shilpi Saini Vs. State of Uttaranchal and others [W.P.No.717

of 2003 Judgment dated 27.08.2003]

"9.It is a case where at the time of first counseling the petitioner was not eligible but subsequently having passed her compartment examination, she has become eligible. As held by the Apex Court in the case Dularey Lodh V. IIIrd Addl. District Judge, Kanpur, 1984 All Ren Gas (SC) 82: AIR 1984 SC 1260, that in such circumstances doctrine of Eclipse will apply Judgment of the Apex Court in Dularey Lodh case (supra) has also been followed in the case Kailash Sonkar V. Maya Devi, (1984) 2 SCC 91: AIR 1984 SC 600. In paragraph 34 doctrine of Eclipse has been discussed. In the case Dularey Lodh it has been observed as under:

'Once the bar placed by the 1972 Act, is removed, by virtue of the doctrine of eclipse the decree will revive and become at once operative and executable. The Courts below have rightly decided that after the 1976 Amendment Act the decree became legally executable.'

10.Applying the aforesaid test once the bar has been removed with regard to the eligibility there should not be any impediment to appear in the second counseling as entrance test by which the petitioner has derived right to get admission in the same. It has been shown on her score card as under:-

'X-State/Category, Rank is provisional subject to verification of documents at the time of counseling.'

11.Therefore, she cannot be deprived from admission on account of mere technicalities as it is a well known fact that one has to put hard labour in participating in entrance test and once the petitioner was covered under the eligibility criteria the technicalities should not come in her way.

9.A clear distinction on facts could be seen from the facts of the cases cited and case in hand. In all the above cases, the procedure for admission is different, it is localized and is of small scale. In such circumstances, this Court has taken a view to accommodate the candidate who has not qualified as per the Rule but otherwise found to be meritorious.

10.In this case, no doubt, the petitioner has secured good marks in NEET examination and it is unfortune that he could not taken up for physics examination. This Court also equally sympathize the predicament of the writ petitioner, but when the larger interest of the other aspiring candidates and the process taken up, which is time bound any inclusion or exclusion of one candidate may have a serious repercussions on other candidates. Accommodating the petitioner herein on sympathetic ground, contrary to the Rules, will end up in injustice to other unknown persons. This Court does not inclined to do so. When an

admission process prescribes that on the date of applying for MBBS Course, a candidate should be qualified in a particular stream of education with prescribed minimum marks, Court cannot allow the petitioner who is not yet qualified to get admission, to apply in anticipation of result of the examination to be held in future.

11. For the said reason, this Court is not able to agree with the submission made by the learned counsel appearing for the petitioner. Hence, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. Union of India,
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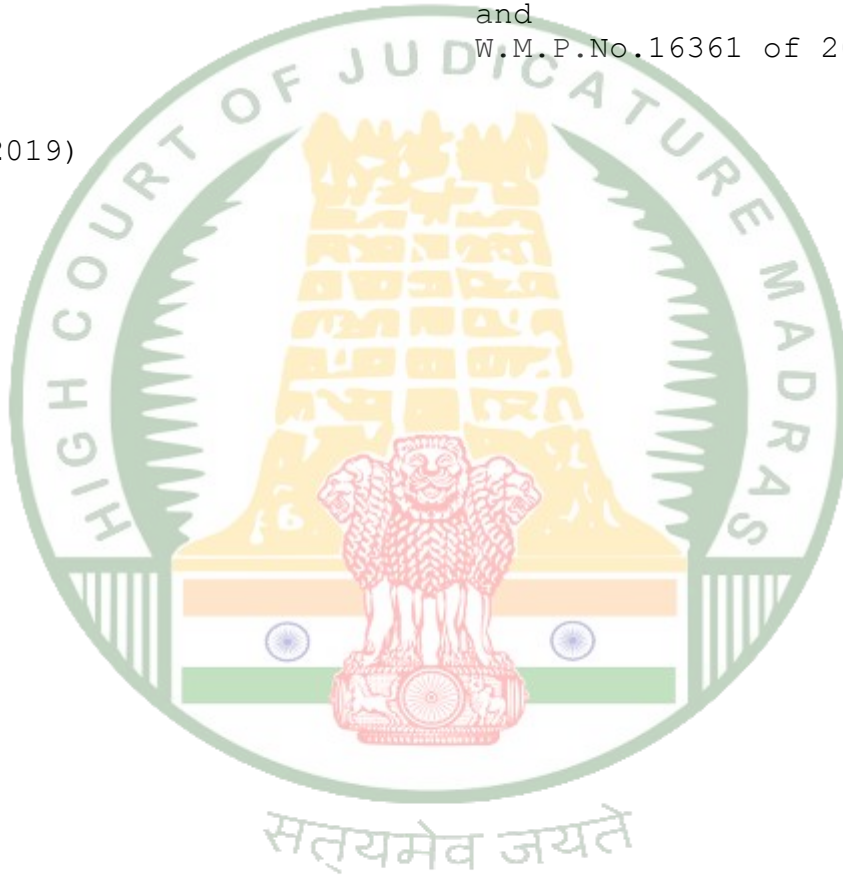
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+1 CC to Mr.M.Shahjahan, Advocate sr 51561.
+1 CC to Mr.Abdul Saleem, Advocate sr 52137.

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PP(CO)
SP(03/07/2019)



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