



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.08.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

W.P.Nos.18849 & 18852 of 2019
& W.M.P.Nos.18206 to 18208, 18210, 18211, 18213, of 2019

Sri Venkateshwaraa Dental College,
Represented by its Chairman B.Ramachandran,
No.13-A, Pondy-Villupuram Main Road,
Ariyur, Puducherry - 605 102. ... Petitioner
in W.P.No.18849 of 2019

Sri Venkateshwaraa Medical College Hospital
and Research Centre,
Represented by its Chairman B.Ramachandran,
No.13-A, Pondy-Villupuram Main Road,
Ariyur, Puducherry - 605 102. ... Petitioner
in W.P.No.18852 of 2019

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W.P.No.18849 of 2019

1. Dental Council of India,
Represented by Secretary,
Aiwan-E-Galib Marg,
Kotla Road, Temple Lane,
Opp.Mata Sundari College for Women,
New Delhi - 110 002.
2. Government of Puducherry,
Represented by its Secretary,
Health Department,
Chief Secretariat,
Puducherry.
3. Centralized Admission Committee,
Rep. by Coordinator (Admission),
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.

... Respondents

W.P.No.18852 of 2019

1. Medical Council of India,
Represented by Secretary,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 077.

2. Government of Puducherry,
Represented by its Secretary,
Health Department,
Chief Secretariat,
Puducherry.

3. Centralized Admission Committee,
Rep. by Coordinator (Admission),
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.

... Respondents

Prayer in W.P.No.18849 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 2nd respondent in its order dated 21.06.2019 in Ref.No.C.27209/Health/H5/UG-NEET/2019-20/74, quash the same and consequently direct the 2nd respondent to issue a revised seat matrix treating only 35 (thirty five) seats in the BDS course offered by the Petitioner Institution as government quota seats during the academic year 2019-2020 and pass orders.

Prayer in W.P.No.18852 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 2nd respondent in its order dated 21.06.2019 in Ref.No.C.27209/Health/H5/UG-NEET/2019-20/74, quash the same and consequently direct the 2nd respondent to issue a revised seat matrix treating only 50 (fifty) seats in the M.B.B.S course offered by the Petitioner Institution as government quota seats during the academic year 2019-2020 and pass orders.

For Petitioner : Mr.AL.Somayaji, Senior Counsel
in both cases for Mr.Abishek Jenasanen

W.P.No.18849 of 2019
For R1 : Mr.Haja Mohideen Gisthi

W.P.No.18852 of 2019
For R1 : Mr.V.P.Raman

W.P.Nos.18849 & 18852 of 2019
For R2 & R3 : Mr.A.Gandhiraj,
Government Pleader (Pondy)

C O M M O N O R D E R

Heard the Learned Senior Counsel for the Petitioners and the Learned Counsel appearing for the Respondents.

2. Both the Writ Petitions are filed by the Management of the Sri Venkateshwara Medical and Dental College.

3. The grievance of the petitioners is that contrary to the Memorandum of Agreement dated 16.04.2015, entered between the College Management and the Government of Puducherry, unilaterally the Government of Puducherry, has taken away more seats than they agreed to share with the Government. Hence the seat matrix released by the Government of Puducherry, dated 21.06.2019 is challenged.

4. To put it in nutshell, the dispute between the Petitioner Institute and the Government of Puducherry, it is necessary to point out certain dates and events. On 16.04.2015, the Government of Puducherry and the Managements of unaided professional College have entered into a Memorandum of Agreement, wherein, they have agreed a specific number of seats as minimum bench mark to be shared with the Government and to be filled, by the Government as per its Policy. Thereafter, every year the Government and the Management agree to share a portion of their permitted intake with the Government, which was not less than the minimum bench mark.

5. As far as the petitioner Institute is concerned, they have agreed to share minimum of 53 seats in M.B.B.S course and 35 seats in B.D.S course. There is also a Clause in Memorandum of Agreement that every alternate year one seat more to the minimum bench mark of 53 will be given to the Government. Every academic year, the College Management and the Government, before the commencement of admission process meet and arrive at consensus, regarding sharing of seats. It all depends upon the demand and the capacity of the Management to fill up the seats under the Management quota.

6. Last year 2018-2019 when the Management had dispute regarding the seat sharing matrix, they approached this Court, wherein, the Single Judge of this Court has disposed the Writ Petition with the following directions:

(a) The second respondent is directed to allot a seat to UG Medical Course for the year 2019-2020 under management quota in any other self financing private medical College in Pondicherry out of the seat permitted to be filled up by

fourth respondent under Management quota. This one seat will be filled up by second respondent under State quota in fourth respondent as the State quota will be reduced by one seat in the other college when the petitioner is given admission;

(b) The fourth respondent shall pay a sum of Rupees One Lakh to the petitioner by way of compensation for illegally denying admission to the petitioner during this academic year;

(c) In view of the conduct of fourth respondent to deny admission circumventing the order of this Court, on flimsy grounds, the number of seats reserved under Management Quota for the fourth respondent for the year 2019-2020 shall be reduced by 5 seats (for ex. If the fourth respondent is entitled to admit 35 students under Management Quota, for the year 2019-2020, the number of seats under Management Quota shall be reduced to 30 and the 5 seats can be filled up by second respondent under State Quota; and

(d) since stray vacancies have been filled up by fourth respondent contrary to the regulations outside the list furnished by the second respondent, it is open to the third respondent or second respondent to cancel the admission of students in stray vacancies on 31.08.2018 after affording an opportunity to the fourth respondent and the students in accordance with law.

7. The above direction has been issued, taking into account that the time prescribed by the Hon'ble Supreme Court for admission for the academic year 2019-2020 lapsed, the directions were for the ensuing academic year namely 2019-2020. This order of the Single Judge was challenged by the Management in the Intra Court appeal. The Division Bench in the Writ Appeal as an interim order stayed the operation of the Single Judge order on 26.06.2019. Initially the Government of Puducherry has released the seat matrix for the admission in M.B.B.S and B.D.S courses on 21.06.2019. As far as the Petitioner Institute is concerned, which is administered by Telugu minority, out of 150 seats in M.B.B.S course, 60 seats were earmarked for Government quota and in the B.D.S course, out of 100 seats, 50 seats were earmarked for Government quota. In view of the stay order passed by the Division Bench in W.A.No.407 of 2019 & C.M.P.No.3823 of 2019, the Government of Puducherry has reduced their share from 60 to 55 and proceeded

with admission process, after release of the seat matrix. The said seat matrix is the subject matter of these two Writ Petitions.

8. In the counter filed by the state, it is contended that three rounds of meeting were held between the Private College Management and the Government on various dates i.e., 10.06.2019, 12.06.2019 and 16.06.2019, to decide number of seats to be shared with the Government for the academic year 2019-2020 for admission of students in M.B.B.S/B.D.S courses through CENTAC under Government quota. It is stated in the counter that, the Government demanded two (2) additional seats from each College over and above seats surrendered, during the previous academic years. However, representatives of the concern College sought time till 17.06.2019, to tell their decision on consulting their respective Chairman's.

9. It is further stated in the counter, that on 17.06.2019, the representatives of the College Management did not turned up. Due to the time schedule fixed by the Hon'ble Supreme Court, they were forced to announce the seat matrix so that, they can commence the admission process through CENTAC and complete the same within the time schedule prescribed by the Hon'ble Supreme Court.

10. From the submissions made by the learned Counsels it appears that the Petitioner Management was ready to share 53 seats in M.B.B.S and 35 seats in B.D.S course, which is the minimum bench mark agreed by the parties under the Memorandum of Agreement. Whereas, without their consent 55 seats in M.B.B.S course and 50 seats in B.D.S course has been taken away by the State and they have proceeded with the admission process.

11. The Learned Counsel appearing for the Government of Puducherry would submit that the decision of taking 55 seats in M.B.B.S course and 50 seats in B.D.S course was taken only after informing the Petitioner Institute and taking note of the previous admission data. After publishing the seat matrix, the admission process has commenced. After completion of two rounds of counselling, only one (1) seat is available in M.B.B.S course and one (1) seat is available in B.D.S course.

12. The Government has already published the seat matrix and the seats available in the Petitioner College under the Government quota, altered it will amount to breach of promise and stand against the Government. The students already admitted have a legitimate expectation to continue the course. The Government is estopped from altering the seat matrix after commencement of the selection process. Whereas, the Learned Senior Counsel appearing for the petitioner would submit that in

all fairness the Government of Puducherry ought not to have proceeded with the counselling process since the Writ Petition was filed on 01.07.2019 along with the stay application. The Learned Counsel for the respondents were put to notice as early as 03.07.2017. Despite pendency of the Writ Petition, they have proceeded with the admission process. Further, the Learned Senior Counsel for the petitioner would also submit that the allotment seat and admission to the candidates is only provisional in nature. Any act done by the state without the consent of the Institution go against the spirit of the Hon'ble Supreme Court observation made in P.A.Inamdar Vs. State of Maharashtra reported in (2005) 6 SCC 537:-

124. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article

30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

128. We make it clear that the observations in Pai Foundation and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the state.

13. In the given factual matrix and in the light of the observation made by the Hon'ble Supreme Court in P.A.Inamdar case, it is clear that voluntary agreement of seat sharing is permissible and what is prohibited is total reservation state quota which will amount to nationalisation. In this case, the Management has agreed to share minimum 53 seats in M.B.B.S course with one (1) seat more in the alternate years and minimum 35 seats in B.D.S course. Unfortunately, in the present academic year 2019-2020, the State has proceeded with earmarking 55 seats in M.B.B.S course and 50 seats in B.D.S course. Accordingly, pending Writ Petition, they have also admitted students under the said quota. The Learned Counsel appearing for the respondents/Government of Puducherry would submit that only one(1) seat in M.B.B.S under Government quota and one (1) seat in B.D.S course are left unfilled.

14. In such circumstances, to mitigate the error committed by the Government to proceed with announcing the seat matrix, without getting the concurrence of the Management, the 1st respondent/Government of Puducherry shall not fill one (1) seat in M.B.B.S and one (1) seat in B.D.S, which are left unfilled. Those seats shall be filled up by the Management. All other relief claimed by the petitioner declined.

15. In the result, the Writ Petitions are Partly-Allowed. It is expected that the Government of the Puducherry, atleast in the future shall convene meeting with the Institute well before the commencement of the admission process and arrive at consensus, if they desire to alter the minimum bench mark

already agreed under the Memorandum of Agreement made on 16th April 2015. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To,

1. The Secretary,
Dental Council of India,
Aiwan-E-Galib Marg, Kotla Road, Temple Lane,
Opp.Mata Sundari College for Women,
New Delhi - 110 002.
2. The Secretary,
Medical Council of India,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 077.
3. The Secretary,
Government of Puducherry,
Health Department,
Chief Secretariat,
Puducherry.
4. The Coordinator (Admission),
Centralized Admission Committee,
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.

+1cc to Mr.V.P.Raman, Advocate SR.No.69652

+1cc to Mr.Haja Mohideen Gisthi, Advocate SR.No.69644

+4cc to Mr.Abishek Jenasanen, Advocate SR.No.69471,69472

+1cc to Government Pleader (Pondicherry) High Court, Madras
SR.No.69937

W.P.Nos.18849 & 18852 of 2019

SJ(CO)
GMY(22/08/2019)