

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Writ Appeal No.2726 of 2019
and C.M.P.No.17640 of 2019

Dr.E.Vengadasalabadhy ... Appellant

Versus

- 1.Principal Secretary
Ministry of Health & Family Welfare
Government of India
Nirman Bhavan, New Delhi-110 108.
- 2.Assistant Director General (Medical Education)
Directorate General of Health Services
Ministry of Health & Family Welfare
Government of India, Nirman Bhavan
New Delhi - 110 108.
- 3.Medical Counselling Committee
Directorate General of Health Services
Ministry of Health & Family Welfare
Government of India, Nirman Bhavan
New Delhi - 110 108.
- 4.Medical Council of India
Pocket 14, Sector 8
Dwaraka Phase I
New Delhi - 110 077.
- 5.Jawaharlal Nehru Institute of Medical Sciences
Porompat, Imphal East - 795 005. ... Respondents

Prayer: Writ Appeal under Clause 15 of Letters Patent Act against the judgment of this Court dated 27.06.2019 in W.P.No.14084 of 2019.

Prayer in W.P.No.14084 of 2019 : Writ Petition praying to directing the respondents to provide admission to the petitioner for the course Orthopaedic Surgery as allotted in the provisional allotment letter dated 11.04.2019

For Appellant : Ms.Abitha Banu
For Respondents :

O R D E R

(Order of the court was made by Dr.VINEET KOTHARI, J.)

Both the parties have filed the affidavits, in pursuance of this Court's directions and the same are quoted below.

"Affidavit filed by Dr.E.Vengadasalabathy (Appellant)

1. I am the appellant herein. I am well acquainted with the facts of the case and I am competent to swear to this affidavit.
2. I submit that during the hearing held on 28.08.2019 in the above appeal, the 2nd respondent offered to give me admission in M.S.Orthopedics in Jawaharlal Nehru Institute of Medical Sciences, Imphal (5th respondent) in the Academic Year 2020-21.
3. I submit that I consent and agree to join the course MS-Orthopedics in Jawaharlal Nehru Institute of Medical Sciences, Imphal during the Academic Year 2020-2021.
4. I pray that this Hon'ble Court may be pleased to take this affidavit on record and thus render justice."

"Affidavit filed on behalf of Respondents 1 to 3

1. That I am presently working on the post of Assistant Director General (ME) in Ministry of Health and Family Welfare. I am well versed with the facts of the case and filing this affidavit on behalf of the Respondents 1 and 3 also, as I am authorized to do so.
2. It is submitted that as per the scheme approved by the Hon'ble Supreme Court of India, the

Medical Counselling Committee of Directorate of Health Services in Ministry of Health and Family Welfare, Government of India, Respondent No.1 to 3 has been entrusted with the responsibility of conducting the online counselling for allotment of Post Graduate (MD/MS/Diploma and MDS) seats in participating Government Medical / Dental Colleges of the country to the eligible and qualified candidates under 50% All India Quota every year.

3. It is submitted that as per the approved scheme all the participating Government Medical and Dental Colleges of the country (except for colleges located in the State of Jammu and Kashmir) are required to contribute 50% of recognized/permitted Post Graduate (MD/MS/Diploma and MDS) seats by Medical Council of India / Ministry of Health & FW on all India basis.
4. It is submitted that for the current academic year 2019-20, the Principal / Dean / Director Registrar / Medical Superintendent of all participating Govt. Medical and Dental Colleges of the country were requested by answering respondent vide letter dated 04/01/2019 to contribute / make entry the vacancy position of 50% PG (Medical and Dental) seats on-line on Website of intramcc (www.intramcc.nic.in) for allotment / admission.
5. It is submitted that Respondent No.5, Jawaharlal Nehru Institute of Medical Sciences, Imphal intimated 02 PG seats in MS (Orthopedics) while uploading vacancy position for allotment to the candidates under 50% All India Quota 2019 for Round-1 of PG Counselling. The above two seats of MS (Orthopedics) were allotted to the candidates during First Round of Counselling by answering respondent. (Copy of vacancy position uploaded on intramcc's website.)
6. It is submitted that Respondent No.5, Jawaharlal Nehru Institute of Medical Sciences, Imphal vide letter dated 02/04/2019 had requested DGHS for contribution of 02 (two) more seats in MS

(Orthopedics) for JNIMS, Imphal in the second counselling of PG admission, 2019-20. Hence, 02 (two) more seats of MS (Orthopedics) as requested by JNIMS, Imphal vide their letter dated 02/04/2019 were uploaded for allotment of Second Round of Counselling under 50% All India Quota.

7. It is submitted that it is important and necessary to mention here that before start of second round of counselling, a NOTICE dated 04/04/2019 was uploaded on intramcc website for the participating medical / dental colleges to verify the correctness of seats matrix for Second Round of PG counselling and report to MCC of DGHS in case any discrepancy is found. In view of our NOTICE dated 04/04/2019, no response from Respondent No.5, JNIMS, Imphal was received regarding any discrepancy in the seat matrix.
8. It is submitted that 02 seats of MS (Orthopedics) were allotted to (i) Dr.Aswin B Nair, Roll No.1966079047, Rank No.6355 and (ii) Dr.E.Vengadasalabathy, Roll No.1966023368, Rank No.6617 (Petitioner). When the above candidates approached 5th respondent for admission, it was informed by the JNIMS, Imphal Vide letter dated 22/04/2019 that out of 04 seats, 02 seats have been given to AIQ candidates and remaining 02 seats have been given to State Quota candidates in First Round. Therefore, no seats in MS (Orthopedics) remain vacant.
9. It is submitted that in order to help the petitioner, Director, JNIMS, Imphal was requested by MCC vide letter dated 22.04.2019 to contribute 02 seats from their state quota seats into the All India Quota this year. Next year, they may contribute 02 less seats to All India Quota in compensation. But college did not accept the proposal of MCC.
10. It is submitted that on receiving the information from college, it was decided by the Medical Counselling Committee to help the candidates (after completion of Second Round All India Quota) by offering seats remaining vacant after Second Round of All India Quota to the petitioner Dr.E.Vengadasalabathy and the other candidate as

per their merit and choices filled by them. As per the rank and choices filled by Dr.E.Vengadasalabathy (Petitioner) only seats of MS (General Surgery) were lying vacant which were offered to him and his willingness was asked on 23/04/2019. (Copy of subject and colleges choices filled by the petitioner during Second Round of Counselling on MCC's website, wherein his second choice is for MS (General Surgery)).

Accordingly the MS General Surgery were offered to the petitioner/candidate in the following medical colleges:

- a) Shri M P Shah Medical College, Jamnagar (Choice No.213)
- b) Veer Surendra Sai Medical College, Burla (Choice No.214)
- c) Jawaharlal Nehru Institute of Medical Sciences (Choice No.216)
- d) Assam Medical College, Dibrugarh (Choice No.217)
- e) Jorhat Medical College and Hospital, Jorhat (Choice No.218)
- f) Fakruddin Ali Ahmed Medical College and Hospital, Barpeta, Assam (Choice No.220)

- 11.It is submitted that as per the consent given by Dr.Aswin B Nair, he was allotted MS (General Surgery) seat at Silchar Medical College, Assam as per his consent. The petitioner was offered MS (General Surgery) seat by MCC vide Email dated 23/04/2019 as per the choices filled by him during the second round of counselling on MCC's website. But, the petitioner Dr.E.Vengadasalabathy insisted on getting allotted the seat in MS (Orthopedics). Since no consent for accepting of MS (General Surgery) seat was received from him till 05.00 PM of 23/03/2019, the seats remaining after Round-2 were transferred / reverted back to respective States / Colleges as per the Schedule approved by Hon'ble Supreme Court of India.

- 12.It is submitted that in the present petition, the Hon'ble High Court of Judicature at Madras vide its order dated 12/06/2019 directed the Jawaharlal Nehru Institute of Medical Sciences, Imphal to keep one seat vacant. On receiving the order of the Honourable High Court of Madras dated 12/06/2019, the Director, JNIMS, Imphal (Respondent No.5) was requested by MCC of DGHS vide letter dated 20/06/2019 to comply with the directions of the Hon'ble Court dated 12/06/2019.
- 13.It is submitted that in response to letter dated 20/06/2019, JNIMS, Imphal vide letter dated 24/06/2019 requested MCC of DGHS to advise them the line of action to be taken up for compliance of the Hon'ble High Court of Madras Order passed on 12/06/2019 in W.P. (C) No.14084 of 2019. However, it was suggested in the letter by college that compliance of Hon'ble High Court order may be possible only with the increase of one seat in PG (Orthopedics) at JNIMS as a special case by the Ministry of Health & Family Welfare, Govt.of India to comply with Hon'ble Court order.
- 14.It is submitted that in response to College's letter dated 24/06/2019, an email has been sent by MCC/MoHFW to JNIMS, Imphal on 22/08/2019 directed them that the candidate of lower merit than the petitioner from State Quota holding MS (Orthopedics) seat has to vacate the seat for the petitioner.
- 15.Insofar as the matter of recent increase of seat by MCC/MoHFW as proposed by the JNIMS, Imphal is concerned, it comes under the jurisdiction of Medical Council of India and hence the Respondent No.5, JNIMS, Imphal will have to approach MCI at their own level. The MCC has no role to play in this regard. However, in the present circumstances if this Hon'ble Court directs, the appellant will be accommodated in the next academic session from the All India Quota in M.S. (Orthopedics) in JNIMS Imphal as was done in the case of Shivani Vs ESIC and Ors by the Honourable High Court of Delhi in W.P.(C) No.6657 of 2018."

2. The Writ Appeal is disposed of in the said terms and the respondents are directed to keep one seat of M.S.(Orthopedics) in Jawaharlal Nehru Institute of Medical Sciences reserved for the present appellant Dr.E.Vengadasalabathy in the next academic year 2020-2021 for his admission. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KST

To

- 1.Principal Secretary, Ministry of Health & Family Welfare
Government of India,Nirman Bhavan, New Delhi-110 108.
- 2.Assistant Director General (Medical Education)
Directorate General of Health Services, Ministry of Health & Family Welfare
Government of India, Nirman Bhavan, New Delhi - 110 108.
- 3.Medical Counselling Committee, Directorate General of Health Services
Ministry of Health & Family Welfare,Government of India,
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- 5.Jawaharlal Nehru Institute of Medical Sciences
Porompat, Imphal East - 795 005.

+1cc to Mr.VP.Raman, Advocate SR.No.75305

+1cc to Mr.CV.Ramachandramurthy, Advocate SR.No.74706

W.A.No.2726 of 2019

MG(CO)
GMY(26/09/2019)