

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.09.2019

Pronounced on: 16.09.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WRIT PETITION NO.25115 OF 2019
& W.M.P.No.24681 of 2019

J.K.Delwin Shirley,
D/o.Mrs.M.A.Lucia Jerina,
Residing at 19, Mahalingam Servai,
Lane, Old Kuyavar Palayam,
Madurai - 625 009. ... Petitioner

/versus/

1. The Secretary/Addl.DME,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R.High Road, Kilpauk,
Chennai - 600 010.
2. The State of Tamil Nadu,
Rep. by its Secretary,
Ministry of Health & Family Welfare,
Fort St.George, Chennai.
3. The Tamil Nadu Dr.M.G.R.Medical University,
Rep. by its Registrar,
No.69, Anna Salai, Chennai - 600 032.
4. Medical Council of India,
Rep. by its Secretary,
Pocket - 14, Sector - 8, Dwarka Phase - I,
New Delhi - 110 077.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the 1st respondent to allow the petitioner to upgrade her seat from BDS to MBBS in any of the medical college as per my rank in the state merit list and pass orders.

For Petitioner : Mr.P.V.Balasubramanian,
for Dakshayani Reddy.

For R1 : Mr.Abdul Saleem, Standing Counsel

For R2 : Mr.V.Kathirvelu,
Special Government Pleader

For R3 :Mr.D.Ravichander, Standing Counsel

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The case of the petitioner is that, she belongs to Christian Minority Most Backward community. She completed her Higher Secondary Education at St.Joseph's Matriculation Higher Secondary School, Madurai, in the year 2018. Secured 1051 marks out of 1200. She prepared for NEET examination for one year and got 431/720 marks in the NEET (UG) 2019 exams conducted on 05.06.2019. Her All India Rank is 99418. With desire to get M.B.B.S admission in Tamil Nadu, she submitted the application Form with necessary documents to the 1st respondent/ Selection Committee. In the State merit list released by the Government on 06.07.2019, she stood at 3989 rank among overall General Category and at 763 among Most Backward Category. She received call letter for the first counselling held on 11.07.2019. Among the 5 categories in which the Colleges were divided, when her name called, there was vacancies only in BDS colleges. No M.B.B.S seat in the Government Colleges was shown vacant. So, she selected BDS course.

3. She participated in the second round of counselling held on 01.08.2019 for MBC candidates. On seeing the seat matrix in the display board showing 16 seats vacant in the I.R.T Medical College Peundurai, Erode District, she asked for up-gradation of her seat from B.D.S to M.B.B.S in I.R.T Medical College. The Selection committee declined to consider her request. They informed her, she is ineligible to apply for seat available in Category B College in the second round of counselling, since she did not take M.B.B.S seat during the first round of counselling, when M.B.B.S seats were available in Category B.

4. According to the petitioner, during the first round of counselling, she opted for B.D.S course since at that time, there was no M.B.B.S Seats in the Government Colleges. The Medical Counsel Officer, during the first round of counselling did not inform her that there are Government Quota seats available in the Category B colleges. Neither she was informed that, if she fail to select any M.B.B.S seat in the category B in the first round of counselling, she will not be eligible to select M.B.B.S seat in Category B during subsequent rounds of counselling. The petitioner contention is that, candidates

scored around 429 marks in NEET have got MBBS seat, whereas, she though secured 431 marks is deprived of M.B.B.S seat due to the mistake of the selection committee and its failure to display the actual number of seats available, when her turn to exercise the option to select Course and College came.

5. Therefore, the petitioner prays for Writ of Mandamus to direct the first respondent to allow her to upgrade her B.D.S seat to M.B.B.S in any of the medical college as per her rank in the state merit list.

6. In the counter affidavit, filed on behalf of the 1st and 2nd respondents, it is stated that, if a candidate opts out from exercising the choice, when seats are available in a particular category, the said candidate cannot choose seat in the said category during the subsequent phases of counselling. In this case, the petitioner when participated in the first counselling seats in category B and C were available but she opted out and joined B.D.S. Therefore, during the subsequent counselling held on 01.08.2019, she was eligible only for the vacancies in Category A. The cut off rank for MBC candidate for Category 'A' is 714. Whereas, the petitioner stands at 763. Hence, she is not qualified to get up-gradation under Category 'A'. I.R.T Medical College at Erode, falls under Category 'B'. The petitioner cannot be accommodated in this College since, the petitioner opted out to choose this college when vacancy was available in this college, during the first round of counselling.

7. The learned counsel for the petitioner would submit that, the petition hailing from remote place not properly guided during the counselling. Hence, when she found that there was no MBBS seat in the Government Medical College, she opted for B.D.S in the Government College with the belief that she can upgrade during the subsequent phase of counselling.

8. The prospectus issued by the 1st respondent reads as below:-

Clause 12

Categories of Seats:-

Category A - Seats in Government Medical Colleges.

Category B -

B1. Rajah Muthiah Medical College, Annamalai University, Chidambaram.

B2. I.R.T Medical College, Perundurai, Erode.

B3. ESIC Medical College and PGIMSR, K.K.Nagar, Chennai.

Category C - Government Quota Seats in Self
Financing Medical Colleges.

Category D - Seats in Government Dental College.

Category E - Government Quota seats in Self
Financing Dental Colleges.

(i). When seats are available in Category A, if he/she opts out for category A and opting seats in Category B (B1, B2, B3) or Category C, then he/she cannot claim the seat in Category A in subsequent phases of counselling.

(ii). When seats are available in Category A and B, if the candidate opts out for Category A and B and opting seat in Category C, he/she cannot claim the seats in Category A and Category B if seats are available in the subsequent phases of counselling.

(iii). When seats are available in Category D, if he/she opts for category E, he/she cannot claim the seats in Category D in the subsequent phases of counselling.

(iv). When seats are available in Category E, if he/she opts out, he/she cannot claim the seats in Category E in the subsequent phases of counselling.

(v). If a candidate opt out, he/she must mark as 'NO' in the column provided in the counselling form.

(vi). If not marked in the counselling form, it will also be considered as 'NO'.

(vii). If seats are not available in a particular category/categories at the time of counselling and candidates are willing to be wait listed in that category/categories of seats they must mark 'WL' in the column(s) provided in the counselling form.

(viii). If not marked in the counselling form, they will not be considered as wait listed in that category.

9. The learned counsel for the first respondent/Selection Committee has produced the photocopy of the counselling form submitted by the petitioner during the first

round of counselling. In the said form, the candidate has stated that seats in Categories A, B and C as Wait List (WL) and she has chosen the B.D.S Course in the Tamil Nadu Government Dental College. In the space meant For Office Use, it is recorded that the candidate has 'opted out for Category B and C'. The Clause 12 of the prospectus extracted above indicates that only when seats are not available in a particular Category and if the candidate desire to wait for the future counselling, then she can mark waitlisted (WL). If seats available, but opted out, she loose the chance of getting seat during the subsequent phases of counselling in the category which she opted out earlier. Thus, the petitioner has lost her opportunity to get upgrade from B.D.S Course to M.B.B.S course.

10. Though the request of the petitioner in this Writ Petition is in violation of the terms of prospectus, since the petitioner has stated some plausible reasons for not choosing Category 'B' College though seats were available and opting out, this Court to explore any possibility of considering the case of the petitioner, directed the respondents to find out, is there any seat available under the Government Quota for M.B.C candidate left unfilled in I.R.T Medical College. The respondents, after verification, informed this Court that out of 150 seats sanctioned to the said College, all seats are filled and no seat under M.B.C Quota available.

11. In the said facts and circumstances, Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

bsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary/Addl.DME,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R.High Road, Kilpauk,
Chennai - 600 010.

2. The Secretary,
The State of Tamil Nadu,
Ministry of Health & Family Welfare,
Fort St.George, Chennai.

3. The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Chennai - 600 032.

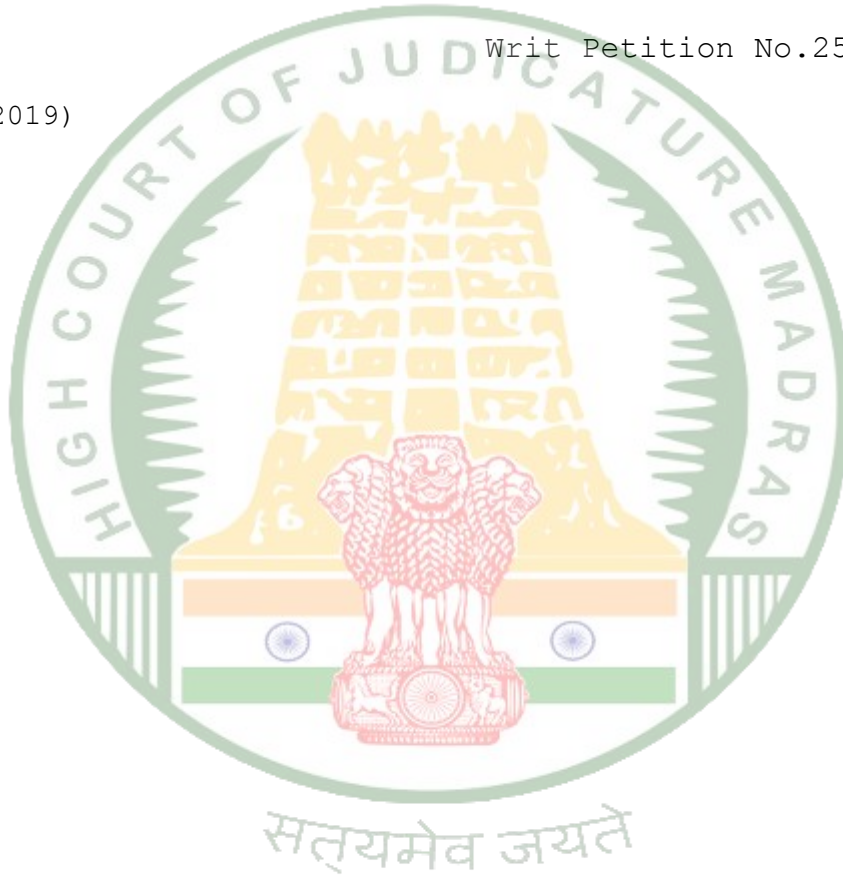
4. The Secretary,
Medical Council of India,
Pocket - 14, Sector - 8, Dwarka Phase - I,
New Delhi - 110 077.

+lcc to Mr.D.Ravichander, Advocate, SR.No.79478

+lcc to Mr.BFS LEGAL, Advocates, SR.No.79744

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Kak(15/10/2019)



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