



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.09.2019	Pronounced on: 24.09.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition Nos.26166, 26584, 26720, 26962 of 2019
& W.M.P.Nos.25529, 25959, 26106, 26354 of 2019

A.Nithish Babu (Minor),
Rep. by his father and natural guardian,
B.Ayyalraj, S/o.A.Babu,
Old No.235, New No.21, NGO New Colony,
Perumalpuram Post,
Thirunelveli - 627 007. ... Petitioner
in W.P.No.26166 of 2019

Prajithaa Sree B.N,
D/o.Nageswara Rao. B,
No.1/133, Perumal Kovil Street,
Sainavaram Amoor Post, Ponneri Taluk,
Thiruvallur. ... Petitioner
in W.P.No.26584 of 2019

G.Hemprasath,
S/o.K.Govindaraj,
No.9, Sakthimariamman Nagar,
Chinnachetty Street, Woraiyur,
Trichy - 620 003. ... Petitioner
in W.P.No.26720 of 2019

M.Pavithra,
D/o.M.Murali,
No.382, Perumal Kovil Street,
Mettu Kandigai, Athigathur Village,
Tiruvallur Taluk and District. ... Petitioner
in W.P.No.26962 of 2019

/versus/

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2. The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk,
Chennai - 600 010.
3. The Secretary,
Selection committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
4. The Principal,
Sri Muthukumaran Medical College &
Research Institute (Linguistic Minority Institute)
Chikkarayapuram, Kundrathur Post,
Near Mangadu, Chennai - 600 069.
5. The Medical Council of India,
Rep. by its Director,
Pocket 8, Dwarka Phase - I,
New Delhi - 110 007. ... Respondents
in all cases

Prayer in W.P.Nos.26166 & 26720 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration, declaring the entire selection process adopted by the respondents to fill up the seats under the category called as "Candidates who are Native of Tamil Nadu having Malayalam/Telugu as Mother Tongue for admission to M.B.B.S course 2019-2020 session under Management Quota in the Minority Status College" particularly in the 4th respondent college as null and void, illegal and consequently direct the respondents to redo the exercise of filling up the seats under the category called as "Candidates who are native of Tamil Nadu Having Malayam/Telugu as Mother Tongue for admission to M.B.B.S course 2019-2020 session under Management Quota in Minority Status College, within the time frame.

Prayer in W.P.Nos.26584 & 26962 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration, declaring the M.B.B.S counselling held on 27.08.2019 for the academic year 201-2020 as unconstitutional in so far it relates to filling up of the seats meant for the candidates those who are claiming linguistic minority seats in self financing Medical College under Management quota and further direct the 3rd respondent to redo the counselling for Linguistic Minority students so as to enable the Petitioner to join in M.B.B.S course in the fourth respondent college and pass orders.

W.P.No.26166 of 2019

For Petitioner : Mr.D.Subbaraj

W.P.Nos.26584 & 26962 of 2019

For Petitioner : Mr.R.Sreedhar

W.P.No.26720 of 2019

For Petitioner : Mr.M.Arun Kumar

W.P.Nos.26166, 26584, 26962 of 2019

For R1 : Mr.N.Inbanathan
Additional Government Pleader

W.P.No.26720 of 2019

For R1 : Mr.J.Purushothaman,
Government Advocate

For R2 : Mr.V.Kathirvel,
in all cases Special Government Pleader

For R3 : Mr.Abdul Saleem,
in all cases Standing Counsel

For R4 : Mr.G.Masilamani,
in all cases Senior Counsel,
for Mr.M.Vishnu Venkatesh

For R5 : Mr.T.Meikandan
in all cases

C O M M O N O R D E R

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

2. The common grievance of these petitioners is that, they all belongs to Telugu Linguistic Minority groups. Sri Muthukumaran Medical College & Research Institute is run by Telugu Management. The petitioners aspired to get seat in the counselling held on 27.08.2019 to fill seats in the Sri Muthukumaran Medical College & Research Institute, Chennai. Though they are all eligible to get seat under the minority quota, they were not considered during the counselling. The Selection Committee/3rd respondent, instead of allotting seats to the candidates hailing from Linguistic minority, had filled the

seats in the Sri Muthukumaran Medical College & Hospital Research Institute, with general candidates, which is contrary to the dictum of Hon'ble Supreme Court laid in DAR-US-SLAM Educational Trust case, hence the counselling held on 27.08.2019 has to be declared as unconstitutional and seats should be allotted only to the Linguistic Minority through fresh counselling.

3. The Additional Director of Medical Education/Secretary to the Selection committee has filed counter affidavit, stating the circumstances under which counselling for the said Sri Muthukumaran Medical Research Institute was conducted. In the counter, it is specifically pleaded that though the institute is run by Linguistic Minority management, they did not seek any specific quota for minorities. Nor the Writ Petitioners were called for counselling on 27.08.2019.

4. In view of the order dated 19.08.2019 passed by this Court in W.P.No.23726 of 2019, affiliation was given to the 4th respondent College provisionally. The Management vide letter dated 26.08.2019 requested the Selection Committee/3rd respondent, to conduct counselling for the sanctioned strength of 150 seats. Proposed the sharing of the seats shall be 75, 53 & 22 (Government Quota, Management Quota and NRI quota). By the time, the Institute got order from the High Court on 19.08.2019 in the writ petition W.P.No.23726 of 2019, two rounds of counselling was already completed, so, 22 seats under NRI Quota were converted into Management Quota. The College never requested quota for minority. As per the request of the Management, the counselling was conducted and seats allotted to the candidates as per merits and same also intimated to the Medical Council of India.

5. On 27.08.2019, at 3.00 p.m, the tentative counselling was conducted for filling up of the 150 seats under Government and Management quota through counselling seats were filled on merits. As far as minority seats and NRI quota seats, the counselling was over by 12.08.2019 and the last date of joining for these categories was 18.08.2019. For the vacancies, if any, arise during the re-allotment slotted at 2.00 pm on that day, the selection committee provided a slot at 3.30 p.m for re-allotment/allotment of seats to Native of Tamil Nadu having Telugu/Malayalam as mother tongue. The petitioners misconstrued that the seats in Sri Muthukumaran Medical College & Hospital Research Institute are to be filled from minority candidates without knowing that the management has not retained any seat for minority, some of these petitioners came to counselling centre without any intimation or call letter on 27.08.2019.

Background of the case:

6. Sri Muthukumaran Medical College & Hospital, Chennai - 600 069 an existing Medical College, lost its affiliation after the academic year 2014. Later, the Medical Council of India, revived the recognition for the academic year 2019-20 with intake of 150 students for the MBBS course. However, the Selection committee constituted by the state Government could not include the College in the seat matrix since, the college was issued with demolition notice of its buildings for unauthorised constructions and the University with held affiliation. In the said circumstances, the Institute filed W.P 23726 of 2019, seeking the following relief:-

"To issue Writ of Mandamus, directing the 1st respondent to perform his statutory duties within such time as Hon'ble High Court may prescribe and pass such further and other orders as this Hon'ble High Court deem fit and proper by including the Petitioner college in the seat matrix for the academic year 2019-2020 so as to enable admission of students before 31th August 2019."

7. On considering the facts and circumstances, this Court, on 19.08.2019 passed the following order:-

"In this case, the facts remains that the Institute was given affiliation till 2014 and due to other reasons, affiliation was not extended. For the current academic year, the affiliation was granted and the Medical Council of India has permitted the Institute to admit 150 students. It is the demolition notice issued by CMDA on 29.04.2019, which has intervene the process of admission. Presently, the request of the petitioner for regularisation of the building is pending before the CMDA. Anticipating a negative response from the CMDA, the University need not prevent the Institute admitting the students.

Hence, the Writ Petition is disposed of with a direction of the 1st respondent to grant affiliation to the petitioner Institute after

getting undertaking from them that within a period of three months from today, they will rectify the defects pointed out by the Inspection team."

8. Pursuant to the order, to allot candidates to the said College, the Selection Committee has informed through its web-site that the tentative counselling schedule for admission to M.B.B.S course 2019-2020 session will be conducted on 27.08.2019. The said notification reads as below:-

SELECTION COMMITTEE

DIRECTORATE OF MEDICAL EDUCATION, CHENNAI - 10.

TENTATIVE COUNSELLING SCHEDULE ONLY FOR ADMISSION TO
MBBS COURSE 2019-2020 SESSION UNDER MANAGEMENT QUOTA IN
SRI MUTHUKUMARAN MEDICAL COLLEGE & RESEARCH INSTITUTE, CHENNAI

Date	Time	Details	Rank		NEET Mark	
			From	To	From	To
27.08.2019	02.00 P.M	RE- ALLOTMENT	1	6627	685	371
	03.00 P.M	ALLOTMENT	6628	11397	371	301
	03.30 P.M	RE- ALLOTMENT/ ALLOTMENT	** From SL.No.545 to 1392 Candidates who are native of Tamil Nadu Having Malayalam/Telugu as Mother Tongue for Admission to MBBS Course 2019-2020 Session under Management Quota in Minority Status Colleges (Please refer Website for List of Minority candidates)			

VENUE: GOVT. MULTI-SUPER SPECIALITY HOSPITAL,
OMANDURAR GOVT.ESTATE, CHENNAI - 600 002.

** 03.30 P.M Counselling Session will be held,
if vacancies arise due to movement from Minority from
Minority Self Financing Colleges.

Dr.G.SELVARAJAN MS., DLO

ADDITIONAL DIRECTOR OF MEDICAL
EDUCATION/SECRETARY

9. As pointed out, though Medical Council of India, granted permission to this Institute to admit 150 students, later it was found that the some of the Institute buildings were not constructed after obtaining permission from the Regulatory Authority. Hence, the CMDA has issued notice to demolish. In view of that notice, the University withheld the affiliation. At that juncture, the Court interfered and directed to grant provisional affiliation and to allot seats during the ensuing counselling. Pursuant to this order, dated 19.08.2019, the Health Secretary to the Government of Tamil Nadu held meeting with the Management and the Tamil Nadu Dr.M.G.R Medical University representatives on 22.08.2019. In compliance of the Hon'ble High Court direction, the University has granted provisional affiliation. The Management has requested to fill the seats through counselling. By that time, two rounds of counselling already completed. Hence tentative counselling was held on 27.08.2019. The 3rd respondent/Selection Committee, issued notification mentioned in paragraph No.7 above and allotted students as per merits. The Management has not sought for any seat sharing with the government for minority candidates. In so far as minority category students, in the counselling which was held on 27.08.2019 at 3.30 p.m was slotted for anticipatory vacancies if arises due to movement from minority self financing College. When there is no such movement, then the necessity to allot students in any of the minority college including the 4th respondent College will not arise.

10. The reading of foot note given in the notification issued by the 3rd respondent/Selection Committee, the above position is made clear. The tentative counselling held on 27.08.2019 was not, in fact, for filling the minority seats. It was only an ancillary and incidental exercise in anticipation of any vacancy due to upward movement of seats already allotted/re-allotted.

11. The petitioners are also under the wrong impression that the seats in the minority colleges are to be filled only with the respective minority students. In DAR-US-SLAM Educational Trust case, the Hon'ble Supreme Court has clearly mentioned that the Minority Quota seats, if any, (emphasis added) in Institutions run by Minorities will be filled up by Minority students only. When the Institution has not reserved any seat for Minority, then the question of allotting seat to Minority students does not arise.

12. The said judgement has to be read as a whole and not disjointedly. The Government of Tamil Nadu has prepared separate list for Minorities and has also held counselling for them. Those Colleges under the Minority categories shared their seats for their minority category, were allotted seats as per the sharing. In P.A Inamdar case Vs. P.A.Inamdar Vs. State of Maharashtra reported in (2005) 6 SCC 537, the Hon'ble Supreme Court has clearly held that, reserving seat for minorities, is the prerogative of the respective minority Institutes. State cannot compel them to give seats. If the minority Institute come forward to share the seats with the state, it's their wish. As far as, the 4th respondent College, it has not reserved any seat for minority. It has shared all its seats to Government. Being consensual arrangement between the Institute and the state, the petitioners have no say. The Hon'ble Supreme Court in P.A.Inamdar Vs. State of Maharashtra reported in (2005) 6 SCC 537 has observed.

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. (emphasis added)

13. Therefore, the petitioners has no right to compel the respective Institute or the State to fill the seat in the manner they like, contrary to the Regulation and direction of the Hon'ble Supreme Court. Hence, the Writ Petitions are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

bsm
To,

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Health & Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
3. The Section committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
4. The Director,
The Medical Council of India,
Pocket 8, Dwarka,
New Delhi - 110 007.

+1cc to M/s.P.Subbaraj, Advocate Sr.81891
+1cc to M/s.Arunkumar, Advocate Sr.82232
+1cc to M/s.R.Sreedhar, Advocate Sr.82392
+1cc to M/s.T.Vishnu, Advocate Sr.81892

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srg 31/12/2019

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