



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.09.2019

Pronounced on: 24.09.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.26968 of 2019
& W.M.P.No.26365 of 2019

K.Manikandan,
S/o.K.Karunanidhi,
Plot No.6, A Sector Extension 4th Street,
V.G.Rao Nagar,
Katpadi - 632 007,
Vellore District. Petitioner

/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,
Kilpauk,
Chennai - 600 010.
3. The Section committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
4. The Medical Council of India,
Rep. by its Director,
Pocket 8, Dwarka,
New Delhi - 110 007.

5. The Dean,
Sri Muthukumaran Medical College & Hospital,
Chikkarayapuram, Kundrathur Post,
Near Mangadu, Chennai - 600 069. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the 5st respondent to grant admission to M.B.B.S course for the academic session 2019-2020 based on the allotment order issued by the 3rd respondent Selection Committee, dated 30.08.2019 forthwith, and pass orders.

For Petitioner : Mr.R.N.Amarnath,
for Mr.G.Sankaran

For R1 : Mr.J.Purushothaman,
Government Advocate

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

For R3 : Mr.Abdul Saleem, Standing Counsel

For R4 : Mr.T.Meikandan

For R5 : Mr.G.Masilamani, Senior Counsel,
for Mr.M.Vishnu Venkatesh

O R D E R

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

2. 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 University with held affiliation and consequentially 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. 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."

3. 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."

4. Pursuant to the order, to allot candidates to the said College, the Selection Committee has informed through its web-site that the tentative counselling 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

5. The petitioner K.Manikandan (W.P.No.26968/2019) who scored 368 in the NEET exam participated in the counselling held on 27.08.2019. He was allotted seat in the 5th respondent College. Since the petitioner could not produce the original certificates on that day, he was granted two days time to produce the original certificates. On 29.08.2019, he produced the original certificates before the selection committee. On that day, he could not pay the allotment fees since, the time to receive cash was over. So, he paid Rs.1,00,000/- on 30.08.2019 and got the allotment order from the selection committee.

6. According to the petitioner, he went to the 5th respondent Institute on 30.08.2019 to report joining. In spite of allotment order issued by the Selection Committee, Directorate of Medical Education, Chennai and demand draft for Rs.3,50,000/- drawn in favour of the 4th respondent/Medical Council of India, the 5th respondent did not admit him in the College. The 5th respondent, made him to wait till evening and send him away without admitting him. Hence, the Writ Petition is filed seeking Mandamus directing the 5th respondent to grant admission to M.B.B.S course for the academic session 2019-2020 based on allotment order dated 30.08.2019, issued by the 3rd respondent.

7. In the counter affidavit filed by the 3rd respondent, on his behalf and on behalf of 1st respondent it is stated that, applications for admission to MBBS/BDS course 2019-2020 session for Management Quota seats in Self Financing Medical/Dental Colleges were invited from eligible candidates based on the prospectus/policy vide G.O.(D).No.948, Health and Family Welfare (MCA1) Department dated 06.06.2019. The petitioner is one of the applicant for admission under Management Quota seats in self financing Medical College. As per the prospectus, the counselling for MBBS course in all Government and Self-Financing Medical Colleges commenced on 08.07.2019 and completed on 12.08.2019. In view of the judgment in W.P.No.23726 of 2019

dated 19.08.2019, tentative counselling was conducted on 27.08.2019 for allotment of seats under Management Quota in Sri Muthukumaran Medical College & Research Institute, Chennai for candidates holding state rank between 6628 and 11397 (NEET Mark holders from 371 to 301). The petitioner Manikandan (state rank 6764, NEET score 368) participated in the counselling on 27.08.2019 and was allotted MBBS seat. During the counselling the petitioner had only attested copies of the certificates. He produced the original only on 29.08.2019. The allotment order was issued on 30.08.2019. The 5th respondent has meanwhile filled the seat on their own without the knowledge of the Selection Committee/3rd respondent.

8. It is contented by the 3rd respondent that the allotment of seat to the petitioner in the 5th respondent college has also been intimated to the Medical Council of India (4th respondent). The list of candidates allotted to the 5th respondent College made public through website on 27.08.2019. As per the direction of the Supreme Court in Dar-us-Slam Education Trust and others, after the completion of counselling, if still there are any stray vacancies, the same shall be filled up by the Medical Colleges only from among the list of students forwarded by the Committee in order of merit, equalling to ten times the number of vacant seats. The 5th respondent College in violation of the Supreme Court direction has denied seat to the petitioner and had filed the seat with the candidate of its own choice. Any admission made by the 5th respondent contrary to the Supreme Court direction is illegal. Non est in the eye of law.

9. For the said reason, the learned counsel for the 3rd respondent/Selection Committee states that, the petitioner Manikandan should have been admitted by the 5th respondent College. For no reason he has been denied admission. The action of the 5th respondent is highly irregular, contrary to the rules and regulations.

10. The 5th respondent College has filed counter affidavit through its Dean. The reasoning for not admitting the petitioner Manikandan and the further course of action taken by the Management is narrated in para 4 to 14 of the Counter affidavit. For better appreciation of the facts the averments are extracted below :

"4. I respectfully submit that the averments contained in the Paras are incorrect. I submit that the order in the Writ Petition No.23726 of 2019 the Hon'ble High Court of Madras allowed the Writ Petition and directed

the 3rd respondent to conduct a special counselling for admission of students of MBBS course for 2019-2020 at Sri Muthukumaran Medical College Hospital and Research Institute, Mangadu, Chennai - 600 069. As per the orders of this Hon'ble High Court the 3rd respondent selected 150 students as per the merit list for admission of the 5th respondent college and it is respectfully submitted that the allotted students for admission were directed to report at Sri Muthukumaran Medical College before 5.00 P.M, on 29th August 2019.

5. It is respectfully submitted that after the counselling 150 candidates were allotted to Sri Muthukumaran Medical College and out of which 141 candidates reported to the Sri Muthukumaran Medical College before the due date and time. Consequently, 9 stray vacancies were filled by the College, admitting candidates from the NEET merit list by conducting counselling at 9.00 A.M on 30th August 2019 after duly notifying in the 5th respondent College website.

6. It is respectfully submitting that the petitioner is one of the candidates selected for admission out of 150 candidates allotted to Sri Muthukumaran Medical College. It is respectfully stated that the petitioner did not report to the 5th respondent college on prescribed time and date which is fixed by the 3rd respondent.

7. It respectfully stated that the stray vacancies arising out of non-joining of candidates allotted by the 3rd respondent are to be filled by the 5th respondent college duly following the procedure as per regulations before 31st August 2019.

8. It is respectfully submit that a notification in the College Website was issued calling for eligible and qualified candidates to appear for counselling at 9.00 A.M. on 30.08.2019 for admission to those stray vacancies. During the counselling all those stray vacancies were filled by the College by

admitting qualified and eligible candidates and the list was also notified in the College website on 30.08.2019.

9. It is respectfully stated that the petitioner appeared before the Dean of Sri Muthukumaran Medical College on the afternoon of 30.09.2019, duly producing the original admission card in which the due date for joining viz., 29.08.2019 has been rounded off and noted as 30.08.2019 by the 3rd respondent. In this regard the 3rd respondent herein did not inform the change of date to the 5th respondent college to treat the petitioner as special candidate.

10. It is respectfully submitting that the 3rd respondent was issued list of 150 candidates to join the 5th respondent on or before 29.08.2019 at 5.00 P.M. It is respectfully submitted that out of 150 candidates, 141 students reported to the 5th respondent college for admission on 29.08.2019 at 5.00 P.M.

11. It is submitted that the petitioner has not reported to the 5th respondent college on the said dated on 29.08.2019 for admission and the petitioner reported on 30.08.2019 afternoon and stated that he has been changed the admission dated through the 3rd respondent as 30.08.2019 afternoon and stated that he has been changed the admission date through the 3rd respondent as 30.08.2019. Meanwhile, the admission of stray vacancies filled by the 5th respondent college in the morning itself as per the merit list.

12. It is submitted that the averments made in para 6 of the affidavit are denied, that the petitioner obtained a Demand Draft on 30.08.2019 and produced the same on the same day. It is again reported by the petitioner that he reached the college at 10.00 A.M., which is not reasonably possible for any individual, after taking a demand draft in the bank which normally starts functioning after 9/10 a.m. After handling over in the selection committee at Kilpauk and reaching Mangadu by 10

a.m, which is away approximately by 20 Kms, is not possible in the normal course.

13. It is respectfully stated that the 3rd respondent had not taken any effort to inform the Dean of the Medical College about the fact that one candidate has been directed to join on 30th August 2019 under special circumstances.

14. It is respectfully submitted that the stray vacancy consequent on not joining of petitioner was filled up by the 5th respondent college duly following the regulations and therefore it is respectfully submitted that there is no wilful refusal of admission by the 5th respondent College authorities to the Petitioner.

11. The Government of Tamil Nadu through the Selection Committee has conducted the admission for M.B.B.S courses in the State. As per the time schedule given by the Graduate Medical Education Regulation, 1997 and the guidelines of the Hon'ble Supreme Court in this connection, for the academic year 2018-2019 onwards, the last date of joining shall be 31st August. After completion of two rounds of counselling as well as the mop-up counselling, for the remaining stray vacancies the Counselling Authorities has to forward list of students in order of merit equalling to ten times the number of vacant seats only among those candidates in that list, the Management has to allot seat. As per the prospectus issued by the Selection Committee for the year 2019-2020 session, the 1st phase of counselling commenced on 16.07.2019 and the last date as closure of admission fixed as 18.08.2019.

12. As far as the 5th respondent Institute is concerned as pointed out earlier, the College was permitted by virtue of the Hon'ble High Court to admit students for the current academic year 2019-2020 session, vide order dated 19.08.2019. In view of the Hon'ble High Court direction, the selection committee has conducted counselling on 27.08.2019, as per the slot which is mentioned in paragraph No.4 above. On that day, the Selection committee has also invited candidates belonging to minority community for counselling who has secured between 392 and 549 in the minority list. As far as candidates sought for allotment in the 5th respondent/Institute, the 2nd slots commencing at 3.00 pm was fixed. Candidates who has secured in between 371 to 301 in the NEET examination were invited.

13. The petitioner herein who has secured 368 marks in the NEET examination had participated and also got letter of allotment. This has been intimated to the College on the same day. The issuance of allotment letter has got delayed, for the reason stated in the affidavit of the petitioner and from the counter affidavit of the 3rd respondent.

14. The petitioner had joined some other course and his original certificates were not with him on the date of counselling. The allotment order initially issued to him to join the institute on or before 29.08.2019. When he was called for counselling on 27.08.2019, he was not in a position to submit his original certificates. Time was granted by the Selection committee to produce the original documents. The petitioner only on 29.08.2019 was able to produce the original document, but on that day he has not paid the fees. Next day, he has paid the requisite fees. Got the date of joining changed to 30.08.2019 manually in the allotment letter and had reported before the 5th respondent on the same day.

15. The 5th respondent representatives were aware of the allotment of seat to the petitioner. Even assuming the petitioner failed to report before them within the time granted for reporting, the 5th respondent are not permitted to fill up the vacant seats on their own. First of all till the end of the day (30.08.2019) they should have waited for the candidate. Thereafter, if the candidate failed to turn up, the 5th respondent must have informed the Selection Committee about the vacancy, for the committee to forward list of eligible candidates in the ratio of 1:10. The Management of the Institute cannot admit candidate of their own choice in view of mandate issued by the Supreme Court. The Hon'ble Supreme Court in DAR-US-SLAM Educational Trust and others Vs. Medical Council of India in W.P.(C). No.267/2017 vide judgment dated 09.05.2017 has amply clarified the procedure to be followed in case of allotment of seats and admission of candidates as below:-

6. The students who secure admission in MBBS course pursuant to the Common Counselling conducted by the State Government, at the time of common counselling itself, should be made to deposit with the admission/counselling committee the Demand Draft towards the fees payable to the institution College/ University. The admission/counselling committee shall forthwith forward the Demand Draft to the respective Institution/Colleges/University. The necessity for including the above-mentioned requirement has arisen as it has been time and again noticed that when students report to the college after the counselling they are refused admission by the colleges on some pretext or

the other and it is shown by the college as if the student never reported to the college for admission. If the Demand Draft is deposited by the admission/counselling committee then there would be no scope for colleges to refuse admission to any student.

7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counselling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equalling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.

16. In this case the candidate Manikandan has paid the fees in time. His name has been forwarded to the Institute in time. Therefore, refusal to admit him is against the Supreme Court direction. Further, the reasoning given by the 5th respondent that they have allotted the seat to some other candidate is untenable, illegal and in violation of the Supreme Court.

17. If the Institute has admitted any candidate in violation of paragraph No.7 of the Hon'ble Supreme Court direction in DAR-US-Slam case cited above, it is illegal, improper and non-est. Those candidates have no right to pursue the course since they were not allotted seat through counselling held by the 3rd respondent/Selection Committee. Therefore, in the result, the 5th respondent is hereby directed to admit the petitioner in their Institute to peruse his M.B.B.S course for the academic year 2019-2020.

18. Accordingly, the Writ Petition is allowed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

To,

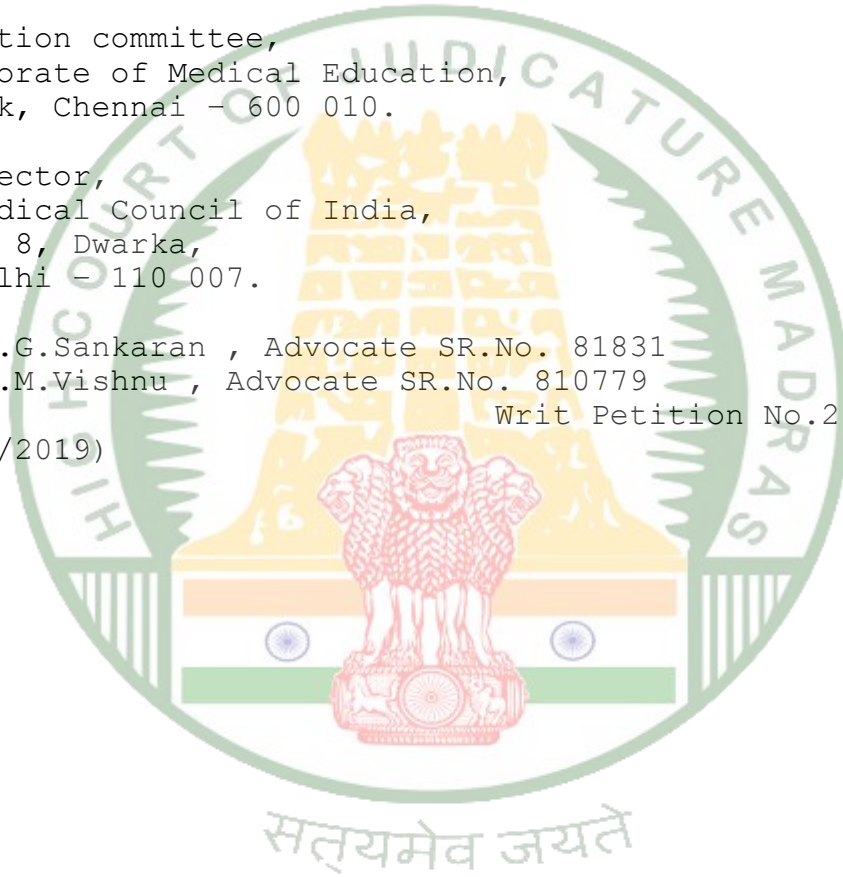
1. The Principal Secretary to Government,
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Pocket 8, Dwarka,
New Delhi - 110 007.

+1cc to Mr.G.Sankaran , Advocate SR.No. 81831

+1cc to Mr.M.Vishnu , Advocate SR.No. 810779

Writ Petition No.26968 of 2019

A.SK(24/09/2019)



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