



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 No.26969 of 2019
& W.M.P.No.26367 of 2019

V.C.Praveen,
S/o.A.Chandrasekaran,
No.134/G, Gandhi Salai,
Near Neel Suppliers,
Chengalpet - 603 002.
Kancheepuram 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, since the college was issued with demolition notice of its buildings for unauthorised constructions, affiliation was withheld by the University and as a consequence, the Selection committee constituted by the State Government could not include the college in the seat matrix. 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 for the academic year 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

WEB COPY

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 V.C.Praveen who secured 326 marks out of 720 in the NEET exam participated in the counselling conducted by the 3rd respondent/Selection Committee and was allotted seat in Raja's Dental College for B.D.S course. Subsequently, he got re-allotment of seat in C.S.I College of Dental Science and Research, Madurai. While so, special counselling for M.B.B.S admission in the 5th respondent College was held on 27.08.2019 and he participated in the counselling. On that day, the candidates secured same mark of that of the petitioner were allotted seats, but the petitioner being the next candidate in the order of merit was not allotted seat on that day. He later came to know that some of the candidates who got allotment did not report for joining. He was intimated by the Selection Committee over phone on 29.08.2019 evening to appear before the Committee on 30.08.2019. He was issued

allotment order on payment of fees on 30.08.2019 and was asked to report before the 5th respondent College on the same day.

6. According to the petitioner, he went to the 5th respondent Institute on 30.08.2019 at 11.00 a.m and produced the allotment order to report joining. In spite of allotment order issued by the Selection Committee and the Officials of the Selection Committee spoke to the 5th respondent, he was made to wait till evening and send away without giving admission. He reported this to the 3rd respondent/Selection Committee, who informed the petitioner that the allotment of seat to him in the 5th respondent College is confirmed and also intimated to the Medical Council of India, so he cannot be denied seat. Further, the petitioner contents that, based on the allotment of M.B.B.S seat in the 5th respondent College, his allotment to B.D.S has been cancelled and now he has no other alternate course to pursue. Hence, Writ Petition is filed seeking Mandamus directing the 5th respondent to grant admission based on allotment order dated 30.08.2019 issued by the 3rd respondent.

7. In the counter affidavit filed by the 3rd respondent/Selection Committee, on his behalf and on behalf of the 1st respondent, it is stated that, applications for admission to M.B.B.S/B.D.S course for the academic year 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 (MCA 1) 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 M.B.B.S 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 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). During the counselling held on 27.08.2019 allotment orders for the eligible candidates were issued as per the merit and same was intimated to the Institute immediately and also published in the website of the 3rd respondent. Later, one of the allottee Mr.E.Raja Chidambaram surrendered his seat. Hence, the writ petitioner V.C.Praveen who was next in the waiting list was allotted the seat on 30.08.2019. As per the Supreme Court direction in DAR-US-SLAM Education Trust case, the 3rd respondent/Selection Committee is the authority designated by the State Government to conduct counselling and allot seat to the colleges.

8. It is contented by the 3rd respondent/Selection Committee, that it is unknown why the college authorities have admitted candidates in the place of the petitioner without bringing it to the notice of the Selection Committee. The action of the College authorities is highly irregular. The Institution is entitled to fill up the stray vacancy, if any, arises in their College, only after informing it to the Selection Committee and from the list of candidates forwarded by the Selection Committee, prepared on order of merits in the ratio of 1:10.

9. For the said reason, the learned counsel for the 3rd respondent states that, in the case of the petitioner/V.C.Praveen, the 5th respondent should have admitted him in the 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/V.C.Praveen and the further course of action taken by the management is narrated in paragraph No.5 to 12 of the counter affidavit. For better appreciation of the facts, the counter affidavit averments are extracted below :

"5. 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 counseling for admission of students of M.B.B.S course for 2019-2020 at Sri Muthukumaran Medical College Hospital and Research Institute, Mangadu, Chennai - 600 069. As per the order of this Hon'ble High Court the 3rd respondent fixed the special counselling on 27.08.2019. 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.

6. 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 arose which are to be filled by the College. Accordingly, those nine stray vacancies were filled by the College, admitting candidates from the NEET merit list by conducting counselling at 9.A.M on 30th August 2019 after duly notifying in the College website.

7. It is respectfully submitted that as directed by 3rd respondent the petitioner, Rank No.9528, NEET mark 326 reported at the College for admission on 30th August 2019 afternoon. It is further respectfully stated that in the list of candidates of 150 seats allotted to the college after the counselling held on 27th august 2019 the name of the petitioner was not found.

8. Further, it is submitted that the last date for all those candidates to join being 29th August 2019, the College authorities should have been informed of when any one is allotted for admission beyond 29th August 2019. In these circumstances, the action of the college authorities in having filled up the stray vacancies duly following the regulations and procedures is in order.

9. Moreover the petitioner reported only in the afternoon of 30th August 2019, when the admission of 9 stray vacancies had been completed. It is respectfully submitted that the special counselling was conducted for one day on 27th August 2019 for admission of candidates to MBBS to Sri Muthukumaran Medical College. It is further submitted that there was no auxiliary counselling held by the 3rd respondent after the counselling held on 27th August 2019. Therefore, it is a fact that the petitioner was allotted admission after the counselling was completed and after the list of selected candidates was furnished to College authorities.

10 It is respectfully submitted that the 3rd respondent in his E-mail dated 3rd September 2019 has reported that one of the candidate

Thiru.E.Rajachidambaram, A.R.No.52903 have been allotted MBBS seat in our Institution surrendered his seat on 29th August 2019. Based on this another candidate the petitioner has been allotted seat on 30th August 2019. It is very clear from the above statement of the 3rd respondent, the petitioner was allotted one seat at Sri Muthukumaran Medical College as an isolated case.

11. It is further respectfully submitted that the petitioner in his affidavit has stated in Para 7 that he was given intimation by the 3rd respondent over phone on 29th August 2019 evening to appear before the 3rd respondent on 30th August 2019 as he being the wait listed candidate.

12. It is respectfully submitted that allotment of candidates from the wait list could be done for all the vacancies from the wait list could be done for all the vacancies in a subsequent counselling only. When there was no subsequent counselling, although there were nine vacancies, allotting one candidate is not in accordance with rules and regulations. The rank and mark of the last candidate by name Abishek allotted to his College is 9521 and 326 respectively. The mark obtained by the petitioner although 326, the Rank No. is 9528. Thus it is very clear that there are six candidates with the same mark above the rank of the petitioner."

11. The Government of Tamil Nadu through the Selection Committee has conducted the admission process for M.B.B.S courses in the State. As per the 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 2019-2019 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 stray vacancies the Counselling Authorities has to forward list of students in order of merit equalling to ten times the number of vacant seats. As per the prospectus issued by the Selection Committee for the year 2019-2020 session, the 1st phase of counselling commences on 16.07.2019. 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 at paragraph No.4 above. As far as candidates sought for allotment in the 5th respondent/Institute, the 2nd slots commences 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 has secured 326 marks in the N.E.E.T examination. His general rank is 9528. He was called for counselling held on 27.08.2019. The list of candidates allotted seats on 27.08.2019 counselling indicates that one A.S.Abishek with same N.E.E.T score of 326 (general rank 9521) was the last candidate in the order of merit. The petitioner, who has scored same N.E.E.T score but below Abishek in the General rank was called and allotted seat on 30.08.2019 since there was non joining of a candidate.

14. The 5th respondent questions the allotment of seat to the petitioner by inviting him over phone when there are six candidates in between Abishek and the petitioner V.C.Praveen (General rank 9528 and 9521). Further the 5th respondent claim that out of 150 candidates allotted to them during the counselling held on 27.08.2019, 141 reported before the due date and time. They all were admitted. Consequently, for the 9 stray vacancies, Management conducted counselling at 9.00 am on 30.08.2019 and admitted students based on their N.E.E.T score.

15. The list of candidates who were admitted in the 5th respondent in the manner stated above are furnished by the 5th respondent in the typed-set of papers. It is very obvious those candidates are very poor N.E.E.T scorers rank between 273941 and 816246 (NEET score between 290 and 112). They have not gone through the counselling held by the 3rd respondent/Selection Committee. They were admitted before expiry of the time given by the Selection Committee to the candidates to report.

16. The Hon'ble Supreme Court in DAR-US-SLAM Educational Trust case has held that:-

"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."

17. Therefore, viewed from any angle, the reasoning given by the 5th respondent for refusal of admission to the petitioner and filling up the seat on their own without intimating the Selection Committee does not stand the test of judicial scrutiny in the light of the Supreme Court direction given in DAR-US-SLAM Educational Trust case.

18. The Apex Court in DAR-US-SLAM Educational Trust case, has in unambiguous term given direction to the Institutes how the seat allotment should be made and they cannot deny admission to the candidates who were allotted seat by the Selection Committee and paid the fees. It has also directed that the stray vacancies ought to be filled only from the list of candidates forwarded by the Selection Committee in the ratio of 1:10 in the order of merits. The 5th respondent has flagrantly violated the dictum of Hon'ble Supreme Court, by denying admission to the petitioner/V.C.Praveen and also filing up the stray vacancies on their own without intimating the selection committee and without involving them while filing up the vacancies as per the guidelines of the Supreme Court. Hence, any admission alleged to have been made by the 5th respondent without adhering to the guidelines of the Supreme Court is non-est and void.

19. In the result, the Writ Petition is Allowed. The 5th respondent/Sri Muthukumaran Medical College & Hospital, Mangadu, Chennai, is directed to admit the petitioner in their College to undergo M.B.B.S course for the academic 2019-2020 session, as per the allotment order issued by the 3rd respondent/Selection Committee, Chennai. No order as to costs. Consequently, Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

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.

+1 cc to Mr.G.Sankaran Advocate sr 81828

+1 cc to M/s.T.Vishnu Venkatesh Advocate sr81892 dt25/09/2019

Writ Petition No.26969 of 2019

tm(co)
aa24/09/2019



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