



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.09.2019

DATE OF DECISION : 24.09.2019

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

W.P. (MD) Nos. 15667, 15669, 15670 and 15671 of 2019

and

W.M.P. (MD) Nos. 12342 to 12345 of 2019, 15878, 16425 and 16482 of 2019

G. Somnath

.. Petitioner in

W.P (MD) No. 15667 of 2019

Minor K. Neya

represented by her father and natural guardian

P. Karthikeyan

.. Petitioner in

W.P (MD) No. 15669 of 2019

Minor A. M. Srilaya,

represented by her father and natural guardian

K. A. Malar Vannan

.. Petitioner in

W.P (MD) No. 15670 of 2019

Minor V. C. Ajithvass

represented by his father and natural guardian

T. V. Charles

.. Petitioner in

W.P (MD) No. 15671 of 2019

Vs.

1. The State of Tamil Nadu,
rep by its Secretary,
Ministry of Health and Family Welfare,
Secretariat, Chennai-600 009.

2. The Secretary,
The Selection Committee,
Office of the Director of Medical Education,
Kilpauk, Chennai-600 010.

3. Medical Council of India,
rep by Secretary,
Dwarka Phase, New Delhi.

4. Shalini Jeyaraman

5. Rubin Gilbert, J.

6. S. Akshaya

7. E. Sneha

8. Reinaldo Ros Suriyan, C.R.

<https://hcservices.mca.gov.in/hcservices/>



10. Nivetha, R.
11. Udhayasuriyan, P.
12. Manirathinam, P.
13. Mayadevi, T.
14. Silvia, M.
15. Sai Preethi Pulluru
16. A.R. Lakshmi Priya
17. K. Jayashree
18. N.S. Swetha
19. P.B. Ragul Rajuram
20. B. Durgadevi
21. S. Preethi
22. Arunraj, S.
23. Santhosh Kumar, S.R.
24. M. Revanth Sai
25. Haritha Hari Krishnan
26. Abilin B.S. Gifty
27. G. Lisshashree
28. P.A. Mirudhula
29. M.K. Vishnu Krishna
30. S. Gokulakrishnan
31. V. Ragavendiran
32. Jared Raj Chavukula
33. Tanya Miriam Job
34. V. Gowri Shankar
35. S. Sivasubramaniyan
36. B. Parvathi
37. G. Gopika Krishna
38. Priya Bhadra
39. Linda S. Robi
40. T. Anuradha
41. C. Sanjay
42. R. Lavanya
43. Jeess Benny
44. P.S. Kaushik
45. V.B. Raghi
46. V. Shruti
47. A. Avanthika
48. C.V. Goutham
49. G. Charulatha
50. M. Bhagya
51. K.S. Sibi
52. V. Vikash Vaibav
53. Muralidharan
54. S.G. Karthik
55. B. Suruthi
56. Amgitha Sudheer
57. R. Sriram
58. R. Sharon Blessy
59. Alden Roathem Rainaire, A.M.
60. T. Harishan



61. Chris Kevin Charles
62. M. Manus
63. R. Nandhini
64. Suhail Ahmed Musthak Ahmed
65. R. Janani
66. P. Bhavya
67. P. S. Srinithi
68. S. Kiruthika
69. G. Rajagurunathan
70. S. Aswin
71. M. Gopika
72. A. Aishwarya
73. Muzzammil Thakkad Syed Azad
74. P. Kavya
75. Andrea Anand
76. Y. Geethik
77. N. Jayasri
78. S. Kaviya Priya
79. S. S. Anjali
80. P. K. Shrivasan
81. P. Karthikeyan
82. M. Dheepshitha
83. P. Raj Kumar
84. D. J. Nivedha
85. R. Prakash
86. N. Rajakumar
87. R. Priyanka
88. B. G. Mukunda Prasath
89. U. V. Rajalakshmi
90. T. T. Ramanan
91. K. Sohail Arshadh
92. R. Nikitha
93. M. Theyaneswaran
94. A. Sivakumar
95. Sudiksha Karthika
96. M. Abarna
97. K. Subiksha Varthana
98. M. Rohan Sebastin
99. A. Preethi
100. S. Jasmine Farzana
101. B. Abishek
102. M. Kousalya
103. J. Basheer Mohamed
104. I. John Nirmal Rajiv
105. V. Siva Poongundran
106. L. Shalini
107. Benson Jayachandran
108. Balaji Kannan
109. I. Khimaram Choudhary
110. Shreya Srinivasan
111. Geetha Vinod



112.S.Saran Kumar
113.S.Mohamed Irfan
114.E.Hariharan
115.E.S.Jithin Das
116.K.Gayathri
117.S.Karthiksaran
118.A.Saqib Ahmed
119.S.Manisha
120.M.Nischitha
121.A.Priyamvadha
122.V.S.Baanu Sagar
123.Abirame Gopinath
124.D.Srivatsan
125.G.Hari Prasaath
126.M.Vignesh
127.Navin Palaniappan Nachiappan
128.Gaurav Ashok
129.M.R.Rohith Kumar

(RR4 to 129 were suo motu impleaded vide
order dated 19.8.2019 made in

W.P. (MD) Nos. 15667, 15669 to 15671 of 2019) .. Respondents in
all writ petitions

These writ petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the impugned rank list published by the 2nd respondent for the admission of MBBS /BDS 2019-2020 session for the Government quota and management quota and consequently, declare the counselling conducted by the 2nd respondent on 8.7.2019 onwards for the admission of MBBS / BDS 2019-2020 under the Government quota is illegal and quash the same and direct the 2nd respondent to conduct fresh counselling for the admission of MBBS /BDS 2019-2020 session for the Government quota and management quota based upon preparing the rank list by deleting the other State candidates as per serial No.5 of the prospectus issued by the second respondent for MBBS /BDS courses for Government Medical Colleges and Government quota in private colleges dated 7.6.2019 and pass such other or further orders that may be proper and necessary under the facts and circumstances of this case and thus render justice.

For Petitioners : Mr.K.K.Kannan
in all W.Ps.

For Respondents : Mr.K.Chellapandian,
in all W.Ps. Additional Advocate General
assisted by
Mr.Aayiram K.Selvakumar, AGP
for RR1 and 2



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Mr.P.Mahendran
for Mr.V.P.Raman,
Standing Counsel for R-3

Mr.Sankar Ganesh for R-4
Mr.K.M.Karunakaran for R-6
Mr.B.Brijeshkishore for R-8
Mr.RMS.Sethuraman
for RR16, 27, 63, 65, 127
Mr.A.P.Rajasimman for R-17
Mr.R.Nireshkumar for RR20,41,51,123
Mr.J.Ravindran for R-21
Mr.V.S.Senthilkumar for R-25
Mr.S.C.Herold Singh for R-26
Mr.C.Arul Vadivel @ Sekar for R-29
Mr.L.Shajichellan for R-32
Mr.K.Balasubramani for R-39
Mr.J.Anandkumar for R-44
Ms.J.Anandhavalli for RR45, 79
Mr.Muthugeethaiyan for R-46
Mr.R.Gandhi for R-47
Mr.M.Mahaboob Athiff
of Ajmal Associates for RR-53,68,95
Mr.K.Suresh for R-59
Mr.K.Ragatheeskumar
of M/s.Issac Chambers for R-61
Mr.P.Arun Jayatram for R-71
Mr.V.Nagendran for R-75
Mr.A.Sivasubramanian for RR-80,120
Mr.M.Sheik Abdullah for RR90

Mr.B.Christopher for R-91
Mr.G.Kasinathadurai for R-92
Mr.Mr.R.Senthilkumar for R-98
Mr.T.Pon Ramkumar for R-106
M/S.T.Sathyaselvi for R-107
Mr.P.Senthurpandian for R-121
Mr.A.S.Balaji for R-124
Mr.K.Samidurai for R-125
Mr.P.Thilakkumar for R-129

No appearance : for RR 23, 58, 70, 109 and 128

Respondent Nos.5, 7, 9, 10, 11, 12, 13, 14, 15, 18, 19, 22, 24, 28, 30, 31, 33, 34, 35, 36, 37, 38, 40, 42, 43, 48, 49, 50, 52, 54, 55, 56, 57, 60, 62, 64, 66, 67, 69, 72, 73, 74, 76, 77, 78, 81, 82, 83, 84, 85, 86, 87, 88, 89, 93, 94, 96, 97, 99, 100, 101, 102, 103, 104, 105, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122 and 126.

<https://hcservices.courts.gov.in/csewices> orders dated 18.09.2019 and 19.9.2019.



COMMON ORDER

This common order will dispose of these four writ petitions.

2 Four writ petitioners who were unsuccessful in their endeavour to get admission in one of the Government or private medical colleges in Tamil Nadu in the academic year now underway, namely 2019-20 have filed the instant writ petitions.

3 Sheet-anchor of these four writ petitions is 'Nativity'. There is no disputation or disagreement before this court that all four writ petitions arise out of a common factual matrix and the complaint of four writ petitioners is the same.

4 Notwithstanding several averments made in the affidavits filed in support of instant writ petitions, notwithstanding several contentions canvassed / grounds urged in the affidavits filed in support of instant writ petitions, learned counsel for writ petitioners projected his argument on the aforesaid sheet-anchor point, i.e., Nativity.

5 Before advertng to the arguments advanced by learned counsel for writ petitioners, it may be necessary to have a brief look at nativity qua admission into Government and private medical colleges in Tamil Nadu.

6 This court is informed that there are 23 Government medical colleges, 13 private medical colleges, besides I.R.T., ESIC and Annamalai University. This court is also informed that in the 23 Government medical colleges, there are 3250 seats and in the 13 private medical colleges there are 1799 seats, 100 in I.R.T., 100 in ESIC and 150 in Annamalai. In these seats, which can be referred to as Government quota, according to prospectus for Government colleges, 15% of seats are set apart for All India quota and the remaining 85% of seats constitute State quota. In this 85% State quota, community based reservation is 69% and open quota is remaining 31%. To be noted, in the 15% seats set apart for All India quota, the communal reservation of Government of Tamil Nadu does not operate. Another important aspect is such allocation is there only with regard to 3250 seats in 23 Government medical colleges and such allocation is not there in the 13 private medical colleges and aforementioned 3 colleges. In this regard, it is also to be noted that two separate prospectus have been issued for admission, i.e., one for Government medical colleges and another for private medical colleges. This allocation of 15% for All India quota and 85% for State quota is contained in Serial No.4 under the caption 'IMPORTANT INFORMATION' in the Government medical colleges prospectus and the same reads as follows :

"4) From the total number of MBBS / BDS seats available in the Government Medical / Dental Colleges, 15% of the seats are surrendered to All India Quota and the remaining 85% of seats are allotted to State Quota for the academic year 2019-2020 whereas in I.R.T. Medical

Colleges, Berunduai, Erode District, the Government has



sanctioned an annual intake of 100 students of which 30 seats earmarked for the wards of I.R.T. Employees of the State Transport Corporation and Institute of Road Transport Corporation members who are contributing to the Corpus Fund, which will be done ahead of general category counselling."

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7 There is no such clause and there is no such equivalent in the prospectus for private medical colleges. The score of students in 'National Eligibility cum Entrance Test' ('NEET' for brevity) is relevant for admission and this can be described as a threshold requirement. In these four writ petitions, W.P.No.15667 of 2019 is referred to as 'First writ petition', W.P.No.15669 of 2019 is referred to as 'second writ petition', W.P.No.15670 of 2019 is referred to as 'third writ petition' and W.P.No.15671 of 2019 is referred to as 'fourth writ petition' respectively. The NEET score of four writ petitioners are 385, 319, 356 and 444 in first writ petition, second writ petition, third writ petition and fourth writ petition respectively. It is also not in dispute that all four writ petitioners come under 'Backward Caste quota', which shall be referred to as 'B.C quota' for brevity. There is also no disputation that the cut off qua NEET score for B.C category or in other words, B.C quota is 470 in Government medical colleges, 460 in I.R.T., ESIC and Annamalai and 440 in private medical colleges.

8 With regard to Nativity, for a candidate to come under the aforesaid 85% quota, requirements are adumbrated and the same is contained in serial No.5 of the Government medical colleges prospectus which reads as follows :

"5.NATIVITY:

(a) Candidates should be a Native of Tamil Nadu.

(b) Candidates belonging to Native of Tamil Nadu and having studied from Standard VI to Standard XII in schools of Tamil Nadu need not submit their "Nativity Certificate". However, such candidates should produce the true copies of their parent's certificates such as Birth Certificate, Ration Card SSLC / 10th / 12th / Degree / Diploma / Professional course. In case, parents are not literate, then No Graduation Certificate for parents, from the Revenue Authority of competent jurisdiction, to substantiate their parent's place of birth in Tamil Nadu and also "Parent's Community Certificate to claim the communal reservation". If the candidates do not submit the above mentioned certificates, then the candidates will be considered under Open Category only.

(c) Candidates belonging to other States who are residing at Tamil Nadu cannot claim nativity of Tamil Nadu and they will be considered under Open Category.

(d) The other State candidates who are not native of Tamil Nadu and have studied from Standard VI to XII in Tamil Nadu will be considered under Open Category.



(e) Permanent Residence Certificate in lieu of Nativity Certificate will not be accepted.

(f) Candidates who are Native of Tamil Nadu, but studied from VI Standard to XII Standard outside Tamil Nadu either partly or completely in one or more States should produce the true copies of their parent's certificates such as Birth Certificate, Ration Card, SSLC / 10th / 12th / Degree / Diploma / Professional course. In case, parents are not literate, then No Graduation Certificate for parents, from the Revenue Authority of competent jurisdiction, to substantiate their parent's place of birth in Tamil Nadu and also "Parent's Community Certificate to claim the communal reservation". If the candidates do not submit the above mentioned certificates, then the candidate's application will be summarily rejected.

(g) Nativity Certificate obtained prior to the last date of receipt of filled in application alone will be accepted and sending the Nativity Certificate separately will not be entertained.

(h) If false Nativity certificate is submitted and at a later date, if it is found out, then the candidate will be expelled from the course and also criminal proceedings will be initiated against the candidate as well as his/her parents as per provision of the law."

9 Another relevant aspect is the list of documents which have to be submitted by a candidate have been enlisted in the prospectus, which reads as follows :

"(a) NEET - UG 2019 Admit Card and Score card.

(b) Class X Mark Sheet (both sides of Mark Sheet should be photocopied).

(c) Class XI Mark Sheet (both sides of Mark Sheet should be photocopied).

(d) H.S.C. Mark sheet (both sides of mark sheet should be photocopied) or any other equivalent examination.

(e) Transfer certificate obtained after the completion of H.S.C. or equivalent courses.

(f) Certificate for proof of study from VI std. to XII std.

(g) Nativity certificate for the candidates who have partly studied outside Tamil Nadu from Standard VI to Standard XII along with supporting documents as mentioned in Clause 5(f).

(h) The candidate who is native of Tamil Nadu and have studied from 6th Std. to 12th Std. in schools of Tamil Nadu should submit supporting documents of the parent's certificates as mentioned in Clause 5(b).

(i) Permanent Community Certificate Card.

(j) First Graduate Certificate (if applicable).

<https://hcservices.ecourts.gov.in/hcservices/> The candidate who claim the benefit of a First



Graduate should submit their certificate issued by the competent authority to their respective Colleges on securing the admission.

(k) Special Category Form with an additional fee of Rs.100/- via Bank payment portal or by means of Demand Draft drawn in favour of "The Secretary, Selection Committee, Kilpauk, Chennai-10" payable at Chennai with relevant certificates for Persons with Benchmark Disabilities, Eminent Sports Person (in person) and Ex-Servicemen, if applicable.

(l) All the entries in the online application form should be filled by the candidate carefully. The candidate should ensure that all information including the marks in the qualifying examination furnished by him / her in the application and the enclosures are correct. The candidate is informed that after proper scrutiny of his / her application, the marks furnished by him / her in the application are not correct or any other information is found to be incorrect, then;

(a) He / She will forfeit the admission, no matter at what stage of the course, he / she will be at that time;

(b) He / She will be debarred from pursuing any other course for a period of three years;

(c) Legal proceedings / criminal action will be initiated against the candidate along with their parents for furnishing false Mark Sheet / false Community Certificate / false Nativity Certificate.

(m) Even if the candidate is provisionally selected for the MBBS / BDS admission but found to be failed in +1 examinations, the provisional admission of the candidate stands automatically cancelled."

10 Having set out necessary facts supra, this court now reverts to the sheet-anchor argument advanced by learned counsel for writ petitioners. As already alluded to supra, all four writ petitioners come under the B.C quota / category. It is the case of the writ petitioners that they are natives of Tamil Nadu and they are entitled to come under 85% quota mentioned supra as far as Government medical colleges are concerned and submissions made on behalf of writ petitioners can be summarised as follows:

(a) 85% quota for natives is not set apart in private medical colleges, while it is done so in Government medical colleges, this is discriminatory and it therefore, vitiates the entire selection and counselling process;

(b) It has not been set out clearly in the Government medical colleges prospectus as to what 'nativity' means and as to who is a native. This ambiguity has given rise to some candidates eating into 85% share of the cake inflicting petitioners' chances;



(c) As a sequel to previous submission, it was argued that several candidates have secured admission by claiming nativity which they are not entitled to as they have claimed nativity in Tamil Nadu as well as in another State taking advantage of the lack of specificity in setting out nativity and who a native is.

11 In response to aforesaid submissions advanced by learned counsel for writ petitioners, the submissions made by learned Additional Advocate General on behalf of respondents 1 and 2 can broadly be summarised as follows :

(a) As far as private medical colleges are concerned, the Government gets 50% of seats in minority institutions and 35% seats in other self financing colleges. To be noted, this adds upto 1799 seats in 13 private medical colleges and 350 in I.R.T., ESIC and Annamalai referred to supra. It was submitted by learned Additional Advocate General that with regard to 1779 + 350 seats, the Government is following 85% nativity rule. As far as the management quota is concerned, complaint if any should be against the management of the respective colleges and at the moment, the Government gets its share of 50% qua minority institutions and 35% qua other self financing colleges. It was submitted that it cannot be gainsaid that this infracts the rights of writ petitioners in any manner.

(b) The submission that 'nativity' and 'native' have not been set out with clarity and specificity is incorrect, as a perusal of serial No.5 in the Government medical colleges prospectus (which has been extracted and reproduced supra) will reveal that all possible permutations and combinations have been formulated and set out.

(c) With regard to certain candidates eating into 85% nativity share without being entitled to, the same is untenable, as all certificates submitted by candidates have been scrutinized, examined and only those candidates who are found eligible under the nativity 85% category have been admitted. In this regard, it was submitted that there was one case of dual nativity where the candidate was denied admission. The candidate filed a writ petition, being W.P.No.22718 of 2019, but was unsuccessful as the writ petition was dismissed vide order dated 09.8.2019 by Hon'ble Single Judge.

(d) Hon'ble Predecessor Judge who heard this matter earlier had made proceedings / order dated 26.08.2019. Paragraphs 7 to 9 of the said order / proceedings are of relevance and the same read as



follows :

"7. Only in order to ascertain the facts, these private respondents/students have been impleaded suo motu by this Court and now, this Court wants those documents/particulars from each of the impleaded respondents/students. Accordingly, the following directions are issued:-

"that the newly impleaded respondents/students (126 students) shall file the following documents by way of typed set of papers on their behalf before this Court during the next hearing by giving advance copy to the petitioner's counsel as well as the learned Additional Advocate General Office.

(i) nativity certificate issued by the State of Tamil Nadu;

(ii) 10th standard (SSLC) certificate;

(iii) 12th standard (HSC) certificate;

(iv) certificate of proof, if any, for having studied 6th to 12th standard at Tamil Nadu;

(v) certificate of the father or parents of the students, as has been mentioned in Clause 5(b) and 5(f) of the prospectus;

(vi) nativity certificate or any certificate obtained by these students from outside the State of Tamil Nadu i.e., State, where they permanently settled or residing along with parents/guardians;

(vii) an affidavit to be filed by each of the students (in case minor, by the parent or guardian) declaring that, the candidate/respondent/student has not claimed any nativity from any State, other than Tamil Nadu at any point of time and the nativity certificate issued by the authority concerned, to these students in Tamil Nadu, had been issued only on their request, after having verified the nativity of the students along with their parents with supporting documents;

(viii) the affidavit shall also have a declaration that, the respondent/student concerned has not claimed admission for any course including the medical course in any State outside the State of Tamil Nadu in the State quota of that State based on the nativity of the student/candidate concerned of that State."



8. These documents and affidavit shall be filed by each of the respondents/students before this Court during the next hearing, without fail.

9. It is made clear that, pursuant to the impleadment of these respondents/students and pursuant to these orders passed today, still, if any of the students/respondents not responded and filed the aforesaid documents, as has been directed above, on or before the next hearing, such non-compliance or non-filing of documents, shall be construed as if that the students/respondents do not have such documents to support their claim of nativity from Tamil Nadu and in that case, this Court will draw adverse inference against such student/respondent."

(e) It is also to be noted that Hon'ble Predecessor Judge has suo motu impleaded 126 candidates, who according to writ petitioners had gained admission in the 85% category without being entitled to do so and these 126 candidates are private respondents 4 to 129 in these four writ petitions. With regard to service on these candidates, paragraph 11 of the order / proceedings dated 26.8.2019 made by Hon'ble Predecessor Judge is of relevance and the same reads as follows :

"11. In order to overcome the difficulty, the official respondents shall communicate this order to the respective Medical Colleges, where these students have been admitted, to intimate the same through their Notice Board and also by individual communication to the students, after getting acknowledgement from the students concerned. Once this order is communicated to the students/respondents, who have not so far been served notice, they shall take such service as the service of notice from this Court and accordingly, they should act upon, as indicated above."

(f) Pursuant to paragraph 11, all 126 candidates have been served and proof of service have been filed by State. Many of the candidates who have filed affidavits and other documents as adumbrated in paragraphs 7 to 9 of Hon'ble Predecessor Judge's order which has been set out supra.



12 This takes us to the stand of respondent No.3 and arguments of respondent Nos.4 to 129.

13 With regard to respondent No.3, there is no disputation or disagreement that respondent No.3 is only a formal party and no relief or prayer has been made qua third respondent.

14 With regard to private respondents 4 to 129, 78 of them were given up by writ petitioners on 18.09.2019 and 19.09.2019, leaving 48 in the fray and their submissions were on the following lines:

(a) Affidavits clearly mentioning that dual nativity have not been claimed have been filed in accordance with the earlier proceedings of this Court;

(b) Certificates as adumbrated in the earlier orders have been produced and nothing that is illegal has been pointed out.

15 Responding to this, learned counsel for writ petitioners referred to respondent No.68, S.Kiruthika. Learned counsel for writ petitioners submitted that nativity certificate reveals that it merely says that candidate's father has been living in Tamil Nadu for more than five years from 01.01.2014. To this, learned counsel for concerned respondent as well as learned Additional Advocate General pointed out that candidate has submitted birth certificate which shows that the candidate was born in Tamil Nadu (within the limits of Madurai corporation) and community certificate produced by the candidate reveals that community certificate is of the year 2003.

16 Mr.Mahaboob Athiff, learned counsel for candidate concerned also submitted that nativity necessarily is a blend of domicile, origin and residence. In other words, it was his specific submission that nativity cannot be compartmentalized, segregated and limited to residence and / or length of residence.

17 With regard to respondent No.4, it is submitted without any disputation that respondent has secured admission in 15% quota and therefore, there can be no complaint qua 4th respondent. Besides this, learned counsel for writ petitioners took specific reference to respondent No.21, Preethi, and respondent No.120 Nischitha and submitted that they have claimed dual nativity in Tamil Nadu and Karnataka. To this, it was submitted by counsel for respective respondents that affidavits have been filed as per the earlier proceedings / order of this court clearly mentioning that they have not claimed dual nativity.

18 Learned counsel for writ petitioners pressed into service two judgments, namely, **Pramati Educational and Cultural Trust (Registered) and others Vs. Union of India and others** reported in **AIR 2014 SC 2114 : (2014) 8 SCC 1** (Pramati case) and **Rajdeep Ghosh Vs. State of Assam** reported in **AIR 2018 SC 3832 : (2018) 17 SCC 524** (Rajdeep case). Attention of this court was drawn to paragraph

No.16 of **Pramati** case and paragraph No.26 of **Rajdeep** case which read as follows :

Paragraph 16 of Pramati case :

"16. We have considered the submissions of learned counsel for the parties and we find that the object of clause (5) of Article 15 is to enable the State to give equal opportunity to socially and educationally backward classes of citizens or to the Scheduled Castes and the Scheduled Tribes to study in all educational institutions other than minority educational institutions referred in clause (1) of Article 30 of the Constitution. This will be clear from the Statement of Objects and Reasons of the Bill, which after enactment became the Constitution (Ninety-Third Amendment) Act, 2005 extracted hereinbelow:

"Greater access to higher education including professional education to a larger number of students belonging to the socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes has been a matter of major concern. At present, the number of seats available in aided or State maintained institutions, particularly in respect of professional education, is limited in comparison to those in private unaided institutions.

2. It is laid down in Article 46, as a directive principle of State policy, that the State shall promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice. To promote the educational advancement of the socially and educationally backward classes of citizens or of the Scheduled Castes and Scheduled Tribes in matters of admission of students belonging to these categories in unaided educational institutions, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution, it is proposed to amplify Article 15.

3. The Bill seeks to achieve the above objects."

Clause (1) of Article 15 of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them and clause (2) of Article 15 of the Constitution provides that no citizen shall, on grounds of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public. These provisions were made to ensure that every citizen irrespective of his religion,

race, caste, sex, place of birth or any of them, is given



the equal treatment by the State and he has equal access to public places. Despite these provisions in Article 15 of the Constitution as originally adopted, some classes of citizens, Scheduled Castes and Scheduled Tribes have remained socially and educationally backward and have also not been able to access educational institutions for the purpose of advancement. To amplify the provisions of Article 15 of the Constitution as originally adopted and to provide equal opportunity in educational institutions, clause (5) has been inserted in Article 15 by the constitutional amendment made by the Parliament by the Ninety-Third Amendment Act, 2005. As the object of clause (5) of Article 15 of the Constitution is to provide equal opportunity to a large number of students belonging to the socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes to study in educational institutions and equality of opportunity is also the object of clauses (1) and (2) of Article 15 of the Constitution, we cannot hold that clause (5) of Article 15 of the Constitution is an exception or a proviso overriding Article 15 of the Constitution, but an enabling provision to make equality of opportunity promised in the Preamble in the Constitution a reality."

Paragraph 26 of Rajdeep case :

"26. In *Vishal Goyal v. State of Karnataka* [*Vishal Goyal v. State of Karnataka*, (2014) 11 SCC 456 : 6 SCEC 688] , the question again came up for consideration with respect to reservation of seats with State quota in postgraduate courses. It was held at the postgraduate level even partial reservation based on residence requirement is impermissible. The observation has been made the criteria for the postgraduate course does not hold good for basic MBBS course. The decisions in *Magan Mehrotra v. Union of India* [*Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : 2 SCEC 492], *Pradeep Jain* [*Pradeep Jain v. Union of India*, (1984) 3 SCC 654] , *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452], *Nikhil Himthani* [*Nikhil Himthani v. State of Uttarakhand*, (2013) 10 SCC 237 : 6 SCEC 497] and other decisions have been considered and this Court has observed with respect to postgraduate courses thus: (*Vishal Goyal case* [*Vishal Goyal v. State of Karnataka*, (2014) 11 SCC 456 : 6 SCEC 688] , SCC pp. 463-64, paras 11 & 13)

"11. Mr Mariarputham is right that in *Saurabh Chaudri v. Union of India* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] , this Court has held that institutional preference



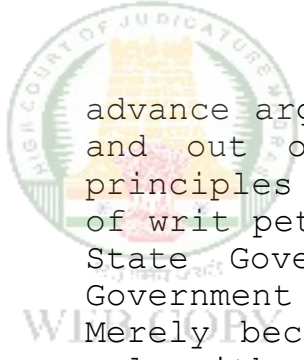
can be given by a State, but in the aforesaid decision of *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452], it has also been held that decision of the State to give institutional preference can be invalidated by the court in the event it is shown that the decision of the State is ultra vires the right to equality under Article 14 of the Constitution. When we examine sub-clause (a) of Clause 2.1 of the two Information Bulletins, we find that the expression "A candidate of Karnataka origin" who only is eligible to appear for entrance test has been so defined as to exclude a candidate who has studied MBBS or BDS in an institution in the State of Karnataka but who does not satisfy the other requirements of sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014. Thus, the institutional preference sought to be given by sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014 is clearly contrary to the judgment of this Court in *Pradeep Jain case* [*Pradeep Jain v. Union of India*, (1984) 3 SCC 654].

13. Sub-clause (a) of Clause 2.1 of the two Information Bulletins does not actually give institutional preference to students who have passed MBBS or BDS from colleges or universities in the State of Karnataka, but makes some of them ineligible to take the entrance test for admission to postgraduate medical or dental courses in the State of Karnataka to which the Information Bulletins apply." "

19 A careful perusal of ***Pramati*** case reveals that Hon'ble Constitution Bench answered a reference with regard to validity of Article 15(5) of the Constitution of India inserted by 93rd amendment and validity of Article 21A of the Constitution of India inserted by the 86th amendment. The principle laid down by Hon'ble Constitution Bench in this context does not in any manner advance the case of writ petitioners, as the principle is only that this provision is to make equality of opportunity a reality.

20 In ***Rajdeep*** case, the Constitutional validity of medical college admission rules in Assam was called in question on the ground that objective criteria should be the basis of classification and it must have a rational nexus with the objective it seeks to achieve.

21 Therefore, in the considered opinion of this court, writ petitioners relying on aforesaid two case laws in an attempt to



advance arguments in the instant case on hand are clearly misplaced and out of context. In other words, these case laws and the principles laid down therein do not in any manner advance the case of writ petitioners in instant case on hand. Suffice to say that the State Government is operating the 85% nativity quota both in Government medical colleges as well as private medical colleges. Merely because 85% quota is operated in private medical colleges only with regard to the State's share of 35% or 50%, as the case may be, is no argument and is certainly not a ground to allege lack of equality.

22 Learned Additional Advocate General pressed into service two judgments, namely Division Bench judgments of this Court in **Writ Appeal No.1512 of 2018, dated 31.07.2018 [Aparna Rajendra Kumar Vs. The Secretary, Selection Committee, Admission to MBBS / BDS Courses 2018-19 Session, Directorate of Medical Education, Kilpauk, Chennai]** and **M.Goutham Vs. The Secretary / Addl. DME Selection Committee and others** reported in **2018-4-L.W. 205**. Broadly, these case laws were pressed into service to say that place of residence and nativity are different concepts and that documents submitted by private respondents have been duly scrutinized at the time of admission.

23 With regard to the argument of writ petitioners that 85% nativity quota not being made available in private medical colleges, the argument does not hold good for Government quota in private medical colleges as Government is implementing 85% nativity rule in its quota in private medical colleges. In this view of the matter, in these cases, this aspect makes no difference to the admission of writ petitioners, considering the cut off scores qua NEET.

24 With regard to nativity definition / description, even out of 126 candidates pointed out by writ petitioners and impleaded suo motu by this Court, 78 have been given up by writ petitioners on their own volition. It is no doubt a fair approach on the part of writ petitioners, but it also brings into sharp focus that the allegation levelled regarding ineligible candidates getting admission in nativity quota and eating into writ petitioners' share of the cake is an argument which is more in the realm of surmises and conjectures. This answers second and third arguments of writ petitioners.

25 Though ideally, this point would qualify as a preliminary or threshold submission, considering the nature of instant cases, this court deems it appropriate to set out this point before parting with the case. The point is, the NEET scores of four writ petitioners (who all fall under B.C. Category) and cut off NEET scores for Government medical colleges as well as private medical colleges, besides three other colleges, namely ESIC, I.T.R. and Annamalai have been set out supra. A careful perusal of the numbers reveals that even if all 48 private respondents are dislodged, these four writ petitioners will not get admission. Therefore, it is clear that these four writ petitioners do not have locus qua these writ petitions. To be noted, these writ petitions are not Public



Interest Litigations and therefore, locus criterion will operate in the manner set out herein.

26 From the discussion thus far, this court is left with the considered view that writ petitioners have not made out any case for assailing the impugned rank list published by the second respondent and the counselling conducted by second respondent. There is no ground to direct the second respondent to conduct fresh counselling. The question of deleting alleged other State candidates under serial No.5 has clearly become a non-starter as far as the materials before this court is concerned. However, it is made clear that it is open to State to scrutinize the affidavits and documents now submitted by private respondents on a case to case basis and apply clause 5(h) of the prospectus, if the need arises in a given case. If any falsity is detected, obviously candidates will be expelled, but that will be a separate exercise by State under 5(h) of the prospectus obviously after giving adequate opportunity to the candidate concerned. It is made clear that it is open to the State to undertake this exercise qua affidavits and documents that have now been submitted by private respondents.

27 Owing to all that have been set out thus far, instant writ petitions qua wide and sweeping prayers seeking fresh counselling for entire MBBS / BDS admission by quashing the entire rank list and counselling, are bereft of merits. Instant writ petitions fail and the same are dismissed albeit with above observations. Considering the nature of the matter, there shall be no order as to costs. Consequently, connected writ miscellaneous petitions, namely W.M.P. (MD) No. 12342 to 12345 of 2019 are closed.

28 With regard to writ miscellaneous petitions for impleading, though the same are not opposed, this is not a case of necessary parties or proper parties, wherein hearing them is imperative. This is a case where implead petitioners are making a common cause with four writ petitioners. In the light of the decision in the four writ petitions, no useful purpose would be served by impleading these petitioners. Resultantly, implead petitions, namely W.M.P. Nos. 15878, 16425 and 16482 of 2019 are dismissed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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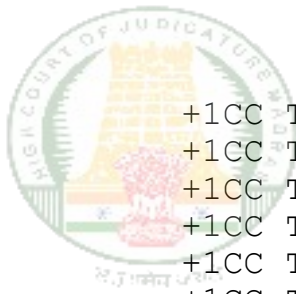


To
1. The Secretary,
The State of Tamil Nadu,
Ministry of Health and Family Welfare,
Secretariat, Chennai-600 009.

2. The Secretary,
The Selection Committee,
Office of the Director of Medical Education,
Kilpauk, Chennai-600 010.

3. The Secretary,
Medical Council of India,
Dwarka Phase, New Delhi.

+1CC TO MR.V.P.RAMAN , Advocate Sr. No. 89675
+1CC TO MR.K.MUTHUMALAI, Advocate Sr. No.89053
+1CC TO MR.K.K.KANNAN, Advocate Sr. No. 88720
+1CC TO MR.T.PON RAMKUMAR, Advocate Sr. No. 88736
+1CC TO MR.M.MUTHUGEETHAYAN, Advocate Sr. No. 88760
+3CC TO MS.J.ANANDHAVALLI, Advocate Sr. No.88762
+1CC TO MR.C.ARUL VADIVEL @ SEKAR, Advocate Sr. No. 88781
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+1CC TO MR.D.SRINIVASARAGAVAN, Advocate Sr. No. 88758
+1CC TO MR.V.NAGENDRAN, Advocate Sr. No.88787
+1CC TO MR.L.SHAJI CHELLAN, Advocate Sr. No.88869
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+1CC TO MR.T.SATHYA SELVI, Advocate Sr. No. 88826
+1CC TO MR.A.S.BALAJI, Advocate Sr. No.88913
+1CC TO MR.K.SAMIDURAI, Advocate Sr. No.89012
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+1CC TO MR.A.P.RAJASIMMAN, Advocate Sr. No.89116
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+3CC TO M/S.AJMAL ASSO., Advocate Sr. No.89179
+1CC TO MR.M.SHEIK ABDULLAH, Advocate Sr. No.89219
+1CC TO MR.R.GANDHI, Advocate Sr. No.89254
+1CC TO MR.G.KASINATHADURAI, Advocate Sr. No.89331
+1CC TO MR.S.C.HEROLD SINGH, Advocate Sr. No.89503
+1CC TO M/S.ISAAC CHAMBERS, Advocate Sr. No.89094
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+1CC TO MR.P.ARUN JAYATRAM, Advocate Sr. No.89702
+1CC TO MR.T.ARUL, Advocate Sr. No.89663
+1CC TO MR.S.DEENADHAYALAN, Advocate Sr. No.89619
+1CC TO MR.M.SOLAISAMY, Advocate Sr. No.89548
+1CC TO MR.S.KARTHIK, Advocate Sr. No.89059
+1CC TO MR.V.M.BALAMOCHAN THAMBI, Advocate Sr. No.89546
+2CC TO MR.B.SARAVANAN, Advocate Sr. No.89466



+1CC TO MR.T.RAMESH, Advocate Sr. No.89440
+1CC TO MR.M.S.JEYAKARTHIK, Advocate Sr. No.89293
+1CC TO MR.H.ARUMUGAM, Advocate Sr. No.89157
+1CC TO MR.P.SENTHUR PANDIAN, Advocate Sr. No.89149
+1CC TO MR.V.SASI KUMAR, Advocate Sr. No.89136
+1CC TO MR.T.LENIN KUMAR, Advocate Sr. No. 89130
+1CC TO MR.E.T.RAJENDRAN, Advocate Sr. No.89117
+3CC TO MR.T.LAJAPATHY ROY, Advocate Sr. No.89106
+2CC TO MR.S.RAMASAMY, Advocate Sr. No.88984
+1CC TO MR.D.SIVARAMAN, Advocate Sr. No.88962
+1CC TO MR.S.PANDIYA RAJ, Advocate Sr. No.88944
+1CC TO MR.P.THILAK KUMAR, Advocate Sr. No.88935
+1CC TO MR.S.PALANI VELAYUTHAM, Advocate Sr. No.88908
+1CC TO MR.R.SENTHIL KUMAR, Advocate Sr. No.88879
+1CC TO MR.HAJA MOHIDEEN, Advocate Sr. No.88842
+1CC TO M/S.SARVABHAUMAN ASSO., Advocate Sr. No. 88716
+1CC TO MR.V.KARTHIKEYAN, Advocate Sr. No. 88727
+5CC TO MR.SAIBABA, Advocate Sr. No. 88740
+1CC TO MR.P.KUMAR, Advocate Sr. No. 88759
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 89839 & 89400
+1CC TO MR.V.PANNEER SELVAM, Advocate Sr. No. 89215

order in
W.P. (MD) Nos.15667, 15669, 15670
and 15671 of 2019
24.09.2019

DB (CO)
TR(17.10.2019) 20P 82C