



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.16908 of 2019

and W.M.P. (MD) Nos.13492 to 13494 of 2019

WEB COPY

Deekshita. R

... Petitioner

Vs.

1.The Directorate General of Health Services,
Health and Family Welfare Department
Near Udyog Bhawan Metro Station,
Maulana Azad Road,
New Delhi.

2.The Director,
Medical Counselling Committee,
Health and Family Welfare Department
Near Udyog Bhawan Metro Station,
Maulana Azad Road,
New Delhi.

3.The Secretary,
Medical Council of India,
Pocket No.14, Sector - 8
Dwarka Phase - I
New Delhi - 110 077.

4.The Government of Tamil Nadu,
Rep. By its Secretary,
Health and Family Welfare Department
Secretariat
Fort St. George, Chennai.

5.The Director,
Selection Committee,
Directorate of Medical Education,
No.162 Periyar EVR High Road,
Kilpauk,
Chennai.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st and 2nd respondents pertaining to "Transfer of Non Reporting and Non Joining Vacancies to State Quota as per the Revised counselling schedule dated 18.07.2019" for the 15% All India Quota for MBBS/BDS seats - 2019 and quash the same as it is illegal and violation of the rule of law enunciated by the Hon'ble Supreme Court and consequently direct the respondents to allot the transferred non reporting and non joining vacant seats in MBBS/BDS under the 15% All India Quota only to the students applied



for the 15% All India Quota MBBS/BDS - 2019 seats.

For Petitioner :Mr.Ananth C.Rajesh
For Respondents :Mr.V.Kathirvelu for R1 to R3
Assistant Solicitor General
assisted by
Mr.Subbiah
Central Government Standing Counsel
Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.P.Kannithevan
Additional Government Pleader
for R4 and R5

WEB COPY

ORDER

Challenge made in this writ petition is pertaining to the "Transfer of Non Reporting and Non Joining Vacancies to State Quota as per the Revised counselling schedule dated 18.07.2019" for the 15% All India Quota for MBBS/BDS seats - 2019 and for a consequential direction to the respondents to allot the transferred non reporting and non joining vacant seats in MBBS/BDS under the 15% All India Quota only to the students applied for the 15% All India Quota MBBS/BDS - 2019 seats.

2. The short facts, which are required to be noticed for the disposal of the writ petition, are as follows:

The petitioner completed her +2 in CBSE stream in 2018-19 and secured 420 marks out of 500. She appeared thereafter in the NEET examinations and scored 335 marks out of 720. The petitioner belongs to Backward Class Community and her All India Ranking in the OBC category is 90243. Insofar as the 85% quota earmarked for the State of Tamil Nadu in the available medical seats in MBBS and BDS degree course is concerned, there is a separate ranking, according to which, the petitioner's rank is 10646 and her Backward class ranking in the State quota is 6157.

2.1. Since the petitioner is eligible to compete for getting admission in 15% All India Quota in the MBBS/BDS admission, the petitioner also applied for All India Quota in the MBBS/BDS admission 2019.

2.2. In the all India quota, the petitioner's all India OBC ranking is 90243 and her all India general ranking is 205504.

2.3. With that ranking, the petitioner participated in the first round of online counselling for All India quota. However, she could not reach the zone of consideration to opt any seat. Thereafter, for filling up the unfilled seats in the All India Quota, second round of counselling was conducted and in that second round of counselling also, the petitioner could not opt for any seat in view of the ranking.

2.4. Thereafter, after completion of the joining time given by the All India admission authorities, after second round of counselling was over, still there has been 121 unfilled seats in the



All India Quota from Tamil Nadu State and as per the procedure adopted by the All India admission authorities and after second round of counselling, since there is no scope for further counselling for All India admission, the same have been surrendered to the State authorities.

2.5. Accordingly, the State authorities having that 121 surrendered seats from All India quota as well as the unfilled seats from State quota, where after completing the first round of counselling, they started to have the second round of counselling between 30.07.2019 and 01.08.2019 and they filled up the unfilled seats in the second round of counselling. In this context, it is the grievance of the petitioner that, once the All India quota seats are surrendered as unfilled, after completing the second round of counselling by the Central authorities, the State authorities must conduct a separate counselling only from among the aspirants of the All India counselling from the particular State, that means, insofar as the State of Tamil Nadu is concerned, in respect of 121 surrendered seats from All India Quota unfilled, the State authorities must follow the reservation adopted by the Central authorities. Accordingly, the candidates from Tamil Nadu, who were not able to get a seat in All India counselling, alone can be permitted to participate in the counselling to be conducted in the second round by the State authorities to fill up those unfilled seats.

2.6. Only in the aforesaid circumstances, the petitioner approached this Court by filing this writ petition with the aforesaid prayer.

3. On notice, Mr.V.Kathirvelu, learned Assistant Solicitor General of India, appearing for the respondents 1 to 3, has filed documents in the typed set of papers and by relying upon the same, the learned Assistant Solicitor General submits that, there were two rounds of counselling under 15% All India Quota and all the All India Quota seats were allotted and the second round of counselling was completed on 25.07.2019 and still any seat remaining vacant thereafter due to non joining or non reporting, which have to be reverted or transferred back to the respective State and accordingly, the unfilled seats, after second round of counselling, had been surrendered to the State Government and the reverted seats have to be dealt with by the State authorities under their admission process as per their rules and policies.

4. In this regard, the communication of the office of the first respondent dated 01.08.2019 has been relied upon by the learned Assistant Solicitor General, where, he pointed out the following contents:

It is essential to mention that there are Two Rounds of counselling under 15% All India Quota and all the ALL India seats were allotted. The second

Final Round) was completed on 25/07/2019.



Any seat remaining vacant thereafter due to non-joining/non-reporting etc. have been reverted/transferred back to the respective States/Colleges/Universities including State of Tamil Nadu in terms of the All India Quota Scheme approved by the Hon'ble Supreme Court of India. The further admission process against reverted seats is to be carried out by them as per their rules and policies. The DGHS has no control over these rules and procedure."

5. In support of the said contention, the learned Assistant Solicitor General also pointed out that, insofar as the petitioner's candidature is concerned, her Roll number is 410601841. In the online counselling, if a candidate with the roll number entered into through online/web site, after Director General of Health Services, Ministry of Health and Family Welfare, Government of India, all the Colleges, where the seats available in All India Quota, would be displayed, where the respective last ranking would also be displayed. In this regard, the rank of the petitioner, since is 205504 and if that is reflected, based on which, against each of the Colleges throughout India, which covered under All India Quota, the last rank in respect of each of the College would be reflected.

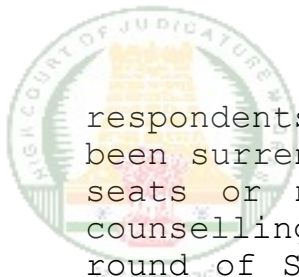
6. For instance, the Chengalpat Medical College, Chengalpat, Tamil Nadu, the last rank holder is 6062 rank, whereas, the petitioner is 205504.

7. Like that, in respect of all other Colleges available in the 15% All India quota throughout India, no one, who is lesser than the rank of the petitioner, both in the Open Quota or in the OBC Quota, had opted for any seat in any College or the last ranking of any such College is having lesser rank than the petitioner.

8. Like that, in the second round of counselling also, such a demonstration was made by the learned Assistant Solicitor General, where also, the petitioner ranking 205504 is put into competition, the last rank holder, who opted seat in various colleges, since has been displayed, where the last rank in each of the college is no way nearer to the rank of the petitioner, in other words, those who have in the rank of 9000 or 10,000 or within 15,000 or 17,000 and not beyond that, whereas, the rank of the petitioner is 2 lakhs and more.

9. Therefore, pointing out this ranking position of the petitioner, the learned Assistant Solicitor General submitted that, the petitioner is no way nearer to the last rank holder in respect of each of the Medical College throughout the State for both MBBS as well as BDS course, hence, the question of getting a seat or opting for getting a seat in All India Quota does not arise.

10. On the other hand, Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 4 and 5, relied upon



respondents 4 and 5, made submissions that, after the seats have been surrendered by the All India admission authorities, as unfilled seats or non joining seats, after completion of second round of counselling, those seats along with unfilled seats from the first round of State counselling will be put together and these unfilled seats under both quota would be available for second round of counselling, which will also be taken place from the very first ranking holder, despite the fact that, seats have already been filled in the first round of counselling. In this regard, the learned Additional Advocate General relied upon the following paragraphs of the counter affidavit of the respondents 4 and 5:

"22.It is submitted that Clause 13 of the Prospectus for admission to MBBS/BDS courses in Government Medical/Dental Colleges and Government Quota seats in Self-Financing Medical/Dental Colleges states as below:

(a) "15% of the total seats in each Government Medical Colleges and I.R.T Medical College, Perundurai, Erode and ESIC Medical College and PGIMSR, K.K.Nagar, Chennai and Rajah Muthiah Medical and Dental College, Annamalai University, Chidambaram and Tamil Nadu Government Dental College are reserved for All India Quota.

(b) If MBBS/BDS seats earmarked for All India Quota are unfilled by the Director General of Health Services, New Delhi, then such unfilled seats will be added to the State seats. These unfilled seats will be filled up by the candidates from the rank list."

23.It is submitted that the surrendered seats from All India Quota had been converted to the General pool of State Quota. The vacancies arising due to not joined seats in Government Quota and All India Quota surrendered seats or newly sanctioned seats arising after the first phase of counselling will be filled by re-allotment as per rank and communal reservation. The vacancy arising after re-allotment will be filled up with the remaining candidates from the rank list following the rule of reservation.

24.It is further submitted that the Clause 10, "Second phase of counselling" admission to MBBS/BDS Courses in Government Medical/Dental Colleges and Self-Financing Medical/Dental Colleges 2019-20 session states as below.

(i) Re-allotment / allotment for the vacancies arising due to not joining of the candidates allotted under State Quota and the unfilled seats from the All India Quota in Government Medical colleges and newly created seats



of reservation.

25. It is submitted that the 121 All India Quota surrendered seats and the not-joined seats arisen during the first phase of counselling has been converted to general pool and those seats have been filled by the State Government following the rule of reservation based on the General rank from 30.07.2019 to 01.08.2019 (OC-31%, BC-30%, MBC-20%, SC-18%, ST-1%)”

11. Accordingly, the surrendered seats from the All India Quota had already been included in the second round of counselling, which was taken place between 30.07.2019 and 01.08.2019 and in that second round of counselling, all the unfilled seats have again been allotted and thereafter, the Medical Colleges in the State started classes from 1st August 2019, onwards.

12. The learned Additional Advocate General also submits that, those who opted for All India Quota from Tamil Nadu, if they did not get a seat in All India Quota, they can also opt a seat in the State Quota, provided, as per her ranking in the general quota or communal quota, if he or she is within the cut off ranking.

13. In this context, the learned Additional Advocate General also would submit that, as far as the petitioner is concerned, though she is entitled to participate in the State counselling also, because of her ranking in the State Quota, she could not reach the zone of consideration to opt out any seats either under open quota or under her communal category.

14. Since the petitioner's overall ranking in the State quota is 10646 and BC ranking of the petitioner is 6157, she could not reach the zone of consideration and accordingly, she could not get a seat or admission in either MBBS or BDS course in the State quota also, including the All India Quota surrendered seats in the second round of counselling.

15. I have considered the said submissions made by the learned Assistant Solicitor General appearing for the respondents 1 to 3 as well as the learned Additional Advocate General for the respondents 4 and 5 and also heard the arguments advanced by the learned counsel for the petitioner.

16. After having heard the learned Assistant Solicitor General as well as the learned Additional Advocate General and perused the materials, as has been referred to above, this Court is of the view that, the system followed by both the All India admission authorities as well as the State admission authorities, who conducted the counselling separately to fill up the seats in MBBS and BDS course for the year 2019-20, both under All India Quota as well as the State quota, is flawless and cannot be found fault



17. However, it is the stand of the learned counsel for the petitioner that, 15% quota earmarked for All India admission is pursuant to the orders passed by the Hon'ble Apex Court and it has been made clear by the Hon'ble Apex Court that, at any rate, the 15% quota earmarked for All India admission cannot be reduced. In this context, it is the submission of the learned counsel for the petitioner that, since 121 seats out of the total 506 seats earmarked for All India Quota from Tamil Nadu has been surrendered and those seats also put under common pool along with unfilled seats from State quota and those seats were filled up during the second round of counselling, where all the rank holders from rank No.1 in the State of Tamil Nadu have been permitted to participate and opt a better seat, then the overall 15% earmarked for All India Quota from Tamil Nadu institutions in medical admission has got reduced, therefore, that goes against the spirit of the scheme of having 15% quota called out for all India students. Hence, the very system followed by the respondents is flawed, he submitted.

18. The said submission made by the learned counsel for the petitioner cannot be accepted for the simple reason that, the 15% quota earmarked for All India admission in Medical and Dental courses is concerned, that has not been reduced.

19. In two rounds of counselling, the central admission authorities have taken every effort by conducting All India counselling through online and seats were filled up even in the first round of counselling, as the entire 506 seats earmarked for All India Quota from Tamil Nadu have been allotted. However some of them, after having opted for some colleges from Tamil Nadu, have not joined. Because of non joining of the candidates in Tamil Nadu in 15% All India Quota, the second round of counselling was conducted on 25.07.2019, where also, the remaining unfilled seats in the second round of counselling had been completely allotted once again among the rank holders and again, some of them, who opted in second round of counselling of unfilled All India Quota seats also still not joined, therefore they become ultimate unfilled seats, which accounts 121 and thereafter, since there is no scope for counselling by All India admission authorities, as per the scheme in vogue, the same have been surrendered to the State authorities. Once the seats are surrendered as unfilled after second round of counselling for All India Quota, as per the prospectus issued by the State authorities, those unfilled seats also shall be taken into consideration for the second round of counselling along with unfilled All India Quota seats, where also communal reservation, being followed in the State of Tamil Nadu, would be followed and based on the ranking, those unfilled seats also would be allotted.

20. The said system being followed by the central as well as the State authorities, as has been set out above, is not faulty one.

21. However, it is not the case of the petitioner that, a



single seat or aspirant, who got lesser rank than the petitioner has been allotted seat, either in the All India Quota from Tamil Nadu institutions or the State Quota.

22. The petitioner's ranking both in the All India Quota or State Quota, as has been mentioned, is far away from the last ranking in respect of the communal category as well as open competition. Therefore, merit has been strictly followed and the system, as has been approved/intimated by the admission authorities, has been strictly followed. It is to be noted that, prospectus has been issued by the State authorities, where, it has been specifically mentioned about the All India Quota, under Clause 13, which has already been extracted hereinabove.

23. Under Clause 13(b), if MBBS/BDS seats earmarked and unfilled by the Director General of Health Services, Ministry of Health and Family Welfare, Government of India, New Delhi, such unfilled seats will be added to the State seats and these seats will be filled up by the candidates by the ranking list, which means, the unfilled seats from All India quota will be added as State seats and that would be filled up by the State admission authorities in the second round of counselling from among the ranking list available in the State.

24. Therefore, the prospectus is very clear and unambiguous. Moreover, it is to be further noted that, once prospectus is issued, it is a settled proposition that, it is a contract between the parties, ie., the authorities, who issued the prospectus and the beneficiaries ie., the aspirants/students or candidates. When that being so, the petitioner, having accepted the said contract by applying the said two quotas, namely, All India Quota as well as State Quota, cannot turn around and say that, the system of adding the unfilled All India seats in the State seat matrix to have the second round of counselling to fill up the seats based on the State ranking and State communal reservation is bad and unacceptable. The said stand now taken by the petitioner is not permissible, as the law is well settled, in this regard.

25. Moreover, on merits also, the said system is one of the best method being adopted by the authorities and in the absence of any other better system, the present system, being adopted by the authorities, cannot be said to be arbitrary or violative of Article 21 of the Constitution of India. Therefore, looking from any angle, this Court feels that, the petitioner is not at all entitled to seek for admission either under All India Quota or under State Quota, both under Open Category or under communal category, where she belongs, in view of her ranking based on the All India NEET examination and therefore, her plea before this Court, as set out in the prayer in the writ petition, cannot be countenanced.

<https://hcservices.ecourts.gov.in/hcservices> 26. In the result, the writ petition fails and the same is



accordingly, dismissed. However, there shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

WEB COPY

/ /2020

Sub Assistant Registrar(CS)

RR

To

1.The Directorate General of Health Services,
Health and Family Welfare Department
Near Udyog Bhawan Metro Station,
Maulana Azad Road, New Delhi.

2.The Director,
Medical Counselling Committee,
Health and Family Welfare Department
Near Udyog Bhawan Metro Station,
Maulana Azad Road, New Delhi.

3.The Secretary,
Medical Council of India,
Pocket No.14, Sector - 8
Dwarka Phase - I
New Delhi - 110 077.

4.The Secretary,
Government of Tamil Nadu,
Health and Family Welfare Department
Secretariat, Fort St. George,
Chennai.

5.The Director,
Selection Committee,
Directorate of Medical Education,
No.162 Periyar EVR High Road,
Kilpauk, Chennai.

+2 CC to M/s.P.SUBBIAH, Advocate (SR-79850[F] dated 06/08/2019)

+1 CC to M/s.ANANTH.C.RAJESH, Advocate (SR-80069[F] dated
06/08/2019)

+1 CC to M/s.SPL GP (SR-80403[F] dated 07/08/2019)

W.P. (MD)No.16908 of 2019
and W.M.P. (MD) Nos.13492 to 13494 of 2019
05.08.2019

_KK/SAR/08.01.2020/9P-10C/