

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.14643 of 2020
and WMP Nos.18196 & 18197 of 2020

1. Dr.M.Syed Fahrudeen
2. Dr.G.Kumaravel

...Petitioners

Vs.

1. The Government of India,
Rep. By its Secretary to Government,
Ministry of Health and Family Welfare,
Room No.348, 'A' Wing, Nirman Bhavan
New Delhi 110 011.
2. The Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
Room No.348, 'A' Wing,
Nirman Bhavan,
New Delhi 110 011.
3. The State of Tamil Nadu,
Represented by Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai 600 009.
4. The Director of Medical Education,
Kilpauk, Chennai 600 010.
5. The Medical Counseling Committee,
Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi 110 011.
6. The National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road),
New Delhi - 110 029.
7. The National Medical Commission,
The Medical Council of India,

Represented by its Secretary,
Pocket 14, Sector - 8,
Dwaraka, New delhi - 110 077

8.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-600 010. ..Respondents
(R8 Suo-Motu impleaded vide order dt 16/10/2020 made in
WP.14643/2020)

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to notify 50% of vacancies for in-service candidates for admission to Super Special Courses DM/MCh. Courses in the academic Session 2020-2021 in respect of Medical Institution in the State of Tamil Nadu while conducting on-line counselling for admission for DM/MCh courses, consequent to the orders passed by the Hon'ble Supreme Court of India in Writ petition (Civil) No.196 of 2018 dated 31.08.2020 and in the light of the communication issued by the 4th respondent in Ref.No.050958/ME-3/2/2019 dated 06.10.2020, based on the representation submitted by the Association dated 06.10.2020.

For Petitioner : Mr.P.Wilson, Senior Counsel for
Mr.G.Sankaran

For Respondents : Mr.Subba Ranga Bharathi
Senior Central Government
Standing Counsel for
R1, R2 and R3
Mr.E.Manoharan
Special Government Pleader
for R4 and 5
Mr.V.P.Raman,
learned counsel for R6 & R7

ORDER

This Writ Petition is filed for the issue of writ of mandamus directing the respondents to notify 50% of vacancies for in-service candidates for admission to Super Speciality courses during the academic session 2020-2021 in line with the orders passed by Hon'ble Supreme Court in WP (Civil) No 196 of 2018 dt 31.08.2020.

2. When the matter came up for hearing on 09.10.2020, this Court passed the following order:
Mr.Subba Ranga Bharathi, learned Central Government Standing Counsel, takes notice on behalf of respondents 1, 2 and 3; Mr.E.Manoharan, learned

Special Government Pleader takes notice on behalf of respondents 4 and 5 and Mr.V.P.Raman, takes notice for respondents 6 and 7.

2. The issue involved in the present writ petition is with regard to notifying 50% of vacancies for the in-service candidates for admission to the super speciality courses. This claim is made by the petitioners based on the judgement of the Hon'ble Supreme Court in Tamil Nadu Medical Officers Association case in WP(civil) No.196 of 2018 dated 31.08.2020. It is also brought to the notice of this Court that the Division Bench of the Kerala High Court has taken note of this judgement and has directed the Government to prepare the list of candidates, who are eligible for admission under the in-service category. Pursuant to the said order, the Director General of Health Services through a notification dated 08.10.2020 has taken a decision to postpone the counselling until further orders.

2. Mr.Vijay Narayanan, learned Advocate General appearing on behalf of respondents 3 and 4 submitted that the State Government has taken note of the judgement passed by the Hon'ble Supreme Court and steps are being taken to take a decision on this issue. The learned Advocate General sought for some time to report the further developments in this case.

3. Post this case on 16.10.2020 at 2.15 p.m for passing further orders.

3. The Writ petition was again posted for hearing on 16.10.2020 and this Court passed the following order :-

The Secretary, Selection Committee, Directorate of Medical Education, Kilpauk, Chennai 600 010, is suo-motu impleaded as the 8th respondent in this writ petition. The Registry is directed to carry out the necessary amendment in the cause-title. Mr.Abdul Saleem, learned Counsel takes notice for 8th respondent.

2. Pursuant to the order passed by this court on 9.10.2020, the fourth respondent has filed the counter affidavit on behalf of the third respondent also. The relevant portion in the counter affidavit is extracted hereunder:

16. I state that in Tamil nadu there are 25 Government Medical Colleges, 14 Self Finance Private Medical Colleges and many of them are with Post

Graduate and Super Speciality Course. The quality of the Medical Education in the State of Tamil Nadu is so high when compared with any other State across the country, since the State has been creating a skilled human resource over the years. Further, as a Policy, the State has proposed to create Government Medical Colleges in all the Districts in the State. Recently, the Government of India, has sanctioned 11 new Government Medical Colleges under Centrally Sponsored Scheme. Hence, for the existing colleges and for the future expansions, skilled faculties is an absolute essential requirement and that as per the above direction of Constitution Bench of the Hon'ble Supreme Court of India, the State of Tamil Nadu should be allowed to fill up 50% of the seats in the Super Speciality Courses as its quota from this academic year.

2. The Learned Advocate General appearing on behalf of respondents 3 and 4 submitted that the state government is now in the process of assessing the total seats that are to be filled up in the PG Courses and also in the Super Speciality courses and it is also taking into consideration the future expansions. The Learned Advocate General appearing on behalf of the respondent 3 and 4 further submitted that the State government is now in the process of taking a decision and the decision taken by the government will be reported in the next date of hearing.

3. Mr. Subbu Ranga Bharathi, learned Senior Central Government Standing Counsel, appearing on behalf of respondents 1, 2 and 5 submitted that he has received written instructions to the effect that the Central Government is not in agreement in providing reservation for in-service candidates in the Super Speciality courses. The learned counsel sought for time to file counter in this case.

4. It is clear from the above that different stands have now been taken by the State Government and Central Government on this issue. The Hon'ble Supreme Court while passing the judgment in Tamil Nadu Medical Officers Association and Others vs. Union of India and others reported in 2020 SCC On Line SC 699 has specifically traced the power of reservation of in-service candidates under Entry 25 to List - III of Constitution of India. Both the Central Government and State Government will have powers to enact a law with regard to providing reservation for in-service candidates in Post

Graduation and Super Specialty courses. In view of the divergent opinions expressed by the Central Government and State Government, this Court has to necessarily hear the versions of both sides before passing final orders in this Writ Petition.

5. Post this case for further hearing on 09.11.2020 at 2.15 p.m. In the meantime, the respondents 1, 2 and 5 shall file counter affidavit.

4. When the matter was taken up for hearing today, the learned Advocate General appearing on behalf of respondents 3 and 4 submitted that the Government of Tamil Nadu has issued a Government Order in G.O. M.S 462, Health and Family Welfare (MCA-1) dt 07.11.2020. The learned Advocate General specifically relied upon paragraph No. 11 of the G.O and the same is extracted hereunder :-

11. The Government have examined the proposal of the Director of Medical Education based on the orders of the Hon'ble Supreme Court of India in Writ Petition (Civil) No.196 of 2018 and also based on the considered opinion of the Learned Advocate General of Tamil Nadu and in order to protect the larger interest of the students hailing from Tamil Nadu, decided to agree the same. Accordingly, the Government hereby issue following orders:

i) 50% of the Super Specialty seats (DM / M.Ch.) in Government Medical Colleges are allocated to in-service candidates of Tamil Nadu and the remaining 50% seats are allocated to the Government of India / Director General of Health Services from the academic year 2020-2021;

ii) 50% of the in-service Super Specialty seats would be filled up based on the marks obtained in the NEET-SS ;

iii) The Secretary, Selection Committee, be designated as the authority to prepare a merit list, to conduct counselling, to fill the 50% of the Super Specialty (DM/M.Ch.) seats in Government in-service candidates in the State of Tamil Nadu and other related admission

Medical Colleges by works;

iv) The Director of Medical Education is directed to obtain a bond from the in-service candidate after completion of their Super Specialty (DM / M.Ch.) courses in Tamil Nadu with the condition to serve in the Government till their retirement; and

v) The Director of Medical Education, the Director of Medical and Rural Health Services and the Director of Public Health and Preventive Medicine are directed to post the above said in-service candidates in hospitals located in rural or remote

or difficult areas already defined or such criteria to be defined by the Government from time to time to access specialist care for treatment for a minimum of two years or the conditions to be fixed by the Government, subject to the availability of vacancies in the respective specialties.

5. The learned Advocate General submitted that the selection for the Super Speciality courses during the academic year 2020-2021, will be conducted in line with this Government order.

6. Mr. P. Wilson, learned Senior counsel appearing on behalf of the petitioners submitted that the relief sought for by the petitioners has now been granted in the above Government Order and hence, the same can be directed to be implemented during this academic year 2020-2021.

7. Mr. Subbu Ranga Bharathi, Learned Central Government Standing Counsel appearing on behalf of respondents 1, 2 and 5 circulated a memo filed on behalf of the 2nd respondent. The learned Counsel submitted that as against the order passed by the Division bench of the Kerala High Court, an appeal has been moved before the Hon'ble Supreme Court. The learned counsel further submitted that the Hon'ble Supreme Court has entertained the Special Leave Petition filed by some of the aggrieved candidates and had directed status quo to be maintained until further orders. The Learned Counsel further submitted that the Union of India has also approached the Hon'ble Supreme Court against the orders passed by the Kerala High Court and the matter is yet to be listed.

8. The Learned Central Government Standing Counsel by placing reliance upon the judgement of Hon'ble Supreme Court in Preeti Srivastava case, submitted that there can be no compromise with merits at the super specialty stage and any such compromise will defeat the very object of imparting the best possible training to the selected meritorious candidates, who would contribute to the advancement of knowledge in the field of medical research and application. The learned counsel further submitted that this judgement was also relied upon in the subsequent Judgement in Dr. Sandeep and Ors. Therefore, the Learned Counsel submitted that reservation beyond the level of MBBS is not advisable and the selection for the Post graduation as well as super-specialty courses must be only based on merits. The Learned Counsel therefore requested this Court to take note of the stand of the Central Government before passing any orders in this writ petition.

9. The memo filed by the 2nd respondent and submissions made by the learned Central Government Standing Counsel were

carefully considered by this Court. It must be borne in mind that the Hon'ble Constitution Bench while deciding the case in Tamil Nadu Medical Officers Association and ors., had taken note of all the earlier judgements and had passed orders. The Government of Tamil Nadu by virtue of passing the Government Order, referred supra, has fallen in line with the orders passed by the Constitution bench of the Honble Supreme Court. Therefore, there is nothing much to be added by this Court in this writ petition except to record the Government Order passed by the Government of Tamil Nadu. The pendency of the Special leave petition before the Honble Supreme Court has nothing to do with the issue that is involved in the present Writ petition. By virtue of Government Order passed in G.O.Ms.No.482 dated 7.11.2020, the relief sought for by the petitioners has been granted by the Government of Tamil Nadu and recording the same, this Writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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1. The Government of India,
Rep. By its Secretary to Government,
Ministry of Health and Family Welfare,
Room No.348, 'A' Wing, Nirman Bhavan, New Delhi 110 011.
2. The Director General of Health Services,
Ministry of Health and Family Welfare,
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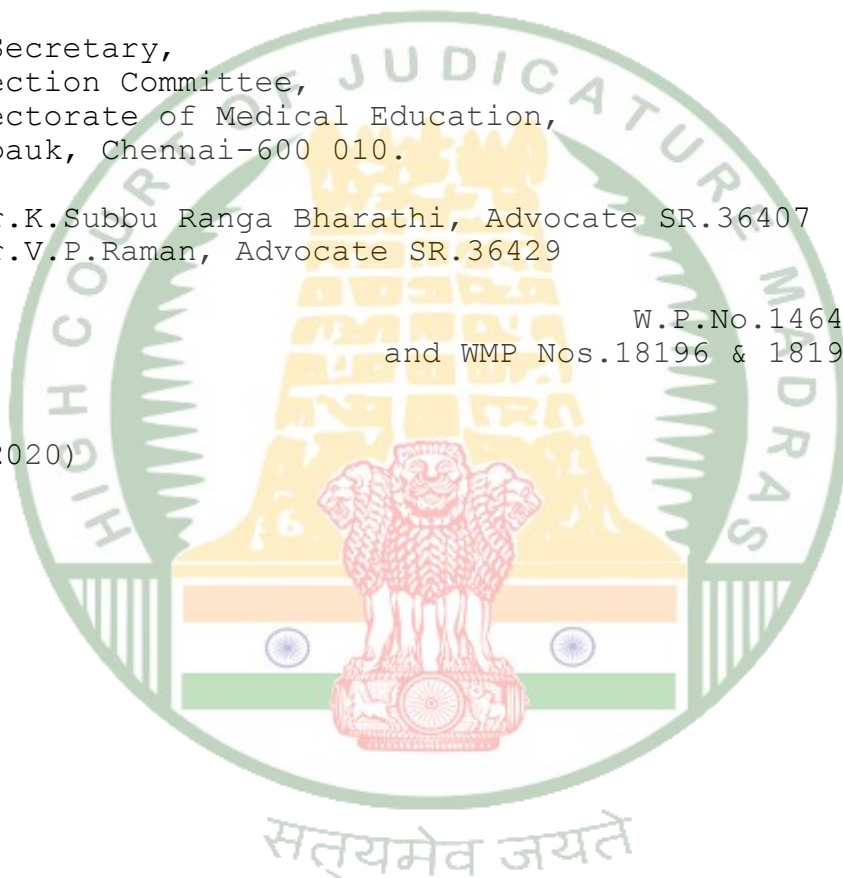
8. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-600 010.

+1cc to Mr.K.Subbu Ranga Bharathi, Advocate SR.36407

+2cc to Mr.V.P.Raman, Advocate SR.36429

W.P.No.14643 of 2020
and WMP Nos.18196 & 18197 of 2020

SRA (CO)
CB(11/12/2020)



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