

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.12.2020

Delivered on: 17.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP No.18687 of 2020

and

WMP No.23205 of 2020

Minor M.Anirudh

Rep.by his father and guardian

A.Muralidharan

1045, 41st Street, Korattur,

Chennai 600 080.

...Petitioner

.Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai 600 009.

2.The Selection Committee,
Rep. By its Secretary,
Directorate of Medical College,
No.162, Periyar E.V.R. High Road,
Kilpauk,
Chennai 600 010.

3.The National Medical Commission,
Represented by its Secretary,
Pocket - 14 Sceotr-8,
Dwaraka Phase-1,
New Delhi 110 077.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, for bearing the respondents from following any other kind of reservation to the M.B.B.S. Courses in the Government Colleges for the academic year 2020-2021 and further direct the respondents to strictly follow the reservation of seats allocated in terms of paragraph 13(2) of the prospectus issued by the Government of Tamil Nadu for admission to M.B.B.S./B.D.S. Degree courses in the Tamil Nadu Government Medical College/Dental Colleges 2020 -2021 session issued by the second respondent.

For Petitioner : Mr.R.Karthikeyan

For Respondents : Mr.E.Manoharan
Special Government Pleader
for R 1
Mr.Abdul Saleem
Standing Counsel
for R 2
Mr.V.P.Raman
Standing Counsel
for R 3

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus forbearing the respondents from adopting any other form of reservation during the selection to the MBBS Course than the one provided under Paragraph 13(II) of the Prospectus issued by the 2nd respondent.

2.The petitioner who completed his XII Examination wanted to join the Medical Course and he took the NEET Examination and obtained 590 marks and he was placed in Rank No.1251. It is seen from the Seat Matrix published by the 2nd respondent that out of 2747 seats about 870 seats are allotted to the open competition in the Government Colleges and 327 seats are allotted to the self-financing Colleges under open competition. The grievance of the petitioner is that the method of allotment of seats by the respondents is contrary to the reservation of seats provided in the Prospectus and ultimately the percentage of seats under open competition gets reduced and as a result of the same, candidates falling under the open category are deprived of their rightful claim. This method of reservation adopted by the respondents does not have any Statutory backing and aggrieved by the same, the present Writ Petition has been filed before this Court.

3.The learned Standing counsel appearing on behalf of the 2nd respondent circulated the position note which explains the procedure followed by the 2nd respondent. For proper appreciation, the entire position note is extracted hereunder:

POSITION NOTE IN W.P.No.18687 of 2020

1. It is submitted that the Minor M.Anirudh has applied for NEET UG 2020 and have obtained 590 marks. He has been placed in State Rank No. 1251. As per his mark, he had attended the counselling on 02.12.2020. He belongs to OC category.

2. It is submitted that the petitioner has prayed the Hon'ble Court to direct the respondents to strictly follow the reservation of seats allocated in terms of paragraph 13(2) of the Prospectus issued by the Government of Tamil Nadu

for admission to MBBS/BDS Degree Courses in the Tamil Nadu Government Medical / Dental Colleges 2020-2021 session.

3.It is also submitted that in the counselling procedure Clause 13(ii), it is stated that "The selection will be made based on NEET -UG 2020 score and by Single Window counselling following the rule of reservation by the Government of Tamil Nadu as follows:

Open Competition	- 31%
Backward Class	- 30%
Most Back ward Class	- 20%
Schedule Caste	- 18%
Schedule Tribe	- 01%

Within the 30% reservation for Backward Classes, 3.5% will be provided for Muslims and 16% of seats out of the 18% quota earmarked to Scheduled Caste shall be allocated to the Arunthathiyar Community.

BC, BCM, MBC / DNC, SC, SCA, and ST candidates are eligible for selection under Open Competition as per rank in addition to the reservation made for those categories".

4. It is also submitted that the persons who made applications, thereafter, were called for counselling for allotment of a specific College and that the choice keeps shifting depending upon the merit ranking and communal ranking. Therefore, there is likelihood of reduction or increase in respect of seat allotted to a particular College. The meritorious order in the open competition candidates is maintained and after the open competition category candidates, the allotment of seats of reserved category candidates will be in the order of merit. Therefore, neither there is violation of the provisions of 1993 Act nor it affects the reservation of the petitioner under Article 15 of the Constitution. In this context, it is necessary to refer to the following averments in the Counter Affidavit which reads as follows:

"The total apportionment of seats for Government Medical Colleges following rule of reservation is as follows:

Total Number of Seats	: 2805
Apportionment:	
Open Competition (31%)	: 870
Backward Class	: 743

Backward Class Muslim	:	98	
MBC (20%)	:	561	
SC (18%)	:	424	
SCA (16% of 18%)	:		81
ST (1%)	:	28	
Total	:	2805	

Hence, the 870 seats earmarked under open competition are filled up by virtue of merit as per published counselling schedule for allotment of MBBS seats for 2020-2021 session irrespective of community as stated in the prospectus.

As a standard procedure followed for years, the apportionment of seats is made for all Medical Colleges and also with regard to sanctioned strength of the College concerned. For example the apportionment for MMC is noted as follows:

	OC	BC	BCM	MBC	SC	SCA	ST	Total SQ seats
MMC	61	52	7	39	29	6	2	196

During counselling, candidates are allotted upto 870 seats (overall OC component) in various Medical Colleges by virtue of merit. There will be an occasion when the above OC component seats of 44 are over, the next high ranking candidates, if he/she wishes to opt for MMC in a community vacancy to which he/she belongs will be allotted to the community vacancy. For example, if he/she happens to be BC candidate, a seat in BC strength in MMC will be reduced. But overall community vacancy reduction should be started only after exhausting all open category seats of 870 are over. Hence in order to maintain the Backward Class quotient intact, the reduced vacancy in BC community in MMC is added to the component of BC in another Government Medical College to compensate and maintain the overall BC component. One seat in Open Competition in another Government Medical College is reduced, so as to maintain the OC quotient.

Suppose, if the practice of allotting a meritorious candidate within the zone of open

category in a community vacancy is not followed, it will lead to a situation where lower ranking BC candidate can get a BC seat in MMC.

. By adopting this loop method, the meritorious order in Open Competition candidates will be maintained and after this Open Competition category candidates, the allotment for reserved category candidates will be in the order of merit.

Hence the application of rule of reservation is fully implemented following the clauses mentioned in the Prospectus issued for 2020-2021 session".

4. The learned counsel for the petitioner relied upon the judgment of the Telangana High Court in Narrajahnvi vs. State of Andhra Pradesh dt. 07.08.2018. The learned counsel specifically relied upon Paragraph No. 61 and the same is extracted hereunder:

61. Accordingly, the writ petitions are allowed. The last portion of paragraph 5 (ii) of the Government Order G.O.Rt.No.550, dated 30-07- 2001, reading:

"During this process, if a candidate belonging to Scheduled Caste/Scheduled Tribe/ Backward Classes, who had taken admission under open competition, opts for a better branch or a better college of his choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open competition shall be filled with a candidate from the same reservation category only, in order of merit." shall stand set aside. The respondent-Universities who have already made admissions in the first phase of counseling, as per the interim order passed by this Court, shall proceed further with the subsequent phases of counseling, as per this judgment. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed".

5. The learned counsel submitted that the above judgment will squarely apply to the facts of the present case. It was submitted that there was at least a Government Order that was available at Telangana and the same was held to be illegal and directions were given by the Court the manner in which the seats will have to be filled up. In the present case, there is no Rule or Regulation that is available and

this practice is being followed without any basis and thereby causing serious prejudice to the candidates falling under the open category.

6. The learned Standing Counsel appearing for the 2nd respondent submitted that this procedure which has been followed for a longtime has been upheld by this Court in W.A.No. 2179 of 2012 by judgment dt. 04.10.2012. The relevant portions of the judgment are extracted hereunder:

"4.The grievance of the appellant as expressed before the writ Court is that while following the reservation quotas in allotting seats, the third respondent was reallocating the seats from the open competition to the reserved category such as backward classes. According to the appellant, this was contrary to Section 4 of the Tamil Nadu BC, SC and ST (Reservation of Seats in Educational Institutions and Appointments or Posts in the Services under the State) Act, 1993.

5.The learned Single Judge after taking into consideration the contention raised by the appellant, dismissed the writ petition, holding that there is no illegality in the method adopted for reservation of seats and over all percentage reservation having been fulfilled, no grounds have been made out to interfere with the selection. The operative portion of the order reads as hereunder:

5.The contentions raised by the petitioner cannot be countenanced by this Court. In the prospectus issued by the respondents for admission to MBBS course for the year 2012-2013 in paragraph Nos.24 and 34, the rule of reservation has been indicated, which reads as follows:

"VI. COUNSELLING PROCEDURE (SINGLE WINDOW SYSTEM):-

24.The selection will be made on merit basis and by Counselling applying the rule reservation by the Government of Tamil Nadu as follows :-

Open Competition	- 31%
Backward Class	- 30%
Most Back ward Class	- 20%
Schedule Caste	- 18%
Schedule Tribe	- 01%

Within the 30% reservation for Backward Classes, 3.5% will be provided for Muslims and 16% of seats out of the 18% quota earmarked to Scheduled Caste shall be allocated to the Arunthathiyar Community.

BC, BCM, MBC / DNC, SC, SCA, and ST candidates are eligible for selection under Open Competition as per rank in addition to the reservation made for those categories.

34. The movement of candidate from one category to another category and from one college to another college will be based on the merit following the rule of reservation."

6. The persons who made applications, thereafter, were called for counselling for allotment of a specific College and that the choice keeps shifting depending upon the merit ranking and communal ranking. Therefore, there is likelihood of reduction or increase in respect of seat allotted to a particular College. The meritorious order in the open competition candidates is maintained and after the open competition category candidates, the allotment of seats of reserved category candidates will be in the order of merit. Therefore, neither there is violation of the provisions of 1993 Act nor it affects the reservation of the petitioner under Article 15 of the Constitution. In this context, it is necessary to refer to the following averments in the Counter Affidavit which reads as follows:

"The total apportionment of seats for Government Medical Colleges following rule of reservation is as follows:

Total Number of Seats	: 1823
Apportionment:	
Open Competition (31%)	: 565 seats
Backward Class	: 483 seats
Backward Class Muslim	: 64 seats
MBC (20%)	: 365 seats
SC (18%)	: 276 seats
SCA (16% of 18%)	: 52 seats
ST (1%)	: 18 seats
Total	: 1823 seats

Hence, the 565 seats earmarked under open competition are filled up by virtue of merit as per published counselling schedule for allotment of MBBS seats for 2012-2013 session irrespective of community as stated in the prospectus.

As a standard procedure followed for years, the apportionment of seats is made for all Medical Colleges and also with regard to sanctioned strength of the College concerned. For example the apportionment for MMC is noted as follows:

	OC	BC	BCM	MBC	SC	SCA	ST	Total SQ seats
MMC	44	37	5	28	21	4	1	140

During counselling, candidates are allotted upto 870 seats (overall OC component) in various Medical Colleges by virtue of merit. There will be an occasion when the above OC component seats of 44 are over, the next high ranking candidates if he/she wishes to opt for MMC in a community vacancy to which he/she belongs will be allotted to the community vacancy. For example if he/she happens to be BC candidate, a seat in BC strength in MMC will be reduced. But overall community vacancy reduction should be started only after exhausting all open category seats of 565 are over. Hence in order to maintain the Backward Class quotient intact, the reduced vacancy in BC community in MMC is added to the component of BC in another Government Medical College to compensate and maintain the overall BC component. One seat in Open Competition in another Government Medical College is reduced, so as to maintain the OC quotient.

Suppose, if the practice of allotting a meritorious candidate within the zone of open category in a community vacancy is not followed, it will lead to a situation where lower ranking BC candidate can get a BC seat in MMC.

. By adopting this loop method, the meritorious order in Open Competition candidates will be maintained and after this Open Competition category candidates, the allotment for reserved category candidates will be in the order of merit.

Hence the application of rule of reservation is fully implemented following the clauses mentioned in the Prospectus issued for 2012-2013 session".

7. In the light of the stand taken by the respondents and there being the illegality in the method adopted for reservation of seats and over all percentage reservation having fulfilled, there is no case made out for interference with the impugned selection by the respondents for the MBBS course. Hence the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions stands closed.

6. In the light of fact that the respondents have been following a standard procedure for several years and the apportionment of seat is made for all medical colleges and also with regard to sanctioned strength of the college concerned, there is no error in the procedure adopted by the third respondent.

7. Therefore, we are fully in agreement with the order passed by the learned Single Judge and find no grounds to interfere with the said order. Further, the entire selection process is already completed as of 30.09.2012.

7. The learned Standing Counsel by relying upon the judgment of the Division Bench submitted that by adopting loop method, the meritorious order in open competition candidates will be maintained and after this open competition candidates only the allotment of reserved category candidates will be made in the order of merit. The learned Standing Counsel therefore submitted that the rule of reservation is fully implemented as per the Prospectus issued by the 2nd respondent.

8. The learned counsel for the petitioner requested this Court to refer this issue to a Division Bench. Judicial discipline requires that a Single Judge is bound by the judgment of a Division Bench of the same Court. The judgments of other High Courts will only have a persuasive value and it is not binding. A Single Judge cannot mechanically refer a matter to a Bench unless it is found that the judgment of the larger Bench is per incuriam. The Hon'ble Supreme Court has explained in detail as to when the concept of per incuriam can be applied in a given case. Useful reference can be made to the judgment of the Hon'ble Supreme Court in Union Of India & Others .Vs R P Singh reported in (2014) 7 SCC 340. The present case does not fall under this category. Therefore,

this Court is not in a position to accede to the request made by the learned counsel for the petitioner. The judgment of the Division Bench is binding on this Court and the same issue has already been dealt with and upheld in favour of the 2nd respondent.

9. In view of the same, this Court does not find any ground to entertain this Writ Petition and accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai 600 009.
2. The Secretary,
The Selection Committee,
Directorate of Medical College,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai 600 010.
- 3.The Secretary,
The National Medical Commission,
Pocket - 14 Sceotr-8,
Dwaraka Phase-1,
New Delhi 110 077.

+1cc to Mr.V.P.Raman, Advocate, S.R.No. 41903

+1cc to the Government Pleader, S.R.No. 41854

WP No.18687 of 2020

NR(CO)
GN(18/01/2021)