

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE B. PUGALENDHI

W.P.Nos.18903 & 18908 of 2020

1.Lavanya ... Petitioner
(in W.P. No.18903 of 2020)
2.Reshmaa. K. ... Petitioner
(in W.P. No.18908 of 2020)

Vs.

1.Union of India,
Represented by the Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi.

2.The Medical Counselling Committee of
Directorate General of Health Services,
Represented by the Secretary,
Ministry of Health and Family Welfare,
Government of India,
New Delhi.

3.JIPMER,
Represented by its Director,
Dhanvantri Nagar,
Puducherry.

4.The Director,
Department of Health and Family Welfare Services
cum - Nodal Officer (Medical Education),
Puducherry.

..... Respondents
(In Both petitions)

5.G.Dhakshancoumar,
(All India Rank No.18857),
No.5, SBI Lloyds Colony,
Boomiyanpet,
Puducherry - 605 005.

6.Hariprasath. S,
(All India Rank No. 34442),
77, Ramanar Street,
Ananda Nagar,
Lawspet,
Puducherry- 605 008.

7.Syedsuhail,
(All India Rank No.40982),
92, Shivaji Street,
Sudana Nagar Extension -3,
Nainarmandapam, Puducherry - 605004.

8. The National Medical Commission
Rep by its Secretary,
Pocket-14, Sector-8,
Dwaraka Phase-I, New Delhi ... Respondents
(In W.P. No.18903 of 2020)

PRAYER IN 18903 OF 2020: This Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Direction or Order in the nature of a Writ, calling for the records pertaining to Under Graduate Medical/Dental Seats Allotment -2020 - Round -2 List dated 28.11.2020 uploaded by the 2nd Respondent in its official website and quash the same only to the limited extent of misplacement of Fifth Respondent under P-SC category instead of P-UR; non inclusion of the Petitioner's candidature (All India Rank No.164528) therein and inclusion of the candidature of the 6th Respondent (All India Rank No. 34442) and 7th Respondent (All India Rank No.40982), therein and to direct the Official Respondents herein to include the Petitioner in the Under Graduate Medical/Dental Seats Allotment -2020 - Round-2 List under JEI - P- SC and to consequently forthwith grant admission to the Petitioner to a seat in UG Medical Course in JIPMER, Puducherry.

PRAYER IN 18908 OF 2020: This Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 2nd and 3rd Respondents herein to include the petitioner in Under Graduate Medical/Dental Seats Allotment 2020 Round 2 List dated 28.11.2020 under JEI-P-SC and to consequently forthwith grant admission to the petitioner to a seat in UG Medical Course in JIPMER Pudecherry.

For Petitioners : Mr. M.Ravi

For Respondents : Mr. Srinivasamurthy

For Respondent-3: Mr. Arunan

For Respondent -8 -Mr. P.V.Raman

COMMON ORDER

The Petitioners, who are aspirants for MBBS medical course in the third respondent College-JIPMER, have filed these Writ Petitions challenging the final selection order of the second round of UG Counselling for MBBS / BDS seats in reference U-11011/04/2020/21 -MEC dated 16/11/2020 issued by the 2nd respondent only to the limited extent of misplacement of 5th Respondent under Puducherry SC Category instead of Puducherry Un-Reserved Category.

2. The case of the Petitioners is that they are residents of Puducherry and also belong to Scheduled Caste Community. The petitioner in W.P.No.18903 of 2020, Ms.Lavanya, secured 418 marks and the other petitioner in W.P.18909/2020, Ms.Reshma secured 414 marks, in the NEET Examination. The residents of Puducherry are eligible for internal reservation and on this quota, 7 seats are allotted for Puducherry SC (Internal SC) category. In this category, one Dhakshancoumar / 5th Respondent herein got admission. The grievance of the petitioners is that though the 5th Respondent is eligible under the Puducherry Internal Un-Reserved Category, he was accommodated under the Puducherry SC (Internal SC) category and thereby, the scope for other eligible SC candidates is denied.

3. Mr.Ravi, the learned Counsel for the petitioners, in support of his case, has relied upon the judgment of the Hon'ble Supreme Court in "Ritesh R. Sah v. Dr. Y.L. Yamul and others, reported in (1996) 3 SCC 253", and submits that in case if the candidates applied under the SC Category are having sufficient marks for being allotted at the Un-Reserved Category, they ought to have been treated as Un-Reserved Category, instead of SC category. The relevant portion of the orders of the Hon'ble Supreme Court is extracted as follows:

"But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in

whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate. The Full Bench of the Bombay High Court in Ashwin Prafulla Pimpalwar & Ors. v. State of Maharashtra [W.P. 2469/90] decided on 16th September, 1991 held that selection of candidates for admission to post-graduate medical course in colleges run by or under the control of the State Government shall be regulated in accordance with the prescription in that behalf contained in the rule for selection of the candidates for admission to the post-graduate medical course notified by the Government. The contention that the candidates belonging to the backward classes admitted to M.B.B.S. course selected as general candidates are not eligible for admission as reserved candidates or for scholarship etc. and also for admission to post-graduate medical course as reserved candidates, is illegal for and in negation of Article 15(4). The memorandum issued by the Government on the basis of the statement made by the Minister of Health, Government of Maharashtra was placed before us showing that such candidates are entitled to all the benefits though admitted on merit basis. The said statement is consistent with Article 15(4). Therefore, the candidates belonging to backward classes but selected as general candidates for admission to graduate or postgraduate medical course are entitled to the concessions or scholarships and other benefits according to the rules or instructions of the State Government or the Central Government as the case may be. The admission to the Medical Colleges for the year 1995-96 in the State of Maharashtra is already over and we are not inclined to interfere with the admissions already made but we do commend that while deciding and publishing the Rules for admission in the next academic session. directions given in this judgment should be borne in mind and the rules should be made accordingly. In view of our conclusion, and-admittedly the Authorities having admitted the candidates belonging to the reserved category only against seats meant for reserved category even though they were entitled to be admitted on the basis of their merit, the petitioner who could have been otherwise admitted, has been debarred from taking admission. Since

the petitioner is a single applicant before us, we direct that the petitioner be admitted to any one of the colleges where he can be so admitted to the MBBS course where seat is still available and if no seat is available then he may be admitted by increasing one seat in any one of the colleges. It may be made clear that, if the petitioner is desirous of being admitted to any of the Medical colleges in pursuance of this Court's order then he should approach the Designated Authority within two weeks from today and the Designated Authority will then take appropriate action within two weeks thereafter. The designated authority will decide the college to which the petitioner will be admitted."

4. The above said judgment in Ritesh R. Sah's case has been followed in the subsequent judgment in the case of "Tripurari Sharan And Anr. vs Ranjit Kumar Yadav reported in 2018 (2) SCC 656", wherein the Hon'ble Supreme Court has held as follows:

"12. In the matter on hand, it is not the case that any other candidate of the reserved category, other than the candidate taking up the MRC's general category place in choosing general category seat, will be adjusted. Moreover this issue is not under challenge in the present case, as both sides are admittedly not contesting the right of a MRC to choose a seat earmarked for the reserved category. On the other hand, it is fairly submitted by Shri Naphade and Shri Prasad that a MRC has got a right to choose a seat earmarked for reserved category/categories. However, they are only worried that the aggregate reservation should not exceed 50%.

It follows from the cases cited above that the 50% reservation rule should not be breached under any circumstances. As mentioned supra, a MRC in medical admissions has more marks than the last general merit candidate, hence he shall be treated as a general category candidate. Only a choice of college seats in the reserved category is open to him. In this manner, the number of seats in each category remains constant and the upper limit of 50% reservation is not breached.

13. It is clear from Ritesh R. Sah (supra), that in the case of admission to postgraduate medical institutions, a MRC who chooses to avail of the option of admission to a college with seats kept for the reserved category is deemed to have been admitted as an open category candidate. He continues to be open category candidate. There is no migration into the reserved category even if a MRC opts for a seat

earmarked for reserved category candidates. The lowest-ranking candidates who qualified in the reserved category, cannot hence have option for colleges/seats in reserved category on account of the MRC's choice, may be adjusted against the choices of college seats then available in the general category left over by MRC. However such reserved category candidates continue in reserved category, except for such option. Thus, by treating a MRC as a general category candidate, the number of reserved seats remains the same, and reservations do not exceed 50%. This is also consistent with the principles of equity. In view of the above, we could not find any reason to disagree with the conclusions reached by the full Bench of the High Court".

5. By relying these judgments of the Hon'ble Supreme Court, the learned Counsel for the petitioners made his submission that the 5th Respondent ought to have been placed only under the Un-Reserved Category, instead of Puducherry SC Category.

6. The Learned Counsel for the Petitioner has also relied on the Counter Affidavit filed by the Respondents 1 and 2 and made his submission that the candidates having lower marks than the 5th respondent have also been allotted under the UR Seat. In fact, the 2nd Respondent has specifically stated in paragraph 20 of the counter affidavit as follows:

"The Candidate(s) even though having lower marks than Mr.Dhakshancoumar had been allotted a UR seat in Round

2. Seats are allotted to the candidates participating in the round concerned based on their rank, seat availability and community they belong. Therefore the answering Respondent allots seat based on the marks/ rank/choice etc secured by the candidates participating in the round concerned."

Therefore, the learned Counsel prays for allowing the writ petitions.

7. Mr.Srinivasamoorthy, the learned Counsel for the 2nd respondent made his submissions that as far as the candidature of 5th respondent (Roll No.3701007384) is concerned, the candidate was allotted JIPMER, Puducherry (Internal Quota) seat in the SC Category in Round 1. The Candidates, who have been accommodated under the UR category from the candidates of Scheduled Caste as referred in the counter affidavit are allotted in Round 2 of Counselling and therefore, this contention of the petitioners cannot be considered.

8. According to the learned Counsel for the second respondent, the 5th respondent did not give his willingness to opt for upgradation in the Round 2 of Counselling. If any candidate, who has been allotted any seat in the Round 1 of Counselling, wishes to upgrade in the second round, he / she has to fill the choice for such upgradation. But, in this case, the 5th respondent did not fill any choices for Round 2 of Counselling and hence, he was not considered for upgradation in Round 2 of Counselling.

9. Mr.Srinivasamoorthy, the learned Counsel for the 2nd respondent further submits that the allotment of seats is purely an automated process and there is no manual intervention in the said process. As per the algorithm followed during the allotment process, at first, UR seats will be offered to an SC Candidate who have scored above 50% and in case, UR seat is not available, the SC seat is allotted to such candidate. By following the above algorithm, in case where an SC Candidate wishes to upgrade in the Round 2, he/she should again fill the choices and can see the UR seats only when the candidate has score above 50% and UR seat is available. In the case on hand, the 5th respondent had not filled any choices for upgrading in Round 2 and therefore, he was not allotted under the UR category and rather retained his SC Seat allotted in Round 1.

10. He further submits that it is only on the wish of the candidates who got seat in Round 1, they can be allowed to participate in the Round 2 and there cannot be any compulsion for the candidates to participate in the Round 2. All those candidates, who have secured lesser marks than Dhakshancoumar, were accommodated only in the Round 2 and not in the Round 1.

11. Heard the learned Counsel on either side and perused the documents placed on record.

12. Admittedly the 5th respondent is admitted under the Puducherry SC Category and the other SC Candidates, who have secured lesser marks than the 5th respondent were accommodated under the Un Reserved candidates as Internal UR Category. According to the 2nd respondent, those SC candidates who have been accommodated under UR category were considered only during the Round 2 and it is not during the Round 1 and the 5th Respondent, who was allotted in the Round 1 under the Puducherry SC category, has not opted for the Round 2 and therefore, he was not considered under the UR Category.

13. The stand of the Respondent in interpreting the Orders of the Hon'ble Supreme Court as that it will be applicable only for the first round and if the candidate is not opting for the second round for upgradation, he will be retained in SC category itself, cannot be accepted. Both these 1st round of Counselling and the 2nd round of Counselling are conducted only for the

selection for the admission of MBBS Seats in JIPMER for the year 2020-21 and therefore, the allotments cannot be differentiated depending upon the 1st or 2nd round. As per the orders of the Hon'ble Supreme Court, if a candidate selected under the SC category, if otherwise eligible to be considered for the UR category, then he ought to have been considered only under the UR category and not under the SC category. In this case, admittedly, some of the SC candidates, who have secured marks lesser than the 5th respondent, have been accommodated under UR Category and therefore, in all fairness, the 2nd Respondent ought to have treated the 5th Respondent also under the UR Category.

14. In such view of the matter and taking note of the aforesaid decisions of the Hon'ble Supreme Court, the Court is of the opinion that the 5th Respondent ought to have been placed in Pondicherry UR Category. Accordingly, the 5th respondent is directed to be placed under the UR Category and the consequent seat in Puducherry SC Category which now arises, may be accommodated by the eligible candidates from the reserve list of that Category.

15. Since the cut-off dates for medical admission is on 15.01.2021, Mr.Srinivasamurthy, learned Counsel for the 2nd respondent is directed to communicate this order to the respondent along with a webcopy, for its implementation, without waiting for physical copy.

16. In the above terms, the Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

lbm

Copy to:

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Represented by the Secretary to Government,
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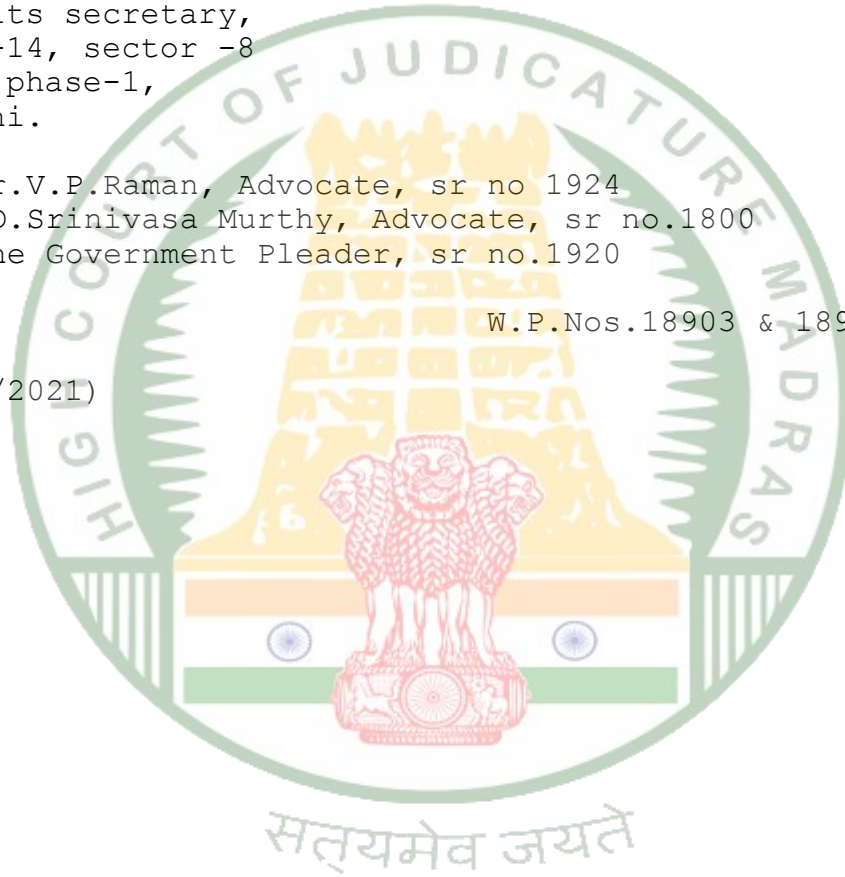
4.The Director,
Department of Health and Family Welfare Services
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5.The National Medical Commission
Rep by its secretary,
pocket -14, sector -8
Dwaraka phase-1,
New Delhi.

+1cc to Mr.V.P.Raman, Advocate, sr no 1924
+1cc M/s.D.Srinivasa Murthy, Advocate, sr no.1800
+1cc to The Government Pleader, sr no.1920

W.P.Nos.18903 & 18908 of 2020

SR II (CO)
RMP (12/03/2021)



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