

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED DATE : 15.03.2021

PRONOUNCED DATE : 07.04.2021

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.35552 of 2019

&

W.M.P.Nos.36402 & 36403 of 2019

Mr.M.Ahamadh Hussain

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.
2. The Medical Council of India,
MCI Building, Pocket - 14,
Sector - 8, Dwaraka Phase - I,
New Delhi - 110 077.
3. The Director of Indian Medicine & Homeopathy,
Arignar Anna Government Hospital of Indian Medicine Campus,
Arumbakkam, Chennai - 600 106.
4. Special Commissioner, Joint Director,
Indian Medicine and Homeopathy,
Arignar Anna Government Hospital of
Indian Medicine Campus,
Arumbakkam, Chennai - 600 106.
5. The Selection Committee,
Directorate of Indian Medicine and Homeopathy,
Arignar Anna Government Hospital of Indian
Medicine Campus, Arumbakkam, Chennai - 06.
6. The Director,
National Eligibility-cum-Entrance Test,
(NEET), Noida, Uttar Pradesh.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent issued on 07.06.2019 and to quash the prospectus issued for the current academic year 2019-2020 insofar as the Clause 4b at Page No.12 is concerned and consequently direct the respondents to grant admission to the petitioner for BHMS Medical Course in the Government College, Thirumangalam for the current academic year 2019-2020.

(Prayer amended as per the order dt.07.01.2020 vide WMP.No.388/2020)

For Petitioner : Mr.I.Mahaboob Khan
Party in Person

For Respondents : Mr.D.Venkatesh, GA (for R.1)
Mr.V.P.Raman, (for R.2)
Mr.Shubharanjani Ananth(for R.3)
Mr.V.Kathirvelu, Spl.G.P.
(for R.4 & R.5)
Mr.G.Nagarajan (for R.6)

ORDER

The petitioner, an aspirant to do Homoeopathic Medicine appeared for the NEET Examination for the year 2019 and applied for BHMS course conducted by the 5th respondent.

2. The 5th respondent, by his order dated 21.11.2019, has rejected the petitioner's request on the ground that he had passed Mathematics, Physics and Chemistry in one qualifying examination i.e., CBSE and completed Biology in a separate qualifying examination conducted by the National Institute of Open Schooling (NIOS) and therefore, he had completed the qualifying examination in two different streams, one through CBSE stream and the other through in NIOS stream whereas the Medical Council Regulation states that the candidates passed Intermediate or its equivalent examination with the subjects Physics, Chemistry, Biology together in the same Board of Education alone are qualified.

3. Mr Mohammed Khan, father of the petitioner appeared as party-in-person and made his submissions by referring to the public notice issued for the NEET examinations, which reads as follows:-

"As per the directives of Hon'ble High Court of Delhi in W.P.(C) 1813/2018 dated 26/02/2018 and in W.P.(C) 1906/2018 and other connected matters dated 28/02/2018, the following candidates can also submit their application form for NEET (UG), 2018:-

1. Candidates belonging to UR category aged above 25 years
2. Candidates belonging to SC/ST/OBC category and persons entitled for reservation under the Rights of Persons with Disabilities Act, 2016 aged above 30 years
3. Candidates from NIOS/State open School
4. Candidates who have passed Biology as an additional subject
5. Candidates who have passed as a private candidate.

All candidates who are fulfilling the conditions of orders of Hon'ble Court can now submit their online application form on or before the last date. However, the candidature will be the subject to the outcome of the above Writ Petitions."

4. Mr.V.P.Raman, learned counsel appearing for the Medical Council of India has also produced the orders of a Division Bench of this Court and the orders passed by the Hon'ble Supreme Court wherein, it has been held that the relevant Regulation, which has been referred insisting for required qualification, has been struck down by various court and the issue is now pending before the Hon'ble Supreme Court and pending this issue, the Hon'ble Supreme Court in S.L.P.No.14320 of 2018 dated 29.4.2019, allowed the students to participate in the counselling to be held in the ensuing selection process and their participation and admission, if any, shall be subject to the result of those petitions pending before the Hon'ble Apex Court.

5. Following the orders passed by the Hon'ble Supreme Court, a Division Bench of this court in W.P.No.16556 of 2019, dated 17.6.2019, has passed the following order:-

"16. A perusal of the prospectus issued by the Government of Tamil Nadu, for admission to MBBS/BDS Degree Courses, in Tamil Nadu Medical/Dental Colleges and Colleges referred to, makes it clear that Government of Tamil Nadu, is aware of the fact

that the eligibility criteria prescribed by certain States, for admission to the Under Graduate professional courses, has been challenged before the Hon'ble High Court of Delhi, Hon'ble High Court of Allahabad, Lucknow Bench and Hon'ble High Court of Madhya Pradesh at Jabalpur. For brevity, we deem it fit to extract the clause which dis-entitle the candidates, who have passed 10 + 2 from open school or as private candidates.

(d). Candidates who have passed 10 + 2 from Open School or as private candidates shall not be eligible to appear for National Eligibility-cum-Entrance Test. Furthermore, study of Biology/Biotechnology as an Additional subject at 10 + 2 level also shall not be permissible.

The proviso in italics has been subject matter of challenge before the Hon'ble High Court of Delhi, Hon'ble High Court of Allahabad, Lucknow Bench and Hon'ble High Court of Madhya Pradesh at Jabalpur. The provisions of the regulations disqualifying recognised Open School Board candidates and the candidates who have studied Biology/Biotechnology as an additional subject has been struck down.

The Medical Council of India has preferred Special Leave petitions before the Hon'ble Supreme Court. Therefore, the candidatures of candidates in the NEET (UG) - 2019 who have passed the qualifying examinations i.e., 10 + 2 from National Institute of Open Schooling or State Open Schools or as private candidates from recognised State Boards; or with Biology/Biotechnology as additional subject shall be allowed but subject to outcome of Special Leave Petitions/Appeals filed by the Medical Council of India."

.....

18. Delhi High Court has already struck down such provisions. Though in the above S.L.Ps, the Hon'ble Supreme Court has permitted all the similar candidates to participate in the counselling process, on the basis of merits and further observed that their participation and admission, if any, shall be subject to the result of the SLPs. Interim order passed by the Hon'ble Supreme Court, is applicable to the case on hand.

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21. Subject to considering the on-line application of the writ petitioner, dated 12/6/2019, on merits, direction in W.M.P.No.16197 of 2019 in W.P.No.16556 of 2019, there shall be an order of interim direction, directing the fourth respondent, to allow the petitioner to participate in the counselling.

22. Having regard to the directions of the Hon'ble Supreme Court and as much as the impugned provisions are stayed by this Court, and consequential directions have been issued, the same should be made applicable to all the candidates, who have passed 10 + 2 from Open School or private."

6. The Special Leave Petition is still pending before the Hon'ble Supreme Court and by way of interim direction, the Hon'ble Supreme Court as well as a Division Bench of this court has admitted the persons who are possessing qualifications similar to that of the petitioner in this writ petition to participate in the counselling.

7. As per the order of the Hon'ble Supreme Court in S.L.P.No.14320 of 2018 dated 29.4.2019, the interim relief has been granted to those candidates who have obtained their qualification from National Institute of Open Schooling (NIOS), as a temporary arrangement. The final decision is yet to be taken by the Hon'ble Supreme Court. Considering the interim orders passed by the Hon'ble Supreme Court, this Court by order dated 15.02.2021, permitted the petitioner to participate in the counselling scheduled to commence from 15.02.2021. Further, it is reported that the petitioner has not appeared for the NEET Examination for the academic year 2020-21. The petitioner has filed this Writ Petition based on his eligibility of appearance of NEET Examination in the year 2019.

8. As per the guidelines of the sixth respondent, the results of the NEET cannot be carried over for the subsequent year. Moreover, the interim relief granted by the Hon'ble Supreme Court on the eligibility of the candidates, who have obtained their qualification through NIOS, is subject to the result of the Special Leave Petition pending before the Hon'ble Supreme Court and the same has been granted only as an interim arrangement to those, who have approached the Hon'ble Supreme Court. The petitioner, who have appeared in the NEET examination in the year 2019, cannot seek for an admission based on those marks, for the academic year 2020-21.

9. Accordingly, this Writ Petition stands dismissed. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

MRM

To

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.
2. The Medical Council of India,
MCI Building, Pocket - 14,
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(NEET), Noida, Uttar Pradesh.

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PCH(CO)
TE (27/04/2021)