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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.2067 and 2578 of 2022
and
WMP Nos. 2217, 2712 and 5617 of 2022

- 1 Mr.Padmanabhan,
Represented by his Father / natural Guardian,
Mr. Kangayen 79, 4th cross street,
Annai Nagar, Reddiarpalayam,
Puducherry 605 010.
- 2 Mr. Soorya,
S/o. Mrs. Usha 114, Third Cross,
Johnkumar Nagar,
Moolakulam Puducherry 10.
- 3 Ms. Stella Snow
D/o. Balan Ponmani Stephen 3, Villa
apartment, Gandhi street, colas Nagar,
Pudhcherry.
- 4 Mr. Yuvaraj Krishnan
S/o. A. badmanabin, 2, 8th Cross, Tagore nagar,
Lawspet, Puducherry 8.
- 5 Mr. Sharan Raj,
S/o Mr. Velmurugan, 130, Main Road Lawspet,
Puducherry.

(P2 dismissed as withdrawn
Vide order dated 25.03.2022)

... Petitioners in W.P.No.2067 of 2022

- 1 E.Gnanadeva Mugil ,
S/o.Mr.K.Elanseralathan, 7, Sunshine Colony,
PIMS Road, KC Kulam, Puducherry- 14.
- 2 R.Nigidha,
D/o.Rudhirakumar, 11, Old Kamaraj Nagar,
Bahour, Puducherry.



3 S.J.Ashwini,
S/o.Saravanan, 36, Drowpathi Amman Kovil
Street, Lawspet, Puducherry- 6.

... Petitioners in W.P.No.2578 of 2022

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Vs

- 1 Union of India,
Rep by its secretary Ministry of Health and
Family welfare, Room No. 156-A ,A Wing,
Nirman Bhavan, New Delhi 110 011.
- 2 National Medical commission,
Rep by its secretary, Pocket 14, Sector 8,
Dwaraka Phase 1, New delhi 110 007.
- 3 The Medical Counselling committee
The Assistant Director General
(Medical Examination) Room No. 352, A Wing ,
Nirman Bhavan, New Delhi 110 011
- 4 Jawaharlal Institute of Post
graduate Medical Education and Research
(JIPMER) Rep by its Dean (Academic)
Puducherry 605 006.
- 5 National testing Agency,
Rep by its Chairman ,
Noida 201 309.
- 6 The Union Territory of Puducherry
Represented by its Chief Secretary
Secretariat,
Puducherry.
- 7 The Directorate cum Nodal officer
(NEET) Government of Puducherry
Directorate of Health and Family Welfare
Services, (Medical Education), Puducherry.

...Respondents in W.P.No.2067 of 2022

- 1 Union of India
Rep. by its secretary, Ministry of Health
and Family welfare, Room No. 156-A, A Wing,
Nirman Bhavan, New Delhi- 110 011.
- 2 The Union Territory of Puducherry
Rep by its chief Secretary,
Secretariat, Puducherry.



3 National Medical Commission
Rep. by its Secretary, Pocket 14, Sector- 8
Dwaraka Phase-1, New Delhi 110 007.

4 The Medical Counseling Committee,
The Assistant Director General
(Medical Examination) Room No.352, A - Wing,
Nirman Bhavan, New Delhi- 110 011.

5 National Testing Agency
Rep. by its chairman, Noida-201 309.

6 The Directorate of Technical
and Higher Education, Centralized
Admission Committee, Government of
Puducherry, Puducherry Technological
University Campus,
Puducherry- 605 014.

... Respondents in W.P.No.2578 of 2022

Prayer in W.P.No.2067 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus, Directing the 3rd and 4th respondent to consider the petitioners representation dated 30.01.2022 and 31.01.2022 within a reasonable time and then proceed with the admission of candidates under JIPMER Internal - Puducherry UT Domicile Quota in the 4th respondent institution so as to enable the petitioners to participate Round 1 counselling.

Prayer in W.P.No.2578 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus, Directing the 2nd and 6th respondent to consider the petitioners representation dated 30.01.2022 and 31.01.2022 within a reasonable time by redoing the exercise of preparing the merit list for NEET Based UG Medical Course after deleting the name of the candidates who had claimed dual nativity and then proceed with the admission of candidates.

For Petitioner : Mr.K.S.Viswanathan
for Mr.P.Venkatraman (in both W.Ps)

For Respondents : Mr.D.Simon,
Senior Central Government
Standing Counsel - R1
Ms.Subaranjani Ananth - R2
Mr.J.Kumaran
Addl. Govt. Pleader - R6 & R7



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(in W.P.No.2578 of 2022)

For Respondents : Mr.V.Chandrasekaran
Senior Panel Counsel - R1 to R4
Mr. J.Kumaran
Addl. Govt. Pleader - R2 & 6

Ms.Subaranjani Ananth - R3
Ms.Sunitha Kumari - R5

C O M M O N O R D E R

A common order is passed in both these Writ Petitions, since the facts and circumstances involved as well as the legal questions that arise are by and large the same. The petitioners are aspirants for medical seats in Institutions in the Union Territory of Puducherry.

2. In W.P.No.2067 of 2022, there are 5 Petitioners. This Writ Petition has been dismissed in the case of Soorya/P2, as withdrawn, by order dated 25.03.2022 by this Court. Mr.Padmanabhan, Ms.Stella Snow, Mr.Yuvaraj Krishnan and Mr.Sharan Raj continue to pursue the Writ Petition now. In W.P.No.2578 of 2022, the petitioners are Mr.E.Gnanadeva Mugil, Ms.Nigidha and Ms.S.J.Ashwini.

3. Their submissions, as urged by Mr.K.S.Viswanathan, learned counsel appearing on their behalf are as follows:

(i) All petitioners claim to have been born and brought up in Puducherry and have done their schooling there. They claim to be natives of Puducherry and, aspiring for medical seats, appeared in the NEET Examination.

(ii) The details of their marks including the CENTAC merit marks have been set forth in the Writ Petitions but are not reproduced here both in the interests of brevity and as they are of no relevance to decide the main issue that arises for resolution.

(iii) All petitioners claimed admission in the 'Internal - Puducherry UT Domicile Quota for Puducherry and Karaikal'.

(iv) Upon the publication of the merit lists by the Medical Counselling Committee/R3 (MCC) as well as the Institutions, and a comparison of the same, the petitioners noticed that some of the candidates who had been successful had claimed dual nativity insofar as they had secured admission both in JIPMER and other Institutions in Puducherry as well as in other States as per the merit lists published by R3.



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(v) They are of the view that the claim of such dual nativity is contrary to law, since any applicant, to secure nativity certificate from the relevant authority in Puducherry, is required to make a declaration that they do not claim nativity elsewhere in the Country.

(vi) Hence, it is only upon making such a declaration that they could have been granted nativity in Puducherry itself. For them to thus hold two nativity certificates entitling them to secure admission in other States in India, such as Andhra Pradesh, Telangana and Kerala would show that the declarations are prima facie and evidently, false.

(vii) This was brought to the notice of respondents 2 to 4, i.e., National Medical Commission, MCC and JIPMER by way of representations. These representations have not been disposed thus far.

(viii) Since time was ticking, the present Writ Petitions have been filed primarily challenging the merit lists that had been published by R3 and R4 on the ground that there are aspirants who have secured admission in both lists by virtue of a claim of dual nativity and seeking a Writ of Mandamus for consideration of the petitioners' representations before MCC and JIPMER so as to enable the petitioners to participate in the counselling. In sum and substance, this is the claim of all petitioners before me.

4. The matter was listed for hearing on several dates and I heard in detail Mr.Viswanathan, learned counsel for the petitioner, Mr.D.Simon, learned Standing counsel who appears for Union of India in W.P.No.2067 of 2022, Ms.Subaranjani Ananth, learned counsel appearing for the National Medical Commission in both Writ Petitions, Mr.J.Kumaran, learned Additional Government Pleader for the Union Territory of Puducherry in both Writ Petitions and for CENTAC, the Centralized Admission Committee, in W.P.No.2578 of 2022, Mr.V.Chandrasekaran, learned Senior Panel Counsel appearing for the Union of India and Medical Counselling Committee in W.P.No.2578 of 2022 and Ms.Sunitha Kumari, learned counsel for the National Testing Agency.

5. However, there was no clarity that was provided by the respondents on any of the contentions raised by the petitioner including on the legal issue raised relating to the claim of dual nativity and I was, on 25.03.2022, thus constrained to pass the following order:

These matters have been coming up repeatedly to await proper instructions in regard to the clarification issued by the Centralized Admission Committee (for short, 'CENTAC').



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2. Sufficient time has been granted to both Mr.Arun and Mr.C.T.Ramesh, learned Additional Government Pleader (P) appearing on behalf of JIPMER and CENTAC respectively, to provide clarifications in regard to the issues concerning dual nativity/dual domicile certificates. Till date, the clarity, as sought for, has not been provided. Even a copy of the prospectus of CENTAC has not been placed on file.

3.Mr.C.T.Ramesh, learned Additional Government Pleader (P) takes instructions from one Mr.Pandian, who appears on behalf of CENTAC and states that there are four seats available for the government quota in the Indira Gandhi Medical College & Research Institute, Puducherry.

4. Since no clarification as sought for by this Court is forthcoming, despite sufficient time being granted, in the interest of justice, interim protection is granted to the petitioners/students.

5. Hence, the four seats, reserved for government quota in Indira Gandhi Medical College & Research Institute, Puducherry will be reserved in favour of the four petitioners, (i) Yuvaraj Krishnan (ii) Sharan Raj (iii) R.Nigidha and (iv) S.J.Ashwini, subject to the result of these Writ Petitions.

6. Insofar as petitioner by name Soorya in W.P.No.2067 of 2022 is concerned, the Writ Petition stands dismissed as withdrawn, as the Court is informed that he has secured admission in a seat of his choice and thus does not pursue this writ petition. An endorsement is made to this effect.

List on 06.04.2022.

6. On a previous occasion, notice had also been directed to be taken upon one Ms.Fathimathu Rajia, who had secured admission in JIPMER and who had admittedly made a claim of dual nativity, both as regards the Union Territory of Puducherry as well as the State of Kerala. Upon receipt of notice, Ms.Kamala Kumar, learned counsel appearing on her behalf confirms that the aforesaid factual matrix.

7. An application bearing WMP No.5617 of 2022 to implead has also been filed by one Mr.Govind P.N, who seeks to implead



himself as R8 in W.P.No.2067 of 2022. As the said application has not been pursued, the same is closed as such.

8. The issue on claim of dual nativity is certainly one to be viewed seriously for two reasons: Firstly, if a declaration is made by the applicant to the effect that the claim of exclusive to that State/Union Territory, then, such declaration would bind the applicant and notwithstanding that the rules of nativity in a particular State/Union Territory, might entitle a person to nativity in multiple States/Union Territories, a choice would have to be made by the candidate at the first instance, as to where the said person wishes to pursue such claim.

9. This observation and discussion becomes relevant by virtue of the fact that the rules of nativity as applicable in some States/UTs do make it possible for a candidate to claim nativity of multiple places at the same time. For instance, the Union Territory of Puducherry has, per proceedings No.6260/C2/Rev/2003 dated 06.10.2003 enabled a person to be a native of Puducherry based on the nativity of his/her parents.

10. This Clause can well be taken advantage of by persons who are themselves resident/native elsewhere, and who claim nativity in Puducherry dually, by virtue of their parents' nativity in Puducherry. Having said so, no application containing a declaration to the effect that the applicant would have to claim nativity exclusive to only one particular place, has been produced before me.

11. I thus decline to answer the larger question as to whether the candidates who have made such dual claim are liable for the consequences of a false declaration. Suffice it to say that if at all such declaration is part of the Application, any breach of the same will lead to consequences and the authorities will examine the same, forthwith, all the more for the reason that there are various facts that must be determined in the furtherance of this exercise.

12. The second aspect of the matter is that neither the prospectus issued by the CENTAC nor that issued by the Union Territory of Puducherry contain any embargo to the effect that an aspirant can claim nativity only in one location. This may be contrasted with the prospectus issued by the States of Tamil Nadu and Punjab and Haryana and Union Territory of Chandigarh, where the prospectus does contain such categoric restriction. This situation is thus not one that the authorities are unaware of.

13. The prospectus containing nativity/residence clause in respect of States of Tamil Nadu and Punjab and Haryana and Union



Territory of Chandigarh, to the extent to which they are relevant, are extracted below:

STATE OF TAMIL NADU:

5. NATIVITY:

a. Candidates should be a Native of Tamil Nadu.

b. The Candidates who claim their Nativity as Tamil Nadu, should submit their nativity certificate issued by the competent authority of Government of Tamil Nadu and supported by a photocopy of Passport / Ration Card / Birth Certificate. If the copy of the supporting document is not produced, then the application form will be rejected. Nativity Certificate submitted after the deadline will also be summarily rejected.

c. Candidates belonging to other States and residing in Tamil Nadu cannot claim nativity of Tamil Nadu.

d. Candidates who have applied for NEET UG - 2021 as a candidate from other State cannot now change his claim as a native of Tamil Nadu.

e. Permanent Residence Certificate in lieu of Nativity Certificate will not be accepted.

f. Nativity Certificate obtained prior to the last date of receipt of filled in application alone will be accepted and sending the Nativity Certificate separately will not be entertained.

g. Candidates who are Native of Tamil Nadu and have studied from Standard VI to Standard XII in schools of Tamil Nadu should also produce Nativity Certificate and Community Certificate issued by the competent authority along with the true copies of their parent's certificates such as Aadhar Card / Driving Licence / Ration Card / Passport, SSLC / 10th, 12th Mark Sheet or Transfer Certificate. The Community Certificate of the parent should be enclosed to claim Communal Reservation. 11 In case, parents are not literate, then No Graduation Certificate for parents / First Graduation Certificate of the candidate, from the Revenue Authority of competent jurisdiction, to substantiate their parent's place of birth in Tamil Nadu along with the above mentioned certificates. If candidates do not submit the above mentioned certificates and if he/she had studied Standard VI to



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Standard XII completely in Tamil Nadu, then the candidate will be considered under Open Category only.

h. Candidates who are Native of Tamil Nadu, but have studied from VI Standard to XII Standard outside Tamil Nadu either partly or completely in one or more States should produce the Nativity Certificate and Community Certificate of the candidates along with the true copies of their parent's certificates such as Aadhar Card / Driving Licence / Ration Card / Passport, SSLC / 10th, 12th Mark Sheet, Transfer Certificate. The Community Certificate of the parent should be enclosed to claim Communal Reservation. In case, parents are not literate, then No Graduation Certificate for parents / First Graduation Certificate of the candidate, from the Revenue Authority of competent jurisdiction should be submitted to substantiate their parent's place of birth in Tamil Nadu along with the above mentioned certificates. If the candidates do not submit the above mentioned certificates, then the candidate's application will be summarily rejected.

i. Such candidates applying in the category 5(h) of this prospectus should also give an undertaking that they have not applied for any Educational Institution in any other State, claiming the nativity of such State for admission in that course. If it is found later that the candidate has applied as a native of any other State other than Tamil Nadu, then the admission will be cancelled at any stage. Further, during the course of study even if it is subsequently found that any candidate had produced a false nativity certificate or given a false undertaking, it will result in expulsion of the candidate from the course and also initiation of criminal proceedings against the candidate as well as his/her parents as per provision of the law

j. Other State candidates who have studied from VI Standard to XII Standard continuously in Tamil Nadu, will be deemed to be native of Tamil Nadu and will be considered under the Open Category.

k. Community Certificate obtained from other States will not be considered for reservation and such candidates will be treated as open category.

(Emphasis supplied)

STATE OF PUNJAB AND HARYANA:



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Eligibility Criteria: A candidate for admission to MBBS/BDS courses in Govt./Govt. Aided Medical & Dental Institutions and Open Merit Category (State Quota) Seats in Private medical /Dental Institutions will be eligible if he/she: i. Is a citizen of India. ii. The candidates, who are bonafide residents of Haryana as per instructions issued by the Chief Secretary to Govt. Haryana and who/whose parents produce(s) Haryana Residence Certificate as per Government instructions given in Annexure III, IV & V or any modification issued by competent authority from time to time.

Annexure V(A)

AFFIDAVIT OF THE PARENT /GUARDIAN TO BE ATTESTED BY EXECUTIVE MAGISTRATE/OATH COMMISSIONER/NOTARY PUBLIC.

I.....
father/mother/guardian of Miss/Mr..... resident of..... do hereby solemnly state and affirm as under:-

1. That I am a Citizen of India.
2. That neither the deponent nor the child/ward of the deponent have obtained the benefit of 'Residence in any other State.

(Emphasis supplied)

UNION TERRITORY OF CHANDIGARH:

1. The candidates must fulfill relevant General Eligibility Criteria (Page 7-8)

2. With reference notification No. GMCH/TA-1(4/E)/2018/45819-27 dated 31.10.2018 issued by Principal Secretary Home-cum-Medical Education & Research, Chandigarh Administration reproduced as under:- In pursuance of judgment dated 31.08.2018 passed by the Hon'ble Panjab & Haryana High Court at Chandigarh in CWP no. 18240, 17407, 19851, 21558, 21742 of 2018 (O & M) titled as Ashu Hooda Vs. Union Territory Chandigarh & Others, the Administrator, Union Territory, Chandigarh is pleased to frame the following eligibility criteria for admission to State Quota Seats in MBBS course in Government Medical College & Hospital, Sector-32, Chandigarh: -



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i) Candidates who had completed 10th, 10+1 and 10+2 from schools/colleges recognized by the Chandigarh Administration and situated in the Union Territory of Chandigarh, as regular student of the said school/college. However, this criteria shall be implemented in a staggered manner i.e. in 2019, the eligibility criteria would be only 10+2, in 2020 it will be 10+1 & 10+2 and in 2021 it shall be 10th, 10+1 & 10+2. 17

OR

ii) Candidates whose parents are residents of Chandigarh for the past 05 years immediately preceding the date of application even if they do not satisfy the criteria as laid down in condition No. 1 above, The requisite residence certificate issued from the office of Deputy Commissioner will be taken as proof for this purpose.

OR

iii) Candidates whose parents are employees of Central Government/State Government who are on deputation to U.T., Administration, including government employees of Chandigarh Administration / employees working in autonomous bodies/ companies in which Chandigarh Administration has 20% or more share, for the past 03 years immediately preceding the date of application even if they do not satisfy the criteria as laid down in condition No. 1 & 2 above.

However, candidates of all three categories above will have to submit an undertaking /affidavit that the candidate has not opted and claimed benefit of residence in any other State/UT other than Chandigarh after the declaration of NEET result.

Appendix B4

FOR MBBS Course Only

Compulsory for all Candidates

Affidavit of the parents/ guardian(s) to be attested by an Executive Magistrate

Certified that I _____
Father/ Mother / Legal Guardian of Miss/ Mr.
_____ resident _____ of
_____ (full
address to be given) Do hereby undertake that :



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1. That I am a citizen of India.

2. That my child/ward has not opted and claimed the benefit of Residence for admission in MBBS in a State/UT other than UT Chandigarh for State Quota Seats.

3. That the above said information is true to the best of my knowledge and nothing is concealed herein. If at any stage, the information provided is found false/ wrong, the admission of my son/ daughter/ ward is liable to be cancelled.

(Emphasis supplied)

14. One aspect of the matter upon which all learned counsel before me would concur is that the problem of dual nativity has been plaguing admissions in medical colleges in the Union Territory of Puducherry for quite some time now and I am at my wit's end as to why the authorities have not addressed this problem and clarified the issue thus far.

15. All that it requires is that the prospectus-issuing authority insert a clause to the effect that the candidate/aspirant can claim nativity only in one State/Union Territory. Had this been done, there would have been some reason to consider the thrust of the petitioners' attack targeted upon those candidates who have admittedly claimed dual nativity and thereafter made a choice of Institution, depending upon the published results.

16. Though the petitioners' grievance has substantial merit, I am of the considered view that those candidates who have opted for dual nativity for the present academic year for which counseling is now concluded, i.e., academic year 2022-2023, must not be disturbed. Their applications are based on the prospectus issued for this year which admittedly does not place any restriction on a claim of dual nativity.

17. Thus, I reject the argument of the petitioners to the effect that the publication of results would have to be re-done excluding those cases wherein the candidates have been the beneficiary of dual nativity claim, securing admissions both in the Union Territory of Puducherry on the one hand, and either Kerala, Telangana or Andhra Pradesh on the other. For this year, the aforesaid irregularity will be viewed as an aberration, to be corrected in the years going forward.

18. However, it is made clear that the prospectus of CENTAC and other institutions in the Union Territory of Puducherry must henceforth, contain a clear restriction in regard to the applicant's claim of dual nativity. It defies logic that an



aspirant could be accepted to be a native of multiple places for the purposes of securing a seat in the domicile/nativity category.

19. The very purpose of an exclusive category for 'Nativity' is to encourage and provide a special avenue for admission those who are natives of a particular State/Union Territory. There can, and must be no dilution of this principle, particularly in these days of ruthless competition for medical seats. A compliance report will be filed in this regard within a period of eight (8) weeks from today with the Registry.

20. Coming to the case of the petitioners, seats have been reserved for them in Government quota. There is however, absolutely no consensus among the parties as regards the availability of seats in various quotas and Institutions. One thing is clear. There appears to be a great deal of confusion at the end of the authorities in regard to the manner in which the seats have been allotted to candidates and what remains for allocation at this stage.

21. The petitioners hold the benefit of interim order granted on 25.03.2022 and bearing in mind such entitlement, the representations of the petitioners shall be disposed and effect given to order dated 25.03.2022 within a period of one (1) week from date of uploading of this order on the official website of this Court.

22. These Writ Petitions are disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1 The secretary,
Union of India,
Ministry of Health and Family welfare,
Room No. 156-A, A Wing Nirman,
Bhavan, New Delhi 110 011.



2 The secretary,
National Medical commission,
Pocket 14, Sector 8 ,
Dwaraka Phase 1, New delhi 110 007.

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3 The Medical Counselling committee,
The Assistant Director General,
(Medical Examination) Room No. 352, A Wing,
Nirman Bhavan, New Delhi 110 011.

4 The Dean (Academic),
Jawaharlal Institute of Post graduate
Medical Education and Research,
(JIPMER), Puducherry 605 006

5 The Chariman,
National testing Agency,
Noida 201 309.

6 The Chief Secretary,
The Union Territory of Puducherry,
Secretariat, Puducherry.

7 The Directorate cum Nodal of ficer (NEET),
Government of Puducherry,
Directorate of Health and Family Welfare
services, (Medical Education), Puducherry.

8 The Directorate of Technical and Higher Education ,
Centralized Admission Committee,
Government of Puducherry,
Puducherry Technological,
University Campus Puducherry- 605 014.

Copy to
The Section Officer,
Writ Section,
High Court, Madras - 104.

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WMP Nos. 2217, 2712 and 5617 of 2022

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NSK 20/04/2022