

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2022

PRONOUNCED ON : 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.3078 & 5204 of 2022

1.A.Priyanka

2.K.Sukisha

... Petitioners in W.P.No.3078 of 2022

R.Annamalai

... Petitioner in W.P.No.5204 of 2022

 V_S

1. The Principal Secretary,
Department of Health and Family Welfare,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Additional Director of Medical Education,
Secretary, Selection Committee,
162, Periyar EVR High Road, Kilpauk,
Chennai - 600 010.
3. The Secretary, National Medical Commission,
Pocket - 14, Sector - 8, Dwarka Phase - 1,
New Delhi - 110 077.

... Respondents in both W.Ps.

PRAYER IN W.P.No.3078 of 2022: Writ petition filed under Article 226 of the Constitution of India for writ of certiorarified mandamus calling for the records on the file of the 1st respondent in respect of G.O.(D).No.33, Health and Family Welfare (MCA-1) Department dated 10.01.2022 in so far as it relates to the allotment of seats among the wards of various categories of Defence personnel is concerned as envisaged under G.O.Ms.No.1142 of 1979 dated 30.06.1979 and quash the same and consequently direct the second respondent to allot two MBBS seats through second counselling for the petitioners in the year 2021-22 so far as the equal distribution of seats among the wards of Defence personnel as per the order passed by Madurai Bench of this Court in W.A.(MD).No.610 of 2019 and W.P.(MD).No.14119 and 14128 of 2020 dated 19.08.2021 and G.O.(Ms).No.1142, Health and Family Welfare Department dated 30.06.1979 for medical admissions.

(Prayer amended vide order dated 28/02/2022 Made in W.M.P.No.4348/2022 in WP.No.3078/2022

PRAYER IN W.P.No.5204 of 2022: Writ petition filed under Article 226 of the Constitution of India for writ of certiorarified mandamus calling for the records of the first and second respondents in respect of impugned G.O.(2D).No.33, Health and Family Welfare (MCA-1) Department dated 10.01.2022 and impugned prospectus for admission to MBBS/BDS degree courses in Tamilnadu Government Medical/Dental Colleges, Government seats in self financing Medical/Dental Colleges and ESIC Medical College and PGIMSR, KK Nagar, Chennai affiliated to the Tamil Nadu Dr.MGR Medical University in the year 2021-2022 and quash both and consequently direct the second respondent to conduct a separate counseling exclusively for serving defense personnel as per G.O (Ms.)No.1142, Health and Family Welfare Department dated 30.06.1979 and Division bench Order in W.A(MD). No.610 of 2019 dated 19.08.2021 after allotting few MBBS seat through second counselling.

For Petitioners in
W.P.No.3078 of 2022 : Mr.D.Saikumaran

For Petitioner in
W.P.No.5204 of 2022 : Mr.R.Annamalai,
Party in person

For Respondent 1 in
both W.Ps. : Mr.B.Vijay,
Additional Government Pleader

For Respondent 2 in
both W.Ps. : Ms.M.Sneha

For Respondent 3 in
both W.Ps. : Mr.Adarsh Mohandass
for M/s.Shubharanjani Ananthi

COMMON ORDER

W.P.No.3078 of 2022 has been filed by two students who are the children of defence personnel who seek admission in the MBBS course under the wards of defence personnel quota relying on G.O.Ms.1142, Health and Family Welfare Department dated 30.06.1979. According to them, despite the order dated 19.08.2021 passed by the Division Bench of this Court in W.A (MD).No.610 of 2019 directing implementation of G.O.Ms.No.1142 dated 30.06.1979 referred to supra, the respondents have not implemented the said G.O., thereby denying admission to the petitioners.

2. W.P.No.5204 of 2022 has been filed by one of the students father by name R.Annamalai challenging G.O.(D) No.33, Health and Welfare Department dated 10.01.2022 as well as the prospectus for admission to MBBS/BDS degrees in Tamilnadu Government Medical/Dental Colleges for the year 2021-2022 on the ground that G.O.Ms.No.1142 dated 30.06.1979 has not been implemented, despite the direction to that effect having been given by Division bench of this Court on 19.08.2021 in W.A.(MD).No.610 of 2019.

3. Since the issues involved in both these writ petitions are one and the same, they are disposed of by a common order.

4. The respondents 1 and 2 have stated that in the Division Bench order dated 19.08.2021 passed in W.A.(MD) No.610 of 2019 which the petitioners rely upon, directions were issued only to the Central Government to revisit the priority list giving equal importance to all children of defence personnel whether ex/deceased /serving by distributing the quota uniformly, so that all the three categories will be benefited. The petitioners claim that while allotting seats to all the three sections of defence personnel namely ex/deceased and serving personnel as per G.O.Ms.No.1142 dated 30.06.1979, there must be equal distribution of seats for each of the three categories

5. According to the respondents 1 & 2, the competent authority to revisit the quota given to defence personnel namely ex/deceased and serving personnel is only the Department of Ex-servicemen Welfare, Ministry of Defence, Government of India. According to them, only in accordance with the directions given by the Ministry of Defence, Government of India from time to time, the present quota for wards of defence personnel has been fixed. According to them, by circular issued by the Ministry of Defence, Government of India dated 21.05.2018, the priority status for wards of defence personnel was fixed. It is also stated by them that based on the directions issued by the Ministry of Defence, Government of India, the State Government issued order vide G.O.D.No.977, Health and family Welfare (MCA-1) Department dated 01.06.2018 increasing the number of seats reserved under ex-servicemen quota from 6 to 11 seats from the academic year 2018-19.

6. According to the respondents 1 & 2, for the year 2021-2022, 251 candidates were eligible under the Children of Ex-servicemen quota for MBBS / BDS Degree courses. According to them, the priority/eligibility list was also published in their official website. It is further contended by them that under the special category for Children of Ex-servicemen quota, 10 MBBS and 1 BDS seat in Government Medical and Dental Colleges were allotted. It is also stated that in accordance with the

prospectus for MBBS/BDS degree courses for the year 2021-22 session, top 18 candidates in the Ex-servicemen merit list were called for counselling which was held on 27.01.2022. According to them, out of the said top 18 candidates in the priority list, ten candidates were allotted for MBBS and one candidate for BDS Courses under the Children of Ex-servicemen quota. The petitioner's father is now a serving defence personnel. According to them, the students come under the category of priority-VIII which has been fixed by the central Government. In priority-VIII, the first petitioner in W.P.No.3078 of 2022 namely A.Priyanka secured 244 Ex-servicemen rank and the second petitioner in the said writ petition namely K.Sukisha secured 245 Ex-servicemen rank. According to the respondents 1 and 2, the petitioners ranks were very low in the Ex-servicemen priority rank list and therefore, they were not allotted seats.

7. According to the respondents 1 and 2, only in accordance with G.O(D).No.33 Health and Family Welfare (MCA-1) Department dated 10.01.2022, seats under Ex-servicemen quota have already been filled up for admission to MBBS/BDS degree courses for the year 2021-2022 session. According to them, candidates allotted under Ex-servicemen quota rank is 14. Therefore according to them, the petitioners' request is unacceptable and it has to be rejected.

8. The third respondent namely, the National Medical Commission has also filed a detailed counter. In the counter, they have categorically stated that the deadline fixed for admission of students is 28.04.2022 which has already come to an end. They have stated that as per the decision rendered by the Hon'ble Supreme Court in the following cases, the deadline for admitting students will have to be strictly adhered to:

(a) Order dated 09.05.2022 passed in the case of Ashish Ranjan vs. Union of India & others in M.A.Nos.205 & 207 of 2022 in W.P.(C).No.76 of 2015.

(b) Mridul Dhar vs. Union of India reported in (2005) 2 SCC 65.

(c) Priya Gupta vs. State of Chhattisgarh reported in (2012) 7 SCC 433.

(d) Royal Medical Trust vs. Union of India reported in (2015) 10 SCC 19.

(e) Ashish Ranjan vs. Union of India reported in (2016) 11 SCC 225.

9. Therefore, according to the third respondent, the petitioners cannot be admitted into one of the Government / medical Colleges at this belated stage as it would amount to violation of the Hon'ble Supreme Court Orders.

10. The third respondent also contended that the number of seats available for allotment to the students is based on the infrastructure of the respective institutions. The MBBS/BDS course are courses of higher learning and higher standards of education has to be maintained. According to them, unless there is required infrastructure available in the medical college, the standard of medical education will decline. According to them, the Hon'ble Supreme Court in various decisions had also given importance to maintaining proper infrastructure for maintaining higher standards. They relied upon the following decisions of the Hon'ble Supreme Court for the said proposition:

(a) K.S.Bhoir vs. State of Maharashtra & others reported in (2001) 10 SCC 264;

(b) MCI vs. Madhu Singh & Others reported in (2002) 7 SCC 258.

11. Therefore, according to them, seats having been filled up and the deadline i.e., 28.04.2022 having got over, the question of granting admission to the petitioners will now not arise.

12. Heard Mr.D.Saikumaran, learned counsel for the petitioners in W.P.No.3078 of 2022, Mr.R.Annamalai, the petitioner in W.P.No.5204 of 2022 who appeared as party in person, Mr.B.Vijay, learned Additional Government Pleader appearing for the respondent 1, Ms.M.Sneha, learned counsel appearing for the respondent 2 and Mr.Adarsh Mohandass, learned counsel appearing for the respondent 3.

Discussion:

13. The petitioners in W.P.No.3078 of 2022 seek admission into Government Medical / Dental Colleges under the quota for wards of defence personnel. The quota which the petitioners are seeking falls under the Central pool and not under the State pool. The quota sought for by the petitioners is otherwise known as CW quota (Children and widows of defence personnel). To seek admission under the said quota which falls under the Central pool, there is a special procedure for applying for seeking allotment under the said quota. All candidates who have qualified the National Eligibility Entrance Test (NEET) seeking allotment of seats under CW quota meant for defence personnel will have to apply with the Kendriya Sainik Board, Ministry of Defence, New Delhi through online with supporting documents.

14. The selected candidates will be informed directly by Kendriya Sainik Board, Ministry of Defence, New Delhi about the date of counselling for those candidates. In the case of the petitioners, admittedly they have applied for NEET through Tamil Nadu State Government under the ex-servicemen category. Even

though there is reservation for children of ex servicemen which includes children of defence personnel, under the State quota, no special quota is available exclusively for children of defence personnel. Based on the ranking as per the marks secured by the student in NEET irrespective of the category of ex-servicemen mentioned in the list therein, seats are allotted.

15. Though G.O.Ms.1142 health and Family Welfare Department dated 30.06.1979 provides for reservation to the children of ex/deceased and serving defence personnel at the rate of 2 seats for each category under the PUC & BSC stream of education, the said G.O. is not applicable to the case of the petitioners as NEET was not in prevalent when the said G.O. was passed. Further, the said G.O. refers to specifically PUC and BSC stream of education which is not applicable to the petitioners who have not completed their education under those streams of study. NEET is a recent introduction and is completely different from the erstwhile systems.

16. The State Government is empowered to allot 85% of the medical seats and 15% is allotted by Central Government. The petitioners have applied for admission to medical colleges under the ex-servicemen quota only to the State Government.

17. G.O.(D).No.33 dated 10.01.2022 which has been issued by the Health and Family Welfare (MAC-1) Department reveals that the reservation under the ex-servicemen category has been fixed only as per priority list published by Government of India, Ministry of Defence, New Delhi from time to time. Though Originally G.O.(D).No.33 dated 10.01.2022 did not include in the priority list quota for wards of serving defence personnel, they were included as Priority-VIII in accordance with the directions of the Division Bench of this Court, Madurai Bench in W.A.(MD). No.610 of 2019 dated 19.08.2019 and the directions issued by the Ministry of Defence by its letter dated 21.05.2018. Earlier under G.O.(D). No. 882, Health and Family Welfare Department dated 28.05.2019, the priority for wards of serving defence personnel was left out but it has been added subsequently by the aforementioned G.O.

18. As observed earlier, reservation of seats for wards of defence personnel is fixed only based on the circulars issued by the Ministry of Defence, Government of India from time to time. There is no circular issued by the Ministry of Defence stating that all the three categories namely Ex/deceased and serving defence personnel must be allotted seats in equal ratio. When no such type of reservation has been provided by the Central Government, the question of allotting seats to the petitioners in that ratio will not arise and has to be rejected by this Court.

19. The Hon'ble Supreme Court has been consistently holding that time schedule for admissions fixed under the regulations/notifications shall be strictly adhered to by all concerned as the time schedule prescribed has the force of law. The said decisions are as follows:

(a) Ashish Ranjan vs. Union of India & others in M.A.No.205 & 207 of 2022 in W.P.(C).No.76 of 2015 dated 09.05.2022;

(b) Medical Council of India vs. Madhu Singh reported in (2002) 7 SCC 258;

(c) Mridul Dhar vs. Union of India reported in (2005) 2 SCC 65; and

(d) Medical Council of India vs. Manas Ranjan Behera reported in (2010) 1 SCC 173.

20. The deadline fixed for completion of admissions of medical students by the Hon'ble Supreme Court for the academic year 2021-2022 is 28.04.2022. When the deadline has been fixed by the Hon'ble Supreme Court as 28.04.2022, the question of allotting seats to the respective petitioners at this stage will not arise. Therefore the request has to be necessarily rejected. The Hon'ble Supreme Court has also deprecated the practice of increase in admission capacity beyond the sanctioned limit by constitutional courts.

21. Section 10 of National Medical Commission Act, 2019 provides the powers and functions of the commission, which in the present context revolve around laying down of policies for maintaining high quality & high standards of medical education, as well as to make policies for regulating medical colleges. The intake of medical course is dependent directly upon the physical facilities available, particularly, in respect of teaching faculty, clinical material and other infrastructural facilities available in the department. Besides the existence of these facilities, it should be commensurate with the annual intake capacity of the medical college for MBBS course. As per the statutory regulations, the third respondent fixes the annual intake capacity for each medical course. Each college/institution is statutorily bound to strictly adhere to its annual intake capacity. No college/institution is permitted to exceed its annual admission capacity for each course sanctioned by the National Medical Commission.

22. The Hon'ble Supreme Court in the case of State of Punjab & Others vs. Renuka Singla & Others reported in (1994) 1 SCC 175 deprecated the practice of the High Courts issuing directions which in substance would entail the authorities concerned to violate the statutory rules and regulations, meant to regulate the admissions of students in a proper and systematic manner. The Hon'ble Supreme Court in the said decision held that the High Court cannot disturb the balance between the capacity of

the institution and number of admissions on compassionate grounds. The Hon'ble Supreme Court further held that the High Court should be conscious of the fact that by judicial interference in the selection process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. The aforesaid decision has also been followed by the Hon'ble Supreme Court in the following decisions as well:

(a) K.S.Bhoir vs. State of Maharashtra reported in (2001) 10 SCC 264;

(b) MCI vs. Madhu Singh & Others reported in (2002) 7 SCC 258; and

(c) Mridul Dhar vs. Union of India & Others reported in (2005) 2 SCC 65.

23. From the aforesaid decisions of the Hon'ble Supreme Court, it is clear that neither intake of students can be allowed beyond the sanctioned limit nor time schedule for completion of the admissions for the medical colleges can be extended. The petitioners in the instant case (students) claim that they are already studying in a private medical college and therefore, the deadline fixed by the Hon'ble Supreme Court is not applicable to them. The said contention will have to be necessarily rejected as the Hon'ble Supreme Court has made it clear in its decisions that on no account, the deadline can be extended. The regulations streamlining the admission of students in medical college are made to maintain higher standards in medical education.

24. The students who are going to be the medical doctors in the near future cannot be allowed to seek relaxation of regulations which have been imposed only in their interest and in public interest. A categorical stand has been taken by the third respondent who is monitoring the medical examination that on no account, the deadline for completing admissions of medical colleges can be extended. This being the case, when the regulations of the third respondent who is an expert and the statutory authority states that deadline cannot be extended which has been upheld by the Hon'ble Supreme Court, this Court cannot ignore the same.

25. For the foregoing reasons, the students who have filed W.P.No.3078 of 2022 cannot seek for equal distribution of the seats among the wards of the defence personnel as G.O.Ms.No.1142 dated 30.06.1979 is not applicable to them as the said G.O was applicable only to PUC and BSC students which was the stream of education prevalent at that point of time, whereas the petitioners have completed 10+2 stream (school education) and have written the qualifying examination namely NEET which system was not in existence in the year 1979. Further, the students

have also not applied under the special quota falling under Priority-VIII to the Kendriya Sainik Board, Ministry of Defence, New Delhi but they have applied under the State Quota which provides for reservation of ex-servicemen of all categories including children of defence personnel as per G.O. (D) No.33 dated 10.01.2022. When the deadline for admission of students in medical colleges for the academic year 2021-22 as fixed by the Hon'ble Supreme Court has also come to an end on 28.04.2022, the question of admitting the petitioners at this stage will not arise. The students have also not come in the top of rank list for getting allotment in the State quota under the ex-servicemen category.

26. Insofar as W.P.No.5204 of 2022 filed by R.Annamalai, the father of one of the students is concerned, he has sought to quash G.O. (D) No.33 dated 10.01.2022 and has also sought for implementation of G.O.Ms.No.1142 dated 30.06.1979 issued by Health and Family Welfare Department. This Court having come to the conclusion that the G.O.Ms.No.1142 dated 30.06.1979 is not applicable for the two students namely the petitioners in W.P.No.3078 of 2022, the question of quashing G.O. (D) No.33 dated 10.01.2022 issued by Health and Family Welfare (MCA-1) Department which prescribes for reservation of ex-servicemen in the State Government will not arise.

27. This Court does not find any merit in both these writ petitions. Accordingly, these writ petitions are dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nl

To

1. The Principal Secretary,
Department of Health and Family Welfare,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Additional Director of Medical Education,
Secretary, Selection Committee,
162, Periyar EVR High Road, Kilpauk,
Chennai - 600 010.

3. The Secretary, National Medical Commission,
Pocket - 14, Sector - 8, Dwarka Phase - 1,
New Delhi - 110 077.

+1cc to M/s.Shubharanjani Ananthi, Advocate, S.R.No.43124
+1cc to Mr.D.Saikumaran, Advocate, S.R.No.42590
+1cc to Mr.R.Annamalai, Advocate, S.R.No.42687
+2cc to Ms.M.Sneha, Advocate, S.R.No.43593,43594
+1cc to the Government Pleader, S.R.No.44055

W.P.Nos.3078 & 5204 of 2022

PL(CO)
CT/20/07/2022