

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2022

DELIVERED ON : 04.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.A.Nos.1093 and 1094 of 2022

W.A.No.1093 of 2022:

Dr.G.Selvarajan

Vs

..Appellant

1 Dr.M.S.Santhosh

2 The Secretary
Selection Committee
Directorate of Medical Education
162, Periyar EVR High Road
Kilpauk, Chennai - 600 010.

3 The Directorate of Medical Education
162, Periyar EVR High Road
Kilpauk, Chennai - 600 010.

4 The Principal Secretary
Health Department
Secretariat, Chennai.

5 The Principal/Dean
Karpaga Vinayakka Medical College
Chinnakolambakkam, Chengalpattu.

6 National Board of Examinations
NEET PG 2020, Medical Enclave
Ansari Nagar, Mahatma Gandhi Marg
Ring Road, New Delhi - 110 029.

.. Respondents

W.A.No.1094 of 2022:

Dr.G.Selvarajan

Vs

..Appellant

1 Dr.M.Keethanjali

- 2 The Director General of Health Services
Ministry of Health and Family Welfare
Government of India, F-17, Karakardooma
New Delhi - 110 032.
- 3 The Director
Director of Medical Education
162, EVR Periyar Salai, Kilpauk
Chennai - 600 010.
- 4 The Secretary
Selection Committee
Directorate of Medical Education
162, EVR Periyar Salai, Kilpauk
Chennai - 600 010.
- 5 The Dean
PSG Institute of Medical Science and Research
Peelamedu, Coimbatore. ..Respondents

Prayer: Appeals under Clause 15 of the Letters Patent against the common order dated 25.2.2022 passed by the learned Single Judge in W.P.No.11963, 13564 and 13466 of 2020.

Prayer in W.P.No.11963 of 2020: Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent authorities to fill up the post graduate medical seats declared as vacant as per the seat matrix published by the third respondent dated 17.08.2020 only by conducting mop up counseling for management seats 2020 and by considering the candidature of the petitioner on the basis merit NEET PG rank 1335.

Prayer in W.P.No.13564 of 2020: Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent authorities to fill up the Post graduate medical seats declared as vacant as per the seat matrix published by the third respondent dated 17.08.2020 only by conducting Mop Up counselling for management seats 2020 and by considering the candidature of the petitioner having NEET PG Rank 67618.

Prayer in W.P.No.13466 of 2020: Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st Respondent to allow seat in Medical Post Graduation in MS Orthopedics Course in govt /self Financing Medical college in Tamil nadu on basis of post Graduate Medical counselling conducted by the 1st Respondent dated 29.08.2020.

For the Appellant : Mr.Sricharan Rangarajan
in both the appeals for Mr.V.Vignesh

For the Respondents : Mr.Murugendran
for 1st respondent in
W.A.No.1093 of 2022

: Mr.R.Shunmugasundram
Advocate General
assisted by
Mr.P.Muthukumar
State Government Pleader
and Mr.K.M.D.Muhilan
Government Advocate
for respondents 2 to 4 in
W.A.Nos.1093 and 1094 of 2022

: Mr.S.Udayakumar
for 5th respondent
in W.A.No.1093 of 2022

: Mr.S.Thankasivan
for 1st respondent
in W.A.No.1094 of 2022

COMMON JUDGMENT

THE CHIEF JUSTICE

The writ appeals have been filed to challenge the common order dated 25.2.2022 passed in W.P.No.11963, 13564 and 13466 of 2020, whereby the learned Single Judge issued the following directions:

"48. While the writ petitions are ordered accordingly, in the overall circumstances of the case, the following order is passed :-

i) The Chief Secretary, Government of Tamil Nadu, is directed to take necessary action against Dr.G.Selvarajan departmentally for stopping pension and other benefits payable to the individual, which would be subject to the outcome of the investigation;

ii) The Enquiry Officer is directed to register an FIR against all persons, including known and unknown persons as also against the private medical colleges, which were under the scanner of investigation for filling up the seats in derogation of the merit list;

iii) The enquiry officer is further directed to conduct enquiry against all persons in the Directorate of Medical Education and the

Department under which the said Directorate is functioning so that none of the persons, who have had a foothold in the said Department are left out;

iv) The Director General of Police, Chennai, is directed not to transfer the officers, who are part of the enquiry team formed for investigating this matter at the instance of this Court.

v) State is directed to pay a compensation in a sum of Rs.4,00,000/= (Rupees Four Lakhs only) to the petitioners in W.P. Nos.11963 and 13564 of 2021 within a period of four weeks from the date of receipt of a copy of this order. The said amount shall initially be paid by the State and, thereafter, the same shall be recovered from the then Secretary, Selection Committee, Directorate of Medical Education from his retirement proceeds/pension. Further liberty is granted to the petitioners to proceed in accordance with law for any other relief, if so advised on the basis of the decision Krishna Sradha's case (supra);

vi) The enquiry officer is directed to ensure compliance of registration of the case and conduct enquiry and to file further report on the progress of the investigation on 25.4.2022."

2. Before advertng to the merits of the appeals, it would be appropriate to give a detailed narration of the facts of the case to throw light on the affairs of the Selection Committee so as the private medical colleges in giving admission to students in Post Graduate Medical courses sacrificing merit. It is in the case of admission in Post Graduate Medical course for the academic year 2020-2021.

3. The facts on record show that two-rounds of counselling for filling up the Post Graduate Medical Seats under government quota was conducted between 30.4.2020 and 30.7.2020 and thereupon four-rounds of mop-up counselling was conducted to fill the unfilled seats of government quota. The two-rounds of counselling for the Post Grade Medical Seats under management quota was also conducted between 6.5.2020 and 31.7.2020. The mop-up counselling for the management quota seats was not conducted. It was stated that a total of 103 management quota seats remained unfilled after two-rounds of counselling in the management quota. The allegation of the writ petitioners/non-appellants is that after holding two-rounds of counselling for

government quota as well as management quota seats, mop-up counselling was conducted only to fill up unfilled seats of government quota, while the same was not applied to fill up unfilled seats in the management quota and private medical colleges were allowed to fill vacant seats on their own.

4.It is stated that the Selection Committee decided not to conduct mop-up counselling for the management quota seats despite availability of sufficient time and despite the direction of the Apex Court fixing 31.8.2020 as the deadline for completion of the process of admissions to the Post Graduate Medical courses for the academic year 2020-2021. The last counselling for management quota seats was conducted between 26.7.2020 and 31.7.2020. The writ appellant, Secretary of the Selection Committee sent a letter after a month on 30.08.2020 to all the private colleges, directing them to admit the candidates for the Post Graduate Courses from the list of candidates who have not been allotted any seat in Post Graduate Courses in management seats. As a result, the private colleges were allowed to fill up the seats at their discretion overlooking the merit and the direction of the Apex Court.

5.The writ petitioners/non-appellants, who were meritorious but were not allotted seats, filed writ petitions: (i) W.P.No.11963 of 2020 seeking a direction on the respondent authorities to fill up the Post Graduate Medical seats declared as vacant as per the seat matrix published by the Selection Committee on 17.8.2020 by conducting MOP up counselling for management seats on the basis of merit; and, (ii) W.P.No.13466 of 2020 seeking a direction on the Selection Committee to allot seat in Medical Post Graduation in M.S.Orthopedics course in government/Self financing medical college in Tamil Nadu on the basis of the Post Graduate Medical Counselling conducted by the Selection Committee. Even though one another writ petition was filed by an aspiring candidate, being W.P.No.13564 of 2020, seeking a direction on the respondents therein to fill up the Post Graduate Medical seats declared vacant as per the seat matrix published on 17.8.2020 only by conducting mop-up counselling for management seats, but for the reasons best known to the appellant, the said writ petitioner has not been arrayed as party to the present proceedings.

6.During the course of hearing the writ petitions, it was brought to the notice of the Single Bench that many vacant management quota seats in private medical colleges were filled without observing the merit in the academic year 2020-21, in violation of the regulations framed by the erstwhile Medical Council of India and the directions issued by the Apex Court in Dar-Us-Slam Educational Trust & Ors vs. Medical Council of India & Ors. (W.P. (Civil) No.267 of 2017 - Dated 09.05.2017).

7.The learned Single Judge, who initially heard the matters, vide order dated 28.10.2020, passed an order observing that the private colleges have given admissions for some of the important clinical courses to candidates who otherwise do not deserve admission. After dealing with the claim by the writ petitioners/non-appellants on merits, the learned Single Judge observed as under:

"20. ... During this academic year, the pandemic has been taken advantage of to stage manage and fill up nearly 74 seats with unmeritorious candidates. Conspiracy is something which can only be inferred or deduced from a given set of facts and the analysis made supra based on the data provided by the Respondents, clearly brings out a conspiracy between the officials belonging to the Directorate of Medical Education and the self-financing colleges. There is definitely something more than what meets the eye and it requires a thorough investigation by a neutral agency. Only such an investigation will expose the culprits behind this conspiracy and the total money that was collected from these candidates by the concerned private self-financing colleges. These self-financing colleges are not conducting charity and have obviously profited through these admissions. At the end of the day, the citizens of this country must be satisfied that merit is not compromised when it comes to post-graduate medicine and super-specialties and that the Courts are there to ensure the same. Therefore, some stringent steps must be taken by the Courts to ensure probity and to send a strong message that such illegal actions will not be tolerated by the Courts."

In the aforesaid order, ultimately, an enquiry was ordered to be conducted. The operative portion of the said order is reproduced hereunder:

"28. A copy of this order shall be marked to the D.G.P. Tamil Nadu and the D.G.P is directed to allot the case immediately to CBCID which shall consist of a team headed by an officer not below the rank of an Assistant Commissioner. The scope of enquiry shall be broadly as follows:

a. Whether there was any conspiracy between the officials of the Directorate of Medical Education, officials in the Selection Committee and the self-financing colleges (list extracted supra) in filling up the stray vacancies on 31.08.2020;

b. The amount received from each candidate who was

admitted by the self-financing colleges on 31.08.2020; and

c. any other matter that unfolds during investigation in this regard."

The writ petitions were directed to be listed on 1.2.2021 for reporting compliance and submission of the enquiry report.

8. Thereafter, the writ petitions were listed on various dates and by the order under challenge dated 25.2.2022, the learned Single Judge after considering the enquiry report, held that the appellant herein was instrumental in depriving the meritorious candidates of their rightful seats under the management quota in the private medical colleges and issued divers directions, as stated supra. It was categorically observed by the learned Single Judge that the appellant herein was holding the office of the Secretary, Selection Committee, for a period of two months without any valid order.

9. The writ appeals have not been filed by the medical colleges to assail the judgment. In view of the above, we would be dealing with the issues raised by the writ appellant to challenge the judgment of the learned Single Judge.

10. Learned counsel for the appellant submits that an adverse order has been passed against the writ appellant without affording an opportunity of hearing to him, thus, on the aforesaid ground itself, the impugned order deserves to be set aside. It is more so when the learned Single Judge has relied on an enquiry report of the CBCID without furnishing a copy thereof to the appellant and, therefore, the principles of natural justice have been violated.

11. It is also submitted that a direction to stop disbursement of pension and other benefits to which the appellant is entitled to would have serious consequences and otherwise a direction has been given in contravention of Rule 9 of the Tamil Nadu Pension Rules, 1978. It is urged that, pending enquiry, a direction to withhold the pension could not have been given, rather such an order can be passed by the competent authority only if the appellant is found guilty of misconduct of the nature indicated in the Rules. Ignoring the aforesaid, the learned Single Judge has issued the direction to withhold pensionary benefits of the appellant.

12. It is also stated that even the direction to register an FIR has been given without affording an opportunity to the appellant to clarify the factual position that the process adopted for admission was strictly as per the rules and the direction of the Apex Court in Dar-Us-Slam Educational Trust &

Ors, supra, was not applicable.

13.Learned counsel for the appellant, referring to the then prevalent pandemic Covid-19 situation, submitted that the counselling process in the State of Tamil Nadu was conducted online and efforts were put in to fill up the government quota seats and, thus, two-rounds of counselling and four-rounds of mop-up counselling were conducted within the stipulated time. Due to paucity of time, a unanimous decision was taken by the members of the Selection Committee not to conduct mop-up counselling for the management quota seats, after two-rounds of counselling. Thus, the decision of the Selection Committee not to hold mop-up counselling to fill up unfilled seats was due to the reasons then prevalent. Referring to Clause 24 of the Prospectus for Admission to PG Degree Courses in Management Quota in Tamil Nadu for the academic year 2020-2021, learned counsel for the appellant justified the non-conducting of mop-up counselling for the unfilled management quota seats and submitted that a direction was given to the colleges to fill the stray vacancies in the management quota on their own, but by following the merit position.

14.It is further submitted on behalf of the appellant that the requirement of sending names in the ratio of 1:10 pursuant to the direction of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, is not applicable to Post Graduate Medical courses and, therefore, the list in the ratio of 1:10 was not prepared and sent to the private medical colleges.

15.It is further urged that vide the letter sent by the appellant on 30.8.2020 to all the private medical colleges, he had shared a list of the candidates giving details of their names, registration numbers, email IDs, apart from other details, with a direction to strictly adhere to merit while filling up the stray vacancies and, thus, there was no intention to defy the judgment of the Apex Court or to tinker with the merit list.

16.Learned counsel for the appellant has further submitted that the action of sending the letter dated 30.8.2020 to the private medical colleges to fill up the unfilled seats on their own was due to paucity of time to conduct the mop-up counselling for the management quota seats. It was for the reason that the Selection Committee was busy in holding the mop-up counselling for filling up the government quota seats. However, ignoring all these aspects, an adverse order has been passed against the appellant.

17.The further argument is in reference to the enquiry

report, where, according to the learned Single Judge, certain discrepancies in the appointment of the appellant as the Secretary of the Selection Committee and foul play during the selection of students to Post Graduate Medical courses for the academic year 2020-2021 have been alleged. It is contended that such discrepancy was on account of non-consideration of the fact that extension of service was given by the government and it is not that the appellant himself had drawn the order aforesaid. In view of the extension of service of the appellant, he discharged the duties after retirement to conduct the counselling. Thus, he has not misused his position as the Secretary of the Selection Committee and never prevented his subordinates from sending separate merit lists to 14 private medical colleges for filling up the vacant seats. The allegations that the appellant indulged in malpractices; caused bogus blocking of seats to help the private medical colleges to fill up the vacancies on their own are denied.

18. It is submitted that such an enquiry report could not have been relied upon without furnishing a copy of it to the appellant, because the ex parte report drawn by the enquiry officer is in ignorance of the efforts put in by the appellant to strictly adhere to the rules and the direction of the Apex Court in filling up Post Graduate Medical seats in different colleges. Therefore, on the aforesaid ground also, the judgment of the learned Single Judge has been assailed with a prayer to set aside it qua the writ appellant.

19. Learned counsel for the appellant further submitted that the learned Single Judge has drawn conclusion about the malpractices even of the medical college, i.e., as to how they could admit the students within a day, because on 30.8.2020 the intimation was sent to the private colleges to fill up the vacant seats on their own and it was filled on 31.8.2020. As to how the private medical colleges could secure the names and merit position of the students was an issue raised by the learned Single Judge, ignoring the fact that the merit list of the students is hosted on the website and otherwise a direction was given by the writ appellant to fill up the vacant seats as per merit with a list of candidates. If the enquiry officer has recorded his finding that on the website of the Selection Committee the contact details of the candidates were not available and ignoring the merit, admissions were given, then an order should have been passed against the medical colleges for having filled the seats ignoring the merit position and not against the writ appellant.

20. The further argument was that the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, was in reference to Under Graduate courses and not for

Post Graduate courses. This was even clarified by the Apex Court in the case of Ashish Ranjan v. Union of India, (2017) 8 SCC 627. Despite the clarification and the finding that the order passed in Dar-Us-Slam Educational Trust & Ors, supra, would not apply to the Post Graduate courses, the Government of India, Ministry of Health and Family Welfare, issued a circular on 26.5.2017 in terms of the judgment in the case of Dar-Us-Slam Educational Trust & Ors, supra. The said circular was issued presuming application of the judgment in the case of Dar-Us-Slam Educational Trust & Ors, supra, even for Post Graduate medical courses and has not been accepted in the case of Ashish Ranjan, supra.

21. For the reasons aforesaid, prayer was made to set aside the judgment, if not entirely, then at least qua the writ appellant.

22. All the respondents, except PSG Institute of Medical Science and Research and the National Board of Examinations, have contested the writ appeals. The arguments raised by learned counsel for the respondents would be dealt with while dealing with the arguments of learned counsel for the writ appellant. It is to avoid repetition of facts.

23. The challenge to the order of the learned Single Judge has been made mainly on the ground that the said order has been passed against the writ appellant without affording an opportunity of hearing, as the writ appellant was not a party to the writ petitions. The fact aforesaid is not in dispute and when this issue was raised before this court, learned counsel for the appellant was directed to raise all the issues before this court so as to provide an opportunity of hearing in reference to issues dealt with by the learned Single Judge. The court was otherwise of the view that the matter can be remanded, but noticing that multiple directions have been given by the learned Single Judge and out of them only few pertain to the appellant, in order to render justice, the court though it fit to give an opportunity of hearing to the appellant on all the issues to suitably justify his action, which was the subject matter of the writ petition. Accordingly, in reference to the first argument, learned counsel for the appellant was given an opportunity to argue the case on all the issues so that if a case is made out, interference would be caused in the judgment to the extent it is required.

24. Pursuant to the opportunity granted, the argument was made to justify the action of the writ appellant in sending the letter to the private medical colleges to fill up unfilled management quota seats in Post Graduate Medical courses on their own after completion of the second round of counselling. Here

we need to address the issue to find out whether there was any justification on the part of the writ appellant to send the letter to the private medical colleges to fill up the unfilled seats on their own without holding mop-up counselling after two-rounds of counselling, that too, when four-rounds of mop-up counselling was conducted to recommend the names of the students against the government quota seats.

25. The issue aforesaid would otherwise deal with the issue of non-supply of the copy of the enquiry report to the appellant, because while filing the appeals, a reference of the enquiry report has also been given and is in the knowledge of the appellant and otherwise this court would record its finding on each issue so that it may not be based on the enquiry report, which otherwise has been relied by the learned Single Judge. It is for the reason that copy of enquiry report was not supplied to the writ appellant. Thus, this court would be recording its finding on all the issues to find whether there was any justification for the writ appellant not to hold mop-up counselling to fill up vacant seats after two-rounds of counselling.

26. To find out whether the action of the appellant is justified or not, we would be reiterating certain facts, which have already been narrated herein above.

27. For the academic year 2020-2021, all the seats in Post Grade Medical Colleges were to be filled on or before 31.8.2020 and, accordingly, the process for filling up the government quota seats so as the management quota seats was to be started by the Selection Committee by holding the counselling. Consequently, the process of counselling was started and the dates for it are tabulated as under:

(i) For PG Government Quota seats:

Dates	Round of Counselling
30.04.2020 to 13.05.2020	1 st Round of counselling
24.07.2020 to 30.07.2020	2 nd Round of counselling
16.08.2020 to 26.08.2020	1 st Round of Mop-up counselling
24.08.2020 to 28.08.2020	2 nd Round of Mop-up counselling
27.08.2020 to 30.08.2020	3 rd Round of Mop-up counselling
29.08.2020 to 31.08.2020	4 th Round of Mop-up counselling

(ii) For PG Management Quota seats:

Dates	Round of Counselling
06.05.2020 to 16.05.2020	1 st Round of counselling
26.07.2020 to 31.07.2020	2 nd Round of counselling

So far as Post Graduate Medical Seats under government quota are concerned, two-rounds of counselling was conducted, followed by four-rounds of mop-up counselling to recommend the names of meritorious candidates against the unfilled seats after the two-rounds of counselling. Two-rounds of counselling is to be conducted and if any seat remains unfilled, mop-up counselling is to be conducted to make admission as per merit.

28.The facts aforesaid are relevant for the reason that the Selection Committee rightly conducted four-rounds of mop-up counselling to fill up the Post Graduate Medical Seats under government quota, but surprisingly after two-rounds of counselling for management quota seats, mop-up counselling was not conducted to recommend the names of students in the order of merit, despite seats remaining vacant after two-rounds of counselling.

29.Learned counsel for the appellant has given justification for not holding mop-counselling for the management quota seats. The first reason is the paucity of time and the second reason is that the Selection Committee was busy in holding the mop-up counselling for the government quota seats and, therefore, sent a letter to the private medical colleges on 30.8.2020 to fill up the unfilled seats in the order of merit.

30.We would first address the issue of paucity of time to justify the action of the Selection Committee. The tabulation given above shows that the second round of counselling for management quota ended on 31.7.2020, that was almost one month prior to the last date for completion of the process. Thus, it cannot be said by the Selection Committee that there was paucity of time to hold the mop-up counselling during the intervening period and it is more so when the mop-up counselling was conducted for the government quota seats during that period. In view of the above, the first ground raised by the writ appellant to justify the action cannot be accepted.

31.It is also urged that the during the intervening period of one month, the Selection Committee was busy in holding the mop-up counselling for the government quota seats, thus could not hold mop-up counselling for management quota seats. The aforesaid explanation is also not tenable because the tabulation

given above shows that earlier two-rounds of counselling for government as well as management quota seats was on overlapping days. Thus, simultaneously the counselling for the government quota as well as the management quota seats was conducted. It could not be explained by the appellant as to why the same procedure could not be adopted for the mop-up counselling, when sufficient time was available. The said fact speaks volumes against the appellant.

32. It is not that the writ appellant was not in the know of the vacant seats in the management quota seats after the second-round of counselling, but despite knowing it and even when the entire record was in his office, no effort was made to hold mop-up counselling to recommend the names of the candidates for management quota seats in the order of merit simultaneously while doing it for the government quota seats. The appellant being the Secretary of the Selection Committee sent a letter on 30.8.2020 to all the private medical colleges directing them to admit the candidates for the Post Graduate Medical courses from the list of candidates who have not been allotted any seat in Post Graduate courses. The letter aforesaid was sent after lapse of almost thirty days from the date of second counselling, giving room to the private medical colleges to fill the seats within a day, which may not be enough to invite the candidates in the order of merit and thereby the medical colleges were given liberty by the writ appellant to fill up the vacant seats ignoring the mechanism provided for admission. In that process, admissions were given without adhering to merit.

33. In view of the above, the appellant was instrumental in giving liberty to the private medical colleges to fill up the seats on their own and without giving sufficient time to call for and admit students strictly in the order of merit. As a consequence, the candidates not having sufficient merit were given admission by the private medical colleges. The fact aforesaid is sufficient to prove how the Selection Committee had conducted itself giving room to private medical colleges to fill up the seats on their own, which could not have been unless there is a connivance between the appellant and the private medical colleges. It is inferred accordingly because filling up of the seats by the private medical colleges on their own volition would remain to their benefit only and is not unknown to the system. It is in such premise that the Apex Court in *Dar-Us-Slam Educational Trust & Ors, supra*, to control the malpractices adopted by the medical colleges issued directions that whenever admissions are to be given, it should be by the process of counselling and fee may be deposited by the students at the time of counselling, so that the lame excuse of non-reporting of the candidates may not be raised by the medical college to fill the seats on their own. The affairs of the

private medical colleges were taken note of by the Apex Court in the judgment, supra, and, therefore, the ratio therein would apply for admission to medical colleges. A detailed reason for it would be given while dealing with the argument of learned counsel for the appellant that after the judgment of the Apex Court in the case of Ashish Ranjan, supra, the judgment in Dar-Us-Slam Educational Trust & Ors, supra, would not be applicable for admission to Post Graduate Courses.

34.The writ appellant, being the Secretary of the Selection Committee, was under an obligation not to conduct himself in the manner which may not be appropriate to fill up the management quota seats for Post Graduate Medical Courses by the private medical colleges. The facts on record show that no efforts were put in to conduct the mop-up counselling for the management quota seats to recommend the names of the candidates in the order of merit, which was otherwise done for filling up the government quota seats by holding four-rounds of mop-up counselling. A justification that it was the unanimous decision of the Selection Committee has been given to say that the writ appellant alone could not have been penalised for the alleged malpractice.

35.The argument aforesaid would not be tenable and if at all it was the decision of the Selection Committee, to which the writ appellant was the Secretary, every member of the Selection Committee should be subjected to the same direction as is to be given for the writ appellant, because it is not now unknown that the medical colleges involve themselves in filling up the vacant seats without resorting to the procedure, for their own gain, not otherwise permissible in law. The facts on record speak volumes about the conduct of the writ appellant as being instrumental in filling up the vacant seats of management quota going against all the canons of law, thereby giving room to the private medical colleges to fill up the vacant seats on their own, sacrificing merit.

36.The issue is further to be considered in the light of one more fact to highlight the conduct of the writ appellant. If the mop-up counselling for the management quota seats could not have been conducted for the reason that they were busy in mop-up counselling for government quota seats, then what prevented the writ appellant from immediately sending a letter to the private medical colleges to fill up the vacant seats after completion of the second-round of counselling on 31.7.2020. The letter for it was sent after a month on 30.8.2020, when only one day remained to fill up the vacant seats. The aforesaid act of the Selection Committee remains unexplained. The consequences are serious for the reason that in one day it would not be possible for any private medical college to give admission to the candidates

strictly in the order of merit.

37.The facts aforesaid prove the mal-intention of the appellant in allowing the private medical colleges to fill the vacant seats in Post Graduate Medical courses, which have to be filled strictly in the order of merit and can be observed in the counselling only. It is for that reason it could not be shown that vacant seats were filled by the private medical colleges strictly in the order of merit. Rather, the writ petitions were filed by the candidates only for the reason that sacrificing the merit, admissions were given to other students and, therefore, the learned Single Judge had initially ordered for enquiry and thereupon passed the impugned judgment.

38.The conclusion aforesaid has been drawn after giving opportunity to the writ appellant, as he was not a party to the writ petitions. The finding aforesaid has been recorded by this court without referring even to the enquiry report. Therefore, the issue regarding the opportunity of hearing to the writ appellant and, that too, without supplying a copy of the enquiry report gets satisfied.

39.The writ appellant has pleaded that he had conducted himself fairly, as, according to him, while sending the letter to the private medical colleges to fill the stray vacant seats in the management quota on their own, the required details of meritorious candidates was enclosed. The learned Single Judge has recorded a finding adverse to the appellant to the effect that the letter dated 30.8.2020 sent by the appellant to the private medical colleges was not containing any contact details of the candidates, despite giving the required details in the aforesaid letter.

40.We find that the letter sent by the appellant on 30.8.2020 was containing the names of the candidates along with their merit position and email-id, etc., but the gist of the letter shows it to have been sent with incorrect information about the mop-up counselling for even management quota seats till 29.8.2020, which in fact was only for the government quota and for ready reference, the part of the letter written by the appellant giving incorrect information is quoted hereunder:

"I am to state that the counselling for Post Graduate Degree/Diploma and MDS courses in Government Medical/Dental Colleges and Government/Management quota seats in Self Financing Medical/Dental Colleges had been conducted from 30.04.2020 to 29.08.2020 for the academic year 2020-2021 in various phases.

As per the orders issued by the Hon'ble Supreme Court of India vide reference cited the Merit List of the candidates who have not been allotted Post Graduate Degree / Diploma and MDS courses in Management quota seats in Self Financing Medical colleges has been attached herewith."

[emphasis supplied]

41.The letter aforesaid further gives reference of the order of the Supreme Court, but without details of the orders. If the writ appellant had otherwise adhered to the direction of the Apex Court in sending the letter dated 30.8.2020 to allow the private medical colleges to fill up the stray vacancies in the Post Graduate Medical Courses against management quota seats, then while arguing the writ appeals, a reference of the judgment permitting the writ appellant to do so should have been given. Further, the fact remains that four-rounds of mop-up counselling was conducted for government quota seats, but the same mechanism was not adopted for management quota seats.

42.It is also required to be clarified further that if the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, was not applicable, then why the appellant had conducted four-rounds of mop-up counselling to recommend the names of candidates against government quota seats.

43.In view of the above, we are unable to accept the argument of learned counsel for the writ appellant that the procedure for filling up the seats in Post Graduate Medical Courses was followed in this case.

44.At this stage, it would be gainful to refer to Clause 24 (a) of the Prospectus for Admission to PG Degree Courses in Management Quota in Tamil Nadu for the academic year 2020-2021. The relevant part of the prospectus is quoted hereunder:

"VI. Counselling Procedure

...

24.(a)After completion of second round of counseling if there is any vacancy that will be filled up by mop-up round.

(b)The vacancies arising after re-allotment will be filled up with the candidates from the Rank list (if time permits as per DGHS Schedule)"

45.An argument has been raised that as per the prospectus for admission to Under Graduate Medical courses, mop-up counselling is mandatory, but the same is not mandatory for Post Graduate Medical Courses.. The argument aforesaid is not

tenable in the light of the clarity in Clause 24(a) of the prospectus, quoted above.

46.The writ appellant, thus, conducted himself going against the condition given in the prospectus to hold mop-up counselling, even if the argument is accepted for the sake of it that the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, has no application. A clarity about the mop-up counselling after the completion of second-round of counselling was given in the prospectus, but the same was not adhered to by the appellant selectively for management quota seats, while applying it for the government quota seats. This again speaks about the conduct of the writ appellant and it could not be clarified as to why the compliance of Clause 24(a) of the prospectus was not made for stray vacancies in management quota seats.

47.The argument that it was not mandatory to conduct mop-up counselling for management quota seats is far from truth and otherwise goes against the writ appellant.

48.At this stage, we would further consider the issue in reference to the direction given by the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra. It is submitted that the judgment of the Apex Court and direction in the case of Dar-Us-Slam Educational Trust & Ors, supra, was applicable only for Under Graduate medical courses and not for Post Graduate Medical courses. A reference of the judgment in the case of Ashish Ranjan, supra, has been given. The argument aforesaid is to justify sending of the letter dated 30.8.2020 to the private medical colleges to fill up the stray vacancies in management quota without holding the mop-up counselling after the second-round of counselling.

49.The argument aforesaid has been addressed in the light of Clause 24(a) of the prospectus to hold that the argument of learned counsel for the appellant not to conduct the mop-up counselling is not tenable. It is, however, necessary to further look into the issue as to whether the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, would be applicable only to Under Graduate Medical courses.

50.We have gone through the judgment of the Apex Court in the case of Ashish Ranjan, supra, and find that the judgment of Dar-Us-Slam Educational Trust & Ors, supra, was not made applicable to Post Graduate Medical courses. The judgment aforesaid was rendered on the facts of that case and for admission in Post Graduate Medical courses for the academic year 2017-2018. We find that even if the judgment of the Apex Court

in the case of Dar-Us-Slam Educational Trust & Ors, supra, may not be applicable to direct mop-up counselling after the second-round of counselling, the prospectus was clearly applicable and Clause 24(a) of it has been quoted above to indicate that there was a mandate to conduct mop-up counselling after two-rounds of counselling for filling up the stray vacancies, but the writ appellant failed to hold the mop-up counselling to fill up the stray vacancies in the management quota seats while conducting it for government quota seats. The purpose of counselling is to admit students strictly as per merit.

51.It is however clarified that the reference of the judgment in Dar-Us-Slam Educational Trust & Ors, supra, has been given by the learned Single Judge in paragraph (6) to emphasize that fees should be collected from the students after the counselling to avoid the management admitting students on the pretext that they did not turn up to seek admission. It is after recording the reason and discussing the conduct of the medical college in taking lame excuses to deny the admission to meritorious candidates on the ground that they did not turn up on the date of admission. In the said background, we can safely hold that the writ appellant could not give justification in not conducting mop-up counselling to fill up the stray vacancies of management quota seats despite a clear mandate in the prospectus. Thus, we hold that irrespective of the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, the action of the writ appellant not to conduct mop-up counselling against the stray vacancies of management quota seats, speaks volumes against the appellant and, therefore, the conclusion remains against the writ appellant.

52.A contest has been made against the finding of the learned Single Judge in regard to the extension of the tenure of the writ appellant and his working for two months without extension of service. The facts on record show that the writ appellant retired from service on 31.7.2019 and he was given extension of service for 19 months, i.e., till 28.2.2021. For a period of two months, there was no order of extension of service, i.e., from 1.1.2021 to 28.2.2021. Yet, the appellant worked and discharged his duties as the Secretary of the Selection Committee. The extension order for it was issued on 12.8.2021.Thus, it was obligatory on the part of the writ appellant to justify his working for the period of two months without an order on or before 1.1.2021, as he could not have worked during the intervening period of two months anticipating extension at a subsequent date.

53.The findings of the learned Single Judge are even against the officers of the department who had given extension of service to the writ appellant after his retirement, which was

the root cause for all the issues raised in the writ petitions and considered by the learned Single Judge. Therefore, enquiry directed by the learned Single Judge in this regard would be against the affairs of the officers of the department.

54. Now, let us analyze certain directions given by the learned Single Judge after drawing the conclusions aforesaid. It is submitted that a direction could not have been given to stop the pensionary benefits of the writ appellant without holding an enquiry and conclusion thereupon or his conviction in the criminal case. A reference of the Rule 9 of the Tamil Nadu Pension Rules, 1978 has been given to indicate that the pension can be stopped as a measure of punishment by applying the procedure, but it is only after holding the enquiry and if charges are found proved or alternatively, on the conviction of the delinquent in the criminal case. In this case, enquiry is yet to be conducted.

55. We find substance in the argument of learned counsel for the writ appellant. The pension cannot be stopped without an enquiry and unless the charge is found proved. The direction contained in paragraph 48(i) of the judgment of the learned Single Judge needs to be interfered. The Chief Secretary of the Government of Tamil Nadu would direct the disciplinary authority to hold the enquiry against the writ appellant and then to proceed in accordance with law. The entire exercise for it would be completed within a period of six months from the date of the judgment. Any delay in that regard would be viewed against the disciplinary authority and no extension of time for completion of the action would be given.

56. The direction to pay a sum of Rs.4 lakh to the writ petitioners/non-appellants, who were deprived of the admission, is not interfered in view of the finding recorded above. The students were dragged in the litigation only for the reason that the writ appellant did not conduct mop-counselling, but sent a list of candidates which allowed the medical college to give admission ignoring the merit of the candidates even from the list.

57. So far as the other directions contained in paragraph 48 of the judgment of the learned Single Judge are concerned, they are not expressly against the appellant and otherwise, we find justification in those directions. It is looking to the fact that while action is taken against the writ appellant, it should be initiated against everyone involved in the matter and especially the officers who remained posted in the Directorate of Medical Education and the department concerned. Therefore, no interference in those directions is made at the instance of the writ appellant and it is further clarified that the judgment

of the learned Single Judge would apply to all concerned in view of the above.

The writ appeals are disposed of with the aforesaid. There will be no order as to costs. Consequently, C.M.P.Nos.6755 and 6758 of 2022 are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

- 1 The Secretary
Selection Committee
Directorate of Medical Education
162, Periyar EVR High Road
Kilpauk, Chennai - 600 010.
- 2 The Director
Directorate of Medical Education
162, Periyar EVR High Road
Kilpauk, Chennai - 600 010.
- 3 The Principal Secretary
Health Department
Secretariat, Chennai.
- 4 National Board of Examinations
NEET PG 2020, Medical Enclave
Ansari Nagar, Mahatma Gandhi Marg
Ring Road, New Delhi - 110 029.
- 5 The Director General of Health Services
Ministry of Health and Family Welfare
Government of India,
F-17, Karakardooma
New Delhi - 110 032.
6. The Dean,
PSG Institute of Medical Science and Research,
Peelamedu, Coimbatore.

7. The Principal Dean,
Karpaga Vinayaka Medical College,
Chinnakolambakkam, Chengalpattu.

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.42585

+1cc to Mr.G.Murugendran, Advocate, S.R.No.42778

+1cc to Mr.V.Vignesh Venkat, Advocate, S.R.No.42618

+1cc to the Government Pleader, S.R.No.42893

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.43564 (15/07/2022)

W.A.Nos.1093 and 1094 of 2022

JPL(CO)
RGA(14/07/2022)