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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.10775 of 2022 and
WMP.Nos.10410, 10411 & 10413 of 2022

1.V.Sharanraj
2.R.Nigidha
3.B.Yuvaraj Krishnan
4.S.J.Ashwini

... Petitioners

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.The Union Territory of Puducherry,
Represented 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 Counselling Committee,
The Assistant Director General (Medical Examination),
Room No.352, A-Wing,
Nirman Bhavan,
New Delhi - 110 011.
- 5.The Directorate of Health and Family Welfare Services,
cum Nodal Officer (NEET),
Government of Puducherry,
Directorate of Health and Family Welfare Services,
(Medical Education),
Puducherry.
- 6.The Directorate of Technical and Higher Education,
Centralized Admission Committee,
Government of Puducherry,
Puducherry Technological University Campus,
Puducherry 605 014.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 5th respondent in connection with the impugned rejection order passed by him in proceedings No.18020/41/LS/DHFWS/2022 dated 23.04.2022 and the consequential circular issued by the 6th respondent in CENTAC/UG/Admission 2021-22 dated 24.04.2022 and quash the same and consequently direct the respondents to consider the petitioners admission for MBBS course in the four reserved Government quota seats in the light of the order passed in W.P.No.2067 and 2578 of 2022 dated 07.04.2022.

For Petitioners : Mr.K.S.Viswanathan
for Mr.P.Venkatraman

For Respondents : Mr.V.Chandrasekaran (for R1)
Senior Panel Counsel

Mr.J.Kumaran (for R2, R4 to R6)
Additional Government Pleader
(Pondicherry)

O R D E R

This writ petition is a consequence of an order passed in W.P.Nos.2067 and 2578 of 2022, that were disposed on 07.04.2022. Two issues had arisen for consideration in that matter, and the first related to applications filed by the candidates, who had claimed dual nativity. The petitioners' prayer was to exclude such candidates from the purview of selection.

2. The above prayer was rejected in favour of the respondents for this academic year holding that the prospectus did not lay down any such embargo and hence, it would not be appropriate to impose a condition that did not find place in the prospectus.

3. As far as the specific case of the petitioners was concerned, the candidatures were protected by virtue of an interim order passed by this Court on 25.03.2022 that read as follows:-

"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').

2. Sufficient time has been granted to both Mr.Arun and Mr.C.T.Ramesh, learned Additional Government Pleader (P) appearing on behalf of



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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 08.04.2022."

4. In conclusion, the respondents were directed to consider the pending representations of the petitioners and give effect to order dated 25.03.2022 within one week from date of uploading of that order. Orders have been passed by the respondents consequent upon the above directions, that is impugned in this writ petition.

5. In impugned order dated 23.04.2022, the respondents have rejected the candidature of the petitioners finding their marks inadequate for admission in the seats, as there are many meritorious candidates who were available in the respective category.

6. This order is unclear as to who the other 'meritorious candidates' are. Had these candidates been restricted to those aspirants who have not yet secured the seat as on date, then the order is perfectly acceptable as it is merit that must form the basis of selection at all stages of selection.



7. However, the respondents have thereafter issued a press release on 24.04.2022, on the heels of impugned order dated 23.04.2022, offering the four seats reserved for the petitioners on 25.03.2022 to all aspirants who have applied for seats in Medical Colleges in the Union Territory of Puducherry and who have secured admission in the counselling that has been completed.

8. This has been assailed by the petitioners on the ground that there is no provision either in the prospectus or in law to open up the entire process of selection once again, at the stage of stray counselling. In this regard, reference is made to the prospectus itself which details the rounds of counselling as follows:-

"Details of Registration Fee

Sl. No.	Round	Free Exit	Exit with forfeiture of fees	Ineligible for further Counselling	Amount of Registration Fee
1.	FIRST				
2.	SECOND	No	If not joined	If joined	Government Quota - Rs.10,000 [5000/- for SC/ST /OBC/ EBC/ MBC/BCM/BT] Management Quota - Rs.1,00,000
3.	MOP UP	No		If joined	

9. Thus, the prospectus confirms the position that there are only three rounds of counselling envisaged, the 1st round that is stated to have taken place on 06.02.2022, the 2nd round stated to have taken place on 11.03.2022 and a mop-up round stated to have been conducted on 04.04.2022.

10. The respondents, as per prospectus, are required to, and have conducted three rounds of counselling, the first, the second and the mop-up round, and the entirety of the procedure has been completed as on 04.04.2022.

11. The counselling thereafter is only to be on a stray vacancy basis, which means that the reminder of the seats available are to be matched with the reminder of the aspirants and those aspirants, who have not been allotted seats thus far, will be offered the reminder of the seats. There is no doubt on the position that as far as the stray vacancy round is concerned, there could be no consideration of applications of those students, who have already been granted seats.



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12. This is made clear from the judgment of the Hon'ble Supreme Court in Nihila P.P. vs. The Medical Counselling Committee and others in Civil Appeal No.10487 of 2021, dated 16.12.2021, wherein the Court makes it clear that there shall be no fresh registration of candidate in the stray vacancy round. The relevant portion of the judgement is extracted below:

- \.....
- d) Fresh registration of candidates will be allowed in:
 - AIQ Round 1
 - AIQ Round 2
 - AIQ Mop-Up Round.
 - e) There will be no fresh registration for candidates in the AIQ Stray Vacancy Round.'

13. Though specific to All India Quota, this would apply equally for state counselling as well and, in fact, the prospectus of the Union Territory of Puducherry makes this position clear in Cause-8 of its prospectus extracted below:-

"8.List of 1:10 Candidates

After mop up counselling, if any stray vacancies remain, the list of willing candidates in the ratios of 1:10 (i.e., ten times the number of vacancies), in order of merit will be sponsored to the colleges. In order to sponsor only those candidates who are interested, CENTAC asks specifically for the willingness of candidates for sponsoring and also may open fresh registration as well, in addition to the existing candidates."

14. This procedure which is the settled procedure, has itself, been applied by the respondents on 08.04.2022 while considering the case of one candidate by name Shakthi Lakshmi E. The selection list issued on 08.04.2022 reveals clearly that the candidate has been pitted against ten (10) other meritorious candidates, all of whom have been drawn from the pool of remaining candidates and the priority determined accordingly.

15. The distinction sought to be made by Mr.Kumaran to the effect that the selection list dated 08.04.2022 relates to a Government quota in a private Medical College is not found acceptable seeing as we are concerned with Government quota only, and thus, the distinction sought to be drawn between Government and private colleges has, in my considered view, no relevance.

16. Pending writ petition, press release dated 24.04.2022 has come to be withdrawn and communication issued bearing No.27209/Health/H5/2021-22 Puducherry, dated 26.04.2022, which makes a marked departure from the earlier release, both in terms of the number of seats available for allotment as well as the



methodology for allotment.

17. I was thus constrained to pass order dated 26.04.2022 keeping in abeyance this new development, by order dated 26.04.2022 stating as follows:

'Mr.V.Chandrasekaran, learned Senior Panel Counsel accepts notice for R1, Mr.J.Kumaran, learned Additional Government Pleader (P) accepts notice for R2, R4 and R6 and Ms.Subaranjani Ananth, learned counsel accepts notice for R3. All learned counsel seek some time to obtain instructions and file counters.

2. As the matter is being heard, a communication dated 26.04.2022 which cancels the counselling communicated under e-mail dated 22.04.2022 and letter dated 23.04.2022 is circulated. A new methodology for filing up of two unfilled NRI quotas is now devised.

3. Mr.Kumaran is completely at sea, when faced with this communication and has no response to the same. That apart, the communication refers to only two seats, whereas, the stand all along of the respondents, has been that there are 4 seats for allotment, being the 4 seats dealt with in interim order of this Court dated 25.03.2022.

4. Let the stand of the respondents be reduced into writing by way of a short and crisp counter, to be circulated prior to 27.04.2022.

5. List on 27.04.2022. Counter/written instructions by then with an advance copy served upon the petitioner.

'7. Status quo, as of today, shall be maintained till then.'

18. The matter is now listed today to receive the counter of the respondents in the light of trajectory of events as noted aforesaid. There is no difference of opinion in the settled position that:

(i) the respondents have completed two rounds of counselling followed by mop-up round, and thus all that remains is the Stray vacancy round;

(ii) the stray vacancy round as per the judgment of the Hon'ble Supreme Court as well as the respondents own prospectus, must be restricted to the pool of unfilled seats and candidates, who have not secured admission thus far;

(iii) the stray vacancy round must undertake a match between the aforesaid two categories only. Clause 8 of the prospectus refers to the methodology of 1:10 and this has been followed by the respondents in the allotment made on 08.04.2022.



19. The only defence that is put forth by Mr.Kumaran is that the four seats that were reserved on 25.03.2022 were drawn from the NRI quota and have not been offered for counselling thus far. According to him, these seats, being unfilled, have been converted to general category seats and must be offered to all students, even those who have already secured admission in the previous rounds of counselling. This argument is clearly contrary to the judgment of the Hon'ble Supreme Court as well as the prospects of the respondents.

20. The statement of the respondents to the effect that the four seats have not been offered for counselling is itself factually incorrect as they have formed part of the pool of seats that were available in all rounds of counselling, but remain vacant as on date.

21. That apart, even in normal circumstances, the established procedure is that unfilled seats in all quotas must be offered to students awaiting admission in the stray vacancy round. There is a clear embargo on students who have secured admission applying for the unfilled seats in the stray vacancy round as per the judgement in Nihila's case, supra.

22. The situation does not become any different in the present case as the previous rounds of counselling have been conducted on 06.02.2022 and 11.03.2022 and the unfilled seats have been included in pool of seats on offer. As per the judgement supra and the prospectus, all unfilled seats, of all categories and quotas, must be converted and offered to the remaining aspirants in the 1:10 proportion.

23. The order of this Court has been passed on 25.03.2022 reserving four (4) seats to the benefit of the petitioners. The respondents have been stating all along that they are in full compliance of the order and have reserved the seats as directed. In the counter now filed, they have, at paragraph 4, stated that two of the four NRI seats that had reserved in compliance of order dated 25.03.2022 have already been allotted to candidates.

24. There was no stipulation in order dated 25.03.2022 as to which category the seats reserved must be drawn from. Having projected throughout as though the respondents are in compliance of order dated 25.03.2022, it is unacceptable that the respondents turn back on that position now and make submissions to the contrary. This is clearly unacceptable and untenable and the procedures followed by the respondents appear clearly opaque and questionable.

25. The statement in counter shows the respondents in poor light as they admit to a complete lack of co-ordination and



transparency between the various departments. The parties stated to be involved in the haphazard procedure admitted to in the counter are all respondents in W.P.Nos.2067 and 2578 of 2022 and order dated 25.03.2022 was passed in their presence, specifically Mr.C.T.Ramesh, who had appeared for CENTAC.

26. The relevant portion of the counter reads as follows:

'I respectfully submit that the Health Secretariat is the authority to issue seat matrix. The 6th respondent herein namely CENTAC is the counseling authority. The CENTAC has to follow the seat matrix arrived by the Health Secretariat. Till 23.04.2000 issuing seat matrix by converting 4 NRI quota seats into Government quota seats, the fact that the CENTAC (Counseling Authority) had already received fees from two NRI candidates viz. C.P.Sanjay and Sri Eswari. S, was not communicated to the Health Secretariat. The said two NRI candidates paid the relevant fees to CENTAC account on 20.02.2022 and 24.03.2022 respectively. On 25.04.2022 the payment made by the two NRI quota candidates was brought to the knowledge of the Health Secretariat. Which is subsequent to the conversion of four NRI seats and issuance of seat matrix.....'

27. Having submitted to an order of Court and projecting all along that that order has been complied with, the respondents are bound by the same and order dated 25.03.2022 shall be complied with scrupulously in light of Clause 10 of the prospectus of the respondents on 1:10 basis. This exercise shall be carried out by tomorrow i.e. 28.04.2022.

28. The relief sought for in the writ petition stands moulded on account of the act of the respondents in withdrawing press release dated 24.02.2022 and issuing communication dated 26.02.2022 pending writ petition and the challenge in the writ petition is modified to address communication bearing No.27209/Health/H5/2021-22, dated 26.04.2022 that stands quashed.

29. This writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



vs

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 Chief Secretary,
The Union Territory of Puducherry,
Secretariat, Puducherry.
- 3.The Secretary,
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Pocket 14, Sector-8,
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- 4.The Medical Counselling Committee,
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- 6.The Directorate of Technical and Higher Education,
Centralized Admission Committee,
Government of Puducherry,
Puducherry Technological University Campus,
Puducherry 605 014.

+1cc to the Government Pleader(Puducherry), S.R.No.29203

+1cc to Mr.P.Venkatraman, Advocate, S.R.No.29318(07/06/2022)

W.P.No.10775 of 2022

and

WMP.Nos.10410, 10411 & 10413 of 2022

NRJK(CO)
SB(28/04/2022)