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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.11040 OF 2022 &
WMP.NO.10633 OF 2022

Annapoorana Medical College & Hospitals,
Rep. by its Dean Dr.P.Shanmugam.

...Petitioner

Vs

1.Union of India
Rep. by its Secretary,
Ministry of Health and Family Welfare,
A wing, Nirman Bhavan,
Maulana Azad Road,
New Delhi - 110 011.

2.State of Tamil Nadu,
Represented by its Secretary,
Ministry of Health & Family Welfare,
Namakkla kavignar Maaligai,
Fort St.George, Chennai - 600 009.

3.Selection Committee,
Represented by its Director,
Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 3rd respondent to issue allotment orders to 17 students admitted under the stray vacancy counselling by the petitioner so as to enable 1st and 2nd respondent to register the said 17 students as MBBS students for academic year 2021-22.

For Petitioner : Mr.Satish Parasaran, Senior Counsel
for Ms.Kavitha Deenadayalan

For Respondents : Mr.J.Ravindran,
Additional Advocate General
assisted by
Mr.D.Ravichander,
Special Government Pleader
- R2 & R3



O R D E R

The petitioner is a teaching hospital cum medical college. It prays for a mandamus directing the Selection Committee/R3 to issue allotment orders to 17 of its students admitted under stray vacancy counseling by the petitioner so as to enable the first and second respondents, i.e., the Union of India and the State of Tamil Nadu, Ministries of Health and Family Welfare to register 17 students as MBBS students for the Academic Year (AY) 2021-22.

2. A preliminary objection was raised to the maintainability of the Writ Petition by Mr.J.Ravindran, learned Additional Advocate General, assisted by Mr.D.Ravichander, learned Special Government Pleader. His objection is on the ground that a prayer of the nature sought for by the petitioner is not liable to be granted, since it would tantamount to this Court directing the process of admission which lies wholly within the domain of the respondent authorities. No counter is filed in the matter, but the respondents are ready to proceed on the basis of instructions from the authorities, have advanced detailed submissions and have been heard in full.

3. The objection on maintainability is met by the petitioner who emphasizes upon the improper procedure followed as far as the allotment of seats is concerned. The premise of the petitioner's submission on the merits of the matter would have a bearing on the aspect of maintainability as well and thus, I refer to those submissions before addressing, comprehensively the defence of the respondents, both in regard to the maintainability as well as the merit of the prayer sought.

4. The prospectus for admission to MBBS/BDS Degree courses under management quota for 2021-2022 session, under the head 'Mop-up counselling', states as follows:

(c) If there is any vacancies available for MBBS/BDS course in Self Financing Medical/Dental Colleges even after MOP UP Counselling, that Vacant Seats will be considered as Stray Vacancies. It will be filled by the respective Self Financing Medical/Dental Colleges as per the list of eligible candidates furnished by Selection Committee.

5. The prospectus for MBBS admissions for AY 2021-2022 comprises of two rounds of counseling to be conducted by the competent authority in the State. There is no quarrel on the position that these two rounds have been conducted as scheduled. Around of mop-up counseling is provided for thereafter. The prospectus is categorical to the effect that any vacancies available after the mop-up counseling would be considered as



joined/not joined in the MBBS course under GQ, MQ and NRI lapsed seats;

(iii) at 4.47 p.m., the petitioner received an e-mail from the Selection Committee forwarding the list of candidates who awaited allotment. The covering letter for the attachment stipulated that the Dean/Principal of the self-financing Medical Colleges were instructed to send a list of allotted candidates in stray vacancy list immediately to the Selection Committee, Directorate of Medical Education, without fail. This clearly gives the impression, and I agree with the petitioner on this, that it was the colleges that were to conduct the seat allocation and forward the list of allottees forthwith to R3;

(iv) at 7.57 p.m. R3, vide e-mail, forwarded the following instructions to all self-financing colleges including the petitioner:

MEDICAL EDUCATION DEPARTMENT

From	To
Dr.P.Vasanthamani MD., DGO.,	The Principal
Additional Director of	All Self-Financing
Medical Education/	Medical/
Secretary, Selection	Dental Colleges in
Committee,	Tamil
Directorate of Medical	Nadu
Education,	
Kilpauk, Chennai - 600 010.	

Ref.No.600/SCSI(1)/2021 dated 11.04.2022.

Sub : Selection Committee - Directorate of Medical Education, Kilpauk, Chennai - Send undertaking - Instructions - Reg.

All the institutions are instructed to send an undertaking as follows:-

"I am to state that I have contacted all the candidates in the list, forwarded by the Selection Committee and to state that no candidates are willing to join MBBS/BDS course in our institutions."

In future any legal issues arises by the allotment of less meritorious candidate for MBBS/BDS Course by the concerned Institutions to face the consequences regarding the admissions. The Selection Committee shall not be responsible for the admission of less meritorious candidates.

Additional Director of Medical Education/Secretary

(v) The above e-mail does, indirectly, support the stand of the petitioner that the colleges were expected to complete the entirety of the process by the evening of 11.04.2022. Though the respondent states that the time for filling in vacancies was



extended till 11:59 of 11.04.2022 nothing has been placed before me, to evidence this position.

(vi) On 12.04.2022 at 5.46 p.m. first list of 11 students out of 28 unfilled seats was forwarded by the petitioner institution to Selection Committee/R3.

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12. According to the petitioner, it had thereafter forwarded the complete list of 28 students who had been allotted seats in the college under letter bearing reference No.104/AMCH/A1/2022 dated 11.4.2022, accompanied by annexure containing a list of 28 names of students. However, admittedly, that list has been sent only on 20.04.2022 by 8.58 a.m. by way of e-mail and there is no clarity as to whether that list was ever furnished prior to 20.04.2022 to the respondents.

13. Respondents make much of the fact that it was only on 20.04.2022 that the final selection of 28 students was done by the petitioner. I do not believe this to be fatal to the selection process as nothing has been placed on record before me to indicate that the petitioner has breached any date/timelines.

14. R3, thereafter issued a communication calling for counseling to fill in stray vacancies, proceeding to fill in the balance 17 seats (28-11 originally filled up on 11.04.2022 by the petitioner). The petitioner has thus rushed to the Court seeking mandamus as it has, on the strength of the argument that the entire responsibility for filling in the stray vacancy seats lies only upon it and the efforts of the respondent to trespass into this role, are grossly misconceived.

15. The respondent would also contend that the procedure followed for allocation was itself incorrect, since such allocation could not have been done unilaterally by the petitioner, but only after an 'admission slip' was issued by the respondents. There is nothing whatsoever to establish this procedure and despite pointed and repeated queries, nothing is placed before me to support this submission.

16. The prospectus makes it clear that filling in of the stray vacancies is to be done by the colleges, though of course, only from out of the list furnished by R3 and the procedure followed by the petitioner is not shown to be improper, erroneous or violative of the prospectus or relevant regulations.

17. I am of the considered view that post mop-up counselling, vacant seats determined as stray vacancies, should be filled in by the respective Self-Financing Medical/Dental Colleges as in the present case. I thus find nothing untoward in filling up of the 28 seats by the petitioner subject to the



students forming part of the list that has been forwarded by the Medical Counselling Committee and subject to the fee structure prescribed.

18. Thus, the selection of the students and the filling up of seats by 20.04.2022, in the absence of there being any last date stipulated, barring 28.04.2022 for final selection of all candidates, is in order. The argument of the respondent to the contrary is thus rejected.

19. That apart, while accepting the 11 students selected on 11.04.2022, balance 17 seats have sought to be filled in by the State by way of a tentative special stray counselling in Government quota seats in the petitioner Institution. This relates to 4 seats under Management quota, 5 seats under Management Quota and 8 seats under NRI quota. It is unknown as to where from the respondents draw authority to issue Notifications and conduct counselling for the aforesaid seats as the prospectus is clear in this regard.

20. Fortunately, out of the 17 students who have been allotted seats in the petitioner college on the basis of the counseling held by R3, 15 did not visit the college to claim their seat and the other 2, as a happy coincidence, happened to be have been selected by the petitioner as well.

21. In light of the above, mandamus as sought for is issued directing the respondents to issue orders of allotment to the 28 students allotted seats by the petitioner college. At the conclusion of the hearing, it is brought to my notice that the end date for counselling has been stipulated as 28.04.2022 by the additional Directorate General (Medical Education), Medical Counselling Committee. Prima facie, this does not appear to be in line with the judgment of the Hon'ble Supreme Court in the case of Ashish Ranjan vs. Union of India &Ors. [(2016) 11 SCC 225] as per which the last date by which the process of admissions shall be completed is the 31st of August. Since mandamus as sought for is being issued today, there shall be immediate compliance of this order by the respondents.

22. This Writ Petition is allowed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1.The Secretary, Union of India,
Ministry of Health and Family Welfare,
A wing, Nirman Bhavan,
Maulana Azad Road,
New Delhi - 110 011.

2.The Secretary, State of Tamil Nadu,
Ministry of Health & Family Welfare,
Namakkla kavignar Maaligai,
Fort St.George,
Chennai - 600 009.

3.The Director, Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R. High Road, Kilpauk,
Chennai - 600 010.

+1cc to M/s.Kavitha Deenadayalan, Advocate Sr.No.30358

W.P.No.11040 of 2022 &
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NRJK(CO)
RVM(30/05/2022)