



W.P.No.27151 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : **14.11.2022**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

**W.P.No.27151 of 2022
and W.M.P.Nos.26366, 26368 and 26370 of 2022**

1. Dr.Greeshma Gopal
2. Dr.Rohan Mahesh
3. Dr.Avinash Jothish Kurup
4. Dr.Anitta Elsa Oommen
5. Dr.Mohammed Arif Abdul Salam
6. Dr.Mariya Renny Mathew
7. Dr.Soofiya

... Petitioners

Vs.

1. The Selection Committee
Rep. by its Secretary
Additional Director of Medical Education
Directorate of Medical Education,
No.162, Periyar E.V.R.High Road,
Kilpauk, Chennai - 600 010.
2. Dr. Maria Hazel Charles
3. Dr. Lavanya R Michael
4. Dr. Kandasamy Siva Pettika
5. Dr. Madhavaraj Sundaravadivelan Neela
6. Dr. Radhalakshmi. T
7. Dr. Maria Ann George
8. Dr. Thomas George
9. Dr. Barath Vishwanath



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10. Dr.Janani Sankarakumar
11. Dr.S.S.Priyanka
12. Dr.Poornima Anandan
13. Dr.Hasna. V.H.
14. Dr.Ayna Ovezova
15. Dr.Karthiga, A
16. Dr.Vonti Mittal Ismayeel
17. Dr.Ilaniyan Manivannan
18. Dr.Ajay
19. Dr.B.Kaveri
20. Dr.Fathima. MM
21. Dr.Binchu Varghese
22. Dr.Lakshana. R
23. Dr.Aishwarya Joseph Varikasery
24. Dr.Ayswarya Mohanakrishnan
25. Dr.R.Lokeshwara Prasad
26. Dr.Shriram
27. Dr.Ambika Suresh Kumar
28. Dr.Aswath Surya.S
29. Dr.Kaviya.S
30. Dr.Anisha Robinson
31. Dr.Sheetal Nandha Kishore
32. Dr.PL.Reshma
33. Dr.Hiba Muhamed Koya Konampulakkal
34. Dr.Samyuktha Babu Chitra
35. Dr.S.Vignesh
36. Dr.Arjunan. R
37. Dr.Santhosh Narayanan.R
38. Dr.Samuel R.Rakesh

... Respondents

(R2 to R38 impleaded vide order, dated 04.11.2022
made in W.M.P.No.28257 of 2022
in W.P.No.27151 of 2022 by RSKJ)



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Prayer : Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in 'Provisional eligible list of NRI candidates for self-financing medical colleges' dated 04.10.2022' and 'Provisional list of candidates allotted under NRI category on 06.10.2022' dated 06.10.2022, quash the same and consequently direct the respondent to include the petitioners in the Provisional eligible list of NRI candidates for self-financing colleges and accordingly include the petitioners in the counselling process for allotment of seats under NRI category.

For Petitioners : Mr.AR.L.Sundaresan
Senior counsel
for Mr.Abishek Jenasenan

For Respondents : Ms.M.Sneha, Standing counsel for R1
Mr.A.Sundaravadhanan for R4 and R10
Dr.R.Gowri for R12
Mr.A.S.Balaji for R14
Ms.S.Akila for R5, R6, R11, R21 and R25
Mr.G.Sankaran for R26 and R27
Mr.J.Kather Hussain for R28
Mr.M.Vijaya Mehanath for R36
Mr.T.R.Rajagopalan, Senior counsel
for Mr.C.V.Vijayakumar for R35

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the respondent in 'Provisional eligible



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list of NRI candidates for self-financing medical colleges' dated 04.10.2022' and 'Provisional list of candidates allotted under NRI category on 06.10.2022' dated 06.10.2022, quash the same and consequently direct the respondent to include the petitioners in the Provisional eligible list of NRI candidates for self-financing colleges and accordingly include the petitioners in the counselling process for allotment of seats under NRI category.

2. These petitioners had applied for admission in PG Courses in Medicine under Non-Resident Indian quota (herein after referred to as “NRI quota”) in the Self Financing Medical Colleges in the State of Tamil Nadu for the Academic Year 2022-2023.

3. In this regard, prospectus was issued by the first respondent in the following name, "Prospectus for Admission to Postgraduate Degree / Diploma Courses in Management Quota including NRI of Self Financing Medical Colleges in Tamil Nadu 2022-2023 Session". The said prospectus was issued as per G.O.(D).No.868, Health and Family Welfare (MCA-1) Department, dated 16.08.2022 and as amended from time to time.

4. As per the prospectus, the following are the important dates :



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IMPORTANT DATES

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1	Date of Notification	19.08.2022
2	Date of Commencement of online application	19.08.2022 12.00 Noon
3	Last date of online submission of application	26.08.2022 upto 05.00 p.m
4	Last date for receipt of filled-in online application	29.08.2022 upto 05.00 p.m
5	Address to which the print out of online application along with enclosures are to be sent	The Secretary, Selection Committee, 162, Periyar E.V.R.High Road, Kilpauk, Chennai – 600 010.
6	Expected date of declaration of rank	Will be notified later
7	Tentative Dates for counselling	Will be notified later
8	Commencement of courses	Will be notified later
9	Closure of admission	Will be notified later

5. These petitioners claim that, their parents either Father or Mother are residing in a Foreign country and in that capacity, they are NRI's and in this respect, they obtained NRI certificate from the Indian Embassy of the concerned country where they reside along with the affidavit in the format



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for declaration, sometime in the month of June, July or August 2022.

Accordingly, the petitioners claim that, they made online application on or before 26.08.2022 and filled-in offline application, i.e., physical application on or before 29.08.2022.

6. In Clause II under the heading "Eligibility criteria", clause 3(d) says that the seats under NRI quota should be utilized by the bonafide NRI's only and for their children or wards. Therefore the NRI financially supporting the candidates should either be the parent (Father or Mother) of the candidate or legally declared as a guardian of the candidate by the Court as per provisions in "The Guardians and Wards Act 1890".

7. The NRI candidates should submit the documents like (i) NRI status of the financial supporter issued by the Indian Embassy of the respective country under their seal, (ii) Certificate of relationship between the NRI financial supporter and the candidate issued by the competent authority and valid Indian Passport of the NRI financial supporter, (iii) NRE (Non Resident External) Bank Account Pass Book of the financial



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supporter, (iv) Evidence for payment of Development charges US \$1000/- to the college by the NRI financial supporter.

8. Only under these conditions, applications have been submitted by all the petitioners to the first respondent in time both through online as well as the physical mode.

9. Under Clause IV with the heading "Procedure for filling & submission of application", clause 10(a)(vii) says that, candidates should submit the print out of the filled-in online application form (Hard copy) along with necessary enclosures.

10. Clause 10(d) says that AR Number (Application Register Number) will be assigned by the Selection Committee on receipt of the filled-in online applications.

11. In Clause 12 (h) under the heading "For NRI candidates" and in



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clauses (i) and (j), the following has been stated :

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"(1) NRI status of the financial supporter issued by the Indian Embassy of the respective country under their seal.

(2) Certificate of Relationship between the NRI financial supporter and the candidate issued by the competent authority with valid Indian Passport of the NRI financial supporter.

(3) NRE (Non Resident External) Bank Account Pass Book of the financial supporter.

(4) Declaration (Annexure III(a))

(5) A copy of Court order legally declared as guardian of the candidate as per provisions in "Guardians and Wards Act 1890", if applicable.

Candidates are instructed to produce the above mentioned original Certificates / Documents at the time of counselling for certificate verification.

(i) Same photo of that uploaded in NEET PG 2022 must be uploaded in filled-in online application.

(j) Post card size photograph (4"x6") (size:50kb to 300 kb) to be uploaded."

12. Clause 13 of the prospectus says, incomplete filled-in online



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application, application submitted without the proper documents and application forms without the signature of the candidates, will be summarily rejected.

13. Under the above said conditions, the candidates, i.e., the petitioners along with others had submitted applications under NRI quota.

14. In the very front page of the application itself, it should be mentioned as NRI quota and in the first page of the application there is a check list, where also under the column NRI, the candidates should say whether Yes or No. that means if it is under NRI quota it should denote as "Yes".

15. In this regard, it is the case of the petitioners, as projected by Mr.AR.L.Sundaresan, learned Senior counsel appearing for the petitioners that, all these petitioners are eligible to apply under NRI quota, as their parents, either Father or Mother, are residing in Foreign country and necessary NRI certificate issued from the Embassy as well as the affidavit to



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that effect has been annexed along with other documents as has been quoted in the prospectus which having been annexed, the offline/physical application had been sent prior to the cut-off date. Already the online application also had been submitted, where along with the application form, no other documents need to be scanned and uploaded as per the instructions.

16. The learned Senior counsel appearing for the petitioner would further submit that, when that being so, after the closing of the last date of applications, the Government had come forward to issue G.O.Ms.No.328, Health and Family Welfare Department, dated 20.09.2022, for amending the qualifications for NRI quota, under which, apart from the parents, i.e., Father or Mother of the candidates, the word "spouse or blood relatives", of the candidates had been inserted. Thereby under the original prospectus, only the wards of the NRI's alone can apply for getting admission under NRI quota, however, subsequent to the amendment, dated 20.09.2022, even a blood relatives or spouse can sponsor any wards for making application under NRI quota to get admission in PG Degree course in Medicine.

17. The learned Senior counsel would further point out that, pursuant



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to the said amendment made on 20.09.2022, applications were invited for Post Graduate / Diploma for NRI quota from 21.09.2022 to 22.09.2022.

18. Therefore, some more applications might have been received and by taking into account of the earlier applications filed before the closing date, i.e., 29.08.2022 and subsequent applications after amendment filed on 21.09.2022 and 22.09.2022, all those applications having been processed, the first respondent had issued the Provisional eligibility list of NRI candidates on 04.10.2022. In that list, though 101 candidates name have been mentioned, the names of the petitioners since have not been included in the list, on the very same day, i.e., on 04.10.2022, they have sent individual e-mail communications to the first respondent and one such e-mail communication, dated 04.10.2022 reads thus :

"My name is Greeshma Gopal. My TNMC Application No.22PG203045. I had applied for TNMC under NRI quota and have sent all my relevant NRI docs to TNMC. My father Mr.Gopal Krishnan Konthassamveetil Govindankutty is my NRI sponsor. He is a true NRI working in Dubai, UAE. But my name is not in the NRI eligible list. I



have contacted the office and they say that since its pooja holidays, officials are not present to give me any answer. They also said the counselling will go on. At this present scenario I am confused as to why I have not been considered as an NRI. Kindly do look into this matter seriously. I have attached all docs with this mail."

19. According to the learned Senior counsel, despite the said e-mail communication sent by each of the petitioners to the first respondent about the non-inclusion of their name in the Provisional eligible list for the NRI candidates, dated 04.10.2022, the first respondent had not come forward to rectify anything and for what reason the petitioner's name had not been included in the provisional eligible list also has not been made known to the petitioners.

20. Immediately within two days, i.e., on 06.10.2022, a final selection list also was published by the first respondent, under which, 37 candidates name were found as if that they were selected for admission in various PG courses under NRI quota.



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WEB COPY 21. Only at that juncture, the petitioners join together and filed this writ petition with a prayer challenging both the provisional eligibility list of NRI candidates, dated 04.10.2022 and the selection list published by the first respondent, dated 06.10.2022. That is how this writ petition has come up.

22. The learned Senior counsel appearing for the petitioners would also submit that, in respect of all these 7 candidates, i.e., 7 petitioners are concerned, it is the case of the first respondent that, the NRI certificate issued by the Embassy concerned has not been annexed along with the physical or offline application submitted by the respective petitioners. Therefore that was the only reason, under which, all these applications of the petitioners were rejected. He would also submit that, however, the first respondent took a stand that, the sworn affidavit of sponsorship in proper format endorsed by the Consulate General concerned or the Embassy concerned obtained by the petitioners or on their behalf submitted along with the physical application, are available.



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WEB COPY 23. The first document, namely, the NRI certificate issued by the Indian Embassy which is the document under clause 12(h)(1), is not available in any of the applications of the petitioners is the stand of the first respondent. But at the same time, the sworn affidavit, i.e., the document under clause 12(h)(2) is very much available in respect of the applications of all these petitioners.

24. Pointing out this, the learned Senior counsel appearing for the petitioner would contend that, the NRI certificate as well as the sworn affidavit were obtained on behalf of the petitioners and both were annexed along with other certificates and documents as required in the prospectus, out of which, all those documents are available including the sworn affidavit. That being so, how the NRI certificate alone would be missing is not known. Therefore in this regard, it is the vehement contention on the part of the learned Senior counsel appearing for the petitioners that, the NRI certificate produced by the 7 petitioners along with all other certificates, if it is missed, it is not the responsibility of the petitioners and in this regard, the



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responsibility should be shouldered only by the first respondent.

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25. Alternatively, the learned Senior counsel would argue that, if at all, that certificate of NRI is missing and based on which if the candidature of the petitioners were rejected and their names were not found in the Provisional eligibility list of NRI candidates, dated 04.10.2022, after verifying the same, since the petitioners on 04.10.2022 itself made an individual e-mail request, where they have stated that, they annexed all the certificates and documents and they all are fully eligible to claim seat under NRI quota based on the inter-se merit, the same should have been taken into account by the first respondent and immediately an opportunity should have been given to each of the petitioners to forthwith give copy of such certificate immediately. Such an opportunity had not been given, however, in respect of one of the candidate, namely, the 28th respondent herein, since his name also was not included in the impugned list, he seems to have made a request to the first respondent and that was considered by the first respondent and his name was added in the Provisional list as 102nd candidate. Therefore the learned Senior counsel would submit that, the gesture shown to R28 has not



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been shown to the petitioners, therefore it is highly discriminatory and arbitrary.

26. Insofar as one of the bullet point under the heading "Important information", in the prospectus, that, in the event of rejection of the application form, no correspondence / request for reconsideration will be entertained, since is heavily relied upon by the first respondent, the learned Senior counsel in this context would submit that, if at all, the online application is submitted without proper facts or bereft of facts or when applications were submitted through offline, i.e., through physical copy of the application, where if there has been no signature of the candidate, in that case, such kind of rejection though has been approved in a case reported in Dr.M.Vennila v. Tamil Nadu Public Service Commission reported in 2006 (3) CTC 449, such a proposition having been considered subsequently by a Division Bench of this Court in Dr.A.Rajapandian v. State of Tamil Nadu, reported in 2006 (5) CTC 529, where it was held that, when there is so much of confused instructions given, pursuant to which, if there was any confusion created in the minds of the candidates, the blame squarely lies on



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the Service Commission (in that case) as there had been a mess created in the minds of the candidates, therefore in the said back drop, the Division Bench has allowed the writ petitions and directed to accept those applications which were submitted to the respondent TNPSC therein.

27. Relying upon these legal position, the learned Senior counsel would submit that, first of all the NRI certificate issued by the Embassy has been produced along with the physical application by each of the petitioners and there is every evidence or circumstances are available to come to such a conclusion, assuming that if such certificate has not been annexed or it has been annexed, however it was missing, when request was made through e-mail on 04.10.2022, such a chance should have been given to the petitioners as their very career in life to pursue their higher education in Medicine since is at stake, such kind of gesture should have been shown by the first respondent, without which, abruptly since the applications of the petitioners were rejected, despite the subsequent request made in this regard, the said inaction or arbitrary action on the part of the first respondent is unlawful, arbitrary and colourable exercise of power, therefore the learned



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Senior counsel seeks indulgence of this Court to allow this writ petition.

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28. On the other hand, Ms.M.Sneha, learned Standing counsel appearing for the first respondent- Selection Committee has submitted that, initially there were 130 applications received for NRI quota admission, out of which 58 applications were rejected, therefore the eligible applicants were only 72. After the amendment was made on 20.09.2022, 50 more applications were received under the NRI quota, on scrutiny 18 out of 50 applications were rejected, therefore only remaining 32 applications were accepted as eligible. Therefore 72+32, there were 104 applications which were accepted as eligible applicants for consideration of admission in PG Degree / Diploma courses under the NRI quota in the Academic Year 2022-2023.

29. The learned Standing counsel appearing for R1 would further submit that, insofar as the claim of the petitioners is concerned, out of the 7 petitioners, petitioner No.3 and 6 are concerned, their NRI certificate



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obtained from the Embassy concerned having been verified was found that, it is a bogus or forged one, therefore they are not entitled to claim any relief, sympathy or equity from this Court.

30. She would also submit that, insofar as the other 5 candidates are concerned, so far as the 7th petitioner since she obtained only 248 marks, she did not come within the 50th percentile as per the eligibility criteria for admission to Postgraduate course under the prospectus, therefore her candidature for that purpose have to be rejected, accordingly it was rejected. Therefore in respect of the 7 petitioners, two candidates NRI certificate are bogus and in respect of one candidate, she did not reach the zone of consideration.

31. In respect of other 4 candidates are concerned, the learned Standing counsel appearing for the first respondent would submit that, it is not the candidature of these petitioners alone were rejected, as has been stated in respect of 130 candidates who made application in the first round, 58 candidates' application were rejected, after amendment out of 50



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candidates, 18 candidates applications were rejected. Therefore 76 candidates' applications were rejected for variety of reasons including the reason like the petitioners case, where they have not produced the important document namely NRI certificate.

32. Therefore no motive can be attributed against the first respondent to state that, despite the certificates having been annexed along with the physical applications, the application have been rejected. Therefore that kind of argument should be rejected by this Court, she contended.

33. That apart, the learned Standing counsel appearing for the first respondent would also submit that, insofar as R28 is concerned, after the provisional list was issued on 04.10.2022 since his name was not found there, that candidate approached the first respondent and he made a request that, he was eligible to be considered as he has annexed all certificates and documents and properly made application.

34. Therefore entertaining his request, his application was verified and found that bonafidely all the certificates have been annexed along with the application submitted by him, therefore, since the said candidature was



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rejected due to inadvertence on the part of the first respondent, his candidature was accepted, accordingly, he was added as 102nd candidate as already 101 candidates name have been found in the 04.10.2022 list.

35. Therefore the learned Standing counsel appearing for the first respondent would submit that, the prospectus even though stated that, in the event of rejections of the application form, no correspondence / request for reconsideration will be entertained, such a request have been entertained in respect of not only R28 but also in respect of the petitioners, where their e-mail request having been considered, after verifying the original application form along with the annexure, since it was found that the important document namely the NRI certificate was not annexed by these petitioners, the decision taken already by the first respondent to reject their application was confirmed. Therefore it cannot be stated that, only the request of R28 alone was considered but that gesture was not shown to the petitioners as that statement made by the petitioners side is incorrect, the learned Standing counsel for the first respondent submitted.



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36. By making all these submissions, the learned Standing counsel appearing for the first respondent would further submit that, out of the 37 candidates selected in the first round of counselling, 27 candidates joined and 10 were not joined, therefore the 10 seats have been taken into account in the second round of counselling. Already there are 14 vacancies meant for second round of counselling, therefore for these 24 seats, the second round of counselling was conducted and selection was made. However pursuant to the interim orders passed by this Court, allotment or admission letter were not given to those 24 candidates, she contended.

37. She would also submit that, in view of the aforesaid transparent selection process conducted by the first respondent, there was no exercise of power arbitrarily on the part of the first respondent in rejecting the applications of the petitioners, hence, the petitioners have no case to assail the provisional eligible list of NRI candidates dated 04.10.2022 as well as the selection list dated 06.10.2022, hence the learned Standing counsel for the first respondent seeks dismissal of this writ petition.



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38. I have also heard Mr.T.R.Rajagopalan, learned Standing counsel who appeared for some of the private respondents and also heard Mr.J.Kather Hussain, learned counsel appearing for R28, Mr.G.Sankaran, learned counsel appearing for R26 and R27, Mr.M.Vijaya Mehanath, learned counsel for R36 and Mr.A.Sundaravadhanan, learned counsel appearing for R4 and R10, Mr.A.S.Balaji, learned counsel appearing for R14, Ms.S.Akila, learned counsel appearing for R5, R6, R11, R21 and R25 and Dr.R.Gowri, learned counsel appearing for R12.

39. The learned counsels appearing for the private respondents would submit that, they made applications either under the first round pursuant to the condition that, only wards should apply based on the sponsorship to be made by the parents as NRI, as well as after amendment made on 20.09.2022 that either spouse or blood relations can sponsor and accordingly under both categories, applications were made by these private respondents.

40. After making online application, they claim that, each of the respondents had made offline physical application, where all necessary certificates, which ought to have been annexed as per the prospectus, had



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been annexed and based on which, the provisional eligible list was published on 04.10.2022, subsequently, the selection list was made on 06.10.2022, accordingly, the first respondent selected the candidates and they were given allotment order on 07.10.2022 directing them to join in the allotted college on or before 11.10.2022. Therefore the learned counsels appearing for the private respondents claim that, all these private respondents had joined in the respective colleges after paying necessary fee to the college concerned and some of them claim that, classes were also commenced.

41. The learned counsels appearing for the private respondents would also submit that, if at all, the 7 petitioners' candidature were rejected for the reason that, they did not produce the NRI certificate and if it is the claim of the petitioners that, such certificate was produced, it is a oath against oath, therefore on the basis of the mere statement given by the petitioners, the provisional eligible list of NRI candidates dated 04.10.2022 and selection list dated 06.10.2022 need not be interfered with.

42. Moreover these private respondents since are eligible to claim



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admission under NRI quota and based on the marks they obtained in PG NEET 2002, considering their inter-se merit, choices were given to them to select their seat, accordingly, these private respondents have selected their seat in PG admission in various disciplines and depending upon the inter-se merit, allotments were given to them, based on which, they joined in the respective colleges to whom they were allotted. Therefore at this juncture, at the instance of the petitioners, the counselling already conducted, selection made and admission given to these petitioners need not be disturbed, as there has been no ground absolutely to interfere with such selection and disturb the admission made to these private respondents, the learned counsels contended.

43. I have given my anxious consideration to the lengthy submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

44. Though such a lengthy arguments were made, the issue raised in this writ petition is in very narrow compass.

45. These 7 petitioners made application in response to the prospectus



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issued by the first respondent, for admission to PG Degree / Diploma course under NRI quota of Self Financing Medical Colleges in Tamil Nadu for Academic Year 2022-2023.

46. Since these petitioners had made applications only under NRI quota, we must see what is the criteria prescribed by the respondents through the prospectus to fulfill for getting admission in NRI quota. In this context, clause 12(h), which has already been quoted herein above, states that, for getting a seat under NRI quota, the NRI status of the financial supporter issued by the Indian Embassy of the respective country under their seal must be produced and also certificate of relationship between the NRI financial supporter and the candidate issued by the competent authority with valid Indian Passport of NRI financial supporter to be produced. That apart NRE Bank Account Pass Book of the financial supporter as well as a declaration to be made and also if need arises, a copy of the Court order legally declared as guardian of the candidate as per provisions in “Guardians and Wards Act 1890” to be produced. The photo uploaded in the NEET PG 2022 must be uploaded in filled-in online application and post card size



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colour photograph to be uploaded.

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47. Apart from these, no other documents were required to be produced. Insofar as these documents are concerned, absolutely there has been no quarrel between the petitioners and the first respondent that, they have filed the application with all these documents except the NRI status certificate issued by the Indian Embassy of the respective country.

48. In this regard, in respect of each of the petitioners, i.e., for all the 7 petitioners, such certificates of NRI obtained either in the month of June or July or August had been filed in the typed set of documents. Also the sworn affidavit signed by the Embassy had been produced. These are the two important documents to be submitted along with the physical application by each of the candidates.

49. In this context, the stand of the first respondent is that, all other certificates including the sworn affidavit are available along with the application of all these petitioners, however the NRI certificate issued by the Embassy of India in the country where the NRI resides are not available.



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50. In this context, it is the vehement contention of the learned Senior counsel appearing for the petitioners that, the certificates were obtained well before the cut-off date for making application, simultaneously the sworn affidavit also obtained and both were produced along with the physical application before the cut-off date as all these applicants are the children of the parents. Therefore before amendment itself in the month of August, i.e., on or before 29.08.2022 they made application physically along with these documents and when that being so, how the particular certificate or document, namely the NRI certificate alone would be missing. Therefore if at all the certificate is missing in the application of the respective petitioners, the blame to be made is only against the first respondent, i.e., the stand taken by the learned Senior counsel appearing for the petitioners.

51. However it has been stoutly denied by the learned Standing counsel appearing for the first respondent, who would submit that, since no malafide has been attributed against the first respondent and no officer of the first respondent since has been named attributing malafide against such



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official of the first respondent by these petitioners, such a statement made by the petitioners side cannot be accepted.

52. It is also the stand of the first respondent counsel that, it is not the petitioners application alone were rejected, there are 76 such applications rejected for various reasons including the reasons like the petitioners'.

53. However this Court, after having perused the NRI certificate issued by the Embassy or Consulate General of India in the respective countries, which have been produced in the typed set of papers at Page Nos.81, 94, 106, 118, 131 and 144 for petitioners 1 to 6, was wondering that, when such certificates were obtained on 07.06.2022, 15.06.2022, 18.08.2022, 02.06.2022, 08.06.2022 and 20.08.2022, why those certificates could not be produced by these petitioners along with the physical application they made on or before 29.08.2022.

54. It is further to be noted that, along with the NRI certificate, the sworn affidavit obtained by them dated 10.06.2022, 16.06.2022, 22.08.2022, 25.08.2022, 13.06.2022 and 26.08.2022 since are available in the application forms, the statement given by the first respondent, even



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though it is oath against oath, is not believable.

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55. The circumstances very much leads to come to such a conclusion only that, these petitioners, when they made such a great attempt to make an application to get admission in PG Medicine, for which they written NEET PG Examination and after obtaining respectable mark, since had applied for getting admission under NRI quota and in respect of all these petitioners, the respective parents are in abroad and only in their name NRI certificates were obtained and they alone were eligible to make applications before the amendment made in the instructions and in the first round itself such applications were made by these petitioners, therefore the petitioners would have been so vigilant in making the application correctly and therefore it cannot be stated that those documents filed by them were not available in the application.

56. Assuming that, that documents were not available in the applications, when it was brought to the notice by making e-mail representation on 04.11.2022 by each of the petitioners to the first respondent, immediately those applications could have been verified and



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assuming that every document is available except the NRI certificate and the sworn affidavit also was available, the first respondent could have come to a conclusion that, when sworn affidavit were available, definitely the NRI certificate should have been obtained by them and they also stated that NRI certificates also one of the annexure had been sent along with their applications, those petitioners could have been called for by the first respondent to verify whether such certificates are available with them and accordingly, they could have proceeded with the selection process.

57. Since some of the petitioners secured more marks than the selected candidates, now by virtue of the rejection made by the first respondent, the candidatures of the petitioners since have been rejected, the meritorious candidates have been denied the seat under NRI quota comparatively the less meritorious candidates are able to find place in getting admission in PG Medical course for the Academic Year 2022-2023 under the NRI quota.

58. Therefore in this context, this Court is unable to accept the



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contention or defence taken by the first respondent in rejecting the application of the petitioners.

59. However during the arguments it was brought to the notice of this Court by Ms.M.Sneha, learned Standing counsel appearing for the first respondent, who has given a shocking news that, on 09.11.2022, the first respondent has sent an e-mail communication to the concerned Embassy about the genuinity of the NRI certificates now produced by the petitioners in the typed set of documents, as to whether those documents are genuine or not and issued by the Embassy or not.

60. For the said query raised by the first respondent, answer has been given by the Consulate General of India, Dubai by its Economic, Trade & Commerce wing, by e-mail on 09.11.2022 at 7.13 p.m which reads thus :

"Sir / Madam,

Please refer to the trailing mail.

1. In this regard it is to confirm that Certificate containing the following two reference nos. were issued by this office and are genuine.



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(i) UAED00571322/366/2022-23, dated 07.06.2022 – issued to Mr.Gopala Krishna Konthassamveetil Govindankutty (Passport No. Z2490483)

(ii) UAED00579322/376/2022-23, dated 08.06.2022 – issued to Mr.Abdul Salam Muhamed Abdul Kader (Passport No. Z5059691)

2. The other following two references were NOT issued by this office.

(i) UAED00631634/456/2022-23, dated 18.08.2022 – issued to Mr.Jyotish Kumar Vasudevan Nair (Passport No.Z2239600) and

(ii) UAED00631623/501/2022-23, dated 20.08.2022 – issued to Mr.Renny Mathew (Passport No.R2417235).

This is for your information please.

With regards.

Economic, Trade & Commerce Wing

Consulate General of India

Dubai."

(Emphasis supplied)

61. In the said communication, the Consulate General of India, Dubai has stated that, the NRI certificate in respect of the parents of the two petitioners, namely P3 and P6, i.e., 3rd petitioner and 6th petitioner, were not issued by the said Consulate General Office, therefore the stand taken by the



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first respondent is that, in respect of these petitioners, the very NRI certificate said to have been issued by the Indian Embassy itself was disclaimed that it was not issued by the Embassy, hence those certificates produced by these candidates are to be treated only as bogus certificates.

62. When a question was posed to the learned Standing counsel appearing for the first respondent by this Court that, whether this kind of verification has been made in respect of all the applicants or all the selected candidates at least whose NRI certificates since have been accepted by the first respondent, the learned Standing counsel submitted that, no such verification had been done in respect of other candidates and such verification have been done only in respect of 7 petitioners, out of which, the NRI certificates issued to 5 candidates are genuine and in respect of petitioners 3 and 6 alone it has come ingenuine, she contended.

63. Therefore this kind of verification has been made by the first respondent selectively only in respect of the petitioners alone, that kind of procedure adopted by the first respondent cannot be appreciated by this Court as no such verification has been done in respect of all other



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candidates.

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64. But at the same time, such verification now has revealed that, two out of seven petitioners' NRI certificates were claimed by the Indian Embassy that they were not issued by them. Therefore on that ground, the applications of 3rd and 6th petitioner of this writ petition can very well be rejected. Therefore in respect of these two petitioners, the rejection made by the first respondent is to be approved.

65. Insofar as the 2nd and 4th petitioners are concerned, it is the claim of the learned Senior counsel appearing for the petitioners that, they since were not permitted to participate in the counselling as their applications were rejected by the first respondent, they participated in the All India quota counselling, where they have been given seat in PG Medicine and the second petitioner joined at Mumbai and the fourth petitioner also joined at Mumbai. It is interesting to note that, the third petitioner whose NRI certificate is found to be ingenuine prima facie, had participated in the All India Counselling and she was also given a seat and she also joined in the seat.



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Therefore the learned Senior counsel would contend that, insofar as 2nd, 3rd and 4th petitioners are concerned, they are not seriously pursuing the present writ petition and that submission made by the learned Senior counsel was taken on record.

66. Since P2 and P4 have joined in the course of PG Medicine under All India quota and they are not pursuing the writ petition, we need not explore the possibility whether any relief can be given or not to these two petitioners.

67. Insofar as the remaining petitioners, namely P1, P5, P6 and P7 are concerned, the 6th petitioner is one of the two candidates, whose NRI certificate were found to be ingenuine, therefore the 6th petitioner also is not entitled to get any relief from this Court.

68. Insofar as the P7, i.e., 7th petitioner is concerned, she scored only 248 marks and her application was rejected not on the ground of her NRI certificate was not available, but on the other ground, namely that she did not reach the minimum marks at 50th percentile.



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69. In this context, the relevant instruction reads thus :

"4. Candidates seeking admission have to qualify the National Eligibility cum Entrance Test-NEET PG 2022 conducted by the National Board of Examination. The eligibility criteria prescribed by Director General of Health Service, New Delhi, in accordance with Post Graduate Medical Education Regulations (as per latest amendment) notified by Board of Governors, in supersession of the Medical Council of India with prior approval of Ministry of Health and Family Welfare, New Delhi, Government of India, shall be taken into account for admission to Post Graduate Degree / Diploma courses for the academic year 2022-2023.

<i>Eligibility criteria for admission to post graduate course</i>		
Category	Minimum Eligibility Criteria	Cut-off score (Out of 800)
General	50th Percentile	
SC/ST/OBC	40th Percentile	



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Eligibility criteria for admission to post graduate course		
(including person with disability)		
General-Persons with Disability	45th Percentile	

While in Tamil Nadu, the candidates should obtain minimum of marks at 50th percentile for the General Category in NEET PG 2022.

However, for the candidates who are natives of TamilNadu belonging to Scheduled Castes, Scheduled Castes (Arunthathiyar), Scheduled Tribes, Backward Classes, Backward Classes (Muslim), Most Backward Classes and Denotified Communities, the minimum marks shall be at 40th percentile in NEET PG 2022."

70. Relying upon these instructions, the learned Senior counsel appearing for the petitioners would submit that, it is not 50% of the mark, but it is only 50th percentile, that means if 100 candidates are participated, among the ranking last whoever comes within the 50th percentile, i.e., exactly middle of the total candidates that mark would be the cut-off mark, based on which whoever taken such cut-off mark and above alone would be



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considered for counselling.

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71. In this regard, the learned Senior counsel pointed out that, in the provisional eligible list of NRI candidates dated 04.10.2022 at least 2 candidates in Sl.No.24 and 89 who had obtained only 248 and 245 marks respectively were found place. However the 7th petitioner obtained 248 marks since was not included by citing the reason that, she did not obtain the minimum mark at 50th percentile, it is unlawful.

72. However the learned Standing counsel appearing for the first respondent has clarified that, only in respect of general candidates, they should come within the 50th percentile, however for the candidates who are natives of Tamil Nadu belonging to any of the reserved category like SC, ST, BC and MBC, those candidates are expected to get only 40th percentile in NEET PG 2022.

73. The said candidates, namely Sl.No.24 and 89 pointed out by the petitioners are belong to Tamil Nadu and therefore these Tamil Nadu candidates belong to various communal categories, if they reached 40th



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percentile, that is enough to be considered for inclusion in the selection list.

Therefore such a comparison the learned Senior counsel for the petitioners makes in respect of 7th petitioner along with two candidates, namely candidates placed in Sl.No.24 and 89 by citing reason that they did not reach the 50th percentile, however they have been selected, may not be justifiable. The said contention and the defence raised by the learned Standing counsel for the first respondent is to be accepted.

74. Therefore the rejection made in respect of the 7th petitioner for the said reason that, she did not reach the minimum mark at 50th percentile is a valid reason for rejecting her candidature, therefore the 7th petitioner also is not entitled to claim any relief from this Court.

75. Therefore out of the 7 petitioners only there are two remaining petitioners, namely P1 and P5. The 1st petitioner obtained 353 marks and the 5th petitioner obtained 281 marks in the PG NEET 2022. If we look at the selection list, dated 06.10.2022, the first petitioner, as per her mark, should have been between 9th and 10th candidates, the 5th petitioner should have



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been in between the 31st and 32nd candidates. However, since their applications were rejected they were denied admission.

76. The said rejection of application in respect of these two candidates at least are concerned, this Court feels that, the reasons stated by the first respondent may not be justifiable as it touches the very professional career of a citizen which cannot be denied for such flimsy reason, which according to the petitioner is nonest. In order to test this reason as to whether the statement made by the petitioners is correct or the statement made by the first respondent is correct, this Court cannot have any other system except to go into the circumstances under which such applications were made and the efforts made by the petitioners who have written the PG NEET 2002 Examination, of course secured a respectable score and based on which, if they participate in the counselling, definitely they would have been in a position to secure admission in any discipline according to their choice, based on the inter-se ranking as stated supra.

77. Therefore the denial of admission to these candidates namely 1st petitioner and 5th petitioner, in the considered opinion of this Court, is unjustifiable, unlawful, arbitrary and violative of all principles of natural



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justice. Therefore this Court ultimately finds that, the petitioners 1 and 5 are entitled to succeed in this writ petition.

78. In order to accommodate these two writ petitioners, namely 1st petitioner and 5th petitioner, whether the entire counselling already conducted is to be redone is the next question. In this regard, this Court has taken judicial notice that the first round of counselling as well as the second counselling was over. These 37 candidates who are private respondents herein are selected in the first counselling and they were given allotment orders on 07.10.2022 pursuant to which they joined in the respective colleges after paying the fee. In respect of the second counselling though it was over, no allotment orders were given to any of such selected candidates because of the interim order passed by this Court.

79. Therefore insofar as the remaining seats are concerned, namely 10 non-joining candidates in the first round of counselling and 14 seats which were left for second counselling, totally 24 seats for which second



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counselling was also over and selection was made is concerned, the first respondent should permit the petitioner 1 and 5 to take a seat at least among the said 24 candidates by adding these two petitioners namely petitioners 1 and 5 making 26 candidates. Out of these 26 candidates, whoever secured higher mark than these two petitioners and allotted seat in the second counselling need not be disturbed. The remaining candidates who secure lesser marks than these two petitioners, in respect of those allotment and the branch they selected is concerned, the two petitioners namely P1 and P5 along with those candidates who secured lesser marks in the second round of counselling, can be put together and among them, based on inter-se merit they may be permitted to select the seat according to their choice including the petitioners, thereby the counselling can be completed in toto.

80. According to the learned Standing counsel appearing for the first respondent, on 15.11.2022 and 16.11.2022 such kind of counselling called “mopup counselling” may go on tentatively. In this regard, a decision can be taken by the first respondent to have such a mopup counselling by fixing a date wherein as indicated above, the 1st and 5th petitioner along with the



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lesser meritorious candidates, than these two petitioners, can be put under one pool, among them the mopup counselling can be conducted.

81. For all these reasons and discussions herein above made, this Court is inclined to dispose of this writ petition with the following orders.

(i) Since the 2nd petitioner and the 4th petitioner joined in PG Medical course in Mumbai, pursuant to the All India Counselling / admission and they since do not want to pursue this case as stated by the learned Senior counsel appearing for the petitioners, the writ petition in respect of these two petitioners, namely P2 and P4 are concerned is dismissed.

(ii) Insofar as the 3rd petitioner and the 6th petitioner are concerned, the NRI certificate obtained by them from the Consulate General of India, Dubai since was not issued by the said Consulate General, prima facie it has to be treated only as a bogus certificate. Therefore these two petitioners, namely P3 and P6 are not entitled to seek any relief from this Court in this



writ petition, accordingly, the writ petition is dismissed in respect of P3 and P6 also.

(iii) Insofar as the 7th petitioner is concerned, since she did not reach the eligible criteria of obtaining the minimum marks of 50th percentile, she is also not entitled to get any relief from this Court, therefore the writ petition in respect of P7 also is dismissed.

(iv) Insofar as the 1st petitioner and the 5th petitioner are concerned, since they obtained 353 and 281 marks respectively in the PG NEET 2022, based on their marks, they should be permitted to participate in the mopup counselling, for which date can be fixed by the first respondent, along with the candidates among the 24 selectees in the second round of counselling, where, those who get lesser marks than these two petitioners shall be added along with these petitioners, among them the mopup counselling shall be conducted. Accordingly, the meritorious candidates based on their ranking



shall be permitted to select their seat which are available now and accordingly admission shall be given to them.

(v) It is made clear that, since the aforesaid direction is given only in respect of the selected candidates under the second counselling, that too those who obtained lesser marks than the petitioners 1 and 5, the private respondents who were selected and admissions given to them in the first round of counselling as they joined in various Institutions, their admission need not be disturbed as it does not require any interference, therefore their admissions are to be approved.

(vi) Thus the writ petition is ordered in so far as the P1 and P5 to the terms indicated above.

82. Before parting with the case, this Court is also inclined to give the following directions to the first respondent :

(i) From the next academic year, i.e., 2023-



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2024, while issuing prospectus, the State Government / first respondent whoever issue such prospectus shall incorporate the following clause:

“That along with the submission of online application, the candidates shall upload the necessary documents given in the annexure”

(ii) In this regard, an annexure can be issued containing what are all the documents to be annexed along with the application even at the time of making online application, so that every candidate can scan the documents and upload the same along with the online application so that this kind of quarrels can be avoided in the future years.

(iii) Also there shall be direction to the first respondent that, from the next Academic Year, whoever makes application under NRI quota, at the time of scrutiny of the application, the first respondent shall take effort to get verification



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from the Indian Embassy concerned, who gave such certificates, as to the genuinity of those certificates and after getting the communication from the Embassy concerned, if any ingenuine certificates are found, the candidature of those applicants who filed the ingenuine NRI certificates can be rejected.

(iv) This kind of verification exercise shall be undertaken uniformly in respect of all the applicants who made such applications which are otherwise in order.

82. With these directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

14.11.2022

Index : Yes

Speaking Order : Yes

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To

The Secretary
Selection Committee
Additional Director of Medical Education
Directorate of Medical Education,
No.162, Periyar E.V.R.High Road,
Kilpauk, Chennai - 600 010.



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R.SURESH KUMAR, J.

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