



W.P.No.30026 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.30026 of 2022
and W.M.P.Nos.29433 & 29434 of 2022

Rakavi R.

.... Petitioner

-Vs-

1.The State of Tamil Nadu
represented by The Principal Secretary
to Government, Health and Family
Welfare Department, Fort St.George
Chennai 600 009.

2.The Director
Directorate of Medical Education
162, EVR Periyar Salai, Kilpauk
Chennai 600 010.

3.The Secretary
Selection Committee
Directorate of Medical Education
162, EVR Periyar Salai, Kilpauk
Chennai 600 010.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus Calling for the records on the file of the 3rd Respondent in connection with his Notification dated 30.10.2022 and quash the same and direct the respondents to issue a fresh order of allotment to the petitioner as per the option exercised by her after retaining the unfilled seats meant for service candidates that became available after the first



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round counseling by conversion to General candidates for the Second round of online counseling for admission to MDS Course for 2022- 2023 session in Government Dental Colleges and Government Seats in Self Financing Dental Colleges in the State of Tamil Nadu.

For Petitioner : Mr.P.Ulaganathan
For Respondents : Mr.U.M.Ravichandran
Special Government Pleader – for RR 1 & 2
Ms.M.Sneha, Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus Calling for the records on the file of the 3rd Respondent in connection with his Notification dated 30.10.2022 and quash the same and direct the respondents to issue a fresh order of allotment to the petitioner as per the option exercised by her after retaining the unfilled seats meant for service candidates that became available after the first round counseling by conversion to General candidates for the Second round of on-line counseling for admission to MDS Course for 2022- 2023 session in Government Dental Colleges and Government Seats in Self Financing Dental Colleges in the State of Tamil Nadu.

2. The petitioner applied for admission in PG Dental Course ie., MDS for the academic year 2022-23. There were 31 seats available in the Government Colleges as Government quota. This has been earmarked as follows, 15 seats – service candidates and 16 seats – non-service candidates.



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3. The petitioner is a non-service candidate. Accordingly, the first round of counseling was conducted, where the petitioner, though participated, could not secure a seat due to her ranking. The second round of counseling commenced on 27.10.2022. In the meanwhile, the National Medical Commission (NMC) has reduced the minimum percentile ie., the eligibility criteria for admission into P.G. Dental Course ie., MDS. The NMC also, by their communication dated 19.10.2022, directed the State Selection Committees for enabling to exercise such choice by the new applicants who made applications pursuant to the reduction of the minimum percentile in the mop-up round counseling of PG-2022 which would be conducted as per the schedule published in the NMC website.

4. In the first round of counseling, out of 31 seats, all the 16 seats earmarked for non-service candidates were opted for by eligible candidates. However, out of the 15 seats earmarked for service candidates, only one seat was opted by a candidate and the remaining 14 seats in the said category became unfilled. Therefore, as per the procedure in vogue, the remaining 14 seats along with the seats if any left by non-service candidates, who opted the seats and not joined, need to be put together and to fill up those seats only the second round of counseling should have been conducted, which in fact started on 27.10.2022.



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5. In the meanwhile, on 19.10.2022 the NMC as stated supra since has issued a communication by reducing the minimum percentile under which some more candidates would become eligible to make application, the Selection Committee has issued a fresh notification on 28.10.2022 inviting applications from eligible candidates as per the reduced minimum percentile of marks. Accordingly, new applications have come. These new applicants would be permitted to participate only in the mop-up counseling as per the directive issued by the NMC.

6. It is in this context the grievance of the petitioner that, though she participated in the first round of counseling as non-service candidate, she could not secure a seat and therefore she participated in the second round of counseling, where she was able to secure a seat. Though she wanted to opt for a seat in Government college, as per her ranking she was able to get a seat only in the Government quota in the self-financing college.

7. Now, in view of the mop-up counseling, where also the 14 seats unfilled under the service candidates going to be added wherein if at all the petitioner is permitted to participate in the mop-up counseling, if any seat falls vacant the petitioner may get a chance to opt the same, under which the petitioner may



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have a bright chance to get a seat in a Government Dental College under Government quota.

8. However, under Clause 23(a) and (b) of the Prospectus under the heading "Round-2 counseling" the following is stated.

" 23 (a) Second round of ONLINE counseling will be conducted for the vacancies arising due to not joined seats in State quota and/or newly sanctioned seats arising after the first phase of counseling. The vacancies will be filled by realotment / allotment as per Rank and communal reservation.

(b) Second round of ONLINE counseling will be applicable for those who have joined / not joined / discontinued candidates of first round of ONLINE counseling and the candidates in the rank list as per the ONLINE counseling schedule mentioned in the official websites."

9. Applying the said principle under Clause 23 of the Prospectus, the Selection Committee has, in its communication made it clear that, the petitioner is ineligible even to participate in the mop-up counseling because, the petitioner had already participated in the first round, the second round of counseling will be conducted for the vacancies arising out of non-joined seats under State quota and also newly sanctioned seats arising after first round of counseling and if the



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persons who have selected seats in the second round of counseling not join or discontinue, those candidates would not be eligible to participate in any other counseling and they will have to forfeit the seat.

10. Only because of this condition imposed in the Prospectus, the petitioner even though has secured a seat of course under the Government quota in self-financing college in the second round of counseling, if she wants to give up the seat and participate in the mop-up counseling to select a seat under Government Quota in a Government college, as there are bright chances for the petitioner since no more candidates may come to take the seats earmarked under the service candidates quota, she is being prevented from availing that chance. Therefore, in order to get that chance to participate in the mop-up counseling the petitioner has moved the present writ petition.

11. Heard Mr.P.Ulaganathan, learned counsel for the petitioner, who after having reiterated the aforesaid would further add that, the NMC's communication had reached the Selection Committee of the State on 19.10.2022. However, they started the second round of counseling only on 27.10.2022. Knowing well that the minimum percentile marks has been reduced and they are going to call for fresh applications, they issued the notification only on 28.10.2022 and therefore by that time had it been brought to the notice of



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the candidates like the petitioner, the petitioner would not have participated in the second round of counseling, which made the petitioner ineligible to participate in the mop-up counseling. If that chance had been given to the petitioner, by this time she would be in a position to participate in the mop-up counseling and she may get a bright chance of choosing a seat in Government College under government quota which are earmarked for service candidates as per the present trend of not more candidates come under the service candidates category. Therefore, the 14 unfilled seats may not have got filled in the mop-up counseling.

12. However, Ms.M.Sneha learned Standing Counsel for the third respondent and Mr.U.M.Ravichandran learned Special Government Pleader appearing for the respondents 1 and 2, on instructions would submit that, as per the condition in clause 23(a) and (b), those participated in the second round of counseling and taken a seat, if they give up the seat he / she may not be eligible to go for mop-up counseling.

13. However, as per the dictat of the NMC, the applicants who make fresh applications pursuant to the notification issued in view of the reduction of the minimum percentile shall only be permitted to participate in the mop-up counseling. Among the fresh applicants, some of the candidates may be from



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service category. Therefore, the right of the service candidates have to be protected because, first time they make applications to the Selection Committee for getting admission under the service quota because of the reduction of the minimum percentile of marks. Therefore, in the mop-up counseling, all the 14 seats have been earmarked only for service candidates and ultimately after the mop-up counseling if those seats are not filled for want of candidates, those seats will automatically go to the non-service category, where, only those who are eligible to participate in the mop-up counseling alone would be eligible to participate and not the candidates who have already opted for seat in the second round counseling and left the seat without joining the same.

14. I have heard the rival submissions made by the learned counsel for the parties and have perused the materials placed on record,

15. In fact, it is not under Clause 23, but only under Clause 24 under the heading 'Mop-Up Counseling', it is stated that the candidates who participated in the second round counseling and chosen a seat becomes ineligible to participate in the subsequent mop-up counseling. To understand the said pattern further, the relevant portion of the Prospectus is extracted hereunder:

“ **MOP-UP COUNSELING**

*24(a) After completion of second round of ONLINE COUNSELING
if there is any vacancies that will be filled by mop-up round.*



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*(b) If the candidate is allotted any seat from his / her locked choices in round 1, round 2 and has joined the course **are not eligible** for the Mop-up counseling (as per the Gazette Notification No.MCI-18(1)/2018-Med/100818 dated 05/08/2018 and the orders of the Supreme Court of India in W.P.(C) No.174/2022 dated 31.03.2022”*

16. If we look at Clause 24(a) and (b), it is made clear that the candidates, if allotted a seat from his/her locked choices in the first round or second round of counseling and has joined the course, they are not eligible for mop-up counseling.

17. This condition in fact has been imposed as per the Gazette Notification dated 05.08.2018 as well as the orders of the Hon'ble Supreme Court in W.P.(C) No.174 of 2022 dated 31.03.2022. Therefore, absolutely there could be no deviation from this clause, which has already been formed part of the Prospects and therefore, that kind of deviation cannot be expected by the petitioner or any one from the respondents, especially the Selection Committee.

18. The NMC, in their communication dated 19.10.2022 made it clear that the fresh applicants shall be permitted to participate in the mop-up counseling. Since the service candidates who made fresh applications, pursuant to the



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28.10.2022 notification, has to be given preference to take the seats earmarked for service quota under which already 14 seats are unfilled and those 14 seats should be retained intact meant for service quota candidates and that has been done by the Selection Committee.

19. Now it may be possible that out of the 14 seats some of the seats alone might be taken and remaining seats may not have to be taken for want of candidates and in those circumstances, the Selection Committee has no other option except to give those unfilled seats to non-service candidates, as this will be the final round of counseling.

20. In that case, if at all the petitioner has become eligible to participate in the mop-up counseling or she wants to participate in the mop-up counseling, she should not have selected a seat in the second round of counseling. In this context the arguments advanced by the learned counsel for the petitioner that, had the respondents acted upon quickly on receipt of the communication from the NMC and that was revealed to all the candidates like the petitioner, the petitioner at least would not have participated in the second round of counseling, is highly hypothetical, based on which no decision can be taken by this Court. The Court will always look into the Statute available which is governing the issue.



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21. Here the issue of admission is governed by the Prospectus in which certain conditions are imposed by the Selection Committee under the 'Instruction to Candidates', which has already been declared in number of orders in the Court of law that it is binding on both sides. Clause 23 and 24 would definitely bind not only the Selection Committee but also the petitioner. The petitioner cannot expect that something would come from the respondents enabling the petitioner to participate in the mop-up counseling.

22. Counseling is meant for all candidates, who are to be treated equally. Therefore, the question of inconvenience caused to one candidate or the other, that too based on the missed action on their part or their anxiety to choose a seat may not alter the situation and the Selection Committee who is acting based on the Prospectus cannot be expected or compelled to deviate the Rule. Therefore, the plea raised by the petitioner in this writ petition is untenable.

23. For all the above reasons, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

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Index : Yes
Internet : Yes



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Fort St.George
Chennai 600 009.
 - 2.The Director
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162, EVR Periyar Salai, Kilpauk
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 - 3.The Secretary
Selection Committee
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R. SURESH KUMAR, J.

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