

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM :

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

W.A.NOS.3706 AND 3709 OF 2019
AGAINST
W.P.NOS.26969 OF 2019 & 26968 OF 2019

The Dean,
Sri Muthukumaran Medical College
and Hospital,
Chikkarayapuram, Kundrathur Road,
Near Mangadu, Chennai-600 069. ...Appellant / 5th Respondent

Vs

1.V.C.Praveen ...Respondent No.1 / Petitioner
in W.A.3706/2019

1.K.Manikandan ...Respondent No.1 / Petitioner
in W.A.3709/2019

2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Govt.,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

3.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

4.The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-600 010.

5.The Medical Council of India,
Rep. by its Director,
Pocket 8, Dwarka,
New Delhi-110 077. ...Respondent Nos.2 to 5 in both
Appeals / Respondents 1 to 4

Prayer: Appeals under Clause 15 of the Letters Patent against
the order dated 24.09.2019 passed in W.P.Nos.26969 and 26968 of
2019.

Prayer in W.P.No.26969 of 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, Directing the 5th Respondent to grant admission to MBBS course for the academic session 2019-20 based on the allotment order issued by the 3rd Respondent Selection Committee dated 30.08.2019 forthwith and pass orders.

Prayer in W.P.No.26968 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the 5th Respondent to grant admission to MBBS course for the academic session 2019-20 based on the allotment order issued by the 3rd Respondent Selection Committee, dated 30.08.2019 forthwith, and pass orders.

For the Appellant	:	Mr.Vishnu Venkatesh
For the Respondents	:	Mr.P.Muthukumar State Government Pleader assisted by Mr.K.M.D.Muhilan, Government Advocate for respondent No.2 in both appeals
	:	Mr.J.Ravindran Addl. Advocate General [Coordination] assisted by Ms.M.Sneha Standing Counsel for respondent No.4 in both appeals
	:	Ms.Shubharanjani Ananth for 5 th respondent in both appeals
	:	No appearance for respondents 1 and 3 in W.A.No.3706 of 2019 and 3 rd respondent in W.A.No.3709 of 2019
	:	Mr.Imayavarbhan for M/s.Ramalingam and Associates R1 in W.A.No.3709 of 2019

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The writ appeals have been filed to assail the judgments of the learned Single Judge dated 24.9.2019 on writ petitions filed by the non-appellants seeking a direction on the appellant

medical college to grant admission to MBBS course for the academic year 2019-2020. The writ petitions were allowed with a direction to the appellant medical college to admit the petitioners/ non-appellants.

2. The brief facts leading to the filing of these appeals are as under: The appellant medical college was an existing medical college, but lost its affiliation after the academic year 2014. The Medical Council of India thereafter granted recognition to the medical college in the academic year 2019-2020 with an intake capacity of 150 students for the MBBS course.

3. The appellant medical college was yet not included in the list of colleges for allocation of students by counselling. Therefore, the appellant filed W.P.No.23726 of 2019 before this Court and on consideration of the facts and circumstances of the case, this court allowed the writ petition on 19.8.2019 with a direction to include the appellant college in counselling after getting an undertaking from them that within a period of three months from the date of the said order, they will rectify the defects pointed out by the Inspection Team.

4. Pursuant to the order passed by the court, the Selection Committee conducted the counselling on 27.8.2019 and 150 students were allotted to the appellant medical college. The appellant had given admission to 141 candidates out of the recommendation of the Selection Committee. It filled the remaining nine vacancies on its own on the ground that the students were to report for admission on 29.8.2019 by 5pm and as nine students did not report till that time, the medical college filled those nine seats on its own after hosting it on the website to invite applications from and amongst the meritorious candidates.

5. In the aforesaid factual background, the writ petitions were filed by the writ petitioners/non-appellants alleging wrongful denial of admission by the appellant medical college. The writ petitions were allowed by the learned Single Judge by detailed judgments and are being assailed herein.

6. Learned counsel for the appellant submits that after the counselling for admission to MBBS course held on 27.8.2019, 150 candidates were allotted to the appellant medical college and they were directed to report for admission on 29.8.2019 by 5 pm. Pursuant to it, 141 students reported and were given admission, while nine candidates did not turn up. The process for admission was to be completed by 31.8.2019. Due to paucity of time, the appellant medical college had invited applications from the meritorious candidates by hosting it on the website of

the college and it was in the ratio of 1:10. The appellant medical college received numerous applications and gave admission to nine candidates strictly as per the merit.

7. The writ petitioners/non-appellants did not report for admission on 29.8.2019, thus, they were not entitled to get admission. It is further stated that the appellant medical college did not receive any communication from the Selection Committee regarding change of date of admission from 29.8.2019 to 30.8.2019 for the writ petitioners/non-appellants. The prayer is, accordingly, to set aside the judgments of the learned Single Judge, as it could not have endorsed the default of the writ petitioners/non-appellants in reporting for admission on 29.8.2019 but reporting in the afternoon of 30.8.2019, by which time, admission was given to other students against the nine stray vacancies.

8. It is further submitted that the judgment of the learned Single Judge is in ignorance of the fact that nine students were admitted strictly as per the merit in the NEET examination and fee was accepted immediately thereupon. Thus, over and above the intake capacity of 150 students, the writ petitioners/non-appellants could not have been adjusted, as otherwise the same is not permissible and, therefore, the impugned judgments are to be set aside.

9. It is submitted that looking to the short time gap in between the counselling and the last date for completion of the process of admission, it was not possible for the appellant medical college to inform the Selection Committee/State Government to conduct the counselling or to send the list of meritorious candidates in the ratio of 1:10 and, therefore, the admission was given by the appellant on their own after hosting the requisition on the website inviting applications from meritorious candidates. Due to time constraint, it was not possible for the writ appellant even to comply the direction of the Supreme Court in the case of Dar-Us-Slam Educational Trust & Ors vs. Medical Council of India & Ors. (W.P. (Civil) No.267 of 2017 - Dated 09.05.2017). However, ignoring the aforesaid, a direction for admission of the writ petitioners/non-appellants was given and, therefore, assailed by way of these appeals.

10. Learned counsel for the appellant referred to the facts in W.A.No.3709 of 2019, as the allegation of the writ petitioner/non-appellant is that he had participated in the counselling on 27.8.2019 and was allotted a seat in MBBS course, but during the counselling he had attached only photocopies of the certificates. The originals were produced by him on 29.8.2019 and, accordingly, he was said to have been granted time for admission till 30.8.2019, but by the time the said writ

petitioner/non-appellant approached the appellant medical college, the seats were already filled. Therefore, the prayer is to set aside the judgments impugned in these appeals.

11. We have considered the submissions of learned counsel for the appellant and perused the records.

12. The facts of the case have been narrated in brief to show that pursuant to the direction of the High Court in a writ petition preferred by the appellant medical college, counselling to fill 150 seats in MBBS course was conducted by the Selection Committee on 27.8.2019. The list of 150 candidates was sent to the appellant medical college which had given admission to 141 students by 5 pm on 29.8.2019, i.e., the last date given by the Selection Committee to the students to report for admission. The writ petitioners/non-appellants reported for admission on 30.8.2019, i.e., after the expiry of the time for seeking admission, and before they reported for admission, the remaining nine vacancies were filled by the appellant medical college after inviting the applications by hosting it on the website of the appellant medical college.

13. The first issue for our consideration is as to whether the method adopted by the appellant medical college to fill up the nine stray vacancies is sustainable.

14. In that regard, we would refer to the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra. In the said case, detailed directions have been given by the Apex Court as to how the seats in MBBS course should be filled and relevant paragraphs are quoted hereunder:

"23.6. The students who secure admission in MBBS course pursuant to the common counselling conducted by the State Government, at the time of common counselling itself, should be made to deposit with the Admission/Counselling Committee the demand draft towards the fees payable to the institution/colleges/university. The Admission/Counselling Committee shall forthwith forward the demand draft to the respective institution/colleges/university. The necessity for including the abovementioned requirement has arisen as it has been time and again noticed that when students report to the college after the counselling they are refused admission by the colleges on some pretext or the other and it is shown by the college as if the student never reported to the college for admission. If the demand draft is deposited by the Admission/Counselling Committee then there would be no scope for colleges to refuse admission to any

student.

23.7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion of counselling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equalling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list."

[emphasis supplied]

15. A perusal of the paragraphs quoted above, reveal that the admission to the students in MBBS course is to be given after conducting two-rounds of counselling, which includes manual counselling, and if the vacancy still remains, then the medical college has to inform the State Government/Selection Committee so that names of the meritorious candidates in the ratio of 1:10 can be sent and admission is to be given by the medical college thereupon from the aforesaid list.

16. The facts on record clearly show a violation of the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra, while filling up the nine stray vacancies by the appellant medical college on their own. The time constraint cannot be taken as a ground to not comply the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra. If, on 29.8.2019, nine candidates did not report till 5 pm, the appellant medical college should have immediately informed the Selection Committee about it so as to enable them to send the list of meritorious candidates in the ratio of 1:10, as directed by the Apex Court. The aforesaid would have been within the time frame because in that event the Selection Committee would have sent a list of candidates in the order of merit in the ratio of 1:10, as there were two intervening days. Thus, we do not find the action of the writ appellant to be valid and justified when it is on the face of it going against the judgment of the Apex Court in the case of Dar-Us-Slam Educational Trust & Ors, supra.

17. The aforesaid is one part, otherwise, we do not find any material on record to show that the nine candidates were given admission before the writ petitioners/non-appellants reported to them on 30.8.2019. It is more so when the writ petitioners/non-appellants were permitted by the Selection Committee to get admission by 30.8.2019.

18. To find out whether the admission was given to the nine students on or before the reporting of the writ petitioners/non-appellants and to know about the manner in which fee was deposited by the nine students, an affidavit was called for from the appellant medical college. The affidavit so submitted shows admission of nine candidates going much below the marks obtained by the writ petitioners/non-appellants and even the general merit list of the NEET examination. The writ appellant has otherwise failed to submit any material to show that pursuant to the invitation of applications by hosting it on the website of the medical college, the candidates reported in the ratio of 1:10 and admission was strictly as per merit. The merit position along with marks of the nine candidates given by the appellant is as under:

S.No.	Rank	AR No.	Student Name	Total Marks	Date of Joining
1	273941	57123	Pooja Chakravarthi.K	290	30.08.2019
2	481342	55501	Gopala Krishnan.S	195	30.08.2019
3	505123	52189	Murali Krishna.N	187	30.08.2019
4	502943	50797	Aishwarya.R	187	30.08.2019
5	515757	52314	Mohamed Aashiq Samsudin.U	183	30.08.2019
6	515445	63236	Jai Adithya	183	30.08.2019
7	563619	60837	P.Soundarya	169	30.08.2019
8	728529	57402	G.R.Harsha	128	30.08.2019
9	816246	55113	Hariharan.V	112	30.08.2019

19. It is seen from the affidavit filed by the appellant medical college that five out of nine students deposited fee in cash. The fee in cash could not have been accepted going against the Reserve Bank of India Regulations. The aforesaid is enough to expose the affairs of the writ appellant, because fee to the tune of lakhs cannot be accepted in cash and it can be to adjust the date of deposit of fee even if received after 30.08.2019 or even thereafter. It is also averred that one student out of the nine had paid the fee through RTGS on 31.8.2019. Thus, his admission could not have been taken to be on or before the reporting of the writ petitioners/non-appellants. This shows that there is more to it than meets the eye in the process adopted by the appellant college for

admitting the nine students on their own. Therefore, the learned Single Judge has rightly directed the writ appellant to admit the writ petitioners/ appellants, who are quite high in the merit than the nine students, and otherwise there was permission in favour of the writ petitioners/non-appellants from the Selection Committee to take admission on or before 30.8.2019.

20. The learned Single Judge has given a reference of the list issued by the Selection Committee for the academic year in question to show that the writ petitioner in W.P.No.26969 of 2019 obtained 326 marks in NEET examination and the last candidate given admission had also scored the same marks. As against the merit position of the said writ petitioner/non-appellant, the appellant medical college had given admission to a candidate who scored only 112 marks in the NEET examination. Thus, the way the appellant medical college had denied the admission to the writ petitioners has been rightly dealt with by the learned Single Judge and we do not find any error therein so as to accept any of the grounds raised by learned counsel for the appellant for assailing the impugned judgments.

21. For the foregoing reasons, we find no ground to interfere with the impugned judgments passed by the learned Single Judge and, accordingly, the writ appeals fail and are dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.23577 of 2019 and 23584 of 2019 are closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To:

- 1.The Principal Secretary to Govt.,
State of Tamil Nadu,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 3.The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-600 010.

4.The Director,
Medical Council of India,
Pocket 8, Dwarka,
New Delhi-110 077.

+2ccs to M/s.M.Sneha, Advocate Sr.No.38490, 38491

W.A.Nos.3706 and 3709 of 2019

NR(CO)
RVM(08/07/2022)