



W.P.No.30666 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.30666 of 2022

and WMP.Nos.30104 & 30105 of 2022

1. Dr.K.Sri Hari Prashanth
S/o. R.Kathirvel
 2. Dr.G.Methun Senthur,
S/o.B.Ganesan
- ... Petitioners

-Vs-

1. The Government of India,
Rep. by its Secretary to Government,
Ministry of Health and Family Welfare,
Room no.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.
2. The Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.
3. The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai – 600 009.
4. The Director of Medical Education,
Kilpauk, Chennai – 600 010.



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5. The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
6. The Medical Counselling Committee,
Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.
7. The National Board of Examinations in Medical Services,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg(Ring Road)
New Delhi – 110 029.
8. The National Medical Council,
Rep. by its Secretary,
Pocket 14, Sector – 8,
Dwaraka, New Delhi – 110 077.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of mandamus, directing the respondents to allocate 50% Super Specialty seats in DM/M.Ch. Courses in Government Medical Colleges in favour of in-service Doctors of Tamil Nadu for the Academic Session 2022-2023 in pursuant to the orders passed in G.O.Ms.No.462 Health and Family Welfare Department (MCA.1) Department dated 07.11.2020.

For Petitioner : Mr. G.Sankaran

For Respondents : Dr.D.Simon
Central Govt.Standing Cousnel



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[R1, R2 & R6]

Mr.R.Shanmugasundaram
Advocate General
assisted by Mr.U.M.Ravichandran
Special Govt.Pleader [R3 & R4]

Ms.M.Sneha
Standing Counsel [R5]

Ms.Shubharanjani Ananth
Standing Counsel [R8]

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondents to allocate 50% Super Speciality seats in DM/M.Ch. Courses in Government Medical Colleges in favour of in-service Doctors of Tamil Nadu for the Academic Session 2022-2023 in pursuant to the orders passed in G.O.Ms.No.462 Health and Family Welfare Department (MCA.1) Department dated 07.11.2020.

2. It is the claim of the petitioners that the petitioners qualified with MBBS have been selected and appointed to the post of Assistant Surgeon in Tamil Nadu Medical Service in the year 2015 and 2017 respectively. They also got admission in P.G Medical Courses viz., M.S(General Surgery) and M.D.(General Medicine) as in-service candidates and they have completed the same in the year 2022. Subsequently, they have been



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posted as Senior Resident in Government Dindigul Medical College and Government Thiruvallur Medical College respectively.

3. They were aspiring for admission in Super Speciality Courses viz., DM/M.Ch., for the current academic year 2022-2023 as in-service candidates as per G.O.Ms.No.462, Health and Family Welfare (MCA.1) Department dated 07.11.2020 issued by the State of Tamil Nadu.

4. In this regard, it is the further case of the petitioners that, despite the orders of the State Government for allocation of 50% seats in Super Speciality Courses in Government Medical colleges issued in G.O.Ms.No.462 referred to above, the Government of India issued order for common counselling for 100% Super Speciality seats in Tamil Nadu without reference to the said Government Order.

5. Therefore, in this regard, it is a further case of the petitioners that, when this issue had come up for consideration in the erster years, ultimately the matter has gone to the Hon'ble Supreme Court, where initially orders were passed by the Hon'ble Supreme Court by order dated



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27.11.2020, thereby for the academic year 2020-2021, the competent authority i.e., Central Government was directed to conduct counselling for Super Speciality courses, that means for the entire 100% seats counselling was directed to be conducted and accordingly, it was conducted for the academic year 2020-2021.

6. However, for the subsequent academic year i.e., 2021-2022 is concerned, writ petition since was filed before this Court, where orders were passed, as against which, SLP was filed and straightaway a writ petition also was filed in W.P.(Civil) No.53 of 2022 invoking Article 32 of the Constitution of India challenging the validity of the G.O.Ms.No.462 before the Hon'ble Supreme Court. Those cases were heard together and ultimately by an interim order dated 16.03.2022, the Hon'ble Supreme Court had passed an order that the interim protection, which was granted for the academic year 2020-2021 vide interim order dated 27.11.2020 need not be continued, therefore, they rejected the prayer in that regard. Therefore, it was further held by the Hon'ble Supreme Court in the said order dated 16.03.2022 that, the State of Tamil Nadu would be at liberty to continue the counselling for academic year 2021-2022 by taking into



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consideration the reservation provided by it as per the said G.O.

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7. Accordingly, for the 50% seats as per G.O.Ms.No.462, since it has been reserved for in-service candidates, counselling was conducted by the State Authorities of the Tamil Nadu Government. Therefore, the same method can be adopted for the current academic year also as per G.O.Ms.No.462. Hence in order to conduct such counselling for this year also i.e., academic year 2022-2023 with 50% seats in the Super Speciality courses in Government Medical Colleges by impleading G.O.Ms.No.462, Health and Family Welfare Department (MCA.1) Department dated 07.11.2020, the present writ petition has been filed.

8. Heard Mr.G.Sankaran, learned counsel appearing for the petitioner, Dr.D.Simon, learned Central Government Standing Counsel appearing for respondents 1, 2 and 6, Mr.R.Shanmugasundaram, learned Advocate General assisted by Mr.U.M.Ravichandran, learned Special Government Pleader appearing for respondents 3 and 4, Ms.M.Sneha, learned Standing Counsel appearing for 5th respondent and Ms.Shubharanjnai Ananth, learned Standing Counsel appearing for eighth



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respondent.

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9. When this case came up for admission Yesterday i.e., 17.11.2022, this Court has passed the following order:

" Dr.D.Simon, learned Central Government Standing Counsel takes notice for the respondents 1, 2 and 6, Mr.R.Shanmugasundaram, learned Additional Advocate General assisted by Mr.U.M.Ravichandran, learned Special Government Pleader takes notice for the respondents 3 and 4, Ms.M.Sneha, learned Standing Counsel takes notice for the 5th respondent and Ms.Shubharanjani Ananth, learned Standing Counsel takes notice for the 8th respondent.

*2. The Hon'ble Supreme Court by order dated 16.03.2022 in the matter of **Dr.N.Karthikeyan and Ors. Vs. The State of Tamil Nadu and Ors.** in W.P.(Civil) No.53 of 2022 etc., batch has passed the following order:*

"34. As such, we find that the facts in the present case are much nearer to the facts that fell for consideration in the case of Tamil Nadu Medical Officers Association (supra). We are also of the prima facie view that the facts that fell for consideration in the case of Dr.Preeti Srivastva (supra) were distinct from the facts that fall for consideration in the present



*case. We are, therefore, of the considered view that taking into consideration the principles of judicial discipline and judicial propriety, we should be guided by the judgment of the Constitution Bench in the case of **Tamil Nadu Medical Officers Association** (supra) rather than the judgment of the Constitution Bench in the case of **Dr.Preeti Srivastava** (supra).*

35. We are, therefore, of the view that no case is made out for continuing the interim protection which was granted for the academic year 2020-2021 vide interim order dated 27th November, 2020(supra) and thus, we reject the prayer in that regard. Needless to say that the State of Tamil Nadu would be at liberty to continue the counselling for academic year 2021-2022 by taking into consideration the reservation provided by it as per the said G.O.”

3. Subsequently by further order of the Hon'ble Supreme Court dated 22.03.2022, paragraph 35 of the said order referred to above has been clarified like this:

“Upon being mentioned, paragraph 35 in the order dated 16.03.2022 may be corrected and read as follows:

35. We are, therefore, of the view that no case is made out for continuing the interim protection which



was granted for the academic year 2020-2021 vide interim order dated 27th November, 2020(supra) and thus, we reject the prayer in that regard. Needless to say that DGHS shall conduct the counselling for academic year 2021-2022 in respect of seats of State of Tamil Nadu by taking into consideration the reservation provided by it as per the said G.O.”

4. Pursuant to these orders passed by the Hon'ble Supreme Court, the Director General of Health Services i.e., the second respondent, Government of India by communication dated 02.04.2022 seems to have given a direction to the State Government to go ahead for counselling with the 50% of the seats in Super Speciality medicine courses in the State of Tamil Nadu for in-service candidates and accordingly, during the last year i.e., academic year 2021-2022 such counselling went on and students were selected.

5. When that being the position, for the present academic year i.e., 2022-2023, it has been decided by the State Government to go ahead with the counselling for filling up 50% of the seats for in-service candidates and accordingly, D.O.Letter.No.3432202/MCA-1/2022-1, dated 14.11.2022 was issued by the Principal Secretary to Government, Health and Family Welfare Department i.e., third respondent herein, where inter alia, he has stated the following:



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“4. Now in the Government of India reference seventh cited, notice has been issued with regard to conducting common counselling for Super Speciality (D.M/M.ch) Courses for the academic year 2022-23 at National level by Medical Counselling Committee of DGHS.

5. In this connection, I am to state that since the Hon'ble Supreme Court of India has already vacated the stay granted in the matter and allowed to provide 50% reservation to in-service candidates of Government of Tamil Nadu, as in 2021-2022, the State of Tamil Nadu proposes to conduct counselling for 50% of seats of Super Speciality Courses in State Government Medical Colleges in Tamil Nadu for in-service candidates of Tamil Nadu as in the line of instructions given by the DGHS in the letter dated 02.04.2021 by duly following all the rules and regulations of National Medical Commission.

6. Accordingly, the seat matrix for conduct of proposed counselling for super-speciality courses in the medical colleges of State of Tamil Nadu (i) for the 50% seats earmarked to in-service candidates to be admitted through counselling conducted by State; and (ii) the remaining 50% seats earmarked for All India Quota that is to be filled by the Counselling conducted by Director General of Health Services for the



academic year 2022-2023 is annexed herewith for information and necessary action.”

6. Relying upon this communication, Mr.R.Shanmugasundaram, learned Advocate General appearing for the State Government has submitted that, since the decks were cleared by the Hon'ble Supreme Court by way of clarification in the order stated supra in March, 2022, there can be no further impediment for the State to proceed with the counselling for super speciality courses for filling up 50% of seats for the in-service candidates as per G.O.Ms.No.462, Health and Family Welfare Department (MCA.1) Department dated 07.11.2020.

7. However, it is pointed out by Mr.P.Wilson, learned Senior Counsel appearing for the petitioner that, the Director General of Health Services, Government of India, the second respondent herein, by communication dated 27.10.2022, wanted to take the entire seat matrix i.e., 100% of seats for the academic year 2022-2023, which should be submitted to the MCC of DGHS and they wanted to go ahead with the counselling and for which, schedule also has been issued by them and as per the schedule, the choice of filling would start from 25.11.2022. Therefore, the learned Senior Counsel would point that, this has to be clarified and as per the order already passed by the Hon'ble Supreme Court referred to above the State Government be directed to go ahead with their counselling to fill up the 50% seats in



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Super Speciality courses for in-service candidates as they have decided vide communication dated 14.11.2022.

8. In order to consider this plea raised by the petitioner supported by the State Government what is the response of the Central Government especially the second respondent has to be ascertained and reported by Dr.D.Simon, learned Central Government Standing Counsel, who takes notice for the respondents 1, 2 and 6 by tomorrow.

Post the matter tomorrow i.e., 18.11.2022 immediately after admission."

10. Pursuant to the said direction issued by this Court Yesterday, Dr.D.Simon, learned Central Government Standing Counsel appearing for the Central Government i.e., R1, R2 and R6 has filed the written instructions given by the Government of India, Directorate General of Health Services, New Delhi dated 17.11.2022, where *inter alia* the first respondent has stated the following:

" 5. The aggrieved candidates & Union approached the Hon'ble Supreme Court through SLP for challenging the aforementioned order (i.e., 07.10.2022) & constitutional validity of G.O. Issued by State of Kerala & Tamil Nadu providing in-service reservation was challenged before the



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Hon'ble Bench of Supreme Court. While deciding the matter the Hon'ble Court passed an interim order dated 27.11.2020.

16. We make it clear that we have not expressed any opinion on the validity of Go.Ms.No.462 of 07.11.2020. We direct that the counselling for admission to Super Specialty Medical Courses for the academic year 2020-2021 shall proceed on a date to be fixed by the competent authority without providing for reservations to in-service doctors for the academic year 2020-2021.

17. We reiterate that the above direction would be operative only for the current academic year i.e., 2020-2021.

List the Appeals and the Writ Petition for hearing in February, 2021.

(copy attached)

6. As per the directions of the Hon'ble Supreme Court in order dated 27.10.2020 (supra), the answering respondent have conducted online counselling for Super-Speciality course for academic year 2020-2021. The Hon'ble Supreme Court has not yet expressed any opinion or view upon the question of constitutionality of G.O of Kerala. Since, the matter is res subjudice before the Hon'ble Bench, the same cannot be implementation.



7. However, an order dated 12.01.2022 was passed in W.P.No.590 of 2022 (**D.Suresh Vs. UOI & Ors.**), whereby the Hon'ble High Court of Madras granted the relief against 50% in-service reservation in Super Specialty course as mentioned in G.O. Issued by State of Tamil Nadu. The participating candidates & Union feeling aggrieved by the judgment passed by the Hon'ble High Court of Madras approached the Hon'ble Supreme Court via a W.P.No.53 of 2022 (**Dr.N.Karthikeyan & Ors. UOI & Ors.**).

8. The Hon'ble Bench of Supreme Court while directing the matter, passed an order dated 16.03.2022 in aforementioned writ petition.

The contents of the relevant paragraph is mentioned below:

“35. We are, therefore, of the view that no case is made out for continuing the interim protection which was granted for the academic year 2020-2021 vide interim order dated 27th November 2020 (*supra*) and thus, we reject the prayer in that regard. Needles to say that the State of Tamil Nadu would be at liberty to continue the counselling for academic year 2021-2022 by taking into consideration the reservation provided by it as per the said G.O.”

(copy attached)

9. It is pertinent to mention that the answering respondent have conducted counselling for 50% seats of



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Tamil Nadu as in compliance of the directions vide an order dated 16.03.2022 (supra). However, the relief granted in the said order is restricted to academic year 2021-2022 against G.O. Issued by the State of Tamil Nadu.

10. Since the relief granted vide an order dated 16.03.2022, was restricted for academic session 2021-2022, the directions issued by the Hon'ble Supreme Court was complied in full letter & spirit. However, the writ petition filed before the Hon'ble Supreme Court (W.P.No.53 of 2022) is res subjudice, any further clarification may be sought from the Hon'ble Bench for academic session 2022-2023."

11. Relying upon this written instructions Dr.D.Simon, learned Central Government Standing Counsel appearing for the Central Government would submit that, whatever the interim order passed on 16.03.2022 by the Hon'ble Supreme Court followed by the clarificatory order passed subsequently on 22.03.2022 is meant for the academic year 2021-2022 alone. Accordingly in compliance of the orders passed by the Hon'ble Supreme Court for the last year, the Central Government i.e., competent authority conducted counselling for Super Speciality courses. Insofar as the seats available in Tamil Nadu Government Medical colleges are concerned, only for 50% that means the remaining 50% seats were



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filled up through the counselling conducted by the State Government of course under G.O.Ms.No.462 referred to above.

12. However, the learned counsel would further submit that, insofar as the current academic year i.e., 2022-2023 is concerned, unless an order to that effect is passed by the Hon'ble Supreme Court or a clarification to that effect is issued that the order dated 16.03.2022 as well as the clarification order dated 22.03.2022 would apply to the subsequent academic years also pending disposal of the SLP as well as the writ petition in this regard before the Hon'ble Supreme Court, the State Government cannot go ahead with the counselling for filling up of the 50% of the seats for the Super Speciality courses available in Government Medical colleges in the State of Tamil Nadu for in-service candidates as per the import of the G.O.Ms.No.462.

13. Heard Mr.R.Shanmugasundaram, learned Advocate General appearing for the State Government, who submitted that, the order passed by the Hon'ble Supreme Court dated 16.03.2022 and 22.03.2022 certainly would be applicable for the subsequent academic years also, therefore, there can be no impediment for the State Government to go ahead with the counselling to fill up 50% of seats for in-service candidates as per



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G.O.Ms.No.462 of the State Government, as that G.O even though was challenged before the Hon'ble Supreme Court it has not been stayed so far.

14. However, learned Advocate General would also submit that, for abundant caution if any clarification is required to be obtained from the Hon'ble Supreme Court, time may be given to the State Government to approach the Hon'ble Supreme Court, within which, they may approach the Hon'ble Supreme Court by filing appropriate petition/application to seek such a clarification.

15. However, Mr.G.Sankaran, learned counsel appearing for the petitioner would submit that, no such clarification is required, because, the earlier orders passed in this regard i.e., order dated 27.11.2020, 16.03.2022 as well as on 22.03.2022, if are read in conjunction that would give the meaning only that there was no necessity to continue the interim protection given by the Hon'ble Supreme Court for the academic year 2020-2021 for the subsequent academic years and therefore, the interim protection was taken back for the academic year 2021-2022. Insofar as the role of the competent authority to conduct the counselling for 100% seats for Super Speciality courses is concerned, the State Government since was



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permitted to continue the counselling for the academic year 2021-2022 by taking into consideration the reservation provided by it as per the said G.O and there has been no changing circumstances in between till today, the said position can very well continue for this academic year also, he contended.

16. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

17. The Hon'ble Supreme Court by order dated 16.03.2022 and subsequent clarificatory order dated 22.03.2022 has made it clear that for the academic year 2021-2022, in respect of the State of Tamil Nadu, the DGHS shall conduct counselling by taking into consideration the reservation provided by it as per the said Government Order i.e., G.O.Ms.No.462.

18. Whether a similar order is required for this year or by taking clue from the said orders passed last year whether the State Authority can be permitted to go ahead with their counselling for filling up 50% of seats



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in Super Speciality courses in the current academic year also, is the matter necessarily to be decided only by the Hon'ble Supreme Court and in this regard, no interpretative clarification can be given by this Court as to the import of the order passed by the Hon'ble Supreme Court.

19. Therefore, this court is of the view that, the stand taken by the Central Government through their written instructions dated 17.11.2022 especially in paragraphs 9 and 10, as has been quoted herein above, has got some substance, therefore it has to be accepted.

20. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

- ◆ That it is open to the State Government as well as the petitioner herein to approach the Hon'ble Supreme Court to seek for any clarification as to the continuation of the order passed by the Hon'ble Supreme Court during last year with regard to the conducting of counselling by the State of Tamil Nadu for filling up the 50% seats in Super Speciality courses available in Government Medical Colleges in the State of Tamil Nadu for the academic year 2022-2023 also



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by following the import of G.O.Ms.No.462 dated 07.11.2020.

- ◆ In order to enable the parties to approach the Hon'ble Supreme Court, 10 days time is granted. Till such time, if the Central Authorities want to go ahead with the counselling as scheduled by them to have the registration of candidates from 25.11.2022 onwards, they can go ahead with the same, provided, no final allotment orders be given to any candidates encroaching upon the 50% of seats reserved for in-service candidates in Super Speciality courses available in the Government Medical colleges in the State of Tamil Nadu for the academic year 2022-2023 as per G.O.Ms.No.462 issued by the Government of Tamil Nadu.

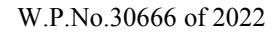
With these orders, this writ petition is disposed of. No costs.

Connected miscellaneous petitions are closed.

18.11.2022

Index:Yes

Speaking order: Yes



Note: Issue order copy on 21.11.2022

1. The Secretary to Government,
Ministry of Health and Family Welfare,
Room no.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.

2. The Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.

3. The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai – 600 009.

4. The Director of Medical Education,
Kilpauk, Chennai – 600 010.

5. The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.

6. The Medical Counselling Committee,
Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
Room No.348, 'A' Wing, Nirman Bhavan,
New Delhi – 110 011.

7. The National Board of Examinations in Medical Services,



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Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg(Ring Road)
New Delhi – 110 029.

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8.The Secretary,
National Medical Council,
Pocket 14, Sector – 8,
Dwaraka, New Delhi – 110 077.

R.SURESH KUMAR.J.,

mp/sgl

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