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W.P.No.31155 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.31155 of 2022 and
W.M.P.No.30586 of 2022

S.Asmaa

... Petitioner

Vs

1.The Secretary,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Secretary,
The Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the the 2nd respondent to admit the petitioner in MDS Course under BCM category in Government Dental College by permit the petitioner to participate in the MOPUP counseling for MDS course Admission in 2022-2023 session.

For Petitioner : Mr.A.Saravanan



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For Respondents : Mr.U.M.Ravichandran
Special Govt. Pleader for R1 & R3
: Ms.M.Sneha, Standing Counsel for R2

ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus directing the 2nd respondent to admit the petitioner in MDS Course under BCM category in Government Dental College by permitting the petitioner to participate in the MOPUP counseling for MDS course Admission in 2022-2023 session.

2. The petitioner after completing BDS course applied for admission to get PG Dental Course i.e. MDS (Dentistry) for the academic year 2022-23. After successfully written the NEET Examination 2022-23 conducted by the National Board of Examinations where she scored 456 marks.

3. As per the instructions provided by the 2nd respondent/Selection Committee, first round of counseling was conducted, where, as per the ranking of the petitioner she was not able to get a seat in the Government College, so she preferred Self Financing Dental College i.e. Tagore Dental College & Hospital, Chennai and Provisional Allotment order was issued.



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4. In this context, it is the case of the petitioner that, one who chosen Self Financing College can also participate in the second round of counseling to get a seat in Government College, if the service category seats were not filled and the same was carried to open category.

5. It is also the case of the petitioner that, however the 2nd respondent conducted second round of counseling on 27.10.2022 wherein the 2nd respondent has suppressed and have not carried forward the unfilled 4 seats of service category to open category and failed to show in the second round of counseling.

6. It is the further case of the petitioner that, instead, the 2nd respondent have conducted third round of counseling which is otherwise called as 'Mop-up' counseling on 15.11.2022, wherein the 2nd respondent have carried forward the unfilled seats of service category to open category and the same has been shown.

7. Therefore, only the petitioner has sought for in the present writ petition that the petitioner would be entitled to participate in the mop-up



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counseling as the unfilled service category seats have not been shown in the second round of counseling where the petitioner has participated and therefore, since the unfilled service category seats since have been carried forward by converting into general category in the third round of counseling i.e. mop-up counseling, according to Mr.A.Saravanan, learned counsel for the petitioner, the petitioner is entitled to participate in the mop-up counseling. Since in the said mop-up counseling the petitioner was not even permitted to participate by submitting the instructions given in this regard by the 2nd respondent Selection Committee, in order to seek permission by way of direction to the 2nd respondent to permit the petitioner to participate in the mop-up counseling and to choose a seat based on the ranking of the petitioner, the present writ petition has been filed with the aforesaid prayer.

8. I have heard Mr.A.Saravanan, learned counsel appearing for the petitioner who having reiterated the aforestated would seek indulgence of this Court.

9. Heard Mr.U.M.Ravichandran, learned Special Government Pleader appearing for respondents 1 & 3 and Ms.M.Sneha, learned Standing Counsel appearing for the 2nd respondent.



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10. The learned Special Government Pleader and the learned Standing Counsel appearing for the respondents would submit that, as per Clause 23 under the heading "Round - 2 of counseling", those who participated in the first round of counseling and selected a seat who have joined or not joined or discontinued can also participate at the second round of Online counseling. However, as per Clause 24 under the heading "MOP-UP Counseling", 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.

11. This in fact has been inserted pursuant to the Gazette Notification dated 05.08.2018 and the orders of the Hon'ble Supreme Court in W.P.(C).No.174/2022 dated 31.03.2022.

12. Citing these clauses in the Prospectus, the learned Special Government Pleader and the learned Standing Counsel appearing for the respondents would submit that, some of the unfilled seats in the service category since have been converted as general category in the Mop-up counseling as thereafter since there was no counseling the unfilled service



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category seats necessarily have to be converted into a general category which have been done by the 2nd respondent and accordingly the Mop-up counseling was conducted on 15.11.2022.

13. Merely because, the conversion was taken place in the Mop-up counseling, the petitioner cannot claim any right to participate in the Mop-up counseling as she has already been declared to be an ineligible person to participate in the Mop-up counseling by virtue of Clause 24 of the Prospectus.

14. I have considered the said submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

15. In fact, the issue raised by the petitioner in this writ petition has already been raised by another petitioner like the present petitioner in W.P.No.30026 of 2022 where I have taken all these arguments now advanced on behalf of the petitioner which was also argued by the learned counsel appearing for the petitioner in the said writ petition and I have



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heard the learned Special Government Pleader as well as the learned Standing Counsel appearing for the respondents, after having considered those submissions made by the respective counsel and having gone through the relevant Clauses of the Prospectus issued by the 2nd respondent, in this regard by order dated 16.11.2022, in the said writ petition I have passed the following order:

“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.

*(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



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course, they are not eligible for mop-up counseling.

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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 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



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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.

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



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same is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.”

16. Therefore, the grounds raised by the petitioner through the learned counsel appearing for the petitioner have already been considered by this Court in the said order, where, Clauses 23 as well as 24 of the Prospectus have been dealt with especially under Clause 24(b), those who participated either in round 1 or round 2 and taken a seat would not be entitled or eligible to participate in the Mop-up counseling and therefore, whether the unfilled service category seats have been converted and carried forward or not that is immaterial, as that cannot be the criterion for any one to join in the mop-up counseling even though they have participated either in round 1 and round 2 and taken a seat.

17. Therefore, that kind of ineligibility attached with Clause 24 of the Prospectus would also apply to the petitioner's candidature. Therefore, her claim seek for a direction to permit the petitioner to participate in the mop-up counseling is totally unjustifiable and against the Prospectus. Therefore, that kind of prayer sought for in this writ petition cannot be granted accordingly, this writ petition fails, hence it is liable to be dismissed,



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therefore it is dismissed. However, there shall be no order costs.

Consequently, connected miscellaneous petition is also dismissed.

23.11.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl

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R. SURESH KUMAR, J.

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