



W.P.Nos.32780 & 33198 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.Nos.32780 & 33198 of 2022

and

W.M.P.Nos.32608, 32612 & 32186 of 2022

W.P.No.32780 of 2022

- 1.Dr.J.Vagishvar
- 2.Dr.S.E.Swetha
- 3.Dr.Mosus Arockya Raj.K
- 4.Dr.Ashwinraj. S
- 5.Dr.V.Shenbaka
- 6.Dr.K.Vinothini

...Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. By Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat,
Chennai – 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai – 600 103.
- 3.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.



W.P.Nos.32780 & 33198 of 2022

4.The National Medical Commission,
Rep. By its Secretary, Pocket 14,
Sector -8, Dwaraka,
New Delhi – 110 077.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Mandamus, directing the respondents to permit the petitioners to take part in the Mop Up / Stray counselling for PG Degree courses 2022-23 session on the basis of the marks secured by them.

For Petitioner : Mr.Ma.P.Thangavel

For Respondents : Mr.R.Shanmugasundaram

Advocate General assisted by

Mr.T.Seenivasan

Special Government Pleader for R1 & R2

and Ms.M.Sneha for R3

Ms.Shubaranjani Ananth

Standing Counsel for R4

W.P.No.33198 of 2022

- 1.Dr.Pradeep
- 2.Dr.A.Abinaya
- 3.Dr.Latha.VK
- 4.Dr.Benazir Rahman Sherif
- 5.Dr.Preetha.S
- 6.Dr.A.Mohammed Abdullah
- 7.Dr.Venkatraj.M
- 8.Dr.Minu Priya.R
- 9.Dr.J.Vagishwar



W.P.Nos.32780 & 33198 of 2022

- 10.Dr.Mosus Arockya Raj.K
- 11.Dr.Kokila
- 12.Dr.V.Vaishnavi
- 13.Dr.S.E.Swetha
- 14.Dr.V.Shenbaka
- 15.Dr.V.Arun Nehru.C
- 16.Dr.S.Swarna
- 17.Dr.Kanomozhi
- 18.Dr.Pranaav
- 19.Dr.K.Vinothini
- 20.Dr.Logaraj
- 21.Dr.S.Srija
- 22.Dr.S.Aswinraj
- 23.Dr.I.Lavanya
- 24.Dr.Pradeep Kumar.A
- 25.Dr.Mirdhula.M
- 26.Dr.Bhuvaneswari
- 27.Dr.Noorul Sidha.MA
- 28.Dr.Uvarajan.T
- 29.Dr.Shrisravan
- 30.Dr.G.Srikrishna

...Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. By Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Secretariat, Chennai – 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai – 600 103.
- 3.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.



W.P.Nos.32780 & 33198 of 2022

4.The National Medical Commission,
Rep. By its Secretary, Pocket 14,
Sector -8, Dwaraka,
New Delhi – 110 077.

5.Dr.Manoj.D

6.Dr.Suganya Devi.R

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Mop-up provisional list of candidates allotted on 29.11.2022 and Provisional List of candidates allotted in stray round on 02.12.2022 issued by the 3rd respondent and to quash the same as illegal, unconstitutional and consequentially directing the respondents to conduct the fresh Mop Up / Stray counselling for PG Degree Courses 2022-23 Session by including the petitioners on the basis of the marks secured by them.

For Petitioner : Mr.Ma.P.Thangavel

For Respondents : Mr.R.Shanmugasundaram

Advocate General assisted by

Mr.T.Seenivasan

Special Government Pleader for R1 & R2

and Ms.M.Sneha for R3

Ms.Shubaranjani Ananth

Standing Counsel for R4



W.P.Nos.32780 & 33198 of 2022

COMMON ORDER

WEB COPY

The petitioners, who are aspirants of Post Graduate medical education seek a writ of mandamus, directing the respondents to permit them to participate in the Mop-up / Stray counselling for the PG decree courses for the academic session 2022.

2.The claim of the petitioners is that the selection committee changed the rules of the game after the game has started in order to benefit few persons. The prospectus that was issued for the Academic year 2022-2023 on 19.08.2022 very clearly stated that candidates, who had choice locked and registered for the first round of counselling and who had joined in the seat allotted in the first round of counselling will have a option of free exit, if they opt to take part in the second round of counselling and chose a better seat. Those candidates, who have joined the seats allotted to them either in the first round or the second round are not eligible for participating in the mop-up counselling and subsequent rounds of counselling.



W.P.Nos.32780 & 33198 of 2022

3. In effect, those candidates, who were allotted seats in the first and second round of counselling and who had joined those seats cannot take part in the mop-up counselling or the stray counselling. The 1st, 4th and 5th petitioners were successful in getting a seat allotted in the second round in a College on their choice and a course on their choice as opted for them in the second round of counselling. The other three namely, the 2nd, 3rd and the 6th petitioners were not allotted any seat in the second round of counselling. Resulting in them retaining the seat allotted to them in the first round of counselling. In the schedule for second round counselling the selection committee had stated as follows:-

In order to prevent seat blocking:

*“The candidates who have been allotted and **not joined in Round-2**, would forfeit the security deposit and not allowed to participate in further rounds of counselling”.*

4. This inclusion is evidently against the prospectus and the orders of the Hon'ble Supreme Court dated 22.07.2022 made in Contempt Petition (Civil) No.289 of 2022 wherein, the Hon'ble Supreme Court had held that



W.P.Nos.32780 & 33198 of 2022

the candidates, who had joined in seats allotted to them up to Round-2 of the All India Quota or State quota shall not be eligible to participate in the further rounds of All India Quota or State quota from the Academic year 2022-2023 onwards. Realising this mistake, the selection committee issued a clarification on 02.11.2022 informing the candidates, who have not joined after being allotted the seat on completion of Round-2 of the online counselling will be eligible to participate in the mop-up counselling, subject to condition that they will forfeit the process fee and security deposit.

5. According to the petitioner, this change imposed by the notification dated 31.10.2022 misled them and under the impression that they would not be entitled to participate in mop-up counselling, they had taken whatever seat that was allotted to them in the second round of counselling in the firm belief that they would not be able to improve upon or upgrade themselves as they had no choice of a further counselling.

6. Mr. Ma. P. Thangavel, learned counsel appearing for the petitioners would vehemently contend that the selection committee



W.P.Nos.32780 & 33198 of 2022

intentionally mislead the petitioners with a view to benefit certain other individuals, who are waiting for the mop-up counselling. I find some force in the contention of the learned counsel for the petitioner. There appears to be perenial confusion in the minds of the selection committee, be it intentional or accidental. The purpose behind or the object behind the clause preventing persons, who had not joined in Round-2 from participating in the mop-up or stray counselling is not clear. But, the subsequent happenings namely, the withdrawal within two days leaves me to firmly believe that there has been an attempt to derail the counselling process and help certain individuals.

7.In fact, some students, who were similarly placed as that of the petitioners approached this Court earlier with W.P.No.31191 & 31192 of 2022. Hon'ble Mr.Justice Mr.R.Sureshkumar on 28.11.2022, considering the fact that this change has resulted in certain disappointment or loss to the petitioners therein, directed the State to conduct a mop-up counselling and allow those six students, who had approached this Court earlier, to participate in the mop-up counselling.



W.P.Nos.32780 & 33198 of 2022

WEB COPY

8.Mr.Ma.P.Thangavel would vehemently contend that the present petitioners are also similarly placed and they should also be extended the same benefits. In the normal course, I would have agreed with Mr.Ma.P.Thangavel but, I find that the petitioners have approached this Court belatedly. They have moved this Writ Petition only on 02.12.2022 i.e., last day fixed for stray counselling. If I disturb the counselling that had happened more than 223 students, who have joined in the mop-up and stray counselling would be disturbed and it will lead to severe stress on the students as well as the selection committee.

9.More over, of the six petitioners before me, two of them had joined the College and course allotted to them in the second round of counselling on 04.11.2022 i.e., two days after the 02.11.2022 notification was published permitting not joined candidates to sit for mop-up counselling. They are Dr.J.Vagishwar, Dr.Ashwinraj.S namely, the 1st and the 4th petitioners. The 5th petitioner namely, Dr.V.Shenbaka has joined the College allotted to her in the 2nd round of counselling on 02.11.2022.



W.P.Nos.32780 & 33198 of 2022

The other three namely, Dr.S.E.Swetha, Dr.Mosus Arockya Raj.K and Dr.K.Vinothini were not allotted a seat in the second round of counselling and they retained the seat allotted to them in the first round of counselling. They cannot be considered aggrieved, since they had already joined in the first round of counselling even prior to the introduction of the clause prohibiting not joined students from participating in the further rounds of counselling.

10.Of course, this action of the selection committee is highly condemnable. Having adopted the prospectes in tune with the orders of the Hon'ble Supreme Court dated 22.07.2022 made in Contempt Petition (Civil) No.289 of 2022., the selection committee ought not to have introduced a new provision debaring the not joined candidates from participating in mop-up counselling or stray counselling. It was only those candidates who had joined in their seats in the first and second round of counselling, who are prohibited from taking part in further rounds of counselling as per the orders of the Hon'ble Supreme Court referred to supra.



W.P.Nos.32780 & 33198 of 2022

11.The candidates, who had not joined had an option to participate in further counselling as per the original prospectus that right was sought to be taken away by issuing a notification on 31.10.2022 and within two days there was a retraction which led to confusion among the candidates. No doubt, this action of the selection committee had led to despair among the candidates, who have joined in the seats allotted to them in the second round of counselling, since they were prevented from participating in the mop-up counselling under the threat of disqualification because of the prohibition introduced on 31.10.2022. The selection committee has been highly negligent and recalcitrant in conducting the counselling. It ought not to have introduced a change without advertent to the clear orders of the Hon'ble Supreme Court, which govern the issue.

12.However, in the light of the fact that atleast 5 of the petitioners are not prejudiced by change, I do not think they would be entitled to any relief. Even as regards the 5th petitioner, to whom a certain amount as prejudice has occurred we cannot re-call the entire counselling, since she had approached the Court belatedly. Therefore, while dismissing the Writ



W.P.Nos.32780 & 33198 of 2022

Petition for want of prejudice with reference to petitioners 1, 2, 3, 4 and 6, the 5th petitioner alone is awarded damages of Rs.2,50,000/- payable by the selection committee as a mitigation.

13.I am alive to the fact that no amount of money can compensate the petitioner, who has been put to suffering because of the casual manner, in which, the selection committee had conducted counselling. However, taking into account the fact that atleast 223 students, who have been admitted subsequently, and any intrusion would effect all the 223 students, I do not venture to set aside the entire mop-up counselling as it would be more harmful than the cure.

14.Hence, this Writ petition in W.P.No.32780 of 2022 is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed. The damages awarded shall be paid with in 15 days of receipt of the copy of the order.



W.P.Nos.32780 & 33198 of 2022

W.P.No.33198 of 2022

WEB COPY

15. As regards, W.P.No.33198 of 2022, I find, this is a speculative litigation launched by the students, who have been allotted seat both first and second round of counselling, who have been fence sitters waiting as to what is happening in the other cases. Since the entire counselling is over and the seats have been allotted, I do not think, it will be proper for this Court to interfere with selection process at this time. It is made clear that the selection committee shall behave in a more responsible manner atleast in future and avoid such misgivings among the students.

16.The Writ Petition in W.P.No.33198 of 2022 stands dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

08.12.2022

kkn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

Note:- Issue order copy on 13.12.2022.

13/15



W.P.Nos.32780 & 33198 of 2022

WEB COPY To:-

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Secretariat,
Chennai – 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai – 600 103.
- 3.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
- 4.The National Medical Commission,
Rep. By its Secretary, Pocket 14,
Sector -8, Dwaraka,
New Delhi – 110 077.



WEB COPY



W.P.Nos.32780 & 33198 of 2022

R.SUBRAMANIAN, J.

KKN

W.P.Nos.32780 & 33198 of 2022
and
W.M.P.Nos.32608, 32612 & 32186 of 2022

08.12.2022