



W.M.P(MD)NO.26181 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)NO.26181 of 2022

in

W.M.P(MD)Nos.20350, 20356 & 20357 of 2022

M. Mohamed Rasool Hameed ... Petitioner

VS.

1.The Principal Secretary to
Government of Tamil Nadu,
Heath and Family Welfare (MCA.1) Department,
Government of Tamil Nadu,
Fort St.George,
Chennai.

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

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's Impugned Prospectus clause 24 (b) for admission to MDS course in Tamilnadu Government Dental College and Government seats in Self-Financing Dental Colleges affiliated to the Tamil Nadu



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Dr.M.G.R. Medical University for 2022-2023 Session and consequential Impugned Notice in Notification No. 2745/SCSII(1)/2022-18 dated 15.11.2022 quash the same as devoid of merits, consequentially permitting the petitioner to participate in the MOP-UP counseling by way of upgrading the Round 1 allotment by considering his representation dated 12.11.2022.

For Petitioner : Mr.A.Haja Mohideen

For R1 & R2 : Mr.N.Ravindran

Additional Advocate General
assisted by Mr.S.Shaji Bino
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's Impugned Prospectus clause 24 (b) for admission to MDS course in Tamilnadu Government Dental College and Government seats in Self-Financing Dental Colleges affiliated to the Tamil Nadu Dr.M.G.R. Medical University for 2022-2023 Session and consequential Impugned Notice in Notification No.2745/SCSII(1)/2022-18 dated 15.11.2022 quash the same as devoid of merits,

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consequently permitting the petitioner to participate in the MOP-UP counseling by way of upgrading the Round 1 allotment by considering his representation dated 12.11.2022.

2. The learned counsel appearing for the petitioner would submit that the petitioner belongs to Muslim Backward Community(BCM). His father is working in a private firm and with his hard earning, he gave good education to him. He joined BDS course in the CSI College of Dental Science and Research at Madurai under the Tamilnadu Dr.M.G.R. Medical University under Government Quota Self Finance and successfully completed the BDS Course in the year August, 2018 and completed his internship in the year 2019.

3. In the said circumstances, he has applied for NEET - 2022 examination conducted by the second respondent for the admission for MDS Courses with the respondents No.1 and 2.



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His application was accepted and he was given Madurai Centre and he has attended the exam on 02.05.2022 for 3 hours and he had attended 233 questions out of 240 compulsory questions. He have not answered 7 questions out of 240 compulsory questions. He has secured 587 marks out of 960 marks. Further, for the Admission of 2021-2022 PG Courses there is only one BCM seat in Service Quota, since no one eligible for the same it was given to the OC Candidate. In roaster system, now 4 seats were allotted to BCM Service Quota since there is no eligible, the said 4 BCM seats were given to the non-service category BCM. The said exercise was not done during the second Round of Counseling. Thus, he was in better position if he was permitted to participate in the 3rd Round of MOP-UP Counseling.



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4.While so, the 2nd respondent issued Prospectus for admission to MDS Course in Tamilnadu Government Dental College and Government Seats in Self-Financing Dental Colleges Affiliated To the Tamilnadu Dr.M.G.R. Medical University for 2022-2023 Session. In which, the entire mode of application and selection process were given. In which, the cut off for BCM is 227 i.e., 40%. Further, as per the admission schemes, a candidate entitle for four rounds of counseling. The Government Dental College at Cudalore and Government Dental College at Chennai are two Government Colleges in Tamilnadu and there are nearly 31 PG seats. There are also several private Dental Colleges and there are nearly 133 PG seats. The candidates can apt for Round I allotment and if he satisfied with the PG Course allotted to him he can join and also apt for upgradation. In such case of upgradation opinion the said candidate is eligible for Round II allotment



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also. In the Round II counseling if the said candidates get his choice of PG Course he can upgrade the Round II Course by getting back all the fees paid in the Round I except the process fees.

5. In the said circumstances in the counseling Round I, he apt for two colleges one is Cuddalore Government College in the Course of Oral and Maxillofacial Surgery and second choice is Madurai CSI College of Dental Sciences and Research in the course of Prosthodontics and Crown And Bridge. Thus, in the counseling, he was allotted a seat in Madurai CSI College of Dental Sciences and Research in the course of Prosthodontics and Crown And Bridge under BCM Category on 08.10.2022. Accordingly, he has accepted the same with choice of participating in Round II Counseling for upgradation.

6. While so, the Government revised the Cut off mark on 14.10.2022 to all the candidates. In which, SC, ST, OBC cut off is



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138, the previous cut off is 227. Thus inspite of reduction of Cut off, the service candidates seats were not filled up. While so they have published the list of rank, in which the service quota was kept as blank. Thus it is crystal clear that there is no one available in Service Quota for the PG MDS Courses.

7. The second Round of Counseling was started on 27.10.2022 to 30.10.2022. In which, he has given 6 options, options 1,2 and 5 is in Cuddalore Government Dental College and option 3, 4 and 6 is in Chennai. While so, on 30.10.2022 a notification issued by the 2nd respondent stating that the percentile has been lowered for General, OBC/SC/ST and PWD candidates, hence as new candidates will become eligible, the conversion of seats which was mentioned in Round-II Counseling Schedule is now stands cancelled. Thus his Second Choice was curtailed. Further, the 2nd respondent failed to take note of the surrender of seats allotted for the service



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quota during the period of Round II Counseling, which prevented him to opt for those seats. Thus, his right to choose a better place was curtailed due to the delay of the 2nd respondent in taking the decision.

8.He would further submit that the said 50% reserved seats for Service Candidates were placed in third Round of MOP-UP Counseling. The tentative vacancy list was published on 15.11.2022, in which lot of Government colleges are available specifically for BCM category 4 seats are available. He is in the 6th Rank in BCM Category. So, he will definitely get a seat in Government College under the BCM Quota. He with great hope that he may get his choice of PG MDS Course in Government Colleges, move to apply for MOP-UP Counseling. But to his misfortune, he found that Clause 24 (b) in Prospectus for admission To MDS Course in Tamilnadu Government Dental College and



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Government Seats in Self-Financing Dental Colleges Affiliated To the Tamilnadu Dr.M.G.R. Medical University for 2022-2023 Session states that *If the candidate is allotted any seat from his/her locked choices in the round 1, round 2 and has joined the course are not eligible for the Mop up counseling.* Further, he also came to know that the notification was issued on 15.11.2022 by the 2nd respondent in No.2745/ SCSII(1) /2022-18 stating that

"Candidates those who have joined in Round 1 and Round 2 he/she is not eligible for the Mop up round and further rounds of counseling."

9. Thus, he was curtailed to participate in the MOP-UP 3rd Round of Counseling. As already stated, if the 50% service candidate quota seats were added in Round II Counseling then, he can very well get a better choice. Eventhough, before 01.11.2022, the availability



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of the non filling of 50% service candidate quota seats known to the 2nd respondent, they have deliberately failed to add those seats in the second Round of Counseling. Thus, for the reasons known to the 2nd respondent, the 50% of service candidates quota was omitted to add in the 2nd Round of Counseling, which prevented him to have a better choice. Thus his right to get a better choice of Course and live with dignity guaranteed under Article 21 of the Constitution of India and his right to equality guaranteed under Article 14 of the Constitution of India at par with similarly placed persons denied by the respondents. Further, inspite of my mark of 587, he was denied better choice. On the other hand, the candidates who got less marks than him now get better choice in the MOP-UP Counseling due to the inclusion of 50% seats surrender from the Quota of Service Candidates. So in the interest of justice it is just and necessary to

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setaside the 2nd Respondent's Impugned Prospectus Clause 24 (b) for admission To MDS Course in Tamilnadu Government Dental College and Government Seats in Self-Financing Dental Colleges Affiliated To the Tamilnadu Dr.M.G.R. Medical University for 2022-2023 Session and consequential Impugned Notice in Notification No.2745/SCSII(1)/2022-18 dated 15.11.2022.

10. He further submitted that due to some mischievous acts of some vested Interest he was penalized. Immediately, he sent a representation to the 2nd respondent through E-Mail on 12.11.2022, but nothing answers till now.

11.In the said circumstances the 2nd Respondent's Impugned Prospectus Clause 24 (b) for admission To MDS Course in Tamilnadu Government Dental College and Government Seats in Self-Financing Dental Colleges Affiliated To the Tamilnadu Dr.M.G.R. Medical University for 2022-2023 Session and



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consequential Impugned Notice in Notification No.2745/SCSI1(1)/2022-18 dated 15.11.2022 are *non-est* in the eye of law and the same are liable to be quashed.

12. Mr.N.Ravindran, learned Additional Advocate General appearing for the respondents 1 & 2 would submit that as per MOP-UP counseling 24(a) After completion of second round of ONLINE COUNSELLING 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 the round 1, round 2 and has joined the course are not eligible for the Mop up counselling.

(as per the Gazette Notification No.MCI-18(1)/2018-Med./1008-8, dated 05/08/2018 and the orders of the Supreme Court of India in W.P(C) No.174/2022, dated 31.03.2022.



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13. He would further submit that the petitioner has secured 587 marks out of 960 marks.

In the counselling round I, he apt for two colleges, once is Cuddalore Government College in the Course of Oral and Maxillofacial Surgery and second choice is Madurai CSI College of Dental Sciences and Research in the course of Prosthodontics and Crown and Bridge. In the counseling, he was allotted a seat in Madurai SCI College of Dental Sciences and Research in the course of Prosthodontics and Crown and Bridge under BCM category on 08.10.2022. Accordingly, the petitioner has accepted the same with choice of participating in round II counseling for upgradation. The prospectus was issued on 17.08.2022, the petitioner has not properly seen the prospectus, which makes it clear that there cannot be any choice for him after attending first and second round and he is not eligible for MOP-UP counseling. Further, on 27.10.2022 the counseling has been completed and all the seats were filled.



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14.As per the prospectus Round 1 of counseling 16(a) Admission to MDS course, shall be made by the online counselling on the basis of rank by applying the rule of reservation. The detailed online counselling procedures are available in Annexure.

(b) Re-allotment is permitted during the subsequent phases of online counselling only, based on Rank.

© Mutual transfer/individual request for transfer of college will not be permitted under any circumstances.

For Service Candidates:- A candidate who has not registered and not choice locked in the first round of online counselling will be permitted to the subsequent rounds of online counselling. A candidate who has taken a seat and joined/not joined/discontinued the course within the stipulated time in the first round counseling, he/she is eligible to attend the second round of online counselling.



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All India Quota candidates who discontinue the course on or after the second round of all India Quota counselling should pay the Discontinuation Fees besides foregoing tuition fees already paid by them as specified in Clause 34(a), to the Deans of the respective Colleges, a sum of Rs.15 lakh by means of a Demand Draft drawn in favour of "The Secretary, Selection Committee, Kilpauk, Chennai-10", payable at Chennai.

The State Quota candidates who discontinue the course on or after the second round of State Quota counselling should pay the Discontinuation Fees besides foregoing tuition fees already paid by them as specified in Clause 34(a), to the Deans of the respective Colleges, a sum of Rs.15 lakh by means of a Demand Draft drawn in favour of "The Secretary, Selection Committee, Kilpauk, Chennai-10", payable at Chennai.

Unless the aforesaid dis-continuation fee as penalty amount is paid in total, the candidates will



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not be relieved and original certificates produced by the candidate at time of admission will be retained by the concerned institutions.

16. In view of the above, once the petitioner was allotted a seat in Madurai SCI College of Dental Sciences and Research in the course of Prosthodontics and Crown and Bridge under BCM category on 08.10.2022 and he has accepted the same with choice of participating in round II counseling for upgradation and joined in the college, he is not eligible to participate in the mop-up counseling.

17. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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To

- 1.The Principal Secretary to
Government of Tamil Nadu,
Health and Family Welfare (MCA.1) Department,
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Fort St.George,
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- 2.The Secretary,
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V.BHAVANI SUBBAROYAN.J.

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