



W.P.(MD)No.27234 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27234 of 2022

and

W.M.P.(MD)Nos.21370 to 21372 of 2022

... Petitioner

Jishiga S.M.

v.

The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai,
Represented by its Secretary.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records related to the impugned notification - Tentative Round II Counselling Schedule (Government Quota) issued by the respondent in so far as the following note at Page 4 is concerned :

“Note. If a candidate is getting a seat in MBBS/BDS course in Round-II of Government Quota counselling or retaining a seat allotted in Round - I, He/She will not be allotted a seat in Round II of Management / Minority/NRI Lapsed Quota and NRI Quota Counselling. Candidates are instructed to be very vigilant before locking their choices, during Round II of Govt. Quota Counselling”



W.P.(MD)No.27234 of 2022

and quash the same and also quash the consequential provisional selection list of candidates allotted for MBBS/BDS (Government Quota) Course, dated 24.11.2022 and Provisional List (Management Quota) dated 26.11.2022 insofar as non-consideration of the petitioner's candidature for upgradation to MBBS (Self-finance) under the Backward Class Christian Minority Category (Management Quota) and issue a consequential direction to allot one seat in MBBS degree course in session 2022-2023 or otherwise under the Backward Class Christian Minority Category in any one of the medical colleges in the State of Tamil Nadu in accordance with the marks obtained by the petitioner in the qualifying examination of NEET and pass such further or other orders and thus render justice.

For Petitioner : Mr.N.Dilip Kumar

For Respondent : Mrs.M.Sneha, Standing Counsel

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned standing counsel appearing for the respondent.

2.The petitioner aspired to join a medical course (MBBS/BDS). When the respondent issued notification announcing holding of counselling for the year 2022-2023, the petitioner applied in response thereto. In the 1st round of counselling held from 19.10.2022 to 25.10.2022, the petitioner was allotted seat against Government quota in Vivekananda Dental College, Namakkal. In



W.P.(MD)No.27234 of 2022

the alternative, she was also allotted seat against Management quota in CSI Dental College (Private), Madurai. As per norms set out in the original prospectus, the petitioner was entitled to take part in the 2nd round of counselling also. The 2nd round of counselling was held from 17.11.2022 to 23.11.2022. The petitioner had choice filled for MBBS course in both Government as well as management quota seats. However, the portal showed that the petitioner had not added any choice. In other words, the petitioner was not allowed to upgrade herself in the 2nd round of counselling. Realizing that such a situation resulted on account of the notification issued on 17.11.2022 by the respondent, questioning the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner's primary ambition is to join MBBS degree course. She took part in the 2nd round of counselling only to upgrade herself. The learned counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to interfere and grant relief as prayed for.

4.The learned counsel appearing for the respondent submitted that the petitioner had already exercised her choice to retain her government quota seat allotted in the 1st round of counselling. The petitioner had choice-filled for all the Government quota seats in the 2nd round of counselling also. She was



W.P.(MD)No.27234 of 2022

however found least meritorious and therefore, she could not secure any seat in MBBS course in any of the Government quota seats. She was also not allowed to upgrade to management quota on account of the restriction set out in the notification that was issued on 17.10.2022. The learned counsel was at pains to impress upon this Court that there was a larger public interest behind incorporation of such a restriction. She pointed out that if a person is allowed to migrate and also retain the seat allotted in the 2nd round of counselling, the end result will be that the seat retained by her would go vacant at the end of 2nd round of counselling and that it will have to be filled up only during mop up counselling. In mop up counselling, the seat allotted to the writ petitioner in the 1st round will go to a far less meritorious candidate who was not allotted any seat either in the 1st round or in the 2nd round. Such a situation is not conducive for the cause of merit. Therefore, the learned counsel for the respondent submitted that the petitioner who has consciously retained the seat allotted to her in the 1st round, ought not to be shown any indulgence. She also added that having participated in the 2nd round with her eyes wide open, the petitioner cannot now be permitted to challenge the notification dated 17.11.2022 after the results turned to be unfavourable for her. According to the learned counsel for the respondent, the principle of estoppel will clearly operate against the petitioner. She pressed for dismissal of the writ petition.



W.P.(MD)No.27234 of 2022

5.I carefully considered the rival contentions and went through the materials on record.

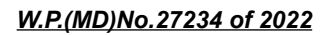
6.The petitioner belongs to backward class category. She being a Christian is entitled to be considered under Christian minority quota. The only question that calls for consideration is whether the petitioner could have been denied the benefit of migration / upgradation in the 2nd round. I posed a specific and pointed query to the learned counsel appearing for the respondent if the notification issued on 17.11.2022 alone stood as an impediment for the petitioner to migrate to the management quota for MBBS seat. The learned counsel appearing for the respondent fairly submitted that notification was the sole cause.

7.Let me now go to the notification dated 17.11.2022. It also catalogues the list of candidates who are eligible to participate in the 2nd round. They have been grouped as follows :

“(a) Candidates who have joined at allotted medical / dental college during round-1 of allotment.

(b) Candidates who have not joined the allotted seats during Round-1.

(c) Candidates who have joined and resigned their seats in Round-1.”



“NOTE: If a candidate is getting a seat in MBBS/BDS course in Round-II of Government quota counselling or retaining a seat allotted in Round-I, He/she will not be allotted a seat in Round-II of Management/Minority / NRI Lapsed Quota and NRI Quota Counselling. Candidates are instructed to be very vigilant before locking their choices, during Round-II of Govt. Quota Counselling.”

9. Coming to the facts of the present case, the petitioner has been denied seat in Round-II in Management / Minority Quota because she had retained the seat allotted in her favour in Round-I. The question is whether such a restriction could have been invoked against the petitioner. I am satisfied that it could not have been done. This is for more reasons than one. Firstly, it is not open to the respondent to change the rules of the game after the game had already commenced. The aforesaid impugned note was not there in the original prospectus. It came to be issued only on 17.11.2022. By then, the petitioner had altered her position irreversibly. It is beyond dispute that only by 16.11.2022, the petitioner could have resigned the seat allotted in Round-I. By



W.P.(MD)No.27234 of 2022

the time, the impugned notification came to be issued, the petitioner no longer had option to resign the allotted seat. That apart, there is an internal contradiction in the impugned notification. The candidates who have joined at allotted dental college during round-1 of allotment were also permitted to participate in the 2nd round of counselling. The impugned “Note” sounds counter to the “eligibility clause”. I do not find any merit in the contention of the respondent anchored on the principle of estoppel. It is true that a person having taken part in a selection process cannot thereafter turn around and question the method of selection and its outcome. But this doctrine cannot be applied in a mechanical fashion to non-suit all challengers. The first requirement is that the person must have consciously taken part in the selection process and it must be possible for the court to arrive at a finding that the claimant had waived his right. In any event, an inherently arbitrary or unsustainable stand cannot be validated by taking recourse to the doctrine of estoppel. Courts would definitely not show alacrity to apply this principle when it comes to students who do not have time to even reflect before taking decision. When the principle of estoppel is invoked against students, it will not be with the same rigour as is applied in the case of tenders or in recruitment process. The individual case facts will have to be taken note of. The second round of counselling commenced only from 17.11.2022. The notification was



W.P.(MD)No.27234 of 2022

also issued on 17.11.2022. Interestingly, the petitioner was otherwise eligible to take part in the second round of counselling. In other words, even a person who had retained the seat allotted in the first round was specifically permitted to take part in the second round. To tell her thereafter that in view of such retention of seat, she will not be allowed to migrate or upgrade herself would be patently unfair.

10.The petitioner has scored 232 marks in NEET. The petitioner now wants to join MBBS course against management quota. The petitioner's counsel has drawn my attention to the fact that candidates who have scored lesser marks have been allotted management quota seats in MBBS degree course in private colleges. This factual assertion is not denied. There is a clear infraction of the equality clause enshrined in Article 14 of the Constitution of India. In these circumstances, I have to necessarily interfere. I hold that the respondent has breached the mandate of Article 14 of the Constitution of India by denying MBBS seat to the petitioner in Round-2 of counselling against Management/Minority quota. Since the 2nd round of counselling is already over, it would not be proper for this Court to pass an order that may operate to the prejudice to the persons concerned who are not before this Court. That is why, on the earlier occasion, a learned Judge of this Court had directed the petitioner to implead the students who may be affected by the outcome of this



W.P.(MD)No.27234 of 2022

writ petition. I will not fault the petitioner for not having impleaded the students concerned. This is because, such a direction was given only on 01.12.2022. The registration process for the additional counselling is to be over this evening. The process of implementing the order would definitely be time consuming and the entire exercise will be rendered futile and infructuous. The selection committee is responsible for the current state of affairs. Therefore, it is the respondent who must set right things. How and in what manner they propose to do so is left to them. Since the persons who have secured lower marks than the petitioner have been allotted MBBS seat in management quota, the petitioner has to be necessarily placed on par with them. The petitioner will be allowed to participate in the additional counselling. It is for the respondent to devise procedure to accommodate the petitioner in MBBS degree course as against BC minority quota. The impugned restrictive conditions are set aside insofar as the petitioner is concerned.

11.The writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

07.12.2022

Index : Yes / No
Internet : Yes/ No
rmi/skm



WEB COPY

Issue order copy immediately.



W.P.(MD)No.27234 of 2022

G.R.SWAMINATHAN, J.

rmi

W.P.(MD)No.27234 of 2022

07.12.2022