



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.11.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. Nos.7567 and 7568 of 2023

and WMP.Nos.7681 and 7683 of 2023

The Principal
Nandha Naturopathy & Yoga Medical College
Pitchandamapalaym (Post)
Erode – 638 052.

.... Petitioner in W.P.No.7567 of 2023

The Principal
Sir Issac Newton Naturopathy
and Yoga Medical College
Pappakovil
Anthanapettai (Post)
Nagapattinam – 611 102

.... Petitioner in W.P.No.7568 of 2023

Vs.

- 1 The State of Tamil Nadu
Rep. by its Secretary
Department of Health & Family Welfare
Fort St. George, Chennai - 600 009.
- 2 The Commissioner of Indian Medicine
and Homeopathy,
Arignar Anna Hospital Campus
Chennai-600 106.



3 The Secretary
Selection Committee
Indian Medicine & Homeopathy
Arignar Anna Hospital Campus
Chennai-600 106.

4 The TN Dr.M.G.R. Medical University
Rep. by its Registrar
No.69/40, Anna Salai
Guindy, Chennai-600 032.

...Respondents in both W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the 4th respondent university to register the three students (name list annexed) (W.P.No.7567 of 2023) and 12 students (name list annexed) (W.P.No.7568 of 2023) admitted by the petitioner college in the lapsed seats under the Government quota for the academic session 2021-2022 to enable the students to pursue the Bachelor of Naturopathy and Yoga Science (BNYS) course and to permit them to take the periodical examinations and results thereof leading to the award of the BNYS degree.

In both W.Ps

For Petitioner : Mr.P.Godson Swaminathan
For M/s.Issac Chambers

For Respondents : Mr.U.M.Ravichandran (R1 to R3)
Special Government Pleader
Mr.R.Imayavaramban (R4)
For M/s.Ramalingam Associates



COMMON ORDER

W.P.No.7567 of 2023 has been filed by Nandha Naturopathy & Yoga Medical College, Erode (hereinafter referred to as 'Nandha') and W.P.No.7568 of 2023 has been filed by Sir Issac Newton Naturopathy & Yoga Medical College, Nagapattinam (hereinafter referred to as 'Sir Issac Newton').

2. The prayers in both Writ Petitions are similar, petitioners seeking a mandamus directing the 4th respondent, i.e., Tamil Nadu Dr.M.G.R.Medical University (hereinafter referred to as 'University/R4') to register those students who have been admitted by the colleges in seats that had lapsed under the Government Quota (GQ) for Academic Year (AY) 2021-22, thus enabling them to pursue the Bachelor of Naturopathy and Yoga Science (BNYS) course with all consequential benefits, such as sitting for examinations, declaration of results and award of the BNYS degree. In the case of Nandha, the prayer relates to 3 students and in the case of Sir Issac Newton, the prayer relates to 12 students.

3. A common sequence of dates and events is set out, since the trajectory of events is more or less same. Individual differences will be referred to as and when relevant.

4. Both colleges hold necessary approvals for conduct of BNYS course and are affiliated to R4 University. The permitted capacity for admission in the



case of Nandha is 60 students, as against which 39 seats (65%) have been offered to the GQ and 21 seats (35%) for Management Quota (MQ). In the case of Sir Issac Newton, the permitted capacity for admission is 100 students and 65 seats (65%) have been offered under GQ and 35 seats (35%) for MQ.

5. The prospectus as well as the procedure consistently followed, dictates that the Selection Committee/R3 would carry out the selection process through the Single Window System through the second respondent Commissioner of Indian Medicine and Homeopathy (R2).

6. The first phase of counselling for AY 2021-22 was held between 14.03.2022 and 16.03.2022. In the case of Nandha, a list of 36 candidates had been sent to the college by R3 in relation to those that had been allotted GQ seats and all 36 reported and joined the college. 3 seats were thus left vacant and this was duly communicated by Nandha to R3 vide communication dated 25.03.2022. That communication enclosed the joining report of the students who had attended counselling between 14.03.2022 and 16.03.2022 and joined the BNYS course.

7. In the case of Sir Issac Newton, 45 candidates had been allotted GQ seats and all 45 had reported and joined the college. 20 seats had been left vacant which had been communicated to R3 vide communication dated 26.03.2022, also enclosing the joining report.



8. Thus, both colleges had, even at the first instance, communicated categorically to R3 the position that there had been vacant seats in GQ, 3 in the case of Nandha and 20 in the case of Sir Issac Newton. However, these letters found no favour of response from the respondents.

9. The second phase of counselling, which is called movement counselling, was held on 19.04.2022. In the meanwhile, in the case of Nandha, 2 students had left the college leaving two more seats under GQ vacant. This was informed to R3 vide letter dated 13.04.2022. Thereafter, during movement counselling, 2 more out of the 34 candidates that remained had also left the college. Thus and overall, the vacancy position in Nandha after conduct of second phase of movement counselling was 7 seats and this was duly intimated to R3 under cover of letter dated 21.04.2022.

10. There was no movement of candidates in the case of Sir Issac Newton and thus the vacancy of 20 seats remained constant even thereafter. R3 had sought details of any movement of seats vide e-mail communication 20.04.2022 and Sir Issac Newton states that it had orally informed the number of vacant seats to R3.

11. The last phase of counselling, i.e., walk-in counselling was held on 23.04.2022. 2 candidates had been allotted to Sir Issac Newton by R3 and one student had reported to the college and joined. Thus, as against the total of 65 GQ



seats, 19 seats remained vacant and this was duly intimated by way of e-mails dated 27.05.2022 and 30.05.2022.

12. In the case of Nandha, walk-in-counselling was held on 23.04.2022 and a joining report had been sent on 30.04.2022 which again reiterated the vacancy of 3 persons under GQ.

13. Thus, the authorities had been duly kept informed even at the second and third stages of counselling, i.e, movement counselling and walk-in-counselling that there were vacancies under GQ.

14. The last date for admission was 30.05.2022 and since the vacancies continued even as on that date, despite the authorities having been duly informed of the same, the petitioners had proceeded to fill in those vacancies converting those seats into MQ seats.

15. The authorities have expressed their strenuous objections to the filling-in of the lapsed GQ seats by the petitioners at their own instance, causing hindrance to those students in writing the examinations. Hence, these Writ Petitions.

16. At the time of admission, the petitioners have obtained interim protection permitting the students who had been admitted in the lapsed seats to



take the intervening examinations, though subject to the result of these Writ Petitions.

17. The petitioners would urge that it is for the respondents to take adequate action in filling up the GQ seats and the role of the petitioners as far as GQ seats are concerned, are merely to accept the students enrolled by R2 and R3 and nothing more. In this regard, both petitioners would draw attention to their repeated correspondences to the respondents bringing to their notice the vacancy in GQ seats, despite which intimation, the authorities have remained silent.

18. Undoubtedly, seats in educational institutions, more particularly professional colleges, cannot be seen to go unfilled as this would constitute a national waste of resources. Seen in the light of the multitude of students who are desirous of professional education, the petitioners would justify their action in filling the seats with such students, though under the MQ.

19. The submissions of both learned counsel have been heard in detail. The Hon'ble Supreme Court in the case of *Dar-us-slam Educational Trust and Ors. V. Medical Council of India and ors* (W.P.(C) No.267 of 2017 dated 09.05.2017), has laid down strict parameters in the matter of conduct of counselling for admission to All India Quota seats in Government Medical Colleges and deemed Universities as well as State Quota seats in Government as well as private Medical Colleges.



At paragraph 7, the Bench states as follows:

7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counselling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.

20. Thus, there has to be due diligence on the part of the State to ensure that manual counselling is carried out for allocation of students to the vacant seats. In this regard, the respondents have certainly been remiss.

21. In *Index Medical College, Hospital and Research Centre V. State of Madhya Pradesh and others* (2021 SCC Online SC 318), the challenge was to an amendment made to Rule 12(8)(a) of the Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018. Rule 12(8)(a) reads as follows:

(8)(a) The vacant seats as a result of allotted candidates from MOP-UP round not taking admission or candidates resigning from admitted seat shall not be included in the college level counselling (CLC) being conducted after MOP-UP round.

22. The Bench held at paragraphs 15 and 26 as follows:

15. There is no controversy relating to provisions of the Act and Rules where procedure for admission to professional colleges is prescribed. The only dispute that arises for our consideration is validity of Rule 12(8)(a) which was introduced on 19.06.2019. The



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object of Rule 12(8)(a) is to ensure that all admissions to medical institutions are based on merit and to bar students of lesser merit from getting admission to better colleges. The notice issued by the Director General of Health Services, Ministry of Health and Family Welfare, Government of India dated 11.04.2018 has been referred to by the High Court in its order dated 24.04.2019. The said letter highlights the active participation of a group of students who were blocking all India quota seats in second round of counselling deliberately for financial gratification without intention to join. During the said period in the letter nearly 1,000 identified students did not join after first round. They were being monitored to find out whether they were taking admission at least in second round. DGHS proposed severe penal action against those indulging in such activities. Having been informed of this menace, this Court passed an order dated 09.05.2017 in *Dar-us-Slam Educational Trust and Ors. v. Medical Council of India and Ors. (supra)*, barring students who take admission in all India quota seats from being allowed to vacate seats after second round of counselling. All vacant seats after last round of counselling were directed to be filled up from a list that is forwarded to the institutions in the ratio of ten times to the number of vacancies to ensure that all stray vacancies are filled. The contention of the Appellants is that being asked to keep seats unfilled amounts to an unreasonable restriction on their right to carry on their occupation guaranteed Under Article 19(1)(g) of the Constitution of India. Even assuming the object of the Rule is to ensure that lesser meritorious candidates do not get admission to better colleges, the measure adopted by the Government in keeping seats vacant is disproportionate.

.....

26. The right to admit students which is a part of the management's right to occupation Under Article 19(1)(g) of the Constitution of India stands defeated by Rule 12(8)(a) as it prevents them from filling up all the seats in medical courses. Upgradation and selection of subject of study is pertinent only to postgraduate medical course. In so far as undergraduate medical course is concerned, the upgradation is restricted only to a better college. Not filling up all



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the medical seats is not a solution to the problem. Moreover, seats being kept vacant results in huge financial loss to the management of the educational institutions apart from being a national waste of resources. Interest of the general public is not subserved by seats being kept vacant. On the other hand, seats in recognised medical colleges not being filled up is detrimental to public interest. We are constrained to observe that the policy of not permitting the managements from filling up all the seats does not have any nexus with the object sought to be achieved by Rule 12(8)(a). The classification of seats remaining vacant due to non-joining may be based on intelligible differentia but it does not have any rational connection with the object sought to be achieved by Rule 12(8)(a). Applying the test of proportionality, we are of the opinion that the restriction imposed by the Rule is unreasonable. Ergo, Rule 12(8)(a) is violative of Articles 14 and 19(1)(g) of the Constitution.

23. A combined reading of the aforesaid paragraphs informs me that the controversy before the Bench also related to the propriety or otherwise of the Management filling in vacancies of seats under GQ. While holding that it was an intrinsic part of the Management's right to fill in seats under GQ that fell vacant, the Court noted that non-filling of vacant medical seats would only result in huge financial loss to the management and a national waste of resources. The reason for non-filling of seats can be any number and in this case, it is the lethargy and inaction on the part of the State that has left the seats vacant beyond the stipulated time.



24. The petitioners are seen to have time and again brought to their notice the vacancies in GQ seats. There is not a single correspondence on the part of the respondents to take any initiative in filling those vacancies.

25. The submissions of the respondents hardly hold any merit, as they would repeatedly harp upon the fact that the petitioners have been engaging in the same modus operandi of filling in lapsed GQ seats with MQ seats.

26. However, I find no infirmity in the action of the petitioners. Had it been the case of the respondents that there had been no correspondence from the petitioners intimating them of the vacancies, it would have been altogether a different matter, but in this case, the letters/e-mails from the petitioners which are, admittedly, part of the respondents' records have unambiguously brought to their notice the vacancy position in GQ seats.

27. It was thus necessary for the respondents to have conducted a manual round of counselling, determine the number of vacancies thereafter and then forward a list of students in order of merit equalling to 10 times the number of vacant seats to all medical colleges, so that any stray vacancy arising in that college may be filled up from this list. Despite a scientific methodology having been put in place to ensure that GQ seats are all filled in, the respondents have not followed the procedure.



28. I thus find nothing untoward in the petitioners having gone ahead to fill in vacancies with eligible students. Incidentally, a similar view has been taken by C.V.Karthikeyan J in the case of *Shri Indra Ganesan Institute of Medical Science, Naturopathy & Yoga Medical College V. The State of Tamil Nadu and others* (W.P.(MD) Nos.4341 and 4730 of 2023 order dated 23.03.2023) and by G.R.Swaminathan.J, in W.P.693 of 2022 and batch dated 13.05.2022.

29. The State must ensure that going forward the procedure set out in paragraph 6 onwards of the judgment in the case of *Dar-us-slam Educational Trust and Ors.* (supra) is followed scrupulously in order to ensure that the seats under GQ are filled in, in full. In the alternate, the colleges are certainly at liberty to go ahead with the process of filling in the vacancies, though only after the last date for counselling prescribed for counselling by the respondents and subject to fee and other prescribed parameters.

30. Learned Special Government Pleader arguing for the State would draw my attention to the prospectus to state that the proportion for GQ and MQ seats are fixed and by virtue of taking in more students for filling in GQ seats by MQ seats, the percentage has been distorted by the petitioners.

31. While this argument may be technically true, it is not worthy of acceptance, for the reasons that I have set out in the preceding paragraphs to



justify the action of the petitioners in filling in lapsed GQ seats. It is nobody's case that the percentage of GQ and MQ seats is not fixed. However, it is for the respondents to have ensured that such percentage is maintained.

32. The procedure for filling in those seats is to be followed at the instance of the respondents and if there is any dereliction of duty on their part, then the petitioners cannot be faulted in filling the seats to ensure that they have a full house, to sanctioned capacity. This would be in the best interests of the institution and the petitioners are certainly justified in ensuring the best for their institution, though in accordance with law.

33. In light of the discussion as aforesaid, mandamus as sought for is issued and these Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

17.11.2023

Index: Yes/No

Speaking order/Non Speaking Order

Neutral Citation: Yes/No

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DR. ANITA SUMANTH, J.

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