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W.P. No.28314 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.28314 of 2023 and
W.M.P. Nos.27836 & 27837 of 2023

- 1.Dr.M.Rajkumar
- 2.Dr.R.Chandra Prabha
- 3.Dr.M.Rajalakshmi
- 4.Dr.M.K.A.Kothari Yasir Arafath
- 5.Dr.S.Nivithra

... Petitioners

Vs

- 1.State of Tamil Nadu
Represented by its Principal Secretary
Health and Family (MCA-1) Department
Fort St. George, Chennai - 600 009
- 2.The Director of Medical Education
Directorate of Medical Education
Kilpauk, Chennai - 600 010
- 3.The Selection Committee
Represented by its Secretary
Directorate of Medical Education
162, Periyar E.V.R. High Road, Kilpauk
Chennai - 500 010
- 4.Medical Counselling Committee
Represented by Directorate General of Health Services
Ministry of Health and Family Welfare



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Government of India, Nirman Bhawan
New Delhi - 110 011

5. The Chairman
National Medical Commission
Pocket 14, Sector 8,
Dwarka Phase-1
New Delhi - 110 077

... Respondents

(5th Respondent *suo motu* impleaded today)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a writ of mandamus directing the 1st to 3rd respondents to conduct 3rd round of NEET State Counselling for P.G. Courses with upgradation option to the candidates who have joined in the seats allotted in the 1st or 2nd round of NEET State Counselling for P.G. Courses or permit the candidates who have joined in the seats allotted in the 1st or 2nd Round NEET State Counselling for P.G. Courses, by treating the seats that they have joined in as virtual vacancies.

For Petitioner s : E.Manoharan

For Respondents : Mr.A.Anandan,
Govt. Advocate for R1 and R2

Mrs.M.Sneha for R3

Mr.AR.L.Sundaresan,
Addl. Solicitor General of India
for Mr.K.S.Jayaganesh,
Senior Panel Counsel for R4



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Ms.Shubharanjani Ananth for R5

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ORDER

1.1 The petitioners herein have sat for NEET - PG examination, and have also registered themselves for counselling under the State quota as per its prospectus. The issue involved in this case is about the difference between the nature of counselling as provided under the prospectus for filling up the Medicine (PG) seats of the All India Quota (AIQ), and that of the State Quota (SQ), after the II round of counselling.

1.2 Whereas in terms of the prospectus for filling the seats under the AIQ, a III round of counselling is provided after the II round of counselling, as per the prospectus for filling the SQ seats, after the second round there will only be a mop-up round.

2. A counselling that goes by the name as III round of counselling is conceptually different from a mop-up round, even though both are after the II round of counselling, since they leave different consequences in the fortunes of the candidates. To elaborate it, in the case of III round of counselling, the



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candidates who might have secured a seat in round I or II for a particular PG course, will have an opportunity to seek for upgradation of the course, in that the candidate will now have an opportunity to participate in the III round of counselling and try for a course of his or her preferred choice and liking, without losing a seat already secured. In other words, even if the candidates do not get a seat of their preference in III round of counselling, they still will have a seat that they had obtained in round I or II of the counselling. But, in the case of the mop-up round counselling, such candidates who intend to migrate to a course of their preference, have to resign the seat which they had obtained in round I or II, and only thereafter can participate in the mop-up round. Here, there is a risk involved, in that, if the said candidate does not get a seat in the mop-up round, he/she will not have the security of the candidates participating in the III round of counselling and prosecute their studies in the course for which they had obtained a seat in round I or II. While a III round of counselling enables the candidate to try for a better course without losing the seat already secured, participation in the mop-up round counselling with a view to seek admission to a preferred course involves a big gamble.

3. This difference which the prospectus for the AIQ and the SQ is sought to be



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alleviated in this proceedings. The petitioners herein, having secured for themselves a seat in PG course, perhaps may not be to their liking or preference, require respondents 1 to 3 to hold a III round of counselling instead of mop-up counselling in the same manner which is introduced for the AIQ seats, and the reasons are obvious: they want to seek upgradation of their course without losing the seat that they have already secured.

4. This Court now *suo motu* impleads the National Medical Commission as the 5th respondent in the writ petition. Ms. Shubaranjani Ananth, takes notice for the NMC.

5. For the academic year 2021-2022, DGHS, 4th the respondent herein has introduced four rounds of counselling for AIQ seats. They are, Round I and II, which is followed by Mop-up counselling and the admission process ends with Stray counselling. This was replicated for the next academic year, 2022-2023.

6.1 Mrs.Sneha, learned counsel counsel appearing 3rd respondent submitted that in the prospectus for AIQ seats notified in January 2023, as was originally notified by DGHS for the current academic year, provided only for a mop-up



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round after the II round of counselling. Subsequently, there was another notification dated, 31.08.2023, by the 4th respondent which permitted upgradation in the III round of counselling. This was followed by a fresh prospectus dated, 13.09.2023, and in Chapter VIII, it was notified the round after the II round of counselling as III round of counselling, enabling upgradation of courses by the candidates. The learned counsel for 4th respondent informed that NMC has moved the Hon'ble Supreme Court for ratification of this schedule.

6.2 Following this development, the 3rd respondent has addressed a communication to the 4th respondent and also the National Medical Commission, seeking clarification as to whether the Selection Committee in Tamil Nadu can follow suit, and convert the mop-up round into round III counselling, but it is yet to receive any information whatsoever, submitted the counsel for 3rd respondent. Now the 3rd respondent is in a state of fix, and perhaps in a no-man's-land, added the counsel.

7. It is also brought to the notice of the court an earlier communication issued by the Government of India, dated 25.07.2023, to '*the President of PG Board*',



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requiring the latter to duly comply with the schedule for NEET-PG counselling for the academic year 2023 - 2024, to be conducted by the MCC and requested him to upload the State PG Counselling Schedule on the NMC website, and has also enclosed NEET-PG schedule for All India Quota. In this schedule the Mop-up round as was originally planned was done away with and has been replaced by round III counselling, even though revised prospectus came to be published only on 13.09.2023. It has also provided fixing the dates for the III round of counselling both for the AIQ and SQ seats.

8. At this juncture, the learned counsel for the petitioners brought to the notice of the court a notification of the Government of India dated 20.09.2023, which has declared that counselling for PG - 2023 has been reduced to Zero for all categories, since if one has to go strictly by NEET regime, few thousand seats in the PG course are likely to go wasted. He added that this was challenged before the Hon'ble Supreme Court in W.P.(C) Diary No.39610 of 2023, but was dismissed today.

9. Few facts can now be bullet pointed.

- The situation appears to have arisen prompting the Central Government



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is to reduce NEET marks to zero to ensure that no PG Seat go lapsed for this academic year. And, this decision of the Government has also stated to have been confirmed by the Hon'ble Supreme Court.

- So far as filling up of AIQ is concerned, the III round of counselling is already notified. And, the tenor of the communication dated, 25.07.2023 from the Government of India appears to indicate that there may be a III round of counselling for the SQ as well.
- And, when the 3rd respondent sought certain clarification from the 4th and the 5th respondents on the issue, neither appeared to have responded.

10. What is in a name may suit the Shakespearian sense of aesthetics, but in a medical college admission under the NEET regime. Should the mop-round for the SQ be converted into III round of counselling as in AIQ? If the case of the petitioners is viewed, it makes abundantly clear that inasmuch as they have secured a seat in Round-I or II of the counselling, they obviously have a better rank in the rank list, than those who may compete for the seats in the III round of counselling, or the Mop up round. And, the candidate will have a great opportunity to upgrade his choice if the third round of counselling is called as the III round and not as a mop-up round. But if zero marks in the NEET (PG)



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examination is the latest criterion, something that was introduced midway through the admission process, and along side if the mop-up round is allowed to be continued as a mop-up round, then it will create a situation that a candidate with a better rank cannot have an opportunity to opt for what he desires, but someone lower in rank, which can now be even a zero, can get that which a better rank holder deserve. This is plainly unconscionable to the conscience of this Court. This anomaly can be resolved only if the mop-up round of the SQ prospectus is converted into III round of counselling as has been done in the case of AIQ seats.

11. Therefore, this Court passes the following order :

(i) Since fresh applications pursuant to zero marks ends today, and this court permits upgradation to Round-3 as done for the All India Quota, time for upgradation is extended till 04.10.2023 for the State Counselling. This is due to the extended date for PG Counselling i.e. 20.10.2023.

(ii) The candidates, who seek upgradation, shall so apply for the same till 04.10.2023. In this regard, the procedure which is applicable for upgradation from Round-1 to Round-2 will be replicated for upgradation



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to Round-3.

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12. The writ petition is accordingly disposed of. No costs. Consequently, the connected writ miscellaneous petitions are closed.

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Asr

Index : Yes/No

Speaking/Non-speaking Order



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- 6.The Government Pleader
High Court, Madras



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N.SESHASAYEE, J.,

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