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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.12.2023

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.34731 of 2023

Dr.S.Manikandan

... Petitioner

Vs

- 1.Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
Room No.156-A, “A” Wing,
Nirman Bhavan, New Delhi – 110 011.
- 2.National Medical Commission,
Rep. by its Secretary,
Pocket 14, Sector – 8,
Dwaraka Phase – 1,
New Delhi 110 007.
- 3.The Medical Counseling Committee,
The Assistant Director General (Medical Examination),
Room No.352, A-Wing,
Nirman Bhavan, New Delhi – 110 011.
- 4.The Dean,
The Nodal Officer,
Sri Lakshmi Narayan Institute of Medical Science,
Pondicherry, Osudu, Agaram Village,
Koodupakkam Post,
Puducherry – 605 502.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to allot the unfilled/vacant MS Ophthalmology Seat in the 4th respondent college to the petitioner herein.

For Petitioner : Mr.P.Venkatraman

For Respondents : Mr.K.Srinivasamurthy (for R1 & R3)
Senior Panel Counsel for Central Government
Mr.Lokesh Khanna (for R2)
for Ms.Shubaranjani Ananth
Standing Counsel

ORDER

Mr.K.Srinivasamurthy, learned Senior Panel Counsel accepts notice for Secretary, Ministry of Health and Family Welfare, Union of India and Medical Counselling Committee/R1 and R3 respectively and Mr.Lokesh Khanna, learned counsel on behalf of Ms.Shubaranjani Ananth, learned Standing Counsel accepts notice for National Medical Commission/R2. They are armed with requisite instructions to enable final disposal of this Writ Petition, even at the stage of admission. No notice is thought necessary to the private respondent/R4, in light of the order that is proposed to be passed in this Writ Petition.

2. The petitioner had studied his M.B.B.S. in Sri Lakshmi Narayan Institute of Medical Science, Pondicherry/R4. Being desirous of pursuing higher studies, he had appeared for the NEET examination for PG 2023-24 and secured



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54 marks. He is ranked 199579 in the All India list. He had participated in all the rounds of counselling, i.e., two rounds of regular counselling and one mop-up counselling, but had not obtained seat of his choice. In the stray vacancy that was held between 9th and 13th November, 2023, he had opted for a PG course in MS Ophthalmology in the R4 college and the seat had been allotted to a candidate with a rank of 95006.

3. He states that even after stray round of counselling, there are several seats that are left unfilled and this position continues even after the last date of reporting, which is 30.11.2023. Under these circumstances, he seeks a mandamus directing the respondents to allot an unfilled/vacant seat in MS Ophthalmology in R4 college.

4. Learned counsel for the respondents point out that the question of extending the date for admission does not arise in light of the decision of the Hon'ble Supreme Court in *Education Promotion Society for India and another V. Union of India and others* (W.P.(C) No.747 of 2019 order dated 21.06.2019).

5. In that Writ Petition, the prayer was for extension of time for admission to several Medical Colleges/Deemed Universities, since large number of seats were lying vacant in those colleges. However, that request was rejected in the following terms:



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'6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the P.G. courses are lying vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the UOI it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in nonclinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400500 seats. This Court however can take judicial notice of the fact that every year large number of non clinical seats remain vacant because many graduate doctors do not want to do postgraduation in nonclinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a Pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated.

7. We may note that in the schedule prescribed, there are three rounds of counselling, the first round, the second round and the mopup round. The mopup round was to be completed by 31.5.2019 and if some seats remain vacant even after the mopup round it cannot be helped. Extension cannot be granted just because some seats are lying vacant without there being any other justification.'

6. In light of the judgment as above and the categoric observations that extensions of time cannot be granted as a matter of rote as that would dislocate the fixed schedule, the request of the petitioner for extension of time cannot be acceded to.



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7. There is yet another point that arises in this matter. Assuming for a moment that the Court is inclined to consider the request, as the respondents point out, there is vast difference between the rank of the petitioner, being 199579 and the last admitted candidate in the stray round of counselling, which is 95006.

8. Thus, the petitioner cannot be cherry-picked from out of the pool of aspirants, some of whom would be more meritorious than him and assigned a seat of his choice. This would completely skew the concept of merit and would be inappropriate and impermissible.

9. In light of the aforesaid discussion and finding no merit in this Writ Petition, the same is dismissed. Assuming that there is any further extension of time after approval is obtained from the Hon'ble Supreme Court, fortuitously for the petitioner, he is always at liberty to participate in the subsequent rounds of selection. No costs.

13.12.2023

Index : Yes / No
Speaking order
Neutral citations: Yes
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