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W.P.(MD)No.4882 of 2023 etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.4882, 5503, 5721, 5918, 6049 of 2023

and

**W.M.P.(MD)Nos.4561, 4563, 4565, 5122, 5123, 5326, 5330, 5331, 5334,
5506, 5507, 5704, 5706, 5708, 5709 of 2023**

In WP(MD)No.4882 of 2023 : -

1.Vetriselvi

2.Bhuvaneshwari

... Petitioners

Vs.

1.The Member Secretary,
Medical Services Recruitment Board,
Government of Tamilnadu,
359, Anna Salai, Chennai – 06.

2.The Secretary, Health Department,
Government of Tamilnadu, Chennai.

3.The Union of India,
Represented by its Secretary,
Ministry of Health and Family Welfare,
Government of India, New Delhi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned selection list of the 1st respondent in Notification No. 02/MRB/2021 dated 16/02/23 and quash the same and further directing the



1st respondent to publish a fresh selection list by considering the candidature of the petitioners.

For Petitioners : Mr.G.Prabhu Rajadurai
For R-1 : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.M.Mohamed Mohideen
For R-2 : Mr.G.Suriyananth,
Addl. Government Pleader.
For R3 : Mr.J.Alaguram Jothi,
Senior Panel Counsel.

In WP(MD)No.5503 of 2023 :-

Archana ... Petitioner
Vs.

- 1.The Member Secretary,
Medical Services Recruitment Board,
Government of Tamilnadu,
359, Anna Salai, Chennai – 06.
 - 2.The Secretary, Health Department,
Government of Tamilnadu, Chennai.
 - 3.The Union of India, Represented by its Secretary,
Ministry of Health and Family Welfare,
Government of India,
New Delhi.
- ... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the impugned selection list of the 1st respondent in Notification No. 02/MRB/2021 dated 16/02/23 and quash the same and further directing the 1st respondent to publish a fresh Selection list by considering the candidature of the petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai
For R-1 : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.M.Mohamed Mohideen,
For R-2 : Mr.T.Villavankothai,
Addl. Government Pleader.
For R3 : Mr.S.Jeyasingh,
Senior Panel Counsel.

In WP(MD)No.5918 of 2023 : -

Muthu Karthikeyan

... Petitioner

Vs.

- 1.The Member Secretary,
Medical Services Recruitment Board,
Government of Tamilnadu,
359, Anna Salai, Chennai – 06.
- 2.The Secretary, Health Department,
Government of Tamilnadu, Chennai.
- 3.The Union of India,
Represented by its Secretary,
Ministry of Health and Family Welfare,
Government of India, New Delhi.

4.E.Vimalraj

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned provisional selection list of the 1st respondent in Notification No. 02/MRB/2021 dated 13/03/23 and quash the same and further directing the 1st respondent to publish a fresh Selection list by considering the candidature of the petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai
For R-1 : Mr.A.Baskaran,
Additional Advocate General,
Assisted by M.Mohamed Mohideen,
For R-2 : Mr.K.Balasubramani,
Spl. Government Pleader.
For R3 : Mr.K.Govindarajan,
Deputy Solicitor General of India

In WP(MD)No.5721 of 2023 : -

1.I.S.Gnanavel

2.S.Winston Churchill

... Petitioners

vs.

- 1.The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Chennai – 06.
- 2.The Secretary, Health and Family Welfare ,
Roon No.156A, Nirmal Bhawan,
New Delhi – 110011.
- 3.The Secretary, Ministry of Ayush,
Ayush Bhawan, B-Block,
GPO Complex, INA, New Delhi – 110 023.



4.The Director (Regulations),
Food Safety and Standards Authority
of India, FDA Bhawan, Kolta Road,
New Delhi - 110 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records of the 1st respondent pertaining to the impugned list of candidates published on 13.03.2023 by the 1st respondent, relating to the post of Food Safety Officer in connection with the selection process for the notification no. 02/MRB/2021 published on 13.03.2023 by the 1st respondent for the posts of Food Safety Officer quash the same as illegal and direct the respondent to allow only the candidate those who have completed their education i.e 1st to 10th Std, 12th Std, Bachelors of Siddha Medicine and Surgery (BSMS) Degree through tamil medium to avail PSTM quota, including the petitioners and proceed with the selection based on such new list, within the stipulated time period and pass such further or other orders as this Court may deem fit and proper for the circumstances of the case and thus render justice.

For Petitioner	: Mr.G.Sakthi Rao
For R-1	: Mr.R.Baskaran, Additional Advocate General, Assisted by M.Mohamed Mohideen,
For R-2	: Mr.K.Balasubramani, Special Government Pleader.
For R3 to R5	: Mr.R.Arjunarajan



In WP(MD)No.6049 of 2023 : -

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1.K.Venkatesan

2.S.Karthi

... Petitioners

VS.

The Member Secretary,
Medical Services Recruitment Board,
7th Floor, DMS Building,
359, Anna Salai, Chennai – 06.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records of the respondent pertaining to the impugned list of candidates published on 13.03.2023 by the 1st respondent, relating to the post of Food Safety Officer in connection with the selection process for the notification no. 02/MRB/2021 published on 13.03.2023 by the 1st respondent for the post of Food Safety Officer quash the same as illegal and direct the respondent to allow only the candidate those who have completed their education i.e 1st to 10th Std, 12th Std, Bachelors of Siddha Medicine and Surgery (BSMS) Degree through tamil medium to avail PSTM quota, including the petitioners and proceed with the selection based on such new list, within the stipulated time period and pass such further or other orders as this Court may deem fit and proper for the circumstances of the case and thus render justice.

For Petitioner : Mr.G.Sakthi Rao

For Respondent : Mr.R.Baskaran,
Additional Advocate General,
Assisted by M.Mohamed Mohideen,



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COMMON ORDER

Shiv Visvanathan's "The Necessity of Knowledge Panchayats" published in the centre page of today's "The New Indian Express" looks at cognitive justice as dialogue among different systems of knowledge. The illustrious essayist is Nobel laureate S.Chandrasekhar's nephew. Should a tribal be considered a repository of botanical knowledge of trees and plants helping maintain the diversity or treated as illiterate and ignorant?. The article refers to indigenista movement in Brazil. The linear idea of development has to give way to cyclical and cosmological time.

The author's thoughts found resonance in me because I have already read and re-read Ashis Nandy's 'Alternative sciences' which analyses aspects of the lives of two Indian pioneers of science: physicist and plant physiologist Jagadis Chandra Bose and mathematician Srinivasa Ramanujan. I was also reminded of Nammalvar who passed away recently and who was respected more than any agro-scientist having university degree.

2.Shiv Visvanathan and Ashis Nandy have helped me to resolve the issue of interpretation raised in these writ petitions. Justice



Markandeya Katju used to rhetorically ask : Why only Maxwell, why not Mimamsa?. I wish to add respectfully that solutions to knotty legal problems can lie in the intersectional region of law and philosophy.

3. Medical Services Recruitment Board (MRB), Chennai issued notification calling for applications from eligible candidates for direct recruitment to the post of Food Safety Officer on temporary basis in Tamil Nadu Food Safety and Drug Administration Department. The petitioners are holders of degree in Siddha medicine. They are medical practitioners. The applications submitted by the petitioners were accepted and they were issued with hall tickets. They wrote the written examination held on 20.12.2022. However, the selection list published by the Board did not contain their names. They came to know that graduates in Siddha medicine were not considered. That led to the filing of these writ petitions.

4. The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavits filed in support of these writ petitions. They called upon this Court to quash the impugned list and direct the board to publish a fresh selection list by considering the candidature of the petitioners.



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5.The Board has filed its counter affidavit. The learned Additional Advocate General appearing for the State as well as the Deputy Solicitor General of India appearing for the Central Government submitted that the issue now raised was considered by other High Courts already and that in the light of the orders passed by them, the present writ petitions deserve to be dismissed.

6.I carefully considered the rival contentions. The educational qualification prescribed for the post of Food Safety Officer is as follows :

“A Bachelor's degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Master's Degree in Chemistry or a Bachelor's degree in medicine from a University recognised by the University Grants Commission.”

The stand of the respondents is that “Bachelor's degree in medicine” would refer only to modern scientific medicine in all its branches and includes surgery and obstetrics. According to them, it refers to MBBS degree and not other systems of medicine such as Siddha. The Food Safety and Standards Authority of India have issued clarification in this regard on 12.10.2022.

7.The clarification provided by the said Authority is as follows :



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46643/2022/REGULATION-FSSAI

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F. No. REG-11/1/2022-Regulation-FSSAI
Food Safety and Standards Authority of India
(A Statutory Authority established under the Food Safety & Standards Act, 2006)
(Regulation division)
FDA Bhawan, Korla Road, New Delhi-110 002

Dated, the 12th October, 2022

Subject: Clarification with respect to the qualification of Food Safety Officer -reg.

Rule 2.1.3(1) of Food safety and Standards Rules, 2011 specifies:-

"Food Safety Officer shall be a whole time officer and shall, on the date on which he is appointed possesses the following: (i) a degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Masters Degree in Chemistry or degree in medicine from a recognized University, or (ii) any other equivalent/recognized qualification notified by the Central Government."

2. Many representations and RTIs have been received from stakeholders from time to time seeking clarifications in respect of the terms "Degree", "Degree in Medicine" and "equivalent/recognized qualification" specified in the qualifications of FSO in these Rules.

3. In this context, for the purpose of qualification of Food Safety Officer specified in Rule 2.1.3(1) of Food safety and Standards Rules, 2011, it may be clarified that:-

- i. The "degree" means the degrees as prescribed in Sub-section (3) of Section 22 of the University Grants Commission Act, 1956 (3 of 1956).
- ii. For the "Degree in Medicine", Hon'ble High Court of Allahabad in the matter of WP No. 2754 of 2015 Dr. Anil Pandey and ORs. Vs. State of Uttar Pradesh and Ors observed that the degree in Medicine does not include any other system of medicine and it will not be proper to include or read any other degree awarded by councils under other acts in to degree of Medicine. Medicine is defined only under Indian Medical Council Act, 1956 and not in other enactments.
- iii. In respect of the "equivalent qualification", the Central Government has not notified any such equivalent qualification so far. Hence, the only qualifications specified for the Food Safety Officer in the above-mentioned rules are applicable for the post of Food Safety Officer.

4. This issues with the approval of the Competent Authority.


V.K. Pancham
Director (Regulations)

To
All Food Safety Commissioner

Copy for information to:

1. PPS to Chairperson, FSSAI
2. PS to CEO, FSSAI



The above clarification only reiterates the position laid down by the

Hon'ble Allahabad High Court. What has been produced before me is only

a copy of the interim order dated 27.01.2015 in Writ Application No.2754

of 2015. It was argued before the learned Judge that the expression

“Degree of medicine” would include other systems of medicine as defined

under Section 2(e) of the Indian Medicine Central Council Act, 1970 and

under Section 2(d) of the Homeopathy Central Council Act, 1973. The

learned Judge noted that the Food Safety and Standards Act, 2006 was

enacted by the Parliament and the Food Safety Rules were framed by the

Central Government. All the statutes are Central enactments and

“medicine” has been defined only under the Medical Council Act, 1956.

Therefore, the definition set out in the 2006 FSSA Act should be

understood in the light of the definition found in the 1956 Act. The

reasoning of the learned Judge is found in the following paragraphs :

“Had the Central Government intended to include other systems of medicines, within the meaning of 'degree of medicine' as defined under the Food Safety Rules, the same would have been clarified. The degree in 'Indian Medicine' or 'Homeopathy' cannot be said to be 'degree in medicine' or its equivalent.

Since the rule is unambiguous and clearly states 'degree in medicine' and does not include any other system



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of medicine, it would not be proper for this court to include or read any other degree awarded by the councils under other Acts referred above into the definition of 'medicine'. Medicine is defined only under the Indian Medical Council Act 1956 and not in the other enactments dealing with Indian Medicine viz. Indian Medicine Council Act 1970 and Homeopathy Act 1973, this is also evident from the qualification/degree as specified in the Schedule of the respective Acts.”

The aforesaid order is entitled to great respect but it is not binding on me. It is only an interim order. No final order has been produced before me. An interim order cannot have any precedential value.

8.The learned Additional Advocate General as well as the Dy.Solicitor General of India contended that the essential qualification for appointment to a post is a matter to be exclusively dealt with by the employer and that the writ court ought not to interfere in the matter. Reliance is placed on the decision of the Division Bench of the Rajasthan High Court reported in **2020 (2) RIW 1352 (Rajnish Sharma v. State of Rajasthan)**. Though this case related to the post of Food Safety Officer, the propositions laid down therein do not have any bearing on the question raised in these writ petitions.



9. Section 2(f) of The Indian Medical Council Act, 1956 is as

follows :

“‘medicine’ means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery”.

The National Medical Commission Act, 2019 also retains the very same definition as is evident from Section 2(j) thereof.

10. Section 37 of FSSAI Act 2006 is as follows :

“37. Food Safety Officer. (1) The Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, as Food Safety Officers for such local areas as he may assign to them for the purpose of performing functions under this Act and the rules and regulations made thereunder.

(2) The State Government may authorise any officer of the State Government having the qualifications prescribed under sub-section (1) to perform the functions of a Food Safety Officer within a specified jurisdiction.”

Rule 2.1.3 of Food Safety and Standards Rules, 2011 sets out the qualification for Food Safety Officer. It is as follows :



“1. Qualification: Food Safety Officer shall be a whole time officer and shall, on the date on which he is so appointed possesses the following:

(i) a degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Masters Degree in Chemistry or degree in medicine from a recognized University, or

(ii) any other equivalent/recognized qualification notified by the Central Government, and

(iii) has successfully completed training as specified by the Food Authority in a recognized institute or Institution approved for the purpose.

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Safety Officer under this rule.”

The stand of the respondents is that the definition of the term “medicine” as found in Section 2(f) of the Indian Medical Council Act, 1956 must be imported into the aforesaid Rule prescribing qualification for the post of Food Safety Officer. The stand of the petitioners is that a wider meaning should be given and that the term “medicine” set out in Rule 2.1.3 of FSS Rules, 2011 would include Indian system of medicine also.



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11.The definition set out in Central Act 102 of 1956 is technical.

If the FSS Act, 2006 and the Indian Medical Council Act, 1956 are in pari materia or if there is a broad overlap of the statutory schemes underlying them, then, the definition found in the earlier Act can be imported into the later Act. That is clearly not the case here. Central Act 102 of 1956 provides for the reconstitution of the Medical Council of India and the maintenance of a medical register for India and for matters connected therewith. Central Act 34 of 2006 is meant to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. I do not find anything common between the two statutes. Hence, it would not be proper to narrowly construe the qualification set out in Rule 2.1.3 in the light of Section 2(f) of the Central Act 102 of 1956. Nothing stopped the Central Government to couch the text of Rule 2.1.3 of FSS Rules, 2011 by referring to the definition set out in Section 2(f) of the Central Act 102 of 1956. On the other hand, the Rule does not exclude the Indian system of medicine.



When the statutory Rule is broadly worded and a general expression is used, it is not for the writ court to narrow down its scope.

12. There is a linguistic exercise known as “parsing”. I will now parse Rule 2.1.3 :

“a degree in Food Technology or
Dairy Technology or
Biotechnology or
Oil Technology or
Agricultural Science or
Veterinary Sciences or
Bio-Chemistry or
Microbiology or
Masters Degree in Chemistry or
degree in medicine from a recognized University.”

I am not able to find any common denominator among the qualifications prescribed above. Section 2(f) of Central Act 102 of 1956 specifically excludes veterinary medicine and surgery. But Rule 2.1.3 states that holders of degree in Veterinary Sciences are eligible. This inclusion of Veterinary Sciences as an eligibility qualification indicates that the Rule makers did not intend to be confined by the definition set out in Section 2(f) of Central Act 102 of 1956 but travel beyond. The Rule is broad and sweeping. Otherwise, the category excluded in Section 2(f) of the Central



Act 102 of 1956 will not be included in the Rule. It virtually declares that

any science or medical graduate is eligible to become Food Safety Officer.

The expression “degree in medicine” cannot therefore be given a restrictive meaning.

13.“Medicine” has been defined in Oxford Advanced Learner's Dictionary as follows :

“the study and treatment of diseases and injuries : advances in modern medicine – to study/practice medicine / traditional / conventional / orthodox medicine : alternative medicine.”

It has been defined in Cambridge Dictionary as follows :

“The science or practice of the treatment and prevention of disease. A substance taken by mouth in order to treat or prevent disease. Origin Latin *medicus* 'physician'.”

Since there is no common denominator in the eligibility qualifications prescribed in the 2011 Rules, I hold that the expression “Degree in medicine' should be understood expansively. Medical degree awarded by any recognized University would fall within the sweep of the Rule. Siddha system of medicine is unique to Tamil Nadu. It is part of Tamil Culture. Earlier, every temple in Tamil Nadu would have a functioning Siddha dispensary attached to it. I do not know if that is still the current position.



I take judicial notice of the fact that the department of Siddha is undertaking researches. The role played by the Siddha doctors during Covid crisis cannot be lost sight of. The term “Kabasura Kudineer” is a part of our vocabulary. When Dengue struck us, the Government itself promoted Nilavembu Kashayam. The Government is running siddha medical colleges. They have been duly recognized. The syllabus and course content indicate that the endeavour is to keep the students abreast of the modern developments. During the recent past, to gain entry into medical course, one has to clear an eligibility test known as “NEET”. It is stated that for pursuing any medical course namely, MBBS, BDS or Siddha, one has to pass “NEET”. The expression “degree in medicine” would therefore include degree in Siddha medicine if issued by a recognised University.

14. Disqualifying a Siddha degree holder in the selection process is illegal. Any system of knowledge can be dynamic. Any system may be ancient or modern. The question is whether it is up to date and relevant to our requirements. It is in the hands of the practitioners to keep a system of knowledge alive. It is for the government of Tamil Nadu to ensure that Siddha system of medicine remains current.



15.The modern age starts from the age of reason. We date it back to 16th Century. Though the subsequent developments can be termed modern, we will still reject them as outdated and archaic if they are not up to date. It is on account of linear approach, we arbitrarily talk of ancient and modern. In a sense, nothing is ancient or modern. Everything depends on whether the system of knowledge or practice is a functioning reality. I hold that the expression “medicine” occurring in the Rule in question includes Siddha system of medicine also. This Indian or rather Tamil system of medicine also studies and treats a number of diseases. It may not have solution to all ailments. Allopathy system of medicine also does not answer all questions.

16.I therefore hold that the petitioners are entitled to be considered for the post of “Food Safety Officer”. The impugned selection list is quashed to the extent it excludes the petitioners. The respondents shall consider the petitioners also and issue a revised selection list. The writ petitions are allowed accordingly. No costs. Connected miscellaneous petitions are closed.

23.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
SKM



Note : Registry to issue revised order copy as the counsel requested for issuance of separate orders for Siddha/BDS. Since certified copy is yet to be issued, Registry to make the changes in the uploaded soft copy.

To:

- 1.The Member Secretary, Medical Services Recruitment Board,
Government of Tamilnadu, 359, Anna Salai, Chennai – 06.
- 2.The Secretary, Health Department, Government of Tamilnadu, Chennai.
- 3.The Secretary, The Union of India,
Ministry of Health and Family Welfare,
Government of India, New Delhi.



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W.P.(MD)No.4882 of 2023 etc.,

G.R.SWAMINATHAN, J.

SKM

W.P.(MD)Nos.4882, 5503, 5721,
5918, 6049 of 2023

23.03.2023