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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28014 of 2022

and

WMP(MD)No.22093 of 2022

The Chairman
Sree Mookambika Institute of Medical Sciences,
Velayutham Pillai Memorial Hospital Complex,
Padanilam, Kulasekharam,
Kanyakumari District
Run by Padanilam Welfare Trust
Kulasekharam, Kanyakumari District.

... Petitioner

v.

- 1.The Union of India Rep by its Secretary,
Department of Health, Central Secretariat, New Delhi.
- 2.The National Medical Commission,
Rep.by its Secretary, Pocket - 14, Section -9,
Dwarka Phase-1, New Delhi 110 077.
- 3.The State of Tamil Nadu, Rep. by its Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai 600 009.



4.The Director of Medical Education,
Directorate of Medical Education,
162, Poonamalle High Road, Kilpauk, Chennai 600 010.

5.The Secretary, The Selection Committee,
Directorate of Medical Education,
162, Poonamalle High Road, Kilpauk, Chennai 600 010.

6.Tamil Nadu Dr.M.G.R. Medical University,
P.B.No. 1200, No.69, Anna Salai, Guindy,
Chennai 600 032, Rep. by its Registrar.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 5th respondent Selection Committee to register forthwith the admission of the 3 Post Graduate Candidates in the petitioner's college for the academic Session 2022-2025 namely, (i) Richard Samuel (MS-General Surgery), (ii) B.Aurobindo (MS-Otorhinolaryngology) and (iii) K.A.Sharath Chandra (MD-Emergency Medicine) and pass such further or other suitable order / orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.Isaac Mohanlal, Senior counsel
for Mr.K.Ragatheesh Kumar

For Respondents : Mr.P.Paul Pandi, Senior Panel Counsel
for R1



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Mrs.Subaranjani Anand for R2

Mr.T.Amjadkhan, Government Advocate
for R3 and R4

Mr.J.Ravindran, Additional Advocate
General for Ms.Sneha for R5

Mr.S.Ramesh for R6

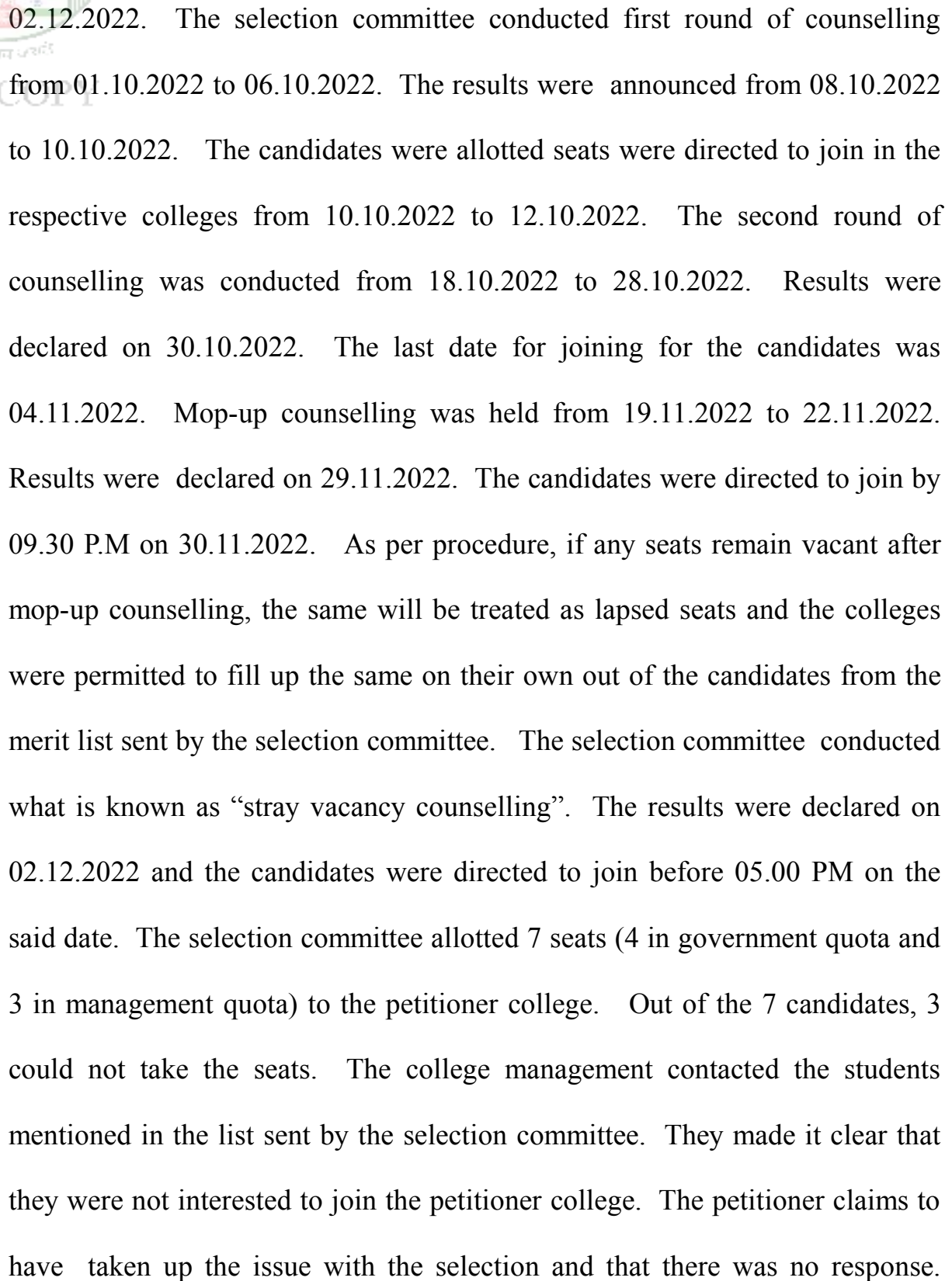
ORDER

Heard the learned Senior Counsel for the writ petitioner and the learned counsel for the respondents.

2.The primary issue that calls for consideration is whether the selection committee (R5) can be directed to register the admission of the petition mentioned candidates. The writ petitioner college is offering UG and PG medical courses. The case on hand relates to admission of candidates in PG courses. The petitioner is a minority institution entitled to exercise the fundamental right guaranteed under Article 30 (1) of the Constitution of India.

3.The case of the petitioner is as follows :

For the current academic year 2022-23, the National Medical Commission (R2) announced the last date of admission to the PG courses as





Since the seats would otherwise go waste, the management admitted the petition mentioned candidates provisionally (1 in government quota and 2 in management quota). It wants this Court to direct the respondents to approve the said admission.

4.The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He placed reliance on the following decisions :

“1.2010 (1) MLJ 923 (Chairman v. UOI

2.2011 (2) MLJ 709 (Medical Council of India v. Chairman)

3.WP(MD)No.14175 of 2017 (The Chairman, Sree Mookambika Insititute of Medical Sciences v. The State of Tamil Nadu)

4.WP(MD)No.7516 & 13135 of 2018 ((The Chairman, Sree Mookambika Insititute of Medical Sciences v. The State of Tamil Nadu)”

He also relied on Paragraph 69 of the decision reported in (2017) 8 SCC 653 (Christian Medical College Vellore Association v. MCI). It reads as follows :

“69.As far as the third contention is concerned, this Court in Ashish Ranjan v. UOI has dealt with this issue and come to the conclusion that the order in Dar-US-Slam case is



not applicable to postgraduate courses and is applicable only to undergraduate courses. This Court rejected the contention that the order in Dar-Us-Slam or the letter of the Union of India dated 26.05.2017 are applicable to postgraduate courses. This Court held as follows :

“62.We are, thus, of the considered view that order dated 09.05.2017 does not relate to admission into postgraduate courses and is confined to admission in undergraduate courses as noted above.

63.Coming to the circular issued by the Government of India, Ministry of Health and Family Welfare dated 26.05.2017, the said circular has been issued on the strength of the order of this Court dated 09.05.2017 in Dar-Us-Slam Educational Trust v. Medical Council of India. It appears that the said circular has been issued by the Government of India, Ministry of Health and Family Welfare in misconception that the order dated 09.05.2017 is applicable to the admission to the postgraduate courses. When the order dated 09.05.2017 is itself not applicable to postgraduate courses, the circular dated 26.05.2017 is not effective.” ”

He also relied on paragraph 25 of the order made in Civil Appeal No.868 of 2021 dated 03.02.2021 (Index Medical College, Hospital and Research Centre



v. The State of Madhya Pradesh & ors). It reads as under :

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“25.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 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.”



5.The fifth respondent had filed counter affidavit on their behalf and on behalf of the State. Their stand is that as directed by the Hon'ble Supreme Court in WP(C)No.267 of 2017 dated 09.05.2017, the selection committee had forwarded a list of students in order of merit equally ten times the number of vacancies to the petitioner college on 02.12.2022 and that the petition mentioned candidates are not figuring in the said list. The learned Additional Advocate General asserted categorically that this court should not permit the college management to unilaterally admit students on their own. That would be contrary to the scheme of admission that is now in vogue.

6.Mrs.Subaranjani Anand, the learned standing counsel appearing for National Medical Commission vehemently contended that the writ petition is not maintainable. She anchored her defence on Regulations 9 and 9A of the Post-Graduate Medical Education Regulations, 2000. Relying on the order dated 07.10.2021 made in WP No.31921 of 2017 etc., and the decision of the Hon'ble Apex Court reported in 2022 SCC Online SC 1475 (DCI v. Sailendra Sharma), she contended that the writ petition is bereft of merits. She strongly pressed for its dismissal.

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



8.Regulation No.9(11) of the PG Medical Education Regulation, 2000

reads as under :

“No authority / institution shall admit any candidate to any postgraduate medicine course in contravention of the criteria / procedure as laid down by these Regulations and / or in violation of the judgements passed by the Hon’ble Supreme Court in respect of admissions. Any candidate admitted in contravention / violation of aforesaid shall be discharged by the Council forthwith. The authority / institution which grants admission to any student in contravention / violation of the Regulations and / or the judgements passed by the Hon’ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year / years.”

This Regulation was considered by a learned Judge of this Court in WP No. 31921 of 2017 etc., batch dated 07.10.2020. It was held therein that there can be no justification for the educational institution concerned to have admitted candidates unilaterally outside the merit list prepared by the statutory agency. Discharge of the students as directed by MCI was sustained. The other



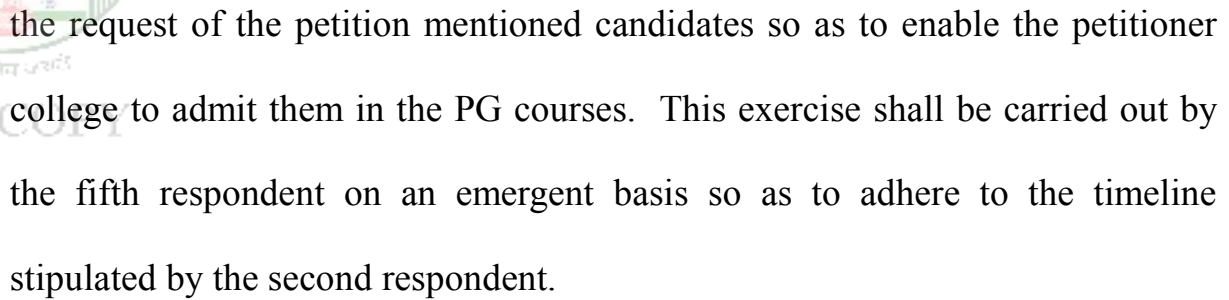
decision rendered by the Hon'ble Apex Court in Civil Appeal No.7611 of 2022 relied on by the learned standing counsel for National Medical Commission is also on the point. The Hon'ble Apex Court held that the admission of the students must be through the counselling process and that even if on the last date of admission, seats remained vacant, the institutions/colleges cannot grant admissions unilaterally. I endorse and accept the aforesaid contentions advanced by the learned standing counsel for NMC and reject the prayer made by the writ petitioner.

9. That cannot be the end of the matter. As per the direction of the Apex Court in WP(C) No.267 of 2017 dated 09.05.2017, “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.” In the case on hand, such a list was sent only on 02.12.2022 at 05.37 P.M. The list contained the names of students who had already been allotted/joined seats in various colleges in the previous rounds itself. For instance, one candidate who had scored 57th rank finds mention in this list. Obviously, he was a highly meritorious candidate and he would have definitely been allotted seat in a government college. The forwarding of list as



contemplated by the Apex court cannot be a mechanical exercise. It should contain only those candidates who have not been allotted seats in the previous rounds. In other words, the colleges concerned must have before them a pool of candidates in 1:10 ratio who can be prospective students. The selection committee in this case has complied with the letter of law but not the spirit. The whole object of the direction of the Hon'ble Apex Court is that seats should not go vacant and that the managements must have an opportunity to draw from a common pool. The selection committee is directed to bear this in mind while complying with the direction of the Hon'ble Apex Court.

10. The whole object is to ensure that non-meritorious candidates are not admitted. The learned Senior Counsel appearing for the petitioner asserts that the petition mentioned candidates herein are very much eligible and NEET qualified. The learned standing counsel for the second respondent graciously informed the court that the Medical Counselling Committee had issued notice dated 10.01.2023 informing that the State counselling authorities that the last of admission/counselling for State quota has been extended till 14.01.2023. The petition mentioned students can immediately apply to the fifth respondent and call upon them to include their names in the merit list to be forwarded to the petitioner college. If there are no other more meritorious candidates who are interested in joining the petitioner institution, the fifth respondent shall consider



<https://www.mhc.tn.gov.in/judis>
12/15



mind that the future of students is at stake and their response must be tailored accordingly.

12.The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

11.01.2023

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

To

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Department of Health, Central Secretariat, New Delhi.
- 2.The Secretary, National Medical Commission,
Pocket - 14, Section -9, Dwarka Phase-1, New Delhi 110 077.
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