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W.P.No.27311 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2024

PRONOUNCED ON : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.27311 of 2024
and
W.M.P.No.29812 of 2024

Sri Venkateshwaraa Medical College Hospital
and Research Centre

... Petitioner

Vs.

1.The National Medical Commission

Represented by its Secretary,
Pocket - 14, Sector – 8, Dwarka,
New Delhi - 110 077.

2.The Director- cum – Nodal Officer (Medical Education),
Directorate of Health and Family Welfare Services,
Government of Puducherry,
Puducherry.

3.The Centralized Admission Committee (CENTAC),
Represented by Coordinator,
Directorate of Higher and Technical Education,
Kamarajar Manimandapam, Karuvadikuppam,
Puducherry – 605008.

.....Respondents



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Prayer :- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in order dated 22.07.2024 in reference F.No.315/DHFWS/BOME/E3/PG-Counselling/2024-25/49 and quash the same and in consequence thereof, directing the third respondent to conduct PG medical counselling by treating all the PG medical seats available in the petitioner institution as all India Management Quota seats.

For Petitioner : Mr.Abishek Jenasenan

For Respondent -1: Ms. Shubharanjani Ananth,
Standing Counsel

For Respondent-2 : Dr.B.Ramaswamy
Additional Government Pleader (Puducherry)

For Respondent-3 :Mr.J. Kumaran
Additional Government Pleader (Puducherry)



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ORDER

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The order of the second respondent dated 22.07.2024, directing the Private Self-Financing Colleges to surrender 50% of the total sanctioned seats in the Post Graduate Medical Course towards Government quota for the academic year 2024-25, is put under challenge in the present Writ Petition.

2. Heard the learned counsels appearing for the petitioner as well as for the respondents.

3. The brief facts of the case of the petitioner is as follows:

3.1. The petitioner is a minority (Linguistic-Telugu) Private Self-Financing Medical College situated within the Union Territory of Puducherry. They are providing education in the field of medicine both at the Under Graduate and Post Graduate levels in various specialities. They were approved to offer training in various M.S. and M.D. Courses at the Post-Graduate Level. As per the regulations framed by the National Medical Commission (NMC), the second respondent is the Nodal Authority for conducting counselling for admission of students in



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PG medical courses.

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3.2. The question of power of the State to impose any kind of seat sharing upon the private unaided educational institutions is no longer *res integra* and the same has been decided by the Hon'ble Apex Court in various Judgments. Pursuant to the directions issued in ***Unni Krishnan J.P. and Others etc. Vs. State of Andhra Pradesh and Others [1993 (1) SCC 645]***, the NMC had originally framed the "*Post Graduate Medical Education Regulations, 2000*" (PGMER 2000). The clause 9 (7) of the Regulation envisages that in Non-Government Medical Colleges/Institutions, 50% of the seats shall be filled up by the State Government or Authority appointed by them. The directions issued in *Unni Krishnan's case as stated supra* was overturned by the Hon'ble Apex Court in ***T.M.A. Pai Foundation & Others Vs. State of Karnataka & Others [2003 (6) SCC 790]***.

3.3. Relying on the "*Post Graduate Medical Education Regulations, 2000*", the second respondent insisted the petitioner to surrender 50% of the seats in PG Medical Courses. Hence, the petitioner has filed a Writ Petition in W.P.No.10756 of 2018 before this Court, challenging the *vires* of the clause 9(7) of the said Regulation



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2000. Meanwhile, the NMC had framed and notified New Regulation namely, "*Post-Graduate Medical Education Regulations 2023 (PGMER 2023)*". The New Regulation contains repealing clause by which the old Regulations 2000 has been repealed. Hence, the W.P.No.10756 of 2018 was closed as infructuous.

3.4. The PGMER 2000 is not in force now. However, the second respondent issued the impugned order dated 22.07.2024 stating that, considering the provisions under New Regulation PGMER 2023, the Hon'ble Lieutenant Governor has directed the Private Self-Financing Medical Colleges to surrender 50% of the total sanctioned seats in PG courses towards Government quota. Since the same is illegal and against the various judgments of the Hon'ble Apex Court, the petitioner has filed the present Writ Petition to quash the impugned order dated 22.07.2024 and for a consequential direction to permit them to fill all seats as All India Management Quota seats.

4. Mr.Abishek Jenasenan, learned Counsel appearing for the petitioner in support of his contentions drew the attention of this Court to various decisions of the Hon'ble Supreme Court which are as follows:-

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4.1. The Hon'ble Supreme Court in ***P.A.Inamdar and Others Vs. State of Maharashtra and Others*** reported in **2005 (6) SCC 537** held that, the State cannot insist on seat sharing from private educational institutions receiving no aid from the State by fixing a quota of seats between Management and the State.

4.2. The Hon'ble Supreme Court has also held that the seat sharing would amount to nationalization of seats and will constitute a serious encroachment on the right and autonomy of private professional educational institutions and also cannot be held to be regulatory measure within the meaning of Article 30(1) or Article 19(6) of Constitution of India.

4.3. The Hon'ble Supreme Court had issued certain directions in *Unni Krishnan's case as stated supra*, directing that 50% of the seats be considered as free seats. The same was expressly overruled by the Hon'ble Supreme Court in *T.M.A. Pai's case*.



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4.4. In support of his contentions, the learned counsel relied upon the following paragraphs in *P.A.Inamdar's* case reported in 2005 (6) SCC 537:

"124. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to



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regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their



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own admissions if fair, transparent, non-exploitative and based on merit."

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5. Moreover, the learned counsel contended that based upon the clause 9(7) of the PGMER 2000, the respondents 2 and 3 herein insisted the seat sharing for all these years. Now PGMER 2000 has been repealed and PGMER 2023 came into force. The PGMER 2023 does not contain any specific seat sharing clause similar to that of clause 9(7) which was in existence in PGMER 2000. Hence, the impugned order deserves to be set aside.

6. While continuing his arguments, the learned counsel urged that even clause 4.8 of PGMER 2023 stipulates that the reservation of seats in Medical Colleges/Institutions for respective categories shall be as per the applicable laws prevailing in the States/Union Territories. In this regard, the Puducherry Government has framed regulation namely, "*The Pondicherry Private professional educational Institutions (Provision of reservation, Admission of students and fixation of fees) regulations, 2006*". The clause 14 of the Regulation deals about the reservation of seats. The applicability of this clause was expressly excluded to the minority education institutions referred in Article 30



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(1) of the Constitution of India. Hence, the reservation policy cannot be enforced against the petitioner.

7. Summing up his arguments, the learned counsel stressed that all 100% of the PG seats of the petitioner college should be treated as “All India Management Quota Seats”. At the level of the Post-graduate courses, only excellence can be the basis for admission and emphasized that implementation of reservation, is bad in law. He also submitted that at Post Graduate level, students from all over India should be allowed to participate in the admission process and it is pertinent to note that implementation of reservation will have a serious impact on the meritorious candidates.

8. Per contra, Ms.Shubharanjani Ananth, learned Standing counsel for the first respondent/NMC put forth her submissions that in exercise of powers conferred under Section 25 r/w. Section 57 and Section 35 of the National Medical Commission Act, 2019 [hereinafter referred to as “NMC Act”], the first respondent has framed the New Regulation PGMER 2023 dated 29.12.2023 and the same was published in the Official Gazette on 01.01.2024. She further submitted that Regulation 11.3 under Chapter–XI categorically provides that the



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earlier PGMER 2000 was repealed, whereas Regulation 4.8 under Chapter-IV dealing with admissions and counselling clearly provides that, reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in the States/Union Territories.

9. She also drew the attention of this Court to Regulation 4.8 under Chapter-IV which deals with admissions and counselling of the PGMER 2023. It is open for this Court to consider the reservation of seats in the petitioner medical college as per the applicable laws prevailing in the Union Territory of Puducherry which is also stated in the counter affidavit of the respondents.

10. At this juncture, the learned Standing counsel pointed out that all admissions to medical courses are to be made in accordance with law as laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of **Modern Dental College and Research Centre's case** reported in **2016 (7) SCC 353, wherein it has held that** The National Eligibility cum Entrance Test (NEET) followed by common counselling to be conducted by the State Government to ensure that there is complete transparency in the admission process



as also meritorious and only meritorious students are admitted in post graduate medicine courses.

11. The learned Standing Counsel would submit that the constitutional validity of second proviso to Regulation 9 (2) (d) of the pre-amended regulations was challenged before the **High Court of Karnataka at Bangalore in W.P.No.41058-41101 of 2003 and in Writ Appeal No.2773 of 2005**. The Karnataka High Court has held that proviso to Regulation 9 (2) (d) of the pre-amended regulations cannot be enforced against a private medical college in the light of observation made by the Hon'ble Supreme Court in *P.A. Inamdar's* case and the same was challenged by the Medical Council of India before the Hon'ble Supreme Court by way of two different appeals in **Civil Appeal No.667 of 2007 and Civil Appeal No.670 of 2007**. The Civil Appeal No.667 of 2007 was disposed by the Hon'ble Supreme Court vide order dated 01.03.2012 by observing that question of law kept open to be decided in Civil Appeal No.670 of 2007. Thereafter, the Civil Appeal No.670 of 2007 was disposed on 21.02.2019 after deprecating the practice adopted by the college in unilaterally admitting the students. Therefore, the question of law ultimately of statutory requirement of seat surrender as per Regulation 9(6) was



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closed and the present challenge, cannot reopen the same.

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12. The learned Standing counsel responded to the contentions of the petitioner in regard to Essentiality Certificate that the Essentiality Certificate issued by the State or Union Territory is at the request of any person seeking to establish medical College within that State or Union Territory. The same is a qualifying criteria under the Scheme framed under Section 10 A (2) (a) & (b) of the Indian Medical Council Act, 1956. Such essentiality certificate issued under Scheme framed under the repealed Act is saved under Section 60(4) of the National Medical Commission Act, 2019. The petitioner College has availed the benefits of such essentiality certificate and is therefore, bound by the terms of such essentiality certificate.

13. She emphasized that the reservation policy of the Union Territory of Puducherry is manifest in the impugned order of the second respondent herein dated 22.07.2024 and in view of the powers conferred under the NMC Act and Rules, the impugned order passed by the second respondent is valid and sustainable in the eye of law.



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14. Thus, she submitted that the relief sought by the petitioner being contrary to the statutory regulations and the various judgments of the Hon'ble Apex Court and High Courts, deserves to be rejected.

15. Dr.Ramasamy, learned Additional Government Pleader appearing on behalf of the respondents 2 and 3 submitted that NMC has notified the New Regulation PGMER 2023 on 29.12.2023. As per the clause 4.3 of PGMER 2023, there shall be a common counselling for admission to post-graduate courses in medicine for all medical institutions in India. All rounds of counselling for medical seats shall be conducted through online mode by the State or Central Government designated counselling authority. The medical colleges cannot admit the candidates on their own. From clause 4.4 of PGMER 2023, it is obvious that, either the Central or State Government can alone conduct counselling for admissions in respect of medical seats. He forcibly submitted that the medical Colleges/Institutions were not conferred with such powers.

16. He also cited clause 4.8 of the PGMER 2023 which empowers the State Government to implement their reservation policy



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in accordance with the prevailing law. He further stated that the reservation policy could not be implemented without following seat sharing and the claim of the petitioner herein to permit them to make admissions under management quota is nothing but an attempt towards profiteering. He further submitted that the fee committee constituted by the Government which was headed by the retired Judge of this Court has also already arrived the fee structure for the courses in the petitioner college. Hence, the issues raised by the petitioner college not to surrender 50% of medical seats, is *per se* illegal and without any valid reason.

17. He forcefully submitted that in respect of seat sharing, the petitioner has already agreed to surrender 50% of their intake at the time of commencement of the institution. The said agreement was entered in compliance with the Essentiality Certificate. In view of saving clause 11.2 found in New Regulation PGMER 2023, any actions made under the old Regulations PGMER 2000 shall be protected. Hence, now the petitioner/institution cannot turn around and refuse to share PG-seats with Government.



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18. He also brought it to the notice of this Court that every year, the Self-Financing Private Medical Colleges functioning within the Union Territory of Puducherry were filing the cases before this Court to deny the opportunity of meritorious students belonging to Puducherry. It is the tactic of private colleges to procrastinate the counselling process, by filing the cases before this Court which causes unrest among the medical aspirants and spot lighted that the rule of reservation can be preserved only in Government quota seats. Hence, the prayer of the petitioner is liable to be rejected.

19. The learned Additional Government Pleader referred to clause 4.3 of the PGMER 2023 which provides that there shall be common counselling for admission to post-graduate courses in all medical institutions. All rounds of counselling for all seats will be held on online mode by State or Central Government designated counselling authority. The medical college/institution cannot make admission on their own.

20. He forcibly supported the reservation policy and strenuously contended that, for the purpose of upliftment of socially backward



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people, implementation of reservation policy is mandatory. The clause 4.8 of the PGMER 2023 is framed by the NMC with laudable object to provide reservation benefits in medical college seats in respect of admissions and the same has to be implemented with letter and spirit for the betterment of the candidates hailing from socially backward sectors of the society those are aspiring for medical profession. For which, the seat sharing is vital for the purpose of implementing the reservation policy.

21. Furthermore, the learned Additional Government Pleader relies upon the seat matrix published by the respondents 2 & 3 on 30.09.2024 for implementation of reservation policy which stipulates the percentage of reservations are as follows:

VERTICAL RESERVATION

- 1 Open Merit - Unreserved (UR) 50 %
- 2 Other Backward Classes (OBC) 11 %
- 3 Backward Classes Muslims (BCM) 2 %
- 4 Most Backward Classes (MBC) 18 %
- 5 Extreme Backward Classes (EBC) 2 %
- 6 Backward Tribes (BT) 0.5 %
- 7 Scheduled Castes (SC) 16 %
- 8 Scheduled Tribes (ST) 0.5 %



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HORIZONTAL RESERVATION

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- 1 Children / Grand Children of Freedom (Fighter) (FF) 4 %
- 2 Person with Disabilities (PwD) 5 %
- 3 Wards of Ex-Servicemen (ESM) 1 %
- 4 Candidates who are Meritorious in Sports (MSP) 1 %

22. He vehemently opposed the submissions put forth by the learned counsel for the petitioner that the implementation of reservation policy at Post Graduate Level will have a serious impact on merit and by relying upon Article 15 (5) of the Constitution of India argued that the said Article does not make any distinction between UG and PG Courses.

23. The learned Additional Government Pleader brought to the notice of this Court that the petitioner college had already agreed to surrender 50% of their intake at the time of commencement of the Institution in compliance with the Essentiality Certificate. Hence, the seat sharing can be enforced against the petitioner college as consensual arrangements. In support of his contention, he strenuously relied upon the para no.128 of *P.A.Inamdar's case* reported in 2005



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(6) SCC 537 and submitted that the word “consensual arrangements” is having highly significance. The relevant para runs as follows:

“128. We make it clear that the observations in Pai Foundation in paragraph 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State”.

24. He would further contend that the provisions of the Regulation namely, *“The Pondicherry Private Professional Educational Institutions (Provision of reservation, Admission of students and fixation of fees) Regulations 2006*, framed by the Government of Puducherry. The New Regulation PGMER 2023 was framed by NMC, by exercising their power conferred under Section 25 r/w. Section 57 and Section 35 of the National Medical Commission Act, 2019. The PGMER 2023 being the regulation framed under Central Act will have overriding effect to the provisions of *“The Pondicherry Private Professional Educational Institutions (Provision of reservation, Admission of students and fixation of fees) Regulations, 2006*. Hence, the petitioner cannot take shelter under clause 14 of the said



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Regulation framed by the Government of Puducherry.

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DISCUSSIONS

25. Based on the above submissions made on behalf of the petitioner as well as the respondents, the following question arises for consideration of this Court:

(i) Whether the direction of the second and third respondents, directing the petitioner college for seat sharing, is legally sustainable or not?

26. The case of the petitioner is that they are minority (Linguistic-Telugu) Private Self-Financing Medical College situated within the Union Territory of Puducherry and providing education in the field of medicine both at the Under Graduate and Post Graduate level in various specialities. They were approved to offer training in various M.S. and M.D. Courses at the Post Graduate Level.

27. The petitioner college is challenging the impugned order of the second respondent dated 22.07.2024, as they have been directed to surrender 50% of the total sanctioned seats in the PG medical courses towards CENTAC Government quota for the academic Year



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2024-2025, on the ground stating that they are minority (Linguistic – Telugu) Private Self-Financing Medical College and therefore, the second and third respondents, cannot enforce seat sharing against them. They are entitled to fill their 100% of the PG seats by treating them as All India Management Quota seats. The New Regulation PGMER 2023 came into force by repealing the Old Regulation PGMER 2000. The PGMER 2023 does not contain any specific seat sharing clause similar to that of 9(7) which was in existence in PGMER 2000.

28. Whether seat sharing is permissible under Post-Graduate Medical Education Regulation 2023 (PGMER 2023) or not?

The clause 9(7) of the Old Regulation PGMER 2000 provides for seat sharing. The terms of the Regulation runs as follows,

9. Procedure for selection of candidate for Postgraduate courses shall be as follows.

(1) There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely 'National Eligibility-cum-Entrance Test' for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision



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*of the Ministry of Health & Family Welfare,
Government of India.*

*(2) The "designated authority" to conduct the
'National Eligibility-cum-Entrance Test' shall be
the National Board of Examination or any other
body/organization so designated by the Ministry
of Health and Family Welfare, Government of
India.*

.....

.....

*(7) In non-Governmental medical
colleges/institutions, 50% (Fifty Percent) of the
total seats shall be filled by State Government or
the Authority appointed by them, and the
remaining 50% (Fifty Percent) of the seats shall
be filled by the concerned medical
colleges/institutions on the basis of the merit list
prepared as per the marks obtained in National
Eligibility-cum-Entrance Test.*

*(8) 50% of the seats in Postgraduate Diploma
Courses shall be reserved for Medical Officers in
the Government service, who have served for at
least three years in remote and /or difficult areas
and / or Rural areas. After acquiring the
Postgraduate Diploma, the Medical Officers shall
serve for two more years in remote and /or
difficult areas and / or Rural areas as defined by*



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*State Government/Competent authority from
time to time.*

.....

(Emphasis supplied)

29. The similar clause 9(7) of PGMER 2000 is not found in New Regulation PGMER 2023. Hence, it is the contention of the petitioner that they cannot be compelled for seat sharing. However, opposing the same on behalf of the respondents 2 & 3, it is stated that in view of Clause 4.8 found in New Regulation PGMER 2023, which empowers the States/Union Territories for implementing reservation policy, seat sharing is permissible. The clause 4.8 of the PGMER 2023 runs as follows:

**"4.8 Reservation of Seats - The reservation of
seats in medical colleges/institutions for
respective categories shall be as per applicable
laws prevailing in States/Union Territories.**

*Provided further that 5% seats of annual
sanctioned intake capacity in Government or
government-aided higher educational institutions
shall be filled up by candidates with benchmark
disabilities by the provisions of the Rights of
Persons with Disabilities Act, 2016 based on the
merit list of NEET or NEET-PG for admission to*



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postgraduate medical courses. For this purpose, the "Specified Disability" contained in the Schedule to the Rights of Persons with Disabilities Act, 2016 is annexed at Annexure-8 and the eligibility of candidates to pursue a course in medicine with a specified disability shall be in accordance with Annexure-9. If the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats should be included in the annual sanctioned seats for the respective category."

30. The above arguments of the respondents 2 and 3 towards permissibility of seat sharing is also supported by the first respondent/ National Medical Commission. Now, the issue in question is that whether seat sharing is permissible even after clause 9(7) under Old Regulation PGMER 2000 is not in existence. The clause 4.8 of the New Regulation PGMER 2023 empowers the States/Union Territories to implement their reservation policy in accordance with their applicable laws prevailing within those States/Union Territories. The clause 4.8 of PGMER specifically framed for the purpose of extending the reservation benefits for the deserved candidates. Once the reservation benefits declared by law, the same should be ensured that the benefits of



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reservation actually reaches the deserving sections in the society. Due to the reason of clause 9(7) under Old Regulation PGMER 2000 is not in existence, the laudable purpose of reservation clause found in New Regulation PGMER 2023, cannot allowed to be inoperative and inactive. The reservation benefits should be given effect to at its full swing. The States/Union Territories cannot implement the social reservations without seats in their hands. The States/Union Territories can effectively implement their reservation policy only for Government quota seats, for which the seat sharing is unavoidable. Thus, seat sharing is *sine-qua-non* for effective implementation of reservation policy. The importance of reservation benefits particularly, in the field of education was dealt by the Hon'ble Supreme Court in **Neil Aurelio Nunes and Others Vs. Union of India and Others** reported in **2022 (4) SCC 1**, wherein in para No.33, it has observed as follows:

"33. The crux of the above discussion is that the binary of merit and reservation has now become superfluous once this Court has recognized the principle of substantive equality as the mandate of Article 14 and as a facet of Articles 15 (1) and 16(1). An open competitive exam may ensure formal equality where everyone has an equal opportunity to participate. However, widespread inequalities in the



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availability of and access to educational facilities will result in the deprivation of certain classes of people who would be unable to effectively compete in such a system. Special provisions (like reservation) enable such disadvantaged classes to overcome the barriers they face in effectively competing with forward classes and thus ensuring substantive equality. The privileges that accrue to forward classes are not limited to having access to quality schooling and access to tutorials and coaching centres to prepare for a competitive examination but also includes their social networks and cultural capital (communication skills, accent, books or academic accomplishments) that they inherit from their family. The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family's standing. This works to the disadvantage of individuals who are first-generation learners and come from communities whose traditional occupations do not result in the transmission of necessary skills required to perform well in open examination. They have to put in surplus effort to compete with their peers from the forward communities. On the other hand, social networks



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(based on community linkages) become useful when individuals seek guidance and advise on how to prepare for examination and advance in their career even if their immediate family does not have the necessary exposure. Thus, a combination of family habitus, community linkages and inherited skills work to the advantage of individuals belonging to certain classes, which is then classified as "merit" reproducing and reaffirming social hierarchies."

31. Moreover, the linguistic minority students are not going to be excluded from admission process to the Government quota seats. If they are eligible on merits and fulfils the requirements of reservation category, they can very well be accommodated in the Government quota seats. While that being so, the contentions of the petitioner that seat sharing is impermissible since the PGMER 2023 does not contain any specific seat sharing clause similar to that of 9(7) as found in PGMER 2000, is untenable.

32. Interpretation for words: "Reservation of seats in medical colleges/institutions for respective categories shall be as per



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applicable laws prevailing in States/Union Territories"

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The petitioner has raised another interesting issue that the clause 4.8 of PGMER 2023 envisages that the reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. In this respect, the law in force for Union Territory of Puducherry is "*The Pondicherry Private professional Educational Institutions (Provision of reservation, Admission of students and fixation of fees) Regulations, 2006*". The clause 14 of the same excludes the reservation of seats in Minority educational institution and the same reads as under:

"14. Reservation of seats – (i)
Reservation shall be made in sanctioned intake in a Private Professional Educational Institutions whether aided or unaided other than the Minority Education Institution referred to in clause (1) of Article 30 of the Constitution".

(Emphasis supplied)

33. For better appreciation, the clause 4.8 of PGMER 2023 is also reproduced hereunder for easy reference:

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"4.8 Reservation of Seats - The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories.

(Emphasis supplied)

34. The disputable question arises for consideration is that whether clause 4.8 of PGMER 2023 is applicable to the petitioner/institution or not? Especially, adverting to the words *"other than the Minority Education Institution referred to in clause (1) of Article 30 of the Constitution"* found in clause 14 of the Puducherry Regulation. To answer the same, it is beneficial to note that clause 4.8 of PGMER 2023 also uses the words "medical colleges/Institutions". The same was defined in the NMC Act, 2019, as well as by the PGMER 2023, which are read as follows:

"Section 2 (i) of the National Medical Commission Act, 2019 defines that "Medical Institution" means any institution within or outside India which grants degrees, diplomas or licences in medicine and include affiliated college and deemed-to-be-Universities.



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Clause 1.2 (c) of PGMER 2023 defines that
“Medical Institution” shall mean ‘Medical Institution’ as defined in Section 2(i) of the National Medical Commission Act, 2019; and the shall include a common expression medical college as well.”

35. The term “Medical Institution” defined by the PGMER 2023 is much wider than the definition given by the Section 2 (i) of the National Medical Commission Act, 2019. On a careful reading the above two definitions, it is explicit that the minority medical institution shall also come within the definition. Therefore, the term “Medical Colleges/Institutions” used in clause 4.8 of PGMER includes minority institution, thereby intended to apply the reservation policy for all medical colleges, including the minority medical colleges. The 2006 Regulation framed by Government excluding the Minority Medical Institution from applicability of reservation policy, is directly repugnant to the Central Act and Regulation. If that being so, the provisions of National Medical Commission Act, 2019 and PGMER 2023 Regulations shall have notwithstanding effect over the 2006 Regulation framed by the Government of Puducherry. Therefore, the reservation policy can



be very well enforced against the petitioner Institution notwithstanding that they are Minority Medical College.

36. The percentage of reservation for the States/Union Territories all over this great nation are not same. All the States/Union Territories by way of *law or rules or regulation* notified the quantum of reservation which was arrived based on their respective backward classes population. The OBC list for each and every States/UT differs. Each State/UT will have different categories of SC and ST. The sub-categories from the OBC categories will also differs. The OBC categories for State list and Central list were also not the same. Hence, clause 4.8 of PGMER 2023 declares that, the reservation of seats for respective categories shall be as per applicable laws prevailing in that States/Union Territories.

37. Whether all the PG medical seats available in the petitioner institution can be treated as All India Management Quota Seats or not?

The case of the petitioner is also that the PG medical counselling should be conducted by treating all the PG medical seats as All India Management Quota seats and the impugned order of the second



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respondent dated 22.07.2024, directing the seat sharing, is bad in law.

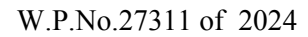
The petitioner being minority institution, is entitled for protection under Article 30 of the Indian Constitution which is as follows:

"30. Right of minorities to establish and administer educational institutions:

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language".



38. The learned Additional Government Pleader appearing for the

39. To answer the above issue, it is necessary to analyse the

"74. We now consider the question of the



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75. *Article 30(1) deals with religious minorities and linguistic minorities. The opening words of Article 30(1) make it clear that religious and linguistic minorities have been put at par, insofar as that Article is concerned. Therefore, whatever the unit - whether a state or the whole of India - for determining a linguistic minority, it would be the same in relation to a religious minority. India is divided into different linguistic states. The states have been carved out on the basis of the language of the majority of persons of that region. For example, Andhra Pradesh was established on the basis of the language of that region. viz., Telugu. "Linguistic minority" can, therefore, logically only be in relation to a particular State. If the determination of "linguistic minority" for the purpose of Article 30 is to be in relation to the whole of India, then within the State of Andhra Pradesh, Telugu speakers will have to be regarded as a "linguistic minority". This will clearly be contrary to the concept of linguistic states.*

76. *If, therefore, the state has to be regarded as the unit for determining "linguistic minority" vis-a-vis Article 30, then with "religious*



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minority" being on the same footing, it is the state in relation to which the majority or minority status will have to be determined.

77. In the Kerala Education Bill case, the question as to whether the minority community was to be determined on the basis of the entire population of India, or on the basis of the population of the State forming a part of the Union was posed at page 1047. It had been contended by the State of Kerala that for claiming the status of minority, the persons must numerically be a minority in the particular region in which the education institution was situated, and that the locality or ward or town where the institution was to be situated had to be taken as the unit to determine the minority community. No final opinion on this question was expressed, but it was observed at page 1050 that as the Kerala Education Bill "extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State."

78. In two cases pertaining to the DAV College, this Court had to consider whether the Hindus were a religious minority in the State of



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Punjab. In *D.A.V. College v. State of Punjab and Ors.* [1971 (Supp.) SCR 688], the question posed was as to what constituted a religious or linguistic minority, and how it was to be determined. After examining the opinion of this Court in the Kerala Education Bill case, the Court held that the Arya Samajis, who were Hindus, were a religious minority in the State of Punjab, even though they may not have been so in relation to the entire country. In another case, *D.A.V. College Bhatinda v. State of Punjab and Ors.* [1971 (Supp.) SCR 677], the observations in the first *D.A.V. College* case were explained, and at page 681, it was stated that "what constitutes a linguistic or religious minority must be judged in relation to the State inasmuch as the impugned Act was a State Act and not in relation to the whole of India." The Supreme Court rejected the contention that since Hindus were a majority in India, they could not be a religious minority in the state of Punjab, as it took the state as the unit to determine whether the Hindus were a minority community.

79. There can, therefore, be little doubt that this Court has consistently held that, with regard to a state law, the unit to determine a religious.



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or linguistic minority can only be the state.”

(Emphasis supplied)

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40. In view of the law laid down by the Hon'ble Supreme Court of India, a particular State/Union Territory alone should be taken as a unit for the purpose of determining both religious, as well as linguistic minority people, within that State or Union Territory. Therefore, the Telugu speaking minority candidates available within the Puducherry can alone be categorised as Linguistic Minority.

41. Now the next question that arises is that, the category of candidates falls under “All India Management Quota”. The candidates those who are applying with the State Counselling Authority for the Management Quota Seats, will come under the category of All India Management Quota. Those candidates may not necessarily be the residence of that particular State or Union Territory. If that being the position, if the case of the petitioner to treat the entire PG seats as All India Management Quota Seats is accepted, it will definitely go against the interest of the linguistic minority candidates. The petitioner wants to admit and fill their entire PG medical seats from Non-Minority candidates in the colour of enforcing minorities right.



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42. It is predominant to note that the claim of the petitioner to treat their entire available PG seats as All India Management Quota is not an attempt to enforce their fundamental rights but the same will amount to claiming privilege. Such privilege is not permissible in law for the petitioner. There is difference between right and privilege. Right is classified under two categories. One is Fundamental Right guaranteed under Constitution and the second is Statutory Right prescribed by a Statue. The Black's Law Dictionary defines the word 'privilege' as a *particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens.*

43. Article 30 of the Constitution of India guarantees fundamental right for the Minorities to establish and administer educational institutions. Thus, Article 30 of the Constitution does confer right alone, does not confer any special privilege upon the minorities. Hence, the prayer of the petitioner to treat all PG medical seats as All India Management Quota, is impermissible since the same will amount to special privilege. While exercising the powers under Article 226 of the Constitution of India, this Court can only enforce the valuable rights of the citizen and the same cannot be exercised to



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confer a privilege upon any person. Therefore, the petitioner cannot be permitted to treat their entire PG seats as All India Management Quota Seats. However, the situation would be different in the event of the minority quota seats goes unfilled. To avoid the wastage of the medical seats, necessary conversion process may be adopted in a manner known to law.

44. Essentiality Certificate and Consensual Agreement:

The main contention of the petitioner, is that they being the minority institution, cannot be forced by the Government to share the seats. In support of his submission, the learned counsel relied upon the para Nos.124 and 125 of the *P.A.Inamdar's case* [(2005) 6 SCC 537]. Further, the Essentiality Certificate was issued to the petitioner Institution by the Government of Puducherry on 30.08.2005, prior to the judgment issued by the Hon'ble Supreme Court in *P.A.Inamdar's case*. The same cannot be considered as "consensual agreement" as contemplated in *P.A.Inamdar's case*. Furthermore, a memorandum of agreement dated 16.07.2015 executed by the petitioner only for MBBS Course and not PG Medical courses.

45. In response to the same, Dr.B.Ramaswamy, learned



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Additional Government Pleader appearing for the respondents 2 and 3 submitted that there is a valid consensual agreement executed by the petitioner in favour of the Government of Puducherry. The same was executed by the petitioner at the time of getting Essentiality Certificate. In view of para no.128 of the *P.A.Inamdar's case [(2005) 6 SCC 537]*, necessarily the petitioner has to share their seats for Government quota.

46. In regard to the same, Ms.Shubharanjani Ananath, learned Standing counsel appearing for the first respondent/National Medical Commission also put forth her submissions that the Essentiality Certificate issued by the State or Union Territory is at the request of any person seeking to establish medical College within that State or Union Territory. The same is a qualifying criteria under the Scheme framed under section 10 A (2) (a) & (b) of the Indian Medical Council Act, 1956. Such essentiality certificate issued under scheme framed under the Repealed Act is saved under Section 60(4) of the National Medical Commission Act, 2019. The petitioner College has availed the benefits of such essentiality certificate and is therefore, bound by the terms of such essentiality certificate.



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47. In reply to the contentions of the petitioner that the Essentiality Certificate was issued by the Government on 30.08.2005 which is prior to the P.A.Inamdar's case. Therefore, the same cannot, under any circumstances, considered to be the "consensual agreement" as contemplated under P.A.Inamdar, the respondents replied that the contention of the petitioner is factually, as well as legally, not veracious. The Hon'ble Supreme Court, delivered the judgment in P.A.Inamdar's case only on 12.08.2005. Hence, the Essentiality Certificate issued to the petitioner college is subsequent to P.A.Inamdar's case and not prior to the same. Further, the Hon'ble Apex Court in para No.128 clarifies the para No.68 of T.M.A.Pai foundation's case and the same reads as under:

"128. We make it clear that the observations in Pai Foundation in paragraph 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State".



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48. The seat sharing with minority Institution can be validly arrived by way of consensual arrangement. The submission of the petitioner is that there is no valid consensual arrangement with Government of Puducherry. But the very same writ petitioner college challenged the seat sharing before this Court in W.P.No.15598 of 2018 and this Court, after hearing all the parties concerned, had dismissed the same. The relevant portion of the order is extracted as follows:

"6. The aforesaid facts are not in dispute. The only issue that arises for consideration is as to whether there was a compulsion on the part of the respondents with regard to the seat sharing. The petitioner's case would have been accepted, if, by means of a letter, there was a demand and thereafter, the agreement was entered. In this case, by means of the consensus, the Memorandum of Agreement was entered into between the parties on 16.04.2015, which was duly signed by the parties, and thereafter, in the approval letter, dated 09.06.2015, the conditions have been imposed. Even though it has been contended by the learned counsel for the petitioner that paragraph 3(vi) of the approval letter dated 09.06.2015 imposed in the communication is wrong/illegal, this Court cannot accept the said contention, as there was a



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Memorandum of Agreement as on 16.04.2015, based on which, the approval was given, and that the conditions have been imposed. For clear understanding, the said paragraph 3(vi) of the approval letter is extracted below:

"As regards the medical admission is concerned, the benchmark of 53 MBBS seats against the total intake of 150 in the academic year 2014-15 shall be the minimum threshold limit for future seat allocations and this ratio shall also be the guide for proportionate additional seat allocations in case of enhancement of intake, whenever it happens. Further, over and above the 53 seats, the institute shall also offer 1 (one) additional MBBS seat every alternate year commencing from 2015-16."

7. That apart, paragraph 3(vi) of the said approval letter, extracted supra, is very clear that there was a mutual agreement between the parties. The Memorandum of Agreement precedes the approval letter and that the petitioner has also contended that the Memorandum of Agreement and the approval letter have got to be read together and they cannot be read in isolation. In such an event, only after the consensus/agreement, the seat sharing was done. If the Memorandum of



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Agreement is read in isolation, then the entire Memorandum of Agreement has to go; so also the consequential approval letters. The approval letter cannot stand alone, but for Memorandum of Agreement.

8. Further, there is no evidence to the effect that the meritorious students are not going to be considered on account of the seat sharing. The decisions of the Supreme Court, quoted above and relied on by the learned counsel for the petitioner, are against the petitioner itself and it is clear that the Apex Court has categorically held that there can be a seat sharing with consent.

9. Hence, for the reasons stated above, I find that there is no reason to grant the relief sought for by the petitioner. The Writ Petition is accordingly dismissed"

49. However, the petitioner now by relying upon the clause 2(vi) of the "Memorandum of agreement" dated 16.04.2015 and claims that the memorandum will be applicable only for the MBBS seats. The same will not applicable for the PG medical seats. To answer this issue, the relevant terms of the agreement were extracted hereunder:



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MEMORANDUM OF AGREEMENT (MOA)

....

2. Admission of Students:

(i) Permission to admit students to MBBS course shall be obtained from the Government of India and affiliation shall be obtained from the Pondicherry University.

(ii) 50% of the total intake permitted by the Government of India shall be from the above minority community.

(iii) Ramachandra Educational Trust Chennai, shall share seats to the Government of Puducherry for admission of students through CENTAC by reaching mutual agreements between Management and the 'Authority every year in Sri.Venkateswaraa Medical College Hospital and Research Centre, Puducherry, Indirani College of Nursing, Puducherry, Sri.Venkateswaraa College of Paramedical Sciences, Puducherry, Sri.Venkateswaraa Dental College, Puducherry, Sri.Venkateswara Engineering College, Ariyur,



Puducherry and any other new colleges /educational institutions proposed to be established by the said Ramachandra Educational Trust in future.

(iv)The Trust shall abide by the directions of the Hon'ble Supreme Court of India in Unnikrishnan J.P and others versus state of Andhra Pradesh and others in Writ Petition (C) No.607 of 1992 and other recent decisions of the Supreme Court in the matter and the Medical Council of India (Norms and Guidelines for Fees and Guidelines for Admission in Medical Colleges) Regulations, 1994, in filling up the remaining seats.

(v)The Trust shall abide bythe any other directions/orders of the Supreme Court of India and the Government of India in matters of admission and allied matters incidental thereto.

(vi)Ramachandra Educational Trust, Chennai, administering institutions in the Union Territory of Puducherry and functioning at No.13-A, Pondicherry – Villupuram Main Road, Ariyur, Puducherry – 605 102,



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has agreed to allot not less than the number of seats allotted in the academic year 2014-15 to the Government of Puducherry for admission of students through CENTAC by reaching mutual agreement between Management and the Authority every year in Sri Venkateshwaraa Medical College Hospital & Research Centre, Puducherry, Indirani College of Nursing, Puducherry, Sri Venkateshwaraa College of Paramedical Sciences, Puducherry, Sri Venkateshwaraa Engineering College, Ariyur, Sri Venkateshwaraa Dental College, Puducherry and any other new colleges/educational institutions proposed to be established by the said Ramachandra Educational Trust in future. Further, in case of increase in the total intake of seats, the Trust shall proportionately increase the number of seats given to Government of Puducherry.

(vii) Legal provisions made by the Legislature of the Government of Puducherry or the scheme evolved by the Court for monitoring admission procedure and fixation of fees are binding on the Trust.



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(viii)All graduate, post graduate level of education as well as all technical and professional educational institutions administered by the said Trust shall obtain the required recognition by or affiliation with any competent authority created by law, such as a University, Board, Central or State Government or the like, in the interest of students of the Union Territory of Puducherry.

(ix)Unless there is fundamental change of circumstances warranting cancellation of earlier orders or suspension of any material fact while passing the order of conferral of minority status, the 'Authority' shall not review its order conferring minority status on the minority educational institutions administered by the said Trust."

50. I have gone through the clause 2(vi) of the above agreement. I am unable to accept the submissions made on behalf of the petitioner that the aforesaid agreement was executed only for the purpose of sharing MBBS seats alone and the same has no relevance



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for the PG medical seats. It is obvious to note that nowhere in the terms of the agreement such prohibition is found to exclude the PG seats from seat sharing. It is also seen from the clause 2(viii) of the agreement that the post graduate level was also one of the subject matter of terms of the agreement. Therefore, the said issue is also answered against the petitioner. Hence, the petitioner is bound by the agreement and also to share the PG seats as well to the Government quota seats.

51. At this juncture, this Court accentuate to share the views rendered by the former judges as well as leaders of our nation which are as follows:-

Justice K.G.Balakrishnan :

Equality is not merely the absence of discrimination but the presence of meaningful opportunity. He has often emphasized that the reservation system is a tool for ensuring social justice and providing opportunities to historically marginalized communities. He viewed it as a mechanism to bring inclusivity and reduce societal inequality.

**“Reservations are not just a policy but
a constitutional commitment to ensure**



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**equality and justice for the underprivileged
sections of society.”**

Justice Jeevan Reddy :

Reservation is not an end but a means to secure social and economical justice. It must not only uplift the backward classes but also integrate them into the mainstream.

K.R.Narayanan (Former President of India):

Reservation is not a charity, it is a recognition of the historical injustice and the need to ensure equal opportunity for all citizens.

52. In view of the elaborate discussions of the matter and in the light of the decisions of the Hon'ble Supreme Court as stated supra and the foregoing reasons, this Court is of the considered opinion that the petitioner college, is not entitled for any relief as sought for by them and accordingly, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.



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53. Before parting with the case, this Court place on record its appreciation for the strenuous efforts of the learned counsel for the respondents, who have put forth their arguments for the welfare and upliftment of the socially backward sectors of the Society. Dr.B.Ramaswamy, learned Additional Government Pleader supported the reservation policy and vehemently contended that for the purpose of upliftment of socially backward people, implementation of reservation policy is mandatory and emphasized that the same has to be implemented with letter and spirit for the betterment of the candidates hailing from socially backward sectors of the society those are aspiring for medical profession.

29.11.2024

Index: Yes
Order: Speaking
NCC : Yes

DP



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To
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- 1.The National Medical Commission
Represented by its Secretary,
Pocket - 14, Sector – 8, Dwarka,
New Delhi - 110 077.

- 2.The Director- cum – Nodal Officer (Medical Education),
Directorate of Health and Family Welfare Services,
Government of Puducherry,
Puducherry.

- 3.The Centralized Admission Committee (CENTAC)
Represented by Coordinator,
Directorate of Higher and Technical Education,
Kamarajar Manimandapam, Karuvadikuppam,
Puducherry – 605008.



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VIVEK KUMAR SINGH, J.

DP

ORDER MADE IN

W.P.No.27311 of 2024

and

W.M.P.No.29812 of 2024

29.11.2024