

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31/10/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 26717 of 2003 and Writ Petition No. 26307 of 2003
and
W.P.M.P.Nos. 32647 and 32193 of 2003

W.P.No. 26717 of 2003

G. Madhumitha. .. Petitioner.

-Vs-

1. State of Tamil Nadu,
represented by its Secretary to
Government, Health and Family
Welfare Department, Fort St. George,
Chennai-600 009.

2. Secretary,
Selection Committee,
Professional Courses for MBBS.,
Kilpauk Medical College Campus,
Chennai-600 010. .. Respondents.

W.P.No. 26307 of 2003
M. Muralidharan.
.. Petitioner.

Vs.

Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, E.V.R. Periyar Road,
Kilpauk, Chennai-600 010.

.. Respondent.

Petitions filed under Article 226 of the Constitution of India, for issuance
of Writs of Mandamus, as stated therein.

!For Petitioner in W.P.No.26717/2003 :: Mr. C. Selvaraju

Mr. K.M. Vijayan, Senior counsel for M/s. La Law:-
For petitioner in W.P.No. 26307 of 2003.

For Respondent : ---

:COMMON ORDER

By consent of both parties, writ petitions themselves are taken up for disposal. Petitioner in W.P.No. 26717/2003 has prayed to issued a writ of mandamus, directing the respondents to admit her in M.B.B.S. Course for the academic year 2003-2004 in any one of the Government Medical College. Petitioner in W.P.No. 26307/2003 has also prayed for similar direction.

2. According to the petitioner in W.P.No. 26717/2003, she did her Plus 2 in March, 2002. She secured 1131 out of 1200 marks in improvement examination held in March, 2003. She belongs to Backward Class community. She secured 194 marks in Physics, 199 in Chemistry, 197 in Biology, 197 in Maths, all out of 1200 marks. After revaluation in Physics paper, she was given 197/200. The re-valuation mark was given only on 24-7-2003. In the meanwhile, along with the others she also applied for Entrance Examination for Tamil Nadu Professional Courses. She was awarded 49.58/50 marks in Biology and 48.32 out of 50 marks in Physical Science and put together the total mark in the Entrance Examination awarded to her come to 97.90 marks. Since some mistake has been committed in the valuation of Physical Science paper in the Entrance Examination and correction is being carried out and revised mark will be given after the revaluation of the Physical Science paper. After the revaluation, she had been awarded 47.90 marks in Physical Science and thereby they reduced 0.42 marks from the originally awarded mark. Since the reduction of the marks without any opportunity unilaterally is an arbitrary action on the part of the Anna University, she filed W.P.No. 20839/2003 before this Court. This Court directed to restore the old mark already given and she was given restoration of old mark in the Entrance Examination, i.e., 48.32 in Physical Science. She also applied for revaluation in Physics. In the revaluation she got 3 more marks. After revaluation in the academic subject as well as restoration of entrance examination marks, her marks raised to 295.40. The cut off mark of the selected candidate in the second counselling was 295.32 for Backward Class category. As far as students who have been given 295.32 marks are concerned, allotment was made to the Government Medical Colleges. Therefore, she is entitled for admission in the Government Medical college. This Court granted relief only in respect of the petitioners who came before this Court. The respondents in their own way will and pleasure have allowed number of students who have not approached this Court for counselling and added to that they have also passed order that 0.42 marks shall be added to the students who have already admitted and on the basis of the additional mark re-allotment has been effected. As a result of the conduct of the respondents, she has been now offered to private Medical College. In such a circumstance, having no other remedy has filed the present writ petition for appropriate relief.

3. The case of the petitioner in W.P.No. 26307/2003 is that he appeared for

the Higher Secondary course examination in the year 2003 and secured 1107 marks out of 1200. He secured 200/200 in Physics, 199/200 in Chemistry and 198/200 in Biology. In the professional courses examination, the petitioner secured as much as 47.06/50 marks in Physical Science. Based on the recommendation of the second expert committee constituted by the Anna University, the petitioner had to lose .42 marks and by the revised mark sheet it was informed to the petitioner that he has secured only 46.64 marks in the Physical Science subject which resulted in reduction of marks in the Biology Group, wherein the petitioner has secured 96.22 marks and the over all aggregate marks is lowered to 294.97. Questioning the same, he filed W.P.No. 23426/2003. Admittedly, this Court held that revision of mark reducing 0.42 marks as illegal and directed the Anna University to add 0.42 marks to the petitioner and issue a fresh mark sheet to the petitioner. Pursuant to the order, the petitioner was also issued a revised mark sheet after adding 0.42 marks. After addition of 0.42 marks the total marks of the petitioner is 295.39. Whereas the cut off marks set by the respondent for that of the backward community classes is 295.32 and hence, the petitioner is much eligible if the selection is done in accordance with merit. The petitioner was asked to attend the counselling for M.B.B.S seats on the basis of the revised mark. He also attended the counselling on 17-9-2003, and found his name in the waiting list as No.11. The petitioner having secured 0.07 marks over and above the cut off mark set by the Selection Committee was denied medical seat, in spite of candidates securing lesser mark than the petitioner were allotted Government Medical college seats. Having no other remedy filed the above writ petition for appropriate direction.

4. Additional Director of Medical Education and Secretary In charge, Selection Committee has filed a separate counter affidavit in the above writ petitions. There is no dispute with regard to the marks secured by the petitioners. It is also not disputed the order passed by this Court directing the Anna University to add 0.42 marks with the marks already awarded to the writ petitioners who have shaded either choice 3 or 4 as correct answer to question No.54. Pursuant to the direction of this Court, it was decided to conduct recounselling for the entire approved intake as the unfilled seats (75 seats) are available in different medical colleges. Re-counselling was conducted on 17-9-2003 and 18-9-2003. Totally 167 number of candidates approached this Court seeking the addition of 0.42 marks. Among those writ petitioners, 18 candidates were already got selected during the second phase of counselling held on 17-7-2003. In the re-counselling conducted on 17-9-2003 and 18-9-2003, totally 49 writ petitioners got selected in accordance with their rank. Apart from the 67 writ petitioners (18 +49) got selected in the recounselling, 26 more candidates who did not file writ petition seeking addition of 0.42 marks were also found eligible and selected for admission. Totally 75 candidates (49 writ petitioners + 26 non-writ petitioners) were accommodated based on their merits in the re-counselling by giving admission in the 75 vacancies which were available as on 17-09-2003. Re-counselling was conducted for re-allotment of candidates already selected to the colleges of their choice in the order of merit and also for the selection of eligible candidates who are coming within in the zone of consideration consequent to the addition of 0.42 marks. Totally, 14 candidates who originally got admission during the first and second phase of

counselling were found not within the zone of consideration at the time of re-counselling. However, their admissions were protected by the orders issued by this Court on 4-8-2003. Accordingly, they were accommodated within the total 1155 seats available though they were not within the cut off marks arrived for recounselling held on 17-9-2003 and 18-9-2003. Except the above said 14 candidates who were found ineligible to get admission in the recounselling, all other candidates were given admission purely based on their rank in the merit list and found within the cut off marks arrived at in the re-counselling held on 17-9-2003 and 18-9-2003 in pursuance of the directions of this Court issued on 4-8-2003. The petitioner Selvi G. Madumitha has secured 295.40 marks. She belongs to B.C. Category. She is not coming within the zone of consideration for admission in MBBS course in Government Medical College as per the revised mark and her rank in the merit list. On 18-9-2003 she was called for re-counselling for allotment of MBBS seat in Self-Financing Medical College as per eligibility and according to her ranking in the merit list prepared based on the revised marks. She has not turned up for the counselling held on 18-9-2003. Hence the question of considering the petitioner for admission in Government/Self Financing Medical Colleges does not arise. The petitioner is claiming admission in a Government Medical College contending that she has secured 295.40 total marks which is higher than the cut off marks 295.32 arrived in the counselling held in July, 2003. The old cut off marks set out have no relevance for the re-counselling in view of the orders of this Court setting aside the common entrance examination marks published by the Anna University on 20-5-2003. The selection committee has conducted recounselling for the purpose of re-allotment of already selected candidates and selecting eligible candidates based on the revised common entrance marks only in accordance with the direction of this Court issued on 4-8-2003. There is no merit in the claim made by the petitioner. Since similar averments have been made in the counter affidavit filed in Writ Petition No. 26307/2003, there is no need to traverse the same once again.

5. Heard Mr. C. Selvaraju, learned counsel for the petitioner in W.P.No. 26717/2003; Mr.K.M. Vijayan, learned senior counsel for the petitioner in W.P.No. 26307/2003; and Mr. V.R. Rajasekaran, Special Government Pleader (Education) for respondents in both the writ petitions.

6. Both the learned counsel for the petitioners vehemently contended that in the light of order of this Court (rendered by A. Kulasekaran, J.,) dated 4-8-2003 in Writ Petition No. 17703/2003 etc., batch, the selection committee ought to have selected both the petitioners for M.B.B.S., course in the Government colleges. They also contended that since the relief was granted by adding 0.42 marks to the petitioners, who approached this Court, the respondents ought not to have granted the said relief in favour of other candidates who have not approached this Court. In order to appreciate the said contentions, it is useful to refer the relevant conclusion arrived at by A. Kulasekaran, J., in the common order dated 4-8-2003. After constituting an expert committee for evaluation and taking note of their report, the learned Judge set aside the results announced by the Anna University on 20-5-2003 in so far as it relates to Question No.54, choice No.4 and directed the respondents to add 0.42 mark to the petitioners therein who have shaded the choice No.4 of Question No.54. The relevant conclusions/directions are as

follows:

"21. Hence, I set aside the results announced by Anna University on 20-05-2003 in so far as it relates to Question No.54, choice No.4 is concerned and hold that the same is also a correct answer and consequently, direct the respondents concerned to add 0.42 mark (fractions can be mentioned as per accurate arithmetic calculations) to the petitioners who have shaded the choice 4 of Question No.54 and further hold that the mark already awarded to the candidates, who shaded choice 3, is also correct.

22. It is submitted by Mr. N.R. Chandran, learned Advocate General, that among the writ petitioners, some are admitted in I Year MBBS, as they have come into the zone of consideration and some other candidates are likely to be inducted, consequent to the adding of 0.42 mark.

23.xx xx

(i) xx xx

(ii) xx xx

(v) The respondents shall conduct counselling to the eligible candidates between 10-09-2003 and 20-09-2003 (the dates are mentioned as prayed for by the Government).

(vi) The admission of candidates already completed based on the list published by the Anna University on 20-5-2003 shall not be disturbed.

(vii) Allotment of colleges will be based on the merit of the candidates."

Though the learned Judge has granted the relief to the persons who filed writ petitions, the reading of the decision referred to above shows that a positive direction has been issued to the respondents to conduct counselling to the eligible candidates (emphasise supplied). In such a circumstance, I am of the view that the respondents are justified in adding 0.42 marks to 26 more candidates who are eligible for the same and who did not file writ petitions seeking addition of marks. Inasmuch as apart from the writ petitioners before the learned Single Judge, in respect of those 26 found eligible, re-counselling was conducted for allotment of candidates already selected to the colleges of their choice in the order of merit and also for the selection of eligible candidates who are coming within in the zone of consideration consequent to the addition of 0.42 marks. In the counter affidavit, it is specifically stated that in the re-counselling, candidates who approached this Court seeking addition of 0.42 marks as well as the non-writ petitioners who were found eligible in accordance with their rank have been considered in the order of merit. Both the petitioners relying on old cut off marks claim that they are entitled for admission in Government colleges. As rightly argued by the learned Special Government Pleader, the old cut off marks set out have no relevance for the re-counselling in view of the orders of this Court setting aside the said common entrance examination marks published by the Anna University on 20-5-2003.

7. The details of the cut off marks for the counselling held prior to

4-8-2003 and re-counselling held on 17-9-2003 and 18 -9-2003 as per the orders of this Court are as follows:

TABLE-I

Government Medical College

Category

OC

BC

MBC

SC

ST

OLD

NEW

OLD

NEW

OLD

NEW

OLD

NEW

OLD

NEW

Government

296

296

.73

295.

32

295.

41

293.

05

293.

04

288.

96

288.

88

274.

33

273.

43

TABLE-II

Self-Financing Medical College

Name of the College

OC
OLD NEW
BC
OLD NEW
MBC
OLD NEW
SC
OLD NEW
ST
OLD NEW
IRT

PSG

Vinayaka

Meenakshi

In so far as G. Madhumitha, petitioner in W.P.No. 26717/2003 is concerned, she has secured 295.40 marks. She belongs to B.C. Category. She is not within the zone of consideration for admission in MBBS course in Government Medical College as per the revised mark and her rank in the merit list. It is the claim of the respondents that on 18-9-2003 she was called for re-counselling for allotment of MBBS seat in a Self-financing Medical college as per eligibility and according to her ranking in the merit list prepared based on the revised marks. However, she has not turned up for the counselling held on 18-09-2003. In those circumstances, the question of considering the petitioner for allotment in Government/Self-financing Medical Colleges does not arise at this juncture.

8. In so far as M. Muralidharan, petitioner in W.P.No. 26307/2003 is concerned, it is explained that in addition to the eligible candidates who approached this Court earlier, around 26 candidates (non-writ petitioners) were also given allotment in the recounselling held on 17-9-2003 and 18-9-2003. The status of the petitioner in the counselling held in June-July, 2003 and after re-counselling held on 17-9-2003 are as follows:-

Sl. Name of Total Commu Status after Selected Not
No. petitioner marks nity Phase I & II selected
and WP No. counselling
held in June-
July,2003
1. 2. 3. 4. 5. 6. 7.

1. M. Murali 295.39 B.C Govt. -- Govt.
dharan Wait List.
26307 of
03.

Name of the College allotted Status in Position

college originally in recounselling after re-allotted. Phase I & II held on 17-9-03 counselling. and 18-9-03
8. 9. 10. 11.

Nil. Govt. Wait list I.R.T. I.R.T.

It is seen that he was considered for allotment in the order of merit as per the revised merit list based on the revised marks furnished by the Anna University and he was not eligible for admission in any one of the Government Medical Colleges as per his rank in the revised merit list.

9. I am satisfied that the merit list drawn by the selection committee based on the entrance marks published by the Anna University 20-5-2003 was set aside by this Court and, therefore, the cut off mark fixed for the first counselling held in June-July, 2003 based on the marks published on 20-5-2003 is no longer valid and the same is not available to the petitioners to claim admission. In words, the old cut off marks have no relevance for the re-counselling in view of the order of this Court setting aside the common entrance examination published by the Anna University on 20-5-2003. Learned Special Government Pleader has also placed the entire list of selected candidates, subject, categories arranged on the orders of this Court, wait list, etc. After perusing all the materials, I am satisfied that there is no substance in the contention of the petitioners.

10. In the light of what is stated above, there is no merit in the claim of the petitioners; consequently both the writ petitions fail and are accordingly dismissed. No costs. Connected miscellaneous petitions are closed.

R.B.

Index: Yes
Internet: Yes

To:-

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.

2. Secretary,
Selection Committee,
Professional Courses for MBBS.,
Kilpauk Medical College Campus,
Chennai-600 010.

