



W.P. Nos.28148 and 31524 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Date of Reserving the Order	Date of Pronouncing the Order
23.11.2022 and 25.11.2022	28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. Nos.28148 and 31524 of 2022

1.K.Pooja Chakravarthi

2.S.Gopalakrishnan

3.N.Murali Krishna

4.D.Jai Adhithya

5.P.Soundarya

6.G.R.Harsha

... Petitioners in W.P.No.28148 of 2022

U.Mohamed Aashiq Samsudin

... Petitioner in W.P.No.31524 of 2022

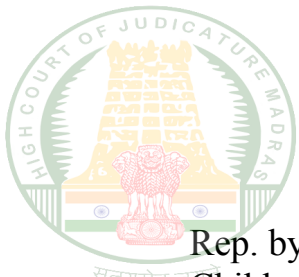
Vs.

1.The Tamil Nadu Dr. MGR Medical University,
Rep. by its Registrar,
No.169, Anna Salai, Gunidy,
Chennai – 600 032.

2.The Selection Committee,
Rep. by its Secretary,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.

3.Sri Muthukumaran Medical College
Hospital and Research Institute,

1/55



W.P. Nos.28148 and 31524 of 2022

Rep. by its Managing Trustee Gomathi Ammal,
Chikkarayapuram, Near Mangadu,
Chennai, Tamil Nadu – 600 069.

4. The National Medical Commission,
Rep. by its Secretary General,
Pocket – 14, Section – 8, Dwarka Phase – I,
New Delhi – 110 077. ... Respondents in both Writ Petitions
(R4 impleaded in W.P.(MD) No.28148
of 2022 vide order dated 17.11.2022 made
in W.M.P.(MD) No.29621 of 2022)

COMMON PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent Medical University relating to its proceedings in Lr. No. Ex.I(6)/59516 / 2019, dated 08.08.2022, quash the same and consequently direct the respondents to ascertain the comparative merit and ranking of the Petitioners by the 2nd Respondent Selection Committee for the vacancy to be filled-up in accordance with law and on that basis allow the Petitioners to continuously pursue the study of MBBS Degree Course in the 3rd Respondent Medical College till they successfully completing the course.

For Petitioners in both the Writ Petitions	: Mr.R.Viduthalai Senior Counsel for Mr.S.Rajendiran
For 1 st Respondent in both the Writ Petitions	: Mr.S.Wilson Standing Counsel
For 2 nd Respondent in both the Writ Petitions	: Mr.J.Ravindran, Additional Advocate General Assisted by



W.P. Nos.28148 and 31524 of 2022

Ms.M.Sneha, Standing Counsel

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For 3rd Respondent in both : Mr.G.Masilamani,
the Writ Petitions Senior Counsel
for Mr.M.Vishnu Venkatesh

For 4th Respondent in both : Ms.Shubhaanjani Ananth
the Writ Petitions Standing Counsel

COMMON ORDER

Since the issue raised in both these Writ Petitions is one and the same with same facts, they are disposed of by this common order.

2. That the third respondent is a Medical College run by a private management. For the academic year 2019-2020, the petitioners were admitted at the third respondent College in first year M.B.B.S. Degree course in stray vacancies on the last date of admission i.e., 30.08.2018. However, at the time of first year M.B.B.S. Examination, which was scheduled to be conducted on 15.02.2021 by the first respondent University, the petitioners were denied Hall Tickets, therefore, the third respondent College filed a Writ Petition before this Court in W.P.No.3224 of 2021, seeking for a Writ of Mandamus to the University to issue Hall Tickets to the students i.e., the petitioners herein and two more students, totalling 9 students. It is to be noted that, the petitioners were not made



W.P. Nos.28148 and 31524 of 2022

parties in the said Writ Petition.

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3. The said Writ Petition was dismissed on 11.02.2021 with a finding that the petitioners' admission to the vacancies in the M.B.B.S. Course were without recourse to the second respondent Selection Committee and hence, those admissions were against regulations.

4. Aggrieved over the dismissal of the Writ Petition, the third respondent College preferred an intra-Court appeal in W.A.No.604 of 2021 against the said order of the Writ Court dated 11.02.2021, dismissing the Writ Petition No.3234 of 2021.

5. At the admission stage, a Division Bench of this Court in the said Writ Appeal had granted an interim order on 13.02.2021, directing the University to issue hall tickets to the petitioners and two other students, totally nine students, to write the first year M.B.B.S. Examination, which was scheduled to be commenced from 15.02.2021.

6. The petitioners had taken the said examinations, but their result were



W.P. Nos.28148 and 31524 of 2022

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7. Subsequently, the third respondent College had moved further to the Division Bench as at that time the students had to necessarily appear for supplementary examination, if necessary, therefore enabling them to note the results for appearing for such supplementary examination for which the first year results had to be published. Therefore, when that plea was made, that was accepted by a Division Bench and on 26.04.2021, a direction was given to the respondent University to publish the results enabling the students to appear for the supplementary examination, if necessary.

8. As against the said order passed by the Division Bench, directing the University to publish the results of first year M.B.B.S. degree course examination of these petitioners and other two students, the University preferred a Special Leave Petition before the Hon'ble Supreme Court in SLP (C) No.18909 of 2021. Even in the said Writ Appeal as well as in the S.L.P, the students i.e., the petitioners were not added as a party. The S.L.P. had been converted into Civil Appeal No.1665 of 2021, which was decided by the order of the Supreme Court on 25.02.2022, setting aside the order of the Division Bench of this Court dated 26.04.2021, directing the University to publish the results. The Hon'ble Supreme

5/55



W.P. Nos.28148 and 31524 of 2022

Court had further directed that the main Writ Appeal No.604 of 2021, which was pending before this Court be disposed of within a period of three months.

9. Accordingly, the said Writ Appeal was taken up for hearing and by order dated 22.06.2022, the said Writ Appeal was also dismissed. Aggrieved over the judgement made by the Division Bench, dismissing the Writ Appeal No.604 of 2021, the third respondent Medical College preferred S.L.P. (C) No.12735 of 2002. The petitioners herein also as aggrieved students preferred Special Leave Petition in SLP (C) Diary No.23565 of 2022. Both the S.L.Ps were heard together and disposed by the Hon'ble Supreme Court on 08.08.2022, where the S.L.P. filed by the third respondent College was withdrawn unconditionally. Insofar as the S.L.P. filed by the students i.e., the petitioners herein are concerned, they were permitted to withdraw the said S.L.P. so as to enable the petitioners to pursue such remedies as are available in law before the High Court i.e., before this Court.

10. On such order being passed by the Hon'ble Supreme Court permitting the two S.L.Ps. to be withdrawn, the first respondent University on the same date i.e., on 08.08.2022 had issued an order, directing the third respondent College to take necessary steps to discharge the nine students, including the petitioners herein from pursuing the M.B.B.S. degree course, immediately under



W.P. Nos.28148 and 31524 of 2022

intimation to the University.

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11. Aggrieved over the said order passed by the University on 08.08.2022, these students, who were admitted in the first year M.B.B.S. degree course at the third respondent College during the academic year 2019-20 have approached this Court by filing these Writ Petitions.

12. Opposing the prayer sought for in this Writ Petition, the first respondent University has filed a detailed counter affidavit. In the said counter, the University has stated that, the very third respondent College during the academic year 2019-2020 was included in the Seat Matrix based on the interim order dated 19.08.2019 passed by this Court in W.P.No.23726 of 2019.

13. Since at the last moment the College was included in the Seat Matrix, exclusive counseling was conducted by the second respondent on 27.08.2019 and 28.08.2019 as the final counseling for allotment of seats by the second respondent, out of 150 students i.e., the sanctioned strength of the third respondent College, 141 students have been admitted. It has been ascertained that the third respondent has denied admission for two genuinely selected students viz.,

7/55



W.P. Nos.28148 and 31524 of 2022

V.C.Praveen and K.Manikandan, who were sponsored by the second respondent

WEB COPY Selection Committee, therefore, those two students have filed W.P.Nos.26968 and 26969 of 2019 and succeeded in the said Writ Petitions. As against the said order passed in the said Writ Petitions, the third respondent College had filed Writ Appeal Nos.2706 and 2709 of 2019 before the Division Bench of this Court and those Writ Appeals were dismissed by the Division Bench.

14. It has further been stated in the counter affidavit filed by the respondent University that, the 9 students have been admitted by the third respondent institution, including the petitioners herein, on their own, without allotment order of the Selection Committee and against the regulations of the Medical College of India. It has also been stated in the counter that, as per the Hon'ble Supreme Court's direction given in ***Dar-Us-Slam Educational Trust and others v. Medical Council of India and others (W.P. (Civil) No.267 of 2017 dated 09.05.2017)***, the Selection Committee is the authority designated by the State Government to conduct the counseling and allot the students to the College. It has further been stated in the said order of the Supreme Court that, the stray vacancies has to be filled up only from the list of candidates forwarded by the Selection Committee in the ratio of 1:10 in the order of merit. However, the third



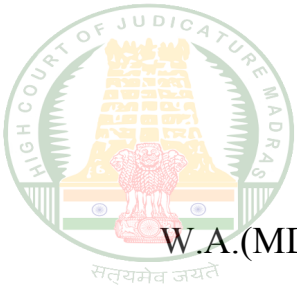
W.P. Nos.28148 and 31524 of 2022

respondent in flagrant violation of the dictum of the Hon'ble Supreme Court made

admissions to the 9 students, including the petitioners.

15. In the counter affidavit, the University also has stated about the Writ Petition filed by the Management, seeking Hall Tickets from the University and the said Writ Petition was dismissed, against which, they filed Writ Appeal as stated supra. In the said Writ Appeal, two interim orders were granted. The first interim order was directing the University to permit the 9 students, including the petitioners, to sit for the first year M.B.B.S. examination. That was complied with by the University and the students were permitted to write the examinations and their results were not declared. However, by a subsequent direction by another Division Bench of this Court, whereby direction was given to the University to publish the results, enabling the students to participate in the supplementary examination for arrears papers, if any. As against the said direction to publish the result, the University preferred Special Leave Petition before the Hon'ble Supreme Court, which in fact was allowed. By virtue of that, the students need not be permitted to write the further examinations and the Division Bench was directed to decide the main Writ Appeal within a time frame.

16. The counter affidavit further states that, the said Writ Appeal i.e.,



W.P. Nos.28148 and 31524 of 2022

W.A.(MD) No.604 of 2021 was disposed by order of the Division Bench dated

22.06.2022, whereby the Writ Appeal also was dismissed by giving exhaustive reasons. The relevant portion of the said judgement has been quoted by the respondent University in its counter and also some other decisions of the Hon'ble Supreme Court with regard to the procedure to be followed in making admissions has been indicated.

17. By stating all these averments, the University has further stated in the counter that, once the Writ Petition as well as the Writ Appeal filed by the College have been dismissed, as against which, the S.L.P. filed by the College was dismissed as withdrawn by the orders of the Supreme Court, the issue has been concluded and the 9 students, who have been admitted against the norms and without having reference to or recourse to the Selection Committee, are not entitled to continue the M.B.B.S. course in the third respondent College. Therefore, the University had sent the letter, which is impugned herein, to take steps to discontinue the course of the 9 students, including the petitioners.

18. The third respondent College Management, represented by the Managing Trustee has filed a counter affidavit on behalf of the College, where it

10/55



W.P. Nos.28148 and 31524 of 2022

has been stated that, the second respondent selected 150 candidates from the

NEET merit list, who were allotted to the third respondent College, out of which,

141 candidates reported to the third respondent College before the due date i.e.,

29.08.2019. It has further been stated by the College in its affidavit that, remaining

9 students have not come forward till the cut of date and time, hence, those nine

seats were to remain vacant which are considered to be stray vacancies. Hence, the

third respondent notified in their website those 9 stray vacancies on 29.08.2019.

As per the said notification, the counseling by the College was fixed on

30.08.2018. Those 9 stray vacancies were filled by the College from the NEET

Merit list by conducting counseling at 9.00 a.m. on 30.08.2019. Accordingly, the 9

students, including the 7 petitioners, were selected and admitted on 30.08.2019.

Therefore, it was the stand of the respondent College in the counter / affidavit that,

the 9 stray vacancies were filled with the above said 9 students from the NEET

Merit list. It has further been stated in the affidavit that, the 9 students deposited

the fees on 30.08.2019 and the procedural method of admission as well as

selection of students of the said 9 students was conducted in a fair and transparent

manner by the third respondent by notifying in their website on 29.08.2019. This

was the stand taken by third respondent Management.



W.P. Nos.28148 and 31524 of 2022

19. With these pleadings, the learned counsel appearing for the parties made submissions at length.

20. At one point of time, this Court by order dated 26.10.2022, in W.P.No.28148 of 2022, passed the following order:-

“ Heard Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioners, Mr.J.Ravindran, learned Additional Advocate General appearing for the 2nd respondent/Selection Committee, Mr.S.Wilson, learned Standing Counsel appearing for the 1st respondent University and Mr.M.Vishnu Venkatesh, learned Standing Counsel appearing for the 3rd respondent/College.

2. After hearing them, this Court feels that a direction can be given to the petitioners as well as the respondents to file affidavit/status report as to how much of fees that has been paid by each of the petitioner per year to the respondent College to pursue their course and in this regard affidavit shall be filed by each of the petitioner as well as the respondent College.

3. That apart, the stand of the Selection Committee as well as the respondent University with regard to the prayer sought for in this writ petition by way of counter affidavit/written submissions be stated.

4. Post the matter on 31.10.2022 immediately after admission.”



W.P. Nos.28148 and 31524 of 2022

21. Pursuant to the said order on 26.10.2022, the petitioners in W.P.

WEB No.28148 of 2022 have filed separate affidavits and also the parents of the students / petitioners have filed additional affidavits as to the fee or capitation fee paid to the third respondent College in a sealed cover as directed by this Court. Thereafter, on 17.11.2022, W.M.P.No.29621 of 2022 was filed by the petitioners in W.P.No.28148 of 2022 to implead the fourth respondent i.e., the National Medical Commission as one of the party respondent in the main Writ Petition and that was allowed.

22. Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioners submitted that, in any of the proceedings i.e., Writ Petition as well as the Writ Appeal filed by the College, seeking relief to the students, including the petitioners for permitting them to write the first year examination and the subsequent plea that was made to publish the results and to permit them to write the supplementary examination in the Writ Appeal are all concerned, none of the 9 students, including the petitioners, were made as parties.

23. Till the disposal of the Writ Appeal No.604 of 2021 on 22.06.2022, the students were kept under dark and only after the result of the said judgement in

13/55



W.P. Nos.28148 and 31524 of 2022

Writ Appeal was made known to them, they were shocked as the plea made by the

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College was not accepted by this Court and the litigation in Writ Petition and Writ Appeal were dismissed, hence, the petitioners had no other option except to file Special Leave Petition against the judgement made by the Division Bench of this Court in W.A.No.604 of 2021.

24. Already the College filed S.L.P. and both were taken up for hearing by the Hon'ble Supreme Court on 08.08.2022, where the Special Leave Petition filed by the College was dismissed as unconditionally withdrawn, however, the S.L.P. (C) Diary No.23565 of 2021 filed by the students is concerned, considering the plea raised on their behalf by the counsel that, though the institution was directed by the High Court to include the students in the lis, the institute failed to do in the proceedings, the Hon'ble Supreme Court in the said order dated 08.08.2022, permitted the petition filed by the students to be withdrawn so as to enable the petitioners to pursue such remedies as are available in law before the High Court.

25. Therefore, according to the learned Senior Counsel for the petitioners, an opening has been given by the Supreme Court to the petitioners to

14/55



W.P. Nos.28148 and 31524 of 2022

agitate the issue by projecting their grievance before this Court, that is why, these

Writ Petitions were filed by the students, he contended. The learned Senior Counsel would also contend that, the sanctioned strength for the College concerned is 150, till 29.08.2019 since there were only 141 students admitted, the College notified in the website that there were 9 stray vacancies and invited students, who are already in the merit list based on the NEET examination marks on All India basis to respond and these petitioners since were qualified to be considered for admission to M.B.B.S. degree course based on NEET marks, however, could not reach the zone of consideration based on merits till the first and second round of counseling was over, made applications to the College and participated in the counseling that was conducted on 30.08.2019, where among the participants based on merits these students were selected and admitted on the same day and fees were also remitted. Therefore, in all fairness, such admissions given to these petitioners in the 9 vacancies, which were considered to be stray vacancies on or before 30.08.2019 is in consonance with the procedure to be adopted in this regard. Therefore, the learned Senior Counsel would submit that, the students, who are the petitioners before this Court, are innocent and meritorious students comparatively and they were admitted only pursuant to the stray vacancies notification issued by the third respondent College and they had

15/55



W.P. Nos.28148 and 31524 of 2022

been pursuing the studies for the past more than two years and they already

cleared the first year exam and at this stage if their studies in the M.B.B.S. course is disturbed and if they are sent out as per the impugned communication issued by the first respondent University, it will be a havoc in the career of these petitioners and the 9 seats which were vacant as stray vacancies during the academic year 2019-2020, since has been filled within the permitted intake of the College concerned, no prejudice would be caused to any one, including the College as well as the other authorities. Therefore, the remedy which will be pursued by these petitioners, which are available in law can be pursued before this Court as indicated in the order of the Hon'ble Supreme Court in the order dated 08.08.2022, while permitting the petitioners to withdraw the S.L.P., therefore, the learned Senior Counsel would contend that the students are before this Court.

26. The learned Senior Counsel would further submit that, pursuant to the directions given by this Court, all these petitioners, except the petitioner in W.P.No.31524 of 2022 have filed separate affidavits with regard to the fees paid by them and also the respective parents filed separate affidavits with regard to any One Time Payment that has been made by the parents of these petitioners. Therefore, insofar as these petitioners are concerned, they are innocent and they

16/55



W.P. Nos.28148 and 31524 of 2022

genuinely approached the College only to get admission in the stray vacancies and

they all cleared the NEET and based on the All India Ranking the admissions were

given on 30.08.2019, i.e., well within the cut of date and they have already

completed two years of the M.B.B.S. degree course, therefore, the learned Senior

Counsel made a fervent appeal before this Court to permit the students to continue

the course and complete it successfully, and therefore, he seeks indulgence of this

Court against the order impugned passed by the respondent University.

27. On the other hand, Mr.J.Ravindran, learned Additional Advocate General appearing for the second respondent Selection Committee, Mr.S.Wilson, learned Standing Counsel appearing for the first respondent / University, Ms.Shubharanjani, learned Standing Counsel appearing for the fourth respondent National Medical Commission, would make submissions stating that, in the judgement of the Hon'ble Supreme Court in ***Dar-Us-Slam Educational Trust's*** case (cited supra), how the medical admissions shall be made has been clearly indicated, where, after first and second round of counseling, in order of ascertain the number of seats still remain vacant after the counseling, the State Government or the authority designated by the State Government shall conduct manual counseling for allotment of students. After the completion of the counseling, the State Government shall determine the number of seats that are still vacant and

17/55



W.P. Nos.28148 and 31524 of 2022

thereafter, forward the list of students in order of merits equal to 10 times the

number of vacancies to the medical college, so that in case of any stray vacancies arise in any College, the said seat may be filled from the said list.

28. Relying upon the dictum of the Hon'ble Supreme Court, the respective learned counsel appearing for the respondents would contend that, even for admissions to be made or to fill up the seats arisen as stray vacancies after completing all rounds of admissions, the State Government or its designated authority shall forward a list of students in order of merit equally to 10 times the number of vacancy.

29. Therefore, if at all 9 seats become vacant in the third respondent College on 28.08.2019 by 5.00 p.m., the College management should have informed the same to the second respondent Selection Committee, who in turn would have forwarded the list of candidates from among the merit list to fill up 9 stray vacancies at the ratio 1:10.

30. Therefore, they contended that, the said exercise has not been undertaken by the third respondent College and in this context they would further submit that atleast two students, who have been selected and sent by the Selection

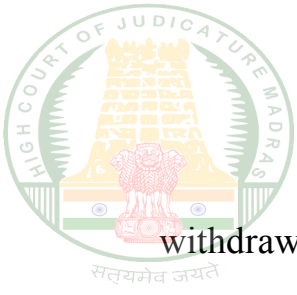


W.P. Nos.28148 and 31524 of 2022

Committee to the third respondent College were denied admissions and those students have gone to the extent of filing the Writ Petitions and those Writ Petitions also were allowed.

31. Quoting these developments, the learned counsel appearing for the respondents 1, 2 and 4 would contend that, the stand now taken by the 3rd respondent College that, by 5.00 p.m. on 28.08.2019, 9 out of the 150 students selected and sent by the Selection Committee since did not turn up, those vacancies become stray vacancies and therefore, for the same, they issued notification through website of the College on the next day to have the counseling on 30.08.2019 and accordingly, they claimed to have admitted these 9 students is concerned, according to the learned counsel appearing for the respondents 1, 2 & 4, is totally against the procedure to be adopted as directed by the Hon'ble Supreme Court in *Dar-Us-Slam Educational Trust's* case (cited supra). Therefore, the learned counsel would contend that, this aspect since has been argued before the Writ Court as well as the Division Bench, where the Writ Petition as well as the Writ Appeal filed by the College Management having been considered were dismissed with exhaustive discussions, and the said judgments since have been approved now by the Hon'ble Supreme Court of India by the decision dated 08.08.2022, dismissing the S.L.P. filed by the College as has been

19/55



W.P. Nos.28148 and 31524 of 2022

withdrawn unconditionally, merely because some observations given in the said

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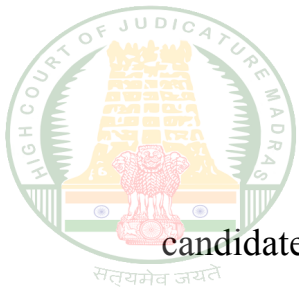
order that, insofar the students i.e., the petitioners are concerned, they can pursue such remedy that are available as per law before this Court, the pandora's box cannot be once again opened as the issue has been settled and concluded by the series of judgments, both by the Writ Court as well as by the Division Bench of this Court and confirmed by the Apex Court.

32. Therefore, the learned counsel appearing for the respondents 1, 2 and 4 in one voice want to sustain the order impugned passed by the first respondent University giving directions to the third respondent College to take steps to discontinue the course pursued by the 9 students, including the petitioners.

33. On the other hand, Mr.G.Masilamani, learned Senior Counsel, appearing for the third respondent College has submitted that, by making the admission in that 9 stray seats with 9 students, including the petitioners, the third respondent College has not compromised the merits and they are not given a go by.

34. Learned Senior Counsel took much pain to refer the list of allotted

20/55



W.P. Nos.28148 and 31524 of 2022

candidates to various Government and Private Medical Colleges during the relevant Session i.e., 2019 – 2020. In the list of such allotted candidates for the 2019 – 2020 Session, the learned Senior Counsel was able to point out that insofar as Madras Medical College, Chennai, is concerned, atleast the last two candidates i.e., serial Nos.220 and 221 are having the All India Ranking of 29,889 and 31,204 respectively and their NEET marks was 123 and 109, they belong to B.C. and M.B.C. Communities respectively. Like that, he referred to the list of candidates allotted to a private Medical College for 2019 – 2020 Session, viz., Tagore Medical College Hospital, Chennai, where some of the candidates who have been selected and sent for admission by the Selection Committee were admitted in the said College, especially, in Serial Nos.30, 50 and 51, whose NEET marks are 211, 109 and 108 and they belong to B.C. and M.B.C. Categories. Similar reference has been made by the learned Senior Counsel appearing for the third respondent College in respect of Velammal Medical College Hospital and Research Centre, Madurai, where the 50th candidate belongs to M.B.C. secured only 110 marks. In Melmaruvathur Athiparasakthi Institute of Medical Science and Research, Kanchipuram, Serial Nos.48 to 51 belong to B.C. and M.B.C., secured only 119, 118, 116 and 107 marks respectively. In Annapoorana Hospital and Medical College, Salem, in Seriel Nos.51, 52 and 53, the students secured only 112, 110

21/55



W.P. Nos.28148 and 31524 of 2022

and 107 marks, they belonged to B.C. and B.C. (Muslim). Like that, in K.M.C.H.

WEB COPY Institute of Health Sciences and Research, Coimbatore, the 13th candidate secured only 108 marks and he belongs to O.C. Category.

35. Making these references, the learned Senior Counsel has also submitted that, insofar as these petitioners are concerned, including the two other students, totalling 9, the marks obtained by the first eight candidates are ranging from 290 to 128 and only the last candidate, viz., Hariharan, who belongs to B.C., secured 112 marks. Therefore, none of these 9 candidates, except Mr.Hariharan can be stated to be lesser meritorious candidates than those admitted in the first year M.B.B.S. degree course either in the Government Colleges or Private Colleges in the Session 2019-2020 and therefore, the learned Senior Counsel wants to emphasis that, the merit has not been given a go by.

36. The learned Senior Counsel would further submit that, insofar as the filling up of the 150 seats for year 2019-2020 at the 3rd respondent College is concerned, a special counseling was conducted on 27th and 28th of August, 2019, pursuant to the order passed by this Court and on those days 141 out of 150 students joined in the institution as they reported for joining, but at the end of 28th August, 2019, there were 9 students not reported, therefore, those 9 seats become

22/55



W.P. Nos.28148 and 31524 of 2022

vacant as stray vacancies. Since there has been no further scope for filling up those

9 seats, instead of allowing the seats to go waste if those seats were not filled up in

the stray vacancies, on the next date i.e., 30.08.2019 the College Management

issued notification through their website and in response to the same several

candidates reported for the counseling conducted on 30.08.2019 at 9.00 a.m. at the

College, where, based on the inter se merits, according to the NEET marks which

they have secured, these 9 candidates were selected and admitted. Therefore, the

learned Senior Counsel would contend that, neither the merit nor the procedure

has been violated or given a go by in making such admissions in the 9 vacancies in

the year 2019-2020. The learned Senior Counsel also would make submissions

that, the Hon'ble Supreme Court by later decision *dated 3rd February, 2021*, in the

matter of *Index Medical College, Hospital and Research Centre v. State of*

Madhya pradesh and others in Civil Appeal No.867 of 2021, while deciding the

validity of Rule 12 (8) (a) of the Madhya Pradesh Chikitsa Shiksha Pravesh

Niyam, 2018 as violative of Article 14 and 19(1) of the Constitution, has held as

follows:-

“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



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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.”

37. Relying upon this decision, the learned Senior Counsel appearing for the third respondent College would point out that, keeping the vacancy without filling the seats before the cut off date would not only be the loss to the institute



W.P. Nos.28148 and 31524 of 2022

from the point out of view of running the private Medical Institution but also it

WEB will be a national waste.

38. Therefore, the filling up of the 9 stray vacancies arose at the end of the final admission could have very well been filled by the College Management and where since the merits have not been given a go by and comparing with these students less meritorious candidates have already been admitted / selected through the second respondent Selection Committee at various Medical Colleges for which proof has been filed before this Court, it cannot be stated that the admissions made by the third respondent College in these 9 seats for the year 2019 – 2020 as stray vacancies are in violation of the procedure established under law including the law declared by the Hon'ble Supreme Court in *Dar-Us-Slam Educational Trust's* case (cited supra). Therefore, the learned Senior Counsel appearing for the third respondent seeks indulgence of this Court to set aside the order impugned passed by the second respondent University.

39. I have given my anxious consideration to the rival submissions made by the learned respective counsel appearing for the parties and have perused the materials placed before this Court.

25/55



W.P. Nos.28148 and 31524 of 2022

WEB COPY 40. Insofar as the admissions made in the 3rd respondent College for filling up the 9 stray vacancy seats for the academic year 2019-2020 is concerned, this was testified before this Court in the Writ Petition filed by the third respondent College itself in W.P.No.3234 of 2021.

41. The said Writ Petition was necessitated because the respondent University refused to issue Hall Tickets to the 9 students for the examination, which was slated to be conducted from 15.02.2021 onwards.

42. The said Writ Petition was heard and decided by a learned Judge by order dated 11.02.2021, where the learned Judge following the law declared by the Hon'ble Supreme Court in *Dar-Us-Slam Educational Trust's* case (cited supra) has dismissed the said Writ Petition. As against the said order of the Writ Court, Writ Appeal No.604 of 2021 was preferred by the third respondent College, wherein on 13.02.2021, the Division Bench of this Court passed an interim order giving direction to the University to issue Hall Tickets to the 9 students of the third respondent institution. The relevant portion of the order passed by the Division Bench reads thus:-

“5. There shall be an interim direction directing the



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respondents to issue Hall Tickets to the nine students of the appellant institution. The students of the appellant institution are permitted to write the examinations scheduled to commence from 15.02.2021, however, their results are directed to be with-held. The results will be subject to the final disposal of the Writ Appeal . It is made clear that the appellant-College/students who are now permitted to write the examination, cannot claim any equity at the time of final disposal. We further make it clear that this order will not confer any right to the 9 students of the appellant/College to continue their further studies in the College, if this Court comes to the conclusion that the appellant/College had no case on merits.

6. The appellant-College is directed to implead all the students who are likely to be affected in the event of allowing this appeal.

7. The learned counsel appearing for the appellant-College shall serve papers on the respective counsel for the respondents.

8. Post after two weeks. The respondents are directed to file counter affidavit by then.”

43. Subsequently, since the results were withheld and not published and in the meanwhile, supplementary examination was also scheduled to be conducted on 04.05.2021, the College approached the Division Bench, where another Division Bench of this Court by order dated 26.04.2021 has passed the following



W.P. Nos.28148 and 31524 of 2022

order:-

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“3. For every examination, the students need not come before this Court and therefore the nine students shall be permitted to write all the examinations and the result shall be published till the completion of course. However, it is made clear that their continuation of the course will be subject to result of the Writ Appeal. Further, in case the appellant loses the case, the student shall not claim any equity.

4. There are two other connected W.A.Nos.3706 and 3709 of 2019, pending before this Court, with regard to the same institution. Therefore, all the matters are directed to be clubbed together.

5. As stated already, the students shall be permitted to write the examination till the completion of all examinations and the result shall be published accordingly. Call the matter on 30.06.2021.”

44. However, as against the interim order passed by the Division Bench dated 26.04.2021, directing the University to permit the students to write all the examinations till the completion of all examination and the results shall be published accordingly, the University preferred Special Leave Petition before the Hon'ble Supreme Court in S.L.P. (C) No.18909 of 2021. The said S.L.P. having been granted leave was re-numbered as Civil Appeal No.1665 of 2022, which was



W.P. Nos.28148 and 31524 of 2022

disposed by the Hon'ble Supreme Court on 25.02.2022, setting aside the order

WEB COPY passed by the Division Bench dated 26.04.2021 and directed further that the main

Writ Appeal No.604 of 2021 be disposed within a period of 3 months.

45. Pursuant to the said order of the Hon'ble Supreme Court, the I Division Bench of this Court had taken up the matter and decided the same by order dated 22.06.2022, where, the Division Bench also has taken note of the judgment of the Hon'ble Supreme Court in *Dar-Us-Slam Educational Trust's* case (cited supra) as well as the Division Bench judgment of this Court *dated 13.08.2020 in W.A.No.494 and 500 of 2020* in the matter of *Sri Venkateshwaraa Medical College Hospital and Research Centre v. Medical Council of India and others*.

46. In the said judgment, the Division Bench has also taken note of the fact that the two students who were denied admissions filed the Writ Petitions successfully. Against which, the College Management filed W.A.No.3706 and 3709 of 2019 and those Writ Appeals were also dismissed by the Division Bench. This factor has been recorded by the Division Bench in its order dated 22.06.2022, which reads thus:-

29/55



WEB COPY

“9. The facts in brief have already been referred in the preceding paragraphs. Those facts would reveal that pursuant to the counselling held on 27.8.2019, 150 students were recommended for admission, out of which 141 took admission according to the appellant and nine students did not report. It was subsequently that two students filed writ petitions when they were denied admission, despite their reporting to the appellant medical college and today those appeals [W.A.Nos.3706 and 3709 of 2019] were considered and dismissed holding the direction of the learned Single Judge to admit the two students to be legal and justified.”

47. The Division Bench also found that the method adopted by the College in admitting 9 students is grossly in violation of the judgment of the Apex Court in *Dar-Us-Slam Educational Trust's* case (cited supra). The relevant portion of the Division Bench judgment reads thus:-

“13. The judgment referred to above shows how the seats in MBBS course are to be filled. If any seat remains vacant, the medical college should have informed the Selection Committee to enable them to forward the list of students in the ratio of 1:10, but, in the instant case, the medical college failed to inform the Selection Committee about the vacant seats, rather Selection Committee had directed the appellant medical college to admit two students who would report on 30.8.2019, but they were refused admission. In view of the above,



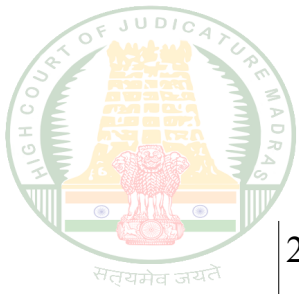
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the action of the appellant medical college to admit nine students was grossly in violation of the judgment of the Apex Court in the case of ***Dar-Us-Slam Educational Trust & Ors***, supra, and Regulation 5(7) of the MCI Regulations, referred by the Division Bench in the case cited supra.”

48. The Division Bench has further gone into the ranking as well as the total marks obtained by these 9 students in the NEET, which has been given in a table and having considered the same, the Division Bench ultimately decided as follows:-

14. The appellant medical college to show its bonafide stated that they filled the nine vacancies from and amongst the meritorious candidates, which includes five seats of the government quota, for which they have absolutely no authority to give admission. Thus, even without having the authority to fill the government quota seats, admissions were given in an illegal manner and, that too, not from and amongst the meritorious candidates, but going much below the merit, which would be reflected from the list of candidates admitted by them along with their merit position and marks submitted by the appellant medical college on an affidavit filed in the connected appeals, which is as under:

S. No.	Rank	AR No.	Student Name	Total Marks	Date of Joining
1	273941	57123	Pooja Chakravarthi.K	290	30.08.2019



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2	481342	55501	Gopala Krishnan.S	195	30.08.2019
3	505123	52189	Murali Krishna.N	187	30.08.2019
4	502943	50797	Aishwarya.R	187	30.08.2019
5	515757	52314	Mohamed Aashiq Samsudin.U	183	30.08.2019
6	515445	63236	Jai Adithya	183	30.08.2019
7	563619	60837	P.Soundarya	169	30.08.2019
8	728529	57402	G.R.Harsha	128	30.08.2019
9	816246	55113	Hariharan.V	112	30.08.2019

15. A perusal of the list given above shows that as against the last candidate given admission by the Selection Committee who secured 326 marks, a student who had secured 112 marks was given admission by the appellant medical college. Thus, the bona fide of the writ appellant in filling up the nine vacancies is not borne out even going by their own affidavit. It is more so when the appellant college was having opportunity to furnish the list of all the candidates who reported pursuant to the information given on their website to indicate that from and amongst the the candidates who reported for admission, nine meritorious candidates were given admissions. The appellant failed to submit names of those candidates and further the affidavit submitted in the connected appeals pursuant to the direction of this court shows that fee from students, not in thousands but in lakhs, was collected in cash, which is not legally permissible as per the Reserve Bank of India guidelines. The fee in cash could have



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been accepted even beyond the date of admission and thereupon shown to have been received on or before the date. It is also a matter of record that one student was given admission by accepting fee on 31.8.2019, while the Selection Committee had directed the appellant medical college to admit the petitioners in connected writ appeals on 30.8.2019 itself, yet, they were denied admission.

16. From the facts given above, the bona fide of the appellant medical college is not coming out and otherwise they cannot go against the judgment of the Apex Court in ***Dar-Us-Slam Educational Trust & Ors***, supra, and judgment of the the Co-ordinate Bench of this court in ***Sri Venkateshwaraa Medical College Hospital and Research Centre***, supra. Thus, we find no reason to cause interference in the judgment of the learned Single Judge. We cannot show sympathy to the medical college or on the students, so as to sacrifice merit and arrive at a conclusion contrary to the law laid down by the Apex Court, as medical profession is a noble profession and any disregard to merit will have drastic consequences on the patients at large. The appellant medical college was having two intervening days to complete admissions. If nine candidates did not report on 29.08.2019 till 5 pm, they should have informed the same to the the Selection Committee on 29.08.2019 itself with a request to send the list of meritorious candidates in 1:10 ratio as directed by the Apex Court in the case of ***Dar-Us-Slam Educational Trust & Ors***, supra, so as to make admission strictly in order of merit. The list of candidates in 1:10 ratio against nine vacancies would not



W.P. Nos.28148 and 31524 of 2022

have gone below so as to admit a candidate having only 112 marks or even 290 marks, because the last candidate recommended by the Selection Committee had secured 326 marks. The admission could not have been given in violation of the judgment of the Apex Court. If we allow those admissions, then, it would be going against the direction of the Apex Court in the case of *Dar-Us-Slam Educational Trust & Ors*, supra.”

49. This judgment of the Division Bench has now been confirmed by the dismissal of the S.L.P. as the College has withdrawn the same unconditionally. The order dated 08.08.2022 passed by the Hon'ble Supreme Court in the said S.L.P. filed by the College as well the students reads thus:-

SLP (C) No(s).12735/2022

1 Mr Manan Kumar Mishra, senior counsel appearing on behalf of the petitioner, seeks the permission of the Court to withdraw the Special Leave Petition.

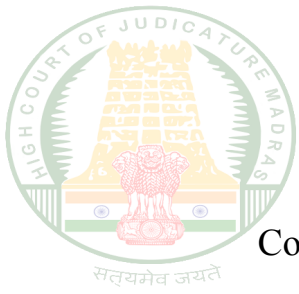
2 The Special Leave Petition is dismissed as unconditionally withdrawn.

3 Pending application, if any, stands disposed of.

SLP (C) No(s).23565/2022

1 Permission to file the Special Leave Petition granted.

2 The present petition under Article 136 of the



W.P. Nos.28148 and 31524 of 2022

Constitution has been instituted by a batch of students. The companion Special Leave Petition, being SLP(C) No 12735 of 2022, instituted by the Institute has been dismissed as withdrawn against the judgement of the High Court dated 22 June 2022.

3 Mr Prashnt Bhusan, counsel appearing on behalf of the students, states that though the Institute was directed by the High Court to implead the students, the Institute failed to do so in the proceedings.

4 In view of the above submission, the petition is permitted to be withdrawn so as to enable the petitioners to pursue such remedies as are available in law before the High Court.”

50. In the said order dated 08.08.2022, the Hon'ble Supreme Court while dismissing the S.L.P. filed by the College as unconditionally withdrawn has taken note of the submissions made on behalf of the students in the S.L.P. filed by the students at para 3, where it was pleaded before the Hon'ble Supreme Court that though the Institute was directed by the High Court to implead the students the Institute failed to do so in the proceedings.

51. Taking note of the submission made on behalf of the students, in para 4 of the order, the Hon'ble Supreme Court has further stated that, in view of the above submission, the petition was permitted to be withdrawn so as to enable



W.P. Nos.28148 and 31524 of 2022

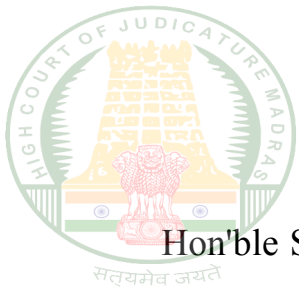
the petitioners to pursue such remedy as are available in law before the High

WEB COPY Court.

52. This observation made by the Hon'ble Supreme Court, according to the learned Senior Counsel appearing for the students i.e., the petitioners herein, have given an opening to agitate the issue from the point of view of the students i.e., the petitioners herein. Therefore, despite the issue as to whether the admissions made by the third respondent College in respect of 9 stray vacancies of 2019 – 2020 is valid or not is concerned, that has been concluded by the judgments of the Writ Court as well as the Division Bench, which has been confirmed the Hon'ble Supreme Court, insofar the grievances of the students are concerned, they can pursue such remedies, which are available to them in law, which has been permitted to be agitated before the High Court i.e., this Court.

53. Therefore, this Court feels that these Writ Petitions, from the point of the merits placed by the students i.e., the petitioners herein, can be heard and disposed on merits 54. Whether the method adopted by the third respondent College in admitting the students for the 9 stray vacancies for the year 2019-2020 on 30.08.2019 is a valid method within the meaning of the law declared by the

36/55



W.P. Nos.28148 and 31524 of 2022

Hon'ble Supreme Court in *Dar-Us-Slam Educational Trust's* case (cited supra) is

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concerned, that has been concluded by the exhaustive decision of the Division Bench by order dated 22.06.2022 in Writ Appeal No.604 of 2021. The same has also been confirmed by the decision of the Hon'ble Supreme Court.

55. When that being so, whatever the point that has been raised or canvassed by the learned Senior Counsel appearing for the 3rd respondent College to establish that the method adopted by the third respondent College in admitting the 9 students in the stray vacancy is justifiable is concerned, it cannot be accepted as the issue has been concluded by the decision of the Division Bench cited supra as confirmed by the Hon'ble Supreme Court.

56. However, by making such admissions for these 9 students, especially, the seven petitioners before this Court is concerned, whether the merit has been given a go by is the next question.

57. In this context, certain new factors have been brought before this Court, where the learned Senior Counsel appearing for the 3rd respondent has taken much pain in taking this Court to various list of allotted students by the

37/55



W.P. Nos.28148 and 31524 of 2022

Selection Committee with the Government College as well as various private

WEB COPY Colleges for the academic year 2019 – 2020 to get admission in the first year

M.B.B.S. Degree Course.

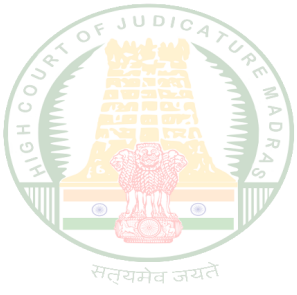
58. Several students i.e., 20 or even more who have secured lesser marks than these petitioners or the 9 students, who have been admitted in the third respondent college, in the NEET Ranking list have been given admission in 2019-2020 Session.

59. Illustratively, who are all the students, allotted in various colleges, who secured only lesser marks than these 9 students have already been indicated in the narration, which hereinabove, made.

60. Therefore, on factual matrix, if we closely peruse it cannot be easily stated that by making the admission of these 9 students, the merit has been given a complete go by.

61. Moreover, had these students been impleaded as party respondents in the Writ Petition filed by the College or subsequently in the Writ Appeal, certainly these aspects would have been projected on behalf of the students before the Writ Court or the Division Bench.

38/55



W.P. Nos.28148 and 31524 of 2022

WEB COPY 62. Despite a specific direction given to the College Management who filed the Writ Petition and Writ Appeal to implead the students also as party respondents, the same has not been complied with.

63. This aspect when was pleaded before the Hon'ble Supreme Court, by the learned Senior Counsel, who appeared on behalf of the students in the S.L.P. filed on behalf of the students before the Hon'ble Supreme Court, the petition was permitted to be withdrawn so as to enable the students to pursue such remedy as are available in law before the High Court.

64. Hence, the plea raised on behalf of the students that they are innocent students and they written the NEET examination and they secured the ranking and comparatively these students, including the petitioners, are slightly ahead of the marks obtained by some of the students who are also allotted by the Selection Committee to be admitted in the I year M.B.B.S. Degree Course in various Colleges, including one Government College for the relevant academic year, is to be evaluated.



W.P. Nos.28148 and 31524 of 2022

65. Therefore, while concluding that the method adopted by the third

respondent College in admitting the 9 students cannot be approved as it violates the law declared by the Hon'ble Supreme Court as well as the regulations made in this regard, since based on the inter se merits by comparing the marks obtained by these 9 candidates, which are slightly ahead of some of the students, who are able to get admission for the said course in various Colleges in the relevant year, the continuance of these students, including these petitioners, pursuing the M.B.B.S. degree course in the third respondent College, in the considered opinion of the Court, need not be hindered.

66. However, yet another aspect this Court wanted to know is as to whether the students were admitted in the third respondent College only based on merits or any methods, which are not approved under law, was adopted by the third respondent College.

67. In this context, pursuant to the directions made by this Court on 26.10.2022, separate affidavits have been filed by each of the petitioners in W.P.No.28148 of 2022. On perusal of the affidavits this Court finds that except one student i.e., the first petitioner, other petitioners seems to have paid higher

40/55



fees. The relevant portion of the respective affidavits are extracted hereunder:-

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(i) The affidavit of the first petitioner, namely, K.Pooja Chakkravarthy reads thus:-

“4. I state that I hailed from a middle class family. My father is a government servant and my mother is a school teacher. I have my sibling, i.e., young sister who is doing Plus Two. In view of the enormous interest shown by me to becoming a doctor, I was put in coaching class for full one year spending my father's hard earned money. I have paid a sum of Rs.8,00,000/- as tuition fee for the 1st year course and further paid a sum of Rs.8,00,000/- for the 2nd year course. Since, the 2nd year examination results have been withheld, the 3rd Respondent College has not made a demand for the fee of 3rd year course.”

(ii) The affidavit of the second petitioner, namely, S.Gopalakrishnan reads thus:-

“4. I state that I hailed from a middle class family. My father is a Agriculturist and my mother is a housewife. I have my sibling younger brother who is doing B.Com.. In view of the enormous interest shown by me to becoming a doctor, I was put in in coaching class for full one year spending my father's hard earned money. I have paid a sum of Rs.15,12,500/- as tuition fee for the 1st year course and further paid a sum of Rs.15,51,000/- for the 2nd year course. Since, the 2nd year examination results have been withheld,



the 3rd Respondent College has not made a demand for the fee of 3rd year course.”

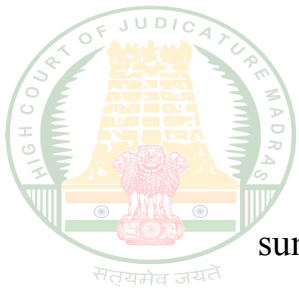
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(iii) The affidavit of the third petitioner, namely, N.Murali Krishna reads thus:-

“4. I state that I hailed from a middle class family. My father is a business man and my mother is a housewife. I have my sibling younger sister who is doing Plus Two. In view of the enormous interest shown by me to becoming a doctor, I was put in in coaching class for full one year spending my father's hard earned money. I have paid a sum of Rs.15,12,500/- as tuition fee for the 1st year course and further paid a sum of Rs.15,51,000/- for the 2nd year course. Since, the 2nd year examination results have been withheld, the 3rd Respondent College has not made a demand for the fee of 3rd year course.”

(iv) The affidavit of the fourth petitioner, namely, D.Jai Adithya reads thus:-

“4. I state that I hailed from a middle class family. My father is an employee in private company and my mother is a government servant. I have my sibling i.e., elder sister who is also doing MBBS. In view of the enormous interest shown by me to becoming a doctor, I was put in in coaching class for full one year spending my father's hard earned money. I have paid a sum of Rs.13,12,500/- as tuition fee for the 1st year course and further paid a



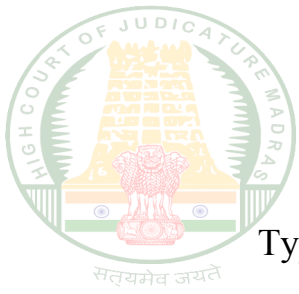
sum of Rs.15,51,000/- for the 2nd year course. Since, the 2nd year examination results have been withheld, the 3rd Respondent College has not made a demand for the fee of 3rd year course.”

(v) The affidavit of the fifth petitioner, namely, P.Soundarya reads thus:-

“4. I state that till date I have paid a total sum of Rs.13,27,500/- to the 3rd Respondent College by cash and by deposit directly into the College Bank account by RTGS / NEFT and what is stated above are the actual amount paid by me to the 3rd Respondent College and I have filed receipts and bank challan for payments of Rs.13,27,500/- by way of Typed Set of Papers. With regard to capitation fee if any, paid by my parents regarding my admission to the 3rd Respondent College, my parents have filed separate affidavit. I was not made known that as to whether I was joined in the 3rd Respondent College against the Management quota or Government quota. However, I paid a fee of Rs.13,27,500/- to the 3rd Respondent College as stated above.”

(vi) The affidavit of the six petitioner, namely, G.R.Harsha reads thus:-

“4. I state that till date I have paid a total sum of Rs.13,27,500/- to the 3rd Respondent College by cash / demand draft and what is stated above are the actual amount paid by me to the 3rd Respondent College and I have filed relevant documents by way of



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Typed Set of Papers to show the actual payments. With regard to capitation fee if any, paid by my parents regarding my admission to the 3rd Respondent College, my parents have filed separate affidavit. I was not made known that as to whether I was joined in the 3rd Respondent College against the Management quota or Government quota. However, I paid a fee of Rs.13,27,500/- to the 3rd Respondent College as stated above.”

68. Like that, pursuant to the order of this Court, the respective parents / father of these six petitioners in W.P.No.28148 of 2022 filed separate affidavits with regard to the One Time Payment (Capitation Fee or any other heads) as demanded by the 3rd respondent College. The affidavits have made some shocking revelation.

69. (i) The father of first petitioner filed the affidavit, wherein he has stated the following:-

“3. I submit that I was introduced by a known person to the college management and hence, I was not asked for any extra payment by the 3rd Respondent College other than regular fees and charges. I am swearing this affidavit by placing all the facts without suppressing any material facts, before this Hon'ble Court in order to realise my daughter's lifetime ambition.”



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(ii) Like that, the father of the second petitioner has revealed in his affidavit, the following:-

“3. I submit that apart from the annual fees payable in respect of medical education imparted by them. The 3rd Respondent college also demanded a further one-time payment of Rs.51,00,000/- (Rupees Fifty One Lakhs only). In order to fulfil the desire of my son, I withdrew my fixed deposit amount and also I cut a prize bid amount in Chit Fund. However, the 3rd Respondent College did not give any receipt for the same. Totally I have paid Rs.81,63,500/- (Rupees Eighty One Lacs sixty three thousand and five hundreds only). I am swearing this affidavit in full facts without suppressing any material facts and placing all the facts before this Hon'ble Court in order to realise my son's lifetime ambition.”

(iii) The father of the third petitioner has revealed in his affidavit, the following:-

“3. I submit that I have paid Rs.15,12,500/- (Rupees Fifteen Lakhs Twelve Thousand and Five Hundred only) as first year fees and paid Rs.15,51,000/- (Rupees Fifteen Lakhs and Fifty One thousand only) as second year fees. Apart from the annual fees payable in respect of medical education imparted by them, the 3rd Respondent college also demanded a further one-time payment of Rs.50,00,000/- (Rupees Fifty Lakhs only) in order to fulfil the desire of my son, I sold out a land property stood in my wife's name and also by disinvesting our family savings. However, the 3rd Respondent College did not give any receipt for this. Totally I have paid



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Rs.80,63,500/- (Rupees Eighty lakhs Sixty Three thousand and Five hundred only). I am swearing this affidavit by placing the above facts without suppressing any material facts before this Hon'ble Court in order to realise my son's lifetime ambition.”

(iv) The father of the fourth petitioner has revealed in his affidavit, the following:-

“3. I submit that apart from the annual fees payable in respect of medical education imparted by them, the 3rd Respondent college also demanded a further one-time payment of Rs.65,00,000/- (Rupees Sixty Five Lakhs only). In order to fulfil the desire of my son, I sold out my land and availed loan against my mutual fund investments. However, the 3rd Respondent College did not give any receipt for the same. I am swearing this affidavit by placing all the facts without suppressing any material facts before this Hon'ble Court in order to realise my son's lifetime ambition.”

(v) The father of the fifth petitioner has revealed in his affidavit, the following:-

“3. I submit that apart from the annual fees payable in respect of medical education imparted by them, the 3rd respondent college also demanded a further one-time payment of Rs.45,00,000/- (Rupees Forty Five Lakhs only). In order to fulfil the desire of my daughter, I mortgaged my house. However, the 3rd Respondent College did not give any receipt for the same. I am swearing this



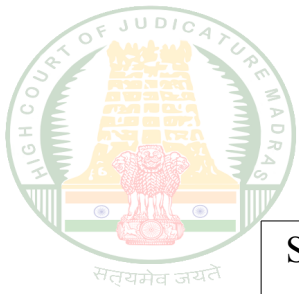
affidavit by placing all the facts without suppressing any material facts, before this Hon'ble Court in order to realise my daughter's lifetime ambition.”

(vi) The father of the sixth petitioner has revealed in his affidavit, the following:-

“3. I submit that apart from the annual fees payable in respect of medical education imparted by them. The 3rd respondent college also demanded a further one-time payment of Rs.65,00,000/- (Rupees Sixty Five Lakhs only). In order to fulfil the desire of my daughter, I sold out my wife's jewels and availed personal loan and withdrew personal savings. However, the 3rd Respondent College did not give any receipt for the same. I am swearing this Affidavit by placing all the facts without suppressing any material facts, before this Hon'ble Court in order to realise my daughter's lifetime ambition.”

70. Except the first petitioner viz., K.Pooja Chakravarthi, the remaining five petitioners i.e., petitioners 2 to 6 and on their behalf the respective parents filed those affidavits revealing that huge amount has been paid as one time payment / capitation fee to the third respondent College. The consolidated statement reads thus:-

**DETAILS OF ONE TIME PAYMENT MADE BY THE PARENTS OF THE
PETITIONERS TO THE 3RD RESPONDENT COLLEGE**



W.P. Nos.28148 and 31524 of 2022

Sl. No.	Name of the Petitioner	Name of the Parent of Petitioner	Rs.
1.	K.Pooja Chakravarthi	Kumar Chakravarthi @	--
2.	S.Gopalakrishnan	G.Selvamurugan	51,00,000/-
3.	N.Murali Krishna	V.Nandakumar	50,00,000/-
4.	D.Jail Adithya	R.Dhanasekaran	65,00,000/-
5.	P.Soundarya	R.Shanthi Mahadevi	45,00,000/-
6.	G.R.Harsha	S.G.Ravi	65,00,000/-
Total :			2,76,00,000/-

71. Even though, in this regard, the third respondent College has filed the fee details collected from these students, stating that fee was collected under the following heads, viz., tuition fee, development fee, education programme fee, book fee and hostel as well as transport fee, whether this amount as claimed by the third respondent College alone is collected from the students or their parents or excess amount also has been collected can easily be found out by virtue of the sworn affidavits filed on behalf of the petitioners by their respective parents. Therefore, this Court can very well take judicial notice of the aforestated factor, where such a shocking revelation has come from the parents of these petitioners.

72. The petitioner in W.P.No.31524 of 2022 has not filed such an



W.P. Nos.28148 and 31524 of 2022

affidavit as the said Writ Petition has been subsequently added after the hearing

was almost over. Whether on behalf of the said petitioner in W.P.No.31524 of 2022 also such a huge amount as One Time Payment has been made or not is not known. Though nine students were admitted, only 7 students are before this Court, therefore, with regard to the remaining two students no revelation has come before this Court as they are not parties in this lis.

73. On perusal of the aforestated documents, and based on the aforestated discussions, the following factual points have emerged:-

(i) The method adopted by the third respondent College in admitting the 9 candidates in the 9 stray vacancies that arose on 28.08.2019 at 5.00 p.m. for admission in the first year M.B.B.S. Degree Course in the academic year 2019 – 2020 is not in consonance with the law declared by the Hon'ble Supreme Court as well as the regulations made by the fourth respondent in this regard.

(ii) Since the issue has already been concluded by the judgment of the Writ Court as well as the Writ Appellate Court, which has already been confirmed by the Hon'ble Supreme Court by dismissing the S.L.P. filed by the College as unconditionally withdrawn, that issue need not once again be opened or traversed.

(iii) However, insofar as the claim made by the petitioners / students is



W.P. Nos.28148 and 31524 of 2022

concerned, since they were never parties to any of the lis and first time when they

filed the S.L.P. such an opening was given permitting them to pursue such remedies available in law before this Court, for the first time since they have come and placed their plea before this Court and also revealed the fact as to how much fee as One Time Payment that they have made to the College, taking note of their genuine approach and by also taking note of the fact that these petitioners have secured slightly higher marks than some of the candidates, who are admitted in the first year M.B.B.S. degree course in various Private Colleges selected through the second respondent Selection Committee for the academic year 2019 – 2020, this Court feels that, by giving admissions to these petitioners, merit has not been given a complete go by.

(iv) It is also to be noted that these students have completed their two years course and at this juncture if they are sent out, that would certainly affect the very career of these students and they have comparatively secured slightly higher marks than considerable number of students, who were able to secure admission in the relevant academic year, hence, this Court feels that these petitioners / students can continue their course in the third respondent College.

(v) Insofar as the shocking revelation that has been made by the parents of these students that, they have paid huge amount by way of One Time Payment

50/55



W.P. Nos.28148 and 31524 of 2022

to the third respondent College, it is a very serious issue which should be taken

note of by this Court.

74. In view of the aforesaid emerging position and for the reasons noted hereinabove and the discussions made in this order, this Court is inclined to dispose of these Writ Petitions with the following orders:-

(i) That the petitioners herein are permitted to continue in their M.B.B.S. course, wherein they joined in the year 2019 –2020 at the third respondent College, and complete the course successfully.

(ii) A sum of Rs.2,76,00,000/- (Rupees Two Crores and Seventy Six Lakhs only) had been paid to the 3rd Respondent College as One Time Payment atleast on behalf of the six petitioners herein as per the respective affidavits filed by the respective parents as detailed hereinabove. The said sum Rs.2,76,00,000/- with interest at the rate of 6% p.a. from the date of the admission of these students in the year 2019 be paid by the 3rd Respondent College in a separate account to be opened in this regard jointly in the name of the Secretary, Selection Committee i.e., the 2nd respondent as well as the Registrar of the first respondent University.

(iii) The said amount can be spent towards paying the tuition fee for more meritorious candidates who would be admitted in the I year M.B.B.S. degree

51/55



W.P. Nos.28148 and 31524 of 2022

course from the academic year 2023-2024 in any Government or Private Colleges

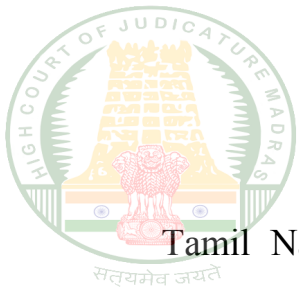
WEB COPY in the State of Tamil Nadu till the entire amount is exhausted as a special scholarship.

(iv) To whom such a benefit shall be extended can be decided jointly by the 1st and 2nd respondents and accordingly the said amount can be spent.

(v) Though merit has not been given a go by in making the admission of these petitioners as held hereinabove, since the method adopted by the third respondent College is in violation of the declared law and for securing admissions on behalf of these petitioners huge amount has been spent or paid as an One Time Payment, which is otherwise called as donation or capitation fee and for such a narrative the petitioners or their parents also had agreed upon, these petitioners and their parents lost their right to get back the said amount i.e., Rs.2,76,00,000/- mentioned hereinabove. That is why, the aforesaid arrangement has been made.

(vi) If at all the third respondent College, pursuant to this order, decides to agitate this issue stating that they have not received any One Time Payment to the extent of Rs.2,76,00,000/- as claimed by the parents of six of the petitioners herein and on that ground if the College refused to deposit the said amount with interest as indicated above, that issue shall be referred by the first, second and fourth respondents herein for investigation by CB CID Police force in the State of

52/55



W.P. Nos.28148 and 31524 of 2022

Tamil Nadu and in that case, such an investigation shall take to its logical

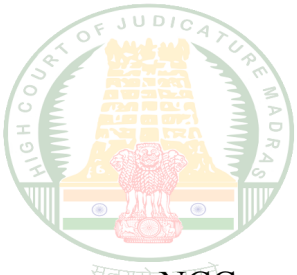
conclusion in the manner known to law.

(vii) Apart from the aforestated, it is open to the 4th respondent to take any action against the 3rd respondent College for such violation in admitting 9 students in the year 2019 – 2020 in accordance with the regulations of the 4th respondent, which are in vogue.

(viii) Since the petitioners are permitted to pursue the course in the 3rd respondent College, the order impugned of the first respondent need not be given effect to.

(ix) That apart, the 3rd respondent College, since has filled 9 seats, out of which, 5 are Government quota and 4 are Management quota, 5 seats in the permitted intake of the 3rd respondent College in first year M.B.B.S. degree course in Management quota shall be surrendered for the academic year 2023 – 2024, where it is open to the second respondent Selection Committee to select candidates and send for admission to the 3rd respondent College as additional seats in the Government quota as a compensatory mechanism.

(x) With these directions and observations these Writ Petitions are disposed of. However, there shall be no order as to costs.



W.P. Nos.28148 and 31524 of 2022

28.06.2023

सत्यमेव जयते
NCC : Yes
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Internet : Yes
sj

To

- 1.The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.
- 2.The Secretary General,
National Medical Commission,
Pocket – 14, Section – 8, Dwarka Phase – I,
New Delhi – 110 077.



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W.P. Nos.28148 and 31524 of 2022

R.SURESH KUMAR, J.

sj

Common order in
W.P. Nos.28148 and 31524 of 2022

Delivered on
28.06.2023

55/55