

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 19.02.2024

Orders pronounced on : **05.03.2024**

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA ,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Cont.P.No.2742 of 2023

M.Shriram

.. Petitioner

Versus

1. Gagandeep Singh Bedi I.A.S.,
Secretary,
Department of Health and Family Welfare,
Fort St. George,
Chennai - 600 009.
2. Dr.R.Shanthi Malar MD. DA.,
Director of Medical Education and Research,
156, Poonamallee High Road,
New Bupathy Nagar, Chetpet,
Chennai - 600 031.
3. Dr.R.Muthuselvam MD., (GM),
Secretary,
The Selection Committee,
The Director of Medical Education and Research,
156, Poonamallee High Road,
New Bupathy Nagar, Chetpet,
Chennai - 600 031.

.. Respondents



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Prayer : Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents herein for the deliberate violation of the orders of the Court in W.A.No.2863 of 2023 in order, dated 17.10.2023 as per the provisions of the Contempt of Courts Act.

For Petitioner : Mrs.Dhakshayini Reddy,
Senior Counsel,
for Ms.S.Suneetha

For Respondents : Mr.A.Edwin Prabakar,
State Government Pleader
for RR-1 and 2

: Mrs.N.Sneha, for R3

ORDER

(Order made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This Contempt Petition has been filed complaining willful disobedience of the order of this Court in W.A.No.2863 of 2023, dated 17.10.2023.

2. According to the petitioner, by erroneous and illegal departure from the rules laid down in the prospectus in respect of the admission to the Post-Graduate Medical Courses in the State of Tamil Nadu for the Academic Year 2023-2024, the candidates who had already choice locked their seats in Round - I, Round – II and Round III under the All India Quota



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were permitted to take part in Round - III for the seats which fell under the State Quota. Therefore, the Writ Petition in W.P.No.29086 of 2023 was filed by him.

3. The prayer in the said Writ Petition was to call for the records on the file of the third respondent namely, the Secretary, Selection Committee in respect of the notification, dated 27.09.2023 and the consequential re-allotment / allotment issued for the Round - III of Counselling, dated 29.09.2023 by the Director of Medical Education and Research, Chennai and to quash the same and to consequently direct the respondents to conduct Mop-Up Counselling for allotment of Post-Graduate seats in General Medicine directly by following the conditions of the prospectus, more specifically, Clause - 27 of the prospectus without allowing the candidates who have joined the seat in the Round - I and Round - II of Counselling and without allowing the candidate who has been allocated a seat in the Round - III of Counselling in All India Quota.

4. Initially, an interim order was granted restraining the respondents from publishing the results of the State Quota Round - III.



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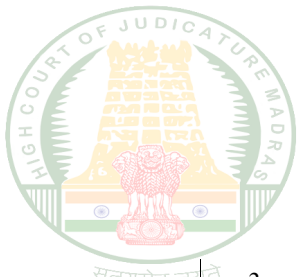
Ultimately, by an order, dated 11.10.2023, the learned Single Judge found that the rules of the admission were changed in the course of the game. However, since the Round - III has been conducted with several candidates participating, the learned Single Judge was not inclined to disturb the entirety of the exercise at that juncture. The said finding in paragraph No.71 of the order is extracted for ready reference :-

" 71. This Court also considered briefly the possibility that order passed in W.P.No.28314 of 2023 dated 25.09.2023 be taken to be applicable to those Writ Petitioners alone. However, since Round III has been conducted with several candidates participating, I am not inclined to disturb the entirety of the exercise at this juncture."

5. Thereafter, the learned Single Judge proceeded further to consider some of the specific seats as published in the website of the Director General of Health Services and rendered the following finding :-

" 76. The petitioner has obtained from the DGHS website the following details in regard to the seats proposed to be allotted to the candidate ranked higher than him :

| S.No. | All India Rank | TN GENERAL RANK | All India COURSE | COLLEGE | STATUS |
|-------|----------------|-----------------|------------------------------|-------------------------|----------------------------|
| 1. | 889 | 95 | MS OBSTETRICS AND GYNECOLOGY | MADRAS MEDICAL COLLEGE | JOINED (All India Round 1) |
| 2. | 1036 | 115 | MD GENERAL MEDICINE | MADURAI MEDICAL COLLEGE | JOINED (All India Round 1) |



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|----|------|-----|---------------------|--|--|
| 3. | 1564 | 189 | MD PAEDIATRICS | SRIRAMA CHANDRA BHANJA COLLEGE, CUTTACK | JOINED (All India Round 1) |
| 4. | 2303 | 285 | MD GENERAL MEDICINE | K.A.P.V. GOVERNMENT MEDICAL COLLEGE, TRICHY | JOINED (All India Round 2) |
| 5. | 2383 | 296 | MD GENERAL MEDICINE | JAWAHARLAL NEHRU MEDICAL COLLEGE, ALIGARH, UTTAR PRADESH | ALLOTTED BUT NOT JOINED (All India Round 3) Allotment itself not |
| 6. | 2477 | 308 | MD PAEDIATRICS | STANLEY MEDICAL COLLEGE | JOINED (All India Round 2) |
| 7. | 2525 | 310 | MD GENERAL MEDICINE | VELLORE MEDICAL COLLEGE | JOINED (All India Round 3) |
| 8. | 3273 | 430 | DNB RADIODIAGNO-SIS | SRM, VADAPALANI | JOINED (All India Round 3) |

77. It is seen that candidates in serial numbers 2, 4 and 7 were initially allotted MD General Medicine in Madurai Medical College, K.A.P.V. Government Medical College, Trichy and Vellore medical College respectively. Thus, the petitioner can be accommodated in any one of these seats as well, if vacated now by the candidates by virtue of the upgradation in Round III."

6. The respondents / contemnors carried the said order on appeal before this Court. After consideration of the appeal, this Court disposed of the appeal with following directions :-

" 6. As observed above, the learned Single Judge has observed that the first respondent can be accommodated in any one of the seats as well, if vacated now by the candidates by virtue of the upgradation in Round III.



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7. We now only hasten to add that the said observation of the learned Single Judge would be subject to the other meritorious candidates above the first respondent. The first respondent cannot get more preferential rights than the other meritorious candidates.

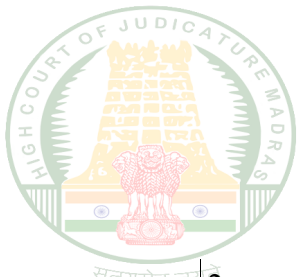
8. The learned Counsel for the first respondent submits that in case, the appellants cannot allot a seat to the first respondent in M.D. General Medicine, since the first respondent is already allotted a seat in M.D. General Surgery, the same may be protected.

9. It goes without saying that in case, the first respondent is not allotted a seat in M.D. General Medicine as per merit, then, certainly, the seat that is already allotted to the first respondent in M.D. General Surgery shall remain.

10. With the aforesaid clarification, the Writ Appeal stands disposed of. There will be no order as to costs. Consequently, C.M.P.No.23794 of 2023 is closed."

7. It is the case of the petitioner in the contempt petition that thereafter, the petitioner was not offered the seat as directed by the learned Single Judge in the Round - III when the results were published. As a matter of fact, at the end of the Round - III, after the candidates vacated and upgraded their seats, finally, five seats in the General Quota of the MD General Medicine fell vacant and were carried to the Stray Round. While the petitioner was not permitted to participate in the Stray Round, the seats were allocated to the following candidates :-

| S.No. | TN RANK | STATE STRAY |
|-------|---------|--|
| 1 | 338 | GQ - M.D. General Medicine STANLEY MEDICAL COLLEGE, CHENNAI |



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| | | |
|---|------|---|
| 2 | 870 | GQ - M.D. General Medicine GOVERNMENT MEDICAL COLLEGE, OMANDURAR |
| 3 | 950 | GQ - M.D. General Medicine COIMBATORE MEDICAL COLLEGE, COIMBATORE |
| 4 | 954 | GQ - M.D. General Medicine THIRUVARUR GOVT. MEDICAL COLLEGE, THIRUVARUR |
| 5 | 1072 | GQ - M.D. General Medicine K A P VISWANATHAN GOVERNMENT MEDICAL COLLEGE, TRICHY |

8. It is further contended that from the above tabular column it can be seen that the candidate at serial No.1, who is ranked 338, alone is more meritorious than the petitioner herein who has the Tamil Nadu rank of 557. All the other candidates are way below in the order of merit. Therefore, when the learned Single Judge had directed to consider the case of the petitioner in any one of the seats that may be vacated by the candidates in serial Nos.2, 4 and 7 as extracted above in the paragraph No.76 of the judgment, inspite of the said candidates vacating seat in the Round - III, the petitioner was willfully not allotted the seat. Without considering the substance of the directions of this Court which is about preserving merit while allotting the seat, the respondents chose to interpret the order by themselves in not allotting the seat in the Stray Round also to the petitioner.



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It is submitted that when this Court has moulded the relief to grant the petitioner the seat, instead of setting aside the whole allotment to the Round - III, the respondents ought to have atleast allotted the seat in the Stray Round. When there were five seats in the branch of General Medicine available in the Stray Round and when there was only one candidate who ranked higher than the petitioner, the respondents ought to have allotted the seat to the petitioner and as such, have willfully disobeyed the order of this Court.

9. Upon issue of a notice simplicitor, the respondents / contemnors filed affidavit before this Court contending that there was no willful disobedience of the order of this Court. It is the case of the respondents that the learned Single Judge directed that the petitioner to be accommodated in one of the seats in the Round - III. However, the direction of the learned Single Judge was clarified by this Court in W.A.No.2863 of 2023 by observing that the said direction of the learned Single Judge would be subject to other meritorious candidates above the petitioner.



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10. As far as the Round - III is concerned, there were 22 candidates who were more meritorious than the petitioner who had choice locked for the seat in MD General Medicine. Therefore, when the petitioner's turn came, the seat was not allotted to him. However, the petitioner opted for his second best option being MS Surgery and joined the seat. However, after the conclusion of the Round - III, there were five vacancies which were filled up in the Stray Round. Had the petitioner not joined the MS Surgery in the Round - III, he would have been eligible to participate in the Stray Round and would have got the seat. It is the petitioner's own making that he choice locked the seat of MS Surgery and joined the same.

11. As far as the All India Quota candidates who choice locked and joined the seats in the Round - I - III who were permitted to participate in the Round - III of the State Quota is concerned, the same was done pursuant to the notification of the Director General of Health Services, Government of India and therefore, the same cannot be found fault with. Placing reliance on the judgment of the learned Single Judge as well as the judgment of this Court in connected Writ Petition in W.P.No.32700 of



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2023, they would contend that the Round - III was not set aside by this
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Court inspite of specific prayers to the said effect. There was no bias or malafide intention on the part of the respondents in complying with the order of this Court. The respondents have truly carried out the compliance of the order of this Court.

12. To the affidavit filed on behalf of the respondents, a detailed reply affidavit has been filed on behalf of the petitioner, detailing about the particulars of the said 22 candidates who were said to be above the petitioner and submitted that of the 22 candidates who were permitted to participate in the Round - III, except for five candidates, the rest of the 17 candidates were not at all qualified to participate in Round - III. The same has been accepted by the learned Single Judge and only because the relief is moulded and granted to the petitioner and the seats ultimately being allotted to four candidates who were lesser in the order of the merit, the same would amount to deliberate violation of the order of this Court.

13. We have heard *Mrs.Dhakshayini Reddy*, learned Senior Counsel appearing on behalf of *Ms.S.Suneetha*, learned Counsel for the



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petitioner; *Mr.A.Edwin Prabakar*, learned State Government Pleader for the respondent Nos.1 and 2 and *Mrs.N.Sneha*, learned Counsel for the third respondent.

14. *Mrs.Dhakshayini Reddy*, learned Senior Counsel appearing on behalf of the petitioner by taking us through the order of the learned Single Judge in W.P.No.29086 of 2023 and the order in W.A.No.2863 of 2023 and by pointing out the list of the candidates to whom the seats were allotted, would contend that the respondents deliberately violated the order of this Court. The respondents cannot interpret the orders of this Court to their convenience and should substantially comply with the order of this Court. When the Court was concerned with the merit, when the petitioner, who is a meritorious candidate, was left high and dry in view of the erroneous procedure adopted by the respondents, the respondents ought to have allotted the seat atleast in the Stray Counselling. The learned Senior Counsel would submit that reliance placed by the respondents on the order passed in W.P.No.23814 of 2023 to permit all the candidates in the Round - III State Quota was erroneous and this has been specifically observed by this Court in the earlier judgment. She would reiterate the contentions made



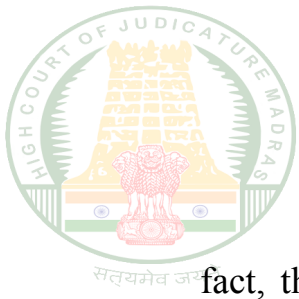
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in the affidavit filed in support of the Contempt Petition and reply affidavit
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filed to the affidavit filed by the respondents / contemnors.

15. *Mrs.N.Sneha*, learned Counsel appearing for the third respondent, once again reiterating the stand taken in the affidavit, would pray that there is no willful disobedience of the order of this Court and that all the candidates have joined the courses and are pursuing their degrees. She would submit that the direction of the learned Single Judge was only in respect of the Round - III and not in respect of the Stray Round.

16. We have considered the rival submissions made on either side and perused the material records of the case.

17. The prayer in the instant Writ Petition was to call for the records in respect of the order passed by the third respondent in permitting all the candidates who have choice locked their seats in the Round - I and Round - II including All India Quota who have choice locked their seats in Round - I, Round - II and the Round – III, to the State Quota Round -III and also challenging the consequential re-allotment order. As a matter of



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fact, the admission process of the Post-Graduate Medical Counselling for this year was less than desirable in view of several changes which are made during the process of selection. We had an occasion to state in detail of the factual matrix and the orders of this Court during the entire process of admission during the Academic Year 2023 - 2024 in paragraph Nos.3 to 9 of the order in W.P.No.32700 of 2023. As a matter of fact, the learned Single Judge in the present matter also went into detail about the process adopted by the respondents and had found fault with the same. However, only considering the fact that the respective rounds of counselling were over and the candidates have choice locked their seats and joined the respective seats, considering the ripple effect it may have in respect of the other candidates who participated and joined in the Round - III of the selection and the Stray and Special Stray Rounds, the selection was not set aside in total. As a matter of fact, in the connected matter we remitted the matter back to the respondents to consider redoing the Stray and Special Stray Rounds so as to alleviate the grievance of the meritorious candidates, if it was possible to do the same with less injury to the other candidates who are not parties before this Court. The respondents passed an order in negative stating that this may cause ripple effect affecting several other students.



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18. As far as the case of the petitioner is concerned, the learned Single Judge also, after concluding that the rules of the selection ought not to have changed during the course of the selection, instead of setting aside the entire allotment to the Round - III, issued a direction to consider the petitioner in the seats that may be vacated by the candidates mentioned in serial Nos.2, 4 and 7 if they vacate their seats by virtue of upgradation in Round - III. It is to be noted that the said seats were actually vacated by the said candidates in the Round - III. However, it is the case of the respondents that there were 22 other candidates who were above the petitioner in the order of the merit, who had choice locked for MD General Medicine and therefore, no allotment could be made to the petitioner. It is the case of the petitioner that 17 of the 22 candidates were not at all qualified to be considered.

19. It is true that in the connected matter relating to the same admission process, by the judgment of this Court in W.P.No.28314 of 2023, it was found that the rules were altered midstream. While the direction was to permit only upgradation in Round - III, the respondents permitted the All



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India Quota candidates to participate in the State quota. However, after considering the same, the learned Single Judge, in the present Writ Petition as well as this Division Bench in W.P.No.32700 of 2023, ultimately, did not set aside the allotment or selection in Round - III or Stray rounds. Therefore, as far as non-allotment of seat in Round - III is concerned, once the consideration and allotment of seats of the said 17 candidates were not set aside and allowed to be continued, then, it cannot be said that there has been willful disobedience of the order on the part of the respondents.

20. However, the respondents seems to have given much importance to the words "in Round - III" in paragraph No.77 of the judgment of the learned Single Judge and in paragraph No.6 of our order in Writ Appeal, without considering the petitioner's case in the Stray Round. We see that while attempting to comply the orders of this Court, the respondents have adopted an approach to the words in the order rather than the substance which is preserving the merit and granting redressal to a meritorious candidate. The respondents themselves cannot interpret the order or restrict the relief granted by ostensible adherence to just the words mentioned in the order. It was very well open for the respondents to have



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got the matter clarified from this Court, especially, when the petitioner is ranked at 557 and a candidate, who is ranked 1072, is being allotted the MD General Medicine seat in the Stray Round.

21. Considering the facts that (i) the entire procedure was changed in the middle of the process partly by the directions of the Director of Health and Family Welfare Services, Government of India converting the Mop-Up Counselling into Round - III and changing the scheme which hitherto was *Round - I + Round - II + Mop-Up + Stray* into *Round - I + Round - II + Round - III + Stray + Special Stray* ; (ii) reducing the cut-off to zero percentile at the stage of Round - III, thereby, directing to issue fresh list of eligible candidates to apply etc.; (iii) considering the efflux of time and the fact that the petitioner has already joined MS Surgery and is undergoing the course in Government Stanley Medical College, Chennai; (iv) the cut off time is already over to grant relief as the candidate who would be unseated will also be affected; we desist from holding the violation of the order of this Court as a willful or deliberate violation.



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22. Accordingly, this Contempt Petition is disposed off with an observation that the respondents shall keep in mind that the entire exercise right from the conduct of N.E.E.T examination and devising rounds of counselling and getting the calendar and the procedure approved by the Hon'ble Supreme Court of India are all meant only to serve cause on merit and merit alone. There shall be no order as to costs.

(S.V.G., CJ.)

(D.B.C., J.)

05.03.2024

Index : yes
Speaking order
Neutral Citation : yes
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**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.**

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