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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **14.12.2022**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 32941 & 33391 of 2022

And

W.M.P.Nos. 32335 to 32337, 32816 & 31818 of 2022

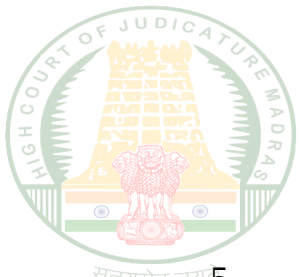
W.P.No. 31941 of 2022

M.Hemalatha

... Petitioner

..Vs..

1. The National Medical Commission
Rep. by its Secretary
Pocket -14, Sector -8,
Dwaraka Phase 1,
New Delhi – 110 077.
2. The Chief Secretary to the Government
State of Puducherry, Secretariat,
Puducherry.
3. The Secretary to Government
Adi Dravidar and Tribal Welfare Department,
State of Puducherry, Secretariat,
Puducherry.
4. The Under Secretary to Government (Health)
Government of Puducherry
Health Secretariat,
Puducherry.



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5.

Co-ordinator (Admission)
Centralised Admission Committee (CENTAC)
Puducherry Technological University Campus,
Puducherry – 605 014. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the letter in No.27209/Health/H5/UG/2022-23 dated 01.12.2022 on the file of the 4th respondent quash the same in so far as the unfilled seat ST is concerned and direct respondents to allot the unfilled Schedule Tribe Quota to the Backward Tribe Quota candidate and admit the petitioner (Application No. 62200834) for the admission to the 1st year M.B.B.S Course in the available vacancy as per the Government Orders in G.O.Ms.No. 6/2010/WEL/SW-V, Chief Secretariat (Welfare), Puducherry dated 09.06.2010 and G.O.Ms.No.05/2019/Wel.(SCW.II)/2326, Adi Dravidar Welfare Secretariat, Puducherry dated 08.03.2019.

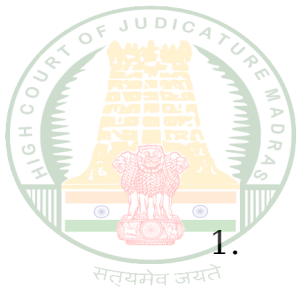
For Petitioner	:: Mr. V.Elangovan
For 1 st Respondent	:: Ms. Shubaharanjani Ananth Standing Counsel
For RR 2 to 5	:: Mr.V.Vasantha Kumar Additional Government Pleader (Puducherry)

W.P.No. 33391 of 2022

Minor K.Megatharani

... Petitioner

..Vs..



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1. The Union of India
Represented by
The Secretary to Government
Ministry of Education
Department of Higher Education
Government of India,
127-C, Shastri Bhawan,
New Delhi – 110 001.
2. The Government of Puducherry
Represented by Under Secretary to the Government
Health Department,
Goubert Avenue, Beach Road,
White Town,
Puducherry – 605 001.
3. The Co-ordinator,
Centralised Admission Committee (CENTAC)
Government of Puducherry
Pondicherry Engineering College Campus
Pillaichavady
Puducherry – 605 014. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the Notification No. 27209/Health/H5/UG/2022-2023, dated 01.12.2022 on the file of the 2nd respondent and to quash the same as illegal and consequently direct the second respondent to convert the vacant seats in Schedule Tribe Community for 2022-2023 in favour of the Backward Tribe Community.

For Petitioner	:: Mr. T.M.Mano
For 1 st Respondent	:: Mr. S.N. Parthasarathi Senior Central Government Standing Counsel
For RR 2 to 3	:: Mr.J.Kumaran Additional Government Pleader (Puducherry)

**COMMON ORDER**

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Both these Writ Petitions have been filed by two aspiring candidates, for the M.B.B.S undergraduate course in the Union Territory of Puducherry. They both belong to Kattunayakan Community, which is classified as “Backward Tribe” in the Union Territory of Puducherry. They also have necessary community certificates certifying them as belonging to Kattunayakan Community.

2. The Writ Petitions have been filed in the nature of Certiorarified Mandamus to call for records relating to a Notification / Letter in No.27209/Health/H5/UG/2022-23 dated 01.12.2022 by the 4th respondent/ The Under Secretary to Government (Health), Government of Puducherry, and to quash the same and also to allot the unfilled Schedule Tribe seat to the petitioners herein, who belonged to Backward Tribe and therefore admit the petitioners for the admission to the 1st year M.B.B.S Course in the available vacancy as per the orders of the Government in G.O.Ms.No. 6/2010/WEL/SW-V, Chief Secretariat (Welfare), Puducherry dated 09.06.2010 and in accordance with G.O.Ms.No.05/2019/Wel.(SCW.II)/2326, Adi Dravidar Welfare Secretariat, Puducherry dated 08.03.2019.



3. Both the petitioners are natives of Puducherry. They both belong to Kattnayakan Community, which is categorised as “Backward Tribe” in the Union Territory of Puducherry. They had completed their school education and had taken part in the NEET examination and they scored the requisite marks for being considered for joining the M.B.B.S Course.

4. In the Union Territory of Puducherry by G.O.Ms.No. 6/2010/WEL/SW-V, Chief Secretariat (Welfare), Puducherry dated 09.06.2010, addendum had been incorporated and it runs as follows:-

“3. And whereas, the State Level Commission for Backward Classes, Puducherry, therefore, unanimously recommended that the following Most Backward Classes may be declared as “Backward Tribes” and 1% separate reservation may be provided to them, in the following manner:-

“1% reservation quota earmarked for S.T. People shall be added to the total reservation of 33% available now for the Backward Classes and the percentage shall be increased from 33% to 34% and out of the total 34%, one (1%) percentage shall be made available to these Backward Tribes”.



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List of Backward Tribes

(1) *Irular (including the Sub-Castes Villi, Vettaikarar); (Pondicherry and Karaikal regions);*

(2) *Malaikuravan / Malakuravan (Pondicherry, Karaikal and Yanam regions);*

(3) *Kattunayakan (Pondicherry, Karaikal and Yanam regions);*

(4) *Yerukula (Pondicherry and Yanam regions); and*

(5) *Kuruman/Kurumans (Pondicherry region); "*

5. It is thus seen that a separate classification, namely "Backward Tribe" was created and they were fitted in with the reservation quota earmarked for the "Schedule Tribe". Serial No. 3 above reflects Kattunnayakan to which the present petitioners belong.

6. Subsequently, by G.O.Ms.No.05/2019/Wel.(SCW.II)/2326, Puducherry, dated 08.03.2019, a notification was issued by the Government of Puducherry / Adi Dravidar Welfare Secretariat,



whereby it was observed that the Irular community specified above, had been categorised as a Scheduled Tribe by Notification issued on 22.12.2016 in G.S.R.1167(E) of the Legislative Department, Ministry of Law and Justice, Government of India, New Delhi. It was further observed that there was no specific reservation for Schedule Tribes in the Union Territory of Puducherry. Taking into consideration the fact that the population of Irular community in the Union Territory of Puducherry was on the higher side among the Backward Tribes, the Irular community also being socially and economically backward and not adequately represented, they were included in the reservation for Scheduled Tribes. The relevant portion of the said notification is as follows:-

“And whereas, hitherto, the following Backward Tribes Communities in the Union Territory of Puducherry are compositely availing 1% reservation as Backward Tribes vide G.O.Ms.No. 6/2010/WEL/SW-V, Chief Secretariat (Welfare), Puducherry dated 09.06.2010 in respect of recruitment to Group 'C' and 'D' posts as well as for admissions in educational institutions and Beneficiary-Oriented Socio-economic Welfare Schemes implemented by different Departments:-



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(1) *Irular (including the sub-castes-Villi, Vettaikaran) [Puducherry and Karaikal regions].*

(2) *Malaikuravan/Malakuravan (Puducherry, Karaikal and Yanam regions.);*

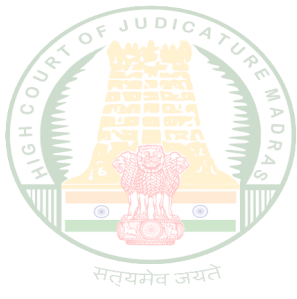
(3) *Kattunayakan (Puducherry and Yanam regions);*

(4) *Yerukula (Puducherry and Yanam regions); and*

(5) *Kuruman/Kurumans (Puducherry region).*

And whereas, there is no specific reservation for Scheduled Tribes in the Union Territory of Puducherry in respect of recruitment to Group 'C' post as well as for admission in educational institutions and Beneficiary-Oriented Socio-economic Welfare Schemes implemented by different Departments;

And whereas, consequent on the ethnographic study, the population of the Irular Community in the Union Territory of Puducherry is on higher side among castes in the Backward Tribes Communities and also the said Irular Community is also being socially and



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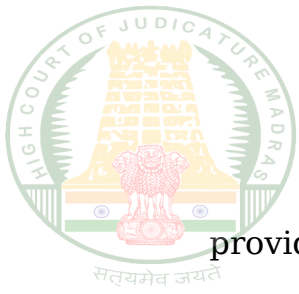
economically backward class and they are not adequately represented in respect of recruitment to Group 'C' post as well as for admissions in educational institutions and Beneficiary -Oriented Socio-economic Welfare Schemes implemented by different Departments in the Union Territory of Puducherry."

7. This effectively meant that originally from the Most Backward Caste, taking into consideration the social and economic backward class of the Tribes among them, a classification of "Backward Tribe" was created. This consisted of five separate categories, namely, Irular, Malaikuravan, Kattunayakan, Yerukula and Kuruman. Among the five categories, the Irular community was thereafter again considered to be categorised as "Scheduled Tribes". This left the other four Backward Tribes high and dry. They could not be fitted in either as Most Backward Community since they had sub-classified from that and they could not be classified as Scheduled Tribes since they had not been moved over to Scheduled Tribes as the irular community, and they cannot also be categorised as Scheduled Caste since they are a distinct category called Backward Tribes. These two petitioners therefore could not fit in any of the reserved categories as announced under the Medical Counseling Committee which recognised Scheduled Caste and Scheduled Tribes alone. They



had not taken into consideration, the existence of Backward Tribes in the Union Territory of Puducherry. It is the responsibility of the Government of Puducherry to step in such a situation and to extend an arm over those communities, namely Backward Tribes and ensure that they are not left behind the race when reservation is sought and when they have particularly scored the eligible marks in the NEET examination. There is absolutely no justification in not considering them in any of the categories for admission to M.B.B.S course. But that is exactly what had happened.

8. Internal reservation in the Union Territory of Puducherry with respect to unfilled seats indicate that if there is an unfilled seat in the Scheduled Tribe category then the first preference would be to allot it to a Scheduled Caste of Union Territory of Puducherry, failing which to the Unreserved Category of Puducherry Region and failing which to the Unreserved Category of Union Territory of Puducherry. Thus, when there is a vacancy in the Scheduled Tribe category, it is not filled up by the Backward Tribe, but rather moved over to the Scheduled Caste and then, moved over to the Unreserved Category. This creates a situation where the candidates from Backward Tribes are not recognised as being eligible to opt for any of the reserved categories. There is thus no reservation

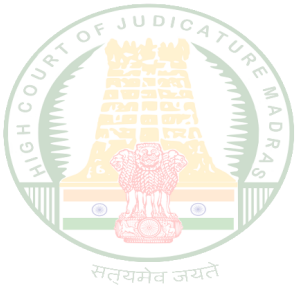


provided to pursue their dream of studying in any of the professional courses particularly the medical profession courses.

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9. This movement of category from Scheduled Tribe to Scheduled Caste is justified in the counter affidavit and by the learned Additional Government Pleader on behalf of the Union Territory of Puducherry by stating that the Union Territory of Puducherry is following the guidelines given by the Medical Counseling Committee, whereby, a vacancy in the Scheduled Tribe Category is moved over to Scheduled Caste and then later to the Unreserved Category. But it is fairly admitted that the Medical Counseling Committee had no idea about the existence of “Backward Tribe”, namely, Malaikuravan, Kattunayakan, Yerukula and Kuruman, who are residents of Puducherry and natives of Puducherry.

10. The question which begs an answer is where would they go, if their Government, namely, the Union Territory of Puducherry, were to disown them and deny their lawful rights to seek a medical seat even if eligible. The only answer is that the Union Territory of Puducherry has left them high and dry and has deserted.



11. These Writ Petitioners question that betrayal and now seek that the vacancy under the Scheduled Tribe Category, should be made over to the Backward Tribe and the Union Territory of Puducherry should exercise its discretion in this regard. Unfortunately, the Government has taken a decision not to do so. They are therefore before this Court seeking that relief.

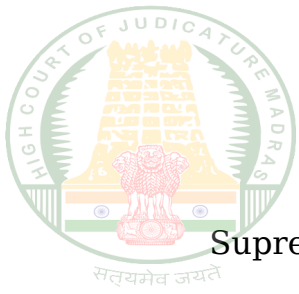
12. The justification for the Scheduled Tribe vacancy to be moved over to Scheduled Caste and later to the Unreserved Category, will necessarily have to fail because they have omitted to consider one entire class, namely, those belonging to “Backward Tribe”. This is a category which has been brought about by the Government of Puducherry. They have been no doubt culled out from the Most Backward Class. Even from that category the Irular Community which was categorised as a Backward Tribe had been granted the reservation as a Scheduled Tribe. There is no reason why the other tribes should be denied reservation.

13. The only reason given for moving the Irular Community to avail the privilege of the Scheduled Tribe is that they are of significant population and that they are socially and economically backward. There is no data provided about the population of the



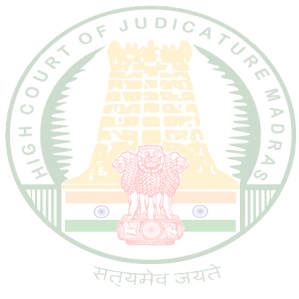
other Backward Tribes particularly , Malaikuravan, Kattunayakan, Yerukula and Kuruman and there is also no data produced that they are socially and economically extremely well off and therefore reservation should not be extended to them. In the absence of such data, this Court will have to fall back on the notification issued by the Government of Puducherry themselves wherein they have been categorised them as Backward Tribe and taken them away from the Most Backward Class Community. Naturally when a Scheduled Tribe seat falls vacant, it is only logical and lawful that the vacancies are filled by the Backward Tribe Community. The Government of Puducherry should have exercised its discretion in this regard.

14. My attention is drawn to a Judgment of the Hon'ble Supreme Court in ***Civil Appeal No. 3518 of 2020 (arising out of SLP (C) No. 9286 of 2020), the State of Tamil Nadu Vs. Union of India and Others***, which was delivered on 26.10.2020. In that particular case, again relating to the filling up of seats of undergraduate medical course, the Government of Tamil Nadu, had taken a decision to fill up the Most Backward Class seats which had fell vacant, with OBC candidates in the All India Quota. This was justified on the ground that this was of State reservation policy. The Judgment of the Madras High Court had been upheld by the Hon'ble



Supreme Court. The relevant portion of the Judgment of the Hon'ble Supreme Court is as follows:-

“8. The only point that arises for consideration of this Court is whether a direction can be issued for implementation of the reservation to OBC candidates for admissions to under-graduate medical courses for this year. It is no doubt true that the High Court accepted the submissions of the Appellants that the 1993 Act can be made applicable to the All India Quota seats. However, a direction was given to the Union of India to constitute a committee to work out the modalities of implementation of the reservation for OBC candidates to the All India Quota seats in the State of Tamil Nadu. At present, there is no challenge to the judgment of the High Court except this writ petition wherein the grievance is limited to the direction that the implementation of the reservation will be from next year. The grievance of the Appellant is that the High Court committed an error in holding that reservation for OBC candidates cannot be implemented for the present academic year as it would disturb the entire admission process that has



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already been set in motion. The process for admissions to under-graduate medical courses commenced in December, 2019 and application forms were issued and filled up by the candidates. The process could not be completed on schedule in view of the unprecedented circumstances owing to the pandemic. The NEET under-graduate examination was conducted on 13.09.2020, the results were announced on 16.10.2020 and the counseling is scheduled to commence on 26.10.2020. At present, reservation in the All India Quota seats has been provided only in favour of the Scheduled Castes, Scheduled Tribes and Physically Disabled candidates. On the strength of the judgment of the High Court, the Appellant is seeking implementation of reservation in the All India Quota seats in State-run medical colleges which are situated in the State of Tamil Nadu. The admission to All India Quota seats is done on the basis of marks obtained in the NEET Examination. The Appellant agreed that there is no domicile or residence reservation or preference for the All India Quota seats. All candidates belonging to the OBC category shall be eligible for admission to OBC seats in the All India



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Quota in the State of Tamil Nadu if reservation is implemented. Candidates belonging to the OBC category from States other than the State of Tamil Nadu would not have even indicated that they belonged to OBC category in the application form as they were not aware of any reservation in the All India Quota for OBC candidates. If all the OBC candidates are now informed about the implementation of reservation for OBC candidates, the entire process has to be re-done which would disturb the counselling which is about to commence from 26.10.2020. ”

15. It is represented by the learned Additional Government Pleader on behalf of the Union Territory of Puducherry that Scheduled Tribes are so categorised by a notification by the President in the Schedule to the Constitution. This Court is not entering into any discussion on that particular aspect but only retaining the category of Backward Tribes as notified by the Union Territory of Puducherry and holding that when there is a vacancy in the Scheduled Tribe seats, the Government of Puducherry must fill them by eligible candidates from the Backward Tribes. The justification of following the Medical Counseling Committee guidelines fall to the ground since the Medical Counseling Committee



had no idea about the existence of the Backward Tribes in the Union Territory of Puducherry.

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16. Ms. Shubaharanjani Ananth, learned Counsel appearing for the first respondent also pointed out the following regulation.

“5. The reservation of seats in Medical Colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An All India merit list as well as State/Union Territory-wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in 'National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS course from the said lists only.”

17. This also stipulates the fact that the State Government or in this case, the Union Territory of Puducherry can exercise its discretion to extend reservation to its natives in accordance with their reservation policy keeping in mind the eligibility under the NEET examination.

18. I am informed that the two vacancies in the Scheduled Caste category have been filled. It is also stated across the bar that



my learned predecessor had warned the Government of Puducherry that if they are so filled up in the teeth of the pendency of the Writ Petitions, then Rs.10/- lakhs cost would be imposed in both the Writ Petitions. It is stated that the Government had filled the seats though the Writ Petitions were pending. It is stated that there are no seats to be filled.

19. It is also stated that the Scheduled Castes candidates, who have been so filled have now moved over to JIPMER, an entirely different institution and therefore there are still two seats available in the Scheduled Tribe category. The two seats under the Scheduled Tribe category which have been filled up by Scheduled Caste candidates can be moved over to the two vacant Scheduled Category candidates and I would direct the Union Territory of Puducherry to fill up the vacancies by including the petitioners, as candidates under the category of Bacward Tribes in the two vacancies under the Scheduled Tribe category for the M.B.B.S undergraduate course.

20. The Writ Petition stands allowed with the above observations. Consequently, connected W.M.P.Nos. 32335 & 32816 of 2022 is dispensed with and W.M.P.Nos. 32336, 32337 & 32818 of 2022 are closed. No costs.



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14.12.2022

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

To

1. The Secretary
The National Medical Commission
Pocket -14, Sector -8,
Dwaraka Phase 1,
New Delhi – 110 077.
2. The Chief Secretary to the Government
State of Puducherry, Secretariat,
Puducherry.
3. The Secretary to Government
Adi Dravidar and Tribal Welfare Department,
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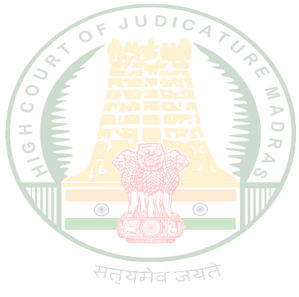


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Government of Puducherry
Health Secretariat,
Puducherry.

5. Co-ordinator (Admission)
Centralised Admission Committee (CENTAC)
Puducherry Technological University Campus,
Puducherry – 605 014.
6. The Secretary to Government
The Union of India
Ministry of Education
Department of Higher Education
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127-C, Shastri Bhawan,
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Government of Puducherry
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Pillaichavady, Puducherry – 605 014.



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C.V.KARTHIKEYAN, J.,

vsg

W.P.Nos. 32941 & 33391 of 2022

And
W.M.P.Nos. 32335 to 32337, 32816 & 31818 of 2022

14.12.2022