

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on: 15.10.2020**

**Delivered on: 28.10.2020**

CORAM

**THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

W.P. Nos. 11963 of 2020, 13466 of 2020 and 13564 of 2020

and

WMP Nos.14690, 16819, 16820, 17510 and 17512 of 2020

**W.P.No.11963 of 2020**

Dr.M.Keethanjali

... Petitioner  
in W.P.No.11963/2020

**Vs.**

- 1.The Director of General Health Services  
Ministry of Health and Family Welfare  
Government of India, F-17, Karakardooma,  
New Delhi 110 032.
- 2.The Director,  
Directorate of Medical Education,  
162, EVR Periyar Salai, Kilpauk,  
Chennai 600 010.
- 3.The Secretary,  
Selection Committee,  
Directorate of Medical Education,  
162, EVR Periyar Salai, Kilpauk,  
Chennai 600 010.
- 4.The Dean,  
PSG Institute of Medical Science and Research,

Peelamedu, Coimbatore.

... Respondents  
in W.P.No.11963/2020

(4<sup>th</sup> respondent suo motu impleaded as  
party vide order dated 18.09.2020 by NAVJ)

**Prayer in W.P.No.11963/2020** : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus, directing the respondent authorities to fill up the Post Graduate Medical seats declared as vacant as per the seat matrix published by the 3<sup>rd</sup> respondent dated 17.08.2020 only by conducting Mop Up counseling for management seats 2020 and by considering the candidature of the petitioner on the basis merit NEET PG rank 1335.

For Petitioner : Mr.S.Thanka Sivan

For Respondents : Mr.E.Manoharan, for R1.  
Special Government Pleader.

Mr.Akhil Akbar Ali, for R2.  
Government Advocate.

Mr.Vijay Narayan, for R3  
Advocate General assisted by  
Mr.Abdul Saleem.

Mr.R.Bharanidharan, for R4.

**W.P.No.13466 of 22020**

Dr.M.S.Santhosh

..Petitioner

**Vs.**

- 1.The Secretary,  
Selection Committee  
Directorate of Medical Education,  
162, Periyar EVR High Road,  
Kilpauk,  
Chennai 600 010.
- 2.Directoriate of Medical Education,  
162, Periyar EVR High Road,  
Kilpauk, Chennai 600 010.
- 3.The Principal Secretary,  
Health Department,  
Secretariat, Chennai.
- 4.The Principal/Dean,  
Karpaga Vinayakka Medical College,  
Chinnakolambakkam,  
Chengalpattu.
- 5.National Board of Examinations,  
NEET PG 2020,  
Medical Enclave,  
Ansari Nagar,  
Mahatma Gandhi Marg,  
Ring Road,  
New Delhi-110 029.

..Respondents  
in W.P.No.13466/2020

**Prayer in W.P.No.13466 of 2020** : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus, directing the 1<sup>st</sup> respondent to allot seat in Medical Post graduation in MS Orthopedics Course in

government/Self financing Medical college in Tamilnadu on basis of Post Graduate Medical Counselling conducted by the 1<sup>st</sup> respondent dated 29.08.2020.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.Vijay Narayan, for R1  
Advocate General assisted by  
Mr.Abdul Saleem.

Mr.E.Manoharan, for R2 & R 3.  
Special Government Pleader

Mr.S.Udayakumar for R4.

Mr.V.P.Raman for R 5  
Standing Counsel

**W.P.No.13564 of 22020**

Mr.Santhosh Kumar

... Petitioner  
in W.P.No.13564/2020

**Vs.**

1.The Director of General Health Services  
Ministry of Health and Family Welfare  
Government of India, F-17, Karakardooma,  
New Delhi 110 032.

2.The Director,  
Directorate of Medical Education,  
162, EVR Periyar Salai, Kilpauk,

Chennai 600 010.

3.The Secretary,  
Selection Committee,  
Directorate of Medical Education,  
162, EVR Periyar Salai, Kilpauk,  
Chennai 600 010.

4.The Secretary,  
Medical Counsel of India,  
Dada Dev Mandir Road,  
Dwaraka Phase 1,  
Packet 14, Sector 8 Dwaraka,  
New Delhi 110 077.

... Respondents  
in W.P.No.13564/2020

**Prayer in W.P.No.13564/2020 :** Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus, directing the respondent authorities to fill up the Post graduate medical seats declared as vacant as per the seat matrix published by the third respondent dated 17.08.2020 only by conducting Mop up counselling for management seats 2020 and by considering the candidates of the petitioner having NEET PG Rank 67168.

For Petitioner : Mr.S.Velmurugan

For Respondents : Mr.N.Ramesh for R 1  
Standing Counsel

Mr.E.Manoharan, for R 2  
Special Government Pleader

Mr.Abdul Saleem for R 3  
Standing Counsel

Mr.V.P.Raman for R4.

Standing Counsel

**COMMON ORDER**

1. The larger issue that is involved in these batch of Writ Petitions is common and therefore, all Writ Petitions are taken up together and disposed of through this common order.

2. A society which perpetrates or encourages or celebrates mediocrity is bound to sink and perish at some point of time. This is more so when it comes to dealing with education and more particularly medical education. A State can never take the chance of filling up a medical seat vacancy with an unmeritorious candidate since it directly involves the life of a person. That is the reason why the Hon'ble Supreme Court reiterates time and again that when it comes to post-graduate courses and super specialty courses, merit can be the only criteria of selection. This is an area which is safely guarded to ensure that merit is not compromised by replacing it with mediocrity. This prelude became necessary since this Court is now going to deal with a scenario where merit has been given a go-by and self-financing colleges have been allowed to fill up certain important clinical seats with candidates who were right down under the ladder of the merit

list and thereby mediocrity gained an upper hand by using the loopholes under the prevailing system.

3. The entire world is now under the grips of a pandemic caused by the COVID-19 virus which has led to disastrous consequences. The governments are grappling with the situation and the normal functioning of the society virtually came to a standstill and slowly attempts are being made to restore essential functions with sufficient safeguards. Unfortunately, attempts are also being made to take advantage of this situation to justify certain actions. There is an attempt to put every blame on the Corona Virus even where it did not have a direct nexus to the action performed by an institution or any instrumentality of the State. There cannot be a greater sin than to make use of the present situation and gain advantage for one's own self-aggrandizement. Again, this prelude has a lot of significance in the present case since an apparently questionable action is sought to be justified by taking advantage of the pandemic.

4. W.P. No. 11963 of 2020 is a case where the Petitioner has sought for the issue of a writ of mandamus directing the official Respondents to fill up the post-graduate medical seats declared as vacant as per the seat matrix published by the selection committee on 17.08.2020 by conducting a mop-up counselling for

management seats. A very similar prayer has been made by the Petitioner in W.P. No. 13564 of 2020.

5. The petitioner in W.P. No. 13466 of 2020 has prayed for the issue of a writ of mandamus directing the selection committee to allot post-graduation in orthopedics on the basis of the counselling conducted on 29.08.2020 on the ground that the 4<sup>th</sup> Respondent college refused to admit the Petitioner inspite of being allotted a seat in the said college after the Petitioner failed to pay the exorbitant fees that was demanded by the 4<sup>th</sup> Respondent college.

6. The order passed by this Court on 24.09.2020 will explain the scope of the issues involved in these Writ Petitions and for proper appreciation, the same is extracted herein under:

*“The petitioner in this case appeared for the NEET Examination and secured 524 marks. She participated in the first round of counselling during May 2020 and she was allotted M.D (Microbiology) in the fourth respondent/College. She joined the College on 01.06.2020. The Provisional Allotment Order that was issued by the Selection Committee clearly shows that the petitioner was willing to upgrade for better choice in further counselling.*

*2. The seat matrix for mop up counselling for Management Quota was published on 17.08.2020. It is seen that there were*

*nearly 100 seats available in various specialities. The mop up counselling for filling up the Government seats was started from 17.08.2020 and atleast three rounds of counselling were conducted.*

*3. The respondents 1 to 3 for some reasons, did not choose to conduct mop up counselling for the Management seats and one justification that was given during the previous hearing was that they did not have time. It is brought to the notice of this Court that the second respondent issued a communication to all the Self Financing Colleges on 30.08.2020, directing them to admit the candidates for the Post Graduate Courses from the list of candidates who have not been allotted any seat in Post Graduate Courses in Management quota seats. On receipt of this letter dated 30.08.2020, the Private Colleges filled up the entire seats that were vacant.*

*4. When this writ petition came up for hearing on 02.09.2020, it was informed to this Court that the respondent will not be in a position to carry out the process of mop up counselling. This Court suggested that the respondents can approach the Hon'ble Supreme Court and get necessary extension of time to conduct the mop up counselling. The application filed by the respondents before the Hon'ble Supreme Court, seeking for extension of time, was dismissed. The respondents never thought it fit to approach the Hon'ble Supreme Court to get extension of time till they were asked to do so by this Court and by then, the last date was over. Some of the State Governments who thought that they will not be able to complete the process within the deadline, had approached the Hon'ble Supreme Court and have got extension of time within the deadline. For some unexplainable reason, the respondents by themselves did not take steps to go before the Hon'ble Supreme Court and get extension of time before the*

*deadline.*

*5.The result of the same is exhibited as a sample case in the present writ petition. The petitioner who had got 524 marks in the NEET examination and was entitled for upgradation, if a mop up counselling had been held, has now been denied a seat in M.D(Paediatrics). Whereas, this seat has now been allotted by the fourth respondent/College in favour of a candidate who had obtained 298 marks. This case gives an indication as to how the other seats numbering nearly 100 would have been allotted by the concerned Private Colleges in favour of the candidates who are less meritorious. The Hon'ble Supreme Court has time and again held that when it comes to Post Graduate and Super Speciality Courses, merit is the only criteria. Unfortunately, the merit has now taken a back seat due to the attitude of the respondents 1 to 3.*

*6.It is now informed to this Court that the fourth respondent has already allotted the seat in favour of one Jaya Banu who secured 298 marks . If this Court interferes with the allotment and if it is given to the petitioner, the course that is presently undergone by the petitioner viz., M.D (Microbiology) will fall vacant and will go waste. A scenario is now being created as if, it has already become a fait accompli and nothing much can be done by this Court at this point of time.*

*7.The Hon'ble Supreme Court in **Krishna Sradha .v. The State of Andhra Pradesh**, reported in [2020 4 LW P 554] has dealt with the question as to whether a medical admission can be given even beyond the cut off date under exceptional circumstances. The guidelines have been given by the Hon'ble Supreme Court at paragraph No.9 of the said judgment. One of the guideline that was given by the Hon'ble Supreme Court was that where a meritorious candidate has been denied admission illegally or irrationally by*

*the authority for no fault of the candidate, grant of compensation has been prescribed as an additional remedy. Even though this judgment was passed in a case involving MBBS Course and it will not apply for the Postgraduate Course, this Court can always take a cue/inspiration from the said judgment, in cases where a meritorious candidate is denied a seat of his or her choice for no fault of the candidate. In this case, an impleading petition has also been filed by another candidate who had secured 365 marks, which is again more than the marks secured by Jaya Banu.*

*8.This Court expresses its anguish on the attitude shown by respondents 1 to 3 which has virtually resulted in handing over nearly 100 seats in a platter to the Private Colleges. This may perfectly suit the Private Colleges, but then, it is done at the cost of overlooking the merit. At some stage, this Court has to ensure that similar such instances do not occur in future. There must be a mechanism to ensure that the selection process takes place strictly in accordance with the MCI Regulations and the guidelines given by the Hon'ble Supreme Court. The respondents cannot be allowed to create a situation and thereafter, water-down the selection process which ultimately results in less meritorious students getting the seats and Private Colleges profiteering through the same.*

*9.The respondents 1 to 3 are directed to file a counter which shall specifically answer the following questions:*

*a) Why no application was filed before the Hon'ble Supreme Court seeking for extension of time to conduct the mop up counselling for the Management Quota, before the deadline date?*

*b) Why the candidates who got the seat during the regular counselling and who had the right to upgrade their discipline by virtue of the marks secured in NEET, were not permitted to participate in the selection process for those vacancies which were*

*directed to be filled up by the Private Medical Colleges? and ;*

*c) The list of candidates who were given admission in the Private Medical Colleges after such authorisation was given by the second respondent by letter dated 30.08.2020. It shall be in a tabular formate containing the following details.*

*I. Serial No.*

*II. Name of the candidate*

*III. Marks secured in NEET*

*IV. NEET Rank*

*V. Name of the Institution*

*VI. Course that was allotted to the candidate*

7. Pursuant to the above orders, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have filed a counter affidavit along with the particulars sought for by this Court. The relevant portions of the counter affidavit are extracted herein under:

*“...3. I humbly submit that for the academic year 2020-21, there were 10006 post-graduate seats available in various specialties in the Government run medical institutions situated across the State. In addition, 287 post-graduate seats available in various private self-financing medical institutions in the State are treated as Government Quota seats. That is, a total of 1293 seats are available in government medical colleges and as Government Quota seats in self-financing colleges. Furthermore, 414 post-graduate seats are available as management quota seats- including 218 seats at Christian Medical College, Vellore- in the private self-financing medical institutions. It is most humbly submitted at this juncture that the State has invested an enormous amount of money, time and effort in establishing the State-run medical institutions*

*which are furnished with the best of facilities to ensure that only the best medical education is imparted to the candidates who are selected on merit. The education of these candidates is heavily subsidized and these candidates are compelled to serve in the hospitals for a period of two years for non-service candidates and till retirement age for service candidates in an effort to ensure that the general public is given the best healthcare. In addition, the State has also expended enormous resources to ensure that adequate infrastructure has been created to meet the minimum standards prescribed by the MCI to offer training at the post-graduate level and accordingly, the State has also obtained approval for the above-mentioned 1006 seats. It is of utmost importance that all these seats are filled up with meritorious candidates so that the public money invested by the State is properly utilized.*

...

*5. I humbly submit that in the meantime, the Hon'ble Supreme Court extended the time limit for completing the counseling process from 31<sup>st</sup> May to 31<sup>st</sup> July and thereafter to 31<sup>st</sup> August. In spite of the numerous difficulties faced in conducting the counseling process for the first time through online mode and giving adequate time to the candidates for allotment of seats and to report for admission, the counseling process could not be completed within the time limit as extended by the Hon'ble Supreme Court.*

*6. I humbly submit that in the first round of counseling conducted on between 30.04.20 to 10.05.20. In this, 1288 candidates were allotted seats as against the total 1293 government quota seats. In addition, 410 candidates were allotted*

*seats as against the total 414 management quota seats. As per the prospectus issued by the Government, a candidate who has taken a seat and not joined the course is not eligible to attend the subsequent rounds of counseling.*

*7. However, out of these allotted students, 445 candidates did not report for admission in the government quota seats and 78 candidates did not report for admission in the management quota seats. This unique and unprecedented situation arose due to the intervening COVID-19 pandemic. A large number of candidates who had been allotted seats has been posted/engaged at places offering treatment for COVID-19 positive cases and these students had to necessarily quarantine themselves as per the directions of the Government. In addition, due to the lockdown imposed across the country, these students also could not report to the respective colleges for admission. As a result, a number of candidates wrote to the Selection Committee requesting for relaxation of the conditions included in the Prospectus.*

*8. I submit that in the meantime, the All-India Quota surrendered seats numbering 304 reverted to the State Quota- totaling 754 Government Quota vacant seats to be filled up through 2<sup>nd</sup> round of counseling. In addition, 13 seats were approved in the Muthukumaran Medical College before the 2<sup>nd</sup> round of counseling- totaling 195 Management Quota vacant seats to be filled up through 2<sup>nd</sup> round of counseling. As against these vacancies, 734 candidates were allotted/reallotted to the Government Quota seats and 188 candidates were allotted/reallotted to the Management Quota seats in the 2<sup>nd</sup> round*

*of counselling conducted on 24.07.2020 to 20.07.2020.*

*9. However, as a result of the overall confusion caused due to the COVID-19 Pandemic and the various measures taken by the Government to tackle the same, 151 candidates did not report for admission to the government quota seats and 96 candidates did not report for admission to the management quota seats- totaling 171 government quota vacancies and 103 management quota vacancies, including 15 seats in CMC Vellore. A number of seats across all reserved categories remained vacant in the government quota seats including in the government colleges which caused a highly critical and unprecedented situation never encountered before by the Government.*

*10. In these extraordinary circumstances, the Selection Committee took Immediate steps to conduct the mop-up counseling to ensure to fill up all government quota seats available, that too primarily in Government Colleges as these seats have never gone vacant in the previous years and their vacancy would have caused immense burden both financially to the State as well as to the public healthcare machinery. During the Mop-up round of counseling conducted between 16.08.2020 to 20.08.2020 or government quota seats, as against the 171 vacant seats, 138 seats were allotted/reallotted to various candidates and 33 seats remained vacant. Out of these 138 allotted/reallotted candidates, once again 64 candidates did not join thereby leaving a vacancy of 97 seats.*

*11. I humbly submit that faced with this truly unprecedented situation, a decision was taken to conduct an extension round to the mop-up Counseling for government quota seats. Meanwhile,*

*suitable orders were also issued to convert the seats reserved for Backward caste (Muslim) into Backward class seats and Schedule caste (Arunthathiyar) into Schedule Caste seats in a last-ditch effort to attract more candidates and fill up the seats. During the extension round of mop-up counseling conducted on between 24.08.20 to 30.08.20, a total of 69 candidates were allotted/reallotted as against the 97 vacant seats and in spite of the best efforts put in by the Government and the Selection Committee, 28 government quota seats still went vacant in the private self-financing colleges. All seats in the Government Colleges were filled up in the extended mop-up counseling.*

*12. It is most humbly submitted that as a result of the serious efforts that were being taken to conduct more rounds of counselling to fill up the government quota seats, the mop-up round of counselling could not be conducted for the management quota seats. It is to be noted herewith that in the first and second round of counseling conducted for management quota seats, 178 and 96 candidates respectively did not report for admission even after being allotted only as a result of which the vacancies continued to exist in the management quota seats. It is reiterated that the allotment of seats to the candidates during the counseling process this year was entirely online and automated and the students were allotted seats strictly as per the order of choice indicated by them in their application form and the vacancy position. It is further humbly reiterated that this situation has never arising before in the counseling usually conducted in the State of Tamil Nadu.*

*13. It is humbly submitted that a total number of 103 management quota vacancies, including 15 seats in CMC Vellore*

*fell vacant in the management quota seats in self-financing colleges. Out of the 103 seats, the vacancy position of 88 seats in self-financing colleges was published on 17.08.2020 and 15 seats in CMC Vellore was published separately on 17.08.2020. It is humbly submitted that since due to the situation, non-reporting of the candidates in the allotted seats resulted in such vacancy position. Due to the paucity of time, the counselling for the management quota could not be completed. Apart from this it is further submitted that another 10 seats arose after the completion of the extended mop-up round for government quota i.e. movement from Self-Financing seat to Government Quota.*

*14. It is most humbly submitted that in view of the repeated extension of time granted by the Hon'ble Supreme Court for completion of the counselling process- from 31<sup>st</sup> May to 31<sup>st</sup> July and thereafter to 31<sup>st</sup> August, it was felt that a further extension of time may not be granted to the Government to complete the counseling and it was only in these circumstances that a suitable application was not filed before the Hon'ble Supreme Court. In these circumstances and as a result of the repeated rounds of counseling conducted for filling up the government quota seats, the Selection Committee wrote to the private institutions on 30.08.2020 to fill up the vacant seats left over after 2<sup>nd</sup> round of counseling from 1:10 list forwarded by the Selection Committee in accordance with the judgement of the Hon'ble Supreme Court in Dar-us Alam Educational Trust and Ors. v. Medical Council of India and Ors in W.P. (s) No. 267 of 2017. It is most humbly submitted that it was never the intention of the Selection Committee to give the interest of merit a go by or to ensure that only meritorious candidates were*

*admitted into the available seats and the letter dated 30.08.2020 was written only in view of the fact that the last date for admission is on 31.08.2020.*

*15. It is humbly submitted that despite the efforts made by the State Government and the Selection Committee there are nearly 28 vacancies in the Government Quota in self-financing colleges and 25 vacancies in the management quota in self-financing colleges, till date.*

8. Mr. Vijay Narayanan, learned Advocate General appearing on behalf of Respondents 1 to 3 submitted that the Respondents were facing an uphill task in filling up the seats in the various post graduate courses. The learned AG submitted that many candidates who were allotted seats during the stages of 1<sup>st</sup>, 2<sup>nd</sup> and mop-up counselling were not able to report for admission in the Government Quota seats since these candidates were posted/engaged at various hospitals to offer treatment for COVID-19 afflicted patients. That apart, the restriction imposed on the movement to various places also prevented these candidates from joining the courses on time. The learned AG further submitted that even during the 1<sup>st</sup> mop-up counselling conducted between 16.08.2020 to 20.08.2020, out of 138 candidates who were allotted seats in the government colleges, once again 64 candidates were not able to join and thereby, the total

vacancy position continued at 97 seats. Therefore, a decision was taken to conduct an extension round of mop-up counselling for Government Quota seats from 24.08.2020 to 30.08.2020. this was conducted only for filling-up Government Quota seats. Through this process, 69 candidates were allotted seats under the Government Quota and thereby, all the seats in the government colleges were filled up. The learned AG submitted that there were totally 103 seats available under the Management Quota and since there was no time to conduct the counselling, the selection committee wrote a letter to the self-financing colleges to fill-up the vacancies from the list forwarded to them. The learned AG submitted that this was the procedure that was directed to be followed by the Hon'ble Supreme Court in the *Dar-us Alam case*. Thereafter, the self-financing colleges have filled up the vacancies with the list of candidates provided by the selection committee.

9. The learned counsel for the Petitioner, submitted that the Petitioner was allotted with M.D. Micro Biology during the first round of counselling under the Management Quota in the 4<sup>th</sup> Respondent college. The allotment order itself provided for upgradation of better choice

during further counselling. The learned counsel submitted that the Petitioner opted for M.D. Ophthalmology in the 4<sup>th</sup> Respondent college even during the second round of counselling. However, the seat was allotted to a candidate who had secured higher marks than the Petitioner. Therefore, the Petitioner was eagerly waiting for the mop-up counseling to fill up the Management Quota. However, the mop-up counselling was not conducted and the 4<sup>th</sup> Respondent college went ahead and allotted the seat in favor of a candidate who had secured lesser marks than the Petitioner. The learned counsel submitted that this was done by the 4<sup>th</sup> Respondent college intentionally inspite of the fact that the Petitioner approached the 4<sup>th</sup> Respondent college on 30.08.2020 and expressed her willingness to join the M.D. Ophthalmology course.

10. Mr. R. Baranidharan, learned counsel appearing on behalf of the 4<sup>th</sup> Respondent college, submitted that the Petitioner has been allotted seat in M.D. Micro Biology in the 4<sup>th</sup> Respondent college and it is true that the petitioner approached the 4<sup>th</sup> Respondent College and requested for allotment of a seat in M.D. Ophthalmology on 30.08.2020. However, the 4<sup>th</sup> Respondent college was not able to allot the seat since they have to only go by the list issued by the

selection committee and if the petitioner is allotted a seat, the seat occupied by the Petitioner in M.D. Micro Biology would have fallen vacant. Therefore, there is absolutely no illegality in filling up the seat on 30.08.2020 with a candidate whose name found place in the list issued by the selection committee.

11. The learned counsel appearing on behalf of the Petitioner in reply to the said submissions made by the Respondents, made an alternative plea to the effect that if in case, the Petitioner cannot be allotted a seat in M.D. Ophthalmology during the current academic year, she must atleast be allowed to discontinue from the course allotted to her and no penalty must be imposed against the Petitioner as provided under Clause 21(c) of the Prospectus.

12. Insofar as the Petitioner in W.P.No.13564 of 2020 is concerned, he did not get any seat during the first and second rounds of counselling and he was expecting the selection committee to conduct a mop-up counselling to fill up the Management Quota. Since it did not happen, he has approached this Court to direct the selection committee to conduct the mop-up counselling. By then, the cut-off date i.e. 31.08.2020 had passed.

13. The grievance of the Petitioner in W.P. No. 13466 of 2020 is that he was allotted a seat in the 4<sup>th</sup> Respondent college under the Government Quota for the M.S. Orthopedics course. On 30.08.2020, he also paid a sum of Rs.30,000/- (rupees thirty thousand) by way of Demand Draft before the selection committee. When he approached the 4<sup>th</sup> Respondent college, and produced the provisional allotment order on 31.08.2020, the 4<sup>th</sup> Respondent college demanded a sum of Rs.35,00,000/- (rupees thirty-five lakhs) as against Rs.3,00,000/- (rupees three lakhs) which was the actual fee that was to be paid. When this was questioned by the Petitioner, the 4<sup>th</sup> Respondent college refused to admit the Petitioner. From the counter filed by the 4<sup>th</sup> Respondent college it is seen that the admission was given in favour of one Dr. Deepan Raj under the stray vacancy on 31.08.2020. According to the college, the fees that is payable is Rs.3,50,000 (rupees three lakhs fifty-thousand) and this was not paid by the Petitioner. The specific stand taken by the learned counsel for the Petitioner was that the Petitioner was willing to pay the fees fixed by the fee committee but what was demanded from the Petitioner was a sum of Rs.35,00,000/- (rupees thirty-five lakhs). According to the Petitioner, a candidate who had obtained lesser marks has been preferred in the place of the petitioner and the same requires interference.

14. The learned AG, placing reliance upon the counter affidavit filed by the 1<sup>st</sup> Respondent in this Writ Petition, submitted that pursuant to the complaint given by the Petitioner about the exorbitant fee demanded by the 4<sup>th</sup> Respondent college, the same has been referred to the fee fixation committee for taking further action and the committee has also directed the concerned college to submit their response. The learned AG submitted that the Petitioner did not join the 4<sup>th</sup> Respondent college on 31.08.2020 and therefore, the 4<sup>th</sup> Respondent college has gone ahead and filled up the seat as a stray vacancy from the list of candidates provided by the selection committee.

15. When this Court passed the order on 24.09.2020, which has been extracted *supra*, it was noticed that all was not well with the selection process that took place during this academic year when it came to filling up the vacant seats in the Management Quota. In order to get more clarity, this Court had raised certain queries to be answered by the Official Respondents.

16. The first query that was raised by this Court was as to why the Respondents did not take any steps to approach the Hon'ble Supreme Court

seeking extension of time to conduct the mop-up counselling for the Management Quota. The answer that is given in the counter-affidavit filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is that the Hon'ble Supreme Court had already extended the time from 31.05.2020 to 31.07.2020 and thereafter, to 31.08.2020 and therefore, it was thought that the Hon'ble Supreme Court may not grant any further extension of time to conduct the mop-up counselling. The learned AG further submitted that on hindsight it can be said that an application could have been filed before the Hon'ble Supreme Court seeking extension of time. However, the Respondents were facing a very challenging situation and it was *bonafide* felt that no extension of time will be granted by the Hon'ble Supreme Court.

17. This Court is not convinced with the answer given by the Respondents for this query. The Respondents were well aware of the fact that there were large number of vacancies that remained to be filled-up as early as on 20.08.2020. The Respondents therefore, took a decision to conduct an extension round of the mop-up counselling for Government Quota between 24.08.2020 to 30.08.2020. Therefore, it was very clear that the Respondents were fully aware that there was no time to conduct mop-up counselling to fill up the vacancy under the Management Quota. There were two clear options that were available to the

Respondents. Either the Respondents should have approached the Hon'ble Supreme Court on time and explained the entire facts and sought for extension of time to conduct the mop-up counselling to fill up the Management Quota. Admittedly in this case, the Respondents approached the Supreme Court after the deadline and that too after this Court questioned them and the application ultimately got dismissed. On the alternative, nothing stopped the Respondents from conducting the mop-up counselling parallelly for filling up the vacancy in the Management Quota also. For reasons best known to the Respondents, this option was never exercised. As a result, 74 seats were given in a platter to the private colleges and these colleges merrily filled up the vacancies with candidates who could not even have dreamt of getting an allotment during regular counselling. That is why this Court commented that mediocrity came to the forefront by pushing back the meritorious candidates.

18. On a careful perusal of the seat allotted for PSG College in M.D. Pediatrics, it is seen that candidates who had obtained 806 marks, 786 marks during regular counselling have secured seats in the 4<sup>th</sup> Respondent college in M.D. Pediatrics. Similar was the case with M.S. Ophthalmology also. The petitioner who had obtained 524 marks was aspiring for this course during mop-

up counselling. However, it ultimately got allotted to a candidate who secured much lesser marks. This has not happened by accident and there is a clear design behind this allotment. This case is only a sample to the larger design which resulted in unmeritorious candidates knocking-off the seats during the current academic year 2020-21. The data provided by the Respondents with regard to the list of candidates who were given admission in private medical colleges clearly captures the larger design and the same is analyzed herein under:

**LISTS OF ADMISSIONS UNDER STRAY VACANCIES SUBMITTED BY**  
**SELF-FINANCING INSTITUTIONS**

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: ADHIPARASAKTHI INSTITUTE OF MEDICAL SCIENCES AND RESEARCH, MELMARUVATHUR

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	# 2103	20990	KAMALESH R	416	BC		M.D. Paediatrics
2	# 2640	22474	PREM KUMAR A	329	BC		M.S. General Surgery
3	# 2703	23144	MAAGNAAH S	317	MBC/DNC		M.S. Ophthalmology
4	# 2747	22783	AMMU.R	308	MBC/DNC		M.S. General Surgery
5	# 2933	23047	BALANANDHITHA	276	MBC/DNC		M.D. Microbiology

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: ARAVIND EYE HOSPITAL, MADURAI

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	# 1599	20816	LAKSHANA M L	486	OC		M.S. Ophthalmology

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: CANCER INSTITUTE, ADAYAR, CHENNAI

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	# 927	22081	VIVEKNATH T V	582	OC		M.D. Radio Therapy

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: DHANALAKSHMI SRINIVASAN MEDICAL COLLEGE & HOSPITAL, PERAMBALUR

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	1914 #	20563	VISHNUPRIYA V ANIL	441	OC		M.S. Ophthalmology
2	2238 #	22186	GNANASEKARAN MAHALAKSHMI	397	BC		M.D. Radio Diagnosis
3	2392B #	22857	KAUSHIKA MANIVASAGAM	374	BC		M.D. Pathology
4	2602A #	22778	RACHANA	337	BC		M.D. Psychiatric Medicine
5	2608B #	22762	SUJITH B	336	BC		M.D. General Medicine
6	2646 #	20805	A SUBA SANKAR	328	MBC/DNC		M.S. Orthopaedics
7	2646A #	23068	CIBI K	328	BC		M.S. General Surgery
8	2648E #	22987	PRANAO	327	BC		M.S. Orthopaedics
9	2713 #	23041	NAWIN JAI VIGNESH K	314	OC		M.D. (S.P.M.)
10	2732 #	23127	KARTHIK RAVEENDRAN	310	BC		M.S. General Surgery
11	2825 #	23259	THARUN D	294	OC		M.D. T.B. and Chest Diseases
12	2856 #	23133	ASHWIN	289	OC		M.D. Anaesthesiology
13	2900 #	23025	ARAVIND A	283	MBC/DNC		M.D. Anaesthesiology
14	2905 #	23129	RENUKADEVI V	282	MBC/DNC		M.S. Obstetrics and Gynaecology
15	2912 #	23154	SUGUMAR P	280	BC		M.D. General Medicine
16	2960 #	23128	VIGNESH KUMAR S	267	BC		M.D. D.V.L
17	2999 #	23312	RAJESWARAN.R	259	MBC/DNC		M.S. General Surgery
18	3013 #	22728	AMRIT KUMAR	255	BC		M.S. General Surgery
19	3023 #	22872	G KARTHIKA	252	MBC/DNC		M.S. E.N.T
20	3034 #	22997	VIDHYALAKSHMI	248	BC		M.D. Paediatrics

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: DHANALAKSHMI SRINIVASAN MEDICAL COLLEGE & HOSPITAL, PERAMBALUR

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
21	3035	22952	CHANDRAMOHAN SOWRIRAJAN	248	BC		M.D. Anaesthesiology

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: JOSEPH EYE HOSPITAL, TRICHY

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	2408	21481	NIVEDHA RAVICHANDRAN	372	BC		M.S. Ophthalmology

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: KARPAGA VINAYAKA MEDICAL COLLEGE, CHINNAKOLAMBAKKAM

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	2086	20435	GOWTHAM THOMAS RAJA J	419	BC		M.D. General Medicine
2	2281	21959	PAVITHRA J	390	MBC/DNC		M.D. Radio Diagnosis
3	2481	21520	PRIYA SELVAKUMAR	360	BC		M.D. D.V.L
4	2557	22029	DANIEL SUNDAR CHELLASAMY	347	BC		M.D. Psychiatric Medicine
5	2630A	23247	NIRANJAN	331	BC		M.D. General Medicine
6	2802	22813	NAYANA CHANDRAN	299	OC		M.D. Pathology
7	3064	22731	BALACHANDAR GURUSAMY	240	ST		M.S. General Surgery
8	3095	22893	KUMARAN	231	BC		M.D. Anaesthesiology

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: PSG MEDICAL COLLEGE, COIMBATORE

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	2808	22782	JAYABANU.B.S	298	BC		M.D. Paediatrics
2	2935	22811	ASWATHASREE A	275	BC		M.S. Ophthalmology
3	2940	22805	E.AKSHAYA	274	BC		M.D. Radio Diagnosis
4	2961	22906	SHYLENDRAN	266	BC		M.D. Psychiatric Medicine

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: SRI MOOGAMBIGAI INSTITUTE OF MEDICAL SCIENCE, KULASEKARAM

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	2183 #	20394	SREEJA K BHASY	405	OC		M.D. Pathology
2	2668A #	22905	J B SREELAKSHMI	323	OC		M.S. General Surgery
3	2695 #	23153	INDRAN G P NAIR	318	OC		M.S. General Surgery
4	2782 #	22815	ABUNAYA H I	302	BC		M.D. Anaesthesiology
5	2819 #	22926	SHAHEEN HAMEED VALIYAKATHE	296	OC		M.S. Orthopaedics
6	2870 #	23246	VAISAKH G T	287	OC		M.D. (S.P.M.)
7	2911 #	22825	M. ERIN JINO	281	BC		M.S. E.N.T

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: SRI MUTHUKUMARAN MEDICAL COLLEGE, CHENNAI.

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	2515 #	22414	GOKUL K	354	SC		M.S. E.N.T
2	2858 #	23137	JAI MANGLA	289	OC		M.D. General Medicine
3	2920 #	22855	MONIKA R	279	BC		M.S. Obstetrics and Gynaecology

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: TAGORE MEDICAL COLLEGE, CHENNAI

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	2787 #	22936	NISHANTH.S	301	BC		M.D. General Medicine
2	2832 #	22794	ARUN POORNESH.E	293	BC		M.S. Obstetrics and Gynaecology
3	2949 #	22928	VINODHRAJA.S	271	SC		M.D. (S.P.M.)
4	3042 #	22780	S F ASHWINKRISHNA	246	MBC/DNC		M.S. Orthopaedics
5	3051 #	22743	KARAN SHANKAR	244	BC		M.S. General Surgery
6	3058 #	23202	MANIKANDAN.G	242	BC		M.D. General Medicine
7	3090 #	22759	BALAMURUGAN S	233	SC		M.D. Pathology
8	3094 #	23113	DR. SIVAKUMAR S P	231	BC		M.D. General Medicine

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: TRICHY SRM MEDICAL COLLEGE HOSPITAL AND RESEARCH CENTRE, TRICHY

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	# 2314	22529	PRAVEEN KUMAAR R	384	OC		M.D. Anaesthesiology
2	# 2547	20202	INIGA MARIA DIVYA B	349	BC		M.D. Psychiatric Medicine
3	# 2686	22516	SRIPRIYA G	320	MBC/DNC		M.D. (S.P.M.)
4	# 2775	23145	AJAY VENKAT.A	304	BC		M.S. Ophthalmology
5	# 2836	23116	SOWMYA P	293	BC		M.D. T.B. and Chest Diseases
6	# 2867	22786	AYISHWARRYA PARAMESWARAN	288	MBC/DNC		M.S. E.N.T
7	# 2937	22941	DHIVAKAR S	275	BC		M.D. Anaesthesiology
8	# 2973	22741	VISWANATHAN M	264	BC		M.D. Radio Diagnosis
9	# 2990	23055	JAYASHAANTHI S	260	MBC/DNC		M.D. Paediatrics
10	# 3014	22911	E. GOWRILAKSHMI	254	BC		M.D. Anaesthesiology
11	# 3056	23164	ARVIND E	242	BC		M.S. General Surgery
12	# 3065	22992	N.M.ASHOK	240	MBC/DNC		M.S. General Surgery
13	# 3075	22764	MUBARAK ALI	235	BCM		M.S. Orthopaedics

PG DEGREE/DIPLOMA COURSES 2020-2021 SESSION - LIST OF CANDIDATES ALLOTTED UNDER STRAY MANAGEMENT QUOTA

NAME OF THE COLLEGE: VELAMMAL MEDICAL COLLEGE, MADURAI

SNO	RANK	ARNO	NAME	TOTAL MARKS	COM.	NRI ALLOTTED	SPECIALITY
1	# 3008	22949	PONNI	257	BC		M.D. Pathology
2	# 3059	22889	J.SAMROBINSON	241	BC		M.S. General Surgery

**ANALYSIS OF ADMISSIONS INTO STRAY VACANCIES BY  
SELF-FINANCING INSTITUTIONS**

**CLINICAL COURSES**

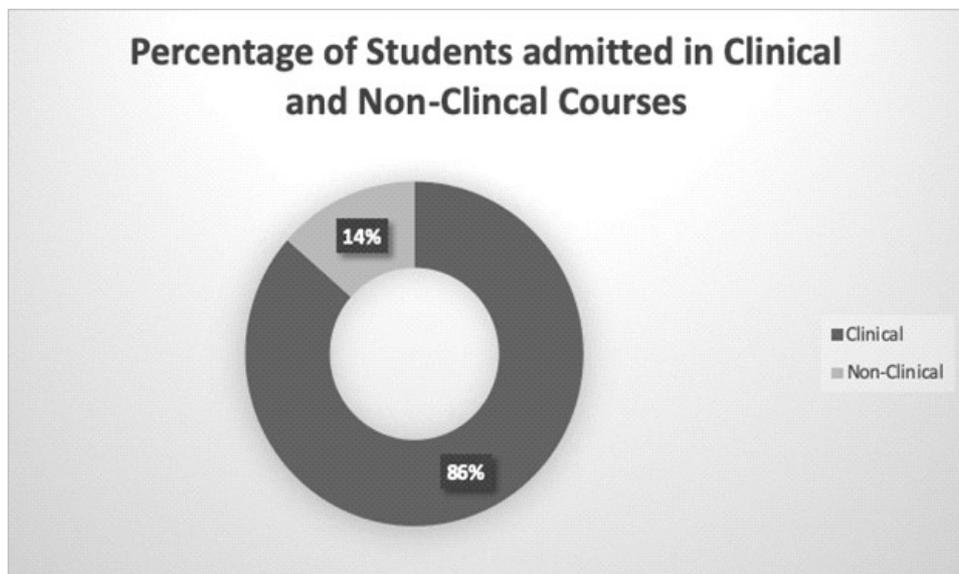
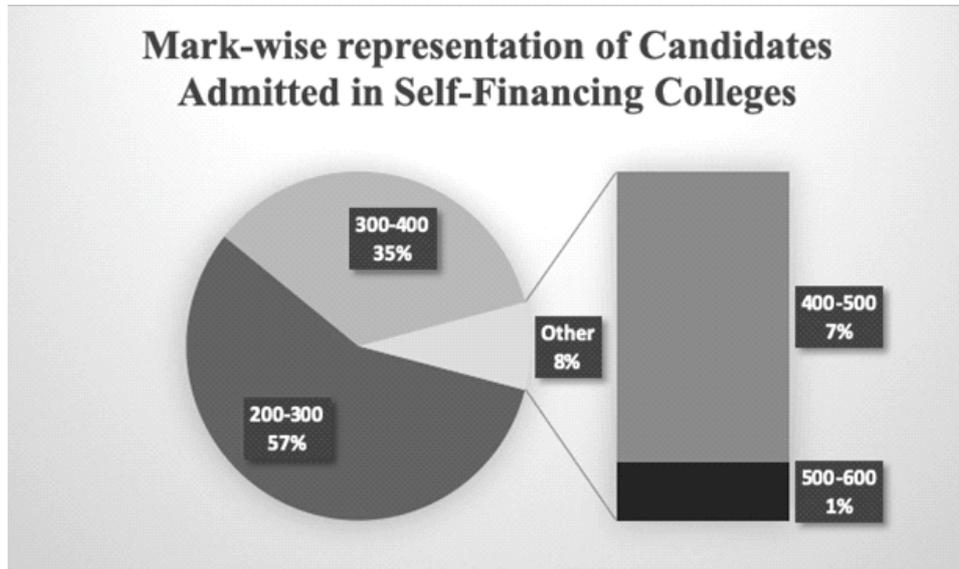
<b>Range of marks obtained</b>	<b>Course</b>	<b>Course-wise seat allotment in each mark category</b>	<b>Institution</b>	<b>Seats Allotted</b>
<u>200-300</u>	<b>M.D. Anaesthesiology</b>	6	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	3
			Karpaga Vinayaka Medical College, Chinnakolambakkam	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	2
	<b>M.D. DVL</b>	1	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
	<b>M.D. General Medicine</b>	4	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
			Sri Muthukumaran Medical College, Chennai	1
			Tagore Medical College, Chennai	2
	<b>M.D. Paediatrics</b>	3	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
			PSG Medical College, Coimbatore	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1
	<b>M.D. Psychiatric Medicine</b>	1	PSG Medical College, Coimbatore	1
	<b>M.D. Radio Diagnosis</b>	2	PSG Medical College, Coimbatore	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1
	<b>M.D. T.B. and Chest Diseases</b>	2	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1
	<b>M.S. ENT</b>	3	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
Sri Moogambigai Institute of Medical Science, Kulasekaram			1	

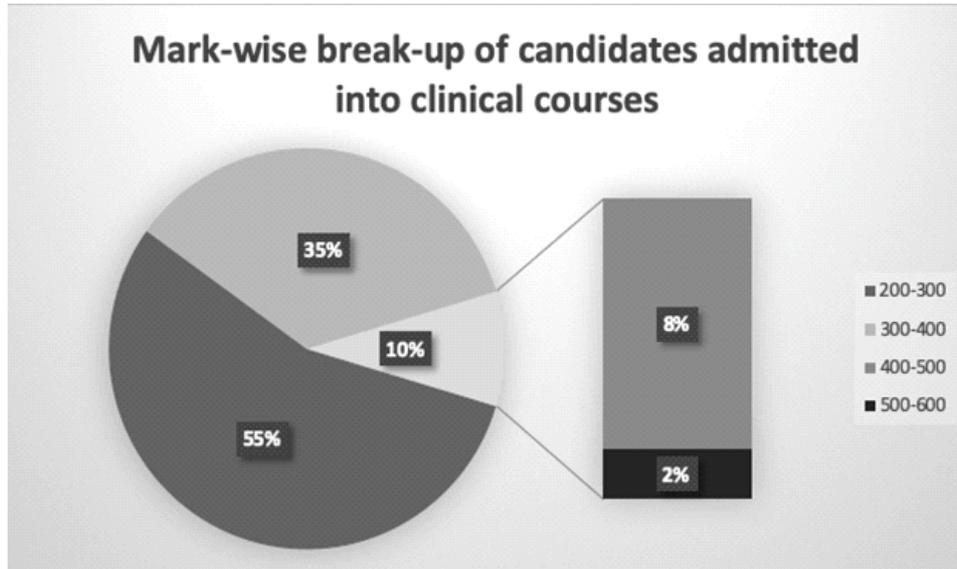
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1
	<b>M.S. General Surgery</b>	7	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	2
			Karpaga Vinayaka Medical College, Chinnakolambakkam	1
			Tagore Medical College, Chennai	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	2
			Velammal Medical College, Madurai	1
			<b>M.S. Obstetrics and Gynaecology</b>	3
	Sri Muthukumaran Medical College, Chennai	1		
	Tagore Medical College, Chennai	1		
	<b>M.S. Ophthalmology</b>	1	PSG Medical College, Coimbatore	1
	<b>M.S. Orthopaedics</b>	3	Sri Moogambigai Institute of Medical Science, Kulasekaram	1
			Tagore Medical College, Chennai	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1
<b>Total No. of Candidates allotted with Clinical Seats in 200-300 mark range</b>				<b>36</b>
<u>300-400</u>	<b>M.D. Anaesthesiology</b>	2	Sri Moogambigai Institute of Medical Science, Kulasekaram	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1
	<b>M.D. DVL</b>	1	Karpaga Vinayaka Medical College, Chinnakolambakkam	1
	<b>M.D. General Medicine</b>	3	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
			Karpaga Vinayaka Medical College, Chinnakolambakkam	1
			Tagore Medical College, Chennai	1
	<b>M.D. Psychiatric Medicine</b>	3	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
			Karpaga Vinayaka Medical College, Chinnakolambakkam	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1

	<b>M.D. Radio Diagnosis</b>	2	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
			Karpaga Vinayaka Medical College, Chinnakolambakkam	1
	<b>M.S. ENT</b>	1	Sri Muthukumar Medical College, Chennai	1
	<b>M.S. General Surgery</b>	6	Adhiparasakthi Institute of Medical Sciences and Research, Melmaruvathur	2
			Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	2
			Sri Moogambigai Institute of Medical Science, Kulasekaram	2
	<b>M.S. Ophthalmology</b>	3	Adhiparasakthi Institute of Medical Sciences and Research, Melmaruvathur	1
			Joseph Eye Hospital, Trichy	1
			Trichy SRM Medical College Hospital and Research Centre, Trichy	1
	<b>M.S. Orthopaedics</b>	2	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	2
<b>Total No. of Candidates allotted with Clinical Seats in 300-400 mark range</b>			<b>23</b>	
<u>400-500</u>	<b>M.D. General Medicine</b>	1	Karpaga Vinayaka Medical College, Chinnakolambakkam	1
	<b>M.D. Pediatrics</b>	1	Adhiparasakthi Institute of Medical Sciences and Research, Melmaruvathur	1
	<b>M.S. Ophthalmology</b>	2	Aravind Eye Hospital, Madurai	1
Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur			1	
<b>Total No. of Candidates allotted with Clinical Seats in 400-500 mark range</b>			<b>4</b>	
<u>500-600</u>	<b>M.D. Radio Therapy</b>	1	Cancer Institute, Adayar, Chennai	1
<b>Total No. of Candidates allotted with Clinical Seats in 500-600 mark range</b>			<b>1</b>	
<b>Total No. of Clinical Seats Allotted in Stray Vacancy</b>				<b>64</b>

**NON- CLINICAL COURSES**

<b>Range of Marks Obtained</b>	<b>Course</b>	<b>Course wise seat allotment in each mark category</b>	<b>Institution</b>	<b>Seats Allotted</b>
<u>200-300</u>	<b>M.D. Micro Biology</b>	1	Adhiparasakthi Institute of Medical Sciences and Research, Melmaruvathur	1
	<b>M.D. Pathology</b>	1	Karpaga Vinayaka Medical College, Chinnakolambakkam	1
	<b>M.D. (S.P.M.)</b>	2	Sri Moogambigai Institute of Medical Science, Kulasekaram	1
			Tagore Medical College, Chennai	1
	<b>M.D. Pathology</b>	2	Tagore Medical College, Chennai	1
			Velammal Medical College, Madurai	1
<b>Total No. of Candidates allotted with Non-Clinical Seats in 200-300 mark range</b>				<b>6</b>
<u>300-400</u>	<b>M.D. (S.P.M.)</b>	2	Trichy SRM Medical College Hospital and Research Centre, Trichy	1
			Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
	<b>M.D. Pathology</b>	1	Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur	1
<b>Total No. of Candidates allotted with Non-Clinical Seats in 300-400 mark range</b>				<b>3</b>
<u>400-500</u>	<b>M.D. Pathology</b>	1	Sri Moogambigai Institute of Medical Science, Kulasekaram	1
<b>Total No. of Candidates allotted with Non-Clinical Seats in 400-500 mark range</b>				<b>1</b>
<b>Total No. of Non-Clinical Seats Allotted in Stray Vacancy</b>				<b>10</b>





19. The above analysis clearly demonstrates as to how the private colleges have virtually given admissions to candidates for some of the important clinical courses, who otherwise do not deserve any admission through regular counselling. Candidates who have really worked hard and secured higher marks than these candidates will surely get an impression that there is something beyond merit that can secure admission to a candidate and which is the purchasing power. It is really surprising that the final list that was handed over by the selection committee to these private colleges on 30.08.2020 did not contain any contact details of the candidates. The most intriguing question is how the colleges got hold of these

candidates and allotted them seats on 31.08.2020? One must be too naïve to think that this happened through coincidence or by sheer accident. There is something more than what meets the eye when it comes to filling up seats in private medical colleges other than by way of counselling. Obviously, these are all candidates who are capable of pulling strings and already had a clear understanding with the concerned college. When the push comes to the shove, the prior understanding translated itself into a final action and the candidates got admitted into the course. Every year some mechanism is devised by the self-financing colleges to fill up vacancies in this manner. This court had an occasion to deal with a different scam that took place in the admissions for the academic year 2017-18 in W.P. Nos. 31921 of 2017 (Batch), where the orders were pronounced on 07.10.2020.

20. If this situation is allowed to be continued year after year and no one takes any steps to redress the same, it results in injustice to meritorious candidates. Obviously, these seats carry a lot of monetary value to it and a student with the necessary contact and financial wherewithal can purchase this seat and undergo the course along with students who had toiled and burnt the midnight oil to secure these seats on pure merit. A student who secures a seat in this manner, is a bigger danger to this society. After completing the course, by hook or crook,

they will be handling the lives of innocent people. Where the means adopted is iniquitous, then obviously the end will also suffer from its consequences. Such a candidate can only be a fruit from a poisonous tree. It is very important to identify this malice that is afflicting admissions in post-graduate medical courses. At the end of the day, money, contacts and power should not be the determining factor for getting a seat in a post-graduate course and it should be merit and merit alone which should form the basis for allotting a seat to a candidate in post-graduate courses and super-specialties. During this academic year, the pandemic has been taken advantage of to stage manage and fill up nearly 74 seats with unmeritorious candidates. Conspiracy is something which can only be inferred or deduced from a given set of facts and the analysis made *supra* based on the data provided by the Respondents, clearly brings out a conspiracy between the officials belonging to the Directorate of Medical Education and the self-financing colleges. There is definitely something more than what meets the eye and it requires a thorough investigation by a neutral agency. Only such an investigation will expose the culprits behind this conspiracy and the total money that was collected from these candidates by the concerned private self-financing colleges. These self-financing colleges are not conducting charity and have obviously profited through these admissions. At the end of the day, the citizens of this country must be satisfied that

merit is not compromised when it comes to post-graduate medicine and super-specialties and that the Courts are there to ensure the same. Therefore, some stringent steps must be taken by the Courts to ensure probity and to send a strong message that such illegal actions will not be tolerated by the Courts.

21. This country has a strong belief in fate/destiny/ *karma*. However, this great truth is very often misunderstood and it is mistakenly taken as a defense for indolence. The flawed understanding of this concept has really caused great damage to this country over a period of time. When the country was supposed to stand up and fight, many a times, it was left into the hands of destiny even without putting the least effort. That is why great thinkers and philosophers emphasize “action” with all vigour. A person who does not perform his action and takes shelter under the defense of destiny should never be excused. This Court wants to take all efforts to cleanse this malice that is afflicting the admission process when it comes to post-graduate courses. This Court does not want to consign this issue to the hands of fate/destiny. Rather this Court wants to take the bull by the horns and see how best the system can be improved.

22. It will be relevant to take note of the judgements of the Hon’ble

Supreme Court which dealt with the scope of the powers of this Court in ordering investigation/enquiry in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India, 1950. The Hon'ble Supreme Court in *State of T.N. v. Elephant G. Rajendran*, reported in **(2019) 14 SCC 29** held as follows:

*46. What is the ambit and scope of powers of the constitutional courts exercising the jurisdiction under Article 226 needs to be looked into. The High Courts in India were created by the Indian High Courts Act, 1861. Sections 9 and 10 of the Indian High Courts Act, 1861 provided for jurisdiction and power of the High Court. Section 106 of the Government of India Act, 1915 and Section 223 of the Government of India Act, 1935 provided for jurisdiction of the existing High Courts. Article 226 of the Constitution of India confers to the High Courts wide powers in the matter of issuing writs which they never possessed before. Article 226 of the Constitution is couched in very wide words, powers given to the High Court are both plenary and inherent. The power under Article 226 is not confined only to issue specified writs but power conferred to the High Court is to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of the rights conferred by Part III and for any other purpose.*

*55. This Court time and again forged and fashioned new designs to enforce fundamental rights and to redress other grievance of the people. There are several instances of this Court and the High Courts issuing directions for carrying out investigation by Special Investigation Team which consisted of even retired officers. This Court in *Guruvayoor Devaswom Managing Committee v. C.K.**

*Rajan [Guruvayoor Devaswom Managing Committee v. C.K. Rajan, (2003) 7 SCC 546] , has elaborately noticed the scope of public interest litigation and has catalogued the principles evolved by this Court in para 50 of the judgment. Eleven principles have been summarised. In sub-para (ix) this Court held: (SCC pp. 569-70)*

*“50. ... (i)-(viii) \* \* \**  
*(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See Bandhua Mukti Morcha [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389] , Rakesh Chandra Narayan v. State of Bihar [Rakesh Chandra Narayan v. State of Bihar, 1989 Supp (1) SCC 644] and A.P. Pollution Control Board v. M.V. Nayudu [A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718]*

*64. We having noticed the expansive nature of jurisdiction under Article 226 and the exposition of law of this Court extracted above, the jurisdiction of constitutional courts under Article 226 and Article 32 can be used to forge new methodology to achieve the constitutional objectives. No fetter can be read in the jurisdiction under Article 32 or 226 as contended by the learned Attorney General. For sufficient reason investigation can be handed over to a person who is retired or no longer in employment. The functions which are to be performed by that person are under authority of Court's order. There may be varied situations and circumstances where a former officer is entrusted with an investigation or any other function to achieve an object or purpose. When the*

*constitutional courts direct a particular officer to carry on specific job that order cannot be treated to put that person in office of that post with all necessary consequences. The particular object is entrusted or only a specific job is entrusted to the officer which he has to carry."*

23. It is settled law that the power under Article 226 is plenary in nature. The expression "any other purpose" occurring in Article 226 has been judicially interpreted so as to enable the High Court to remedy injustice wherever it may be found. The jurisdictional contours of Article 226 have been succinctly set out in an oft quoted passage of Subba Rao, J in ***Dwarak Nath v ITO*** reported in ***[AIR 1966 SC 81]*** which runs thus:

*"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country."*

24. In *Elephant Rajendran's Case* (cited *supra*), the Hon'ble Supreme Court also cited and approved the judgement of a Division Bench of the Bombay High Court in *Ranjit Singh Bramhajeet Singh Sharma v. Kisan Baburai Hazare*, reported in (2004) 3 Mah LJ 760, where a Bench of C.K Thakker CJ and D.Y Chandrachud, J [as their Lordships then were] constituted a SIT and observed as under:

*"41. The judgment of the Supreme Court in Vineet Narain emphasizes the need for ensuring independent investigations and competent prosecutions. There is a real and undeniable relationship between the maintenance of the rule of law and the administration of criminal justice. No society can pride itself on the maintenance of the rule of law if crime continues to be investigated poorly and prosecuted insufficiently. Constitutional Courts are confronted with cases that shake the foundation of the rule of law and threaten the legitimacy of a system founded on its observance. The High Court, upon being confronted with such problem cannot throw its hands in despair at the breakdown of the administration of criminal justice. Nor can the Court be sanguine in the hope that all is indeed well when facts which are brought to its attention warrant scrutiny. The Court is under a constitutional obligation to design and create remedies that deal with such situations in a manner that would not be inconsistent with the provisions of law."*

25. At this juncture, this Court will now consider the reliefs that could be granted to the Petitioners. Insofar as W.P. No. 13564 of 2020 is concerned, no

further orders can be passed by this Court since the deadline for conducting the mop-up counselling for Management Quota is already over i.e. on 31.08.2020.

26. While dealing with the Petitioner in W.P. No. 11963 of 2020, this Court is of the considered view that the Petitioner cannot be allotted a seat either in M.S. Ophthalmology or M.D. Pediatrics since it has already been allotted in favour of two other candidates and they are not parties to this Writ Petition. However, the Petitioner cannot be sent away empty handed. Considering the peculiar facts of the present case, the Petitioner is at liberty to give up her seat in the 4<sup>th</sup> Respondent college in M.D. Micro Biology. The penalty as contemplated under Clause 21(c) of the Prospectus should not be put against the Petitioner and the Petitioner will be entitled to once again participate during selection in the next academic year for post-graduate courses. Atleast, this liberty must be given to the Petitioner who otherwise, was eligible for consideration for selection into M.S. Ophthalmology or M.D. Pediatrics if a regular counselling had taken place. This liberty granted by this Court cannot be taken as a precedent in any other case and it is confined to the peculiar facts of the present case.

27. Insofar as the Petitioner in W.P. No.13466 of 2020 is concerned, that is

a case where the Petitioner was allotted seat in the 4<sup>th</sup> Respondent college. According to the Petitioner, he was willing to pay the fees fixed by the committee and the counter-affidavit filed by the Respondents shows that the fees that was fixed was a sum of Rs. 3,00,000/- (rupees three lakhs). The petitioner was willing to pay this fees and the complaint is that the 4<sup>th</sup> Respondent demanded for additional fees and had ultimately allotted the seat in favour of some other candidate by treating the vacancy caused by the Petitioner as a stray vacancy. This procedure adopted by the 4<sup>th</sup> Respondent is completely illegal. The 4<sup>th</sup> Respondent ought to have informed the selection committee about the non-payment of the fees and the selection committee should have thereafter, identified the seat as a stray vacancy and only thereafter can it be filled. Admittedly, this procedure was not adopted by the 4<sup>th</sup> Respondent. Therefore, the Petitioner should not be deprived of the seat allotted in the 4<sup>th</sup> Respondent college. In view of the same, there shall be a direction to the Petitioner to pay the fees fixed by the fee fixation committee to the 4<sup>th</sup> Respondent college on or before 02.11.2020. On such payment, the 4<sup>th</sup> Respondent shall admit the Petitioner in the M.S. Orthopedics course. The 4<sup>th</sup> Respondent shall intimate the same to the National Medical Commission of India on or before 06.11.2020. The 4<sup>th</sup> Respondent shall

refund the entire amount received from the candidate who was admitted in the place of the Petitioner. Since this Court found that the admission granted by the 4<sup>th</sup> Respondent college was illegal, the same will not create any right in favour of the admitted candidate and providing opportunity to such a candidate will only be a futile formality.

28. A copy of this order shall be marked to the D.G.P. Tamil Nadu and the D.G.P is directed to allot the case immediately to CBCID which shall consist of a team headed by an officer not below the rank of an Assistant Commissioner. The scope of enquiry shall be broadly as follows:

- a. Whether there was any conspiracy between the officials of the Directorate of Medical Education and the self-financing colleges (list extracted *supra*) in filling up the stray vacancies on 31.08.2020;
- b. The amount received from each candidate who was admitted by the self-financing colleges on 31.08.2020; and
- c. any other matter that unfolds during investigation in this regard.

29. The report shall be submitted before this Court on or before 30.01.2021. Post these Writ Petitions on 01.02.2021 along with the report under the caption "For Reporting Compliance". No costs. Consequently, the connected miscellaneous petitions are closed.

**28.10.2020**

Internet: Yes  
Index : Yes/No  
KP

To

- 1.The Director of General Health Services  
Ministry of Health and Family Welfare  
Government of India, F-17, Karakardooma,  
New Delhi 110 032.
- 2.The Director,  
Directorate of Medical Education,  
162, EVR Periyar Salai, Kilpauk,  
Chennai 600 010.
- 3.The Secretary  
Selection Committee  
Directorate of Medical Education,  
162, EVR Periyar Salai, Kilpauk,  
Chennai 600 010.
- 4.The Dean,  
PSG Institute of Medical Science and Research,  
Peelamedu, Coimbatore.

5. The Principal Secretary,  
Health Department,  
Secretariat, Chennai.
6. The Principal/Dean,  
Karpaga Vinayakka Medical College,  
Chinnakolambakkam,  
Chengalpattu.
7. National Board of Examinations,  
NEET PG 2020,  
Medical Enclave,  
Ansari Nagar,  
Mahatma Gandhi Marg,  
Ring Road,  
New Delhi-110 029.
8. The Secretary,  
Medical Counsel of India,  
Dada Dev Mandir Road,  
Dwaraka Phase 1,  
Packet 14, Sector 8 Dwaraka,  
New Delhi 110 077.
9. The Director General of Police,  
Tamil Nadu.

W.P. Nos.11963, 13466 & 13564 of 2020

**N. ANAND VENKATESH, J.**

KP

**Pre Delivery Common Order in**  
**W.P. Nos.11963 , 13466 and 13564 of 2020**

**28.10.2020**