

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION**

Civil Appeal No.3840 of 2020
(Arising out of SLP (C) No.12891 of 2020)

DR. PRERIT SHARMA & ORS.

.... Appellant(s)

Versus

DR. BILU B.S. & ORS.

.... Respondent (s)

WITH

Writ Petition (C) No.1299 of 2020

Civil Appeal Nos. 3841-3843 of 2020
(Arising out of SLP (C) Nos.13670-13672 of 2020)

O R D E R

Leave granted in the special leave petitions and the Writ Petition is admitted.

1. Writ Petition No.20256 of 2020 was filed by Dr. Bilu B.S., the Respondent No.1. in the appeal arising out of SLP (C) No.12891 of 2020 in the Kerala High Court seeking implementation of reservation to 40 per cent of the seats in Super Specialty Medical Courses for in-service Doctors in terms of the law laid down by this Court in ***Tamil Nadu***

Medical Officers Association v. Union of India (2020)

SCC Online P. 699. The said Writ Petition was taken up along with Writ Petition No.20135 of 2020 filed for the same relief. By an order dated 05.10.2020, a learned Single Judge of the Kerala High Court refused to grant stay of counselling to the 40 per cent seats for in-service quota. Aggrieved thereby, the first Respondent filed the Writ Appeal which was allowed by a Division Bench of the High Court of Kerala by an order dated 07.10.2020. The Division Bench directed the preparation of a list of candidates eligible for admission as in-service candidates, which was to be sent to the Directorate of Medical Education, New Delhi by 05.00 PM on 08.10.2020. The Director General, Health Services was directed to consider the candidates for admission in Super Specialty Medical Courses in the State of Kerala under in-service quota. The said order dated 07.10.2020 passed by the Division Bench of the High Court of Kerala is challenged by the Petitioners who are post-graduate degree holders in Medicine and who have qualified the National Eligibility-cum-Entrance Test

(NEET), 2020 for admission to Super Specialty Medical Courses for the academic year 2020-2021.

2. Notice was issued by this Court on 27.10.2020 in the Special Leave Petition filed against the order dated 07.10.2020 passed by the Division Bench of the High Court of Kerala and on the statement made by Mr. Dushyant Dave, learned Senior Counsel that the National Medical Commission on 08.10.2020 decided to postpone the counselling, and an order of status quo was passed and the matter was directed to be listed for hearing today.

3. Respondent Nos.1 and 2 in the appeal arising out of SLP (C) No.13670-13672 of 2020 filed a Writ Petition in the High Court of Madras seeking a direction to notify 50 per cent of the vacancies for in-service Doctors for admission to Super Specialty Medical Courses for the academic year 2020-2021 in the State of Tamil Nadu. When the matter was listed for hearing, the learned Advocate General for the State of Tamil Nadu placed GOMS No.462, Health and Family Welfare (MCA-1) dated 07.11.2020 before the High Court and submitted that the selection for the Super Specialty Medical Courses during the academic year 2020-

2021 shall be conducted by providing 50 per cent reservation for in-service doctors. The Writ Petition was disposed of by a learned Single Judge of the Madras High Court by holding that the relief sought for in the Writ Petition has already been granted by the State Government by passing the GOMS No.462 dated 07.11.2020. The said order dated 09.11.2020 is in challenge before this Court in the appeal arising out of SLP (C) No.12891 of 2020. Writ Petition (C) No. 1299 of 2020 is filed by six Doctors who are eligible for admission to Super Specialty Medical Courses, seeking a direction to Respondent Nos.2 and 3 therein to conduct the counselling and admission to the Super Specialty Medical Courses for the academic year 2020-2021 as per the information bulletin and not to grant any reservation to in service Doctors.

4. We have heard Mr. Dushyant Dave and Mr. Shyam Divan learned Senior Counsel appearing for the Appellant-Petitioners in the Appeals and the Writ Petition. We have also heard Mr. Vikas Singh learned Senior Counsel for the National Medical Commission, Mr. Sanjay Jain, learned

Additional Solicitor General appearing for the Union of India, Mr. Jaideep Gupta, learned Senior Counsel for the State of Kerala, Mr. C.S. Vaidhyathan and Mr. V. Giri, learned Senior Counsel for the State of Tamil Nadu, Mr. P. Wilson, learned Senior Counsel for the Respondents in the Appeal arising out of SLP (C) No.13670-13672 of 2020, Mr. George Varghese Perumpallikuttiyil, Advocate for the first Respondent in Appeal arising out of SLP (C) No.12891 of 2020.

5. At the outset, Mr. Dushyant Dave, learned Senior Counsel brought to our notice the affidavit filed on behalf of the State of Kerala in which it is mentioned that it is not possible to implement the direction issued by the High Court in its order dated 07.10.2020 for the current academic year i.e. 2020-2021. It has been stated in the said affidavit that there are 140 postgraduate Super Specialty seats in the Government Medical Colleges and RCCs in the State of Kerala. Rank list of the candidates who qualified in the NEET PGSS 2020 shall be prepared by the National Board of Examinations on the basis of merit. As the information bulletin for the entrance examination

for admission to Super Specialty Medical Courses has already been issued in which no reservation has been provided for in-service candidates, it is practically impossible to introduce any new reservation norms for the current academic year i.e. 2020-2021. On the basis of the said affidavit filed by the State of Kerala, Mr. Dave submitted that the admission to Super Specialty Medical Courses for the year 2020-2021 should be completed without any reservation to the in-service doctors and the larger questions that are raised in the appeal can be decided at the later stage.

6. Mr. Jaideep Gupta, learned Senior Counsel appearing for the State of Kerala stated that it might not be possible to implement the reservations for in-service candidates at this stage for the academic year 2020-2021 as the admission process has already commenced. However, he stated that the legislation made by the State providing for reservation to in-service doctors has been upheld by this Court and the State has the power to provide reservation to in service Doctors in super specialties. Mr. George Varghese Perumpallikuttiyil supported the order passed by

the High Court by arguing that the Kerala Medical Officers Admission to Postgraduate Courses under Service Quota Act, 2008 and the Rules made thereunder provided for a service quota to in-service doctors for admission to Super Specialty Courses and Postgraduate Courses. He submitted that the said Act was upheld by this Court in its judgment in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra). Responding to the stand taken by the State of Kerala, Mr. Perumpallikuttiiyil argued that administrative inconvenience cannot be a ground to interfere with the order passed by the High Court directing implementation of reservation to in-service doctors in accordance with the Kerala Medical Officers Admission to Postgraduate Courses under Service Quota Act, 2008. He stated that this Court should not interfere with the order passed by the High Court as it would result in immense loss to the in-service doctors in the State of Kerala.

7. In so far as the cases relating to the State of Tamil Nadu are concerned, Mr. Dushyant Dave and Mr. Shyam Divan, learned Senior Counsel submitted that the judgment of the Constitution Bench in ***Tamil Nadu***

Medical Officers Association v. Union of India (supra) does not deal with the admissions to Super Specialty Medical Courses. They contended that it is settled law that there cannot be any reservation of any kind in admission to Super Specialty Courses. It was argued by them that the information bulletin for admission to Super Specialty Courses for the academic year 2020-2021 was issued on 03.08.2020. The NEET Super Specialty Examination was conducted on 15.09.2020 and the results were declared on 25.09.2020. Counselling was scheduled to commence on 08.10.2020. They took us through the information bulletin to show that it was made clear to the candidates that there shall be no reservation for admission to Super Specialty Courses. They relied upon the observations made by the Constitution Bench in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra) that the judgment shall operate prospectively. They further contended that the Rules of the game cannot be changed mid-stream and no reservation can be provided for this academic year i.e. 2020-2021 as the procedure for selections for admission to Super Specialty

Medical Courses commenced a long time back. Though, the learned Senior Counsel made submissions on the correctness of some findings of the Constitution Bench in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra), we are not inclined to entertain such submissions at this stage. We have made it clear to them that arguments are heard only for the purpose of granting interim relief.

8. Mr. Sanjay Jain, learned Additional Solicitor General supported the submissions made on behalf of the Petitioners that it has been clearly laid down by this Court in ***Jagdish Saran v. Union of India (1980) 2 SCC 768, Dr. Pradeep Jain & Ors. v. Union of India & Ors. (1984) 3 SCC 654, Dr. Preeti Srivastava and Another vs. State of M.P. and Others (1999) 7 SCC 120*** and ***Indira Sawhney & Ors. v. Union of India & Ors. (1992 Supp. (3) SCC 217)*** that there can be no reservation in Super Specialty Courses and that the Constitution Bench was only concerned with the postgraduate courses in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra). He submitted that there is no reference to

any cogent material on the basis of which reservation was provided to in-service doctors by the Government order dated 07.11.2020. One of the directions given in GOMS No.462 dated 07.11.2020 is to post the in-service candidates in hospitals in rural or remote or difficult areas which even according to Mr. Vikas Singh, learned Senior Counsel for National Medical Commission is not a valid reason for providing reservation to in-service doctors in the Super Specialty Medical Courses. He submitted that it is impossible to provide reservation for in-service Doctors for this year as the admission process is at an advance stage.

9. Mr. C.S. Vaidhyanathan and Mr. V. Giri learned Senior Counsel appearing for the State of Tamil Nadu argued that a Constitution Bench considered the issues that are raised by the learned counsel for the petitioners in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra). According to them, it has been clearly laid down by this Court in the said judgment that the States have power to provide reservation for in-service candidates in postgraduate courses. The learned Senior Counsel stressed on the requirement of Doctors having Super

Specialty qualifications to cater to the needs of the patients in the rural areas. It was submitted by them that there are 369 seats in Super Specialty Medical Courses in the State of Tamil Nadu and on the basis of statistics placed before this Court they argued that around 70 per cent of the Doctors who are trained in the State of Tamil Nadu in the Super Specialty Medical Courses do not serve in the State of Tamil Nadu. They submitted that huge amount is expended on each Doctor for their training in the Super Specialty courses and the people of State of Tamil Nadu do not get benefit of their services. Whereas, the in-service doctors have an obligation to serve the State of Tamil Nadu till the date of their retirement. The Constitution Bench in its judgment in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra) only saved the admissions which have already been made. As the admissions for the year 2020-2021 have not been completed, the learned Senior Counsel for the State of Tamil Nadu submitted that the said judgment has to be implemented for admissions to the academic year 2020-2021. As it is well settled law that reservation can be

provided by an executive order taking into account the needs of the State, GOMS No.462 dated 07.11.2020 is valid.

10. Mr. P. Wilson, learned Senior Counsel appearing for the Respondent supported the submissions made on behalf of the State of Tamil Nadu and stressed on the need for reservation to in-service Doctors in Super Specialty Medical Courses. Mr. Wilson argued that no new law has been laid down by this Court in its judgment in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra). This Court categorically held in ***K. Duraisamy and another v. State of T.N: (2001) 2 SCC 538*** that reservation is permissible in Super Specialty Medical Courses which was reiterated in and ***Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors. (2016) 7 SCC353***. Mr. Wilson submitted that the prospectus itself is contrary to the earlier judgments of this Court. Even without following the judgment of this Court in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra), it was incumbent on the part of the National Medical Commission

and the Union of India to implement the law laid down by this Court by providing for reservation for in-service doctors in Super Specialty Medical Courses.

11. Though, the learned counsel appearing for the Petitioners made an attempt to argue that the judgment of the Constitution Bench in *Tamil Nadu Medical Officers Association v. Union of India* (supra) requires reconsideration, we prevented them from doing so as we made it clear that the hearing today is only for the purpose of deciding whether the counselling for Super Specialty Medical Courses for the year 2020-2021 should be held without providing reservations for in-service doctors.

12. The information bulletin for NEET-SS 2020 was issued on 03.08.2020. The examination date was scheduled to be held on 15.09.2020, the results of which were to be declared on 25.09.2020. We are informed that the examination was held as per schedule and results were declared on the date fixed. It was made clear in point 5.16 of the bulletin that there shall be no reservations of seats for Super Specialty DM/MCH Courses. The Medical Counselling Committee issued the counselling scheme for

100 per cent All India Quota for NEET Super Specialty DM/MCH DMB 2020-2021 in which it was made clear that there shall be no reservation for Super Specialty Medical Courses while referring to the judgment by this Court in ***Dr. Preeti Srivastava and Another vs. State of M.P. and Others*** (supra) and ***Dr. Sandeep Sadashivrao v. Union of India & Ors. (2016) 2 SCC 328***. The counselling for admission to Super Specialty Medical Courses was postponed. The State of Tamil Nadu issued GOMS No.462 dated 07.11.2020 by which a decision was taken to reserve 50 per cent of the Super Specialty seats in Government Medical Colleges in the State of Tamil Nadu for in-service candidates. The basis for the said order is the judgment of this Court in ***Tamil Nadu Medical Officers Association v. Union of India*** (supra) and the opinion of the learned Advocate General for the State of Tamil Nadu.

13. Kerala Medical Officers Admission to Postgraduate Courses under Service Quota Act, 2008 provides for 40 per cent reservation for in-service doctors in admission to the Super Specialty Medical Courses. Admittedly, the Act was

not implemented for the years 2017-2019. By the impugned order, the High Court directed the concerned authorities to carry out the provisions of the Act and provide reservation to in-service Doctors. However, the State of Kerala has shown its inability to implement the said Act for admission to the Super Specialty Medical Courses for the current academic year i.e. 2020-2021.

14. As stated supra, several submissions ranging from the correctness of the judgment of this Court in ***Tamil Nadu Medical Officers Association*** (*supra*) to the applicability of the judgment of super speciality courses have been made on behalf of the Petitioners. Other points pertaining to permissibility of reservations for admission to Super Specialty courses in view of the earlier judgments of this Court and interpretation of Regulation 9 of the 2017 Regulations framed by the MCI are to be considered in detail.

15. The process for admissions to Super Specialty Medical Courses started on 03.08.2020 and it was made clear to all the competing candidates that there shall be no reservation to Super Specialty Medical Courses. The

Government order issued by the State of Tamil Nadu on 07.11.2020 reserving 50 per cent seats for in-service doctors would be detrimental to the interests of the meritorious Doctors as 50 per cent of the available seats in the State of Tamil Nadu in Super Specialty Medical Courses will not be available to them. We are not in agreement with the submission of Mr. Vaidyanathan and Mr. Giri that nobody will be prejudiced if the Government Order is given effect to. There will be reduction of 50% of seats in Super Specialty courses in Tamil Nadu if the Government Order is carried out, which is detrimental to their chances of admission. Admittedly no reservation for in-service Doctors was implemented since 2016. As the admission process is at the final stages, we cannot permit reservation for in-service Doctors for this year.

16. We make it clear that we have not expressed any opinion on the validity of GOMS No.462 of 07.11.2020. We direct that the counselling for admission to Super Specialty Medical Courses for the academic year 2020-2021 shall proceed on a date to be fixed by the competent authority without providing for reservations to in-service

doctors for the academic year 2020-2021. We reiterate that the above direction would be operative only for the current academic year i.e. 2020-2021.

17. List the Appeals and the Writ Petition for hearing in February, 2021.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

.....J.
[AJAY RASTOGI]

**New Delhi,
November 27, 2020**