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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.02.2022

Pronounced on : 22.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 32182 of 2022

And

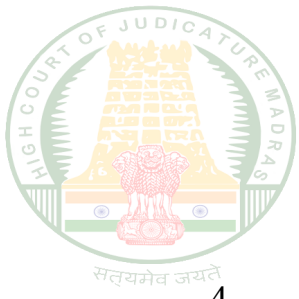
W.M.P.No. 31607 of 2022

Saminathan

... Petitioner

..Vs..

1. Union of India
Represented by the Secretary to Government
Ministry of Health and Family Welfare
New Delhi.
2. The Medical Counselling Committee of
Directorate General of Health Services
Represented by ADG(ME) & Member Secretary, MCC
Ministry of Health and Family Welfare
Government of India
New Delhi.
3. JIPMER
Represented by its Dean (Academic)
Dhanvantri Nagar,
Puducherry.



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4. The Director
Department of Health and Family Welfare Services
- cum- Nodal Officer (Medical Education)
Puducherry.

5. Najih Sarfraz Khalid ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the 2nd and 3rd respondents to pass appropriate orders cancelling the admission of the 5th respondent to 1st year MBBS Course in JIPMER Puducherry Campus for the academic year 2022-23 and to allot admission to the petitioner to 1st year MBBS Course in JIPMER Puducherry Campus for the academic year 2022-23.

For Petitioner :: Mr. M.Ravi

For RR 1 & 2 :: Mr. Bala Manimaran
Central Government Standing Counsel

For 3rd Respondent : No appearance

For 4th Respondent: Mr. Ramaswamy Meyyappan
Government Advocate
Puducherry

For 5th Respondent: Mr. T.P.Manoharan
Senior Counsel
for Mr.T.M.Naveen



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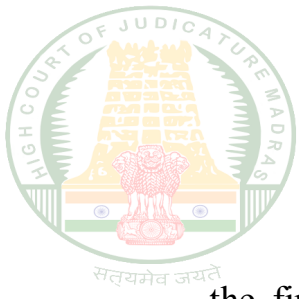


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ORDER

The Writ Petition has been filed in the nature of a Mandamus seeking a direction against the second and third respondents, Medical Counselling Committee of Directorate General of Health Services, Government of India, New Delhi and JIPMER, represented by its Dean (Academic), at Puducherry, to pass orders cancelling the admission of the 5th respondent for the 1st year MBBS Course in JIPMER Puducherry Campus for the academic year 2022-23 and allot admission to the petitioner for the 1st year MBBS Course in JIPMER Puducherry Campus for the academic year 2022-23.

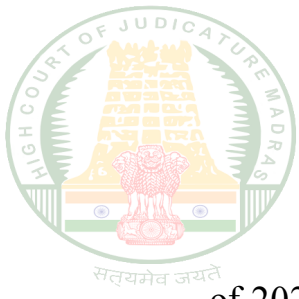
2. The petitioner, Saminathan, is a permanent resident at Puducherry. He belongs to other Backward Class community. He had participated in the Jipmer examination for MBBS for the academic year 2022-23. He had applied only under Puducherry General Category. He further stated that in the Under Graduate Medical/Dental Seats Allotment -2022 (Round-I) issued by the second respondent on 21.10.2022, 58 candidates were declared as selected for admission under Jipmer, Puducherry Internal and Jipmer Karaikal Internal category seats. He was



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the first candidate to be allotted a seat in Jipmer Puducherry Internal Karaikal Campus by virtue of his merit. However, 12 candidates, who had secured lower marks in NEET-2022 had secured admission under OBC category through Puducherry Internal Quota in Jipmer Puducherry Campus. He stated that if the OBC – NCL certificate which was issued later to him, had been issued earlier, he would have been automatically allotted admission through Puducherry Internal Quota in Jipmer Puducherry Campus.

3. In the affidavit, he further stated that subsequently he came to know that candidates, who had claimed residence in other states had applied for admission to MBBS course. They were not entitled to apply for seats under Jipmer Puducherry and Karaikal Internal Category, but had however applied for the same and were allotted seats under Jipmer Puducherry Internal Quota. He further stated that several candidates, who had applied for medical admission in Puducherry Medical Institution had filed Writ Petitions regarding the charge of dual nativity and this Court had given a finding that the issue of claim of dual nativity is to be viewed seriously. In the Judgment dated 07.04.2022 in W.P.Nos. 2067 and 2578

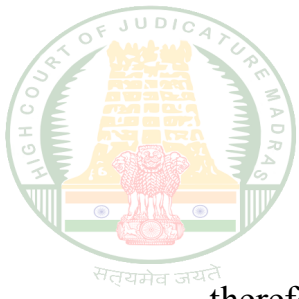


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of 2022, the irregularity was viewed as an aberration and it was directed to be corrected by the next year. It was stated that in the prospectus of CENTAC and other institutions in Union Territory of Puducherry, it must be stated that a specific undertaking must be given by both the candidate and the parent/guardian that the candidate had not opted and claimed the benefit of residence of admission in Under Graduate medical in any other State or Union Territory other than Puducherry.

4. In the affidavit, it had been further stated that the fifth respondent, Najih Sarfraz Khalid had been allotted a seat under Jipmer Puducherry Internal open category at Puducherry Campus under General Category with NEET Rank 12186 and that he had claimed dual nativity both as regards the Union Territory of Puducherry and State of Kerala.

5. In this connection, reliance was placed on the category wise list of Kerala State (KEAM 2022) and the Kerala State Medical Rank List-2022 based on NEET (UG) 2022 Rank which revealed that the holder of NEET Rank 12186 had been assigned Kerala State Rank as 880 under MU Muslim Category for admission to the medical course. It was



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therefore alleged that the fifth respondent had unlawfully been given a seat at Jipmer at Puducherry though he had also sought seat in Kerala and it was therefore stated that the admission of the fifth respondent should be cancelled and the petitioner should be offered that seat. It is to be noted that the petitioner is studying at Jipmer Karaikal Campus and therefore seeks transfer to Jipmer, Puducherry Campus on the cancellation of the seat of the fifth respondent.

6. The fourth respondent, Director of Health and Family Welfare Services cum Nodal Officer (NEET), Puducherry, had filed a counter affidavit. He stated that in accordance with the directions in W.P.Nos. 2067 & 2578 of 2022 dated 07.04.2022, an affidavit was sought from both candidates and parents/guardians relating to nativity. He also stated that Jipmer authorities had also been informed to obtain undertaking from the students in the same manner. The fifth respondent had also accordingly submitted an undertaking that he had not claimed residence in any other state other in Union Territory of Puducherry. The fourth respondent also stated that complaints had been received that many candidates, who applied for Jipmer under Puducherry Internal

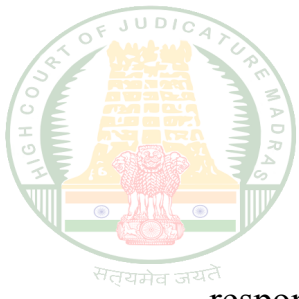


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Quota had also applied for medical seats under Government Quota in other states. It was alleged that the fifth respondent was one such candidate.

7. The Director of Health and Family Welfare Services by letter dated 21.10.2022 informed this aspect to the Dean, Jipmer and to the District Collector, Puducherry, requesting them to scrutinise the residence status through Revenue Department before granting admission at Jipmer, Puducherry. A letter dated 26.10.2022 was again addressed to the District Collector, Puducherry, requesting verification of the genuineness of residence / caste certificate of students who were alleged to have applied in another state also.

8. It was specifically stated that the fifth respondent was a native of Puducherry and a resident of Mahe but had studied at Kerala and had also applied in Kerala for admission. Both he and his parents had submitted an undertaking that they had not opted and claimed benefit of residence for admission in UG/PG Medical in any other State other than Union Territory of Puducherry. It was stated that the fifth



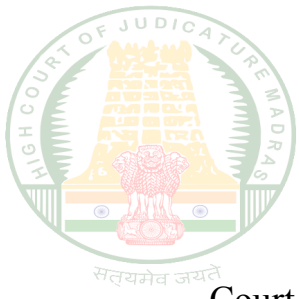
respondent was allotted a MBBS seat at Jipmer by the Medical Counseling Committee, New Delhi under the Puducherry Internal Quota.

It had been however stated finally as follows:-

“9. The fifth respondent has violated the conditions stipulated in the undertaking / affidavit submitted by him and his parent. The Department of Health vide letter dated 21.11.2022 has requested Jipmer Authorities to initiate appropriate action on the individual for the violation.”

9. The fourth respondent filed an additional affidavit wherein it had been stated that the Commissioner, Office of Entrance Examinations, Kerala, had stated that the fifth respondent had applied under Keralite category and had opted reservation under Muslim category. He was eligible to apply for KEAM 2022.

10. It had been stated in the additional affidavit that the fourth respondent had also informed the second respondent about this aspect. It had been stated that any transfer can be done only under directions of the



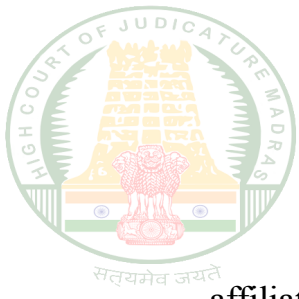
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Court. It was further stated that the power to recall/cancel any seat vests only with the second respondent.

11. The first and second respondents had filed an affidavit and stated that though the fourth respondent had informed this Court that they had forwarded the records regarding the domicile status of the fifth respondent, the first respondent had not received any such record/file.

12. An additional counter affidavit was then filed on behalf of the first and second respondents wherein they stated that they had actually received a letter dated 18.01.2023 from the office of DME, Puducherry / fourth respondent. It had been informed in the said communication that the fifth respondent had claimed dual residency status. It was stated that as per the records, the fifth respondent was found eligible for allotment of admission in Jipmer, Puducherry. It had also been stated that the student had also joined the college. It had been stated that the counseling had been completed.

13. The fifth respondent had filed a counter affidavit. He stated that he is a resident of Mahe and that all the schools in Mahe are



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affiliated to the Board of Senior Secondary and Higher Secondary Education of State of Kerala. He had however studied in a school situated within the territory of Kerala close to Mahe. He also did his 12th standard in another school but situated within the territory of New Mahe in State of Kerala. He appeared for the NEET UG MBBS examination 2022 and secured 621 marks out of 720. He obtained All India Rank of 12186. Since he was a native and resident of Mahe, and since he belonged to BC category and since certificates with respect to both had been obtained by him, he applied for a seat reserved for candidates domiciled in the Union Territory of Puducherry. Counseling was conducted by the second respondent. Due to his mark and rank, he was placed at serial No. 6432 and allotted seat No.8 out of the 48 seats reserved for candidates domiciled in Union Territory of Puducherry in the third respondent / Jipmer in Puducherry Campus. He also joined the MBBS Course on 22.10.2022. He claimed that he had been attending classes from 02.11.2022. He and his mother have signed and submitted the affidavit as required at the time of joining the first year MBBS degree course in the third respondent college.



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14. He further stated that the State of Kerala is conducting Kerala Engineering Architecture Medical (KEAM) as entrance examination for admission to various professional degree courses in the State of Kerala including Medical and Medical Allied Courses. Any Indian citizen is eligible for admission. The candidates are divided into three categories: (i) Keralite (candidates of Kerala origin); (ii) Non-Keralite Category – I (NK I) – those who are eligible to seek admission against the State merit to all professional courses in State of Kerala ; & (iii) Non-Keralite Category – II (NK II) – those who are not eligible for admission to professional courses in Government Colleges but rather eligible for admission in Self-Financing Colleges. It was therefore stated that even if a candidate is not a native of Kerala and a non resident of Kerala, he would still be eligible to seek getting admission in professional courses in the State of Kerala. He therefore justified his application under the category Non Keralite NK-I. He applied and registered for KEAM -2022 seeking admission to MBBS degree course. In view of his NEET Score and Rank of 12186, he was ranked 880 in the State list published by KEAM 2022. Further, since he was a Muslim, he was placed at rank 334 in the Muslim (MU) category.



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15. He however stated that he did not attend even the counseling conducted by KEAM for allotment of seats. Thereafter, the counseling authority of KEAM 2022 had published his name in the list of in-eligible candidates. He joined the third respondent - Jipmer in Puducherry Campus after the second respondent had issued a provisional allotment letter. He stated that he had not claimed as a native/ origin / resident of the State of Kerala. He had only applied and he stated that mere application cannot be held against him.

16. He further stated that the petitioner had been allotted Jipmer at Karaikal Campus. He denied that he had deliberately suppressed information. He stated that after verifying all facts and the original certificates produced by him, the authorities had confirmed that the certificates are genuine and correct. He reiterated that he is a native and resident of Union Territory of Puducherry and was entitled for a seat in Jipmer, Puducherry Internal Quota.



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17. He further stated that the third respondent had issued a Memorandum on 22.11.2022 and directed him to submit relevant documents. He had given a detailed explanation and also submitted the relevant documents. He stated that the entire issue had arisen out of a complaint by an unregistered Association on 21.11.2022. He also stated that the writ petitioner had filed the Writ Petition belatedly out of frustration. He finally stated that the Writ Petition should be dismissed.

18. Heard arguments advanced by Mr. M.Ravi, learned counsel for the petitioner, Mr. Bala Manimaran, learned Central Government Standing Counsel for the first and second respondents, Mr. Ramaswamy Meyyappan, learned Government Advocate, Puducherry, for the fourth respondent and Mr.T.P.Manoharan, learned Senior Counsel for Mr. T.M.Naveen, learned counsel for the fifth respondent.

19. The learned counsels reiterated the submissions made in the affidavits and in the counter affidavits.



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20. It was the contention of Mr.M.Ravi, learned counsel for the petitioner that the fifth respondent had applied for medical course in Kerala and had also simultaneously applied for joining medical course in Puducherry. This according to the learned counsel, as a fact, had been established. It was therefore asserted that the fifth respondent had claimed dual nativity both in the State of Kerala and in the State of Puducherry. The learned counsel stated that it was only owing to this unlawful claim act of the fifth respondent that the petitioner was denied a seat at Puducherry Campus in the third respondent college. The learned counsel was insistent that the Writ Petition should be allowed and the seat of the fifth respondent should be cancelled.

21. The learned counsel for the first and second respondents though had initially stated that they had not received any information from the fourth respondent, later filed an additional affidavit and stated that they had indeed received information about the fifth respondent claiming dual nativity. The learned counsel was quite guarded in his submissions and stated that the orders of the Court will be abided.

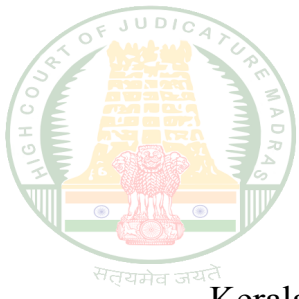


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22. Though counsel had entered appearance on behalf of the third respondent, neither was counter filed nor were arguments advanced. The third respondent had not come forward to own up their responsibility as they had admitted the fifth respondent in their college.

23. The learned Government Advocate, Puducherry, appearing for the fourth respondent stated that they had sought information regarding the fifth respondent from the authorities in Kerala and had found that the fifth respondent had also applied in KEAM-2022 under Non-Keralite (NK-I) Category. He stated that in those documents, the fifth respondent and his father had signed. It was stated in the documents submitted before Jipmer, the fifth respondent and his mother had signed. It was stated that the fifth respondent had applied for admission in both Kerala and in Puducherry.

24. Mr.T.P.Manoharan, learned Senior Counsel appearing on behalf of the fifth respondent however was insistent that the fifth respondent had not committed any irregularity at all. The learned Senior Counsel stated that the fifth respondent had only applied for a seat in

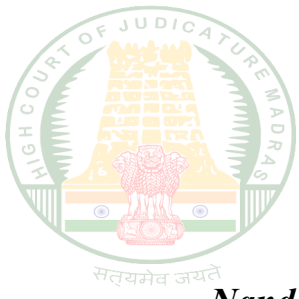


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Kerala but had not appeared for counseling. The name of the fifth respondent was also listed under the in-eligible candidate list. The learned Senior Counsel stated that the fifth respondent had not applied under Keralite category but had only applied under Non Keralite category for which residence within the State of Kerala was not mandatory. The learned Senior Counsel stated that the fifth respondent was a resident of Mahe in Kerala. He had studied schools in Kerala but the fact remains that he belonged to Mahe.

25. The learned Senior Counsel pointed out the documents filed and stated that though it is a fact that the fifth respondent had applied for KEAM, it is to be noted that he had not attended counseling and not taken further step towards seeking a medical seat. The learned Senior Counsel therefore stated that the fifth respondent had not committed any irregularity and that all the certificates had been examined and re-examined and thereafter a seat was allotted to the fifth respondent.

26. The learned Senior Counsel relied on *(2012) 6 SCC 430*
[A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya



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Nandhavana Paripalanai Sangam and Others], wherein the Hon'ble

Supreme has observed as follows:-

“38. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite some time, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In



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the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants. ”

27. The proposition laid down actually works Courts of possibility of covering to an erroneous conclusion on the basis of irrelevant or false pleas/documents.

28. The learned Senior Counsel also relied on **(2014) 10 SCC 521 [Chandigarh Administration and another Vs. Jasmine Kaur and Others]**. The Hon'ble Supreme Court has held as follows:-

“33.4. When a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the courts cannot grant any relief to the candidate in the form of securing an admission.



33.5. If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non-selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

*33.6. If it is found that the candidate acquiesces or waives his/her right to claim relief before the court promptly, then in such cases, the legal maxim *vigilantibus et non dormientibus jura subveniunt*, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.*

33.7. No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and



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after the same is refused on the ground of eligibility.

43. As time and again such instances of claiming admission into such professional courses are brought before the Court, and on every such occasion, reliance is placed upon the various decisions of this Court for issuing necessary directions for accommodating the students to various courses claiming parity, we feel it appropriate to state that unless such claims of exceptional nature are brought before the Court within the time schedule fixed by this Court, court or Board should not pass orders for granting admission into any particular course out of time. In this context, it will have to be stated that in whatever earlier decisions of this Court such out-of-time admissions were granted, the same cannot be quoted as a precedent in any other case, as such directions were issued after due consideration of the peculiar facts involved in those cases. No two cases can be held to be similar in all



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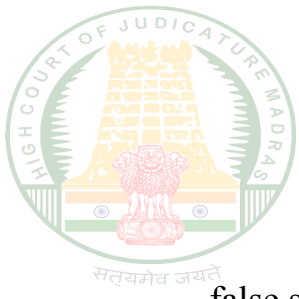


respects.....”

29. This Judgment was cited for the proposition that the petitioner had not come to Court immediately and that, since he had slept over, relief should not be granted to the petitioner herein.

30. I have carefully considered the arguments advanced and perused the records.

31. The petitioner is a student of Jipmer at Karaikal Campus. It is the case of the petitioner that the fifth respondent had unlawfully applied for and was allotted seat at Jipmer, Puducherry Campus. The petitioner claims that the fifth respondent had appeared for NEET UG examination 2022. He had obtained the NEET Rank 12186. Simultaneously, he had also applied for a medical seat in Kerala State. While applying for a seat at Jipmer, Puducherry, as a resident of Puducherry, a declaration had been given by the fifth respondent that he is a native of Puducherry and had not sought seat in any other State. It is the thrust of the petitioner that this undertaking by the fifth respondent is

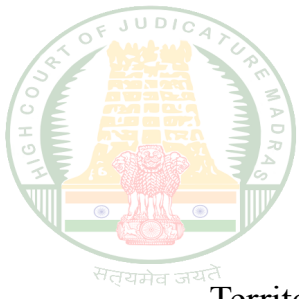


false since he had evidently applied for a medical seat in State of Kerala.

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32. The Taluk Office at Mahe, which comes within the Union Territory of Puducherry had issued a residency certificate, certifying that the fifth respondent is a resident of Union Territory of Puducherry owing to continuous residence for the past five years. The fifth respondent was also issued with a community certificate by the Taluk Office at Mahe as Islam – Mappila Community which is recognised as Backward Class. The Secondary School leaving certificate of the fifth respondent was also filed as a document and it is seen that his residence address was given as “Chaithanya, Gramathi, East Palloor, Mahe 670 672. The fifth respondent also had a voter identity card issued to him in the same address. A similar voter identity card had also been issued to his mother with the same address at Mahe. The fifth respondent had also obtained Aadhar card with the same address at Mahe. The family Card had also been issued.

33. Thereafter on 20.10.2022, a provisional allotment letter for medical seat had been issued by the second respondent to the fifth respondent. It was under the category Internal – Puducherry Union

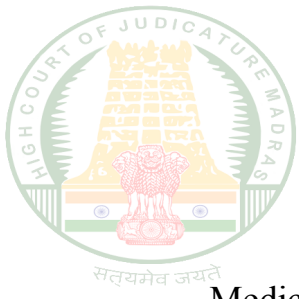


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Territory, Domicile. It is thus evident that it has been issued on the ground that the fifth respondent was a resident of Union Territory of Puducherry. He had been allotted Jipmer, Puducherry Campus.

34. Thereafter, on 22.11.2022, the third respondent Jipmer had issued a Memorandum to the fifth respondent, who was then a first year MBBS student stating that they had received a letter from the Director of Health cum Nodal Officer, Medical Education, namely, the fourth respondent that he had claimed dual residency in both Puducherry and Kerala and therefore, he was called upon to produce (i) residency proof in Union Territory of Puducherry (ration card/ Aadhar card/Voter identity card); (ii) the reason why he had been ranked in Kerala State Medical Rank List; and (iii) whether he had applied MBBS seat in any Kerala Medical College.

35. The fifth respondent had given a reply on 23.11.2022. He stated that he did not participate in the Kerala Medical allotment counseling 2022 and that his name was not in the Kerala Medical allotment list 2022. He claimed that his name was included in Kerala

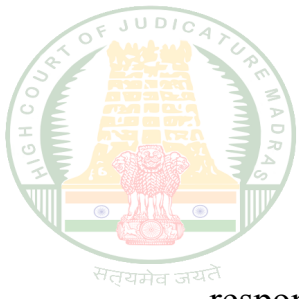


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Medical Rank list 2022 since he had registered in Kerala Medical Entrance exam website to write KEAM (Kerala Engineering Agriculture Medical) Exam 2022. He specifically stated that he had studied in a school which was affiliated to the Board in Kerala State and on that basis had applied for KEAM-2022. He claimed that it was a mistake. He state that he did not accept admission in any medical college at Kerala. He also stated that he had not taken dual residency. He stated that his permanent address was at Mahe in Puducherry.

36. The learned Senior Counsel appearing on behalf of the fifth respondent stated that the fifth respondent had applied only under Non-Keralite (NK-I) category not based on residency. He had studied in a School affiliated to the Kerala Education Board and had therefore applied for seat in Kerala.

37. Mr.M.Ravi, learned counsel appearing for the writ petitioner however pointed out the rank list of Kerala State Medical Rank list 2022 and stated that the fifth respondent with NEET rank 12186 had been given the State rank of 880. The learned counsel stated that the fifth



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respondent had therefore applied for admission for medical seat in Kerala State. The learned counsel also stated that the fifth respondent had applied under MU Muslim category, and simultaneously, had also applied as a resident of Puducherry seeking admission in Jipmer and was allotted Jipmer, Puducherry campus as a resident of Puducherry. It was also pointed out that the fifth respondent and his mother had also given an affidavit affirming that they have not claimed dual nativity in any other State apart from the Union Territory of Puducherry. The learned counsel stated that the fifth respondent had given a false declaration in that regard.

38. The learned counsel also relied on the proceedings of the Directorate, Health and Family Welfare Services, Government of Puducherry, regarding the violation of the undertaking given by the fifth respondent. He also relied on the information dated 21.11.2022 given by the Directorate, Health and Family Welfare Services, Government of Puducherry, that the fifth respondent had claimed dual residency both in Puducherry and in Kerala State and had thus violated the undertaking given by him to Jipmer while joining the course.



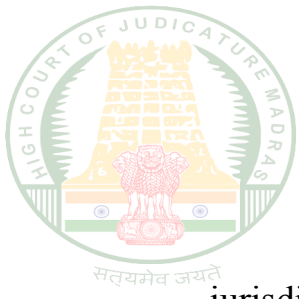
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39. The learned counsel for the fourth respondent stated that information had been obtained from the Commissioner, Officer of Entrance Examination, Kerala relating to the application of the fifth respondent and it was evident that he had given his address at Kerala and not his address at Mahe while applying for KEAM 2022. It was stated by the learned counsel for the fourth respondent that therefore the claim of dual residency stood proved.

40. The learned Senior Counsel appearing on behalf of the fifth respondent stated that a notice was issued to the fifth respondent asking him to appear before the fourth respondent on 04.01.2023 for an enquiry and he had appeared and an enquiry was conducted.

41. The facts have been stated above. The facts reveal the following:-

- (1)** The fifth respondent is a resident of Mahe;
- (2)** The fifth respondent had studied in school within the territorial



jurisdiction of Kerala;
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(3) The fifth respondent on the basis of such study in school in Kerala had applied for medical seat on the basis of the NEET UG examination;

(4) In the KEAM-2022 rank list, he was given the rank 880 in Kerala State;

(5) On the basis of his residence at Mahe, he also applied as a Puducherry Internal candidate and was allotted Jipmer, Puducherry campus, in view of his All India rank of 12186.

42. Before joining Jipmer Puducherry, it was necessary that the fifth respondent and his mother should give an undertaking and an affidavit. This was consequent to an order of the learned Single Judge dated 07.04.2022 in W.P.Nos. 2067 and 2578 of 2022. Both the Writ Petitions had been filed questioning grant of admission to candidates, who had claimed dual nativity but had still applied as natives of Puducherry and had obtained medical seats for the academic year 2021-22. The learned Single Judge had observed as follows:-



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“8. The issue on claim of dual nativity is certainly one to be viewed seriously for two reasons: Firstly, if a declaration is made by the applicant to the effect that the claim of exclusive to that State/Union Territory, then, such declaration would bind the applicant and notwithstanding that the rules of nativity in a particular State/Union Territory, might entitle a person to nativity in multiple States/Union Territories, a choice would have to be made by the candidate at the first instance, as to where the said person wishes to pursue such claim.

9. This observation and discussion becomes relevant by virtue of the fact that the rules of nativity as applicable in some States/UTs do make it possible for a candidate to claim nativity of multiple places at the same time. For instance, the Union Territory of Puducherry has, per proceedings No.6260/C2/Rev/2003 dated 06.10.2003 enabled a person to be a native of Puducherry



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based on the nativity of his/her parents.

10. This Clause can well be taken advantage of by persons who are themselves resident/native elsewhere, and who claim nativity in Puducherry dually, by virtue of their parents' nativity in Puducherry. Having said so, no application containing a declaration to the effect that the applicant would have to claim nativity exclusive to only one particular place, has been produced before me."

43. In the next paragraph at para 11, the learned Single Judge had also stated as follows:-

"11. I thus decline to answer the larger question as to whether the candidates who have made such dual claim are liable for the consequences of a false declaration. Suffice it to say that if at all such declaration is part of the Application, any breach of the same will lead to consequences and the authorities will



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examine the same, forthwith, all the more for the reason that there are various facts that must be determined in the furtherance of this exercise.”

44. Thus the consequence for a false declaration had not been answered by the learned Single Judge.

45. The affidavit which was given by the father of the fifth respondent is as follows:-

*“ANNEXURE-II
FOR JIPMER MBBS DEGREE
AFFIDAVIT OF THE PARENT/GUARDIAN TO
BE ATTESTED BY EXECUTIVE MAGISTRATE /
NOTARY PUBLIC*

*Certified that I, **KHALID PK**, Father of **NAJIH SARFRAZ KHALID**, resident at X/538-B, Chaithanya, Gramathi, East Palloor, Mahe-670 672, Puducherry, I do hereby undertake that:*

- 1. That I am citizen of India.*
- 2. That my child/ward has not opted and*



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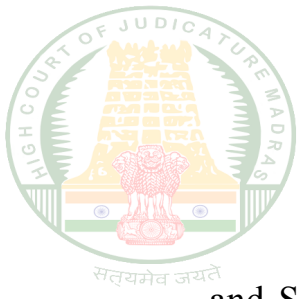
claimed the benefit of Residence of admission in UG Medical in a State/UT other than UT of Puducherry for state quota seats.

3. *That the above said information is true to the best of my knowledge and nothing is concealed herein. I am aware that if at any stage the information provided is found false/wrong, the admission of my son/ward will be liable to be cancelled and criminal proceedings will be initiated against me as provided under the law.*

Signature of the Candidate

Signature of the parent /guardian ”

46. In this affidavit, it had been stated that fifth respondent had not opted and claimed the benefit of residence of admission in UG medical in any other State other than Union Territory of Puducherry but the fifth respondent had actually claimed a seat. He had applied for a medical seat in Kerala. His application had been accepted. In furtherance of his application, he his NEET UG mark had been assessed



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and State ranking had been given as 880. He may not have applied as resident of Kerala State but he had still applied. If he had not been allotted a seat at Jipmer, Puducherry, he would have fallen back and taken up the seat if allotted at Kerala State. He had thus applied claiming nativity in both Kerala State and Union Territory of Puducherry. He should not have that privilege of two seats being blocked by him. He should have applied either for Jipmer, Puducherry or at Kerala. He thus had an undue advantage over every other candidate who would be eligible to apply only at either Puducherry as a native of Puducherry or as a native of any other State.

47. It is to be noted that he applied under the State quota for Kerala State. He did not apply under Non Keralite (NK-2) which is for self financing colleges. He had rather applied for admission to State Government colleges. Thus though he may proclaim innocence before this Court, he had consciously explored the possibility of obtaining a medical seat at Kerala as well. He did not compete on the same levelling playing field with other candidates. He had an additional advantage. He had applied for both Kerala State and as a native of Puducherry. He pursued



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such admission. He was ranked in both Kerala State and in the Union Territory of Puducherry. The counselling in Jipmer took place and he attended that and since he was allotted a seat, he did not appear for counseling in Kerala State. Significantly the dates for the counseling in both Puducherry and in Kerala have not been disclosed. But he was able to secure a medical seat in Puducherry. Had he restricted himself only to seeking a medical seat Kerala, then one native of Puducherry would have had the opportunity of studying in MBBS Course. This is a direct loss to the Union Territory of Puducherry as a whole. They have now taken in their wings, a candidate who had also simultaneously applied for medical seat in another State in violation of the undertaking given.

48. I hold that a strict view will have to be taken in this aspect. As a matter of fact, the very Judgment which the learned Senior Counsel for the fifth respondent, reiterates this particular view. It had been stated *“False averments of facts and untenable contentions are serious problems faced by our Courts.In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so*



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that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.”

49. In the instant case, the records speak for themselves. It is clear that the fifth respondent had applied for medical seat both in Puducherry and in Kerala. He should not have done that. Had he been selected for medical seat in Kerala though he had applied also in Puducherry then he would have denied a seat for a student from Kerala, who had applied only for that particular seat. He had been granted a seat in Puducherry and had directly affected a prospective candidate from pursuing his/her MBBS dream in Puducherry.

50. I will have to take a serious view on this aspect and therefore, I would necessarily have to issue a Mandamus that the fifth respondent had obtained a seat in Jipmer, Puducherry surreptitiously and on the basis of a false declaration.



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51. It is in this context that the absence of the learned counsel for the third respondent and the absence of the counter affidavit on behalf of the third respondent comes into scrutiny. They had admitted the fifth respondent. They were responsible for giving this false hope of a seat to the fifth respondent. They had not appeared before this Court though counsel had filed vakalat and had entered appearance. To put it mildly this is direct avoidance of discharge of public duty.

52. The respondents as a whole will have to take a decision as this Court have found that the fifth respondent had obtained the seat in a fraudulent manner and on the basis of false declaration. They had offered him a seat. Now they will have to take an appropriate decision. It is not for the Court to advise a public servant regarding their duty. They will have to abide by their rules. A student, a native of Puducherry had been denied medical education only owing to the careless attitude of the respondents herein. This Court cannot cancel the seat of the said student but can direct the respondents to take necessary action on the basis of the declaration that the fifth respondent had obtained a seat through a false declaration. To that extent, a Mandamus is issued.



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53. The corollary whether the petitioner should be allotted or transferred from Jipmer, Kerala to Jipmer, Puducherry is again a decision to be taken only by the authorities. A public servant cannot shift his responsibility on the Court. The Court can only render a finding. On the basis of those findings, it is for the authorities to take a correct and just decision.

54. It is declared that the fifth respondent had obtained the seat surreptitiously on the basis of the false representation. A direction is issued to the respondents, particularly, the first to fourth respondents to take appropriate action both with respect to the fifth respondent and with respect to the petitioner. Such decision has to be taken and communicated both to the petitioner and the fifth respondent within a period of ten working days from the date of receipt of a copy of this order.

55. In view of the above reasons, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.



22.02.2023

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Index :Yes/No
Internet:Yes/No
vsg

To

1. The Secretary to Government
Union of India
Ministry of Health and Family Welfare
New Delhi.
2. ADG(ME) & Member Secretary, MCC
The Medical Counselling Committee of
Directorate General of Health Services
Ministry of Health and Family Welfare
Government of India
New Delhi.
3. Dean (Academic)
JIPMER
Dhanvantri Nagar,
Puducherry.
4. The Director
Department of Health and Family Welfare Services
- cum- Nodal Officer (Medical Education)
Puducherry.



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C.V.KARTHIKEYAN, J.

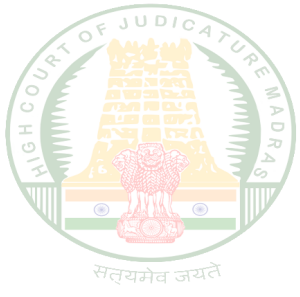
vsg

Pre-Delivery Order made in

W.P.No. 32182 of 2022

And

W.M.P.No. 31607 of 2022



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22.02.2023