

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.13384 of 2021

K.Nagarajan

.. Petitioner

Vs.

1.Union of India,
rep. By its Secretary,
Ministry of Health and Family Welfare,
New Delhi 110001

2.State of Tamil Nadu,
rep. By its Principal Secretary,
Health and Family Welfare (MCA-1) Department,
Fort St.George, Chennai 9

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the file of the 2nd respondent in proceedings G.O.(MS)No.283 dated 10.06.2021 and to quash the same.

For Petitioner : Mr.V.Raghavachari,
for M/s.Gupta and Ravi

For Respondents : Mr.R.Sankaranarayanan,
Assisted by
Mr.R.Rajesh Vivekananthan,
for 1st respondent

Mr.R.Shunmugasundaram,
Advocate-General,
Assisted by
Mr.P.Muthukumar,
Counsel for State,
for 2nd respondent

Implead petitions

- W.M.P.No.14810/2021 : Mr.P.B.Suresh Babu
W.M.P.No.14811/2021 : Mr.P.B.Suresh Babu
W.M.P.No.14836/2021 : Dr.A.Thiagarajan, Senior Counsel,
for Mr.D.Veerasekaran
W.M.P.No.14842/2021 : Mr.K.Chandramohan
W.M.P.No.15121/2021 : M/s.M.N.Sumathy
W.M.P.No.15125/2021 : Mr.R.Barnabas
W.M.P.No.15134/2021 : Mr.A.Mohan
W.M.P.No.14845/2021 : M/s.V.Jeevagiridharan
W.M.P.No.14849/2021 : Ms.S.Deepika
W.M.P.No.15065/2021 : Ms.A.Arulmozhi
W.M.P.No.15274/2021 : Mr.P.B.Suresh Babu
W.M.P.No.15360/2021 : Mr.R.Abdul Mubeen
for M/s.A.Raja Mohamed
W.M.P.No.15379/2021 : Mr.Ajmal Khan, Senior Counsel,
for M/s.A.Abrar Ahamed
W.M.P.No.15404/2021 : Mr.R.Natarajan
W.M.P.No.15410/2021 : Mr.A.V.S.Madhusudhan
W.M.P.No.15419/2021 : Mr.P.Neelakantan
W.M.P.No.15420/2021 : M/s.I.Abdul Basith
W.M.P.No.15421/2021 : M/s.V.P.Sengottuvel

W.M.P.No.15422/2021 : M/s.S.Kumaresan
W.M.P.No.15434/2021 : Dr.G.Babu
W.M.P.No.15449/2021 : Mr.A.Nowfil
W.M.P.No.15451/2021 : M/s.R.Thirumoorthy
W.M.P.No.15471/2021 : Mr.G.Karthikeyan
W.M.P.No.14646/2021 : Mr.P.Wilson, Senior Counsel,
for M/s.P.Wilson Associates
W.M.P.No.14756/2021 : Mr.G.Nanmaran
W.M.P.No.14765/2021 : Mr.Adithyaraj
W.M.P.No.14780/2021 : Mr.S.Prabhakran, Senior Counsel,
for M/s.S.Arunachalam Associates

ORDER

(made by the Hon'ble Chief Justice)

The writ petition, filed in public interest, is to challenge a notification bearing G.O.Ms.No.283 dated June 10, 2021 by which a "High Level Committee" has been constituted by the State. The prayer in the writ petition is squarely to quash the notification on the ground that it is "unconstitutional, illegal, unfair and without legal justification".

2. By the said notification, the State has constituted a committee headed by a retired High Court Judge to undertake such work as is indicated in the terms of reference. Clause (a) of paragraph 3 of the notification outlines the contours of the work to be undertaken by the "High Level Committee":

"(a) The High Level Committee will study whether the National Eligibility-cum-Entrance Test (NEET) based admission process has affected the socially backward students in the past few years, if it has affected them, then the Committee will study the issues involved and suggest alternative admission procedures which would benefit all students, the feasibility of implementing such alternative admission procedures and the legal steps to be undertaken to implement such fair and equitable methods."

3. The commission is to submit its report to the Government within a month. Though a month has elapsed, it is not known whether the commission has already filed its report or, true to the usual nature of such commissions, a month may stretch to several years and decades.

4. The writ petitioner apprehends that the issuance of the notification is the first step in a process that the State has embarked on to subvert the procedure for admission to medical educational institutions in this State. Indeed, when the petition was admitted, an impression was given to the court that the very constitution of the commission flies in the face of Supreme Court orders and it may be altogether useless for the commission to undertake the task that the Government notification requires it to do.

5. The writ petitioner relies on several judgments of the Supreme Court, including the one reported at (2016) 7 SCC 353 (*Modern Dental College and Research Centre vs. State of Madhya Pradesh*) and a more recent decision reported at (2020) 8 SCC 705 (*Christian Medical College vs. Union of India*), to assert that the matter is no longer open to question and has been conclusively pronounced upon by the Supreme Court: that it is the sole prerogative of the Union to set standards for higher education. The petitioner says that pursuant to the Supreme Court judgment in *Modern Dental College and Research Centre*, the National Medical Commission Act, 2019 came to be enacted. Such statute declares that it provides for a

medical education system that, inter alia, helps to improve access to quality and affordable medical education. Section 10 of the Act provides for a commission to be appointed, inter alia, to "lay down policies for maintaining a high quality and high standards in medical education and make necessary regulations in this behalf". Section 11 of the Act provides for the constitution of an advisory body known as the 'Medical Advisory Council' by the Central Government. Such provision also indicates the personnel who would constitute the Medical Advisory Council. Section 14(1) of the Act is of paramount importance in the present context. It is necessary to notice such provision:

"14. (1) There shall be a uniform National Eligibility-cum-Entrance Test for admission to the undergraduate and postgraduate super-speciality medical education in all medical institutions which are governed by the provisions of this Act:

Provided that the uniform National Eligibility-cum-Entrance Test for admission to the undergraduate medical education shall also be applicable to all medical institutions governed under any other law for the time being in force."

6. The other sub-sections in Section 14 of the Act require the NEET to be conducted in English and other languages as may be specified by regulations. The statutory body constituted under Section

11 of the Act is required to specify by regulations the manner of conducting common counselling. In short, the process of admission to all medical educational institutions would be governed by NEET and NEET would be conducted under the supervision of the Medical Advisory Council constituted by the Central Government in terms of Section 11 of the Act of 2019.

7. There appears to be little doubt that the procedure prescribed for admission in the said Act is the only process by which candidates can gain admission as students to obtain medical education in any medical institution imparting such education.

8. According to the petitioner, governments in this State are given to try and disturb the established procedure and the petitioner refers to a letter dated February 18, 2017 issued by the State to the Ministry of Home Affairs regarding the admission to MBBS and BDS courses in the State in terms of a Bill which was passed by the State Legislative Assembly. The petitioner says that even the latest Supreme Court pronouncement in *Christian Medical College* would indicate that the State had no power in such regard. Indeed, the petitioner

specifically refers to an emphatic order of the Supreme Court of August 22, 2017 passed on a matter arising out of this Court. The order must be seen in its entirety:

"It is submitted by Mr.Tushar Mehta, learned Additional Solicitor General that the Union of India has decided not to bring out an Ordinance. In view of the aforesaid, the State of Tamil Nadu shall carry out the judgment passed by the High Court and affirmed by this Court. The competent authority shall publish the result of NEET examinations and thereafter proceed with the counselling. Time for counselling is extended till 4th September, 2017. The extension of time is meant for every category of seats in the Institutions/Universities situate within the State of Tamil Nadu. Needless to clarify that the State of Tamil Nadu shall not make any kind of distinction or discrimination between the examinations conducted by various Boards; and admission shall be effected as per the result of the NEET examination."

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9. The substance of the petitioner's submission is that since it has now been concluded by the Supreme Court, no less, that it is the Parliament which has the exclusive authority over the matter and an Act of Parliament governs the field of admission to medical colleges all over the country, the perception of the State cannot alter the position.

The petitioner questions the very need to constitute a commission to undertake any study or other work since there may be no sequitur to the same.

10. A closer reading of the impugned notification reveals that though a high-powered committee or commission has been constituted, the report would only be submitted to the Government and the report would also indicate alternative admission procedures and "the legal steps to be undertaken to implement such fair and equitable methods".

11. The setting up of the commission does not amount to subverting any process of admission, far less an act of defiance to any order passed by the Supreme Court or even the remotest challenge to the exclusive authority of the Union to enact a law and conduct a procedure in a field which is constitutionally designated to be undertaken only by the Union. The notification does not indicate the purpose for setting up the commission except that the findings of the commission may reveal that students studying in government schools in the State and hailing from the socially backward and economically

weaker sections may be disadvantaged in taking the NEET examination.

12. The setting up of the commission can, by no stretch of imagination, be seen to be contrary to any Supreme Court order, whether in letter or spirit, or as a counter to any legislative action taken by the Union or process put in place. For all we know, the commission may come up with some material that the State Government may use to persuade the Union to search for an alternative or modify the process to make it more inclusive for students belonging to the socially backward and economically weaker sections to participate therein with a better chance of success.

13. The other point of view is equally possible: that the way forward for students of the State to compete favourably with others in the NEET examinations may be to raise the standard of school education in the State. It is a question of policy as to whether the bar has to be raised at the school level or the bar has to be lowered at the medical college admission level and such matters of policy are resolved by discussion and any attempt at mature resolution begins with

lending the ear and being receptive to the other point of view. A section of citizens may feel that it is a waste to appoint a commission; that the costs incurred in maintaining such commission may be better used to provide relief to those who suffered in course of the pandemic. But these are choices that an elected Government has to take and, indeed, in the constitutional scheme, has the freedom to take. Courts cannot rush in and interdict notifications or steps taken pertaining to policy or for garnering public opinion or the like.

14. If the issuance of the notification was in any manner perceived to be an affront to the authority of the Supreme Court under Article 141 of the Constitution or in derogation of the obligation of the State to aid the implementation of an order of the Supreme Court under Article 144 of the Constitution or as an alternative to a national procedure for entrance examination conducted in accordance with a Parliamentary legislation in a field open only to the Parliament, the court's immediate interference would have been necessary. But nothing of such kind can be apprehended or reasonably seen to be the effect of the notification or the constitution of the commission thereby.

15. The Union is represented and learned Solicitor-General has intervened to refer to Articles 162, 245, 254 and 256 of the Constitution. However, the issuance of the impugned notification has nothing to do with the provisions of the Constitution cited. The issuance of the notification does not exceed the authority of the State Government. As long as the State Government does not do anything to upset the procedure for admission to medical institutions as established by law, it does not call for any interference. A constitutional court's allegiance to the rule of law needs to be tempered by the respect for the democratic process. Overzealous obeisance to what is perceived to be the rule of law invites an avoidable clash that partners in the sovereign exercise must guard against.

16. Several bodies, individuals, political parties and others interested have applied for being impleaded. None has been called upon, not even the State. The scope of the petition is limited and it is not the business of the Court to play to the galleries by allowing or indulging in discussion which is beyond the scope of the *lis* or wider than the perceived malady that is sought to be arrested by the action,

public interest or otherwise.

17. For the reasons aforesaid, W.P.No.13384 of 2021 is dismissed with the observation that the scope of the impugned notification is not such that it impinges on the conduct of NEET examinations or the authority of the designated body to conduct the same in accordance with law. There will be no order as to costs.

18. As a consequence, W.M.P.Nos.14810, 14811, 14836, 14842, 15121, 15125, 15134, 14845, 14849, 15065, 15274, 15360, 15379, 15404, 15410, 15419, 15420, 15421, 15422, 15434, 15449, 15451, 15471, 14224, 14225, 14646, 14756, 14765, 14780 of 2021, are closed.

(S.B., CJ.) (S.K.R., J.)
13.07.2021

Index : yes

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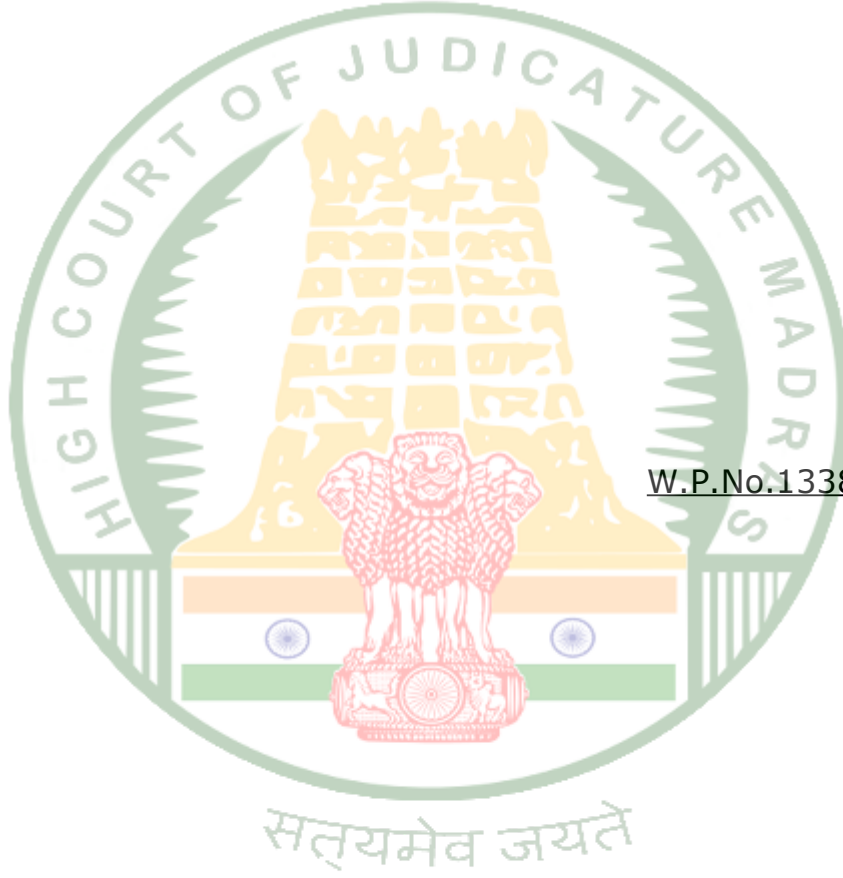
To:

1. The Secretary,
Ministry of Health and Family Welfare,
New Delhi 110001
2. The Principal Secretary,
Health and Family Welfare (MCA-1) Department,
Fort St.George, Chennai 9

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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

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