



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.08.2022

Pronounced on : 05.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)Nos.13028 of 2022
and
WMP(MD)Nos.9239 and 9240 of 2022**

- 1.Dr.A.Packia Raj
- 2.Dr.P.R.Pudhiyasamy
- 3.Dr.M.Ananth
- 4.Dr.P.C.Srinandhini ... Petitioners

v.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family (MCA-1) Department,
Fort St.Geroge, Chennai – 600 009.
- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
- 3.The Selection Committee,
Represented by its Secretary,
Directorate of Medical Education,
162, Periyar E.V.R.High Road,
Kilapuk, Chennai – 600 010.
- 4.National Medical Commission,
Represented by its Secretary,
Pocket 14, Sector -8,



Dwarka Phase I,
New Delhi – 110 077.

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5.S.K.Nagarajan

6.R.Vasa Vi

7.V.Nijani

(R5 to R7 are impleaded vide order dated 30.06.2022 in W.M.P.(MD)No.9731 of 2022 in W.P.(MD)No.13028 of 2022 by GRSJ)

8.Bharathi Vasanth

(R8 is impleaded vide order dated 12.07.2022 in W.M.P.(MD)No.9898 of 2022 in W.P.(MD)No.13028 of 2022 by GRSJ)

9.S.Abirami

10.Tamil Nadu Medical Officers Association,
Represented by its General Secretary,
Aklian.

(R9 & R10 are impleaded vide order dated 12.07.2022 in W.M.P.(MD)No.10743 of 2022 in W.P.(MD)No.13028 of 2022 by GRSJ)

11.A.Raghu

(R11 is impleaded vide order dated 12.07.2022 in W.M.P.(MD)No.10745 of 2022 in W.P.(MD)No.13028 of 2022 by GRSJ)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent contained in G.O.(Ms) No.463, dated 07.11.2020 and to quash the same as arbitrary, unjust, illegal and ultra vires the



Constitution of India and to direct the 1st respondent to treat “in service” and “non-service” candidates on par in making admissions to Post Graduate Degree seats in Tamil Nadu Government Medical Colleges.

For Petitioners : Mr.Suhrith Parthasarathy
For Mr.R.Murali.

For Respondents : Mr.J.Ravindran,
Additional Advocate General
assisted by Mr.V.Om.Prakash,
Government Advocate for R1 & R2.

Mr.J.Ravindran,
Additional Advocate General
assisted by Ms.Sneha for R3.

Ms.R.Subharanjani Anand for R4.

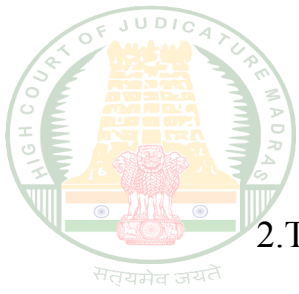
Mr.Isaac Mohanlal, Senior Counsel
For M/s.Issac Chambers for R5 to R7.

Mr.E.Manoharan for R8.

Mr.P.Wilson, Senior Counsel
For M/s.Wilson Associates for R9 to R11.

ORDER

Heard the learned counsel for the writ petitioners, the learned Additional Advocate General for the official respondents, the learned senior counsel and the learned counsel for the impleaded respondents.



2.The writ petitioners challenge G.O.(Ms) No.463, dated 07.11.2020 for two reasons ; (a) The Government had directed that 50% of the State quota seats in the PG (MD, MS and MDS) degree courses in Tamil Nadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges affiliated to the Tamil Nadu Dr.M.G.R.Medical University be reserved for in-service doctors serving in Government Health Institutions in the State of Tamil Nadu. (b) It had also directed that the remaining 50% which is the Open category will be open to both in-service and non-service candidates and that seats will be filled up based on the marks already defined or such criteria to be defined by the 1st respondent from time to time as per the decision of the Committee headed by Hon'ble Thiru.Justice A.Selvam, High Court Judge (Retd.).

3.Elaborate contentions were advanced on both sides. Detailed written submissions were filed. Almost a dozen case laws were cited and relied upon. But I am of the view that it is not necessary to go into any of them. This is for a very simple reason. The validity of the impugned government order was considered by the Hon'ble Division Bench in W.A.Nos.93 and 94 of 2022. The two fold grievances now projected in this writ petition were raised before the Hon'ble Division Bench also. The Hon'ble Division Bench declined to



interfere. Following the decision of the Hon'ble Supreme Court, it was held that

the State does have power to provide for separate quota for in-service Doctors, as a separate source of entry in medical education, while filling up Post Graduate seats in medical education, from within the State Quota. As regards providing additional weightage of marks by the State in the merit of in-service Doctors on the basis of their place of work in remote/difficult/hilly/rural areas, it was held that the State is well within its right to do so, in view of regulation 9(4) of MCI Regulations, with specific reference to proviso thereto.

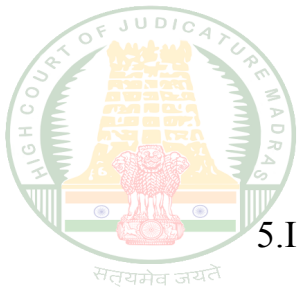
4. When the learned Additional Advocate General emphatically asserted that this writ petition is not maintainable in view of the aforesaid decision of the Hon'ble Division Bench, the learned counsel for the writ petitioners submitted that the Hon'ble Division Bench did not completely foreclose the issue ; it had provided sufficient room for renewing the challenge. He drew my attention to the liberty set out in Paragraph No.15 of the judgment dated 27.01.2022. Only if I hold that the liberty granted by the Hon'ble Division Bench can be availed by the present writ petitioners, I will have to consider the issues on merits. This is a threshold requirement. Let me see how the liberty has been worded. The Hon'ble Division Bench in Paragraph No.15 of the said judgment held as follows:-



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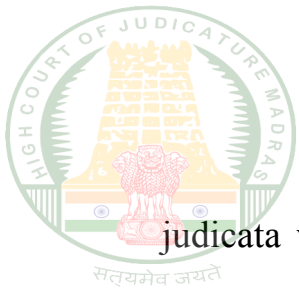
“15..... while holding that the State does have power to do, what it has - vide impugned stipulation 29(c) quoted above, the consequence thereof is not immuned from judicial scrutiny on permissible parameters, at an appropriate stage. This being the first year of implementation of the impugned policy, and as noted above the implementation of such a policy has to start some day, we deem it proper not to question the wisdom of the State as translated in its policy decision [impugned stipulation 29 (c) as quoted above] at this stage. This is with the clarification that, in the event the said policy ultimately turns out to be unsustainable on any of the permissible parameter of judicial scrutiny, including on the test of doctrine of proportionality and if any material is produced before the Court by the aggrieved party, this question will be examined by the Court and in that event it would not be open to the State and / or to in-service Doctors to contend that the said issue is concluded by this judgment.”

The case of the writ petitioners is that in response to an RTI query, the first petitioner was informed that for Post Graduate degree/Diploma Courses in Government Medical Colleges, 294 non-service doctors and 859 in-service doctors were allotted during the Tamil Nadu Counseling in 2021-2022 session. The petitioners contrast the aforesaid figures with the position that obtained during the preceding three years ie., 2018-2019, 2019-2020 and 2020-2021 and contend that the implementation of the impugned government order has an arbitrary, unreasonable and disproportionate effect.



5.I decline to go into this contention for the simple reason that the

Hon'ble Division Bench clearly stated that the primary reason for non-interference was that the academic year 2021-2022 was the first year of implementation of the impugned policy. It is relevant to note here that the judgment of the Hon'ble Division Bench was pronounced on 27.01.2022. Quite a few months before the said date, the admissions had already been finalized. It is obvious from a reading of the entire paragraph 15 of the order dated 21.01.2022 that the Hon'ble Division Bench did not want to interfere in the first year of implementation of the impugned G.O. The Hon'ble Division Bench wanted to see as to how the implementation would pan out in future. Therefore, the data collected in respect of the first year of implementation of the policy cannot be the basis for maintaining this writ petition. The liberty granted by the Hon'ble Division Bench can be invoked only if the petitioners can show a pattern of disproportionate impact. One swallow does not make a summer. The results drawn from one academic year which could have very well been placed before the Hon'ble Division Bench cannot lead me to any conclusion. There is also no scope for axiomatic or a priori reasoning. The argument has to necessarily proceed only from concrete materials and data. The data in respect of the first year of implementation of policy cannot be relied upon or referred to in these proceedings. The principle of constructive res



judicata will also come into play. The petitioners may have to see how the policy works itself out during the academic year 2022-2023 before they can avail the liberty. Based exclusively on the result of this academic year 2021-2022, the petitioner cannot mount a challenge. Even when such a challenge is made, all the defences of the respondents will be intact.

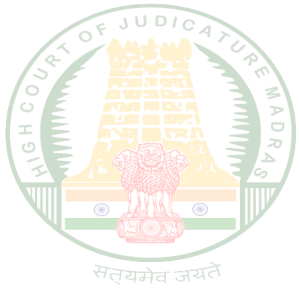
6. In this view of the matter, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

05.09.2022

Index : Yes / No
Internet : Yes / No
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To

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G.R.SWAMINATHAN, J.

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