

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7294 of 2022

K.Lal Bhagadhur Sasthri

... Petitioner

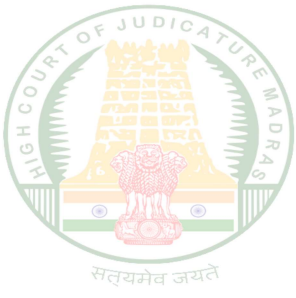
v.

1.The Director of Medical Education,
Directorate of Medical Education,
No.162, Periyar, EVR High Road,
Kilpauk, Chennai.

2.The Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents herein to give admission to the petitioner in any one of the Medical College under the Management Quota based on the petitioner's NEET Examinations score ie., 409 marks based on the representation dated 09.04.2022.



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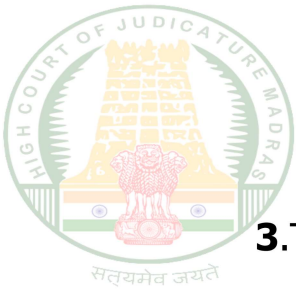
For Petitioner : Mr.D.Srinivasaraghavan
for Mr.S.M.Mohan Gandhi

For Respondents : Mr.V.Om.Prakash,
Government Advocate

ORDER

Heard the learned counsels on either side.

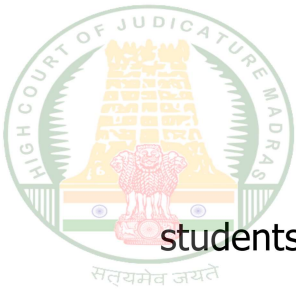
2.The petitioner aspires to become a Doctor. He wrote NEET and scored 409 marks. He was not selected in the first round of counselling. He was however kept on waiting list. On 07.04.2022 at about 07.30 P.M, he received a text from the second respondent through SMS to register before 10.00 P.M. The petitioner is a resident of Narikudi village in Thiruvudaimaruthur Taluk, Thanjavur District. He tried to register his name. Due to poor internet connectivity, the petitioner was unable to register his name on the portal immediately. Even if the connectivity was good, the One Time Password (OTP) was not generated from the portal in time. The OTP was obtained only at 10.31 P.M through SMS. When he entered the password, the server was busy and there was buffering. It became a Sivarathiri for the petitioner. All his efforts went in vain.



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3.The petitioner learnt that persons who scored as low as 108 marks in NEET were allotted seats under the management quota. Since the efforts of the petitioner did not yield result, he filed the present writ petition.

4.The counter affidavit filed by the respondents does not deal with the allegations made by the writ petitioner. The counselling details and the cut off mark prescribed for each round has been set out and it is stated that the petitioner could not be allotted to even in the extended mop up round in the final round of counselling for management quota. It is also clarified that the last date of counselling for admission to MBBS course is 28.04.2022 and that the counselling process for the academic year 2021-2022 has already been completed and that there are no vacancies. The stand of the respondents that the petitioner has not secured the requisite marks cannot be accepted. If the petitioner's mark was below the cut off mark, obviously, he could not have been called for counselling. The petitioner has placed material before this Court that the persons who have secured marks lower than the petitioner had been allotted seats. The categories, to which the said



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students who got selected belong, have not been indicated. In the counter affidavit filed by the respondents, the basic case projected by the petitioner has not at all been controverted.

5. I have to sustain the stand of the respondents that it is not possible to direct the admission of the petitioner for any medical course for the academic year 2021-22 though the writ petition was filed in April 2022 itself. But can the issue of digital divide raised by the petitioner go unanswered? The petitioner belongs to a Most Backward Community. He hails from a remote village. For the marks obtained by him, he was entitled to get admission in a medical course under management quota. He failed to get a seat only because of online glitches. Had the respondents adopted a dual mode of counselling, i.e. both physical and online, the situation could have been avoided. Had the respondents given the petitioner reasonable time to register himself in the portal, then probably, he could have made it. These “ifs” haunt me. What can the court do in such circumstances when the student is not at fault ? I can direct the respondents to reconsider the mode of selection in the light of the experience undergone by the petitioner

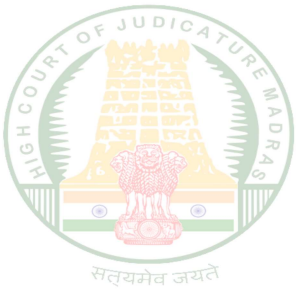


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herein so that such incidents do not occur in future. Of course, that would be no consolation to the petitioner.

6.What do the precedents say? The Hon'ble Supreme Court in the decision reported in **(2012) 7 SCC 389 (Asha v. P.T.B.D.Sharma University of Health Sciences and ors)** observed as follows :

"33.This brings us to the last phase of this case as to what relief, if any, the Appellant is entitled to. Having returned a finding on merits in favour of the Appellant, the Court has to grant relief to the Appellant even, if necessary, by moulding the relief appropriately and in accordance with law. This Court must do complete justice between the parties, particularly, where the legitimate right of the Appellant stands frustrated because of inaction or inappropriate action on the part of the concerned Respondents. In fact, normally keeping in view the factual matrix of this case, we would have directed the admission of the Appellant to the MBBS course in the academic year 2011-2012 and would further have directed the Respondents to pay compensation to the Appellant towards the mental agony and expense of litigation and the valuable period of her life that stands wasted for failure on the part of the Respondents to



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adhere to the proper procedure of selection and admission process. May be the Court would have granted this relief subject to some further conditions.”

Though in that case, on account of the conduct of the appellant, relief could not be granted, it was held that wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Rules, Regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to such students. This was re-affirmed by the Full Bench of the Hon'ble Supreme Court in **(2020) 17 SCC 465 (S.Krishna Sradha v. State of Andhra Pradesh and ors.)**

“9...(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.”

7.Digitisation is the road ahead. It should lead to empowerment and not deprivation. The ground reality is that there is a digital divide in the society. The Hon'ble Supreme Court had observed in Special Leave to Appeal (C) No(s).4351/2021 dated 08.10.2021 **(Action Committee Unaided Recognized Private Schools v. Justice for All)** observed



as follows :

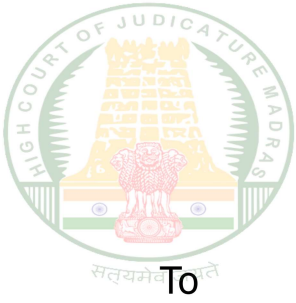
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"4....The digital divide has produced stark inequality in terms of access to education. Children belonging to EWS/DG suffer the consequence of not being able to fully pursue their education and many may have to drop out because of a lack of access to internet and computers...."

If on account of the digital divide, a student is deprived of an entitlement, the State is obliged to compensate him. I, therefore, direct the respondents to pay a sum of Rs.1.00 lakh as compensation to the petitioner herein within a period of eight weeks. I also direct the respondents to ensure that the selection process is conducted and finalized in such a way so as to ensure that incidents such as the one on hand do not recur. The writ petition is disposed of accordingly. No costs.

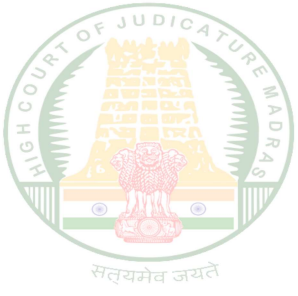
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Kilpauk, Chennai.
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Directorate of Medical Education,
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G.R.SWAMINATHAN, J.

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