

CASE NO.:
Appeal (civil) 2309-2310 of 2003

PETITIONER:
Secretary, Selection Committee (MBBS)

RESPONDENT:
N. Anirudhan (minor) and Ors. etc.

DATE OF JUDGMENT: 12/03/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T

(Arising out of SLP (C) Nos. 19429-19430/2002)

ARIJIT PASAYAT J

Leave granted.

Challenge in these appeals is to the directions given by a learned Single Judge undisturbed by the Division Bench of the Madras High Court in Writ Appeal Nos. 1736 and 1737 of 2002.

Factual scenario which is almost undisputed and leading to the appeals is as follows:

The respondents were admitted to the MBBS degree course. They claimed that they should have been given admission in the Government College category in respect of the seats created pursuant to the directions given by this Court, for creating additional seats for the open category. They filed writ petitions before the High Court contending that some students who had secured lesser marks than them had been admitted in the Government College category.

The Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in educational Institutions and of appointment or posts in services under the State) Act, 1993 (hereinafter referred to as the 'Act') was enacted by the State of Tamil Nadu. Prior to its enactment, the ratio of admission was as follows:

Open category	50%		
BC/MBC	31%		
SC		18%	
ST		1%	

After enactment of the Act, the communal reservation to be followed in the admissions was 31% to open competition candidates, while the rests 69% was allotted to BC, MBC, SC and ST candidates. Constitutional validity of the provisions of the said Act was challenged before this Court in SLP (C) No. 13526/1993. Pending final orders, an interim order was passed on 18.8.1994. Essence of the order is being followed

for various academic years.

The writ petitioners contended that they had secured 292.54 and 292.43 cut off marks. They were selected and allotted to Perundurai Medical College under free seat category by following the 69% reservation rule. Certain additional seats were created pursuant to the directions given by this Court. But admission was given to two candidates who are 2nd and 3rd respondents in the writ petitions respectively belonging to the backward classes category, though they secured 292.08 cut off marks. They were allotted to Madurai and Coimbatore Government Medical Colleges respectively.

Grievance of the writ petitioners was that they were entitled to be allotted to the seats in Government Medical Colleges and not the 2nd and 3rd respondents in the writ petitions. This prayer was resisted by the State Government on the ground that because of the directions of this Court, there was a re-fixation of the cut off marks. The cut off marks for the open category candidates stood lowered to 293.18 from 294.52. Since writ petitioners had secured lesser marks, they were not entitled to be admitted.

Learned Single Judge of the High Court directed that on the factual position as highlighted by the parties, the writ petitioners were entitled to be admitted to the allotment in Government seats in Government Medical Colleges. However, the allotment to the 2nd and 3rd respondents in the writ petitions was not disturbed. The order passed by learned Single Judge came to be challenged before the Division Bench which by the impugned order was dismissed. It was noticed that the learned Single Judge had passed an order on the basis of the directions given by this Court and had given valid reasons for allowing the writ petitions.

Learned counsel appearing for the appellant submitted that the approach of the High Court was erroneous. The order passed by this Court on 18.8.1994 clearly indicated the position as regards the number of seats to be allotted to various categories. The seats were filled up by the concerned authorities strictly complying with the directions of this Court. It is further submitted that by giving admission to the writ petitioners virtually new seats have to be created for them which will be against the law laid down by this Court in *Medical Council of India v. Madhu Singh and Ors.* (2002 (7) SCC 258).

Per contra, learned counsel for the respondents-writ petitioners submitted that the data furnished by the appellant clearly indicate as to how misleading information is being given. According to him, the data clearly indicates that directions of this Court have not been complied with.

In *Voice (Consumer Care) Council v. State of Tamil Nadu* (1996 (11) SCC 740) this court indicated the purport of the order dated 18.8.1994 which is as follows:

"First, make the admissions applying the rule of 69% reservation in favour of Backward Classes, Scheduled Castes and Scheduled Tribes. Second, the additional seats created by virtue of the orders of this court be filled with the general category candidates. The number of seats so created was equal to

the number of seats which the general candidates would have got if the rule of fifty per cent total reservation had been applied.

This order in effect respected the rule of 69 per cent devised by the Government of Tamil Nadu and sanctioned by the Tamil Nadu Act 45 of 1994 while, at the same time, removing the grievance of the general category candidates by creating additional seats for them for that year. In other words, the sanctioned strength of seats in every college are being allotted exclusively in accordance with the sixty-nine per cent reservation rule. Only the additional seats, which are created by and only because of the orders of this Court are being provided to general category candidates on the basis of merit, which category includes Backward Classes, Scheduled Castes and Scheduled Tribes as well. It is significant to notice in this connection that according to the figures supplied by the Government of Tamil Nadu for the Academic Years 1993-94 and 1994-95, more than eighty per cent of the seats in the general category are being taken away by the students belonging to Backward Classes on the basis of their own merit. As fully explained and illustrated in the order dated 18.8.1994, the students belonging to Backward Classes are getting fifty per cent of the total seats on the basis of reservation and more than 80 per cent of the seats in the general category (open competition category) on the basis of their own merit. There is no reason to believe that the situation is different this year. Thus, the bulk of the additional seats directed to be created by this Court year after year (since 1994-95) are again going to students belonging to Backward Classes. The order of this Court is thus not only upholding the rule of fifty per cent ceiling on reservation affirmed by the Special Bench of this Court in *Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217) but is in truth operating to the advantage and benefit of a number of Backward Class students. Many of the Backward Class students, along with certain other candidates belonging to non-reserved categories, who would not have otherwise got admission into these courses, are getting seats by virtue of these orders. And yet it is surprising to note that the Government of Tamil Nadu has chosen to ask for modification of the order dated 22.7.1996. The said order is only interlocutory in nature. Pending decision of the several constitutional and legal questions raised in these matters, it was supposed to be an equitable order harming no one. If at all, it benefited some who would not have been able to obtain admission otherwise and surely that fact cannot be a ground of grievance for the State of Tamil

Nadu. Only as an interim measure, certain additional seats are being created and they are being allotted to general category candidates which in Tamil Nadu really means providing the bulk of them to students belonging to Backward Classes."

It has been rightly submitted by the learned counsel for the appellant that there is no scope for any increase of seats without specific permission from the concerned authorities as was held in MCI's case. The directions given by this Court, as extracted above, are clear and unambiguous. The only controversy is whether there has been proper implementation of the order. We find that learned Single Judge and the Division Bench have categorically noted that persons belonging to open category who had secured lesser marks than the writ petitioners, were admitted to the Government Medical Colleges. From the data furnished, we find that there were several absentees from amongst those selected in the open category in relation to the Government Medical Colleges. Additionally, two seats were directed to be kept vacant by learned Single Judge which position continued on confirmation of the Learned Single Judge's order by the Division Bench.

In the peculiar circumstances without elaborate deliberations of the controversy involved in the main case which is pending before this Court, it would be appropriate if the writ petitioners (respondents in the present appeals) are admitted in the Government Medical Colleges. Obviously, this direction would not amount to creation of additional seats and has to be done within the sanctioned seats strength of the concerned Government College. As noted above, there were several absentees and the interim order passed by the learned Single Judge continued to be operative on confirmation by the Division Bench as the writ petitions were decided in favour of the writ petitioners. Let the necessary steps be taken to admit the writ petitioners (respondents in the present appeals) within three weeks from today. Such admission shall be without prejudice to the claims involved in the main petition pending before this Court. We make it clear that we have not made any departure from principles as laid down in MCI's case (supra) and have passed this order taking note of the undisputed factual position of the case.

The appeals are accordingly disposed of.