

**JUDGMENT**

1. We have heard Sri Ashok Desai for the Government of Tamil Nadu and Sri Vaidyanathan for the petitioners today.

2. We have perused the affidavit filed by Dr Karuppa Swami today mentioning certain particulars. In the affidavit, it is stated that out of 161 seats allocated to all-India quota, only 24 seats were vacant as per the information furnished by the Deans of the respective medical colleges to the Government. Since they were surrendered to the State Government by the Director General of Health Services, they were filled strictly according to the merit by candidates from out of the O. C. merit list. It is, however, not stated as to how the resultant vacancies, if any, in the reserved categories were filled. In other words, some candidates out of 24 students admitted on the basis of merit from the O. C. merit list must have been admitted earlier under one or the other reserved quota. Since they were now admitted on the basis of their merit from out of the O. C. list, the seats earlier held by them would have fallen vacant. It is those vacancies which we called 'consequential vacancies' and we would like to know how they were filled. This should be done.

3. It is stated by Sri Desai today that 161 seats were deducted out of the total number of seats, i. e. out of 1072 seats and not from out of the O. C. quota alone as stated by Sri Sibal appearing for the Government of Tamil Nadu on an earlier occasion and which statement of Sri Sibal was recorded by us. Sri Desai also stated that 54 seats towards special categories (like physically handicapped etc.) were also deducted from out of 1072 seats. This again is at variance with the information given and assertion made by Sri Sibal on the earlier occasion. An affidavit should be filed affirming the factual statement now made.

4. The Government shall also file the entire merit list, i. e., list pertaining to open competition candidates along with the marks obtained by them- up to S. No. 700, before this Court, serving a copy thereof on the appellant's counsel, Sri Vijayan, at Madras.

5. Sri Desai states that no prejudice is really caused to merit candidates, if the precise figures are looked to. He explained the position in the following manner : Out of 857 seats remaining (after deducting 161 towards all-India quota and 54 seats towards the special category from out of total 1072) 50% must go to O. C. candidates. That means that 429 seats. As against this, 358 students have already been admitted. Amongst the students 359 to 429, only 11 students are such who have not been admitted because they do not belong to any reserved category. All the rest have been admitted under one or the other reserved category. 11 seats are vacant as on today as per the affidavit filed today. Before we pass orders with respect to filling up of those 11 seats, we would like to have an affidavit from a responsible officer of the Government affirming the facts stated in this para. The affidavit/affidavits affirming the said facts shall be filed by the Government on or before December 9, 1993. Copies thereof shall be served on Sri Vijayan, Advocate at Madras on or before December 9, 1993.

6. Pending further orders, 11 seats mentioned in the affidavit of Dr Karuppa Swami filed today shall not be filled up. The Government shall also not fill up any other seat, whether in the all-India quota or any other quota including O. C. category. The 54 seats relating to special category shall also be not filled up, as already directed, pending further orders.

7. List on December 13, 1993 at 2.00 p. m.

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**Voice (Consumer Care) Council And Others  
Vs  
State Of T. N. (II) And Others**

**CASE NUMBER**

SLP (C) No. 13526 of 1993 with Contempt Petition No. 373 of 1993 in SLP No. 13526 of 1993  
and SLP (C) Nos. 16534-40, and 15241-42 of 1993

**EQUIVALENT CITATION**

1995-(SU1)-SCC-0633-SC

**CORAM**

B P Jeevan Reddy  
S P Bharucha

**DATE OF JUDGMENT**

05.11.1993

**JUDGMENT**

1. We have heard Mr C. S. Vaidyanathan, learned counsel for the petitioner in the contempt petition and Shri Kapil Sibal, learned counsel for the State of Tamil Nadu. Both the counsel have placed certain material and certain facts and figures before us. We do not wish to express any opinion on that material as on today.

2. Mr Kapil Sibal tenders on behalf of the Government of Tamil Nadu an unconditional apology for the actions taken in violation of the orders of this Court by the State of Tamil Nadu and its officers/authorities. However, when we pointed out that there is no such unconditional

apology in the affidavit filed on behalf of the State of Tamil Nadu, he undertook to file an affidavit of the Chief Secretary to the Government of Tamil Nadu to the above effect within ten days from today. He shall do so. He shall also file an affidavit of a responsible official affirming that the letters of allotment to students admitted in the Government Medical Colleges (both MBBS & BDS colleges) were despatched on 24th, 25th and 26th August, 1993 as asserted by him before us today.

3. Orders will be passed on the contempt case after the affidavits as aforesaid are filed and further considered.

4. Pending further orders, we direct that the Government shall create 6% additional seats in Government Medical Colleges (both MBBS & BDS colleges) and allot these seats exclusively to the open competition candidates strictly on the basis of the merit. Similarly so far as the Government Engineering Colleges are concerned, the State shall create 7% extra seats in Government Engineering Colleges and allot them on the very same basis indicated above, namely to open competition candidates only, strictly on the basis of merit. The rule of reservation shall not apply to these additional seats.

5. List the matters on November 22, 1993 at 2.00 p. m. Let this Bench be constituted.

6. The order regarding the creation of extra seats and filling up of those seats shall be completed on or before November 22, 1993. An affidavit indicating compliance with these directions by the State be filed on that date.

7. The Indian Medical Council and the All-India Council for Technical Education shall grant the necessary sanction for the said additional seats forthwith.

8. SLP (C) Nos. 15959-61 of 1993 be listed on November 22, 1993 with these matters.

9. A copy of this order shall also be communicated to the Indian Medical Council and the All-India Council for Technical Education today.

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**Voice (Consumer Care) Council And Others**  
**Vs**  
**State Of T. N. (VI) And Others**

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**CASE NUMBER**

SLP (C) No. 13526 of 1993 with Contempt Petition No. 373 of 1993 in SLP (C) Nos. 13526,  
16534-40, 15241-42 and 15959-61 of 1993

**EQUIVALENT CITATION**

1995-(SU1)-SCC-0640-SC

**CORAM**B P Jeevan Reddy  
S P Bharucha**DATE OF JUDGMENT**

14.12.1993

**JUDGMENT**

1. This order is made in continuation of our order of December 6, 1993 (1995 Supp (1) SCC 638) which itself was in continuation of earlier orders in the matter.

2. This order is confined only to directions contained herein (regarding the admission of certain students who were unlawfully deprived of their admission on account of the orders and proceedings taken by the Government of Tamil Nadu, notwithstanding the orders of this Court dated August 24, 1993 (1995 Supp (1) SCC 632)). The orders on SLPs and contempt petitions will be made in due course.

3. Shri Ashok Desai, the learned counsel for the State of Tamil Nadu has filed a further affidavit sworn to by Shri Karuppa Swami (dated December 8, 1993) we have perused the said affidavit. The learned counsel has also filed a copy of the "overall merit list for the year 1993". This list is stated to be a copy of the original, but confined up to serial number 700 only. The list is said to have been prepared strictly on the basis of the merit. It also indicates whether a particular candidate belongs to Scheduled Tribes, Scheduled Castes, most backward classes/denotified community, backward classes or forward classes. We have perused the said list.

4. Shri Vaidyanathan, the learned counsel for the petitioner has filed a rejoinder affidavit of Shri KM Vijayan (dated December 13, 1993) along with certain statements. We have perused the same.

5. It is stated by Shri Desai that the students in the merit list up to Rank No. 358 have been admitted. Between candidates bearing Rank No. 359 and Rank No. 429 (both inclusive) there are eleven candidates who alone have not been admitted so far. All the rest have been admitted under one or the other reserved quota. (It may be recalled that the figure 429 represents 50 per cent of the total number of seats in Government medical colleges in the State, deducting the seats reserved for all-India quota and special category reservations). Our immediate concern is to provide admission to these eleven candidates who, in the language of the aforesaid list, belong to

'forward classes'.

6. It is stated by Shri Desai that as on today there are eleven vacancies arising in the following manner. There are eight vacancies in all-India quota but two of them are covered by certain court orders, with the result that only six of them are available immediately. (These seats are in addition to 24 which have already been filled up pursuant to our earlier orders.) Besides the above six, there are five vacancies in the 64 seats which were created pursuant to our orders dated November 5, 1993. It is accordingly directed that the eleven students aforementioned namely students bearing Ranking Nos. 359, 362, 365, 379, 380, 382, 387, 390, 397, 401 and 404 shall be admitted forthwith into the course.

7. It may happen that some more vacancies may arise for one or the other reason in one or the other category. Having regard to the manner in which the 55 consequential vacancies have been filled up (reference may be made to our order of November 30, 1993 (1995 Supp (1) SCC 637) Which explains the position in this behalf) it is directed that any vacancies arising hereinafter, in whichever category it may be, up to ten vacancies shall be filled only from among the candidates belonging to "forward classes"- out of the overall merit list, in the order of merit- to use again the expression employed in the overall merit list. If more than ten vacancies arise, they shall be filled up strictly according to merit observing the rule of reservation, so, however, that the total extent of reservation under Article 15(4) does not exceed 50 per cent.

8. So far as private medical colleges are concerned it is complained by Shri Vaidyanathan that the overall merit list is not being followed in allotting the students either for the free seats or for the payment seats. This is denied by Shri Desai, on instructions. Be that as it may it is directed that the 'free seats' as well as 'payment seats' shall be filled strictly in accordance with the relevant orders of this Court (orders made by the Constitution Bench from time to time), faithfully following the overall merit list.

9. It is directed that all admission shall be finalised as early as possible in view of the fact that inordinate delay has already occurred.

10. We may also record the assertion made by Shri Desai, on instructions, that out of the all-India quota, neither the Government of Tamil Nadu nor its authorities have filled up any seats except the 24 seats mentioned above (which have been filled up pursuant to the orders of this Court). It is stated that all the rest except the vacancies mentioned above have been filled by the Director General of Health Services alone. It is made clear that any vacancies arising in this quota also shall be subject to the orders made hereinabove.

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**Voice (Consumer Care) Council, And Others**

**Vs**

**State Of T. N. (IV) And Others**

**CASE NUMBER**

SLP (C) No. 13526 of 1993 with C.P. No. 373 of 1993, SLP (C) Nos. 16534-40, 15241-42 and 15959-61 of 1993

**EQUIVALENT CITATION**

1995-(SU1)-SCC-0637-SC

**CORAM**

B P Jeevan Reddy  
S P Bharucha

**DATE OF JUDGMENT**

30.11.1993

**JUDGMENT**

1. In pursuance of the order dated November 22, 1993 certain information in the shape of a Note has been placed before us by Shri Ashok Desai, learned counsel appearing for the State of Tamil Nadu. The Note is neither signed nor verified by any responsible officer of the Government. Be that as it may, we make the said Note a part of the record.

2. We have also heard Shri Ashok Desai for the Government and Shri Vaidyanathan for the appellants. Having regard to the material placed before us and the arguments advanced, we make the following directions :

1. The Government of Tamil Nadu shall file an affidavit of the officer who is stated to have understood our order dated November 5, 1993 (1995 Supp (1) SCC 633) as authorising the Government of Tamil Nadu to fill up the consequential vacancies in the reserved categories from out of the candidates in the waiting lists pertaining to those categories alone, without reference to the order dated August 24, 1993. The affidavit shall also explain as to why it was not thought proper to approach this Court for appropriate directions with respect to the manner in which the said consequential vacancies should be filled- particularly having regard to the fact that as many as 55 consequential vacancies are said to have arisen in the reserved category. Pausing here for a moment, we may explain the context in which the above direction is made : It is stated that in the 6% additional seats created in Government Medical Colleges pursuant to our order dated November 5, 1993 (1995 supp (1) SCC 633), 64 students belonging to open category were admitted according to their merit inter se. But it so happened that 55 out of the 64 students

belonged to reserved categories who were earlier admitted under reserved categories. Since those 55 students got admitted on the basis of their merit in the open competition category, 55 consequential vacancies arose in the reserved categories. It is stated before us today that those 55 vacancies were filled from amongst the students in the waiting lists pertaining to the respective categories. This prima facie is in the teeth of and inconsistent with the order dated August 24, 1993. The explanation is called for in the light of the above facts.

2. Pending further orders, 54 seats belonging to various special categories like physically handicapped, widows, sportsmen etc. shall not be filled up. Shri Ashok Desai stated before us that these 54 seats have not been filled up as on date. The statement is recorded.

3. Shri C. S. Vaidyanathan, learned counsel for the petitioners states that though 161 seats were to be filled on the basis of All-India Examination conducted by the Director General of Health Services, only about 50-55 students have joined and that the remaining seats are still vacant which have been or likely to be surrendered to the State Government. Be that as it may, we direct that pending further orders, the seats remaining unfilled as on today from out of the said quota of 161 seats (15% of the total seats to be filled on all-India basis) shall not be filled up.

4. Any vacancy remaining, whether among the free seats category or among the payment seats category in the Private Medical Colleges shall not be filled up pending further orders.

3. Though we wanted to list this matter on Friday, the 3rd of December, 1993, Shri Ashok Desai requests that it may be taken up on Monday, the 6th of December, 1993. We accede to the request and direct the matters to be listed on December 6, 1993 at 1.30 p. m. before the same Bench in the Court.

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**Voice (Consumer Care) Council  
Vs  
State Of T. N. (I)**

**CASE NUMBER**

SLP (Civil) No. 13526 of 1993

**EQUIVALENT CITATION**

1995-(SU1)-SCC-0632-SC

**CORAM**

M N Venkatachaliah  
S C Agarwal

**DATE OF JUDGMENT**

24.08.1993

**JUDGMENT**

1. Upon motion the matter is taken on Board.

2. The view of the High Court is that the limit on the maximum permissible reservations indicated by this Court in *Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385) would operate prospectively only after the exercise indicated in the judgment is completed and that the maximum limit of reservations will operate only prospectively for future academic years and not for the current year. We are afraid, this view is prima facie not correct.

3. Issue notice on the SLP as well as on stay application. Pending notice, there shall be interim stay of reservations in excess of 50 per cent.

Court Masters

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**Voice (Consumer Care) Council**  
**Vs**  
**State Of T. N. (III)**

**CASE NUMBER**

SLP (Civil) No. 13526 of 1993 (From the Judgment and Order dated July 26, 1993 of the High Court of Madras in Writ Petition No. 10016 of 1993) with C.P. No. 373 of 1993, SLP (C) Nos. 16534-40, 15241-42 and 15959-61 of 1993

**EQUIVALENT CITATION**

1995-(SU1)-SCC-0635-SC

**CORAM**

B P Jeevan Reddy  
S P Bharucha

**DATE OF JUDGMENT**

22.11.1993

**JUDGMENT**

1. Having heard the counsel for both the parties we are of the opinion that the following further information should be furnished and action taken, by the Government :

(i) In paragraph 9 of the affidavit sworn to by Dr Karuppa Swami, it is stated that the seats falling vacant on account of the allotted students not accepting the admission, were allocated observing the principle of 50% ceiling. But the said paragraph does not make it clear as to how many seats fell vacant in the open category and how many in the respective reserved categories. These particulars be furnished.

(ii) It is admitted that among the students admitted against the additional seats created pursuant to our order dated November 5, 1993, there are several students belonging to reserved categories who were granted admission earlier under the respective reserved categories, but were given admission against the additional seats on the basis of their merit ranking. This necessarily means that some seats did fall vacant in the reserved categories. The Government shall furnish particulars regarding how many seats fell vacant in each of these reserved categories and how were they dealt with. In other words were these vacancies clubbed with the seats mentioned in paragraph 9 or were they treated as a separate category and filled exclusively with the respective reserved candidates.

(iii) In paragraph 10 it is stated that out of the merit quota, 161 seats reserved for all-India quota (which are filled by the Director General of Health Services, Government of India, on the basis of all-India merit) were deducted. The rationale for this is stated to be- since all 161 seats are filled exclusively on merit without applying any rule of reservation, these were deducted out of the merit quota. At the present moment we do not wish to say anything about this. But the other fact stated in paragraph 10 is that another 54 seats were earmarked for special categories like physically handicapped etc. It appears that these 54 seats were also deducted from the merit quota which appears to be ex facie wrong. As has been stated in the judgment of *Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1) these reservations fall under clause (1) of Article 16 of the Constitution and have to be evenly (proportionately) spread over to the several categories including in open competition category. Therefore, the deduction of 54 seats from out of merit quota alone is bad.

2. The Government shall now follow the principle indicated above and spread these 54 seats

among all the categories and make admissions to the resulting open competition seats from among the open competition candidates exclusively. While working out the open competition quota, the rule of 50% ceiling shall be applied. The same principle shall be applied in the case of Engineering Colleges and other colleges. The Government shall complete the exercise as per these directions and furnish the particulars of action taken by them.

3. List on November 26, 1993 at 2 p. m. No orders on the impleadment application.

Court Masters