

(1993) 07 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 11055 of 1993

B. Padmapriya and others

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 226
Tamil Nadu Medical University Act, 1987 — Section 35

Citation : AIR 1994 Mad 95

Hon'ble Judges : Raju, J;Bakthavatsalam, J

Bench : Division Bench

Advocate : Mrs. Nalini Chidambaram, for S. Silambanan, for the Appellant; P. Shanmugam, Spl. Govt. Pleader (Education), Subbiah for M/s. Row and Reddy and M. Vellaisamy, for the Respondent

Judgement

Raju, J.—The petitioners have filed the above writ petition for a writ of mandamus directing the third respondent to make admissions to the

B.Sc., (Nursing) course for the year 1993-94 in accordance with the Regulation formulated and brought into effect from the academic year 1992-

93 by the third respondent. The petitioners are students who have all completed their plus two (H.S.C.) course of study and are aspiring for

admission into the B.Sc., (Nursing) professional course.

2. The petitioners claim that students who have studied Science Group (viz., Physics, Chemistry and Biology) in the plus two course are eligible for

undergoing the B.Sc., (Nursing) course, that the eligibility criteria for admission into the course has been prescribed by the Tamil Nadu Dr. M.G.R.

Medical University, hereinafter referred to as "the Medical University", that till the academic year 1993-94 Entrance Examination was being

conducted by the Government for all other Professional Courses except B.Sc., (Nursing) and that admissions to the said course was being made

on the basis of the marks obtained in the plus two course in Science subjects and the performance of the candidates in the viva voce Interview. It is

also stated that the M.A. Chidambaram College of Nursing was started in the year 1992 with a sanctioned strength of 25 seats of which 2/3 are

earmarked as "Management Quota" and 1/3 are reserved for "Government Quota". The said college was stated not to charge any capitation fee

and stood affiliated to the Medical University apart from the recognition obtained from the Tamil Nadu Nurses and Midwives Council, Madras.

3. The petitioners further claim that the Medical University had issued the guidelines and instructions to all the Institutions imparting education in

B.Sc. (Nursing) Course prescribing the following eligibility criteria :--

III. Eligibility:

(1) Eligibility for admission with effect from 1992-93.

Candidates for admission to the Degree of Bachelor of Science in Nursing shall be required to have :

(a) Completed the age of 17 years on or before 31st December of the year of admission to the programme in a college of Nursing affiliated to this

University.

(b) Passed the Higher Secondary Examination conducted by the Government of Tamil Nadu or an equivalent Examination accepted by the

Governing Council subject to such conditions as may be prescribed therefor, Physics, Chemistry and Biology (Botany and Zoology) as subjects of

studies.

(c) Should have 50% aggregate in Science subjects Physics, Chemistry. Biology (Botany and Zoology).

(2) Eligibility for the Award of Degree : The candidate for the award of Degree of Bachelor of Science in Nursing shall be required to :

(a) Be enrolled as a student and undergone the prescribed courses of study and practice in a college of Nursing affiliated to the University for a

period of four academic years or eight semesters and passed the examinations.

While admitting that the decision of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.,

evolved a Scheme Regulation admissions of students in professional courses including "Nursing" in Private Institutions, it is stated that petitioners

came to know that for the current academic year the Anna University is conducting common Entrance Examination for all professional courses

including B.Sc., (Nursing). It is also stated that the M.A. Chidambaram College of Nursing had received a communication on 7-5-1993 from the

Secretary to Government, that the students in professional colleges would hereafter be divided into two groups with a 50% of the total strength

being called free seats and the other 50% being called payment and that selection for admission would be on the basis of an Entrance Examination

to be conducted by the State and asking the Private Colleges concerned not to make any admission on their own.

4. According to the petitioners the applications obtained by them from the Anna University and the Prospectus issued therefore by the Anna

University stipulated the following eligibility criteria:--

(ii) Minimum Marks :

M.B.B.S./B.D.S./B.Pharm./B.S.M.S./ B.H.M.S./B.P.T./B.Sc., (Nursing) Candidates who have passed H.S.C. (Academic) equivalent

examination should have obtained the following marks in their qualifying examination :

1. Other communities :

(a) A minimum of 60% marks in Biology or Botany and Zoology taken together; and

(b) a minimum of 60% marks in each of the subjects Physics and Chemistry and;

(c) aggregate marks of (a) and (b) to be less than 140 out of 200 in Science subjects.

II. Backward Class :

(a) A minimum of 60% marks in Biology or Botany and Zoology taken together and

(b) a minimum of 60% marks in each of the subjects Physics and Chemistry and

(c) aggregate marks of (a) and (b) to be not less than 130 out of 200 in science subjects.

III. M.B.C. and denotified community :

(a) A minimum of 55% marks in Biology or Botany and Zoology taken together

and

- (b) a minimum of 55% marks in each of the subjects Physics and Chemistry and
- (c) aggregate marks of (a) and (b) to be not less than 120 out of 200 in Science subjects.

IV. S.C. and S.T.

Candidates belonging to S.C. and S.T. are eligible to apply, if they have 40% marks in each of the Science subjects Physics, Chemistry and

Biology or Botany and Zoology taken together.

This concession to the candidates belonging to S. C. and S. T. is applicable to those who apply for selection under general pool and those who

apply for seats reserved against the special categories. For physically handicapped persons, widows and eminent sports persons applying for

M.B.B.S. course and physically handicapped persons and widows applying for B.S.M.S./B.H.M.S. course the eligibility for admission is a pass in

the qualifying examination with not less than 50% marks in each of the Science subjects Physics, Chemistry and Biology or Botany and Zoology

taken together.

This and the other stipulations relating to age, number of attempts to pass and improvement etc., were similar and identical to the other Medicinal

professional courses.

5. Aggrieved against the variation and the increase in the minimum eligibility marks prescribed in contrast to the one prescribed by the Medical

University, the above writ petition came to be filed by the petitioners.

6. Mrs. Nalini Chidambaram, learned Senior Counsel appearing for the petitioners, in her submissions, raised the following contentions :--

(a) Under the Tamil Nadu Dr. M.G.R. Medical University Act, 1987, it is the Medical University which is competent to fix the eligibility criteria and

minimum marks for admission into B.Sc., (Nursing) Course and when the said University as a matter of fact fixed the criteria already, there is no

power in the Anna University which is merely an Agency for conducting the Entrance Examination, to prescribe any different or higher norms or

minimum marks.

(b) Under the guise of implementing the Scheme evolved by the Supreme Court in the decision reported in Unni Krishnan, J.P. and others Vs.

State of Andhra Pradesh and others etc. etc., , there is no power even in the Government or any other authority to fix norms higher than those

fixed by the Medical University.

(c) Unless there is a specific order u/s 35-A of the Medical University Act, there cannot be any prescription of minimum eligibility criteria by a

mere administrative order or prospectus and the norms stipulated in the prospectus issued by the Anna University would not govern the

Admissions for B.SC., (Nursing).

(d) Even the orders said to have been passed by the State Government were after the notification issued inviting applications and, therefore, will

have no application for admissions to the current academic year. The further plea projected was that the higher or revised criteria, if any, should

have been announced before the examinations for plus-two course, which is the qualifying examination was conducted and not thereafter.

(e) The issue raised in W.P. No. 10891 of 1993 on behalf of the petitioners therein based upon Sections 35 and 35-A of the Medical University

Act has been adopted by the learned Senior Counsel, in addition to the points referred to supra to contend that even the government has no such

power in the face of the stipulations already made by the Medical University, to prescribe different norms.

7. Mr. P. Shanmugam, learned Special Government pleader (Education) while traversing the contentions on behalf of the petitioners, contended on

the basis of the counter-affidavit filed for the State, by the Under Secretary to Government, Health and Family Welfare Department, that there are

no merits in any of the contentions raised for the petitioners and that the orders made by the Government in G.O.Ms. No. 748, Health and Family

Welfare, dated 3-6-1993 even before the last date fixed for receipt of applications would apply and govern the claims for admission for the current

academic year also. It is also contended that the B.Sc., (Nursing) Course of four years duration was started in the year 1983, that the selections

were so far made on the basis of oral interviews, and that in the light of the recommendations of the Directorate of Medical Educations and in

keeping with the procedure adopted in the neighbouring States as well as the decision taken in a conference held on 15-6-1988, the entrance

examination was properly and validly decided to be held for this course also as in

the case of other Medical professional course in G.O.Ms. No.

424, Health and Family Welfare, dated, 1-4-1993. While contending that the procedure adopted is valid in law, it is also stated for the

respondent-State that the minimum guidelines fixed by the Medical University do not stand in the way of the State Government in fixing additional

and higher norms by virtue of its powers both under Article 162 of the Constitution of India as well as Section 35-A of the Medical University Act,

8. Mr. M. Vellaiswamy, learned counsel appearing for the Medical University, contended that the admission of students to the course or their

selection is not the business or concern of the Medical University, that the Medical University had prescribed the criteria for admission to the

course and that it was open to the State Government and under its directions for the Anna University to prescribe further additional or higher

norms. It was also contended by the Medical University that the relief as prayed for against the University to admit the petitioners to the course

cannot be countenance since the Medical University had no such powers or jurisdiction to admit students in the various Colleges and Institutions.

9. Mr. Subbiah, learned counsel appearing for the Anna University has invited our attention to the counter affidavit filed and contended that in the

light of the relevant orders of the State Government, the Anna. University is entitled to conduct the Entrance Examination, that the eligibility norms

and the stipulations contained in the prospectus was pursuant to the orders of the State Government and, therefore, no exception could be taken to

the action of the Anna University. The learned counsel further contended that the common Entrance Examination for the course in question is also

fully justified and that the minimum eligibility marks prescribed was well justified. In other respects, the learned counsel adopted the submissions of

the other learned counsel for other respondents.

10. We have carefully considered the various submissions of the learned counsel appearing on either side. So far as the general issue raised on the

basis of the provisions of the Medical University Act and the scope and purport of Sections 35 and. 35-A of the said Act are concerned, made by

adopting the submissions of the learned counsel in W.P. No. 10891 of 1993, suffice it to state in this order that we have considered them at length

and repelled the same as not acceptable in our order dated 26-7-1993 in the

common order in W.P. No. 11031 of 1993 etc. and that the judgment rendered therein squarely governs this issue against the petitioners in this writ petition also.

11. Before adverting to a consideration of the other issues raised, a reference to certain factual details is relevant for such considerations. The

Government of Tamil Nadu passed orders in G.O.Ms. No. 754, Health and Family Welfare dated 21-5-1991, according sanction for the starting

of self-financing institutions to impart education in B. Sc., (Nursing) Course subject to certain terms and conditions. The said order seems to be a

model of similar sanctions granted by the Government. The relevant conditions to be noticed are that such institutions would be under the control of

the Director of Medical Education and affiliation from the Medical University shall be obtained by the concerned institutions. The self financing

institutions were also to admit 66-2/3% of approved annual intake adhering to the minimum age, educational and other qualifications prescribed by

the Government for admission to Nursing Courses and the remaining 33-1/3% of the approved intake shall be filled up by the Director of Medical

Education every year from among the approved list of candidates selected for admission to Nursing Course in Government institutions.

Subsequently, G.O.Ms. No. 758, Health and Family Welfare, dated 27-5-1991 came to be passed stipulating the conditions governing the grant

of permissions to start self-financing institutions for the course in question. Clause 4 of the guidelines stipulated that the rules for selection of

candidates followed for B.Sc., (Nursing) in Government College of Nursing like the minimum qualification/marks for eligibility also shall be

followed by the institution to maintain the standard of education. Clause 23 also provided that the institution should fulfil all the norms and

conditions stipulated and also any other conditions prescribed by the Government from time to time. In G.O.Ms. No. 128, Health and Family

Welfare, dated 3-2-1992 the Government ordered the revision of then existing educational qualifications for admission to B.Sc., (Nursing) and

accorded approval to the revised application form and prospectus. No doubt this government order has relevance to the admissions in government

college of Nursing; but in view of the above referred stipulation relating to the grant of sanction for private institutions, the criteria and stipulations

applicable to Government College would apply to such Private Institutions also. Annexure II to G.O.Ms. No. 128, Health and Family Welfare,

dated 3-2-1992 prescribes a minimum of aggregate of 60% marks in Science subjects in respect of open competition, B.C. and M. B.C.

candidates and 50% marks in respect of S.C. and S.T. candidates. This came into force from the academic year 1991-92 onwards.

12. In G.O.Ms. No. 424, Health and Family Welfare, dated 1-4-1993, the Government directed the conduct of Entrance Examination on the lines

of professional Entrance Examinations conducted for selection of candidates to M.B.B.S., B.D.S. and B. Pharm Courses from 1993-94 onwards.

Pursuant to the said orders, the Directorate of Medical Education submitted proposals to the Government to have the same eligibility marks for

B.Sc., (Nursing) as those stipulated for other Medical courses. Thereupon, the Government passed G.O.Ms. No. 748, Health, dated 3-6-1993

and approved the minimum eligibility marks proposed on par with those for other Medical Courses and they are the same as stipulated in the

prospectus issued for the Entrance Examination by the Anna University. Admittedly, the last date for the receipt of applications was 10-6-1993 and

the examinations were actually conducted on 19-6-1993 and 20-6-1993 and the petitioners, according to the respondents, have been made

aware of the minimum eligibility marks in time by the instructions to candidates issued by the Anna University. In the light of the above facts, the

learned Special Government Pleader submitted by relying upon a decision of the Supreme Court reported in State of Uttar Pradesh and others Vs.

Dr. Anupam Gupta, etc., , that the orders of the Government in G.O.Ms. No. 748, Health, dated 3-6-1993 provided sufficient authority to insist

upon the minimum eligibility marks as notified by the Anna University in the prospectus and the fact that such orders came to be passed even

before the last date fixed for receipt of applications would suffice, in law, and the contentions to the contrary have no basis whatsoever.

13. The decision reported in State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., dealt with a case wherein, the initial press note

inviting applications for the entrance examination did not say that 50% minimum marks in the entrance examination is a condition for admission to

the Post Graduation Course, but that before conducting the examination, as such, a second notification was issued specifically stating that securing

a minimum of 50% of the marks in the entrance examination was a condition as eligibility for admission. In that fact situation, it was held that there

was no infirmity involved in the same particularly when such course of action was aimed in larger public interest of selecting candidates of merit. In

view of the above, we do not find any infirmity in law, in the stipulation of minimum marks and their applicability to the academic year 1993-94

itself. Even that apart, as noticed already, one of the terms or guidelines governing the very grant of sanction for the establishment and running of a

private institution for B.Sc., (Nursing) was that the institution shall abide by the minimum standards etc., prescribed by the Government (vide : G.

O. Ms. No. 754, Health and Family Welfare, dated 21-5-1991 and G.O.Ms. No. 758, Health and Family Welfare, dated 27-5-1991) and on

that ground also the admissions to seats in private institution also in respect of the course in question shall be on par and subject to same criteria

and guidelines which are applicable for selection of candidates in Government College of Nursing. The contentions of the petitioners to the

contrary, do not have any merit or basis in law and, therefore, shall stand rejected.

14. As far as the other grounds raised at the time of hearing are concerned, we are of the view, that the stipulation of the eligibility criteria by the

Medical University alone is not the last word in the matter. The eligibility of a candidate is one and the question of their selection for admission is

totally a different aspect. In view of the limited number of seats available and the large number of eligible candidates in the field the State has ample

powers to prescribe not only the mode or manner of selection for admission but also the minimum marks required for participating in the selection

process and getting selected for admission. The State has ample powers in this regard both under Article 162 of the Constitution of India and also

Section 35-A of the Medical University Act. This was the view we have taken in respect of selection of candidates to other Medical Courses in

our order dated 26-7-1993 in W.P. No. 11031 of 1993 etc., and the same also squarely applies to the present case also. It was well within the

State to prescribe additional and further qualifications or eligible criteria than the one prescribed by a different body, in order to ensure the selection

of meritorious candidates for admission to the Course in question.

14A. Admittedly, a Constitution Bench of the Supreme Court had an occasion to consider the question of administration of private unaided/aided recognised/affiliated educational institutions conducting professional courses in the decision reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . The Supreme Court evolved a scheme with stipulations governing all such institutions. The expression "professional colleges" was defined therein to include, among others institutions and colleges imparting Nursing course also. One of the terms of the said scheme is that 50% of the seats in every professional colleges shall be filled by the nominees of the Government or the University and such seats are to be considered as "Free Seats". The balance of 50% of seats have to be considered as "Payment seats" and that the allotment of students against payment seats shall also be done on the basis of inter se merit determined on the same basis as in the case of free seats. The further provision in the scheme is also that the criteria of eligibility and all other conditions shall be the same in respect of both free seats and payment seats. It is unnecessary to refer to the other clauses for the present consideration. In the light of the above Scheme framed by the Supreme Court, the action of the State Government in applying the same criteria of eligibility for all the seats in the professional college concerned on par with the criteria stipulated for similar course in Government run college cannot be objected to. The respondents are, therefore, acting in public interest and no exception could be taken for the course of action adopted by the respondents. The assumption that the Anna University has fixed the minimum eligibility marks on its own has no meaning in the light of the facts disclosed above by the various government orders relating to the basis for such fixation.

15. The next contention that remains to be considered is that in the absence of a specific order u/s 35-A of the Act, a mere administrative order passed by the State Government cannot have a binding force and provide sufficient basis or authority for the Anna University to lay down different norms in the prospectus. Attractive though this plea may look like, we are of the view that there is absolutely no merit in the same. Section 35 of the Medical University merely mandates that no person shall be admitted to a course of study or training in a college or University or laboratory or

an approved institution and to appear for any examination held by the University for conferring any degree, diploma or other distinction unless he had passed the qualifying examination prescribed therefore by the University and fulfils such other conditions as may be prescribed by the regulations. The above provision has no concern with the actual selection to the limited number of seats available for admission from out of the eligible candidates. That really has been provided for u/s 35-A inserted by Tamil Nadu Act No. 20 of 1992, according to which notwithstanding anything contained in Section 35 or any other provisions of the Medical University Act, the Government shall be the Competent Authority to select and admit candidates to a course of study or training in the Government as well as private colleges and institutions to which the Medical University Act applies, in respect of seats under Government quota and that the Government may by general or special order specify the policy, guidelines, method and procedure for selection of candidates for such colleges and institutions and in respect of the seats referred to above. The explanation to the said provision lays down that the expression "seats under government quota" means the seats reserved to be filled up by the government from among the approved list of candidates selected for admission. The scheme framed by the Supreme Court reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., clearly lays down that even in respect of what was till then known as "Management Quota" but renamed as "payment", the admission should be on the basis of inter se merit determined on the same basis as in the case of "free seats" or what was till then called as "Government Quota" and that the criteria of eligibility and all other conditions shall be the same in respect of both free seats and payment seats.

16. The issue that next requires to be considered is as to whether the orders relied upon by the respondents could be attributed to or claimed to have been passed u/s 35-A of the Medical University Act. No doubt, all the three Government Orders passed in G.O.Ms. No. 128, Health and Family Welfare, dated 3-2-1992; G.O.Ms. No. 424, Health, dated 1-4-1993 and G.O.Ms. No. 748, Health, dated 3-6-1993 do not make any specific mention of Section 35-A of the Medical University Act. The relevant files were produced before us in Court and on our going through the

same, the subject and nature of consideration by the Government which culminated in the above Government Orders as well as the content of the orders make it clear, that those Government orders relate to specification or laying down of the policy, guidelines, method and procedure for selection of candidates for admission. Consequently, they could be attributed to and traced legitimately to the power conferred u/s 35-A of the Medical University Act. The non-mention by the Government of the statutory power in exercise of which those order were passed at the time of its exercise will not derogate from the fact that the Government acted in exercise of such statutory powers, which in our view the government undoubtedly possess under Sec. 35-A of the Medical University Act. It is a well accepted principle of law that once it is shown that the statutory power exists and the orders are traceable to such statutory power, the exercise is not invalidated merely by non-mentioning of the source of power or even an erroneous or mistaken referenee to the source of power. Therefore, we see no merit in this objection, as well. The relief sought for against the 3rd respondent is wholly misconceived and cannot be obtained, as prayed for.

17. For all the reasons stated above, we do not see any merit in the contention urged behalf of the petitioners at the time of hearing. The writ petition, therefore, fails and shall stand dismissed, but in the circumstances of the case there shall be no order as to costs.

18. Petition dismissed.