
(1996) 08 MAD CK 0048

In the Madras High Court

Case No : W.A. No's. 669 and 670 of 1996

Director General, Armed Forces and others

APPELLANT

Vs

Ravi Bhatt

RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1997 Mad 222

Hon'ble Judges : K.A. Swami, C.J;Raju, J

Bench : Division Bench

**Advocate : T. Srinivasamoorthy, Addl. Central Govt. Standing, for the Appellant;
T. S. Sivagnanam, for the Respondent**

Judgement

D. Raju, J.—The respondent herein the writ petitioners have filed two separate writ petitions, seeking for writs of mandamus, directing the

respondents therein to admit the respective petitioner to the M.B.B.S., Course, at Armed Forces Medical College, Pune for the 1995 Session

based upon the selections already made. Pending disposal of the main writ petitions, in W.M.P. Nos. 17671 and 17672 of 1995 interim orders

were made for reserving two seats one each without filling up for both the petitioners, after hearing the counsel for respondents 1 and 2 on 5-9-

1995. Similarly, in W.M.P. Nos. 21428 and 21429 of 1995, respondents 3 to 5 also came to be impleaded having regard to certain subsequent

developments coming to light. The prayers in the main writ petition also came to be amended as for writs of certiorarified mandamus in W.P. No.

11135 of 1995 to quash the telegram of the 1st respondent bearing No. 87 and in W.P. No. 11134 of 1995, to quash the proceedings of the 1st

respondent dated 2-11-1995 and consequently direct the respondents 1 and 2 to

admit the petitioner at the College and for the course referred to supra. The proceedings under challenge in both the writ petitions stated that based on the Court of Inquiry ordered to enquire into the alleged irregularities in the conduct of the Armed Forces Medical College, Pune, 1995 Session the Government of India, Ministry of Defence, have decided to disqualify the petitioners for admission to the said course.

2. Both the writ petitioners have completed their Plus Two Course successfully during the year 1994 under the CBSE Scheme. The father of Ravi

Bhatt (Petitioner in W.P. No. 11133 of 1995) was serving as an Officer in the Military Hospital where the examinations in question were held, and

the Officer-in-charge of the Examination and the Invigilator were his father's colleague Officers serving in the same Hospital where the father of the

petitioner was posted. Similarly, the father of the petitioner Arun Lakshmanan (petitioner in W.P. No. 11134 of 1995) was a high ranking officer in

Army Medical Corps and was employed as Deputy Director. Medical Services in the Area Head Quarters, Madras and control the Military

Hospital. Madras also where the Examination was conducted. The officer of the Military Hospital and the Invigilator of the hall in question are

subordinate to the father of this petitioner. The selection for admission to the college in question is based upon a written test followed by an oral

interview for such of those candidates who have passed the written test and have been assessed and found to be suitable to appear for the

interview. The college is said to be under the overall control of the first respondent viz., The Director General of Armed Forces Medical Services,

Ministry of Defence, New Delhi.

3. According to the writ petitioners, they submitted their applications, that they were intimated to take part in the written examination, that the

examination centre was St. Dominic's Anglo-Indian Higher Secondary School, Madras-16 and they performed well in the examination as a result

of which the 1st respondent by his proceedings dated 16-5-1995 and 20-5-1995 assessed the petitioners to have passed the written test and held

them to be suitable to appear for interview too. Consequently, the petitioners also appeared and performed well in the interview and were hopeful

of selection. At that stage, the petitioners came to know through their parents that a Court of Inquiry will be held on 10-7-1995 to go into certain

alleged irregularities in the conduct of the Entrance Examination. The petitioners were given to understand that on a complaint received from a

person who also was said to have participated in the written examination and on the report of the Major General S. Biswas, SM, Dean and

Deputy Commandant, Pune, the Court of Inquiry was held. It is in these circumstances, the writ petitions came to be filed apprehending that they

may not be given admission, notwithstanding their best performance and selection. It is in the meantime, the impugned communications also were

passed and communicated later to the petitioners.

4. The respondent also filed more than one counter affidavits and on behalf of the petitioners also more than one affidavit and rejoinders came to

be filed. The learned single Judge also permitted the learned counsel for the writ petitioners to go through the record of the Court of Inquiry. After

all these, the matter was heard and ultimately by an order dated 9-4-1996, the learned single Judge allowed the writ petitions and quashed the

impugned proceedings of the 1st respondent and consequently directed the respondents to admit the petitioners in the Medical College in question

for the academic year 1996, in view of the lapse of time during the pendency of the writ petitions, though the claim was for admission even for the

M.B.B.S. Course for the 1995 Session. Aggrieved, the respondents have filed the above writ appeals.

5. Having regard to the nature of the grievance sought to be vindicated, the conclusions of the learned Judge and the nature of consideration

required to be made in these appeals, we have avoided a detailed narration of all the claims and counter claims made in the proceedings in greater

detail. The proceedings of the Court of Inquiry held were also brought to our notice and the learned counsel appearing on either side forcefully

reiterated the various contentions raised before the learned single Judge in support of their respective stand even before us. As against the plea of

the appellants that the Chief of Army Staff had ample powers and authority to appoint a Court of Inquiry re enquire into the conduct of the Army

Officers who were supervising and were responsible for the conduct of the examinations at various centres including Madras, and that there are

ample materials to support the ultimate decision taken to disqualify the petitioners for admission to the course in question. The learned counsel for

the writ petitioners persisted in the challenge to the competency of the Court of Inquiry to go into the aspect dealing with civilians like the petitioners, that the Court of Inquiry also has not definitely found anything against the petitioners though some doubts and suspicions have been raised about the possible malpractices and that at any rate before indicting and penalising the petitioners no proper, effective or sufficient opportunity was given to the petitioners. It was further contended for the petitioners that neither the purpose of the Inquiry was disclosed, nor any charge was made known to them against them nor any enquiry in the manner of a quasi-judicial enquiry was held or any opportunity to examine witnesses or cross-examine the witnesses examined by the Department was afforded to the petitioners. Except making them to appear before the Court of Inquiry by sending a message through their parents to secure their presence, the petitioners were not given any charge against them and they were asked some questions and their answers were recorded in the form of a statement and no other opportunity was afforded to them to defend themselves or vindicate their stand. As a matter of fact, the learned single Judge who allowed the writ petitions also was of the view that no opportunity was given to the petitioners to cross examine other witnesses and that the evidence of other witnesses were recorded behind their back and relied upon by the Court of Inquiry and this procedure adopted by the Court of Inquiry was violative of the principles of natural justice and, therefore, deserves to be condemned. For the very same reason, the impugned proceedings of the 1st respondent made relying upon such report and findings of the Court of Inquiry were also considered to be vitiated.

6. We have carefully considered the submissions of the learned counsel appearing on either side before us. The learned counsel for the respondents/Writ petitioners also relied upon an unreported decision of the Andhra Pradesh High Court, dated 1-4-1996 in W.P. Nos. 25509, 25514 and 25565 of 1995 by a learned single Judge and that of the Division Bench of that Court rendered on appeal against that Judgment in W.A. Nos. 843, 844 and 845 of 1996, in support of the claim on behalf of the writ petitioners. The learned single Judge of the Andhra Pradesh High Court seems to have proceeded that on mere suspicions persons said to be similar to those of the writ petitioners before this Court cannot be

penalised and the learned Judges of the Division Bench merely held that they do not consider it necessary to interfere with the conclusions of the

learned single Judge on an appreciation of a factual issue and the finding on merits. So far as the Judgment under appeal before us is concerned,

the learned Judge was more of the view that the impugned proceedings are vitiated, since it purported to be based on a finding recorded by the

Court of Inquiry conducted in gross violation of the principles of natural justice and denial of proper and effective opportunity to the petitioners. In

our view, once such a view has been taken of the nature of the enquiry held by the Court of Inquiry and that the report prepared and findings

recorded are in gross violation of the principles of natural justice and denial of opportunity to the petitioners, no further question would arise for

consideration on the basis of the perfunctory report and the other alternative open would be to ensure the conduct of a fair enquiry by giving due

opportunity to the petitioners and thereafter provide for the decision on the issue by a competent authority objectively and on merits of the claims

and contentions raised.

7. We are also of the view that it is unnecessary to go into all other questions raised about the competency of the Chief of Army Staff to constitute

a Court of Inquiry into the matter, the binding nature of the report of the said Court of Inquiry against the petitioners on that ground. We are also in

agreement with the findings of the learned single Judge that the petitioners are well merited in their submission that there had been gross violation of

the principles of natural justice so far as they are concerned, in that they have not been issued with any charge memo pointing out the irregularities

or malpractices said to have been committed by them, the materials or statement of facts in support of the said charges levelled, a fair and proper

enquiry thereafter in the manner known to law by adopting a quasi-judicial approach giving an opportunity not only to cross-examine the witnesses

examined by the Department in support of the charges but also liberty and opportunity to examine their own witness and also produce relevant

records on their side and thereafter consider and decide the issues objectively on the basis of the materials made available and marked in the said

enquiry before recording a finding on merits in the matter. Since such a procedure does not appear to have been followed in the present cases, the

impugned proceedings are liable to be and in our view have been rightly quashed.

8. The further question that remains to be considered is as to the consequential relief claimed and the propriety of allowing the consequential relief.

The learned single Judge granted the consequential relief of admission as prayed for by the petitioners. The matter involves serious allegations

against the petitioners and their parents alleged to have committed grave malpractices and if the same are found proved or established, it would be

quite justifiable and necessary too to deny and consequential relief as claimed, apart from the other action that may be taken against the petitioners

as well as their parents also. The matter also, in our view, is of serious concern and of great importance since it involves events happening in the

matter of selection for admission into Armed Forces Medical College and a high degree of discipline, scruples and fairness is expected to be

observed in such matters, in national and public interest. Keeping in view all these aspects and the seriousness of the allegations made, we are of

the view that a consequential direction for admission of the petitioners cannot be straightway granted and instead we consider it more appropriate,

necessary and justifiable to issue certain directions for a proper and due enquiry into the entire episode in a time bound schedule to deal with the

matter effectively and give a quietus once and for all, either way.

9. For all the reasons stated, we are of the view and we direct that ,the first respondent shall take up the matter on his file, issue a notice containing

the charges or allegations against the petitioners to them about the alleged malpractices in the written examination disclosing the materials or

statement of facts in support of the same, give an opportunity to submit their explanation and forthwith conduct an enquiry into the same by

producing materials and examining witnesses if any in support of the charges levelled giving also an opportunity to the petitioners to cross-examine

such witnesses but also an opportunity to produce their materials and witnesses and examine them and thereafter consider all such materials

objectively and decide the matter judiciously. The question of admission of the petitioners to the M.B.B.S. Course for the 1996 Session would

depend upon the ultimate findings recorded in such enquiry and the decision taken by the 1st respondent thereon. Two seats shall be reserved

unfilled for the 1996 Session of M.B.B.S., pending decision as above. The 1st

respondent shall take expeditious steps and ensure completion of the process and proceedings within six weeks from the date of receipt of a copy of this order by the counsel for the appellants. The writ appeals are partly allowed and the orders of the learned single Judge shall stand accordingly modified in the light of the above directions. No costs.

10. In view of the final orders passed in the writ appeals, no further or separate orders are necessary in the connected C.M.Ps. and hence, the same are closed.

11. Order accordingly.