

(2010) 07 MAD CK 0140

In the Madras High Court

Case No : Writ Petition No. 19946 of 2009

I. Aravind Adhavan rep. by his Father and Natural Guardian P. Ilangovan **APPELLANT**

Vs

The State of Tamil Nadu and Others **RESPONDENT**

Date of Decision : 12-07-2010

Acts Referred:

Constitution of India, 1950 — Article 19(6), 30(1)

Citation : (2010) 07 MAD CK 0140

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : N. Surya Senthil, for A.R. Suresh, for the Appellant; G. Sankaran, Special Govt. Pleader assisted by E. Ranganayaki, Government Advocate (Edn.) for R - 1 and R - 2, A. Saravanan, for R - 3, B. Saraswathi, for R - 5 and V.P. Raman, for R - 6, for the Respondent

Final Decision : Dismissed

Judgement

K.B.K. Vasuki, J.—The writ petition is filed for issuing appropriate direction to the third respondent to enforce the seat sharing policy with

the respondents 4 and 5 herein with further direction to the second respondent to conduct counselling for the surrendered seat for admission to

M.B.B.S. course for the year 2009-2010 conducted by the second respondent and to consider the petitioner for selection for admission to

M.B.B.S. course for the year 2009-2010.

2. The brief facts which are relevant for consideration herein are as follows:

(i) The minor petitioner belonging to backward class community passed the Higher Secondary Certificate Examination (Academic) conducted by

Tamil Nadu State Board in March, 2009 and he has secured 1122 out of 1200 marks and has secured of 193.75 in the main papers. Then he has

applied for admission to M.B.B.S./B.D.S. course for the Academic year 2009-2010 and he was assigned the rank of 1822 for the purpose of

counselling. Based on his total marks and his rank, he was called for the third counselling held on 26.09.2009 and the same was postponed to

28.9.2009 and the postponement, according to the petitioner, was due to the failure of the respondents 4 and 5 to surrender 50% of their total

intake capacity. According to the petitioner had 50% equivalent to 75 each seats are duly surrendered and made available to the Government on

the date of counselling on 26.09.2009 or on 28.9.2009, the petitioner being in number 35 in the waiting list would have been allotted one seat and

the respondents 4 and 5 have been thus allowed to fill up all the vacancies under the management quota and thus way less meritorious students are

allotted medical seats against meritorious students like that of the petitioner thereby meritorious students, who are unable to get seats in the medical

course by paying huge capitalization fees are deprived of their legitimate claim for being admitted under Government quota. It is further contended

by the petitioner that the third respondent University, to which the respondents 4 and 5 colleges are affiliated, should have insisted the colleges to

surrender the seats on time for the benefit of such of those students waiting in the que to be admitted under Government quota

(ii) Such claim of the petitioner is very seriously opposed by the respondents 1 and 2 on one hand and by the 6th respondent and by the

respondents 3 and 4 individually. Though all the respondents uniformly contended that the none of the self financing colleges are bound to

surrender 50% of their seats and though one such seat sharing policy is in force in pursuance of relevant Government Order, the same is only

volunteer act by the individual colleges and despite the currency of one such policy arrangement between the Government and the individual

colleges the same cannot be in view of law laid down by the supreme court enforced as the unaided self financing colleges whether minority or

non-minority are free to adopt their own admission process however subject to merit basis.

3. Before going into the petitioner's claim on merits, the first aspect to considered is the respondents against whom the relief can be sought for.

Though the petitioner has in the writ petition sought the relief against the respondents 4 and 5 colleges, the petitioner in the course of argument does

not press the relief against the 5th respondent/Deen Dayal Medical college and D.D. Hospital as the Medical college did not at all come to be

established and the authority concerned i.e., the 6th respondent/Medical Council of India (herein after referred to as ""MCI"") has already returned

the application for establishment of new Medical College submitted by Deen Dayal Medical College and educational trust, Chennai and relief is

now focussed only against the 4th respondent college.

4. As far as the 4th respondent/Chennai Medical College and Research centre is concerned the application for establishment of 4th respondent

college was also simultaneously processed along with the application filed by the 5th respondent Deen Dayal Medical and Educational Trust and

the letter of intent and the letter of permission for the establishment of new Medical college at Thiruchirappalli, Tamil Nadu by SRM University,

Chennai with intake capacity of 150 students with prospective effect i.e, from the Academic year 2009-2010 are issued to the Registrar, SRM

University by the Government of India on 13.07.09 and 14.07.09 respectively. The facts made available herein further reveal that the 4th

respondent Medical College is initially affiliated to Tamil Nadu Dr. M.G.R. Medical University, Chennai where as the communication sent to the

college, in this regard wrongly referred it as SRM University, Chennai. In view of the same, the 4th respondent has completed admission for its

entire intake capacity of 150 seats through entrance exam conducted by SRM University and has submitted through its letter dated 05.10.2009 to

MCI for its approval, the admission list along with other particulars pertaining to the students so selected such as their community, marks secured

in the +2 course and marks secured in the entrance exam and the date of admission etc. The 6th respondent/MCI has on receipt of the same sent

its communication dated 16.11.09 enclosed at page 120 of the typed set filed by the 6th respondent in and under which the 4th respondent is

informed that the affiliation granted to the same is only with 3rd respondent/Tamil Nadu Dr. MGR Medial University, Chennai and the admission of

150 students made by the college through an entrance conducted by the university is against the communication of the Central Government and the

institution is to hence discharge all the students admitted and to report the compliance immediately. On receipt of such communication the 4th

respondent immediately addressed the Ministry of Health and Family Welfare, Government of India to ratify the action of the college as the same not violative of rules and procedure and the Secretary Ministry of Health and Family Welfare has also requested the 6th respondent to take further necessary action on the representation dated 16.3.2010. The 4th respondent has also requested the 6th respondent/MCI not to initiate any action against the institution, pending decision by the Ministry of Health and Family Welfare. The 4th respondent has also simultaneously approached the MCI for granting affiliation with SRM University and the same is till date pending consideration before the 6th respondent.

5. Regarding the claim made herein it is noteworthy to mention that the process and the manner of admission to medical courses is subjected to

judicial review before Hon"ble Apex Court and Apex Court has time and again laid down guidelines in this regard and the guidelines so issued by

11 judges Constitution bench on 31.10.2002 in W.P. No. 317 of 1993 in T.M.A. Pai foundation case leads to issuance of regulations by the

Government of India and relevant G.O. by the State of Tamil Nadu The Union of India has in pursuance of the directions of the 11 Judges

Constitutional Bench and in consultation with the concerned State Secretaries issued uniform policy communication dated 14.12.2003 containing

various guidelines in the matter of appropriation of seats, fees structure, time schedule for commencement and completion of admission in medicine

courses. The Medical Council of India in exercise of its power conferred in Section 35 of the MCI Act has with the approval of the Central

Government passed Graduate Medical Education Amendment Regulation 2004 published in the Gazette on 01.03.2004 laying down various

guidelines in the same line including time schedule for commencement and completion of admission process for the Ist year MBBS course/PG

and/Speciality courses. The State Government has also issued G.O. Ms. No. 19, Higher Education (J1) Department, dated 13.03.2003 in

compliance with the direction of 11 Judges Constitutional Bench of Supreme Court in T.M.A. Pai foundation case. As per the G.O. the directions

are issued to unaided, non-minority and minority institutions thereby the colleges be allowed to admit 50% of its total intake capacity by

themselves, by following a transparent and reasonable method of admission and this 50% of the seats includes NRI quota and the remaining 50%

to be filled up by the Government through single window system of admission by following the rule of reservation. The colleges above referred to

are also free to part with more percentage of seats over and above 50%.

6. Following the 11 Judges Constitutional Bench Judgment and the regulations by the Government of India, the issues relating to admission process

are decided by the Supreme Court in cantena of cases few among which are (i) Medical Council of India Vs. Madhu Singh and Others, ; (ii) AIR

2005 SCC 666 Mirthula v. Union of India; (iii) 2005 12 SCC 626 Medical Council India v. Nina Varma and Ors.; and (4) Civil Appeal. No.

4051 of 2004 in Medical Council of India v. Udaya Bharathi and Ors. wherein the Supreme Court has clearly laid down that the time schedule

shall be strictly followed in the matter of admission and the admission shall be within annual intake capacity as sanctioned by Medical Council of

India and no admission after the last date fixed in the time schedule is permissible and no mid-stream admission against any unfilled seats and the

same shall get lapsed and there cannot be no carry forward of any MBBS seat of the previous year, which fell vacant, to the subsequent academic

year and any management make extra benefit under the management quota during previous academic year would be required to surrender equal

number of seats from the management quota for admission of meritorious students in the state list for the next academic year and no court can issue

any direction or show any indulgence in respect of admission made in violation of rule and procedure. The Supreme Court has in the judgment third

cited above gone to the extent of setting aside the admission given to the writ petitioner therein during December 2003 much after the closer of

admission.

7. Here in this case, the petitioner is seeking the relief mainly by relying upon the State G.O. No. 19, dated 13.03.2003 containing clause for

appropriation of seats in equal ratio among the management and the Government. It is seriously contended on the side of the learned Counsel for

the petitioner, that as per the seat sharing policy the 4th respondent institution ought to have surrendered 50% of its intake capacity i.e., 75 seats

and had it been complied with in time the petitioner could have been benefited and could have been allotted admission against such surrendered

seats. Such claim of the petitioner is so seriously opposed on the side of the

contesting respondents, mainly by relying upon the time schedule fixed in Government of India regulations 2004 and the Hon''ble 7 Judges Judgment of Supreme Court reported in AIR 2005 SCC 3226 in P.A.

Inamdar and Ors. v. State of Maharastra and Ors....

8. According to the respondents, as per the time schedule fixed by Government of India Regulations, which is referred to above 1st year MBBS

course shall be closed on 30th September, as such the reliefs sought for by the petitioner to get admission for the first year MBBS course for the

academic year 2009-2010 as sought for in the writ petition filed on 30.09.2009 becomes ineffective and cannot be entertained. As far as the seat

sharing policy introduced in State G.O. Ms. No. 19, dated 13.03.2003 is concerned, the same is according to the respondent, unenforceable in

view of the latest judgment of the Supreme Court reported in AIR 2005 SCC 3226 (cited supra).

9. Heard the rival submissions made on both sides and the relevant documents contained in the typed set papers filed on both sides.

10. Regarding the claim of the petitioner based on the seat sharing policy it is true that the State Government has introduced one such policy in

GO. Ms. No. 19, dated 13.03.2003. The same is as already referred to in compliance with Hon''ble 11 Judges Constitution Bench of Supreme

Court in T.M.A. Pai foundation case. The directions issued by Hon''ble 11 Judges in the above referred case led to several issues and several writ

petitions came to be filed resulting in constitution of Hon''ble 5 Judges bench to interpret the earlier judgment of 11 judges and the 5 judges bench

judgment is pronounced on 14.08.2003 in Islamic Academic of Education case (herein after referred to as Islamic Academy case) reported in

Islamic Academy of Education and Another Vs. State of Karnataka and Others, . Even thereafter some of the main issues remain unsettled and

those unsettled issues came up for clarification and settlement before the Apex Court bench of 7 Judges in P.A. Inamdar v. State of Maharastra

reported in AIR 2005 SCC 3226, In P.A. Inamdar case the Hon''ble 7 judges bench dealt with the issues raised before T.M.A. Pai foundation

case and the questions formulated by Islamic Academy case and has finally proceeded to deal with the issues which are as follows :

27. In the light of the two orders of reference, referred to herein above, we

propose to confine our discussion to the questions set out hereunder

which, according to us, arise for decision:

(1) To what extent the State can regulate the admissions made by unaided [minority or non-minority] educational institutions? Can the state enforce

its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

(2) Whether unaided [minority and non-minority] educational institutions are free to devise their own admission procedure or whether direction

made in Islamic Academy for compulsorily, holding entrance test by the State or association of institutions and to choose therefrom the students

entitled to admission in such institutions, can be sustained in light of the law laid down in Pai Foundation?

(3) Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

(4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by Islamic Academy?

11. The Hon'ble 7 judges bench of Supreme Court after hearing the arguments discussed the issues starting from Para 112 at Page 3259 of the

Judgment. As far as, the issue involved in the present case is concerned, the issue involved herein is covered in question No. 1 above referred to

i.e. appropriation of quota by state and enforcement of reservation policy. The relevant observation of the Supreme Court on question No. 1 is

quoted as follows :

1. Minority Educational institution unaided and unrecognized -

They are free to admit all students of its own community if they choose to do so (para 145 T.M.A. Pai foundation case) such institution cannot

indulge in any activity which is violative of any law of the land.

2. Minority unaided educational institution asking for affiliation or recognition

Urgent or need for affiliation or recognition brings in concept of regulation by way of laying down conditions consistent with requirement of

ensuring merit, excellence of education and preventing maladministration....

However there cannot be interference in the day to day administration

The essential ingredient of the management including admission of students, recruiting of staff and the quantum of fees to be charged cannot be

regulated (Pare 55 Pai foundation case)....

Any regulation accompanying affiliation or recognition must satisfy the triple test (a) the tests of reasonableness and rationality (b) the regulation

would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it and (c)

there is no in road on the protection conferred by Article 30(1) of the Constitution i.e. by framing the regulation the essential character of the

institution being a minority educational institution is not taken away (para 122 T.M.A. Pai foundation case)

3. Minority educational institution receiving state aid -

Conditions which normally be permitted to be imposed on the educational institution receiving the grant must be related to the proper utilization of

the grant and fulfillment of the objectives of the grant without diluting the minority status of the educational institutions as held in (Pai Foundation

para 143 there of)

12. The 7 judges bench of Supreme Court then proceed to discuss the issue of appropriation of quota by the state and the enforcement of its

reservation policy in respect of non-minority unaided institutions and the discussion and the conclusion arrived at by the Supreme Court is

reproduced herein :

121. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference

between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the

State have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the

management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's

policy on reservation for granting admission on lesser percentage of marks. i.e. on any criterion except merit.

122. As per our understanding neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which

was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional

educational institutions so as to compel them to give up a share of the available

seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in *Pai Foundation*. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

123. The observation in paragraph 68 of the majority opinion in *Pai Foundation* on which the learned Counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in *Pai Foundation*, if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned Counsel have made comments and counter comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in *Pai Foundation*) in our considered opinion, observations in Paragraph 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame, their own policy to give free-ships and scholarships to the needy and

poor students or adopt a policy in line with the reservation policy of the state to cater to the educational needs of weaker and poorer sections of the society.

124. Nowhere in *Pai Foundation*, either in the majority or in the minority opinion, have we found any justification for imposing seat sharing quota

by the State on unaided private professional policy of the State or State quota seats or management seats.

125. We make it clear that the observations in *Pai Foundation* in Paragraph 68 and other paragraphs mentioning fixation of percentage of quota

are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and

the State.

126. In *Pai Foundation*, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in

determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and

transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

127. For the aforesaid reasons, we can not approve of the scheme evolved in *Islamic Academy* to the extent it allows States to fix quota for seat

sharing between management and the States on the basis of local needs of each State, in the unaided private educational institutions of both

minority and non-minority categories. That part of the judgment in *Islamic Academy*, in our considered opinion, does not lay down the correct law

and runs counter to *Pai Foundation*.

134. *Pai Foundation* has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be

allowed admissions the procedure therefore subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority

unaided institutions.

13. The interpretation given by 7 Judges bench of Apex Court to the judgment of 11 Judges Constitutional Bench of Supreme Court in *T.M.A. Pai*

foundation case and *Islamic Academy* case is the latest ruling and still holds good as per which no guideline is issued in *T.M.A. Pai* foundation case

for appropriation of seats between Management and State and the observation to

that effect made in T.M.A. Pai foundation case is only by way of illustration tant amounting to just a suggestion or observation as to how the state can devise a possible mechanism so as to take care of poor and backward sections of the society and as to how the same to be reached either by consensual agreement or persuasion and imposing any seat sharing quota by the state on unaided private professional educational institutions is unjustified and the colleges are free to frame its own policy to give free ships or scholarships to the needy and the poor students or adopt a policy of the state into cater to the Education needs of weaker and poorer sections of the society.

14. According to the Supreme Court, imposition of quota of State seats by way of any policy of the reservation of the seats on available seats in

unaided professional institutions are acts constituting serious inroad or encroachment on the right and autonomy of private professional educational

institutions and it is not in consonance with Article 30(1) in so far as minority institutions are concerned and Article 19(6) of the Constitution in so

far as unaided minority and non-minority institutions are concerned. That being the legal position the seat sharing policy introduced by State

Government by way of G.O. and not through any act, rule or regulation with due approval or consent by appropriate authority cannot be relied

upon or sought to be enforced to seek any relief as sought for in this writ petition. The seat sharing policy as introduced in the G.O. may be in view

of the discussion held and decision arrived at in P.A. Inamdar case insisted only after entering into any arrangement with the individual college. As it

is nobody's case that any such arrangement is in force with the 4th respondent on the date of commencement of admission process for the year

2009-2010, the question of enforcing such seat sharing policy against 4th respondent does not at all arise.

15. Regarding the objections, on the basis of time schedule fixed by the Government of India for admission to 1st year MBBS/BDS as per the time

table (Appendix-E) in Regulations 2004 it is note worthy to mention that the letter of intent and the letter of permission for establishment of new

college in the name of the 4th respondent were issued only on 13.07.2009 and 14.07.2009 and the college is affiliated to 3rd respondent Dr.

MGR Medical University and the representation of the 4th respondent to grant its

affiliation to SRM university is still pending consideration before the authority concerned. As far as 150 seats which is the sanctioned intake capacity of the 4th respondent is concerned, the same is filled up by the 4th respondent between 16.9.2009 and 30.09.2009 through the entrance exam conducted by the SRM university and such admission held by the 4th respondent college by itself without the intervention or permission of either Dr. MGR Medical University or MCI is not approved by the 6th respondent/MCI on the ground that it is not in accordance with the communication of the Central Government and the 4th respondent college is instructed to discharge all the students and such discharge order passed by the 6th respondent is still in force and the issues relating to the Ist batch admission already made and fresh admission of IInd batch of students and the affiliation of the college with SRM University are yet to reach any finality.

16. As per the time schedule above referred to the commencement and completion of admission to medical course is as follows :

Conduct of entrance examination - month of May.

Declaration of result of

1. entrance examination - 15th June.
2. First round of counselling-admission - by 25th July.
3. Last date for joining the allotted college and course - 31st July.
5. Second round of counseling or allotment of seats from waiting list - upto 28th August.
6. Last date for joining, for the candidates allotted seats in the second round of counseling or from the waiting list - 30th August.
7. Commencement of Academic Section - 1st August.
8. Last date upto which students can be admitted against vacancy arising

due to any reason - 30th September, the date 30th September is last date not for regular admission but for admission against any stray vacancy.

17. That being the time schedule, as per which 30th September being the the last date for closure of admission no relief can be given for admission to Ist year MBBS course in the writ petition filed on such last date i.e., 30.09.2009. As rightly argued by the learned Counsel for the respondents, the petitioners claim to consider him for allotment of one seat to him in MBBS course for the Academic year 2009-2010 is on the date of filing of the writ petition time barred and the same is in contravention of legal principles laid down in the judgments above referred to.

18. However, the learned Counsel for the petitioner has by relying upon the judgments of Apex Court reported in 1) 2005 (13) SCC 461 in Vijay Jayamani v. MCI and Ors. 2) 2005 (13) SCC 464 in Harshali v. State of Maharashtra and Ors. urged this Court that in the event of conclusion being arrived at against considering the petitioner's claim for admission in MBBS course for the academic year 2009-2010 the respondents can be duly directed to consider his case for admission for the next academic year 2010-2011.

19. It is true that in the cases cited above the Supreme Court has, while dealing with the petitioner's claim therein for admission for the academic year 2004-2005, granted the writ petitioner therein admission for the next academic year 2005-2006. But the cases dealt with by the Supreme Court stand factually distinguishable from the facts involved in the present case. The Supreme Court has in the cases above referred to thought fit to do so after having found that non selection of the writ petitioner therein was not founded on valid ground. In both the cases it is found out that meritorious student like that of the the petitioner was denied admission for obvious reasons and less meritorious students with less marks were granted admission and seats are still available within the sanctioned intake capacity of the college concerned for admission for the subsequent academic year 2005-2006. That is not the case herein. Further, the petitioner is seeking relief only on the basis of the seat sharing policy that to against the 4th respondent which cannot at all be for the reasons stated above

and in view of P.A. Inamdar case law legally enforced. Thus the petitioner having not made out any legitimate claim for getting admission in MBBS course either for the academic year 2009-2010 or for the subsequent year 2010-2011 is, viewing from any angle, dis-entitled to get any relief in this writ petition.

20. In the result writ petition stands is dismissed. No costs.