

(1998) 01 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No. 9238 of 1997 and W.M.P. No. 14768 of 1997

Ilavarasi Nagarani Sujatha rep. by her father and Natural
Guardian, K. Jayaraj

APPELLANT

Vs

The Director of Medical Education, Government of Tamil Nadu
and The Selection Committee for MBBS, BDS Courses

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1998) 2 MLJ 204

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S. Silambannan, for the Appellant; D. Murugesan, Spl. Govt. Pleader for 2nd Respondent and S. Mani Kumar, Addl. Govt. Pleader for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of Writ of Mandamus, directing the Respondents to select the Petitioner as a S.T. candidate in the MBBS course for the year 1997-98 or subsequent years in any one of the Government Medical Colleges.

2. In the affidavit filed in support of the Writ Petition, which is sworn to by the father of the Petitioner who is a minor, it is stated that the Petitioner passed her Plus 2 examination and obtained very high marks. It is the case of the Petitioner that the Petitioner belongs to Kadar community, which is a Scheduled Tribe recognised by the Government of Tamil Nadu and Government of India. The Petitioner underwent the Entrance Examination conducted by the Anna University for Professional Courses and Secured 80% in Entrance Examination and in aggregate she secured 258 out of 300 marks. It is her case that on the basis of marks obtained and also being a member of Scheduled Tribe community she is entitled to get selection to the MBBS Course. It is also stated that the

Petitioner's father joined in the Bank Service under the reservation quota in December 1976 and he was the District Secretary for All India S.C. and S.T. Employees Association. Whiles, on 29-1-1992, the Tahsildar, Madurai South, called upon the father of the Petitioner to produce the records to show his community status and an enquiry was conducted. By order dated 6-9-1994, the District Collector held that the father of the Petitioner and her family members do not belong to Kadar Community, and cancelled the community certificate issued by the Tahsildar. The Defendant, thereafter, filed W.P. No. 17160 of 1994 before this Court, and obtained an order of interim stay. The order of stay was also produced along with the application, and therefore, the Petitioner is entitled to be considered as a member of S.T. Community and selected for the MBBS Course. The refusal on the part of the Respondents to admit her is illegal.

3. A detailed counter affidavit has been filed by the Secretary of the Selection Committee, wherein it is stated that the Petitioner did not enclose the certificate of the Tahsildar of the respective area regarding the caste of her parents. It is further stated that the last candidate selected as against the seats for S.T. candidates has obtained 262.98 marks, whereas the Petitioner has secured lesser marks, and so she is not eligible for admission. There are other meritorious candidates than the Petitioner, and therefore, under no circumstances, the Petitioner is entitled to get selection or admission. It is further stated that the Petitioner applied for admission as against the seats reserved for children born of intercaste marriage under Clause 3.5(VIII) of the prospectus, and she claims herself to be the child born of intercaste marriage between SC/ST and Backward Community. To substantiate the same the Petitioner did not produce any document, and therefore, her case was not considered under that category. It is said that all the 12 seats reserved for the children born of intercaste marriage have been filled up by the Selection Committee taking into consideration the order of preference stated in the prospectus. In either way the Petitioner is not entitled to get admission.

4. The only question that requires consideration is whether the denial of selection by the Selection Committee to the Petitioner was proper or not.

5. The main contention of the Petitioner is that when she being the daughter born to parents of intercaste marriage--S.T. and Backward Community, she is to be considered under the category of S.T. She also challenges the clause in the prospectus, which gives preference to children born of intercaste marriage. It is her case that in the Prospectus three categories of children born of intercaste marriage have been stated and the order of preference among the three categories is one without any legal basis. In the Prospectus it is stated that the children born of intercaste marriage between SC/ST and forward community is being given preference, and the same is, according to the Petitioner, discriminatory, and therefore, invalid.

6. I do not think that such contention could be accepted, in view of the decision of a Division Bench of this Court in W.A. No. 209 of 1995 judgment dated

10-3-1995, where the same question came up for consideration. The prospectus giving preference to the children born of intercaste marriage is based on the order of the State Government in G.O. Ms. No. 477, dated 27-6-1975. The said G.O., reads thus:

The Government have been extending certain concessions to the members of Scheduled Castes, Scheduled Tribes and Backward Classes from time to time. A question has arisen about the determination of the community of the children born of intercaste marriages.

2. The Government after carefully examining the question, direct that the children born of intercaste marriages, that is, marriages-

i) between a person of Scheduled Tribe and another of a Scheduled Caste or Backward Class or Forward Class;

ii) between a person of a Scheduled Caste and another of a Backward Class or Forward Class and

iii) between a person of a Backward Class and of a Forward Class shall be considered to belong to either the community of the father or the community of the mother according to the declaration of the parents regarding the way of life in which the children are brought up and that the declaration in respect of one child will apply to all children.

The very same provision has been incorporated in the prospectus. The Division Bench, after extracting the above G.O., held that the said G.O., was issued with a view to set at naught the controversy as to which community the children born of such wedlock would belong and also to ensure that they are not deprived of the benefit of reservation, nor they are over benefited. In paragraph 6 of the judgment, the argument regarding the arbitrariness of the classification is also met by the Division Bench. It was held thus:

6. The contention of the learned Counsel that such a classification is arbitrary and has no nexus to the object, as such it is violative of Article 14 of the Constitution cannot at all be appreciated. It may be pointed out here that the children born of intercaste marriage between S.C. and S.T. and most backward class and denotified communities, will lie having the benefit of reservation made either for the most backward community or for S.C. & S.T. depending upon the way of life in which they are brought up. Similarly, the children born of intercaste marriage between S.C. and S.T. and backward communities also, will have the reservation depending upon the way of life in which they are brought up, whereas the children born of intercaste marriages between S.C. and S.T. and forward communities will not have any benefit of such reservation, as one of the parties to the marriage is from a forward community. If all are treated alike, then, the intercaste marriage that has taken place between the S.C. and S.T. and forward community which removed the imbalance between the communities in a greater measure, will not be in any way advantageous. Further, the object of the

reservation is also to encourage intercaste marriage between S.C. and S.T. and forward communities. As the classification is based on the intelligible differentia and this differentia has rational relation or nexus to the object sought to be achieved, viz., to encourage intercaste marriage between S.C. and S.T. and forward community, it is not possible to hold that the classification suffers from the vices of Article 14 of the Constitution.

In that case, the Division Bench has also taken note of an earlier decision of another Division Bench of this Court reported in *S. Hari Ganesh and Another Vs. State of Tamil Nadu and Another*, .

7. In view of the binding precedent, I do not think that the Petitioner is competent to challenge the preference given to children born of intercaste marriage--S.C./S.T. and forward community. I had also occasion to consider the similar question in W.P. Nos. 10888, 10889 and 10921 of 1997, where the children born of intercaste marriage between S.C. and forward community was given preference and the same was challenged by a children born of intercaste marriage between S.C. and backward community parents. In that writ petition, I held that the Petitioner is not entitled to challenge the order of preference.

8. Apart from the legal argument, which I have held not acceptable, on merit also the Petitioner is not entitled to any relief. In the counter affidavit, it is specifically stated that the Petitioner has secured lesser mark than the cut-off mark. The Petitioner has obtained only 258 marks, whereas the last candidate selected under the seats reserved for S.T. candidate secured 262.98 marks. It is further said in the counter that there are other eligible candidates than the Petitioner, and even if the legal argument is accepted, there is no chance for the Petitioner being admitted. The said contention of the Respondents has some force.

9. For one more reason also, the contention of the Petitioner cannot be accepted. The Petitioner claims to be a member of the S.T., community, because her father is a member of S.T. community. As against her father, proceedings have been initiated by the District Collector, and it was found that he does not belong to S.T. community. The father of the Petitioner filed W.P. No. 17160 of 1994 and has obtained an interim order. Once there is a finding that the father of the Petitioner does not belong to S.T. community unless that finding is set aside the Petitioner cannot claim the status of a member of S.T. community. Mere obtaining an order of stay will not efface the order passed by the competent authority. For the above reasons, I hold that the writ petition is liable to be dismissed, and I do so. No costs. Consequently, the connected W.M.P. is also dismissed.