

(1993) 06 MAD CK 0018
In the Madras High Court
Case No : Writ Petition No. 19794 of 1992

J. Devi

APPELLANT

Vs

Government of Tamil Nadu and another

RESPONDENT

Date of Decision : 21-06-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : AIR 1994 Mad 293

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : R. Gandhi, M. Kamalanathan, S. Balaji and J. Saravanel, for the Appellant; P. Shanmugham Special Govt. Pleader, for the Respondent

Judgement

1. The writ petition is for the issue of a writ of mandamus directing the respondents to select and admit the petitioner for first year M.B.B.S.

Course 1992-93 under physically handicapped quota in any of the Government Medical Colleges in Tamil Nadu.

2. The petitioner had applied for selection to the First Year M.B.B.S. Degree Course for the academic year 1992-93 under the Special Category,

i.e., under the Physically Handicapped quota. Three seats are reserved for this special category. Though there are various categories under

Physically Handicapped group, we are concerned with category (g) of Annexure VII, which reads -

Hand function within normal limit without any aid.

The petitioner had secured 185.50 out of 200 marks in the qualifying examination and 44.6 marks in the Entrance Examination and sought

admission into First Year M.B.B.S. Course under the said special category, i.e., under the category physically handicapped. The petitioner had

sent two certificates -- one from Dr. T. Sankarlal, Ortho Surgeon, Rajapalayam (dated 21-4-1991) and another from Dr. Rajagopal, Professor of Orthopaedic Surgery, Head of the Department, Madras Medical College (dated 17-8-1991). The first certificate dated 21-4-1991 shows that the disability of the petitioner has been assessed to 60 per cent (vide certificate dated 21-4-1991 issued by Dr. T. Sankarlal) and in the second certificate dated 17-8-1991 issued by Dr. Rajagopal, there is no reference about the exact percentage of disability of the petitioner, but it is stated that the disability of the petitioner is ranging from 25% to 75%. It appears that out of 169 candidates who had applied for the said course, under the special category 60 candidates were called for interview before the expert committee, consisting of Ortho Surgeon and E.N.T. Surgeon. The norms prescribed by the expert committee for selection was 40 per cent and below and out of 169 candidates, forty students were found suitable for consideration under this special category, and out of them, three candidates were selected purely on the basis of marks obtained by them in the entrance examination. Since the petitioner has not been selected under the special category, aggrieved thereby, the petitioner has filed this writ petition with the abovesaid prayer.

3. In the affidavit filed in support of this petition, it is stated that the petitioner had sent a medical certificate from Dr. T. Sankarlal, Ortho Surgeon, Rajapalayam (dated 21-4-1991) to the effect that the petitioner's disability was 60% due to deformity of left wrist, along with her application for the first year M.B.B.S. Course and she had secured 230 marks in the qualifying examination and 45 marks in the entrance examination and persons who had secured lesser marks in the qualifying examination as well as in the entrance examination, had been given admission into the first year M.B.B.S. Course on some extraneous consideration and the non-selection of the petitioner is violative of Arts. 14 and 16 of the Constitution.

4. In the counter affidavit filed by respondents, it is stated that the candidates selected must be fit and able to undergo the medical course and must be useful to the society and therefore, free from the deficiencies, satisfying the requirements as prescribed under Annexure VII. It is further stated that if the hand function of the petitioner or any candidate is not within the normal limit, it will not be possible for such candidates to undergo the

course and such candidates will not be useful to the society as doctors. It is further stated that it is not that every physically handicapped person is eligible for admission and only if the handicappedness is within the limits as prescribed they will be eligible for selection. The petitioner had not been selected in view of her own certificate as not satisfying the required standard.

5. Mr. R. Gandhi, learned senior counsel for the petitioner contends that though the petitioner has produced a certificate from a Ortho Surgeon along with her application dated 21-4-1991 to show that the petitioner is a physically handicapped person, entitled to be considered under the special category meant for physically handicapped, the respondents have not considered the claim of the petitioner properly. The learned senior counsel further contends that there is no norm or guideline in the prospectus in terms of percentage of disability, as to the eligibility of applying to the said course, and in the absence of such a clear norm or guideline in the prospectus, the non-selection of the petitioner on the ground that the petitioner's disability is 60%, i.e., more than 40%, is violative of Articles 14 and 16 of the Constitution. In support of his contention, the learned senior counsel relies upon the order of A. R. Lakshmanan, J. in W. P. No. 3159/92 (reported in 1992 TNLJ 150), wherein the learned Judge, has held that-

..... The percentage of disability cannot disentitle the petitioner a seat since no percentage of disability had been prescribed anywhere in the prospectus for eligibility.

Therefore, the learned senior counsel contends that in the absence of clear norms in terms of percentage of disability for physically handicapped persons, in the prospectus, the decision of A. R. Lakshmanan, J. in the said case, will squarely apply to this case. Further the non-selection of the petitioner, as against the selection of persons, who had secured lesser marks than the petitioner, is violative of Articles 14 and 16 of the Constitution.

6. Per contra, Mr. P. Shanmugam, Special Govt. Pleader (Education) contends that the case on hand is distinguishable from the case reported in

Minor G. Thiagu, represented by his father and guardian v. Govt. of Tamil Nadu 1992 TNLJ 150 and in this case, even on the very certificate

produced by the petitioner from Dr. T. Sankarlal, dated 21-4-1991 shows that the

disability of the petitioner is 60%, which is beyond the norms fixed by the expert committee, for eligibility of candidates under the special category (physically handicapped). In W. P. No. 3159/92, A. R. Lakshmanan, J. has held taking into account a certificate issued by a competent doctor, that the disability of the petitioner, if at all, was only in the lower limb, which was not one of the disqualifications. Therefore, the learned Special Government Pleader distinguishes the decision of A. R. Lakshmanan, J. and states that the decision of A. R. Lakshmanan, J. is not applicable. The learned Special Government Pleader (Education) further states that the petitioner had not produced the certificates, now produced before this Court at the time of sending application for admission to the said course and that the certificate now produced by the petitioner itself shows that the certificate has been obtained on 21-10-1992, long after the admission to the said course was over. Therefore, the learned Special Government Pleader (Education) states that the certificate dated 21-10-1992 is issued by Ortho Surgeon, General Hospital, and who was a member of the Expert Committee, should not be taken into account since the same has been issued subsequent to the selection of candidates to the course. According to the learned Special Government Pleader, the Expert Committee was concerned with the certificates sent along with the application for admission to the course and according to the certificate issued by Dr. T. Sankarlal dated 21-4-1991 sent along with the application, the petitioner's disability was 60%, which is beyond the norms fixed by the Expert Committee and the non-mentioning of norms, in terms of percentage of disability, will not vitiate the selection itself. In support of his contention, the learned Special Government Pleader relies upon a judgment of a Division Bench of this Court reported in G. Sumathi Vs. The Director of Medical Education, Madras and others, , for the proposition that norms and procedures have to be construed properly and applicants have to comply with the conditions therein, i.e., in the prospectus.

7. Mr. R. Gandhi, learned senior counsel for the petitioner, further relies upon apart from the decision of A. R. Lakshmanan, J. in W.P. No. 3159/92, another decision of this Court in N. Palaniappan and Others Vs. The Regional Transport Authority, , for the proposition that a principle laid down by a single Judge of this Court is applicable to cases of similar nature,

and contends that the decision of A. R. Lakshmanan, J. is squarely applicable to the case on hand.

8. I have considered the arguments of Mr. R. Gandhi, learned senior counsel for the petitioner and Mr. P. Shanrnugam, learned Special

Government Pleader (Education) for respondents.

9. It is not in dispute that the candidates who want to apply under Special Category (Physically Handicapped) must forward their applications

along with requisite certificates in support of their claim. I have called for the original application of the petitioner and found that as per the medical

certificate produced by the petitioner dated 21-4-1991, by one doctor in Rajapalayam, the petitioner's disability has been assessed at 60%, which

is beyond the norm, i.e., 40%, fixed by the Expert Committee. Another certificate produced by the petitioner, though does not show the exact

percentage of disability of the petitioner, says that the disability may be 25% to 75%. It is true that the petitioner had not filed the certificates along

with the application which the petitioner has produced before this Court. However, the certificate issued by the Professor, Ortho. Surgeon, Head

of the Department, Madras Medical College with the application form shows that the total disability of the petitioner ranges from 25% to 75%.

When such a certificate had been produced by the petitioner, without exactly mentioning about the percentage of disability, in my view, the

Selection Committee ought to have called the petitioner to appear in person to appear before the Expert Committee so as to assess the exact

percentage of his disability. But unfortunately that has not been done. The Selection Committee simply relied upon the yet another certificate

produced by the petitioner, which says that the petitioner's disability was 60%. There is no dispute that the petitioner has got higher marks in the

qualifying examination as well as in the entrance examination that the persons who have been selected and admitted under the special category, i.e.,

as against three seats meant for physically handicapped candidates.

10. That apart, I am not able to agree with the learned Special Government Pleader, Education, Mr. P. Shanmugam, when he contends that

Clause (g) in Annexure VII is very clear about the suitability of a candidate to undergo the medical course. No doubt the selected candidates for

the M.B.B.S. Course, on their completion of course, must be useful to the society

as a doctor, but that does not mean that selection under special category could be made without any norms. When a selection is made for M.B.B.S. Course, a concrete principle has got to be followed with regard to the percentage of disability and such a principle must be put on notice to the candidates through the prospectus. This has not been done.

This point among other things, has already been decided by A. R. Lakshmanan, J. against the State, *Minor G.Thiagu v. Government of Tamil Nadu* 1992 TNLJ 150. Admittedly, in the prospectus, no percentage of disability has been clearly fixed for physically handicapped candidates, and as rightly observed by the learned Judge, that any percentage of disability will not disentitle the petitioner to claim a seat under the special category. The maximum percentage of disability at 40% has been arrived at by the Selection Committee, and I do not think, that there is any Government Order, which authorises the Selection Committee to fix the maximum percentage as such. The Supreme Court has occasion to consider a similar issue in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, on the question that in the absence of a specific provision under the Rules, what is to be done with regard to the award of marks. In that case the Supreme Court has held that in the absence of specific provision in rules committee must distribute total marks equally on various items and giving marks in lumpsum and not on itemwise basis is illegal. The said principle has got to be applied to this, case also, as there is no specific and exact percentage of disability mentioned in the prospectus. The Selection Committee has no power to fix the percentage of disability without any Government Order. It is for the Government to fix the percentage of disability and such a percentage of disability must be put on notice to candidates in the prospectus. Therefore, on the basis of percentage of disability fixed by the Selection Committee, the petitioner cannot be denied seat just on the basis of a certificate produced by the petitioner. In the absence of any percentage of disability by the Government, and when the Selection Committee has no power to fix the percentage of disability. I am not concerned as to the question, whether the certificates produced by the petitioner before this Court were furnished after the selection, and therefore, those certificates cannot be taken into consideration. Even one of the certificates produced by the

petitioner says that the percentage of disability of the petitioner ranges from 25% to 75%. It may be 25% or 40% or 60%.

11. Thus, in view of the above reasonings, I direct the respondents 1 and 2 to form an Expert Committee within four weeks from today and ask

the petitioner to appear before the Expert Committee to assess the exact percentage of disability of the petitioner. If, after ascertaining the

percentage of disability, the Committee comes to the conclusion one way or other. I do not think that the petitioner can challenge the same in any

manner, as the disability aspect is purely a matter for the Expert Committee to decide and not for this Court to go into the same. If the Expert

Committee decides that the petitioner is entitled to a seat in M.B.B.S. Course, I do hope that the respondent will allot a seat to the petitioner, if the

petitioner comes within the other norms as prescribed by the respondents 1 and 2. The respondents are directed to submit a report to this Court

on this subject, within four weeks after the formation of the Expert Committee.

12. The writ petition is ordered in the above terms. No costs.

13. Order accordingly.