

(1995) 12 MAD CK 0001
In the Madras High Court

J.A. Roche

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Citation : (1996) 1 MLJ 375

Hon'ble Judges : Shivaraj Patil, J

Bench : Division Bench

Judgement

Shivaraj Patil, J.—The petitioner has sought for a writ of mandamus directing the respondents 1 to 4 to provide a seat in first year M.B.B.S.

course to the petitioner in any one of the Government Medical Colleges in the State of Tamil Nadu in the category of free seats, pleading that he

completed his higher secondary course in the year 1994 securing 1021 marks out of 1200; he wrote the entrance examination conducted by the

second respondent for the year 1994 and secured 93 marks out of 100. Thus he secured 188/200 marks in the Core subjects and 93/100 in

entrance examination, aggregating to 281/300 marks.

2. He is an eminent sportsman (Tennis). He participated in the National level All India Junior Tennis Championship held at Egmore Stadium,

Madras in January, 1993 while was pursuing his higher secondary course. The State Government issued G.O.Ms. No. 118, Education, dated

21.2.1994 to encourage outstanding sports talented students by providing grace marks. The said G.O. was not given effect to professional course

admissions. He challenged withdrawal of the benefit of the said G.O. in W.P. No. 14816 of 1994. The said writ petition was dismissed by the Full

Bench of this Court on 23.12.1994. In the meanwhile the third respondent filled

up the sports quota and allotted the seats to respondents 5 and 6

adopting the reservation policy while selecting the candidates from the sports quota erroneously.

3. The petitioner again applied for the first year M.B.B.S. course for the year 1995-96 as he did not know the irregularity and illegality committed

by the third respondent - Committee, as the reasons for non-selection were not made known to the petitioner for the previous year. In the entrance

examination for the year 1995-96 he secured 89.5% out of 100, aggregating to 277.58 out of 300. He legitimately expected that his name would

find a place in the selection list as one of the outstanding national level Tennis player, that too having secured good marks both in academic

subjects and entrance examination. However his name did not find a place in the selection list published on 14.7.1995 for the academic year 1995-

96.

4. It came to the light that the respondents did not follow the reservation policy as was done for the year 1994-95 while selecting the candidates

under the Sports Quota. On enquiry the petitioner came to know that selection for the year 1995-96 was also not done properly and that many of

the disqualified persons have been selected under the special category. He was told that he was placed at serial No. 2 in the waiting list under the

Sports category. He was endeavouring to collect information about the selected candidates and their actual qualifications. During this process he

was given to understand that a batch of writ petitions challenging the selection for the M.B.B.S. course, 1995-96 were listed for hearing in the third

week of September, 1995.

5. When he was watching the proceedings, on 26.9.1995, it came to light that there was one Writ Petition No. 18536 of 1994 challenging the

validity of selection for the year 1994-95. The Division Bench of this Court by a common Judgment in batch of cases on 28.9.1995 specifically

held the selection made the year 1994-95 under the category of Sports quota was improper and vitiated by favouritism in order to accommodate

the respondents 5 and 6 who had influenced. It was further observed in the said judgment that the petitioner herein ought to have been selected in

the sports quota for the year 1994-95, but declined to issue suitable direction to the concerned authorities to admit the petitioner, on the sole

ground that he was not before them as party. The petitioner mentioned through his counsel before the Division Bench seeking leave to file

impleading petition which was declined as saying it was open to the petitioner to pursue his remedy available in law.

6. The petitioner was vigilant all along, and in fact was watching the court proceedings, but only at that stage, the petitioner got knowledge about the illegalities committed by the respondents in regard to the selection made for the year 1994-95. There was no chance for the petitioner to have

access to the records pertaining to the selection maintained by the third respondent, nor he had occasion to know the reason for his non-selection.

As a matter of fact no communication would be sent to the non-selected candidates including the persons in the waiting list. Thus the petitioner was denied admission for no fault of him.

7. The petitioner is entitled to be admitted to the first year M.B.B.S. course as being a qualified meritorious candidate under the sports quota for

the year 1994-95 as has been held by the Division Bench of this Court in its judgment dated 28.9.1995 aforementioned. The petitioner has further

stated that he is willing to study the M.B.B.S. course even during this academic year 1995-96. Only three seats were allotted for the special

category for the year 1995-96 which was increased to four. In fact the Government accommodated 400 meritorious medical candidates in the

year 1992 pursuant to the court Order striking down G.O.Ms. No. 555. Thus there should be no difficulty in accommodating the petitioner to

study the first year M.B.B.S. degree course for the year 1995-96.

8. The learned Counsel for the petitioner contended that,

(i) There were four seats available in the sports quota, and the petitioner was No. 4 in the order of merit, but the candidates at serial Nos. 5 and

15 in the list were selected by applying communal reservation against the Prospectus. The application of communal reservation for selection under

special categories was not permissible as laid down by this Court in the case of R. Sree Jayalakshmi v. The State of Tamil Nadu 1995 T.L.N.J.

275;

(ii) The Division Bench of this Court in the case of Midhuna Natraj v. State of Tamil Nadu and others, W.P. No. 18536 of 1994 etc. batc, has

observed that it was unfortunate that the said writ petition could not be disposed

of earlier; the learned Advocate General had fairly conceded that Rule of reservation ought not have been made applicable to the special category of eminent Sports-men and the provision is bad in law. Hence clause 8 in G.O.Ms. No. 209, Health and Family Welfare Department, dated 3.4.1995 was declared unconstitutional and void. Consequently the second paragraph of Clause 9.5 in the prospectus for 1995-96 was also held unconstitutional. In paragraph 38 of the same judgment it is stated by the Division Bench of this Court that the 7th respondent therein viz., P.Rajkumar was at serial No. 5 in the merit list of eminent sports-men, respondents 5 and 6 by names Elangovan and Lineal Raj were at serial Nos. 1 and 2. In the absence of rule of reservation both the respondents 5 and 6 therein would have been selected and they have been rightly selected, but the seventh respondent therein could not have been selected if the rule of reservation had not been applied. Candidates at serial Nos. 3 and 4 viz., Anandhi, J. and Roche, J.A. (the petitioner in the present writ petition) who had secured higher marks than the seventh respondent therein ought to have been selected. In the concluding portion of the same paragraph it is stated that if that writ petition had been filed by J. Anandhi or J.A. Roche (the writ petitioner herein) who had secured more marks than the seventh respondent therein, they would have allowed the writ petition inspite of delay indisposal as they could not have been made to suffer for the courts delay. In this regard, the learned Counsel strongly relies on the decision of the Supreme Court in the case of Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, .

(iii) Assuming that even though the petitioner had not moved the court earlier, the seats ought to have been filled on the basis of merit, even on the basis of the writ petitions filed by some other candidates. In support of this submission he cited the decision in Dr Santosh Kumari (Mrs) Vs. Union of India (UOI) and Others, ; and

(iv) He submitted that having regard to the facts and circumstances of the case, the relief may not be denied to the petitioner on the ground of delay and laches in the light of the following decisions, viz., The Moon Mills Limited v. M.R. Me her, President, Industrial Court, Bombay and Ors. AIR 1967 S.C. 1450 : (1967) 2 S.C.W.R. 1 : (1967) II L.L.J. 34 : 69 Bom. L.R. 594 :

(1967) 2 S.C.A. 444, (ii) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, and (iii) M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, .

9. Shri D. Murugesan, the learned Special Government Pleader representing the respondents 1 to 4 contended that the rule of reservation was

followed in respect of all special categories uniformly for the academic year 1992-93, 1993-94 and 1994-95 which was considered permissible

then, but the rule of reservation was not applied now to the special categories for the year 1995-96 in view of the position of law declared; the

petitioner being aware of selection of others, ought to have filed the writ petition earlier if he was really serious about his selection. He could not

wait till the academic year 1994-95 was over, and to file the writ petition only on 16.10.1995. The petitioner having applied for M.B.B.S. course

during 1995-96 session, he should be taken to have waived his right, since the writ petition was not filed by the petitioner, and it was not pending

on the date of passing the judgment by the Division Bench of this Court in W.P. No. 18536 of 1994, it does not help the petitioner. Thus he sought

for the dismissal of the writ petition.

10. The learned Counsel for the respondent No. 5 submitted at this length of time the admission of respondent No. 5 may not be disturbed as he

has already undergone the course for a substantial period.

11. I have carefully considered the submissions made by the learned Counsel for the parties.

12. Writ Petition No. 18536 of 1994 was disposed of by the Division Bench of this Court on 28.9.1995 along with other writ petitions. In the said

writ petition the petitioner had challenged the selection of respondents 5 to 8 made for the academic year 1994-95 in the special category relating

to Sports. As can be seen from paragraph 37 of the said judgment the learned Advocate General had fairly conceded that the rule of reservation

ought not have been made applicable to the special category of eminent sportsman and the provision was bad in law.

13. The Division Bench of this Court declared that Clause 8 in G.O.Ms. No. 209, Health and Family Welfare Department, dated 3.4.1995 was

unconstitutional and void, and consequently the second paragraph of Clause 9.5

in the Prospectus for 1995-96 was also held unconstitutional. It is further observed that when there was no provision for rule of reservation during 1994-95 the Selection Committee chose to apply the rule of reservation and that itself was sufficient to vitiate the selection of four candidates in the special category under Clause 3.5(v) for the year 1994-95. I also took the view in the case of Sree Jayalakshmi v. The State of Tamil Nadu and Ors. 1995 T.L.N.J. 275, that there could not be further reservation in special categories on the basis of communal rotation.

14. Paragraph 39 of the judgment of the said Division Bench reads thus:

Had this writ petition been heard by us some time last year, we would have had no hesitation to set aside the selection of the 7th respondent and the 8th respondent and direct the Selection Committee to make a fresh selection for the two vacancies. Now, the 7th respondent and the 8th respondent have already undergone the course for more than a year and it will be causing grave injustice to them to set aside their selection at this distance of time. Moreover, the petitioner, who was No. 26 in the Merit List of Eminent Sportsmen – National Level had no chance of being selected under that category, even if the selection of all the four respondents, i.e., respondents 5 to 8 is set aside. In the circumstances, we are unable to issue the writ as prayed for by the petitioner. If this writ petition had been filed by J. Ananthi or J.A. Roche, who had secured more marks than the 7th respondent, we would have allowed the writ petition, in spite of the delay in disposal, as they could not have been made to suffer for the court's delay.

J.A. Roche, referred to in the paragraph of the said judgment extracted above, is none other than the petitioner in the writ petition on the hand. It is clearly stated in the said judgment that the Division Bench would have allowed the writ petition in spite of the delay in disposal. If the writ petition had been filed by J. Ananthi or J.A. Roche (the petitioner herein). It follows that the petitioner was entitled for selection for the academic year 1994-95 to the M.B.B.S. course on merits. But by wrong selection he was deprived of the admission to the course.

15. In the case of Dr Santosh Kumari (Mrs) Vs. Union of India (UOI) and Others, , in paragraph 8, it is stated,

The allotment of seats should go according to merit. It does not depend upon

who comes to court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means to approach the court.

The Full Bench of Delhi High Court in the case of Sandhya Kabra and Others Vs. University of Delhi, , has also taken the similar view following a

Supreme Court judgment. Merely because the petitioner did not approach the court his merit and claim could not be ignored.

16. The learned Counsel for the petitioner strongly relied on the judgment in the case of Punjab Engineering College Chandigarh through its

Principal Vs. Sanjay Gulati and Others, , in support of the case of the petitioner. The Division Bench of this Court in the aforementioned decision,

referring to the said judgment, has stated in paragraph 41 thus:

In spite of the clear Warning issued by the highest court of the country in April, 1983, the Tamil Nadu Selection Committee had chosen to violate

the norms set out in the prospectus and grant admission on extraneous consideration by unlawfully applying the rule of reservation, which was

wholly inapplicable.

Under the circumstances there can be no hesitation to hold that the petitioner was entitled for admission to the M.B.B.S. course for the academic

year 1994-95 if the selection had been made fairly, properly and on merits.

17. The claim of the petitioner is resisted mainly on the grounds of delay and laches in filing the writ petition, and waiver. It is well settled that the

rule which states that the court may not go into belated and state claims is not a rule of law but a rule of practice depending upon sound and proper

exercise of discretion and it is not necessary that whenever there is delay, the court should refuse to entertain the writ petition. Each case must

depend on its own facts as laid down in paragraph 9 of the judgment of the Supreme Court in Ramchandra Shankar Deodhar and Others Vs. The

State of Maharashtra and Others, .

In yet another judgment of the Supreme Court in the case of M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and

and District Board, Shahabad and others, , in paragraph 13, the Supreme Court has held thus:

The rule which says that the court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper

exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy

claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights

which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable

explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is

created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the

circumstances justifying the conduct exists, the illegality which is material cannot be sustained on the sole ground of laches. The decision in

Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , relied on is distinguishable on the facts of the present case. The levy if

based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though

belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case,

the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing

the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed.

18. Having regard to the facts and circumstances of this case, it cannot be said that the petitioner was either negligent, or waived his right, or the

delay is such that the relief can be denied. The petitioner has satisfactorily explained under what circumstances he could not file the writ petition

earlier. Further when the petitioner was entitled on merit for selection, his claim ought to have been considered although he did not approach the

court in the light of the decision in the case of Dr Santosh Kumari (Mrs) Vs. Union of India (UOI) and Others, , and the Full Bench decision of the

Delhi High Court in Sandhya Kabra and Others Vs. University of Delhi, . Merely because the petitioner applied for admission to M.B.B.S. course

for the academic year 1995-96 it cannot be construed that he has waived his right. The petitioner was not in a position to know the reasons for his

non-selection, and the similar matter was already pending before this Court in W.P. No. 18536 of 1994. Under the circumstances, in my opinion,

it is not a case where the writ petition can be dismissed either on the ground of delay or laches or waiver.

19. The question now is as to what relief can be granted to the petitioner having regard to the fact that the academic year 1994-95 is already over.

The Division Bench of this Court in the aforementioned W.P. No. 18536 of 1994 has clearly stated that had the petitioner filed the writ petition

that petition could have been allowed, but did not disturb the selection of the seventh respondent therein. The petitioner has also stated that his

case can be considered for the academic year 1995-96, but as on today, it is submitted by the learned Special Government Pleader that there are

no vacancies. Further the course for 1995-96 session has also commenced some time back. Even if the petitioner is to be provided admission for

the year 1995-96, he may have to face the shortage of attendance, and completion of course etc. In my opinion this is not a case where the

petitioner could be compensated in terms of money because the petitioner was denied admission wrongly for no fault of his. Moreover ordinarily

the carrier and future of the candidate cannot be compensated in terms of money that too having regard to the situation in which the petitioner was

placed. Under the circumstances, I deem it appropriate to direct the respondents 1 to 3 to admit the petitioner to the first year M.B.B.S. course

for the academic year 1995-96 by creating one extra seat if necessary.

20. In the result, for the reasons stated, I pass the following order:

(i) The writ petition is partly allowed;

(ii) The respondents 1 to 3 are directed to admit the petitioner to the first year M.B.B.S. course for the academic year 1995-96 by creating one

extra seat. It is made clear that the petitioner has to essentially put in the necessary attendance and complete the course for taking up the

examinations; and

(iii) No costs.