

(2014) 09 MAD CK 0117

In the Madras High Court

Case No : Writ Petition No. 21434 of 2014 and M.P. No. 1 of 2014

K. Vaithi Viswanath

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Annamalai University Act, 1928 — Section 10, 12(1), 2(c), 41, 42
Annamalai University Act, 2013 — Section 14, 3(1), 3(2), 35, 35(2)

Citation : (2014) 7 MLJ 822

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The petitioner has come up with the above writ petition seeking the issue of a writ of Mandamus to direct the respondents to admit him to the first year of the M.B.B.S. Course for the academic year 2014-15 in the 4th respondent university, before the cut off date for admission to medical/dental colleges as prescribed by the Supreme Court.

2. I have heard Mr. K.M. Vijayan, learned senior counsel for the petitioner, Mr. P. Sanjay Gandhi, learned Additional Government Pleader for the respondents 1 and 2, Mr. V.P. Raman, learned counsel for the third respondent and Mr. A.L. Somayaji, learned senior counsel for the fourth respondent.

3. The petitioner passed the Higher Secondary Course, in the Public Examination conducted by the Department of Government Examinations of the State of Tamil Nadu in March 2014. He secured 1154 marks out of a maximum of 1200 marks. In Physics he secured 196 out of 200, in Chemistry he secured 196 out of 200 and in Biology he secured 199 out of 200. In fine, he had secured 197.50 marks out of a total of 200 marks in the aggregate, of the relevant subjects to be considered for admission to the M.B.B.S. Course. Therefore, he applied for admission to the first year of the M.B.B.S. Course offered by a College known as Raja Muthiah Medical College which is a constituent College of the fourth Respondent University. His Rank was 287 in the order of merit. He belongs to the

forward community.

4. The petitioner came to understand that about 223 persons who were above him in the order of merit, absented themselves on the date of counseling. Consequently, he was within the first 75 candidates in the order of merit. Therefore, if the fourth Respondent had adopted 50% as the percentage of Reservation for Backward Communities, Scheduled Castes and Scheduled Tribes, the petitioner would have been selected for admission, as a candidate coming under the open category in the order of merit.

5. But the fourth Respondent applied 69% Reservation and hence the person who secured 247th Rank became last person admitted under the Open Category. The constituent college of the fourth Respondent University has an annual permitted intake of 150 students. Therefore, if 50% of those seats namely 75 seats had been filled up under open competition, the petitioner would have been selected for admission. In other words, the petitioner lost the chance of getting admitted, only because of the application of 69% Reservation.

6. The Supreme Court held in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, that communal reservation shall not exceed 50%. However, the State of Tamil Nadu enacted Tamil Nadu Act 45 of 1994, providing for a reservation up to 69% and included the Act under the IX Schedule of the Constitution. The validity of the Act was challenged by Voice (Consumer Care) Council before the Supreme Court and during the pendency of the challenge, interim orders were passed year after year, directing the State to create extra seats, in order to accommodate those meritorious candidates, who could not get admission due to the application of reservation at 69%, rather than 50%. The writ petition was eventually disposed of by the Supreme Court by an order dated 13.07.2010, directing the Backward Classes Commission of the State of Tamil Nadu to collect data for justifying the Reservation at 69%.

7. Since the order of the Supreme Court was not carried out, another set of persons filed a fresh writ petition in W.P.(C) No. 365 of 2012 on the file of the Supreme Court. By interim orders passed in the years 2012 and 2013, the Supreme Court issued directions to the Government to create additional seats, as had been done in the past 20 years. Even recently a group of students filed one more writ petition in W.P.(C) No. 641 of 2014 on the file of the Supreme Court. On 04.08.2014, the Supreme Court passed an interim order to the following effect:-

"Considering the facts and circumstances of the case and also considering the fact that the petitioners are meritorious candidates, who have secured 198.5 out of 200 marks i.e. more than 99% marks, we are inclined to follow the procedure adopted by the Court for the last so many years. Reference is made to the order dated 13.7.2010 passed by this Court in Writ Petition No. 471 of 1994 and connected cases.

We, therefore, direct the State of Tamil Nadu to follow the interim order dated

11th November, 1994 passed by this Court as well as the order dated 13.7.2010 passed by this Court in Writ Petition No. 471 of 1994 and connected cases for the current year also. The same is made applicable to all candidates who fall in that category."

8. Therefore, the petitioner has come up with the above writ petition seeking a direction of similar nature to the fourth Respondent. The reason as to why the petitioner has approached this Court rather than the Supreme Court is that the fourth Respondent University, which was in the hands of private persons, until the year 2013, has now come under the full-fledged control of the State Government and the State Government has applied 69% Reservation for admission to the Courses offered by the fourth Respondent University and its constituent colleges.

9. The one and only contention of the petitioner is that once the fourth Respondent University has come under the total and absolute control of the State Government, and once the State Government had passed orders for the application of Reservation at 69%, on the basis of the law that is under challenge before the Supreme Court, the Respondents are obliged to create additional seats as directed by the Supreme Court by way of interim orders passed year after year for the past 20 years.

10. In response to the claim of the petitioner, the fourth Respondent has filed a counter affidavit. In the counter affidavit, it is claimed that Raja Muthiah Medical College run by the fourth Respondent University was originally started in 1985-86 as a "University College" purely on Self Financing basis and that there is no Government funding or financial support. Consequently, the fourth Respondent claims that the College in question was bound till the year 2013, to surrender 65% of the seats towards Government quota and to fill up the remaining 35% of seats on their own, by virtue of being a Self Financing Institution. According to the fourth Respondent, the Government passed an enactment known as Annamalai University Act, 2013, by which the University was declared as deemed to have been established and incorporated by the 2013 Act. Nevertheless it is claimed by the fourth Respondent that the University Medical College continues to be a Self Financing Institution and that merely because the Government decided to fill up all the 150 seats by applying Reservation at 69%, the College would not become a Government College. According to the fourth Respondent, if Reservation at 50% is applied to 65% of 150 seats namely 98 seats (which would have been surrendered to the Government in the normal course, but for the 2013 Act), only 49 seats could be filled up as per the order of merit. Now, the fourth Respondent has admitted 46 students under the open category. Hence, even if three additional seats are created, the petitioner would not come within the zone of consideration.

11. From the pleadings and the stand taken by the fourth respondent, the only issue that arises for consideration is as to whether Raja Muthiah Medical College which is a constituent of the fourth Respondent University, is a Government

College/a Constituent of a State University College or a private self financing College.

12. In order to find an answer to the question arising for consideration, it is necessary to undertake a journey into the past. Raja Sir S.R.M. Annamalai Chettiar established several institutions of Higher Education at or near Chidambaram more than 9 decades ago. In a unique Public-Private-Participation in the field of education, perhaps the first of its kind in the State of Tamil Nadu, Raja Sir Annamalai Chettiar entered into an Understanding with the Local Government of the pre-independence days in 1928. Under the agreement, he agreed to hand over all the institutions of Higher Education together with all the properties attached thereto, to the Local Government, along with a donation of Rs. 20 lakhs for the purpose of establishing and maintaining at Annamalai Nagar, a teaching and residential University. However, he reserved unto himself, and his legal heirs certain powers and privileges. Incorporating the terms of such agreement, a law was enacted under the name Annamalai University Act, 1928.

13. Under Section 8 of the Act, the University was to have (1) the Governor of Madras as the Chancellor (2) the Founder (Rajah Sir Annamalai Chettiyar and his descendants) as the Pro-Chancellor (3) a Vice-Chancellor appointed by the Chancellor from out of a panel of three persons recommended by the Founder (4) the Registrar (5) the Dean of the faculties and (6) such other persons declared by the Statute of the University.

14. Apart from the Founder having a strong hold in the University as its Pro-Chancellor and also having an exclusive role in the selection of Vice-Chancellor, the Founder was also conferred with other rights under the other provisions of the Act. Section 14 of the Act prescribed that the University shall have a Senate, an Academic Council, a Syndicate, a Board of Selection and such other bodies. The Founder, acting as the Pro-Chancellor and his nominee appointed as the Vice-Chancellor were to be the Ex-Officio Members of the Senate. Vice-Chancellor was also to be an Ex-Officio Member of the Academic Council as well as the Syndicate. The Board of Selection, which was vested with the power to appoint teachers and the Registrar of the University, was to comprise of five Members, out of whom one was the Founder and the other was the Vice-Chancellor.

15. In so far as the funds of the University were concerned, Section 41 of the Annamalai University Act, 1928 provided for creation of a Permanent Endowment Fund, consisting of an amount of Rs. 20 lakhs provided by the Founder, another sum of Rs. 27 lakhs provided by the Local Government and all contributions made by the Local Government and the Government of India and any other Public Body. The University was also to have a General Fund under Section 42. This Fund is to consist of fees and income from Endowments including the Permanent Endowment Fund and any contributions to this fund by the Local Government or the Government of India.

16. Section 43 of the Act provided for contribution by the Local Government to

the General Fund at the rate of one and half lakhs of rupees per year. In addition, the Local Government was also to give a prescribed amount for buildings and equipment every year. Sections 41 to 43 of the Act require reproduction, in order to test the correctness of the contention of Mr. A.L. Somayaji, learned Advocate General appearing for the fourth Respondent University that Raja Muthiah Medical College is a Self Financing Institution. Therefore, these Sections are extracted as follows:-

"Permanent Endowment Fund:

41. (i) The University shall have a fund called the Permanent Endowment Fund which it shall invest and keep invested in securities issued or guaranteed by the Government of India or by Local Governments in British India.

(ii) The said Permanent Endowment Fund shall consist of

(a) the sum of twenty lakhs of rupees given by the Founder, the Honourable Rajah Sir S.R.M. Annamalai Chettiar;

(b) the sum of twenty-seven lakhs of rupees given to it by the Local Government; and

(c) any contributions to this Fund made by the Local Government, the Government of India, any Local or other public body, the Founder or others.

General Fund:

42. The University shall have a fund called the General Fund which shall consist of

(a) fees and income from endowments including the Permanent Endowment Fund; and

(b) any contributions made to this fund by the Local Government, the Government of India, any local or other public body, the Founder or others.

Contribution by Government to the University.

43. The Local Government.

(1) shall contribute to the general fund annually a sum of "one and a half lakhs of rupees and

(2) subject to such conditions as may be agreed upon between them and the University;

(a) shall give for the buildings and equipment of the University a sum of seven and a half lakhs of rupees, and

(b) may contribute, from time to time, such further sums as they deem fit to contribute to the said fund or towards such buildings or equipment."

17. The University was thus established perhaps as a joint venture between an individual and the Local Government as a first of its kind at least in the State of

Tamil Nadu. But, the monetary contribution of the local Government was much more than that of the Founder even in the year 1928, as seen from the above provisions. Though the 1928 Act by which the University was established, underwent a few amendments in the past, they were only cosmetic. But after 85 years of its establishment and after finding that the University was thoroughly mismanaged, and its funds plundered, the State Legislature passed the Tamil Nadu Act 20 of 2013, which is also known as the Annamalai University Act 2013, with a view to repeal and reenact the law. As seen from Section 3(1) of Act 20 of 2013, the Annamalai University was declared as deemed to have been established and incorporated under Act 20 of 2013. The University is to have, under Section 3(2) perpetual succession and a common seal, as it is declared to be a Body Corporate. Under Act 20 of 2013, the Founder as well as the role and hold that the Founder had in the University got completely eliminated. For instance, under Section 8 of the 1928 Act, the Founder was to be one of the Officers of the University. But under Section 6 of the 2013 Act, the Founder is no more to be an Officer of the University. Similarly, Section 10 of the 1928 Act made the Founder, the Pro-Chancellor. But under Section 8 of the 2013 Act, the Minister in-charge of Higher Education in the State of Tamil Nadu shall be the Pro-Chancellor. As a matter of fact, Section 2(c) of the 1928 Act had a very long definition of the word "Founder". This definition itself has now been deleted under the 2013 Act. Likewise, the role played by the Founder, in the matter of recommending a panel of three names for appointment as Vice-Chancellor, conferred by Section 12(1) of the 1928 Act has now gone. Under Section 9(1) of the 2013 Act, a Vice-Chancellor has to be appointed from out of a panel of three names recommended by such Committee constituted in terms of sub-section (2). The Founder has no role to play at all, in the matter of appointment of Vice-Chancellor.

18. Under the 2013 Act, the Founder is not an Ex-Officio Member of the Syndicate or Academic Council or Finance Committee or Faculties and Boards of Studies.

19. Section 37 of the 2013 Act, is a reproduction of Section 41 of the 1928 Act. Section 38 of the new Act is a reproduction of Section 42 of the old Act with a small change. The word "Founder" appearing in Section 38 of the new Act.

20. More importantly, Section 43 of the 1928 Act which spoke about Annual Contribution by the Local Government to the University, has been deleted. This is due to the fact that once the Government had assumed complete control of the University, the question of contribution does not arise.

21. Section 35 of the 2013 Act contains provisions for selection and admission of students. Under sub-section (1) of Section 35, the Government may specify the policy, guidelines, method and procedure for selection of candidates for admission to a course of study in the University. Under sub-section (2) of Section 35 of the 2013 Act, admission to Professional Courses should be made following the provisions of Tamil Nadu Act 3 of 2007. Section 35 of the 2013 Act is

extracted as follows:-

"35. (1) The Government may specify by general or special order, the policy, guidelines, method and procedure for selection of candidates for admission to a course of study or training in the University.

(2) Admission to professional degree courses such as engineering, medicine, dental, agriculture and other allied courses in the University shall be made following the provisions of the Tamil Nadu Admission in Professional Educational Institutions Act, 2006."

22. Apart from deleting the provision for Contribution by the Local Government to the University under Section 43 of the 1928 Act, the 2013 Act contains a provision for audit of the accounts of the University. Section 42 of the 2013 Act reads as follows:

"42. (1) The annual accounts shall be submitted to such examination and audit, as the Government may direct and a copy of the annual accounts and audit report shall be submitted to the Government.

(2) The University shall settle objections raised in the audit and carry out such instructions as may be issued by the Government on the audit report.

(3) The Government shall cause the annual accounts and the audit report to be laid before the Legislative Assembly together with their comments."

23. Therefore, it is clear (1) that the admission of students to the University is now as per the dictates of the State Government and (2) that the Annual accounts of the University and the audit report are to be laid before the State Legislative Assembly.

24. Now, let me take a look at the Tamil Nadu Act 3 of 2007, only in accordance with which, admission to Professional Courses should be made in the fourth Respondent University as per Section 35(2) of the 2013 Act. The Tamil Nadu Act 3 of 2007 defines the expression "Government Seats" as follows:

"(c) "Government seats" mean-

(i) all the seats in Government colleges, University colleges and University constituent colleges;

(ii) such number of seats in aided professional educational institutions as may be notified by the Government; and

(iii) 65% of seats in each branch in non-minority unaided professional educational institutions and 50% of the seats in each branch in minority unaided professional educational institutions, in accordance with the consensus arrived at between such professional educational institutions and the Government."

25. A careful look at the definition of the expression "Government seats" would show that for the purposes of Tamil Nadu Act 3 of 2007, professional colleges fall

under three categories (a) non-minority unaided professional educational institutions; (b) minority unaided professional educational institutions; and (c) other institutions. If a college does not fall under the first or second category, it should necessarily fall under the third category. Raja Muthiah Medical College cannot fall under non-minority unaided professional educational institution nor can it fall under the category of minority unaided professional educational institution. The college in question can fall only under the third category, which is what is indicated in sub-clause (i) of Clause (c) of Section 2 of Act 3 of 2007. The college in question is a University constituent college and not a non minority unaided professional educational institution. Right from the year 1928, the Local Government had pumped in a huge amount of public money into the University both by way of contribution to the Permanent Endowment Fund under Section 41(ii)(b) and (c) of the 1928 Act as well as by way of Annual Contribution to the General Fund under Section 43(1) of the 1928 Act. Therefore, to say that it is a Self-Financing Institution, would virtually amount to pleading the case of the Founder of the University.

26. As a matter of fact, Mr. M.A.M. Ramasamy, the grandson of the Founder of the University has already filed a writ petition in W.P. No. 28092 of 2013, challenging the provisions of Act 20 of 2013. The Government have already filed a detailed counter affidavit contesting the said writ petition. A look at the counter affidavit filed by the Government in that writ petition would show that the stand now taken by the University that Raja Muthiah Medical College is a Self-Financing Institution, will only advance the cause of the Founder who has challenged the validity of the 2013 Act. I think in an attempt to save the hair, the fourth respondent University has taken a stand that would throw the head into the grinding mill.

27. In the counter affidavit filed by the Principal Secretary to Government, High Education Department, to the writ petition W.P. No. 28092 of 2013 filed by the grandson of the Founder challenging the validity of Act 20 of 2013, the Secretary to Government, has made a sworn statement in paragraph 3(B) that the University received grants from the State of Tamil Nadu to the tune of Rs. 427.98 Crores during the period from 1998-99 to 2012-13. After taking such a stand in the counter affidavit in W.P. No. 28092 of 2013, that hundreds of Crores have been granted by the State Government in a period of just 14 years, I do not know how the Respondents dare to claim that the college is a Self-Financing Institution. The College might not have received grants directly from the Government. But, it received everything from the University, which in turn, survived only at the cost of the Government funds.

28. Interestingly, the Principal Secretary to Government Higher Education Department has taken a stand, which I think is the correct stand, in paragraph 3(H) of the counter to W.P. No. 28092 of 2013 that the privileges claimed by the legal heir of the Founder, is incompatible with the egalitarian social order and that it would work against the spirit of good governance. In paragraph 3(I) of the

counter affidavit the Principal Secretary to Government had stated as follows:-

"It was found that the University was run as if it was personal property of the petitioner".

29. The extent to which public money has gone into the making of the fourth Respondent University and its constituent colleges, can be demonstrated amply by reproducing para 7 of the counter affidavit filed by the Principal Secretary to the Government of Tamil Nadu in W.P. No. 28092 of 2013. It reads as follows:

"7. With reference to the averments made in paragraph 3 of the affidavit, it is respectfully submitted that apart from alienating hundreds of acres of land in favour of the University, the second respondent has also contributed Rs. 27 lakh to the Permanent Endowment Fund of the University vide section 41(ii)(b) of the "Repealed Act". In addition to this the second respondent as on 31.03.2013 has released Grants to the tune of Rs. 456.93 crore in the form of Block Grants and other Grants since inception of the University. It is pertinent to note that the updated value of the contributions and Grants made by the second respondent to the University as on 31.03.2013, assuming nominal interest rate of 10% per annum, including inflation, works out to nearly Rs. 2310 Crore."

30. The mind boggling statistics given by the Government of Tamil Nadu in their counter affidavit extracted above, shows that what was originally conceived by the Founder and the public at large to be a philanthropic venture, appears to have ultimately turned out to be a profitable commercial venture. If what the counter affidavit of the Government reveals in W.P. No. 28092 of 2013 is correct, what the Founder invested in 1928 was (i) a vast extent of land, (ii) buildings, and (iii) a sum of Rs. 20.00 Lakhs. But, what the local Government invested in 1928 was Rs. 27.00 Lakhs. But, after 1928, the Government funds, whose monetary value as on date would work out to Rs. 2300 Crores, had gone into the University. The counter affidavit of the Government in that writ petition shows that the money pumped in by the Government into Annamalai University was almost equivalent to the total amount of money invested in 12 Universities in the State. The counter affidavit in W.P. No. 28092 of 2013 also states that all contracts awarded by the University in the past several decades went in favour of companies floated by the Founder's family. Therefore, the argument that the College is a self financing institution, is actually self-defeating.

31. It is quite unfortunate that a person appointed by the Government as the Registrar in-charge of the fourth Respondent University pursuant to Tamil Nadu Act 20 of 2013 has taken a stand in the counter affidavit that Raja Muthiah Medical College is a Self-Financing Institution, without realising that such a stand is completely contrary to the letter and spirit of the counter affidavit filed by the Government itself in the writ petition filed by the grandson of the Founder challenging the validity of the Act. In the light of the facts and figures provided by the Government of Tamil Nadu, I have no hesitation in rejecting the contention of the learned Advocate General appearing for the fourth Respondent

University that Raja Muthiah Medical College is a Self-Financing Institution.

32. As seen from G.O. Ms. No. 39, Higher Education, dated 28.02.2014, the Governor of Tamil Nadu has already authorised the University, to select and allot students for admission to all professional educational courses, in terms of the provisions of the Tamil Nadu Act 3 of 2007. This could not have been done, but for the fact that the college is a constituent college of the University which has now come under the complete and total control of the State. Moreover, under Section 58(3) of Act 20 of 2013, the college in question is deemed to have been established and maintained by the University under the provisions of Act 20 of 2013. Under Act 20 of 2013, there is no Self-Financing Institution.

33. Once it is found that Raja Muthiah Medical College is a constituent college of the fourth Respondent University which is a 100% State run University, all the seats in that Medical College would come within the definition of the expression "Government seats" under Section 2(c) of Tamil Nadu Act 3 of 2007. Therefore, by virtue of Section 3 of the said Act, admission to every such Government seat in every professional educational institution should be made only on the basis of the marks obtained in the qualifying examination. Consequently, the provisions of Tamil Nadu Act 45 of 1994 prescribing reservation at 69%, applies automatically and not out of any pro-active step taken by the Government. If the application of Tamil Nadu Act 45 of 1994 is automatic and involuntary, the interim orders passed by the Supreme Court for the creation of additional seats, has also to follow, as in the case of other Government colleges.

34. Therefore, the writ petition is allowed, directing the fourth Respondent University to act as per the interim orders of the Supreme Court in W.P.(C) No. 641 of 2014 in respect of the 150 seats available in Raja Muthiah Medical College which is a constituent college of the fourth Respondent University. If the writ petitioner could have secured a seat for admission, if the rule of communal reservation had been kept at 50%, then the writ petitioner has to be admitted, by creating an additional seat. The fourth Respondent shall examine this and pass appropriate orders within a period of one week from the date of receipt of a copy of this order so that the prayer of the petitioner does not become infructuous, due to the deadline fixed by the Supreme Court for admission to Medical Courses. There will be no order as to costs.