

(2005) 07 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 21955 of 2005 and W.P. No's. 21956, 22039, 22040, 22277, 22409, 22522 and 22814 of 2005 and W.P.M.P. No's. 23997 to 24000 of 2005

Mohammed Nawaz G

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Tamil Nadu General Clauses Act, 1891 — Section 8

Citation : (2005) 3 MLJ 528

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Silambanan, in WP. 22039 to 22040, 22409, 22522 and 22814 of 2005, for the Appellant; R. Muthukumaraswamy, A.A.G. assisted by V. Karthikeyan, Government Advocate, for the Respondent

Judgement

P.D. Dinakaran, J.

I - ISSUES

1.1. Whether a student who got selected to a professional course under Government quota and later discontinued rendering the seat a waste is eligible to apply again for Medical and Dental Courses for the year 2005-2006.

1.2. Whether a person who renders himself disqualified by his negative performance can have any grievance logically to complain against the rationalised policy decision of the Government rendering him ineligible to apply again for Government quota for Medical and Dental Courses for the year 2005-2006.

1.3. Whether the rationalised policy decision of the Government could be challenged on the ground of legitimate expectation, if such legitimate expectation is antithesis to *Wednesbury's* reasonableness.

1.4. Whether a person who has contributed for the loss of public funds can seek estoppel against the Government based on his negative performance.

1.5. These are all the substantial issues, which are projected in this batch of writ petitions. I have no hesitation to answer in negative all these issues as dealt with hereunder.

II - RELIEF SOUGHT FOR 2

1. The Writ Petition, W.P.NO. :21955 OF 2005 is filed for issuance of Writ of Declaration, declaring para 6(ii) of the Prospectus issued by the Government of Tamilnadu for the admission to Medical/Dental Courses for the academic year 2005-2006 Session as illegal and ultra vires to Section 8(d) of the Tamilnadu General Clauses Act and cannot take away the accrued rights of the petitioner retrospectively and consequently admit the petitioner for the MBBS Degree Course in accordance with merit of the seniority list for the academic year 2005-2006 session.

2.2. The Writ Petition, W.P. No. 21956 of 2005 is filed for issuance of Writ of Declaration, declaring para 6(ii) of the Prospectus issued by the Government of Tamilnadu for the admission to Medical/Dental Courses for the academic year 2005-2006 Session as illegal and ultra vires to Section 8(d) of the Tamilnadu General Clauses Act and cannot take away the accrued rights of the petitioner retrospectively and consequently admit the petitioner for the MBBS Degree Course in accordance with merit of the seniority list for the academic year 2005-2006 session.

2.3. The Writ Petition, W.P. No. 22039 of 2005 is filed for issuance of Writ of Certiorarified Mandamus to call for the records of the prospectus for the 2005-2006 and quash clause 6 of the prospectus for the year 2005-2006 issued by the 2nd Respondent in so far as the petitioner is concerned and direct the Respondents 1,2 and 3 to receive the application of the petitioner for the MBBS Course for the year 2005-2006 and consider the application on merits.

2.4. The Writ Petition, W.P. No. 22040 of 2005 is filed for issuance of Writ of Certiorarified Mandamus to call for the records of the prospectus for the 2005-2006 and quash clause 6 of the prospectus for the year 2005-2006 issued by the 2nd Respondent in so far as the petitioner is concerned and direct the Respondents 1 and 2 to receive the application of the petitioner for the MBBS Course for the year 2005-20 06 and consider the application on merits.

2.5. The Writ Petition, W.P. No. 22277 of 2005 is filed for issuance of Writ of Certiorari to call for the records pertaining to the prospectus issued by the 3rd respondent for admission to MBBS/BDS Courses for the year 2005-2006, and quash the same, in so far as Class (6)(ii) is concerned.

2.6. The Writ Petition, W.P. No. 22049 of 2005 is filed for issuance of Writ of Certiorarified Mandamus to call for the records of the prospectus for the 2005-2006 issued by the 2nd respondent and quash clause 6 of the prospectus

for the year 2005-2006 in so far as the petitioner is concerned and direct the Respondents 1 and 2 to receive the application of the petitioner for the MBBS Course for the year 2005-2006 and consider the application on merits.

2.7. The Writ Petition, W.P. No. 22814 of 2005 is filed for issuance of Writ of Certiorarified Mandamus to call for the records of the prospectus for the 2005-2006 issued by the 2nd respondent and quash clause 6 of the prospectus for the year 2005-2006 in so far as the petitioner is concerned and direct the Respondents 1 and 2 to receive the application of the petitioner for the MBBS Course for the year 2005-2006 and consider the application on merits.

2.8. The Writ Petition, W.P. No. 22522 of 2005 is filed for issuance of Writ of Certiorarified Mandamus to call for the records of the prospectus for the 2005-2006 issued by the 2nd respondent and quash clause 6 of the prospectus for the year 2005-2006 in so far as the petitioner is concerned and direct the Respondents 1 and 2 to receive the application of the petitioner for the MBBS Course for the year 2005-2006 and consider the application on merits.

III - EARLIER ORDER PASSED

3. While admitting these writ petitions on 19.07.2005, this Court passed the following interim order:

"All those candidates who have been called for counselling shall attend the interview. However, as undertaken by the learned Additional Advocate General the results of the same shall not be taken till 22.7.2005." and posted the matter today. Since the matter was not included in the list, on mentioning by the learned Senior Counsel that the last date for counselling for the selection of the candidates for admission to the Medical and Dental courses falls on Sunday 24.07.2005, all the matters are taken up for hearing today.

IV - IMPUGNED CLAUSES

4.1. It is appropriate to extract the following relevant clauses in the information booklet of the Tamil Nadu Professional Courses Entrance Examination conducted by the Anna University, Chennai during the year 2004 as well as 2005 and the relevant clauses of the Prospectus of the Tamil Nadu Admission to Medical and Dental courses for the year 2004-05 and 2005-06.

4.2. Clause 7(iv)(c) of the prospectus issued for the year 2004-05 by the Government of Tamil Nadu Admission to Medical/Dental Courses reads as follows:

"7. (iv) The following categories of candidates are not eligible to apply to Medical Dental Courses:

(a)... (b) . . . (c) Those candidates who have already joined in any of the professional courses such as MBBS, BDS, B Pharmacy, Bsc.,(Nursing), BPT, BOT, BSMS, BHMS, Engineering, Law, Agriculture, Veterinary etc., and discontinued the course on any grounds after six months."

4.3. Clause 2.3(B) of the information booklet for Tamil Nadu Professional Courses Entrance Examinations conducted by the Anna University for the year 2005 reads as follows:

"2.3(B) Medicine: HSC Vocational stream candidates and P.U.C. one year course candidates are not eligible for admission to any course under this group. Married candidates, whether male or female are not eligible for B.Sc.(Nursing) Course.

Candidates who have already undergone more than 6 months or discontinued after 6 months or presently undergoing any of the following professional courses viz., MBBS/BDS/B.Pharm/B.Sc.(Nursing)/BPT/ BOT/ BSMS/ BHMS/ BAMS/ BUYS/ BUMS/ Engineering/ Law/ Agriculture/ Veterinary, etc., are not eligible to apply to any course under this group",

4.4. Clause 6(ii) of the prospectus issued by the Government of Tamil Nadu for admission to Medical/Dental courses for the year 2005-2006 reads as follows:

"6. The following categories of candidates are not eligible to apply for medical, dental courses: (i) (ii) those candidates who are presently undergoing any of the professional courses such as MBBS, BDS, B.Pharmacy, Bsc(Nursing), BPT, BOT, BSMS, BHMS, Engineering, Law, Agriculture, Veterinary etc., and those candidates who have discontinued on any grounds the professional courses mentioned leading to a waste of seat."

4.5. In nutshell, as per the prospectus for admission to the students in Medical and Dental courses for the year 2004-2005, as well as the Eligibility prescribed for the entrance examination for the professional courses conducted by the Anna University for the year 2005, the candidates, who discontinued their respective professional courses after six months alone are ineligible for admission into the medical and dental courses. In other words, those who discontinued their professional courses within six months from the date of admission were eligible for admission to medical and dental courses, as per the instructions issued for the Entrance Examination for the last year and this year; and as per the prospectus to the medical and dental courses for the last year.

V - ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONERS

5.1. According to Mr.K.M.Vijayan, learned senior counsel for the petitioners, since the candidates, who discontinued the professional course only after six months alone were made ineligible last year, a right or privilege had accrued in favour of the petitioners, who discontinued their professional courses within the period of six months to seek an admission in medical and dental courses in the next year and such right and privilege cannot be withdrawn, particularly, when they were also permitted to write entrance examination this year, namely 2 005 and in this regard it is contended that the impugned clause violates Section 8(d) of the Tamil Nadu General Clauses Act.

5.2. Mr.K.M.Vijayan, learned senior counsel also invited my attention to the fact that the candidates, who have discontinued their professional courses after six

months in the last year, were alone rendered ineligible to apply for the admission to the Engineering course this year and therefore, there is glaring discrimination among the students, who have written the common entrance examination between (i) those who seek admission in B.E. Course and (ii) those who seek admission in medical and dental courses.

5.3. According to Mr.K.M.Vijayan, learned senior counsel, since the petitioners have discontinued their professional courses last year within six months from the date of admission, they have legitimate expectation to seek admission for medical and dental courses this year based on their eligibility in the common entrance examination conducted by the Anna University for the students, who seek admission for B.E., Medical and Dental courses and such legitimate expectation cannot be annulled by the impugned clause of the prospectus for the admission in Medical and Dental Courses for the year 2005-2006.

5.4. Mr.K.M.Vijayan, learned senior counsel for the petitioners also relied upon a decision of the Division Bench of this Court in the judgment dated 27.6.2005, made in W.P. Nos. 18801 of 2005 and batch cases, wherein the Division Bench had quashed the Government Order relating to the abolition of the Common Entrance Test and directed the Government to give the benefit of improvement examination for this year.

5.5. Mr.C.Selvaraj, learned senior counsel for the petitioner in W. P. No. 22277 of 2005 and Mr.Silambanan, learned counsel for the petitioners in W.P. Nos. 22039, 22040, 22409, 22522, 22814 of 2005 adopted the arguments of Mr.K.M.Vijayan, learned senior counsel for the petitioners in W.P. Nos. 21955 and 21956 of 2005.

VI - REPLY BY THE RESPONDENTS

6.1. Per contra, Mr.R.Muthukumaraswamy, learned Additional Advocate General contents that the non-eligibility of students, who discontinued the course after six months as prescribed in the instructions to the Common Entrance Examination or the Prospectus for the academic year 2004-05, should not be construed as a permission to the students, who got selected in the Government quota to discontinue the respective course rendering their seat to go in waste which would result in wastage of public funds. Therefore, the legitimate expectation as claimed by the petitioners is not sustainable in law, as the same does not qualify the test of reasonableness.

6.2. Mr.R.Muthukumaraswamy, learned Additional Advocate General submits that the admission to Medical and Dental Courses for the year 20 05-2006 is governed only by the eligibility or ineligibility prescribed in the prospectus for the year 2005-2006, but not by the instructions of the Anna University for Common Entrance Examination alone.

6.3. Explaining the object behind the impugned clause Mr.R. Muthukumaraswamy, learned Additional Advocate General submits that the impugned clause 6(ii) is intended to deny admission to those who discontinued

their professional course leading to waste of seats, since the Government is spending substantial public funds for every seat for the professional course in Medicine and Dental, unlike in the Engineering course. Therefore, the discrimination as argued on behalf of the petitioner attracting Article 14 of the Constitution of India, in this regard, is not tenable in law.

6.4. Mr.Muthukumaraswamy, learned Additional Advocate General also explained that a mere discontinuation within a period of six months is not a disqualification, but, what is disqualification under the impugned Clause of the Prospectus for the year 2005-2006 is the discontinuation leading to a waste of seat.

6.5. The learned Additional Advocate General now produced the following details of the respective candidates with reference to the date of admission and discontinuation.

Sl No	Name	Course	Joined on	Discontinued on
1	21955/05 Mohammed Navaz	B.Tech	25.08.2004	20.09.2004
2	21956/05 J. Vinoth Raj	BDS, Govt.	21.09.2004	25.01.2005
3	22039/05 Riyaz Ahamed	Dental College	16.08.2004	27/08/2004
4	22040/05 S. Priyadharshini	BE.College	16.08.2004	08.11.2004

5	22277/05 B. Hari Shankar	BE,Bio-Tech,GCT, Coimbatore	27.08.2004	20.09.2004
6	22409/05 P.Nithya Priya	Engg,SSN College	20.08.2004	05.10.2004
7	22814/05 M. Arjun Raj	BE, Private College	06.09.2004	22.09.2004
8	22522/05 M. Manimekalai	B.Sc., Agriculture	25.07.2004	1.10.2004

VII OBSERVATIONS

7.1. In so far as, the candidates viz., Mohammed Navaz, petitioner in W.P. No. 21955 of 2005, who joined the Course of B.Tech on 25.8.2004 and discontinued on 20.09.2004 and another candidate namely B.Hari Shankar, petitioner in W.P. No. 22277 of 2005, who joined the BE, BioTech, GCT, Coimbatore on 27.8.2004, and discontinued on 20.09.2004, are concerned, their discontinuation did not lead to waste of seats and therefore, they were considered and also got selected for admission.

7.2. Similarly, so far as, P.Nithya Priya, petitioner in W.P. No. 2240 9 of 2005, who joined the Engineering course in SSN College on 20.08.2004 and discontinued on 5.10.2004 and M.Manimekalai, petitioner in W.P. No. 22522 of 2005, who joined the B.S.C., Agriculture course on 25.07.2004 and discontinued the course on 1.10.2004 are concerned, it is reported that their discontinuation also did not lead to waste of seats.

7.3. So far as the candidates viz., Riyaz Ahamed, petitioner in W. P. No. 22039 of 2005, who joined the BE Course in the the College of Engineering, Guindy on 16.08.2004 and discontinued the course on 27.08.2 004 and M.Arjun Raj, petitioner in W.P. No. 22814 of 2005, who got selected in Government quota and joined the BE course in private College on 6.9.2004 and discontinued the course on 22.09.2004, are concerned, they are also likely to be considered for selection

subject to the verification whether their discontinuation led to waste of seats.

7.4. Hence, the writ petitions, viz., W.P. Nos. 21955, 22277, 22409, 2 2522, 22039 and 22814 of 2005 are disposed of recording the above statement of learned Additional Advocate General and directing the respondents to take appropriate decision in the case of the petitioners concerned on merits subject to the satisfaction of other requirements and clauses of the Prospectus for the current year.

7.5. But, with reference to the case of J.Vinoth Raj, petitioner in W.P. No. 21956 of 2005, who joined the BDS Course in the Government Dental College on 21.09.2004 and discontinued the course on 25.01.2005 and S.Priyadharshini, petitioner in W.P. No. 22040 of 2005, who joined the BDS course in Government Dental College on 16.8.2004 and discontinued the course on 8.11.2004, it is contended that their case cannot be considered, as their discontinuation has led to waste of seats.

VIII ? CONSIDERATION & FINDING

8.1. I have given my careful consideration to the submission of Mr. K.M.Vijayan and Mr.C.Selvaraj, learned senior counsel and Mr. Silambanan, learned counsel for the petitioners, and Mr.Muthukumaraswamy, the learned Additional Advocate General.

8.2. The object in imposing the impugned clause is to render those who discontinued the professional course after having been selected under the Government quota leading to waste of such seats as ineligible to seek for admission in Medical and Dental Courses for the year 20 05-2006. In other words, the mere discontinuation of the course is not a disqualification, unless it leads to a waste of seat resulting in the wastage of public funds. The petitioners having been selected under the Government quota and discontinued their course resulting in waste of seats had taken the risk of disqualification, because they are not entitled to place any reliance on the Instructions for Common Entrance Examination as well as the Prospectus for admission to Medical and Dental Courses for the year 2004-2005 which has no relevance for the admission to Medical and Dental Courses for the current year, viz., 2005-2006. In any event, the instructions for the Common Entrance Examination are only intended for the purpose of selection process, but the conditions imposed in the Prospectus for admission to Medical and Dental Courses are intended to prescribe qualification for admission which shall prevail over the instructions for the Common Entrance Examination. That apart, as rightly pointed out by the learned Additional Advocate General, since the Government is spending substantial public funds for every seat for the professional course in Medicine and Dental, unlike in the Engineering Course, merely because there is no similar condition for the admission to Engineering Course cannot be a ground to challenge the impugned clause for the admission to Medical and Dental Courses and therefore, the discrimination as argued on behalf of the petitioners attracting Article 14 of the

Constitution of India is not tenable in law.

8.3. The contention that the clause in the Instructions for Common Entrance Examination as well as the Prospectus for admission to Medical and Dental Courses for the year 2004-2005 that only those who discontinued after six months would be disqualified for the next year would amount to a permission to discontinue the course within six months and to seek admission for the next year as the same conferred a right and privilege to them to seek admission, in my considered opinion is not acceptable as the said clause was applicable only for the year 2004-2005, but the same is not applicable for the current year 2005-2006. Similarly the contention that the petitioners had derived the right or privilege to discontinue their course within six months to seek a better avocation in the next year as per the Instructions of the Common Entrance Examination and the clause in the Prospectus of the last year, viz., 2004-2005 is liable to be held irrational in the event such discontinuance led to waste of seats causing wastage of public funds, and therefore, such contention is held to be illogical and irrational as the same does not stand to the test of Wednesbury's reasonableness.

8.4. The argument of learned senior counsel for the petitioners that only those who discontinued the course after six months are ineligible to apply for Medical and Dental Courses and therefore the petitioners who discontinued within six months, by implication, has got a right and privilege to discontinue the course to seek for admission in the next year is nothing but an attempt to claim a premium for their own act of risk and therefore the petitioners are not entitled to claim estoppel against the respondents based on their own negative performance, namely, in not continuing the course.

8.5. The decision relied upon by the learned senior counsel for the petitioners in the case of MINOR S.MUTHU SENTHIL v. STATE OF TAMIL NADU 2002 (1) CTC 385 is not relevant to the facts of the case, as the clause, which stood during the last academic year did not confer any right on the petitioners to discontinue their course after joining in a professional course under the Government quota, as already held above.

8.6. Of course, the Division Bench of this Court in the judgment dated 27.6.2005, made in W.P. Nos. 18801 of 2005 and batch cases quashed the Government Order abolishing the Common Entrance Examination. The said decision of the Division Bench that the abolition of Common Entrance Examination would attract Article 14 of the Constitution of India is based on the fact that the competing students have passed different qualifying examinations, but in the instant case, there is no violation of Article 14 of the Constitution of India. That apart, the benefit of improvement examination was given this year taking into consideration that those students have acted upon the improvement examination positively, but here, the petitioners are claiming estoppel based on their negative performance which makes all the difference. Hence, the ratio laid down in the Division Bench judgment dated 27.6.2005 made in W.P. Nos. 18801

of 2005 and batch cases is not applicable to the facts of the case.

8.7. An argument advanced based on the decision of Division Bench of this Court dated 8.2.2002 made in W.A. No. 1876 of 2001, wherein it is held that retrospective application of the policy decision of the Government would definitely be against the principles of legitimate expectations, is also not applicable to the case on hand, as the legitimate expectation claimed by the petitioners in the instant case has already been held as illogical and irrational. On the other hand, the clause imposed by the Government as a Policy Decision is made in the larger public interest, namely, to disqualify those candidates whose discontinuance of professional course led to waste of seats.

8.8. It is emphasised that the legitimate expectation should also stand to the test of reasonableness. Otherwise it will not have sanctity in law. Any right or privilege, claimed on behalf of the petitioners leading to a waste of public fund is liable to be deprecated. The contention of the petitioners based on the legitimate expectation, in this regard is illogical and irrational and my above view is supported by the settled principles of law on the point relied on hereunder.

IX LAW ON THE POINT

9.1. As was observed in Punjab Communications Ltd. Vs. Union of India and Others, , the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness". The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision maker and not the Court. The legitimate substantive expectation merely permits the court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate expectation without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time; present, past and future. How significant is the statement that today is tomorrow's yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same anticipation. legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

9.2. As held in Attorney General for New Southwale v. Quin 1990 (6 4) ALJR 324 to strike the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the negotiation of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law: "if a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 but

a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider, but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is not the key which unlocks the treasure of natural justice and it ought not to unlock the gates which shut the court out of review on the merits, particularly, when the element of speculation and uncertainty is inherent in that very concept. As cautioned in *Attorney General for New South Wales*'s case the court should restrain themselves and respect such claims duly to the legal limitations. It is a well meant caution. Otherwise, a resourceful litigant having vested interest in contract, licences, etc. can successfully indulge in getting welfare activities mandated by directing principles thwarted to further his own interest. The caution, particularly in the changing scenario becomes all the more important.

9.3. In *Union of India v. International Trading Co.* 2003 AIR SCW 28 28 after referring various decisions, the Apex Court held that reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. It is also held that a restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and in determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing clause at the relevant time, enter into judicial verdict. The Supreme Court has further held that the reasonableness of the legitimate expectation has to be determined with respect to the circumstances of the case.

x ? CONCLUSION 10.1. Applying the above well settled principles of law, on the question of legitimate expectation in this case, and the right of the State to take appropriate policy decision, applying the *Wednesbury*'s reasonableness, I have no option except to uphold the impugned clause as I do not find any reason to interfere with the same.

10.2. In the result, the writ petitions, W.P. Nos. 21955, 22277, 22409 ,22522, 22039 and 22814 of 2005 are disposed of with the observation referred to above. The writ petitions, W.P. Nos. 21956 and 22040 of 200 5 are dismissed. No costs. Consequently, connected WPMPs are closed.