

(1997) 12 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 17446 of 1997

R. Arvind Karthikeyan

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 12 MAD CK 0150

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

Bench : Single Bench

Advocate : R. Gandhi for R.G. Narendran, for the Appellant; D. Murugesan, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Petitioner seeks the issuance of a Writ of Mandamus directing the Respondents to select and admit the Petitioner for the I year MBBS Course 1997-98 under special category as per Clause 3.5(xi) of the Prospectus for the M.B.B.S Course 1997-98 which provides for reservation of seats for the children of Medical Department staff who lost their lives on account of infection, radiation and chemical reaction during the course of occupation in Government Hospitals, in any one of the Government Medical Colleges in Tamil Nadu forthwith, and pass such further or other orders as this Court may deem fit and proper.

2. In the Prospectus issued by the second Respondent for admission to Medical and Dental Colleges, Clause 3.5 (xi) reads thus:

Seats reserved for children of medical department staff who lost their lives on account of infection, radiation and chemical reaction due to occupational hazards in Government hospitals.

No. of seats reserved in MBBS--4

An expert committee will examine the claims of candidates and offer their recommendations regarding their eligibility for admission under this Special Category.

Note: The candidates seeking admission under this category should enclose along with their application certified copies of the case history, nature of death, cause of death and death certificate of their parent (s).

Petitioner, in his affidavit, has stated that while he was about 2-1/2 years old, his father died due to blood cancer. His father died on 11-7-1983 while he was working as a Tutor in the Chengalpattu Medical College. Petitioner, being the only son of his deceased father, was looked after by his mother, and with great difficulty he studied upto plus Two and obtained reasonably good marks. It is his further case that he belongs to the most backward Vanniyar Community. Petitioner appeared for the Entrance Examination for admission to the MBBS Course 1997-98 with Registration No. 9721038 and secured 42-08 in the Biology group out of 100. In total, Petitioner had secured 217.28/300. It is his further case that his father was a doctor appointed as Assistant Surgeon in the Department of Radiology in the General Hospital, Madras, and he was later transferred to the Coimbatore Medical College Hospital. Since, he was appointed in the Department of Radiology, he was infected by radiation and affected by occupational disease, namely, leukaemia. Petitioner applied for admission even during 1996-97. He was not selected. He filed W.P.15291 of 1996. It is said that writ petition is still pending. According to the Petitioner, the denial of admission by the Respondents is arbitrary, and, therefore, he seeks the assistance of this Court to compel the Respondents to admit him.

3. A detailed counter-affidavit has been filed on behalf of the Respondents, justifying their action, and also explaining how the Petitioner is not entitled to get admission under the special category. One of the main reasons mentioned is that list of candidates selected under special category was published as early as on 1-7-1997, and this writ petition has been filed only on 18-11-1997, i.e., after a lapse of nearly five months. By that time all admissions have been closed and Course have also begun, and now the Petitioner wants admission during the middle of the year, belatedly. When students have been already admitted, it is not proper to disturb the completed admission.

4. On merits, it is contended that the application form filed by the Petitioner has not disclosed anything. Along with the application form, he has only filed a certificate issued by Dr. V.K. Rajagopalasamy dated 20-3-1980. The application did not disclose the cause of Petitioner's father's death. No evidence was placed before the Selection Committee that the Petitioner's father died due to occupational hazards in Government Hospital. Except for the Certificate which did not disclose anything, no other evidence was produced. In spite of it, the counter affidavit has been filed taking into consideration all the documents that have been filed along with the writ petition. It is said that it is the Expert Committee which is considering the eligibility of admission, and the Selection Committee is

making the selection, only on the basis of recommendation made by the Expert Committee, in its Report. So long as the formation of the Expert Committee or its recommendations are not challenged, the Selection Committee cannot be blamed for not selecting the Petitioner. It is further said that the various certificates which are included in the typed set of papers cannot be believed and they are suspicious. Even the Certificate dated 20-3-1980 only shows that the father of the Petitioner consulted one Dr. VJC Rajagopalasamy for general weakness of illness. His blood test showed that he was suffering from leukaemia, and therefore he was advised to take special treatment. Petitioner's father Dr. A. Rajasekaran died only in July 1983. From 1980 to 1983, what was the treatment taken by Dr. A. Rajasekaran was also not disclosed. The Petitioner had enclosed prescriptions given by Dr. V.K. Rajagopalasamy, dated 20-2-1979 and 25-2-1979. They showed that the Petitioner's husband was suffering from Asthma and that he was also having some heart problem. He was given some vitamin tablets. From the treatment that was given from February 1979, under no circumstance, can it be believed that Dr. Rajasekaran was suffering from blood cancer, and that too the infection was due to his employment. When the documents produced are insufficient to come to a conclusion that the staff was affected by illness due to employment, Petitioner cannot be considered for admission under special category.

5. I heard learned Counsel on both sides.

6. Mr. R. Gandhi, learned Senior Counsel appearing for the Petitioner argued that the Petitioner was only 2-1/2 years old when his father died, and at that time there was no provision for admission to special category, and if there was such a provision, he would have made arrangements for getting documents. According to him, in cases of this nature, Court will have to be sympathetic, and it should not be too technical. The Court must take into consideration the intention behind making such reservations. Learned Counsel argued that implementation of such reservation can be had only if the Court also takes a practical approach in such cases. He relied on a decision of this Court in *V. Shanthanalakshmi Vs. The State of Tamil Nadu*, and also a Division Bench judgment in the same volume at page 851 (*Midhuna Nathan v. State of Tamil Nadu* rep. by its Secretary, etc. and Ors.). Learned Senior Counsel stressed the following observation of the learned judge in *Shanthanalakshmi's* case (*supra*).

The object and purpose of the reservation of this special category is laudable and appear to support the deserted woman who after getting education in a professional college will not only serve the society, but also will relieve herself from the misery and/or dependency and will lead a respectable life. This serves a good social cause. This type of reservation made to encourage the unfortunate and suffering should not be handicapped on a very technical ground without substance. Denial of admission to the only candidate available, i.e., the Petitioner, when, on facts it is established that she is a deserted woman, merely on a very feeble and technical ground that the Petitioner did not enclose

Tahsildar's certificate with the application form, is not "justified, and it does not serve the purpose for which the reservation is made in the special category." In the subsequent Division Bench judgment (referred to supra) also, the same principle was reiterated. I do not think on the basis of these decisions, the case of the Petitioner has to be considered.

7. As pointed out in the counter-affidavit, the selection is made by an Expert Committee, and the Selection Committee is making the selection only on the basis of the Report of the Expert Committee. The constitution of the Expert Committee or its conclusion is not challenged. The Selection Committee is bound by the prospectus and it cannot act beyond the same.

8. As rightly contended by learned Counsel for Respondents, the documents filed by the Petitioner will not show that his father died on account of infection caused by occupational hazards in Government hospital. The Doctor's certificate issued in February 1979 only shows that the Petitioner's father was suffering from some asthma trouble and he was also having some heart ailment. Only in the Doctor's Certificate of 1980, it is said that his blood-test showed that he was suffering from leukaemia. No materials were produced before the Expert Committee to show whether leukaemia was due to occupational hazards, and what was the treatment that was taken by Dr. Rajasekaran from 1980 to 1983, and what was the cause of his death. Even in the prospectus, it is said that supporting documents have to be filed along with the application. It is the case of the Selection Committee that except the Certificate dated 20-3-1980, no other document was filed, and on that basis even the Expert Committee will not be in a position to hold that the Petitioner is eligible to get admission under the special category.

9. It is further seen that this writ petition has been filed very belatedly, i.e., nearly 4-1/2 months after the admissions were closed. At this stage, if the entire admission is re-opened, that will affect the whole admission process, and in such a position, the Court must be very slow in interfering with the admission.

10. Learned Senior Counsel argued that in cases of this nature, sympathy has to be shown to the applicant. Petitioner has come to this Court on the basis of a legal right and he wants to enforce the same under Article 226 of the Constitution. If eligible candidates are available, and conditions of admission are also stipulated, there is no ground for sympathy in the case of admission. That will amount to favouritism only. The decisions relied on by learned Senior Counsel also will have no application. In Shanthanalakshmi's case (supra), the applicant was admittedly a deserted woman and she was qualified to get admission in that category. The only defect in her application was, it was not supported by a Certificate issued by Tahsildar. It was in such circumstances, the learned Judge held that a practical approach has to be made, and admission should not be denied for technical reasons. That principle was reiterated by the Division Bench in Midhuna Nathan's case (supra). The reasons stated in those cases will have no application to the facts of this case, when the Petitioner has no

qualification for being considered under the special category, consequently the Writ Petition is dismissed. No costs. WMP 27601 of 1997 for interim direction is also dismissed.