

(1993) 09 MAD CK 0081

In the Madras High Court

Case No : Writ Petition No. 15904 of 1993

R. Balamurugan

APPELLANT

Vs

The Principal Government Engineering College, Salem-11, 2
The Director of Technical Education, Directorate of Technical
Education, Madras-600 025

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Citation : (1993) 09 MAD CK 0081

Hon'ble Judges : Raju, J;Bakthavatsalam, J

Bench : Division Bench

**Advocate : D. Govinda Ready, for the Appellant; P. Shanmugham, Special
Government Pleader, for the Respondent**

Judgement

1. The above writ petition has been filed for a writ of mandamus directing the respondents to admit the petitioner in the first year course of the

Engineering degree course of this year (1993) by declaring that the marks obtained by the petitioner in April 1993 examination as the first

improvement examination. The petitioner claims, in the affidavit filed in support of the writ petition, that he belonged to the Most Backward

Vanniya Community"" and that he passed the Higher Secondary examination held in March 1992 securing the following marks:

Physics -137;

Chemistry -130

Biology -131 and

Mathematics -114.

with the object of joining professional courses the petitioner wanted to improve his performance. Admittedly the petitioner applied for the

examination to be held in September 1992 and also paid the examination fee. His register number for the said improvement examination is

857672/September 1992/501. The petitioner claims that due to his ill-health he could not actually appear and write the examination held in

September 1992. Thereafter the petitioner applied for writing the improvement examination to be held in March 1993, It is claimed that he secured

in the said examination marks as hereunder:

Physics -171;

Chemistry -170;

Biology -157; and

Mathematics -180;

2. With the above marks, the petitioner applied for admission into the Engineering Degree course and undertook the entrance examination held for

the year 1993, with Registration No. 237102. The petitioner secured 43.3 out of 50 in Mathematics and 40.4 out of 50 in Physics and Chemistry.

The petitioner has also been provisionally selected for admission into the First year of the B.E. Degree course under the category of ""Free Seats

and allotted to the Government College of Engineering, Salem. When the petitioner presented himself before the Principal of the College, for

admission with all the relevant certificates he returned the certificates and declined to admit him stating that his selection taking into account the

improvement marks obtained in the examination held in March 1993 which amounts to really the second improvement performance marks, is bad

and not valid. The move of the petitioner before the Director of Technical Education also did not meet with success since the Liaison Officer of the

Director stated to the petitioner that the stand taken by the Principal of the Salem Engineering College was correct. Hence the above writ petition.

3. The contention on behalf of the petitioner both in the affidavit filed in support of the writ petition and that at the time of hearing is that though the

petitioner applied and got himself registered as well as paid the examination fee for writing the examination in September 1992, he could not

actually attend and write the examination due to ill-health and therefore the examination undertaken by the petitioner in March 1993 alone should be

considered to be the First Improvement Examination and that therefore the selection for admission to the B.E. Degree Course (First year) is valid

and cannot be said to vitiated. It is also contended that the denial of admission is arbitrary, unreasonable and violative of the fundamental rights of

the petitioner. Reliance was also placed on the decision of the Supreme Court of India reported in *Abhijit Vs. Dean, Government Medical College,*

Aurangabad and Another, .

4. Mr. P. Shanmugham, learned Special Government Pleader invited our attention to the Notification issued by the Department of Technical

Education, Government of Tamil Nadu pertaining to the admission for B.E. Degree course, 1993 and the Instructions to candidate issued along

with application presented therefore, and particularly to C1.2.3 (Note No. 2) which stipulate not only that the First Improvement marks alone will

be taken into account but which also made it clear that for the purpose of calculation of the number of appearances the registration made by the

applicant in the Qualifying Examination, irrespective of the fact whether the candidate has written the examination, shall be considered as an

appearance and the same shall be taken into account for determining the number of appearances prescribed. Consequently, it is contended for the

respondents that no exception could be taken to the action declining to admit the student and that the petitioner is also estopped from contending

to the contrary, he having applied for the course under a particular scheme with specific stipulation governing such admissions and being bound by

the terms and conditions laid down therefor. It was also contended for the respondents, the decision of the Supreme Court will have no application

whatsoever to the case on hand and the ratio laid down was peculiar to the facts of that case.

5. We have carefully considered the submissions of the learned counsel appearing on either side and we are unable to agree with the claim made

for the petitioner. There is no serious controversy over the position that as the indisputable facts on record shows, his case will attract C1.2.3(Note

2) referred to supra and though the petitioner did not really attend or write the Examination in September, 1992, on account of ill-health claimed,

the fact that he has registered himself as a candidate by paying the necessary Examination fee and got assigned a Registration number also, it will

be construed as an appearance in/computing the number of appearances As the said stipulation which is one of the conditions governing the

scheme of admission is very specific and clear on the position, it is not open to the petitioner to claim any right for admission into the B.E. Degree

course by ignoring an express stipulation. The petitioner was well aware of the said express stipulation and having applied subject to the said

stipulation it is not open to the petitioner to resile back or turn round and contend to the contrary, at any rate so long as the condition or the clause

continue to exist. The petitioner has not chosen to challenge the said clause at the earliest opportunity and at any rate cannot be allowed to

challenge the same at this point of time. The objection for the respondent has been, in our view, well taken and the petitioner's claim cannot be

countenanced, ignoring a specific stipulation and clause, proclaimed as a condition for the admission into the course in question.

6. The decision of the Supreme Court in *Abhijit Vs. Dean, Government Medical College, Aurangabad* and Another, very much relied upon for the

petitioner is one arising under totally different set of circumstances. The appellant before the Supreme Court in that case who secured first rank in

order of merit in the III M.B.B.S. examination of the Marathawada University in May 1985 and also stood first in Surgery/and

ENT/Ophthalmology sought for admission to the M.S. Degree course commencing in July, 1986. The selection for such admission was purely on

merit but he was not selected on account of a deduction of 5 per cent of marks obtained by him on the ground that he had passed the subject in his

second attempt. The basis of such action was that in the III M.B.B.S. final term the appellant suffered from infectious hepatitis and therefore unable

to attend his classes and clinic. Consequently, he applied to the Dean to cancel third M.B.B.S.. final term and to permit him to attend classes and

clinics regularly with the next batch and this was actually done and only thereafter he creditably passed the examination, as noticed supra. There it

was not only not disputed that the appellant was ill and hospitalised so as not to attend the classes and clinic but that he did not even submit his

application form for the III year M.B.B.S. examination in 1984. It is only in that context and fact situation that the Supreme Court held that the

appearance of the said candidate in the next year batch in 1985 cannot be treated as the second attempt. This is made very clear by the

observation of the Court in the said decision in the following terms:

...We may at once say that the appellant was not "due" to appear at the examination as he had not put in the necessary attendance of the classes

and clinics and had not even submitted his application form for the examination. We are also of the view that if the rule has the effect of treating

failure to appear at the examination because of serious illness as non-appearance of the examination so as to make the candidate liable to a

deduction of five per cent of marks when seeking admission to a Post graduate course the rule is indeed arbitrary..

Such an observation came to be made in the context of a provision for deduction of a particular percentage of marks and also of an examination

which he is entitled to take as a matter of right, having been admitted to the M.B.B.S. Course of study.

7. The case on hand has no parallel for comparison or analogy with that of the Supreme Court. In the case before us the petitioner not only applied

for the examination for improvement performance in September 1992 but also paid the examination fee and got himself registered as a candidate

for the said examination and the allotment of the registration number disclosed by him in the affidavit shows that he should have been issued with a

hall ticket also for the purpose of the said examination. There is no material worth credence about the reason for not thereafter appearing in the

examination in September 1992, except the general claim now made in the affidavit about the alleged illness. The observations of the Supreme

Court cannot be taken out of their context and factual background for universal application. It is all the more so, when the instructions to

candidates specifically dealt with such a situation without leaving the matter for any possible interpretation otherwise. Consequently we are of the

view that the decision of the Supreme Court referred to above cannot help the petitioner in this case, in any manner, to have his claim upheld or

countenanced.

8. The plea made generally that the refusal of admission for the reason in question is arbitrary and violation of fundamental rights of the petitioner

has no substance whatsoever. This court has held on more than one occasion that there is no analogy or comparison of the claims of a particular

candidate who has creditably cleared all subjects and passed the course in one and the same attempt and examination and such of those who have

either completed the same in more than one attempts or improved their performance by undertaking further attempts or appearances, for any equality of treatment. This Court as well as the Supreme Court of India have repeatedly held that all and every selections for admission into professional courses are to be only on the basis of merit and that having regard to the large number of eligible or qualified candidates in the field and the limited number of seats available in professional courses, the State Government or the competent authority shall have the necessary power and authority to lay down the standards, norms and criteria for making such selections from out of the large body of eligible candidates, to ensure that candidates of merit alone get selected for admission. As a matter of fact it was well within the competency or authority of the State Government to stipulate that only the marks obtained in the examination in which a particular candidate had really passed the eligibility course or a qualifying examination alone would be taken into account for selection along with the marks secured in the entrance examination. But, the government has chosen to give a special concession for making improvement of their academic performance and the said concession was made subject to certain specific conditions and terms viz., that the first improvement marks alone will be taken into account and that for the purpose of calculation of the number of appearances, the registration made by the applicant in the qualifying examination irrespective of the fact whether the candidate has written the examination, shall be considered as an appearance. The provision for taking into account improvement examination itself being a concession shown subject to certain conditions, there is no right in the petitioner to contend that the concession should be extended without the conditions imposed therefor. The petitioner has no legally protected or any vested right to have such a concession, de hors the conditions and consequently there is no room or scope for contending that the stipulation is arbitrary or in violation of any of the fundamental rights of the petitioner. There is neither any legally vested or protected right in the petitioner nor could it be claimed that the petitioner had any fundamental right to write any examination by way of improvement of his performance even after passing the particular course or examination already (...sic) once. Viewed in that context, as it ought to be the plea of alleged arbitrariness or violation of fundamental right has no meaning or substance whatsoever.

We are therefore of the view that the stand taken for the respondents is well merited and there is no scope for issuing any writ in the nature of a writ of mandamus as prayed for. For all the reasons stated supra, the writ petition fails and shall stand dismissed, but in the circumstances of the case there will be no order as to costs.