

(2009) 08 MAD CK 0459

In the Madras High Court

Case No : Writ Petition No's. 29541 of 2008 and 1162 and 1117 of 2009 and
Writ Appeal No's. 1081 to 1083 of 2009

Reena Joy represented by her mother and natural guardian
Aneyamna Joy and Others

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2009) 8 MLJ 206 : (2009) WritLR 863

Hon'ble Judges : H.L. Gokhale, C.J;D. Murugesan, J

Bench : Division Bench

Advocate : Silambanan and AR.L. Sundaresan and A.L. Gandhimathi, in writ Appeals, for the Appellant; AR. L. Sundaresan and A.L. Gandhimathi, for 2nd respondent, Raja Kalifulla, Government Pleader for 1st respondent, Issac Mohanlal, for 4th respondent in W.P. Nos. 1162 and 1117/09, S. Silambanan, for 1st respondent in all appeals and respondents 1 to 4 in W.A. No. 1083/09, Raja Kalifulla, Government Pleader for 2nd respondent in W.A. Nos. 1081 and 1082/09 and 5th respondent in W.A. No. 1083/2009, Issac Mohanlal, for 4th respondent in W.A. Nos. 1081 and 1082/09 and 7th respondent in W.A. No. 1083/09, for the Respondent

Judgement

H.L. Gokhale, C.J.—Heard Mr. S. Silambanan, learned Counsel appearing for the petitioners in all the petitions, Mr. G. Sankaran, learned Special Government Pleader (Education) appearing for the State of Tamil Nadu, Mr. AR. L. Sundaresan, learned senior counsel appearing with Ms. AL. Gandhimathi, learned Counsel, for Tamil Nadu Dr. M.G.R Medical University and Mr. Issac Mohanlal, learned Counsel appearing for M/s. Global Nursing College.

2. The petitioners, who are the students of Nursing, the State of Tamil Nadu and Tamil Nadu Dr. M.G.R Medical University are the main parties to these writ petitions. Learned Counsel appearing for the parties request that these writ petitions be taken up on the Board of this Bench, and accordingly the writ petitions and the writ appeals are taken up, heard and are being disposed of at

the admission stage itself.

3. The petitioners are students, who hail from Kerala, and who have taken admission in a Nursing College situate in Kanyakumari. All these students/petitioners have taken up admission to Global Nursing College in Kanyakumari, except one Reena Joy, who has filed W.P. No. 29541/2008, and who has taken admission in Jaynee College of Nursing in Dindigul. The petitioners have taken admission to these colleges without their eligibility for admission being examined by Tamil Nadu Dr.M.G.R Medical University. All of them contend that they have done vocational course in Kerala with Physics, Chemistry and Biology, and it is their case that they are entitled for admission to the nursing course being conducted in Tamil Nadu. The colleges have given admission to the students without getting the eligibility decided by the University. In the circumstances, the University has not allowed them to appear for the first semester examination, which is scheduled from today (03.08.2009). As the applications of the petitioners for eligibility have been rejected by the University, they are not being allowed to appear for the examination. It is, therefore, that they have filed these writ petitions seeking a writ of certiorari to quash the communication from the University declining them to admit to the course and consequently refusing them permission to write the examination.

4. The State of Tamil Nadu had earlier issued G.O.Ms. No. 186 dated 26th March, 1996 under which certain qualifications were prescribed under Clause-4 of the said Government Order. The said clause reads thus:

MINIMUM QUALIFICATION FOR ELIGIBILITY FOR MBBS/BDS/B.PHARMACY/B.SC., (NURSING)/B.P.T COURSE

Candidates, who have passed the Higher Secondary Certificate (Academic) Examination conducted by the Tamil Nadu Higher Secondary State Board with the following groups of subjects, shall be eligible for the I year MBBS/BDS/B.Pharmacy/B.P.T Course:

a) Physics, Chemistry, Botony and Zoology

Or

b) Physics, Chemistry, Biology with any other subjects.

The candidates, who have passed other equivalent examinations with the same group of subjects as mentioned above, also shall be eligible for admission to the courses subject to the condition that the candidates should obtain the necessary eligibility certificate from the Tamil Nadu Dr.M.G.R Medical University.

Diploma holders in Pharmacy will be admitted only to I year B. Pharmacy course and their selection will be made on the basis of marks obtained in the final examination of the Diploma in Pharmacy Course.

Higher Secondary Certificate Vocational Stream candidates and P.U.C. candidates are not eligible for admission to MBBS/BDS/B. Pharmacy/B.Sc., (Nursing)/B.P.T

course.

On a perusal of Clause-4, it is seen that the candidates who have passed their Higher Secondary Certificate examination conducted by the Tamil Nadu Higher Secondary State Board with the specified subjects are eligible for admission to the course. Other students, who have passed other equivalent examinations with the same group of subjects, are also eligible for admission to the course. It is also specified in Clause-4 of the G.O that Higher Secondary certificate vocational stream candidates and P.U.C candidates are not eligible for admission to MBBS/BDS/B.Pharmacy/B.Sc (Nursing)/B.P.T course.

5. It appears that passing of this Government Order led to representations from the students and their parents, which paved the way for passing of subsequent G.O.(Ms.) No. 216 by the State Government on 03.07.2008. The G.O itself points out in paragraph-2 that representations were received by the Government from the public, which contained two submissions. The first is that the age limit be increased from 17 to 35 for Diploma in Nursing and B.Sc Nursing Courses and the second is that all +2 students irrespective of the subject may be considered as eligible for admission in Nursing Courses in Tamil Nadu. In paragraph-3 of G.O.Ms. No. 216, the Government has extended the age limit to 30 years for the General Category candidates and for the Scheduled Caste and Scheduled Tribe candidates to 35 years. As far as the representation on subjects is concerned, Clause-4 of the G.O is relevant, and which reads as follows:

4. To enable the rural candidates to join the Nursing Courses and to fall in line with the procedure followed in other States, it has been decided that +2 pass with Science subject may be fixed for admission to B.Sc Nursing and Diploma in Nursing Courses.

Clause-5 of the G.O, which is also relevant, reads as follows:

5. The Government accordingly direct that the existing age limit of 17 to 25 years for admission to Diploma in Nursing and B.Sc Nursing be revised as 17 to 30 years. The maximum age shall however be raised to 35 years for SC/ST candidates. The Government also direct that the educational qualification "a pass in +2 with science subject" be fixed for admission to both the courses as prescribed by the Indian Nursing Council.

Placing reliance on these two clauses, it is submitted by Mr. Silambanan that Clauses 4 & 5 will have to be given the same meaning as Clause-4 which states that to fall in line with the procedure followed in other States, it has been decided that +2 pass with Science subject may be fixed for admission to B.Sc Nursing and Diploma in Nursing Courses.

6. Now what has happened in the instant case is that the University has rejected the application for eligibility of these petitions by its communication dated 29th December, 2008. As far as the petitioners, Shibin Raj B.S. Chithra. S, Anija L.C and Neethuraj J.J are concerned, the University communication reads as follows:

As per the orders of Government in G.O.Ms. 186, Health and Family Welfare Department dated 25.03.1996 the candidate who have passed Vocational Higher Secondary Courses of Government of Kerala are not eligible for admission to any Under Graduate course in this University.

7. Mr. Sundaresan submits that the University has taken a general decision not to permit the vocational course with Physics, Chemistry and Biology for the Under Graduate course offered by the University and he refers to the resolution passed by the Governing Council in that behalf.

8. Having noted the submissions advanced by the learned Counsel, we do accept that there is some force in the submission of Mr. Sundaresan that there has to be equivalence between the two courses and it is for the University to decide as to whether the course is equivalent or not. However, from the impugned order/communication of the University dated 19th December, 2008, it is seen that the University has rejected the application of the students on the basis of the earlier G.O.Ms. No. 186 and has not considered the question of equivalence of the courses, which these students have pursued in Kerala with the one which is supposed to be the proper course for admission norms, particularly with reference to the G.O which is issued on 03rd July, 2008, and which is the relevant G.O for the purposes of admission to the present course and also the procedure for the current year.

9. Having considered the submissions advanced on either side, and also the relevant materials produced, we permit the students to give the examination, which is starting from today. We make it clear that giving this examination does not create any equity in their favour. The University will examine the eligibility of their course which they have undertaken in Kerala on the test of one permissible under the present rules of admission. The students will hand over to the University the prospectus and the subjects of the course that they have undertaken in Kerala within two weeks from today, and the University will take necessary decision within two weeks thereafter. In the event, the University decides against the students, their admissions will stand cancelled. The University shall not declare the results until the eligibility issue is decided. The writ petitions are disposed of accordingly.

10. Since the petitions are disposed of, the appeals will also stand disposed of, which are filed against the interlocutory order passed in all the writ petitions. We make it clear that in the event the University finds that the applications given by the College are in flagrant violation of the University Regulations, it will be open to the University to take action against the college concerned. No costs. Consequently, miscellaneous petitions are closed.