

(1985) 08 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 8081 of 1985

S. Muthumanicakam

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1986 Mad 179

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : S. Sivasubramaniam, for the Appellant; N.R. Chandram, Addl. Govt. Pleader and Row and Reddy, for the Respondent

Judgement

1. The matter comes up after notice of motion. Mr. N. R. Chandran, Additional Government Pleader, represents respondents 1 and 2 M/s. Row

and Reddy represent respondent 3 and 4. The prayer in the Writ petition runs as follows :-

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Honourable Court may be pleased to issue a Writ of

Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of a writ of certiorarified mandamus calling for the records

of the respondents I to 3 relating to the Candidates issued for the admission of candidates into B. E. course for the year 1985-86,.quash the same

which relates to the Diploma holders, in so far as it affects the petitioner's right and consequently direct the Respondents 1 to 3 to frame uniform

norms in respect of minimum marks after reserving a quota for the Diploma holders for admission into B. E. course and also to consider the

application of the petitioner on such revised norms

The prospectus admittedly sets for the instructions to candidates, prescriptions with regard to eligibility for, the course, and the methodology for

selection. The petitioner does not plead that he was not apprised of the implications of the above aspects. Any candidate who applies for the

course applies accepting the prescriptions. If it is a case of not accepting the prescriptions and challenging them on constitutional basis, the

candidate ought not to have resorted to the process of applying under the very same prescriptions. The petitioner knew about the prescriptions,

and accepting them he applied for admission to the course. But his application has been rejected on the ground of not satisfying the mark rules. The

petitioner is stated to have taken the entrance examination on 6-7-1985. Now the petitioner attacks the very system. The relevant allegations in his

affidavit run as follows :

I state that the system evolved by the respondents for selection cannot be supported on any rational basis. It has no nexus with the object of

maintaining the standard of education or based upon any intelligible data The selection is based upon average marks in physics and

chemistry in respect of all the students excepting the diploma. holders like me. Even for B. E. (Agrl.) course the average marks is alone taken into

consideration.

I state that the plus 2 students are able to score very high marks i.e. 90% to 95% in science subjects due to different type of examination. On the

other hand in the diploma course awarding of marks is strict and the highest marks will not go beyond 80%. Similarly in the Engineering subjects in

Semesters V and VI awarding marks is comparatively low and it cannot be equated with the marks awarded to the plus 2 students in Physics and

Chemistry. It is a case where unequals are treated as equals for purposes of comparing the respective merits. Even if full marks are obtained in the

entrance examination the Diploma students cannot compete with the other students. Therefore the very system is arbitrary, unjust and violates the

principles of equality enshrined under Art. 14 of the Constitution of India.

I state that unless a quota is fixed for the diploma holders out of the total seats in B. E. course as in the case of M. B. B.S. course where 10%

seats are reserved for graduates the diploma holders in Engineering there is no

scope for them to secure admission in the B. E. course. The present system successfully prevents the diploma students from competing with others on equal terms. It is impossible to test the merits of all the candidates merely on the basis of the, marks obtained in subjects which are totally different both in syllabus and method of valuation.

2. There is one principle, countenanced by the highest court in the land, which dissuades me from going into the contentions raised by the

petitioner. Dealing with the allegations of bias against a member of Bar Council Tribunal, the Supreme Court, in *Manak Lal Vs. Dr. Prem Chand*, ,

observed as follows:-

Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his

failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant

wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an

unfavourable report, he adopted the device of raising the present technical point.

3. In *G. Sarana Vs. University of Lucknow and Others*, the Supreme Court, dealing with a similar situation, and following the ratio in its earlier

pronouncement, referred to above, observed as follows: -

We do not, however, consider it necessary in the present case to go into the question of reasonableness of bias or real likelihood of bias as

despite the fact that the appellant knows all the relevant facts, he did not before appearing for the interview or at the time of the interview raise

even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a

chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the

Committee.

4. On the question of attack on the constitution of a committee in the matter of appointments in *A. Sesharajan v. The Collector, Kanyakumari*

District at Nagercoil, (W. P. No.895 of 1984, order dated 8-8-1984), it has been observed as follows : -

But one salient principle which this court, exercising jurisdiction under Art. 226 of the Constitution of India takes note of it that a party who

complaints of any violation of any rule with reference to the constitution of a committee in the matter of appointments should not be permitted to raise such a grievance after having participated and taken his chance before the said committee. This will come within the mischief of the rule that a party should not be allowed to approbate and reprobate. This will also come within the principle of waiver. It is not claimed by the petitioner that he did not know about the constitution of the committee, which took in the District Educational Officer, Thuckalay, instead of the Chief Educational Officer. Obviously, the petitioner knew about this and his right to take objection in any manner known to law. Hence, the petitioner must be deemed to have been conscious of his legal rights in the matter and therefore his deliberate failure to raise objections to the constitutions of the committee at the earliest point of time and before his participation in the selection process before the very same committee creates an effective bar of waiver against him and he is precluded from raising it before this court for the first time. It is patent that the petitioner wanted to try his chance before the committee without any reservation, voluntarily appeared before it and now, when he is confronted with an unfavourable decision, he has adopted the device of raising the present technical point, This rule is well settled and it does not require any citation.

5. The same ratio applies to a case of prescriptions for selections for appointments to posts and to admissions to educational courses. In I. L.

Honnegouda v. State of Karnataka, AIR 1978 SC 28, it has been observed as follows:-

the fact that the appellant acquiesced to the 1970 Rules by applying for the post of the Village Accountant, appearing before the Recruitment

Committee for interview in 1972 and 1974 and taking a chance of being selected, the present appeal which question the constitutionality of Rules 4

and 5 of the 1970 Rules cannot be allowed.

6. In W. P. No. 11505 of 1981 order dated 3-2-1982 S. Mahendran is the Secy. to Government Education Dept. Madras there was, amongst

other contentions, an attack on the prospectus on the ground of lack of guidelines for selection to Law College. Taking note of the ratio of the

Supreme Court in I. L. Honnegouda v. State of Karnataka, AIR 1978 SC 28 it was observed as follows:

Secondly, the alleged infirmities which the petitioner is projecting with reference to the selections made, whether they be under Rules or otherwise,

were there from the inception and they are not factors which have crept in after selections. The constitution of the members of the selection

committee, the lack of guidelines for selection in the prospectus the treatment of the candidates irrespective of their obtaining First or Second

Classes in their academic qualifications were all part of the system which worked cut for selection. The petitioner having appeared for the selection

with all these alleged infirmities staring in his face and taking a chance of being selected as the system stood worked out, cannot turn back and

question the system. The Supreme Court in I. L. Honnegouda v. State of Karnataka, AIR 1978 SC 28 discountenanced a party questioning the

validity of the concerned rules after having acquiesced in the rule and applying for the post and taking a chance of being selected. In view of this

position, this Writ Petition cannot be entertained and the same is accordingly dismissed.

7. Taking note of the above principles, I am obliged to dismiss this Writ Petition and accordingly the same is dismissed. No costs.

8. Petition dismissed.