

(1993) 11 MAD CK 0046
In the Madras High Court

Sanjay Arya

APPELLANT

Vs

The Director of Technical Education and Others

RESPONDENT

Date of Decision : 19-11-1993

Acts Referred:

Citation : (1994) 2 MLJ 277

Hon'ble Judges : Bakathavatsalam, J

Bench : Division Bench

Judgement

Bakathavatsalam, J.—The above writ petition has been filed for a writ of mandamus forbearing the respondents from restraining the

petitioner from writing the four year B.E. Degree Course University examinations under the following circumstances:

The petitioner claims to belong to Barber Community recognised as Backward Community in Rajasthan State and he passed the plus two

examination conducted by the Board of Secondary Education, Rajasthan, in the year 1992 in which he claims to have obtained the following marks

in the subjects indicated below:

English : 49/100

Maths : 76/100

Physics : 63/100

Chemistry : 60/100

It is also claimed by the petitioner that he obtained distinction in the Mathematics subject.

The petitioner appears to have approached the fourth respondent/self-financing college at Thanjavur in Tamil Nadu, seeking for admission to B.E.

degree course as against the seats available under the management quota in the said institution. On being satisfied, as it is claimed by the petitioner,

of the fact that the petitioner satisfied the guidelines issued for such admissions, the fourth respondent admitted the petitioner in the first year of the

B.E. degree course as against a seat available under the management quota in the said institution. The petitioner was also said to have paid the

necessary fees and joined the college and underwent instruction in the first year of the course. As was obliged, the fourth respondent appears to

have sent a list of candidates who had been admitted to the course in question for the purpose of writing the first year examinations during 1992-93

by a communication dated 17.4.1993 to the third respondent/Controller of Examinations, of the second respondent/University. While so, just

before the commencement of the Examinations, the Principal was said to have received a communication from the first respondent that the

admission of the petitioner was not approved, since he had not obtained the minimum required 70 per cent marks prescribed by the Government

as the eligibility marks for the admission of any student to the B.E. degree course in the State in professional colleges, both aided or self-financing,

or Government institutions. In spite of the College Authorities pursuing the matter before the higher authorities, it is claimed that the second

respondent rejected the admission of the petitioner by sending a communication dated 24.4.1993. It is at that stage, the petitioner has come before

this Court with a request for the relief as referred to supra.

2. At the time of filing the writ petition, the petitioner also filed W.M.P. No. 15219 of 1993 seeking for an injunction restraining the respondents

from preventing the petitioner from writing the University Examinations for the fourth year B.E. degree course including the first year examinations

which was stated to be held on 27.5.1993 or on any other date, pending disposal of the writ petition. A learned single Judge of this Court, after

hearing the petitioner, on being satisfied of a prima facie case in favour of the petitioner, issued a direction on 27.5.1993, directing the respondents

to permit the petitioner to appear for the examinations as prayed for, with a further reservation that the authorities need not value the Hfl"Bdp6Hsi

written by the petitioner until further orders. Notice was ordered to the respondents and they have entered appearance and filed counter-

affidavits also.

3. The petitioner has raised several grounds in the affidavit on the right of the respondents to enforce the prescribed minimum eligibility of 70 per

cent marks in the subjects, but, in our view, since the learned Counsel, before advert to such contentions, has referred to another issue, which

we feel would suffice to sustain the claim of the petitioner, we are not going into the tenability or otherwise of the other grounds raised in the

affidavit.

4. One of the grounds raised in the affidavit and urged at the time of hearing of the writ petition by learned Counsel for the petitioner is that in any

event, inasmuch as the petitioner belonged to the Most Backward Class viz., Barber community, which is recognised as Most Backward

throughout India, and having regard to the fact that the very students have been prescribed only 65 per cent minimum marks in the qualifying

examination for admission in to the B.E. degree courses, the admission to the fourth respondent/College of the petitioner, who has obtained 66 per

cent marks in the aggregate, could not be said to be bad in law and, therefore, the action taken by the respondents to interfere, with the

admission given to the petitioner is opposed to law.

5. The first respondent herein has filed a counter-affidavit. It is claimed therein that when the self-financed college in question sought the approval

of the admissions including that of the petitioner, it was noticed during the scrutiny of all original certificates such as transfer certificate, mark sheet,

community certificate, etc. that the marks obtained by the petitioner are less than the minimum aggregate of 70 percent marks required for

admission, that the other State candidates are treated as open class candidates for first year B.E. admission even though they belong to SC/ST of

the respective States and that, therefore, by treating the petitioner as belonging to the open class category hailing from other States, he should have

secured a minimum of 60 per cent in Mathematics, 60 per cent in Physics and 60 percent in Chemistry and an aggregate total of 140/200. It is

further contended that since the petitioner fell short of the said marks, the Principal of the College was informed as early as on 15.3.1993 with a

copy marked to the Registrar, Bharathidasan University, for removing the petitioner from the rolls of the College and, in spite of the same, the

college did not heed to the advice and directions of the first respondent. We desist from adverting to the other contentions raised in the counter

affidavit pertaining to the other grounds, except noticing the further fact that the Government of Tamil Nadu have approved the admission

procedure for the year 1988-89 including the educational qualification such as mark rules/improvements/attempts in the plus two examinations by

the Government Order, G.O.Ms. No. 815, Education Department, dated 12.5.1988, and that the other state candidates have to be treated only

as O.C. candidates for first year B.E., admission, even though they might belong to SC/ST/MBC/BC of the respective States. Reliance has also

been placed upon paragraphs 5A(1) of the Instructions to candidates for B.E., Admission 1991-92.

6. Respondents 2 and 3 have also filed a counter-affidavit. We avoid reference to the contentions raised in the said counter-affidavit in reply to the

other averments, except the one taken up for consideration and argued at the time of hearing at the first instance. With reference to the protection

claimed by the petitioner based on his knowledge, it is contended in paragraph 10 that no such claim that the petitioner belonged to the Barbar

Community of Rajasthan, a backward community was made to the University so far, except in the affidavit and that his claim, if any which was not

rejected on that ground, has to be stated before the concerned authorities and the petitioner must establish his community, subject to the

notification issued by the first respondent as to recognition of his community as Backward in the State of Tamil Nadu.

7. Learned Counsel appearing on either side reiterated the stand taken in the pleadings as above with reference to the eligibility or otherwise of the

petitioner for admission on the basis of the community of the petitioner, which is claimed as Barber, said to be a backward community in Rajasthan

State and Most Backward Community in this State, and also the Marks obtained by the petitioner as referred to above. The fourth

respondent/College with whom the certificate produced by the petitioner was available produced the Community Certificate given by the

petitioner. Learned Counsel for respondents 2 and 3 drew our attention to the decision of the Supreme Court in Marri Chandra Shekhar Rao Vs.

Dean, Seth G.S. Medical College and Others, , in support of their claim that the fact that the student concerned was a member of the class or

community entitled for reservation in a particular State, is no ground to claim such a benefit in a different state which is not his native State.

8. We have carefully considered the submissions of learned Counsel appearing on either side. As noticed earlier, learned Counsel for the fourth

respondent/college has made available, the community certificate issued in the local language with the English translated and duly attested certified

copy issued by the Tahsildar, Jodhpur, Rajasthan State that the petitioner belongs to the community of Barber, recognised as Backward Caste in

Rajasthan State. The problem that is posed for decision in this case required to be adjudicated not on any abstract principles as contended by the

respondents, but with reference to the peculiar facts and circumstances of the case. As already noticed, there is no controversy, or dispute over the

fact that the petitioner was admitted by the fourth respondent/college as against a seat available under the management quota. It is not a case

where the petitioner has applied and obtained admission as against the Government quota of seats on selection by the State Government, and

allotment to the fourth respondent/college. No doubt, any outside candidate who is a non-resident in the State and native resident of some other

state in the country, cannot straightaway come and seek his claim in this State as a member of the SC/MBC/BC, merely because he was treated or

considered to be so in his native state, as against the quota of seats-reserved for such SC/MBC/BC in the various professional colleges. If that had

been the claim and contention of the petitioner, there would have been no difficulty for us to discountenance such a claim. But the moot question is

whether his selection and admission as against the management quota of seats in a self-financing college is in accordance with law with reference to

the eligibility qualification prescribed. It must also be made clear that the case on hand is one relating to the period prior to the applicability of the

decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Prior to this decision, admissions to management

quota of seats available in self-financing colleges were made without any common entrance examination or selection on the basis of any reserved

quota for SC/MBC/BC in the State. The only criteria for securing admission during that period was that the candidate concerned must possess the

minimum eligibility marks as prescribed to be secured in the qualifying examination. It cannot also be disputed by the respondents that there was

more than one eligibility criteria of marks prescribed for candidates belonging to OC/SC/MBC/BC and that if a candidate who was admitted as

against a seat available under management quota in a self-financing college, and the said candidate happens to be a candidate belonging to

backward class or most backward class, only the minimum eligibility marks prescribed for such category of persons should be taken into

consideration for finding out the eligibility or otherwise of the candidate concerned for his admission. At the expense of repetition, we make it clear

that the view we are taking in this case, we would not take, if the candidate concerned or a claimant seeks his claim to any seat available at the

disposal of the Government either in its colleges or aided or self-financing colleges. As pointed out earlier, different considerations would arise in

such cases and our decision in this case is confined to the peculiar facts and circumstances of this case viz., that it related to the admission of a

candidate to a seat available under the management quota in a self-financing college for a period prior to the applicability of Unni Krishnan, J.P.

and others Vs. State of Andhra Pradesh and others etc. etc., , rendered by the Supreme Court.

9. Having regard to the community certificate, which the petitioner has made available even at the time of submitting his records to the fourth

respondent/college, that the petitioner belonged to Barber community which was said to be considered as a backward community in Rajasthan

State, and is still considered to be a most backward class in this State, the marks already possessed by him satisfy the minimum required eligibility

criteria prescribed in the qualifying examination and, therefore, his selection cannot be said to be bad in law. The principle sought to be pressed

into service by the respondents that, being an outsider and a native of a State other than the State of Tamil Nadu, the petitioner cannot claim to be

considered as a candidate belonging to the Backward class and that he had to be considered only as a candidate belonging to open class, does not

merit our acceptance in the circumstances pointed out supra.

10. The decision of the Supreme Court relied upon by learned Counsel for respondents 2 and 3 has no relevance to the case on hand. That was a

case wherein the petitioner before the court was born in Tenali in the State of Andhra Pradesh. He claimed to belong to Gouda community also

known as "Goudi" which is recognised as "scheduled tribe" in the Constitution (Scheduled Tribes) Order, 1950, as amended upto date. The father of the petitioner therein had obtained a scheduled tribe certificate from the Tahsildar and on that basis got an employment in S.T. quota in a Government of India undertaking and was placed in. Bombay in Maharashtra State. The petitioner was living in Bombay since the age of nine years and after passing the 12th standard examination of the Maharashtra State Board of Secondary and Higher Secondary Examination, Bombay Divisional Board, he applied for admission to the respondent medical colleges seeking benefit of reservation in favour of S.Ts. He was denied admission based on a circular dated 22.2.1985 issued by the Government of India, Ministry of Home Affairs, which stated that a SC/ST person who has migrated from the State of origin to some other State for the purpose of seeking education, employment, etc., will be deemed to be a SC/ST of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated. It was under such circumstances and in view of the circular orders, that the Supreme Court held that whenever a member of a scheduled caste or scheduled tribe, belonging to a particular area of a country, goes to other areas, he does not require the necessary protection and, therefore, the petitioner in that case was not entitled to be admitted to the medical college in Maharashtra State on the basis of the Scheduled Tribe Certificate, as claimed by him. The decision of the Supreme Court is to be distinguished for the simple reason that it concerned an admission as against a seat reserved for a SC/ST available with the College run by the State and not as against a seat of the type we are concerned in the present case to which the rule of reservation for SC/ST/MBC/BC never applied during the academic year in question. The very purpose and object of treating a candidate belonging to a reserved category or class as one belonging to O.C. outside the State of his origin is to ensure that he does not have the benefit of reservation in the migrated state who need the protection of reservation in that State. This principle also would not stand violated in case of the nature in respect of a seat which does not belong to any reserved or protected group or category. The decision of the Supreme Court does not stand in the way of the petitioner in having his admission to a seat available in management quota in a self-financing college which is not

governed by any rule of reservation or protection. The contentions to the contrary on behalf of the respondents, therefore, are devoid of merit.

11. Having regard to the above, we are of the view that there is no infirmity in the admission accorded to the petitioner in the fourth

respondent/College as against a seat available in management quota in a self-financing college for a period prior to the applicability of Unni

Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Consequently the writ petition shall stand allowed and a writ of

mandamus shall issue as prayed for. No costs.