

(1989) 09 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 10401 of 1989

S.P. Chandra Mohan represented by his father and natural guardian, V. Panneerselvam

APPELLANT

Vs

The Director of Medical Education, Chepauk, Madras-600005,
The Dean, Stanley Medical College, Madras and The
Secretary, Selection Committee, Sabarmathi Hostel, Kilpauk,
Madras 600010

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 35

Citation : (1989) 09 MAD CK 0035

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : R. Gandhi for M. Kandasamy, N. Paul Vasanthakumar, K. Ravichandra Babu and T.S. Sivagnanam, for the Appellant; T. Arivudainambi, Government Advocate, for the Respondent

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is to direct the respondents to admit the petitioner in the first year M.B.B.S. Course in Stanley Medical College, Madras, for the Academic year 1989-90 as he has already been selected by the third respondent. Notice of motion has been ordered on 3-8-1989.

2. The petitioner who belongs to a Most Backward Community has applied for M.B.B.S. in 1989-90 after passing the H.S.C. examination. In the application form, in column No. 3, he has shown his date of birth as 29-11-1972. It is to be stated here that column No. 3 states as follows:- "Age and date of birth (as found in S.S.L.C. or H.S.C. or other records)". The petitioner was allowed to write the entrance examination under registration No. 461125 and he has secured 220, as total marks. The petitioner was selected and an intimation was sent by the Secretary of the Selection Committee on 17-7-1989. It is stated in the intimation that the petitioner has been selected provisionally for admission to the

I year M.B.B.S. course 1989-90 session in Salem at Stanley Medical College, Madras. It is also stated that the selection of the petitioner will be confirmed only when he satisfies certain conditions. Item No. 4 of the condition is the certificate of evidence of date of birth. The petitioner reported for admission on 24-7-1989 and he was orally informed to meet the third respondent, i.e., Secretary, Selection Committee. It is alleged in the affidavit that the petitioner and his father met the third respondent on 29-7-1989 and they were informed that the petitioner was under aged as per the age given in the Higher Secondary Certificate, wherein the date of birth of the petitioner is given as 29-5-1973. It is relevant to point out that in the application form for admission, this petitioner has given his date of birth as 29-11-1972 specifically mentioning that it is as per the birth certificate issued by the Municipal Commissioner, Salem. Apprehending that he may not be admitted, he issued a notice under S. 80 of the CPC for the alteration of date of birth and has filed a suit O.S. No. 936 of 1989 before the District Munsif's Court, Salem, for a declaration that the correct date of birth of the petitioner is 29-11-1972 and also for a mandatory injunction directing the Collector of Salem and the Director of School Education to strike the entry of wrong date and correct the date of birth as 29-11-1972 in the records and the certificate of Higher Secondary Course. The petitioner alleges that since the petitioner's date of birth is in dispute, the petitioner's admission to the Medical College should not be unjustly denied by the Authority. It is further stated that the petitioner is entitled to be given admission as per his application wherein the date of birth has been given as 29-11-1972 and the respondents are bound to admit the petitioner in the first year M.B.B.S. Course for 1989-90, after having allowed him to the entrance examination and having selected him provisionally. The petitioner has submitted that the birth extract issued by the Salem Municipality is taken from the birth and death register and the entry in the birth register has got evidentiary value under S. 35 of the Evidence Act. A curious plea has also been advanced to the effect that exact age is never given by the students and as such it cannot be taken as conclusive proof. The petitioner has also relied upon the horoscope and it also shows the date of birth of the petitioner is 29-11-1972. The petitioner alleges that he being a brilliant student having been selected for the M.B.B.S. Course is entitled to get the admission in the course. The petitioner alleges that the mistake committed by his father cannot be put against him.

3. The learned Government Advocate contends that according to Rule 13 of the Prospectus issued for the admission of students in Government Medical College in Tamil Nadu for 1989-90, it is stated that candidates should have completed the age of 17 years on or before 31st December, 1989 and that no request for exemption from the prescribed age limit will be entertained. The learned Government Advocate further states that as per R.21 the selected candidates will be called for verification of certificates by the Deans of the Medical Colleges concerned and the candidates will have to produce the original mark sheet of the qualifying examination and other original documents, such as proof of age,

certificate of social status, Transfer Certificate, etc., at the time of verification. The learned Government Advocate also brings to my notice that admission will be cancelled if the candidates do not produce all the original documents and the original transfer certificate. The sum and substance of the contention of the learned Government Advocate is that the petitioner has been provisionally selected and unless he satisfies the condition prescribed under Rule 21, it cannot be taken that admission is final. The learned Government Advocate submits that the Higher Secondary Certificate produced by the petitioner shows the date of birth as 29-5-1973 and since there is a discrepancy between Higher Secondary Certificate and the birth extract issued by the Salem Municipality, the petitioner has not been admitted to the Course. The learned Government Advocate also brings to my notice that there is a suit pending before the Civil Court with regard to the correction of date of birth of the petitioner. He submits that unless the candidate satisfies the age limit for admission to the first year M.B.B.S. Course, his claim could not be considered and his case is liable to be dismissed.

4. Mr. Gandhi, learned counsel for the petitioner contends that the petitioner has given the date of birth as 29-11-1972 in the application form itself. An extract from the birth register from Salem Municipality has also been produced. The learned counsel's argument is all that is the candidate required to give is the certificate of age and in this case, a certificate of age has been given. The learned counsel also draws my attention to the intimation given to the petitioner is that the candidate is requested only to produce a certificate of evidence of date of birth. As such the learned counsel contends that when once the certificate of evidence from the birth extract of Salem Municipality is given, the respondents cannot deny the seat to the petitioner.

5. I have considered the arguments of Mr. Gandhi, learned counsel for the petitioner and the learned Government Advocate.

6. Condition No. 13 of the Prospectus states as follows:--

Candidates should have completed the age of 17 years on or before 31st December, 1989. No request for exemption from the prescribed age limit will be entertained.

7. R.21 as far as method of selection for admission is as follows:

(1) All the eligible candidates who have applied for admission than these exempted as above should write the entrance examination mentioned in R.1 above following the rules laid down for the same. The selected candidates will be called for verification of certificates by the Deans of the Medical Colleges concerned. Individual letters will be sent to the candidates in the order of merit. They will be required to undergo a Medical Examination at the College allotted by a Medical Board on the notified date. Candidates will have to produce the original mark sheet of the qualifying examination and other original documents, such as proof of age, certificate of social status, Transfer certificate, etc., at the time of verification. Admission will be cancelled if the candidate do not produce all the

original documents and the original transfer certificate. Only those candidates found medically fit by the Board will be admitted and be required to pay the fees in full immediately.

8. R.22 also would be noted which is to the following effect:--

Selected candidates are eligible to be allotted to any of the Medical Colleges in the State of Tamil Nadu. The list of Government Medical Colleges is given in Annexure No. VIII.

9. In the application form for M.B.B.S. for 1989-90 for H.S.C. candidates, column No. 3 is to the following effect:--

Age and date of birth (as found in S.S.L.C., or H.S.C. or other records).

Considering the conditions in the Prospectus and the requirement with regard to the date of birth in the application form, in my view, the birth extract also can be taken into account especially when it has been issued by a responsible Authority like Salem Municipality. The extract from the Register of Salem Municipality is not disputed. The evidentiary value of such birth extracts is well settled with reference to S. 35 of the Evidence Act. There is nothing in the application form or in the prospectus, which shows that only the date of birth shown in the S.S.L.C. or H.S.C., will be taken into account. The application form provides for evidence from "other records" also. With regard to the date of birth, in my view, the birth extract given by the Salem Municipality can be taken as "other records." I am inclined to accept the arguments of the learned counsel for the petitioner, Mr. R. Gandhi, that in view of the entry in the application form, the petitioner is entitled to be admitted, on the basis of the certificate of age given by the Salem Municipality.

10. It is true that a suit is pending before the civil Court for declaration but in my view, it has got nothing to do with the facts of this case, since I am taking a view with regard to the entry given in the application form and the rules in the Prospectus. It is true that the petitioner has been selected only provisionally as contended by the learned Government Advocate. But the authorities cannot deny the seat arbitrarily without looking into the proof of age given by the petitioner such as birth extract from the Salem Municipality register. It is also not denied by the respondents that the petitioner has given his date of birth even in the application form as 29-11-1972. With regard to the application form as on today and the instructions which are found in the prospectus as on date, I am of the view that the petitioner can produce a certificate of evidence of date of birth from the birth extract from a Municipality. If the authorities had any objection to this birth extract, they should not have selected or even allowed the petitioner to sit for the entrance examination, without doing so, it is not open to the authorities to drive away a student by taking up a stand that he is under aged. Even on the principle of equitable estoppel as has been held in *V.P. Thirunavukkarasu v. The State of Tamil Nadu* represented by the District Revenue Officer, Cuddalore 1973 II M.L.J. 181, I am of the view that the petitioner is

entitled to be admitted in the M.B.B.S. course for 1989-90.

11. I do hope that in future the authorities must have a careful look of the application forms and verify it properly before asking any candidate to sit for entrance examination and allowing him for interview. It is unfortunate that a student is driven away at the last minute taking an objection like this, that too against the entry in the application form. It is common knowledge that it is very difficult to get a seat in a Medical College especially when it is a case of a candidate from the most backward community gets a seat in the Medical College. I do not think that it is proper on the part of the authorities to deny the seat on the ground of underage at the last minute. I do hope the authorities will be careful in future and will not repeat the mistake again in the coming years. For the reasons stated above, the writ petition is allowed. However, there will be no order as to costs. The second respondent is directed to receive the fees and admit the petitioner as soon as the petitioner produces the order copy of this order Court.