

(1998) 10 MAD CK 0056

In the Madras High Court

Case No : W.A. No's. 854 and 855 of 1996 and C.M.P. No's. 9295 to 9297,
12168 and 12169 of 1998

State of Tamil Nadu and Others

APPELLANT

Vs

G. Sumathi and etc.

RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : AIR 1999 Mad 327

Hon'ble Judges : Shivappa, J;K. Natarajan, J

Bench : Division Bench

Advocate : D. Murugesan, Addl. Govt. Pleader, for the Appellant; S.
Ramaswamy, for the Respondent

Final Decision : Allowed

Judgement

C. Shivappa, J.—Two candidates by name, G. Sumathi and G. Malathi filed two writ petitions, viz., W.P. Nos. 3643 and 3645 of 1994

seeking for a direction for admission to 1st Years M.B.B.S. Degree Course for the Academic Year 1993-94 as against the seats reserved under

Clause V of Annexure I of the prospectus of that year. The writ petitions were allowed by a common order dated 9-6-1998 by the learned single

Judge with a direction to admit them in the Ist years M.B.B.S. course for the Academic Year 1998-99 in the Madras Medical College without

insisting upon them to produce any more certificates from any source. It is against the said common order, these two appeals have been filed and

they are heard together and disposed of by this common order.

2. That on the basis of the policy of the Government, the prospectus was prepared for admission. All the applications received in pursuance of the

prospectus shall be assessed by a Committee constituted by the Government. The admissions are made on the basis of merits, marks obtained in

the academic subject and entrance examination by following the rule of reservation. In so far as the special category of seats, selection and

admission are made solely on the basis of the marks obtained in the academic subjects and in order of merit even among the eligible candidates.

The valid applications must conform to the requirements of the prospectus.

3. The respondent No. 1 in W.A. No. 854 of 1998, by name, G. Sumathi, has secured 193.95 marks (139.75, 54.20) in the Academic Year

1993-94, whereas, the respondent No. 1 in W.A. No. 855 of 1998, by name, G. Malathi, has secured 196.70 marks in the Academic Year

1993-94, inclusive of the entrance examination marks.

4. As per Annexure-I, Clause V Special Category Tamil Language of the prospectus for admission to M.B.B.S. Degree Course for the Academic

Year 1993-94 certain reservations were made. In that category, a) candidates whose parents have lost their lives for bringing Tamil as official

language of Tamil Nadu and as the prime language of Tamil Nadu; b) candidates whose parents have suffered imprisonment for bringing Tamil as

official language of Tamil Nadu and as the prime language of Tamil Nadu; and c) candidates whose parents have worked for the development of

Tamil were reserved certain ratio of seats and a note appended to the reservation category contemplates that the candidates should submit

certificates from the officers of the Revenue Department not below the rank of Tahsildar of the respective areas and M.L. As. and M.Ps. of Tamil

Nadu, and that all applications must be submitted before the last date, viz., 13-8-1993. It is further stated that if the application was not supported

by necessary certificates, then it has to be construed as incomplete as per Clause 7 of the prospectus and any incomplete application so received

after the due date and time is liable to be rejected summarily;

5. The respondents Nos. 1 and 2 herein obtained the certificates as required under Annexure-I, Clause 5 Special Category -- Tamil Language,

only on 28-9-1993 and the same were received by the Secretary, Selection Committee on 18-10-1993. According to the appellants, the

applications of respondents 1 and 2 herein were not supported by the certificates as required under the prospectus. It is also the case of the

appellants that even under the special category, selected candidates have secured more marks than these two candidates.

6. The learned counsel Mr. Murugesan appearing for the appellants in both the appeals contended that a single certificate is not the requirement

under the prospectus as held by the learned single Judge and such a certificate has to be assessed by a Committee of Scholars in the Tamil

language and the note attached to the prospectus insists certificates by the authorities contemplated under the Rules,

7. On an earlier occasion, the certificate produced by the respondent No. 1 herein, was not accepted by this Court and her claim was rejected and

there is no basis to insist the very certificate to be accepted for the subsequent academic year. Even factually, so far as the certificate about the

imprisonment is concerned, it was not for the cause of Tamil development, but for anti-Hindu agitation, and, therefore, both the respondents are

not coming within the eligibility criteria contemplated under Clause 5 of Annexure-I of the prospectus. It was further contended that both the

applications of respondents 1 and 2 herein cannot be construed as application in the eye of law as they are incomplete and liable to be rejected

summarily. As against the 8 seats reserved for Special Category Tamil Language, at the relevant year all the selected candidates have obtained

higher marks than the respondents 1 and 2 herein, and therefore they cannot claim as a matter of right without any assessment from the Committee

constituted by the Government, seats on the ground that they are eligible under the special category.

8. At para 4 of the counter-affidavit filed by respondents 1 and 2 herein, the fact there was a delay in producing the certificate by the Tahsildar has

been admitted. It was contended that it is not . a requirement as alleged by the appellants. It was also contended that it is quite unreasonable to

assume that certificate should be obtained from the officers of the Revenue Department not below the rank of Tahsildar and M.L.As. and M.Ps. of

Tamil Nadu. Though the word used is "and," it only means "or". The counter is silent on the aspect whether anybody who has secured lower

marks than these two candidates have been accommodated for that relevant year. In other words, even under the third category, candidates who

have secured more marks than respondents 1 and 2 herein were alone selected.

9. The point for consideration in these appeals is whether respondents 1 and 2 are entitled for seats in the Ist year M.B.B.S. Degree Course for

the Academic Year 1993-94?

10. The guidelines with regard to the selection under the head "Tamil Language" is provided for in the Annexure is as follows :--

..... .Tamil Language : The following categories of students only shall be made eligible to apply for admission to M.B.B.S. Course for the seats

reserved for Tamil Language.

(a) Candidates whose parents have lost their lives for bringing Tamil as Official Language of Tamil Nadu and as the prime language of Tamil Nadu.

(b) Candidates whose parents have suffered imprisonment for bringing Tamil as Official Language of Tamil Nadu and as the prime language of

Tamil Nadu.

(c) Candidates whose parents have worked for the development of Tamil.

Note: The proportion shall be at (a), (c) and (b) above unless the period of imprisonment is at least one year.

A. The Government also direct that the officers of the Revenue Department not below the rank of Tahsildars of the respective areas and the

M.LAs. and MPs. of Tamil Nadu are competent to issue certificates to the candidates who apply for admission to the M.B.B.S. Course against

the seats reserved for Tamil Language.

11. The case of respondents 1 and 2 herein is that their father suffered imprisonment for more than 11/2 years for participation in anti-Hindu

agitation to promote Tamil as language of Tamil Nadu. It is also alleged that their father worked for the development of Tamil language. Their

grievance is that the actual allocation of seats for each category in the selection was completely in violation of the norms prescribed in the guidelines

to the prospectus issued for the Ist year M.B.B.S. course. When the guidelines are same, on an earlier occasion, in W.P. No. 1260 of 1993,

decided on 4th March, this Court had held that respondent No. 1, G. Sumathi will not come under any of the categories mentioned in the special

category ""Tamil language."" This principle applies, for herself or for her sister, since the criteria is same. This question, since once concluded need

not be gone into in any subsequent proceedings, that too, when it was between the same parties and when the factual situations are same. The

learned single Judge in the impugned order has construed the word ""and"" used in the explanation as ""or."" A Division Bench of this court, in the

earlier writ petition filed by one of the respondents herein, following Rathnaswamy Dr. v. Director of Medical Education 1986 WLR 207 (Mad)

and Surayanarayana Raju v. Government of Tamil Nadu 1992 WLR 581 has held in paragraph 11 thus :--

It is settled law that while considering the admission for a particular professional course, norms and procedures have to be construed properly and

applicants have to comply with the conditions therein. It has been held by a Division Bench of this Court in Rathaswamy, Dr. v. Director of

Medical Education 1986 WLR 207 that the rules and norms to be strictly and solemnly adhered to. It has been approved by a later Division

Bench which is reported in Suryanarayanan Raju, G. Dr. v: Government of Tamil Nadu, 1992 Writ LR 581. In Miss. Romini Susan Kurian Vs.

State of A.P. and others, , it has been held as follows :--

..... .The prospectus issued by the University binds the candidates who seek admission and unless any portion of the prospectus is held to be

illegal, Court cannot direct either amendment of the prospectus or consideration of the claim of a student in a manner otherwise than that provided

in the prospectus..

This being the settled position of law, the learned single Judge erred in interpreting the explanation attached to the prospectus insisting certificates

by officers of the Revenue Department, not below the rank of Tahsildar and MLA and MP. The reasoning is unsustainable having regard to the

law settled by this Court on earlier occasions.

12. The High Court of Andhra Pradesh, in Miss. Romini Susan Kurian Vs. State of A.P. and others, has held that ""Student seeking admission into

any course have to abide by the prospectus issued by the University for admission into that course. It cannot be said that the order of preference

prescribed in the prospectus is contrary to any legal provision in the form of a statutory provision of an Act or a Rule The prospectus issued

by the University binds the candidates who seek admission....."" The Court further held that it cannot direct either amendment of the prospectus or

consideration of the claim of a student in a manner otherwise than that provided in the prospectus.

13. The learned single Judge ought not to have interpreted the word ""and"" as ""or"" as the condition in the prospectus is binding on the student and if

it is to be interpreted in that manner, it may open flood-gates of litigation to upset several selections which were made in conformity with the

prospectus. This consequence was lost sight of by the learned single Judge. Even against the order of the learned single Judge, respondent No. 1

herein filed W.A. No. 854 of 1998, questioning the dismissal of the writ petition, and that was also rejected by this Court. Thus, acceding to the

contention that respondents 1 and 2 herein are entitled to admission to the 1st year M.B.B.S. under the category of reservation meant for Tamil

language amounts to reviewing the earlier decisions when they are placed on the same set of facts and circumstances viz., same certificates. A

student who applied knowing the conditions in the prospectus and the process of selection cannot question the norms prescribed in the prospectus

when not selected. The learned single Judge ought not to have ignored the findings recorded in the writ petition, which was conformed in the writ

appeal on the same contention.

14. Judicial discipline requires consistency in judicial orders. Where, in the first writ petition this Court had held that respondent No. 1 was not

eligible for admission under special category reserved under the heading ""To promote Tamil language,"" on the same certificate, in a subsequent writ

petition between the same parties, the Judge should not reiterate his dogmatic views on a particular question and come to a different conclusion, as

it constitutes an attempt to review the earlier judgment affirmed by the Division Bench, It was not competent for the learned, single Judge to

overlook the view already expressed in the earlier writ petition.

15. It is the specific case of the appellant that the applications of respondents 1 and 2 herein are incomplete applications received after the due

date and time and the certificates were enclosed at a later date which are liable to be rejected summarily under Condition No. 7 of the prospectus.

In the eye of law, there were no applications as they were not in conformity with the conditions of the prospectus. This Court, in several writ

petitions, viz., W.P. No. 9164 of 1997, decided on 22-8-1997 and W.P. No. 11839 of 1997, decided on 20-10-1997 held that rejection of

incomplete applications need not be interfered with and such rejection is valid in

law. A Division Bench of Kerala High Court in *A. Sainulabdin and Another Vs. State of Kerala and Others*, , took the view that failure to furnish the certificate renders the application defective and the candidate cannot seek a remedy on the strength of such a defective application under Art. 226 of the Constitution of India. When the applications were not accompanied by the certificates as required under the prospectus on the last date of filing, which fact was not denied by respondents 1 and 2 herein, the learned single Judge has lost sight of the same and adopted the reasoning that the candidate belonged to that category, following a decision of this Court in *V. Premanand Vs. The State of Tamil Nadu and others*, . That was a case where the community to which the candidate belonged was not in dispute, nothing to be enquired or processed with, and he was able to produce the certificate before the application was scrutinised for admission. In such situation, this Court took the view that the procedure is intended to facilitate enforcement of a substantive right, in the sense, the candidate belonged to the category of children born of an inter-caste marriage between a SC/ST and Forward community. That is the difference between that case and the case on hand which was lost sight of by the learned single Judge.

16. Both the respondents have secured lesser marks than the candidates selected in that category and the last selected candidate has secured 264.25 marks, whereas, respondent No. 2 has secured 196.70 marks and respondent No. 1 has secured even lesser marks, viz., 193.95. Even for the relevant year, the Table furnished by the appellant is as follows :--

S.No. E.E.No. Name of the Candidate Community Marks

1. 233949 Elankathir S. E. B.C. 279.05
2. 235324 Ezhilan S. B.C. 276.50
3. 333335 Vairavel Prakash K. B.C. 274.50
4. 332400 Kavitha Kalivani H. B.C. 271.35
5. 321202 Md. Yasar Arafat B.C. 267.00
6. 322008 Brathiba S. MBC 259.90
7. 231240 Chevvel A. MBC 255.80
8. 222800 Panimalar P. S.C. 199.60

The above Table show that the last candidate selected under the Special Quota meant for S.C. candidate also has secured more marks than the respondents 1 and 2. Therefore they cannot complain of their non-selection, as they have not reached the cut-off mark. When such being the factual position, in view of the finding on an earlier occasion that the certificates have no relevance and does not enable respondents 1 and 2 to claim seats under the category reserved for "Tamil Language" holding that they are entitled for seats is even factually unsustainable.

17. The learned single Judge has directed that they should be accommodated for the year 1997-98 even without taking the Entrance Examination and without insisting on further certificates. This view of the learned single Judge is unsustainable, in view of the decision in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, wherein the Apex Court held thus (at p. 1650 of AIR) :

Reliance was placed on the observations of Lord Justice Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 All

ER 935 where the learned Lord Justice classified 3 grounds subject to control of judicial review, namely, illegality, irrationality and procedural

impropriety. Learned Additional Solicitor General is right, in our opinion, in that we cannot really substitute a decision reached by a fair procedure

keeping the policy of the respondent in mind by a different decision only on the ground that the decision which appeals to the Court, is a better

one. Reliance was placed on the observations of Lord Chancellor Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* (1982) 1

WLR 1155. In our opinion, it is necessary to remember that judicial review, in the words of Lord Brightman in that case, is not concerned with the

decision, but with the decision-making process. As observed by Prof. Dias in "Jurisprudence" (5th Edn. at p. 91), unless the restriction on the

power of the Court is observed, the Court would under the guise of preventing the abuse of power, to itself guilty of usurping power which does

not belong to it. It is, therefore, necessary to bear in mind the ways and means by which the Court can control or supervise the judicial action of

any authority which is subject to judicial control. In the connection, it is necessary to refer to the observations of Lord Justice Templeman in *re,*

Preston v. I.R.C. (1985) 2 WLR 836 and the observations of Lord Justice May in *Regina v. Chief Constable of the Merseyside Police* (1986) 2

WLR 144. It is not within the purview of a Court of substitute a decision taken by a constituted authority simply because the decision sought to be substituted is a better one.

17A. Court cannot substitute its decision in the guise of preventing abuse of power. Judicial review is not concerned with the decision, but with the decision-making process. Even assuming that there is an element of justification to consider their case, the Court should direct the authority to

consider if they are eligible and stand with other candidates equally or more who claim seats in that particular category. Otherwise, it will be

denying a seat to a meritorious candidate without undergoing the process of selection. Those legally responsible for a decision must infact make a

decision taking the guideline in the judgment, adopting proper methodology. If the direction is complied with, it amounts to assuming eligibility

without examination or scrutiny. We have seen the records right from 1993-94 onwards. Even in this category, none of the candidates who have

secured less marks than respondents 1 and 2 herein are accommodated. One of the respondents by name, G. Malathy, is 55% disabled. Even

under the special category meant for physically handicapped three seats were allotted, but the special Medical Board consisting of five experts

unanimously decided to have nominal minimum disability, but not very severe degree of physical disability, because such a person may not render

better service to the suffering person. In a profession like medicine, a person having 55% disability will be misfit, having regard to the nature of the

training one has to undergo. From any angle, either on merit or under the criteria laid down under the special category meant for Tamil language or

under the category meant for physically handicapped persons, the respondents are not entitled to any consideration.

18. The learned counsel for respondents 1 and 2 in the counter, relied on certain decisions, viz., (1) Punjab Engineering College Chandigarh

through its Principal Vs. Sanjay Gulati and Others, ; (2) State of Kerala Vs. Kumari T.P. Roshana and Another, and (3) Ajay Hasia and Others

Vs. Khalid Mujib Sehravardi and Others, , but they have no bearing to the case on hand. In fact, those decisions relate to instances, where

students admitted without eligibility and Courts have taken the view in the interest of students not to upset the admission or cancel the seats.

19. In Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, , the Apex Court held that even in cases where

the Court declared that some students are refused admission unjustly, they also cannot be preferred for admission in the next session irrespective of

merit. All the candidates who had applied for admission in previous session should also to seek consideration on the basis of open merit

irrespective of whether they had filed writ petition or not. The finding of the learned single Judge that they should be admitted irrespective of

entrance marks and without undergoing selection process, even from this view, is also unsustainable.

19A. The learned counsel for the respondents urged several contentions of the ground that prospectus are different for different years and non-

production of the certificate is not fatal and once seat granted, should not be interfered with and tried to justify the interpretation of the word ""and

as ""or"" none of these contentions have any force or sustainability in view of the reasons we have assigned in the foregoing paragraphs.

20. The learned counsel contended that these two respondents applied for B.S.M.S. and B.H.M.S. courses and the very certificates were

accepted by the University and they were admitted to those courses. It is stated in the reply affidavit that there is no committee of scholars

constituted by the Court for scrutiny of applications for B.H.M.S. course. It is not the same situation. When the claim is for admission to M.B.B.S.

Degree course, the norms prescribed in the prospectus for admission to B.S.M.S. course in the year 1995-96 and the norms prescribed for those

courses and the eligibility criteria and the selection procedure being different, they cannot be equated. Therefore, the contention has no merit.

21. The findings of the learned single Judge, is opposed to law, facts and probabilities of the given case. Therefore, the appeals are allowed. The

impugned order of the learned single Judge, dated 9-6-1998 passed on W.P. Nos. 3643 and 3645 of 199.8 (1994) is set aside, but without,

costs. Consequently, the connected miscellaneous petitions are closed.