
(2000) 09 MAD CK 0041

In the Madras High Court

Case No : W.A. No. 2632 of 1999, C.M.P. No's. 22237 of 1999, 917 and 10217 of 2000

The State of Tamil Nadu

APPELLANT

Vs

S. Gayathiri Devi

RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1)

Citation : (2000) 09 MAD CK 0041

Hon'ble Judges : K. Gnanaprakasam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : R. Viduthalai, Government Pleader, for the Appellant; V. Subramani, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—The above appeal has been directed against the order of the learned single Judge in W.P.15131 of 1999.

2. The short facts that are necessary for consideration of the above appeal can be stated as under:

The Respondent hereinafter successfully completing her Plus Two examination, applied for admission to the M.B.B.S. course during the year 1999-2000 in the special category of eminent sportsmen for which three seats have been reserved. As required Respondent herein also appeared for the Tamil Nadu Professional Courses Entrance Examination 1999 and got 77.92% marks. The Respondent secured 258.17 marks (cut off) based on the performance in the Higher Secondary examination and in the professional courses entrance examination. The grievance of the Respondent herein is that the persons who have secured less marks than herself in the category of eminent sportsman have been selected and the same is arbitrary, unreasonable, discriminatory and violative of the provisions of Article 14 of the Constitution.

The Respondent also raised another contention that non-provision of reservation for the best cadets in the NCC for admission to the M.B.B.S. course unlike the Engineering course, wherein two seats have been reserved in this category, amounts to discrimination and violative of Article 14 of the Constitution of India. It is the further contention of the Respondent that there is no valid reason why the candidates for M.B.B.S. course should be denied reservation for NCC candidates especially when a common entrance examination is held for admission for both the courses. The Respondent would claim that she is an outstanding NCC candidate and she is entitled to be selected for M.B.B.S. course. The exact prayer in the writ petition reads thus,

For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to issue an appropriate writ, order or direction more particularly in the nature of a writ of mandamus directing the Respondents to consider the Petitioner for selection to the M.B.B.S. course for the year 1999-2000 for the reserved seats in the category of eminent sportsman or in the alternative to create reservation in category of the best cadets in NCC and allot her one seat in the said category and thus render justice.

3. The writ petition was resisted by the 1st Appellant herein contending that it is the policy decision of the Government to provide reservation under Article 15(1) of the Constitution of India and there is no right of reservation since it is only a concession. It was also contended that the Government has taken a policy decision not to grant any seat to NCC candidates in the M.B.B.S. course.

The second Appellant resisted the claim of the Respondent contending that as there is no provision for reservation to NCC cadets, the Respondent was not considered for selection.

4. The learned single Judge, as far as the claim of the Respondent that she should have been selected in the category of eminent sportsman, came to the conclusion that the Appellants have rightly shown preference to the national level candidates as per the conditions of the prospectus and hence Respondent could not be considered under the said category.

5. However, the learned single Judge took the view that the reading of the G.O.Ms. No. 354, Higher Education DI, dated 8.7.1997 would show that the Government has taken a policy decision at the request of the Deputy Director General, NCC, to provide incentive to the NCC cadets all over the country that there should be a guaranteed admission for a minimum of two NCC Cadets with proven merit and performance in all the educational institutions. The said request was accepted by the Government and decided to reserve one seat for NCC cadet in any under graduate course in each college. While the reservation is made for the NCC candidates in the Engineering courses and when both the Engineering and Medical Colleges are having NCC battalions and common entrance examination is held for both the courses, the stand of the Appellants to deny seat for NCC Cadets is arbitrary and unreasonable. According to the learned single

Judge, when there is a policy decision on the part of the Government to reserve one seat under various categories, it cannot be stated that there is no policy for the Government to provide reservation in the M.B.B.S. course. The Respondent only seeks to implement the earlier decision of the Government to provide reservation for the NCC cadets in the Medical course. The learned single Judge further held that the denial of such a reservation is discriminatory since such a reservation is provided in other professional courses like Engineering. The learned Judge further held that even assuming that there is a Government Order in support of the prospectus, in as much as there was no exclusion or supersession of the G.O.Ms. No. 354, Higher Education (DI), dated 8.7.1997, the said order has to be enforced and given effect to.

6. Being aggrieved by the order of the learned single Judge, the Appellants have filed the above appeal. It has been pointed out that before the learned single Judge, the Appellants failed to file any counter affidavit. Before this Court, we have the Memorandum of grounds of appeal as well as the affidavit filed in support of the stay petition -C.M.P.22237 of 1999 to understand the case of the Appellants. The stand of the Appellants appear to be that,

- a. G.O.Ms. No. 354, Higher Education (DI), dated 8.7.1997 is not applicable to the admissions of NCC cadets in the M.B.B.S. course;
- b. It is the duty and obligation of the Government to identify the source of candidates to be admitted for M.B.B.S. course and candidates cannot compel the Government to reserve and create a particular category of their choice;
- c. With regard to the admission to the medical courses, it is only the Department of Health and Family Welfare to issue necessary Government Orders setting out its policy decisions.
- d. The Respondent having applied on the basis of the prospectus and not having challenged immediately (Le.) the failure to reserve the category i.e., NCC cadets, it will not be open to Respondent to put forth the alternate plea;
- e. There are over 30,000 seats available in the Engineering colleges, but only 1,000 seats are available for medical courses each year. Therefore, the Health Department has earmarked only a very few seats for specified sources for admission under the special categories.

7.G.O.Ms. No. 354, Higher Education (DI), dated 8.7.1997 reads thus,
order:

The Deputy Director General, NCC, in the letter read above, has stated that in order to have uniformity in the incentives to be given to the NCC cadets all over the country, and based on the discussion at Joint State Representatives and Deputy Directors General NCC Conference, New Delhi, the Deputy Director General NCC had requested guaranteed admission for minimum 2 NCC cadets with proven merit and performance in all educational institutions.

2. The Government after careful consideration, reserve one seat for NCC cadet of outstanding merit in any Under Graduate Course in each college and one seat in any Post Graduate Course and Polytechnic where NCC scheme is available.

3. The Deputy Director General, NCC, should formulate detailed guidelines for screening the eligible cadets for admission.

(By order of the Governor)

S.P. Elangovan Secretary to Government.

(Emphasis supplied)

A reading of paragraph 1 of the said Government order would clearly show that there was a conference in which the representatives from the States as well as the Deputy Director General of NCC participated and in which the Deputy Director General of NCC requested for guaranteed admission for minimum of 2 NCC cadets with proven merit and performance in all the educational institutions.

We called upon the learned Government Pleader to produce the original file in this regard. Also we called upon the Government Pleader to produce the entire file both the current file as well as the notes file relating to the G.O.Ms. No. 354 Higher Education (DI), dated 8.7.1997. The matter was adjourned at least on two occasions and more than a month time was granted for the Appellants to produce the file. Now we have been informed by the learned Government Pleader that the said files are not traceable.

Paragraph 2 of the said Government Order would clearly show that the Government after careful consideration decided to reserve one seat for NCC Cadets of outstanding merit in any Under Graduate course in each college and one seat in any Post Graduate course and Polytechnic where NCC scheme is available. The Government Order has been issued by the Higher Education Department. It is the contention of the Appellants that the Government order would apply only to the Engineering course and not to the Medical course. If that is the intention, then there would have been a clear mention in the Government order itself. The Appellants failed to produce any material/any file before this Court in this regard to satisfy us that the Government Orders issued by the Higher Education Department are applicable to the Technical Education and not to the Medical Education. The Government Order would show that it has been issued in the name of the Governor duly signed by the Secretary to the Higher Education Department, Government of Tamil Nadu.

8. In the light of what we have stated earlier, we are in entire agreement with the learned single Judge that in view of the G.O.Ms. No. 354 Higher Education (DI), dated 8.7.1997, the Appellants ought to have provided seat/seats for NCC cadets in the Medical course and the omission in the prospectus cannot nullify the earlier order of the Government of the year 1997. The learned single Judge is quite right in observing that there is NCC wing in the Medical Colleges and that the common entrance examination is conducted for both the courses. The

Appellants cannot escape by contending that there is no reservation made in the prospectus as the intention of the Government is clear from the said Government order. We are in entire agreement with the reasonings of the learned single Judge for allowing the writ petition.

9. The contention that if writ petition is allowed, it will amount to amending the prospectus and the Court has no jurisdiction to do so, cannot be accepted. It is not as if the Court is taking a policy decision and directing the Appellants to reserve one seat for a particular category. What this Court found is that the Government took a general policy decision applicable to all the Educational institutions in the State, but however implemented it to only one professional course and not to the other. The explanation now sought to be given is that in the Engineering courses, 30,000 seats are available whereas in the medical courses, only 1,000 seats are available and only because of that, no seats are reserved for this category in the medical course. Here again, we have to point out that no files have been produced by the Appellants touching any of these aspects or points involved in this case, in spite of the fact that the matter was adjourned for the said purpose for a number of times. This Court has to draw only an adverse inference in favour of the Respondent that if the files are produced, the same would support the claim of the Respondent.

10. The contention that the Respondent applied only on the basis of the prospectus and she cannot now after the publication of the results, for the first time, come forward with the prayer that the Appellants should have reserved seat/seats for the NCC cadets. Normally, we would have sustained such objection taken by the Appellants. But, as far as the present case is concerned, when even this Court is not able to secure the files to know the real state of affairs/policy decisions etc., of the Government, how is it possible for the Respondent to know the correct details and stand of the Government during the interregnum i.e., between the publication of the prospectus and filing of application by her. We do not propose to defeat the claim of the Respondent in the peculiar facts and circumstances of the case on this ground.

11. The Learned Counsel for the Appellants would rely on the ruling of the Supreme Court reported in 2000 (11) CTC 306 (Rajiv Kapoor and Ors. v. State of Haryana and Ors.) and submitted that the Respondent would not be entitled to any seat in the subsequent years. A careful perusal of the said judgment particularly paragraph 14 of the judgment would show that if the fault is because of some irregularity and illegality committed by the authorities entrusted with the task of selections for admissions then the admission for the subsequent year can be considered. In the peculiar facts and circumstances of the case, we are inclined to reject the objection by the Appellants that as the Respondent has not applied for admission for the year 2000-2001, her claim should not be considered. It has to be remembered that the Respondent is/was not at fault.

12. The Appellants shall take immediate steps and admit the Respondent in M.B.B.S. course in this Academic year 2000/2001 in any one of the city

(Chennai) Colleges on or before 5th of October, 2000.

The Appellants are directed to report compliance of the above direction to the Registrar of this Court by 9.10.2000.

The Respondent shall be at liberty to contact the 2nd Appellant and also produce the xerox copy of this order. On production of the same, the concerned Appellant shall proceed to act further without waiting for the copy of the order from this Court.

13. The writ appeal is dismissed as above confirming the order of the learned single Judge in W.P.15131 of 1999 dated 4.11.1999. No costs. Consequently, the connected C.M.Ps. are closed.