

(1998) 11 MAD CK 0144
In the Madras High Court

Vijay Krishna, K. represented by father and natural guardian
Prof. S. Kannan

APPELLANT

 V_S

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:

Citation : (1999) 1 MLJ 406

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Both these writ petitions are filed for issuance of writ of mandamus, directing the respondents to admit the petitioner to B.E. degree course. In W.P.No. 12973 of 1998, petitioner seeks admission to the first year B.E. (Mechanical) course in any one of the Government Engineering Colleges. In both the writ petitions, admission is sought under special category No. 15, i.e., sons and daughters of eminent Tamil scholars, for the year 1998-99, and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

2. In the first writ petition (W.P.No. 10582 of 1998) petitioner therein has secured 928 out of 1200 in his Higher Secondary School Examination. He also appeared for the Entrance Examination and secured 43-75 out of 100, and thus, he has secured a total of 199-76 out of 300. In W.P.No. 12973 of 1998, petitioner has obtained 922 out of 1200 in the Higher Secondary Examination. Taking into consideration the marks obtained in the entrance examination, he has obtained combined total marks of 220-47.

3. Grievance of both the petitioners is that candidates who have secured much less marks have been selected, and admissions have been denied to these petitioners for flimsy reasons. It is said that the admissions made by respondents are arbitrary, and violative of Article 14 of the Constitution of India. It is said that the prospectus does not disclose the basis on which the committee Tamil scholars has to make selection to qualify for special category. It is said that a committee

has been appointed and its function is only to identify the efficient Tamil scholars, and once the eligible candidates are found by the committee, respondents ought to have selected them according to the marks secured by them in the qualifying examination taking along with the entrance examination. It is not open to the respondent selection committee to select candidates based on the proficiency in Tamil since the same would offend the principles laid down by the Honourable Supreme Court. Hence, the petitioners herein seek issuance of writs of mandamus, for getting themselves admitted to Engineering course.

4. Separate counter-affidavit has been filed by the respondent-selection committee in both the writ petitions, and the Government has filed a common counter-affidavit.

5. Though separate counters have been filed by the selection committee, the contents are the same. It is said that a committee was constituted consisting of three eminent Tamil scholars, namely, Prof. Tamilarban, Prof. Arasu Manimegalai and Prof. Pon. Kodhandaraman. On the report submitted by them, it could be seen that they have formed certain guidelines for selection based on the relative degree of eminence of parents of the candidates seeking admission to Engineering courses, in one or more of the following three areas of service to the cause of development and enrichment of Tamil language and the quality of such service. (1) Services rendered for the Tamil Language, Tamil Literature and Culture; (2) Services to Tamil Language by writing, short stories, Non-details, Poems and dramas; and (3) Services rendered by writing books or translating from other languages to Tamil in connection with Science and technology. It is further said that the initial selection of candidates by the selection committee was entirely based upon the relative degree of eminence of the parents of the candidates in the field of service to the, cause of development and enrichment, etc. of Tamil language and the Quality of such service. The selection committee which met on 1.7.1998 and 6.7.1998 submitted a list of 18 candidates based on the relative merit/eminence of the parents to fill up the available 12 seats. It is said that the names of petitioners herein were not informed to the selection committee and, therefore, the petitioners were not selected. In paragraph 9, it is further said that comparable eminence of parents of the candidates were also considered for deciding the eligibility. It is also said that the documents filed by the respective petitioner along with the application form only show the eligibility of the candidates, and not for selection. Selection will have to be made on some more materials which are placed before the committee. Respondent prayed for dismissal of the writ petitions.

6. In the common counter-affidavit filed by Government, after giving the names of members of the committee, constituted to select the candidates under eminent Tamil scholar quota, it is said that on the basis of the guidelines framed by the said Tamil scholars committee, the committee sent a list of eligible candidates. In paragraph 4, it is said that the committee has gone through all the evidences produced by the candidates and has selected the candidates based

on the eminence of their parents. So long as there is no allegation of mala fides, the selection made by the committee will have to be accepted. It is further said that the consideration of a candidate for selection under the special category does not mean that a candidate has got a right to be selected, automatically. The respondent-Government has, therefore, prayed for dismissal of the writ petitions.

7. In *N. Gayathri Malathi and Ors. v. State of Tamil Nadu and Ors.* 1997 W.L.R. 261, a learned Judge of this Court considered the prospectus of Medical college where also there is a provision for admission of students whose parents have worked for enrichment of Tamil language. Paragraph 3.5 (ii) of the Medical college prospectus provides that seats have been reserved for children whose parents worked for the enrichment, propagation and development of Tamil language and significant contribution made to Tamil society, culture and literature. It is further stated that a committee of Tamil scholars constituted by the Government will examine the claims of the parents whose children have applied for admission under this special category and offer their recommendations regarding their eligibility for consideration under this special category. The candidates should submit a certificate from an Officer of the Revenue Department not below the rank of a Tahsildar of the respective area or a Member of Legislative Assembly of Tamil Nadu in support of their claim for admission on the above mentioned grounds along with their application for consideration of their application under this category. So far as Engineering colleges are concerned, Clause 4.5 gives a table of number of reserved seats allocated for different categories. Item 15 of that table is: "Sons/Daughters of eminent Tamil scholars - 12". The relevant note of the prospect says thus:

Candidates seeking admission under the reservation as per Item No. 15 should enclose the certificate as per format in certificate No. VIII and send all relevant publications and certificates. The candidates selected by the Committee; constituted for this purpose, will be allotted branches and colleges based on their marks only.

Why I am extracting the relevant portions of the prospectus of Medical College and Engineering College is because, "in regard to Medical College, the Prospectus itself indicates the consideration for eligibility, whereas, in the prospectus in relation to the Engineering College, there is no indication regarding eligibility. Considering the prospectus of Medical college in *Gayathri Malathi's* case, 1997 W. L.R. 261. learned Judge held that Clause 3.5 (ii) of the prospectus indicates the eligibility. The committee has also formed certain guidelines of its own. These guidelines were considered by the learned Judge as sufficient, for the purpose of considering the eligibility. In this case also, a committee has been formed and from the counter-affidavit, filed by the Government, it is seen that the following guidelines have been framed by the scholar committee.

1. The candidate's father/mother/parents contribution alone to the Tamil language are to be taken for considering for this quota.

2. Service rendered for the Tamil language, Tamil literature and culture.
3. Services to Tamil languages by writing short stores, non-details, poems and dramas.
4. Services rendered by writing books or translating from other languages to Tamil in connection with Science and Technology.

The guidelines only show the eligibility, and they do not give any clue as to how to consider the eminence. If these are the only guidelines that were framed by the committee, naturally, it follows that they are expected only to consider the eligibility of the parents and recommend the names to the selection committee. After considering the eligibility, there cannot be a further scrutiny of eminence by the scholars, since there is absence of guidelines: But, it is admitted by the selection committee itself that the initial selection of candidates by the selection Committee was entirely based on the relevant degree of eminence of the parents of the candidates in the field of service to the cause of enrichment of Tamil language. It is further stated in the same paragraph, i.e., paragraph 6, that the selection committee which met on 1.7.1998 and 6.7.1998 submitted a list of 18 candidates based on the relative merit/eminence of the parents to fill up the available 12 seats. More or less on the same line, in para 4 of the counter filed by the Government, it is said that the committee selected the candidates on the basis of the eminence of their parents.

8. If the guidelines apply only to eligibility, then all candidates whose parents have contributed must be considered as eminent. There cannot be any further sorting out of applications, and a relative merit is not expected to be considered by the selection committee. I hold so only because the guidelines only provide for eligibility and there are no guideline for finding out the eminent. So long as there is no guidelines for assessing the eminence, there cannot be any question, of comparative study.

9. In the decision reported in Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors, , the question that came for consideration was regarding eminent sportsmen. In paragraph 3, Their Lordships of the Supreme Court have approved the observation of M.N. Chandurkar, C.J. and M. Srinivasan, J. (as he then was) regarding reservation of seats for the category "eminent sportsmen". The observation made by the learned Chief Justice (M.N. Chandurkar, C.J.) reads thus:

It has to be pointed out that the rules themselves do not provide for any comparative degree of eminence between different candidates, in the same category. Such a determination of comparative eminence, apart from introducing an element of subjective determination and providing a scope for direction which would be capable of being arbitrarily exercised in the absence of any guidelines, also appears to us to be impracticable. The reservation for eminent sportsmen is not restricted to any particular game. There are different kinds of games and

different kinds of tournament. In some games, tournaments are held more frequently than in others. To compare the performance, whether quality wise or quantity wise, by a candidate proficient in one game with the performance of a candidate in an altogether different game is neither possible nor feasible. The proper approach to determine which of the candidates in one particular category should be given performance in the selection must therefore necessarily depend only on their academic merit.

Thereafter in paragraphs, 5 and 6, the Honourable Supreme Court have held thus:

The argument of learned Counsel for the petitioner does not take note of the fact that the decision in *P. Sabitha v. The Director of Medical Education* W.P.No. 9406 of 1983e, proceeded on an interpretation of a provision for reservation of seats for the category "eminent sportsmen" which was altogether different. The importance of the decision in *P. Sabitha's* case, lies only on the view that a provision for reservation of seats in professional courses for sportsmen was not irrational or arbitrary but had reasonable nexus to the object sought to be achieved in public interest namely, promotion to sports. In the prospectus for the year 1986-87, the State Government has brought about a change. The provision, as it now stands; provides for a rule of preference. Category (iii) dealing with eminent sportsmen lays down the order of preference as between candidates for selection and makes sponsorship certificate a condition prerequisite for eligibility. Further, candidates applying for admission to category (iii) like category (i) and (ii) must have secured 50 percent aggregate marks in science subjects in the qualifying examination. The rule nowhere provides for any determination of comparative eminence. All that the rule does is to lay down a rule of preference. A candidate who had participated at International level would exclude a candidate participating at National level and a person who had participated at National level would exclude a person participating at State level. It has to be pointed out that the rule itself does not provide for determination of comparative eminence as between different candidates falling within the same class but as between sportsmen who have participated at International level, National level and State level. It only provides for the rule of exclusion of one by the other. There are no guidelines provided by which comparative eminence can be judged as between candidates belonging to the same class e.g. at National level, as here. Nor does it provide for any guidelines by which the choice has to be made as between the-candidates who have excelled in a particular field of sports, e.g. aquatics. The real difficulty arises when there are more than one candidate who have excelled in their respective fields of sports e.g., cricket, football, hockey, etc. and the number of seats reserved are less than the candidates found eligible. All of them being more or less equal, the best method is to go by marks obtained at the qualifying examination. In such a case, the selection must necessarily depend upon their academic merits. Even in *P. Sabitha's* case, the court realised the difficulty to lay down any guidelines for adjudging comparative eminence between sportsmen falling within the same class and it was said that

when candidates are shown to have attained equal proficiency in sports, then their academic superiority can be pressed into service as a tilting factor in their favour.

In the absence of any guidelines for purposes of selection, the adjudicating of comparative merits among the eligible candidates falling under the category "eminent sportsmen" would necessarily introduce, as the learned Chief Justice observed, "an element of subjectivity which would introduce arbitrariness in the selection of candidates because it would be left to the discretion of the executive in making the choice. In the absence of any guidelines, there is nothing for the selection committee to fall back, upon except the marks obtained by the candidates at the qualifying examination. The argument of the learned Counsel obviously based on the observation in P. Sabitha's case, that the proper test to adopt in the matter of selection of candidates for admission to the MBBS course belonging to the category "eminent sportsmen" was pre-eminence in sports and not academic excellence, cannot be accepted. That test cannot obviously be applied in interpreting the present rule.

[Italics added]

10. In fact, the argument before the Honourable Supreme Court was that importance must be given to sports Since selection is among the candidates of eminent sportsmen, and importance should not be given to academic marks. That connection was repelled and their Lordships said that when there are no guidelines to consider the eminence, the only thing that the selection committee can do is to fall back on the marks obtained by the candidates in the qualifying examination. According to me, that principle has to be applied here also.

11. In Gayathri Malathi's case, 1997 WLR. 261 as I said already, the prospectus itself provided that only candidates satisfying the norms regarding their eligibility will be considered In that case, after considering the eligibility, the committee formed by the Government again reconsidered the list and short listed the same, making a comparative study of the various works. A list of 35 was reduced to 21. The selection committee was of the view that out of the qualified candidates, the best of them are to be selected. This scrutiny by the selection committee was quashed by the Honourable Judge holding that the committee is concerned only with the eligibility, and is not Concerned with any comparative assessment. Their Lordships also reminded that the question is whether from among the eligible candidates, the committee has jurisdiction to select only the candidates whose parents ranked first in the matter of Tamil development. We have to remember that the selection is for the M.B.B.S. course and the selection is not for any course relating to Tamil development. It is only by way of special reservation that a few candidates are being selected to encourage persons who have contributed for the Tamil development. Such reservation has always been upheld by Courts of Law. But the question is, if there are more persons eligible to be considered, should the selection committee go by the academic marks or should the selection committee go by the excellence of the parents regarding Tamil development. This

question is no longer res integra, and the Apex Court, has held as among eligible candidates the selection committee should go only by the academic marks. (Reference to the judgment of the Apex Court is Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors, referred to supra). On the basis of this decision, I hold that the selection process followed in this case is not proper, and the selection committee had no jurisdiction to take into consideration the relevant degree of eminence and on that basis select the candidate. So long as there are no guidelines in the prospectus and no guidelines have also been framed by the committee, only eligibility will have to be considered, and all who satisfy those guidelines must be included in the selection list, and after considering the inter se merit based on the qualifying marks, the meritorious students must be given admission. The recommendation of the committee is not in accordance with law, and the same is arbitrary. As held by the learned Judge (Kanakaraj, J.) in Gayatri Malathi v. State of Tamil Nadu 1997 WLR. 261, the selection is for admission to Engineering course, and not for any course relating to Tamil development.

12. The question that arises for consideration is, what is the relief that has to be granted in this case.

13. Under normal circumstances, the relief that could be granted is, to reopen the selection process and direct the selection committee to consider the applications afresh and select candidates according to merits.

14. In W.P.No. 10582 of 1998, petitioner has impleaded respondents 3 to 6, who have obtained lesser marks than the petitioner in that case. Notices have been served on them. In the other writ petition, i.e., W.P. 12973 of 1998, candidates who have obtained lesser marks than the petitioner therein have not been impleaded.

15. After hearing learned Counsel for all the parties, I do not want to set aside the entire selection, for, it is not the mistake of the candidates who have already been selected and they have also joined the college and are attending classes for the past two months. 16. Under the above circumstances, I only direct the respondents-selection committee and Government to admit the petitioners herein also to B.E. Engineering course as prayed for by them. Even if there is no vacancy, they are bound to create additional seats for petitioners herein and admit them within a period often days from to-day. Writ petitions are allowed as indicated above. No costs. Connected W.M.Ps. are closed.