



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A(MD) .No.277 of 2015 and M.P(MD)No.1 of 2015

N.Anandan

.. Appellant

Vs.

1.The Principal,
White Memorial Homoeo Medical College,
Attoor, Veeyannoor Post,
Kanyakumari District-629 177.

2.The Registrar,
The Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai,Chennai-629 177.

3.The Directorate of Indian Medicine & Homoeopathy,
Chennai-600 106. .. Respondents

Writ Appeal is filed Under Clause 15 of Letters Patent Act, to set aside the order, dated 29.01.2015 passed in W.P.(MD)No.17454 of 2013 by this Hon'ble Court and allow this Writ Appeal.

Prayer in WP(MD). 17454/ 2013 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the Respondents to permit petitioner s daughter Miss. A.Hema Malini to complete the 1st year senior course in BHMS in the academic year 2013-2014 and to write the exam schedule to be conducted in February 2014.

For Appellant : Mr.G.Prabu Rajadurai

For R2 : Mr.C.Karthick

For R3 : Mr.M.Govindan

Spl. Government Pleader

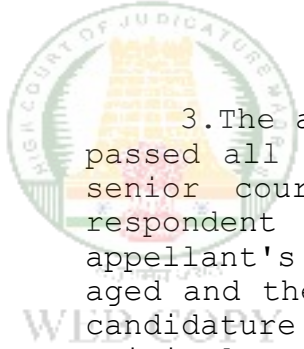
O R D E R

[Order of the Court was made by V.M.VELUMANI, J]

The appellant herein has filed W.P(MD)No.17454 of 2013 for a direction to the first respondent to permit his daughter Miss.A.Hema Malini to complete the first year senior course, BHMS in the academic year 2013-2014 and to write the exam scheduled to be conducted in the year 2014. The writ petition has been dismissed on 10.02.2015. Against the said order of the dismissal, the petitioner has filed the present Writ Appeal.

2.Case of the Appellant:-

The appellant's daughter was born on 14.05.1996. She successfully completed her 12th Standard in the year 2012. She applied for admission in Homeopathy Course. The appellant belongs to Schedule Caste community and he is an agricultural coolie. The third respondent conducted counseling on 13.02.2013. His daughter was selected and allotted a seat in the first respondent College, under SC Government Quota.



3. The appellant's daughter completed the first year junior course and passed all the examinations in March 2013. She was undergoing first year senior course and had to take exams to be conducted by the second respondent in February, 2014. While so, the first respondent called the appellant's daughter on 20.10.2013 and informed her that she was under aged and therefore, the second respondent University would not accept her candidature for first year senior examination. They returned all the original certificates to his daughter and informed her that she can redo the first year junior course after obtaining the permission from the second respondent university and join some other college. The appellant's daughter completed her 16 years of age at the time of admission and she completed 17 years on 13.05.2013. The appellant and his daughter did not misrepresent her age. Having admitted her and allowed to complete her first year junior course successfully, the first respondent is not right in sending her out of college.

4. The second respondent has filed a counter affidavit and stated that the appellant's daughter joined BHMS degree course in the first respondent college during the academic year 2012-2013. At the time of registering the candidates of the first respondent college, it was found that the date of birth of appellant's daughter is 14.05.1996 and she has not completed 17 years of age, at the time of admission or before 31st December of that year. Because of under age, the appellant's daughter was not registered by the second respondent university. As per Regulation for Homeopathy (Degree Course) BHMS, Regulations 1983, no candidates shall be admitted to the BHMS degree course, unless he or she has attained the age of 17 years on or before 31st December of the year of his/her admission to the first year of the course. For the above said reasons, the second respondent has submitted that the writ petition is not maintainable and prayed for dismissal.

5. The learned Judge considering the pleadings and judgements relied on by the learned counsel for the appellant and respondents, dismissed the writ petition. Against the said order, the present appeal is filed.

6. The learned counsel for the appellant contended that appellant and his daughter did not make any misrepresentation of her age and she was validly admitted and allowed to complete the 1st year BHMS junior course successfully. The appellant is a poor coolie and belongs to Schedule caste community. The respondents are not justified in contending that the appellant's daughter's admission was wrong on the ground that she was underaged at the time of admission.

7. The appellant's daughter completed her first year course and was successful in the examination and thereafter the first respondent informed his daughter that she was underaged and therefore the second respondent will not allow her to write first year senior course examination. The appellant's daughter, as per the interim order of this Court, wrote the first year senior course examination. The appellant's daughter has completed first year senior course and therefore, it will cause hardship in directing her to redo from first year junior course.

8. The learned counsel for the appellant relied on the following judgements:-

<https://hcservices.courts.gov.in/hcservices/> Supreme Court Cases 311 (Shri Krishnan vs. The Kurukshetra University, Kurukshetra) wherein in paragraph 7 of the judgement is held as follows:



"7. It appears from the averments made in the counter-affidavit that according to the procedure prevalent in the college the admission forms are forwarded by the Head of the Department in December preceding the year when the examination is held. In the instant case the admission form of the appellant must have been forwarded in December, 1971 whereas the examination was to take place in April/May, 1972. It is obvious that during this period of four to five months it was the duty of the university authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the university to see that the form complied with all the requirements of law. If neither the Head of the Department nor the university authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi*, or *suppressio veri*. The appellant never wrote to the university authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the university authorities to have found out the defect. In these circumstances, therefore, if the university authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I examination in April, 1972, then by force of the university statute the university had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in *Premji Bhai Ganesh Bhai Kshatriya v. Vice Chancellor, Ravishankar University, Raipur* where a Division Bench of the High Court of Madhya Pradesh observed as follows:

From the provisions of Ordinance Nos.19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No.19 or Ordinance NO.48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result.

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the examination in May, 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the university to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for

his benefit and the statute therefore would not have stood in the way of the university authorities in cancelling the candidature of the appellant. "

ii) AIR 1987 Supreme Court 2305 (A.Sudha v. University of Mysore) wherein in paragraphs 17 & 18 reads as follows

"17. This Court was, therefore, of the view that as the students were innocent and were admitted to the Colleges for the sake of capitation fee in some cases, they should not be penalised and should be allowed to continue their studies in the respective Engineering Colleges in which they were granted admission.

18. The facts of the instant case are, more or less, similar to the Rajendra Prasad Mathur's case (Supra) (AIR 1986 SC 1448). It has been already noticed that on the appellant's query, the Principal of the Institute by his letter dated February 26, 1986 informed her that she was eligible for admission in the First Year MBBS Course. It was, inter alia, stated in the letter that the candidate should have obtained 50% marks in the optional subjects in the B.Sc. Examination. There is no dispute that the appellant had obtained 54% marks in those subjects in the B.Sc. Examination. The appellant was, therefore, quite innocent and she was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute in the said letter in regard to the eligibility of the admission in the First Year MBBS Course. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the MBBS Course. Prima facie it was the fault of the Principal of the Institute but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission in the MBBS Course, was on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS Course for the academic year 1985-86, which to some extent suffer from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajendra Prasad Mathur's case (supra) while we dismiss the appeal, we direct that the appellant shall be allowed to prosecute her studies in the MBBS Course, and that her result for the First year MBBS Examination be declared within two weeks from date."

Iii) AIR 1989 Supreme Court 823 (Ashok Chand Singhvi v. Jodhpur University) wherein in paragraph 17 reads as follows:-

"17. It is submitted on behalf of the University that it was through mistake that the appellant was admitted. We are unable to accept the contention. It has been already noticed that both the Dean and the Vice-Chancellor considered the objections raised by the Officer-in-Charge, Admissions, and thereafter direction for admitting the appellant was made. When after considering all facts and circumstances and also the objections by the office to the Admission of a candidate, the Vice-Chancellor directs the admission of such a candidate, such admission could not be said to have been made through mistake. Assuming that the appellant was admitted through mistake, the



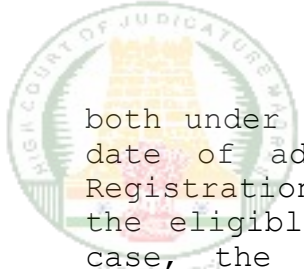
appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant. In this connection, we may refer to a decision of this Court in *Rajendra Prasad Mathur v. Karnataka University*, 1986 (Suppl) SCC 740: (AIR 1986 SC 1448). In that case, the appellants were admitted to certain private engineering colleges for the B.E., Degree Course, although they were not eligible for admission. In that case, this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of cancellation was upheld by the High Court. At the same time, this Court took the view that the fault lay with the engineering colleges which admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of these engineering colleges. Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission. The same principle which weighed with this Court in that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering. "

iv) AIR 1990 Supreme Court 1075 (*Sanatan Gauda v. Berhampur University*) wherein in paragraphs 10 & 11 reads as follows:-

"10. This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his mar-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course.

11. For all these reasons, I am of the view that the University is not justified in refusing to declare the appellant's results of the Pre-Law and Intermediate Law examinations. The appeal, therefore, succeeds. The respondent-University is directed to declare the said results as well as the result of the Final examination if the appellant has appeared for the same. The appeal is allowed accordingly. In the circumstances of the case, there will be no order as to costs."

9. The second respondent filed a counter affidavit and typed set of papers. In the counter affidavit it has been stated that as per the Regulations, a candidate must have completed 17 years of age on or before 31st December of the year of her admission to the first year course. In the present case, she did not complete 17 years before 31st December. Therefore, she was not eligible for admission. The second respondent has written to all the colleges to send final list of candidates admitted



both under the Government and Management Quota, within 15 days from the date of admission, so as to enable the University can conduct the Registration Sub Committee Meeting in the next 15 days and to register the eligible candidates for the academic year, in time. In the present case, the first respondent has sent list of 83 candidates, only on 30.10.2013 for registration for the academic year 2012-2013. In the list, 32 candidates allotted under Government Quota were mentioned. Serial No.10 was appellant's daughter. It has been stated that appellant's daughter is under aged and hence not to enter in the Registration Website Log in. The second respondent considered the list sent by the first respondent with remarks, in respect of appellant's daughter and by the letter, dated 26.11.2013 registered only 82 candidates and did not register the appellant's daughter as she was under aged. The second respondent has further stated that fixation of 17 years of age for admission was held to be valid by this Court. The second respondent has further contended that appellant has not challenged the regulations for Homeopathy degree course BHMS regulations 1983, prescribing the age for admission, in first year course. It is not the case of the appellant that the said regulations are arbitrary, contrary to any other laws in force, including the provisions of Constitution of India. The second respondent has further stated that if the appellant's daughter is permitted to continue her BHMS degree course, it will be against the Regulations of the Central Council of Indian Medicine as well as Regulations of the University. It will be a wrong precedent and against the judgements of this Court, as well as Apex Court.

10.The learned counsel for the second respondent relied on the following judgements.

i) AIR 1987 Rajasthan 174 (*Gautam Kapoor vs State of Rajasthan and another*) wherein in paragraph 9 reads as follows:

"9.Our conclusion, therefore, is that no invalidity attaches to the impugned provision prescribing the minimum age of 17 years to be completed in the year of admission for entry to a Medical College and that provision cannot, therefore, be struck down. This question has, therefore, to be answered accordingly."

ii) 2008(4) CTC 741 (*Mahatma Gandhi University vs. Gis Jose*) wherein in paragraph 9 reads as follows:-

"9.The misplaced sympathies should not have been shown in total breach of the Rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in Regional Officer, CBSE v. Ku.Sheena Peethambaran and others, 2003(7) SCC 719. In paragraph 6 of the Judgment, this Court observed as follows:

"6.This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the Petitions. In most of such case, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions.....".

<https://hcservices.ecourts.gov.in/hcservices/>
 iii) 1993(4) SCC 401 (*Guru Nanak Dev University vs. Parminder Kr.Bansal and others*) wherein in paragraph 7 reads as follows:-



"7. Shri Gambhir is right in his submission. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

11. The learned Special Government Pleader appearing for the third respondent contended that appellant's daughter was ineligible for admission due to under age. The appellant cannot plead equity taking advantage of mistake committed by staff of selection committee.

12. Admittedly, the appellant's daughter had not completed 17 years of age either at the time of admission or before 31st December of that year. Therefore, as per the Regulations, she is not eligible for admission due to under age.

13. The appellant's daughter was selected only provisionally and admission is subject to verification of the documents and compliance of required qualifications. On verifications of certificates, it was found that the appellant's daughter was under aged and therefore, her candidature was not registered for the academic year 2012-2013.

14. All the judgments relied on by the learned counsel for the appellant cannot no longer be applied in case of wrong admission of candidates even though, there is no misrepresentation or fraud played by such candidates. The Apex Court by the Judgment reported in 1993(4) SCC 401 (Guru Nanak Dev University vs. Parminder Kr. Bansal and other) and 2008(4) CTC 741 (Mahatma Gandhi University and another vs. Gis Jose and others) has held that Courts cannot regularise the wrong admission on misplaced sympathy and thereby embarrass the academic authorities by taking over their functions.

15. Therefore, the writ appeal fails and dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

16. The appellant has sent a letter in March 2015 to the respondents requesting them to allow his daughter to Study BHMS degree course from first year in first respondent college, as per the observations of the writ Court. The second respondent has stated that it is for the third respondent to consider such request for the Government seat and for first



respondent to consider for management quota. The respondents 1 and 3 are directed to consider the representation of the appellant sent in March 2015 on merits and pass orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order. The first respondent is directed to accommodate the petition in this academic year in Government Quots.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal,
White Memorial Homoeo Medical College,
Attoor, Veeyannoor Post,
Kanyakumari District-629 177.
- 2.The Registrar,
The Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai,Chennai-629 177.
- 3.The Directorate of Indian Medicine & Homoeopathy,
Chennai-600 106.

+1cc to MR.KARTHIK, Advocate in SR.No. 39268
+1cc to MR.G.PRABHU RAJADURAI, Advocate in SR.No. 39569
+1CC THE SPECIAL GOVERNMENT PLEADER, IN SR.NO. 39546

Am

SR : 31.07.2015 : 8p/7c

W.A (MD) No.277 of 2015
16.07.2015