

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.18663 of 2017
and
WMP.No.20197 of 2017

S.Aishwarya ..Petitioner
(Rep by father and natural guardian,S.Subramani)

Vs.

- 1.The Secretary to Government
Higher Education Department
Fort St.George, Chennai-600 009.
- 2.The Registrar
The Tamilnadu Dr.Ambedkar Law University
"Poompozhi" No.5, Dr.D.G.S.Dhinakaran Salai
Chennai-600 028.
- 3.The Chairman
The Tamilnadu Dr.Ambedkar Law University
"Poompozhi" No.5, Dr.D.G.S.Dhinakaran Salai
Chennai-600 028.
- 4.The Secretary to Government
Backward Classes and Most Backward Classes
Fort St.George, Chennai-600 009.
- 5.The Secretary to Government
Law Department, Fort St.George
Chennai-600 009.
- 6.The Bar Council of India,
Rep. by its Secretary,
21, Rouse Avenue Institutional Area
New Delhi - 110 002. ..Respondents

Prayer :

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the second respondent to create additional seats for Open Category and admit her in B.A.L., L.L.B., (Hons.) or B.B.A., L.L.B.(Hons.) as per the orders passed by this Hon'ble Court in WP.No.21434 of 2014.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.A.Kumar
Special Government Pleader
For R1 to R5.

O R D E R

The petitioner seeks for a mandamus directing the second respondent to create additional seats for Open Category and admit her in B.A.L., L.L.B., (Hons.) or B.B.A., L.L.B.(Hons.) as per the orders passed by this Hon'ble Court in WP.No.21434 of 2014.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 5.

3. The case of the petitioner is as follows:-

After passing All India Senior School Certificate Examination and securing 476 out of 500 marks, the petitioner applied for five years integrated degree course in law at Tamil Nadu Dr.Ambedkar University. Through single application form, her rank was fixed as 198 in the order of merit and her community rank for other caste was fixed as 43. In the order of merit, she was within the first 57 candidates. Had the second respondent adopted 50% reservation for Backward Communities, Scheduled Castes and Scheduled Tribes, there was a chance for selecting the petitioner as a candidate coming under the Open Category in the order of merit. Thus, the petitioner seeks for present relief by way of mandamus.

4. Mr.V.Raghavachari, learned counsel appearing for the petitioner submitted that in view of the orders passed by the Hon'ble Supreme Court in Indra Sawhney vs. Union of India [AIR 1993 SC 477], the communal reservation shall not exceed 50% and however, the State of Tamil Nadu had promulgated the Act, extending reservation upto 69%. He further contended that when the matters were heard by the Hon'ble Supreme Court subsequently, an order came to be passed on 04.08.2014 directing

the Government to create additional seats. Therefore, he submitted that similarly the respondents herein should be directed to create an additional seat and accommodate the petitioner. In support of the submission, the learned counsel for the petitioner relied on the decision reported in 2014 (7) MLJ 822.

5. On a careful consideration of the case of the petitioner and the submission made by the learned counsel, I do not think that this Court can entertain the present writ petition for the following reasons.

6. It is not in dispute that the State of Tamil Nadu passed the Tamil Nadu Act 45 of 1994, providing for a reservation upto 69% and the said Act, which was included under the IX Schedule of the Constitution. It is also not in dispute that the writ petition filed before the Hon'ble Supreme Court, challenging the said Act was disposed of on 13.07.2010, wherein, a direction was issued to the Backward Classes Commission of the State of Tamil Nadu to collect data for justifying the reservation at 69%. In the above referred decision cited by the petitioner's counsel, it is seen that the learned Judge while disposing the writ petition therein has extracted the above said facts, which read as follows:

"5. But the fourth respondent applied 69% reservation and hence the person who secured 247th rank became last person admitted under the Open Category. The constituent college of the fourth respondent University has an annual permitted intake of 150 students. Therefore, if 50% of those seats namely 75 seats had been filled up under open competition, the petitioner would have been selected for admission. In other words, the petitioner lost the chance of getting admitted, only because of the application of 69% reservation.

6. The Supreme Court held in Indra Sawhney v. Union of India [AIR 1993 SC 477] that communal reservation shall not exceed 50%. However, the State of Tamil Nadu enacted Tamil Nadu Act 45 of 1994, providing for a reservation up to 69% and included the Act under the IX Schedule of the Constitution. The validity of the Act was challenged by Voice (Consumer Care) Council before the Supreme Court and during the pendency of the challenge, interim orders were passed year after year, directing the

State to create extra seats, in order to accommodate those meritorious candidates, who could not get admission due to the application of reservation at 69%, rather than 50%. The writ petition was eventually disposed of by the Supreme Court by an order dated 13.07.2010, directing the Backward Classes Commission of the State of Tamil Nadu to collect data for justifying the reservation at 69%.

7. Since the order of the Supreme Court was not carried out, another set of persons filed a fresh writ petition in W.P.(C)No.365 of 2012 on the file of the Supreme Court. By interim orders passed in the years 2012 and 2013, the Supreme Court issued directions to the Government to create additional seats, as had been done in the past 20 years. Even recently a group of students filed one more writ petition in W.P.(C) No.641 of 2014 on the file of the Supreme Court. On 04.08.2014, the Supreme Court passed an interim order to the following effect:-

"Considering the facts and circumstances of the case and also considering the fact that the petitioners are meritorious candidates, who have secured 198.5 out of 200 marks i.e. more than 99% marks, we are inclined to follow the procedure adopted by the Court for the last so many years. Reference is made to the order dated 13.07.2010 passed by this Court in Writ Petition No.471 of 1994 and connected cases.

We therefore, direct the State of Tamil Nadu to follow the interim order dated 11th November, 1994 passed by this Court as well as the order dated 13.07.2010 passed by this Court in Writ Petition No.471 of 1994 and connected cases for the current year also. The same is made applicable to all candidates who fall in that category."

7. From the perusal of the said facts as extracted by the learned Single Judge in the above said order, it is evident that the Hon'ble Supreme Court has passed the order for creating additional seats only for that particular year and therefore, now the petitioner cannot approach this Court and seek for creation of additional seat for this year as well. No doubt, the learned Single Judge in the above said reported case has

allowed the writ petition and directed the fourth respondent University to act as per the interim orders of the Hon'ble Supreme Court. However, when this Court finds that the interim order passed by the Hon'ble Supreme Court was confined to that particular year, any further direction as sought for in this present writ petition before this Court cannot be entertained. Therefore, I find that the present writ petition is not maintainable before this Court. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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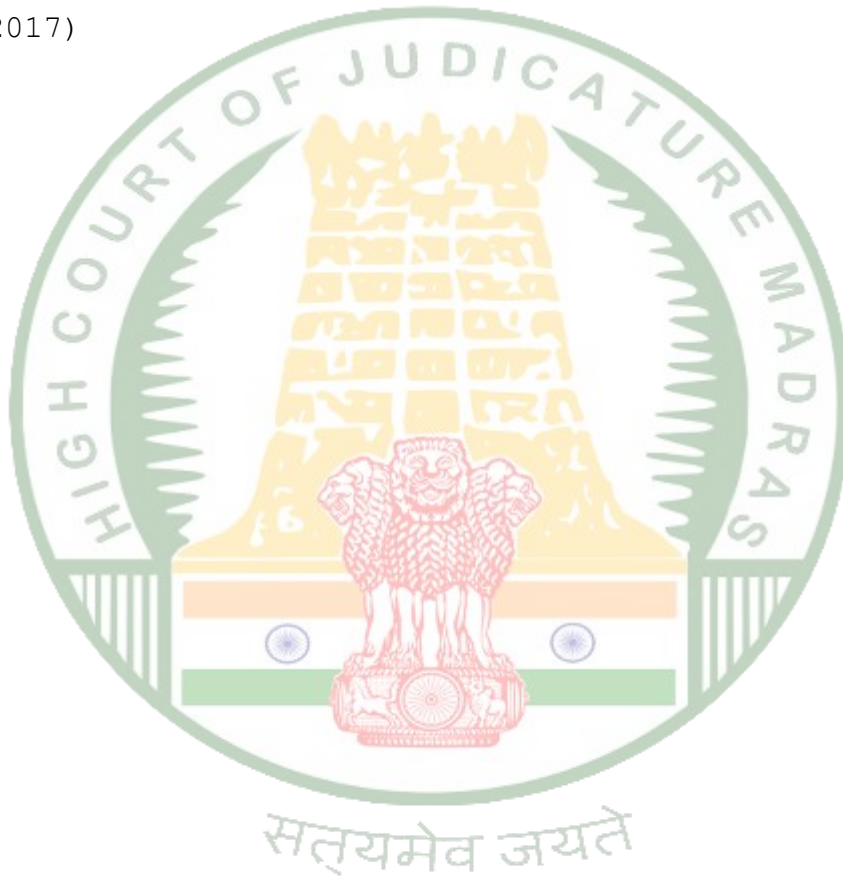
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+1cc to the Government Pleader, Advocate, S.R.No.51988

WP. No.18663 of 2017

CU(25/07/2017)



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