

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
21.3.2018

Delivered on
28.3.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.No.1809 of 2017

1. Tamil Nadu Veterinary and Animal
Sciences University, rep by Registrar,
Madhavaram Milk Colony,
Chennai 51.

2. The Chairman,
Tamil Nadu Veterinary and Animal
Sciences University
Madhavaram Milk Colony,
Chennai 51.

1.Shanthi Esther Puyravaud

2.Ministry of External Affairs,
Government of India, New Delhi

..Appellants/Respondents

...Respondents/Petitioner

Appeal filed against the order passed by this Court dated
24.11.2017 passed in W.P.No.26619 of 2017.

Writ Petition is filed under Article 226 of the constitution
of India to issue a Writ of Mandamus to direct the respondent 1
& 2 provide admission to the Petitioner under the foreign National
Quota in the EVSC-AH Course for the academic Session 2017-2018.

For appellant : Mr.S.Vijaya Kumar

For 1st Respondent : Mr.R.Srinivas

For 2nd respondent : Mr.J.Madanagopal Rao,
Central Government Standing Counsel

J U D G M E N T

K.K.SASIDHARAN, J.

The notification and the prospectus issued by the Tamil Nadu
Veterinary and Animal Sciences University for admission to the
undergraduate programme under the "foreign national" category
for the academic session 2017-18 provides that the foreign
national must be a person possessing foreign passport and must

not be of Indian origin. The learned Single Judge failed to note the second part of the eligibility criteria viz., "must not be a person of Indian origin" and directed the University to grant admission to the first respondent, who, even though is a foreign passport holder, admittedly is a person of Indian origin. The first respondent after securing admission, filed a fresh Writ Petition recently challenging clause 1.2 of the prospectus, which mandates that the foreign national must not be of Indian Origin, to overcome the legal hurdle and more particularly this intra court appeal filed by the appellant, challenging the order passed by the learned Single Judge, directing admission, notwithstanding the ineligibility of the respondent as per the prospectus.

The facts:-

2. The Tamil Nadu Veterinary and Animal Sciences University, (hereinafter referred to as the Veterinary University) issued a notification for admission to the undergraduate degree programme for the academic session 2017-18. The University reserved five seats in B.V.SC & AH and two seats in B.Tech (Food Technology) for foreign nationals, for the session 2017-18.

3. The prospectus for admission of students to the undergraduate programme for foreign nationals contain the details of the eligibility criteria.

4. The clause no.1.2 of the prospectus clearly provides that the applicant must be a foreign national, possessing foreign passport and must not be of Indian Origin.

5. The first respondent is the holder of a foreign passport. However, she is a person of Indian origin. Even then, the first respondent submitted application for admission to B.V.Sc. & AH Degree programme under foreign national category.

6. The Veterinary University, on verification of the records found that the first respondent is a person of Indian Origin and studied the basic education in India. Her application was therefore considered only under NRI quota. Since she was overaged for admission to the course under NRI quota, admission was not given.

7. The first respondent filed a Writ Petition for issuance of a Writ of Mandamus to allot a seat to her under the foreign national category.

8. The learned single Judge without considering the fundamental fact that the first respondent being a person of Indian origin would not meet the eligibility criteria for admission under foreign national category, issued a Writ and directed the Veterinary University to comply with the order dated 24 November 2017 on or before 11 December 2017 by giving

her admission, failing which, the Vice Chancellor was directed to appear in person before the Court.

9. The Veterinary University, with a view to avoid an unpleasant situation, granted admission to the first respondent and thereafter, filed this intra court appeal.

10. The first respondent, long after the admission given to her, and more particularly after receiving notice in the writ appeal, filed a fresh Writ Petition in W.P.No.5502 of 2018, challenging Clause 1.2 of the prospectus for the academic session 2017-18, notwithstanding the completion of admission for the said session and her very admission pursuant to the order passed by the writ court, without there being a challenge to the provision regarding eligibility criteria viz., Clause 1.2.

Submissions :-

11. The learned counsel for the appellant contended that the first respondent is a person of Indian origin. Her mother is an Indian citizen. She was born at Pondicherry and had her education also at Pondicherry. The learned counsel contended that Clause 1.2. was not challenged originally by the first respondent. The learned Single Judge therefore erred in directing admission to her, notwithstanding clause 1.2 which provides that the candidate must not be of Indian origin.

12. The learned counsel for the first respondent by placing reliance on the provisions of the Foreigner's Act, Citizenship Act and Article 9 of the Constitution of India, contended that the first respondent being a holder of a foreign passport is a foreigner. The learned counsel contended that the University was not correct in treating the first respondent as an NRI. The learned counsel submitted that the first respondent was given admission without any protest and the appeal was filed only thereafter. Therefore, there is no equity in favour of the appellant.

The issue :-

13. The only question for consideration is whether the first respondent would meet the eligibility criteria viz., the applicant must be a foreign national, he must be in possession of foreign passport and must not be of Indian origin.

Discussion:-

14. It is not in dispute that the first respondent is a French citizen. She is in possession of a French passport issued by the Republic of France. She therefore fulfilled the first part of the eligibility criteria viz., Foreign nationality and possession of foreign passport.

15. There is another part of the eligibility criteria which

should also be fulfilled for meeting the eligibility, viz., "must not be of Indian origin".

16. The first respondent is admittedly a person of Indian origin. She was born at Pondicherry. Her mother is an Indian national and the father is a French national. The first respondent took the French passport after registering her birth at Pondicherry. She is therefore not a foreign national within the meaning of Clause 1.2. of the prospectus.

17. Since French nationality of a resident of Pondicherry is in issue, we consider it appropriate to deal with the status of people holding French passport and continuously residing at Pondicherry.

Position of French national in Pondicherry:-

18. The French establishment in India originally consists of five outlying regions viz., Pondicherry, Karaikal, Mahe, Yanam and Chandernagore near Calcutta.

19. The French establishments in India formed part of the French Empire in 1816, when they were either restored to or retained by the French under the terms of the Treaty of Paris, 1814. The French administered its establishments in India through a Governor and a Council.

20. The Indian independence movement had its natural effect and consequences in Pondicherry also. The French, taking into account the liberation movement, finally agreed for transfer of the administration of the French establishments to the Government of India.

21. The Government of India and Government of France entered into a Defacto agreement dated 21 October 1954 for transfer of French establishment in India. The notification dated 30 October 1954 issued by the Government of India defined the term "French Settlements" as the areas comprised in the erstwhile French establishments in India, known as Pondicherry, Karaikal, Mahe and Yanam.

22. The Defacto agreement dated 21 October 1954 contain various articles governing the transfer of administration of the territories of the French Establishment in India. Article 7 of the Agreement permitted those practicing the profession to continue their profession without requirement to secure any additional qualifications or to comply with any new formalities.

23. The Treaty of Cession of the French establishment was signed by the French and the Government of Indian Union on 28 May 1956. Article 6 provides for the Citizenship and the option to choose the nationality. Article 11 permitted the

professionals to carry on their profession without any precondition. Similarly, Article 17 provides that nationals of France and of the French Union, domiciled in the French Establishments as on 1 November, 1954, shall be entitled to the same freedom of residence, movement and trade. Article 28 provides that the French language shall remain the official language of the establishments so long as the elected representatives of the people shall not decide otherwise.

24. The Pondicherry (Administration) Act, 1962, was enacted for the administration of Pondicherry. Section 9 of the Act extended the jurisdiction of the Madras High Court to Pondicherry. Section 11 permitted the Advocates practicing before the Tribunal Supérieur d Appel, Pondicherry, to practice as Advocates before the High Court of Madras. Similarly, the Government of India protected the interest of Ex.French employees by framing Pondicherry Ex.French Employees (Conditions of Service) Rules, 1966.

25. The Advocates Act, 1961, with amendment, was extended to Pondicherry by enacting the Pondicherry (Extension of Laws) Act, 1968. Section 58AA was inserted in the Advocates Act, 1961, to permit the Advocates of Pondicherry to practice the profession and they are subjected to the disciplinary jurisdiction of the Bar Council of Madras.

26. The Central Government with a view to specify the persons who shall be citizens of India, by reason of their connection with the Pondicherry Territory and in the light of the Treaty of Cession dated 16 August 1962, issued the Citizenship (Pondicherry) Order 1961. The order came into effect from 16 August 1962. The citizenship Order contain provisions recognizing the Indian citizenship of French nationals born in Pondicherry and domiciled there or elsewhere in India as on 16 August 1962. It also permitted the people to choose their nationality.

27. The Citizenship Act, 1955, was amended as per Act 6/2004 for introducing overseas citizenship. Section 7A deals with registration of Overseas Citizens of India cardholders. Section 7B conferred various rights on the overseas citizens of India Cardholders except certain rights indicated in sub clause (2) of Section 7B.

28. The professionals who were practicing as on 1 November 1954 in the French Settlements are given the right to practice the profession even after the merger of the erstwhile French settlements of Pondicherry, Karaikal, Mahe and Yanam with the Indian territory by the de jure transfer on 16 August 1962.

29. By virtue of the provisions of the Advocates Act, which was extended to Pondicherry and more particularly Section 58AA,

under the caption "Special provisions in relation to Union Territory of Pondicherry", the legal professionals practicing in the Union Territory of Puducherry are entitled to practice the profession before the High Court at Madras. They are also eligible for the privileges attached to the legal profession. The legal practitioners of Pondicherry, notwithstanding their French Nationality are entitled to hold office, including the engagement as Law Officers, and except those positions which specifically require Indian citizenship. This position is also made out from sub Clause (2) of Section 7B of the Citizenship Act. The Government of India thus protected the interest of the people of the French establishments in Pondicherry in accordance with the Treaty of Cession.

30. The Ministry of Overseas Indian Affairs, Government of India issued a notification dated 5.1.2009 conferring right on registered overseas citizens of India under Article 7A of the Citizenship Act for pursuing medical, legal, dentists, nurses, Pharmacists, Advocates, Architects and Chartered accountants profession and to undergo the test for making them eligible in pursuance of the provisions contained in the relevant Acts.

The fundamental flaws in the case of first respondent:-

31. The first respondent was born in Pondicherry on 2 February 1995. Her mother is a person of Indian origin. Therefore, it is clear that the first respondent failed to satisfy the eligibility criteria, "must not be of Indian origin".

32. (a) The learned counsel for the first respondent contended that clause 1.2. is arbitrary and it would take away the right given to foreign nationals in the matter of admission. According to the learned counsel, the first respondent has now filed a Writ Petition to quash Clause 1.2 of the prospectus for the session 2017-18. The learned counsel made a request to take up the Writ Petition along with this appeal.

(b) There is absolutely no merit in the contention taken by the learned counsel for the first respondent. There is no vested right to a foreign national to claim admission in the Indian University. It was only on account of allotting few seats to foreigners under "foreign national category", the first respondent submitted application. In order to avail the benefits of such allotment, the candidates must fulfill the eligibility criteria. Since upper age for a foreign national for admission is 26 years, as against the age of 21 years for others, the provision must receive a strict construction.

33. The prospectus for the academic session for 2017-18 was not under challenge earlier. In spite of non-fulfilling the eligibility criteria prescribed under clause 1.2, the first respondent filed a Writ Petition only for a Writ of Mandamus. The admission for the session 2017-18 was over, long back in

2017. There is no question of challenging clause 1.2 of the prospectus for 2017-18 during the fag end of the academic session 2017-2018. The first respondent is therefore not entitled to any relief, even if a challenge is made to the provisions of the prospectus for the session 2017-18.

34. The learned single Judge referred to the provisions of various acts to give meaning to the term, "foreign nationals". There is no dispute with regard to the term. The real issue is as to whether the first respondent satisfied the ingredients of Clause 1.2 in its entirety. The admitted facts are sufficient to hold that the first respondent is a person of Indian origin. She is therefore not entitled for admission under "foreign national category".

Discretionary relief:-

35. The further question is as to whether we should cancel the admission given to the first respondent for the year 2017-18 at this point of time.

36. The learned single Judge by order dated 24.11.2017 directed the appellant to grant admission to the first respondent. There was no genuine attempt made by the appellant to challenge the order immediately. The appellant on the other hand complied with the order by giving admission to the first respondent and only after her joining the course, filed the appeal. The admission for the academic session 2017-18 closed in the year 2017. It would not be possible now to give admission to another student after cancelling the admission given to the first respondent. Similarly, it would not be possible for the first respondent to join any other institution during the session 2017-18.

37. The Supreme Court in G.M.,O.N.G.C.Ltd., v. Sendhabhai Vastram Patel JT 2005(7) SC 465 observed that it is not always necessary to strike down a wrong decision only because it would be lawful to do so. The Supreme Court said:

"23. It is now well-settled that the High Courts and the Supreme Court while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India even may not strike down a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the Appellant in a given case although the Court may find the same to be justified in law."

38. The Supreme Court in Ritesh Tewari v. State of U.P., (2010) 10 SCC 677, explained the discretionary and equity

jurisdiction in the following words:

"26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. "

39. We have considered the entire background facts and the legal position for moulding the relief. We are of the view that equity should be worked out on account of the efflux of time, and the attending circumstances, even after declaring the correct legal position.

40. We make the position clear that eligibility criteria in Clause 1.2 of the notification issued by the Veterinary University must be satisfied in its entirety for admission to the professional course under the "Foreign National category". However, we refrain from cancelling the admission given to the first respondent for the academic session 2017-18.

41. The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Registrar,
Tamil Nadu Veterinary and Animal
Sciences University,
Madhavaram Milk Colony, Chennai 51.

2. The Chairman,
Tamil Nadu Veterinary and Animal
Sciences University
Madhavaram Milk Colony, Chennai 51.

+1 CC to Mr.S. Vijayakumar, advocate sr 23584.
+1 CC to Mr.R. Srinivasan, advocate sr 24072.

W.A.No.1809 of 2017

VGII (CO)
SP(16/04/2018)

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