

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.07.2018
CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.16447 of 2018 and
19651 of 2018

Gayathri, R.
Minor represented by her Mother,
B.Thilagavathy,
3/10A, Bajanai Kovil Street,
Nagal Village, Gudiyattam, Vellore.
Temporarily residing at
22, 4th Cross, VaishnaDevi Nivas,
Horamavu Main Road,
Bangalore North - 560043. Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by its Principal Secretary,
Health Department,
Secretariat,
Chennai 600 009.
2. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.
3. The Joint Secretary,
Central Board of Secondary Education,
National Eligibility cum Entrance Test (UG) 2018,
Shiksha Kendra-2,
Community Centre, Preet Vihar, Delhi-110 092.
4. The Medical Council of India,
rep. by its Secretary,
Pocket 25, Sector 8,
Dwaraka Phase 1,
New Delhi 110 077. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the Respondents to include the candidature of Gayathri, R. AR No.3322 given by Selection Committee DME (Directorate of Medical Examination), in the Provisional Rank List published by the Directorate of Medical Examination, so as to entitle her in participating in the Counselling for admission into Medical Seat under the Tamil Nadu State Quota.

For Petitioner : Ms.K.Aparna Devi
For Respondents 1 & 2 : Mr.C.Manishankar,
Additional Advocate General
assisted by
Mrs.V.Annalakshmi,
Government Advocate
For 3rd Respondent : Mr.G.Nagarajan
For 4th Respondent : Mr.V.P.Raman

O R D E R

Petitioner has come up with the present Writ Petition seeking a direction to the Respondents to include the candidature of her minor daughter in the Provisional Rank List published by the Directorate of Medical Examination, so as to entitle her to participate in the Counselling for admission into Medical Seat under the Tamil Nadu State Quota.

2. According to the Petitioner, her daughter viz. R.Gayathri, who was born in Chennai, pursued Classes I to VI in Tamil Nadu and Classes VII to XII in Karnataka. She further stated that her husband is an Agriculturist and that she is working in a Private Company in Bangalore. Her daughter appeared for NEET Examination on 06.05.2018 and scored 371 out of 720, and ranked as 1186. The grievance of the Petitioner is that though her daughter had applied for admission to MBBS/BDS Course as a native of Tamil Nadu and has produced requisite documents, viz. Aadhar, Birth Certificate, School Certificates and Ration Card along with the Application, she has not been included in the list of eligible candidates. On enquiry with the Selection Committee, the Petitioner was informed that the 'Communication Address' has the address that of Karnataka and that has become a criteria for disqualification.

3. It is the case of the Petitioner that 'Communication Address' would only mean the place of communication and cannot be interpreted in any other manner, more so to disqualify her daughter on such basis from participating in the Counselling under the Tamil Nadu State Quota. The Petitioner further stated that the First Phase of Counselling is scheduled between 01.07.2018 and 05.07.2018 and as per Clause 24 of the Prospectus, if a candidate is not able to attend the First Phase of Counselling, then the candidate will not be permitted to attend further Phase of Counselling and if this is applied on the candidate, then the candidate will be put to irreparable loss. Hence, the Petitioner contended that the State Government has misdirected itself to consider only the factum that 'Communication Address' given is that of Karnataka and has failed to look into and give weightage to all other documents, i.e. Aadhar and Birth Certificate, that have been placed before them.

4. Though the Respondents have not filed counter, they have produced relevant File pertaining to the Petitioner's daughter. It is seen that along with the Application Form, the Petitioner's daughter has enclosed her Nativity Certificate dated 25.09.2017, Community Certificate and Aadhar Card. That apart, she has furnished her father's PAN Card and Aadhar Card and Income Certificate.

5. Learned Additional Advocate General appearing for Respondents 1 to 3 contended that though the Petitioner's daughter claims to be a native of Tamil Nadu, she has pursued Classes VII to XII in Karnataka, and has not produced true copies of her parent's Certificates, such as, Birth Certificate/SSLC/10th/12th/Degree/Diploma/Professional Course and Ration Card/Passport in terms of Clause 3(f) of the Prospectus, to substantiate their place of birth in Tamil Nadu and to establish the relationship between the parent and the candidate. He further submitted that the Petitioner's daughter has produced only her Nativity Certificate.

6. According to the learned Additional Advocate General, though the Petitioner claims to have furnished Ration Card, Aadhar Card, Birth Certificate and School Certificates of her daughter along with the Application, true copy of the Ration Card, which is required as per Clause 3(f) is not annexed with the Application form. It is his contention that there is no use in producing documents which are not required under clause 3(f) of the Prospectus. Learned Additional Advocate General went on to state that since the Petitioner has furnished only the Nativity Certificate of her daughter and no other requisite documents have been produced, if her case is considered, it will certainly amount to opening the Pandora's box and she is not entitled to the relief sought for, more particularly in terms of clause 3(j) of the Prospectus, which states that if the photocopies of the supporting documents are not produced, then the application form will be summarily rejected.

7. In reply, learned counsel for the Petitioner submitted that similar issue came up before this Court in the case of K.Kanimozhi vs. The Director of Medical Education, (2011 (2) CWC 394), wherein, the Petitioner therein, who did not furnish the requisite Enclosures, was permitted to participate in the Counselling. Relevant portion of the said order reads, as under:

"20. At this juncture, the learned Advocate General submits that the applications of 199 candidates, including the petitioner, were rejected on the ground of "no enclosures" and if any concession is shown to the petitioner herein, the same will open the flood gates.

produced the details of marks obtained by those 199 candidates, whose applications were rejected on the ground of "no enclosures". On perusal, it is found that out of 199 candidates, 47 candidates belongs to Scheduled Caste. Out of 47 candidates, the petitioner and other person alone have secured more marks than the cut off marks and others are not coming under the zone of consideration at all. In the same way, none of the B.C., and O.C., candidates whose applications were rejected, have secured higher marks than the cut off marks and therefore, they could not come under the zone of consideration and only one M.B.C. candidate, secured higher marks than the cut off marks. Thus, in my view, out of 199 candidates, 3 candidates including the petitioner alone are prejudiced due to non enclosure of relevant documents. Hence, the same could not open the flood gate as contended by the learned Advocate General.

22. The submission made by the learned Advocate General looks attractive, but on deeper scrutiny, it lacks merit and thus I am not persuaded by the submission. There is a possibility that the documents could have been misplaced. The prospectus contemplates that no intimation could be made to the candidates whose applications were rejected. In this case also, the rejection was not intimated. When the petitioner on seeing that her name does not find place in the merit list, though she secured more than the cut off marks, approached this Court. Clause 14 of the prospectus contemplates rejection of application for all defects and no distinction is made between the one that could be cured and another that could not be cured. That is, the application rejected for submitting the same after last date could not be compared with some curable defects, such as no enclosures of attested copies of documents, particularly when the details of marks and other relevant details are found in the application form and O.M.R. Sheet and the original documents have to be produced only on admission. Hence, clause 14 is arbitrary. In fact, the learned Advocate General also admits the same, but he states that necessary changes could be made in the future years and this year admission should

not be disturbed. I am not inclined to agree with such submission.

24. In these circumstances, in the interest of justice, I am of the view that the petitioner should be included in the merit list and should be permitted to participate in the counseling hereafter. But however, as already stated, the candidates, who were already admitted in the Government Colleges, should not be disturbed. Hence, while directing the respondents to include the name of the petitioner in the merit list so as to enable her to participate in the counseling, I make it clear that she is permitted to participate in the counseling that has to take place from tomorrow (i.e., 08.07.2011) and the students, who obtained lesser marks than the petitioner and who have already been admitted through counseling that had already taken place, should not be disturbed. The respondents are also directed to effect necessary changes in clause 14 of the prospectus in accordance with the submissions made by the learned Advocate General for coming years."

8. Heard the learned counsel on either side and perused the material documents available on record.

9. In the case on hand, the candidate has studied till Class VI in Tamil Nadu. On a perusal of the File produced by the Respondent/Selection Committee, it is seen that the candidate has not produced true copies of the documents required to be produced as per clause 3(f) of the Prospectus. However, she has produced her Nativity Certificate. While so, she has furnished a copy of the Ration Card, Aadhar Card of her Father, Degree Certificate and Passport of her mother, in the typed set of papers to the above Writ Petition. On going through the same, it is clear that the candidate as also her parents, are native of Tamil Nadu.

10. Though the documents required under clause 3(f) of the Prospectus have not been produced by the candidate, this Court is in entire agreement with the decision rendered in Kanimozhi's case (cited supra) and is of the view that the candidate shall not be thrown out on technical grounds, as her future will be affected. Whatsoever, the candidature of the Petitioner's daughter can at the most be considered only under 'Open Category'.

11. Accordingly, the Petitioner's minor daughter viz. R.Gayathri is permitted to attend the counselling under 'Open Category' and the documents that may be produced by her at the time of counselling, may be verified. Persons, who have been

admitted through counselling that had already taken place shall not be disturbed.

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.M.P.No.19651 of 2018 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Principal Secretary,
Government of Tamil Nadu,
Health Department,
Secretariat,
Chennai 600 009.
2. The Secretary,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

+1cc to Mr.V.P.Raman, Advocate Sr.No.43936

+1cc to Mr.P.Subbareddy, Advocate Sr.No.43148

VGI (CO)
sm:20.8.2018

Order in
W.P.No.16447 of 2018

सत्यमेव जयते

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