

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.29474 of 2018

Yazhesy Tha,
Minor, aged about 16 years,
D/o. T.Thamizhmagizhnan
Represented by her father, Natural guardian
and her next friend
Mr.T.Thamizhmagizhnan .. Petitioners

Vs

1. The Secretary,
Selection Committee,
Directorate of Indian Medicine and
Homeopathy,
Arignar Anna Government Hospital of Indian
Medicine Campus, Arumbakkam,
Chennai-600106.
2. The Director,
Indian Medicine and Homeopathy Department,
Chennai-600106.
3. The Secretary,
Ministry of Ayush Bhawan,
B Block, GPO Complex,
New Delhi - 110 02.
4. The Central Council of Indian Medicine,
Jawaharlal Nehru Bhartiya Chikitsa Avam Homeopathy,
Anusandhan Bhavan, 61-65, Institutional Area,
Janakpuri 'D'Block, New Delhi - 110 058.
5. The Central Council for Homeopathy,
Jawaharlal Nehru Bhartiya Chikitsa Avam Homeopathy,
Anusandhan Bhavan, 61-65, Institutional Area,
Janakpuri 'D' Block, New Delhi - 110 058.

.. Respondents

(R3 to R5 suo motu impleaded vide this court order dated
14.11.2018)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of declaration declaring that the Clause-3 of the prospectus issued by the 2nd respondent for admission to BSMS/BAMS/BNYS/BUMS/BHMS courses for the year 2018-2019 as unconstitutional and ultravires and consequently direct the respondents to include the petitioner's name in the GENERAL MERIT LIST FOR U.G.COURSES IN INDIAN MEDICINE & HOMEOPATHY 2018-2019 published by the respondents without reference to clause 3 of the prospectus issued by the second respondent for the year 2018-2019.

For Petitioner : Mr.R.Thiagarajan
Senior counsel
Amicus curie

For Respondents: Mr.A.Kumar (R1 and R2)
Additional Advocate
General
Assisted by Ms.P.Rajalakshmi
Mr.K.Vellayaraj (R4 and R5)
for M/s.V.K.Raj Law chambers
Mr.N.Rajan (R3)
Senior Central Government
Standing Counsel

O R D E R

This Writ Petition has been filed for declaring Clause-3 of the Prospectus issued by the 2nd respondent for admission to BSMS/BAMS/BNYS/BUMS/BHMS courses for the year 2018-2019 as unconstitutional and ultravires and consequently directing the respondents to include the petitioner's name in the GENERAL MERIT LIST FOR U.G.COURSES IN INDIAN MEDICINE & HOMEOPATHY 2018-2019 published by the respondents without reference to clause 3 of the Prospectus issued by the second respondent for the year 2018-2019.

2. Mr.R.Thiagarjan, learned senior counsel, appointed as amicus curie to assist this Court, submitted that the petitioner has passed the Higher Secondary Examination, which was conducted in March 2018 and applied for BSMS/BAMS/BNYS/BUMS/BHMS courses for the year 2018-2019 Vide Application No.6198 before the first respondent and the first respondent also assigned A.R.No.0798 to the petitioner's Application. It is further submitted that petitioner is a meritorious student and she recited 1330 thirukurals while studying in L.K.G. itself and was awarded with a certificate by "Deiveeka Sidhantha Ilakiya Mandram" on 02.08.2006. She was also conferred with title 'Thirukkural Maamani" by ' Thalainagar Thamizhsangam' on 24.07.2011 and even

World Tamil Research Centre, Tharamani also awarded certificate on the 66th birth anniversary of former Chief Minister, Selvi. J.Jayalalitha, certifying that she had participated in Thirukural recitation competition, while studying eighth standard. She had also received a cash award of Rs.10,000/- along with certificate by Principal Secretary, Tamil Development Department. In addition to that, the petitioner had received many certificates and Awards, details of which have been enclosed in the typed set of papers. With these credentials, the petitioner aspired to get admission in any one of the courses offered by the first respondent. Learned Amicus Curie further stated that she has also scored 157.25 cut off marks, as per clause 10 of the prospectus. It is further submitted that the petitioner belonged to OBC category, for which, 26.5% of seats were reserved in the total seats, apart from 31% in the open competition. While so, the respondents published the General Merit List for U.G.Courses in Indian Medicine & Homeopathy 2018-2019 in their website www.tnhealth.org. The name of the petitioner was not included in the said list though the merit list contains cutoff marks ranging from 198 to 100 and the rank from 1 to 3471 respectively. Learned Amicus Curie further submitted that admittedly, though the petitioner has scored 157.25 cut-off marks and the petitioner rank falls in between 1648-1666, she was not considered for selection on the ground that she has not completed 17 years as on 31.12.2018, as per clause '3' of the prospectus.

3. Mr.Thiagarajan, the learned Amicus curie has drawn the attention of this Court to the Amendment Notification dated 07.11.2016, and submitted that the petitioner has fulfilled the criteria required for admission to B.S.M.S/B.A.M.S/B.N.Y.S/B.U.M.S., courses. When that be so, the petitioner's case should not be rejected for the simple reason that she has not completed 17 years of age. Learned Amicus Curie also relied upon the Judgment of the Apex Court in Rajiv Kappor and Others Vs. State of Haryana and others reported in 2000 9 SCC 115, wherein it is clearly held that the when the eligibility criteria is wrongly fixed in the prospectus and contrary to the Rule, the candidate cannot be rejected based on the condition mentioned in the Prospectus, when that candidate comply with other eligibility Rules and hence, he prays to allow this Writ Petition and also permit her to take part in the counseling with respect to B.A.M.S course.

4. It is an admitted fact that the petitioner is a meritorious student who evidently proved her memory and intelligentsia as she started reciting all 1330 thirukurals, even from L.K.G., itself and she was awarded with a certificate by "Deiveeka Sidhantha Ilakiya Madnram on 02.08.2006. She was also conferred with title "Thirukkural Maamani" by Thalainagar Tamizhsangam on 24.07.2011. Further, the World Tamil Research

Centre, Tharamani also awarded certificate on the 66th birth anniversary of former Chief Minister, J.Jayalalitha, certifying that she had participated in Thirukural recitation competition, while studying eighth standard. Besides, several other awards conferred on her clearly show that the petitioner is a highly talented student and also a child prodigy. The difficulty faced by her at the hands of the respondents shows that as she has applied for BSMS/BAMS/BNYS/BHMS courses for the year 2018-2019 and she also secured 157.25 marks, for the simple reason that she is below seventeen years as on 31.12.2018 as per clause 3 of the prospectus, the respondents have denied admission. It is pertinent to extract the eligibility criteria as per the amendment notification.

"2. Eligibility for admission:- The eligibility to seek admission in Bachelor of Siddha education are as under:

(a) 12th standard with science or any other equivalent examination recognised by University or Boards with at least fifty per cent, aggregate marks in the subjects of Physics, Chemistry and Biology.

(b) For reserved category or special category like physically handicapped students in 10+2, they shall be given relaxation in marks for admission in Bachelor of Siddha Medicine and Surgery as per rules for time being in force.

(c) Candidates shall have passed Tamil as one of the subjects in the 10th standard or in Higher Secondary Course.

(d) Candidates who are not covered with clause (c) above, have to study Tamil as a subject during the First Professional Course.

(e) For foreign students any other equivalent qualification to be approved by the concerned authorities may be allowed."

5. One another latest notification dated 07.11.2016 also prescribes the admission qualification as follows:

2. Admission Qualification: The eligibility to seek admission in Bachelor of Ayurveda education are as under:

(a) 12th Standard with science or any other equivalent examination recognised by concerned State Government and Education Boards with at least fifty per cent, aggregate marks in the subjects of physics, Chemistry and Biology.

(b) For reserved category or special category like physically handicapped students in 10+2, they shall be given relaxation in marks for admission in Bachelor of Ayurvedic Medicine and Surgery as per rules in force.

(c) For foreign students any other equivalent qualification to be approved by the concerned authority may be allowed.

6. When the petitioner has admittedly complied with the aforementioned admission qualifications, as per the amendment notification dated 07.11.2016, the respondents cannot rely upon the old notification dated 13.10.2006 issued for Siddha by citing the age factor that she has not completed 17 years of age as on 31.12.2018. This Court finds no impediment on the basis of the latest amended notification to allow the petitioner to take part in the counseling.

4. Mr.A.Kumar, learned Additional Advocate General appearing for the first respondent would submit that on the basis of the cut-off marks secured by the petitioner, she may not be able to get admission in Government Colleges in Chennai and Palayamkottai for Siddha but, she can be considered for admission in private colleges. Since counseling is presently going on, and there is a vacancy in Maria Ayurveda Medical College, Kanyakumari District, the petitioner will be considered in the said college, if she takes part in the counseling, which has been agreed by the learned amicus curie appearing for the petitioner.

5. In view of the above reasons, this Writ Petition is disposed of and the respondents are directed to permit the petitioner to take part in the counseling for the B.A.M.S.

Course on 23.11.2018 and, if she is found eligible, in the counseling, in terms of amended notification, to admit her in Maria Ayurveda Medical College, Kanyakumari District. Since, Mr.A.Thiagarajan, learned Amicus Curie has placed before this Court , relevant rules and criteria for admission and also the Judgment of Hon'ble Apex Court, this Court places its appreciation for his immediate response and assistance to this Court. No costs.

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

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
Selection Committee,
Directorate of Indian Medicine and
Homeopathy,
Arignar Anna Government Hospital of Indian
Medicine Campus, Arumbakkam,
Chennai-600106.
2. The Director,
Indian Medicine and Homeopathy Department,
Chennai-600106.
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+1CC to Mr.R.Senthil Kumar,Advocate sr 79626.

+1CC to Mr.N.Rajan, Advocate sr 79634.

+1CC to Mr. Arun Anbumani, Advocate sr 78274 (05/12/2018)

+1CC to M/s.V.K.Raj Law Chambers,Advocate sr 80050 (27/12/2018)

W.P.No.29474 of 2018

SP(22/11/2018)