

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.09.2019

PRONOUNCED ON: 10.09.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WRIT PETITION NO.18310 OF 2019

S.Malathi (Minor),
Represented by her Mother,
S.Uma Maheswari,
W/o.Selvam,
12-B, Tsunami Kudiyiruppu,
Velankanni, Nagapattinam District.

... Petitioner

/versus/

1. The Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.
2. Andavar College of Nursing,
Main Road,
Poravachery,
Nagapattinam - 611 108.
3. Sir Issac Newton College of Nursing,
Pappakoil,
Anthanapettai (PO),
Nagapattinam - 611 102.
4. Indian Nursing Council,
Combined Council Building
Kotla Road, Temple Lane,
New Delhi - 110 002.
5. Tamil Nadu Nurses and Midwives Council,
Jayaprakash Narayanan Maligai,
Old No.140, New No.56, Santhome High Road,
Mylapore, Chennai - 600 004.

... Respondents

R4 & R5 - impleaded as per Court order dated 08.07.2019 made in W.M.P.No.18719 of 2019 in W.P.No.18310 of 2019 by Dr.GJJ.

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the 1st respondent to admit the petitioner in B.Sc., Nursing Course

for the Academic year 2019-2020 in any one of the Institutions of the respondents 2 and 3 and pass orders.

For Petitioner : Mr.V.Karthikeyan

For R1 : Mr.Ilayaraj Kumar
for Ramalingam Associates

For R2 : Mr.D.Ravichander

For R4 : Mr.B.Deepak Narayanan

For R5 : Mr.A.R.Nixon

For R3 : No appearance

ORDER

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein is the mother of the minor girl Malathi who applied for B.Sc., Nursing course in the 3rd respondent College for the academic year 2019-2020 admission. The application was not considered for the reason that the candidate does not satisfy the minimum age requirement prescribed by the 1st respondent/Tamil Nadu Dr.M.G.R.Medical University.

3. The petitioner contention is that, her daughter has successfully completed her 10 +2 studies during April, 2019. She has secured 353 marks out of 600 marks in the examination. The minimum education prescribed for B.Sc., Nursing is pass in 10 +2 examination with Physics, Chemistry, Biology and English as core subjects with aggregate of 45%. Having secured 58.83% in the qualifying examination, she is fully eligible to join B.Sc., Nursing Course. However, her candidature is not considered for admission because the 1st respondent/Tamil Nadu Dr.M.G.R.Medical University, has prescribed the minimum age for admission shall be 17 years on 31st December of the year, in which admission is sought. Due to the prescription of minimum age, the petitioner is deprived of Education of her choice and forced to wait for one academic year to join B.Sc., Nursing course though she has secured the required eligibility marks prescribed in the qualifying examination.

4. As per the instructions annexed to the application for B.Sc., Nursing course, the candidates should have passed the

qualifying examination with aggregate of 45%. In this case, the candidate has secured 58.83% and her date of birth is 17.02.2003. Therefore, though the petitioner's daughter has secured the required marks, she has become ineligible for this year admission since she will not attained the age of 17 years by 31st December of this year (2019).

5. The learned counsel for the petitioner submit that, the policy of fixing 17 years as minimum age for admission into B.Sc., Nursing course is irrational and illegal. There is no nexus between the object and the classification making students who have not reached the age of 17 years ineligible. The Nursing Council does not prescribed minimum age for admission into B.Sc., Nursing Course. By instruction, the 1st respondent/Tamil Nadu Dr.M.G.R.Medical University, cannot fix additional eligibility criteria detrimental to the interest of meritorious students who are able to clear the qualification exams at a younger age. By prescribing minimum age limit for admission, the petitioner's daughter despite having the required educational qualification not permitted to join the B.Sc., Nursing course.

6. The learned counsel for the 1st respondent submitted that, as per the guidelines of the Nursing Council of India, the eligibility criteria for admission to B.Sc., Nursing Course is framed. The fixation of minimum age for admission as 17 years is based on the Nursing Council's mandate. This age limit is uniformly followed for courses like M.B.B.S/ B.D.S and Engineering throughout the country. There is no discrimination or unreasonable classification. Admittedly the petitioner's daughter has not fulfilled the eligibility minimum age requirement. Rounding of 16 years 5 month as 17 years is not permissible. Under section 16 of the Nursing Council Act, the Indian Nursing Council is vested with power to make regulations. The Indian Nursing Council has prescribed minimum age of 17 years for admission into B.Sc., Nursing course. The said provision is not challenged. The petitioner cannot seek a relief in violation of the regulation. Any relaxation to the Rules prescribed will tantamount to violation of Article 14 of the Constitution.

7. The 5th respondent/Tamil Nadu Nurses and Midwives, while supporting the stand of the 4th respondent/Indian Nursing Council, in the counter has stated that no sympathy or leniency can be shown to the petitioner against the statute. The admission software does not allow entries of the candidate who does not satisfy the eligibility criteria. On 31st December 2019

the petitioner will attain only 16 years 10 months. So, she has to wait till she attains 17 years to get admission in B.Sc., Nursing Course. The age criteria is common to all and no discrimination or concession could be shown between candidates seeking admission in Government and Private colleges.

8. The Indian Nursing Council/4th respondent, which is the governing body for Nurses, is vest with power to prescribe conditions for admission to course of training under Section 16 of the Act. Accordingly, the 4th respondent has prescribed the minimum age and minimum mark in the qualifying examination. The guideline issued by the 4th respondent specifically state the minimum age. Same is incorporated in the instruction issued to the candidates annexed along with the application form. The petitioner has not challenging the vires of fixation of the minimum age. Her grievance is by fixation of minimum age criteria her daughter is not able to get admission in B.Sc., Nursing Course for this academic year and she has to wait for one year to get admission. To avoid wasting one year, she wants relaxation of the eligibility criteria in respect of the minimum age.

9. The policy of the State fixing minimum age for admission cannot be assailed. The petitioner seeks relaxation as a special case since, her daughter suffered Tsunami Trauma and eager to do Nursing. If any relaxation necessary, it can be considered only by the 4th respondent. The 4th respondent, in the counter has categorically stated that, any relaxation to the minimum age criteria fixed, will tantamount to violation of Article 14 of the Constitution and it will open a floodgate for others to file similar writ petition.

10. Fixation of minimum age as eligibility criteria is a decision of the state. It cannot be judicially reviewed or interfered unless such fixation is done arbitrarily or with malafide. The legal position regarding fixation of minimum age as eligibility criteria for admission into professional Course came up for consideration before this Court in N.Anandan Vs. Principal, White Memorial Homoeo Medical College and two others (W.P.(MD)No.17454 of 2013). By order dated 10.02.2015, this Court declined to interfere with the policy decision of the state. In that case, the candidate was in fact admitted to the B.H.M.S Course before attaining 17 years of age. By the time the case came up for final disposal, the candidate had successfully completed his first year examinations. Even then his admission to the course was withdrawn since the admission was contrary to the statute. Following the dictum of the Supreme court, this Court dismissed the plea of the candidate, who failed to satisfy the minimum age eligibility criteria.

11. In N.Anandan Case, the Court observed; "Whatever the case may be with regard to the examination written by him, the fact remains that as on the date of admission into the first year degree course, admittedly, she has not completed the age of 17 years as required under the Regulations. Therefore, such admission is certainly an irregular admission, even though it was not due to any misrepresentation or fraud played upon by the petitioner's daughter. Irregular admission, made in violation of Rules, cannot be sustained".

12. In the said judgment the Learned Judge has referred the Hon'ble Supreme Court decision reported in 2008(4) CTC 741 - Mahatma Gandhi University and another Vs. Gis Jose and others, (1993) 4 SCC 401- Guru Nanak Dev University Vs. Parminder KR.Bansal and others, the unreported decisions of this Court passed in W.P.No.12698 of 2009, dated 13.07.2009 and in W.P.No.12531 of 2009, dated 05.08.2009 besides the decision of Rajasthan High Court reported in AIR 1987 Raj 174 - Gautam Kapoor Vs, State of Rajasthan and another.

13. In the Mahatma Gandhi University case, the Apex Court has held that the misplaced sympathies should not be shown in total breach of the Rules.

14. In Regional Officer, CBSE Vs. Ku. Sheena Peethambaran and others reported in 2003(7) SCC 719 at paragraph No.6 of the Judgement, Hon'ble Supreme Court observed, "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 cases, 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."

15. In Guru Nanak Dev University case, reported in 1993(4) SCC 401 the Hon'ble Supreme Court has at paragraph Nos. 6 and 7 has observed, "Learned counsel for the respondents, however, sought to maintain that the two candidates had now completed the 12 months of their internship and it would be hard on them if their internship is reckoned from the date of their passing the MBBS examination.

"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 and 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.

(emphasis added).

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."

16. When issue similar to this case came up for consideration in W.P.No.12698 of 2009, the learned Judge in his order, dated 13.07.2009 observed:

"The minimum age limit prescribed in the prospectus issued by the first respondent, for admission to the M.B.B.S/B.D.S., course, for the academic year 2009-2010, is based on the policy decision of the Medical Council of India. The Medical Council of India has not been made a party to the present writ petition. The age limit prescribed for admission to the M.B.B.S/B.D.S courses cannot be relaxed, merely for the reason that the candidate had been permitted to write the 10th standard examinations, by relaxing the age limit prescribed for writing the said examinations."

17. In another unreported decision made in W.P.No.12531 of 2009, dated 05.08.2009, the Learned Single Judge of this Court has observed at paragraph No.15 as follows:

"Since the petitioner would not be completing 17 years of age, on or before 31.12.2009, he is not qualified to apply for the M.B.B.S./B.D.S Courses, for the academic session 2009-2010. Merely for the reason that the petitioner had been permitted to write the 10th Standard and the plus two examination, it cannot be a ground for granting the exemption in favour of the petitioner, in respect of the age limit prescribed under Clause 4 of the prospectus issued by the second respondent. In view of the decisions cited supra it is clear that the Courts of law ought to be reluctant to interfere in matters relating to education, especially, when certain conditions of admission to medical courses are prescribed by the experts in the medical and its allied fields. In such view of the matter, this Court is not inclined to grant the relief, as prayed for by the petitioner. As the writ petition is devoid of merits, it stands dismissed. No costs. Consequently, connected writ petition misrepresentation petition is closed."

18. In Gautam Kapoor Vs, State of Rajasthan and another - AIR 1987 Raj 174, the Full Bench of Rajasthan High Court has observed at paragraph No.4 that minimum age limit prescribed for entering into the Medical College as 17 is being followed throughout the Country for a long time and there is no invalidity attached to the provisions prescribing the minimum age of 17 years.

19. Following the above dicta, this Court holds that the plea of the petitioner to relax the minimum age cannot be entertained.

20. Before parting, it is necessary to state that, the minimum age criteria fixed decades ago requires reconsideration in view of vast change in Education pattern and methodology after introduction of New Education Policy (NEP) and the Right to Education Act. Possibility of bright and brilliant children completing the qualifying examinations few months or days earlier has become more and in future it will be still more. Those students cannot forced to have a break and be deprived of their right of continuous Education because of minimum age prescribed. It is time for the authorities to take a call on

this issue at the earliest. With the above observation and request for a timely consideration of the departments concern, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.
2. Indian Nursing Council,
Combined Council Building
Kotla Road, Temple Lane,
New Delhi - 110 002.
3. Tamil Nadu Nurses and Midwives Council,
Jayaprakash Narayanan Maligai,
Old No.140, New No.56, Santhome High Road,
Mylapore, Chennai - 600 004.

+2cc to M/S.Ramalingam & Associates, Advocate, S.R.No.78071
+1cc to Mr.B.Deepak Narayanan, Advocate, S.R.No.78594

Writ Petition No.18310 of 2019

SS(CO)
CS/10/10/2019

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