

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.19583, 18667, 20786, 22235 of 2017
and W.M.P. Nos.20206, 21143, 21629, 22234 and 23268 of 2017

I.P.Kanagasundaram ... Petitioner in
W.P. No.19583 of 2017

P.B.Prince Gajendra Babu ... Petitioner in
W.P. No.18667 of 2017

Tamil Nadu Students Parents Welfare
Association
Rep. by its President S.Arumainathan
No.4/16, Sanjay Gandhi Nagar, II Street
Virugambakkam, Chennai - 600 092 ... Petitioner in
W.P. No.20786 of 2017

U.Mustafa ... Petitioner in
W.P. No.22235 of 2017

Vs

1.Union of India
Rep. by The Secretary,
Ministry of Home Affairs
North Block, Cabinet Secretariat
Raisina Hill, New Delhi

2.Union of India
Rep. by the Secretary,
Ministry of Health and Family Planning
A Wing, Nirman Bhawan, Maulana Azad Road
New Delhi - 110 011

3.Union of India
Rep. by The Secretary
Ministry of Human Resource and Development
Shastri Bhawan, Dr.Rajendra Prasad Road, New Delhi

4.State of Tamil Nadu,
Rep. by the Principal Secretary,
Heath and Family Welfare
Fort St. George, Chennai 600 009 ...Respondents in all WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of mandamus, directing the the respondents 1 to 3, to complete the procedures for obtaining the Presidential assent for Tamil Nadu Admission to MBBS and BDS Courses Act, 2017 and the Tamil Nadu Admission to Post Graduate Courses in Medicine and Dentistry Act, 2017 on or before 15th of August, 2017.

For Petitioner : Mr.R.Viduthalai, Sr. Counsel
in W.P. No.19583 for Mr.R.Rajaram

For Petitioner : Mr.R.Viduthalai, Sr. Counsel
in W.P. No.18667 for Mr.P.B.Suresh Babu

For Petitioner : Mr.N.L.Rajah, Sr. Counsel
in W.P. No.20786 for Mr.P.Amarnath

For Petitioner : Mr.S.Doraisamy
in W.P. No.22235

For Respondents : Mr.K.Srinivasamurthy
in W.P. No.19583 SCGSC for R1 to R3

For Respondents : Mr.V.Chandrasekaran
in W.P. Nos.18867, SCGSC for R1 to R3
20786 & 22235

For Respondent No.4 Mr.Vijay Narayan,
in all WPs Advocate General for R4
Assisted by
Mr.V.Jayaprakash Narayanan
Govt. Pleader i/c and
Mr.V.Kadhirvelu, Spl. GP for R4

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COMMON ORDER
(Order of the Court was made by S.MANIKUMAR, J)

These writ petitions have been filed for a writ of mandamus, directing the the respondents 1 to 3, to complete the procedure for obtaining the Presidential assent for Tamil Nadu Admission to MBBS and BDS Courses Act, 2017 and the Tamil Nadu Admission to Post Graduate Courses in Medicine and Dentistry Act, 2017 on or before 15th of August, 2017.

2. Short facts leading to the filing of these writ petitions are that the Government of India, have introduced and is implementing the National Eligibility cum Entrance Test (NEET), for the whole of the country towards regulating admission to the Medical and Dental Colleges. On the other hand, Government of Tamil Nadu prefers to maintain its existing pattern of admission to medical and dental colleges for the seats under its control. The Union Government originally proposed to hold NEET in the year 2010. At that time, Medical Council of India (MCI) notified its Regulation that made an All India Common entrance Test mandatory for admission to the Medical colleges. This notification was struck down by the Supreme Court, as the Medical Council of India which has issued Notification in this regard, has no statutory authority to do so at that point of time. However, the Government of Tamil Nadu, took a policy decision to abolish entrance test to the Professional Courses and passed the Tamil Nadu Admissions in Professional Educational Institutions Bill. The said legislation was made on the basis of the recommendations of Dr.M.Anandakrishnan Committee. In pursuance of its policy, it has passed Tamil Nadu Admissions in Professional Educational Institutions Bill. This Bill obtained the Presidential Assent on 7.3.2007 and became an Act. Its constitutional validity was tested before the Madras High Court in Minor S.Aswin Kumar's case, 2007 and the Supreme Court in A.S.Prabhu's case, 2011. Both High Court and Supreme Court upheld the validity of this Act. Thus the State of Tamil Nadu was exempted from conducting a common Entrance Test both by Legislative Act and by the judicial pronouncement.

3. Thereafter, in a batch of cases commonly called as Christian Medical College, Vellore case, the Hon'ble Supreme Court on 18.7.2013 reported in 2014 (2) SCC 305 held that the right to admit students in the different educational and medical institutions in an integral part of the right to administer and cannot be interfered with except in the cases of maladministration or lack of transparency. It has further held that nowhere in the 1956 Act nor in the MCI Regulations, the council has been vested with any authority or either conduct examinations or to direct that all admissions into different medical colleges and institutions in India would have to be on the basis of one common National Eligibility-cum-Entrance Test.

4. The State of Tamil Nadu in exercise of Legislative Authority passed the Tamil Nadu Admission to MBBS and BDS Courses Act, 2017 and the Tamil Nadu Admission to Post Graduate Courses in Medicine and Dentistry Act, 2017 unanimously. These Bills after Governor's Assent was sent for Presidential Assent. On 12.4.2017, the petitioner's organisation has sent representation to the President of India seeking to expedite the process. On 17.4.2017 Mr.T.K.Rengarajan, Member of Parliament had written a letter to the Hon'ble President's office seeking the status of the two bills that have been sent for presidential assent from Tamil Nadu. On 20.4.2017, a reply was received from President's office stating that no such bills have been received by their office from Ministry of Home Affairs. Hence the petitioners have filed the above writ petitions for the relief stated supra.

5. Heard Mr.R.Viduthalai, learned senior counsel appearing for the petitioner the learned counsel appearing for the parties and perused the materials available on record.

6. On 5.7.2019, we have passed the following order:

"M/s.I.P.Kanagasundaram, Mr.P.B.Prince Gajendra Babu, Tamil Nadu Students Parents Welfare Association and U.Mustaffa, have filed W.P.Nos.19583, 18667, 20786 and 22235 of 2017, respectively, praying for the issuance of a writ of mandamus, directing the respondents 1 to 3, to complete the procedures, for obtaining the Presidential Assent, for the Tamil Nadu Admission to MBBS and BDS Courses Act, 2017 and the Tamil Nadu Admission to Post Graduate Courses in Medicine and Dentistry Act, 2017, on or before 15th of August 2017.

2. Mr.A.Kumaraguru, and Mr.T.V.Krishnamachari, learned Senior Central Government Standing Counsel, appearing for Union of India, submitted that they have received a communication, from the Under Secretary (Judicial & PP), Ministry of Home Affairs, to the effect that bills (The Tamil Nadu Admission to MBBS and BDS Courses Bill, 2017 and the Tamil Nadu Admission to Post Graduate Courses in Medicine and Dentistry <http://www.judis.nic.in> Bill, 2017), were received from Government of Tamil Nadu, on 20/2/2017. The bills were with held by the President of India, on 18/9/2017.

3. Both the learned counsel for Union of India submitted that on the clarification sought for, as to whether bills were withheld or rejected, Under Secretary (Judicial & PP), Ministry of Home Affairs, has stated that bills have been rejected.

4. We direct, the Secretary, Union of India, Ministry of Home Affairs, North Block, Cabinet Secretariat, Raisina Hill, New Delhi, first respondent, to file an affidavit, setting out the details of the receipt of the bills, in particular the date of rejection, as submitted by the learned counsel for Union of India.

5. Post on 16/7/2019, in the motion list."

7. Though Mr.R.Viduthalai, learned Senior Counsel for the petitioners submitted that the procedure as contemplated under Article 201, has not been followed in letter and spirit and therefore, prayer sought for in the writ petitions for a mandamus is still maintainable, we are not inclined to accept the said submission.

8. Submission of the learned Senior Counsel that withholding of assent by the Hon'ble President of India, has been construed by the State Government as still pending with the Hon'ble President of India and that is why State Government have sent reminders to the sender and therefore, it should be construed that the procedure is incomplete, is not acceptable to us, for the reasons that, an order under Article 201 has been passed. Though Mr.R.Viduthalai, learned senior counsel wanted to make submissions on the procedure to be followed, we are not inclined to accept the said submission also for the reason that it is beyond the scope of the prayer sought for. Without pleadings, mandamus cannot be converted into a writ of certiorari or declaration, as the case may be.

9. Though Mr.R.Viduthalai, learned senior counsel for the petitioner submitted that reasons ought to have been given in the order of rejection, considering the relief, it is our considered view that procedure if not followed any order can be challenged only in a writ of certiorari or declaration, as the case may be subject of course to the pleadings, supporting materials and maintainability of such writ petition, if any filed.

10. With the above observations, all the writ petitions are disposed of with liberty to challenge the order subject to the maintainability of the writ petition, if any filed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Asr

To

- 1.Union of India
Rep. by The Secretary,
Ministry of Home Affairs
North Block, Cabinet Secretariat
Raisina Hill, New Delhi
- 2.Union of India
Rep. by the Secretary,
Ministry of Health and Family Planning
A Wing, Nirman Bhawan, Maulana Azad Road
New Delhi - 110 011
- 3.Union of India
Rep. by The Secretary
Ministry of Human Resource and Development
Shastri Bhawan, Dr.Rajendra Prasad Road, New Delhi
- 4.State of Tamil Nadu,
Rep. by the Principal Secretary,
Heath and Family Welfare
Fort St. George, Chennai 600 009

+1 cc to Government Pleader sr69338
+1 cc to Mr.K.Srinivasamurthi counsel for R1 to R3
sr69122

W.P.Nos.19583, 18667, 20786, 22235 of 2017
and W.M.P. Nos.20206, 21143, 21629,
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