



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P(MD)No.17951 of 2019

and

W.M.P(MD)Nos.14422 & 14423 of 2019

K.Surandhran

... Petitioner

vs.

1.The Principal Secretary,
Department of Higher Education,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Director of Collegiate Education,
O/o.Director of College Education,
Evk Sambath Building,
College Road,
Chennai.

3.The Joint Director of Collegiate Education,
O/o.Joint Director of College Education,
Tiruchirappalli.

4.The Registrar,
Bharathidasan University,
Tiruchirappalli.

5.The District Collector,
O/o.District Collector,
Tiruchirappalli.

6.The Principal,
Government Arts College,
Karur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the sixth respondent to grant admission to the course of Post Graduation in History (M.A) to the petitioner at the sixth respondent College considering the petitioner's representations dated 22.07.2019 and 29.07.2019 within the time stipulated by this Court.



For Petitioner : Mr.S.Vanchinathan
For RR 1 to 3, 5 & 6 : Mr.K.Mu.Muthu,
Additional Government Pleader.
For R - 4 : Mr.VR.Shanmuganathan,
Standing Counsel.

ORDER

Mr.S.Vanchinathan, learned counsel on record for writ petitioner, Mr.K.Mu.Muthu, learned Additional Government Pleader on behalf of respondents 1, 2, 3, 5, 6 and Mr.VR.Shanmuganathan, learned Standing Counsel for Bharathidasan University (respondent No.4) are before this Court.

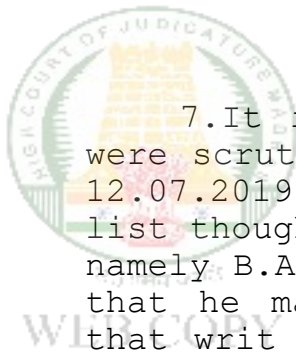
2.With consent of all the aforementioned learned counsel, main writ petition is taken up, heard out and is being disposed of.

3.Considering the nature of the matter and trajectory which the hearing has taken today, short facts shorn of unnecessary details or in other words factual matrix in a nutshell containing facts imperative for appreciating instant order will suffice.

4.Writ petitioner is 20 years of age and has completed Bachelors Degree in History (B.A History) which this Court is informed is a three year course in the sixth respondent College from 2016 to 2019 (three academic years).

5.In the affidavit filed in support of the Writ Petition, it has been averred that writ petitioner's parents are working as 'Coolie'. In the hearing, learned counsel for writ petitioner, on instructions, submits that writ petitioner's parents are doing 'agriculture labour'. This Court chooses to use the term 'farm labourers' instead of the term 'Coolie'. It is submitted by learned counsel for writ petitioner that writ petitioner's parents are eking out a livelihood by working as 'farm labourers' on daily wage basis. To be noted, this is in furtherance of the averment in paragraph 3 of the writ affidavit, by way of articulation in the oral hearing.

6.Be that as it may, after finishing B.A (History) course from sixth respondent College, writ petitioner submitted an application in the sixth respondent College for pursuing Masters Degree in History ie., M.A (History). This is vide Application No.2934, dated 26.07.2019. This Court is informed that Masters Degree in History namely M.A (History) is a two year course and that there are totally 35 seats in the sixth respondent College in the current academic year namely 2019-20.



7.It is the case of writ petitioner that all the applications were scrutinised and a list of eligible candidates was published on 12.07.2019, but the writ petitioner's name did not find place in the list though writ petitioner had a good score in his under graduation namely B.A (History). It is the further case of the writ petitioner that he made enquiries with the sixth respondent College, learnt that writ petitioner has not been included in the list of selected candidates owing to a communication from the police authorities that some 'First Information Reports' ('FIRs' in plural and 'FIR' in singular for brevity) are pending qua writ petitioner.

8.It is also the further case of the writ petitioner that he immediately sent a representation to respondents dated 22.07.2019 and followed it up with another representation dated 29.07.2019. It is pointed out that both the representations did not evoke any reply or response from the respondents. Therefore, writ petitioner moved this Court by filing instant Writ Petition on 13.08.2019.

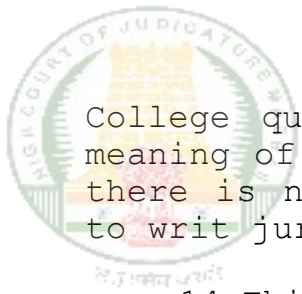
9.Notice was ordered and aforesaid State Counsel and Standing Counsel are today before this Court.

10.With regard to State Counsel, the records of the sixth respondent College have also been produced for perusal of this Court.

11.With regard to Standing Counsel for Bharathidasan University ie., fourth respondent, learned counsel submitted that sixth respondent though a Government College, is an autonomous College. Therefore, the role of the University is very limited is learned Standing Counsel's say. It is submitted that with regard to the role of University, it is limited to grant the Degree Certificate. In other words, it also comes to light from the submissions of Standing Counsel that the sixth respondent College has a Controller of Examinations for the College itself and therefore, it is obvious that even the examinations are conducted by the sixth respondent College themselves. This Controller of Examinations in sixth respondent College is present in Court today instructing the learned State Counsel. To be noted, this Court is informed that this Controller of Examinations was serving as Principal of sixth respondent College when writ petitioner did his B.A (History) in said College.

12.From the submissions made at the Bar, it emerges clearly that the lone reason for not admitting the writ petitioner in M.A (History) course in the sixth respondent College is pendency of FIRs though he is otherwise qualified and is otherwise eligible.

13.As mentioned supra, there is no disputation or disagreement before this Court that sixth respondent College though a Government College is an autonomous College. Most importantly, there is no



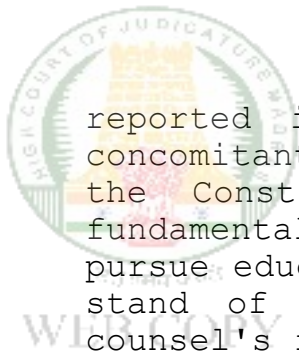
College qualifies as State / Instrumentality of State within the meaning of Article 12 of the Constitution of India. In other words, there is no disagreement that sixth respondent College is amenable to writ jurisdiction.

14.This Court had the benefit of perusing the records of the sixth respondent College. From the records of the College, it comes to light that Inspector of Police, 'Q' Branch, Karur District has written a letter to the sixth respondent College, dated 19.06.2019 bearing Reference Na.Ka.No.05/கா.ஆ/கி.பு.கு.ப.து/2019, wherein the police officer has mentioned that FIRs are pending against the writ petitioner and has sought three sets of information from the College. One is regarding the attendance particulars of the writ petitioner in under graduation (2016 - 2019), second is semester examinations score of writ petitioner in the three years under Graduation course and third is as to whether any internal disciplinary action was ever taken against writ petitioner for any unlawful or undesirable activities during his three years stint in the sixth respondent College. A further perusal of the file reveal that sixth respondent College has responded vide communication dated 02.07.2019 bearing Reference Na.Ka.No.1583/F/2019, wherein it has been mentioned that no internal disciplinary action has ever been taken against writ petitioner during his three years stint in the College. Furthermore, the scores of writ petitioner in B.A (History) ie., under graduation have also been set out. As already mentioned supra, under graduate B.A (History) Degree is a three year course, it is in semester mode and therefore there are six semesters. The score of writ petitioner in six semesters are 90.38%, 69.35%, 76%, 69.86%, 75.42% and 75.42%. This reveals that writ petitioner's academic performance is very good.

15.Records of the College also include a communication dated 29.07.2019 bearing Reference Na.Ka.No.1779/F/2019 from the Principal to the Director of Collegiate Education (second respondent), wherein the Principal of sixth respondent College has written to the Director of Collegiate Education saying the only reason for not admitting the writ petitioner is pendency of FIRs. A perusal of this communication reveals that writ petitioner has not been given admission in M.A (History) course solely owing to pendency of the FIRs.

16.A resolution said to have been taken by what is described as Governing Council of the College on 10.03.2019 is cited in reference portion of this letter. To be noted, this Court is also informed that 'ஆட்சிமன்ற குழு' translates as 'Governing Council' of the College and that Governing Council of the College is constituted by Heads of Departments, Controller of Examination and the Principal.

17.In response to the aforesaid scenario, learned counsel for writ petitioner submitted that the Hon'ble Supreme Court has held



reported in AIR 1992 SC 1858 that the right to education is concomitant to the fundamental rights enshrined under Part III of the Constitution. Right to education being a concomitant of fundamental rights, there being no bar in law for a citizen to pursue education merely because an FIR / FIRs is / are pending, the stand of the sixth respondent College is untenable is learned counsel's further say.

18. Furthering his submission in this regard, learned counsel for writ petitioner drew the attention of this Court to an order passed by the Hon'ble Rajasthan High Court in *Pradeep Choudhary Vs. The Rajasthan Agricultural University* being an order dated 11th October, 1996.

19. Attention of this Court was drawn to paragraphs 5 and 6 of the said order which read as follows:

'5. The point arises in the case for consideration of this Court is, whether there is right of education guaranteed under the Constitution of India; and condition of prohibiting admission on the ground of criminal complaint lodged by the University with the police is arbitrary, unfair and unjust condition and as such is violative of Article 14 of the Constitution of India. Article 41, Chapter IV of the Constitution recognises the individual's right to education. It says that the State shall, within the limits of its pecuniary capacity and development, make effective provisions for securing the right to education. Although a citizen cannot enforce directive principles contained in Chapter IV, but they are not intended to be mere pious legislation. In *Miss Mohini Jain v. State of Karnataka and Ors.* MR 1992 SC 1858, the apex Court has said that the right to education is concomitant to fundamental rights contained in Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. Every citizen has right to education under the Constitution and the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The right to education directly flows from the right to life and liberty. Right to life with dignity is guaranteed under Article 21 of the Constitution and the dignity of the individual cannot be assured unless it is accompanied by the right to education.

6. When the person has a right to education, guaranteed under the Constitution of India, that right can only be denied on the grounds which are



reasonable, just and fair and not arbitrary. Can a meritorious student be denied admission in college on the ground that the College or University has lodged an F.I.R. against him. Lodging a complaint with the police simply brings into operation the police force to investigate in the matter. The F.I.R. is neither proof of guilt nor conclusively establishes the offence being committed by the person named. The police after investigation may close the F.I.R. on the ground that the facts mentioned therein are not found true. It is against criminal jurisprudence that the man shall be presumed to be innocent unless and until proved to be guilty by a competent Court after giving full opportunity to defend himself. The said ground gives excessive and unbridled powers in the hands of the University or College authorities to deny admission to a meritorious student. Here they assume the role of prosecutors, Juries and also Judges. On the one hand, there is mere assumption of the student's involvement in the offence, complained to have been committed by him; on the other hand, his entire career is at stake. In such a situation, the right to education should only be given precedence over the pre-ordained guilt of the person by University or College. The condition laid down by the University denying admission to the student for prosecuting further studies is, in my opinion, arbitrary, irrational, unfair and unjust and violates Article 14 of the Constitution. Accordingly, the condition is declared to be unenforceable and is struck down.'

(underlining made by this Court to supply emphasis / highlight)

20.A perusal of paragraph 5 would reveal that a Hon'ble Rajasthan High Court has rendered the order by relying on Mohini Jain's case of Hon'ble Supreme Court referred to supra.

21.In Mohini Jain's case, relevant paragraphs are paragraphs 14, 17 and 18 which read as follows:

"14.The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of



the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. increasing demand for medical education has led to the opening of large number of medical colleges by private persons, groups and trusts with the permission and recognition of State Governments. The Karnataka State has permitted the opening of several new medical colleges under various private bodies and organisations. These institutions are charging capitation fee as a consideration for admission. Capitation fee is nothing but a price for selling education. The concept of "teaching shops" is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage. As back as December 1980 the Indian Medical Association in its 56th All India Medical Conference held at Cuttack on December 28-30, 1980 passed the following resolutions:

'The 56th All India Medical Conference views with great concern the attitude of State Governments particularly the State Government of Karnataka in permitting the opening of new Medical Colleges under various bodies and organisations in utter disregard to the recommendations of Medical Council of India and urges upon the authorities and the Government of Karnataka not to permit the opening of any new medical college, by private bodies.

It further condemns the policy of admission on the basis of capitation fees. This commercialisation of medical education endangers the lowering of standards of medical education and encourages bad practice.'

17. We hold that every citizen has a 'right to education' under the Constitution. The State is under an obligation to established educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institutions-whether state-owned or state-recongnised-in recognition of their 'right to education' under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution.

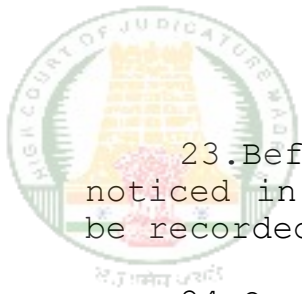


18. Indian civilization recognises education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale. Looking at the economic-front, even forty five years after achieving independence, thirty per cent of the population is living below poverty-line and the bulk of the remaining population is struggling for existence under poverty-conditions. The preamble promises and the directive principles are a mandate to the state to eradicate poverty so that the poor of this country can enjoy the right to life guaranteed under the Constitution. The state action or inaction which defeats the constitutional-mandate is per se arbitrary and cannot be sustained. Capitation fee makes the availability of education beyond the reach of the poor. The state action in permitting capitation fee to be charged by state-recognised educational institutions is wholly arbitrary and as such violative of Article 14 of the Constitution of India. During the last two decades the horizon of equality clause has been widened as a result of this Court's judgments. Earlier the violation of Article 14 was judged on the twin tests of classification and nexus. This Court in E.P. Royappa v. State of Tamil Nadu and Anr., [1974] 2 SCR 348 gave new dimension to Article 14 in the following words:

'Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.'

(underlining made by this Court to supply emphasis / highlight)

22. There is nothing before this Court to demonstrate that fact scenario in Pradeep Choudhary's case is so different qua case on hand that aforementioned Mohini Jain principle laid down by Hon'ble Supreme Court and view of Hon'ble Rajasthan High Court in Pradeep Choudhary's case cannot be applied here ie., instant case.



23. Before this Court proceeds further, some of the aspects noticed in the hearing and as they unfurled in the hearing need to be recorded.

24. One is the chronicle of events which is as follows:

(i) 2016-2019:

writ petitioner finished B.A (History) in sixth respondent College.

(ii) 19.06.2019:

Inspector of Police writes to the Principal of sixth respondent College about pendency of FIRs and seeks three sets of information alluded to supra.

(iii) 26.06.2019:

Writ petitioner submits application form seeking admission in M.A (History) course.

(iv) 02.07.2019:

Principal of the sixth respondent College responds to Inspector of Police saying no internal disciplinary action was ever taken against writ petitioner in his three years stint for any unlawful or undesirable activities in the campus.

(v) 10.07.2019:

There is a handwritten resolution said to have been made by what is described as Governing Council wherein it is recorded that it is decided that aspirants against whom FIRs are pending will not be accommodated / given a seat.

(vi) 12.07.2019:

List of eligible candidates for M.A (History) is published.

(vii) 22.07.2019:

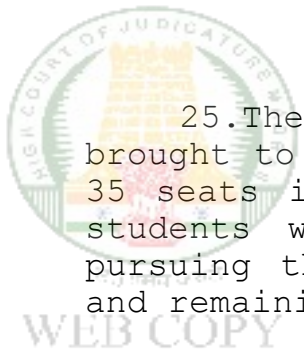
Writ petitioner sent a representation *inter alia* to sixth respondent College (evoke no response or reply).

(viii) 29.07.2019:

Writ petitioner sent one more representation which also did not evoke any response or reply.

(ix) 13.08.2019:

Instant writ petition filed in this Court.



25.The second aspect is a undisputed fact which has been brought to the notice of this Court and that fact is that there are 35 seats in M.A (History), there were 14 applications and only 8 students were selected. Even as of today, only 8 students are pursuing the course (M.A History) in the sixth respondent College and remaining 27 seats are lying vacant.

26.The third aspect that comes to light very clearly from a reading of the aforementioned communication dated 29.07.2019 by the Principal of the sixth respondent College to the Directorate of Collegiate Education is that the sole and solitary reason for not admitting writ petitioner in M.A (History) course is pendency of FIRs which has come to light from a letter from a Inspector of Police seeking some particulars. This Court has no difficulty in holding that it follows as a sequitur that writ petitioner is otherwise eligible and has been denied admission on the sole and solitary ground that FIRs are pending.

27.One more aspect of the matter which has been noticed is that a perusal of the FIRs reveal that they all pertain to participation in what the writ petitioner verify, believed are common causes / public causes. The provisions of law show that one of the FIRs pertains to 'TNOPD Act' and this Court is informed that 'TNOPD Act' stands for 'Tamil Nadu Open Places Prevention of Disfigurement Act'. In other FIRs Sections 143, 188 of I.P.C, 153(A) and 504 of I.P.C and like provisions have been cited. It is nobody's case that writ petitioner has indulged in any criminal activities for monetary gain. The letter of the Inspector of Police also suggests that writ petitioner is part of a student organisation which goes by the name Revolutionary Students Youth Federation (RSYF). It is nobody's case that RSYF is a banned organisation.

28.This takes this Court to the discussion and dispositive reasoning qua narrative thus far.

29.There are five main reasons which this Court considers are of immense of significance in the instant case and they are as follows:

- (i) The first reason is that there is adequate vacancy ie., while there are 35 seats, only 8 students have been selected and 27 seats remain vacant even as of today. Sixth respondent College is an autonomous College with the Controller of Examination and there is nothing before this Court to show that there is any cut-off or last date for admission. In this regard, it is to be noted that learned Standing Counsel for University made it clear that admission is entirely the domain of the College and University has no role in the same as it is an autonomous College.



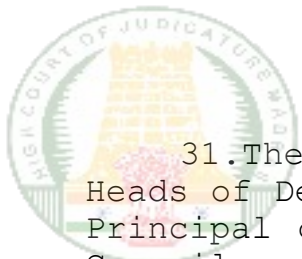
(ii) The second aspect of the matter is that mere pendency of FIRs, cannot come in the way of a student pursuing education that too higher education. There is no disputation that even a convict can pursue education from the prison while serving a sentence. Dovetailed with this point is what has been alluded to supra regarding the score of writ petitioner in the under graduate course. Writ petitioner's score in six semesters suggest that he had a very good academic record or in other words, writ petitioner is a bright student.

(iii) The third aspect is a legal position wherein, this Court finds that the principle laid down by Hon'ble Supreme Court in *Mohini Jain's* case is instructive ie., principle that right to education is a concomitant of fundamental rights enshrined in Part III of the Constitution of India. Principle laid down in *Mohini Jain's* case by Hon'ble Supreme Court is the inspiration for *Pradeep Choudhary's* case rendered by Rajasthan High Court. *Mohini Jain's* case principle has been applied by the Hon'ble Rajasthan High Court in *Pradeep Choudhary's* case and there is nothing before this Court to say that *Pradeep Choudhary's* facts are so distinguishable that the view inspired by *Mohini Jain* principle cannot be applied to case on hand.

(iv) The fourth aspect is that this Court has also noticed that it was highlighted by learned counsel for writ petitioner that writ petitioner hails from economically severely disadvantaged background.

(v) The fifth aspect is, it comes to light that pendency of FIRs and the letter written by the Inspector of Police is the sole and solitary ground on which admission has been denied to an otherwise eligible and meritorious candidate.

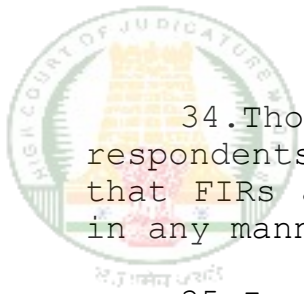
30.If there had been some other issues or questions regarding the eligibility of writ petitioner or his entitlement qua admission in M.A (History) course, this Court would have directed the sixth respondent College to reconsider the application of the writ petitioner, but in the instant case, it emerges clearly without any disputation or disagreement that the sole and solitary reason for admitting writ petitioner is pendency of FIRs in the aforementioned letter from Inspector of Police.



31. There is nothing before this Court to demonstrate that the Heads of Departments together with the Controller of Examination and Principal constitute what is described as 'ஆட்சிமன்ற குழு' / Governing Council or in other words, there is nothing to demonstrate before this Court that this is traceable to any statutory provision or Regulation. In any event, as such a purported resolution made by the Heads of Departments together with the Controller of Examination and Principal being contrary to the sanctus Mohini Jain principle laid down by Hon'ble Supreme Court and obtaining legal position that mere pendency of FIRs cannot be a bar for admission in a College (if a student is otherwise eligible and meritorious) the purported resolution cannot impede the admission of the writ petitioner in the sixth respondent college. As it cannot impede admission of writ petitioner in sixth respondent College, as rightly pointed out by learned counsel for writ petitioner, the need to delve into technicality of assailing the resolution does not arise in the factual setting of this case and owing to trajectory of hearing. In other words, purported resolution unfurled only in hearing and on a demurer even if Governing Council is traceable to a statutory provision there is no reason as to why purported resolution should not be set aside on the ground that it is hit by Mohini Jain principle following aforementioned Rajasthan High Court view. This Court therefore considers the challenge to resolution argument without insisting on the technical formalities of a separate certiorari prayer. Handwritten resolution of Governing Council dated 10.07.2019 (erroneously mentioned as 10.03.2019 in 29.07.2019 letter) is hereby held to be unenforceable in so far as the writ petitioner is concerned.

32. In three academic years 2016-19, which writ petitioner has spent in sixth respondent College pursuing three year under Graduate course (B.A History) admittedly / concededly, there has been no undesirable activity on the part of writ petitioner in the campus. As alluded to supra, no disciplinary action has been initiated by sixth respondent College during this period and on the contrary, good conduct certificate has been given to writ petitioner.

33. Even with regard to the aforementioned letter from the Inspector of Police, it merely seeks three sets of details and obviously and correctly it does not say anything about writ petitioner student's admission in the sixth respondent College. As there is no disputation or disagreement that there is no other impediment for admitting the writ petitioner (other than pendency of FIRs which has been held to be untenable by this Court in this order) and as the aforementioned 10.07.2019 resolution has been held to be unenforceable in so far as the writ petitioner is concerned, sixth respondent is directed to admit writ petitioner in M.A (History) course forthwith subject to writ petitioner complying with all other conditions and requirements including payment of fees.



34.Though obvious, it is made clear that all other co-respondents will remain bound by this order. It is also made clear that FIRs and the same being carried to their logical end will not in any manner be influenced by observations made in this order.

35.Instant Writ Petition is disposed of with the above observations and directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

ps
To

- 1.The Principal Secretary,
Department of Higher Education,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
- 2.The Director of Collegiate Education,
O/o.Director of College Education,
Evk Sambath Building,
College Road,
Chennai.
- 3.The Joint Director of Collegiate Education,
O/o.Joint Director of College Education,
Tiruchirappalli.
- 4.The Registrar,
Bharathidasan University,
Tiruchirappalli.
- 5.The District Collector,
O/o.District Collector,
Tiruchirappalli.

+1 CC to M/s.S.VANCHINATHAN, Advocate (SR-93436[F] dated 22/10/2019)
+1 CC to M/s.SPL GP (SR-93575[F] dated 22/10/2019)

W. P (MD) No.17951 of 2019
21.10.2019