

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03 .03.2021

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.4611 of 2021

M.Pavithran

... Petitioner

Vs.

The Dean,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent and to quash the order dated 18.02.2021 passed by the respondent and consequently direct the respondent to admit the Petitioner to the respondent University for academic year 2020-21 or subsequent year based on the Transfer and Conduct Certificate produced by the petitioner.

For Petitioner : Mr.Om Prakash, SC
***for Mr.Elambharathi**

For Respondents : Mr.Abdul Saleem
Standing Counsel

ORDER

This Writ Petition is filed as against the communication dated 18.02.2021 of the respondent and for a consequential direction to the respondents to admit the petitioner in respondent/University for the academic year 2020-21. The Dean of the Agricultural University informed the petitioner that his admission in the B.Tech (Food Technology) course cannot be considered now and requested to get back his certificates.

2.The petitioner has applied for B.Tech (Food Technology) course in the respondent/University under industrial sponsorship quota for the academic year 2020-21 on 29.12.2020. The respondent had also issued provisional admission card confirming the admission of this petitioner in the respondent/University. After verifying the Transfer Certificate submitted by the

petitioner, the respondent obtained a legal opinion and based on the legal opinion, the petitioner was informed that he cannot be allowed to continue the course and to get back his certificates.

3.The petitioner is facing a criminal case on the file of the Gandamanur Vilakku Police Station, Theni District in FIR.No.196 of 2019 for the offences punishable under Section 120B, 419 & 420 of IPC. The allegation in the FIR is that he made impersonation to write and clear the NEET Examination by engaging a proxy. The petitioner was arrested and was also released on bail. The investigation appears to be still pending at the stage of FIR. Pursuant to the NEET marks, the petitioner has been admitted in the MBBS Course in SRM University and on the directions of this Court the SRM University issued a Transfer Certificate to the petitioner with certain endorsements and based on that endorsements, the respondent obtained a legal opinion and issued the impugned communication.

4.No doubt, the petitioner is facing serious criminal prosecution for impersonation. Considering the similar allegations leveled against one of the petitioner, the Madurai Bench of Madras High Court in the Crl.O.P.(MD).No.7698 of 2020 passed an order directing the learned Judicial Magistrate to return the X & XII standard mark statements of the petitioner after substituting the photocopy of the same in the case records. With regard to the return of Transfer Certificate, the Court observed that the institution in which he has joined can furnish the Transfer Certificate. Pursuant to the orders of the Court the petitioner herein has also filed a petition before the concerned judicial magistrate and obtained some of his certificates which have been seized by the Police. Regarding the Transfer Certificate, the learned Judicial Magistrate rejected the claim of the petitioner and as against that order the petitioner preferred a Criminal Revision Petition before the Madurai Bench of Madras High Court in Crl.R.C.(MD).No.553 of 2020 and this Court by order dated 02.02.2021 with a direction to the SRM University to give the Transfer Certificate and Conduct Certificate within a stipulated time. As per the directions of this Court, the Transfer Certificate has been issued by the SRM Medical College with certain terms and based on that endorsement the respondent University sought for some legal opinion and issued the impugned communication. The learned counsel for the petitioner has also relied upon a decision of this Court in the case of K.Surandharan Vs. The Principal Secretary, Department of Higher Education & others in W.P.(MD). No.17951 of 2019 dated 21.10.2019, wherein this Court has passed an order as follows;

"17.In response to the aforesaid scenario, learned counsel for writ petitioner submitted that the Hon'ble Supreme Court has held inter alia in Miss.Mohini Jain

Vs. State of Karnataka and others 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, here 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.

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.

"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 dispute 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 undergraduate 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 20/26 <http://www.judis.nic.in> W.P(MD)No.17951 of 2019 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."

5. Heard Mr. Om Prakash, the learned Senior counsel for the petitioner and Mr. Abdul Saleem, learned Standing counsel for the respondents.

6. The respondent has issued the impugned communication based on the legal opinion and based on the serious allegations leveled against this petitioner. The case registered against this petitioner is under the investigation. No doubt respondent University is expected to have its concern for the discipline of

its students. Though a criminal case has been registered, the charge sheet is yet to be laid. Till a competent Court declare him as a guilty after a full fledged trial, the petitioner is deemed to be innocent.

7. Mere registration of an FIR cannot be a ground to reject the claim of an admission. Even a convict is entitled to pursue his studies. No person shall be vexed twice for the offence committed.

8. The respondent/University based on the marks secured by the petitioner has already admitted the petitioner, however issued the impugned communication based on the criminal case registered against petitioner. This Court in CrI.O.P.(MD).7698 of 2020 (supra) has held that the mark sheet of the petitioner pertaining to his X Standard and XII Standard, there are no allegations against him. Therefore, this Writ Petition is allowed and the impugned order is set aside. The respondent University is directed to admit the petitioner after obtaining an undertaking affidavit that he would maintain discipline in the University.

9. With the above directions, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are also closed.

mrm

03.03.2021

This matter having been listed under the Caption for being mentioned on 08/03/2021 pursuant to the order of this Court dated 03.03.2021 and made herein the presence of the Mr.Om Prakash, Senior Counsel for Mr.Elambharathi, Counsel for the Petitioner and of Mr.Abdul Saleem, Standing Counsel for the respondent this Court made the following order;

Today, the matter is listed under the caption "For being mentioned".

2. It is brought to the notice of this Court that some typographical error have been crept in the order dated 03.03.2021. Accordingly, the following correction shall be incorporated in the order:

In the appearance portion the name of the petitioner counsel has been typed as "Mr.Om Prakash, Senior Counsel for Ms.Elambharathi" and the same shall be replaced as "Mr.Om Prakash, Senior counsel for Mr.Elambharathi".

3.Registry is directed to carry out necessary corrections in the order and issue fresh order copy.

*Corrected as per the order of
this Court dated 08/03/2021
made in W.P.No.4611/2021

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Dean,
Tamil Nadu Agricultural University,
Coimbatore - 641 003.

+1cc to Mr.Abdul Saleem, Advocate Sr.19807

W.P.No.4611 of 2021

kj[co]
srg 17/05/2021

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