

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 07.01.2021****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.17835 of 2020****and****W.M.P.(MD)No.14870 & 14872 of 2020**

D.Arun

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of Health and Family Welfare,
Fort St. George, Chennai – 9.
2. State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of School Education,
Fort St. George, Chennai -9.
3. The Director of Medical Education,
O/o. The Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.
4. The Selection Committee,
Rep.by the Secretary/Additional Director,
Directorate of Medical Education,
162, Periyar E.V.R. High Road,
Kilpauk, Chennai – 600 010.
5. The Director of School Education,
O/o. The Director of School Education,
DPI Campus, College Road, Chennai – 6.

6.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Thanjavur, Thanjavur District.

7.The District Collector cum Chairman,
Chattram Administration,
Collectorate, Thanjavur District.

8.The Special Tahsildar,
Chattram Administration,
Thanjavur District.

9.The Headmaster,
Rajah's Higher Secondary School,
Thanjavur – 613 009.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.2139/D3/2020 dated 11.11.2020 on the file of the respondent No.6 and quash the same as illegal and consequently for a direction, directing the respondents 3 and 4 to admit the petitioner in the MBBS Course based on his NEET marks in any of the Government Medical College in accordance with the Tamil Nadu Admission to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homeopathy on preferential basis to students of Government Schools Act, 2020 (Tamil Nadu Act No.34 of 2020) and in the light of the Judgment of the Hon'ble Supreme Court in S.Krishna Sradha V. State of Andhra Pradesh reported in (2019) SCC Online SC 1609 within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman,
for Mr.T.Lajapathi Roy.

For R-1 to R-4 : Mr.Vijay Narayan, Advocate General
and
Mr.M. Sricharan Ranagarajan,
Additional Advocate General
assisted by Mr.K.P.Krishnadoss,
Special Government Pleader.

For R-5 to R-9 : Mrs.S.Srimathi,
Special Government Pleader and
Ms.J.Lakshmi Prasanna,
Government Advocate.

ORDER

The writ petitioner underwent his schooling from sixth standard to twelfth standard in Rajah's Higher Secondary School, Thanjavur. He scored 1003 marks out of 1200 in the Higher Secondary examinations and 238 marks in the National Eligibility cum Entrance Test(UG) – 2020. He belongs to Scheduled Caste. His parents are eking out their livelihood by running a roadside eatery on a pushcart. His request for issuance of Bonafide Certificate certifying that he studied in a Government school for the purpose of availing the benefit of reservation provided under the Tamil Nadu Act No.34 of 2020 was negatived by the the Chief Educational Officer, Thanjavur,

vide communication bearing Na.Ka.No.2139/D3/2020 dated 11.11.2020. Questioning the same, this writ petition has been filed.

2.The respondents have opposed the prayer made in the writ petition. Their stand is that Rajah's Higher Secondary School, Thanjavur is an aided private school and not a government school. It is managed by an entity known as Chattram Administration. The District Educational Officer, Thanjavur, passes monthly grant bills for the teaching and non-teaching staff. They are not considered as government servants. It has a school committee and the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules framed thereunder are applicable to it. This being the factual position, the petitioner is not entitled to the relief sought for.

3.The learned Advocate General took me through the provisions of Tamil Nadu Admission to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homeopathy on Preferential basis to Students of Government Schools Act, 2020(hereinafter referred to as "the Act"). It was promulgated to ensure equitable distribution of medical seats for the

Government school students who are socially and economically disadvantaged and who have qualified in the National Eligibility Cum Entrance Test. The Act defines the expression “government schools”. It is an exhaustive definition and it is not for the Court to expand its scope. He wanted me to bear in mind the principle of “ejusdem generis” while interpreting the provision. Merely because the government officials are associated with the administration of the school, that would not mean that the school is managed by the government departments. According to him, the categories of government school and private school are mutually exclusive. One cannot be the other. When Rajah's Higher Secondary School has always been treated as a private school, the impugned order rejecting the petitioner's request does not warrant any interference.

4.The issue that arises for my consideration is whether the writ petitioner is entitled to claim the benefit under Tamil Nadu Act 34 of 2020. For that, it must be shown that he studied in a government school. The expressions “Government schools” and “Students studied in Government schools” have been defined in Section 2(c) and 2(d) of the Act as follows :

“2. ..

(a) ..

(b) ..

(c)“Government schools” mean and includes Government schools, Corporation schools, Municipal schools, Adi Dravidar and Tribal Welfare schools, Kallar Reclamation schools, Forest Department schools and other schools managed by Government Departments.

(d)Students studied in Government schools” mean children who have studied from Sixth Standard to Higher Secondary Course in a Government school and qualified in the National Eligibility-cum-Entrance Test.”

Private school has been defined in Section 2(h) as a school which is not a government school. It is relevant to note here that the Act does not borrow or refer to the definition of a private school set out in Tamil Nadu Private Schools (Regulation) Act, 1973. The Act does not say that the schools governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 will fall within Section 2(h). While government schools have been positively defined in Section 2(c), private school has been

negatively defined in Section 2(h). To find out whether the school in question is a government school or not, I have to go by the definitions set out in the Tamil Nadu Act No.34 of 2020 and not venture outside. This is all the more so because the Act contains an overriding provision. Section 3 of the Act states that notwithstanding anything contained in any law for the time being in force and subject to Section 5, seven and a half per cent of the Government seats shall be set apart on preferential basis to students studied in Government schools. If the petitioner is treated as a student who studied in the government school within the meaning of Section 2(d), then he is entitled to claim the benefit of the Act notwithstanding the application of the provisions of Tamil Nadu Private Schools (Regulation) Act, 1973 to the school in question all along.

5.The question whether Rajah's Higher Secondary School, Thanjavur is a government school has to be answered by referring to the position presently obtaining. Its historical origins are not much relevant. The fact remains that the administration was vested in the District Board and following its abolition in the year 1961, it came under the control of the District Administration vide G.O (Ms) No.2184, Rural Development and

Local Administration, dated 04.08.1961. As rightly contended by the learned counsel for the petitioner, this position has been accepted by the Government itself in an earlier writ proceeding (order dated 30.04.2010 in WP No.12308 of 2005, C.Palanisamy vs. State of Tamil Nadu).

6.It is true that there is a school committee. But it is the District Collector, Thanjavur who is the President. The Special Tahsildar is the Secretary. The members inter alia include the District Revenue Officer, P.A. to District Collector (General) and P.A. to District Collector (Accounts). The membership is in ex-officio capacity. What matters in law is substance and not the form. When construing documents, it is not the nomenclature or the form that is determinative but the content. Even in the case of incorporated companies, the veil is lifted to ascertain the true character of the management in certain circumstances.

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7.The school no doubt has been treated as a private school under Tamil Nadu Recognized Private Schools(Regulation) Act, 1973. Its staff are not Government servants. But the fact remains that it is managed by the Revenue Department/District

Administration. It is funded entirely by the Government. That the Chattram Administration is managed by the Special Tahsildar indicates the true character of the administration. The key word occurring in Section 2(c) is “managed by government department”. This statutory definition will have to receive a purposive construction. The object of enacting this legislation is to extend the benefit of reservation to economically disadvantaged students who have passed out of Government schools. Therefore, I have to adopt such a construction as would effectuate the legislative object. The petitioner belongs to Scheduled Caste community. The school is a Tamil Medium school. More than anything else, it was the Special Tahsildar who wrote to the Education Department seeking issuance of Bonafide Certificate certifying that the petitioner was a student who studied in government school. This clinches the issue in favour of the petitioner.

8. When the writ petition came up for admission on 23.12.2020, the learned Judge felt that the petitioner must be considered as a student who studied in government school and gave interim direction to keep one seat vacant. During counselling, the petitioner was allotted M.B.B.S. seat in

Sivagangai Medical College subject to the result of the writ petition. Since I have held that the Rajah's Higher Secondary school, Thanjavur, is a Government school within the meaning of Section 2(c), the seat allocation made in favour of the writ petitioner is made absolute.

9.The order impugned in this writ petition stands quashed. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.01.2021

Index : Yes / No
Internet : Yes/ No
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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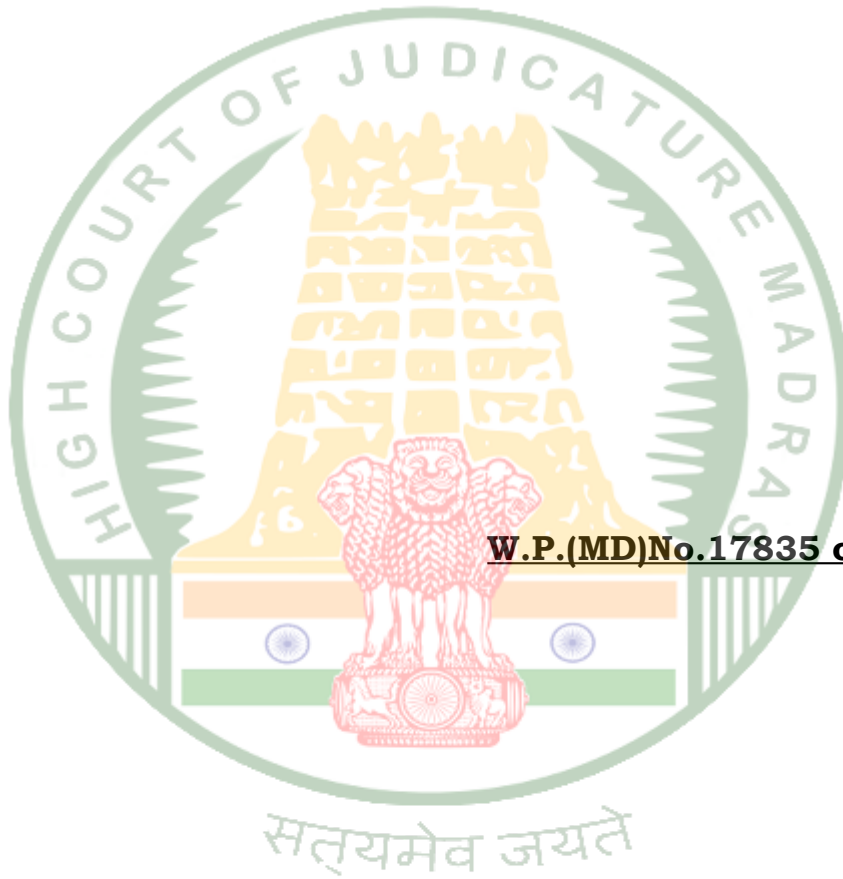
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G.R.SWAMINATHAN, J.

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