

MITHUNRAJ

vs.

UNIVERSITY GRANTS COMMISSION AND OTHERS

COURT OF APPEAL.

IMAM, J.

SRISKANDARAJAH, J.

C. A. WRIT 498/2003.

MAY 4, 2005.

University Grants Commission – University Admissions – Selection of University – On what criteria? – Who determines the administrative district of a candidate for admission? – School candidate and private candidate – Is there a difference?

The Petitioner was informed by the 1st respondent on 10.06.2002 that he has been selected to follow a course of study in Medicine at the University of Jaffna. Later on 17.08.2002 he was informed by the 1st respondent that for the purpose of University admission the District is Colombo and not Mannar and cancelled the selection. The petitioner sought to quash the said decision.

The respondents contended that the relevant three year period to be considered for University admission for the academic year 2002/03 was from 01.01.1998 to 31.08.2001, and that the petitioner was studying in Mannar from 01.08.1998 to 17.02.1999 - 6 months and 16 days and at Colombo from 22.02.1999 to 19.06.2000 - 1 year 3 months and 27 days and since the petitioner falls within the first limb of Rule 40.1 – that he has studied in a school for a period of more than one year his District is Colombo and that the petitioner has furnished false and inaccurate information that he should be considered for admission from Mannar District.

HELD:

- (1) Rule 4.2 draws a distinction between a school candidate and a private candidate. In the case of a private candidate the rules not only requires the candidate to produce the school leaving certificate or pupils record but also requires him to submit evidence of a permanent place of residence. In a case of a private candidate both the school and residence become relevant when Rules 4.1 and 4.2 are read together.
- (2) The petitioner is a private candidate and the major part of the studies during the relevant period was in Mannar. The relevant period is from 01.08.1978 to 31.08.2001. The petitioner had studied at Mannar from 01.08.1998 - 17.02.1999 (6 months, 16 days) Colombo 22.02.1999 - 19.06.2000 (1 year and 3 months 27 days) and returned to Mannar to reside and studied in Mannar from 26.06.2000 - 31.08.2001., a period of 1 year 2 months and 14 days.
- (3) The determination of the administrative district of a candidate for admission to the University is vested with the 1st respondent - and not with the candidate.

Per Sriskandarajah, J.

"Column 4 of the application for university admission form and column 8 of the computer data sheet annexed to the application possess only a question" From which administrative district should you be considered for admission" – answering this question by mentioning a district by a candidate will not tantamount for a declaration of the candidate but it is a request of a candidate to consider him as a candidate from that particular administrative district for admission on the material furnished by him."

- (4) The application form has a specific column for office use. This column is for the office to indicate the district after verifying the documents and other material submitted in accordance with the relevant rules. This is not done by copying the district entered by the candidate in column 8 but by an officer of the 1st respondent after verifying the documents and materials.

APPLICATION for a Writ of Certiorari.

Geoffrey Alagaratnam with *M. P. Puvitharan* for petitioner.

Ms. M. N. B. Fernando, Senior State Counsel for respondents.

Cur.adv.vult.

June 28, 2005.

SRISKANDARAJAH, J.

The Petitioner submitted that he was born at Vidathlthivu Mannar on 16.12.1981 resided and had his early education at Vidathlthivu R. C.T. M. School Vidathlthivu Mannar from 05.01.1987 to 03.01.1995—P1. Thereafter at St. Xavier's M. M. V.Mannar from 02.01.1995 to 17.02.1999—P2. and Hindu College Colombo 04 from 22.02.1999 to 19.06.2000—P3. He submitted due to the security situation prevalent in Colombo around June 2000 and on account of prevalent tension resulting from sudden security searches and questioning the Petitioner left Hindu College Colombo and went back to Mannar to reside in Mannar as he was not successful in his G. C. E. (A/L) first attempt and continued his studies as a private candidate in Mannar. He sat for the G. C. E. (Advance Level) examination in August 2001 at Mannar St. Xavier's M. M. V. exam center as a private candidate P4, P 5. The Petitioner tendered his application in the prescribed form to follow Medical Degree as his first preference P6. This was acknowledged by the 1st Respondent by its letter dated 01.04.2002 stating *inter-alia* that the Petitioners' District for the purpose of admission will be Mannar (12) P7. The 1st Respondent by its letter dated 10.06.2002 informed the Petitioner that he has been selected to follow a course of study in medicine at the University of Jaffna P8. The Petitioner registered as an internal student of the University of Jaffna on 03.07.2002.

The 1st Respondent informed the Petitioner by its letter of 17.08.2002 P10 that it has been revealed that your District for the purpose of the University admission should be Colombo and not Mannar and he was asked to show cause why his selection to follow a course of study in Medicine at the University of Jaffna for the academic year 2002/2003 should not be cancelled. The Petitioner replied to this letter on 30.08.2001.

The Petitioner submitted that he received a letter on 14.02.2003 dated 27.01.2003 from the 1st Respondent informing him that the Petitioner's selection to follow a course of study in medicine has been cancelled—P11. The Petitioner submits that the regulation for academic year 2002/2003 P18 was unreasonably and wrongfully applied against him. He was not called for any inquiry or clarification or provided an adequate opportunity of being heard prior to the aforesaid decision, other than P10 which is a show cause letter. In these circumstances the determination or decision of the 1st and/or 3rd Respondents P11 and P12 is *ultra vires*, without jurisdiction, unreasonable, arbitrary and in violation of the principles of natural justice.

The Respondents submitted that the relevant three year period to be considered for university admission for the academic year 2002/2003 was from 01.08.1998 to 31.08.2001 and that the Petitioner was studying at St. Xavier's College, Mannar from 01.08.1998 to 17.02.1999 a period of 6 months and 16 days and at Hindu College, Colombo from 22.02.1999 to 19.06.2000 a period of 1 year 3 months and 27 days. The Respondents submitted that since the Petitioner had studied in a school for a period of more than one year the Petitioner falls within the first limb of Rule 04.1 of the regulations. As the major part of the stipulated three year period was in Colombo District *i.e.* 1 year 3 months and 27 days at Hindu College the Petitioner's application should be considered for university admission as per Admission Rules from the Colombo District and has been wrongfully indicated by the Petitioner in P6. Therefore the information furnished by the Petitioner in his application P6 was false and inaccurate and the decision to cancel the Petitioner's registration is correct, lawful and valid and in accordance with the law.

The relevant Rules applicable to the admission to the university for the academic year 2002/2003 is marked as P17. The determination of districts of candidates is dealt with in Rule 4. It reads as follows :

- 4.1 For purpose of university admission, the district of a candidate will be determined as follows:-

The district of any candidate will be the district of location of school/schools in which he/she studied during the major part of the three - year period ending on the last day of the month immediately preceding the month in which he/she sat the G.C.E.(A/L) Examination to qualify for admission.

Provided however the district of a candidate who has studied in a school for a period of less than one year during the three year period stipulated above will be determined on the basis of the location of school/schools in which he/she had studied, permanent place of residence of the candidate and other evidence as decided by the UGC.

- 4.2 In the case of a candidate who sat G.C.E.(A/L) examination as a school candidate, the head of the school concerned should certify, on the basis of school records, the accuracy of the information provided by the candidates. Every candidate who sat the G.C.E.(A/L) examination as a private candidate should send along with his/her application for admission his/her school Leaving Certificate or Pupil's Record Sheet and documentary evidence on permanent place of residence, e.g. extracts of Electoral Register, Grama Niladhari Certificate and other relevant documents.

Rule 4.2 draws a distinction between a school candidate and a private candidate. In the case of a school candidate the head of the school concerned should certify, on the basis of school records, the accuracy of the information provided by the candidates. But in the case of a private candidate the rules not only requires the candidate to produce the school leaving certificate or pupil's record but also requires to submit evidence of permanent place of residence. This shows that the framers of these rules contemplated a situation where the residence of a private candidate becomes material. In case of a private candidate both the school and the residence becomes relevant *i.e.* the period of schooling and the period of studies without attending school within the three-year stipulated period becomes relevant when Rules No. 4.1 and 4.2 are read together. This position is further supported by the steps taken by the University Grants

Commission to amend said Rule 4.1 for the next academic year namely 2003/2004 to make the position clear. The amended Rule 4.1 reads as "the school/schools in which the candidate was enrolled (on the basis of school records) for the maximum number of days during the three-year period."

In this instant application, it is common ground that the Petitioner is a private candidate and the major part of the studies of the Petitioner during the relevant period was in Mannar. The relevant period is from 01.08.1998 to 31.08.2001 and that the Petitioner had studied at St. Xavier's College, Mannar from 01.08.1998 to 17.02.1999 a period of 6 months and 16 days and at Hindu College, Colombo from 22.02.1999 to 19.06.2000 a period of 1 year 3 months and 27 days and returned to Mannar and studied in Mannar from 20.06.2000 to 31.08.2001 a period of 1 year 2 months and 14 days.

Whatever it may be, the determination of the administrative district of a candidate for the admission to the University is vested with the 1st Respondent and not with the candidate. It is clearly borne out by the scheme formulated in the application form. The column 4 of the Application for university admission form and column 8 of the computer data sheet annexed to the application form poses only a question "From which administrative district should you be considered for admission?" Answering this question by mentioning a district by a candidate will not tantamount to a declaration of the candidate but it is a request of a candidate to consider him as a candidate from that particular administrative district for admission on the material furnished by him. The computer data sheet annexed to the application form at the bottom of page 2 has provided a scheme to consider this request at the outset by the officers of the 1st Respondent with the document and the materials submitted by the candidate in keeping with the provisions of the rules. Once they make a determination they enter the district in the given column at the bottom of page 2 of the computer data sheet and certify that he has checked the relevant information to arrive at this decision. The Respondent communicates this decision to the applicant when acknowledging the receipt of the application. Accordingly, the officers of the 1st Respondent in keeping with the request of the Petitioner after considering the information supported with the documents had come to the conclusion that the district for the purpose of admission of the Petitioner to the University is Mannar. It is

communicated by the 1st Respondent to the Petitioner by P7 which states "Your District for the purpose of admission will be Mannar, 12."

The court also observes that the 2nd Respondent has failed to submit a copy of the application of the Petitioner after it was processed by the 1st Respondent for the university admission. The application has a specific column for office use at page 2. This column is for the office to indicate the district after verifying the documents and other material submitted in accordance with the relevant rules. The Respondent without submitting the Petitioner's processed application has annexed three other applications relating to other candidates as 2R2, 2R3 and 2R4 which had been processed. These applications clearly demonstrate at page two in the column "for office use only" that the relevant district of the candidate should be entered by an official. This is not done by copying the district entered by the candidate in column 8 but an officer of the 1st Respondent after verifying the documents and materials has to determine the district and enter the same and sign the adjoining column to certify that he has checked.

Rule 4 contains a foot note. It reads as follows:

"IMPORTANT"

"The heads of schools should take special care to ensure that correct information is provided by the candidates. Provision of incorrect information by any candidate will be considered a serious offence and liable for disciplinary action. A candidate who has been found to provide incorrect information will lose his/her admission/registration at whatever point in his/her career at the university and will not qualify for the award of a degree."

The counsel for the Respondent submitted that the only incorrect information that was submitted by the Petitioner is in column 8 *i.e.* he should be considered for admission from Mannar District. As I have discussed above this is not information but only a request of the Petitioner based on the information and documentations submitted by him. The decision to treat the Petitioner as a candidate from Mannar District is that of the 1st Respondent based on the information provided by the Petitioner. None of the information or documents provided by the Petitioner to arrive at that conclusion by the 1st Respondent was found to be incorrect. Under these circumstances the 1st Respondent is not entitled to cancel the selection of the Petitioner to follow a course of study in Medicine at the

University of Jaffna. Therefore the Court issues a writ of certiorari to quash the decision of the 1st Respondents as communicated by letters dated 27.01.2003 (P11) and the decision of the 4th Respondent communicated by letter dated 10.02.2003 (P12). The question of issuing a writ of mandamus does not arise as the Petitioner is continuing his course of study at the faculty of Medicine at the University of Jaffna in pursuance of an interim order issued by this court. The court allows this application without costs.

IMAM, J. — *I agree.*

Application allowed.
