

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2007

CORAM:

THE HONOURABLE Mr.A.P.SHAH, CHIEF JUSTICE
and
THE HONOURABLE Mr.JUSTICE P.JYOTHIMANI

WRIT PETITION No.28680 of 2006
AND
M.P. Nos.1 and 2 of 2006

Goodluck Rajendran.S.

..Petitioner.

Vs.

1. Dr.D.Viswanthan
Vice Chancellor
Anna University
Guindy
Chennai.
2. Anna University,
represented by its Registrar
Guindy
Chennai.
3. All India Council for Technical Education
represented by its Regional Director
Southern Regional Office
Shastri Bhavan
Chennai.
4. State of Tamil Nadu
represented by its Secretary to Government
Education Department
Fort St. George
Chennai 600 009.
5. Central Bureau of Investigation
Rajaji Bhavan
Besant Nagar
Chennai 600 090.

..Respondents.

(Respondents 1 and 5 are deleted as
per suo motu order dated
4.9.2006 by the Hon'ble CJ & K.C.J.)

Writ Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct fifth respondent to investigate into the various irregularities committed by the first respondent including that of admitting of ineligible students and gross misappropriation of funds running to crores of rupees and collecting money from various colleges.

For petitioner : Mr.V.Raghavachari for Mr.K.Mariappan.

For 1st respondent : Mr.R.Viduthalai, Advocate-General
assisted by Mr.Raja Kalifulla, Govt. Pleader
and Mr.V.R.Thangavlu, Govt. Advocate (Writs)

For 2nd respondent : Mr.G.Masilamani, Sr. Counsel for
Mr.G.M.Mani Associates.

For 3rd respondent : Mr.N.Muralikumaran, Addl. Central Govt.
Standing Counsel.

O R D E R

(The Order of the Court was made by Hon'ble the Chief Justice)

This petition filed in public interest questions the legality and propriety of the admission of students in Constituent Colleges of the Anna University under various quotas like Government quota, Governor's quota, Vice Chancellor's quota, etc.

2. The Anna University constituted under the Anna University Act 30/1978 comprises of various Constituent colleges including College of Technology, Guindy, Madras Institute of Technology (MIT), Chromepet, Chennai Campus, Alagappa College of Technology (AC Tech.), Guindy, Chennai Campus, School of Architecture and Planning, Guindy, Chennai Campus, Alagappa College of Engineering and Technology,

Karaikudi, etc. The petitioner contends that the students, who were admitted in these Constituent colleges under the aforesaid quotas were ineligible, and were not allotted by counselling to the Anna University, but by direct orders of the Vice Chancellor making a mockery of the Single Window System, as well as merit based selection. The admission of students under these quotas is, according to the petitioner, per se violative of Article 14 of the Constitution of India. The petitioner contends that Anna University is an instrumentality of the State and any instrumentality of the State cannot give preferential treatment to a class of persons without there being any justification for the same. The contention of the petitioner is that there is no rationale for reservation of the seats under the aforesaid quotas and that the creation of such quotas would defeat the very purpose, object and concept of merit based selection.

3. On behalf of the Anna University, Dr. K.Jayaraman, Registrar of Anna University, has filed a counter affidavit. The University has denied the existence of Governor quota and Vice Chancellor quota, but conceded that there is a Government quota, and a Donor's quota and there is also reservation of certain seats for Industrial Consortium. It is stated that Alagappa College of Technology, Guindy, Chennai Campus of which School of Architecture and Planning, Guindy, Chennai Campus is an integral part, as well as Alagappa College of Technology and Engineering, Karaikudi Campus were established by a well known philanthropist Dr. Alagappa Chettiar. The Madras Institute of Technology (MIT), which was a private Educational Institution founded by late C.Rajam, was handed over to the Government of Tamil Nadu. The said college became a Constituent college of Anna University vide Anna University Act 30/1978. It is stated that by various Syndicate Resolutions, a provision has been made for admission of students nominated by the founders of Madras Institute of Technology (MIT) and Alagappa College of Engineering (AC Tech.) both Guindy campus and Karaikudi campus. Initially a total number of five seats in DMIT course in Madras Institute of Technology (MIT) were allotted as Management quota for nomination by founders and donors of MIT, subject to the condition that the candidates so nominated should possess a minimum academic qualification and standards prescribed for admission to such courses. Subsequently, the Donor's quota was increased to 5% of the sanctioned intake for the academic year 1999-2000 i.e., in all 24 seats vide resolution dated 18.08.1999. By resolution dated 27.02.2002, Dr. Alagappa Chettiar Educational Trust has been allowed to sponsor eight seats under Donor's quota in each of the institutions namely, A.C. College of Engineering and Technology, Karaikudi and A.C. College of Technology, Guindy from the year 2002-2003.

4. Insofar as the Government quota is concerned, it is stated that originally vide Syndicate Resolution dated 19.07.1999, two seats were reserved for students of Andhra Pradesh and one seat for the student of Karnataka on reciprocal basis in the Engineering College, Guindy for the year 1979-80. By Syndicate resolution dated 24.5.1982, the reciprocal seats allotted for the neighbouring States were discontinued and six seats were reserved in the University for allotment of candidates by the Government of Tamil Nadu. By resolution dated 18.08.1999, Government quota was increased to 2% of the sanctioned intake i.e., approximately 61 seats. It is stated that the seats under Government quota are over and above the sanctioned intake and since 1982, successive Governments have nominated the students to the University and they were admitted as per the Syndicate resolutions.

5. Lastly, there are Industrial Consortium seats, which have been approved by the Syndicate vide its resolutions dated 18.06.1997 and 27.02.2004. Under this quota for each of the degree programme (excluding Industrial Bio-Technology) 5% of the seats in respective branch can be reserved over and above the sanctioned intake. By Syndicate resolution dated 21.02.2007, the number of seats under Consortium of Industries was increased from 5% to 10%. Amendments to the Memorandum of Understanding and Guidelines for execution of Memorandum of Understanding were also approved by the Syndicate. It is submitted on behalf of the Anna University that the overall expenditure of the University ever year is nearly Rs. 64 crores and the expenses keep on increasing ever year due to increase in maintenance costs and other commitments. The University receives only Rs.16 crores i.e., 1/4th of the total expenditure, by way of Block Grant and other Grants. Nearly Rs.23 crores is generated by way of institutional charges from the sponsored Projects and Consultancy and Testing that are carried out by the Faculty Members of the University. The University does not even get any amount from the Government towards Pension Contribution. The University, thus, finds it extremely difficult to provide a reasonable amount to the Departments for their developmental activities and for improving the Laboratory facilities. The Department also finds it difficult to provide industrial exposure to the students of the Department concerned. Through a Memorandum of Understanding with the Consortium of Industries, students get industrial exposure in the said industries, the staff of the Department interact with the industry and industry also takes part in the academic activities of the Department. Thus, the Consortium of Industries plays a significant role to achieve the objectives of the University. Out of the Consortium amount 25% is given to the Department concerned for the developmental activities and 75% is kept in the corpus. The interest

accrued out of this corpus is given to the Department ever year for improving the Laboratory facilities. The total corpus fund available in various Departments out of Consortium is Rs.14.5 crores. The amount received through the Consortium of Industries during the year 2005-06 was Rs. 1.50 crores.

6. In view of the above delineated facts, the short question that falls for our consideration is whether the quotas like Government quota, Donor's quota, and the Industrial Consortium quota are legal and valid.

7. In the context of admission to an institution imparting higher education in professional courses a question has often arisen whether the State can make provision giving preferential treatment to a candidate seeking admission to the institution. In dealing with the question, the Supreme Court has repeatedly held that such preferential treatment must be consistent with the mandate of Article 14 of the Constitution guaranteeing equality of opportunity and that though reasonable classification is permissible, such classification must have a reasonable nexus with the object of the rules providing such admission viz., to select the most meritorious amongst the candidates to have advantage of such education. In *Minor P. Rajendran v. State of Madras* (AIR 1968 SC 1012), the Supreme Court has struck down as violative of Article 14 of the Constitution the provision for allotment of seats in Medical Colleges in the State amongst the various Districts in the State in the ratio of the population of each District to the total population of the State. Similarly, provision for distribution of seats on unit basis was also struck down in *Periakaruppan v. State of Tamil Nadu*, (AIR 1971 SC 2303). In *D.N. Chanchalla v. State of Mysore*, (AIR 1971 SC 1762) the Supreme Court, however, upheld University wise distribution of seats on the ground that the Universities are set up for satisfying the educational needs of different areas where they are set up and those attached to such Universities have their ambitions to have training in specialised subject like medicine satisfied through colleges attached to their own Universities.

8. In *Suman Gupta v. State of J & K* (AIR 1983 SC 1235) there was an arrangement among some of the States under which certain percentage of the seats in Medical Colleges was reserved for candidates from other States on a reciprocal basis. The nominations made by the State Government against these seats were challenged on the ground that the same were made by the State Governments in their absolute and arbitrary discretion. It was held that the principle adopted by the State Government of nominating candidates in their absolute and unfettered choice to seats in medical colleges outside

the State was invalid being violative of Article 14 of the Constitution. The Court directed the Medical Council of India to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in Medical Colleges outside the State and that until a policy is so formulated and concrete criteria are embodied in the procedure selected, the nomination shall be made strictly on the basis of merit, the candidate nominated being those, in order of merit, immediately below the candidate selected for admission to the Medical Colleges of the home States. The following observation of Chandrachud, J (as His Lordship then was) is appropriate and apposite for the purpose of the case at hand and is, therefore, extracted and reproduced hereunder: -

"6. For the purpose of these cases, we shall proceed on the assumption that national integration, which is undeniably in itself a highly commendable and laudable objective, will be effectively served by a policy encouraging the admission of candidates of one State to seats in the Medical Colleges of another State. After considering the matter carefully, we confess, we are unable to subscribe to the view that the selection of candidates for that purpose must remain in the unlimited discretion and the uncontrolled choice of the State Government. We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason # relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in *Maneka Gandhi v. Union of India* ((1978)2 SCR 621): (AIR 1978 SC.,597) has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded on the Rule of Law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason. To contend that the choice of a candidate selected on the basis of his ability to project the culture and ethos of his home State must necessarily be left to the unfettered discretion of executive authority is to deny a fundamental principle of our constitutional life. We do not doubt that in the realm of administrative power the element of discretion may properly find place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an

absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether. Proceeding from there, it is evident that if the State Government desires to advance the objective of national integration it must adopt procedures which are reasonable and are related to the objective. In this Age of Reason, all law must measure up to that standard, and necessarily so also must all executive acts. Viewed in this context, the claim of the State Government in these cases that the nature of the objective and the means adopted to serve it entitle it legitimately to vest in itself an absolute power in choosing candidates for nomination cannot be allowed to prevail. It is incumbent on the State Government to adopt a criterion or restrict its power by reference to norms which, while designed to achieve its object, nevertheless confine the flow of that power within constitutional limits. We are not convinced that an adequate system of standards cannot be devised for that purpose. Tested on the touchstone of our constitutional values, the claim of the State Government to the content of the power assumed by it must, in our opinion, be declared invalid.

7. Now, the selection of an appropriate procedure lies ordinarily within the domain of administrative policy, and when the objective can be fulfilled by more than one constitutionally valid method, the selection must be left to administrative choice. The courts are generally concerned merely with the legal validity of the choice made."

9. In *K.Sujatha v. Marathwada University*, (1995 Supp. (1) SCC 155), admission to 20 per cent of the seats was at the discretion of the management of the Medical College. It was argued that these seats were not the open merit seats. Rejecting the said contention, it was held that there cannot be different eligibility Rules for candidates admitted from different sources.

10. In *State of Gujarat v. M.P.Shah Charitable Trust*, (1994 (3) S.C.C., 552) the M.P.Shah Medical College was established in Jam Nagar in 1954 by the then Government Saurashtra on receipt of Rs.15 lakhs from Sri. M.P.Shah. The Medical College started functioning from June, 1955. At all times, it was being maintained and run by the Government from out of its own funds. Initially, it had a strength of 60 students. As per the arrangement between Sri Shah and the then Chief Minister of the State, Sri Shah was entitled to nominate students for admission to the extent of 10 per cent of the total strength admitted every year and this arrangement was to continue on permanent basis. Accordingly, this arrangement continued even after the formation of State of Gujarat. However, the power of

nomination was unregulated and absolute and lay within the sole discretion of 'donor' and his nominee. In the course of time, the annual intake of students in the College rose to 175. After the decision of the Supreme Court in J.P.Unni Krishnan v. State of Andhra Pradesh(1993 (1) SCC 645) in 1964 the State Government decided to discontinue the donor's seats in the medical college. M.P.Shah Medical College Trust filed a writ petition challenging the validity of the resolution of the Government of Gujarat which was allowed. The said decision of the High Court was reversed by the Supreme Court and the resolution of the Government of Gujarat was upheld. It was observed as follows:-

"Now, where an individual or an organisation which establishes and runs a medical college (recognised by State or affiliated to a university) is not entitled, according to Unnikrishnan (1993 AIR SCW 863) to admit students on its own, or in its discretion, it is inconceivable that a person or a body which has assisted in setting up of a Government medical college would be permitted to have a quota of its own to which it can nominate students of its own choice. There is no room for such an arrangement in law."

11. In Thappar institute of Engineering & Technology v. State of Punjab (AIR 1997 SC 793), the question raised before the Supreme Court was relating to reservation of seats for wards of employees in the matter of admission to institutions imparting technical education. It was argued before the Court on behalf of the Management that four additional seats for which reservation was made for the wards of the college and mill/school staff of the T.I.T. & S are in addition to intake of 90 seats and admission is made on the basis of marks obtained in the Entrance Examination conducted by the respondent-University. For the purpose of admission to these four seats a separate merit list is drawn in respect of the candidates who are eligible for these seats and admission is not made according to merit as reflected in the common merit list. It was held by the Supreme Court that such reservation in favour of wards of the College and mill/school staff of the T.I.T. & S. does not satisfy the test of admission being given strictly on the basis of merit as laid down in Unnikrishnan's case (supra) and the same has been rightly held to be impermissible by the High Court.

12. In the light of these decided cases, we may now proceed to examine various quotas provided by way of Syndicate Resolutions. Originally by Resolution dated 9.7.1979 two seats were reserved for students of Andhra Pradesh and one seat for the student of Karnataka on reciprocal basis in the Engineering College, Guindy, for the year 1979-80. Reciprocity was discontinued in the year 1982 and a Resolution was passed for reservation of six seats for allotment of

candidates by the Government of Tamil Nadu. By a further Resolution dated 18.8.1999, the Government quota has been increased to 2 per cent of sanctioned intake from the academic year 1999-2000. It is not in dispute that this quota has been maintained since the year 1982 and the successive Governments in the State of Tamil Nadu have been nominating students to the University and they were admitted as per the Syndicate Resolution. It is an admitted position that no guideline or criteria is laid down for selection of students in the Government quota and it is entirely left to the unlimited discretion and uncontrolled choice of the State Government. In our opinion, it is not permissible for the Anna University to allow such nomination in the absence of criteria or norms with acceptable guidelines while selecting the candidates from the Government quota. Indisputedly, admission to Constituent Colleges of Anna University is being done on the basis of merit and even the University has no power to nominate a student for admission in its discretion. We fail to appreciate how the State Government would deviate from this rule and select the candidates for the State quota of 2 per cent of total intake. Selection of the candidates cannot remain in the unlimited discretion and the uncontrolled choice of the State Government. Learned counsel appearing for the State and University are not in a position to offer any justification for having such quota for the Government, except saying that such practice has been followed since 1982. It is also stated that 2% seats are over and above the sanctioned intake and are supernumerary seats created by the University, and therefore the normal selection process is in applicable. This very argument was rejected by the Supreme Court in Thapar Institute of Engineering & Technology v. State of Punjab (supra). Even in respect of selection to supernumerary quota, the State cannot have any unquestioned and uncontrolled choice in the matter of selection of the students. Merit has to be the main criteria in the selection of students. As laid down by the Supreme Court in T.M.A.PAI FOUNDATION v. STATE OF KARNATAKA 2002 (8) SCC 481) and P.S.INAMDAR AND OTHERS v. STATE OF MAHARASHTRA AND OTHERS (2005 (6) SCC 537) all these seats are liable to be filled up by the University strictly on the basis of merit.

13. Coming then to the donor's quota sponsored by the founders and donors of MIT and Alagappa Colleges of Technology & Engineering, the only basis for providing the quota seems to be that sponsors had donated their properties for the purpose of establishing Colleges. This is not a case where the University has entered into any agreement with the founders and donors of those Colleges which became Constituent Colleges by virtue of Anna University Act 30 of 1978. The Syndicate resolutions do not prescribe the manner or method according to which the donor or founder should select the students to be nominated against the quota reserved for them. It is open to the donor/founder to nominate such candidates as they choose. The

University has no right to question the nominations so made. The nominations are thus completely unregulated and absolute and lay within the sole discretion of the donors/founders. In the light of the clear pronouncement of the Supreme Court in State of Gujarat v. M.P.Shah Charitable Trust (supra), the said founder and donor's quota is totally impermissible and unsustainable. However, we are informed that the students have been already got admission from this quota and Courses have been commenced. As far as the students who have been admitted, they may continue their Courses, but from the next year, the founder and donor's quota has to be dispensed with.

14.Lastly, as far as the Consortium of Industries category is concerned, it is seen that certain industries have contributed one time lump sum payment which entitles them for a fixed number of seats every year. While certain other industries make contribution of Rs. 10,00,000/- for the entitlement of one seat one time only. During the year 2006-2007, the contributory amounts have been increased to Rs.15 lakhs for certain disciplines and Rs.12 lakhs for certain other disciplines. It is seen that some industries have made substantial donation ranging from Rs.50 lakhs to Rs.9 crores. It is seen from the counter affidavit filed by the Registrar that the Departments find it difficult to provide industrial exposure to the students of the Department concerned. Through a Memorandum of Understanding with the Consortium of Industries, students get industrial exposure in the said industries, the staff of the Department interacts with the industry and industry also takes part in the academic activities of the Department. The University has framed detailed guidelines for the execution of Memorandum of Understanding with the Consortium of Industries which inter-alia read as follows:

Any company applying for sponsorship and agreeing to exchange the facility and other infrastructure available with the University must be a company registered under the Companies Act, 1956.

The Company shall be a reputed one engaged in the manufacturing/ productivity process or other related process of any material which shall be related to any faculty like Mechanical/Electrical/Electronics/Computer Science Engineering/Biotechnology, etc. imparted in the University.

The Company must have been registered at least five years prior to signing of the agreement.

The Company along with application shall produce the annual audited statement of Accounts for a minimum period of three years preceding the date of agreement together with Income Tax Clearance Certificate.

The Vice Chancellor/Registrar may depute two or more faculty and other officers of the University for inspection of the facility and other infrastructure available in the industry prior to the signing of the Memorandum of Understanding. The Company will pay the relevant travel and other expenses.

The Agreement executed shall be valid for a period of 4 years and may be extended, on the discretion of the Vice-Chancellor.

The University shall consider conducting refresher courses/training programmes, explore Consultancy, arrange guest lectures for the benefit of the staff of the Company, to derive mutual benefit, on payment of necessary charges by the company concerned.

The candidates sponsored under the provisions of MoU should be the sons/daughters or grandchildren inclusive of relatives of employers/employees studying in Tamil Nadu and should satisfy the eligibility criteria for admission as stipulated by Anna University. For purpose of this clause an employee shall not include Consultant, part-time employee and Contract employee.

The Company shall impart Industrial training for at least a total of 10 students with a minimum of 3 students per year, within the stipulated block period of four years.

The Company shall arrange for Industrial visits and extend support for industrial projects for students and actively involve in placement. "

15 In our opinion, this scheme providing for reservation of seats for Consortium of Industries contains sufficient guidelines whereby both the University and Industries are benefitted by mutual collaboration. We may also mention that the Supreme Court has specifically permitted the Educational Institutions to have their NRI quota upto 15%. We are informed that the Anna University has provided only 10% quota for NRI, which comes to 340 seats, whereas only 85 students have been admitted under the said quota. Against the Consortium of Industries, the University has admitted 2.97% of the total intake in the year 2007-08. The University has agreed to restrict the reservation of seats for Consortium of Industries only to 5% and not to exceed 15% of the total intake for NRI quota and Consortium of Industries combined together. We, therefore, do not see any ground to interfere with the procedure for admission of the students under category of Industrial Consortium quota.

16. In the result, in view of the foregoing discussion, the writ petition is partly allowed and disposed of in terms of the following order:

(i)The Government quota and the founders/donor's quota effected through various resolutions of the Anna University are violative of Article 14 of the Constitution of India.

(ii)As the admission of students through the donors/founder's quota is already complete for the year 2007-08, they are allowed to continue their course, but from next academic year, the founders/donor's quota shall be dispensed with.

(iii)Government quota of 2% shall be filled up through the Single Window System in accordance with the merit.

(iv)The admission of students through Consortium of Industries category is valid, subject to maximum of 15% intake including NRI.

Consequently, connected miscellaneous petitions are closed. No costs.

sai/pv

To

1. The Registrar
Anna University
Guindy
Chennai.
2. The Regional Director
All India Council for Technical Education
Southern Regional Office
Shastri Bhavan
Chennai.
3. The Secretary to Government
State of Tamil Nadu
Education Department
Fort St. George
Chennai 600 009.