

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* * * *

WRIT PETITION No.40395 of 2014

Between:

Dr.Nushrat Jahan

....Petitioner

AND

The State of Andhra Pradesh, rep. by its Principal
Secretary, Medical and Health Department,
Secretariat, Hyderabad and others

....Respondents

DATE OF JUDGMENT PRONOUNCED: .07.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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|----|---|--------|
| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be
Marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether His Lordship wishes to
see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.40395 OF 2014

ORDER:

Heard learned counsel for the petitioner and learned Standing
Counsel for second respondent University.

2. The petitioner completed graduation in Unani Medicine (B.U.M.S)

from the State Unani Medical College and Hospital, Allahabad. She hails from the State of Uttar Pradesh. The second respondent notified the entrance test for admissions into M.D (Unani) courses for the academic year 2014-2015 on 10.10.2014. The petitioner appeared for the same and secured an over all 17th rank and 7th rank as other state candidate. The number of seats in M.D(Unani) permitted by the Government of India for the academic year 2014-2015, as per the prospectus are as follows:

- | | |
|----------------------------|--------------|
| “ 1. Moalajat | - 10 seats |
| 2. Ilmul Advia | - 05 seats |
| 3. Qabalat Wa Amraz Niswan | - 09 seats |
| 4. Tahafuzi Wa Samaji | - 05 seats |
| 5. Kulliyat | - 05 seats ” |

3. The number of seats reserved to various categories were stated in G.O.Ms.No.603, HM & FW (R2) Department, dated 28.12.2004 after making provision for three seats in Advia course for Government of India Nominees and one seat each in Moalijat and Qabalat-O-Amraz-e-Niswan courses for foreign nationals. The counselling was held on 20.11.2014 and the list of admitted candidates was displayed on 07.12.2014. Three seats reserved for Government of India's nominees and one seat reserved for foreign nationals were not filled up. The left over seat for the foreign nationals is in Qabalat-O-Amraz-e-Niswan. In the State of Uttar Pradesh, there is no PG level course in the Government sector in the concerned speciality. The petitioner was sponsored by that State and she states that she deserved to be considered for nomination as Government of India nominee for M.D course against the seat reserved for Government of India nominees. The petitioner applied to the Secretary of AYUSH, Ministry of Health and Family Welfare, New Delhi on 10.12.2014 seeking nomination for admission to the vacant seat reserved for foreign nationals in the Qabalat-O-Amraz-e-Niswan speciality. It appears that pursuant to her application, the AYUSH Department, Government of India, addressed a letter dated 11.12.2014 to

the Principal, Government Nizamia Tibbi College, Charminar, Hyderabad stating that in case the seats earmarked for foreign students are not filled up by the prescribed dead line for admission, the reserved seats for ICCR sponsored candidates may be treated as lapsed and other candidates from open merit list can be admitted as per rules and regulations. Accordingly, the petitioner applied to the Government Nizamia Tibbi College, Charminar, Hyderabad and the Principal addressed a letter to the Registrar of the second respondent University to consider the request of the petitioner and when the case of the petitioner was not considered, she filed the present Writ Petition.

4. A counter-affidavit is filed on behalf of the second respondent stating that the petitioner applied through on-line for admission to PG medical courses and she appeared for the entrance examination on 26.10.2014. The results were published on 01.11.2014. As per the letter of Government of India dated 23.03.2003, the following seats were earmarked in PG courses for foreign students.

- “ 1. Moolegath - 01 seats
2. Niswan Vasalerth - 01 seats”

The admissions were closed on 15.11.2014 and one student from Srilanka was admitted against the quota reserved for foreign nationals. Thus one seat was left open. The Government of India, in its letter dated 17.07.2014, earmarked three seats in M.D(Advia) for Central Nomination i.e., for other State candidates. As per the guidelines issued in the said letter, preference was given to regular teaching staff of any Government run medical institution and if no teaching staff of State Government run medical institution is available for nomination, medical officers working on regular basis in the Government would be nominated as Government of India nominees. If neither a teacher nor a medical officer working in the Government is available for nomination, the vacant seats would be

filled up by the private candidates sponsored by deficient States/Union Territories. Even thereafter if a seat was left, the said vacancy will be filled up by open category candidates according to the merit in the entrance test. Three seats earmarked for Central Government nominees were filled up by three medical officers belonging to Jammu and Kashmir, who were nominated by the Government of India for the academic year 2014-2015. Thus, no seat remained vacant for other State candidates. It was admitted that the Government of India, in its letter dated 04.06.2012, stated that in case the seats earmarked for foreign students are not filled up by 30.09.2012, then the reservation of seats for ICCR sponsored candidates may be treated as lapsed and other candidates from open merit list can be admitted as per rules and regulations. The said position was reiterated by the Government of India in its communication dated 11.12.2014 for 2014-2015 also. Thus, the petitioner was not eligible for admission, as she is neither local nor non-local candidate to the second respondent University for consideration in the merit list.

5. In view of the above rival stands taken by the petitioner and the second respondent University, it has to be seen whether the candidate deserves admission in the M.D (Unani) course for the academic year 2014-2015 in the college affiliated to the second respondent University under the left over foreign national quota.

6. The learned counsel for the petitioner submitted that the petitioner is entitled to be admitted in the seat left out due to the unfilled seat earmarked for foreign nationals on the ground that the said seat has to be filled up from open merit list.

7. The learned Standing Counsel for the second respondent University, on the other hand, submitted that the candidature of the petitioner cannot be considered in the open merit list, as she does not

belong to local or non-local candidate within the definition given in the regulations for admission.

8. The case of the petitioner is that since she hails from a “deficient State”, she is deserved to be considered as a nominee of Government of India for M.D (Unani) course against the seat earmarked for Government of India’s nominees. The petitioner applied to the Government of India seeking nomination for admission to the vacant seat reserved for foreign nationals and her case was forwarded to the Principal, Government Nizamia Tibbi College, Charminar, Hyderabad, who addressed a letter to the second respondent on 12.12.2014 for consideration of her case and the second respondent has not considered her case. It is an admitted case that out of two seats earmarked for foreign nationals, one seat alone was filled up by a Srilankan national and the other seat remained vacant. As per the communication of Government of India dated 11.12.2014 to the Principal, Government Nizamia Tibbi College, Charminar, Hyderabad, the reservation of the seats for ICCR sponsored candidates lapsed due to non-filling up of the seat earmarked for foreign nationals within the prescribed date and the said seat can be filled up by a candidate from open merit list as per rules and regulations. In view of the said communication, the learned counsel for the petitioner submits that since the petitioner obtained the rank of 17, she is entitled to be considered on her own merit in the open merit list. The learned Standing Counsel submits that the seats in the open merit list have to be filled up by local or non-local candidates within the State only in view of the Presidential Order.

9. Para 3 of the Prospectus deals with eligibility for admission. Reservations are provided in para 4 thereof. The reservation for Government of India nominees and foreign nationals are stated in para 4.5.4 as follows:

“ 4.5.4 The number of seats reserved to various categories are as

follows as per G.O.Ms.No.603, HM & FW (R2) Dept., dt.28-12-2004 and after making provision for 3 seats in Advia course for Government of India Nominees as per G O I Letter No.R.12013/1/2003-E&C (i), dt.23-3-2004 and 1 seat each in Moalijat and Qabalat-O-Amraz-e-Niswan courses for foreign nationals as per G O I Letter No.R.12013/1/2003-E&C (i), dt.23-3-2004.”

10. Para 5 deals with reservation in favour of local candidates and it reads as follows:

“ 5. Reservation in favour of local candidates:

Admission to 85% of the seats specified in Regulation 2 above shall be reserved in favour of and allocated among the local candidates in relation to the local area in respect of the Andhra University including the Nagarjuna University area, the Osmania University including the Kakatiya University area and S.V.University including the Sri Krishna Devaraya University area in the ratio of 42:36:22 respectively. While determining the number of seats to be reserved in favour of local candidates, in respect of local area any fraction of 0.5 and above shall be counted as one provided that there shall be atleast one unreserved seat.”

11. Local area is specified in para 6 and it reads as follows:

“ 6. Local area:

6.1 The part of the State comprising the Districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Krishna, Guntur and Prakasam shall be regarded as the local area in respect of the Andhra University and the Nagarjuna University.

6.2 The part of the State comprising the Districts of Adilabad, Hyderabad (including the twin cities of Hyderabad and Secunderabad), Rangareddy, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad and Warangal shall be regarded as the local area in respect of the Osmania University and the Kakatiya University.

6.3 The part of the State comprising the Districts of Anantapur, Kurnool, Chittoor, Kadapa and Nellore shall be regarded as the local area in respect of S.V. University and Sri Krishna Devaraya University.”

12. Para 8 deals with categories of candidates, who are eligible to apply for admission to the 15% of the unreserved seats and it reads as follows:

“ 8. The following categories of candidates are eligible to apply for

admission to the 15% of unreserved seats.

- 8.1 All candidates defined under Regulation 7.
- 8.2 Candidates, who have resided in the State for total period of ten years excluding periods of study outside the state, or either whose parents have resided in the State for a total period of ten years excluding periods of employment outside the state.
- 8.3 Candidates whose parents are in the employment of this state or Central Government, Public Sector Corporations, local bodies, Universities and other similar quasi public institutions within the state.
- 8.4 Candidates who are spouses of those in employment of this State or Central Government Public Sector Corporations, local bodies, Universities and educational institutions recognised by the Government, a University or other competent authority and similar other quasi government institutions within the State.
- 8.5 Candidates who are employees in the State Government Undertakings, public sector corporation, local bodies, Universities and other similar quasi public institutions within the State.
- 8.6 Candidates who are the spouses of the local candidates as per Regulation 8.1.4.”

13. Since the petitioner does not come under the definition of local candidate under para 7 or is not eligible to be considered in respect of 15% of the unreserved seats, the petitioner cannot claim to be considered in the open merit which is meant for local and unreserved quota only. Even as per the case of the petitioner, the left over foreign national's seat should go to the meritorious candidate in the merit list, which means that it will be treated as a part of 100% of the seats indicated in the total number of seats, out of which 85% seats are reserved for local candidates and 15% are treated as unreserved seats. Since the petitioner does not fulfil the said criteria, her case cannot be considered in any of the categories even though she might have secured 17th rank and the other candidates who got lesser marks, but fulfilling the eligibility criteria under local candidates and unreserved seats might have got admissions.

14. In view of the above position, the Writ Petition deserves to be dismissed and is accordingly dismissed. Miscellaneous Petitions pending, if any in this Writ Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 24.07.2015
TJMR