

*** THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

+ WRIT PETITION Nos.25586 AND 26125 OF 2015

% Date 19-08-2015

W.P.No.25586 of 2015

T. Tanmai Reddy and others

... Petitioners

V.

\$ The State of Andhra Pradesh,
and others

...Respondents

! Counsel for the petitioners : Sri K.G. Krishna
Murthy
(Senior Counsel)

^ Counsel for Respondent No.1 : Government
Pleader for
Medical & Health

Counsel for Respondent No.2 : Sri Nimmagadda
Venkateswarlu

Counsel for Respondent No.3 : Sri A. Prabhakar
Rao

Counsel for Respondent Nos.4 & 5 : Smt. P. Saradha

< **GIST :**

> HEAD NOTE:

? CASES REFERRED:

C/15

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

*** * * ***

WRIT PETITION Nos.25586 AND 26125 OF 2015

W.P.No.25586 of 2015

Between:

T. Tanmai Reddy and others

.. Petitioners

and

The State of Andhra Pradesh,
and others

.. Respondents

JUDGMENT PRONOUNCED ON : August 19, 2015

-
HON'BLE SRI JUSTICE : R. SUBHASH REDDY

AND

**HON'BLE SRI JUSTICE : A. SHANKAR
NARAYANA**

1. Whether Reporters of Local :
Newspapers may be allowed
to see the Judgments?
2. Whether the copies of :
judgment may be marked to
Law Reporters/Journals?
3. Whether their Ladyship/Lordship :
wish to see the fair copy of the
Judgment?

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

WRIT PETITION Nos.25586 AND 26125 OF 2015

COMMON ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

As both these Writ Petitions are filed by the students aspiring to get entry into M.B.B.S. course, they are heard together and are being disposed of by this common order. For the purpose of disposal, we refer to the facts as narrated in W.P.No.25586 of 2015.

2. The prayer in W.P.No.25586 of 2015 reads as under:

“.. to issue a Writ, order or direction, more particularly one in the nature of a Writ of Mandamus declaring the action of the respondent Nos.1,3,4 and 5 in issuing G.O.Ms.No.120, Health, Medical and Family Welfare (E1) Department dt 23-08-2015 so far as it relates to denial of local reservation in respect of 85% of the seats is contrary to the

Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974 and set aside the same to the extent indicated above and further direct the respondents 1,3,4 and 5 to implement the local reservation for local candidates as per the Presidential Order Andhra Pradesh Educational Institutions (Regulation of Admissions) Order 1974 only to the candidates of local area.”

3. The 4th respondent – Sri Padmavathi Medical College for Women, Tirupati, Chittoor District, is an institution started by the

5th respondent – Sri Venkateswara Institute of Medical Sciences, Tirupati, from the academic year 2014 – 15 and is an unaided non-minority professional college.

4. The grievance of the petitioners is that admissions into M.B.B.S. course in the 4th respondent – College are made contrary to the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (for short, ‘Presidential Order’), issued under Article 371D of the Constitution of India.

5. Article 371D of the Constitution of India, introduced by the Constitution (32nd Amendment) Act, 1973, deals with the special provisions with respect to the State of Andhra Pradesh. The said provision empowers the Honourable President to issue an order in the matter of public employment and education for providing

equitable opportunities and facilities for the people belonging to different parts of the State. Accordingly, the Presidential Order was issued reserving 85% of the available seats in every course of study for candidates belonging to the local area. In the Presidential Order, paragraph No.2 deals with the interpretation of 'local area' and 'local candidate'. Paragraph No.2 (b) and 2 (c) read as under:

“2 (b) – “local area” in respect of any University or other educational institution means the local area specified in paragraph 3 of this Order for the purposes of admission to such University or other educational institution;

2 (c) – “local candidate” in relation to any local area, means a candidate who is qualified under paragraph 4 of this Order as a local candidate in relation to such local area,”

6. Paragraph No.3 of the Presidential Order defines the 'local area', which reads as under:

“3. Local Area : - (1) The part of the State comprising the districts of Srikakulam, Visakhapatnam, West Godavari, East Godavari, Krishna, Guntur and Prakasam shall be regarded as the local area for the purposes of admission to the Andhra University, the Nagarjuna University and to any other educational institution (other than State-wide University or a State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

(2) The part of the State comprising the districts of Adilabad, Hyderabad, Karimnagar, Khammam, Mahaboobnagar, Medak, Nalgonda, Nizamabad and Warangal shall be regarded as the local area for the purposes of admission to the Osmania University, the Kakatiya University and to any other educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.

(3) The part of the State comprising the districts of Anantapur, Cuddapah, Kurnool, Chittoor and Nellore shall be regarded as the local area for the purposes of admission to Sri Venkateswara University and to any other educational institution (other than a State-wide University or State-wide educational institution) which is subject to the control of the State Government and is situated in that part.”

7. The 4th respondent – college is located in Chittoor District. As per the ‘local area’ defined in the Presidential Order, the 4th respondent – College falls within the local area of Sri Venkateswara University, which comprises the five Districts namely Anantapur, Kadapa, Kurnool, Chittoor and Nellore, for the purpose of admission into educational institutions. Paragraph No.5 of the Presidential Order provides reservation in non-State-wide Universities and educational institutions. As much as the 4th respondent – College is a non-State-wide educational institution,

reservation as contemplated under paragraph No.5 of the Presidential Order has to be applied. Paragraph No.5 of the Presidential Order reads as under:

“5. Reservation in non-State-wide Universities and educational institutions:-

(1) Admission to eighty-five percent of the available seats in every course of study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide Educational Institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one:

Provided that there shall be atleast one unreserved seat.”

8. In the composite State of Andhra Pradesh, there were 23 Districts. By Act 6 of 2014 i.e., Andhra Pradesh Reorganisation Act, 2014, a new State known as the State of Telangana is formed from the notified date i.e., 02.06.2014 comprising Ten Districts of the erstwhile State of Andhra Pradesh. The Ten Districts, with which the State of Telangana is formed, come within the local area of Osmania University. By virtue of Section 95 of the Andhra Pradesh Reorganisation Act, admission quotas in all the

Government, Private, Aided and Un-aided institutions of higher, technical and medical education, as notified under Article 371D of the Constitution, shall continue as such for a period of Ten years. Section 95 of the Andhra Pradesh Reorganisation Act reads as under:

“In order to ensure equal opportunities for quality higher education to all students in the successor States, the existing admission quotas in all government or private, aided or unaided, institutions of higher, technical and medical education in so far as it is provided under Article 371D of the Constitution, shall continue as such for a period of ten years during which the existing common admission process shall continue.”

9. In the Writ Petitions, the guidelines issued by the Government in G.O.Ms.No.120, dated 23.08.2014, are challenged mainly on the ground that the quotas as prescribed in the impugned G.O. run contrary to the Presidential Order. It is the case of the petitioners that the admission quotas as prescribed in the Presidential Order continue as such for a period of Ten years by virtue of Section 95 of the Andhra Pradesh Reorganisation Act and hence, admissions are to be made into the 4th respondent – College by reserving 85% of the available seats to the candidates belonging to local area of Sri Venkateswara University, as per paragraph No.3 of the Presidential Order. It is their allegation that contrary to the Presidential Order, respondent No.1 - Government has issued

impugned G.O.Ms.No.120, dated 23.08.2014, by way of guidelines to fill up 85% (127) of the seats in the 4th respondent – College by treating the candidates of residual State of Andhra Pradesh (i.e., 13 Districts) as eligible local candidates. It is also the case of petitioners that admissions into unaided non-minority colleges are governed by the statutory Rules framed in G.O.Ms.No.136, dated 30.04.2007, which are titled as “A.P. Un-aided Non-minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007”, and as such, the admission procedure followed by the 4th respondent – College and the guidelines issued in the impugned G.O., run contrary to Rule 9 of the said admission Rules.

10. The Government as well as respondent Nos.4 and 5 have filed separate counter affidavits.

11. In the counter affidavit filed by the 1st respondent, while denying the various allegations made by the petitioners, it is stated that admissions into 4th respondent – College are made by 3rd respondent as per the guidelines issued by the Government in G.O.Ms.No.120, dated 23.08.2014. It is also categorically averred that ‘local candidate’ means the student who resides in the residual State of Andhra Pradesh i.e., within

13 Districts and 'non-local candidate' means the student who resides in the State of Telangana or in any other State, and the entire admissions were made as per the guidelines issued in G.O.Ms.No.120, dated 23.08.2014.

12. In the counter affidavit filed by the 4th and 5th respondents, it is simply stated that the 1st respondent – Government has issued guidelines vide G.O.Ms.No.120, dated 23.08.2014, and as per the said guidelines and as has been done during the previous academic year 2014 – 15, admissions are made into the 4th respondent – College for the current academic year i.e., 2015 – 16.

13. Heard Sri K.G.Krishna Murthy, learned Senior Counsel appearing for the petitioners, learned Government Pleader for the 1st respondent, Sri Nimmagadda Venkateswarlu, learned counsel for the 2nd respondent, Sri A. Prabhakar Rao, learned counsel for the 3rd respondent and Smt. P. Saradha, learned counsel for the 4th and 5th respondents.

14. Sri A. Prabhakar Rao, learned counsel appearing for the 3rd respondent – University, has fairly submitted that admissions into the 4th respondent – College were made by treating the candidates from all the

Districts of the residual State of Andhra Pradesh as local candidates.

15. From a perusal of the provision under Article 371D of the Constitution, it is clear that the said provision is introduced empowering the Honourable President to issue orders for providing equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and education. In exercise of power conferred under Article 371D of the Constitution, the Presidential Order, which is titled as "A.P. Educational Institutions (Regulation of Admissions) Order, 1974, was issued. As per the Presidential Order, the entire State of Andhra Pradesh is broadly divided into three local areas keeping in mind the geographical area of the erstwhile composite State. It is also clear from paragraph No.5 of the Presidential Order that 85% of available seats in every course of study are reserved in favour of local candidates. The Districts of Anantapur, Kadapa, Kurnool, Chittoor and Nellore, which are contiguous in one part of the erstwhile State, are included in the local area of Sri Venkateswara University for the purpose of admission into educational institutions. Though the Presidential Order was notified in the year 1974 and though the Andhra Pradesh Reorganisation Act, 2014, came into force from 02.06.2014, by virtue of Section 95 of the said Act, the existing admission quotas in all the Government, Private,

Aided and Un-aided institutions of higher, technical and medical education, as notified under Article 371D of the Constitution, continue as such for a period of Ten years. Therefore, it is clear that admissions into institutions of higher, technical and medical education are to be made by reserving 85% of the available seats to the local candidates belonging to local area as defined in the Presidential Order. From a perusal of paragraph Nos.3(3) and 5 of the Presidential Order coupled with the provision under Section 95 of the Andhra Pradesh Reorganisation Act, it is clear that 85% of the available seats in the institutions within the local area of Sri Venkateswara University shall be reserved to the candidates belonging to the Districts of Anantapur, Kadapa, Kurnool, Chittoor and Nellore only. From the notified day i.e., 02.06.2014, the

13 Districts of the erstwhile composite State remained with the residual State of Andhra Pradesh, but, out of the said 13 Districts, only five Districts i.e., Anantapur, Kadapa, Kurnool, Chittoor and Nellore, as covered by paragraph No.3(3) of the Presidential Order, shall be regarded as local area of Sri Venkateswara University for the purpose of admissions.

16. By the impugned G.O.Ms.No.120, dated 23.08.2014, the 1st respondent – Government has issued directions by way of guidelines, as per which, 85% of

seats shall be filled with eligible local candidates of the residual State of Andhra Pradesh (13 Districts) and 15% shall be filled under unreserved category. The said guidelines and instructions issued in the impugned G.O. are quite contrary to paragraph Nos.3 (3) and 5 of the Presidential Order, issued under Article 371D of the Constitution of India. On the said ground alone, the impugned guidelines are fit to be set aside.

17. Further, the guidelines for admission issued in the impugned G.O. are not only contrary to the Presidential Order, but also contrary to the admission Rules framed by the State. To regulate admissions and fee structure, by prohibiting collection of capitation fee, the erstwhile State of Andhra Pradesh has enacted the law titled as “Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983”. In exercise of powers conferred under Sections 3 and 15 of the said Act, the admission Rules are framed in G.O.Ms.No.136, Health, Medical and Family Welfare (E1), dated 30.04.2007, which provide the procedure for admission into Medical and Dental professional courses in non-minority professional educational institutions.

18. Rule 9 of the admission Rules deals with the Rules of Reservation for Admission and Rule 9 (1) thereof deals with Region-wise reservation of seats as per

Presidential Order, 1974. Rule 9 (1) of the Rules reads as under:

“9. Rules of Reservation for Admission:- Seats shall be reserved for the following categories in admissions to professional courses.

(1) Region-wise reservation of seats:

(a) Admission to 85% of the "Competent Authority Seats" in each course shall be reserved for the local candidates and the remaining 15% of the "Competent Authority Seats" shall be un-reserved seats as specified in the Andhra Pradesh Educational Institutions (Regulations and Admissions) Order, 1974 as subsequently amended.

(b) In respect of State wide Institutions, admission into 85% of seats in each course shall be reserved for the candidates belonging to three local areas in the State specified in this sub-rule namely, Andhra University Area (Andhra), Osmania University Area (Telangana) and Sri Venkateswara University area (Rayalaseema) in the ratio of 42:36:22 respectively and the balance of 15% seats shall be un-reserved seats:

Explanations for purpose of these Rules:

(A) "The Local Areas" means:

(a) The part of the State comprising the Districts of Adilabad, Hyderabad (Including Twin Cities) Rangareddy, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad and Warangal shall be regarded as the Osmania University Local Area (Telangana).

(b) 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 Andhra University Local Area (Andhra).

(c) The part of the State comprising the districts of Ananthapur, Kurnool, Chittoor, Cuddapah and Nellore shall be regarded as the Sri Venkateswara University Local Area (Rayalaseema).

(B) "The Local Candidate": A candidate for admission shall be regarded as a local candidate in relation to a local area.

(a) If he has studied in educational Institutions in such local area for a period of not less than four consecutive academic years ending with the academic year in which he appeared or as the case may be, first appeared in the relevant qualifying examination.

OR

(b) Where, during the whole or any part of the four consecutive academic years ending with the academic year in which he appeared or as the case may be first appeared for the relevant qualifying examination, he has not studied in any Educational Institutions, if he has resided in that local area for a period of not less than four years immediately preceding the date of commencement of the relevant qualifying examination which he appeared or as the case may be first appeared.

(C) A Candidate for admission to the course who is not regarded as local candidate under clause (A) in relation to any local area shall;

(i) If he has studied in Educational Institutions in the State for a period of not less than seven consecutive academic years ending with the academic year in which he appeared or as the case may be first appeared for the relevant qualifying examination be regarded as a local candidate in relation to:

(a) Such local area where he/she has studied for the maximum period out of the said period of seven years;

OR

(b) Where the period of his/her study in two or more local areas are equal, such local area, where he/she has studied last in such equal period.

OR

(ii) If, during the whole or any part of seven consecutive academic years ending with the academic year in which he/she appeared or as the case may be first appeared for the relevant qualifying examination he/she has not studied in the Educational Institutions in any local area but has resided in the State during the whole of the said period of seven years, be regarded as a local candidate in relation to:

(a) Such local area where he/she has resided for the maximum period but of the said period of seven years.

OR

(b) Where the periods of his/her residence in two or more local areas are equal, such local areas where he/she has

(D) The following categories of candidates are eligible to apply for admission to the remaining 15% of un-reserved seats:

(a) All the candidates eligible to be declared

as local candidates.

(b) Candidates who have resided in the State for a total period of 10 years excluding periods of study outside the State or either of whose parents have resided in the State for a total period of ten years excluding period of employment outside the State.

(c) Candidates who are the children of the parents who are in employment of the State or Central Government, Public Sector Corporations, Local Bodies, Universities and Educational Institutions other similar quasi Public Institutions within the State.

(d) Candidates who are spouses of those in the employment of the State or Central Government, Public Sector Corporations, Local Bodies, Universities and Educational Institutions recognized by the Government or University Or other Competent Authority and similar quasi Government Institutions within the State.

(E) If a local candidate in respect of a local area is not available to fill any seat reserved or allocated in favour of a local candidate in respect of that local area, such seat shall be filled as if it has been un-reserved, in the orders of ranking assigned in the Common Merit List.”

19. The said Rule also makes it clear that for admission into un-aided Medical and Dental professional courses, 85% of the available seats shall be reserved for ‘local candidates’, as defined under the Presidential Order. In view of the said Rule, as it is not in dispute that

admissions into 4th respondent – College are made by reserving 85% of the available seats to the candidates of all the

13 Districts of the residual State of Andhra Pradesh, it can be said that such admissions are contrary to the admission Rules and the Presidential Order.

20. All the petitioners in these Writ Petitions who are aspiring to get admission into medical courses have appeared for Medical Common Entrance Test for the academic year 2015 -16 and have secured the ranks 353, 355, 322, 330, 341, 371, 324 and 334 in the local area of Sri Venkateswara University as notified in the Presidential Order. It is also evident from the counter affidavit filed by the 1st respondent that majority of the students who are admitted in the 4th respondent – College are from Andhra University with ranks ranging from 1800 – 2000. In view of the same, it is clear that though the petitioners are better rank holders, who have secured the ranks between 322 and 371, in the local area of Sri Venkateswara University, they did not get admission in the 4th respondent – College in view of the procedure adopted for admissions by the 4th and 5th respondents, which is in gross violation of the Presidential Order and Rule 9 (1) of the admission Rules.

21. For the aforesaid reasons, as much as all the petitioners belong to local area of Sri Venkateswara

University and are denied admission into M.B.B.S. Course in respondent No.4 – College along with other similarly placed persons by treating the entire residual State of Andhra Pradesh as one unit, which is contrary to the Presidential Order, 1974, we allow these Writ Petitions and quash G.O.Ms.No.120, Health, Medical and Family Welfare (C1) Department, dated 23.08.2014, to the extent of treating the

13 Districts of the residual State of Andhra Pradesh as one unit for the purpose of admission into respondent No.4 – College. Consequently, we set aside the admissions made to M.B.B.S. Course in respondent No.4 – College to the extent of 85% of seats reserved for local candidates and we direct respondent Nos.3 to 5 to make admissions to respondent No.4 – College by conducting fresh counselling duly following the region-wise reservation as contemplated under Presidential Order, 1974. It is made clear that this order will not affect the admissions made for the previous academic year i.e., 2014 – 15.

Miscellaneous Petitions, if any, pending in these Writ Petitions, shall stand closed. No costs.

R. SUBHASH

REDDY, J

NARAYANA, J
August 19, 2015

A. SHANKAR

Note: 1. L.R. copy to be marked.
2. Issue C.C. by 31.08.2015.

B/o.MD