

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

WRIT PETITION NOS.35468 AND 35522 OF 2015

-

WRIT PETITION NO.35468 OF 2015:

-

Between:

Dr.Ambedkar Global Law Institute,
19-3-2J/F1/A20, K.K.Chervu,
Renigunta Road, Tirupathi,
Chittoor District, rep. by its Correspondent,
and others. .. Petitioners

and

The State of Andhra Pradesh, rep.
by its Principal Secretary,
Higher Education Department,
Secretariat Buildings,
Hyderabad, and others .. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 13th NOVEMBER, 2015

SUBMITTED FOR APPROVAL:

-

-

THE HON'BLE SRI JUSTICE SANJAY KUMAR

- | | | |
|----|---|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2. | Whether copies of the 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 |

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

+ WRIT PETITION NOS.35468 AND 35522 OF 2015

-

% DATED 13th NOVEMBER, 2015

W.P.No.35468 of 2015:

Dr.Ambedkar Global Law Institute and others ...Petitioners

Vs.

\$ The State of Andhra Pradesh, rep.

by its Principal Secretary, Higher

Education Department and others ... Respondents

W.P.No.35522 of 2015:

A. Nandini and others ...Petitioners

Vs.

\$ The State of Andhra Pradesh, rep.

by its Principal Secretary, Higher

Education Department and others ... Respondents

<Gist:

>Head Note:

! Counsel for Petitioners in : Sri D.V.Sitarama Murthy,

W.P.No.35468 of 2015 learned senior counsel

and 4th respondent in appearing for Mrs.Machikala-

W.P.No.35522 of 2015 -pati Renuka, learned counsel

! Counsel for Petitioners in : Sri S.Sri Ram and Sri V. Surya

W.P.No.35522 of 2015 Kiran Kumar

^Counsel for 1st Respondent in : Government Pleader for Higher
W.P.Nos.35468 & 35522 of 2015 Education

^Counsel for 2nd Respondent in : Sri Y. Kishore
W.P.Nos.35468 & 35522 of 2015

^Counsel for 3rd Respondent in : Sri C.Sudesh Anand
W.P.Nos.35468 & 35522 of 2015

? CASES REFERRED: --

THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

WRIT PETITION NOS.35468 AND 35522 OF 2015

COMMON ORDER

Challenge in these writ petitions is to the Circular dated 08.10.2015 issued by the Andhra Pradesh State Council of Higher Education (APSCHE), in so far as it imposed a fine of Rs.5,000/- per student admitted from other than the States of Andhra Pradesh and Telangana, which was to be paid by the management of the college concerned, and required the management to also submit antecedent reports as regards such students.

The matters are amenable to final disposal as the pleadings are complete and Sri D.V.Sitarama Murthy, learned senior counsel appearing for Smt.Machikalapati Renuka, learned counsel for the petitioners in W.P.No.35468 of 2015, Sri S.Sri Ram, learned counsel for the petitioners in W.P.No.35522 of 2015, Sri Y.Kishore, learned standing counsel for the APSCHE, and Sri C.Sudesh Anand, learned counsel for the Convenor, LAW CET/PGL CET-2015, advanced comprehensive arguments covering the gamut of issues arising in these cases.

W.P.No.35468 of 2015 was filed by five colleges, while the other writ petition was filed by 15 students aggrieved by the offending portions of the Circular dated 08.10.2015.

The factual matrix, to the extent relevant, is as under:

The Rules framed under G.O.Ms.No.64, Higher Education (UE.II)

Department, dated 26.05.2006, govern the admission of students into LLB/BL Courses and are titled 'The Andhra Pradesh Law Courses (Regulation of Admissions into 3 year and 5 year LLB/BL Courses through Common Entrance Test) Rules, 2006' (for brevity, 'the Rules of 2006'). These Rules were framed in exercise of the powers conferred by Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983. The Competent Authority, under these rules, is the Chairman, APSCHE. The allotment of seats in 3-Year/ 5-Year LLB/BL courses is to be made to University colleges and unaided non-minority/minority professional institutions. In so far as the latter category is concerned, the seats allotted to such institutions are classified as Category A seats and Category B seats. Category A seats are 80% of the sanctioned intake of the seats in the courses in question which are to be filled with eligible candidates on the basis of the rank obtained in the LAW CET/LAW CET-AC, as the case may be. Category B seats comprise the remaining 20% of the total intake of seats in the courses and such seats are open for admission to all the eligible candidates, including candidates belonging to other States and Union Territories of India and NRIs on merit basis. This is as per Rule 3 of the Rules of 2006.

Rule 4 stipulates the eligibility criteria for admission and it is relevant to note that an eligible candidate is only required to be an Indian National. Under sub-rule (iv) thereof, it is stipulated that the vacant seats, if any, may be filled with eligible candidates including those securing not less than 50% marks in aggregate in the qualifying examination duly ensuring merit and transparency. 'Qualifying examination' is defined under Rule 2(o) as the examination of the minimum qualification, passing of which, entitles one to seek admission to 3-Year/5-Year LLB/BL courses as prescribed in Rule 3 of the Andhra Pradesh Law Common Entrance Test Rules, 2004.

Rule 6 deals with the procedure of admissions and sub-rule (ii)(a) thereof deals with the procedure for admission of candidates to University colleges and Category A seats in unaided non-minority and minority Institutions who opted for LAW CET. Rule 6(ii)(a)(11) reiterates the general principles stipulated under Rule 4 and states that the Convenor, LAW CET, shall handover the vacant seats, if any, to the institutions concerned after conducting the counselling till the last rank of LAW CET and Rule 6(ii)(a)(12) stipulates that the vacant seats handed over by the

Convenor shall be notified and filled up by the college on merit basis following the rule of reservation and in the case of minority institutions, such seats shall first be filled up with eligible candidates belonging to the concerned minority and then with eligible candidates belonging to other than the concerned minority. Rule 6(ii)(a)(13) mandates that each minority and non-minority institution shall obtain ratification from the Competent Authority for all the admissions made by it. Rule 6(ii)(b) deals with the procedure for filling up the Category A seats in unaided minority and non-minority colleges who opted for LAW CET-AC. What is stated in Rules 6(ii)(a)(11), (12) and (13) is reiterated in Rule 6(ii)(b) (10), (11) and (12). Rule 6(ii)(c) deals with the procedure for filling up Category A seats in unaided minority colleges who opted for LAW CET-AC Window and what is stated in Rule 6(ii)(a)(11), (12) and (13) is again reiterated in Rule 6(ii)(c)(10), (11) and (12). Rule 6(iii) deals with the procedure for filling up Category B seats in unaided non-minority and minority colleges and sub-rule (1) thereof states that the colleges shall notify all the details of seats available under this category and conduct the admissions in a fair, transparent and non-exploitative manner. Sub-rule (3) states that the left over seats shall be filled on merit basis by the management of the college with candidates from other States and Union Territories of India who have passed the qualifying examination and secured a rank in the All India Common Entrance Test. Sub-rule (4) states that if the vacant seats still exist, such seats may be filled up on merit basis with eligible candidates including those securing not less than 50% of aggregate marks in the qualifying examination. Sub-rule (5) provides that the college shall obtain ratification from the Competent Authority for all the admissions made into Category B seats.

The Explanation to these Rules, in the context of the Andhra Pradesh Educational Institutions (Regulations of Admission) Order, 1974, provides under Clause (b)(4) that 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 had not been reserved.

This, then, is the statutory scheme governing the procedure to be followed by the colleges admitting students to pursue LLB/BL courses.

It is clear from the aforesaid scheme that students from all over the country are eligible for admission to law courses in the colleges governed by these Rules. It is in this backdrop that the offending portions of the impugned Circular would have to be examined.

It is clear from a bare perusal of the Circular that the APSCHE is under the misconception that admission of students from other than the States of Andhra Pradesh and Telangana is not permitted by the Rules in force. Referring to the fact that managements of the colleges were making such admissions despite the displeasure of the APSCHE and were obtaining interim orders from this Court enabling such students to pursue their studies, the APSCHE stated that it had decided to ratify the admissions of students from other than the States of Andhra Pradesh and Telangana by imposing a fine of Rs.5,000/- on each such student subject to submission of an undertaking by the management of the college concerned, as per Clauses (a), (b) and (c) thereof, on the following points:

(a) The Management made all efforts to fill up the seats with the students of AP and only made admissions with the students of other States by following transparency and merit.

(b) The Management shall submit to the Council, the antecedents of each student from the Station House Officer of the Police Station of the student area concerned in other States keeping in view the security of the State.

(c) The Management shall record the total details of each student in a separate register along with documentary proofs (like Voter Card, Aadhar Card, driving license etc).

The question that arises is whether the APSCHE is entitled to impose such a fine or prescribe the condition under clause (b) as a *sine qua non* for ratifying admission of students from other States.

It is the contention of Sri D.V.Sitarama Murthy, learned senior counsel and Sri S.Sri Ram, learned counsel, that the APSCHE has no authority in law to do so. It is further contended that the requirement of submitting antecedent certification from the police authorities of all such students would be illegal, arbitrary and unconstitutional. The learned counsel pointed out that the Rules of 2006 did not vest the APSCHE with such power and the very imposition of a fine on the ground that students from outside the States were admitted runs *contra* to the import and substance of the said Rules.

The APSCHE filed a common counter in both the writ petitions, wherein it stated as under:

The subject Circular was issued for the purpose of regulating admissions of students hailing from other States in Category A and B seats in various courses in the State of Andhra Pradesh, for which no specific rules were in existence. Reference was made to the Act of 1983 which prohibited collection of capitation fee by regulating admissions into educational institutions, so as to prevent commercialization of education. The power to impose the fine was sought to be traced to Section 9 of the Act of 1983. This Section reads as under:

9. Penalties:-- Whoever contravenes the provisions of this Act or the rules made thereunder shall on conviction be punishable with imprisonment for a term which shall not be less than three years but which shall not exceed seven years and with fine which may extend to five thousand rupees. Where the conviction is for an offence under Section 5 or Section 6, the institution shall refund the money so collected to the party from whom it was collected.

According to the APSCHE, as the Competent Authority under the Rules of 2006, it was entitled to exercise powers under Section 9 of the Act of 1983 and impose the impugned fine. Having stated so, the APSCHE addressed the fact situation relating to the first petitioner college in W.P.No.35468 of 2015 and stated that this college was not even able to fill up 40 out of the 896 seat matrix available in 3 Year LLB, 5 Year LLB and LLM courses offered by it. This fact which has been cited by the APSCHE itself indicates that there is no question of this college collecting capitation fee when it is not even in a position to fill up the seats. The APSCHE seems to have failed to realize the fallacy in its own argument in this regard.

According to the APSCHE, the first petitioner college is filling up seats without any method of transparency and merit. Again, this bald allegation loses sight of the fact that the Rules of 2006 provide a strict regime for submission of data of all the admissions made and ratification thereof. Various alleged irregularities committed by the colleges in the guise of making admissions of students hailing from other States were cited. The intent of issuing the subject Circular was stated to be to regulate the admissions made of students hailing from outside the States of Andhra Pradesh and Telangana, in violation of the triple test of merit, transparency

and exploitation. According to the APSCHE, the Rules of 2006 pertaining to law courses are inadequate to address the situation and therefore, the measures embodied in the Circular have been adopted to regulate the admission of such students in a clandestine, exploitative and non-transparent manner.

The Convenor, LAW CET-2015 and PGL CET-2015, being a Professor of Sri Krishnadevaraya University, Anantapuramu, filed a separate common counter-affidavit in the writ petitions. Apart from reiterating the averments made by the APSCHE, including the source of the power to impose the fine being traceable to Section 9 of the Act of 1983, the Convenor stated that in so far as law courses are concerned, the format for submission of the list of admitted students for ratification to the Competent Authority did not provide the column of 'other State students', but majority of the students admitted in these colleges belonged to the State of Tamil Nadu, who did not possess any rank in the LAW CET. He further stated that imposition of a minimum fine was justified so as to curtail the practice of making such admissions and to regulate them. According to the Convenor, the Circular is not intended to harass the candidates or the managements, but was aimed at knowing the bonafides of such students who were coming from different States in the country, in view of the infiltration of undeserved elements in the guise of education.

Reference was also made by Sri C.Sudesh Anand, learned counsel, to the Guidelines-2015-16 dated 17.08.2015 issued by the APSCHE in relation to submission of the lists of admitted students under Category B management quota in all technical/professional courses for ratification by the competent authority. Learned counsel would contend that these Guidelines read with the Circular dated 08.10.2015 provide for a comprehensive methodology to regulate the admissions by unaided minority and non-minority educational institutions so as to prevent irregularities being committed in such admission processes.

Having given earnest consideration to the issues raised, this Court finds that the Circular dated 08.10.2015 does not at all address the issue of regulating the admissions being made by minority and non-minority educational institutions. Nor does it seek to remedy any shortcomings in the standards of transparency and merit maintained by such educational institutions in the admission process. All that the Circular states is that ratification of admissions, in so far as they relate to students from other than the States of Andhra Pradesh and Telangana, would be by imposing

a fine of Rs.5,000/- on each such student. In addition thereto, the management of such educational institution was also required to submit an undertaking on the issues covered by clauses (a), (b) and (c), extracted hereinbefore. It may also be noticed that only a passing reference was made to transparency and merit in clause (a) and all that was required was that the educational institution state in its undertaking that it made all efforts to fill up the seats with students from Andhra Pradesh and then made admissions with students from other States by following transparency and merit. No more is required from the educational institution to manifest the standards of transparency and merit adopted by it in the admissions.

It is difficult to comprehend as to how, by merely calling for an undertaking in the aforesaid terms, the APSCHE would be in a position to regulate adherence to the required standards of transparency and merit. Further, as referred to *supra*, the Rules of 2006 provide a comprehensive scheme for ratification by the APSCHE of all the admissions made by the educational institutions covered thereunder. The lacuna, it appears, lies essentially in the implementation of these Rules.

Though it is stated that the Circular dated 08.10.2015 is not limited to law colleges and would cover all technical/professional courses, it is not brought out that a similar regime is not prescribed in so far as educational institutions offering technical courses are concerned. This is also demonstrated by the Guidelines-2015-16 dated 17.08.2015 issued by the APSCHE, which speak of ratification of admissions made by all categories of educational institutions.

Therefore, the Circular dated 08.10.2015, in the considered opinion of this Court, does not even aim at regulating the admission processes of educational institutions in the context of the standards of transparency and merit to be maintained by them. It is not demonstrated before this Court as to how imposition of a fine of Rs.5,000/- per student would have the impact of regulating the admissions by colleges in terms of their maintaining the standards of transparency and merit. Further, the respondents have no answer to offer as regards their power to impose such a fine. In both the counters filed by the authorities, imposition of fine was sought to be justified under Section 9 of the Act of 1983. However, this Section provides that a conviction is required in relation to contravention of any of the provisions of the Act or the Rules made thereunder and such conviction can be the basis for imposition of a fine extending to Rs.5,000/- apart from imprisonment. The

Rules of 2006 were framed under the Act of 1983. When the parent Act itself requires a conviction as a condition precedent for imposition of the fine under Section 9, the delegated legislation cannot empower the Competent Authority designated thereunder, the APSCHE, to resort to such imposition of fine without the power to do so being spelt out. It is an admitted fact that there is no specific authorisation under the Rules of 2006 whereby the APSCHE could have done so.

Sri Y. Kishore, learned standing counsel, would contend that once the power of regulation is vested in the APSCHE as the Competent Authority, such power must be construed to include within its ambit the power of imposing a fine or penalty in a suitable case. This contention is mentioned only to be rejected. As already stated, the subordinate legislation cannot go beyond the parent Act. That apart, it is a settled legal position that power to penalize must be explicitly spelt out and it cannot be conferred by implication. Section 9 of the Act of 1983, which has been cited as the source by both the contesting respondents, therefore has no application whatsoever as educational institutions are sought to be visited with the fine without any conviction. Imposition of the fine is therefore without jurisdiction. Before parting with this aspect of the matter, this Court is constrained to observe that it may well be true that educational institutions are resorting to unhealthy practices so as to fill up their seats and as a result thereof, the quality and standard of education is suffering. However, it is for the State and its organizations to restrict the actions of educational institutions in this regard by adopting stringent and effective measures. Unfortunately, the course adopted in the present case under the Circular dated 08.10.2015 appears to be only aimed at filling the coffers and no more.

As regards the condition prescribed under Clause (b) of the Circular dated 08.10.2015, there is no explanation forthcoming as to the basis thereof. The counter-affidavits filed by the authorities reflect that as many as 9706 students from other States were admitted in B.Ed courses while 671 students from other States were admitted in Engineering courses, during the year 2014. Similarly, in the year 2015, 546 students from other States were admitted in Engineering courses, 51 such students were admitted in Pharmacy courses, 80 such students were admitted in MBA courses and data has not been received in so far as the admissions in B.Ed. courses are concerned. Given these numbers, it would be well-nigh impossible for the educational institutions concerned to submit antecedent certification from the

local police authorities in respect of each such student. As noted in the Circular itself, this Court has granted orders permitting studies of such students in these educational institutions. This condition would practically defeat such orders by making it completely unworkable for the educational institutions to continue with these students on their rolls.

Article 15 of the Constitution prohibits discrimination on the ground of, amongst others, the place of birth. The mere factum that a student hails from outside the States of Andhra Pradesh and Telangana cannot therefore be held against him/her and he/she cannot be subjected to the discriminatory treatment intended under clause (b) of the Circular dated 08.10.2015. Upon a pointed query from this Court, the learned standing counsel appearing for the APSCHE and the Convenor-LAWCET fairly admitted that no data was available on the basis of which an informed decision could have been taken that students from other States were a threat to the security of the State, whereby police certification of their antecedents could be justified. It is indeed shocking that a State instrumentality should categorise all students from other States as criminally inclined or believe that they are endowed with a criminal background. This Court therefore has no hesitation in condemning this outrageous claim of the APSCHE.

Though, as stated earlier, the Circular dated 08.10.2015 is applicable across the board to different kinds of courses, the bald recital therein that managements have made admissions with candidates from outside the State, though there is no provision for such admissions in the Rules in force, would have no application whatsoever in so far as law courses are concerned. The Rules of 2006 specifically permit admissions of candidates who are Indian Nationals and the general methodology of admissions prescribed thereunder also affirms this. Therefore, the statement in the Circular dated 08.10.2015 that the rules do not provide for such admissions clearly demonstrates lack of application of mind in so far as law courses are concerned.

It appears that some law colleges made representations to the APSCHE requesting it to withdraw the Circular dated 08.10.2015. However, by Circular dated 23.10.2015, the APSCHE clarified that there would be no change in the contents of the Circular dated 08.10.2015 and that the college managements had to strictly adhere to the guidelines stipulated therein without deviation. It is relevant to note

that in the Circular dated 23.10.2015, reference was made to the contents of the representations made by the law colleges, wherein they specifically argued that the Rules of 2006 permitted admissions of Indian Nationals and that the vacant left over seats could be filled without reference to the local/non-local reservation or a rank in the entrance test. Despite this being brought to its notice, the APSCHE blindly observed that students from other States had to be admitted only in Category B seats if they secured ranks in the All India Entrance Test and that such students alone need not be asked to pay the fine. In this regard, it may be noticed that if this was the condition prescribed under the Rules of 2006, the question of ratifying an admission made in violation thereof would not arise at all. In the event the APSCHE proposed to overlook such violation of the prescribed Rules by letting off educational institutions with a paltry fine, there is no point in having a legal regime by way of statutory rules. The said Rules did not permit such relaxation on payment of a fine. The approach and actions of the APSCHE are therefore incomprehensibly vague, self-contradictory and contrary to the purported lofty objectives sought to be projected before this Court, as justification for the Circular dated 08.10.2015.

On the above analysis, this Court holds that the offending portions of the Circular dated 08.10.2015 are liable to be struck down. The imposition of fine on every student who hails from other than the States of Andhra Pradesh and Telangana is without jurisdiction apart from being wholly illegal. The condition prescribed under Clause (b) of the Circular requiring police certification of the antecedents of such students is illegal and unconstitutional, apart from being retrograde and against national interest.

The writ petitions are accordingly allowed setting aside the Circular dated 08.10.2015 in so far as these two aspects are concerned. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

13th NOVEMBER, 2015

Note: L.R. copy to be marked

B/o PGS