

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

WRIT PETITION No.26713 of 2016

ORDER:

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The issue in this Writ Petition relates to admission to the D.M. Cardiology course in the 1st respondent Institution. The closure of admissions is notified in the prospectus to be on 31-08-2016.

2. The 1st respondent conducted an online entrance test for the said course on 08-07-2016 at Yogananda Institute of Technology and Science, Mohanreddy Nagar, Elamandyam, Renigunta, Tirupati for admission to the above course.

3. Both the petitioner and the 2nd respondent appeared for the said exam. The petitioner and the 2nd respondent both got 88 marks out of 100 marks in the entrance examination.

4. On 08-08-2016, the present Writ Petition was filed challenging the action of the 1st respondent in not updating the answer key to the entrance test and contending that objections raised by the petitioner to answers provided in the preliminary answer sheet for question Nos.14 and 15 is arbitrary and illegal, to revise

the final answer key released on 18-07-2016 by 1st respondent.

5. On 10-08-2016, when the Writ Petition was listed for admission, Smt.P.Sarada, learned Standing Counsel informed that the counseling was already conducted and 2nd respondent was allotted the seat.

6. Thereupon petitioner filed W.P.M.P.No.33651 of 2016 on

11-08-2016 to implead the 2nd respondent and also filed W.P.M.P.No.33648 of 2016 seeking amendment of the prayer in the Writ Petition adding the challenge to the admission of 2nd respondent to the said course by challenging clause X sub-clause (4)(iii) of the Prospectus issued by 1st respondent.

7. These applications were allowed on 11-08-2016. Notice was directed to be served on 2nd respondent. He was served and he engaged Sri Sarvabhuma Rao, Advocate and also filed a counter-affidavit.

8. Clause X of the prospectus issued by 1st respondent for admission into the above course for the academic year 2016-17 stated as under :

"X Merit List:

1. Selection of candidates for PG Super-specialty (DM/Mch) courses will be made on the basis of rank

obtained in the entrance test.

2. The candidate who secured a minimum of 50% marks in the entrance test will only be qualified to appear for the counseling.

3. Merit list will be prepared and rank shall be allotted on the basis of the marks obtained by the candidate in the entrance test.

4. In case of tie in the marks obtained in the entrance test, to break the tie, their inter se merit shall be determined in the descending order as follows:

i) A candidate who passed MD/MS/DNB in the first attempt or with less number of attempts will be given preference.

ii) If there is still a tie, the candidate who passed final MBBS (Part I & II) with less no. of attempts will be given preference.

iii) if there is still a tie, the candidate who secured higher percentage of marks (upto 2 decimal points) in final MBBS examination (Part-I & II) will be given preference

iv) If there is still a tie, elder in age will be preferred.”

9. Thus, sub-clause (4) of Clause X sets out the four criteria for breaking the tie and determining inter se merit in the marks obtained in the entrance test which shall be applied in descending order.

10. Since (i) and (ii) of sub-Clause (4) of Clause X did not help in breaking the tie, (iii) was applied by the 1st respondent to provide provisional admission to the 2nd respondent on 08-08-2016 to the D.M. Cardiology course.

11. Later on 10-08-2016, regular admission to the said course was given to the 2nd respondent. The 2nd

respondent joined as Post Graduate in D.M. Cardiology on 10-08-2016. Thus, the admission of the 2nd respondent to the said course took place after the Writ Petition is filed and is therefore subject to the result in the Writ Petition.

12. Two contentions are raised by the petitioner:

- (a) The criteria adopted by 1st respondent in sub-clause (4)(iii) of Clause X of Prospectus to break the tie by reference to percentage of marks in the final M.B.B.S. (Part I and II) examination is not valid and that the 1st respondent ought to have taken into account the percentage of marks obtained in final M.D. examination as was done by the Dr.N.T.R. University of Health Sciences, Vijayawada for the D.M. Course (as indicated in clause 7.6.4 of the Prospectus issued by the said University).
- (b) Answers to question Nos.14 and 15 in the question paper for the entrance test indicated in the preliminary answer key published by the 1st respondent are not correct and were wrongly retained in the revised final answer key published on 18-07-2016 (wherein it was accepted that objections raised to answers to

question Nos.8 and 33 as pointed out by the students were correct). Petitioner contends that if the petitioner's objections are accepted to these two questions, he would get 90 marks and not 88 which would be more than those obtained by 2nd respondent and he would get admission.

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Point (a)

13. On the first point, petitioner contends that sub-clause (4)(iii) is not equitable and justified in law and that it has no nexus with the object sought to be achieved. Petitioner contends that the basic qualification for becoming eligible to write the D.M. Cardiology entrance test is a pass in M.D./D.N.B. courses in Medicine/Paediatrics/Respiratory Medicine and this was indicated in clause III of the prospectus; that D.M. Cardiology is a Super Specialty Course which can be opted only by a candidate who has completed an M.D./D.N.B. course in the above disciplines; and there is no logical basis to take the marks obtained in the final M.B.B.S. examination (part I and II) as the basis to break the tie if two competing candidates get the same marks in the entrance examination. According to the petitioner, the

reasonable course of action for the 1st respondent is to take the marks obtained in the M.D. course which is the qualifying examination, and the adoption of the final M.B.B.S. examination marks adopted by 1st respondent, is arbitrary and violates Article 14 of the Constitution of India. He contends that if the marks obtained in the M.D. course is taken into account, then the petitioner would qualify and not the 2nd respondent. Counsel for petitioner contends that the Dr.N.T.R. University of Health Sciences has adopted this method of taking marks obtained in the D.M. examination as the basis to break the tie in clause 7.6.4 of its Prospectus by stating *“in case of tie in the entrance test marks, the marks in the qualifying examination i.e. M.D./M.S./D.N.B. shall be taken into consideration for fixing the merit of the candidates.”*

14. In the counter-affidavit filed by the 1st respondent there is no justification indicated as to why the 1st respondent has preferred the marks in the final M.B.B.S. examination in sub-clause (4)(iii) of Clause X of the Prospectus as the basis for breaking the tie instead of marks in the M.D. examination which is the qualifying examination. It is only stated that the petitioner applied for the admission to the course after accepting the conditions given in the Prospectus and he cannot question the same now.

15. I am unable to agree with this contention. If the

criteria adopted by 1st respondent to break the tie as indicated in sub-clause (4)(iii) of Clause X of the Prospectus is arbitrary and has no nexus with the object sought to be achieved, then it would be violative of Article 14 of the Constitution of India and in that case, there cannot be any estoppel against the Constitution. In such a situation even the plea of acquiescence is not available to the 1st respondent. (**Basheshar Nath v.**

CIT [\[1\]](#)). Even otherwise, the petitioner, when he applied for the course, could not have anticipated that he and 2nd respondent would get same marks in the entrance examination and this provision of law would be invoked by 1st respondent. So he had no cause of action to question it at that time.

16. The 2nd respondent in his counter however sought to justify the action of the 1st respondent in adopting the marks in the final M.B.B.S. course as the basis for breaking the tie in sub-clause (4)(iii) of Clause X of the Prospectus. According to him, subjects of M.D. vary from candidate to candidate such as General Medicine, Paediatrics, Pulmonary Medicine and in view of the divergence in subjects, marks awarded therein cannot be considered to resolve the tie. He contends that the difference in subjects and the difference of wisdom of the faculty of the teaching college would make it difficult to

adopt this standard. He contended that these criteria are within the exclusive purview of the 1st respondent to fix and are unassailable since the 1st respondent has the expertise to fix such criteria.

17. In Sanchit Bansal and another Vs. Joint Admission Board and others^[2], the Supreme Court, while dealing with challenge to fixation of cut-off marks for admission to the I.I.T-J.E.E. course, 2006, held that the process of evaluation, the process of ranking and selection of candidates for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialized courses, are all technical matters in academic field and the courts will not interfere in such processes. *The courts will interfere only if they find all or any of the following: (i) violation of any enactment, statutory rules and regulations; (ii) mala fides or ulterior motives to assist or enable private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious.* It further observed that *to be termed arbitrary and capricious, an action must be illogical and whimsical, something without any reasonable explanation* and that when an action or procedure seeks to achieve a specific objective in furtherance of education in a bonafide manner, by adopting a process which is uniform and non-discriminatory, it cannot be described as

arbitrary or capricious or mala fide.

18. Keeping in mind the above principle, now let us consider the facts in the present case.

19. According to the prospectus issued by 1st respondent, the basic qualification required for admission into the D.M. Cardiology course is a pass in M.D./D.N.B. in the subject of Medicine/Paediatrics/Respiratory Medicine. The petitioner had passed M.D. in General Medicine from Guntur Medical College, Guntur while the 2nd respondent had passed M.D. in Respiratory Medicine. Thus, both petitioner and 2nd respondent satisfy the basic eligibility criteria prescribed by 1st respondent for admission to D.M. Cardiology course.

20. In addition, both have appeared for the entrance test held on 08-07-2016 and secured equal marks in it. Therefore a tie happened since there were two eligible candidates for one seat. The tie could not be resolved by recourse to sub-clause (4)(i) and (ii) of Clause X of the Prospectus since both passed M.D. and M.B.B.S. in the first attempt.

21. Therefore recourse had to be taken to sub-clause (4)(iii) of Clause X of the Prospectus. The said sub-clause states that *“if there is still a tie, the candidates who secured higher percentage of marks (upto 2 decimal points) in the final MBBS examination (Part I & II) will be*

given preference”.

22. To test whether a provision or a rule is arbitrary, the accepted test is to see whether there is nexus with the object sought to be achieved.

23. The object sought to be achieved is to give admission to the one who is more meritorious, if there are two candidates aspiring for the same seat and they have obtained equal marks in the entrance examination *and* sub-clause 4(i) and (ii) do not help in breaking the tie.

24. The 1st respondent which framed sub-clause (4) (iii) of Clause X of the Prospectus has not furnished any reason in its counter justifying as to how it helps in achieving the above object. This failure of the 1st respondent by itself is sufficient to hold that the said provision is arbitrary.

25. However, in my considered opinion, the qualifying examination for admission to D.M. Cardiology course being M.D./D.N.B. in Medicine/Paediatrics/Respiratory Medicine, and since the candidates have passed in the said examination *nearer in point of time* to the holding of the entrance examination for M.D. Cardiology when compared to final M.B.B.S. Part I & II (the duration of the M.D. course is admittedly two years), the 1st respondent ought to have taken the former as the basis for breaking

the tie as compared to the latter.

26. Admittedly, the petitioner passed MBBS course in April, 2009, finished his internship in May, 2010 and obtained M.D. General Medicine degree in May, 2015. Thus in the case of the petitioner the time gap between pass in the MBBS and M.D. is 6 years since he passed MBBS in April, 2009 and passed M.D. in May, 2015. The 2nd respondent has not chosen to give any details as to when he passed MBBS and obtained M.D. degree. In any event, he would have also passed the MBBS course more than two years prior to obtaining the M.D. degree since the duration of the M.D. degree is admitted to be two years. In my opinion, it would be illogical to ignore the academic performance in the qualifying examination of M.D. which is more recent than the MBBS examination (which is minimum of two years prior to the pass in the M.D. examination).

27. The contention of the 2nd respondent in his counter that marks obtained in the MD Course of candidates cannot be taken into account because the subjects are different and would be given on the wisdom of the faculty of the respective teaching colleges. This cannot be accepted because firstly the actual basis for admission into the D.M. Cardiology is marks obtained in the entrance examination conducted by 1st respondent and not merely marks obtained in the M.D. course. If

there were no entrance examination for making admissions into the D.M. Cardiology course, there may be some substance in the plea of the 2nd respondent. Even that is doubtful because students who have studied M.D/D.N.B. courses anywhere in the country in private or Government institutions are eligible to apply for admission to the D.M. Cardiology course in the 1st respondent institution. In these circumstances, there is bound to be some variation in the teaching expertise of faculties in these institutions and method of allocation of marks. But to a large extent, these are neutralized by the entrance examination held by 1st respondent. So the fact that there could be variation in assessment of marks of different subjects by Faculty members of different educational institutions cannot be a ground to reject adopting marks in the M.D. course as the basis for breaking a tie. In fact even if the subjects in the M.B.B.S course are uniform, the way they are taught by faculty members of different educational institutions and the way they assess the marks of the students is bound to be different. It is probably this reason which prompted the Dr.N.T.R. University of Health Sciences to adopt, as a criteria for breaking the tie, the marks obtained in the M.D. course for admission into the D.M. Cardiology course. Therefore, in my opinion, abandoning the marks obtained in the qualifying M.D. examination and adopting the marks obtained in the MBBS course as the basis for breaking the

tie to determine the more meritorious candidate among two candidates who have secured the same marks in the entrance test is arbitrary and capricious and appears to be illogical and whimsical. It has no nexus with the object sought to be achieved.

28. Accordingly I hold that that sub-clause (4)(iii) of Clause X of the Prospectus is arbitrary, illegal and violative of Article 14 of the Constitution of India and cannot be the basis for granting admission to the 2nd respondent.

29. In view of my finding on Point (a) raised by the petitioner, I do not feel it necessary to consider Point (b) raised by him.

30. Accordingly, the Writ Petition is allowed and sub-clause (4)(iii) of Clause X of the Prospectus of the 1st respondent for admission into D.M. Cardiology course is declared arbitrary, illegal and violative of Article 14 of the Constitution of India; the admission of the 2nd respondent to the said course is set aside; and the 1st respondent is directed to consider admitting the petitioner to the said course on the basis of the better marks allegedly obtained by the petitioner in the M.D. General Medicine course. This shall be done by 1st respondent on or before 31.8.2016, the last date for closure of admissions. No costs.

31. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-08-2016

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[\[1\]](#) AIR 1959 SC 149

[\[2\]](#) (2012) 1 SCC 157