

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No. 33360 of 2015

ORDER: (*Per VRS,J*)

The petitioner, who was unsuccessful in seeking admission to the medical courses for the academic year 2015-2016, has come up with the above writ petition seeking the issue of a Writ of Mandamus to declare the action of the 5th respondent-University in filling the open category medical seat with the 6th respondent, who is less meritorious than herself, and for a consequential direction to the

5th respondent-University to admit her in any of the medical colleges in the State of Telangana.

2. Heard Mr. Ch. Janardhan Reddy, learned counsel for the petitioner, Mr. Taddi Nageswara Rao, learned standing counsel for the 5th respondent-University, and Mr. K. Ravindra Kumar, learned senior counsel for the 6th respondent.

3. The 4th respondent issued a notification for Telangana State EAMCET-2015 in March, 2015. The

petitioner as well as the

6th respondent appeared in the entrance test. The petitioner belongs to an un-reserved category (O.C.). She seems to have participated in the Local Republic Day Parade (LRD) conducted by the State of Telangana in 2015 and had also obtained NCC 'B' certificate.

4. The 6th respondent as well as his sister also appear to have participated in the selection. Both the 6th respondent as well as his sister belong to Backward Classes coming under 'D' category. The 6th respondent appears to have obtained NCC 'C' certificate.

5. At the time of first counselling, the 6th respondent's sister,

by name, Sree Stuti was offered a seat on her own merit, among the open category seats available for NCC candidates. But, it appears that the 6th respondent's sister did not accept the seat allotted to her in the counselling held in the morning, under the open category, in view of the fact that the college, to which she would have been allotted, was not to her liking or choice.

6. In the counselling that was held in the afternoon, the

6th respondent's sister was offered a seat in Osmania University, under the quota reserved for BC 'D'. The 6th respondent's sister chose to join the college affiliated to Osmania University.

7. As a result, the seat offered to the 6th respondent's sister, namely, the 5th seat, fell vacant. This seat was offered to the 6th respondent and the 6th respondent joined the Kamineni Medical College.

8. In the ultimate analysis, the petitioner could get a seat only in BDS course and not in MBBS course. Unable to take it, the petitioner has chosen to prepare both for litigation as well as for next year's entrance examination.

9. The main thrust of the argument of the learned counsel for the petitioner is that the petitioner is more meritorious than the

6th respondent, in terms of the marks secured in the entrance examination, and that, therefore, the offering of a seat to the

6th respondent, against the seat available for un-reserved category (open competition) was contrary to law.

10. On facts, the petitioner appears to be right in his

contention. While the petitioner has secured 99 marks in the entrance examination, the 6th respondent appears to have secured only 74 marks in the entrance examination. Therefore, it is obvious that the petitioner is more meritorious than the 6th respondent.

11. But, the 5th respondent-University has come up with two explanations as to why the petitioner could not march over the 6th respondent. The first explanation is that while the petitioner had only a 'B' certificate in NCC, the 6th respondent had a 'C' certificate in NCC. Therefore, in terms of priority among candidates coming under the NCC quota, the 6th respondent was placed higher than the petitioner.

12. The second explanation offered by the 5th respondent-University is that under G.O.Rt.No.550, Higher Education (EC2) Department, dated 30.07.2001, the seat vacated by a candidate belonging to SC/ST/BC, who had taken admission under open competition, shall be filled up with a candidate from the same reserved category only in the order of merit. Therefore, the second explanation of

the 5th respondent-University is that since the 5th seat in the order of ranking, though an un-reserved one (OC), was filled up by a candidate belonging to BC 'D', the same had to be offered only to another candidate belonging to BC 'D', by virtue of paragraph 5 (ii) of G.O.Rt.No.550, dated 30.07.2001. Since the petitioner belongs to an un-reserved category, the 5th respondent-University contends that the seat vacated by the 6th respondent's sister could not have been filled up by the petitioner.

13. In so far as the first explanation offered by the 5th respondent-University is concerned, we do not know how far this categorization, on the basis of 'A' 'B' or 'C' among NCC candidates, would have an impact upon the merit of a candidate seeking admission to medical courses. Such categorization normally leads only to the manipulation of the certificates. But, be that as it is, the said categorization and priority followed by the Government, is not under challenge before us. Therefore, we have no alternative except to accept the said explanation.

14. But, in so far as the second explanation offered by the 5th respondent-University is concerned, we have

something to say.

A careful reading of G.O.Rt.No.550, dated 30.07.2001, would show that the same was issued, purportedly on the basis of the decision of the Supreme Court in **Ritesh R. Sah Vs. Dr. Y. L. Yamul and others**^[1].

15. **Ritesh R. Sah** is a case where candidates belonging to reserved categories who secured admission to under-graduate medical courses in open merit list, on the basis of the marks secured by them, were counted against the quota meant for those reserved categories. This was questioned by a candidate belonging to the reserved category.

16. As seen from paragraph 1 of the decision in **Ritesh R. Sah**, the question that arose for consideration in that case was whether a candidate belonging to Scheduled Caste or any other reserved category even if he is entitled to be selected for admission in the open competition on the basis of his own merit, could be counted against the quota meant for reserved category or will he be treated as an open competition candidate. It was this question that was answered by the Supreme Court in **Ritesh R. Sah** in the negative.

17. As a matter of fact, G.O.Rt.No.550 relies upon a particular paragraph of the decision of the Supreme Court in **Ritesh R. Sah**. The said paragraph reads as follows:

“A student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be

deemed to have been admitted as an open category candidate and not as a reserved category candidate.”

In the said paragraph, there is not a single observation to the effect that the seat vacated by a candidate belonging

to the reserved category, who was admitted under the open competition, shall be filled up only by a person belonging to the very same reserved category. Therefore, G.O.Rt.No.550 appears to have been formulated upon a wrong reading of the decision of the Supreme Court in

Ritesh R. Sah. But unfortunately, the petitioner has not chosen to challenge the said Government Order. Therefore, despite finding that the petitioner is more meritorious in terms of marks secured in the entrance examination, we are unable to provide any relief to her.

18. The present writ petition relates to the academic year

2015-2016. Not only the admissions are over, but also two semesters are now over. Therefore, it is not now possible to grant admission to the petitioner for the previous academic year. For the current academic year, the rules of the game have already been changed. Therefore, even for the current academic year, the petitioner cannot be granted any relief.

19. If at all any relief can be granted to the petitioner, it could be only in terms of damages. But unfortunately, the very ranking list that the petitioner has produced would show that there are several candidates who belong to un-

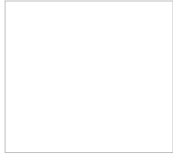
reserved categories and who has secured more marks than him and who were placed above him in the ranking list. Therefore, if the writ petition had been allowed last year itself, some other person than the petitioner would have had the benefit of admission to such a course. Therefore, it is to such a person that we would have awarded damages, if we could not have granted admission. In such circumstances, the petitioner cannot get the benefit of even damages but could get only our sympathy on record. Therefore, the Writ Petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

**A. SHANKAR
NARAYANA, J.**

28th June, 2016
cbs



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