

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS**

Writ Petition No.28680 of 2016

ORDER: (per V. Ramasubramanian, J.)

The petitioner, who has unfortunately secured the first rank in the entrance examination for admission to Super Speciality Course in Medicine, has come up with the above writ petition seeking the issue of writ of mandamus to consider him for admission to the course in DM Neonatology, by throwing open the only seat available for unreserved categories.

2. Heard Mr. S.V.S. Chowdary, learned counsel for the petitioner, Mr. Taddi Nageswara Rao, learned standing counsel for the 1st respondent, Mr. A. Prabhakara Rao, learned standing counsel for the 2nd respondent and Mr. K.V. Simhadri, learned counsel appearing for the 3rd respondent.

3. As per the seat matrix, contained in the prospectus for admission to super speciality courses for the Academic year 2016-2017, there is one seat in the State of Andhra Pradesh for DM Neonatology and one seat in the State of Telangana for the same course. Since the petitioner has secured the first rank in the entrance examination, he claims that the only seat available for admission to the said course, in these States, has to be thrown open for unreserved categories to be considered.

4. The petitioner has a peculiar problem namely, that he studied the Undergraduate Medical course in the State of Telangana, but pursued a Post Graduate Medical course in the Union Territory of Chandigarh. Therefore, he has been disowned by both the States as he cannot now be considered as a Local

candidate in either of the two States.

5. The Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, issued in exercise of power conferred by clauses (1) and (2) of Article 371-D of the Constitution, provides for reservation under paragraph 5, in Non-State-wide Universities and Educational Institutions and provides under paragraph 6 for reservation in State-wide Universities and State-wide Educational Institutions.

6. The expression "State-wide Educational Institution" is defined in para 2 (e) to mean an Educational Institution or a department of an educational institution specified in the Schedule to the Presidential Order. The expression "State-wide University" is defined in para 2 (f) to mean Andhra Pradesh Agricultural University, Jawaharlal Nehru Technological University and Nizams Institute of Medical Sciences.

7. Both the respondents herein are not included, within the definition of expression "State-wide University" under paragraph 2 (f). Therefore, *prima facie*, paragraph 6 of the Presidential Order that deals with the reservation in State wide Universities, may not apply to the admissions to the respondent Universities.

8. The course to which the petitioner is seeking admission viz., D.M. Neonatology, is also not one of the courses, listed in S.No.15 in the Schedule to the Presidential Order. Therefore, it is not even a State-wide Educational Institution.

9. In other words, the University to which the petitioner is seeking admission is not a State-wide University and the course to which he is seeking admission is not a State-wide Educational Institution. Hence, the application of Para-6 of the Presidential Order is ruled out.

10. As a corollary, it is paragraph 5 of the Presidential

Order that would apply to the case of the petitioner. Insofar as Para 5 is concerned, there is no restriction with regard to applicability of the Rule of Reservation for local candidate, with reference to the total number of seats available. To be precise, the proviso under paragraph 6 (1) of the Presidential Order makes the reservation prescribed in Para 6 (1) inapplicable to any course of study in which the total number of available seats does not exceed three. Such a prescription is conspicuously absent in Para 5.

11. It appears that an argument was advanced in one of the cases that came up before the Full Bench of this Court, in **Dr. B. Sudhakar, M.D., v. Union of India, rep. by the Secretary to Govt., Ministry of Home Affairs, Govt. of India, New Delhi and others**^[1] to the effect that the prescription contained in the proviso to Para 5 (2) that there shall be at least one unreserved seat, would mean that if only one seat is available, the same shall be treated as an unreserved seat. But the Full Bench of this Court rejected the said contention in the above decision. Therefore, the petitioner cannot seek the benefit of the fact that there is only one seat available for DM Neonatology and that therefore, it should be thrown open for being filled up purely on the basis of merit without any reservation.

Hence, the writ petition is dismissed. The miscellaneous petitions, if any, pending in the writ petition shall stand closed. No costs.

V. RAMASUBRAMANIAN, J

ANIS, J

Date: 29.08.2016

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^[1] 1994 (3) ALT 1 (F.B.)