

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.C.No.1938 of 2015

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C.A.No.445 of 2016

COMMON ORDER:

C.C.No.1938 of 2015 is an application filed under Sections 10 and 12 of the Contempt of Courts Act, alleging wilful disobedience of the order of this Court dated 28.07.2015 passed in WPMP.No.30179 of 2015 in W.P.No.26159 of 2014.

2. In the main writ petition challenge is to the orders of the Revenue Divisional Officer, Palakonda, Srikakulam District vide Rc.No.25/2012/G, dated 09.07.2014 and proceedings in D.Dis.No.438/2003 E, dated 24.11.2003, rejecting the application of the petitioner for issuance of the caste certificate under Act 16 of 1993 and the writ petition further seeks a direction to the Revenue Divisional Officer to issue caste certificate to the petitioner by considering the caste certificates of her father and paternal uncle by following Act 16 of 1993 and the Rules framed thereunder. Petitioner herein filed WPMP.No.30179 of 2015 for the following relief:

“to direct the respondents 6 to 8 to consider the case of the petitioner for admission to the courses for which she is eligible as per her ranking in EAMCET-2015 (Agriculture & Medical) under Rule 19 of the Rules framed under Act 16 of 1993 by taking the caste certificate of her father/paternal uncles into consideration i.e., without insisting on submission of ST Caste Certificate of the petitioner.”

3. This Court on 28.07.2015, after hearing the respective counsel, passed an interim order as prayed for subject to the petitioner producing proof of identity.

4. Complaining wilful disobedience of the said order, this Contempt Case came to be filed initially against the 6th respondent in the writ petition i.e., the Registrar, N.T.R University of Health Sciences, Vijayawada, Krishna District.

5. In the affidavit filed in support of the Contempt Case, it is stated that in pursuance of the orders of this Court dated 28.07.2015, the N.T.R. University considered the case of the petitioner during the process of counselling conducted on 10.08.2015 and allotted the petitioner to KIMS, Amalapuram, East Godavari District and received a sum of Rs.800/- towards process fee on 10.08.2015 and Rs.21,500/- towards the fee stipulated for S.T. Category candidates. It is further averred that thereafter, when the petitioner approached KIMS College, Amalapuram on the next day, the Principal of the said college did not permit the petitioner to join on the ground that she did not get any response from the university. According to the petitioner, she approached the Registrar of the university with a request to issue necessary instructions to KIMS College, Amalapuram. In the above background, the present Contempt Case has been filed.

6. On 14.12.2015, petitioner filed CA.No.1472 of 2015 under Section 151 of C.P.C, seeking impleadment of the Principal/Dean of KIMS and Manager of KIMS as the respondents 2 and 3 in the present C.C.1938 of 2015. Learned Standing Counsel for the NTR Health University has placed on record the letters bearing Lr.No.7086/EA1/MBBS/BDS/2016, dated 04.01.2016 and Lr.No.30179/EA1/MBBS/BDS/2016, dated 21.01.2016. The above said letter dated 04.01.2016 clearly shows that on the representation of the petitioner dated 29.12.2015, the first respondent/Registrar of NTR Health University instructed the KIMS College, Amalapuram to permit the petitioner to attend the classes and all other academic activities without any bias. The Lr.No.30179/EA1/MBBS/BDS/2016, dated 21.01.2016 of the NTR University of Health Sciences makes it very much manifest that vide letter dated 18.08.2015, the Health University instructed KIMS College, Amalapuram to keep one seat pending in respect of the petitioner while informing KIMS that they are not entitled to convert the seat into 'C' category on the ground that the candidate has not reported before the cut-off date. It is further clear that the university vide

Lr.No.7086/MBBS/BDS/EA1, dated 29.10.2015, instructed to discharge the candidate one Ms.Kongara Yasasri, admitted against 'C' category. The university further made it clear that since the petitioner reported for admission, Ms.Kongara Yasasri is deemed to be discharged under 'C' Category from the course. University further made it clear that the petitioner is deemed to be included in the sanctioned intake under category A 75 seats for the year 2015-2016 and college admitted 24 candidates under 'C' category though the sanctioned intake under 'C' category is 23.

7. By way of the said letter KIMS was also asked not to cause inconvenience to the petitioner during her study period while threatening action in the event of any deviation. The Health University also directed to submit compliance report within a week.

8. A counter affidavit is filed by the respondents 2 and 3 stating that the NTR University, in obedience to the orders of this Court, granted provisional admission to the petitioner in the first phase of counselling conducted on 10.08.2015 and communicated lists of selected candidates vide Lr.No.7086/EA1/MBBS/BDS/2015, dated 18.08.2015; that the petitioner's name was placed at Sl.No.71 and 69 candidates reported and were given provisional admissions and two candidates viz., Ms.Basa Manisha and Ms.Priyanka Pradhan, petitioner herein, did not report and immediately vide Rc.No.449/E2/2015, dated 25.08.2015, KIMS College intimated the same to the University; that the University conducted second and final counselling and sent the list of admitted candidates vide Lr.No.7086/EA1/MBBS/BDS/2015, dated 28.09.2015 and again petitioner's name was placed at Sl.No.74; that even after the second and final phase of counselling the petitioner did not turn up to the college to report about her admission and as the petitioner did not report to the college within the stipulated time, the college intimated the same to the university vide letter Rc.No.156/E2/2015, dated 30.09.2015; that the college sought permission from the university to convert the unfilled convenor quota seats into 'C' category seats (NRI) vide

Lr.No.453(S1)/E2/2014, dated 30.09.2015; that the college again on 30.09.2015 itself sent a letter along with the list of admitted candidates who were admitted against the said vacancy and the same was uploaded to the website of the University for approval.

9. According to the learned counsel for the respondents 2 and 3 the college vide Lr.Rc.No.451/E2/2015, dated 30.09.2015, sought permission of the university of Health Sciences in terms of G.O.Ms.No.33 (Health, Medical and Family Welfare (CI) Department, dated 17.04.2015, and on the same day, the college vide Rc.No.453/S1/E2/2014, dated 30.09.2015, sought approval of the university for admission of the candidate under NRI quota. Though, it is stated in the counter affidavit of the respondents 2 and 3 that after getting necessary permission from the university the college again on 30.09.2015 itself sent a letter along with the list of admitted candidates, there is no such evidence available on record wherein the university granted permission in favour of the respondents 2 and 3. So, it is very much evident from the material on record that without obtaining permission from the University of Health Sciences, the respondent college authorities converted the Convenor quota seat (allotted to the petitioner) into NRI quota and filled the same. It is further brought to the notice of this Court that pending the present contempt case the University of Health Sciences on 05.03.2016 rejected the admission made by the respondent college under NRI Quota and the candidate affected by such action filed W.P.No.10922 of 2016. A copy of the affidavit filed in support of the said writ petition is filed before this Court and paragraph 3 of the said writ affidavit reads as under:

“3. I submit that even though I could not approached the medical colleges with in time as notified in their notifications, but however the cut-off date for closure of admissions into 1st year M.B.B.S. course as stipulated by the M.C.I. i.e. 30.09.2015 has not come to an end. With a hope to get an admission into M.B.B.S. course I have been continuously searching the websites of Medical Colleges, fortunately I found a notification in the website of 3rd respondent medical college in the evening hours of 30.09.2015

stating that one seat has become vacant due to non-reporting of a admitted candidate. Immediately I contacted with the management of the 3rd respondent college to obtain the seat under N.R.I. quota into 1st year M.B.B.S course. Immediately management of 3rd respondent college has sent the petitioner's name to the 2nd respondent University on 30.09.2015 itself for approval and the 2nd respondent university also received the same. We were told that the process may take some time."

10. A reading of the above said paragraph makes it abundantly clear that even for the first time the petitioner in W.P.No.10922 of 2016 came to know about the existence of the seat in the respondent's college and contacted the college management in the evening time on 30.09.2015. The same would reflect the mode and manner in which the respondent college conducted itself obviously for the purpose of denying the seat to the petitioner. Yet another submission of the learned Senior counsel, Sri G.Vidyasagar appearing for the respondents 2 and 3 is that in view of the cut-off date as per the Judgment of the Hon'ble Apex Court in **MRIDUL DHAR (MINOR) AND ANOTHER v. UNION OF INDIA AND OTHERS**^[1], the claim of the petitioner cannot be considered at this length of time. In fact, the Hon'ble Apex Court in **ASHA v. PT.B.D.SHARMA UNIVERSITY OF HEALTH SCIENCES AND OTHERS**^[2], at paragraphs 30 and 31, held as under:

"30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely

defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.”

11. In the instant case also various correspondences and the letters placed on record clearly and unequivocally show that by any stretch of imagination the petitioner herein cannot be faulted and no fault is attributable to the petitioner. Therefore, the principle laid down in the above said judgment is clearly applicable to the present case also.

12. Pending the contempt case, C.A.No.445 of 2016 is also filed by the petitioner seeking a direction to the respondents 2 and 3 to permit the petitioner to attend the classes of the first year MBBS course for the year 2015-2016. It is further brought to the notice of this Court that pending the present Contempt Case the respondent college issued an office order bearing No.135/E3/15, dated 25.11.2015, conditionally admitting the petitioner into first year MBBS course for the academic year 2015-2016 while stating that the admission is subject to the approval by the Medical Council of India, New Delhi. In the affidavit filed in support of C.A.445 of 2016 it is stated that in pursuance of the letter dated 24.11.2015 the college issued the said proceedings No.135/E3/15, dated 25.11.2015 admitting the petitioner, but not permitting her to attend the classes though the petitioner paid fee of Rs.42,100/- by way of DD.No.647005 dated 25.11.2015 in the name of the second respondent and there is no counter filed opposing the same. This attitude on the part of the respondents 2 and 3 cannot be countenanced. Since the respondent college by virtue of office order bearing No. No.135/E3/15, dated 25.11.2015, conditionally admitted the petitioner in the college, this Court deems it appropriate to dispose of the main Contempt Case and the present interlocutory application C.A.No.445 of 2016 with a direction to the respondents to permit the petitioner to attend the classes.

13. For the aforesaid reasons, both Contempt Case and C.A.No.445 of 2016 stand disposed of, directing the respondents to permit the petitioner to attend the classes in MBBS Course. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:20.06.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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[\[1\]](#) (2005) 2 SCC 65

[\[2\]](#) (2012) 7 SCC 389