

IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH

Writ Petition No.32205 of 2016

Between:

Chilumuri Saraya and 4 others

.... Petitioners

AND

State of Andhra Pradesh, represented by its
Principal Secretary, A.P. Secretariat,
Hyderabad and 8 others

.... Respondents

JUDGMENT PRONOUNCED ON : 26-10-2016

HON'BLE SRI JUSTICE : V. RAMASUBRAMANIAN

AND

HON'BLE SMT JUSTICE : ANIS

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1. Whether Reporters of local Newspapers may be allowed to see the Judgments? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/ Journals? Yes/No
 3. Whether their Ladyship/Lordship wish to see the fair copy of the judgment? : Yes/No

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

HON'BLE SMT. JUSTICE ANIS

+ Writ Petition No.32205 of 2016

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Chilumuri Saraya and 4 others

.... Petitioners

AND

State of Andhra Pradesh, represented by its
Principal Secretary, A.P. Secretariat,
Hyderabad and 8 others

.... Respondent

! Counsel for petitioner: Sri J. Sudheer

^ Counsel for respondent: Sri G.P. for Medical & Health, for R-1, 2 & 8
Sri Taddi Nageswara Rao, for R-3
Sri P. Srinivasa Rao, for R-5 & 9
Smt. A. Chayadevi, for R-6
Sri S.V. Chandrasekhar for R-7

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> Head Note:

? Cases referred:



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

Writ Petition No.32205 of 2016

Order: (per V. Ramasubramanian, J.)

The petitioners have come up with the above writ petition seeking a declaration that the rule of communal reservation would apply even to Category-B seats in Un-aided Private Educational Institutions.

2. We have heard Mr. J.Sudheer, learned counsel for the petitioners, learned Government Pleader for Medical Health and Family Welfare (Telangana) for the respondents 1, 2 and 8, Sri Taddi Nageswara Rao, learned Standing Counsel for the 3rd respondent-Dr. NTR University, Sri P.Srinivasa Rao, learned counsel for the respondents 5 and 9, Smt. A.Chaya Devi, learned counsel for the 6th respondent and Sri S.V. Chandrasekhar, learned counsel for the 7th respondent.

3. The petitioners passed the Intermediate examination and also qualified in NEET, 2016. The petitioners belong either to the Backward Classes or to the Scheduled Castes. The grievance of the petitioners in this writ petition is that the Association of Managements of Un-aided Private Medical and Dental Colleges and the Convenor for Admissions follow the rule of communal reservation only insofar as Category-A seats are concerned, but do not follow the rule of reservation insofar as Category-B seats are concerned.

4. In order to regulate the admission of students into Under-Graduate Professional Courses in Medical and Dental disciplines in Un-aided Non-Minority Professional Institutions in the erstwhile combined State of Andhra Pradesh, the Government of Andhra Pradesh issued a set of rules known as “The Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Under-Graduate Medical and Dental Professional Courses) Rules, 2007, under G.O.Ms.No.136, Health, Medical and Family Welfare Department, dated 30-4-2007. Rule 4 of these Rules classified the seats in Un-aided Non-Minority Professional Institutions into three categories, namely, (1) Category-A seats comprising of 50% of the sanctioned intake, to be filled up through counselling by the Committee for Admissions constituted by the Competent Authority as per merit on the basis of a common entrance test known as EAMCET conducted by the State, (2) Category-B seats comprising of 20% of the sanctioned intake, to be filled up through counselling by the Committee for Admissions constituted by the Competent Authority as per merit from the candidates on the basis of EAMCET and (3) Category-C seats comprising of 30% of the sanctioned intake, to be filled up by the managements of individual colleges or committees of managements in the order of merit based upon a transparent procedure specified in the Rules.

5. The procedure for filling up these three categories of seats was prescribed in detail in Rule 6 of the aforesaid Rules. Rule 9 of the aforesaid Rules prescribed the rule of reservation for admission.

Rule 9 was divided into three parts, the first dealing with region-wise reservation as per the Presidential Order, 1974 issued in exercise of the power conferred by Article 371D of the Constitution, the second comprising of reservation for SC/ST/BC Communities and the third comprising of reservation for Special Categories such as Physically Handicapped, National Cadet Corps, Games and Sports, reservation for women etc.

6. Rule 4 of the 2007 Rules which classified the seats into Categories-A, B and C, used the words “rules of reservation” while dealing with the seats under Categories-A and B. It would be useful to extract the relevant portion of Rule 4 of the 2007 Rules as follows:

“Category-A Seats (50% of the sanctioned intake of the Seats)

“Competent Authority Seats”:- The seats shall be filled through counselling by the Committee for Admissions constituted by the Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation.

Category-B (20% of the sanctioned intake of the Seats)

“EAMCET ranking based Management Seats”:-

The seats shall be filled through counselling by the Committee for Admissions constituted by the Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation as agreed to by the A.P. Private Medical and Dental Colleges Managements Association, Hyderabad.”

7. A careful look at the manner in which Rule 4 is worded would show that though the words “rules of reservation” were used both with reference to Category-A seats and with reference to Category-B seats, these words were followed by a rider reading “***as agreed to by the A.P. Private Medical and Dental Colleges***

Managements Association, Hyderabad”, when it deals with the allotment of Category-B seats. It is relevant to note that even in the preamble to G.O.Ms.No.136, dated 30-4-2007, it was indicated by the Government that the rules were framed by the Government pursuant to a consensual agreement reached between the Government and the Private Un-aided Non-Minority Institutions, after the judgment of the Supreme Court in **P.A. Inamdar Vs. State of Maharashtra** (AIR 2005 SC 3226).

8. In the context of the fact that the 2007 Rules themselves were issued pursuant to the decision of the Supreme Court in **P.A. Inamdar** (*supra*) and the consensual agreement reached between the Government and the Association of Managements, as reflected in the preamble to the rules, the rider contained in the second part of Rule 4 assumes significance. Therefore, it is clear that insofar as Category-A seats were concerned, Rule 4 stipulated the automatic application of the rule of reservation, since those 50% of the seats were to be filled up only by the Committee of Admissions constituted by the Competent Authority, without any say on the part of the Private Institutions. But insofar as Category-B seats are concerned, what was regulated by the Rules was only the procedure for admission and hence the application of the rules of reservation in respect of Category-B seats was left open to be determined as agreed to by the Association of Managements.

9. Despite the clear demarcation of the distinction between Category A seats and Category-B seats found in Rule 4, sub-rule (2) of Rule 9 of the 2007 Rules gave a contra indication. As we have

stated earlier, sub-rule (1) of Rule 9 of the 2007 Rules dealt with region-wise reservations as per the Presidential Order, 1974. While dealing with such reservation, Clause (a) of sub-rule (1) of Rule 9 made it clear that such reservation would apply only to “Competent Authority Seats”. In other words, regional reservation in terms of Article 371D of the Presidential Order was restricted under Rule 9(1) of the 2007 Rules only to Category-A seats.

10. But insofar as reservation of seats for SC/ST/BC Communities is concerned, sub-rule (2) of Rule 9 used a different language, as can be seen from the following extract:

“(2) Reservation of seats for SC/ST/BC Communities:

- (a) 15% of seats in each course shall be reserved for the candidates belonging to Scheduled Castes.
- (b) 6% of the seats in each course shall be reserved for the candidates belonging to Scheduled Tribes.”

11. The 2007 Rules issued under G.O.Ms.No.136, dated 30-4-2007, was amended by G.O.Ms.No.144, dated 15-7-2009. By this amendment, the percentage of Category-B seats was reduced from 20% to 10% and the percentage of Category-C seats was increased from 30% to 40%. Even while doing so, the original language of the second part of Rule 4 was retained in the Statutory Scheme. The relevant part of Rule 4 dealing with Category-B seats, as amended by G.O.Ms.No.144, dated 15-7-2009, reads as follows:

“Category-B: (10% of the sanctioned intake of the seats)

EAMCET ranking based Management Seats:- The seats shall be filled through counselling by the Committee for Admissions constituted by the Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the State for that year and following the rules of

reservation as agreed to by the A.P. Private Medical and Dental Colleges Managements Association, Hyderabad.”

12. It is relevant to note that even in G.O.Ms.No.144, dated 15-7-2009, the words “rules of reservation” were followed by the rider “as agreed to by the A.P. Private Medical and Dental Colleges Managements Association, Hyderabad”.

13. Before proceeding further, we are also obliged to take note of the fact that the Association of Managements of the Private Un-aided Medical and Dental Colleges enters into a consensual agreement with the Government every year, as per Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. The last of such agreements was entered into on 13-4-2015. This agreement does not contain any undertaking on the part of the Managements to follow the rule of reservation, even in respect of Category-B seats. In other words, the rider contained in the second part of Rule 4 of the 2007 Rules does not stand satisfied, so as to compel the Association of Managements to follow the rule of reservation even for Category-B seats.

14. The 2007 Rules underwent further amendments under G.O.Ms.No.97, dated 06-7-2013 and G.O.Ms.No.744, dated 26-8-2014. A final set of amendments was issued to the 2007 Rules under G.O.Ms.No.33, Health, Medical and Family Welfare Department, dated 17-4-2015. The existing Rule 4 of the 2007 Rules was substituted by a new Rule 4, by the said amendment under G.O.Ms.No.33, dated 17-4-2015. The new Rule 4 reads as follows:

“Category-A seats (50% of the sanctioned intake of the seats)

Competent Authority Seats:- These seats shall be filled in through the counselling by the Committee constituted by Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the State for that year **following the rules of reservation.**

Category-B seats (35% of the sanctioned intake of the seats)

MCET-AC ranking based management seats:- The seats shall be filled through the counselling by the Committee for Admission constituted by APMDCMA as per the merit from the candidates who are qualified at MCET held by a third party employed for the purpose by the Managements Associations for that year as per the procedure that may be prescribed in this regard.

Category-C seats (15% NRI quota)

These seats shall be filled by the Managements of the individual institutions or the Committee of the Managements under these rules.”

15. It is pertinent to note that at least in the original Rule 4 as framed under G.O.Ms.No.136, dated 30-4-2007, the words “rules of reservation as agreed to” were used. But in the amended Rule 4 under G.O.Ms.No.33, dated 17-4-2015, the words “rules of reservation” were completely deleted, while dealing with Category-B seats. Therefore, it is clear that the Statutory Scheme did not contemplate the application of the rules of reservation for SC/ST/BC Communities and Special Reservation for Physically Handicapped, NCC and Games and Sports, insofar as Category-B seats are concerned. As a consequence of the Statutory Scheme so well laid out, the respondents did not apply the rules of reservation for Category-B seats, for the current academic year 2016-17. Aggrieved by such action, the petitioners have come up with the present writ petition.

16. The main contentions of Mr. J. Sudheer, learned counsel appearing for the petitioners, are (a) that Rule 6(B) (i) read with Rule 9(2) of the 2007 Rules would have an over-riding effect upon Rule 4 and (b) that the amendment to Rule 4 under G.O.Ms.No.33, dated 17-4-2015, without a corresponding amendment to Rule 9, cannot be of any impact insofar as the application of the rule of reservation for Category-B seats is concerned.

17. As a matter of fact, Mr. J. Sudheer, learned counsel for the petitioners, himself brought to our notice, very fairly, a decision of another Division Bench of this Court dated 25-01-2016 passed in a batch of writ petitions W.P.Nos.16651 of 2015 batch, wherein the Division Bench held that the rule of reservation will not apply to Category-B seats. However, the learned counsel sought to contend that the said decision is *per incuriam* and that the same does not have a binding effect upon us.

18. We have carefully considered the above submissions.

19. The first contention of the learned counsel for the petitioners, as we have indicated above, is that Rule 6 (B) (i) read with Rule 9(2) of the 2007 Rules has an overriding effect upon Rule 4. But the said contention is not legally sustainable. As we have indicated earlier, Rule 4 of the 2007 Rules, as it was originally drafted, made a clear distinction between the method of allotment of seats to Category A and Category B. In so far as Category A seats are concerned, Rule 4 made it clear that those seats should be filled up through counselling as per merit determined through EAMCET and following the Rule of Reservation. But when it came to Category

B seats, Rule 4 used a rider “as agreed to by the A. P. Private Medical and Dental Colleges Managements Association”. Therefore the applicability of rule of reservation to Category B seats was clearly made subject to an agreement with the Association of Managements of Private Colleges.

20. Rule 6 (B) (i) of the 2007 Rules as it originally stood and the relevant part of Rule 6 (B), which is now substituted by G.O.Ms.No.33, dated 17-04-2015 are presented in a tabular column for easy appreciation.

Rule 6 (B) (i) as it originally stood	Rule 6 (B) v now substituted
<u>To Fill up EAMCET Ranking Based Management Seats:</u> (Category-B 20% of the sanctioned intake of the seats) (i) Category-B Seats shall be filled by the Committee for admissions constituted by the Competent Authority under these Rules based on the merit obtained in EAMCET and following the Rules of Reservation.	Category B seats shall be filled by the committee constituted for admissions by the APMDCA based on the merit obtained in MCET-AC and following rules framed for this purpose. There shall be three nominees one each from Government, Association and the University.

21. The answer to the first contention of the learned counsel for the petitioners, as deducible from the above tabular column are two-fold. The first is that even after the 2007 Rules, the application of the Rule of Reservation under Rule 6 (B) (i) was subject to an agreement with the Association of Managements, as envisaged in Rule 4. The second aspect is that in any case, the words “Rules of Reservation” as they originally appeared in Rule 6 (B) (i) of the 2007 Rules have now been completely removed from the amended Rule 6

(B) (i). Therefore, the contention that Rule 6 (B) (i) would have an overriding effect upon Rule 4 cannot be accepted.

22. Similarly, the contention that Rule 9 (2) would have an overriding effect upon Rule 4 is also legally flawed. The correct method of reading Rule 9 (2) of the 2007 Rules is to say that wherever there is an agreement between the Government and the Association of Managements, to apply rule of reservation to Category B seats as contemplated in the second part of Rule 4, such reservation should be in accordance with and in the proportion fixed under Rule 9 (2). In other words, Rule 9 (2) will have no meaning and will have no application in the absence of an agreement. Hence, the first contention is liable to be rejected.

23. The second contention of the learned counsel for the petitioners is that the amendment of Rule 4 whereby the words "Rules of Reservation" were deleted, would have no significance so long as Rule 9 (2) was not amended. But this contention also deserves to be rejected for the very same reason that we have indicated in the preceding paragraph. Even as per the original Rules, Rule 9 (2) did not have a controlling effect upon Rule 4. Rule 9 (2) came into play only when there was an agreement with the Association of Managements. Now by the amendment to Rule 4 by G.O.Ms.No.33, dated 17-04-2015, even the scope of having an agreement to apply the rule of reservation to category B seats has gone. Hence, the second contention of the learned counsel for the petitioners also deserves to be rejected.

24. The third contention of the learned counsel for the petitioners revolves around the decision of the Division Bench of this Court in W.P.No.16651 of 2015 and batch, dated 25-01-2016. As we have pointed out earlier, one of the contentions raised before the Division Bench in that case was that the failure to provide for the application of the rule of reservation to Category B seats was contrary to Rule 9 of the 2007 Rules and it also offended Article 15 of the Constitution. It is seen from paragraph 11 of the judgment of the Division Bench that the very same argument now raised before us that Rule 4 ran contrary to Rule 9 was also raised before the Division Bench.

25. But in paragraph 13 of the judgment in the said decision, the Division Bench rejected those contentions after extracting paragraphs 124 to 126 of the decision of the Supreme Court in **P.A. Inamdar** (*supra*). At the cost of the repetition, we would also extract paragraphs 124, 125 and 126 of the decision of the Supreme Court in **P.A. Inamdar** (*supra*), which read as follows:

“124. So far as appropriate of quota by the State and enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat-sharing in unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State's policy on reservation for granting admission on lesser percentage of marks i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill which was approved by Pai Foundation is there

anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically Disapproved in *Pai Foundation*. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

126. The observations in para 68 of the majority opinion in *Pai Foundation* on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read disjointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in *Pai Foundation* if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter-comments and reading the whole judgment in the light of previous judgments of this Court, which have been approved in *Pai Foundation*, in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also

observations saying that they may frame their own policy to give freeships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society.”

26. After referring to another decision of the Supreme Court in **Gulshan Prakash & others v. State of Haryana** (AIR 2010 SC 288), the Division Bench concluded that in the absence of any legislative mandate or any executive orders of the Government, there is no basis for the claim for effecting reservations in Category B seats. We do not think that the view so taken by the Division Bench is contrary to law. With great respect to the Division Bench, we are in full agreement with the view expressed therein. Apart from the fact that there is no legislative mandate or executive order of the Government, there was also no agreement between the Government and the Association of Managements to apply rule of reservation to Category B and Category C seats. Therefore, the third contention of the learned counsel for the petitioners is also unsustainable.

In view of the above, the writ petition deserves to be dismissed, and accordingly, it is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

V.RAMASUBRAMANIAN, J

ANIS, J

Date: 26-10-2016

Note: L.R. copy to be marked.

B.O./Ksn

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



Writ Petition No.32205 of 2016
(per VRS, J.)

October, 2016.
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