

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.14906 OF 2013

ORDER :

It is the case of the petitioners that they were admitted into 5th respondent college in the First Year B.Pharmacy course for the academic year 2012-13 and thereafter paid necessary fees and attended classes throughout the year and appeared for internal and practical examinations and they also have sufficient attendance to appear for the final examinations of the first year B.Pharmacy course. Since the 2nd respondent did not approve their admissions, petitioners were not allowed to appear before the final examination commencing from 22nd May, 2013. As the petitioners 1 and 2 failed to secure 50% marks in the qualifying examination, the 2nd respondent issued proceedings dated 03.05.2013 not approving their admissions and the 2nd respondent had also issued proceedings dated 10.05.2013 stating that the petitioners 3 to 24 have been admitted in excess admissions under Convenor quota. Aggrieved by the same, present writ petition is filed.

Heard Sri Sricharan Telaprolu, learned counsel for the petitioners and Sri A. Abhishek Reddy, learned Standing Counsel for the 2nd respondent.

Learned counsel for the petitioners submits that rule prescribed for possessing required qualification in the qualifying examination was amended by virtue of G.O.Ms.No.94, dated 16.08.2011. He submits that G.O.Ms.No.67, Higher Education (EC.2) Department, dated 03.09.2012 was issued reducing the

percentage of marks to 45% (40% in case of candidates belonging to reserved categories) of marks in the prescribed group subjects taken together/aggregate marks in the qualifying examinations. He submits that the petitioners 1 and 2 belong to BC category and they secured marks above 40% in the qualifying examination, as such, they cannot be disqualified on that ground.

A perusal of G.O.Ms.No.75 Higher Education (FC) Department, dated 28.07.2011 shows that the candidates securing admission into B.Pharmacy course should possess 50% marks in the qualifying examination, but the same is amended vide G.O.Ms.No.61 Higher Education (EC.2) Department, dated 28.08.2011 reducing the percentage of marks to 45% (40% in case of candidates belonging to reserved categories).

In view of the same, the non approval of the admissions of 1st and 2nd petitioners appears to be erroneous, as such, the impugned order in proceedings No.APSCHE/Secy/EAMCET-2012/Approval/B.Pharm/JNTUH/SW-III/232/B,dated 10.05.2013 is liable to be set aside.

Learned counsel for the petitioners submitted that the admissions of petitioners 3 to 24 were not approved by the 2nd respondent on the ground that they have been admitted by the 5th respondent exceeding the limit under Convener quota. He submits that the maximum seats in the college are 100 as per the norms of Pharmacy Council of India, out of which 70% is Convener Quota and 30% is management quota. Since the petitioners 3 to 24 were admitted by the 5th respondent in excess of the norms fixed by the Pharmacy Council of India, their admissions were not approved.

Learned counsel for the petitioners placed reliance on the judgment reported in **A.Mahesh v. K.K.College of Pharmacy, rep. by its Principal/Correspondent, Chennai**¹, wherein it is held as follows:

“8. A combined reading of the statements and objects of the Pharmacy Act and the above provisions would indicate that the Act was enacted only to make better provision for the regulation of the profession and practice of pharmacy and for that purpose to constitute Central Pharmacy Council and State Pharmacy Councils.

10. A combined reading of objects and reasons of the AICTE Act would undoubtedly reveal that the said Act was enacted duly taking into note of the fact that most of the institutions have serious deficiencies in terms of rudimentary infrastructure necessary for imparting proper education and training and also to vest statutory powers to regulate and maintain standards of technical education in the country on the All India Council for Technical Education which was set up during the year 1945. The said enactment is a special enactment insofar as laying down norms and standards for courses, curricula, physical and instructional facilities, staff pattern and other qualifications, quality assessment and examinations as well as for grant of approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

13.....Therefore, it must be held that the legislature while enacting AICTE Act intended that the said Act should govern the technical education including pharmacy, more particularly, in regard to the laying of norms and standards in the technical system. At this juncture, it must be pointed out that the Pharmacy Act is a pre-constitutional statute enacted prior to the Constitution and was in force from the year 1948. The AICTE Act is referable to Entry 66 of List I of Seventy Schedule to the Constitution of India. The AICTE Act covers the same field which was earlier covered by the Pharmacy Act, particularly, laying down norms and standards for studies in the field of pharmacy. Therefore, in terms of Article 372 of the Constitution of India, the AICTE Act to the extent it covers the same field as covered by the Pharmacy Act will prevail and the provisions of the Pharmacy Act to that extent would yield to the AICTE Act. When both the enactments are traceable to the power of the same legislature, on the same subject viz., the Parliament, the later enactment viz., the AICTE Act which is a special enactment insofar as laying down the norms and standards for courses, etc., shall over ride the provisions of Pharmacy Act shall be deemed to be inoperative insofar they relate to admission of students, syllabi, course of study and the examination and for that matter, the approval for pharmacy course. Consequently, the provisions of AICTE Act alone shall regulate and control the colleges in the matter of laying down norms and standards for courses in pharmacy.”

In view of same, Pharmacy Council's norms cannot be a ground to refuse approval when Pharmacy Act is held to be inoperative in case of admissions into Pharmacy course. In this case, when once 2nd respondent approved 180 seats and once the 3rd respondent

¹ 2003 (4) CTC 657

University has granted affiliation in respect of 180 seats in respect of B.Pharmacy course, the 2nd respondent cannot refuse to approve the admission of the petitioners 3 to 24 on the ground of excess admissions under Convener quota. It is stated that the petitioners have already completed the Course by virtue of interim order granted by this Court on 15.05.2013. Even according to the impugned order, the Management is entitled for 30% of quota i.e., 30 seats and management admitted 13 candidates, which is permissible under Management quota. When the 4th respondent has sent the candidates in excess quota, neither petitioners 3 to 24 nor 5th respondent cannot be found fault with.

In view of above facts and circumstances, I am of the opinion that the proceedings No.APSCHE/SECY/EAMCET-2012/Approval/B.Pharm/JNTUH/SW-III/232/A, dated 03.05.2013 and proceedings No. APSCHE / SECY/ EAMCET-12/Approval/B.Pharm/JNTUH/SW-III/232/A, dated 10.05.2013 cannot be sustained and same are liable to be set aside and accordingly set aside.

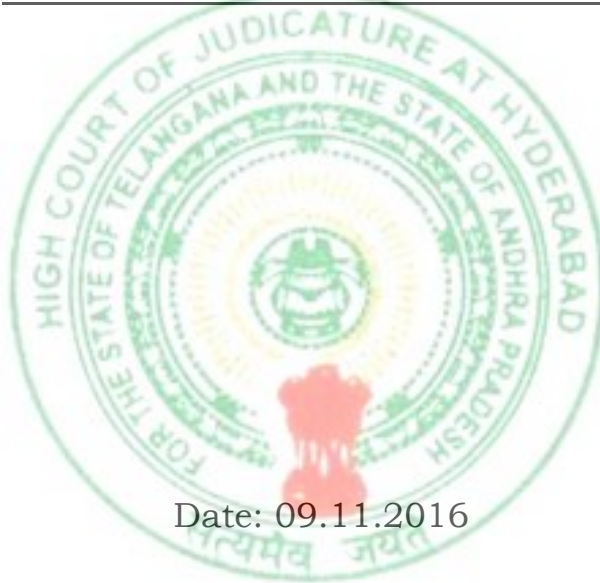
Accordingly, this writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stands closed.

A.RAJASHEKER REDDY, J

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