

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 38606 of 2016

ORDER: (*Per VRS,J*)

The petitioners, who runs a Non-Minority Private Medical Educational Institution, have come up with the present writ petition, challenging an order of the 2nd respondent-University, rejecting the approval of admission of ten candidates to M.B.B.S. course for the current academic year 2016-2017 under category 'C'.

2. Heard Mr. P. Venu Gopal, learned senior counsel appearing for the petitioners. Mr. A. Prabhakar Rao, learned standing counsel for Kaloji Narayana Rao University of Health Sciences, takes notice for the 2nd respondent.

3. The petitioner-Institution furnished a merit list of 19 candidates for admission into category 'C' seats, reserved for NRIs., for the current academic year 2016-2017. The 2nd respondent-University rejected the candidature of 10 candidates out of those 19, on the ground that they did not qualify in NEET-2016. Aggrieved by the said order, the petitioners are before us.

4. The main contentions of Mr. P. Venu Gopal, learned senior counsel appearing for the petitioners are that the refusal of the 2nd respondent-University to grant approval for the admission of ten candidates was contrary to G.O.Ms.No.129, Health, Medical and Family Welfare (C1) Department, dated 12.09.2016, that these candidates were admitted, only after this Court had passed orders in favour of one candidate, directing admission to be granted on the basis of the ranking secured in NEET-2016, and that since the petitioners were not at fault as they had already rejected the applications of these candidates, but they granted admission only pursuant to the orders passed in favour of similarly placed candidates, the clock cannot be put back by the respondents.

5. We have carefully considered the above submissions.

6. It is true that the Government of Telangana passed G.O.Ms.No.129, dated 12.09.2016, amending the existing Rules for regulating the admission into under-graduate medical and dental professional courses. The amendment was brought forth, in exercise of the powers conferred by Sections 3 and 15 of the Telangana State Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. The amended Rules prescribe a particular method for filling up the category 'C' seats.

7. But unfortunately for the petitioners, the Supreme Court directed that even category 'C' seats should be filled up, only if the candidates had qualified in NEET-2016. As a matter of fact, G.O.Ms.No.129, dated 12.09.2016, itself is in tune with the order of the Supreme Court, insofar as category 'C' seats are concerned. The amended Rule 6(C), as per G.O.Ms.No.129, reads as follows:

“Category – C (NRI Quota seats) (15% of the total intake of the seats): These seats shall be filled by the Managements of individual colleges or Committee of Managements under these rules.

- i. The candidates shall submit an affidavit to establish the bonafides that they are children/wards of bonafide NRI residents.*
- ii. The admissions made under the NRI quota should be according to the NEET qualified merit list of that year prepared by the college(s) from the applicants.”*

8. Therefore, admission under the NRI quota, even as per G.O.Ms.No.129, should be according to the NEET qualified merit list of that year.

9. A question arose before us in W.P.No.34558 of 2016 as to whether a mere appearance in NEET-2016 would be sufficient to make a person eligible for admission under the NRI quota. It was contended in that case that since all persons who appeared for NEET-2016 are arranged in some order of merit, even the person, who secured the least marks and got the last place, should be deemed to

have taken a rank in NEET-2016. But, the said contention was rejected by us, by an order, dated 03.11.2016, on the basis of Chapter 6 of Information Bulletin released by the CBSE. The relevant portion of Chapter 6 of the Information Bulletin reads as follows:

“Merit List and Qualifying Criteria:

I. Eligibility Criteria – the Central Board of Secondary Education will prepare an All India Merit List of successful candidates of NEET-2016 on the basis of the eligibility criteria provided by the Medical Council of India and Dental Council of India as given in Graduate Medical Education Regulations-1997 issued under Indian Medical Council Act, 1956 and BDS Course Regulations, 2007 under the Dentists Act, 1948. The eligibility Criteria are as follows:

a) In order to be eligible for admission to MBBS/BDS Courses for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in National Eligibility Cum Entrance Test to MBBS/BDS Courses held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates, with locomotory disability of lower limbs, terms of Clause 4(a), iv above, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All India common merit list in National Eligibility Cum entrance Test for admission to MBBS/BDS courses.

b) Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility Cum Entrance Test held for any academic year for admission to MBBS/BDS courses, the Central Government in consultation with Medical Council of India and Dental Council of India may at its discretion lower the minimum marks required for admission to MBBS/BDS courses for candidates belonging to respective categories and marks so lowered by the

Central Government shall be applicable for the said academic year only.

c) To be eligible for the admission to MBBS/BDS courses, a candidate must have passed in the subjects of physics, Chemistry, Biology/Bio-technology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, Biology/Bio-technology at the Qualifying Examination as mentioned in Graduate Medical Education Regulations-1997 and BDS Course Regulations, 2007 and in addition must have come in the merit list of National Eligibility Cum Entrance Test for admission to MBBS/BDS Courses. In respect of the candidates belonging to the SC, ST and OBC category the marks obtained in Physics, Chemistry, Biology/Bio-technology taken in qualifying examination and competitive examination (Physics, Chemistry, Biology) be 40% marks instead of 50%. In respect of candidates with locomotory disability of lower limbs, the minimum of 45% marks for Gen-PH and 40% marks for SC-PH/ST-PH/OBC-PH are required. Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS/BDS courses, he shall not be admitted to that course until he fulfils the eligibility criteria as specified above.

A list of the successful candidates in order of All India Rank based on the score obtained in the examination will be prepared by the Board.”

10. Therefore, the expression “NEET qualified merit list” appearing in the amended Rule 6(C) of the Rules issued under G.O.Ms.No.129, dated 12.09.2016, cannot be understood to mean that any candidate securing any mark in NEET, will be taken to come within the purview of the amended Rule. Hence, the first contention requires to be rejected.

11. It is true that it was this Court, which committed the original sin by passing the first interim order directing the grant of admission to one candidate, under the category 'C' under the NRI quota. However, the interim order passed by us was carefully worded. The order passed by us reads as follows:

“Issue notice to respondents returnable in three (3) weeks.

The learned counsel for the petitioner is also permitted to take out personal notice on the respondents through registered post with acknowledgment due and file proof of service.

In the meantime, the respondents shall consider the case of the petitioner for admission under N.R.I. quota, as per the rank as she secured in NEET-2016 conducted in pursuance of the directions issued by the Hon'ble Supreme Court on 24.05.2016.”

12. We have used the expression “as per the rank”. If the candidates and colleges had understood the expression “as per the rank” in the same manner as they have understood the expression “NEET qualified merit list” appearing in G.O.Ms.No.129, dated 12.09.2016, then only a part of the blame lies at the doors of the Court and the rest lies with the candidates and the colleges. In any case, no Court order, which goes contrary to statutory regulations, can stand the force of law. Assuming that the order was not properly understood, ultimately, public interest cannot be allowed to suffer, by directing the approval of admission of candidates, who could not

secure the minimum percentile marks prescribed by the CBSE. We should be cautious about the fact that we are dealing with the admission to medical courses. The candidates, who could not secure the minimum percentile indicated in Chapter 6 of the Information Bulletin, cannot contend that since the admission was granted pursuant to the orders of this Court, the regulations shall take a back seat. Hence, the second contention is also rejected.

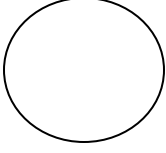
13. The third contention revolves around what has happened in the past. It is true that the petitioners and the candidates would have altered their position after the interim orders of this Court. But, in essence, the contention revolves around the principle of estoppel. Since there can be no estoppel against Statute, the said contention cannot also be accepted. Hence, the Writ Petition deserves to be dismissed and, accordingly, it is dismissed.

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

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

9th November, 2016
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