

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MRS.JUSTICE ANIS

+ Writ Petition No.23893 of 2016 & batch
(W.P.Nos.23893, 25853, 26022, 26029, 26035, 26141, 26233, 26238,
26261, 26275, 26393, 26414, 26424 & 26491 of 2016)

%11.08.2016

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Miriyala Priya Darshini

...Petitioner

VERSUS

\$ The State of Andhra Pradesh, rep. by its
Principal Secretary, Health Medical and Family Welfare Department
A.P. Secretary Buildings, Hyderabad & 3 others

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri B. Sesi Bushan Rao

^Counsel for Respondent No.1: 1. G.P. for Medical & Health

^Counsel for Respondents 2 & 4: G.P. for Higher Education

^ Counsel for Respondent No.3: Sri Taddi Nageswara
Rao

? Cases referred

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**Writ Petition No.23893 of 2016 & batch
(W.P.Nos.23893, 25853, 26022, 26029, 26035, 26141, 26233, 26238,
26261, 26275, 26393, 26414, 26424 & 26491 of 2016)**

Between:

Miriyala Priya Darshini

.. Petitioner (s)

And

The State of Andhra Pradesh, rep. by its
Principal Secretary, Health Medical & Family Welfare Department
Hyderabad & 3 others

.. Respondent (s)

JUDGMENT PRONOUNCED ON : 11.08.2016

HON'BLE SRI JUSTICE

**: V. RAMASUBRAMANIAN
AND
MRS. ANIS**

1. Whether Reporters of local newspapers :
may be allowed to see the Judgments?

2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?

3. Whether their Ladyship/Lordship wish to :
see the fair copy of the Judgment?

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MRS.JUSTICE ANIS

Writ Petition No.23893 of 2016 & batch
(W.P.Nos.23893, 25853, 26022, 26029, 26035, 26141, 26233, 26238,
26261, 26275, 26393, 26414, 26424 & 26491 of 2016)

COMMON ORDER: *(per Hon'ble Sri Justice V. Ramasubramanian)*

The petitioners in all these writ petitions appeared for AP-EMCET, 2016 for admission to undergraduate medical courses. It is claimed by the petitioners that they secured sufficiently high rank so as to entitle them for the allotment of seats in undergraduate medical courses.

2. The President of India issued an order known as 'Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974', in exercise of the powers conferred by Clauses (1) and (2) of Article 371-D of the Constitution of India and the same was published in the Gazette of India bearing No.G.S.R.590(E), dated 09.06.2016. This Presidential Order was re-published by the State of Andhra Pradesh in G.O.Ms.No.132, General Administration (SPF & MC) Department, dated 13.06.2016.

3. By the aforesaid Presidential Order, a sub-paragraph, namely, sub-paragraph (3) was inserted, after sub-paragraph (2) but before the Explanation, under paragraph 4 of the 1974 Presidential Order. This newly inserted sub-paragraph (3) reads as follows:

“(3) Notwithstanding anything contained in sub-paragraph (1) or (2), a candidate who migrates to any part of the State of Andhra Pradesh from the State of Telangana within a period of three years from the 2nd day of June, 2014 shall be regarded

as the local candidate in the State of Andhra Pradesh at the place of his residence and be treated at par with the local candidates residing in that area, in accordance with such guidelines as may be issued by the Government of Andhra Pradesh for the purpose of education.”

4. Therefore, on the basis of the aforesaid Presidential Order, the petitioners herein made representations for considering their status as local candidates, for the purpose of admission to undergraduate medical courses for the current academic year in the State of Andhra Pradesh. But the University could not take any action on the basis of the Presidential Order, in the absence of any guide-lines framed by the State of Andhra Pradesh.

5. Therefore, all these petitioners came up with the above writ petitions, seeking a *mandamus* to direct the respondents to treat them as local candidates, in the State of Andhra Pradesh, for the purpose of admission to undergraduate courses for 2016-17.

6. At the time when these writ petitions came up for orders as to admission, we passed interim orders, directing the respondents to treat the petitioners as local candidates, in view of the clear mandate of the Presidential Order. Though the grant of such interim order was resisted very vehemently by Sri Taddi Nageswara Rao, learned standing counsel for the University on the ground that in the absence of any guidelines framed by the State of Andhra Pradesh, the University was not competent to take unilateral action, we pointed out that the Presidential Order laid down the substantive law, the benefit of which was available up to June 2017 to the candidates and that therefore, the absence of any procedural guidelines, can not take away the benefit conferred by the Presidential Order. However, while issuing interim directions to the University to consider the petitioners as local candidates in the State of Andhra Pradesh, we also directed the State of Andhra Pradesh to frame guidelines in the meantime.

7. Accordingly, the Government of Andhra Pradesh has issued
a Circular Memo No.4136/SPF&MC/2015-5, dated 08.08.2016.

Paragraphs 4 and 5 of the said Circular Memo read as follows:

“4. In pursuance of the powers vested upon in the reference 3rd cited, the Government of Andhra Pradesh, hereby issue the following guidelines in the matter:

- (a) A candidate, intending to make an application for admission in Higher Educational Institutions in the State of Andhra Pradesh or an application for direct recruitment to a post to which the scheme of reservation to a local candidate residing in that area in terms of the amendments issued in the reference 4th and 5th cited, has to furnish an application along with declaration in the Forms-I & II respectively, annexed to these guidelines containing the details of his/her migration to the State of Andhra Pradesh from the State of Telangana within a period of 3 years from the 2nd day of June, 2014. In case of minors, the parent/guardian has to also furnish a declaration (Form-II annexed)
- (b) The Candidate, who migrates from the State of Telangana to the State of Andhra Pradesh within the prescribed time limit has to furnish self-attested copies of proof of his residence in the State of Telangana (i.e., any one of the documents viz., Aadhar Card, Driving License, Ration Card, Bank Pass Book, Pan Card, Voter ID card and any other valid certificates) which are accepted as proof of residence in force.
- (c) The Candidate, who migrates from the State of Telangana to the State of Andhra Pradesh within the above time limit also has to furnish self-attested copies of proof of residence in Andhra Pradesh by a declaration along with any one of the documents viz., Aadhar Card, Driving License, Ration Card, Bank Pass Book, Pan Card, Voter ID card and any other valid certificates which are accepted as proof of residence in force.
- (d) The candidate, who intends to apply for admission into Educational Institutions/Employment as stated above, shall make an application in Form-I online to the Tahsildar concerned, on or before 1st June, 2017,

through “Mee-Seva” Portal or any other portal to be notified in due course. Basing on the documents furnished, the Tahsildar shall issue the local Status Certificate in the pro-forma prescribed with digital signature within (7) days from the date of receipt of the application online in Form-III annexed to these guidelines, failing which a Local Status Certificate will be generated automatically in the Portal in the name of concerned Tahsildar.

- (e) In case the information furnished by the candidate is found false, his/her admission to such course or selection to the post shall stand cancelled and the candidate shall be liable for prosecution.

5. The above guidelines are issued strictly in adherence to the provisions of the Presidential orders meant for both Education & employment, wherein it has been stipulated that, “whether any candidate for admission to any course of study or for direct recruitment to any post has resided in any local area shall be determined with reference to the places where the candidate actually resided and not with reference to the residence of his/her parent or other guardian”.

8. As can be seen from the guidelines issued by the State of Andhra Pradesh, the benefit of the Presidential Order has been made available to the candidates, who wish to migrate. One of the conditions prescribed for eligibility for local status in Andhra Pradesh is that the candidate, who intends to apply, should make an application in Form-I online to the Tahsildar concerned on or before 01.06.2017. If a certificate is not issued within 7 days, by the Tahsildar, in Form-III, the candidate will be entitled to local status certificate generated automatically in the Portal.

9. Therefore, the Government Circular has actually made matters much better and easier for the candidates, who want to take advantage of the Presidential Order. In other words, there is nothing in the Circular that obliges the students to do anything more than what they have already done, except making an application online in Form-I. Since a lot of time is available now, as per the above Circular, the University appears to have given admission pursuant to the interim

orders of this court, to all the petitioners herein as local candidates and allotted them to the appropriate colleges and courses. Therefore, under normal circumstances, no further orders may be necessary in these writ petitions, but for one important fact.

10. It appears that some of the candidates before us, who are petitioners in these writ petitions belong to open category, some belong to the backward classes and a few belong to scheduled castes. The candidates belonging to open category, who are petitioners in WP Nos.25853, 26022 and 26491 of 2016, have already been treated as local candidates and they have also been allotted seats in appropriate courses and colleges. These writ petitioners have no more issues. Therefore, these writ petitions are disposed of, directing the petitioners to comply with para 4(d) of the Circular Memo dated 08.08.2016, with further direction to the respondents to make the admission of the petitioners to these courses regular, upon the petitioners complying with paragraph 4(d) of the Circular.

11. The second category of persons before us, are those belonging to the scheduled castes, scheduled tribes or some of the backward classes. These persons have not only been treated as local candidates but also been treated as candidates belonging to their respective reserved categories. For instance, the petitioners in WP Nos.23893, 26393 and 26424 of 2016 belong to the scheduled castes. They have been granted local status as well as benefit of reservation by the respondents. No dispute with regard to their social status/community status has been raised. Therefore, no further are necessary in these three writ petitions, namely, WP Nos.23893, 26393 and 26424 of 2016, except directing the University to regularize their admissions upon the petitioners complying with para 4(d) of the Circular dated 08.08.2016.

12. Similarly, the petitioner in WP No.26029 of 2016 has been

treated both as local candidate and as a candidate belonging to the scheduled tribe. Therefore, the petitioner in WP No.26029 of 2016 also has no problem. Hence, this writ petition is also disposed of, directing the University to regularize his admission subject to compliance of para 4(d) of the Circular dated 08.08.2016.

13. The petitioners in WP Nos.26035, 26141, 26238 and 26414 of 2016, have also been treated local candidates and their community certificates to the effect that they belong either to BC-B or BC-A, have been accepted by the respondents. In other words, they have been allotted seats in appropriate courses in appropriate colleges by accepting their community certificates and by also accepting them as local candidates. Therefore, WP Nos.26035, 26141, 26238 and 26414 of 2016 are also disposed of with a direction to the University to regularize their admissions subject to their complying with para 4(d) of the Circular dated 08.08.16.

14. That leaves us with only three writ petitions, namely, WP Nos.26233, 26261 and 26275 of 2016. The petitioners in these three writ petitions have been treated as local candidates, in the State of Andhra Pradesh, pursuant to the interim direction issued by us. But the community certificates produced by the petitioners in these writ petitions, to the effect that they belong either to BC-A, or BC-D, have not been accepted by the respondents.

15. The explanation offered by Sri Taddi Nageswara Rao, learned standing counsel for the University, is that responsible Officers from the Social Welfare Departments of both the States of Telangana and Andhra Pradesh were required to be present at the counselling centre and that the treatment of a candidate as belonging to one community or the other, on the basis of the community certificate produced by them, was left to the Officers of the Social Welfare Departments of both the States. According to the learned standing

counsel for the University, whenever a question of migration arose, the question as to whether a candidate could take to the State of migration, his social backwardness had to be considered by the concerned departments and that therefore, in these three cases, the petitioners were found ineligible to be treated as persons belonging to BC-A or BC-D.

16. We have carefully considered the above submissions.

17. It is true that a particular caste, which is recognized as a backward class or scheduled caste or scheduled tribe in a particular State, need not necessarily be recognized as such in another State. The law is well settled that people cannot carry their social backwardness wherever they go.

18. But insofar as the States of Telangana and Andhra Pradesh are concerned, there are two difficulties in addressing this issue. The first is that both these States existed as a combined State up to 01.06.2014. Therefore, the question of migration itself may not arise. Whenever a State is bifurcated into two and a native of the combined State chooses one of the two newly formed States, he cannot be said to be migrating from one State to another, in the strict sense of the term.

19. The second difficulty is that some of the petitioners in these cases were born in the regions which now form part of the State of Andhra Pradesh. They have been issued with community certificates by the concerned departments in the regions that now form part of the State of Andhra Pradesh. Therefore, it is actually a question of a person who was a native of one State, but was brought up in another State, getting back to his own native State. Hence, the principle that one may lose his community status upon migration cannot apply to persons who were having valid community certificates issued by the

concerned departments in the regions that now form part of Andhra Pradesh itself.

20. Therefore, these writ petitions, namely, WP Nos.26233, 26261 and 26275 of 2016 are disposed of directing the respondents to treat the petitioners not only as local candidates, but also as candidates belonging to the respective reserved communities, provided the community certificates produced by them had been issued by a competent authority of the region, that now form part of the State of Andhra Pradesh even after bifurcation. It is needless to state that it will be subject to the regulations that are in force for the admission.

21. One last objection raised by Sri Taddi Nageswara Rao, learned standing counsel for the University is that already allotments have been made in the first phase of (web) counselling and that if the whole process is to be re-done, it will result in severe hardship to thousands of candidates.

22. But we do not think that the said contention can be accepted. It is only the first phase of counselling which is now over. The candidates have not so far been issued with orders of allotment. More over, there has been no uniformity on the part of the respondents in the matter of acceptance of community certificates produced by the candidates, upon migration. Therefore, the contention that much water has flown under the bridge, loses sight of the fact that there is more water to come under the bridge. Hence, the said contention is rejected.

23. All the writ petitions are, accordingly, disposed of. No order as to costs. Miscellaneous petitions, pending in these writ petitions, shall stand dismissed in consequence.

V.RAMASUBRAMANIAN, J

ANIS, J

Date: 11.08.2016
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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