

* THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ WRIT PETITION Nos. 33111, 34362, 34423, 34424, 34425, 34555, 30608, 32743, 32802, 32803, 32817 & 32837 of 2016

% Date: 28-11-2015

Between:

Bommaku Rohitha

... PETITIONER

And

1. The Union of India, rep. by its Secretary, Ministry of Human Resource Development, Government of India, New Delhi, and others.

... RESPONDENTS

! Counsel for Petitioner : Sri T. Lakshminarayana

^ Counsel for Respondents : Mr. A. Prabhakar Rao
Mr. Taddi Nageswara Rao
Mr. P. Venugopal

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> HEAD NOTE:

? Cases referred

1. (1992) 3 ALT 99



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos. 33111, 34362, 34423, 34424, 34425,
34555, 30608, 32743, 32802, 32803, 32817 & 32837 of 2016

W.P.No.33111/ 2016

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THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The petitioners in all these writ petitions appeared for NEET-2016 after passing the Intermediate/higher secondary examination and also after passing EAMCET-III. Contending that their mere appearance in EAMCET-III is sufficient and that the respondents cannot insist on any qualifying percentile marks in NEET-2016 to secure admission to Category-C seats under the NRI quota to Private Unaided Medical and Dental Colleges, the petitioners have come up with the present writ petitions.

2. Though all the petitioners in these writ petitions appeared for NEET-2016, they did not admittedly get sufficiently higher rank to secure admission to Category-A and Category-B seats. They did not even get the minimum percentile marks in NEET-2016 to be eligible to secure admission even under the NRI quota. Therefore, despite their participation in NEET-2016, all of them have come up with a prayer to declare that NEET-2016 is not at all applicable for admission to Category-C seats and for a consequential direction to the respondents to direct them to be admitted to private Unaided Medical and Dental Colleges to Category-C seats.

3. Heard Mr. T. Lakshminarayana, learned counsel for the petitioners, Mr. A. Prabhakar Rao, learned counsel appearing for Kaloji Narayana Rao University, Mr. Taddi Nageswara Rao, learned counsel

appearing for Dr. N.T.R. University of Health Sciences, and Mr. P. Venugopal, learned Senior Counsel appearing for Medicit Institute of Medical Sciences, which is one of the respondents in these writ petitions.

4. The contentions of Mr. T. Lakshminarayana, learned counsel for the petitioners are as follows:

a) That admission to medical courses in the States of Telangana and Andhra Pradesh is governed by G.O.Ms.No.39 Health, Medical and Family Welfare, dated 20.05.2015 and that therefore, even for admission to Category-C seats, the respondents are not entitled to insist upon a rank in NEET-2016, merely on the basis of G.O.Ms.No.129 dated 12.09.2016 and also on the basis of the direction of the Supreme Court issued in Vigyan Bharati Trust v. Union of India and Ors., dated 11.05.2016;

b) That the respondents have relied upon the instructions issued by the CBSE at the time of conduct of NEET, without taking into account the fact that CBSE has no role to play in the matter of determination of eligibility for admission;

c) That the very prescription contained in the Information Bulletin issued by CBSE, is contrary to the statutory prescription and the CBSE, which has no legislative competency, cannot dictate as to the eligibility criteria for admission to medical courses;

d) That under Section 3A of the A.P. Act 5/1983, which still holds the field, all the admissions to Unaided Private Medical Colleges, to the extent of one half of the total number of seats, can be filled up by the educational institutions;

e) That the direction issued by the Supreme Court on 11.05.2016 cannot be equated to the law laid down by the Supreme Court so as to have a binding effect;

f) That when the petitioners fulfill the eligibility criteria, viz., a pass in the intermediate/higher secondary examination with high marks and a pass in EAMCET as well as NEET, they cannot be disqualified merely on the basis of the instructions issued by the CBSE.

5. In addition to the aforesaid contentions of Mr. T. Lakshminarayana, learned counsel for the petitioners, it is submitted by Mr. P. Venugopal, learned Senior Counsel appearing for one of the Private Unaided Medical Colleges, that the Private Unaided Medical Colleges admitted students on the basis of G.O.Ms.No.39 and on the basis of their participation in NEET-2016 apart from the interim directions issued by this Court in several of the writ petitions. Therefore, his contention is that the private institutions were not at fault for admitting the writ petitioners. But now the university has rejected the approval of such admissions, throwing these colleges completely out of gear. Therefore, the learned counsel submitted that the colleges cannot be punished for something that they were not responsible for.

6. We have carefully considered the above submissions.

7. The 1st contention of the learned counsel for the petitioners revolves around G.O.Ms.No.39, dated 20.05.2015. The said Government Order was issued in exercise of the powers conferred by Section 3 and 15 of the A.P. Educational Institutions (Regulation of Admissions and prohibition of capitation fee) Act, 1983, hereinafter referred to as A.P. Act No.5/1983. By the said Government Order certain amendments were made to the Rules issued in 2007. Those rules are known as the A.P.

Unaided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007. Under paragraph-4 of the amended Rules, the managements of private institutions were permitted to fill up Category-C seats. Under the amended Rule 6 (C), issued under G.O.Ms.No.39, the Private Unaided Institutions were permitted to fill up the seats under Category-C, according to the merit list prepared by the colleges from the applicants.

8. Therefore, on the basis of G.O.Ms.No.39, it is contended by the learned counsel for the petitioners that the petitioners secured admission on the basis of the merit list allowed to be prepared by the Private Unaided Institutions and that once this is done, the Rules stand satisfied.

9. However, G.O.Ms.No.39 was superseded by G.O.Ms.No.129, Health, Medical and Family Welfare, dated 12.09.2016. This Government Order was also issued in exercise of the powers conferred by Sections 3 and 15 of A.P. Act No.5/1983. By this Government Order, the Rules issued under G.O.Ms.No.39 were superseded and several amendments were inserted.

10. Even according to the learned counsel for the petitioners, the amended Rules in G.O.Ms.No.129 require a candidate to secure a rank in NEET, so as to get admission even to Category-C seats. But his contention is that G.O.Ms.No.129 was issued after the process of admission for the current year has commenced, and that therefore, it was not open to the Government to change the rules of the game, after the game had started.

11. Except the submission that admission to medical courses itself has become a game, we do not agree with the said contention of the

learned counsel for the petitioners. The rules of the game were never changed after the game started. As a matter of fact, the direction issued by the Supreme Court to follow NEET, was dated 11.05.2016 when the game had not even been commenced. G.O.Ms.No.129, was actually in implementation of the direction issued by the Supreme Court. The last date for admission to medical courses for the current year was 30.09.2016. It was later extended up to 07.10.2016 then to 14.10.2016. G.O.Ms.No.129 was merely a reflection of the direction issued by the Supreme Court in Vignana Bharati Trust v. Union of India and others. This can be verified from the fact that the order of the Supreme Court is cited as the 10th reference under G.O.Ms.No.129. Hence the first contention that G.O.Ms.No.129 cannot hold the field, is liable to be rejected. As a matter of fact, it is not open to the petitioners to take such a contention at all. None of the petitioners challenged G.O.Ms.No.129. All the petitioners appeared for NEET-2016 without challenging the requirement of NEET-2016. Therefore, to say that NEET-2016 is not applicable, is contrary to the very participation of the petitioners in the game, subject to the very same Rule. Hence, the first contention requires to be rejected. Accordingly it is rejected.

12. The next contention revolves around the role of the CBSE. Drawing our attention to the Information Bulletin issued by the CBSE, it is contended by the learned counsel for the petitioners that the responsibility of the CBSE is limited to the conduct of the entrance test, declaration of results and providing all India rank to the counselling authorities/admitting institutions. Therefore, it is contended that CBSE has no jurisdiction to prescribe a minimum percentile under Chapter-6 of the admission process Bulletin issued by them.

13. It is true that in Chapter-1 of the Information Bulletin issued by the CBSE regarding NEET-II, they have stated that the responsibility of CBSE is limited to the conduct of the entrance test, declaration of results and providing all India rank between counselling authorities/admitting institutions. But nevertheless, the CBSE had made it clear in Chapter-6 of the very same Information Bulletin that unless a person acquires prescribed percentile in NEET, he would not be eligible for admission. The expression “declaration of results” appearing in Chapter-1, has to be construed to mean the prescription of the percentile for a pass. Therefore, the second contention is completely unfounded. It would be useful to extract the first paragraph of Chapter-6 of the Information Bulletin issued by the CBSE.

“1. 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.

14. If the petitioners had not secured the minimum marks prescribed as the percentile in the aforesaid Chapter-6 of the Information Bulletin, then the petitioners are not eligible for admission even to Category-C seats. The role of the CBSE is not merely to conduct examination but also to prescribe a pass percentage. The question of declaration of results would never arise unless a pass percentage is prescribed. Therefore, the contention that CBSE has no role to play is completely misconceived.

15. The third contention is about the legislative competency of CBSE. We do not know how such a contention is raised. CBSE was entrusted with the task of conducting NEET-2016. An agency entrusted

with the task of conducting an examination, especially a competitive examination, is certainly entitled to fix the pass percentage. The prescription of pass percentile or percentage is incidental to the job entrusted to them. Therefore, the third contention is also liable to be rejected.

16. The fourth contention revolves around Section 3A of the A.P. Act 5/1983. Section 3A relied upon by the learned counsel for the petitioner has already been struck down by a Full Bench of this Court *Kranti Sangram Parishad v. Sri N.J. Reddy*¹. Therefore, the said argument need not even be met.

16. The last argument of the learned counsel for the petitioners is that all these petitioners secured very high marks in intermediate examination and that they have also participated in EAMCET conducted by the State and NEET conducted by CBSE. Hence it is contended that it is not as though some unqualified candidates are seeking admission to professional courses, jeopardizing the public interest.

17. The above contention lacks merit. The very object of conducting a competitive examination in addition to the qualifying examination, is to ensure that the best students get admitted to professional courses. There were some States in the country, which opposed and which also oppose a common entrance test for admission to professional courses on the ground that the results of the intermediate/higher secondary courses themselves should be taken as the criteria for deciding merit. But such arguments have been rejected by some States like the States of Telangana and Andhra Pradesh which have resorted to the conduct of EAMCET. The argument has also been rejected

¹ (1992) 3 ALT 99

by the Hon'ble Supreme Court by making NEET-2016 mandatory for admission to medical courses. Therefore, the contention that the petitioners have secured high marks in the qualifying examination, does not hold good at all.

18. While dismissing the first of this batch of writ petitions, viz., W.P.No.34558 of 2016 filed by one Mr. Kondragunta Venkata Raghavendra, by order dated 03.11.2016, we had an occasion to point out that the petitioner therein, who secured very high marks in intermediate examination, performed so badly in NEET-2016. Paragraph-5 of our order dated 03.11.2016 passed in W.P.No.34558 of 2016 would expose the hollowness of the claim made by the learned counsel for the petitioners. Hence paragraph-5 is extracted as follows:

“As seen from the results of the National Eligibility Cum Entrance Test-2016 released by the Central Board of Secondary Education, the petitioner secured minus 9 (-9) marks out of a total of 180 in Physics, 6 marks out of 180 in Chemistry, 57 out of 360 in combined paper of Botany & Zoology, aggregating to 54 marks out of a total of 720 marks. As per the rules, the percentile score of the petitioner is calculated at 11.465312. The cut off marks for general category candidates is 145, for OBC candidates is 118 and for SC & ST is also 118.”

19. Therefore, we find no merits in these writ petitions.

20. It is regrettable that at the time of admission of the writ petitions, we were not apprised of the Information Bulletin of CBSE prescribing a minimum pass percentile. This resulted in some interim orders having been passed by us putting the colleges to some kind of hardship. But the fact that an interim order passed by this Court created some hardship to Private Unaided Medical Institutions cannot be a ground to go contrary to law and to direct the university to approve such admissions not made purely on the basis of merit. Therefore, these writ petitions lack merit and they are dismissed.

21. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

28th November, 2016
Js.

L.R. Copy to be marked



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Date: 28-11-2016

Js.