

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION Nos.26461 and 25091 of 2016

COMMON ORDER:

Since the issue in both the Writ Petitions is one and the same, with the consent of counsel for the parties, both the Writ Petitions are being disposed of by this common order.

In W.P.No.26461 of 2016, the petitioner seeks direction thereby directing respondent Nos.1 and 2 to fill the seats in D.M. (Neurology) in NIMSET-SS, in terms of the Presidential Order and G.O.P.No.646 dated 10.07.1979, by giving preference to higher fraction as per the fractional entitlement in proportion to the ratio fixed in the Presidential Order and to allot two seats in D.M. (Neurology) under local area reservation to the S.V.University.

In W.P.No.25091 of 2016, the petitioner seeks a mandamus declaring the action of respondents Nos.3 and 4 in issuing notification for NIMSET-SS for the academic year, 2016, without indicating the local area reservations, as indicated in the previous notifications, as illegal and arbitrary and contrary to the ratio which is required to be followed in terms of G.O.P.No.646 dated 10.07.1979.

The petitioner in W.P.No.26461 of 2016 seeks admission in Neurology, whereas the petitioner in W.P.No.25091 of 2016 seeks admission in Cardiology.

Pursuant to the notification issued by respondent Nos.3 and 4, petitioner in W.P.No.26461 of 2016 appeared for D.M. (Neurology), whereas the petitioner in W.P.No.25091 of 2016 appeared for D.M (Cardiology). Examination for both the streams was conducted on 26.06.2016 and the results were published on

11.07.2016. The petitioner in W.P.No.25091 of 2016 got equally highest marks, on par with one M.Sandeep, having secured 65 marks, who competed for D.M.Cardiology Super Speciality seat.

Learned counsel appearing on behalf of the petitioners submits that previously during the course of conducting NIMSET-SS Examination for Super Speciality PG courses, out of 8 seats, 3 seats were allocated to Andhra University (AU), 2 seats to Osmania University (OU) and 2 seats to Sri Venkateswara University (SVU); and 1 seat for non-reservation, non-local area candidate based on the Presidential Order and G.O.P.No.646 dated 10.07.1979.

Learned counsel further submits that in exercise of the powers conferred by clauses (1) and (2) of Article 371-D of the Constitution of India, the President has made, in respect of the State of Andhra Pradesh, the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974. This Presidential Order was published at pages 1383 to 1386 of the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) dated 01.07.1974. It had come into force on the same day. The order was republished in Andhra Pradesh Gazette, Extraordinary dated 03.07.1974 through G.O.P.No.646 dated 10.07.1979.

As per Annexure–IV, the procedure for implementation of reservation in favour of local candidates provided under the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, in respect of State-wide Universities and State-wide Educational Institutions (which are subject to the control of the State Government) is as under:

1. The number of available seats in the course of study shall first be computed by deducting from the total number of seats provided in

that course the number of seats reserved for candidates from outside the State.

2. If the number of available seats does not exceed 3 the provisions relating to reservation in favour of local candidates shall not apply to such course. Where, however, the number of available seats exceeds 3 further action should be taken in the manner set out in the following paragraph.
3. The number of seats reserved in the aggregate in favour of local candidates in relation to all the three University local areas, namely the Andhra University area, Osmania University area and Sri Venkateswara University area shall be determined; this number shall be 85% of the available seats, any fraction of a seat being counted as one, provided that there shall be atleast one unreserved seat.
4. The number of seats reserved in the aggregate in favour of local candidates of all the three University areas having been determined as provided under paragraph 3, the number of such reserved seats allocated in favour of the candidates of each of the three University areas shall then be determined. For this purpose the number of reserved seats shall be allocated amongst the local candidates of the Andhra University, Osmania University and Sri Venkateswara University local areas in the ratio of 42:36:22 respectively. While allocating the reserved seats, fractions of a seat shall be adjusted by counting the greatest fraction as one and if necessary also the greater of remaining fractions as another, and where the fraction to be so counted cannot be selected by reason of fractions being equal, the selection shall be by lot. There shall however be atleast one seat allocated for the local candidates in respect of each local area.

Learned counsel for the petitioners submits that the University of Osmania is aided by the State of Telangana and, therefore, the State has to abide by the terms of the Presidential Order in its letter and spirit. He further submits that 32nd amendment made to the Constitution of India during the year 1972 incorporating Article 371D to remove inequalities in the matter of education and employment in the State of Andhra Pradesh in view of historical background. Based on the amendment of Constitution of India, the Government of India issued Presidential Order 1974 viz., the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974.

Learned counsel for the petitioners submits that the government issued G.O.P.No.646 dated 10.07.1978, wherein local areas of State of Andhra Pradesh were defined for the purpose of admission into the educational institutions. The local areas of State-wide Universities are AU, OU and SVU. In the said Presidential Order, the local area seats were distributed in the ratio of 42:36:22 to AU, OU and SVU respectively. The number of seats reserved, in aggregate, in favour of local candidates, is in relation to three Universities; and this number shall be 85% of available seats, **any fraction of seats being counted as one**, provided that there shall be atleast one unreserved seat. The purpose of fixing the above ratio among the three areas is **to provide equitable opportunities for the people of different areas of the State based on the population of the said three areas.**

Nizam Institute of Medical Sciences (NIMS) is a State-wide University conducting various Speciality and Super-Specialty medical courses. NIMS is included in the schedule of Presidential Order, 1974, by issuing Gazette of India notification dated 11.12.1991. NIMS has been distributing the seats as per the Presidential Order in the said ratio prescribed. It is stated that the total seats available in D.M.(Cardiology) is 8 seats. According to Presidential Order, one seat is earmarked as unreserved seat and remaining 7 seats shall be distributed in the ratio of 42:36:22 for the local candidates of AU, OU and SVU respectively.

Learned counsel appearing on behalf of the petitioners submits that NIMS has categorically admitted in their counter affidavit that G.O.P.No.646 dated 10.07.1978 shall be complied with as per terms and conditions in its letter and spirit. However,

NIMS reserved 3 seats in favour of OU and 2 seats in favour of SVU in the year 2014-2015. The ground for allocating 3 seats to OU and 1 seat to SVU is that the fraction of 2.52 is more than the fraction of 1.54, which is contrary to allotment of seats for the past two years. Moreover, it is contrary to the Presidential Order and G.O.P.No.646 dated 10.07.1978.

He submits that the issue as to “how to count the fractions”, came up for consideration before this Court in **Dr.Batsala Harshavardhan v. Government of Andhra Pradesh**^[1], wherein this Court held that the greatest fraction to be counted as one (i.e. 0.52 to be counted as 1). Therefore, NIMS ought to have counted fraction 0.54 as 1 because the said fraction is bigger, and moreover, this issue has already been decided by this Court in the case noted supra and hence, the Writ Petitions may be allowed.

On the other hand, Sri Ramachandra Rao, learned Additional Advocate General for the State of Telangana, who appeared on behalf of respondent Nos.2 and 3, submits that Article 371D of the Constitution of India describes special provisions with respect to State of Andhra Pradesh for equitable opportunities and facilities for people belonging to different parts of the State in the matter of public employment. In the matter of education different provisions were made for various parts of the State. Clause 2(b) thereof specifies part or parts of the States which shall be regarded as local area. Sub-clause (iii) thereof reads as under:

- (iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

Clause 2(c) specifies the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made. Sub-clause (ii) reads as under:

- (ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order,

Learned Additional Advocate General further submits that Section 3 of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (vide item 2 of the Six-Point Formula) deals with application. It prescribes that the said order applies to admissions to every course of study provided by the Universities in the State and all other Educational Institutions which are subject to the control of the State Government, other than Primary and Secondary Schools, Correspondence Courses and Part-Time Courses of study for the benefit of employed persons.

Section 4 deals with land area which reads as under:

Land Area - Paragraph 3 of the said Order regarding the territories jurisdiction of the Andhra University, the Osmania University and Sri Venkateswara University (comprising the districts as amended recently as local area in relation to the Andhra University, the Osmania University and Sri Venkateswara University respectively and to all other Government controlled non-State-wide educational institutions which are situated in the respective local area of each of those Universities. Thus the State has been divided into three local areas as follows:

Local Area	D i s t r i c t s comprised therein	Applicable to
1). The Andhra University local area	Srikakulam, Visakhapatnam, East G o d a v a r i , West Godavari, Krishna, Guntur and Prakasam.	Admissions to the Andhra University and all other Government controlled non-State-wide educational institutions situated in that local area.
2). The Osmania University local area.	Adilabad, Hyderabad, Karimnagar, Khammam, Mahboobnagar, Medak, Nalgonda, Nizamabad and Warangal.	Admissions to the Osmania University and all other Government controlled non-State-wide educational institutions situated in that local area.

3). Sri Venkateswara University local area.	Anantapur, Cuddapah, Kurnool, Chittoor and Nellore.	Admissions to Sri Venkateswara University and all other Government controlled non-State-wide educational institutions situated in that local area.
---	---	--

Section 6 deals with Extent of Reservation. It reads as under:

Extent of Reservation: The Universities and educational institutions have been categorized as State-wide and non-State-wide. Provisions have been made in the said order for reservation to local candidates separately for these two categories. Paragraph 5 of the said order relates to reservation in non-State-wide Universities and educational institutions, while paragraph 6 of the said order relates to reservation in the State-wide Universities and State-wide educational institutions. Under the above paragraphs admissions to eighty-five percent of the seats in every course of study after excluding those reserved for candidates from outside the State. Thus by virtue of paragraph 5, 85% of the available seats in every course of study provided by the Andhra University and all other Government controlled non-State-wide educational institutions within the Andhra University area are reserved in favour of the local candidates in relation to that area. Similar will be the case in rest of the Osmania University and Sri Venkateswara University and other government controlled non-State-wide educational institutions situated in the respective local areas. By virtue of paragraph 6, 85% of the available seats in every course of study provided by State-wide Universities State-wide educational institutions shall be reserved in favour of, and allocated among, the local candidates in relation to the local areas in respect of the Andhra University, the Osmania University and Sri Venkateswara University, in the ratio of 42:36:22 (being the approximate ratio of population of these areas). The balance of 15% of the available seats in both State-wide and non-State-wide institutions are left unreserved.

Learned Additional Advocate General submits that AU, OU and SVU allotted seats in the ratio of 42:36:22 being the approximate ratio of population of these areas. He submits that the said ratio has to be maintained and the ratio has been decided on the basis of the population of the area. If the present Writ Petitions are allowed, it will be great injustice to OU having more

population than SVU and the ratio, as provided by the Presidential Order, shall be totally disturbed. The total seats are 50, and those seats have to be allotted in the ratio of 42:36:22. AU has 8 districts; OU has 10 districts; and SVU has 5 districts. The admission of seats is divided as per the ratio of population of the concerned area. Though fraction is taken into consideration, however, ratio has to be maintained and that cannot be disturbed. If it is disturbed, it will be contrary to the Presidential Order.

Learned Advocate General fairly conceded that, in the year 2014-15, OU and SVU has wrongly allotted two seats, whereas OU and SVU is to get seats in the ratio of 36 and 22 respectively. If 2 seats are given, the ratio of both the Universities will be disturbed. By that process, OU would get less and SVU would get more seats.

Learned Additional Advocate General has drawn the attention of this Court to G.O.P.No.646 dated 10.07.1978, wherein the President, in exercise of powers conferred by clauses (1) and (2) of Article 371-D of the Constitution of India, made Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974. Para 11 of the said G.O.P. reads as under:

As clarifications were being sought on the question as to who should be considered eligible to apply as candidates belonging to the State of Andhra Pradesh for the purpose of admission to courses of studies offered by the educational institutions, subject to the control of the State government, against the 15% of the available seats kept unreserved in terms of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 the Government after careful consideration have directed that the following categories of candidates may be treated as eligible to apply for admissions to educational institutions in the State, subject to the control of the State Government, as candidates belonging to the State of Andhra Pradesh against the 15% of the available seats left unreserved in terms of the Presidential Order:

- i) All local candidates defined in the Presidential Order;
- ii) Candidates who have resided in the State for a total period of ten

- years excluding periods of study outside the State; or either of whose parents have resided in the State for a total period of ten years excluding periods of employment outside the State;
- iii) Candidates who are children of parents who are in the employment of this State or Central Government, Public Sector Corporations, Local bodies, Universities and other similar quasi-Public Institutions within the State; and
 - iv) Candidates who are spouses of those in the employment of this State or Central government, Public Sector Corporations, Local Bodies, Universities and educational institutions recognized by the Government a University or other competent authority and similar other quasi-Government institutions within the State.

Annexure—IV of the said G.O.P. deals with the procedure for implementation of the reservation in favour of local candidates provided under the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 in respect of State-wide Universities and State-wide Educational Institutions (which are subject to control of the State Government).

Clause 4 thereof reads thus:

The number of seats reserved in the aggregate in favour of local candidates of all the three University areas having been determined as provided under paragraph 3, the number of such reserved seats allocated in favour of the candidates of each of the three University areas shall then be determined. For this purpose the number of reserved seats shall be allocated amongst the local candidates of the Andhra university, Osmania University and Sri Venkateswara University local areas in the ratio of 42 : 36 : 22 respectively. While allocating the reserved seats, fractions of a seat shall be adjusted by counting the greatest fraction as one and if necessary also the greater of remaining fractions as another, and where the fraction to be so counted cannot be selected by reason of fraction being equal, the selection shall be by lot. There shall however be atleast one seat allocated for the local candidates in respect of each local area.

Learned Additional Advocate General submits that, vide Annexure IV of G.O.P.No.646 dated 10.07.1978, it was clarified that counting greatest fraction as 'one' and if necessary also, the greater of remaining fractions as another. However, the ratio of 42:36:22 has to be maintained.

Learned counsel appearing on behalf of respondent Nos.4 and 5 submits that respondent No.4 appeared for NIMSET-SS 2016 in M.Ch.Urology and secured 4th rank in combined State and 2nd rank in OU. Whereas respondent No.5 appeared for NIMSET-SS 2016 in DM Neurology and secured 5th rank in combined State and 3rd rank in OU. He submits that in NIMS Super Speciality, various seats were allocated in the previous years in respect of DM Neurology, DM Cardiology and M.Ch.Urology. Respondent No.4 intended to pursue M.Ch.Urology for which 4 seats are available for the entire State; 2 seats for AU; 1 seat for OU; and 1 seat for SVU. Similarly, in respect of DM Neurology, 8 seats are available, out of which, 3 seats for AU; 2 seats for OU; 2 seats for SVU; and 1 seat for unreserved. The same arrangement is going on for the past more than three years. Even after bifurcation of the State of Andhra Pradesh, the same procedure is being continued by which respondent Nos.4 and 5, who are meritorious and deserving, are unable to secure Super Specialty Course seats even if they get 2nd and 3rd ranks respectively because of the application of highest fraction in terms of the Presidential Order.

Learned counsel for respondent Nos.4 and 5 submits that respondent No.5 appeared for DM Neurology, where 8 seats were available, out of which 1 seat is invariably kept for unreserved. The division of seats is according to the Presidential Order, 42:36:22 ratio for AU:OU:SVU would be 2.94 : 2.52 : 1.54 respectively. Considering the highest fraction, the NIMS is allocating 3 seats for AU; 2 seats for OU; 2 seats for SVU. But, if the same is considered for two years, AU will get 5.88 seats ($2.94 \times 2 = 5.88$); OU will get 5.04 seats ($2.52 \times 2 = 5.04$); and SVU will

get 3.08 seats ($1.54 \times 2 = 3.08$). Thus, actual seats AU, OU and SVU would be getting are 6, 4 and 4 respectively. For every alternative year, OU is losing 1 seat; SVU is gaining 1 seat, which is against the spirit and intent of the Presidential Order.

Learned counsel for respondent Nos.4 and 5 submits that there is overall loss of seats in OU region in NIMS. Every year 50 seats are available, out of which, 6 seats national wide, 2 seats unreserved and, out of remaining 42 seats, OU is getting only 12 seats with 28.57% as against 36% in terms of the Presidential Order. However, AU is getting 20 seats out of 42 seats and securing 47.6% against 42%. Whereas SVU is getting 10 seats out of 42 seats and securing 23.8 % as against 22%. Even if over all seats of Super Specialty is taken into consideration, OU is deprived of its legitimate share.

While concluding his arguments, learned counsel for respondent Nos.4 and 5 submits that, in G.O.P.No.646 dated 10.07.1978, local areas, of the State of Andhra Pradesh, was defined for the purpose of admission into the educational institutions. The local areas are AU, OU and SVU and the seats shall be distributed in the ratio of 42:36:22 respectively. The number of seats reserved, in aggregate, in favour of local candidates in relation to all the three Universities local areas, and this number would be 85% of available seats, and any fraction of seat being counted as one, provided that there shall be atleast one unreserved seat. The purpose of fixing the above ratio among the three areas is to provide equitable opportunities for the people of different areas of the State based on the population of three areas.

I heard learned counsel for the parties at length.

The issue for consideration before this Court is the Division of Seats according to Presidential Order noted above. As per the Presidential Order, seats were allocated for Andhra University (AU), Osmania University (OU) and Sri Venkateshwara University (SVU) in the ratio of 42%, 36%, 22%, respectively, and each of the aforesaid Universities will get seats in the ratio of 2.94, 2.52 and 1.54, respectively.

Learned counsel for the petitioners argued that the 2nd respondent has counted seats of OU as 3 against 2.52 seats, whereas against 1.54 seats for SVU, the 2nd respondent has counted only one seat. Learned counsel for the petitioner further argued that 0.52 fraction is lesser than 0.54 fraction and, therefore, the decision of respondent No.2 is arithmetically wrong and contrary to G.O.No.646, dated 10.07.1978.

I find force in the submission of the learned counsel for the petitioner to the extent that fraction 0.52 is lesser than fraction 0.54. If one of the two fractions is to be rounded off to '1', then 0.54 fraction will have precedence over 0.52 fraction. But the fact remains that as per G.O. No.646, dated 10.07.1978, the seats have been allotted in the ratio 42%, 36% and 22% for AU, OU and SVU, respectively, and accordingly the seats allocation was 2.94, 2.52 and 1.54, respectively.

The total seats available are 8 and the division of seats according to the Presidential Order would be: AU will get $2.94 \times 2 = 5.88$; OU will get $2.52 \times 2 = 5.04$ seats, and SVU will get $1.54 \times 2 = 3.08$ seats. But, actually the seats they are getting are 6, 4 and 4, respectively, for every alternate years. According to the aforesaid arrangement, for every alternate year, OU is losing one

seat and SVU is gaining one seat which is against the spirit and intent of the Presidential Order.

Considering the overall arrangement, the overall loss of seats in OU region in NIMS for every year 50 seats were available, out of which 6 seats nationwide, 2 seats unreserved, out of the remaining 42 seats, OU is getting only 12 seats with 28.57% as against 36% in terms of the Presidential Order. AU is getting 20 seats out of 42 seats and securing 47.6% against 42% as per the Presidential Order. SVU is getting 10 seats out of 42 seats and secured 23.8% as against 22% as envisaged in the Presidential Order. Accordingly, even if overall seats of Super Specialty are taken into consideration, OU is deprived of its legitimate share.

It is pertinent to note here that AU covers 8 districts, OU covers 10 districts and SVU covers 5 districts. As per the Presidential Order, the ratio of 42:36:22 was given for the purpose of providing equitable opportunities for the people of different areas of State based on the population of the said areas. Therefore, while issuing the Presidential Order, the population of the area was taken into consideration and accordingly the ratio of 42:36:22 was allocated for the aforesaid three Universities. The respondent No.2 institute is included in the Schedule of Presidential Order, 1974 by issuing Gazette of India Notification dated 11.12.1981.

It is an admitted fact that the 2nd respondent has not notified the seat matrix and merit list for academic year due to representations made by the Telangana Doctors Joint Action Committee regarding the injustice in getting the seats in Broad Speciality and Super Speciality Courses conducted by respondent

No.2. However, on examination of request of Telangana Doctors, it was noticed that SVU is getting more number of seats in the guise of greater fraction in allotment of seats. The total seats available in DM Cardiology is 8 seats. According to Presidential Order, one seat shall be put as unreserved seat and the remaining seven seats shall be distributed in the ratio 42:36:22 for the local candidates of AU area, OU area and SVU area. As per the Annexure 4 of G.O.P.No.646, dated 10.07.1978, the procedure for implementation of reservation to local candidates has been prescribed. Under para 4, it is stated that while allocating reserved seats in favour of local candidates, the fraction of seats will be counted as 'one' and if necessary also the greater of the remaining fraction as another; and where the fraction to be so counted cannot be selected by the reason of fractions being equal, the selection shall be by lot. The total seats available in DM Cardiology is 8 seats according to the Presidential Order, if there are more than six seats in a discipline/Super Specialty, one seat shall be allocated to non-local/undeserved and the remaining 7 seats shall be allocated amongst three areas. If the same is done, AU area will get 2.94, O.U. area will get 2.52 and SVU area will get 1.54. In all the three cases, if fraction 2.94 is rounded off, AU area will get 3 seats. The remaining major fraction is 2.52 of OU area, but not 1.54 of SVU area. The reason being the difference between OU and SVU area is 0.98, the major fraction shall be taken on the whole percentage i.e., for 2.52 and not 1.54.

Therefore, respondent No.2 institute would fix the seat matrix basing on the above analogy and the same would rightly fit into the Presidential Order and it would meet the aims and objectives sought to be achieved by the Presidential Order.

In case of Dr. Batsala Harsavardhan supra, the issue before

the Court was which institution will get how many seats. Accordingly, this Court held that NIMS has understood that 85% of the seats, being higher fraction than 15%, should be filled in first. In fact, it should have understood that against an unreserved seat, all the candidates, irrespective of the preferential treatment as a local candidate that they are entitled to otherwise, can also compete. All unreserved seats are liable to be filled in, strictly in accordance with the merit order. Therefore, they should be filled in first and thereafter, the reserved segment seats in favour of local candidates should be filled in, so that the most meritorious local candidates will also have a fair chance of getting selected against the 15% unreserved seats.

As argued by the learned counsel for the petitioner, the issue is not dealt in the aforesaid judgment by this Court. Therefore, the judgment is not applicable.

It is clearly stated that allocation of seats is to be done in the ratio of 42:36:22 being approximate ratio of population of these areas. Therefore, the intent of the Presidential Order was to give seats in the ratio mentioned above, but that ratio was keeping in view the population of the area concerned. It is not in dispute that AU region has 8 Districts, OU region has 10 Districts and SVU region has 5 districts. Therefore, the fraction 0.52 in the OU allocation cannot be counted lesser than 0.54 in the SVU allocation. If simply the fraction had to be considered, then certainly 0.54 would have been given the preference. But in the present case, the ratio of 42:36:22 has to be maintained.

However, if this Court accepts the submission of the learned counsel for the respondents then there would be no

meaning to the fraction 0.54 and SVU will be deprived of its legitimate share every year in the seats allocation. Therefore, this Court deems it appropriate to direct the respondents to consider, on rotation basis, by converting AU seat to OU (for every 3 years) in the branches having 4 seats, similarly in branches where 8 seats are available, 1 seat from SVU to OU for every alternate years. This arrangement would give equitable rights to all the Universities mentioned above and none of the universities would be deprived of their legitimate share of allocation. The aforesaid arrangement shall be made for subsequent years. Accordingly, for this year i.e., Academic Year 2016-17, OU will get 3 seats and SVU will get 1 seat.

With the above discussion and direction, the Writ Petitions are disposed of. No costs. Pending miscellaneous petitions, if any, shall stand closed.

(JUSTICE SURESH KUMAR KAIT)

10th August, 2016

USD/KSM

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

-
-
-
-
-
-
-
-
-
-

10th August, 2016

[1] 2014(4) ALD 81