

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION Nos. 10922 and 27903 of 2016

COMMON ORDER: (*Per VRS,J*)

Heard the learned counsel for the petitioners, learned Government Pleader for Medical, Health & Family Welfare (AP), Mr. Vivek Chandrasekhar S, learned standing counsel for the Medical Council of India, and Mr. Taddi Nageswara Rao, learned standing counsel for Dr. NTR University of Health Sciences.

2. The petitioners in both these writ petitions applied for admission to under graduate medical courses for the academic year 2015-2016 by appearing for EAMCET-2015. The petitioner in W.P.No.27903 of 2016 belongs to a community known as "Bentho Oriya Community", which is enlisted at Serial No.17 of the list of Scheduled Tribes in the State of Andhra Pradesh under the S.C. & S.T. Lists (Modification) Order, 1956.

3. But unfortunately, the combined State of Andhra Pradesh stopped issuing community certificates, on account of certain administrative hiccups, from the year 2009 onwards. Therefore, when the petitioner in W.P.No.27903 of 2016 came within the zone of consideration for allotment of a seat under category-A for admission to the medical courses for the academic year 2015-2016, under the quota reserved for Scheduled Tribes, she was allotted by the Convener

for Admissions to Konaseema Institute of Medical Sciences, which is an Unaided Non-Minority Private Educational Institution. According to the petitioner in W.P.No.27903 of 2016, she paid a total amount of Rs.21,500/- on 10.08.2015 under receipt No.AUVP219594003106 and approached the said private college next day.

4. But, according to the petitioner, the private college insisted upon her getting a community certificate, despite production of an interim order passed by this Court on 28.07.2015 in W.P.M.P.No.30179 of 2015 in W.P.No.26159 of 2014. By the said interim order, a learned Judge of this Court directed the Convener, EAMSET-2015, as well as Dr. NTR University of Health Sciences, to consider the case of the petitioner without insisting on submission of a community certificate.

5. Since Konamaseema Institute of Medical Sciences insisted upon the production of a community certificate, despite the interim order passed by this Court, the petitioner in W.P.No.27903 of 2016 filed a contempt petition in C.C.No.1938 of 2015 as against the Registrar of Dr. NTR University of Health Sciences. In the said contempt petition, a learned Judge passed an order on 26.06.2016, directing the respondents including the private college to permit the petitioner to attend the classes in M.B.B.S. course. It will be useful to extract Paragraphs-11, 12 and 13 of the order passed by the learned Judge, dated 26.06.2016, as follows:

“In the instant case also various correspondences and the letters placed on record clearly and unequivocally show that by any stretch of imagination the petitioner herein cannot be faulted and no fault is attributable to the petitioner. Therefore, the principle laid down in the above said judgment is clearly applicable to the present case also.

Pending the contempt case, C.A.No.445 of 2016 is also filed by the petitioner seeking a direction to the respondents 2 and 3 to permit the petitioner to attend the classes of the first year MBBS course for the year 2015-2016. It is further brought to the notice of this Court that pending the present Contempt Case the respondent college issued an office order bearing No.135/E3/15, dated 25.11.2015, conditionally admitting the petitioner into first year MBBS course for the academic year 2015-2016 while stating that the admission is subject to the approval by the Medical Council of India, New Delhi. In the affidavit filed in support of C.A.445 of 2016 it is stated that in pursuance of the letter dated 24.11.2015 the college issued the said proceedings No.135/E3/15, dated 25.11.2015 admitting the petitioner, but not permitting her to attend the classes though the petitioner paid fee of Rs.42,100/- by way of DD.No.647005 dated 25.11.2015 in the name of the second respondent and there is no counter filed opposing the same. This attitude on the part of the respondents 2 and 3 cannot be countenanced. Since the respondent college by virtue of office order bearing No. No.135/E3/15, dated 25.11.2015, conditionally admitted the petitioner in the college, this Court deems it appropriate to dispose of the main Contempt Case and the present interlocutory application C.A.No.445 of 2016 with a direction to the respondents to permit the petitioner to attend the classes.

For the aforesaid reasons, both Contempt Case and C.A.No.445 of 2016 stand disposed of, directing the respondents to permit the petitioner to attend the classes in MBBS Course. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.”

6. It is pertinent to note that the Principal/Dean and the Manager of Konaseema Institute of Medical Sciences were cited as respondents 2 and 3 in the contempt case and they also contested the contempt case by filing a counter affidavit. In other words, the direction issued by the learned Judge in the contempt petition, was actually in the presence of the private college before this Court. But, the private college did not take up the order passed in the contempt petition on

appeal, on any of the grounds that were available to them at that time. Therefore, as on date, the aforesaid order of the learned Judge, dated 26.06.2016, passed in C.C.No.1938 of 2015, has attained finality.

7. In the meantime, giving a new twist to the whole story, another candidate, by name, Kongara Yasasri, whose father is the petitioner in W.P.No.10922 of 2016, was granted admission by the private college, under 15% quota reserved for NRIs, by converting the category-A seat, allotted to the other petitioner, into a category-C seat. Therefore, in order to comply with the order passed in the contempt petition, Dr. NTR University of Health Sciences issued proceedings, dated 21.01.2016, directing the Principal of the private college to discharge Kongara Yasasri and to allow the petitioner in W.P.No.27903 of 2016 to continue the course of study. These proceedings were followed by another proceedings, dated 25.02.2016, issued by the Registrar of Dr. NTR University of Health Sciences, directing the college to comply with the order passed in the contempt petition. Finally, when another order, dated 05.03.2016, was passed by Dr. NTR University of Health Sciences, discharging Kongara Yasasri, that candidate's father came up with a writ petition in W.P.No.10922 of 2016.

8. In W.P.No.10922 of 2016, a learned Judge of this Court originally passed an interim order, directing the private college to continue to allow Kongara Yasasri to attend the classes.

By a subsequent order, she was also permitted to write the examinations.

9. Finding that the original order passed in her writ petition, the next order passed in the miscellaneous petition and the third order passed in the contempt petition, have all gone down the drain, the writ petitioner in W.P.No.27903 of 2016 filed the said writ petition seeking a writ of mandamus to declare the action of the respondents in not permitting her to pursue the course, contrary to the directions.

10. Since both these writ petitions are by candidates having a competing claim upon one seat, both were clubbed together and taken up for hearing.

11. Today, the position is that the petitioner in W.P.No.27903 of 2016 was validly allotted by the Convener for Admissions for admission to Konaseema Institute of Medical Sciences for the academic year 2015-2016 into a category-A seat, under the quota reserved for Scheduled Tribes. But, she has not been permitted to join the course and a period of one year has already elapsed. The interim direction passed by the learned Judge of this Court in W.P.M.P.No.30179 of 2015 in W.P.No.26159 of 2014, has remained only on paper. The order passed in the contempt petition, C.C.No.1938 of 2015, directing the private college and the University to permit the candidate to attend the classes has also not been implemented. The result is that despite securing admission validly for the academic year 2015-2016 and despite securing a series of orders

from this Court, the petitioner in W.P.No.27903 of 2016 has got attendance only in Court and not in classes. The latest order of Dr. NTR University of Health Sciences, dated 05.03.2016, directs the private college to discharge the other candidate and to allow this candidate to join the course. The other candidate is before this Court, on the ground that she was not aware of any of those happenings, and that she should not be penalized after having undergone one year of the course of study.

12. In the peculiar facts and circumstances of the case, there are three options open to this Court. The first option is to dismiss the writ petition in W.P.No.27903 of 2016, on the sole ground that it is now impossible to allow the petitioner therein to pursue the course of study, by gaining entry into the second year of M.B.B.S., when she has not virtually attended the classes in the first year. But, this option would mean dumping of (1) the allotment validly made to a category-A seat by the Convener for Admissions for the academic year 2015-2016, (2) an interim order passed by this Court in W.P.M.P.No.30179 of 2015 in W.P.No.26159 of 2014, and (3) an order passed by this Court in C.C.No.1938 of 2015. Such a consequence may not be in the interest of justice, especially when the petitioner in W.P.No.27903 of 2016 belonging to the Scheduled Tribes has been allotted for admission validly and she has also secured several orders. Therefore, the first option is not an option that will do justice.

13. The second option available to the Court is to grant the relief of compensation to the petitioner in W.P.No.27903 of 2016, instead of allowing her to continue the second year of the course of study, both at the cost of her own lack of attendance for the first year and at the cost of another candidate, who has already undergone one year of the course of study. We are conscious of the fact that in cases of this nature, where some candidates have been wrongfully denied admission, the Supreme Court has awarded compensation rather than granting a seat. But, the difficulty in this case is that the petitioner in W.P.No.27903 of 2016 has been waging a battle for the past three academic years to gain admission into M.B.B.S. course. She wrote EAMCET-2014 for the academic year 2014-2015 and did not become successful. She came out successful in EAMCET-2015 for the academic year 2015-2016 and gained admission to a category-A seat, but could not pursue the course of study, not due to any fault on her part but due to a system in which even court orders have been rendered fruitless. Now, we are in the academic year 2016-2017. Unless the petitioner reconciles herself to the destiny that she is not cut out for medicine course, the grant of monetary compensation, especially for a candidate belonging to the Scheduled Tribes, may not do complete justice. Therefore, the second option is also to be ruled out, in the facts and circumstances of the case.

14. The third option available to us is to direct the private college to admit the petitioner in W.P.No.27903 of 2016, to a category-C seat, for the academic year 2016-2017. By giving such a direction, the

number of seats that the private college will be entitled to fill up under the NRI quota for the current academic year, may get reduced by one seat. The college cannot take objection to such a course of action, in view of the fact that the findings recorded in C.C.No.1938 of 2015 against them, have attained finality. By directing the admission of the petitioner in W.P.No.27903 of 2016 into a category-C seat for the academic year 2016-2017, the daughter of the petitioner in W.P.No.10922 of 2016 will also not get affected. Therefore, the petitioners in both these cases as well as the private college, do not have any objection to this course of action being adopted.

15. But, the learned counsel for the Medical Council of India (MCI) has serious objections to the third option on two grounds, namely, (a) that it is not possible either to carry forward or to telescope any seat of a particular year into another year, and (b) that for admission to a category-C seat for the academic year 2016-2017, a candidate must have taken NEET-2016.

16. We have carefully considered the objections of the learned counsel for the MCI.

17. It is true that the Supreme Court has made it clear in *State of Madhya Pradesh Vs. Surendra Kori*¹ that carry forward principle is unknown to professional courses, and that the act of carrying forward one seat of a year to the next year will be at the expense of other meritorious candidates waiting for admission in the succeeding years.

¹ (2012) 10 SCC 155

It is also true that in *Satyabrata Sahoo Vs. State of Orissa*², the Supreme Court made it clear that it is not permissible to increase seats at the expense of candidates waiting for admission in the succeeding years.

18. But, in our considered view, the third option that we have explored does not tend to increase even a single seat. The daughter of the petitioner in W.P.No.10922 of 2016 was actually admitted not by increasing any one seat, but admitted as against the seat allotted to the petitioner in W.P.No.27903 of 2016. Therefore, the admission of the daughter of the petitioner in W.P.No.10922 of 2016 was not in excess of the annual permitted intake allotted for the college. Similarly, if we direct the private college to admit the petitioner in W.P.No.27903 of 2016 for the academic year 2016-2017, as against a category-C seat, the total number of seats that the private college can fill up for the current academic year under category-C, will go down by one seat. Once this is done, we will not be either carrying forward any vacancy from the previous year to this year, nor will we be increasing any seat for the current year at the expense of any meritorious candidate. This takes care of the first objection of the learned counsel for the MCI.

19. The more formidable objection from the learned counsel for the MCI relates to NEET-2016. It is true that the petitioner in W.P.No.27903 of 2016 has not taken NEET-2016. But, this petitioner is a candidate who now has a series of orders passed by a learned

² (2012) 8 SCC 203

Judge of this Court directing the University and the college to permit her to attend the classes and pursue the course of study. Even Dr. NTR University of Health Sciences has reconciled itself to these orders and issued a series of directions by their communications, dated 21.01.2016, 25.02.2016 and 05.03.2016, to the private college to permit this candidate to attend the classes. Therefore, the second objection of the learned counsel for the MCI, though on first principle is valid, cannot stand in the way of the petitioner getting admission at least for the current academic year.

20. As a matter of fact, the quota for NRIs was carved out by the Supreme Court, not necessarily for the benefit of the meritorious students. The object, as stated by the Supreme Court in a series of decisions where NRI quota was approved, was to vitalize the private colleges with some funds for the purpose of sustaining the infrastructure. Therefore, if the private college can reduce the total number of seats that they are entitled to fill up under the NRI quota for the current academic year and accommodate the petitioner, no prejudice will be caused to any meritorious candidate.

21. Therefore, we are of the considered view that in the given circumstances, the third option that we have discussed above, is the best available option, or at least the least detrimental option. Therefore, both these Writ Petitions are disposed of to the following effect:

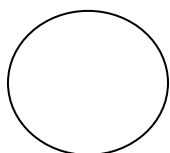
- (1) The petitioner in W.P.No.27903 of 2016 shall be granted admission by Konaseema Institute of Medical Sciences under category-C for admission to the first year of M.B.B.S. course for the academic year 2016-2017.
- (2) In the light of the above direction, the daughter of the petitioner in W.P.No.10922 of 2016 shall be allowed to continue her course of study.
- (3) It is also made clear that Konaseema Institute of Medical Sciences will collect only such fee from the petitioner in W.P.No.27903 of 2016, as she would have been liable to pay for a category-A seat, had she been allowed to join the course in the academic year 2015-16.

Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed.

V. RAMASUBRAMANIAN, J

ANIS, J.

23rd September, 2016
cbs



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