

*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON'BLE SMT JUSTICE ANIS

+WRIT PETITION Nos. 29716, 30106 & 30540 of 2016

% 21-09-2016

+WRIT PETITION No. 29716 of 2016

N. Sai Harishitha

.. Petitioner

Vs.

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

.. Respondents

+WRIT PETITION No. 30106 of 2016

Chalamani Sai Ravindra Reddy

.. Petitioner

Vs.

\$ The State of Andhra Pradesh, rep. by its
Principal Secretary to Government,
HM & FW Department,
A.P.Secretariat, Hyderabad and others

.. Respondents

+WRIT PETITION No. 30540 of 2016

Yellapu S. Venkata Chalapathi Rao and others

.. Petitioners

Vs.

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

.. Respondents

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+WRIT PETITION No. 29716 of 2016

! Counsel for petitioner : Mr. D.V. Nagarjuna Babu

^ Counsel for R.1 & R.4 : The Government Pleader for
Medical, Health & Family Welfare

^ Counsel for R.2,R.3 & R.5 : Mr. Taddi Nageswara Rao

? CASES REFERRED :

- 1) 1992 (3) ALT 99 (F.B.)
- 2) 1998 (2) ALD 460 (DB)
- 3) 2016 (2) SLR 1 SC



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION Nos. 29716, 30106 and 30540 of 2016

W.P.No.29716 of 2016

Between:

N. Sai Harishitha

.. Petitioner

Vs.

The State of Andhra Pradesh, rep. by its
Principal Secretary to Government,
Medical, Health and Family Welfare Department,
A.P.Secretariat, Hyderabad and others

.. Respondents

W.P.No.30106 of 2016

Between:

Chalamani Sai Ravindra Reddy

.. Petitioner

Vs.

The State of Andhra Pradesh, rep. by its
Principal Secretary to Government,
HM & FW Department,
A.P.Secretariat, Hyderabad and others

.. Respondents

W.P.No.30540 of 2016

Between:

Yellapu S. Venkata Chalapathi Rao and others

.. Petitioners

Vs.

The State of Andhra Pradesh, rep. by its
Principal Secretary to Government,
Medical, Health and Family Welfare Department,
A.P.Secretariat, Hyderabad and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 21-09-2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SMT JUSTICE ANIS

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION Nos. 29716, 30106 and 30540 of 2016

COMMON ORDER: (*Per VRS,J*)

While the relief sought in two of the present writ petitions is for a Mandamus to direct the Convener for Admissions into medical and dental courses in the State of Andhra Pradesh, to follow the reservation for local candidates, as stipulated in the Presidential Order, 1974 even for admissions to B-category seats, the prayer in one writ petition is to direct the respondents not to admit those who have not taken NEET-2016 into medical courses for the current academic year.

2. Heard Mr. D.V.Nagarjuna Babu and Mr. Janardhana Reddy Ponaka, learned counsel for the petitioners, learned Government Pleader for Medical, Health & Family Welfare for the State of Andhra Pradesh, Mr. Taddi Nageswara Rao, learned standing counsel appearing for Dr. NTR University of Health Sciences, and Mr. C.V.Mohan Reddy, learned senior counsel appearing for the Convener as well as the Association of Managements of Private Medical and Dental Colleges.

3. Insofar as W.P.No.30106 of 2016 is concerned, the same is capable of being disposed of without much debate. Therefore, we take it up first for disposal.

4. The main grievance of the petitioner in this writ petition is that without the State Government issuing a notification as per the consensual agreement between the State Government and the Association, the respondents have proceeded with the process of admission. His another grievance is that persons, who have either not participated in NEET-2016 or who have secured a lower rank in NEET-2016, have been selected for admission.

5. After finding that no notification was issued as per the consensual agreement, we directed by way of an interim order, the Association of Managements, to file a list of candidates, who have been selected for admission to B-category seats. A list was, accordingly, furnished, containing the names of the candidates, their roll numbers and the marks secured by them in NEET-2016. From the list so furnished, the learned counsel for the petitioner is unable to point out a single case, of any one, who has not taken NEET-2016 or who has secured a lower rank in NEET-2016, being included. Therefore, the second point raised in the writ petition falls to ground. Insofar as the first point is concerned, the issuance of a notification, in pursuance of the consensual agreement, is only procedural in nature.

In case no notification is issued up to 30th September, it is not as though all admissions would come to a grinding halt. Therefore, the first contention is not legally tenable and W.P.No.30106 of 2016 is liable to be dismissed.

6. The issue raised in the other two writ petitions is that the Association of Managements of Private Colleges is obliged to follow the Presidential Order, 1974 for admissions to B-category seats. In other words, the contention of the petitioners is that the Managements of Private Medical and Dental Colleges are entitled to admit students to B-category seats, only if two conditions are satisfied, namely, (a) that they have secured a good rank in NEET-2016, and (b) that they also satisfy the requirement of being a local candidate as per the Presidential Order. In simple terms, the contention of the petitioners is that no candidate, who does not belong either to the State of Andhra Pradesh or to the State of Telangana, as the case may be, can be admitted to B-category seats, merely on the basis of the ranks secured in NEET-2016. This, according to the petitioners, is the dictum of Article 371D of the Constitution, the Presidential Order, 1974 issued pursuant thereto, and the Rules framed thereafter.

7. We have carefully considered the above submissions.

8. It is true that by the 32nd amendment to the Constitution, Article 371D was inserted, enabling the President, to make with respect to the State of Andhra Pradesh, by order, certain special provisions to enable equal opportunities and facilities to be granted for the people belonging to different parts of the State, in the matter of public employment and in the matter of education. Since it is a special power conferred upon the President and also since the provisions of such a Presidential Order would have application, notwithstanding anything to the contrary contained in any other part of the Constitution, the provisions of the Order issued by the President have to be construed strictly and cannot be decided on the touchstone of Articles 14, 16, etc. of the Constitution.

9. In exercise of the powers conferred by Clauses 1 and 2 of Article 371D, the President issued an order known as "*the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974*". The said order came into force on the first day of July, 1974. The said order, hereinafter referred to as "*the Presidential Order, 1974*", made it mandatory for the non-State-wide Universities and educational institutions, to carve out 85% of the available seats in every course of study, to be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution. It is relevant to note that the Presidential

Order, 1974 divided the Universities and the educational institutions into two categories, namely, State-wide and non-State-wide categories. For the present, we are not concerned with the State-wide or non-State-wide educational institutions or Universities, as the present litigation concerns Unaided Private Minority or non-Minority educational institutions.

10. The relevant provision of the Presidential Order, 1974, that mandates the reservation of 85% of the seats for local candidates, reads as follows:

“5. Reservation in non-State-wide Universities and educational institutions:- (1) Admission to eighty-five percent of the available seats in every course of study provided by the Andhra University, the Nagarjuna university, the Osmania University, the Kakatiya university or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide Educational Institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.”

11. The institutions in question, according to the petitioners, come within the purview of the expression “any educational institution” appearing in Paragraph-5(1) of the Presidential Order extracted above. Therefore, the contention of the learned counsel for the petitioners is that if what these Managements are running, are educational institutions, such educational institutions would squarely fall within the ambit of Paragraph-5(1) of the Presidential order. If they so fall,

then they are obliged to reserve seats for local candidates, in accordance with the Presidential Order.

12. But unfortunately for the petitioners, the institutions run by the Managements of Private Medical and Dental Colleges would fall within Paragraph-5(1) of the Presidential Order, only if they satisfy two requirements, namely, (a) that these institutions should be educational institutions in the first instance and (b) that they should also be subject to the control of the State Government. Unless these two requirements are satisfied, the institutions run by these Managements will not be covered by Paragraph-5(1).

13. In support of their contention that these institutions are subject to the control of the State Government, the learned counsel for the petitioners relied upon the provisions of (1) the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, and (2) the Rules issued in exercise of the powers conferred by the said enactment.

14. The Andhra Pradesh Act 5 of 1983 was enacted by the State to provide for a regulation of admissions into educational institutions and to prohibit the collection of capitation fee in the State of Andhra Pradesh. As the very title of the Act goes and as seen from the preamble to the Act, the object of the Act was to curb the practice of

collecting capitation fee and also to provide for regulation of admissions into educational institutions. As a matter of fact, an amendment was introduced to Act 5 of 1983, under Act 12 of 1992, inserting Section 3A. Under Section 3A, it was made lawful for the Managements of any Unaided Private Medical and Engineering Colleges, to admit students into such colleges to the extent of one half of the total number of seats from among those who have qualified in the common entrance test or in the qualifying examination. But, this provision, namely, Section 3A, was struck down, by a Full Bench of this Court in *Kranthi Sangram Parishath, represented by its State Convener, Y.Shankar Vs. Sri N. Nanardhan Reddy, Chief Minister, Government of A.P., Hyderabad*¹, on the ground that Section 3A necessarily led to the consequence of collection of capitation fee by private educational institutions for granting admissions.

15. Interestingly, Section 3A inserted by amendment 12 of 1992, despite leaving 50% of the seats out of the purview of Act 5 of 1983, made the same, subject to the Rules made under the Presidential Order, 1974. As a consequence, the express provision contained in Section 3A that admission to 50% of the seats in these Unaided Educational Institutions will continue to be subject to the Rules made under the Presidential Order, 1974, has also gone.

¹ 1992 (3) ALT 99 (F.B.)

16. Section 15 of Act 5 of 1983 confers powers upon the State Government to frame Rules. In exercise of the powers conferred by the Act, the Government of Andhra Pradesh originally issued a set of Rules, under G.O.Ms.No.184, Health, Medical & Family Welfare (E1) Department, dated 30.06.2004. These Rules were amended from time to time. Eventually, a new set of Rules issued under G.O.Ms.No.136, Health, Medical and Family Welfare (E1) Department, dated 30.04.2007, replaced the old Rules. These Rules were called “*the Andhra Pradesh Unaided Non-Minority Professional Courses (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007*”. These Rules prescribed the procedure for allotment of seats to category-A, category-B, and category-C. It is needless to point out that category-A seats are those, which are to be filled up only through counseling by a Committee for admissions constituted by the competent authority. In the State, category-A seats are called in common parlance as “*convener quota seats*”. Category-B seats are those, which fall entirely within the purview of the Managements, subject, however, to a process of selection. The process of selection originally envisaged, after the decisions of the Supreme Court in ***T.M.A. Pai Foundation Vs. State of Karnataka and P.A. Inamdar Vs. State of Maharashtra (2005 (6) SCC 537)***, the conduct of a common entrance test by the Managements themselves. But, the same

was replaced under Rule 4 of the 2007 Rules, by a common entrance test to be conducted by the State, known by the acronym “EAMCET”.

17. Heavy reliance is placed by the learned counsel for the petitioners on the manner in which Rules 3 and 4 of the 2007 Rules are worded. Rule 3(a) reads as follows:

“Nationality and Domicile: The candidates should be Indian Nationals and should satisfy Local, Non-Local status requirement as laid down in the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974 as amended in G.O. (P) No.646, Education (W) Department, dated 10.07.1979.”

18. Rule 4 reads as follows:

*“**Allotment of seats:** The seats to be allotted in each Unaided Non-Minority Professional Institution under these rules, for admission of candidates shall be classified as:*

***Category – A Seats (50% of the sanctioned intake of the seats) - “Competent Authority Seats”:-** The seats shall be filled through counseling by the Committee for admissions constituted by the Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation.*

***Category – B (20% of the sanctioned intake of the seats) – “EAMCET ranking based Management seats”:-** The seats shall be filled through counseling by the Committee for Admissions constituted by the Competent Authority as per merit from the candidates who are qualified at the common entrance test, EAMCET held by the State for that year and following the rules of reservation as agreed to by the A.P.Private Medical and Dental Colleges Managements Association, Hyderabad.*

***Category – C (30% of the sanctioned intake of the seats) – “Managements Seats”:-** The seats shall be filled by the*

Managements of individual colleges or Committee of Managements in the order of merit based on the applications received following a transparent procedure as specified in these rules.”

19. It is true that under Rule 3(a), the candidates, who could be admitted into various courses, should be Indian Nationals and should satisfy local and non-local status, as required by the Presidential Order, 1974. But, as seen from Rule 4, the allotment of seats to category-B, which was originally contemplated to be made by a process of selection undertaken by the Association, was replaced by “EAMCET”. After conducting a common entrance test, the role of the State ceases.

20. Under Rule 5(ii), category-B seats are required to be filled up, by the Committee constituted by the Competent Authority, and that Committee should include a nominee of the Association of the Managements. Therefore, all these things are taken by the learned counsel for the petitioners as an indication that these Managements of Private Colleges are subject to the control of the State Government.

21. As a matter of fact, reliance is also placed upon the Rule 9 of the 2007 Rules relating to the reservation for various socially backward communities as well as for certain special categories. According to the petitioners, they are pointers to the fact that these Managements are subject to the control of the State Government,

making them amenable to Paragraph-5(1) of the Presidential Order. It appears that the 2007 Rules underwent an amendment under G.O.Ms.No.33, Health, Medical and Family Welfare (C1) Department, dated 17.04.2015. It was by such amendment that Rules 4 and 5 were modified and Rule 6B was inserted. While Rule 4, after amendment, made it mandatory for category-B seats to be filled up through counselling, by the Committee for admissions constituted by APMDCMA, Rule 6B contemplated three nominees, one each from the Government, the Association, and the University, to be included in the Committee for admissions. There was also one more amendment in the interregnum, under G.O.Ms.No.144, dated 15.07.2009. It was by this amendment that the word “MCET-AC” was replaced by the word “EAMCET”.

22. On the strength of Act 5 of 1983 as well as the 2007 Rules as amended from time to time, it is contended by the learned counsel for the petitioners that the Managements of Unaided Private Educational Institutions are subject to the control of the State Government, and that, therefore, Paragraph-5(1) of the Presidential Order would squarely apply.

23. But, all the above arguments lose sight of one important fact. A careful look at Paragraph-5(1) of the Presidential Order would show that what is contemplated therein is the control over the educational

institution. For the purpose of an easy appreciation, the relevant portion of 5(1) alone is reproduced once again as follows:

“by any educational institution (other than a State-wide University or a State-wide educational Institution) which is subject to the control of the State Government”.

Therefore, what is contemplated by Paragraph-5(1) of the Presidential Order is the control of the State Government over the educational institution. Neither Act 5 of 1983 nor any of the Rules issued thereunder contemplate the control of the State Government over the educational institution. The control over the process of admission of students to the courses, stands on a completely different footing from the control over the educational institution itself.

24. A strong reliance is placed upon the interpretation as given by a Division Bench of this Court in ***J.Sameena Vs. A.P.State Council for Higher Education and others***², to the expression “control” appearing in Paragraph-5(1). In Paragraph-12 of the said decision, a Division Bench of this Court held that the expression “control” is of very wide amplitude, and that it connotes superintendence authority to direct, restrict or regulate. Paragraph-12 of the said decision may be usefully extracted as follows:

“The expression ‘control’ is of very wide amplitude. It connotes superintendence, authority to direct, restrict or regulate. Power to give or refuse assent is a mode of control. Prohibiting doing a thing is also a mode of control. Power to regulate is a control which includes

² 1998 (2) ALD 460 (DB)

interference on the part of the authority with the decision of individual/body. The test of control is the right to exercise the control, not the exercise of it daily and in the ordinary routine. The word ‘control’ is so comprehensive to include every form of control, actual or legal, direct or indirect, negative or affirmative, check or counter-check, curb, hold in restraint, to govern, regulate and rule to have authority.”

25. But unfortunately for the petitioners, the above decision arose out of a dispute with regard to the distribution of seats in the ratio of 42:36:22 under Paragraph-6(1) of the Presidential Order, 1974. The said decision arose before the decision of the Supreme Court in ***P.A. Inamdar Vs. State of Maharashtra***. Therefore, we do not think that the said decision can be relied upon by the petitioners. As a matter of fact, in Paragraph-18 of the said decision, the Division Bench has formulated its opinion on several issues. One of the opinions rendered by the Division Bench was that admissions should be made, only in accordance with Paragraph-5(1) of the Presidential Order, by reserving 85% of the available seats in the respective local areas. This decision was obviously rendered, prior to the decision of the Supreme Court in ***P.A. Inamdar Vs. State of Maharashtra*** where the question of State control fell for consideration before the Supreme Court.

26. As we have pointed out earlier, the control that is contemplated under Paragraph-5(1) of the Presidential Order is the control over the educational institution and not a mere control over the admission

process. If it is clear that the State has a control only over the process of admission, it would follow as a corollary that Paragraph-5(1) of the Presidential Order would have no application. We also have to point out that the word “*control*” itself is a misnomer in such cases. It is only by a Court made law that the State Governments were directed by the Supreme Court to regulate the process of admission of students into professional courses by private unaided institutions. All the statutory enactments as well as the Rules issued by the State Governments are actually regulatory in nature and the same is done by the State Governments, by virtue of the directions of the Supreme Court to regulate its procedure. Once this is clear, there can be no second opinion about the fact that the State Governments do not have any control over the educational institution, except to the extent of regulating the process of admission. As a consequence, Paragraph-5(1) of the Presidential Order reserving 85% of the seats for local candidates, will have no application for admission to the professional courses.

27. Two more important aspects to be taken note of are (1) that the original requirement of any institution securing an essentiality certificate from the State Government is now gone, and (2) that the very object of the Supreme Court directing the conduct of NEET, is to ensure that a merit based process of selection is to be in place. As a

matter of fact, a question arose in *Dr. Sandeep and others Vs. Union of India and others*³ as to whether admission to super speciality courses in medicine could be restricted in certain States, such as, Andhra Pradesh, Telangana and Jammu & Kashmir, to the local students. The Supreme Court held that the undivided State of Andhra Pradesh enjoyed a special privilege under Article 371D and the Presidential Order, and that, therefore, the application of the domicile test in respect of 15% of the quota made for non-local candidates, cannot be said to be illegal.

28. The reverse of the logic applied in *Dr. Sandeep* is what we are now concerned with. The Supreme Court was not concerned in *Dr. Sandeep*, with the interpretation to the expression “*control of the State Government*” appearing in Paragraph-5.

29. It will be interesting to note that on the question as to whether the State Governments exercise control over these institutions, we directed the learned Government Pleaders of both the States to get instructions. Insofar as the State of Andhra Pradesh is concerned, the Principal Secretary to the Government, Health, Medical & Family Welfare Department, has stated in his communication, dated 20.09.2016, that the Presidential Order has no application for admission to B-category seats in Unaided non-Minority Private

³ 2016 (2) SLR 1 SC

Medical and Dental Colleges in the State of Andhra Pradesh. The same opinion has been communicated by the Principal Secretary to the Government of the State of Telangana also. In other words, the State Governments themselves have conceded before us that the power to regulate admission of students into these colleges, cannot be construed as power of control conferred upon a State Government over these institutions. Once this is clear, the questions raised in these writ petitions have to be naturally answered against the writ petitioners. Therefore, we hold that the reservation for local candidates, as contemplated under Paragraph-5(1) of the Presidential Order, 1974, would have no application for admission of students to category-B seats in Unaided non-Minority Private Medical and Dental Colleges. However, the Managements of these Private Unaided institutions are supposed to admit students, only on the basis of their performance in NEET-2016, insofar as category-B seats are concerned.

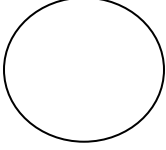
30. All the Writ Petitions are, accordingly, dismissed. Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

21st September, 2016

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