

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

WRIT PETITION No.34558 of 2016

Between:

Mr. Kondragunta Venkata Raghvendra

PETITIONER

And

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

RESPONSENTS



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

The petitioner came up with the above writ petition seeking a declaration that the National Eligibility Cum Entrance Test Rules are not applicable for admission to Category-C seats in under graduate medical courses, which relates to the N.R.I quota in private medical colleges.

2. At the time when the writ petition came up for admission, the learned counsel for the petitioner submitted that the petitioner nevertheless appeared for NEET-2016 and secured a rank. On the basis of the said statement we passed an interim order on 13.10.2016 to the following effect.

“Notice before admission returnable in three weeks.
Post along with W.P.No.30608 of 2016.

Pending further orders, the respondents shall consider the case of the petitioner for admission under the N.R.I. quota, as per the rank he secured in NEET-2016 conducted in pursuance of the directions issued by the Supreme Court on 24.05.2016. Provided that the petitioner should have obtained at least 50% marks, taken together in Physics, Chemistry, Biology/Bio-technology, in the Intermediate qualifying examination.

The above order is subject to the availability of seats in the N.R.I quota. If seats have already been filled up, the respondents cannot create any additional seat.”

3. After receipt of notice, the University has come up with a stand that the admission of the petitioner under N.R.I. quota cannot be approved in view of the fact that the petitioner, who appeared for NEET-2016 did not qualify with the required cut off percentile. Therefore, the writ petition was taken up for hearing today.

4. We have heard Mr. T. Lakshminarayana, learned counsel for the petitioner. Mr. Taddi Nageswara Rao, learned counsel for respondent No.3 and Mr. A. Prabhakar Rao, learned counsel for respondent No.4.

5. 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.

6. The contention of Mr. T. Lakshminarayana, learned counsel for the petitioner is that insofar as the admission to Medical courses in Telangana and Andhra Pradesh is concerned, the same is governed by G.O.Ms.No.39 Health Medical and Family Welfare, dated 20.05.2015 and that therefore the subsequent order in G.O.Ms.No.129, dated 12.09.2016 should not be applied. But the said contention is to be rejected in view of the directions already issued by the Supreme Court, by order dated 11.05.2016, in Vigyan Bharati Trust v. Union of India and Ors., clarifying that even for admission of students under N.R.I quota, the students should have passed NEET examination for the academic year 2016-2017. As a matter of fact, the petitioner has also appeared for NEET. Therefore, the main prayer made by the petitioner to direct the respondents not to insist upon NEET-2016 for admission to Category-C seats, cannot survive in the light of the directions issued by the Supreme Court.

7. The next contention of the learned counsel for the petitioner is that what is stipulated by the Information Bulletin issued by the CBSE is that all candidates are required to appear for NEET and that since it happens to be a competitive examination there is no question of pass or fail in the said examination. Drawing our attention to Chapter-6 of Information Bulletin, it is contended by the learned counsel that what is stipulated is a result calculated as a percentile and not as a percentage.

8. But Chapter 6 of the Information Bulletin issued by CBSE, for admission to a medical course, may not really be of any help to the petitioner. The eligibility criteria indicated in Chapter-6 of the Information Bulletin reads as follows.

“Merit List and Qualifying Criteria:

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.

9. Admittedly, the percentile score that the petitioner could get was far below the minimum percentile prescribed by CBSE.

10. The contention that there is nothing like pass or fail in a competitive examination is wholly unacceptable. If such a contention is accepted, it is enough for a person to merely appear for NEET, mark his attendance and come out claiming that in any case some rank is assigned to him. We cannot accept such a contention especially for admission to medical courses. Therefore, the writ petition is devoid of merits. The action of the respondents in refusing to approve the admission cannot be

said to be illegal. On the contrary it is in tune with the criteria fixed by the Information Bulletin of CBSE.

11. Hence, the writ petition is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

3rd November, 2016
Js.



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

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Date: 03-11-2016

Js.