

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.35051 of 2016

Between:

Ahila Chippa

PETITIONER

And

1. NTR University of Health Sciences, Vijayawada, rep. by its Registrar, and others.

RESPONSENTS



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

Aggrieved by the action of the 3rd respondent-college in not permitting her to continue her studies in the 1st year of the MBBS course during the academic year 2016-2017, the petitioner has come up with the present writ petition.

2. Heard Mr. S. Sriram, learned counsel for the petitioner, Mr. Taddi Nageswara Rao, learned counsel for the 1st respondent, Mr. Srinivasa Rao Pachwa, learned counsel appearing for the 2nd respondent, Mr. L. Ravichander learned Senior Counsel appearing on behalf of Mr. Balaji Medamalli, learned counsel for the 3rd respondent, Mr. Vivek Chandrasekhar, learned counsel for the 4th respondent and Mr. Parsa Ananta Nageswara Rao, learned counsel appearing for the students.

3. The petitioner appeared in NEET-2016 and secured an All India Rank of 82658 with OBC category Rank of 32079. In the counselling held on 03.09.2016, the petitioner was allotted to the 3rd respondent-college for a seat under Category-B. It appears that the petitioner paid a sum of Rs.67,500/- towards other fees, a sum of Rs.11,55,000/- towards tuition fees and Rs.25,000/- towards university fees. The petitioner was directed to report to the 3rd respondent-college on or before 13.09.2016. According to the petitioner she did so.

4. The fact that the petitioner submitted all original certificates and also paid the aforesaid sums of money, are not in dispute. According to the 3rd respondent-college, all the amounts other than the sum of Rs.67,500/- were paid only to the 2nd respondent (Convener of

Admissions). But it is needless to point out that insofar as Category-B seats are concerned, the payment towards tuition fee is always made to the Convener and it is the responsibility of the Convener to pass on the amount to the 3rd respondent-college. Hopefully and without any dispute the 2nd respondent has passed on the amount to the 3rd respondent-college.

5. It appears that a second counselling for Category-B seats in the State of Telangana commenced on 23.09.2016. Out of a desire to join a college, which the petitioner thought to be a better college than the 3rd respondent-college, the petitioner appears to have gone for counselling on 23.09.2016 and she was allotted a seat in a college known as Malla Reddy Institute of Medical Sciences, Suraram. But for reasons, which we could not decipher, the petitioner did not join the said college.

6. In the meantime, on the ground that the petitioner wanted to go out of their college, the 3rd respondent notified the vacancy and admitted yet another student. Therefore, when the petitioner came back, the 3rd respondent refused to permit her to continue. Hence, the petitioner is before us.

7. At the out set, it should be pointed out that today the petitioner is not treated by the 3rd respondent as a student of their college and they claim that her seat has been allotted to another candidate. The petitioner did not join Malla Reddy Institute of Medical Sciences, Suraram. The result is that the petitioner is out of the course for the current academic year 2016-17. A meritorious student, had to waste one academic year in the prime of her youth, for whatever reason.

8. Since the cut off date stipulated by the Supreme Court has already gone, it is not possible for this Court to direct the respondents to

accommodate the petitioner. One more difficulty is that without throwing out another candidate to whom the petitioner's seat has been allotted, the petitioner cannot also be accommodated. Therefore, the question of directing the respondents to take her back, at this distance of time may not be feasible, in the light of the fact that the interest of another candidate may be in jeopardy and also in the light of the fact that the cut off date for admission was over before a long period of time.

9. The issue, therefore, that is left for our consideration is as to whether the petitioner is entitled to any other relief. Admittedly, the amounts of Rs.11,55,000/- and Rs.67,500/- paid by the petitioner are lying with the 3rd respondent. So far they have not refunded the same. Even the certificates have not been returned by the 3rd respondent to the petitioner.

10. If the petitioner is wholly responsible for the state of affairs that had fallen upon her, she cannot get any relief except the return of the certificates and the refund of the above amounts. But if the 3rd respondent is also at fault then the 3rd respondent cannot be allowed to go scot-free. Therefore, it is to be found out whether there was any mistake on the part of the 3rd respondent.

11. The case of the petitioner is that though she appeared for counselling for Category-B seats in the State of Telangana on 23.09.2016, she never withdrew her admission into the 3rd respondent-college and that therefore, the action of the 3rd respondent-college in canceling her admission, was illegal. But the contention of the 3rd respondent-college is that the petitioner's father informed the Principal of the college orally on 13.09.2016 that she was quitting and that therefore the seat allotted to her was notified on 26.09.2016. The further contention of the 3rd

respondent-college is that even the order of admission dated 03.09.2016 indicate that the classes had already commenced, and that there was no justification on the part of the petitioner in not attending the college from the date of payment of fees.

12. We have carefully considered the rival contentions. There is no dispute about the fact that the petitioner took a chance by participating in the counselling held on 23.09.2016 in the State of Telangana. But the question as to whether the participation of the petitioner in the counselling on 23.09.2016 alone was sufficient to have her admission cancelled in the 3rd respondent college, is of significance.

13. If we have a close look at the detailed procedure for counselling and admission of students to professional courses followed in these States, it will be clear that normally the counselling is held in successive phases without a huge interval of time in between two stages of counselling. This year, the counselling for admission to Category-A seats was held online. Therefore the system was developed by the university in such a manner that the moment a candidate pressed an option online, in the second phase of counselling, the allotment made in the first round of counselling automatically got cancelled. It is only in such cases that there can be an automatic cancellation of an allotment or admission made in the first round of counselling.

14. In the case on hand, there has been a huge time gap between 03.09.2016 when the petitioner was admitted to the 3rd respondent-college and 23.09.2016 when she participated in counselling in Telangana. Two things which stand against the 3rd respondent are (1) that there is no proof to show that the petitioner's father informed the Principal of the 3rd respondent-college orally about the petitioner's participation in the second

counselling; and (2) that in any case, the 3rd respondent did not make any effort to refund the amount of more than rupees twelve lakhs paid by the petitioner, along with an intimation that her admission got cancelled and the seat was allotted to another person.

15. The cancellation of allotment made to a candidate in a particular counselling, stands on a different footing from the cancellation of admission and the discharge of a candidate from college. In the case on hand, the petitioner had paid the entire amount of Rs.11,55,000/- to the 2nd respondent on 03.09.2016 itself. In other words, the admission was taken and whatever was expected of the student had been done by the student, by paying all the 3 amounts and also depositing the original certificates. Once a valid admission has been given to a student, the question of cancellation of admission may not arise unless the candidate is discharged from the curriculum. That has not happened in the case on hand. Therefore, we are of the considered view that though the initial fault was on the part of the petitioner in opting for greener pastures, the mistake committed by the 3rd respondent was grater in nature, depriving the student of one full year in the prime of her youth from educational avenues.

16. Today the 3rd respondent-college has not suffered any disadvantage. They have allotted the seat to another candidate. They have also retained the amount of Rs.11,55,000/- paid by the petitioner. According to the learned counsel for the 3rd respondent, the petitioner never asked for refund and that they are always prepared to refund. But this is hardly a justification. Once the seat given to a candidate is cancelled and the seat is allotted to another candidate, the college should not wait for the candidate to ask for refund. The certificates as well as the

amount belonging to the student should have been returned to the student without waiting for the student to ask for it.

17. In view of the above, we are of the considered opinion that the petitioner should be compensated at least nominally by the 3rd respondent, since the petitioner has now been made to waste one year of academic curriculum. Hence the writ petition is disposed of to the following effect.

a) The 3rd respondent shall, within two weeks on receipt of a copy of this order, refund to the petitioner the amount of Rs.11,55,000/- + Rs.67,500/-.

b) The 3rd respondent shall also return all the original certificates of the petitioner that are now lying with them. If any of the certificates are lying with the second respondent, the same shall also be sent to the petitioner within two weeks.

c) The 3rd respondent shall pay to the petitioner by way of compensation, a sum of Rs.2,00,000/-. If the petitioner's father goes to the college, he shall be handed over the certificates as well as the money.

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

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

1st February, 2017
Js.

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AND
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Date: 01-02-2017

Js.