

***THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

+ Writ Petition Nos.30291, 32814, 33775 and 33890 of 2016

% 20-06-2017

W.P.No.30291 of 2016

Between:

Kum. B. Mukthi Madhurya Stephen

.... Petitioner

AND

State of Andhra Pradesh, represented by its
Principal Secretary, Health, Medical and Family
Welfare, Secretariat, Hyderabad and 2 others

.... Respondents

! Counsel for petitioner: Sri A. Satyaprasad, learned senior counsel

^ Counsel for respondent: G.P. for Medical and Health,

Taddi Nageswara Rao, standing counsel for
the University

< Gist:

> Head Note:

? Cases referred:

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Delivered on: 20-06-2017

Coram:

**The Honourable Sri Justice V.RAMASUBRAMANIAN
and
The Honourable Sri Justice N. BALAYOGI**

Writ Petition Nos.30291, 32814, 33775 and 33890 of 2016

W.P.No.30291 of 2016

Between:

Kum. B. Mukthi Madhurya Stephen

.... Petitioner

AND

State of Andhra Pradesh, represented by its
Principal Secretary, Health, Medical and Family
Welfare, Secretariat, Hyderabad and 2 others

.... Respondents

W.P.No.32814 of 2016

Between:

Nookala Sai Aparna and 4 others

.... Petitioners

AND

State of Andhra Pradesh, represented by its
Principal Secretary, Health, Medical and Family
Welfare, Secretariat, Hyderabad and 2 others

.... Respondents

W.P.No.33775 of 2016

Between:

P. Rashmi Goud, D/o P. Satyanarayana Goud,

.... Petitioner

AND

State of Andhra Pradesh, represented by its
Principal Secretary, Health, Medical and Family
Welfare, Secretariat, Hyderabad and 2 others

.... Respondents

W.P.No.33890 of 2016

Between:

Viyyapu Appala Jyothi

.... Petitioner

AND

State of Andhra Pradesh, represented by its
Principal Secretary, Health, Medical and Family
Welfare, Secretariat, Hyderabad and 2 others

.... Respondents

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N. BALAYOGI

Writ Petition Nos.30291, 32814, 33775 and 33890 of 2016

COMMON ORDER: (V. Ramasubramanian, J)

The petitioners, who applied for admission to Undergraduate Medical Courses for the Academic Year 2016-2017, came up with the above writ petitions seeking mandamus to direct the respondents to strictly implement G.O.Ms.No.109, Health, Medical and Family Welfare (C1) Department, dated 18-08-2016, by duly giving priority to the holders of different categories of certificates of NCC attained prior to appearing in the qualifying examination viz., EAMCET.

2. Heard Mr. A. Satyaprasad, learned senior counsel appearing for the petitioners.

3. A brief history as to how the dispute on hand arose, may be necessary for understanding the reliefs sought at the time when the petitioners came up with the above writ petitions and the reliefs now sought.

4. The Government of Telangana by order in G.O.Ms.No.75, Health, Medical & Family Welfare Department dated 08-09-2015 fixed priorities to be adopted, for admission to MBBS and BDS Courses as against 1% quota reserved for NCC. The Government of Andhra Pradesh also issued a similar Government Order in

G.O.Ms.No.111 Health, Medical & Family Welfare (C1) Department, dated 03-09-2015.

5. By a judgment rendered on 13-07-2016 in a batch of cases in W.P.No.26478 of 2015 and batch, G.O.Ms.No.111, dated 03-09-2015 was struck down by this Court. Therefore, the Government of Andhra Pradesh issued a fresh order in G.O.Ms.No.109 Health, Medical and Family Welfare (C1) Department, dated 18-08-2016 fixing the priorities.

6. In Note-I contained in the Government Order issued by the State of Telangana and in the Government Order issued by the State of Andhra Pradesh, it was stated that the priorities will be accorded to different categories of certificates obtained by NCC candidates, prior to appearing in the qualifying examination, viz., "EAMCET/CET".

7. A writ petition was filed in W.P.No.26163 of 2016 challenging the said Note on the ground that the expression "qualifying examination" would mean only the Intermediate or equivalent examination and that EAMCET/CET can only be termed as a competitive examination.

8. When rival claims were made in different writ petitions, one in support of the contentions that qualifying examination would only mean a pass in the higher secondary examination and the other contending that the expression "qualifying examination" would mean EAMCET/CET, all of them were grouped together and interim order was passed on 30-09-2016 by this Court in a batch of cases in

W.P.No.30291, 30335, 26163, 33890, 32805 and 33775 of 2016.

We held by the said interim order that the expression “qualifying examination”, appearing in Note-I of G.O.Ms.No.75, dated 08-09-2015 of the State of Telangana and G.O.Ms.No.109, dated 18-08-2016 of the State of Andhra Pradesh should be construed only to mean, a pass in the Intermediate or equivalent examination and not EAMCET/CET.

9. As against the order passed in W.P.No.32805 of 2016, which formed part of the aforesaid batch, an appeal has been filed in S.L.P. (Civil) No.29792 of 2016, which later got converted as Civil Appeal No.5400 of 2017.

10. It appears that a bunch of interim orders were passed by the Supreme Court, on 15-12-2016 and on 10-01-2017, after which the appeal C.A.No.5400 of 2017 was taken up for final disposal by the Supreme Court. By a judgment dated 18-04-2017, the Supreme Court disposed of the civil appeal, with a direction to the respondents-State to admit the appellants before the Supreme Court under the NCC category for the Academic Year 2017-2018.

11. Therefore, in the light of the disposal given by the Supreme Court to the appeal arising out of the common order, the learned senior counsel for the petitioners' states that the petitioners in the present writ petitions are also entitled to similar benefit, as granted to the appellants by the Supreme Court. In other words, the learned senior counsel seeks a direction to the respondents to admit the petitioners for the current Academic Year i.e. 2017-2018, under

the quota for NCC candidates, on the basis of the judgment of the Supreme Court.

12. We have carefully considered the order of the Supreme Court. The operative portion of the order of the Supreme Court, reads as follows:

“.....As there was confusion at the time the Government Order was in vogue we are inclined to direct the present appellants shall be admitted in the academic years 2017-2018 in the NCC category and for the said year the quote shall stand lessened by the said number. The principle of *ex-debito justitiae* has to be made applicable and hence, we so direct. We have passed the present order to meet the situation that has been created by the High Court. In view of our order the writ petition pending before the High Court shall be deemed to have been disposed of. Whatever we have said is only meant for the purpose of the present controversy and has nothing to do with the conducting of the examination or any weightage granted....”

13. What the Supreme Court had done in the appeal is to direct the respondents to admit the students as against the quota available for NCC candidates for the current academic year, though the petitioners had applied for the previous academic year. Such a direction, in our considered view, can be granted only by the Supreme Court, in exercise of the power available under Article 142 of the Constitution of India. The Supreme Court has cautioned that the High Court cannot issue a direction to admit the students to professional courses in the next academic year, even if the respondents were on the wrong in not granting admission for one academic year.

14. Since the power available to the Supreme Court is not available to this Court, it is not possible for this Court to grant a

direction of the nature granted by the Supreme Court. Hence, all the writ petitions are dismissed. There will be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

Date: 20-06-2017

Ksn

