

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No. 26253 OF 2017

ORDER: (*Per VRS,J*)

The petitioners who belong to the Muslim minority communities and who aspired to get into the medical courses during the current academic year 2017-2018, have come up with the above writ petition challenging an Government order in G.O.Ms.No.115, Health Medical & Family Welfare (C1) Department, dated 05.07.2017, by which the proportion of seats made available for the Government, called the convenor quota, got reduced from 60% to 50% and the seats available under the management quota got proportionately increased.

2. Heard Ms. B.Rachna Reddy, learned counsel for the petitioners, the learned Government Pleader for Medial and Health (Telangana) appearing for respondents 1 and 2, Mr. A.Prabhakar Rao, learned counsel appearing for the third respondent and Mr. P.Pandu Ranga Reddy, learned counsel appearing for the fourth respondent which is a private minority institution offering medical courses.

3. Till the academic year 2016-2017, the ratio of allotment of seats for the convenor quota, the management quota and the NRI quota remained at 60%, 25% and 15% respectively, as could be seen from G.O.Ms.No.130, Health Medical & Family Welfare (C1) Department,

dated 12.09.2016. But for the academic year 2017-2018, the Government of Telangana issued an order in G.O.Ms.No.115, dated 05.07.2017, reducing the seats available under the convenor quota to 50% and increasing the seats available under the management quota to 35%, but retaining the NRI quota at 15%.

4. Contending that the reduction in the number of seats available under the convenor quota which is called in the States of Telangana and Andhra Pradesh as Category A seats, caused a serious dent in the opportunities available for poor minority students to join in medical colleges, the petitioners who belong to the Muslim minority community, came up with the above writ petition.

5. On 07.08.2017, when the writ petition came up for orders as to admission, we took a note of the situation previously till academic year 2016-2017. We also took note of the fact that the total fee payable by a student admitted under Category A was Rs.50,000/- per year while the fee payable by a student admitted under the management quota (Category B) was Rs.14.00 lakhs per year and the fee payable by a student admitted under the NRI quota (Category C) was Rs.28.00 lakhs per year. Therefore, we passed an interim order on 07.08.2017, directing the respondents not to alter the ratio to the disadvantage of the marginalized sections of the minority communities.

6. The writ petition again came up on 24.08.2017. On the said date, it was pointed out that the process of admission was already half a through and that as a consequence only 14 seats were left in the fourth respondent college, 8 seats left in another minority medical college and 8 seats left in one more minority medical college. It must be recorded here that in the State of Telangana there are three medical colleges run by the minority managements. Therefore, it was clear from the information furnished by the parties on 24.08.2017 that about 30 seats were lying vacant under Category A on that date.

7. In view of the same, the university itself came up with a stand on 01.09.2017 that some seats which went to the management quota, but which fell vacant due to the allotted candidates not reporting, were converted again into Category A in order to honour the interim orders passed by this Court. But, the university took a stand that after conversion of the management quota seats into convenor quota, they had also been filled up. Hence, we passed an order on 01.09.2017 to the following effect:

“It is stated by Mr. A.Prabhakar Rao, learned Standing Counsel for the University, that some seats in Category-B, which fell vacant due to the candidates not reporting, were converted into Category-A with a view to honour the interim orders passed by this Court. But we do not know how counselling was conducted for filling up these Category-A seats and whether all meritorious candidates had an opportunity to participate in such counseling. The University shall file a report as to the number of seats that fell vacant in Category-B, the

method by which those seats were treated as Category-A and sought to be filled up and whether all meritorious candidates had notice of such counseling.

Post on 05-09-2017.”

8. When the matter came up on 07.09.2017, the pleadings were completed. The picture that emerged out of the pleadings and the materials furnished, were taken note of by this Court in an order passed on 07.09.2017, in the form of a tabular statement. The tabular statement and the order passed by this Court on 07.09.2017 read as follows:

“Counter affidavits, additional counter affidavits, and additional material papers are filed on both sides. The picture that emerges from the materials furnished, could be presented in a Tabular Column as follows:

Name of the College	Total permitted intake	Category A/B seats before the impugned amendment	Category A/B seats after the impugned amendment	The excess seats that the colleges granted into Category-B	No. of seats declared vacant in category-B after the 1 st round of counseling on 3.8.17	No. of seats converted by University after the 1 st round of counselling	No. of seats left unfilled according to the petitioner after the 1 st round of counselling
1.SHADAN	150	90/38	75/53	15	52	8	7
2. DECCAN	150	90/38	75/53	15	50	3	11
3. VRK	100	60/25	50/35	10	35	2	7

The standing counsel for the University shall verify and report (1) as to how the number of seats that fell vacant after the 1st round of counseling on 03.08.2017, got reduced from 52 to 8 in respect of Shadan, 50 to 3 in respect of Deccan, and 35 to 2 in respect of VRK, and (2) as to how seats were filled up after 07.08.2017 up to 12.08.2017, especially when we had passed interim

orders on 07.08.2017 in the presence of the standing counsel.

Post on 12.09.2017.”

9. Thereafter, the writ petition came up for hearing on 12.09.2017. A detailed order was passed on the said date, recording as to how the seats have been filled up. It was also noted that out of 14 writ petitioners, five got admitted to the medical colleges under the convenor quota (Category A), pursuant to the interim order. But we recorded in our order dated 12.09.2017 that the enquiry cannot go any further, in view of the deadline fixed by the Hon’ble Supreme Court having already expired. The order passed by us on 12.09.2017 reads as follows;

“On 7.09.2017 we passed an order directing the University to explain as to how the seats got filled up in Category-B from 07.08.2017 to 12.08.2017.

The university has filed an additional affidavit along with a set of documents. The stand of the university is that the first phase of counseling for Category-B seats was held on 03.08.2017 and 04.08.2017 and that the candidates, who were allotted seats under Category-B were granted time till 12.08.2017. Out of a total of 40 extra seats all the three minority medical colleges in the State got in Category-B on account of the impugned Government Order, 14 seats remained unfilled on 12.08.2017 and according to the university these 14 seats were got reconverted to Category-A pursuant to the interim order, and admissions were made on merit basis.

A careful look at the statistics would show that by altering the proportion between Category-A and B seats, the three minority medical colleges in the State got a total of 40 extra seats in Category-B. Out of them today 14 seats got reconverted to Category-A only pursuant to the interim order. As a result, out of 14 writ petitioners, who also belong to the minority communities, 5 petitioners have now been admitted to medical colleges only because of the interim order. The writ petitioners 4, 7, 9, 11 and 13 have secured admission now into this minority colleges under category-A itself, on account of the interim order. Therefore, the only question that remains is how far the implementation of the interim order can be taken into.

It is possible that students, who were allotted to Category B seats on 03.08.2017 and 04.08.2017, had time till 12.08.2017 to pay the fees. The interim order was passed in the above writ petition only on 07.08.2017. The impugned Government Order, by which the proportion between Category-A and B seats was changed, was passed on 05.07.2017. The writ petition itself was filed on 04.08.2017, which was a Friday. The writ petition came up for hearing on 07.08.2017.

Taking into account the timeline of events, if the interim order has to be strictly implemented in letter and spirit, all candidates who were allotted Category-B seats in excess of the original quota should have their allotments cancelled and the entire process of admission should be reworked today. That will result in candidates who have already got admitted losing their seats. They are not parties before us. It is not possible today to implead them and throw them out of those colleges.

One more difficulty in adopting such a course of action would be that the candidates, who are lower in order of merit might have paid fees on 03.08.2017 and

04.08.2017. They, in any case, cannot be affected by the interim order passed on 07.08.2017. If candidates having higher merit had taken advantage of the time given by the colleges to pay the fees up to 12.08.2017, they may have to be thrown out of the colleges, if the interim order had to be strictly worked out. That will result in more disparity.

In view of the fact that the time by which the interim order was passed the first phase of counselling was over, and in view of the fact that out of 40 extra seats the three colleges got, 14 have been reconverted and also in view of the fact that at least five out of the 14 writ petitioners now got admission under Category-A, we do not think that this enquiry can be extended any further by way of interim orders.

Therefore, the writ petition is directed to be posted after two weeks for counter, on the question as to the validity of the Government Order G.O.Ms.No.115, dated 05.07.2017.”

10. It appears that some of the writ petitioners who could not secure a seat even after an interim order, went before the Hon'ble Supreme Court in SLP (Civil) No.26920 of 2017. While disposing the Special Leave Petition, the Hon'ble Supreme Court directed this Court to dispose of this writ petition by the end of November, 2017. Therefore, we directed the Government to file a counter, the Government filed a counter on 29.11.2017 and the writ petition was heard and is being disposed of on 30.11.2017.

11. The prayer made in the writ petition is for a declaration that G.O.Ms.No.115, dated 05.07.2017, is arbitrary, unfair and unlawful.

As we have pointed out earlier, the said Government order modifies the ratio of seats between the convenor quota, management quota and NRI quota, from 60%, 25% and 15% to 50%, 35% and 15%. This Government order was issued in exercise of the power conferred by Sections 3 and 15 of the Telangana State Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. As could be seen from Para 1 of the impugned Government order, the same was issued pursuant to a consensual arrangement arrived at between the government and the private unaided minority medical colleges, in accordance with the decision of the Hon'ble Supreme Court in Vigyan Bharati Trust Vs. Union of India.

12. In other words, the Government enters into a consensual arrangement with both private, unaided minority medical colleges and private unaided non-minority medical colleges year after year. It is by virtue of the said arrangement that the proportion is finalized.

13. Until the academic year 2016-2017, the proportion has remained at 60%, 25% and 15%, which was beneficial to poor students belonging to the minority communities as the number of seats available under the convenor quota for them was high. We have already indicated the fees payable by the students under these quotas. While a student admitted under the convenor quota (Category A), pays the fee of Rs.50,000/- per year and candidate admitted under the management quota and under the NRI quota respectively at Rs.14.00 lakhs and Rs.28.00 lakhs per year.

14. Even in respect of non-minority institutions, the proportion of fee remains almost the same, it is Rs.50,000/- per year for those admitted under Category A, Rs.11,55,000/- per year for those admitted under Category B and Rs.23,10,000/- per year for those admitted under the NRI quota.

15. In G.O.Ms.No.115, dated 05.07.2017, there is no indication as to why the proportion that was maintained till then had been changed. But, it is contended that for non-minority institutions also the proportion has been changed and that therefore the Government wanted to maintain uniformity. The Government has also stated in the counter-affidavit that in the single window counseling, it would be difficult if different proportions are maintained. The relevant portion of the counter-affidavit filed by the Government reads as follows:

“As it is a single counseling and is Web based, to facilitate the preparation of seat matrix and for implementation of relevant reservations in Competent Authority Quota and to avoid confusion with varying percentages for different quotas as there will be sliding of candidates from one college to other, uniform percentage distribution of seats was done. Management Quota also is done as a single counseling for all the Private Medical Colleges including Minority Medical colleges. Hence, a Uniform distribution of quota will facilitate smooth conduct of counseling.”

16. There are two reasons as to why we should accept the stand taken by the Government for the current academic year 2017-2018. They are:

- (a) that even if we now find fault with G.O.Ms.No.115, dated 05.07.2017, the same cannot enure to the benefit of any student for the current academic year, as the admissions are already over; and
- (b) that the said order has been passed to bring minority institutions on par with non-minority institutions. Therefore, for the current academic year we do not wish to upset G.O.Ms.No.115.

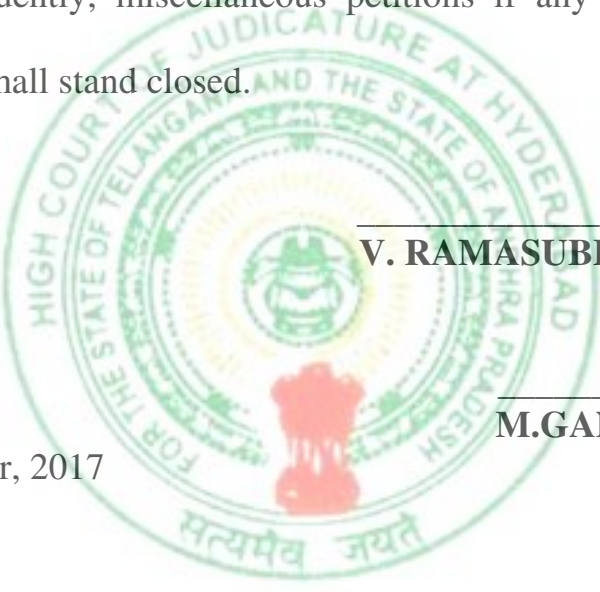
17. But, at the same time, we should point out that in respect of both minority and the non-minority institutions, the Government should address the problem of the poor students who cannot afford to pay huge amount of fees year after year. The consensual arrangement reached between the governments and the minority and non-minority institutions, is not a matter of contract. It does not simply lie in the realm of contract between two individuals. A great deal of public interest is sought to be served by such consensual agreement.

18. It is not as though the colleges are not receiving any corresponding benefit from the State Government. As a matter of fact, State Governments used to insist upon the essentiality certificate at least about five to six years ago. It is only a state run university which grants affiliation to these colleges. Therefore, indirectly the infrastructure made available by the State is made use of by all the minority and non-minority, unaided private colleges on account of

which alone, they come to the negotiating table for fixing the ratio. Therefore, the Government may do well to restore the original pattern for the next academic year.

19. With the above observation, the writ petition is disposed of. The candidates who have already admitted pursuant to the interim order under Category A shall continue to be treated as students admitted under Category A for the rest of their course. No order as to costs.

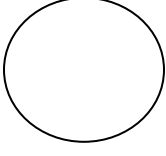
Consequently, miscellaneous petitions if any pending in the writ petition shall stand closed.



V. RAMASUBRAMANIAN, J

M.GANGA RAO J

30th November, 2017
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