

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

+ WRIT APPEAL Nos.760 & 761 of 2016

% Date: 12-04-2017

Between:

W.A.No.760/ 2016

Dr. Ch. Poornasree Sesha Sai Neelima
D/o. Ramasesha Sarma, R/o. Room No.19,
Old P.G. Hostel, SVIMS, Alipiri, Tirupati,
Chittoor District.

... Petitioner

And

1. The State of Telangana, rep. by its Principal Secretary, Health, Medical & Family Welfare Dept., Secretariat Buildings, Hyderabad.
2. The State of Andhra Pradesh, rep. by its Principal Secretary, Health, Medical & Family Welfare Dept., Secretariat Buildings, Hyderabad.
3. Nizam Institute of Medical Sciences, rep. by its Executive Registrar, Hyderabad.
4. Nizam Institute of Medical Sciences, rep. by its Director, Hyderabad

... Respondents

W.A.No.761/ 2016

Dr. Madhan Kumar Allagadda, S/o. Thirumala Rao
R/o. Duvvur Village & Mandal, Kadapa District

... Petitioner

And

1. The State of Andhra Pradesh, rep. by its Principal Secretary, Medical & Health, Secretariat Buildings, Hyderabad.
2. Nizam Institute of Medical Sciences, rep. by its Director, Hyderabad.
3. The State of Telangana, rep. by its Principal Secretary, Medical & Health, Secretariat Buildings, Hyderabad.
4. Dr. Kiran Uske, S/o. Lingaiah, R/o. H.No.2-15, Mahabubpally Village, Bhupalpally Mandal, Warangal District, Telangana State.

5. Dr. Annakula Ramu, S/o.A. Nagabhushanam, R/o. H.No.5-4-21,
Gung Road, Jagitial, Karimnagar District.

... Respondents

! For the Petitioner in both W.Ps : Mr. N. Subba Rao

^ For official Respondents in both W.Ps : The Additional Advocate
General (Telangana)

^ For Private Respondents in both W.Ps : Mr. K.V. Simhadri

< 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 :12-04-2017

Coram :

HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

And

HONOURABLE MS. JUSTICE J.UMA DEVI

W.A.Nos.760 & 761 of 2016

W.A.No.760/ 2016

Dr. Ch. Poornasree Sesha Sai Neelima
D/o. Ramasesha Sarma, R/o. Room No.19,
Old P.G. Hostel, SVIMS, Alipiri, Tirupati,
Chittoor District.

... Petitioner

And

1. The State of Telangana, rep. by its Principal Secretary,
Health, Medical & Family Welfare Dept.,
Secretariat Buildings, Hyderabad.
2. The State of Andhra Pradesh, rep. by its Principal
Secretary, Health, Medical & Family Welfare Dept.,
Secretariat Buildings, Hyderabad.
3. Nizam Institute of Medical Sciences, rep. by its
Executive Registrar, Hyderabad.
4. Nizam Institute of Medical Sciences,
rep. by its Director, Hyderabad

.... Respondents

W.A.No.761/ 2016

Dr. Madhan Kumar Allagadda, S/o. Thirumala Rao
R/o. Duvvur Village & Mandal, Kadapa District

... Petitioner

And

1. The State of Andhra Pradesh, rep. by its
Principal Secretary, Medical & Health,
Secretariat Buildings, Hyderabad.
2. Nizam Institute of Medical Sciences,
rep. by its Director, Hyderabad.
3. The State of Telangana, rep. by its Principal
Secretary, Medical & Health,
Secretariat Buildings, Hyderabad.
4. Dr. Kiran Uske, S/o. Lingaiah,
R/o. H.No.2-15, Mahabubpally Village,
Bhupalpally Mandal, Warangal District, Telangana State.
5. Dr. Annakula Ramu, S/o. A. Nagabhushanam,
R/o. H.No.5-4-21, Gung Road, Jagitil,
Karimnagar District.

... Respondents

For the Petitioner : Mr. N. Subba Rao

For official Respondents in both W.Ps. : The Additional Advocate General
(Telangana)

For Private Respondents : Mr. K.V. Simhadri



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

W.A.Nos.760 & 761 of 2017

COMMON JUDGMENT: (per V. Ramasubramanian, J.)

These writ appeals arise out of an order of the learned Single Judge, directing the respondents to consider the conversion, on rotation basis, of the seats from one University area to another University area once in three years, in such branches of Super Speciality courses in Medicine, which have a sanctioned intake of 8 seats.

2. We have heard Mr. N. Subba Rao, learned counsel for the appellants, the learned Additional Advocate General appearing for the State of Telangana as well as the Nizam Institute of Medical Sciences and Mr. K. V. Simhadri, learned counsel appearing for the private respondents in one of the writ appeals.

3. The appellants in these writ appeals applied respectively for admission to DM (Cardiology) and DM (Neurology) courses in the Nizam Institute of Medical Sciences, for the academic year 2016-2017. The sanctioned intake of students for these courses was 8 seats each. The appellants expected that out of these 8 seats, 3 seats would go to the Andhra University area, 2 seats would go to Osmania University area, two seats to Sri Venkateswara University area and 1 would be available for non-local candidates. But the Nizam Institute distributed these seats in the ratio of 3 seats for Andhra University area, 3 seats for Osmania University area, 1 seat for Sri Venkateswara University area and 1 seat for non local candidates. Therefore, the appellants, who belong to the Sri Venkateswara University area, who missed the chance very narrowly, filed

a writ petition contending that the distribution of the seats was contrary to the Presidential Order and G.O.P.No.646, dated 10.07.1979.

4. Finding the distribution of seats by the respondents in the ratio of 3:3:1:1 between Andhra University (for short 'AU area'), Osmania University (for short 'OU area'), Sri Venkateswara University (for short 'SVU area') and non-local candidates, to be untenable and at the same time finding it difficult to provide the distribution of seats in the ratio of 3:2:2:1 as demanded by the appellants, the learned Judge struck a via media and disposed of the writ petition with a direction for some kind of rotation. The last two paragraphs of the judgment of the learned Single Judge may be extracted, for a better understanding of the manner in which the learned Judge attempted to find a solution. Hence they are extracted as follows:

"It is clearly stated that allocation of seats is to be done in the ratio of 42:36:22 being approximate ratio of population of these areas. Therefore, the intent of the Presidential Order was to give seats in the ratio mentioned above, but that ratio was keeping in view the population of the area concerned. It is not in dispute that AU region has 8 districts, OU region has 10 Districts and SVU region has 5 Districts. Therefore, the fraction 0.52 in the OU allocation cannot be counted lesser than 0.54 in the SVU allocation. If simply the fraction had to be considered, then certainly 0.54 would have been given the preference. But in the present case, the ratio of 42:36:22 has to be maintained.

However, if this Court accepts the submission of the learned counsel for the respondents then there would be no meaning to the fraction 0.54 and SVU will be deprived of its legitimate share every year in the seats allocation. Therefore, this Court deems it appropriate to direct the respondents to consider, on rotation basis, by converting AU seat to OU (for every 3 years) in the branches having 4 seats, similarly in branches where 8 seats are available, 1 seat from SVU to OU for every alternate years. This arrangement would give equitable rights to all the Universities mentioned above and none of the universities would be deprived of their legitimate share of allocation. The aforesaid arrangement shall be made for subsequent years. Accordingly, for this year i.e., Academic Year 2016-17, OU will get 3 seats and SVU will get 1 seat.

5. Finding that the solution suggested by the learned Judge will not yield the result that they wanted, the petitioners, who filed writ petitions, have come up with the above writ appeals. As a matter of fact, even the official respondents, viz., the State of Telangana and the Nizam Institute of Medical Sciences are unable to accept the solution provided by the learned Judge. But they have not chosen to challenge the order of the learned Judge. Nevertheless, the learned Additional Advocate General admitted that the modification of the ratio, once in three years by rotation, may be contrary to the Presidential Order. Therefore it is clear that the solution provided by the learned Judge is not acceptable to both parties. While it is not acceptable to the appellants since they do not derive any benefits in the current academic year, it is not acceptable to the official respondents since the same may go contrary to the Presidential Order.

6. Keeping in mind the above, let us now test the grounds on which the appellants herein came to the Court with the writ petitions. The background facts are as follows:

a) The Nizam Institute of Medical Sciences issued a prospectus for admission to Super Speciality courses of DM/MCH, for the year 2016 in April, 2016. The courses offered and number of seats in respect of each one of them, were given in Para-II of the prospectus as follows:

Subject	No. of seats as per LOP
DM-Cardiology	08
DM-Neurology	08
DM-Nephrology	04
DM-Clinical Pharmacology	04
DM-Medical Oncology	03
DM-Rheumatology	03

M.Ch. Urology	04
M.Ch. Cardiothoracic Surgery	06
M.Ch. Plastic Surgery	04
M.Ch. Neuro Surgery	06

b) By virtue of the powers conferred by Article 371-D(2)(b)(iii) of the Constitution, the President of India issued an order known as Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974. Under the said order, the combined State of Andhra Pradesh was divided into three local areas known as (1) Andhra University area; (2) Osmania University area; and (3) Sri Venkateswara University area.

c) The Andhra University local area comprised of 7 Districts, viz., Srikakulam, Visakhapatnam, East Godavari, West Godavari, Krishna, Guntur and Prakasam.

d) The Osmania University local area, comprised of 9 Districts, viz., Adilabad, Hyderabad, Karimnagar, Khammam, Mahaboobnagar, Medak, Nalgonda, Nizamabad and Warangal.

e) The Sri Venkateswara University local area comprised of 5 Districts, viz., Ananthapur, Kadapa, Kurnool, Chittoor and Nellore.

f) The universities and educational institutions were categorised into (1) State-wide and (2) Non State-wide Universities and educational institutions, under the Presidential Order of 1974.

g) Paragraph-5 of the Presidential Order provided for reservation for local candidates in Non State-wide Universities and educational institutions. Similarly, paragraph-6 of the Presidential Order provided for reservation in State-wide Universities and State-wide educational institutions.

h) Under the above paragraphs, admissions to 85% of seats in every course of study, after excluding those reserved for candidates from outside the State, shall be reserved in favour of and allocated among the local candidates.

i) This 85% reserved for local candidates was to be distributed among the local candidates of Andhra University, Osmania University and Sri Venkateswara University in the ratio of 42:36:22. This ratio was arrived at on the basis of the approximate population of the Districts comprised within these three local areas.

j) Since the total number of seats available in DM (Cardiology) and DM (Neurology) were 8 each, 85% of these 8 seats would work out to 6.8 seats. Therefore, 7 out of the 8 seats were considered as the seats reserved for local candidates and one seat was for non-local candidates.

k) If these 7 seats that fall under the 85% quota for the local candidates is distributed in the ratio of 42:36:22 between Andhra University, Osmania University and Sri Venkateswara University, the number of seats that would be allotted to these areas would be 2.94, 2.52 and 1.54.

l) What the respondents did for the academic year 2016-17 was that they rounded off 2.94 that fell to the share of Andhra University area to 3. Then they rounded off 2.52 that fell to the share of Osmania University area as 3, since the fraction was more than 0.5. Thereafter the respondents were left only with one seat for the Sri Venkateswara University area. Therefore, the respondents provided a seat matrix of 3:3:1:1 respectively for Andhra University area, Osmania University area, Sri Venkateswara University area and non-local candidates.

m) But the grievance of the appellants is that as between the fractions 0.52 and 0.54, the latter was bigger and hence the appellants contend that after rounding of 2.94 for Andhra University area as 3, the respondents should have rounded of 1.54 as 2 for Sri Venkateswara University area and left the balance 2 for the Osmania University area.

n) But *the respondents have taken a stand that if 1.54 for Sri Venkateswara University is rounded of to 2, and 2.52 for Osmania University is rounded of to 2, the same may not do justice either to the law of arithmetic or to the law of reservation.* Their second contention is that in all such cases, the respondents may go only by the ratio of 42:36:22 and cannot make 22 as equal to 36.

7. We have carefully considered the above submissions.

8. The cases on hand raise a problem more of fractions, though the Presidential Order providing for local area reservation was a product of factions. There are no disputes on facts, viz., –

a) That the total number of seats available in DM Cardiology and DM Neurology for the academic year 2016-17, were 8 each.

b) That out of the 8 seats, one seat should go to the non-local candidates.

c) That the remaining 7 seats should be distributed between Andhra University Area, Osmania University Area and Sri Venkateswara University Area in the ratio of 42:36:22.

d) That if so distributed, the number of seats to be allocated to Andhra University, Osmania University and Sri Venkateswara University areas came respectively to 2.94 : 2.52 : 1.54.

9. Unfortunately the Presidential Order, viz., the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 does not give a clear indication as to how to resolve such a problem. Paragraph-5 which speaks about Reservation in non-State-wide Universities and educational institutions, indicates in sub-para (2) that any fraction of a seat while determining the number of seats reserved in favour of local candidates should be counted as one. Sub-paragraph (2) of paragraph-5 of the Presidential Order reads as follows:

“While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one”

10. Similarly sub-paragraph (2) of paragraph-6, which deals with Reservation in State-wide Universities and State-wide Educational Institutions, also makes it clear that while determining the number of seats to be reserved in favour of local candidates, any fraction of a seat shall be counted as one.

11. Though sub-paragraph (2) of paragraphs-5 & 6 of the Presidential Order are in *pari materia*, paragraph-6 contains an additional directive. Sub-paragraph (3) of paragraph-6, deals with the question of fraction, while addressing the issue of allocation of the reserved seats among the local candidates in relation to different local areas. Sub-paragraph (3) of paragraph-6 of the Presidential Order, 1974 reads as follows:

“(3) While allocating under sub-paragraph (1) the reserved seats among the local candidates in relation to different local areas, fraction of a seat shall be adjusted by counting the greatest fraction as one and, if necessary, also the greater of the remaining fractions as another; and, where the fraction to be so counted cannot be selected by reason of the fractions being equal, the selection shall be by lot:

Provided that there shall be atleast one seat allocated for the local candidates in respect of each local area.”

12. Therefore, it is clear that at least insofar as State-wide Universities and State-wide Educational Institutions are concerned, paragraph-6(3) of the Presidential Order provides three rules. The Rules are:

- (a) Fraction of a seat shall be adjusted by counting the greatest fraction as one;
- (b) The greater of the remaining fractions may be counted as one; and
- (c) Where the fractions are equal making it impossible for the selection of one fraction over the other, the selection shall be by lot.

13. Let us apply the aforesaid three Rules found in paragraph-6 (3) of the Presidential Order to the fact situation. If so done, we could easily see that Andhra University Area has to be allotted three seats, in view of the fact that the ratio of allotment works out to 2.94 : 2.52 : 1.54. Undoubtedly and without dispute, 2.94 rates as the greatest fraction whatever way we look at it.

14. But while applying the second Rule found in paragraph-6(3) of the Presidential Order, a problem arises. As between Osmania University and Sri Venkateswara University Areas, the share becomes 2.52 and 1.54 respectively. *The language used in the second Rule under paragraph-6(3) of the Presidential Order is "greater of the remaining fractions."*

15. If the expression "fraction" is understood only to indicate what is less than one, then .54 is greater than .52. Therefore, irrespective of the fact that 2.52 for Osmania University Area, as a whole, is greater than 1.54 for Sri Venkateswara University Area, .54 has to be rounded off to one (1) , so as to make the seats available in Sri Venkateswara University Area as two (2). As a consequence, what will be left for Osmania

University Area will only be two seats despite the fact that in terms of simple arithmetic, any fraction of .5 and above should normally be rounded off to the nearest higher digit.

16. However, it is contended by the learned Additional Advocate General that by treating the ratio 2.52 as two and treating 1.54 as two, over a long period of time, a major chunk of the seats that should otherwise fall to the Osmania University Area, has been taken away by the locals of Sri Venkateswara University Area. Therefore, the learned Additional Advocate General contended that over a period of time, the ratio 2.52 available to Osmania University Area has been reduced as equivalent to the ratio of 1.54 available for Sri Venkateswara University Area. This injustice, according to the learned Additional Advocate General, had to be set right.

17. It appears that by a Government Order in G.O.P.No.646, dated 10.07.1979, which was also followed until the bifurcation of the State, the distribution of seats between Andhra University, Osmania University and Sri Venkateswara University areas was always fixed at 3:2:2 on the basis of the ratio 42:36:22, whenever 85% of the reserved seats available for the local candidates was 7 in number. But the learned Advocate General submitted that the allocation of seats as between the local areas is covered entirely by the Presidential Order and that therefore the Government was not entitled to issue any directions as contained in G.O.P.No.646, dated 10.07.1979.

18. The learned Advocate General is right in contending that when the field is occupied by the Presidential Order issued in terms of Article 371-D of the Constitution, there is no scope for the Government to issue any order. Even in cases where the field is left unoccupied by the

Presidential Order, the State Government may have to get the nod of the President under para-8(1) of the Presidential Order. Paragraph-8(1) of the Presidential Order confers power upon the President to require the State Government, by order, to issue directions as may be necessary for giving effect to the Presidential Order. Thereafter, the State Government may issue orders in terms of paragraph-8 (2) of the Presidential Order.

19. We do not know whether G.O.P.No.646 was issued under paragraph-8 (2), in terms of a direction issued under paragraph-8(1). Therefore, we shall keep G.O.P.No.646 aside for a moment.

20. As we have stated earlier, paragraph-5 of the Presidential Order deals with reservation in non-State-wide Universities and Educational Institutions. It covers Andhra University, Osmania University and Sri Venkateswara University areas. But paragraph-6 of the Presidential Order deals with reservation in State-wide Universities and State-wide Educational Institutions. The expression State-wide Educational Institutions is defined in paragraph-2(1)(e) of the Presidential Order, to mean an institution specified in the schedule to the Presidential Order. The expression "State-wide University" is defined in paragraph-2(1)(f) of the Presidential Order to mean certain institutions including the Nizams Institute of Medical Sciences.

21. Therefore, it is clear that the Nizams Institute of Medical Sciences, into which the petitioners sought admission in Super Speciality Courses, is a State-wide University, to which paragraph-6 of the Presidential Order is applicable. As a consequence, the three rules indicated in paragraph-6(3) of the Presidential Order would also apply. Once this is done and the three rules contained in paragraph-6(3) of the Presidential Order are applied, the following picture would emerge;

(i) By complying with the first Rule and making the greatest fraction .94 found in the ratio of 2.94 as one, the number of seats to be allotted to Andhra University Area could be arrived at as 3.

(ii) That would leave us with the ratio of 2.52 for Osmania University Area and 1.54 for Sri Venkateswara University Area. Since paragraph-6(3) of the Presidential Order speaks only about "*the greater of the remaining fractions*" and not about the integers along with which such fractions go, we have to take .54 as one. This will make the ratio of 1.54 allocable to Sri Venkateswara University as two.

22. It is true that as an integer, 2.52 (for Osmania University Area) is greater than 1.54 (Sri Venkateswara University Area) but when paragraph-6(3) of the Presidential Order speaks only about "greater of the remaining fractions", we have to take .52 and .54 separately and see which of these two is the greater of the fractions. This is perhaps the only way in which this conundrum, which is partially legal and partially arithmetical, could be resolved.

23. The expression "fraction" cannot be understood or interpreted in any other manner. The "Advanced Law Lexicon" by Sri P. Ramanatha Aiyar (3rd Edition 2005) defines "fraction" as follows:

"A fragment; a separate portion; a disconnected part; a fragment or broken part; a portion of thing less than the whole."

Therefore when paragraph-6(3) of the Presidential Order speaks about "greater of the fractions", the same has to be understood only to speak about what is less than one.

24. In any case, the University itself appears to have understood the expression "fraction" in a particular manner in the previous years. Even admittedly the seat matrix provided for the previous academic year

was 3:2:2:1 for AU, OU, SVU areas and non-local candidates. Once it is found that a university has understood, in the previous academic year, a particular expression found in the Presidential Order in a particular way, the university should have a justification for deviating from such an understanding in the next academic year. It is only when the university has not understood the expression in a particular manner that there is scope for the Court to interpret the expression found in the Statute.

25. Therefore, we are of the considered view that the distribution of those 8 seats in DM-Cardiology and 8 seats in DM-Neurology should have taken place in the ratio of 3 seats for Andhra University Area candidates, 2 seats for Osmania University candidates, 2 seats for Sri Venkateswara University Area candidates and 1 seat for non-local candidates. The learned Judge was not correct in directing the University to rotate the seats once in three years when paragraph-6(3) of the Presidential Order lays down three Rules, the last of which alone provided a resolution of the dispute by draw of lots. If at all the learned Judge found that the problem could not be resolved one way or the other, the learned Judge could have resorted only to the third Rule found in paragraph-6(3) for draw of lots every year.

26. Therefore, the order of the learned Judge is liable to be set aside. But while doing so, we will have to address one more question and it is as to whether the appellants are entitled to any relief, as a consequence of our conclusion. The academic year 2016-17 is now gone. In a Super Speciality course, no one could be admitted half way through. In view of the decisions of the Supreme Court, no direction can be issued to admit the appellants in the next year, as the dynamics of the process of admission for the next year may undergo a change. Therefore, it may not

be possible for us to grant any relief, except laying down the law on the point, so that a dispute of the same nature could be avoided for the academic year 2017-18 and thereafter.

27. Therefore, the writ appeals are allowed, the order of the learned Judge is set aside and it is held that wherever the seats that fall under 85% quota reserved for local candidates of Andhra University, Osmania University and Sri Venkateswara University areas are 7 in number, the distribution of seats shall be in the ratio of 3:2:2. However we make it clear that the appellants are not entitled to any relief. The miscellaneous petitions pending in this writ petition, if any, shall stand closed. No costs.

V. RAMASUBRAMANIAN, J.

J. UMA DEVI, J.

12th April, 2017.
Js



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

W.A.Nos.760 & 761 of 2017
(Per VRS,J.)



12th April, 2017

Js.