

IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA

PRADERSH

Writ Petition No.33140 of 2016

Between:

Shaik Shoyab Ali

.....Petitioner

And:

State of Telangana and 3 others

..... Respondents

JUDGMENT PRONOUNCED ON : ON 24-03-2017

HON'BLE SRI JUSTICE : V. RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE : J. UMA DEVI

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? : Yes
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals? : Yes
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? : Yes

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

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

+Writ Petition No.33140 of 2016

% 24-03-2017

Shaik Shoyab Ali

.... Petitioner

AND

State of Telangana, represented by its Secretary,
Department of Health, Medical & Family Welfare (E1),
Telangana Secretariat, Hyderabad and 3 others

.... Respondents

! Counsel for petitioner: Sri K. Venkatesh Gupta

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

< Gist:

> Head Note:

? Cases referred:

1) (2014) 10 SCC 521

2) (2016) 1 SCC 662

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

Delivered on: 24-03-2017

Coram:

The Honourable Mr. Justice V.RAMASUBRAMANIAN

and

The Honourable Ms. Justice J.UMA DEVI

Writ Petition No.33140 of 2016

Between:

Shaik Shoyab Ali, S/o Shaik Rahamath Ali, aged
19 years, Occ: Student, resident of H.No.43/167-1-1,
Prakash Nagar, Kadapa Town and District

... Petitioner

Vs.

- 1) State of Telangana, represented by its Secretary,
Department of Health, Medical & Family Welfare (E1),
Department, Telangana Secretariat, Hyderabad – 500 028
- 2) The Director of Medical Education, Telangana, DM & HS
Campus, Koti, Hyderabad.
- 3) Kaloji Narayana Rao Health University, Warangal,
Represented by its Registrar
- 4) The Convenor, TS EAMCET-III, 2016, Jawaharlal Nehru
Technology University, Hyderabad, represented by its
Registrar

... Respondents

For Appellants : Sri M. Venkanna,

For Respondents : G.P. for Medcial and Health
Mr. A. Prabhakar Rao, standing counsel for R-3
Mr. A. Abhishek Reddy, standing counsel for R-4

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMADEVI

Writ Petition No.33140 of 2016

Order: *(per V.Ramasubramanian, J.)*

The petitioner appeared in TS EAMCET-III for admission to the Medical Courses for the Academic year 2016-2017 and secured the 27625th rank. On 19-09-2016 he was called for certificate verification and he participated in the counselling held on 20-09-2016.

2. It is relevant to note that the petitioner applied under the quota reserved for physically challenged persons, claiming that he had 62% loco motor disability. But he was not selected, after the Medical Board constituted by the 3rd respondent University found his disability to be of the extent of 81%. Therefore, the petitioner has come up with the above writ petition seeking a mandamus to direct the 3rd respondent University to grant admission to him under the quota reserved for physically handicapped.

3. The above writ petition came up for orders as to admission on 30-09-2016. On the said date, we passed an interim order to the following effect, while directing the learned counsel for the 3rd respondent University to take notice:

“As per the disability certificate dated 19.02.2016 issued by the Medical Board of the Rajeev Gandhi Institute of Medical Sciences, Kadapa, the petitioner suffers from a disability of 62%. At the time of counselling the University appears to have referred him to the Medical Board, which opined that the disability is 81%. Since the MCA Regulations prescribe a range of 40% to 70% disability as

the eligibility criteria, the University has rejected the candidature of the petitioner.

But there are two mistakes committed by the University. The first is that they have not found the disability certificate produced by the petitioner to be forged or fabricated. The next is that in cases of this nature, the question of verifying the status of the disability periodically, does not arise. There is no finding that the disease has progressed. The procedure for admission contemplates a different exercise to be undertaken. Since that was not undertaken, there will be an interim direction to the respondents to consider the petitioner as a person with 62% disability and allot him a seat if he is otherwise qualified. This is subject to the further orders to be passed in this writ petition.”

4. However, the learned counsel for the University submitted on the next date of hearing namely 24-10-2016 that by the time we passed the interim order as stated above, the seats earmarked for physically handicapped had already been filled up. The University also came up with a petition to vacate the interim order.

5. Therefore, we took up the main writ petition itself for hearing and we heard Mr. M. Venkanna, learned counsel for the petitioner and Mr. A. Prabhakara Rao, learned standing counsel for the 3rd respondent-University.

6. The dispute raised in this case lies in a very narrow campus. As per the Medical Council of India Regulations of Graduate Medical Admission, 1997, 3% of the seats shall be filled up by candidates with loco motor disability of lower limbs between 50% to 70%. In case the seats under the 3% quota remained unfilled due to non-availability of candidates with prescribed percentage of disability, then such seats may be filled up under the quota, by persons with loco motor disability of lower limbs between 40% to 50%.

7. There is no dispute about the fact that the petitioner produced, at the time of counselling, a certificate of disability issued by a team of 3 doctors constituted in terms of G.O.Ms.No.31, WD CW & DW Department, dated 01-12-2009. As per this certificate, the percentage of disability of the petitioner was indicated as 62%. Therefore, if this certificate had been taken into account, the petitioner would have been treated as eligible to be considered under the 3% quota as indicated above.

8. But what happened in this case was that when the petitioner produced the certificate of physical disability at the time of counselling, the University referred the petitioner to its own Medical Board. The Medical Board constituted by the Vice Chancellor of the 3rd respondent University estimated the percentage of disability of the petitioner to be 81%. Since the percentage of disability was more than the prescribed range of 50% to 70%, the University denied the admission to the petitioner.

9. The contention of the petitioner is that so long as the certificate of disability issued by an authority constituted by the Government under the Persons with Disabilities Act, 1995 is not cancelled or suspected to be fabricated, the question of referring the petitioner to a Medical Board constituted by the Vice Chancellor does not arise. The further contention of the petitioner is that a Medical Board constituted under the statutory provisions, cannot be made dummy by the University constituting its own Medical Board.

10. In response to the above contentions, it is submitted by Mr. A. Prabhakara Rao, learned standing counsel for the University

that the Government issued a set of Rules known as “Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007, under G.O.Ms.No.136, Health, Medical and Family Welfare (E1) Department, dated 30-04-2007. Rule 9 (3) of these Rules prescribe the percentage of reservation for Physically Handicapped, National Cadet Corps as well as Games and Sports and the said Rule also prescribes the procedure for filling up of the seats under the quota. The Note under Rule 9 (3) of these Rules reads as follows:

“NOTE: The candidates claiming reservation benefits under the above categories shall produce original documents. In support of their claim to the Committee for Admissions and he shall be entitled to refer the original documents of the candidates claiming reservation for scrutiny and confirmation to the following authorities:

- (I) NCC : To the Director of NCC, Andhra Pradesh
- (II) Sports & Games : To the Vice-Chairman and Managing Director, Sports Authority of Andhra Pradesh (SAAP)
- (III) Physically Handicapped: To the Medical Board Constituted by the Competent Authority,
- (IV) CAP : To the Director, Sainik Welfare Department, Andhra Pradesh.”

11. On the basis of the above rule, it is contended by Mr. A. Prabhakara Rao, learned standing counsel for the University that the certificates of disability produced by the physically challenged candidates are liable to be referred to the Medical Board constituted by the competent authority. The expression “competent authority” is defined in Rule 2 (1) (ii) of the Rules to mean the Vice Chancellor, Dr. NTR University of Health Sciences, Andhra Pradesh,

Vijayawada. Therefore, his contention is that the reference made by the University to a Medical Board, was duly authorised by law in the form of statutory rules and that the same cannot be questioned.

12. The learned standing counsel for the University also produced a copy of the minutes of the Medical Board duly constituted by the University. It is seen from the minutes that the Medical Board comprised of the following persons:

- 1) "Dr. Kodandapani, HOD & Prof. of Orthopaedics, Osmania Medical College, Hyderabad;
- 2) Dr. Raju Iyengar, Prof. of Orthopaedics, NIMS Hospital, Hyderabad.
- 3) Dr. Bhaskara Shastry, HOD & Prof. of Medicine, Gandhi Medical College, Sec'bad.
- 4) Dr. Ramulu, Prof. of Surgery, Gandhi Medical College, Secunderabad."

13. The minutes of the Medical Board constituted by the Vice Chancellor discloses that out of 36 candidates examined by them only 9 were declared eligible by the Medical Board. The remaining were declared not eligible.

14. The preamble portion of the minutes of the meeting of the Board read as follows:

"The Vice-Chancellor, KNR UHS constituted Medical Board vide proceedings No.187/KNRUHS/2016, dated 13-09-2016 for verification of PH certificates and examine the candidates physically for confirmation of the disability mentioned in the certificate and shall fix the percentage of disability and to decide the fitness of the candidates for provisional admission into MBBS/BDS courses for the academic year 2016-17.

The members of Medical Board have met in JNTU, Hyderabad on 19-09-2016 at 10.00 a.m. and verified PH certificates and examined the following candidates physically for confirmation of the disability."

15. Therefore, it is contended by the learned standing counsel for the University that the exercise undertaken by the University was legally valid and cannot be questioned.

16. We have carefully considered the above submissions.

17. But there are two issues, which appear to have been overlooked by the University. The first is that the ***Note under Rule 9 (3) of the Rules issued under G.O.Ms.No.136, dated 30-04-2007, which we have extracted above, enables the competent authority to refer the documents “for scrutiny and confirmation.”*** The Note entitles the University only to refer the certificates for verification. The Note under Rule 9 (3) does not stipulate that the candidates claiming the benefit of reservation for physically challenged will also be subjected to a medical examination. ***Referring the certificate of disability for scrutiny and confirmation stands on a completely different footing from referring an individual to the Medical Board for examination.*** The Rules authorised only the original documents of candidates to be referred for scrutiny and confirmation. If the Medical Board, which scrutinises the certificates of disability produced by candidates, suspects their genuineness, it may perhaps be open to the Medical Board to recommend a second medical examination. But it is not possible for the Medical Board appointed under the Note under Rule 9 (3) of the Rules to assume the role of a Super Medical Board or Appellate Medical Board over and above the Medical Board, which issued the certificates of disability to all candidates. ***Subjecting all candidates with disability to a medical examination, would tantamount to dumping the certificates of disability issued by authorities duly constituted under the provisions of the Statute, without any kind of authority.***

18. The second aspect overlooked by the University is that the benefit of reservation for physically challenged, flows out of a Parliamentary enactment viz., the Persons with Disabilities Act, 1995. (PWD Act). All expressions such as “disability”, “loco motor disability,” “persons with disability” etc., are all defined under the Act. Section 73 (1) of the Act empowers the appropriate Government to make Rules for carrying out the provisions of the Act. The Medical Board constituted by the State Government under G.O.Ms.No.31, dated 01-12-2009 is the appropriate authority constituted in terms of the statutory provisions. The certificate issued by such an authority constituted in terms of statutory prescriptions cannot be treated as a dead letter. ***By referring all candidates, who produced valid certificates of disability, to a fresh medical examination just for the purpose of admission to professional courses, the University has only exhibited their lack of faith in the authority duly constituted by the State Government in terms of the provisions of the Act, without realising the serious consequences flowing out of the same.*** Section 69 of the PWD Act 1995 makes it a punishable offence, if any one fraudulently avails any benefit meant for persons with disabilities. ***By dumping the certificates of disability of about 27 out of 36 candidates, the University has now belittled and humiliated both the candidates as well as the members of the Medical Board, who assessed their percentage of disability under the statutory provisions.***

19. Therefore, the action of the University is completely illegal both for violation of the prescription contained in the Note under Rule 9 (3) that provides only for reference of the certificates and not the candidates to a Medical Board and also for overreaching the powers of the Medical Board constituted in terms of statutory provisions. Hence, the writ petition is liable to be allowed.

20. But today it is not possible to direct the 3rd respondent University to admit the petitioner to the Medical Course, as the last date for admission has already gone. Carry forward is also not permissible in view of the law laid down by the Supreme Court. Therefore, the only alternative available to us is to grant compensation to the petitioner in terms of the decisions of the Supreme Court in ***Chandigarh Administration & Anr v. Jasmin Kaur***¹ and ***S. Nihal Ahamed v. the Dean, Velammal Medical College Hospital and Research Institute, Madurai***². We are conscious of the fact that the decision in ***Jasmin Kaur*** was recently doubted by a Bench of the Hon'ble Supreme Court in Civil Appeal No.1081 of 2017 in ***S. Krishna Sradha v. State of Andhra Pradesh*** and the issue has now been referred to a Larger Bench. But nevertheless the reference is only on the question as to whether the grant of compensation alone could be the adequate remedy. Therefore, the petitioner is entitled at least to compensation as of now. If on the reference to a Larger Bench, the Supreme Court holds that admission may also be possible, it is only then that we may be entitled to grant the relief of admission.

¹ (2014) 10 SCC 521

² (2016) 1 SCC 662

21. Therefore, the writ petition is allowed directing the 3rd respondent University to pay compensation in a sum of Rs.3,00,000/- (Rupees three lakhs only) to the petitioner for wrongfully denying the petitioner of admission to the MBBS Course. No costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

Date: 24-03-2017

Ksn

Note: L.R. copy to be marked.

B.O./Ksn

J. UMA DEVI, J

