

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

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE T. RAJANI**

+Writ Petition Nos.23472, 24798 and 25087 of 2017

%Date: 02-08-2017

W.P.No.23472/2017

#Between:

Yeshwanth Vangapandu, S/o Simhachalam
R/o. Quarter No.349D, Sector-VI,
Ukku Nagaram, Visakhapatnam, Andhra Pradesh

... Petitioner

And

1. The State of Andhra Pradesh, rep. by its Principal Secretary,
Health, Medical & Family Welfare Department, Secretariat,
Velagapudi, Guntur district.
2. Dr. NTR University fo Health Sciences, Vijayawada, Andhra
Pradesh rep. by its Registrar.

... Respondents

! Counsel for the Petitioner : Mr. C. Raghu
^ Counsel for the Respondent No.2 : Mr. Taddi Nageswara Rao

W.P.No.24798/2017

#Between:

1. Pooja Srivastava D/o. Rajender Pershad Srivastava, R/o. H.No.4-2-
656, Badichowdi, Hyderabad-500019
2. A. N.B.D. Prasanna Reddy S/o. A. A Krupananda Reddy R/o.
H.No.2-1-49/116, Street No.3, Suryanagar Colony, Uppal, Ranga
Reddy District, Telangana-500039
3. Mohammed Asif Baba, S/o. Mohammed Azeez Ali R/o. D1-3,
Nandavanam Colony, ISR Nagar, Near TKR College, Hyderabad,
Ranga Reddy District, Telangana 500097.

... Petitioners

And

1. The State of Telangana, rep. by its Principal Secretary, Health,
Medical & Family Welfare Department, Secretariat buildings,
Hyderabad.
2. The State of Andhra Pradesh rep. by its Principal Secretary, Health,
Medical and Family Welfare Department, Secretariat at Velagapudi,
Amaravathi, Guntur District.
3. Kaloji Narayana Rao University of Health Sciences, Warangal,
Telangana State, rep. by its Registrar.
4. Dr. NTR University fo Health Sciences, Vijayawada, Andhra
Pradesh rep. by its Registrar.

5. The Convenor, NEET, Central Board of Secondary Education, Siksha Kendra, 2-Community Centre, Preet Vihar, Delhi – 110092
6. The Deputy Director General, NCC (AP & T), NCC Directorate, Secunderabad.
7. Medical Council of India, Pocket-14, Sector-8, Dwarka Phase-1, New Delhi – 110077, India.

... Respondents

! Counsel for the Petitioner : Mr. K. G. Krishna Murthy Sr. Counsel
 ^ Counsel for Respondent No.3 : Mr. A. Prabhakara Rao
 ^ Counsel for Respondent No.4 : Mr. Taddi Nageswara Rao
 ^ Counsel for Respondent No.5 : Mr. Vevekchandra Sekhar S.
 ^ Counsel for Respondent No.6 : Mr. B. Adinarayana Rao ASG
 ^ Counsel for Respondent No.7 : Ms. A. Chayadevi

W.P.No.25087/2017

#Between:

1. Angajala Bhanu, S/o. Satya Prasad, R/o. 16-22-13, Machiraju Vari Street, Old Guntur, Guntur, A.P.
2. Bachu Hardik Mourya, S/o. Desaiyah, R/o. 27-2-997, Vepadoruvu HP Gas Godown, Balaji Nagar, Nellore, Sri Potti Sriramulu Nellore District, A.P.
3. Madhavarapu Kalyan Chakravarthy, S/o. Srinivasulu, R/o. 25-3-296, Lake View Colony, 3rd Street, Dargamitta, Palakoderu Road Circle, Nellore, Sri Potti Sriramulu Nellore District, A.P.

... Petitioners

And

1. The State of Andhra Pradesh rep. by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat at Velagapudi, Amaravathi, Guntur District.
2. Dr. NTR University fo Health Sciences, Vijayawada, Andhra Pradesh rep. by its Registrar.
3. The Convenor, NEET, Central Board of Secondary Education, Siksha Kendra, 2-Community Centre, Preet Vihar, Delhi – 110092
4. The Deputy Director General, NCC (AP & T), NCC Directorate, Secunderabad.
5. Medical Council of India, Pocket-14, Sector-8, Dwarka Phase-1, New Delhi – 110077, India.

... Respondents

! Counsel for the Petitioner s : Ms. K. Jyothi Prasad
 ^ Counsel for the Respondent No.2 : Mr. Taddi Nageswara Rao
 ^ Counsel for the Respondent No.3 : Ms. A. Chayadevi
 ^ Counsel for the Respondent No.4 : Mr. B. Adinarayana Reddy
 ^ Counsel for the Respondent No.5 : Mr. Vivekchandra Sekhar S.

<GIST:

> HEAD NOTE:

? Cases referred

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
And
THE HON'BLE MRS. JUSTICE T. RAJANI**

WRIT PETITION Nos.23472, 24798 and 25087 of 2017

COMMON ORDER: *(V. Ramasubramanian, J)*

The petitioners, whose aspirations to join MBBS/BDS course in the past did not fructify and who seek to make it at least for the current academic Year 2017-2018, have come up with these writ petitions questioning the action of the respondents in not according appropriate priority to the certificates obtained by them in NCC, while considering their claim under the quota reserved for NCC.

2. Heard Mr. K.G. Krishna Murthy, learned senior counsel appearing for the petitioners in W.P.No.24798 of 2017, M/s. C. Raghu, and Mr. K. Jyothi Prasad, learned counsel appearing for the petitioners in other writ petitions. We have also heard the learned Government Pleader of both the States, Mr. A. Prabhakar Rao, learned standing counsel appearing for Kaloji Narayana Rao University, Mr. Taddi Nageswara Rao, learned counsel appearing for Dr. NTR University of Health Sciences, Mr. B. Narayana Reddy, learned Assistant Solicitor General for the Directorate of NCC and Mr. Vivek Chandrasekhar, learned counsel appearing for Medical Council of India.

3. A horizontal reservation of 1% out of the total number of seats available for admission to MBBS/BDS courses in the erstwhile combined State of Andhra Pradesh, was provided by the then Government of Andhra Pradesh under G.O.Ms.No.184, Education,

dated 20-8-1993. This Government Order was issued in exercise of the powers conferred by sections 3 and 15 of the Andhra Pradesh Act 5 of 1983. Since the cadets of NCC fall under different categories depending upon their level of participation in the events and also depending upon the type of certificates issued to them, all candidates claiming the benefit of this reservation, are arranged in an order of priority. This priority is determined primarily by the Directorate of NCC. While there is no difficulty in the priorities accorded to the cadets on the basis of their participation in State Level, or National Level or International Level events, the priority in respect of certificates is determined by the Directorate placing 'C'-Certificate on top followed by 'B' Certificate and 'A' Certificate.

4. After the bifurcation of the State with effect from 02-06-2014, the State of Andhra Pradesh issued an order in G.O.Ms.No.111 Health, Medical and Family Welfare Department, dated 03-09-2015 and the State of Telangana issued an order in G.O.Ms.No.75 Health, Medical and Family Welfare dated 08-09-2015, indicating the priorities to be accorded for admission to MBBS and BDS courses under the 1% quota reserved for NCC.

5. By a judgment dated 13-07-2016 rendered in W.P.No. 26478 of 2016, the order of the Government of Andhra Pradesh in G.O.Ms.No.111, dated 03-09-2015 was set aside by this Court in a batch of cases in W.P.No.26478 of 2016.

6. Thereafter, the Government of Andhra Pradesh issued a fresh order in G.O.Ms.No.109, dated 18-08-2016.

7. The order issued by the State of Telangana in G.O.Ms. No.75, dated 08-09-2015 and the order issued by the State of Andhra Pradesh in G.O.Ms.No.109, dated 18-08-2016 were identically worded in so far as the controversy on hand is concerned. In both the Government Orders, there was a note in Note-1, which stipulated that priorities will be accorded to the “C”, “B” and “A” certificates of NCC, obtained prior to appearing in the qualifying examination. If Note-1 to both the Government Orders had merely stopped with the expression “qualifying examination”, there would have been no confusion. But unfortunately, Note-1 contained something more, which became the cause for concern as well as confusion. Note-1 to both the Government Orders reads as follows:

“Priority will be considered in ‘C’, ‘B’ and ‘A’ certificates attained prior to appearing in qualifying examination i.e. EAMCET/CET.”

8. Taking advantage of the meaning sought to be assigned under Note-1 of the Government Orders, to the expression “qualifying examination”, many students in both the States, who were not successful in getting admission to Medical Courses on their own merit, but who found the reservation for NCC Cadets as a short cut, started upgrading their status in NCC, after completion of the Higher Secondary Course and after failing to make it to the Medical Courses in their first attempt in EAMCET/CET. After getting their status in NCC upgraded, after a couple of years of completion of Higher Secondary Course, these candidates appeared for EAMCET/

CET/NEET once again after 2 or 3 years and started claiming the benefit of higher priority under the quota reserved for NCC.

9. Therefore, a few candidates who had a brighter chance of securing admission to the Medical Courses even with 'B' or 'A' Certificate in NCC, but whose chances got diminished due to the candidates who upgraded their status in NCC after 2 or 3 years, came up with a batch of writ petitions last year in W.P.No.30291 of 2016 batch cases, challenging the manner in which Note-1 to both the Government Orders were worded.

10. In those writ petitions, interim orders were passed by this court, directing the Universities as well as the NCC Directorate to construe the expression "qualifying examination" only to mean a pass in the Higher Secondary examination and not EAMCET/CET. These interim orders were implemented by the NCC Directorate and both the Universities also followed the list of priorities prepared by the NCC Directorate on the basis of the interim orders.

11. Finding fault with the accord of priorities by the NCC Directorate pursuant to the interim orders passed by this Court, a few candidates, who had upgraded their status in NCC after 2 or 3 years of completion of the Higher Secondary course, came up with another batch of writ petitions.

12. Thereafter, both the sets of writ petitions were taken up together for hearing and by a common order passed on 09-09-2016, this court directed the Universities as well as the NCC Directorate to interpret the expression "qualifying examination" appearing in Note-1

to both the Government Orders to mean only a pass in the Intermediate or equivalent examination and not EAMCET/CET. The reason as to why the Division Bench came to the said conclusion was that the expression “qualifying examination” was defined in a set of Rules framed by the State of Andhra Pradesh in exercise of the powers conferred by Sections 3 and 15 of A.P. Act 5 of 1983. Rule 2 (1)(xiii) of these Rules known as “Andhra Pradesh Common Entrance Test for Entry into Engineering, Pharmacy, Agriculture, Medical, Dental and Pharm-D Course Rules, 2011, defines the expression “qualifying examination” to mean the passing of 10+2 examination conducted by the Board of Intermediate examination. Similarly, Rule 2 (1) (xiv) of another set of Rules issued under G.O.Ms.No.136, Health, Medical and Family Welfare, dated 30-04-2007 also defined the expression “qualifying examination” to mean only the examination relating to the minimum qualification prescribed, the passing of which entitles one to seek admission into the relevant professional courses. Even the Presidential Order of the year 1974 explained the expression “qualifying examination” to mean only an examination, a pass in which is the minimum educational qualification required for admission to a course of study.

13. Aggrieved by the common order passed by this court on 9-9-2016 in those cases, the petitioners in W.P.No.32805 of 2016, filed a Special Leave Petition in SLP (Civil) No.29792 of 2016. In the said Special Leave Petition, the Supreme Court passed a couple of interim orders, before finally granting leave and disposing of the Civil

Appeal by a final order dated 18-04-2017. By the said final order, the Supreme Court directed the respondents to admit the petitioners in the SLP to the Medical Courses in the academic year 2017-2018 under the quota reserved for NCC. The main portion of the judgment of the Supreme Court, which resolved the controversy, can be extracted as follows, since the sheet anchor of the case of the petitioners before us is only the judgment of the Supreme Court. Hence, the main part of the judgment of the Supreme Court dated 18-04-2017 in Civil Appeal No.50400 of 2017 is extracted as follows:

“When the matter was taken up today, it is submitted by Mr. P.V. Reddy, learned counsel for the State of Telangana that as per the Presidential Order the qualifying examination is 10+2 examination and if that is taken into consideration, the appellant would not get the benefit as they could not obtain “C” certificate by the time the examination was held. Mr. R. Venkataramani, learned senior counsel appearing for the appellants, per contra, would contend that the Government of Telangana has issued a circular dated 8th September, 2015 wherein it had mentioned Priority-I including “C” certificate in NCC which deals with the seniority. According to the learned counsel, when “C” certificate was provided for the purpose of giving weightage, then the same cannot be ignored for grant of admission. At this juncture, Mr. Reddy, learned counsel submits that the said category has later on withdrawn by the State Government Order which included “C” category in view of the interim order passed by the High Court. Mr. Gaurav Sharma, learned counsel for the Medical Council of India submits that nothing of the sort had taken place for the State had provided weightage for “C” category students though the NCC that was given “B” category will be given “C” certificate if obtained at the level of 10+2 examination it will be treated as “B” category. However, such a stipulation was not there at the time of holding the EAMCET/CET examination. Mr. Gaurav Sharma also submits the students who have been admitted on the basis of the marks obtained and the benefit of the certificates could be lower in rank than the appellants for they were given the benefit

of weightage of “C” certificate. 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 20-17-2018 in the NCC category and for the said year the quota 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.”

14. From the portion of the judgment of the Supreme Court extracted above, it will be clear-

- (1) that on the issue of interpretation of the expression “qualifying examination”, the Supreme Court did not hold finally that EAMCET/CET is the qualifying examination;
- (2) that the Supreme Court granted relief to the appellants, since the Supreme Court was convinced that a confusion had been created by the Government Order; and
- (3) that the appellants before the Supreme Court were granted relief on the basis of a statement that persons lower in rank than the appellants before the Supreme Court gained a march over more meritorious candidates, merely because less meritorious candidates held ‘C’ certificates in NCC.

15. Inspired by the relief granted by the Hon’ble Supreme Court to the appellants before them last year, the petitioners herein have come up with the present writ petitions seeking extension of the very same relief to them for the current academic year, by

treating the expression “qualifying examination” to mean NEET. The main plank of the argument of the petitioners in these writ petitions is that the order passed by this Court on 09-09-2016 in the batch of cases in W.P.No.32805 of 2016, having already been set aside by the Supreme Court, the respondents are bound to understand the expression “qualifying examination” only to mean EAMCET/CET (now it is NEET).

16. But the above understanding of the petitioners, about the judgment of the Supreme Court in Civil Appeal No.5400 of 2017 appears to be misconceived. By the order dated 09-09-2016 (which was set aside by the Supreme court), this Court held that Note-1 to the Government Orders G.O.Ms.No.75, dated 08-09-2015 and G.O.Ms.No.109, dated 18-08-2016, cannot give a different meaning to the expression “qualifying examination”, than the meaning assigned to the same expression in a set of statutory Rules viz., The Andhra Pradesh Common Entrance Test for Entry into Engineering, Pharmacy, Agriculture, Medical, Dental and Pharm-D courses Rules, 2011, which were issued in exercise of the powers conferred by Sections 3 and 15 of A.P. Act 5 of 1983. This Court also held that Note-1 to the Government Orders cannot give a different meaning to the expression “qualifying examination” than the meaning assigned to the same expression under the Presidential Order.

17. The above findings of this Court as to how the expression “qualifying examination” has to be understood and interpreted, were not set aside by the Supreme Court in its judgment dated 18-04-

2017. The Supreme Court did not state either expressly or impliedly that the expression “qualifying examination” would only mean “EAMCET/CET”.

18. The qualifying examination for admission to any Undergraduate Courses including Medical Courses is only the Higher Secondary Examination or its equivalent. Examinations such as EAMCET/CET/NEET are actually conducted as competitive examinations, for short listing the candidates for admission to professional courses, since the seats available, in comparison to the competitors are very few. This is why, the Supreme Court did not hold in its order dated 18-04-2017 in C.A.No.5400 of 2017 that the expression “qualifying examination” appearing in Note-1 of the Government Orders would mean “EAMCET/CET. Hence, the petitioners cannot pitch their claim on the basis of the judgment of the Supreme Court.

19. As seen from the order of the Supreme Court that we have extracted above, the Supreme Court granted relief to the appellants, only on the basis that there was confusion at the time when the Government Order was in vogue. But now the Government of Andhra Pradesh has issued an order in G.O.Ms.No.123, dated 24-07-2017 amending Note-1 in G.O.Ms.No.109, dated 18-08-2016. The amended Note-1 reads as follows:

“Priority will be considered in ‘C’, ‘B’ and ‘A’ certificates obtained prior to appearing in qualifying examination i.e. 10+2 examination”.

20. Therefore, today the situation which compelled the Hon'ble Supreme Court to grant relief to the appellants before the Supreme Court does not exist. The element of confusion in the Government Order that impelled the Supreme Court to grant relief has now been removed.

21. Today, the said Government Order G.O.Ms.No.123, dated 20-04-2017 is not under challenge. Therefore, we cannot give a completely different meaning to the expression "qualifying examination" appearing in Note-1 of the Government Order.

22. Mr. K.G. Krishna Murthy, learned senior counsel for the petitioners in one of the writ petitions contended that no amendment can have retrospective effect and that the rights vested on students cannot be taken away by an amendment with retrospective effect.

23. But we do not think that the said contention is legally tenable. The admission to Undergraduate Medical Courses for the academic year 2017-2018 has just commenced. Therefore, no vested right has been created in favour of the petitioners. The petitioners' contention that the rules of the game cannot be changed after the game had commenced, if accepted, would lead to disastrous consequences. All persons, who failed to secure admission in several years in the past and who upgraded their status in NCC later, will now claim, if the interpretation sought to be given by the petitioners is accepted, that the amendment under G.O.Ms.No.123 will not apply to all persons, who upgraded their status in NCC up to the date of amendment. In other words, without

stopping at making a claim for the current academic year, such persons can extend their claim even to the next academic year on the ground that they have already upgraded their status to a higher category in NCC before the date of issue of G.O.Ms.No.123 and that therefore, the expression “qualifying examination” should be understood only in one way in so far as they are concerned. Therefore, the contention is unacceptable.

24. Having dealt with the legal submissions made by the petitioners, we think it will be useful to give a factual matrix about each of the petitioners. This will give a clear picture as to who they are, what they claim and what is the basis of their claim. Therefore, the factual details about the petitioners are presented in a tabular column as follows:

W.P.No.23472 of 2017:

Petitioner	Completed +2 in the year	Degree course joined	Original NCC status	Admission for MBBS sought for the academic year	Basis of present claim
Yeshwant h-- sole petitioner	March, 2016	2016-17 B.Com	‘B’ Certificate – secured in 2016	2017-18	He participated in State Level republic day parade in January 2017

W.P.No.24798 of 2017:

Petitioner	Completed +2 in the year	Degree course joined	Original NCC status	Admission for MBBS sought for the academic year	Basis of present claim
Pooja Srivastav	March, 2015	B.Com	NCC ‘B’ certificate	2017-2018	NCC ‘C’ certificate obtained in Jan 2016
Prasanna	May, 2016	B.A.-	NCC ‘B’	2017-2018	NCC ‘C’

Reddy		History	certificate		certificate obtained in July 2017
Mohd. Asif Baba	March, 2015	B.Sc	NCC 'B' certificate	2017-2018	NCC 'C' certificate- in July 2017

W.P.No.25087 of 2017:

Petitioner	Completed +2 in the year	Degree course joined	Original NCC status	Admission for MBBS sought for the academic year	Basis of the present claim
Angala Bhanu	March, 2013	B.Sc completed	NCC 'B' certificate	2017-2018	NCC 'C' certificate obtained in July 2017
Bachu Hardik Mourya	May, 2016	Studying B.Sc	NCC 'B' certificate	2017-2018	NCC 'C' certificate obtained in July 2017
Madhavarapu Kalyan Chakravarthi	March, 2016	Studying B.Sc	NCC 'B' certificate	2017-2018	NCC 'C' certificate obtained in July 2017

25. A look at the factual details contained in the table above would show that the petitioners in W.P.Nos.24798 and 25087 of 2017 completed the higher secondary courses at least two to five years ago. Since they could not secure admission on the cumulative basis of (1) the marks secured in the higher secondary course; (2) the ranking secured in the EMACET/CET and (3) the status of their NCC certificate, immediately after completion of the higher secondary course, those 3 petitioners in W.P.Nos.24798 of 2017 and 3 petitioners in W.P.No.25087 of 2017, joined various degree courses such as BA History, B.Com or B.Sc. While pursuing their degree courses, they took 'C' certificate in NCC and they have

written NEET this year, for the purpose of seeking admission to MBBS/BDS course this academic year.

26. Interestingly, the petitioners in W.P.Nos.24798 and 25087 of 2017 (except the 1st petitioner in one writ petition) appeared for NCC 'C' certificate in February, 2017 and they secured 'C' certificate in NCC only in July 2017, after the conduct of NEET- 2017. But the contention of these petitioners, viz., petitioners 2 and 3 in W.P.No. 24798 of 2017 and the petitioners 1 to 3 in W.P.No.25087 of 2017, is that since the examination for 'C' certificate in NCC was held before conduct of NEET-2017, they should be considered as having secured a 'C' certificate in NCC before NEET-2017, despite the results of the examination for 'C' certificate in NCC having been declared only after NEET-2017.

27. Insofar as W.P.No.23472 of 2017 is concerned, the petitioner completed the higher secondary course in the year 2015-16. He could not secure admission to MBBS/BDS for the academic year 2016-17, on the cumulative basis of (1) his performance in the higher secondary course; (2) his performance in EAMCET/CET; and (3) the certificate in NCC that he had at that time. Therefore, he joined a B.Com degree and claims to have participated in the State Level Republic Day Parade, as a NCC cadet. By improving his status in NCC and moving up in the list of priorities in the NCC, the petitioner in W.P.No.23472 of 2017, has taken NEET-2017 and is now seeking the grant of a higher priority in NCC.

28. Thus we are able to see a pattern. The petitioners in all these writ petitions could not secure admission to undergraduate medical courses, on the basis of their own merit, immediately after completion of the higher secondary courses. The marks secured by these petitioners in higher secondary courses and the ranking secured by them in EAMCET/CET (now NEET) were not sufficient for these petitioners to be given admission into MBBS/BDS courses. There is no way a person can improve his performance in the higher secondary examination and hence keeping the marks secured by them in the higher secondary examination held about two to five years ago as static, the petitioners have upgraded their status in NCC, so that they could improve their chances of getting admission into medical courses within the 1% quota reserved for NCC cadets.

29. While there is nothing legally or morally wrong about what the petitioners have done, the question as to whether the object of ensuring the entry of meritorious candidates alone into medical courses would stand diluted by such methods, looms large. Let us take a hypothetical case of a student who has just completed the higher secondary course in March/April 2017 and has a “B” or “A” certificate in NCC. Such a candidate will now be made to go down in the list of priorities, as against a candidate, who passed higher secondary course two to five years ago, but who upgraded his status in NCC during this period of two to five years. This will certainly compromise quality and merit.

30. It was argued by Mr. K.G. Krishna Murthy, learned Senior Counsel for the petitioners, on the basis of one of the contentions that attracted the attention of the Supreme Court, that the priority given to 'C' certificate holders in NCC would become redundant, if the expression "qualifying examination" is understood to mean the higher secondary examination. As per the NCC Scheme itself, a cadet will be entitled to enroll for 'C' certificate, only during graduation. Therefore, the contention is that no candidate will be able to secure a 'C' certificate in NCC while undergoing the higher secondary course. If a candidate will be able to join training for 'C' certificate only during graduation, no candidate, who has just passed higher secondary course, will be able to take a 'C' certificate. But the NCC Directorate has included 'C' certificate in the list of priorities and this according to the learned Senior Counsel for the petitioners is an indication that persons undergoing the graduate courses and who take 'C' certificate in NCC would take a higher priority when it comes to admission to medical courses.

31. But the above contention loses sight of one important aspect. The Directorate of NCC has nothing to do with admissions to professional courses. The NCC Directorate came into the picture only after (1) a reservation of 1% of the seats was created for NCC cadets; and (2) that too after it was found that all NCC cadets do not belong to one category so as to compete on the same level playing field.

32. Since NCC cadets were categorized into different levels and all of them could not be treated as equals, the Government/ universities sought the assistance of the NCC Directorate for prioritizing the cadets. The Directorate of NCC prioritized the holders of NCC certificates. Since 'C' certificate holders were higher in ranking among the NCC cadets, the Directorate of NCC indicated the same in the list of priorities. But this is not to be taken as an indication that persons, who could not upgrade their ranking on merit, could resort to the upgradation of their status in NCC and seek admission to medical courses.

33. A careful look at the judgment of the Supreme Court in C.A.No.5400 of 2017, dated 18.04.2017 would show that the Supreme Court did not hold that the expression "qualifying examination" appearing in Note-1 to the Government Orders G.O.Ms.No.75, dated 08.09.2015 and G.O.Ms.No.109, dated 18.08.2016 would mean a pass in EAMCET/CET (now NEET). It appears from the judgment of the Supreme Court dated 18.04.2017 that an argument was advanced before the Supreme Court that less meritorious candidates could have gained admission on the basis of the weightage given to 'C' certificates. Therefore in order not to allow merit to be compromised, the Supreme Court granted relief to the appellants, without holding that the expression "qualifying examination" would only mean EAMCET/CET.

34. Moreover, the Supreme Court recorded in the order dated 18.04.2017 that a confusion was created by the Government Order.

Today that confusion has been removed with the issue of G.O.Ms.No.123, dated 24.07.2017 by clarifying that 'qualifying examination' would mean only higher secondary course. This Government Order is not under challenge. Therefore, the petitioners cannot now seek relief on the basis of the upgradation of their status in NCC.

35. As a matter of fact, Dr. N.T.R. University of Health Sciences has filed a counter affidavit pointing out that the confusion created by the earlier Government Orders now stand removed with the issue of G.O.Ms.No.123, dated 24.07.2017.

36. Actually, the petitioners in W.P.No.24798 of 2017, came up with an application in W.P.M.P.No.31043 of 2017 seeking amendment of the prayer made in the writ petition. By the amendment that the petitioners now seek, the petitioners want a declaration that G.O.Ms.No.123, will have no application for admission to the academic year 2017-18, but will apply only for the academic year 2018-19. In other words, the petitioners do not challenge the validity of G.O.Ms.No.123, but seek to contend that the G.O can have only prospective application.

37. We have no difficulty in allowing the application for amendment, since the same may not advance the case of the petitioners. The question as to what would tantamount to a qualifying examination, is only a matter of interpretation and not a matter of laying down the rule. In fact, the original Government Orders 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 attempted to interpret the expression 'qualifying examination' to mean EAMCET/CET. Such an interpretation was completely contrary to the law, as can be seen from the following:

(1) Explanation (ii) under Paragraph 4 of the Presidential Order known as Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 makes it clear that the expression "relevant qualifying examination" in relation to admission to any course of study would mean the examination, a pass in which is the minimum educational qualification for admission to such course of study. It must be pointed out that the Presidential Order of the year 1974 was issued by the President in exercise of the powers conferred by the Article 371D of the Constitution and hence no Government Order can go contrary to the Presidential Order.

(2) Rule 2(1)(p) of the Andhra Pradesh Educational Institutions (Regulation of Admission Into Under-Graduate Entrance Test) Rules, 1993, also defines 'qualifying examination' to mean the examination of the minimum qualification prescribed, the appearance/passing of which entitled one to seek admission into the relevant professional course. These statutory rules were issued by the Government in exercise of the powers conferred by Section 3 r/w Section 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. In fact, it is only these rules that provided for the first time a reservation for NCC cadets for admission to medical and dental

courses. Rule 8 of these Rules of the year 1993 provided for region wise reservation, reservation for SC/ST/BC communities, reservation for women, reservation for physically challenged and reservation for games and sports as well as National Cadet Corps. In other words, the very right of the candidates to seek reservation for NCC was born out of these statutory Rules of the year 1993 and hence no Government Order regulating such reservation can go contrary to the definition contained in the statutory Rules that contain a definition. What the petitioners now want is to give an interpretation to the expression 'qualifying examination' in the matter of reservation for NCC candidates, that goes completely contrary to the definition of the very same expression found in the statutory Rules by which this very reservation was born.

(3) The aforesaid Rules of the year 1993 were superseded by two different sets of Rules issued in the year 2003. One set of Rules were issued under G.O.Ms.No.486, dated 05.09.2003 and another issued under G.O.Ms.No.488, dated 05.09.2003. One set of Rules were applicable to all Government Professional Institutions imparting Under-Graduate Professional Courses in Medicine and Dentistry. The other set of Rules were applicable to Un-Aided Non-Minority Professional Institutions importing undergraduate professional courses in Medicine and Dentistry. Even these Rules define the expression qualifying examination to have the same meaning as assigned under the 1993 Rules. The Rules issued under G.O.Ms.No.486 define the expression 'qualifying examination' under

Rule 2(l) to mean, the examination of the minimum qualification prescribed, passing of which entitles one to seek admission into the relevant professional course. The same definition was adopted in Rule 2(1)(xiv) of the Rules issued under G.O.Ms.No.488.

38. Therefore, it is clear that the statutory Rules issued in exercise of the powers conferred by an Act of the State Legislature as well as the Presidential Order issued in terms of the Constitution define the expression qualifying examination in a particular manner. It is by virtue of these statutory Rules that the very reservation for NCC cadets was created. When the statutory Rules which created reservation for a particular category, define an expression in a particular manner, the Government Order regulating the procedure for implementing such reservation cannot define the expression in a different manner.

39. Therefore, the contention that the present amendment under G.O.Ms.No.123, dated 24.07.2017 cannot take retrospective effect, is misconceived. As pointed out by the Supreme Court in its judgment dated 18.04.2017, the previous Government Order created a confusion in the matter of interpretation to a particular Rule. When such a confusion is sought to be cleared through an amendment, it cannot be contended that the amendment seeks to take away a vested right. No one can contend that he should have the benefit of the confusion, up to the date on which the confusion is cleared. No one can contend that a clarity provided to something cannot take

retrospective effect. No one can contend that a confusion created a vested right which cannot be taken away by clarity.

40. Therefore, we find no merits in the above writ petitions. Hence they are dismissed. As a sequel, all miscellaneous petitions pending in these writ petitions, except W.P.M.P.No.31043 of 2017 are closed. W.P.M.P.No.31043 of 2017 in W.P.No.24798 of 2017 alone is allowed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: 02-08-2017

Ksn/JS

L.R. copy to be marked.



**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MRS. JUSTICE T. RAJANI**

Writ Petition Nos.23472, 24798 and 25087 of 2017

(Per VRS,J)



2nd August, 2017

Ksn/Js