

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS

Writ Petition No.29547 of 2016

Order: (per V.Ramasubramanian, J.)

The petitioner, who aspired to get admission to M.Ch. (Genito Urinary Surgery) for the current academic year, has come up with the above writ petition challenging the seat matrix prepared by the respondents.

2. We have heard Mr. C.Suman, learned counsel for the petitioner, Mr. Taddi Nageswara Rao, learned Standing Counsel appearing for the 1st respondent-Dr. NTR University and Mr. A.Prabhakar Rao, learned Standing Counsel appearing for the 2nd respondent-Kaloji Narayana Rao University.

3. On 06-7-2016, the 1st respondent issued a prospectus for admission to Super Speciality Courses in Medicine for the academic year 2016-17. All candidates, who applied, were subjected to an entrance test held on 31-7-2016. After evaluation of the answer sheets of all the candidates, the 1st respondent released a merit list on 13-8-2016.

4. In the merit list, the name of the petitioner was found with an indication that he had secured 16th rank, for being considered for admission to M.Ch. (Genito Urinary Surgery). Among a total of 44 candidates named in the merit list, the

petitioner happened to be the 4th from the Andhra University Area.

5. By a Notification dated 24-8-2016, the 2nd respondent announced 30-8-2016 as the date of counselling for admission to these super speciality courses in the State of Telangana. Similarly, the 1st respondent fixed 29-8-2016 as the date of first and final counselling for admission to super speciality courses.

6. Though it was seen from the prospectus issued by the 1st respondent that there were 6 seats in M.Ch. (Genito Urinary Surgery), the respondents had carved out 2 out of those 6 seats as Non-Statewide seats, on the ground that those seats were sanctioned after 02-6-2014. As a consequence, the seat matrix released by the 1st respondent showed 4 seats as allotted to the University Medical College, Hyderabad and 2 seats as allotted to Gandhi Medical College, Secunderabad. Therefore, contending that the classification of the 2 seats created after 02-6-2014 as Non-Statewide seats is contrary to the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (Presidential Order), the petitioner has come up with the above writ petition.

7. The sheet anchor of the case of the petitioner is a decision rendered by this very Bench on 30-8-2016 in W.P.No.29205 of 2016. In sum and substance, we have indicated in the said decision that the seats created after

02-6-2014, cannot be earmarked contrary to the Presidential Order and Section 95 of the Andhra Pradesh Re-organisation Act, 2014. Therefore, contending that his case falls squarely within the four corners of the law laid down by us in *Dr. Phanindra Kumar Nagisetty Vs. Dr. NTR University of Health Sciences, Vijayawada* (W.P.No.29205 of 2016, dated 30-8-2016), the petitioner is before us.

8. In order to understand the scope of the dispute raised in the present writ petition, it may be necessary to have an understanding of the distinction between Statewide and Non-Statewide seats. Due to historical reasons, the Parliament inserted a special provision in Article 371-D of the Constitution of India, empowering the Hon'ble President of India to issue orders, providing for regional reservation, in certain areas in the erstwhile combined State of Andhra Pradesh. In exercise of the powers conferred by Clauses (1) and (2) of Article 371-D, the President issued an order known as "Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974". Paragraph 2 of the Presidential Order defines several expressions found in the Presidential Order. The expression "Statewide University" is defined in Para-2(f) of the Presidential Order to indicate the Andhra Pradesh Agricultural University, Jawaharlal Nehru Technological University, Nizam Institute of Medical Sciences. Similarly, the expression "Statewide Educational Institutions" is defined in para 2(e) to mean an educational institution or

a department of an educational institution specified in the schedule to the Presidential Order. The Schedule to the Presidential Order contains a list of about 15 items. The last item at serial No.15 in the Schedule to the Presidential Order contains a list of 8 courses, in super specialities in medicine. “M.Ch. (Genito Urinary Surgery)” is not one of those 8 items in Serial No.15 of the Schedule to the Presidential Order.

9. Therefore, it is clear that neither Osmania Medical College, Hyderabad nor Gandhi Medical College, Secunderabad is a Statewide University within the meaning of para 2(f) of the Presidential Order. It is also further clear that M.Ch. (Genito Urinary Surgery) is not a Statewide Educational Institution, on account of the non-inclusion of the same in serial No.15 of the Schedule to the Presidential Order.

10. In *Dr. Phanindra Kumar Nagisetty*, this Bench was concerned with the admission to another super speciality course in medicine, namely M.Ch. (Surgical Oncology). There was only 1 seat for the said post in the combined State of Andhra Pradesh. That seat was available in Osmania Medical College, Hyderabad. But after the bifurcation of the State, with effect from 02-6-2014 the State of Telangana increased the seats available in the said course to 3. After the creation of additional seats, the Kaloji Narayana Rao University of Health Sciences, Warangal, divided those 3 seats into 2 categories, namely (1) 1 seat already in existence as a Non-

Statewide seat and (2) the 2 newly created seats as Statewide seats. As a consequence, all the 3 seats became available only to the local candidates of the Osmania University area.

11. In the above context, this Bench adverted to the distinction drawn between the Statewide Universities and Statewide Educational Institutions from Non-Statewide Universities and Non-Statewide Educational Institutions in paragraphs 5 and 6 of the Presidential Order and this Bench came to the conclusion that since the petitioner in that case was not seeking admission either to a Statewide University or to a Statewide Educational Institution, paragraph 5 of the Presidential Order alone would apply. In paragraph 16 of the decision, this Bench pointed out the distinction between paragraph 5 and paragraph 6 of the Presidential Order as follows:

“16. At this juncture, it is also necessary to take note of one distinction between Paragraph-5 and Paragraph-6 of the Presidential Order. While Paragraph-5(1) prescribes a percentage of reservation for local candidates, Paragraph-6(1) speaks about the distribution of those reserved vacancies, among the local areas carved out in relation to that particular region. The proviso to sub-paragraph (1) of Paragraph-6 makes the distribution provided in sub-paragraph (1) applicable only to cases where the total number of seats exceeds three.”

12. Eventually this Court came to the conclusion that as per the proviso to sub-paragraph (2) of paragraph-5, 1 out of the 3 seats available in M.Ch. (Surgical Oncology) should be kept as an unreserved seat. If 1 seat is unreserved, the

person who secured the highest rank should naturally get it and this is how we granted relief to the petitioner in the decision *Dr. Phanindra Kumar Nagisetty*.

13. The case on hand represents the converse. In this case the Prospectus issued by the University indicated the availability of 6 seats for M.Ch. (Genito Urinary Surgery). Subsequently, the number of seats was indicated as 7, including the 1 additional seat made available in Mamatha Medical College, Khammam.

14. In the seat matrix, the respondents showed 4 seats in Osmania Medical College, Hyderabad and 2 seats in Gandhi Medical College, Secunderabad. Out of those 6 seats, 4 seats were in existence at the time of bifurcation of the State. 2 additional seats (out of those 6 for the State of Telangana), were created after bifurcation of the State on 02-6-2014. These 2 newly created seats were classified as Non-Statewide seats, while the pre-existing 4 seats have been classified as Statewide seats. Therefore, the question that falls for consideration is whether such a classification is correct or not.

15. As we have pointed out earlier, the expression “Statewide Educational Institution” is defined in para 2(e) of the Presidential Order to mean Educational Institution or a Department of an Educational Institution, specified in the Schedule to the Order. In the Table under serial No.15 of the Schedule to the Presidential Order, 1974, M.Ch. (Genito

Urinary Surgery) in Osmania Medical College, Hyderabad and Gandhi Medical College, Secunderabad, is included as a Statewide Educational Institution. Therefore, as per paragraph 6(1) of the Presidential Order, admissions to 85% of the available seats in every course of study should be reserved in favour of local candidates and allocated amongst the local candidates, in the ratio of 42:36:22.

16. If 6 seats available are in Statewide Educational Institutions, 85% of those 6 seats would be equivalent to 5. Therefore, all the 3 Universities, namely Andhra University, Osmania University and Sri Venkateswara University, will get allotted 2 seats, 2 seats and 1 seat respectively. Then the remaining 1 seat would become an unreserved seat.

17. But by keeping 2 seats out of those 6 seats as Non-Statewide seats, the respondents have applied paragraph 6 of the Presidential Order to 4 seats and paragraph 5(2) to the newly created 2 seats. As a consequence, Andhra University, Osmania University and Sri Venkateswara University respectively got 1 seat, 2 seats and 1 seat respectively leaving 2 seats as unreserved seats.

18. In other words, the number of seats that would have got unreserved has now gone up from 1 seat to 2 seats, as a result of the 2 newly created seats being treated as Non-Statewide Educational Institution.

19. Technically the petitioner is right in contending that once the name of a particular course and the educational

institution in which it is offered are included in the Table under serial No.15 of the Schedule to the Presidential Order, then the same would automatically become a Statewide Educational Institution, by virtue of Section 2(e). But it appears that even if the contention of the petitioner is accepted to the effect that the unreserved seats should be 1 and the seats allotted to Andhra University area should be 2, the petitioner who secured the 16th rank might not have got it. Though a contention was raised that one of the candidates who was allotted the seat as a local candidate, did not take it up, it appears that the seat has gone to a more meritorious candidate.

20. Therefore, if the writ petition is to be allowed, the seat given to a more meritorious candidate should be cancelled. Even if we do so, the petitioner cannot be directed to be admitted. The candidate who has been admitted on merit, as against the 1 additional seat in the unreserved category, is also not a party before us. Therefore, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ANIS, J.

06th January, 2017.
Js/Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS

Writ Petition No.29547 of 2016
(per VRS, J.)



06th January, 2017.
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