

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

+ Writ Petition No.2688 of 2018

% Date: 09-4-2018

B.Lalith Kalyan, S/o.Chandra Sekhar,
Aged about 20 years, Occ: Student, R/o.1-4/3-8,
Post Office Lane, Kamakoti Nagar, Vijayawada, A.P.
... Petitioner

Vs.

\$ 1. Dr. N.T.R. University of Health Sciences,
Rep. by its Vice Chancellor,
Ring Road, Vijayawada, Krishna District,
Andhra Pradesh, Pin: 520 008

2. The Registrar, Dr. NTR University of Health Sciences,
Vijayawada-520 008, Krishna District, A.P.

3. The P.E.S. Institute of Medical Sciences &
Research, Rep. by its Principal, Kuppam,
Chittoor District, Andhra Pradesh

... Respondents

! Counsel for Petitioner: Mr. A.Bhaskarachari

Counsel for Respondents 1&2: Mr. Taddi Nageswara Rao,
Standing Counsel

Counsel for Respondent No.3: ---

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
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Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging the cancellation of admission granted to him into MBBS Course during the Academic Year 2015-16.

2. Heard Mr. A.Bhaskarachari, learned counsel for the petitioner and Mr. Taddi Nageswara Rao, learned Standing Counsel appearing for the University.

3. The petitioner studied up to 10th standard in two different schools in Vijayawada. He did his Intermediate (+2) also at Vijayawada. After completion of Intermediate, the petitioner applied for EAMCET-2015 and he secured a rank of 2530. The petitioner does not belong to any reserved category.

4. In the 3rd phase of counselling held in August 2015, the petitioner was allotted to the 3rd respondent-College for admission to the MBBS Course for the Academic Year 2015-16 and the petitioner joined the college on 01-10-2015.

5. In April 2016, the 2nd respondent-University sent a communication to the District Educational Officer, Anantapur, calling upon him to verify whether the petitioner studied in Sri Vivekananda EM High School, Uravakonda, Anantapur, from 6th standard to 9th standard during the period 2007-08 to 2011-12. This clarification was sought on the basis that the place where the petitioner actually studied

up to 10th standard viz., Vijayawada came within the Andhra University Area and that he produced a bogus certificate as though he studied in Anantapur District coming within Sri Venkateswara University Region and got admission to the 3rd respondent-College on the basis of the bogus Study Certificate.

6. In response to the letter dated 20-4-2016 issued by the Registrar of the University, the District Educational Officer, Anantapur, conducted an enquiry and submitted a report. The report confirmed that the petitioner was not a student of the school in Anantapur.

7. On the basis of the said report dated 14-6-2016 of the District Educational Officer, Anantapur, the Vice Chancellor of the University passed an order dated 27-6-2016 placing the petitioner under suspension from pursuing the MBBS Course until further orders. The said order of suspension was challenged by the petitioner by way of a writ petition in W.P.No.22871 of 2016. After ordering notice in the writ petition on 01-8-2016, this Court passed an interim order on 09-8-2016 permitting the petitioner to appear for the examination. The interim order passed by this Court was to the following effect:

“As we have seen in yet another case in W.P.No.24644 of 2016, this is also a case where the petitioner got his application registered on 25-9-2015. The receipt issued to him at 17.35 hours discloses that the local area is recorded as Andhra University. But the next receipt issued at 18.45 hours discloses the local area as

SVU. Therefore, something appears to have happened between 17.35 hours and 18.45 hours. The logical inference is that something had happened in the counselling centre. Since this could not have happened without any assistance, if not abetment on the part of the person-in-charge of the counselling centre, we issue an interim direction to the respondents to permit the petitioner to take the remaining examinations (practical). However, the results shall not be published, until further orders.”

8. Thereafter, the writ petition W.P.No.22871 of 2016 itself was disposed of by a final order dated 09-6-2017. Paragraphs-6 to 9 of the judgment dated 09-6-2017 passed in W.P.No.22871 of 2016 read as follows:

“6. It is seen from the impugned order that the impugned order was supposed to be a temporary measure. The impugned order states that the petitioner is suspended from pursuing the course of study until further orders. A period of nearly 9 months has passed from the date of the interim order.

7. It is claimed that a police complaint was lodged and Crime No.34 of 2016 of Gudipalli P.S., Chittoor District, has been registered.

8. In such circumstances, we are of the considered view that the suspension order cannot continue without any end. Obviously, the impugned order dated 27-6-2016 was passed without putting the petitioner on notice and without affording any opportunity. The University has not chosen to put the petitioner on notice and give an opportunity, probably on account of the fact that the suspension was intended to be only a temporary affair. But, this temporary suspension has now prolonged for nearly 9 months.

9. Therefore, the writ petition is allowed, the impugned order is set aside and the petitioner may be permitted to pursue the course of study, without prejudice to the right of the respondents to proceed, in accordance with law.”

9. Pursuant to the said order, the Vice Chancellor issued a show cause notice dated 01-9-2017 calling upon the petitioner to show cause why the admission granted to him during the Academic Year 2015-16 should not be cancelled. The petitioner filed a reply on 10-9-2017.

10. However, the petitioner was not permitted to pursue the course of study and was not allowed to attend the classes. Therefore, he came up with a 2nd writ petition in W.P.No. 34963 of 2017 seeking a direction to allow him to continue the course of study. In the said writ petition, an interim order was passed on 26-10-2017 directing the University to permit the petitioner to appear for the supplementary examination of the year 2017. The petitioner was also directed to cooperate with the enquiry.

11. Thereafter, the University appointed one Dr. Sasank, Principal of Siddhartha Medical College, Vijayawada, as an enquiry officer. The Enquiry Officer conducted an enquiry, examined witnesses and eventually came to the conclusion that the petitioner produced two Study Certificates, one of 10th Class and one of Classes 6 to 9 which were proved to be bogus and that he could not have gained admission, but for the bogus certificates.

12. On the basis of the said enquiry report, the Vice Chancellor passed a fresh order dated 11-01-2018 cancelling the admission granted to the petitioner. Challenging the said order, the petitioner has come back to this Court with the

above writ petition, which is the 3rd writ petition in succession. In other words, the future of the petitioner is actually tossed between Law and Medicine in the past nearly two years.

13. The learned counsel appearing for the petitioner forcefully contended that the enquiry report was completely perverse and that without connecting the petitioner to the disputed Study Certificate, the petitioner's future has been annihilated.

14. Before proceeding further, it must be recorded that a criminal complaint has also been registered against the petitioner for producing a bogus Study Certificate and securing admission to the MBBS Course. Therefore, we are obliged to tread very cautiously on a delicate path, lest the entire future of a reasonably bright young boy of 20 years would get jeopardised.

15. If we carefully analyse the pleadings on hand, it is seen that there is no dispute from the petitioner about the following facts viz.,

- (i) that he studied from Classes 1 to 10 at Vijayawada,
- (ii) that as a consequence, he belonged to the Andhra University Area (AU Area),
- (iii) that he secured a rank of 2530 in EAMCET-2015,
- (iv) that he belongs to the Open Category and
- (v) that he gained admission into a college that falls within Sri Venkateswara University Area (SVU Area).

16. What follows out of the above facts as admitted by the petitioner in his own Affidavit, is that the petitioner could have either secured admission under the 85% quota reserved for local candidates in the Andhra University Area or under the 15% quota available for all candidates in the SVU Area irrespective of the local area to which the petitioner belonged. The positive case of the University, about which the petitioner has no dispute, is that the last candidate belonging to the Open Category (Male) who secured admission in the Andhra University Area had secured a rank of 1885. Therefore, the petitioner could not have gained admission to a college located within the AU Area under the 85% quota reserved for local candidates of that area. Since he is a local candidate of AU Area even on his own admission, he could not have secured admission under the 15% quota thrown open to candidates of all areas in the AU Area, as the cut-off for Open Category was higher. The last rank for Open Category (Male) was 1739. Therefore, there can be no dispute about the fact that the petitioner could not have secured admission either as a local candidate or as a non-local candidate in any of the colleges located within the AU Area.

17. That takes us to the next question as to whether the petitioner could have secured admission as a non-local candidate available for Open Category under the 15% quota in SVU Area. According to the University, the last of the candidates belonging to Open Category (Male) who secured

admission as a non-local in SVU Area within the 15% quota available for Open Categories, had secured a higher rank than the petitioner. Therefore, the petitioner did not secure and could not have secured admission under the 15% quota available for non-locals in SVU Area. If that be so, the controversy gets reduced only to one last question viz., as to how the petitioner secured admission under the 85% quota available for local candidates in SVU Area. According to the respondents, the answer to this last question lies in the Study Certificate available with them on record, to the effect as though the petitioner studied in Sri Vivekananda EM High School, Uravakonda, Anantapur and that but for this Certificate, the petitioner could not have been allotted a seat in SVU Area.

18. The petitioner feigns ignorance of the Study Certificate relied upon by the respondents. According to the petitioner, he produced a Study Certificate that showed him to have studied up to 10th standard in Vijayawada. In other words, it is a case of total denial by the petitioner, of the production of any bogus certificate.

19. As we have pointed out at the threshold, we do not wish to get into the question whether the petitioner actually produced a bogus Study Certificate and gained admission. If we go into it and record a finding, the fate of the petitioner in the criminal case will get completely sealed and we do not wish to do that. Let us proceed on the presumption, by giving

the benefit of doubt to the petitioner that he did not produce a bogus certificate and gained admission.

20. But even then, the fact remains that the petitioner could not have gained admission to the 3rd respondent-College, with the certificates that he actually produced and the score and rank that he had secured. The admission granted to the petitioner to the 3rd respondent-College, in any case, cannot be sustained as he did not come within the cut-off for admission in SVU Area. Therefore, the cancellation of his admission cannot really be found fault with.

21. The learned counsel for the petitioner contended that the impugned order was not passed on the basis that the admission granted to the petitioner was erroneous. It is his contention that even if the admission granted to the petitioner was erroneous, the petitioner was not at fault and that therefore his admission cannot be cancelled.

22. But we are not impressed with the said argument. Rightly or wrongly, the Presidential Order, 1974 issued in exercise of the powers conferred by Clauses (1) and (2) of Article 371-D of the Constitution has created a reservation for local candidates in the three local areas viz., Osmania University Area (OU Area), Andhra University Area (AU Area) and Sri Venkateswara University Area (SVU Area). This reservation on the basis of domicile, is notwithstanding anything contained in any other part of the Constitution including Articles 14 and 16. Insofar as the States of

Telangana and Andhra Pradesh are concerned, this reservation on the basis of domicile is akin to the reservation for socially Backward Classes. Therefore, if somebody had secured admission to an educational course, under the quota reserved for a particular category (locals), despite not being entitled, he or she will have to forgo the same. In the case on hand, the petitioner could not have secured admission to the 3rd respondent-College coming within SVU Area, with the score and rank he secured. Therefore, he is not entitled to retain the benefit, irrespective of whether the benefit was unlawfully gained by him or erroneously conferred upon him. Therefore, we have no alternative except to dismiss the writ petition, even on admitted facts that the petitioner could not have got admission to the 3rd respondent-College. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.AMARNATH GOUD, J.

09th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

Writ Petition No.2688 of 2018
(per VRS, J.)



09th April, 2018.
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