

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

+ Writ Petition No.6073 of 2018

% Date: 09-4-2018

Ms S.Satya Manisha, D/o.S.Satyanarayana,
Aged 20 years, Occ: Student, R/o.D.No.5-168,
Nadakundura (V), Karpa (M), E.G. District

... Petitioner

Vs.

\$ 1. Dr. N.T.R. University of Health Sciences,
Rep. by its Vice Chancellor,
Vijayawada, Krishna District

2. Dr. N.T.R. University of Health Sciences,
Rep. by its Registrar,
Vijayawada, Krishna District

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

... Respondents

! Counsel for Petitioner: Mr. B.S. Kartik

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
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

Writ Petition No.6073 of 2018

Order: (per V.Ramasubramanian, J.)

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

2. Heard Mr. B.S. Kartik, 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 a school known as St. Joseph's Convent School at Kakinada. She did her Intermediate (+2) at Vijayawada. After completion of Intermediate, the petitioner applied for EAMCET-2015 and she secured a score of 80.8015 with a rank of 3896. The petitioner belongs to the BC-D Community.

4. In the counselling held on 09-8-2015, 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 14-9-2015.

5. In April 2016, the 2nd respondent-University sent a communication to the District Educational Officer, Kurnool, calling upon him to verify whether the petitioner studied in Good Shepherd EMH School, Nandyal, from 6th standard to 9th standard during the period 2006-2010. This clarification was sought on the basis that the place where the petitioner

actually studied up to 10th standard viz., Kakinada came within the Andhra University Area and that she produced a bogus certificate as though she studied in Nandyal, Kurnool District coming within Sri Venkateswara University area 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 instructed the Deputy Educational Officer, Nandyal, to make an enquiry and to submit a report. The Deputy Educational Officer, Nandyal, contacted Good Shepherd EMH School, Nandyal and verified the genuineness of the Study Certificate containing information as though the petitioner studied from 6th standard to 9th standard in Nandyal during the period 2006-2010. The school confirmed that the petitioner was not a student of that school. Therefore, the Deputy Educational Officer, Nandyal, submitted a report dated 14-6-2016, on the basis of which the District Educational Officer, Kurnool, wrote a letter dated 09-7-2016 to the 2nd respondent informing him that the Study Certificate was not genuine.

7. On the basis of the said communication dated 09-7-2016 of the District Educational Officer, Kurnool, the Vice Chancellor of the University passed an order dated 19-7-2016 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.24644 of 2016. After ordering notice in the writ petition on 26-7-2016, 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:

“Pending the writ petition challenging an order of suspension passed against her, the petitioner has come up with these miscellaneous petitions seeking *inter alia*, (1) suspension of the order of suspension; (2) a direction to allow her to write the examinations scheduled to be held from 09.08.2016.

Heard Mr. BS. Kartik, learned counsel for the petitioner and Mr. Taddi Nageswara Rao, learned counsel appearing for the 1st respondent.

The ground on which the petitioner, who was undergoing the 1st year MBBS course, has been placed under suspension was that though she actually belonged to Andhra University local area, she produced a fabricated study certificate, as though she belonged to Sree Venkateswara University local area and gained admission into the 1st year of MBBS Course. The conclusion that the petitioner fabricated a document with regard to her local area status and gained admission has been reached on the basis of the findings of a Committee constituted for verification of the original certificates.

A careful look at the proceedings of the Committee dated 14.03.2016 would show that after examining the cases of about 10 candidates including that of the writ petitioner herein, the Committee constituted for the purpose, requested the University to examine the study certificates produced by the candidates by referring them to the Director of School Education. Accordingly, the study certificate allegedly produced by the petitioner was referred to the Director of School Education. Thereafter, the University also wrote a letter dated 20.04.2016 to the District Educational Officer, Kurnool, directing him to verify whether the school from which the petitioner allegedly produced a study certificate, viz., Good Shepherd EM High School, Nandyal, Kurnool District, is in existence or not and whether the study certificates are genuine or not. The District Educational Officer has sent a reply after enquiry, on 9.07.2016, stating that the study certificate indicating that the writ petitioner studied from VI class to IX class in Good Shepherd EM High School, was not genuine.

But the contention of the writ petitioner is that she never produced the study certificate in question and that she produced only a study certificate to the effect that she studied from Class-I to Class-X only in St Joseph's Convent School, Kakinada.

In the light of such a stand taken by the writ petitioner that she never produced the study certificate,

which is in dispute, it has to be seen whether benefit of doubt at this stage should be given to the petitioner or not .

There are two things that would persuade us to give the benefit of doubt for the present to the petitioner. The first is that the Committee constituted by the university for verification of certificates, has conducted only a preliminary enquiry and not a detailed enquiry giving an opportunity to the petitioner. That stage has not yet been reached.

The second reason is that on the date of counselling, viz., 9.08.2015, the petitioner appears to have claimed local status only in Andhra University area. The hall ticket issued for APEAMCET-2015 indicating the date of examination as 08.05.2015 shows that the local status claimed by the petitioner was only Andhra University. The receipt for the registration at the time of counselling on 09.08.2015, issued at 10.18 am., also contains the local area status only as Andhra University. But the acknowledgement for receipt of certificates issued in a printed format at 11.08 am., indicates the local area status as Sree Venkateswara University. Therefore, what happened between 10.18 am., and 11.08 am., remains a mystery and the question as to whether the Convenor or the officers who scrutinized the applications at the counselling centre performed their tasks truthfully, looms large.

Therefore, for the above two reasons, we give benefit of doubt to the petitioner for the present to enable her to write the examination for the 1st year. The respondent shall permit the petitioner to take the examination but the results of the examination shall be withheld until further orders. We have passed this order on the premise that the petitioner has requisite attendance for writing the examination.

Post after two weeks. The university shall produce all the records relating to the petitioner, produced at the time of counselling.”

8. Thereafter, the writ petition W.P.No.24644 of 2016 itself was disposed of by a final order dated 27-3-2017. Paragraphs-6 to 8 of the judgment dated 27-3-2017 passed in W.P.No.24644 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 10 months has passed from the date of the interim order.

7. Though it is claimed that a police complaint was also lodged, no FIR has been registered and as a consequence there are no criminal proceedings pending. In such circumstances, we are of the considered view that

the suspension order cannot continue without any end. Obviously, the impugned order dated 19-7-2016, 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 10 months.

8. 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. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.”

9. Pursuant to the said order, the Registrar passed a final order dated 02-6-2017 cancelling the admission granted to the petitioner during the Academic Year 2015-16. Challenging the said order, the petitioner filed a 2nd writ petition in W.P.No.29766 of 2017. The said writ petition was allowed by this Court by an order dated 11-9-2017 on the short ground that the same had been passed in utter violation of the principles of natural justice. Paragraphs-4 to 6 of the order passed on 11-9-2017 in W.P.No.29766 of 2017 read as follows:

“4. Pursuant to the liberty, the impugned order of cancellation of admission has been passed. The impugned order comprises of four paragraphs. The first two paragraphs contain the past history. The last paragraph contains the operative portion of the order. The third paragraph, which contains the reasons, reads as follows:

“In view of the same, the University has examined your explanation and also material (report of the District Educational Officer, Kurnool and your fake/bogus study certificate) on record, the University treats that you have furnished fake/bogus study certificate and also mislead the University at the time of admission into MBBS course for the

academic year 2015-16 at PES Institute of Medical Sciences, Kuppam.”

5. It is obvious from the above paragraph that an enquiry, where witnesses are examined, documents are marked, and witnesses are allowed to be cross-examined, was not conducted before the impugned order was passed. Thus, there has been a violation of the principles of natural justice.

6. In view of the above, the Writ Petition is allowed, the impugned order is set aside, and the matter remanded back. The respondents may conduct a full-fledged enquiry, after giving opportunities to the petitioner, and then pass final orders.”

10. 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 she could not have gained admission, but for the bogus certificates.

11. 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.

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

13. 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 girl of 20 years would get jeopardised.

14. 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 she studied from Classes 1 to 10 at Kakinada in St. Joseph's Convent School,

(ii) that as a consequence, she belonged to the Andhra University Area (AU Area),

(iii) that she secured a score of 80.8015 and a rank of 3896 in EAMCET-2015,

(iv) that she belongs to the BC-D Community and

(v) that she gained admission into a college that falls within Sri Venkateswara University Area (SVU Area).

15. What follows out of the above facts as admitted by the petitioner in her own Affidavit, is that the petitioner could

have secured admission either 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 BC-D Community who secured admission in the Andhra University Area had secured a rank of 3181. 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, in terms of the Presidential Order, 1974 issued under Article 371-D of the Constitution. Since she is a local candidate of AU Area even on her own admission, she 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 is higher. Actually the last candidate belonging to BC-D Community who secured admission as a non-local in the AU Area had secured the rank 2268. 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, but for the study certificate in question.

16. 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. It is not the case of the petitioner that the last of the candidates belonging to BC-D Community who secured admission as a non-local in SVU Area within the 15% quota available for Open Categories, had secured a lower rank. 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 Good Shepherd EMH School, Nandyal and that but for this Certificate, the petitioner could not have been allotted a seat in SVU Area.

17. The petitioner feigns ignorance of the Study Certificate relied upon by the respondents. According to the petitioner, she produced a Study Certificate that showed her to have studied up to 10th standard in St. Joseph's Convent School at Kakinada. In other words, it is a case of total denial by the petitioner, of the production of any bogus certificate.

18. 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 she did not produce a bogus certificate and gained admission.

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

20. 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 her admission cannot be cancelled.

21. 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, within the quota reserved for a particular category, 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. Therefore, she is not entitled to retain the benefit that was either unlawfully gained by her or erroneously conferred upon her. 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.6073 of 2018
(per VRS, J.)



09th April, 2018.
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