

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.13615 of 2018

% Date: 23-11-2018

Puli Gayatri Chandrahasa D/o V Chalapathi Rao,
Aged 27 years, R/o 8-17, Kothapeta, Pasumarru,
Pamarru Mandal, Krishna District, Andhra Pradesh
... Petitioner

Vs.

\$ 1. Dr. NTR University of Health Sciences,
AP PG Medical Admissions-2018,
New Govt. Hospital Road, NH 5 Frontage Road,
Beside General Hospital, Gunadala,
Vijayawada-520 004, Rep. by its Registrar

2. The National Board of Examinations,
NEET-PG, 2018, Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road),
New Delhi-110 029, Rep. by its Director

3. State of Andhra Pradesh, Rep. by its Prl. Secretary,
Health, Medical & Family Welfare (C1) Dept.,
Secretariat, Amaravathi, Guntur
(R.3 is impleaded as per Court order dated 19-4-2018
In I.A.No.3/2018)

... Respondents

! Counsel for Petitioner: Mr. A.Satya Prasad,
Senior Counsel, representing
Mr. Venugopal Rao Veerla

Counsel for Respondent No.1: Mr. Taddi Nageswara Rao,
Standing Counsel

Counsel for Respondent No.2: ---

Counsel for Respondent No.3: GP for Medical & Health (AP)

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.13615 of 2018

Order: (per V.Ramasubramanian, J.)

Challenging the validity of Rule 10(x)(B) of the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997, the petitioner has come up with the above writ petition.

2. Heard Mr. A.Satya Prasad, learned Senior Counsel appearing for the petitioner, Mr. Taddi Nageswara Rao, learned Standing Counsel appearing for the University and the learned Government Pleader for Medical and Health (Andhra Pradesh).

3. The petitioner completed her MBBS Course in March, 2015. She appeared for NEET PG-2016 and appeared for counselling in the year 2017. She secured a seat only in Post Graduate Diploma in Psychiatry. Since the petitioner was not interested in the said course, she did not take the allotment.

4. Thereafter, she appeared again for NEET PG-2018. She was invited to participate in the counselling held on 13-4-2018. To enable the candidates to participate in the counselling, all candidates were invited for certificate verification. After completion of verification of certificates on 05-4-2018, an SMS was sent to the Mobile numbers of the candidates, asking them to exercise Web options as per the

schedule. When the petitioner attempted to exercise Web options, she did not receive the one time password.

5. When the petitioner made enquiries, she found from a list published on 11-4-2018 that she was declared ineligible for admission. This was on the basis of amended Rule 10(x)(B) of the Rules. The amendment was introduced under G.O. Ms.No.67, dated 21-4-2017. The amended Rule 10(X) in entirety reads as follows:

“(X)(A) (i) A candidate allotted seat as per his option in the last but one phase of web counselling, such candidate should join compulsorily. Otherwise the candidate will not be permitted to exercise options in the last phase of counselling. However, the candidate can slide into any other seat of his choice in the subsequent counselling and join.

(B) In the final phase of final counselling:

i. A candidate who exercised options and allotted a seat shall not be permitted to leave the seat. If any candidate has not joined in the allotted seat, the candidate shall be debarred for a period of three years for admission into Post Graduate Medical Degree/Diploma courses at the colleges in the State of Andhra Pradesh.

ii. A candidate who exercised options and joined in an allotted seat shall not be permitted to withdraw from the seat. In case any candidate withdraws from the allotted seat, the candidate shall be debarred for a period of three years for admission into Post Graduate Medical Degree/ Diploma courses at the colleges in the State of Andhra Pradesh besides payment of Rs.3 lakhs.”

Therefore, challenging Rule 10(X)(B), the petitioner has come up with the above writ petition.

6. The impugned rule is assailed primarily on four grounds viz., (i) that the rule travels beyond the scope and

ambit of the Statute under which the rule is framed, (ii) that the rule has no nexus with the object sought to be achieved, (iii) that the rule is so arbitrary that the number of years for which a candidate is sought to be debarred, exceeds even the duration of a Post Graduate Diploma Course and (iv) that the penalty sought to be imposed is highly disproportionate to the practice sought to be curtailed.

7. We have carefully considered the above submissions.

8. The first contention revolves around the power in exercise of which the impugned rule is framed. Therefore, it is necessary to have a look at the Statute under which the impugned rule is issued.

9. The State of Andhra Pradesh first enacted the Andhra Pradesh Education Act, 1982, primarily with the object of reforming the existing system of examinations so as to make it a valid and reliable indicator of student achievement. The Act sought to provide for Statutory recognition of Tutorial Educational Institutions and also to provide Statutory authority to various existing educational bodies such as Board of Secondary Education, State Board of Technical Education and Training etc.

10. But within a year of enactment of Andhra Pradesh Act 1/1982, the Government realised that the undesirable practice of collecting fee at the time of admission into educational institutions had been on the increase. But the provisions of the A.P. Education Act, 1982 were found not to

be adequate to control the evil practice. Therefore, another Act known as A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 was enacted. The Statement of objects and reasons made it clear that the purpose of the Act was to regulate admission into educational institutions and to prohibit the collection of capitation fees in the State.

11. Section 3 of the Act reads as follows:

“3. Regulation of admission into educational institutions:-- (1) Subject to such rules as may be made in this behalf, admission into educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed:

Provided that admission into Agriculture, Dental, Engineering, Medical, Pharmacy and Veterinary Colleges shall be made on the basis of ranking assigned by giving weightage to the marks secured in the relevant group subjects namely, Biology, Physics, Chemistry or Mathematics, Physics, Chemistry, as the case may be, in the Intermediate Public Examination or equivalent Examination and weightage to the marks secured in the common entrance test as may be prescribed.

(2) The admission into educational institutions under sub-section (1) shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and other categories of students as may be notified by the Government in this behalf and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974.

(3) Notwithstanding anything in sub-sections (1) and (2) it shall be lawful for the Government, to admit students belonging to other States on reciprocal basis and the nominees of the Government of India, into Medical and

Engineering Colleges in accordance with such rules as may be prescribed.

Provided that admission of students into the Regional Engineering College, Warangal to the extent of one-half of the total number of seats shall be in accordance with the guidelines issued by the Government of India from time to time.”

12. A reading of Section 3 would indicate that the Government was entitled to make rules for regulating admissions into educational institutions. Section 12 of the Act conferred overriding effect for this Act, upon all other laws for the time being in force. Section 15(1) of the Act empowered the Government to make rules for carrying out all or any of the purposes of the Act. The entire scheme of the Act together with the Statement of objects and reasons and the preamble would go to show that the Act sought to achieve two purposes viz., (i) to regulate admission into educational institutions and (ii) to put an end to the evil practice of collecting capitation fee.

13. In the background of the scheme of the Act and its objects and reasons, the argument of Mr. A.Satya Prasad, learned Senior Counsel for the petitioner, is that the debarment of a candidate for three years, under Rule 10(X)(B) travels far beyond the scope and purpose of the Statute and that therefore it is *ultra vires* the Act.

14. But we do not think so. One of the twin objects of A.P. Act 5/1983 is to regulate admissions into educational institutions. The reason as to why the State Government had

come up with the impugned amendment, as stated in the counter affidavit filed by the Special Chief Secretary to Government, Health, Medical and Family Welfare Department, is that the practice of candidates not taking a seat allotted to them in the Web counselling or leaving the course after taking the allotment, results in large number of seats going waste. According to the Government, a large number of students make options simultaneously in the States of Andhra Pradesh and Telangana, leading to intentional blockage of seats and that as a result, the next meritorious candidates are deprived of the opportunity of joining a Post Graduate Medical Course.

15. In a separate counter affidavit filed by them, the University has also taken a stand that the practice of students making options and not joining the seats, results in other candidates not getting allotment and the seats going waste. Therefore, it is contended that the impugned rule was incorporated, after consultations with the officials of the Universities and hence the same cannot be assailed.

16. From the counter affidavits filed by the Government and the University, it is clear that the very object of the original set of rules issued in the year 1997 was to regulate admissions to educational institutions. A number of seats going vacant in Post Graduate Medical Courses is actually a matter of serious concern. It is actually a national waste and hence if steps are taken in the form of rules, to curtail

the practice of students making options and then backing out, the same would tantamount to “regulating admissions”. Since “regulation of admissions into educational institutions” is one of the twin objects of A.P. Act 5/1983, any rule which seeks to achieve the said object, would be *intra vires* and not *ultra vires*. Hence, the first contention of the learned Senior Counsel for the petitioner is liable to be rejected.

17. The second contention of the learned Senior Counsel for the petitioner is that the rule has no nexus to the object sought to be achieved. But we are unable to agree with this contention. Fear of penal consequences may at times act as a deterrent for candidates to avoid the practice of making options and not taking the seats. There are different methods by which the object of curtailing this practice could be achieved. Providing penal consequences is one of the methods by which this object could be achieved. Therefore, the second contention that there is no nexus with the object sought to be achieved, is unsustainable.

18. The third contention of the learned Senior Counsel for the petitioner is that the rule is so arbitrary that the debarment prescribed therein exceeds even the duration of the course. This contention is fairly justified. It may be seen from sub-clauses (i) and (ii) of Clause (B) of sub-rule (x) of Rule 10 that the debarment prescribed therein is uniform, both for Post Graduate Medical Degree and Post Graduate Medical Diploma Courses. The debarment prescribed is for

three years. The period of three years appears to have been chosen, as one that correlates to the duration of the course. But unfortunately, the duration of a Post Graduate Diploma Course is only two years and not three years. The duration of a Post Graduate Medical Degree Course is three years. Therefore, the penal provision for both cannot be the same. Hence, the impugned rule appears to be arbitrary at least insofar as Post Graduate Medical Diploma Courses are concerned.

19. The last contention of the learned Senior Counsel for the petitioner is that the penalty sought to be imposed is highly disproportionate to the practice sought to be curtailed. Though this contention, on the surface level appears to be simple and capable of being dealt with easily, it has, in built within itself, certain serious issues. This can be understood only if we have a look at the evolution of the rule from the year 1997.

20. As we have pointed out earlier, the A.P. Act 5/1983 came into force on 07-4-1983. But a set of rules known as Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, were issued for the first time only in the year 1997, under G.O.Ms.No.260, Health, Medical and Family Welfare, dated 10-7-1997. At the time when the rules were issued for the first time in 1997, Rule 10 comprised only of 9 sub-rules. In other words, sub-rules (i) to (ix) alone were available under Rule 10. But by

an amendment issued under G.O.Ms.No.34, Health, Medical and Family Welfare, dated 03-02-2010, sub-rule (x) was inserted under Rule 10. It reads as follows:

“(x) The candidates who are selected and admitted to PG courses are not permitted to withdraw from the course between the issue of the notification for final counselling by the University and 30th June of year of admission and such candidates will be debarred for three years from appearing for the Entrance Test for admission into PG Medical Courses in addition to forfeiture of the bond amount.”

21. Thus the original sub-rule (x) was intended only to penalise those who were admitted to Post Graduate Medical Courses and who wanted to withdraw from the course, after admission. But by the impugned amendment under G.O. Ms.No.67, dated 21-4-2017, two sets of modifications are made to sub-rule (x). The first modification sought to be made to sub-rule (x), relates to candidates who were allotted seats in the last but one phase of Web counselling. The second relates to the allotments and admissions made in the final phase of final counselling.

22. The second category which relates to final phase of final counselling, is again categorised into two by the sub-rule. The first deals with candidates who exercised options and allotted a seat but who did not join the allotted seat. The second deals with candidates who join a course and later withdraw.

23. There can no doubt that as regards the second category of cases that arise in the final phase of final

counselling and which are sought to be dealt with by Rule 10(x)(B)(ii), the situation for the Government and the medical colleges becomes irreversible. Once a person who is allotted a seat takes the seat and joins the course and thereafter leaves the course, that seat becomes vacant for the entire duration of the course. The wastage in such cases is not merely of money, but also of resources. Irrespective of whether it is a Government-run or Private Aided, a Post Graduate Medical Educational Institution is required to put in place a huge infrastructure for the purpose of producing specialists in various branches of medicine. The teacher-student ratio in Post Graduate Medical Educational Institutions is kept at such a stringent level by the regulations, to ensure that those who come out, are of International quality. This infrastructure becomes unproductive if a candidate takes a seat and thereafter leaves. It is of course true that an unwilling student cannot be compelled to continue the course, as the same would tantamount to flogging a dead horse. Therefore, prescribing a penalty alone may prove to be a deterrent, if at all. Hence, we have no difficulty in accepting that Rule 10(x)(B)(ii), cannot be termed arbitrary. As a matter of fact, the petitioner is not actually hit by Rule 10(x)(B)(ii). The petitioner is actually hit by Rule 10(x)(B)(i). Therefore, the petitioner's challenge should have been confined only to Rule 10(x)(B)(i). But unfortunately, the prayer made in the writ petition is for declaring the entire

Rule 10(x)(B) as *ultra vires*. But in view of the fact that the grievance of the petitioner has arisen directly as a result of the operation of Rule 10(x)(B)(i), we shall not pronounce any opinion on the validity of Rule 10(x)(B)(ii). We shall confine our discussion only to the validity of Rule 10(x)(B)(i).

24. The evolution of the impugned rule shows that from 1997 until the year 2010, there was no penal provision. In the year 2010, a penal provision was introduced, only in respect of persons who took admission and thereafter left the course. But by the impugned amendment, persons who did not take the allotment in the final phase of final counselling, are also sought to be penalised. The only justification sought to be given by the Government as well as the University for this penal provision is that there is intentional blocking of seats by candidates in both the States. In order to test the correctness of the justification so pleaded, it may be necessary to have an understanding of the manner in which Web counselling takes place.

25. To begin with, candidates who are successful in NEET PG are called upon to appear for certificate verification. After certificate verification, a SMS is sent to candidates informing them of their entitlement to exercise Web options as per the schedule. They are also informed that at the time of saving options, the candidates will receive OTP (One Time Password).

26. Thereafter, Phase-I of Web options commences. Since the admission to Post Graduate Medical Courses has become extremely competitive, the candidates indicate more than one option. If candidates are entitled to exercise only one option, they become disentitled to seek admission to any other discipline, in the event of not getting a seat of their choice. Therefore, candidates are left with no alternative except to provide more than one option.

27. Upto the final phase, even if candidates are not allotted a course of their first preference, but allotted a course according to their second option, they are allowed to slide. Up to the final phase of counselling, the candidates are permitted to switch over from the option of least choice to the option of first choice. It is only in the final phase of final counselling that the candidates face a roadblock.

28. Up to the date of the impugned amendment, it is only those who took admission and later discontinued the course, who were debarred from participating in the selection. Therefore, candidates who are unwilling to join a course either on account of the situation prevailing before the introduction of the impugned amendment or on account of their dislike for the course of least preference, were well entitled within their rights not to take the allotment, but to wait for a period of one year so that they can improve their score in NEET PG the next year. To say that such candidates will be debarred for three years thereafter, would be to axe the

entire dream of the students to pursue their Post Graduate Medical Education.

29. The conflict in cases of this nature is between private right and public interest. When all candidates who are equally placed are entitled up to the stage of final phase of counselling, to not take the allotment of a seat of least preference but to wait or to take a seat of less preference and thereafter slide in the next phase, some of those candidates who get caught in the final phase of counselling alone cannot be penalised and that too to the extent of debarment for a period of three years. The private rights and private interest that are affected by the impugned rule far outweigh the public interest sought to be achieved.

30. As a matter of fact, the problem that is sought to be addressed through the impugned rule, is not incapable of being solved with a little improvement in the software that is used for Web counselling. If the final phase of final counselling is closed one or two days prior to the cut-off date for closure of admissions, the seats that go vacant on account of candidates who are allotted such seats not taking the same, can also be filled up. In these days of advancement in technology, this is possible of being achieved. Assuming without admitting for a moment that it is not possible, the Government may at least reduce the period of debarment to only one year. A graduate medical doctor, if debarred from participating in the process of selection for three years for

admission to Post Graduate Medical Courses, may not be able to secure good rank in NEET PG thereafter. To seal the career of a person with potential, is also against public interest.

31. Therefore, the writ petition is allowed and Rule 10(x)(B)(i) of the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997, is declared *ultra vires*, null and void. It is open to the Government to introduce a rule which will either minimise the penalty or provide a solution for ensuring that the seats do not go a waste. Insofar as the petitioner is concerned, she shall be permitted to appear for selection in the next academic year, as the admissions to the current academic year are already over. Pending applications, if any, shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

23rd November, 2018.

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