

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

WRIT PETITION No.21008 of 2018

Between:

K.Tejaswi Sai Venkatesh

.... Petitioner

and

High Court of Judicature at Hyderabad
For the State of Telangana and the State
Of Andhra Pradesh, Hyderabad, represented
By its Registrar General and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.06.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be marked to Law Reports/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE CHIEF JUSTICE SRI RAMESH RANGANATHAN**
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

+ **WRIT PETITION No.21008 of 2018**

% 28.06.2018

K.Tejaswi Sai Venkatesh

.. Petitioner

Vs.

\$ High Court of Judicature at Hyderabad
For the State of Telangana and the State
Of Andhra Pradesh, Hyderabad, represented
By its Registrar General and others.

.. Respondents

! Counsel for the petitioner: Sri R.Gopala Krishna, Learned Counsel

^ Counsel for the respondents 1 & 2: Sri Swaroop Oorilla, Learned
Standing Counsel.

Counsel for the respondent No.3: Learned G.P. for Medical,
Health & FW (AP)

< Gist:

> Head Note:

? CITATIONS:

¹ (2012) 7 Supreme Court Cases 389

² 1996 (3) ALD 56 (FB)

³ 1997 (2) ALD (CrL.) 910 (AP)

⁴ AIR 1957 AP 49

⁵ AIR 1951 Nagpur 11

⁶ AIR 1952 Patna 341

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

W.P.NO.21008 of 2018

ORDER: (Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This writ petition is filed questioning the office order dated 3.4.2018, directing listing of writ petitions, relating to counseling/admissions into MBBS/BDS courses which are already filed and pending and which are likely to be filed during the current academic year, before a Division Bench of this Court as arbitrary, illegal, and contrary to Rule 14 of the Writ Proceedings Rules of the High Court, and the judgment of the Supreme Court in ***Asha Vs. PT. B.D. Sharma University of Health Sciences and others***¹. A consequential direction is sought to set aside the same in the interest of justice.

The Supreme Court, in ***Asha***¹, observed:-

“.....We are not oblivious of the fact that the Hon'ble Judges of the High Court are working under great pressure and with some limitations. **However, we would still make a request to the Hon'ble Chief Justices of the respective High Courts to direct listing of all medical admission cases before one Bench of the Court as far as possible and in accordance with the Rules of that Court. It would further be highly appreciable if the said Bench is requested to deal with such cases within a definite period, particularly during the period from July to October of a particular year.** We express a pious hope that our request would weigh with the Hon'ble Chief Justices of the respective High Courts as it would greatly help in serving the ends of justice as well as the national interest.....” (emphasis supplied).

By its order in ***Asha***¹, the Supreme Court requested the Chief Justices of the respective High Courts to direct listing of all medical admission cases, as far as possible, before one Bench of the High Court, and in accordance with the Rules of that Court; and that the said Bench be requested to deal with such cases

¹ (2012) 7 Supreme Court Cases 389

within a definite period, particularly during the period from July to October of a particular year, as it would greatly help in serving the ends of justice as well as national interest.

Since cases, relating to medical admissions, are required to be heard by one bench, that too during the period from July to October of each year, such matters were directed to be listed before a Division Bench of this Court. The complaint in this writ petition is that the Supreme Court, in **Asha¹**, has opined that constitution of Benches should be in accordance with the rules; Rule 14 (a) of the Writ Proceedings Rules of the High Court requires these matters only to be heard by a Single Judge; the office order dated 03.04.2018, whereby all such matters are directed to be listed before a Division Bench, is therefore illegal; writ petitions, relating to counselling/admissions into MBBS/BDS courses, should be listed only before a Single Judge of this Court, and not before a Division Bench; the petitioner's right of an intra-court appeal would be lost, if the matter is directly heard by a Division Bench, instead of a Single Judge; and the officer order, whereby all these matters were directed to be listed before a Division Bench, should be quashed.

Rule 14(a) of the Writ Proceedings Rules, 1977, as it stood prior to its amendment by Roc.No.1967/SO/2015, read thus:-

The following petitions shall be heard by a Bench of two Judges,

- (i) Petitions for a writ in the nature of Habeas Corpus:**
- (ii) Petitions relating to Elections under the Representation of the People Act, 1951**
- (iii) Petitions relating to Income-tax, Gift-tax, Wealth-tax, Estate duty, Sales-tax and Excise Acts and other Allied Acts (State and Central Taxation Cases)**

(iv) Petitions relating to matters coming within the purview of:-

A.P. Land Grabbing (Prohibition) Act, 1982.

Administrative Tribunals Act, 1985,

A.P Lokayukta & Upa - Lokayukta Act, 1983 and

The Consumer Protection Act, 1986.”

Rules 14 (b) required all other petitions to be posted before a Single Judge.

The Writ Proceedings Rules, 1977 were amended by Roc. No.1967/SO/2015, and notified in Notification No. 30/SO/2015. The said notification was published in the Telangana Gazette on 04.08.2015, and the A.P. Gazette on 10.10.2015. By the said amendment, the words “*Andhra Pradesh Reorganization Act, 2014*” were inserted, after the words “*the Consumer Protection Act, 1986*”, in Rule 14 (a) (iv) of the Writ Proceedings Rules, 1977. By the said amendment sub-clauses (v) and (vi) were also inserted after sub-clause (iv) of Rule 14 (a) of the Writ Proceedings Rules, 1977. Sub-clause (v) relates to matters in which the High Court is impleaded as a party, and sub-clause (vi) relates to matters where statutory provisions, sections or rules, regulations or the statute itself is/are challenged as being ultra vires/unconstitutional.

In terms of the amendment made to the Writ Proceedings Rules, 1977, in the year 2015, all cases where statutory provisions and rules, including those relating to medical admissions, are challenged as being ultra vires or as unconstitutional, are required to be listed before a Division Bench. As Rule 14 (b) only requires all other petitions (other than those referred to in sub-clauses (i) to (vi) of Rule 14 (a)) to be posted before a Single Judge, writ petitions,

where the vires of statutory provisions are under challenge, cannot be so posted.

It is true that Rule 14 (a) of the Writ Proceedings Rules of the High Court do not specifically require Writ Petitions, relating to medical admissions, to be listed before a Division Bench. The fact remains that, in the light of the judgment of the Supreme Court in **Asha¹**, all matters relating to medical admissions are required to be heard by one Bench. Writ Petitions, relating to medical admissions and counseling, are filed on various grounds. In some case the validity of Statutory provisions or Rules, governing admissions to medical colleges, are subjected to challenge. In view of Rule 14(a)(vi) of the Writ Proceedings Rules, 1977, such cases are required to be heard only by a Division Bench. Directing Writ Petitions where the vires of Statutory provisions and Rules, relating to medical admissions and counseling are under challenge, to be listed before a Division Bench, and all other cases, relating to medical admissions/counseling, to be listed before a Single Judge, would again fall foul of the judgment of the Supreme Court in **Asha¹** whereby the Chief Justices of the High Courts were requested to direct that all medical admission cases be listed before one Bench of the High Court.

The Writ Proceedings Rules of the High Court cannot be read out of context, since a narrow construction of Rule 14 (a)&(b) of the Writ Proceedings Rules of the High Court would disable all matters, relating to medical admissions, to be listed before one Bench. The right of the litigant to claim that a matter be heard either by a Single Judge or a Division Bench came up for consideration before a Full Bench of this Court in **A. Srinath and**

others Vs. Andhra Pradesh State Road Transport Corporation

and another², and the Full Bench observed:-

“... In **State of Maharashtra v. Narayan: AIR 1982 SC**

1198 a similar observation has been made in these words:

".....**The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in subsection (3) of Section 51 of the Act, but inheres in him in the very nature of things...**"

To sum up :

(1)

(2)

(3) **The Hon'ble the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judge hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular Division Bench. No Judge or a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon'ble the Chief Justice....."** (emphasis supplied)

Again in **Coromandal Fertilizers Ltd. Vs. P. Venkatarami**

Reddy and another³ a Full Bench of this Court considered the

question whether hearing of a case by a Division Bench, which as

per the Writ Proceedings Rules, 1977, ought to be posted and

heard by a Single Judge, would nullify the hearing. After

examining Rule 14 (a) of the Writ Proceedings Rules, 1977, as it

then stood, the Full Bench observed:-

“...It is not in dispute that most of the cases are posted as per the Rules. The grievance of the learned Counsel is that when that is the situation why should there be any exception in posting these cases before a Division Bench, when such a posting is not permissible under the Rules, particularly when the parties are deprived of their right of appeal under Clause 15 of the Letters Patent. This argument is based on the misapprehension that the rules give a right to the litigants of hearing of their cases by the High Court by particular number of Judges. The Rules contemplate apportionment of work among the Judges, for hearing and determination of the cases coming up before the High Court, by way of a single

² 1996 (3) ALD 56 (FB)

³ 1997 (2) ALD (CrL.) 910 (AP)

Judge or Bench of two Judges or a Full Bench. The object of the Rules appears to be that most of the cases can be disposed of by single Judges and only some important matters need to be heard by Division Benches. The language of the Rules does not indicate that if the matter is not posted as per rules, the hearing would be vitiated. The litigant cannot be heard to say that his case should be heard by a single Judge than by two Judges, since hearing by two Judges is not only less expensive but would give him better comfort. Rule 1 of the Appellate Side Rules only say that the matters 'may be heard and determined by one Judge'. It does not follow from these words that these matters should in no case be heard by a Division Bench. In the same Rule it is also provided that a single Judge, before whom the matter is posted for hearing, may refer it for hearing and determination by a Bench of two Judges. Rule 14(a) of the Writ Proceedings Rules, 1977, also contemplates hearing of writ petitions relating to Habeas Corpus, Election matters, Tax matters and other certain special enactments by a Bench of two Judges. As per Rule 14(b) "All other petitions shall be posted before a single Judge who may, if he thinks fit, refer any of them to a Bench of two Judges". The language is similar to what we find in Rule 1 of the Appellate Side Rules. **It is apparent from the language of the Rule, that a matter which is to be heard by a single Judge can also be heard by a Division Bench. A Division Bench does not appear to be incompetent to hear such matters. The above rules, having been framed for distribution of work between the Judges and being rules of procedure, are only administrative in nature and unenforceable. They do not create any right in the litigant to claim that his case should be heard by a particular number of Judges...."** (emphasis supplied)

The Full Bench, in **Coromandal Fertilizers Ltd³**, referred with approval to the earlier Full Bench judgment in **K. Venkateswarulu and others Vs. S. Satyanarayana and others⁴** wherein it was held:-

"....The Chief Justice of the High Court is the authority to determine which Judge is to sit alone and which Judges are to constitute the several division Courts. The Appellate Side Rules having been made by the High Court under statutory authority referred to above, if they have a meaning and effect inconsistent with the Acts authorising them or if they are in excess of the powers conferred thereunder or if they contravene the provisions of other enactments they are pro tanto ultra vires.

Otherwise they have the force of law and are binding on all the Judges of the Court, as held by a Full Bench of the Madras High Court in '**District Magistrate of Trivandrum v. M. Mappillai**' (ILR (1939) Mad. 708 = AIR 1939 Mad. 120)...."

(emphasis supplied)

The law declared by the Full Bench, in **A.Srinath²** and **Coromandal Fertilizers Ltd³**, is that the Chief Justice is the master of the roster; he has full power, authority and jurisdiction

⁴ AIR 1957 AP 49

in the matter of allocation of business of the High Court, which inheres in him in the very nature of things; he has the power to allocate judicial business of the High Court, including which of the Judges should sit alone, and who should constitute the Bench of two or more Judges; no litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court, have a right to question the jurisdiction of the Judges or the Judge hearing the case; no person can claim, as a matter of right, that his petition be heard by a Single Judge or a Division Bench or a particular single Judge or a particular Division Bench; the Chief Justice enjoys an inherent and unrestricted administrative power in the matter of constitution of Benches in the interest of administration of justice; and a litigant has no right to be heard by any particular number of Judges. Consequently no party can claim that he has a right to be heard by a particular number of Judges. The right of appeal, given by the Statute, remains unaffected unless the party aggrieved can say that he has a vested right to be heard by a particular number of Judges, which he does not. (***Zikar Vs. The Government of State of Madhya Pradesh***⁵; ***Mahendra Raut and others Vs. Darsan Raut and others***⁶).

As noted hereinabove, listing of all matters relating to medical admissions before a Division Bench is only to ensure compliance with the judgment of the Supreme Court in ***Asha***¹. If medical admission matters, where a statutory provision or Rule is not under challenge, were to be listed before a single Judge, and writ petitions relating to medical admissions, where the vires of statutory provisions or rules are under challenge, are to be heard

⁵ AIR 1951 Nagpur 11

⁶ AIR 1952 Patna 341

by a Division Bench, that would fall foul of the directions of the Supreme Court, in **Asha¹**, that all medical admissions should be heard by one Bench. It is in such circumstances that it was considered appropriate that all medical admission cases should be listed only before a Division Bench.

In the light of the law declared by the Full Bench of this Court, in the judgments referred to hereinabove, the petitioner cannot claim, as a matter of right, that his case should be heard only by a Single Judge, and not by a Division Bench.

The writ petition fails and is, accordingly, dismissed. Miscellaneous applications, if any pending, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J

Dt.28.6.2018

Note:
L.R. copy to be marked.
B/O
kr/gsn

