

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N. BALAYOGI

+ WRIT PETITION Nos.23930 & 23973 of 2018

% Date: 17-07-2018

W.P.No.23930/ 2018

Between:

Vidya Rani, D/o. Anil Kumar Patil,
R/o. 6-1-8/1, Bhavani Colony,
Rajendra Nagar, Ranga Reddy,
Telangana – 500 030.

..Petitioner

Vs.

1. The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare, Secretariat, Hyderabad, T.S.
2. K.N.R. University of Health Sciences, (KNRUHS) Warangal, Rep. by its Registrar.
3. Deputy Director General, National Cadet Corps (NCC) Group Head Quarter, A.P. & T.S. State Region, Secunderabad.
4. Sailing Federation of India, No.82, II Floor, Road No.7 Jubilee Hills, Hyderabad, rep. by its Secretary General.

Respondents

W.P.No.23973/ 2018

Between:

P. Navyatha, D/o. P. Shobanbabu,
R/o. H.No.1-8-450/1, Street No.9,
Chikkadpally, Hyderabad – 500 020.

..Petitioner

Vs.

1. The State of Telangana, Rep. by its Principal Secretary, Health, Medical and Family Welfare, Secretariat, Hyderabad, T.S.
2. The Director of Medical Education, Telangana State, Hyderabad.
3. Kaloji Narayan Rao University of Health Sciences, (KNRUHS) Warangal, Rep. by its Registrar.
4. National Cadet Corps (A.P. & T.S.) General Chaudari Road, Secunderabad, rep. by its Deputy Director General.

Respondents

! Counsel for the petitioner : Mr. Suprabath Reddy
In W.P.No.23930/2018

! Counsel for the petitioner : Mr. G. Vidya Sagar Sr. Counsel
In W.P.No.23973/2018

^ Counsel for respondent No.1 : Mr. G.P. for Medical & Health (T.G)

^ Counsel for respondent No.2 : Mr. A. Prabhakara Rao S.C

^ Counsel for respondent No.3 : Mr. K. Lakshman, A.S.G.

^ Counsel for impleaded respondent : Mr. L.Ravichander, Sr. Counsel

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? Cases referred



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION Nos.23930 & 23973 of 2018

COMMON ORDER: (Per VRS,J.)

The petitioners in both these writ petitions are aggrieved substantially by two different parameters fixed in the Government Order G.O.Ms.No.75, Health, Medical and Family Welfare Department, dated 08.09.2015, in the matter of according priorities for admission to professional medical courses under the quota reserved for NCC Cadets.

2. Heard Mr. G. Vidya Sagar, learned Senior Counsel appearing for the petitioner in the second writ petition and Mr. Suprabath Reddy, learned counsel appearing for the petitioner in the first writ petition. The learned Government Pleader takes notice for the State. The learned Assistant Solicitor General takes notice for the NCC Directorate and Mr. A. Prabhakara Rao, learned Standing Counsel takes notice for the University. We have also heard Mr.L.Ravichander, learned Senior counsel for the impleading petitioners in the second writ petition.

4. The Government of Telangana came up with an order in G.O.Ms.No.75, Health, Medical and Family Welfare Department, dated 08.09.2015, listing out the priorities to be adopted for admissions to MBBS and BDS courses under the 1% quota reserved for National Cadet Corps (NCC). Priority-II (f) as it stood in G.O.Ms.No.75 reads as follows:

“Priority-II (f): Participants of Para Jumps / Skydiving / Mountaineering / Sailing / Para Sailing / Rafting / Canoeing & Kayaking / Shooting competitions / Equestrian conducted by the respective Federations / Associations at National Level NCC Games at National Level.”

5. Note No.5 under G.O.Ms.No.75 dated 08.09.2018 reads as follows:

“NOTE No.5: The above priorities will be given to the certificates acquired if the candidates represented through NCC only and the same to be endorsed on the certificate.”

6. The State of Andhra Pradesh also incorporated the very same list of Priorities for admission to medical and dental courses, by a separate order in G.O.Ms.No.109, Health, Medical and Family Welfare, dated 18.08.2016. Priority-II (f) of G.O.Ms.No.109 dated 18.08.2016 issued by the Government of Andhra Pradesh was exactly the same as Priority-II (f) in G.O.Ms.No.75 dated 08.09.2015 issued by the State of Telangana.

7. Subsequently, the Government of Telangana issued a fresh order in G.O.Ms.No.14, Higher Education, dated 09.06.2017 listing out the priorities for admission to engineering courses under the 1% quota reserved for National Cadet Corps. Priority-II (f) stipulated in G.O.Ms.No.14, Higher Education, dated 09.06.2017 reads as follows:

“Priority-II (f): Participants of Para Jumping/ Skydiving /Mountaineering /Sailing/ Para Sailing/ Rafting/ Canoeing & Kayaking/ Shooting/ Equestrian competitions conducted by the respective Federations/ Associations in which HQ DGNCC fielded a team representing NCC as an Organization and whose cadets have been selected after a due selection/ screening process. (Cadets participating in these events in the individual capacity are not eligible for claiming any reservation under this clause).”

8. This Government Order G.O.Ms.No.14, dated 09.06.2017 also retained the very same Note No.5 as found in G.O.Ms.No.75 in the State of Telangana and G.O.Ms.No.109 in the State of Andhra Pradesh, relating to admission to medical and dental courses.

9. The State of Andhra Pradesh followed it by issuing G.O.Ms.No.129 dated 25.07.2017, but the mistake committed by them was that it was by way of an amendment to G.O.Ms.No.109. In other words, instead of issuing a separate order governing the priorities to be accorded for the quota reserved for NCC Cadets, the State of Andhra Pradesh issued an amendment to G.O.Ms.No.109, which was applicable to the medical stream. As a consequence, the amendment to priority-II (f) was not carried into effect insofar as the engineering stream is concerned in the State of Andhra Pradesh.

10. In the last academic year 2017-2018, a few of the aspirants to the medical courses, came up with a writ petition in W.P.No.27014 of 2017 challenging G.O.Ms.No.129 dated 25.07.2017 issued by the State of Andhra Pradesh amending G.O.Ms.No.109. One of the grounds of challenge in the said writ petition was that there cannot be different priorities for NCC Cadets for admission to medical courses between the States of Telangana and Andhra Pradesh. Though we rejected the claim on a different ground by an order dated 06.09.2017, we pointed out in paragraph 14 of the said order that there cannot be different priorities between the States of Andhra Pradesh and Telangana, when they have been following the same pattern all through. Incidentally, we also pointed out in paragraph 11 of our order dated 06.09.2017 that there was nothing wrong in NCC Directorate prescribing Priority-II (f).

11. Now in the current academic year 2018-2019, the petitioner in W.P.No.23930 of 2018 has come up with a prayer seeking a direction to the respondents to consider her case for admission under 1% quota reserved for NCC candidates, under Priority-II (f), ignoring Note No.5 under G.O.Ms.No.75. The basis on which the petitioner has come up with W.P.No.23930 of 2018 is that Note No.5 of G.O.Ms.No.75 has been suspended by this Court in a writ petition W.P.No.29485 of 2017. But today, we have passed an order in W.P.No.29485 of 2017, closing the writ petition on the ground that the petitioner therein has already secured admission and that therefore we did not want to disturb the admission secured by her. We did not go into the question of validity of Note 5. As a consequence the stay granted by a Division Bench of this Court in W.P.No.29485 of 2017 stands vacated.

12. The petitioner also relies upon the stay orders granted by the Single Judges of this Court, in respect of the very same Note No.5. But those orders related to admission to the Engineering Courses. The petitioner in this case is seeking admission to medical course.

13. In any case, a person cannot seek admission to a medical course under the quota reserved for some particular category, merely on the basis of a stay order granted in another case. Each individual has to challenge the offending portion of any Government Order which stands in their way of being considered under the quota. If one person challenges and obtains a stay of an offending portion of a Government Order and a lot of candidates come up with subsequent writ petitions founding their claim only on the stay orders passed in the first case without independently challenging the offending portion of the Government Order, their writ petitions cannot have independent legs to stand. If the candidates, who had secured stay orders and also gained admission, withdrew their writ petitions later, the prayer made by subsequent candidates on the basis of the very same stay orders will have to fail along with the writ petitions filed by those candidates.

14. In other words, there is no challenge in this writ petition to Note No.5 of G.O.Ms.No.75 dated 08.09.2015. The petitioner cannot seek a direction to consider her case under the quota for NCC, merely on the basis of a stay granted in some other case of the very same para of the Government Order. As we have pointed out above, the case in which a stay was granted had been closed by us today and as a consequence, the stay also stands vacated. Therefore, the very basis on which the present writ petition is filed, has gone.

15. But we do not wish to dismiss the writ petition of the petitioner on that only ground. Let us test the correctness of the challenge to Note No.5 also, so that the issue is given a quietus. We have seen that in a cluster of cases, the learned Single Judges of this Court have granted stay of Note No.5 in relation to admission to engineering courses, solely on the basis of a stay granted by a Division Bench in W.P.No.29485 of 2017. Ultimately, the candidates, who filed the writ petitions, got the benefits and the validity of the offending portion of the G.O. was never decided finally by this Court. The Supreme Court has repeatedly

pointed out that without testing the correctness of a policy decision spelt out by an executive action, it is not proper to keep on granting interim benefits by suspending such orders. Therefore, despite the absence of a challenge in this writ petition, to Note No.5 of G.O.Ms.No.75, let us see whether there can be any valid challenge in law to the said Note No.5 at all.

16. We have already extracted Note No.5 to G.O.Ms.No.75. All that it says is that the priorities listed in the Government Order will be given only to persons, who represented through NCC, in the events, for which priorities were given. In order to understand the scope of Note No.5, it may be necessary to see the type of events for which priorities were accorded under the Government Order.

17. It is seen from G.O.Ms.No.75 that the benefit of reservation for NCC is to be given in the order of three different priorities. Priority-I relates to the NCC Cadets participating at the International level selected for the youth exchange programme, NCC cadets participating at International Level events and the NCC cadets who are the winners of certain awards. Priority-II is accorded to Medal winners in Republic Day Camp, participants at the Republic Day Camp, Medal Winners in All India competitions, participants in All India events, medal winners in certain events conducted at the national level and NCC camps, participants in certain events at the national level and the NCC events, and participants in the national integration camp. We are not concerned about Priority-III for the present.

18. The events for which specific focus is given in Priority-II (e) and (f) are, – (1) para jumping, (2) skydiving, (3) mountaineering, (4) sailing, (5) para sailing, (6) rafting, (7) canoeing & kayaking, (8) shooting competitions, (9) equestrian.

19. A careful look at the events in respect of which Priorities are accorded under Priority-II (e) and II (f) would show that the focus is not on sports or

camps but actually on the events that can be correlated to NCC. It is in that context that Note No.5 spells out that the priorities listed therein will be given only to the certificates acquired by the candidates through NCC and which are endorsed on the certificate.

20. In other words, the object of Note No.5 is to ensure that candidates, who participate in the events organized by other bodies or associations, do not claim the benefit of the same for a priority under the quota reserved for NCC.

21. The ground on which Note No.5 was challenged as projected by Mr. R. Raghunandan, learned Senior Counsel and Mr. Suprabath Reddy, learned counsel appearing for the petitioners, is that for the past two years NCC has stopped sponsoring candidates for any sports events and that therefore, the insertion of Clause-5 is otiose. According to the learned counsel when a clarification was sought from the NCC Directorate, they replied stating that they were not sponsoring candidates for any games. Therefore, the contention is that when NCC Directorate had stopped sponsoring candidates, it is not fair on their part to give Priority only to those who represented through NCC.

22. But we think that there is some lack of understanding about the difference between (i) sports and (ii) events. On our directions, the Deputy Director of the NCC Directorate was present in Court today to give clarifications. He admitted that NCC is not organizing certain events such as canoeing and kayaking. But the NCC is organizing all other events such as para jumping, skydiving, mountaineering, sailing, shooting and equestrian. Therefore, if the NCC Directorate is of the opinion that for awarding the benefit of the quota reserved for NCC, the candidates should have fulfilled certain criteria, it is not open to this Court to analyze the policy decision with surgical precision to see whether Article 14 would get offended.

23. It must be remembered that a quota for NCC candidates is not born out of a Constitutional guarantee. It is a benefit granted by the State, based upon certain parameters. As a matter of fact, the Government Pleader conceded that the Priorities are not arranged by the Government themselves and that it was based only upon the advise given by the NCC Directorate the priorities were drawn. It appears that the NCC Directorate prepared a draft containing the list of priorities. The draft was accepted by the Government and the impugned Government Order was issued.

24. When the benefit of reservation given for certain categories is not based upon constitutional guarantee, but based upon a Government policy, such a policy cannot be put to test on certain minuscule disparities. If a person stakes a claim for the benefit of reservation given to such categories, he must fall within the parameters prescribed in the policy to get the benefit. There is no scope for tinkering with the policy and then to extend the benefit.

25. For persons who excelled (?) in sports, the Government has granted a separate reservation. The reservation stands at 0.5%. If a person comes within the list of candidates eligible for claiming the benefit of reservation for sports quota he must claim that benefit separately. If a person claims the benefit of reservation of NCC cadets, he must come within the priorities listed in G.O.Ms.No.75.

26. What the petitioner in this case wants to do is to take advantage of the participation in sports events organized outside the purview of the priorities but to come within the list of priorities given by NCC. There can be no mix up of both and there can be no integration of both.

27. We do not think that Note No.5 of G.O.Ms.No.75 offends Article 14. There is nothing wrong with the NCC Directorate stipulating that if a person wants to claim a benefit of reservation as a NCC Cadet, he should have

represented from NCC only, in the events which are listed in Priority-II (e) and (f). We find nothing wrong in Note No.5 of G.O.Ms.No.75 in its application to both engineering and medical courses. Therefore all writ petitions pending wherever in this Court challenging Note No.5, should automatically fail as a result of our upholding Note No.5.

28. Coming to W.P.No.23973 of 2018, the prayer of the petitioner is to direct the respondents to adopt Priority-II (f) for admission to medical and dental courses under the quota reserved for NCC. The grievance of the petitioner in W.P.No.23973 of 2018 stems from the fact that though the Government of Telangana had issued G.O.Ms.No.14 dated 09.06.2017 amending Priority-II(f), insofar as the Engineering courses is concerned, the same has not been adopted in relation to admission to medical courses.

29. In order to appreciate the nature of the challenge made, it is important to take note of how Priority-II (f) stands under G.O.Ms.No.75 dated 08.09.2015 and Priority-II (f) as it stands in G.O.Ms.No.14, dated 09.06.2017. Therefore, they are presented in a tabulation as follows:

Priority-II(f) in G.O.Ms.No.75, dt.08.09.2015	Priority-II(f) in G.O.Ms.No.14, dt.09.06.2017
Priority-II (f): Participants of Para Jumps / Skydiving / Mountaineering / Sailing / Para Sailing / Rafting / Canoeing & Kayaking / Shooting competitions / Equestrian conducted by the respective Federations / Associations at National Level NCC Games at National Level.”	Priority-II (f): Participants of Para Jumping/ Skydiving /Mountaineering /Sailing/ Para Sailing/ Rafting/ Canoeing & Kayaking/ Shooting/ Equestrian competitions conducted by the respective Federations/ Associations in which HQ DGNCC fielded a team representing NCC as an Organization and whose cadets have been selected after a due selection/ screening process. (Cadets participating in these events in the individual capacity are not eligible for claiming any reservation under this clause).

30. The learned Assistant Solicitor General pointed out that at the request of both the State Governments, viz., the State of Andhra Pradesh and the State of Telangana, the NCC Directorate had redrawn the list of priorities, from the academic year 2017-2018 onwards. Based upon the redrawal of priorities by the NCC Directorate, the State of Telangana issued G.O.Ms.No.14 dated 09.06.2017 in relation to technical education. The State of Andhra Pradesh issued G.O.Ms.No.129 amending the earlier Government Order in G.O.Ms.No.109 dated 18.08.2016.

31. The result of these amendments is that Priority-II(f) as directed by the NCC Directorate has now been implemented in the State of Telangana only for admission to technical education and not medical education. But in the State of Andhra Pradesh it is the other way about namely, that it is adopted only for admission to medical education and not technical education. In other words, the Priorities are juxtaposed in both the States. The list of priorities adopted for admission to technical education in Andhra Pradesh and the list of priorities for admission to medical courses in the State of Telangana are one and the same. Similarly, the list of priorities for medical education in Andhra Pradesh and technical education in Telangana are one and the same. On instructions it was submitted by the learned Assistant Solicitor General that the priorities that they have redrawn at the request of both the State Governments, were in relation to both technical education and medical education. The learned Assistant Solicitor General produced copies of the communication dated 07.07.2017 addressed by the NCC Directorate, to the Department of Higher Education as well as the department of Health, Medical and Family Welfare, of both the State Governments, directing them to maintain Priority-II(f), as suggested by them in their communication dated 07.06.2017 for rboth technical and medical streams.

32. In a previous round of litigation in W.P.No.27014 of 2017, this court has already held that there cannot be different priorities in both the States as

both the States had a single policy up to the date of bifurcation. Even now the State Governments have not taken any conscious decision that they should follow one policy for technical education and another policy for medical education. It is not the case of the learned Government Pleader that it was a deliberate choice consciously made by the State to adopt Priority-II (f) in one way for technical education and another way for medical education. It will be useful to extract paragraph-14 of the order dated 06.09.2017 passed in W.P.No.27014 of 2017, which reads as follows:

“14. The second contention perhaps, has some force. The State of Telangana cannot adopt a different priority from a priority adopted by the State of Andhra Pradesh. But it is pointed out by the learned Assistant Solicitor General of India that the Directorate of NCC also addressed a letter to the Government of Telangana on 23-9-2015 for the revision of priorities. But the Government of Telangana did not issue any order for some time. However, a draft G.O. was sent to the Directorate of NCC on 31-5-2017 for comments. The NCC Directorate forwarded a draft G.O. on 07-6-2017. Pursuant to the same, the Government of Telangana seems to have issued G.O.Ms.No.14, dated 09-6-2017. It is not known whether this G.O.Ms.No.14, dated 09-6-2017, relates to admission to MBBS/BDS Courses in the State of Telangana. According to the learned Senior Counsel for the petitioners, G.O.Ms.No.14 is only for Engineering Courses. If this is true, then there is disparity between the State of Telangana and the State of Andhra Pradesh.”

33. Therefore, it is mandatory that the State of Telangana follows the same type of priorities as given in Priority-II (f) under G.O.Ms.No.14, dated 09..06.2017, even for admission to medical courses.

34. However, this is opposed by Mr. L. Ravichander, learned Senior Counsel appearing for the impleaded petitioner on two grounds, viz., (a) that the petitioner having participated in the process of selection, on the basis of the rules of the game that were in force as on date of participation, cannot later on challenge the very rules of the game; and (b) that there cannot be a positive direction to the State to follow one particular policy or the other.

35. We have carefully considered the above submissions.

36. This is not a case where the petitioner is challenging one of the rules of the game. All that the petitioner is saying is that the list of priorities as given

by NCC for the academic year 2015-2016 was already changed from the academic year 2016-17 onwards and that the same has been accepted in respect of technical education by the State of Telangana and in respect of medical education in the State of Andhra Pradesh. The Government themselves do not have a quarrel about the fact that they did not consciously decide to deviate from what was suggested by the NCC Directorate. In fact, the NCC Directorate had prepared a draft of the Government Order itself. The Government applied its mind and issued the Government Orders. But what was done in the case of one course, was left out in the case of the other course. This mistake was brought to the notice of the Governments by the NCC Directorate itself by the letter dated 07.07.2017.

37. Once the Government had chosen to accept the list of priorities as given by the NCC directorate without questioning the wisdom of the same or without taking a conscious decision to deviate from the same (which they are very much entitled to), any lapse on the part of the Government, if pointed out by the NCC, should also be corrected. Therefore, it is not a case where the petitioner is challenging the rules of the game after participating in the game. The petitioner is not challenging the NEET examinations or the prescription contained for admission to medical courses. She is only pointing out a lapse on the part of the Government in implementing the advise provided by the NCC Directorate. That does not tantamount to challenging the rules of the game.

38. Insofar as the second contention of the learned Senior Counsel for the impleaded respondent is concerned, it has to be pointed out that all that the petitioner wants, is to direct the State of Telangana to maintain parity of treatment in the matter of according priorities for admission to medical courses on par with the State of Andhra Pradesh. This is on account of the fact that both the Governments had followed the same policy on the advise of the same NCC Directorate in the past. It appears that there was a small lapse in the matter of

adoption of the policy evolved by the NCC Directorate. This does not tantamount to seeking a direction to the Government to change the very policy. Therefore, W.P.No.23973 of 2018 deserves to be allowed. Accordingly, it is allowed. Even in the matter of admission to medical and dental courses, the State of Telangana shall follow Priority-II(f) as directed in G.O.Ms.No.14 by the State of Telangana itself. There shall be no order as to costs.

39. As a sequel, miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE N. BALAYOGI

17th July, 2018
Js.



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

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