

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. Nos.27690, 27764 and 27749 of 2018, 40589, 40604,
40652 of 2016

COMMON ORDER:

Since the issue involved in all these writ petitions is one and the same, they are being heard together and disposed of by way of this common order.

2) **Writ Petition Nos. 27690, 27749 and 27764 of 2018**

These writ petitions are filed by the students of 5th respondent institution assailing the action of the respondents 1 to 4 in not providing for the benefit of the fee reimbursement, maintenance charges including provision of room in SC hostel in respect of the admissions of the petitioners with the 5th respondent college into 2nd year of the respective B.Tech courses made under lateral entry in respect of the unfilled seats of 1st year as well as ratification of the said admissions as spot admissions by the 3rd respondent as illegal, arbitrary and violative of Articles 14 of the Constitution of India and for a consequential direction to the respondents to extend the benefit of fee reimbursement scheme to the petitioners by treating the said admissions as lateral entry admissions.

3.W.P.Nos.40589, 40604 & 40652 of 2016

These writ petitions are filed by the colleges/institutions assailing the action of the 2nd respondent in approving the admissions, listed in Annexure-A made through the TSECET-SW-III-2016 counselling conducted by the 3rd respondent for the academic year 2016-17 under lateral Entry into 2nd year of the respective B.Tech Courses of the petitioners' institutions with the eligible candidates, as 'Spot Admissions' instead as under 'Convener Quota' in respect of the unfilled seats of 1st year while approving the admission made against 20% supernumerary seats under 'Convener quota' through the impugned proceedings dated 07.11.2016 & 31.10.2016, as illegal and arbitrary and consequently to set aside the same in so far as approving admissions made through the counselling conducted by the 3rd respondent.

4. In all these writ petitions, the petitioners as students and institutions assailing the action of the respondents in approving the admissions made against 20% as 'Spot Admissions' instead of 'Convener Quota' and thereby denying the benefit of free reimbursement, maintenance charges etc., Therefore, for the sake of convenience, averments facts in the writ petitions filed by the students are being considered for disposal of these Writ Petitions.

5. Brief facts, in a nut shell, which are necessary for disposal of these writ petitions are as follows:

It is the case of the petitioners that the petitioners have appeared for the ECET-AC 2016 examination conducted by the Convener approved by the 3rd respondent and they have secured respective ranks. In respect of the lateral entry admissions, the Rules framed under G.O.Ms.No.61, dated 26.05.2006 issued by the 1st respondent are in operation and the procedure therein has to be followed. The 5th respondent institution (petitioner institution in W.P.Nos.40589, 40604 & 40652 of 2018) is permitted to make admissions for lateral entry into the 2nd year of the respective B.Tech courses in respect of the unfilled seats of 1st year as well as 20% of the approved intake of the 1st year as supernumerary seats. Thus, all the seats that are made available for the admissions to be made under lateral entry are to be treated as one and the same. However, the admissions equivalent to 20% of the approved intake are treated as convener seats and they are ratified as such and the unfilled seats of the 1st year are treated separately and they are ratified as spot admissions and on that ground the benefit of fee reimbursement is not made applicable. That the notification issued by the Convener ECET-AC 2016 inviting applications for making admissions under lateral entry, the petitioners participated in the counselling and joined with the 5th respondent institution basing on the merit as per the ranks in the entrance examination. That the

petitioners are informed by the 5th respondent through communication that the entire list of admitted candidates to the 3rd respondent for ratification and the 3rd respondent from out of the list has bifurcated and ratified the admissions of the unfilled seats in the 1st year as spot admissions and communicated the same to the 5th respondent college through proceedings No. TSCHE/ TSECET (FDH) AC-Sw-III-2016/ Engineering /JNTUH/SMCD/01 dt.04-10-2016 while ratifying the admissions equivalent to 20% as Convener quota admissions. However, the fact remains that all the admissions in respect of the 20% supernumerary seats as well as the unfilled seats of the 1st year are made available for counselling by the Convener and the admissions for all the seats are made by the Convener only and communicated to the 3rd respondent for ratification. The 3rd respondent without there being any rationale ratified the admissions of the petitioner as spot admissions.

6. It is stated that the petitioners are eligible for fee reimbursement scheme announced by the 4th respondent as such they are admitted through the counselling conducted by the Convener ECET-AC 2016. When all the seats are made available for counselling, all the admissions made during the counselling are to be treated as same and the eligible candidates should be granted the benefit of fee

reimbursement, maintenance charges including provision of room in BC / SC Hostels. Hence, the action of the 3rd respondent in ratifying the admissions in respect of the unfilled seats as spot admissions and thereby not extending the benefit of fee reimbursement, maintenance charges including provision of room in SC hostel by the 4th respondent is illegal and arbitrary. The technicalities in the ratification cannot be a ground for depriving rights of the petitioners to get fee reimbursement for the course of study they undertake. If the petitioners are not extended the benefit of fee reimbursement, maintenance charges including provision of room in BC / SC Hostels, the 5th respondent (colleges/petitioners in WP Nos.40604 of 2016 & batch) will not issue certificates in favour of the petitioners, as they are not in a position to pay the fee. That G.O.Ms.No.66, Dated 08/09/2010 provides for grant of fee reimbursement, maintenance charges including provision of room in SC hostel for the eligible candidates who were admitted based on the merit in the entrance examination conducted by the convener. In the present context when all the admissions are made pursuant to the counselling conducted by the Convener, there cannot be any discrimination in respect of the admissions made against 20% supernumerary seats or the unfilled seats of the 1st year. Aggrieved by the same, present writ petitions are filed.

7. Common Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the Writ Petition stating that all the seats in University Unaided Minority and Non Minority Institutions offering Under Graduate Professional Courses (including Technology and Pharmacy) shall be filled through Lateral Entry at the 2nd year level of the Courses by the Convener who is appointed by the State Agency and are called as Convener Seats, which constitute 20% of the supernumerary seats sanctioned over and above the sanctioned intake by the Apex Body and the leftover seats in the 1st year admissions to the same courses in the previous year admissions, which are to be filled based on the rank obtained in Common Entrance Test viz., ECET (FDH) which is held by the Convener. That in case any seats are left unfilled in the Convener seats even after final phase of counselling is over, these leftover seats are handed over to the Managements to be filled by them and same are called as 'spot admissions', which are to be made in a transparent and fair manner by the Managements as per the procedure in vogue. In so far as Non Minority & Minority colleges are concerned, they can form into Consortium of Colleges and appoint the Convener-AC-SW-III from amongst themselves for making admissions on the basis of rank obtained at ECET-AC-SW-III Test, which is conducted by the Consortium. In so far as some Minority colleges are concerned, the Consortium

shall appoint a Convener-AC-SW-II and make admissions on the basis of rank obtained at ECET (FDH), Test. After the seats were filled in the Convener quota, the Management issues a notification for making spot admissions against the vacant seats handed over to them by the respective Conveners from the eligible candidates following the rules of admissions in vogue. The entire list of admissions made under 20% Convener quota and the spot admissions are sent for ratification to TSCHE, who ratifies the same after verifying as to whether the process contemplated under the Rules are complied with or not. It is stated that the admissions to the Convener Seats are based on the rank obtained in the ECET (FDH) entrance test whereas the admissions under spot is based on rank obtained at ECET (FDH) or the marks secured in the qualifying examination i.e., the Polytechnic Diploma Course/B.Sc Degree course. The Government at the request of the managements has given the benefit of adding the left over seats of the 1st year along with the supernumerary seats of 2nd year only with a view to help the colleges and augment their resources. It is stated that since issuance of G.O.Ms.No.159, dated 28.10.2005, the admissions made to the leftover seats are not been given any fee reimbursement. That once the left over seats are handed over to the Management to be filled under the spot admissions, the students who take admissions under the said quota are not

eligible for any fee reimbursement so also the case of admissions under the Management Quota.

8. Reply affidavit is filed by the petitioners in WP No.27690 of 2018 to the Common Counter affidavit filed by the 3rd respondent denying the averments in the same stating that as per Rule 9 of the AICTE Approval Process Handbook 2016-2017, the admission eligibility under the Lateral Entry mechanism directly into the 2nd year of the said courses is of one singular category of students i.e., 20% of the sanctioned intake plus unfilled vacancies of the 1st year. Neither the AICTE, the AICTE Act, 1987 nor the AICTE Approval Process Handbook distinguishes the students taking admission under the lateral entry route into two separate classes whereby one is characterized as 'Convenor Seats' and the other as 'Management Seats'. As such, all the petitioners, who are rank holders in ECET are eligible to get fee reimbursement.

9. Heard Sri Sricharan Telaprolu and Sri P.Shreyas Reddy, learned counsel for the petitioners and Sri A.Abhishek Reddy, learned Standing Counsel for the Telangana State Council of Higher Education.

10. Learned counsel for the petitioners, while reiterating the averments in the affidavit filed in support of the writ petitions and reply affidavit filed to the common counter affidavit filed by the Telangana State Council of Higher

Education submits that the action of Telangana State Council of Higher Education is contrary to the Rule 9 of Chapter IV of the AICTE Approval Process Handbook 2016-17, which is a legal and statutory document as per the AICTE Act, 1987 and addition of the unfilled vacancies from the I year to the 20% supernumerary seats for the purpose of lateral entry is not a governmental benefit, but a mandate of law in view of Rule 9 of Chapter IV of the AICTE Approval Process Handbook 2016-17 and that in view of above rule position, there is one singular category for Lateral Entry admissions i.e., 20% supernumerary seats plus unfilled vacancies and that all of them have to be reckoned as 'Convener Seats'. It is submitted that there is no distinction between 'Convenor Seats' and the 'Management Seats' as made by the 3rd respondent in WP No.27690 of 2018. All the petitioners are rank holders in the relevant ECET examination and were allotted seats by the Convenor SW-III, as such, they are eligible and qualified for the Post Matric Scholarship scheme.

10. On the other hand, Sri A.Abhishek Reddy, learned Standing Counsel for the AICTE while reiterating the averments in the common counter affidavit filed in WP No.27690 of 2018, submits that as per Rules, all the seats in the University, Unaided Minority and Non Minority Institutions shall be filled through lateral entry in the 2nd year

by the Convener who is appointed by the competent authority, which are called as 'Convener Seats' and they constitute 20% of the supernumerary seats sanctioned over and above the sanctioned intake by the apex body and the left over seats in the 1st year admissions to the same courses in the previous year admissions. He submits that in case any seats are left unfilled in the Convener seats even after final phase of counselling, they are handed over to the management to be filled by them, which are called as 'Spot Admissions'. He submits that in the case of Minority and Non-Minority colleges, they have to form into Consortium of Colleges as Convener AC-SW-II and Convener AC-SW-III respectively for making admissions on the basis of rank obtained by the students in ECET (FDH) test and ECET-AC-SW-III test respectively. He submits that the admissions to the Convener Seats are based on the rank obtained in the ECET (FDH) entrance test whereas the admissions under spot is based on the rank obtained at ECT (FDH) or basing on the marks secured in the qualifying examination i.e., Polytechnic Diploma Course/B.Sc Degree course. He submits that the Convener appointed through State Agency alone makes admissions to the 2nd year of B.Tech/B.E for the 20% of the supernumerary seats and the left out unfilled seats of 1st year are to be filled by the management themselves, which are subsequently ratified by the Telangana

State Council of Higher Education as Spot Admissions. He further submits that the students who got admissions under Convener quota under 20% of the supernumerary are alone eligible for PMS scheme but not the students who got admissions under management quota.

11. In view of above rival contentions of both parties, the only question that falls for consideration is whether the petitioners are entitled for fee reimbursement or not? For deciding the said point, it is necessary to extract definition of Convener

The word 'Convener' is defined 2(f) & 2(g) in G.O.Ms.No.61, Higher Education (EC) Department, dated 26.05.2006, which reads as follows:

“(f) **Convenor of ECET (FDH)** Admissions’ means the Commissioner/Director of Technical Education or any other officer of such rank, nominated by the competent authority for selection and allotment of candidates for admission.

(g) “**Convenor of ECET (FDH)-AC** Admissions’ means a person *nominated by the Associations of Unaided Professional Colleges for selection and allotment of qualified candidates for admission.*”

12. Though learned counsel for the petitioners submits that there is no difference between the Convener appointed by the competent authority/Governmental agency with that of the Convener nominated by the association of Unaided

Professional Colleges, the aforesaid GO clearly distinguishes the difference between the two Conveners. Insofar as Convenor of ECET (FDH) admissions is concerned, he has to be nominated by the competent authority for selection and allotment of candidates for admission and in the case of Convenor of ECET (FDH) AC, he has to be nominated by the Associations of Unaided Professional Colleges for selection and allotment of qualified candidates for admission.

G.O.Ms.No.66 Social Welfare (SW.EDN.2) Department, dated 08.09.2010 provides guidelines to be followed for reimbursement of fees to the colleges and payment of scholarships to the students and applicability of Post Matric Scholarships to SC/ST/BC/EBC/Minorities/Physically Challenged students. Rule 4(I)(iii) provides eligibility for Convener Quota Seats, which reads as follows:

iii) ***Eligibility for Convener Quota seats***:-All students admitted by the Convenor as notified by the Government, under the Quota meant for the Convenor, shall be eligible for the PMS scheme. However, students admitted under management quota or through spot admissions i.e., left over seats of the Convenor quota filled by managements subsequently, will not be eligible for the PMS scheme. In respect of Medical Colleges, the PMS scheme will also be applicable to the "B"category only in respect of SC and ST students.

In the aforesaid Rule, it is clearly mentioned that all the students admitted by the Convenor, as notified by the Government under the Quota meant for the Convenor shall

be eligible for the Post Matric Scholarship and not the students admitted under management quota or through spot admissions i.e., left over seats of the Convenor quota filled by the managements subsequently. The aforesaid provision makes it very clear that all the students who are admitted by the Convener notified by the Government, alone are eligible for PMS scheme, but not otherwise.

Learned counsel for the petitioners by relying on Rule 9 of Chapter IV of the AICTE Approval Process Handbook 2016-2017, submits when any seats remain unfilled seats after the final phase of counselling, such seats are given for 'spot admissions and that even after spot admissions, when there are vacant seats in the 1st year, such seats are considered as 'unfilled vacancies of 1st year, as such, along with unfilled vacancies, together with the 20% of supernumerary seats form the class of students who are eligible for direct admission into the 2nd year under lateral entry route and that there is no distinction of Convenor quota and Management quota.

“Rule 9 of Chapter VI of AICTE 2017-18

Diploma holders and Bsc. Degree holders shall be eligible for admission to Second year Engineering degree courses up to a maximum of 20% of sanctioned intake (30% for Institutions in Andaman, Nicobar, Lakshadweep, Daman and Diu), plus unfilled vacancies of 1st year which will be over and above, supernumerary to the sanctioned intake.

Provided further that students, who have completed Diploma course in Pharmacy shall be eligible for admission to second year Pharmacy degree courses up to a maximum

of 10% of sanctioned intake (20% for Institutions in Andaman, Nicobar, Lakshadweep, Daman and Diu), which will be over and above supernumerary to the sanctioned intake.”

In the cases where students filed writ petitions, it is a fact that the all the students who have taken admission in the 5th respondent colleges are not under the ‘Convenor Quota’ notified by the competent authority of the Government, but they have taken admissions under as management quota and same is ratified by the 3rd respondent by the impugned proceedings. Even if the argument of the learned counsel for the petitioners that when once the Convener-AC conducted counselling to the available seats under lateral entry with the eligible candidates under the procedure prescribed under the entry rules on merit basis as per the ranks in the entrance examination, there cannot be any distinction for the 2nd respondent to approve the admissions under the convener quota and spot admissions, Convenor notified by Government as per Rule 4(1)(iii) has not made subject admissions. It is the case of the petitioners that the students who are admitted by the Convener nominated by the consortium of unaided Private Professional Colleges, are also eligible to get benefit of PMS but the said contention cannot be accepted, in view of Rule 4 (1)(iii) contained in G.O.Ms.No.66, dated 08.09.2010. Even according to the petitioners, admissions in respect of unfilled

seats of 1st year under lateral entry into 2nd year are made by the Convenor of ECET (FDH) but not by Convener notified by the Government. As already stated supra, there is a clear distinction between the Convener notified by the competent authority/Governmental agency and the Convener nominated by the association of Unaided Professional colleges as per Rule 4(I)(iii) of G.O.Ms.No.66, dated 08.09.2010. When once above Rule provides guidelines to be followed for reimbursement of fees to the colleges and payment of scholarships to the students and applicability of Post Matric Scholarships to SC/ ST/ BC/EBC/Minorities/Physically Challenged students, taking a different view is not possible. Moreover, the said Rule is not challenged in these Writ Petitions.

In view of above facts and circumstances, I do not see any merits in these writ petitions and accordingly, dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

Date: 28.12.2018

kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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