

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

+ Writ Petition No.30172 of 2018

% Date: 29-8-2018

V.Roop Manikanta Reddy, aged about 17 years,
S/o. V.Naga Maheswar Reddy, R/o. D.No.39/594-3,
Patel Road, Kadapa, YSR Kadapa District,
Rep. by his father natural guardian

... Petitioner

Vs.

\$ 1. The State of A.P., Rep. by its Prl. Secretary,
Health, Medical and Family Welfare Dept.,
Secretariat Bldgs, Velagapudi, Guntur District

2. Dr. NTR University of Health Sciences, Vijayawada,
Krishna District, Rep. by its Registrar

3. The National Cadet Corps, Rep. by its Deputy Director General,
A.P. and Telangana, General Chaudary Road, Sec'bad-08.

4. A.Pathan Arshiya Khan, C/o. PES Institute of Medical Sciences,
Kuppam, Chittoor District

... Respondents

! Counsel for Petitioner: Mr. K.G. Krishna Murthy,
Senior Counsel, representing
Mr. K.Venugopal Reddy

Counsel for Respondent No.1: G.P. for Medical Health and
Family Welfare (A.P.)

Counsel for Respondent No.2: Mr. Taddi Nageswara Rao,
Standing Counsel

Counsel for Respondent No.3: Mr. K.Lakshman,
Asst. Solicitor General

Counsel for Respondent No.4: Mr. Kambhampati Ramesh
Babu

< Gist:

> Head Note:

? Cases referred:
Nil.

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

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Order: (per V.Ramasubramanian, J.)

The petitioner who was not allotted a seat for admission to the Medical Courses for the current academic year, despite being ranked at serial No.19(a), by the NCC Directorate, has come up with the above writ petition questioning the allotment of a seat to the 4th respondent, who stood in terms of merit, below the petitioner under the priority for NCC candidates.

2. Heard Mr. K.G. Krishna Murthy, learned Senior Counsel for the petitioner, the learned Government Pleader for Medical Health and Family Welfare Department (Andhra Pradesh) for the 1st respondent, Mr. Taddi Nageswara Rao, learned Standing Counsel for the 2nd respondent/University, Mr. K.Lakshman, learned Assistant Solicitor General of India for the 3rd respondent and Mr. Kambhampati Ramesh Babu, learned counsel for the 4th respondent.

3. On 19-7-2018, the NCC Directorate prepared provisional merit list. In the said list, the petitioner was shown at serial No.25 and the 4th respondent was shown at serial No.52. The provisional merit list was later modified by a final merit list dated 17-8-2018. In the said list, the name of the petitioner was placed at serial No.19(a) and the name of the 4th respondent was placed at serial No.43.

4. Both the petitioner as well as the 4th respondent belongs to the unreserved categories. Insofar as the NCC is concerned, the priority of the petitioner is III(a) + B. The priority of the 4th respondent is III(c) + B. Therefore, the petitioner has always been ranked, both in the provisional and in the final merit list, at a higher rank than the 4th respondent herein.

5. In the first phase of counselling, the 4th respondent was allotted, to Shadan Institute of Medical Sciences, which is a minority educational institution. She appears to have taken admission there. But subsequently, Dr. NTR University allotted a seat to the 4th respondent, under the quota reserved for female candidates among the NCCs. Therefore, the 4th respondent left the seat allotted to her in Shadan Institute of Medical Sciences. She is now allotted a seat in P.E.S. Institute of Medical Sciences and Research, Kuppam, Chittoor District.

6. But the allotment of the seat to the 4th respondent is challenged by the petitioner on the ground that once the reservation of seats under 33 $\frac{1}{3}$ % for women is reached, then the remaining seats need not be filled up with female candidates and that despite being less meritorious candidate, the 4th respondent has been allotted a seat in P.E.S. Institute of Medical Sciences and Research, Kuppam, Chittoor District.

7. But the contention of the learned counsel for the 4th respondent is that the 4th respondent was not at mistake

and that due to the mistake committed by the University, she has now lost a seat in Shadan Institute of Medical Sciences and that after she is deprived of a seat in P.E.S. Institute of Medical Sciences and Research, she will be left nowhere. Therefore, the learned counsel for the 4th respondent submitted that the seat allotted to the 4th respondent should not be disturbed, as the candidate was not at fault and that she cannot now be rendered without any seat anywhere.

8. We find from admitted facts that there are two mistakes committed by the University. The first is that of allotting the 4th respondent to Shadan Institute of Medical Sciences. If the 4th respondent had straightaway been allotted a seat in P.E.S. Institute of Medical Sciences and Research, this situation would not have come. The second mistake committed by the University is in allotting a seat to the 4th respondent in P.E.S. Institute of Medical Sciences and Research, overlooking the merit of the petitioner over and above the 4th respondent.

9. The fact remains, as we have stated earlier, that both the petitioner and the 4th respondent belong to the unreserved categories and in terms of NCC priority, the petitioner is far above the 4th respondent. Moreover, the reservation for women under the 33 $\frac{1}{3}$ %, has already reached, with 6 candidates already having been allotted under the quota for women.

10. The stand taken by the University is that Sri Padmavathi Medical College, Tirupati, is taken as a separate unit and that therefore the seats allotted in other colleges alone will count for the purpose of calculating the 33 $\frac{1}{3}$ % reservation. The relevant part of the written instructions given by the University to the learned Standing Counsel for the University reads as follows:

“3. Out of 6 Open Competition seats one seat is UR (unreserved), 4 seats are general out of which one seat is allocated at Padmavathi Medical College for Women, Tirupati and one seat is for female, that female seat is allocated at PES Medical College, Kuppam. Actually if the Padmavathi Medical College for Women, Tirupati seat is not taken into consideration, one more seat has to be reserved for female candidate in other college out of 5 seats of Open Competition seats (i.e., $5 \times 33 \frac{1}{3} = 1.67$ i.e., rounded 2). But considering the seat earmarked to Padmavathi Medical College for Women, Tirupati the University has allocated only one seat at PES Medical College, Kuppam for female candidate instead of 2 seats.”

11. But we do not think that the above position is correct. Reservation for women as well as the reservation for NCC, is calculated on the basis of the total number of the seats available in a particular local area such as Sri Venkateswara University Area or Andhra University Area. It is not applied unit-wise. Therefore, the separation of Sri Padmavathi Medical College as a separate category may not be proper. Hence, the denial of seat to the petitioner is wholly unjustified.

12. In normal circumstances, the writ petition deserves to be straightaway allowed and the petitioner accommodated against the seat allotted to the 4th respondent. The displacement of the 4th respondent as a consequence, is inevitable.

13. But in this case, the displacement would result in more injustice than what such displacement would normally result in other cases. The seat that was already given to the 4th respondent which she took, is also now gone. It is like pulling out a passenger with an offer of better seat and depriving that passenger also of the earlier seat. This contingency has arisen wholly due to the mistake committed by the University for not following the priorities properly and in not calculating 33 $\frac{1}{3}$ % reservation for women appropriately.

14. Fortunately, it appears that there are 17 unfilled seats in MBBS today. There are 2 seats available under the Open Category in Santhiram Medical College, Nandyal, Kurnool District. Therefore, one of those seats shall be given to the 4th respondent under 'A' Category. The fee, if any, already paid by the petitioner to P.E.S. Institute of Medical Sciences and Research, Kuppam, Chittoor District, shall either be adjusted against the fee payable to Santhiram Medical College, Nandyal, Kurnool District, or shall be refunded to the 4th respondent.

15. Accordingly, the writ petition is allowed, directing the 2nd respondent/University to allot to the writ petitioner, the seat to which the 4th respondent is admitted in P.E.S. Institute of Medical Sciences and Research, Kuppam, Chittoor District. The 2nd respondent/University shall also allot an alternative seat to the 4th respondent, available in Category 'A' in Santhiram Medical College, Nandyal, Kurnool District. The pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

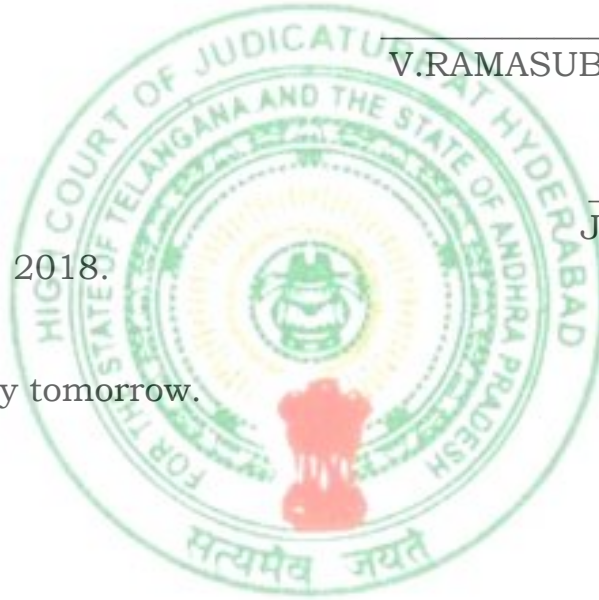
29th August, 2018.

Note:-

Issue C.C. by tomorrow.

(B/o)

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

Writ Petition No.30172 of 2018
(per VRS, J.)



29th August, 2018.
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