

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

*** HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND**

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

**+Writ Petition Nos.26330, 26844, 28106, 28689, 29175, 29266,
29709, 29854, 29858 of 2017, 25108, 25809 and 26861 of 2018**

% 07-08-2018

W.P.No.26330 of 2017

Suraparaju Likhitha Manohar, D/o Suraparaju Manohar Raju, aged about 17 years, represented by her natural Guardian, father, S. Manohar Raju, S/o Venkataramana Raju, aged 45 years, Occ: Employee, resident of D.No.5-287, Ameer Function Hall Road, Rajula Colony, Rayachoti, YSR Kadapa District and 7 others

... Petitioners

Vs.

Dr. NTR University of Health Sciences, represented by its Registrar, Vijayawada, Krishna District and another

... Respondents

W.P.No.26844 of 2017

Kommajosyula Sai Sudhatri, D/o K. Sreedhara Murthy, Aged 18 years, Occ: Student, R/o 21-52, Dayanand Nagar, Malkajgiri, Hyderabad.

... Petitioner

Vs.

The State of Telangana, represented by its Principal Secretary, Health, Medical and Family Welfare C-1 Department, Secretariat Buildings, Hyderabad and 4 others

... Respondents

W.P.No.28106 of 2017

P. Mahati, D/o P. Sree Ramulu, aged about 17 years, Occ: Student, represented by her Father P. Sree Ramulu, S/o Srinivasulu, aged 48 years, Nellore District,

... Petitioner

Vs.

The State of Telangana, represented by its Principal Secretary, Health, Medical and Family Welfare C-1 Department, Velagapudi, Amaravathi, Guntur District
5 others

... Respondents

W.P.No.28689 of 2017

Pulikunta Saranya, D/o P. Vijaya Vasudea Reddy, Aged 17 years, represented by her father, Reddivaripalle, Pulikunta village, Galiveedu Mandal, YSR Kadapa District and another

... Petitioners

Vs.

The State of Telangana, represented by its Principal Secretary, Health, Medical and Family Welfare C-1 Department, Velagapudi, Amaravathi, Guntur District
4 others

... Respondents

W.P.No.29175 of 2017

Akula Venkata Harshavardhan, S/o Venkata Ramaiah, Aged 19 years, Occ: Student, R/o 7-1-1826, Isukadonka, Ranganayakulapeta, Nellore, SPSR Nellore District and 2 others

... Petitioners

Vs.

The State of Telangana, represented by its Principal Secretary, Higher Education Department, Velagapudi, Amaravathi, Guntur District and 21 others

... Respondents

W.P.No.29266 of 2017

Narra Jahnavi, D/o N. Venkateswara Rao,
Aged 17 years, R/o Chintalapeta, Gannavaram,
Krishna District, being minor represented by her
Father natural guardian
and 2 others

... Petitioners

Vs.

The State of Telangana, represented by its Principal
Secretary, Higher Education Department, Velagapudi,
Amaravathi, Guntur District and 5 others

... Respondents

W.P.No.29709 of 2017

Gutta Rishitha, D/o G. Ravana, aged 17 years,
minor represented by her father G. Ravana,
R/o D.No.3-145-C-12-4, Prashanthnagar,
Madanapalli, Chittoor District

... Petitioner

Vs.

Dr. NTR University of Health Sciences, represented
By its Registrar, Vijayawada, Krishna District
and another

... Respondents

W.P.No.29854 of 2017

Gunukula Srinivasa Hemanth, S/o Kishore Kumar,
Aged 17 years, Occ: Student, R/o Balaji Nagar,
Lakshmi Nagar Ext., near Sub-Registrar Office,
Nellore, SPSR Nellore District

... Petitioner

Vs.

The State of Telangana, represented by its Principal
Secretary, Higher Education Department, Velagapudi,
Amaravathi, Guntur District and 4 others

... Respondents

W.P.No.29858 of 2017

Kankara Sree Jeevana Jyothi Reddy,
D/o K. Srinivasa Reddy, aged 17 years,
Occ: student, R/o St. Marry's B.Ed. College,
Buitchireddypalem, SPSR Nellore District

... Petitioners

Vs.

The State of Telangana, represented by its Principal
Secretary, Higher Education Department, Velagapudi,
Amaravathi, Guntur District and 4 others

... Respondents

W.P.No.25108 of 2018

Kurakula Urjitha Yadav, D/o Muralidhar Yadav, a
Aged 19 years, Occ: Student, resident of 13-1-76,
Mahatma Gandhi Statue, Ananthapur, A.P.

... Petitioner

Vs.

The State of Telangana, represented by its Principal
Secretary, Higher Education Department, Velagapudi,
Amaravathi, Guntur District and 3 others

... Respondents

W.P.No.25809 of 2018

Duvvuru Sai Geetha, D/o Vijayasekhara Reddy,
Aged 17 years, Occ: Student, R/o 16-11-427,
2nd lane, Haranadhapuram, Nellore, SPSR Nellore
District and 11 others

... Petitioners

Vs.

The State of Telangana, represented by its Principal
Secretary, Higher Education Department, Velagapudi,
Amaravathi, Guntur District and 4 others

... Respondents

W.P.No.26861 of 2018

Pasumarthi Sumedha, D/o Y. Srinivasa Sarma,
Aged 17 years, Occ: Student, R/o Padaprolu
Village, Mopidevi Mandal, Krishna District,
Represented by her father natural guardian

... Petitioner

Vs.

The State of Telangana, represented by its Principal
Secretary, Higher Education Department, Velagapudi,
Amaravathi, Guntur District and 5 others

... Respondents

! Counsel for the Petitioners : Mr. Ganta Rama Rao, Sr. counsel
Mrs. B. Rachana,
Mr. P. Jagadish Chandra Prasad,
Mr. Ch. Jagannadha Rao
Mr. D. Kodanda Rami Reddy
Mr. J. Sudheer

^ Counsel for Respondents : Mr. Dammalapati Srinivas,
Advocate General for the A.P.
G.P. for Medical and Health
Mr. A. Prabhakara Rao, standing
Counsel for KNR University
Mr. Taddi Nageswara Rao,
Standing counsel for NTR University
Mr. A. Satya Prasad, Sr. counsel
Mr. K.G. Krishna Murthy, Sr. Counsel

< Gist:

> Head Note:

> Cases referred:

- 1) 2002 (4) ALD 389
- 2) 1993 (3) SCC 253
- 3) 2014 (14) SCC 745
- 4) 2018 (2) SCC 656
- 5) 2010 (7) SCC 234
- 6) 2002 (2) ALD 532
- 7) 2006 (1) ALD 1 (FB)

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

**Writ Petition Nos.26330, 26844, 28106, 28689, 29175, 29266,
29709, 29854, 29858 of 2017, 25108, 25809 and 26861 of 2018**

COMMON ORDER: *(per V. Ramasubramanian, J)*

Challenging a particular portion of a Government Order in G.O.Rt.No.550, Higher Education (EC.2) Department, dated 30-07-2001, permitting the Convenor to fill up the seats vacated by Meritorious Reserved Category Candidates, who were allotted a seat under the Open Category, with candidates belonging to the very same reserved category, the students aspiring to gain admission into Professional Medical and Dental Courses, have come up with all the above writ petitions except one. In one writ petition namely W.P.No.25108 of 2018, the petitioner has assailed the very same G.O.Rt.No.550, dated 30-07-2001, for reasons exactly opposite to the reasons for which the petitioners in all the other writ petitions have assailed the impugned order.

2. We have heard Mr. Ganta Rama Rao, learned senior counsel, Smt. B. Rachana, Mr. P. Jagadish Chandra Prasad, Mr. Ch. Jagannadha Rao and Mr. D. Kodanda Rami Reddy, learned counsel appearing for the petitioners. We have also heard Mr. J. Sudheer, learned counsel for the petitioner in W.P.No.25108 of 2018, which stands on a different footing as indicated in paragraph-1 above. We

have also heard Mr. Dammalapati Srinivas, learned Advocate General for the State of Andhra Pradesh, learned Government Pleader for Medical, Health and Family Welfare for the State of Telangana, Mr. A. Prabhakara Rao, learned standing counsel for Kaloji Narayana Rao University, Mr. Taddi Nageswara Rao, learned standing counsel for Dr. NTR University of Health Sciences, Mr. A. Satya Prasad, learned senior counsel and Mr. K.G. Krishna Murthy, learned senior counsel appearing for the impleaded unofficial respondents.

3. As could be seen from all the writ petition numbers, 9 out of the present batch of 12 writ petitions were filed in the year 2017 and they related to admission to professional Medical/Dental courses for the year 2017-18. The remaining 3 writ petitions were filed in the year 2018 and they relate to admission for the current Academic Year 2018-19.

4. Therefore, one may think that nothing survives in 9 out of the present batch of 12 writ petitions, as the academic year 2017-2018 was already over. But what happened in the previous academic year was that a part of the Government Order impugned in these writ petitions, was stayed by this Court. However, the petitioners in the writ petitions of the year 2017 could not reap the benefit of the stay orders, since admissions to the courses were already over by the time stay orders were passed. Therefore, one portion of the reliefs sought for by the petitioners in the writ petitions of the year 2017 has become infructuous, since these writ petitioners

cannot be granted the benefit of admission for the academic year 2017-18.

5. But still their challenge to the Government Order remains, as the petitioners in the writ petitions of the year 2017 are seeking admission at least for the current academic year and they have taken NEET examination this year also. Therefore, it was not possible for us to dismiss the writ petitions of the year 2017 as infructuous, as the challenge to the impugned Government Order still survived. In any case, there are three individual writ petitions where there is a challenge to the very same Government Order, for the current academic year. Hence, all the writ petitions were taken up together for disposal.

6. The challenge in all these writ petitions, is actually to the operative portion of the Government Order G.O.Rt.No.550, Higher Education (EC.2) Department, dated 30-07-2001, which reads as follows:

“5. After careful consideration and due examination of the issue relating to implementation of reservation for Scheduled Castes/Scheduled Tribes/ Backward Classes in engineering and other Professional Courses the following instructions are hereby issued:-

- (i) In the counseling process, the seats to be filled by open competition should be filled up first, wherein the candidates should be called for counseling based on merit alone irrespective of whether they belong to SC, ST or BC in accordance with the instructions issued by the Government in G.O.Ms.No.996, Employment & Social Welfare, dated 11th November, 1975.
- (ii) Next, reservation categories like SC/ST/BC candidates will be counseled to fill the seats earmarked for them in their respective categories. During this process, if a candidate belonging to Scheduled Caste/Scheduled Tribe/ Backward Classes, who had taken admission under open competition, opts for a better branch or a better college of his choice for which he or she would

be eligible as per the rules of reservation, the seat vacated by him or her in open competition shall be filled with a candidate from the same reservation category only, in order of merit.”

7. As could be seen from the portion of the impugned Government Order extracted above, a four step process is envisaged in the Government Order, for filling up seats in all Professional Courses. This four step process is as follows:

- (i) the seats to be filled up by open competition, strictly on the basis of the merit, irrespective of the community to which a candidate belongs, should be filled up first;
- (ii) the seats reserved for the respective categories are to be filled up next;
- (iii) while going through the second step, if a candidate belonging to the reserved category, who has taken admission under the open category, opts for a better branch or a better college of his choice, he shall be allowed to slide down; and
- (iv) the seat vacated by such a meritorious reserved category candidate, who was first allotted a seat under the open category and who later opted to slide down to a better branch or better college by sliding down, shall be filled up only with a candidate from the same reserved category in the order of merit.

8. None of the petitioners have an objection, nor can they in law have any objection to the first three steps enunciated in the previous paragraphs. The objection of the writ petitioners is only to

the fourth and last step and this objection is based on three primary grounds namely:

(a) that the fourth step envisaged in the impugned Government Order actually creates a reservation within the seats required to be kept as unreserved, solely on the basis of the fact that a meritorious reserved category candidate came to occupy that seat for a few seconds before opting to slide down, thereby offending Article 14 of the Constitution;

(b) that by reserving the seat vacated by a meritorious reserved category candidate, to be filled up only by a candidate belonging to the very same reserved category, the percentage of reservation has gone up beyond the cap prescribed by the Constitution Bench of the Supreme Court in ***Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217)**; and

(c) that in any case, after the advent of web options and the filling up of seats through online counseling, the first two steps envisaged in the impugned Government Order have been given a go-by, on account of which less meritorious candidates directly come to occupy the seats earmarked as unreserved, merely on the basis of a notional allotment of meritorious reserved category candidates to unreserved seats, followed by a notional sliding down.

9. The very maintainability of the challenge to G.O.Rt.No.550, dated 30-07-2001, is questioned by the respondents on the grounds *inter alia*,-

(i) that a Full Bench of this Court has already upheld its validity in **Koganti Jayakrishna v. State of Andhra Pradesh**¹ and hence, a bench of lesser strength cannot even go into it;

(ii) that in any case, the issue is no longer *res integra* in view of a long line of decisions starting from **Ritesh R. Shah v. Dr. Y.L. Yamu**², and reaffirmed in **Samta Aandolan Samti v. Union of India**³ and in **Tripurari Sharan v. Ranjit Kumar Yadav**⁴, where circulars identical to the impugned Government Order were under consideration;

(iii) that the writ petitioners cannot place reliance upon the decision of the Constitution Bench of the Supreme Court in **Union of India v. Ramesh Ram**⁵, as the same related to recruitment to All India Services, governed by Article 16 of the Constitution of India, while **Ritesh R. Sah, Samta Aandolan and Tripurari Sharan** related to admission to Medical Colleges, tested on the strength of the Article 15 of the Constitution;

(iv) that what is provided by the impugned Government Order is only an adjustment and interchange of the seats between the meritorious reserved category candidates selected under the open category and the reserved category candidates selected under the quota reserved for them and hence, the writ petitioners, who cannot even aspire to get boarding cards, cannot maintain a challenge to the mere

¹ 2002 (4) ALD 389

² 1993 (3) SCC 253

³ 2014 (14) SCC 745

⁴ 2018 (2) SCC 656

⁵ 2010 (7) SCC 234

readjustment of seats among candidates who have boarded the train.

10. We have carefully considered the rival contentions. We shall first take up the question whether we have any role to play at all, especially when a Full Bench of this Court has already upheld the validity of the very same Government Order. But, before we do that, it may be necessary to look at the historical background of the impugned order G.O.Rt.No.550.

Background of G.O.Rt.No.550, dated 30-07-2011:

11. With a view to consolidate and amend the laws relating to the educational system in the State of Andhra Pradesh, for reforming, organizing and developing the educational system, the State of Andhra Pradesh enacted the Andhra Pradesh Education Act, 1982, on the basis of the recommendations made by a Committee constituted under the Chairmanship of one Mr. M.V. Rajagopal, I.A.S. The Act provided for the establishment of a Board of Secondary Education, a State Board of Technical Education and Training, the establishment of Educational Institutions, their Administration and Control, Grant-in-Aid, taking over of the Management of Educational Institutions and various other things.

12. Closely following the said Act, the State enacted the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, primarily with the avowed object of curbing the evil practice of collection of capitation fees. Though the original object of this Act 5 of 1983, which we shall

hereinafter referred to as “the Capitation Fee Act”, was only to curb the practice of collection of capitation fee, the scope and ambit of the Act was expanded by successive amendments, three of which were made in the year 1984 itself, one made in the year 1985, another in the year 1992 and the last in the year 2009.

13. Section 3 (2) of the Andhra Pradesh Capitation Fee Act, 1983 stipulated that admission into educational institutions shall be subject to the rules 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. Section 12 of the Andhra Pradesh Capitation Fee Act, 1983, provided overriding effect for this Act upon anything inconsistent contained in any other law for the time being in force. Section 15(1) of the Act conferred upon the Government, the power to make Rules.

14. In exercise of the powers conferred by Section 3 read with Section 15 of the Capitation Fee Act, 1983, the Government of Andhra Pradesh originally issued a set of Rules in the year 1989. But, these Rules were replaced by another set of Rules known as Andhra Pradesh Professional Educational Institutions (Regulation of Admission into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993. Rule 8 (1) of these Rules prescribed that the Rules of Reservation provided therein would

apply to all institutions including Private Professional Institutions both for free seats and payment seats. But Rule 8 (1) concerns only regional reservation, as provided in the Presidential Order of 1974.

15. Rule 8 (2) provided for a reservation of 15% of the seats in each course in each institution to Scheduled Castes; 6% of the seats for candidates belonging to Scheduled Tribes; and 25% of the seats for candidates belonging to Backward Classes.

16. Rule 8 (3) provided for a reservation of 33 1/3 % of seats for women. Rule 8 (4) (a) provided for reservation for the physically challenged, NCC, Games and Sports and children of Ex-Servicemen and Defence Personnel, for admission to courses other than Medical and Dental. Rule 8 (4)(b) provided for reservation for physically handicapped, NCC, Games and Sports and children of Ex-Servicemen, for admission to Medical and Dental Courses.

17. While the 1993 Rules were holding the field, the Supreme Court held in **Ritesh R. Shah** (1) that a student, who is entitled to be admitted on the basis of merit, though belonging to a reserved category, cannot be considered to be admitted against the seats reserved for reserved category; (2) that provisions should be so made that it will not work out to the disadvantage of such candidates and he may not be placed at a more disadvantageous position than the other less meritorious reserved candidates and (3) that this objective can be achieved, if an option is given to the meritorious reserved category candidate to choose the college to which he would like to get admitted and (4) that even after the exercise of

such an option, the meritorious reserved category candidate who exercised such an option, will be continued to be considered as an open category candidate and not a reserved category candidate.

18. It appears that immediately after the decision of the Supreme Court in **Ritesh R Shah**, a few writ petitions came to be filed challenging the admissions in relation to the Academic Year 1998-99. They eventually landed up before a Division Bench. In **NTR University of Health Sciences v. Y. Raghavendra**⁶, a Division Bench of this Court held that the principles laid down by the Supreme Court in **Ritesh R. Shah** should be strictly followed. Therefore, taking cue from **Ritesh R. Shah** and **Y. Raghavendra**, the Government issued G.O.Rt.No.550, dated 30-07-2001, the operative portion of which in paragraph 5, we have already extracted. **It is relevant to note that paragraph 6 of the impugned Government Order indicated that necessary amendments to the 1993 Rules will be issued separately.** This is the genesis of G.O.Rt.No.550, dated 30-07-2001.

Full Bench in Koganti Jaya Krishna v. State of A.P.:

19. G.O.Rt.No.550 came to be challenged in two writ petitions, by students, who appeared for EAMCET 2001 seeking admission to Engineering Courses. A learned single Judge, before whom the writ petitions came up, placed the matter before the Hon'ble the Chief Justice for appropriate directions as to placing the matter before the

⁶ 2002 (2) ALD 532

Division Bench. Having regard to the importance of the issues involved, the matter was referred to the Full Bench.

20. As seen from paragraph 3 of the judgment of the majority, authored by Justice V.V.S. Rao (as he then was) in ***Koganti Jayakrishna, what was under challenge was “the method of permitting the meritorious reserved candidate to opt for the college or seat of his choice, described as sliding”***. Four points were formulated, as arising for consideration, by the majority in ***Koganti Jayakrishna***. They were:

“1. Whether paragraph 5(ii) of the impugned Government Order being G.O.Rt.No.550 dated 30-7-2001 is not in the realm of the policy and what is the scope of judicial review when a policy decision is challenged before the High Court?”

2. Whether paragraph 5(ii) of the impugned G.O is contrary to A.P. Educational Institutions (Prohibition of Capitation Fee), Act, 1983, A.P. Professional Educational Institutions (Regulation of Admissions into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 issued in G.O. Ms. No.184 dated 20-8-1993 ?

3. Whether the State Government is justified in contending that the impugned Government Order is issued to give effect to the judgment of the Supreme Court in Ritesh Shah and the judgment of this Court in NTR University of Health Sciences v. Raghavendra-II

4. Whether the principle laid down in Ritesh Shah case is not applicable to engineering admissions and if it is applicable whether the application of sliding rule entails meritorious candidate (OC) to claim the seat which is vacated by a meritorious SC/ST/BC candidate who was initially selected as OC candidate, and whether petitioners right if any under Articles 14 and 15 of the Constitution of India is violated?

21. It is needless to point out that all the four points were answered by the majority against the writ petitioners. But what is of interest to note is that while dealing with the second issue namely as to whether paragraph 5 (ii) of G.O.Rt.No.550 was contrary to Andhra

Pradesh Educational Institutions Rules 1993, the Full Bench took note, only of Section 3 of the Capitation Fee Act, 1983 and Rules 4, 5, 6 and 7 of the 1993 Rules. Though a passing reference was made to Rule 8 (2) (paragraph 33 of the majority view as per the report in ALD), the Full Bench, while answering the second issue arising for consideration against the writ petitioners, did not test paragraph 5 (ii) of the impugned Government Order on the touchstone of Rule 8 (2) as it prevailed at that time. It may be useful to extract Rule 8 (2) of the 1993 Rules as follows:

“(2) Reservations of seats for S.C./S.T./B.C. communities:- (a) 15% and 6% of seats in each course in each institution shall be reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes respectively.

The seats reserved for Scheduled Castes shall be made available to Scheduled Tribes and vice-versa, if qualified candidates are not available in the category. If qualified candidates belong to Scheduled Castes and Scheduled Tribes communities are not available the left over seats reserved for them shall be treated as unreserved seats and shall be filled by the candidates of general pool.

(b) 25% seats in each course in each Institution shall be reserved for the candidates belong to the Backward Classes and shall be allocated among the four group of Backward Classes as shown below:

Group ‘A’ – 7%; Group ‘B’ – 10%; Group ‘C’ – 1%; Group ‘D’ – 7%

If qualified candidates belong to Backward Class of a particular group are not available, the left over seats can be adjusted for the candidates of next group. If qualified candidates belong to Backward Classes are not available to fill up the 25% seats reserved for them, the left over seats shall be treated as unreserved and shall be filled up with candidates of general pool.”

22. As can be seen from the Rule 8 (2), the reservation contemplated therein for Scheduled Castes, Scheduled Tribes and Backward Classes is to be worked out in respect of each course in each institution. But the way G.O.Rt.No.550 was designed, was to take all institutions affiliated to one University, as a

single unit. This is why a demand arises every time, from meritorious reserved category candidates allotted to less preferred colleges under the open category, to be allowed to opt for more preferred colleges, under the quota reserved for his category. ***A situation where candidates may choose one institution over the other was not contemplated nor provided for in Rule 8 (2). Rule 8 (2) of the 1993 Rules made every institution and every course, a water tight compartment by itself. As per Rule 8 (2), the seats are to be allotted course-wise and institution-wise and not to a cluster of institutions affiliated to a single University.*** But paragraph 5 of the impugned G.O.Rt.No.550 provided for the application of the Rules of Reservation stipulated in Rule 8 (2) to a cluster of institutions affiliated to a University.

23. Therefore, ***the question as to whether the executive instructions issued in G.O.Rt.No.550, dated 30-07-2001 can go contrary, particularly to Rule 8(2) of the statutory rules issued in exercise of the powers conferred by Section 15 (1) of the Capitation Fee Act, 1983, assumed significance, especially in the light of the fact that these statutory rules were required by Section 15 (2) to be laid before each House of the State Legislature. But unfortunately, the Full Bench in Koganti Jayakrishna did not examine the question as to whether G.O.Rt.No.550, which was in the nature of executive instructions, went contrary, particularly to Rule 8(2) of the statutory rules.***

24. Be that as it may, ***the march of law did not stop with Koganti Jayakrishna, as there were subsequent Government Orders and there were subsequent batches of students to knock at the doors of this Court. We do not know whether those students had Medical Education, but we certainly know that this Court had legal education.***

Full Bench in Md. Abdul Azeez Asad:

25. Just as a set of Rules were issued in 1993 under G.O.Ms.No.184, Education (E.C.2), dated 20-08-1993, for regulating the education to Under Graduate Professional Courses, the Government of Andhra Pradesh also issued another set of Rules for admission to Post Graduate Medical Courses, in exercise of the rule making power under Section 15 (1) of the Capitation Fee Act, 1983. These Rules known as the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997 also provided for a reservation of 15% for Scheduled Castes, 6% for Scheduled Tribes and 25% for Backward Classes. These 1997 Rules relating to admission to Post Graduate Medical Courses were amended under G.O.Ms.No.719, Health, Medical and Family Welfare dated 16-12-2003. By this amendment, a 100 point roster system was introduced, for admission to Post Graduate Medical Courses, commencing from the Academic Year 2003-2004. Simultaneously, the members of the Scheduled Castes were classified into four categories under the Andhra Pradesh Act 20 of 2000, but the same was struck down as unconstitutional by the

Supreme Court in ***E.V. Chinnaiah v. State of A.P. ((2005) 1 SCC 394)***.

26. Thereafter, the roster point introduced in the 1997 Rules, under G.O.Ms.No.719, dated 16-12-2003 was further modified by G.O.Ms.No.44, Health, Medical and Family Welfare (E-2) Department, dated 25-02-2005. When admissions were sought to be made to Post-Graduate Medical Courses for the Academic Year 2005-06, on the basis of these amended Rules of the year 1997, they become the subject matter of the challenge in a batch of writ petitions. Since the issues raised were of importance, the matters were placed before a Full Bench, pursuant to a reference made by a Division Bench.

27. The Full Bench framed four principal issues, as arising for determination in ***Md. Abdul Azeez Asad***. Issue No.3 (ii) framed for the consideration of the Full Bench was as to ***whether the clubbing together of all Post Graduate Medical Courses of study and of Degree and Diploma of Courses was valid or not***. In an attempt to sustain the amendment, the decision of the Full Bench in ***Koganti Jayakrishna*** was pressed into service before the Full Bench in ***Md. Abdul Azeez Asad***. Therefore the decision in ***Koganti Jayakrishna*** was analyzed in a great detail in paragraphs 91 and 92 of the decision of the Full Bench in ***Md. Abdul Azeez Asad***. Distinguishing the decision of the Full Bench in ***Koganti Jayakrishna***, it was held by the subsequent Full Bench in ***Md. Abdul Azeez Asad*** in paragraph 92 of the report as follows:

“92. We have carefully considered the conclusions of the learned Full Bench of this Court in Koganti Jaya Krishna's case (4 supra) on the issue of grouping of Engineering Degree Courses. We find that the Full Bench majority's analysis proceeded on an etymological basis of the words "course" and "branch". There was no lexicographic analysis of the words nor an analysis as to the purposes for which the expression "course of study" preceded by the word "every" is employed in the Presidential Order. Issues such as whether the expression "course of study" is plurisignative and ambiguous and if so whether the expression requires dynamic processing by employing principles of purposive construction or the application of the Heydon's rule were not considered. We also find that on facts, the decision was one involving degree courses of Engineering study and not specialized courses like postgraduate studies or professional courses involving discreet and insular specialised academic pursuits, as is the case in post-graduate medical studies. In degree courses of study even involving separate disciplines like Civil, Electrical, or Electronics Engineering, the course content involves a measure of common curricula in the different disciplines. Only to a limited extent and in the later years, is separate theoretical and practical instruction imparted to the students of the different disciplines. In such factual context of Engineering degree studies, the distinction between the different disciplines is perhaps not absolute. What is true of Engineering degree courses, on the above analysis, does not hold good in the case of post-graduate medical studies. Each postgraduate medical course of study and degree and diploma courses are wholly distinct and specialised courses of study. The judgment in Koganti Jaya Krishna's case (4 supra) involving as it does an analysis of degree courses in Engineering thus offers no guiding principle on the legitimacy of grouping of post-graduate medical courses of study.”

Thus the decision of the first Full Bench in *Koganti Jayakrishna* came to be distinguished in *Md. Abdul Azeez Asad*.

Yet another Full Bench in Dr. B. Kaladhar:

28. As a fall out of the decision of the second Full Bench in ***Md. Abdul Azeez Asad***, the Government issued a new set of Rules under G.O.Ms.No.123, dated 23-04-2005, providing for the preparation of a 100 point roster adopted from the Andhra Pradesh State and Subordinate Service Rules, in all respects, with a minor variation. These new set of Rules issued under G.O.Ms.No.123 were assailed in a batch of writ petitions, primarily on the ground that the

100 point roster violated the principle laid down in **Rithesh R. Shah** by the Supreme Court. During the pendency of the challenge, the Government issued another order in G.O.Ms.No.167, dated 26-05-2005 and this Government Order also came to be challenged. When this batch of writ petitions was heard by a Division Bench, the Bench held that the decision of the Full Bench in **Koganti Jayakrishna** may have a bearing on the issue. Therefore, the Division Bench made a reference to a Full Bench. The order of reference was as follows:

"We consider it appropriate that the issue whether the principle enunciated in Ritesh Sah's case (supra) is relevant and applicable in the context of post-graduate medical admission, independent of the implications of the Presidential Order; and whether a general seat declined by a meritorious reserved candidate who opts for a reserved seat invariably be reserved for being filled up by a lower ranked student belonging to the same reserved class are matters which require a consideration by a Bench of appropriate strength."

29. It may be of interest to note that when the matter came up before the Full Bench, in **Dr.B.Kaladhar vs. Government of A.P.**⁷ on the reference so made, a preliminary objection was raised as to the validity of the order of reference, on the ground that it was not open to a Division Bench to doubt the correctness of the Full Bench decision in **Koganti Jayakrishna**. This objection was overruled in paragraph 30 of the report of the Full Bench in **Dr. B. Kaladhar**, on the ground that the reference arose not because of a doubt about

⁷ 2006 (1) ALD 1 (FB)

the correctness of the decision in **Koganti Jayakrishna**, but because of the application of the principles enunciated therein.

30. The primary question with which we are concerned in these cases as to whether a seat vacated by a meritorious reserved category candidate should be filled up only by a candidate belonging to the same reserved category, was dealt with by the Full Bench in **Dr. B. Kaladhar** in paragraphs 38 and 39 of the report. These paragraphs may be usefully extracted as follows:

"38. The purport of the submissions made on behalf of the petitioners is that if a candidate born in reserved category is entitled to be admitted against a seat in a particular course, and in a particular college, as a candidate in the open category, and if he intends to get admitted against a seat reserved for the said category, the seat against which he was entitled to be admitted in the open category must be made available to the person who is displaced on account of the change of choice by an otherwise open category candidate. In the illustration, given in the preceding paragraphs, candidate 'X', who belongs to S.C. category was entitled to be admitted into course-I in college 'B' as an open category candidate. Not being satisfied with that, he gets admitted against a seat in Course-II in college 'A', which incidentally was reserved in favour of a S.C. category to which he belongs. Such an option by 'X' is to result in displacement of candidate-Y, who was eligible to get admission only as a reserved candidate. According to the petitioners, candidate-Y must be accommodated in course-I in college 'A' (sic. 'B') vacated by candidate-X.

39. We are of the view that the ratio of the judgment in Ritesh Sah's case (2 supra) does not support such a contention. The judgment, according to us, is to the effect that if candidate-Y faces displacement from reserved category, on account of shifting of priority by candidate-X, he must be accommodated in any course, may be I, III, IV, V, and in any colleges C, D, E., depending on the availability, and not necessarily against the seat vacated by 'A'. It is a different thing, if he gets that seat, in the process. The number of seats so affected may have to be replenished, if necessary by displacing the candidate of other categories, from the bottom. The words "they be allotted seats in whichever college the seats should be available" used by the Supreme Court supports this view.

31. In other words, the Full Bench in **Dr. B. Kaladhar** actually came to a conclusion in paragraphs 38 and 39 of the report

extracted above, which strikes at the root of the second part of the para 5 (ii) of G.O.Rt.No.550. Thus, we have on one hand a Full Bench upholding the validity of G.O.Rt.No.550 in ***Koganti Jayakrishna*** and on the other hand, a subsequent decision of another Full Bench in ***Dr. B. Kaladhar***, which has the effect of annihilating the later part of paragraph 5 (ii) of G.O.Rt.No.550.

32. Therefore, two issues trouble our judicial conscience and judicial propriety. They are—

- (i) the conflict between Rule 8 (2) of the 1993 Rules, which provides for reservation only course-wise and institution-wise and the executive instructions in G.O.Rt.550, which provide for the applicability of the rule of reservation to a cluster of institutions affiliated to a University, which aspect was not touched upon by the Full Bench in ***Koganti Jayakrishna*** and
- (ii) the effect of the ratio laid down in paragraphs 38 and 39 of the subsequent decision of the Full Bench in ***Dr. B. Kaladhar***.

33. Therefore, it is not possible for us to rubbish the writ petitions as completely devoid of merits on the ground that they try to resurrect the ghost of G.O.Rt.No.550 from the grave to which it was sent by the first Full Bench in ***Koganti Jayakrishna***. But for the two aspects that we have mentioned in the preceding paragraphs, the writ petitions challenging G.O.Rt.No.550 were not even worthy of a hearing. Apart from two aspects that we have indicated in the previous paragraphs, there is also one more aspect, in the form of statistics, that stare at our face. But we shall go to the statistics, after

dealing with the decisions of the Supreme Court starting from **Ritesh R. Sah.**

The decisions of the Supreme Court:

34. We do not think that we need to spend more time in analyzing the principles laid down in the 4 decisions of the Supreme Court, around which the fulcrum of the case rotates. In a nutshell, the principles laid down in **Ritesh R. Sah, Ramesh Ram, Samti Aandolan and Tripurari Sharan** can be summed up as follows:

- (i) **Ritesh R. Sah, Samti Aandolan and Tripurari Sharan** fall on one side, as they relate to admission to Medical Courses. **Ramesh Ram** falls on another side, as it related to appointment to All India Services.
- (ii) Though a distinction was sought to be made between Articles 15 and 16 of the Constitution, the distinction, in our considered opinion, is only one of form and not of substance. None of the clauses (1) to (4) of Articles 15 speak about education. It is only clause (5) of Article 15 inserted by the Constitution 93rd amendment with effect from 20-01-2006, that speaks of the power of the State to make any special provision by law, for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes, for admission to Educational Institutions, including private Educational Institutions, whether aided or unaided by the State, other than those protected by Article 30(1). But Article 16 specifically deals with equality of opportunity in matters of public employment. The distinction between Article 15 (5)

and Article 16(4) is that under the former, the special provision to be made by the State, should be by law, whereas under Article 16 (4) it is not so. The second distinction is that Article 15 (5) is confined to admission to educational institutions, while Article 16(4) relates to reservation of appointments or posts. Other than these two distinctions, there is nothing more that could question potency of Article 14, in its applicability to both Educational Institutions and Public Employment.

(iii) All the three decisions of the Supreme Court in ***Ritesh Sah, Samti Aandolan and Tripurari Sharan*** can be taken, without fear of contradiction, to have laid down three propositions namely,-

(A) that a meritorious reserved category candidate (MRC for short) allotted to a seat under the Open Category is entitled to exercise an option to slide down to a course or college of his choice, which falls within the quota reserved for that category on the basis of the quota;

(B) that despite such a MRC sliding down to course or college of his choice and taking a seat in the reserved category, he will continue to be treated as an Open Category candidate; and

(C) that the seat vacated by MRC by exercising an option, may be filled up by a candidate belonging to the very same reserved category.

(iv) But all the three decisions of the Supreme Court, in ***Ritesh Sah, Samti Aandolan and Tripurari Sharan*** made it clear that the aforesaid three Rules will always be subject to the condition that the operation of those Rules does not result in the maximum percentage

of reservation for all categories put together, exceeding 50%. This is in view of the mandate of the Constitution Bench in **Indra Sawhnay**.

35. As a matter of fact, none of the learned counsel appearing on either side, including the learned Advocate General, dispute the propositions that we have culled out from the decisions of the Supreme Court in the preceding paragraph. The only area of dispute that the parties who are pitted against each other, seeks to raise is as to whether in the application of G.O.Rt.No.550, the total percentage of reservation has exceeded 50% or not. In order to resolve the dispute, we directed the learned standing counsel of the two Universities, who are before us, to furnish the statistics. In fact, the petitioners in one of the writ petitions namely W.P.No.25809 of 2018 has furnished the statistics relating to admission to the various Medical Colleges affiliated to the Dr. NTR University of Health Sciences, in the academic year 2017-18. It is as follows:

Admissions in the year 2017-2018 in
Dr. N.T.R. University of Health Sciences, A.P.

Name of College	L/OC	UR/OC	L/BC	UR/BC	L/SC & ST	UR/SC & ST	
Rims, Kadapa	59	10	34	7	27	3	As per seat matrix
	36	4	59	12	29	4	As per allotment
ACSR Govt Medical College	61	11	36	3	25	4	As per seat matrix
	36	8	63	6	28	4	As per allotment
Narayana Medical College Nellore	49	9	30	4	22	3	As per seat matrix
	28	8	49	6	27	3	As per allotment
VMCK	31	6	18	3	12	1	As per seat

Karnool							matrix
	15	4	35	5	13	1	As per allotment
Padhmavati Medical College	51	9	31	5	22	4	As per seat matrix
	32	7	50	7	23	4	As per allotment
SV Medical College, Tirupati	81	14	46	7	33	7	As per seat matrix
	67	14	62	7	36	7	As per allotment
P.E.S. Medical College Kuppam	31	4	18	3	12	3	As per seat matrix
	20	4	30	3	9	3	As per allotment
Govt. Medical College Ananthapur	41	7	23	4	17	2	As per seat matrix
	29	5	35	6	20	2	As per allotment
S.R.M.C. Medical College, Nandyala	19	2	11	3	9	2	As per seat matrix
	9	2	23	3	10	2	As per allotment
Kurnool Medical College, Kurnool	81	13	46	8	33	7	As per seat matrix
	81	12	49	9	32	7	As per allotment
Appolo Medical College, Chittoor	33	2	17	4	13	3	As per matrix
	33	2	17	4	13	3	As per allotment
Total	537	86	310	51	225	39	As per seat matrix
	386	70	472	68	240	40	As per allotment

36. It is seen from the above statistics that there are 13 Medical Colleges in the State of Andhra Pradesh, affiliated to the Dr. NTR University of Health Sciences. The total number of seats available in all the 13 colleges put together for the academic year 2017-18 appears to be 1276. There is a Local Area reservation in terms of the Presidential Order, 1975, issued in exercise of the power conferred by Article 371-D of the Constitution. There are two

Local Areas namely Andhra University Area and Sri Venkateswara University Local area within the State of Andhra Pradesh. In colleges falling within each of those areas, 85% of the seats are to be allotted to the local candidates, who satisfy the criteria fixed by the Presidential Order. The remaining 15% of the seats are available for all the candidates including the candidates belonging to the local area. The local area reservation also operates vertically and the reservation for Backward Classes, Scheduled Castes and Scheduled Tribes are to be operated, within the two compartments “Local Area” and “Open Category” (Locals and Non-locals). The acronyms used in the tabular column given above, have to be understood as follows:

L = Local,
O.C. = Open Category,
U.R. = Unreserved.

37. For the present, let us keep aside the reservation for Local Area candidates in terms of the Presidential Order and take the Locals and Non-locals together, to find out, if the total percentage of reservation crossed 50% or not in the previous academic year.

38. As per the seat matrix, without the application of the para 5 (ii) of the G.O.Rt.No.550, the total number of seats that are to be kept unreserved, for being filled up strictly according to merit was 623 (537 + 86). The number of seats that fell under the 25% quota reserved for Backward Classes was 361 (310 + 51). This is apart

from those belonging to the Backward Classes, who got allotment on their own merit under the Open Category.

39. But after the application of para 5 (ii) of G.O.Rt.No. 550, the number of seats that came to be occupied by candidates on their own merit got reduced to 456 (386 + 70). The number of seats that got allotted to the candidates belonging to the Backward Classes increased to 540.

40. For the present, we will go to the extent of ignoring the statistics provided by the petitioners in W.P.No.25809 of 2018. relating to the academic year 2017-18. We shall take up the statistics provided by KNR University of Health Sciences and Dr. NTR University of Health Sciences, both in respect of the seats allotted and the seat matrix. It is as follows:

MBBS									
Seats Allotted									
Candidate Category	OPE N	SC	ST	BCA	BCB	BCC	BCD	BCE	Total
OC	492								492
SC	3	275							278
ST	4		110						114
BCA	6			142					148
BCB	32				335				367
BCC	1					21			22
BCD	15						219		234
BCE	12							91	103
Total	565	275	110	142	335	21	219	91	1758
Seats as per Seat Matrix	879	264	105	123	176	18	123	70	1758

The increase in the percentage of reservation as per the G.O. is :

Category	Seats
SC	11
ST	5
BCA	19
BCB	159
BCC	3
BCD	96
BCE	21
Total	314

41. It can be seen from the above that though as per the seat matrix, 879 seats which represent 50% of the total of 1758 seats should be kept to be filled up strictly on the basis of merit under the open category, only 565 seats got allotted under the open category. This includes even those belonging to the reserved categories, who are meritorious and who did not have the necessity to seek sliding down. The remaining 314 seats (879 – 565), added up to the percentage of seats reserved for the reserved categories.

42. In the State of Telangana, the Backward Classes are divided into 5 categories namely BC-A, BC-B, BC-C, BC-D and BC-E, who are entitled, in total, to a reservation of 25% of the seats. The latter part of para 5(ii) of G.O.Rt.No.550 apparently has increased the total number of seats for Backward Classes, by about 298.

43. Now let us take the statistics relating to Dr. NTR University of Health Sciences for the academic year 2018-19. As in the case of KNR University of Health Sciences, Dr. NTR University of Health

Sciences has also furnished information both relating to seat matrix and the eventual allotment. Shorn of the details regarding local area reservation, and the sub-classification of the Backward Classes under the A,B,C,D, and E categories, the picture that would emerge in Dr. NTR University of Health Sciences will be as follows:

Categories	As per seat matrix	As per allotment
O.C.	672	469
B.C.	392	588
S.C.	202	208
S.T.	81	82
	1347	1347

44. The statistics furnished by Dr. NTR University of Health Sciences would show that the number of seats that would go eventually to the open category gets reduced to 469 from 672 and the number of seats reserved for Backward Classes goes up from 392 to 588.

45. An important aspect of the analysis of the statistics given by the University is that the Scheduled Castes and Scheduled Tribes are not the major beneficiaries of the second part of para 5 (ii) of the G.O.Rt.No.550. But the maximum percentage of reservation goes up beyond 50% due to the application of the latter part of para 5(ii) of the G.O.Rt.No.550, with the major beneficiaries being B.C-B in both cases.

46. Thus, it is clear from the statistics that despite para 5 (ii) of G.O.Rt.No.550, being in tune, on a theoretical basis, with the decisions of the Supreme Court in ***Ritesh Sah, Samti Aandolan and Tripurari Sharan***, it does not pass the test of ***Indra Sawhney***,

which was a *sine qua non* for the upholding of similar orders or circulars by the Supreme Court in the three aforementioned cases namely ***Ritesh Sah, Samti Aandolan and Tripurari Sharan***.

47. What is important to note is that neither the Full Bench decision of this Court in *Koganti Jayakrishna* nor the decisions of the Supreme Court in *Ritesh R. Sah, Samta Aandolan and Tripurari Sharan*, were decided on the basis of concrete facts and figures. The Full Bench of this Court in *Koganti Jayakrishna* did not have the advantage of statistics, in view of the fact that G.O.Rt.No.550 was issued on 30.07.2001 and the case was decided immediately thereafter. The Full Bench decision in *Koganti Jayakrishna* was decided on 30.11.2001, within four months of issue of the impugned G.O.Rt.No.550. Therefore the Full Bench had no occasion to decide the validity of G.O.Rt.No.550, in its actual implementation, but decided the validity only on theoretical basis.

48. An argument was advanced to the effect that what is contemplated under Para-5(ii) of G.O.Rt.No.550 is a mere readjustment of seats among the reserved category candidates, some of whom got allotted seats under the open category, with the same kind of reserved category candidates who got allotted seats under the reserved category. This argument can be best understood in the form of an illustration. If admission to all medical colleges affiliated to a university is conceived to be something like filling up of seats in an aircraft, the impugned Government Order, according to the learned counsel for the contesting respondents, contemplate the

issuance of boarding cards to the extent of 50% of the seats to candidates who qualified for admission on the basis of their own merit. The remaining 50% of the seats in the aircraft are filled up by distributing boarding cards to candidates belonging to reserved categories to the extent of the percentage of reservation. After this process of filling up the first 50% of the seats under the open category and the remaining 50% of the seats with reserved categories, the doors of the aircraft are closed and the cabin crew, who can be equated to the Convener arms all doors. Thereafter, persons, who have taken boarding cards under the open category on the basis of their own merit, despite belonging to the reserved category, seek to exercise a right to switch over to the premium economy or business class, on the ground that by fortuitous circumstances, a candidate belonging to the same reserved category, but who is less meritorious, is issued with a boarding card for the premium economy or business class. If the cabin crew accepts such a claim and displaces the less meritorious reserved category candidate from the seat allotted in the premium economy or business class, such a person has to be accommodated in the seat vacated by the candidate, who seeks to enforce such a right. Then it becomes only a matter of exchange of seats between persons who were issued with boarding cards and who have already boarded the aircraft. The passengers, who could not even secure boarding cards and who are, consequently only in the lounge, cannot stake a claim on the ground that in the process of readjustment, a less meritorious

candidate gained a seat. Off loading a passenger on the basis of a claim by a passenger who is not entitled to a boarding card, according to the learned counsel for the respondents, cannot be permitted.

49. As an illustration, what is stated above is quite attractive and it captures our imagination. But the above illustration was holding good so long as the issuance of the boarding cards happened manually. Now the boarding cards are issued online. In other words, both the respondent-universities have now shifted to online counseling for admission to medical and dental courses. In the online counseling where candidates exercise web options, the physical allotment of candidates, the physical act of sliding down and the physical act of filling up the vacated seats do not happen. All the steps happen simultaneously in computer systems in which the software is programmed in such a manner.

50. Today, all candidates who make applications for admission to undergraduate medical and dental courses, indicate the community to which they belong, the marks secured in higher secondary course, the Statewide and all India rank in NEET and three different choices of the colleges to which they would like to seek admission in the order of priority. ***The system is programmed in such a manner that a meritorious reserved category candidate, according to his first choice of preference, is accommodated directly into the college or course of his choice, either under the open category or under the reserved category***

to which he belongs. Therefore, sliding itself does not take place. As a consequence, no one knows who vacated which seat. If one cannot know who vacated which seat, it is not possible to take any particular seat as having been vacated by a candidate belonging to one particular reserved category.

51. One more eventuality that is happening these days is that candidates who get allotted to colleges affiliated to other universities in other States either under the all India quota or otherwise, also vacate seats allotted to them. Paragraph-5(ii) of the impugned Government Order, operated literally, would oblige the respondents to fill up even those seats only with candidates belonging to the same reserved category, to which the person who did not take the allotment belonged.

51. When a pointed query was made by us to the learned Advocate General appearing for the State of Andhra Pradesh and also to the learned Standing Counsel for the universities, they stated that if a candidate does not take allotment, the second part of Para-5(ii) of the impugned Government Order will not operate and that the seat will go according to merit or reservation as the case may be. But such a statement does not appear to be factually correct, in view of the very nature of online counseling and exercise of web options. This can be illustrated with an example.

52. As we have pointed out earlier, all candidates seeking admission are entitled to indicate the colleges of their choice in the order of preference. Though G.O.Rt.No.550 contemplates a four

step process, viz., (1) filling up of the open category seats first; (2) filling up of reserved category seats next; (3) allowing MRC to slide down to colleges or courses of their choice; and (4) filling up of the seats vacated by MRCs, the computer system has integrated all the four steps into a single step. For instance, let us take the case of a MRC, who has opted for colleges A, B & C in the order of preference. He will be first allotted to college 'C' under the open category. When he finds that a less meritorious reserved category candidate has been allotted to college 'A' due to the benefit of reservation, this candidate will opt to slide down. Once he is permitted to slide down, he will displace the candidate who got allotted to college 'A' on the basis of reservation. Therefore, such a displaced candidate should be accommodated in college 'C', as though a mutual transfer has taken place. This is how the manual system operates.

53. But after the universities have switched over to online admissions, the system does not allot a MRC first to college 'C' and then allow him to slide to college 'A' so as to enable him to vacate a seat. The system finds out by itself that a MRC can straightaway go to college 'A'. Since software programming follows a logic, unlike humans, the system presumes a notional allotment, a notional sliding and a notional filling up of the vacated seat. As a consequence, only one allotment takes place to MRC and that allotment directly takes him to the college of his preference. When

that happens, no seat gets vacated under the open category as no one has left his impression of birth mark upon the seat.

54. As we have pointed out earlier, when a more meritorious reserved category candidate, who is entitled to be allotted only college 'C' under the open category, gets directly allotted to college 'A' as a reserved category candidate and then he either does not take the allotment or vacate the seat for better pastures, after getting admission under the All India quota, he will in fact be vacating only the seat of a reserved category candidate. All the decisions of the Supreme Court, which we have discussed above, proceed on the premise that despite sliding down, a MRC continues to be an open category candidate. But it does not happen any more when he vacates the seat.

55. ***To put it in a lighter vein the mechanics of software have changed the dynamics of the game.*** Therefore, the learned Advocate General as well as the counsel for the other respondents may not be right in stating that a MRC who does not opt to slide down, but who goes out of the system on account of getting a seat elsewhere, may be treated differently from a MRC who slides down. Since the whole system now operates on the basis of the programming that is designed through software, there is virtually no distinction between a person who does not take the allotment at the first instance and a person who takes the allotment, then slides down and thereafter goes to a different university.

56. Another argument advanced by the learned counsel for the respondents was that what happens in the third and fourth step of Para-5(ii) of the impugned Government Order was only a tussle between a more meritorious reserved category candidate and a less meritorious reserved category candidate and that an open category candidate placed in between the two, in the order of merit, is nowhere in the picture. But this argument loses sight of one important fact namely that ***a MRC displaces a reserved category candidate only on the basis of his own merit. If displacement is permissible on the basis of merit and merit alone, the same logic would apply to the intermediary candidate also, who may even be a reserved category candidate.***

57. The argument that even after sliding, a MRC will continue to be treated as an open category candidate, has found acceptance in all the three decisions of the Supreme Court. But this argument, when it comes to public employment, may cut at the very root of social justice. Article 16 (4A) of the Constitution enables the State to provide for reservation for Scheduled Castes and Scheduled Tribes, even in matters of promotion with consequential seniority. If a MRC, who happens to be a scheduled caste, slides down to a post of his choice by exercising his right of reservation and if he continues to be treated as an open category candidate, he may then lose the chance of seeking the benefit of reservation in the matter of promotion. Therefore, treating a MRC, who opts to slide down, as an open

category candidate, may do harm especially to scheduled castes and scheduled tribes.

58. Yet another argument raised on behalf of the respondents was that G.O.Rt.No.550 is a product of the policy decision of the Government and that therefore as per the law laid down by the Full Bench in *Koganti Jayakrishna*, the same cannot be interfered with. But the said contention overlooks the fact that while a provision for reservation may be a policy decision, the manner in which the policy decision is worked out, can always be subject to judicial scrutiny.

59. In any case, we make it clear that we are not in this case, taking a view even remotely contrary to the law laid down by the Full Bench in *Koganti Jayakrishna*, though we have pointed out that the subsequent decisions of two Full Benches, one in *Md. Abdul Azeez Asad* and the other in *Dr. B. Kaladhar* give lot of scope for the same. We have only pointed out that the decision in *Koganti Jayakrishna* was not treated as a final word by two subsequent Full Benches.

60. On the fundamental propositions of law laid down by the Full Bench in *Koganti Jayakrishna* and by the Supreme Court in *Ritesh sah*, *Samta Aandolan* and *Tripurari Sharan*, we have tested the impugned Government Order. The impugned Government Order, on theory, passes the tests laid down in these decisions. But the caveat to which these fundamental propositions were made subject, by all the aforesaid decisions, is not satisfied by the impugned Government Order in the sense that the manner in which it is worked out, makes the maximum percentage of reservation

cross 50%. Therefore, the offending portion of the impugned Government Order is liable to be set aside.

61. Accordingly, the writ petitions are allowed. The last portion of paragraph 5 (ii) of the Government Order G.O.Rt.No.550, dated 30-07-2001, reading:

“During this process, if a candidate belonging to Scheduled Caste/Scheduled Tribe/ Backward Classes, who had taken admission under open competition, opts for a better branch or a better college of his choice for which he or she would be eligible as per the rules of reservation, the seat vacated by him or her in open competition shall be filled with a candidate from the same reservation category only, in order of merit.”

shall stand set aside. The respondent-Universities who have already made admissions in the first phase of counseling, as per the interim order passed by this Court, shall proceed further with the subsequent phases of counseling, as per this judgment. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

Date: 07-08-2018

Ksn/Js

L.R. copy to be marked

B.O./Ksn

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**



**Writ Petition Nos.26330, 26844, 28106, 28689, 29175, 29266,
29709, 29854, 29858 of 2017, 25108, 25809 and 26861 of 2018**

(Per VRS,J)

7th August, 2018.

Ksn