

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.15123 and 15583 of 2019

COMMON ORDER :

These two writ petitions are heard together and disposed of by this common order as the issue involved in both these writ petitions is almost same.

WP.No.15123 OF 2019:

2. The case of the petitioner is that she passed Intermediate examination in the year 2017 and appeared for the NEET-2017 with Roll No.909110589 and secured rank of 638802; that the Kaloji Narayana Rao University of Health Sciences (*for short 'KNRUHS*), Warangal-2nd respondent, issued notification for the year 2017-2018 for admission into the Bachelor of Unani Medicine and Surgery (BUMS) and petitioner also participated in the counselling held on 07.11.2017; that the Convenor, ISM/BUMS, KNRUHS, Warangal issued provisional admission order Phase-I to the petitioner allotting seat in Al-Arif Unani Medical College, Hyderabad-5th respondent for BUMS under Management quota in the fee category of CTB and the petitioner was directed to physically report before the Principal on or before 10.11.2017 by 5.00 p.m. along with the provisional admission order, other original certificates and pay the tuition fee for obtaining admission card in the respective course; that in pursuance of the provisional admission order, the petitioner has taken a Demand Draft for Rs.15,000/- dt.07.11.2017 bearing No.431884 in favour of the

respondent-University and handed over the same to the respondent-University at the time of counselling and subsequently submitted the joining report to the college on 08.11.2017 by paying fee of Rs.2,00,000/- through Demand Draft; and that the 5th respondent-college has also issued Receipt No.643, dt.09.11.2017 and accordingly the petitioner pursued the course with the 5th respondent-college. After completion of one year, petitioner was issued Hall ticket vide Regd. No.1705222014 for writing first year examinations scheduled from 14.11.2018 to 29.11.2017 and petitioner also appeared in the examinations and fared well and as results were not declared, the petitioner filed WP.No.8756 of 2019, and this Court by order dt.30.4.2019 directed the 2nd respondent- University to furnish the marks secured by the petitioner in the first year examinations in a sealed cover to the Court by the next date of hearing. Thereafter, the 1st respondent withdrew the 'No Objection Certificate (essentiality certificate) granted to the 5th respondent-college in terms of the orders from the Ministry of Ayush, Government of India and ordered for transfer of students of the said college to the Government Nizamia Tibbi college-4th respondent herein. Accordingly, the 2nd respondent issued orders for de-recognition and disaffiliation of the 5th respondent- college and also issued notification dt.09.07.2019 for the students of 5th respondent-college directing that the candidates who are admitted in BUMS course for the academic year 2014-2015; 2015-2016 under Dr.NTRUHS and for the academic year 2016-2017 and 2017-2018 under KNRUHS to attend the first and final counselling

along with the parent with allotment order, identity card, fee receipts, marks memos, undertaking on Rs.100/- stamp paper, etc. for reallocation to the Government Nizamia Tibbi College as per the orders of the Government of Telangana and also directed to appear at the venue of Prof.Ram Reddy Center for Distance Learning (PGRRCDE) Osmania University campus, Hyderabad from 10.00 a.m on 13.07.2019 and for the candidates who joined in the year 2017-2018, they were directed to report at 11.30 a.m. along with parents. Accordingly, the petitioner and her father have appeared at the counselling with all relevant documents referred to in the notification dt.09.07.2019 and also proforma undertaking on Rs.100/- stamp paper. However, except petitioner's name, names of all other candidates were displayed in the list for transfer from 5th respondent college to 4th respondent- college. When the petitioner requested the officials belonging to the University and the Department of Ayush, Telangana, as to why they did not include her name in the said list of the students, who were admitted into the course for the academic year 2017-2018, they did not give any reasons. In spite of verification of petitioner's certificates and having found genuine, they did not record petitioner's name for transfer from 5th respondent-college to the 4th respondent-college, on the premise that petitioner's name is not figuring in the list of students displayed for the academic year 2017-2018. Aggrieved by the same petitioner filed this writ petition.

WP.No.15583 OF 2019:

3. The facts in this writ petition are almost similar to that of WP.No.15123/2019 and the same are as follows:-

The case of the petitioner is that she passed Intermediate examination in year 2014 and thereafter appeared for the NEET-2017 and secured rank of 636910; that the Kaloji Narayana Rao University of Health Sciences (*for short* 'KNRUHS'), Warangal-3rd respondent, issued notification for the year 2017-2018 for admission into the Bachelor of Unani Medicine and Surgery (BUMS) and petitioner also participated in the counselling held on 07.11.2017; that the Convenor, ISM/BUMS, KNRUHS, Warangal, issued provisional admission order Phase-I to the petitioner allotting seat in Al-Arif Unani Medical College, Hyderabad-1st respondent, for BUMS course under Management quota in the fee category of CTB and the petitioner was directed to physically report before the Principal on or before 10.11.2017 by 5.00 p.m. along with the provisional admission order, other original certificates and pay the tuition fee for obtaining admission card in the respective course; that in pursuance of the provisional admission order, the petitioner has joined the 3rd respondent-college by paying Rs.2,00,000/- through Demand Draft vide D.D.No.603048, dated 09.11.2017; and that the 1st respondent-college has also issued Receipt No.642, dt.09.11.2017, and accordingly the petitioner pursued the course with the 1st respondent-college. While so, though petitioner paid examination fee for the first years, the 3rd respondent-University did not send the hall ticket to the

petitioner. But, later in view of the orders passed by this Court in WP.No.39615/2018 and 40752/2019 the petitioner obtained the hall ticket. It is stated that the petitioners in WP.No.39615/2018 and 40752/2019 were not qualified in NEET-2017 but were admitted by the 1st respondent-college under Management quota, though Rules mandate that the seats under Management quota should be filled up by the candidates who qualified in NEET. The grievance of the petitioner is that though she is permitted to write the first year examinations, in view of the interim order passed in the above two writ petitions, the University withheld the result of the petitioner, though the petitioner is not a party to those two writ petitions. The further grievance of the petitioner is that when the students of 1st respondent-college were reallocated to the 4th respondent-college after disaffiliation of the 1st respondent-college, petitioner's name is not found in the list showing the names of students to be transferred to the 4th respondent-college. Though the petitioner gave representations to the 3rd respondent-University, the University neither declared the results nor included the name of the petitioner in the transfer list. Aggrieved by the same, present writ petition is filed.

4. Respondents 2 and 3 (University) filed counter affidavits in both the writ petitions stating that the 5th respondent-college is a private un-aided Unani Medical College established by the 6th respondent-Al-Azizia Educational and Welfare Society; that the intake of the 5th respondent college is 100 seats, out of which 50 seats

are to be filled by the competent authority and the remaining 50 seats are to be filled under Management quota seats; that the University issued Notification dt.31.10.2017 inviting online application forms from the eligible candidates for admission into Bachelor of Unani Medicine and Surgery under competent authority quota; that in pursuance thereof candidates having eligibility applied through online and letter of allotments were issued based on their merit for admission into the 5th respondent-college. Thereafter, the University issued notification dt.02.11.2017 inviting online applications from the candidates all over India who have qualified in NEET U.G 2017 for the purpose of admission into BUMS course, 2017, under Management quota in the 5th respondent-college for the academic year 2017-2018; that in pursuance thereof, the petitioners participated in the counselling on 07.11.2017 and they were given provisional admission order phase-I allotting seats in the 5th respondent college; and that the petitioners were instructed to physically report to the Principal of the 5th respondent-college along with provisional admission order and all original certificates and pay the tuition fee and obtain the admission card on or before 10.11.2017 by 5.00 p.m. It is stated that the University could not fill-up some of the seats under Management Quota through counselling, and as such the University has given permission to the college to fill up Management Quota seats with the candidates who are satisfying the eligibility criteria fixed by the University. Though, the 5th respondent-college issued a Notification calling applications from those who are having NEET

qualification, but it had admitted the students, who were not satisfying the eligibility criteria prescribed by the University. It is also stated that from the records submitted by the 5th respondent, it is evident that the petitioners did not take admission in the 5th respondent-college pursuant to the Provisional Admission Order given by the University; and that the contention that the petitioners joined the 5th respondent-College on 08.11.2017 and paid fee of Rs.2 lakhs through Demand Drafts is not true and correct, in view of the list showing the candidates admitted under Management quota, furnished by the 5th respondent-college dt.23.03.2018, wherein petitioners' names were not found. Had the petitioners taken admission in the 5th respondent-college and paid tuition fee in terms of the provisional admission order, the names of the petitioners would have found place in the list furnished by the 5th respondent-college on 23.03.2018 for approval to the University. It is further stated that the University gave hall tickets to all the candidates admitted by the 5th respondent as per the list furnished by the 5th respondent-college including the names of petitioners in both the writ petitions and another in terms of the orders passed by this Court in IA.No.1 of 2018 in WP.No.39615 of 2018, dt.12.11.2018; and that the petitioners in both the writ petitions are permitted to write first year examinations scheduled from 14.11.2018 to 29.11.2018 basing on the request made by the 5th respondent-college to include the names of petitioners and another in the place of three candidates whose names were already in the list dt.23.03.2018 furnished by the College and thereafter the University immediately

addressed a letter dt.13.11.2018 through e-mail stating that the names of those three candidates including the petitioners were furnished after a lapse of five months and requested to submit all the relevant records along with original certificates of the above three students by 5.00 p.m on 13.11.2018; that the admission of the petitioners under Management quota in the 5th respondent-college was not approved by the University, as the names of the petitioners did not find place in the list furnished by the 5th respondent-college on 23.03.2018; and that the petitioners have not taken admission in the 5th respondent-college in pursuant to provisional admission order issued by the University. The University issued Notification dt.20.11.2018 to all the Principals of AYUSH Colleges by enclosing a Schedule for verification of Original Certificates of the candidates who were given admission under convener quota as well as Management quota and unfilled seats are converted into Management quota by duly affixing the photograph of the candidate attested by the Principal; that the date fixed for certificates verification was on 19.02.2018. But the 5th respondent-college neither submitted list of candidates admitted under Management quota as well as Convener quota nor participated in the original certificate verification on the date fixed by the University. However, the 5th respondent-college after one month sent a list dt.23.03.2018 of the candidates admitted under Management quota for the academic year 2017-2018 for approval and as per the said list showing the approved Competent Authority Quota Seats of 2nd respondent University dt.12.06.2018, the University approved 50

candidates under competent authority quota, and out of those 50 candidates, the University came to know that two candidates namely MD.Asma, Rank No.469297 and Mohd Abdul Rahman, Rank No.515780 have not joined in the college, whereas in the list of candidates submitted by the 5th respondent under Management Quota, dt.09.07.2019, the names of petitioners are not included; that the State Government withdrew 'No Objection Certificate' (Essentiality Certificate) granted for establishment of the 5th respondent college in terms of the orders issued by the Ministry of AYUSH, Government of India and ordered for transfer of Students from 5th respondent college to Nizamia Tibbi College, Charminar, Hyderabad; and that the University issued orders de-affiliating the 5th respondent- college and issued a Notification dt.09.07.2019 directing the students who were admitted for the academic year 2014-2015, 2015-2016, 2016-2017 and 2017-2018 to participate in the counselling for reallocation of the students from the 5th respondent-college to the Government Nizamia Tibbi College; and that since the admission of the petitioners was not approved, the petitioners names were not enlisted in the list of candidates proposed to transfer from the 5th respondent-college to the Government Nizamia Tibbi College.

5. Heard Sri G.Vidya Sagar, learned Senior Counsel for the petitioner in WP.No.15123 of 2019, Sri Rahmath Ali, learned counsel for the petitioner in WP.No.15583 of 2019, Sri A.Prabhakar Rao,

learned Standing Counsel for 2nd respondent University and learned Government Pleader for Medical and Health.

6. The facts that the petitioners in both the writ petitions were granted provisional admission into 5th respondent-college basing on their NEET rank for pursuing BUMS course for the year 2017-2018; that the petitioners have paid necessary fee to the university and also joined in the 5th respondent-college; that the petitioners were also issued hall tickets for writing the first year examinations; and that, as the results were not declared, petitioner in WP.No.15123 of 2019 filed WP.No.8756 of 2019 for declaration of results which is pending, were all not denied. The petitioners also state that they have paid University fee of Rs.15,000/- at the time of counselling and joined the 5th respondent-College by paying Rs.2 lakhs towards college fee through Demand Drafts on 08.11.2017 and 09.11.2017, respectively, and the same was also acknowledged by the 5th respondent vide Receipt Nos.643 and 642 dt.09.11.2017, respectively. It is also the admitted fact that the petitioners have also paid the examination fee and they were also issued hall tickets for writing the first year examinations scheduled on 14.11.2018 to 29.11.2018. The petitioner in WP.No.15123 of 2019 also produced attendance register showing that both the petitioners have attended the college. It is also an admitted fact that on 31.07.2018 the 5th respondent-college furnished the list of 19 students who were admitted and approved on the basis of NEET-2017 and the name of the petitioner in WP.No.15123 of 2019 is

shown at Sl.No.10 in the said list. The fact that at the time issuing hall tickets, the College Management also addressed a letter dt.13.11.2018 to the University to include the names of the petitioners and that on the same day the University sent message to submit relevant records along with originals of the petitioners and others and thereafter the College forwarded the scanned copy of the originals of the petitioners and requested to issue hall tickets, were also admitted. All these aspects go to show that the petitioners were pursuing first year BUMS course in the 5th respondent-college. If the admission of petitioners was not approved as contended by the respondent-university, it is not known on what basis they have issued hall tickets to the petitioners and allowed them to write first year examinations. The attendance register produced by the petitioner in WP.No.15123 of 2019 shows that the petitioners are attending the college. The petitioners also filed documents to show that college has received their certificates and acknowledged the same.

7. The above facts and circumstances goes to show that petitioners were admitted in the 5th respondent-college by paying fee to the University and to the college which was accepted and they pursued their course and have also written first year examinations. As such, the petitioners' names should have been shown in the list of candidates sought to be transferred from 5th respondent-college to the 4th respondent college.

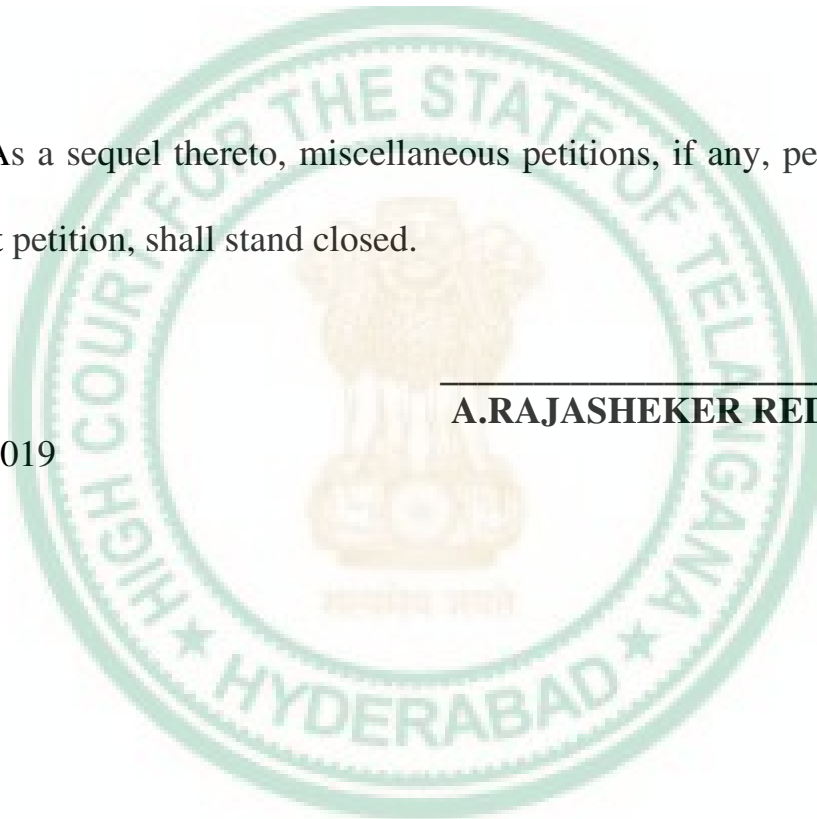
8. Having regard to the aforesaid facts and circumstances, it is not proper on the part of respondent-university to contend at this stage that they have not approved the admission of the petitioners. It is just and proper for them to include the names of the petitioners in the list of students for transfer to 4th respondent-college and the writ petitions are liable to be allowed.

9. Accordingly, both the writ petitions are allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

03.09.2019
t k.

A.RAJASHEKER REDDY, J



THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.15123 and 15583 of 2019



03.09.2019

tk