

HIGH COURT FOR THE STATE OF TELANGANA

* * * *

WRIT PETITION NOs.16637, 17285 AND 17293 OF 2019

W.P.No.16637 of 2019:

Between:

Nootenki Bhavana and others

... Petitioners

and

State of Telangana, Rep. by its
Principal Secretary, Hyderabad
and others

... Respondents

Date of Judgment Pronouncement: 19th AUGUST, 2019

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

P.KESHAVA RAO, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

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> Head Note:

! Counsel for petitioners : Mr.A.Satya Prasad on behalf of
Mr.U.D.Jai Bhima Rao,
Mr.Bathini Papa Rao Goud and
Mr.T.Koteshwara Prasad

^ Counsel for respondents 1 & 5 : GP for Medical and Health

^ Counsel for respondent 2 : GP for Higher Education

^ Counsel for respondents 3 & 4 : Mr.A.Prabhakar Rao

^ Counsel for respondent 6 : Mr.Vidya Sagar on behalf of
Mr.Bommineni Vivekananda

^ Counsel for respondent 7 : Ms.Gorantla Sri Ranga Pujitha

? CASES REFERRED:

1. AIR 1996 SC 1378
2. (2016) 11 SCC 225

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NOs.16637, 17285 AND 17293 OF 2019

COMMON ORDER

(per SK,J)

1. Admissions to medical courses invariably bring in their wake litigation galore. This year is no different. The petitioners in these three cases allege irregularities in the counselling process for admission to MBBS course by Kaloji Narayana Rao University of Health Sciences, Warangal (*for brevity*, 'the University'), during the academic year 2019-20.

2. In Writ Petition No.16637 of 2019, the petitioners are five in number. Two of them belong to BC-B category while two belong to BC-D category and the last is a member of the Scheduled Castes. They allege that the University and its Convenor failed to follow the procedure prescribed in G.O.Rt.No.550, Higher Education (EC.2) Department, dated 30.07.2001, and G.O.Ms.No.114, Health, Medical & Family Welfare (CI) Department, dated 05.07.2017, during the II Phase counselling for admission into MBBS course.

3. Writ Petition No.17285 of 2019 was filed by two candidates belonging to BC category assailing the action of the University in not considering them for admission into MBBS course under BC quota during the II Phase counselling.

4. The petitioner in Writ Petition No.17293 of 2019 also belongs to BC-B category and contends that the University did not follow the procedure contemplated in G.O.Rt.No.550 dated 30.07.2001 and G.O.Ms.No.114 dated 05.07.2017 in the II Phase counselling.

5. We may now note certain relevant facts. There are 27 Medical Colleges (Government & Private) and 4 Minority Medical Colleges in the

State of Telangana offering MBBS course. There are 12 Dental Colleges also. All these colleges are affiliated to the University. Candidates are expected to exercise their web options in choosing from amongst these colleges as per their choice of priority. The University issued Notification dated 21.06.2019 inviting applications through online registration from eligible NEET UG-2019 qualified candidates for admission into MBBS/BDS courses in these State institutions. Notification dated 28.06.2019 was then issued by it in connection with verification of the original certificates of the candidates who had applied online. The seat matrix of the available seats in MBBS course in the Competent Authority's quota was displayed on the University's website.

6. This seat matrix indicated that there were 2535 MBBS seats in Government and Private Medical Colleges and 330 MBBS seats in Minority Medical Colleges. 48 seats out of the 2535 seats were meant for National Cadet Corps (NCC) quota and Children of Armed Personnel (CAP) quota. 2487 seats therefore remained. Out of the 2487 seats, 1244 seats were in open category while 1243 seats were reserved under various heads. The 2487 seats also included 17 seats meant for persons with disability (PwD). Out of these 17 seats, 15 were meant for open category while two were reserved. 1229 open category seats remained, after deducting the 15 seats meant for PwD category, while 1241 reservation category seats remained, after excluding the two seats meant for PwD category.

7. Out of the total 2535 MBBS seats available in Government and Private Non-Minority Medical Colleges, the I Phase counselling was conducted for only 2487 seats. The seats reserved for NCC quota and CAP quota, being 24 each, were excluded. The final merit list in relation to these 2487 seats was drawn up by the University, indicating details of the

candidates, their NEET Hall Ticket Number, NEET Rank, NEET Marks, Sex, local/non-local status, social status, Minority status and any special status category, like PwD, PMC, etc. The candidates in this final merit list then exercised their web options in terms of priority of courses and colleges.

8. The I Phase of counselling was then undertaken by the University, resulting in 2047 allotments being made to open category as well as reserved category seats. In the open category, 804 allotments were made, which included 625 OC, 5 SC, 3 ST, 6 BC-A, 92 BC-B, 67 BC-D and 6 BC-E candidates. Allotments to the reserved categories totalled 1243 and included 372 SC, 150 ST, 173 BC-A, 250 BC-B, 26 BC-C, 173 BC-D and 99 BC-E candidates. 440 reservation category candidates were allotted open category seats, as they were meritorious reserved category (MRC) candidates, but they chose to slide to reserved category seats. The resulting 440 open category vacant seats were however not filled up by the University as it wanted to verify the joining status of such MRC candidates who had chosen to slide to reserved category seats.

9. The University thereafter collected the data of all the candidates who had not joined in their respective colleges, despite allotment in the I Phase counselling. It then identified the seats vacated in open category by MRC candidates who had chosen to slide to reserved category seats and had also joined the course. These seats were converted to the reserved category applicable, in the context of the reserved candidate who had vacated it, and the same had to be allotted to the next candidate in the same reserved category as per merit. The University also had to identify the remaining resultant vacancies in all categories, which arose due to non-joining of allotted candidates in the I Phase of counselling.

10. These seats were to be filled up by the University during the II Phase counselling. Notification dated 16.07.2019 was issued by the University in this regard, after obtaining the data of non-joining candidates and the total number of seats available. The University found that out of 440 MRC candidates, who had secured seats on merit basis in open category but chose to slide over to reservation category seats, 420 had joined the course and only 20 such candidates did not join the course. The vacant seats available for the II Phase counselling totalled 716. These comprised 48 seats belonging to NCC and CAP quotas, 420 seats to be filled up with the respective reserved category candidates in the light of sliding over and joining of MRC candidates, 20 open category seats, due to non-joining of MRC candidates, 228 non-joining vacant seats consisting of 107 seats in open category and 121 seats in the reserved category. However, 4 seats that fell vacant due to discontinuation by candidates were intimated by colleges after the vacancy list was displayed on the website. They were therefore not included and the II Phase of counselling was taken up only for 712 seats.

11. After the II Phase counselling, the aggregate 2487 allotments of seats made by the University were as follows: In open category, 824 allotments were made, which included 687 OC, 4 SC, 2 ST, 6 BC-A, 68 BC-B, 53 BC-D and 4 BC-E candidates. Insofar as the reservation category seats were concerned, allotments were made for 1663 seats, which included 396 SC, 163 ST, 186 BC-A, 449 BC-B, 30 BC-C, 313 BC-D and 126 BC-E candidates. In reality, 687 seats were allotted to OC candidates and 1800 seats were allotted to reservation category candidates. Out of these 1800 seats, 137 seats were open category seats and 1663 were reserved category seats. These statistics reflect that the University

showed the 420 MRC candidates who had chosen to slide to reserved category seats as such and did not include them in the open category.

12. It is the case of the petitioners in these cases that the University did not abide by the prescribed procedure during the II Phase counselling. The University, on the other hand, would contend otherwise. By order dated 07.08.2019 passed in I.A.No.1 of 2019 in W.P.No.16637 of 2019, this Court granted stay of all proceedings, including admissions of candidates who had participated in the II Phase counselling conducted by the University, till 13.08.2019. We may note at this stage that I.A.No.2 of 2019 was filed in W.P.No.16637 of 2019 by an OC candidate who had been allotted a seat during the II Phase counselling and who had joined MBBS course on 01.08.2019. Apprehending that her allotment and admission were at risk, she got impleaded in this writ petition as the sixth respondent asserting that the petitioners had no case on merits and seeking dismissal of the writ petition. The matters were heard at length on 13.08.2019 and orders were reserved in all the three writ petitions.

13. Having given our earnest consideration to the material on record and the relevant law, we are now of the opinion that the University cannot be found fault with for the manner in which it undertook the II Phase counselling. However, we must note that the University seems to be in an utter state of confusion as to the law applicable to the exercise done by it. G.O.Rt.No.550 dated 30.07.2001 was issued by the erstwhile Government of Andhra Pradesh, pursuant to the decision of the Supreme Court in *RI TESH R.SHAH V/ s. DR.Y.L.YAMUL*¹. In para 5 of the said G.O, instructions were issued in relation to implementation of reservations for Scheduled Castes, Scheduled Tribes and Backward Classes in Engineering

¹ AIR 1996 SC 1378

and other professional courses. In terms of para 5, during the counselling process, seats should first be filled up by open competition, whereby candidates would be called for counselling only on the basis of merit, irrespective of whether they belong to any reservation category. Next, reservation categories, like SC/ST/BC candidates, would be called for counselling to fill up the seats earmarked for them in their respective categories. During this process, if a SC/ST/BC candidate who had taken admission in open category, opted for a better branch/college for which he/she would be eligible as per the Rule of Reservation, the seat vacated by him/her in open competition should be filled with a candidate from the same reservation category only, in the order of merit.

14. Para 6 of G.O.Rt.No.550 dated 30.07.2001 contemplated that necessary amendments should be separately made to the Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993. However, it appears that no amendments were effected and the G.O. continued to remain in operation. Para 5 of the said G.O. fell for consideration before a Division Bench of the High Court for the State of Telangana and the State of Andhra Pradesh in W.P.No.26330 of 2018 and batch. By common order dated 07.08.2018, the Division Bench struck down the last portion of paragraph 5(ii) of G.O.Rt.No.550 dated 30.07.2001, which reads as under:

‘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.’

15. However, this decision of the Division Bench was reversed by the Supreme Court in S.L.P.(C) Nos.22000 of 2018 and batch, *vide* common order dated 24.08.2018. Thereby, the Supreme Court held that even the later portion of para 5(ii) of G.O.Rt.No.550 dated 30.07.2001 was legal and valid. The Supreme Court however took note of the fact that online counselling had been introduced, bringing about certain changes in the process of counselling, which might necessitate amendment of the G.O. for complete harmony. The Supreme Court further noted that the procedure prescribed in the G.O. could not be implemented without minor deviations, consequential upon the introduction of online counselling, but such deviations would not be sufficient to invalidate the admissions already made. It was left open to the Government to amend the G.O. or, alternatively, to issue a fresh G.O. to harmonize online counselling with the statutory rules and Government Orders. It was further observed that the statutory rules may, if necessary, be amended.

16. Significantly, it was not brought to the notice of the Division Bench of the erstwhile High Court or the Supreme Court that statutory rules, in supersession of G.O.Rt.No.550 dated 30.07.2001, had already been put in place, *vide* G.O.Ms.No.114 dated 05.07.2017. This G.O. was issued in exercise of the powers conferred by Section 3 read with Section 15(1) of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, in supersession of all earlier rules regarding preparation of the seat matrix and the selection procedure for admission into MBBS & BDS courses in the Competent Authority quota. Thereby, the Government promulgated and notified the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 (*for brevity*, 'the Rules of 2017').

17. Be it noted that in the reference portion of this G.O., G.O.Rt.No.550 dated 30.07.2001 specifically found mention at Sl.No.4. Further, as already pointed out *supra*, these statutory rules were issued in supersession of all the earlier rules regarding preparation of seat matrix and also the selection procedure for admission into MBBS & BDS courses in the Competent Authority quota. Therefore, there can be no doubt that G.O.Rt.No.550 dated 30.07.2001, which seems to have been issued in exercise of executive power under Article 162 of the Constitution, ceased to operate after the statutory rules were put in place, *vide* G.O.Ms.No.114 dated 05.07.2017. As noted, the Rules of 2017 clearly indicated that they had overriding effect over all earlier rules issued on the subject.

18. That being said, we may however note that the import of para 5 in G.O.Rt.No.550 dated 30.07.2001 was reiterated and affirmed in these statutory rules. Chapter-V of the Rules of 2017 is titled 'Preparation of the Seat Matrix' and Rule 4 thereunder deals with the 'Selection Procedure'. The relevant portions of Rule 4 are extracted hereunder:

'4. ...

- (iv) Candidates are permitted to exercise web option for each round of Counselling separately. While submitting the options, candidates have to give options for the course and the college in which they are interested. Candidates are not supposed to give option to the course and college for which they are not interested. There is no limitation for options. If the candidate is allotted seat, he/she has to report for admission without fail. If the candidate has not reported, he/she will not be considered for allotment of seat for subsequent rounds of counselling/web-based allotments. In other words the candidate will not be considered for further counselling for that academic year admission.
- (v) If the candidate is admitted in the course as per his option, in the 1st counselling his options will be considered for admission in all subsequent counsellings. Whenever his next option is considered, he/she will forego the seat allotted in previous round of counselling in which he is admitted. Whenever his next option is considered and a seat is allotted his/her

previous admission will be cancelled automatically and filled up in the same round. If the candidate does not report at the allotted college of subsequent round he will lose the seat and will not be considered for next round.

- (viii) As per the G.O.Ms.No.42, the unreserved seats will be filled first and then the local seats.
- (ix) Both local and non-local candidates are eligible for un-reserved seats.
- (x) First all the OC seats in MBBS/BDS in all the colleges shall be filled and then the reserved category seats shall be filled.
- (xi) A reserved category candidate selected under OC in a college in a course (MBBS/BDS) shall be permitted to slide into the same course to another college. The seat vacated shall be filled with the candidate of the same reserved category.
- (xiii) A reserved category candidate selected under OC and does not join the course, the said vacancy shall be treated as OC and shall be filled in the subsequent counselling.
- (xiv) A reserved category candidate selected under OC and slides into a category seat in another college and does not join in the course, the seat vacant under OC category shall be treated as OC and the category into which he has slid not joined shall be treated as respective category seat in the subsequent counselling.
- (xv) Where a reserved category candidate slides to another college such seat vacated shall be filled by another reserved candidate of the same category.'

.. .. .

19. Having considered the thrust and direction of the aforestated extracts from Rule 4 of the Rules of 2017, we are of the opinion that the sum and substance of the procedure thereunder was more or less the same when compared with that set out in para 5 of G.O.Rt.No.550 dated 30.07.2001. However, at least for the purpose of clarity, the University had to be aware as to under which legal frame and regime it was undertaking the counselling process. Unfortunately, the counter-affidavit filed by the University demonstrates that it seems to be under the impression that G.O.Rt.No.550 dated 30.07.2001 still continues to hold the field! In any event, even if G.O.Rt.No.550 dated 30.07.2001 is no longer in operation, it makes little difference to our deliberations as the

prayers in W.P.Nos.16637 and 17293 of 2019 simultaneously allege violation of the Rules of 2017 also.

20. Though Mr.A.Satya Prasad, learned senior counsel appearing for Mr.U.D.Jai Bhima Rao, learned counsel for the petitioners in W.P.No.16637 of 2019, would assert that the University ought to have undertaken filling up of the 440 MRC vacancies during the I Phase of counselling itself, we find merit in the submission of Mr.A.Prabhakar Rao, learned counsel for the University, that the same was not permissible. This is because Rule 4(xiv) of the Rules of 2017 provides that in case a reservation category candidate, selected under open category, chooses to slide into a reservation category seat but does not join, it would result in the vacant open category seat being treated as an open category seat only and the reservation category seat, into which he chose to slide but did not join, would be treated as a reservation category seat, as originally notified, in the subsequent counselling. Therefore, when 440 MRC candidates chose to slide into reservation category seats despite securing allotment in open category on their own merit, the University necessarily had to await the report as to whether they had joined in the reservation category seats into which they chose to slide. If they did not do so, in terms of the aforestated Rule 4(xiv), the *status quo ante* would stand restored and the open category seats which were to be allotted to them would retain their status as open category seats and the reservation category seats into which they chose to slide but did not join would retain their original reservation category status. It is only if they joined, that Rule 4(xi) would apply and the open category seats vacated by such MRC candidates who chose to slide into reservation category seats would be filled up with candidates of the same reserved categories as per merit.

21. We therefore find no error having been committed by the University in not filling up the 440 MRC seats immediately as they had to verify as to whether the sad MRC candidates, who had chosen to slide from open category seats to reservation category seats, actually joined or not. The admitted fact is that 20 out of these 440 MRC candidates did not choose to join and therefore, in terms of Rule 4(xiv), these 20 seats again became open category seats and the reservation category seats, into which those 20 MRC candidates had chosen to slide, retained their reservation category status. In effect, the University was perfectly justified in filling up the 420 MRC candidates' seats first during the II Phase of counselling. As per the Rules of 2017, these 420 seats necessarily had to be allotted to the reservation categories that they pertained to, in terms of the status of the MRC candidates who had chosen to slide from open category seats to join in these reservation category seats.

22. However, the complaint of the petitioners before us is that along with these 420 seats, the University also took up admissions to the remaining 248 non-joining vacant seats, i.e., 121 reservation category seats and 127 open category seats, including the 20 MRC non-joining seats. They would contend that if these 127 open category non-joining seats were dealt with in the same manner as the open category seats were dealt with during the I Phase of counselling, the reservation category candidates would have been benefited. The petitioners in W.P.No.16637 of 2019 cited the instances of five candidates, who were allotted reservation category seats during the II Phase counselling but who, as per the petitioners, could have aspired for seats in the open category on the strength of their own merit. The cases cited are those of the following rank holders:

Rank No.109080 (SC) 420 Marks
 Rank No.88880 (ST) 443 Marks
 Rank No.102981 (BC-A) 421 Marks
 Rank No.58293 (BC-B) 485 Marks
 Rank No.87265 (BC-C) 445 Marks
 Rank No.61005 (BC-D) 481 Marks, and lastly
 Rank No.88368 (BC-E) 444 Marks.

23. The University however refuted this claim in its counter-affidavit and pointed out that the cut-off NEET rank for open category (General) seats was Rank No.43868, while the cut-off rank for open category (Female) was Rank No.42615. As none of the rank holders cited by the petitioners secured a better rank than the cut-off rank, the University asserted that their claim was without basis. We find it to be so. Further, we also find merit in the submission of Mr.G.Vidya Sagar, learned senior counsel appearing for the sixth respondent in W.P.No.16637 of 2019, that once a MRC candidate chooses to give up the open category seat allotted to him and slides into a reservation category seat for his own benefit, the seat that is taken by him, though it is a reservation category seat, becomes an open category seat for all practical purposes and the vacated open category seat is to be treated as a reservation category seat, as it would be allotted only to that reservation category to which the MRC candidate belongs. This would be in keeping with the Rules of 2017. But, if the MRC candidate, who has taken admission in the reservation category seat that he chose to slide into, thereafter decides to again vacate it so as to slide into an open category seat, the seat vacated by him for the second time would not qualify as a reservation category seat, though it was so originally, and it would have to be treated as an open category seat. The question of adopting the same procedure that was applied during the I Phase of counselling for open category seats, when the MRC candidates chose to slide for the first time, would not arise once

again during the II Phase of counselling or even thereafter, as permitting the said procedure to be adopted in the later counselling would invariably have the effect of raising the reservations beyond the permissible limit.

24. For example, if a ST MRC candidate who is allotted an open category seat in the I Phase of counselling chooses to slide into a ST reservation category seat and joins the same, the open category seat vacated by him would have to be allotted to a ST reservation category candidate on merit and the ST reservation seat that he chose to slide into would be treated as an open category seat. Thereafter, if the said ST MRC candidate chooses to opt for an open category seat in the next counselling on his merit ranking, it would not have the effect of allowing another ST reservation category candidate to aspire for the seat vacated by him. However, if the said ST MRC candidate chooses to opt for another ST reservation category seat on merit, there would be no difficulty, as the seat vacated by him would then have to be given to another ST reservation category candidate on merit.

25. The contention of the petitioners is that if the open category non-joining seats are filled up on merit basis again, such MRC candidates, who have already joined in reservation category seats that they chose to slide into, could opt for such open category seats on the strength of their own merit and again, the University would have to allot the seats vacated by them to other respective reservation category candidates. We are not persuaded to agree. This argument does not stand to reason in the light of the example cited *supra*. If such a MRC candidate, who joined in the reservation category seat that he chose to slide into, opts for a change of seat in the II Phase counselling and chooses an open category seat on merit, it would not mean that the University again has to follow the

procedure adopted in the I Phase counselling and substitute such a MRC candidate with the next meritorious candidate in that reservation category. That would invariably lead to increasing the reservations beyond the prescribed and permissible limit.

26. The University also placed before us the college-wise particulars of all the 27 Government and Private Medical Colleges which offered MBBS course during the academic year 2019-20. Perusal thereof reflects that there was no injustice done to any reservation category candidates in allotment of seats in any of these colleges during the II Phase of counselling. The details of the candidates allotted during the II Phase counselling relied upon by the petitioners, by clubbing all of them together irrespective of the colleges that they opted for, do not bear scrutiny as the correct parameter would be to check each college individually and not by clubbing all of them together. The summary of data of the II Phase allotments of local candidates in the 27 Government and Private Medical Colleges indicates that in none of the colleges did any of the reservation category candidates possess ranks higher than the last rank of the OC candidates who were admitted into either open category (General) or open category (Female) seats. Having perused these statistics, we find that no injustice whatsoever was done to reservation category candidates.

27. We therefore find no merit in the contention of the petitioners that in the II Phase counselling, the open category non-joining seats had to be dealt with in the same manner as open category seats were dealt with in the I Phase counselling. Further, we find no grounds to infer that the University failed to abide by the procedure prescribed in the Rules of 2017, notified under G.O.Ms.No.114 dated 05.07.2017.

28. Ms.Gorantla Sri Ranga Pujitha, learned counsel for the Medical Council of India, which was impleaded *suo motu* in these writ petitions, would point out that in terms of the law laid down by the Supreme Court in *ASHISH RANJAN V/ s. UNION OF INDIA*², the cut-off date for making admissions to MBBS/BDS courses is 31.08.2019, in so far as the academic year 2018-19 is concerned and therefore, the University would have to abide by the same. In that view of the matter, the University has to continue the counselling so as to complete the admission process on or before 31.08.2019.

29. The writ petitions are devoid of merit and are accordingly dismissed. We make it clear that the interim order dated 07.08.2019, which was not extended beyond 13.08.2019, stands vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

19th AUGUST, 2019

Note: (1) L.R. copy to be marked
(2) Issue copy today
(B/ o) PGS

² (2016) 11 SCC 225