HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD

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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

W.P.Nos. 39899, 3997l, 39972, 39982, 39985, 39989, 39990, 39991, 40001, 40084, 40087, 40088, 40092, 40093, 40094, 40095, 40096, 40097, 40098, 40099, 40100, 40101, 40102, 40105, 40106, 40108, 40109, 40110, 40111, 40112, 40113, 40115, 40116, 40117, 40119, 40121, 40126, 40249, 40252, 40253, 40254, 40260, 40235, 40275, 40288, 40281, 40289, 40291, 40292, 41758 and 41776 of 2022

Between:

Md. Rizwan Arfath, Tandur, Telangana and others

……Petitioners

And

The State of Telangana, rep. by its Principal Secretary,
Medical and Health Family Welfare Department,
Secretariat Building, Hyderabad and two others.

…….Respondents

Date of Judgment pronounced on : 16-11-2022

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

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> HEAD NOTE:

!Counsel for the petitioners	:	Sri Rajagopallavan Tayi, Sri Hussain Aamir, Sri Sama Sandeep Reddy, Sri Raavilla Gopala Krishna, Sri P. Sravan Kumar Goud, Sri T. Rajinikanth Reddy, Sri V.Ramesh Reddy.
^ Counsel for respondent No.1	:	Learned Special Government Pleader
Counsel for respondent Nos.2 and 3	:	Sri A.Prabhakar Rao

? Cases referred

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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COMMON ORDER:*(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

All these Writ Petitions are being heard together and disposed of by way of this Common Order as the issue raised in all these Writ Petitions is one and the same.

2. Heard Sri Rajagopallavan Tayi, Sri Hussain Aamir, Sri Sama Sandeep Reddy, Sri Raavilla Gopala Krishna, Sri P. Sravan Kumar Goud, Sri T. Rajinikanth Reddy, Sri V.Ramesh Reddy, learned counsel for the petitioners in all the Writ Petitions and the learned Special Government Pleader appearing for the 1st respondent, Sri A.Prabhakar Rao, learned Standing Counsel for the respondent Nos.2 and 3-University.

3. For the sake of convenience, the facts in W.P.No.39972 of 2022 are hereunder discussed.

4. W.P.No.39972 of 2022 is filed seeking a Writ of Mandamus to declare the provisions of clause (xvii) (a) of the Rule 4 (Selection Procedure) of G.O.Ms.No.114 dt.05-07-2017 as unconstitutional and further declare in listing the name of the petitioner in the list of not eligible candidates for the admission into the M.B.B.S. course for the academic year 2022-23 as being arbitrary and illegal and consequently delete the name of the petitioner from the list of ineligible candidates for the admission into the M.B.B.S. course for the academic year 2022-23 by duly permitting the petitioner to participate in the NEET counseling for the academic year 2022-23.

5. It has been contended by the petitioners that all the petitioners have appeared for Under Graduate NEET-2022 and they have secured decent marks in the said entrance examination and the respondents-University have issued admission notification

for MBBS/BDS courses, but the respondents-University has issued list of ineligible candidates on 23-10-2022 wherein the names of the petitioners are included. It has been further stated by the respondents-University that the petitioners are not eligible for the admission into MBBS course in terms of G.O.Ms.No.114 dt.05-07-2017 for a period of three years on the ground that the petitioners have been allotted admission under Management Quota i.e. 'B' category for the last academic year 2021-22, and therefore they were barred from permitting MBBS/BDS course in Telangana for three years till 2024 and therefore the petitioners could not get admission this year and that the petitioners have vacated the seats even though they were allotted seats under Management Quota. Consequently, the resultant vacancies are caused because of not joining the petitioners in the said seats and the same were allowed to be filled up by the management by treating them as management seats and consequently the next meritorious candidates could not get admission in the MBBS/ BDS Course.

6. Learned counsel for the petitioners had contended that the fact that the petitioners were allotted seats last year under management quota was not properly informed to them as they could not take up the admission under management quota during the last academic year and consequent upon their social status, the petitioners have strived hard for the whole of the academic year and appeared for the UG-NEET-2022 and they have secured decent ranks and improved their ranks, thereby making them eligible for admission into MBBS/BDS course on the strength of their marks secured in the said examination. But the respondents-University have debarred the petitioners from taking admission for the next three academic years on the ground that they were not taken admission owning socio economic conditions. If the 'B' category (Management Quota) seats could not be filled up, they are liable to be filled up by the management under NRI quota by treating it as 'C' category seats.

7. Learned counsel for the petitioners have drawn our attention that the petitioners never executed any bond nor paid any penalty amount of Rs.3.00 lakhs to the respondents-

University and in the absence of their execution of bond or payment, the question of enforcing the conditions in the bond against the petitioners would not arise. Therefore, appropriate orders be passed in the Writ Petition by setting aside the list of ineligible candidates dt.23-10-2022 wherein the petitioners were made ineligible to pursue their MBBS/BDS course for the next three academic years and declare the same as arbitrary, illegal and contrary to Article 21-A of the Constitution of India and also violative of Article 14 of the Constitution of India.

8. As admittedly, the petitioners have not executed any bond, they are no way responsible for the seats which were to be allotted by the Convener or to be filled up by the Management. The Rule itself paved the way for convener quota seats to be filled up by Management. If the convener quota is not filled up, this facilitates the management to fill up the convener quota seats by treating those seats as management quota. The Rules themselves are framed in such a way for beneficial to the private management and the petitioners are no way responsible in blocking seats of 'B' category seats which were liable to be filled up by convener and

consequent upon not joining of petitioners in ‘B’ category seats, the seats were filled up by the management by treating them as category ‘C’ seats.

9. Learned Special Government Pleader appearing for the 1st respondent as well as Sri A.Prabhakar Rao, learned Standing Counsel for the respondents-University have contended that all the applications will be submitted through on line and the allotment letters will be issued by the respondents-University to the respective candidates. Admittedly in the instant case, all the petitioners were given allotment letters by the Convener for admission into ‘B’ category seats. Because the petitioners could not join in pursuance to their allotment under ‘B’ category seats for the last academic year i.e. 2021-22, 54 seats of ‘B’ category seats were transferred to private management colleges and 54 seats were filled up by the private management by treating them as ‘C’ category seats. Thereby, they are denied admission into next meritorious candidates and as per clause (xvii) (a) of the Rule 4 (Selection Procedure) of G.O.Ms.No.114 dt.05-07-2017, if a candidate has been allotted ‘B’ category seat and does not join

the said seat, then he has to pay penalty of Rs.3.00 lakhs besides that the candidates will be debarred for three years and to that effect, the bonds have to be executed by the respective candidates who were allotted to the 'B' category seats. The respondents-University has issued a list of ineligible candidates on 23-10-2022 wherein the respondents-University have invoked clause (xvii) (a) of the Rule 4 (Selection Procedure) of G.O.Ms.No.114 dt.05-07-2017 and debarred the petitioners for a period of three years. Because of the petitioners, the next meritorious candidates were denied admission under 'B' category. Therefore, petitioners are blocking the seats and paving the way for management to fill up the vacancies with 'C' category seats. Therefore, the respondents-University was justified in debarring the petitioners for a period of three years in terms of Rules issued in G.O.Ms.No.114 dt.05-07-2017.

10. Learned Standing Counsel for the respondents-University has further drawn our attention to the fact that out of all the 54 candidates, only 36 candidates have joined the courses and after pursuing the courses for some time, they have

discontinued the courses. Thereby the petitioners are not entitled for relief as prayed for. On these grounds also the Writ Petitions are liable to be dismissed. Therefore, there are no merits in the Writ Petitions and the same are liable to be dismissed.

11. This Court having considered the submissions made by the learned counsel for the petitioners is of the considered view that some of the Writ Petitions in the present batch of Writ Petitions have come up for admission before this Court on 31-10-2022 and this Court was pleased to pass the following elaborate interim order:

> *"Notice before admission.*
>
> *Learned Special Government Pleader takes notice on behalf of the respondent No.1-State Government and respondent Nos.2 and 3-University.*
>
> *It has been contended by the learned counsel for the petitioners that the petitioners have appeared for the NEET-2021 examination in which they have secured decent marks and participated in the counseling process.*
>
> *However, the University has allotted B-category seats in the mop up phase of counseling in favour of the petitioners and as per the rules issued under G.O.Ms.No.114 dated 05.07.2017, the persons, who have*

been allotted seats in the mop up counseling, must take admission without fail and if they failed to take admission, the seats meant for convener quota will be allowed to fill up by private managements.

Petitioners have participated in the mop up counseling and seats were allotted in their favour. Since, they have not taken admission, the petitioners were to be penalized with a payment of Rs.3,00,000/- towards forfeiture of a bond, proceeds debarring them for 3 years for admission into MBBS/BDS course.

The learned counsel for the petitioners had contended that they have not executed any bonds so as to enable the university to recover Rs.3,00,000/- from the petitioners and also make them ineligible for pursuing MBBS/BDS courses for the next 3 years is too harsh and when the petitioners have not executed any bond, the question of invoking the Rule 4 (xvii) (a) of the Rules issued vide G.O.Ms.No.114 dt.05-07-2017 against the petitioner would not arise.

The learned counsel for the petitioner has further contended that all the petitioners have appeared for the NEET Under graduate-2022 examination and all the petitioners have improved their performance in the NEET and have secured decent ranks but the respondents-University has issued proceedings dated 23.10.2022 wherein the petitioners are debarred from pursuing MBBS/BDS course as they have participated in the mop up counseling in the academic year and the convener having allotted the said seats in their favour has not responded to that allotment and not given admission in

the said allotment. The action of the respondent university in debarring the petitioners from pursuing MBBS/BDS course for a period of three years is too harsh. However, the respondent had made them eligible for admission into BDS course.

Therefore, appropriate orders be passed in the writ petition directing the respondent University to permit the petitioners to participate in the first phase of counseling which is likely to be commenced from 01.11.2022, if the petitioners are not permitted to appear for the first phase of counseling, grave irreparable loss of hardship would be caused to the petitioners and they may not get seats in the Government colleges and A-Category seats in private medical colleges. Therefore in the interest of justice, direct the respondents-University to permit the petitioners to participate in the first phase of counseling which is likely to commence from 01.11.2022 or any other subsequent date.

The Special Government Pleader appearing for the State Government as well as the University had contended that the petitioners have blocked the seats and denied admission to next meritorious candidates and consequently the seats which were not taken up by the petitioners have been allowed to be filled by private medical colleges under their quota and the petitioners are hand in hand equivalent with the private management and the petitioners have helped the private managements in blocking the seats in convener quota and unfilled seats were allowed to be filled by the management at exorbitant rates. Therefore, the petitioners do not deserve any relief as they have facilitated the private

managements in blocking the seats. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

Learned Special Government Pleader appearing for the respondents had further contended that Rs.3,00,000/- penalty as contemplated in the rules was already paid which would mean that the petitioners are found guilty on seat blocking and when the petitioners have blocked the seats, the question of granting interim orders in their favour by permitting them to participate in the first phase of counseling would not arise. He further vehemently pointed out that the Rs.3,00,000/- penalty was paid by the private medical colleges which would clearly establish that the petitioners have facilitated the seat blocking in favour of the private medical colleges. Since the petitioners have not come up with clean hands, the question of entertaining the writ petition would not arise.

Having considered the rival submissions made by the counsel on either side this Court is of the considered view that the persons who are aspiring to get admission into MBBS/BDS courses are all young people and the rule is provided to the effect that the unfilled seats in convener quota are liable to be filled up by management by treating it as management seat. Allotment of Management seat itself is not in accordance with law. Because of that rule, the entire mischief is being played by the private medical colleges and the petitioners have worked hard and appeared for the NEET under graduate 2022 entrance examination and they are seeking consideration of their case for admission into MBBS/BDS courses based on the

ranks obtained in the competitive examination and the rules also contemplate that execution of the bond is prima faice. However, the said bonds were not produced before this Court in spite of the fact that an opportunity was given to the respondent University in W.P.No.39899 of 2022 to produce the bonds, if the petitioner has executed, and today also, no bonds are produced by the University. In the absence of bonds, the action of respondents-University in forfeiting the admission of young students is too harsh.

Therefore this court is of the considered view that a direction can be given to the University to permit the petitioners to participate in the first phase of counseling which is likely to be commenced from 01.11.2022 or any other subsequent date."

12. Further, today, the respondents have filed their counter affidavits. A perusal of the counter affidavits makes it clear that the respondents could not produce any original bonds executed by the petitioners and it has been contended by the respondents that the so-called bonds executed by the petitioners were in the custody of the private colleges and the private colleges have informed the respondents-University that the petitioners have paid Rs.3.00 lakhs as a penalty for their not joining the courses in spite of an allotment of seat for the previous academic year and the private managements have handed over the

original certificates to the petitioners and as on today, the bonds alleged to be executed by the petitioners in favour of the management are not in existence and when the bonds are not in existence, the question of enforcing the conditions as set out in the so-called bonds would not arise and therefore the question of debarring students for three years also would not arise.

13. Debarring a student for three long years from pursuing MBBS/BDS course would be too harsh punishment thereby depriving their right guaranteed under Article 21-A of the Constitution of India. All the students who are in the age between 17 to 21 cannot be expected to know the intricacies of legal system and even if they have executed bonds, imposing such a condition of debarring the students from pursuing further studies for three valuable years, that too in the formative years, would be too harsh of punishment.

14. For all these reasons, this Court is inclined to set aside the list of ineligible candidates issued by the respondents-University dt.23-10-2022 wherein the petitioners were debarred from pursuing MBBS/BDS courses for a period of three years.

Accordingly, the same is set aside with a declaration that the petitioners are entitled to pursue their MBBS/BDS course based upon their ranks secured in the UG-NEET-2022 or in the future examinations, if the students intend to pursue their career in future.

15. With these observations, all the Writ Petitions are allowed. There shall be no order as to costs.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

NAMAVARAPU RAJESHWAR RAO,J

Dt.16.11.2022
Mark the L.R. copy.
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