

(2000) 12 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26510 of 1999

A. Shilpa

APPELLANT

Vs

Convenor, EAMCET-1999, JNTU, Hyderabad and others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 12

Citation : (2001) 1 ALD 121 : (2001) 1 ALT 133

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. N. Ram Mohan Rao, for the Appellant; Mr. C. Kodanda Ram, SC for JNTU, Government Pleader for Higher Education, Mr. L. Narasimha Reddy, SC for Central Govt., for the Respondent

Judgement

V.V.S. Rao, J.—The petitioner filed this writ petition seeking a writ in the nature of mandamus declaring the action of the respondents 1 to 3 in treating her candidature as falling within priority category 4 instead of priority category 3 while filling up the seats reserved for National Cadet Corps (NCC) quota in engineering colleges as arbitrary and unjust and also seeking consequential directions to respondents 1 to 3 to consider the candidature of the petitioner for admission to engineering course under NCC quota by treating her claim as falling under priority category 3 of the said quota.

2. This Court issued notice before admission on 30-12-1999. After receiving notices, the first respondent filed a counter-affidavit. When the matter was listed before me, the learned Counsel requested that the matter be disposed of at the stage of preliminary hearing. Accordingly, the matter was heard and is being disposed of at the admission stage.

3. The petitioner completed her two-year Intermediate course during the academic years 1997-99. She appeared for Engineering, Agricultural and Medical Common Entrance Test-1999 (hereafter called, "EAMCET-1999") with hall ticket

No.2324154. After declaration of the results of EAMCET-1999 she secured rank 54291. In the usual course in open category she would not get any seat in any engineering course. Therefore, she claimed a seat reserved for NCC candidates. It is pertinent to mention here that the petitioner passed the certificate "A" examination held in 1996 under the authority of Ministry of Defence, Government of India, popularly called NCC "A" certificate examination.

4. In the State of Andhra Pradesh as per the orders of the Government issued in G.O. Ms. No.194, dated 26-8-1993 one percentage of seats is reserved in each professional courses for NCC candidates. As per these orders, priorities in NCC category are as follows:

"National Cadet Corps (NCC) (G.O. Ms. No.194, dated 26-8-1993):

(1) Participants at National level in International Youth Exchange programme with NCC "C" Certificate.

(2) Participants at National level in Republic Day Camp parade in New Delhi with NCC "C" "B" "A" Certificate.

(3) Participants at State level competition with NCC "C" "B" "A" Certificate.

(4) Holders of NCC "C" "B" "A" Certificate.

If there is more than one candidate in a particular priority, indicated above, the selection shall be made based on the rank at EAMCET- 1999."

5. The petitioner claimed that she is entitled to be considered under priority category 3. She also produced a certificate dated 22-11-1994 issued by the Camp Commandant of NCC Group Visakhapatnam to the effect that she attended Combined Annual Training Camp held at Government College for Men, Srikakulam. Based on this certificate, she claimed that it is a State level competition and therefore she should be treated as "participant at State level competition with "A" certificate" falling under priority category-3. She appeared for counselling on 2-11-1999. According to her, the officials helping the Convenor marked on her application as falling under priority category 3 and in the last minute they determined that the petitioner falls in priority" category 4 and accordingly she was not considered for allotment of the seat. The petitioner therefore contends that due to unjust and arbitrary action in treating her "A" certificate as well as alleged participation in State level competition as falling under priority category 4 has resulted in violation of her fundamental rights under Articles 14 and 21 of the Constitution of India. The petitioner further pleads that if any doubt persists as to whether a candidate falls in priority category 3 or 4, the respondents ought to have referred the matter to NCC Directorate, the fourth respondent in accordance with the policy guidelines issued by the Government. Therefore, the learned Counsel for the petitioner fairly submitted that any declaration given by this Court as prayed for or any determination by NCC Directorate pursuant to any directions by this Court would only enure to the petitioner's benefit to claim reservation under NCC category in

future years.

6. The first respondent in his brief counter-affidavit states that the petitioner produced NCC "A" Certificate and the Certificate of participation in Annual Training Camp which is must for obtaining NCC "A" Certificate. The certificate of participation in annual training camp do not come under the category of State level competition and therefore, the petitioner cannot be considered to be "participant at State level competition with "A" Certificate". It is also stated that the criteria laid down in G.O. Ms. No. 194 was strictly adhered while determining the priority in which the petitioner falls. It is further averred that when the petitioner attended counselling the available seats were offered and she declined to join in the available seats/branches. The first respondent therefore prayed for dismissing the writ petition.

7. The learned Counsel for the petitioner submits that the petitioner falls in priority category 3 having regard to various certificates of participation in training camps as she has NCC "A" Certificate. In any event, he submits that the Convenor is not competent to decide the case and in case of doubt, the matter has to be referred to NCC Directorate, the fourth respondent herein. He relied on an unreported judgment of a Division Bench of this Court in Rohith Pande v. Government of A.P., in WP No. 12953 of 1992 and Batch dated 12-2-1993.

8. Sri Satyanarayana Prasad, learned Government Pleader, vehemently refutes the submission of the learned Counsel for the petitioner. He submits that the petitioner cannot be treated as participant in State level competition with NCC "A" Certificate to be considered as falling under priority category-3. He also submits that when the orders issued in G.O. Ms. No.194 which were issued after consultation with the NCC Directorate, are clear and categorical there is no necessity to refer the matter again to NCC Directorate. He also submits that in the matter of making Rules and issue of policy guidelines by virtue of Section 12 of A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, (Act 5 of 1983) it is only the Government which can do so and the Convenor has no authority to refix the priorities. As the Government orders in G.O. Ms. No. 194 were issued after consultation with NCC Directorate the Convenor in every case need not refer the matter to NCC Directorate.

9. The question whether the Convenor can decide and determine the priority, in which a candidate falls having regard to the certificate, need not detain us longer. G.O. Ms. No.194 lays down the principles of priority category among the candidates claiming reservation under NCC quota. These priorities are clear and categorical. Participants at National level in International Youth Exchange Programme with NCC "C" Certificate are placed in priority No.1 whereas participants at National level in Republic Day Camp in New Delhi with NCC "C", "B", "A" Certificates are treated as priority category 2. Those candidates who do not fall under priorities 1 or 2 are again treated in two distinguished categories. The participants at State level competition with NCC "C", "B", "A" Certificates are

placed in priority category 3 whereas the holders of NCC "C", "B", "A" Certificates without anything else are placed in priority category 4. The Convenor is admittedly head of the department of technical education. In my considered opinion, no adjudication or administrative determination is involved in categorizing "a candidate" in accordance with G.O. Ms. No.194. Should there be any additional qualification or certificate produced by a candidate with NCC "C", "B", "A", certificate which is not specifically dealt with by the Government Order, it is always open to the Convenor to refer such case to the Government, in all cases, it is not necessary for the Convenor to refer the matter directly to the NCC Directorate. In Rohith Pande's case relied on the learned Counsel for the petitioner it was observed that the priorities for NCC categories were determined taking into consideration the opinion of NCC Directorate which is expert body in the subject. The Division Bench further observed as under.

"In matters of this nature, it will be proper for the State Government or the University of Health Sciences, as the case may be, to consider the matter afresh and formulate the order of preference for selection of candidates for admission to the seats reserved for NCC Category, on the basis of relevant material. In taking a decision, they shall take into account the opinion of the experts, such as the NCC Department/Directorate or any other person or authority in the field/subject. Therefore, we direct that the State Government and the University of Health Sciences shall accordingly consider the matter afresh and take appropriate decision."

The learned Government Pleader submits that G.O. Ms. No.193 prescribing reservation for Physically Handicapped persons, G.O. Ms. No. 194 prescribing reservation for NCC candidates and G.O. Ms. No.195 prescribing reservation for Games and Sports persons issued on 26-8-1993 were issued after consulting expert bodies like NCC and Sports Authority of India Limited. This is not denied. Therefore, I hold that every time when a doubt arises, the Convenor need not refer to NCC Directorate.

10. The second question is whether the petitioner can be treated as "participant at State level competition with NCC "A" Certificate", which is treated as priority category 3. The petitioner obtained "A" Certificate in 1996. She participated in Combined Annual Training Camp from 11-11-1994 to 22-11-1994 at Government College for Men, Srikakulam as evidence by the certificate dated 22-11-1994 issued by the Camp Commandant. It is a Combined Annual Training Camp and it is not a State level competition. Be that as it may, the petitioner appeared and passed NCC "A" Certificate examination in 1996 and whereas she underwent Combined Annual Training much prior to appearing in NCC "A" Certificate examination. It is categorically stated in the counter affidavit that participation in "Annual Training Competition" is a must for obtaining NCC "A" Certificate. This is not denied by the petitioner by filling necessary rejoinder. Further, G.O. Ms. No. 194, dated 26-8-1993 stipulates that participant at State level competition with NCC only is considered in priority category-3. This shows if a NCC candidate

passed "A" Certificate, he/she falls under priority category 4. If such a candidate has also participated at State level competition after obtaining "A" Certificate, he/she falls under priority category 3. "Participation at State level competition with NCC "A" Certificate only means after passing "A" Certificate examination and cannot be any stretch of imagination be construed as "participation in Combined Annual Training camp at District level, apart from NCC "A" Certificate". It is not possible, therefore, to agree with the contention of the petitioner's Counsel. The decision of the Convenor in treating the petitioner as falling under priority category 4, cannot be said as contrary to G.O. Ms. No.194 or illegal or unjustified.

11. In the result, the writ petition fails and the same is accordingly dismissed without any order as to costs.