

(2003) 03 AP CK 0113

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18752 of 2002

A.D.M. Akbar Khan

APPELLANT

Vs

Sri Venkateswara University and Others

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Citation : (2003) 3 ALD 466 : (2004) 7 ALT 848

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : D. Seshadri Naidu, for the Appellant; B. Adinarayana Rao, SC, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The petitioner filed the Writ Petition to issue a writ of mandamus to declare the action of Sri Venkateswara University, Tirupathi and the Rector and Director of Admissions, S.V. University, in allotting the seat in the 1 year MBA course for the academic year 2002-2003 under NCC quota in favour of the 3rd respondent (A. Sivakumar) as illegal and arbitrary on the ground that the petitioner and the 3rd respondent possess equal qualifications and NCC certificates of similar rank but the petitioner secured State ICET rank of 35629 as against the rank of 3rd respondent of 52135 which is a lower rank than that of the petitioner.

2. The petitioner submits that he has passed B.Sc. degree from S.V.University in II Division with 55 marks and he has applied ICET examination conducted by Osmania University vide Hall Ticket No. 17010212 and obtained a State rank of 35629 and Region-wise rank of 6064. During the course of his degree he was selected to Air Force Wing as a Cadet and he was designated as Senior Under Officer under which capacity he participated in various camps such as, All India Vayu Sainik and he is holding "C" certificate in NCC issued by the Director, National Cadet Corps. He has represented the State of Andhra Pradesh in the rank of Senior Under Officer at the annual NCC Republic Day Camp and the Prime

Minister's Rally held at New Delhi from 5-1-2000 to 29-1-2000.

3. Similarly, the 3rd respondent also attended the NCC Republic Day Camp and holds a "C" certificate issued by NCC authorities though not as a Senior Under Officer but as Sgt. Senior Under Officer is the person who leads a delegation of the Cadets from a given State. The petitioner secured the State rank of 35629 in ICET examination for the academic year 2002-2003 but whereas the 3rd respondent secured State rank of 52135. The petitioner submits that as per the relevant order of the Government in G.O. Ms. No. 155 dated 17-11-2000 and the guidelines issued from time to time, certain quota has been reserved to the NCC (National Cadet Corps). As per the Prospectus of Directorate of Admissions, Sri Venkateswara University, the eligibility for a candidate seeking admission in MBA should pass a degree of 3 years course and also qualify ICET-2002 conducted by the Osmania University. Rule 5 of the said Prospectus deals with the reservation of seats. As per Rule 5 (d), 1 % of the seats are reserved for the National Cadet Corps. The allotment of NCC quota will be as per the priorities. Priority -I will be given to the NCC candidate who participated in the International Level under Youth Exchange Programme. Priority - II will be given to the NCC candidates who participated in the National Level in the following order of priority:

(a) Republic Day camp at New Delhi.

(b) Not relevant

(c) Not relevant

(d) Not relevant

Priority - III is not relevant.

4. As per Note 1 of Rule 5 of Prospectus, priority within selected students in each category will be given in order of seniority of certificates i.e., C, B & A certificates. As per Note 3, if there is more than one candidate in a particular priority, in the order of Priority indicated above, the selection shall be made based on the rank in ICET-2002. The petitioner submits that he and the 3rd respondent both of them got "C" certificate and both of them are entitled to be considered on Priority - II as both of them have participated in the Republic Day Camp at New Delhi. As both the petitioner and the 3rd respondent are entitled to be considered in particular Priority - II, the selection should have been made based on the rank in ICET-2002 examination. The petitioner and the 3rd respondent are entitled to be placed at Priority II(a) as regards NCC candidates and though the 3rd respondent holds the same certificate and he has secured inferior rank and, therefore, the authorities would have preferred the petitioner over the 3rd respondent. The petitioner and the 3rd respondent fall in the same category of Priority - II and their inter se claims to be decided only on the basis of their rank in the entrance examination as provided under Note 3 appended to the priorities of Prospectus of the University.

5. As the petitioner was having prima facie case, this Court at the time of the

admission, rightly granted interim direction in W.P. M.P. No. 23560/2002 on 10-10-2002 to reserve one seat in the 1st year MBA degree course but as the admissions were already over and the 3rd respondent given admission, the said order was not continued and the W.P. M.P. No. 23560/ 2002 was dismissed by another learned Judge on 3-2-2003. Thereafter, the petitioner taken notice on the respondents and though the notices have been served, none appeared for the 3rd respondent and respondents 1 and 2 have not chosen to file any counter. But on the other hand, their Counsel have argued the matter based on the remarks sent by the 2nd respondent and the said letter is placed on record. As per the said letter it is stated that one per cent of the seats are earmarked for the NCC cadets as per Rule 5 (d) of the Prospectus. 9 candidates applied under Priority II (a) (Republic Day Camp at New Delhi) out of which 3 candidates have participated in the Marching Contingent as mentioned in the NCC certificates submitted by them. Though a candidate namely, Swathi J., secured higher rank and entitled to Priority - I, she did not report at the Counselling session. The other candidate, Khadar Ali, D., preferred MCA at RIMS, Tirupathi and another candidate namely, Leelavathi was not interested to join MBA as she has already joined some other PG course and the only seat was allotted to the 3rd respondent on the ground that he had participated in the Republic Day Camp at New Delhi and participated in the Marching Contingent with "C" Certificate.

6. It is the case of the petitioner that as per the Rules, participation in Marching Contingent is irrelevant to consider the case of the candidates on the basis of Priority - II. The required qualification is one should have participated at National Level in Republic Day Camp at New Delhi. Both the petitioner and the 3rd respondent participated in the Republic Day Camp at New Delhi and, therefore, both of them are entitled to be considered on Priority-11 basis. Both of them are having "C" certificates and both of them have participated in Republic Day Camp at New Delhi and, therefore, the selection should have been made based on the rank secured in ICET - 2002.

7. On the other hand, the learned Standing Counsel for respondents 1 and 2 submits that even the contentions of the petitioner is accepted, he is not entitled for admission in MBA course as there are four more persons who have also participated in the National Level Republic Day Camp at New Delhi and secured higher rank, the particulars of the same are as follows:

Sl. No.	Rank	Name	NCC qualification
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1.	4502	Mallikarjuna K	RD + "C" certificate
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2.	18559	Lakshmi Neelima	RO + "C" certificate
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3.	23510	Lavanya M	RD + "C" certificate
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4.	33457	Vijaykrishna Reddy	RD + "C" certificate
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8. The learned Standing Counsel for respondents 1 and 2 submits that if the admission of the 3rd respondent is set aside, the case of the aforesaid

candidates may have to be considered but the petitioner cannot be admitted straight away in the reserved quota of 1% which was given to the 3rd respondent.

9. The respondents considered the case of the 3rd respondent as against the claim of the petitioner and other candidates on the ground that the 3rd respondent not only participated at the annual NCC Republic Day Camp at New Delhi from 1-1-2001 to 29-1-2001, but also participated Republic Day Marching Contingent. Whether a candidate participates in the Republic Day Marching Contingent or not, for considering the Priority-II, the only criteria for considering the NCC candidates is that they should participate in the National Level Republic Day Camp at New Delhi. Both the petitioner and the 3rd respondent participated at the annual NCC Republic Day camp and Prime Minister's Rally held at New Delhi in January, 2000 and 2001 respectively. In fact, the petitioner was Senior Under Officer and he represented Unit 11 (A) Air Sgn (T) NCC Directorate A.P., his NCC Directorate at the annual NCC Republic Day Camp and Prime Minister's Rally held at New Delhi from January, 2000 but the 3rd respondent was not a Senior Under Officer and he has participated in the Republic Day Camp in the next year January, 2001. However, both of them should be considered on Priority-II (a) basis only and both of them are entitled to be considered on Priority-II (a) basis alone and the selection has to be based on the rank secured by them in ICET-2002. The petitioner having secured higher rank than the 3rd respondent and the rank secured by the 3rd respondent is inferior and lower than that of the petitioner, the cases of the candidates who secured higher rank than the 3rd respondent would have been considered but the official respondents committed illegality and irregularity ignoring the case of the petitioner and the other similarly situated persons.

10. Accordingly, the action of the respondent in admitting the 3rd respondent in 1% quota of the seats reserved for the NCC cadets under Rule 5(d) is set aside and respondents 1 and 2 are directed to consider the case of the petitioner including that of Mallikarjuna K. Lakshmi Neelima CR, Lavanya M. and Vijayakrishna Reddy, M who have secured the ranks of 4502, 18559, 23510 and 33457 respectively and who are all having NCC qualifications, having participated in the Republic Day Camp at New Delhi with "C" certificates. It is not known whether the aforesaid persons are also interested in getting admission in MBA course. If they are interested in getting admission, they should be given priority consideration before the petitioner. Therefore, notice may be given to them as to whether they are interested in seeking admission. If they are not interested, the said seat has to be given to the petitioner alone. The learned Standing Counsel appearing for respondents 1 and 2 submits that the 3rd respondent having undergone the course about six months and, therefore, it may not be just and proper to set aside the admission given in favour of him. The petitioner is entitled to seek admission as a matter of right as against the claim of the 3rd respondent, therefore, if the University is inclined to accommodate both the petitioner as well as the 3rd respondent, it is open for them to do so. The

respondents are directed to complete the aforesaid exercise and to pass appropriate orders within four weeks from the date of receipt of a copy of this order.

11. The writ petition is accordingly allowed. There shall be no order as to costs.