

(1995) 03 AP CK 0049
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4243 of 1995

B. Seenaiiah

APPELLANT

Vs

Health University, Vijayawada and others

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 335, 342
Evidence Act, 1872 — Section 115

Citation : AIR 1995 AP 181 : (1995) 1 ALT 638

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Nooty Rama Mohan Rao for S. Rajeswar Reddy, for the Appellant;
Govt. Pleader for S.W., for the Respondent

Judgement

1. Petitioner seeks a Mandamus or an appropriate direction to the second respondent to issue application forms for Part II, M.B.B.S. Examination enabling him to appear for the said examination and seeks a further direction to the second respondent to accept the said application forms and permit the petitioner to appear for Part II, M.B.B.S. Examination.

2. petitioner is a student of first year M.B.B.S. Course having obtained provisional admission in Osmania Medical College --second respondent herein against; a seat reserved for Scheduled Tribe Candidates. It is stated that having obtained provisional admission in the first year M.B.B.S. Course the petitioner has been prosecuting his studies and has also appeared for Part I Examination in the month of November, 1994. The memorandum of marks was issued to him on 24-1-1995 by the Deputy Registrar (Examinations), University of Health Sciences, Vijayawada. It is stated that after one and half years course, the University of Health Sciences, Andhra Pradesh is planning to hold Part II Examination for M.B.B.S. Course. It is further stated that in order to participate in the Part II Examinations, the second respondent has to issue necessary application forms. The petitioner approached the second respondent authorities

for issuance of such forms which was refused to him on the ground that the enquiry as to the social status claim of the petitioner is pending before the third respondent and no report has been received from the third respondent clearing the social status claim of the petitioner to be a member of Schedule Tribe.

3. Petitioner states that he appeared before third respondent on 27-12-1994 and filed necessary certificates enabling them to make enquiry. Having obtained necessary particulars, the third respondent has not completed the enquiry with the result the petitioner is now prevented from appearing at the Part II of M.B.B.S. Course and hence, the present Writ Petition is filed, seeking appropriate directions.

4. Sri N. Rama Mohan Rao learned counsel appearing on behalf of Sri S. Rajeshwar Reddy, learned counsel for the petitioner raises two important questions in this Writ Petition, viz.,

(1) Whether the second respondent-College has any right to prevent a bona fide student from appearing in the M.B.B.S. Examination ?

(2) Without putting a student on notice, can any adverse action be initiated by the respondents ?

5. In order of traverse with the principal submissions made on behalf of the petitioner. it would be necessary to deal with the relevant rules governing the admission to various professional courses against claims to be Scheduled Castes, Scheduled Tribes or Backward Classes, and the binding nature of the enquiry report on the students whose social status claims are to be cleared by the respective Directorates.

6. The petitioner was granted provisional admission on the basis of his claim to be a member of Scheduled Tribe. The University of Health Sciences, Vijayawada has framed rules for admission to first year M.B.B.S. Course for the academic year 1993-94 (hereinafter referred to as the "relevant rules"). Sub-rule (D) of Rule (7) which is a specific provision dealing with reservation of seats, postulates that a candidate belonging to Scheduled Caste, Scheduled Tribe and Backward Classes shall in support of his claim, furnish a certificate in the prescribed form appended to the application. The social status of Scheduled Caste, Scheduled Tribe and Backward Classes candidates shall be subjected to the scrutiny and confirmation by the Director of Social Welfare, Director of Tribal Welfare and Director of Backward Classes Welfare of Andhra Pradesh respectively and their decision is final and binding on the candidate.

7. These rules are so framed to check the mala fide claims made by candidates other than members of Scheduled Castes, Scheduled Tribes and Backward Class and to weed out any bogus claims at the threshold itself. Any admission granted to a student who claims to be a member of these categories is only provisional and is subjected to clearance from the respective Directorates.

8. The petitioner has no doubt, produced a certificate along with his admission

form, said to have been issued by the Mandal Revenue Officer, Nalgonda, dated 25-7-1994 indicating that he belongs to "Erukala Community which is recognised as Scheduled Tribe.

9. The procedure after granting provisional admission to students of these categories is that the students must necessarily appear before the respective Directorates i.e., Director of Social Welfare, Director of Tribal Welfare and Director of Backward Classes Welfare, as the case may be, and furnish necessary details before those authorities enabling them to further investigate into the matter so as to find out the bonafides of the claim of social status of the respective candidates.

10. When the matter came up for admission, the learned Government pleader for Social Welfare was directed by this Court to place the entire record pertaining to the enquiry stated to have been contemplated by the third respondent so as to verify the statement of the petitioner that he has submitted all the relevant documents before the third respondent on 27-12-1994 itself and the third respondent is sleeping over the matter which has resulted in denial of appearing in Part II Examination which action has culminated in infringement of right granted to him under Article 342 of the Constitution of India. As directed, the learned Government Pleader on the next date of hearing, has placed before me the entire record pertaining to the enquiry contemplated by the third respondent so far.

11. It is evident from the record that the Director of Tribal Welfare, on information that the second respondent i.e., the Principal; Osmania Medical College has granted admission to as many as 12 candidates under the quota meant for Scheduled Tribes, requested the second respondent by a letter dated 6-7-1994 to furnish the details of those 12 candidates who have been given provisional admission into first year M.B.B.S. Course under the quota meant for Scheduled Tribes. In response to the said letter, the second respondent has indicated the names, of 12 students by letter dated 13-6-1994 including the name, of the petitioner which stood at: serial No. 6 (at page No. 21 of the record), it is evident that from out of 12 students who secured provisional admission in the second respondent-College, admissions of three students viz., N. Siddiramulu, B. Seenaiah. (petitioner herein) and Dheeraj Giri, have not been cleared by the Director of Tribal Welfare pending further enquiry into their claims of social status.

12. Petitioner though under obligation to appear before the third respondent for getting his social status cleared as required under the relevant admission rules, was intimated by the second respondent directing him to appear before the third respondent on 20-7-1994 through a letter dated 12-7-1994. On the said date, the petitioner though appeared, requested the third respondent to grant time for bringing his parents and for furnishing relevant documents, upto 25-7-1994 which is evident from the letter dated 20-7-1994 (at page 31 of the record). As the petitioner failed to appear before the third respondent, the third respondent

addressed a letter to the Registrar, University of Health Sciences, Vijayawada on 5-8-1994 requesting him to direct the second respondent for instructing the three students including the petitioner to appear before the third respondent for further enquiry so that their social status claims could be completed at an early date, which letter is available at page 43 of the record. The third respondent has addressed letters to the second respondent also on 10-10-1994 (at page 93 of the record) and on 16-11-1994 (at page 107 of the record) requesting him to direct the petitioner to appear before the Director, Tribal Welfare for completing enquiry.

13. The second respondent finally issued memo dated 30-11-1994 (at page 117 of the record) requiring the petitioner and others to appear before the third respondent and get attendance certificate to that effect, lest he will not be permitted to attend classes in future. Pursuant to the directions issued by all the authorities, the petitioner on 7-12-1994 appeared before the third respondent and files an application that he would bring his father or any elder member of his family on 19-12-1994 without fail and also place necessary certificates. On 19-12-1994, the petitioner though appeared before the third respondent, he was advised to come on 23-12-1994 along with relevant particulars and with his parents. Finally, the petitioner appeared before the third respondent on 28-12-1994 and gave statement. On the said day, he was also accompanied by one Smt. Yellamma, said to be his mother, along with her photo which is being attested By Lay Secretary, Grade-II, Osmania Medical College, Hyderabad. The petitioner has also furnished some documents. On the basis of the information furnished by the petitioner regarding the details of his studies in various schools and nativity certificate etc., the enquiry is set in motion by the third respondent.

14. The Commissioner of Tribal Welfare has a Special Branch known as "Research Wing". This Research Wing is manned by expert officials and is headed by a Director known as "Director, Research Wing." The Officers go to the Tribunal areas, study the habits, customs, cultural and such other activities of the Tribals governing their system and prepare thesis and suggest ways and means to the Government of Andhra Pradesh for improving their living conditions. They also collect minute details about their sub-sects existing in each Tribal group.

15. As per the admission rules governing admission into professional Colleges, when the claim of social status is made by a particular candidate, the matter would be referred to the third respondent as required under the admission rules and the third respondent deposes the officials to investigate into the details as furnished by such candidate when he participates in the enquiry. On the basis of the information furnished by the petitioner, the third respondent has collected information which is available in the record. The petitioner who sought admission in the II class in the Primary School, Chintagudem, the Withdrawal Register details of which have been furnished by the Head Master of Chintagudem School, indicate that the name of the petitioner is written, as "Byreddi Seenaiah." As far as the claim of social status is concerned, in column -- 15, it is shown as "F.

C." (at page 63 of the record.) The application for admission to the 8th Class in St. Alphonscs High School, Nalgonda, ad-mission number being 3729, dated 22-6-1988, the name of the petitioner is written as "B. Seenaiah." The social status claim in the said admission form is shown as "S. C." (at page 45 of. the record). In the Register of Admission and Withdrawal, a copy, of which is furnished by the Head Master, St. Al- phorises High School, Nalgonda for the year 1988/89. reference to the caste of the peti tioner, is shown as "S. C." at column No. 7 (page 51 of the record). As against his original claim as "O.C." and the family name or surname as "Byreddi Seenaiah." The peti tioner now claims to be ""Bikumala Seenaiah" and also claims to be from "Edukala Com munity" (Scheduled Tribe) and resident of Nalgonda.

17. . The Lay Secretary who had certified that Smt. Yelamma to be the mother of the petitioner, when required by the third respondent to appear for an enquiry as to whether he has verified the genuineness and whether he was conscious of the fact that Smt. Yellamma is the petitioner's mother, the Lay Secretary through his letter dated 7-2-1995 (at page 95 of the record) categorically informed the third respondent that the petitioner and his mother are not known to him. He further informs that one of the staff members by name B. Sampat Kumar, Senior Assistant of his College has brought the petitioner with a request to issue a certificate stating that Smt. Yellamma is the mother of Seenaiah with a plea to use it for study purpose. The Lay Secretary further stated that on the persua-tion of the said Sampath Kumar that he knew both Seenaiah and his mother, he believed it to be genuine and signed on the photo and certified to be the mother of Seenaiah. The Lay Secretary has further intimated that he would like to withdraw the identification certificate issued by him.

18. A perusal of the record placed by the learned Government Pleader for Social Welfare, prima-facie, disproves the claim of the petitioner that he belongs to "Scheduled Tribe".

19. The submission that the petitioner had appeared before the third respondent and the third respondent has failed to issue necessary clearance, in my view, is invented only for the purpose of seeking an urgent order from this Court. The record further discloses that the petitioner has originally claimed himself to be a member of "Forward Caste" and his surname has been claimed as "Byreddi" and later on, his name is recorded as "B. Seenaiah". Thereafter, he obtains a certificate as "Bikumala Seenaiah", S/o Kotaiah resident of Nalognda. The documents furnished by him prima-facie, do not tally with each other to show that he is "Scheduled" Tribe" by caste and his name is "Bikumala Seenaiah". His claim that he belongs to Scheduled Tribe is based only on a certificate issued by the Mandal Revenue Officer, Nalgonda in the year 1994, the genuineness of which is also under investigation.

20. All admissions granted to the students under reserved category are provisional in nature and are subjected to clearance by the respective Directorates. To ensure that genuine students are granted admission into

professional colleges, the relevant rules have been framed by the University of Health Sciences. This Court has come across in innumerable cases where false claims have been made by fictitious persons and obtained admission into Medical and Engineering Courses, thereby denying chance to real beneficiaries. When such fraud is detected, such students approach Courts and obtain an order of interim direction to continue them in said Course and successfully complete the same. When once it is found that the social status as claimed by a particular candidate is false, and when the authorities seek to cancel such certificates, they approach the Courts and get an order by invoking sympathy of the Courts on the ground that they have already completed the Courts and such benefit cannot be withdrawn at this point of time.

21. In this background, is it warranted for this Court to issue direction to the respondents to provide the petitioner the necessary application enabling him to appear for part II, M.B.B.S. Examination and further direct the second respondent to accept the same and permit the petitioner to participate in the Examinations ?

22. The endeavour of Fathers of the Constitution in providing reservations to Scheduled Caste and Scheduled Tribes is to ensure social justice to these sections. To ensure the benefit reaching the genuine persons, certain rules and regulations are framed by the respective institutions providing checks and balances. One such endeavour is also made by the University of Health Sciences by bringing out certain rules contemplating clearance of social status claims made by such of those candidates by the respective Directorates, which shall be final and binding on the candidates. In the absence of such rules, it would be humanly impossible to halt the growing infiltration by the poachers in the area meant for these sections.

23. This Court has held in *B. Venkata Rao and Another Vs. Principal, Andhra Medical College, Visakhapatnam and Another*, that the rules framed by the Health University are valid and the findings of the respective Directorates are binding on the candidates who obtained seats in professional Courses on the basis of social status claim. I respectfully agree with the proposition laid down by Sri Justice K. Ramaswamy (as he then was) in this regard in the decision cited (1) supra.

24. As long as the clouds of suspicion as to the claim of social status hang on the petitioner, I am of the view, the petitioner is not entitled to seek a direction from this Court directing the respondents to permit him to prosecute his further studies. The petitioner ought to have co-operated with the third respondent in getting his social status cleared as early as possible. The events narrated above indicate that the petitioner was not prompt in co-operating with the third respondent enabling the third respondent to complete the enquiry. The petitioner appeared before the third respondent on 20-7-1994 and sought time upto 25-7-1994 enabling him to "bring his mother, which request was accepted by the third respondent. Thereafter, the petitioner failed to appear before the third respondent. It is only on the combined efforts made by the Registrar, University

of Health Sciences, the second and third respondents and when the second respondent issued a final memo on 30-11-1994, the petitioner appeared before the third respondent on 7-12-1994. It is only on 28-12-1994, the petitioner accompanied by one Smt. Yellamma said to be his mother, whose identity is now being disputed by the Lay Officer who has certified that said Yellamma to be the mother of the petitioner, appeared before the third respondent and placed certain documents. His statement was also recorded on the said day, Basing on the statement, the third respondent is conducting enquiry and collected certain documents from respective schools where the petitioner has studied, which have been referred to by me in the earlier paragraphs.

25. These events do indicate that the petitioner has reasons to delay the enquiry as far as possible and obtain some orders from this Court which would enable him to complete his M.B.B.S. Course. The requirement of Law is to assist a person who approaches this Court with clean hands. Could this Court, in the background of narration of events, hold that the petitioner is entitled for the relief sought ? The events as emerge from the narration of facts, would not appeal me to hold that the petitioner is entitled for a direction, till his social status claim is cleared by the third respondent. The Court would be doing great injustice to real beneficiaries if a direction is granted basing only on ill-conceived sympathies.

26. Coming to the contentions raised by Sri N. Rama Mohana Rao, counsel for the petitioner that whether the second respondent-College is competent to prevent a student from appearing in the examination and whether without notice to the student, any action could be initiated behind his back, these contentions though look to be very logical, but in reality, guided with malafide intention, harping upon technicalities to serve the designs of the petitioner. Petitioner is well aware that admission granted to him, is provisional "and as long as his social status claim is not cleared by the third respondent, he is not entitled to participate in the day-to-day classes also. He should have promptly co-operated with the third respondent to get his social status cleared as early as possible so that he could prosecute his studies without any hindrance. According to the petitioner, he has attended the classes for nearly one and half year's: If that is to be true, why did the petitioner fail to appear before the third respondent and get his social status cleared earlier? Having not co-operated in the enquiry, to be held by the third respondent, it is not open to the petitioner to harp on technicalities and attack the action of the respondents. Law cannot assist the defaulters. Can the petitioner's claim to be member of Scheduled Tribe be held as a bonafide claim ? I am afraid, this is not to be so. Nor the action of the second respondent could be held as without notice to the petitioner.

27. As long as the social status of the petitioner is not cleared by the third respondent, the admission of the petitioner in the second respondent-College is only provisional. Therefore, I hold that the second respondent is justified in preventing the petitioner from prosecuting his further studies including that of

participation in Part II of the M.B.B.S. examination and therefore, there is no illegality in such an action. When the action of the second respondent is not mala fide and is in accordance with the provisions contemplated in the admission rules, it is for the petitioner to show that such an action of the second respondent is tainted with mala fides. In the instant case, the petitioner has failed to show that the second respondent acted with mala fide intention, more so, when the social status claim of the petitioner itself has not finally been cleared by the third respondent. In a case of mala fide and arbitrary action by the authorities, a direction could be invited by such party from approaching this Court invoking Article 226 of the Constitution of India. In this case, as observed by me, the action of the respondents 2 and 3 seeking to restrain the petitioner from appearing for the Part II, M.B.B.S. Course is justified and is in accordance with the rules and therefore, this Court is not inclined to assist the petitioner under Article 226 of the Constitution of India.

28. Law assists a person to shape himself as a prudent citizen and lead a better life in the society. Clever are those who try to harp upon technicalities or lacunae in the law and try to make fortunes. The concept of social justice is the theme of Constitution of this Country. It promises every citizen a meaningful and better life and promises to provide opportunities in that endeavour. One such endeavour is provided under Article 335 of the Constitution of India providing for necessary reservations to Scheduled Castes and Scheduled Tribes. If courts are to ignore these principles governing the concept of social justice and to allow petitioner-like persons to run away with the benefits meant for genuine Scheduled Caste and Scheduled Tribe candidates, in my view, such a situation would lead to frustration among the real beneficiaries and the vagaries of such acts would defeat the very purpose of providing reservation to these classes.

29. The objectives of Constitutional requirements are to be achieved while enforcing reservations to various categories, greater responsibility is endowed on such authorities who are to enforce and implement reservations either while granting admission to various Courses or while selecting candidates for filling up of vacancies in public services. This Court is conscious of the fact that nearly 1/4th of the vacancies meant for Scheduled Tribes in particular are knocked away by infiltrators under the guise of their claim to be a member of Scheduled Tribe Community. Some go scot-free without being nabbed and the other few against enquiries are contemplated, seek shelter under "Operation Rescue". The process of "Operation Rescue" varies from person to person depending upon his ability to mobilise resources. By that time the fraud is detected, unjustified sympathies are evoked besides harping on technicalities. The past experience shows that the scheme of reservation is not properly working. A single authority or an individual cannot be blamed for this sorry state of affairs. A combined effort of all concerning the implementation of reservation policy would probably achieve the constitutional goal at a quicker pace.

30. Once a seat in a professional course is ensured to a student claiming it under

reserved category, the concerned Head of the Institution refers the case to the concerned Directorate and instructs such student to get his social status claim cleared earlier. The student would obviously make his prompt appearance before the Directorate, furnish all information as required by them enabling them to complete the enquiry earlier, so that the student may not suffer from losing any classes. If the process gets delayed, the real student from categories cannot be compensated by accommodating him in the next academic year. It is therefore, necessary to ensure the constitutional objectives to be achieved, all concerned to act in time, before the fraud reached a point of no return. The principle governing the reservation policy not only applies to Educational Institutions but also to all field wherever reservations are provided ensuring social justice. It shall be the combined efforts of all to see that real person for whom reservations are provided, get the benefit. Though the Constitution is not a divine law but only a man-made law, yet the endeavour shall be to protect the Law and law in turn will protect those who protect it.

31. The petitioner has tried to contend that the principles of Promissory Estoppel is applicable in this case and the respondents shall not prevent him from participating in future M.B.B.S. Examinations, I am afraid, this plea cannot be accepted. When a party harps on fraud cannot seek equity, such party could be better designated as "premier to the perpetuation of the Constitutional fraud" and is not entitled to the equitable relief under Article 226 of the Constitution of India. The records placed by the Government Pleader, prima facie, satisfied this Court that the petitioner is not entitled for seeking any direction from this Court till the enquiry into his social status is completed. The plea of Promissory Estoppel cannot be made applicable to the facts of the case as the Doctrine of Estoppel applies to a case where a person is given an unequivocal assurance and on such assurance, he acted and having made such promise, later relented to extend the promise, with the result, the party suffers. Admittedly, the petitioner's admission into first year M.B.B.S. Course is only provisional and his social status claim has yet to be cleared by the third respondent. As long as the social status claim of the petitioner is not cleared by the third respondent, the petitioner is not entitled to seek continuation in the M.B.B.S. Course in the second respondent College.

32. It may not be out of place to mention in this context that the Supreme Court has time and again held in a series of decisions, though in a different context, in *Guru Nanak Dev University Vs. Parminder Kr. Bansal* and another, and in *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu* and others, etc. etc., that ill-conceived sympathy is subversive to the academic discipline leading to serious impasse in academic life. The Supreme Court further held that admissions cannot be ordered without regard to the eligibility of the candidates. I am conscious of the decisions of the Supreme Court stated supra. Therefore, I am of the view as long as the petitioner fails to come out of the clouds as to his social status, the petitioner is not entitled for seeking a relief from this Court.

33. Sri N. Rama Mohan Rao, learned counsel for the petitioner has made a belated attempt by contending that the procedure contemplated in Act 16 of 1993 is not followed and the respondents cannot prevent the petitioner from prosecuting his further studies. I am afraid, this contention is riot proper inasmuch as the cancellation of the certificate of the petitioner is not in question before the respondents. According to "relevant admission rules", the petitioner is obliged to get himself cleared as"to his social status from the third respondent. Therefore, as long as the petitioner fails to get himself cleared according to the admission rules, he cannot be permitted to prosecute further studies in M.B.B.S. Course. It is for the petitioner to participate in the enquiry before the third respondent and get himself cleared of his social status.

34. Having regard to the above discussion, I do not find any merits to grant the relief as sought in the writ petition.

35. Accordingly, the Writ Petition is dismissed at the stage of admission itself.

36. Petition dismissed.