

**(2009) 12 AP CK 0071**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 14426 of 2009**

D.B. Vanaja Kumari (Dr.)

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

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**Date of Decision : 05-12-2009**

**Acts Referred:**

**Citation : (2010) 1 ALD 407 : (2010) 2 ALT 11**

**Hon'ble Judges : L. Narasimha Reddy, J**

**Bench : Single Bench**

**Advocate : A.M. Rao, for the Appellant; G.P. for Respondent No. 1, D.V. Nagarjuna Babu and K. Rajitha, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

L. Narasimha Reddy, J.—The petitioner passed B.H.M.S. (Homoeo) Course in the year 2007. With a view to pursue further studies, she appeared in the entrance examination conducted for admission into M.D. (Homoeo), held in the year 2007-08 and 2008-09, but was not successful. She repeated her appearance in the entrance examination for the current academic year 2009-10, and secured 29th rank. She belongs to Schedule Caste (SC) category, and among SCs, she is second in the rank. Counselling was conducted on 11-7-2009.

2. There are three branches in the Postgraduate (Homeopathy) Courses in the J.S.P.S. Government Homoeo Medical College, Hyderabad viz., Materia Medica, Repertory, and Homoeopathi Philosophy and Organon. All the three courses are treated as Statewide, in the context of A.P. Educational Institutions (Regulation of Admissions) Order, 1974 (for short "the Presidential Order"). In each course, there are six seats. Fairly large number of reservations, in terms of the Presidential Order, social reservations, reservations in favour of in-service candidates, etc., are provided for. The Petitioner was not selected. However, respondents 3 and 4, who belong to the same category, and secured rank Nos. 43 and 46, were selected. The petitioner feels aggrieved by the denial of admission to her. She contends that, in each course, one seat is reserved in

favour of SC category, and contrary to the principles of reservation, all the seats were filled up by candidates from Andhra University area.

3. Dr. N.T.R. University of Health Sciences, the 2nd respondent herein, filed a counter-affidavit. The break-up of reservations, under different categories, is furnished. It is stated that the two seats in each course were reserved for Andhra University area, under the Presidential Order, and it so happened, that one candidates in each course came to be selected from SC category; from that University area. The 2nd respondent contends that no student from Osmania University area, who secured a rank, inferior to that of the petitioner; was selected.

4. Heard Sri A.M. Rao, learned Counsel for the petitioner; learned Government Pleader for Medical, Health and Family Welfare", Sri D.V. Nagarjuna Babu, learned Standing Counsel for respondent No. 2, and Smt. K. Rajitha, learned Counsel for respondents 3 and 4.

5. It is only in J.S.P.S. Government Homoeo Medical College, that the postgraduate courses in Homoeopathy are being conducted. In terms of the Presidential Order, it was declared as Statewide institution. As a result, allocation of seats for the three regions, viz., Andhra University, Osmania University and Sri Venkateswara University, local area have to be allocated in the ratio of 42:36:22. This led to allocation of two seats, in each of the three courses, in favour of Andhra University; and one seat each in favour of Sri Venkateswara University area, two seats each, in Materia Medica and Repertory, and one seat each in Homoeopathic Philosophy and Organon, in favour of Osmania University area. One seat in each of the courses was left unreserved and one seat in Homoeopathic Philosophy and Organon was reserved for foreign nationals. In addition, reservation in favour of SCs to the extent of one seat in each course, and in favour of BCs, which in turn, is subdivided, i.e. BC-A, BC-D; was provided. Naturally, the exercise has become complicated. In the matter of according precedence, one would be justified in adopting one or the other of several alternatives.

6. The reservation under Presidential Order, no doubt, deserves precedence. However, while working out other reservations, such as, those, in favour of SCs and BCs, even while observing the reservations under Presidential Order, several options would exist. In the instant case, it so happened, that among the two seats allocated to Andhra University area, in each course, one seat each were filled by SC candidates. This is patently illegal and contrary to the very spirit of reservations.

7. It is not out of place to mention that, in post-graduate or super-specialty courses, where seats are meagre, reservations are worked out in such a manner, that no particular section gains excessive benefit over the other. In certain cases, candidates from certain sections, such as SCs and STc, in whose favour the extent of reservation is relatively less, are provided seats, in the alternative

years. If an SC candidate is admitted for an academic year for a particular seat, the candidates from S.T. category is selected in the next academic year for it. So is the case with the subcategories within BCs. When this is the pattern, there is absolutely no basis or legality for selecting three SC candidates from the same University area, denying the seats to the students of the same category, from other University areas. By no reasoning whatever, the respondents can justify allocation of 50% of the available seats for Andhra University area in favour of SC candidates. It has already been mentioned that the petitioner is No. 2, among the entire SC candidates. Therefore, she could not have been denied admission.

8. It is brought to the notice of this Court, that one seat, earmarked for Sri Venkateswara University area, is vacant on account of non availability of an inservice candidate. This Court did consider the feasibility of allocating that seat by directing the University to admit the petitioner against that seat. However, that would result in violation of Presidential Order. It is also stated that a candidate with rank No. 19 from Sri Venkateswara University area is awaiting admission against that seat. The only alternative is to direct the admission of the petitioner against a seat, earmarked for SC category. This would certainly result in the displacement of the 4th respondent, whose rank is far inferior to that of the petitioner, and displacement of a candidate from Osmania University area.

9. This Court is of the view that, instead of requiring the admission of the 4th respondent to be cancelled, the 1st respondent may take steps to seek approval for one supernumerary seat, for the current academic year, from the Central Council of Homeopathy.

10. Hence, the writ petition is allowed, and it is directed that the petitioner shall be considered for admission against a seat, earmarked for SC category in Homoeopathic Philosophy and Organon Course in the place of the 4th respondent. However, the admission of the 4th respondent shall not be cancelled, and the 2nd respondent shall take up the matter with the Central Council of Homoeopathy, New Delhi, for creation of supernumerary seat for the 4th respondent.

11. There shall be no order as to costs.