
(2002) 07 AP CK 0060

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9805 of 2002

Dr. Ch. Ramakrishna Rao

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Admission into Super Speciality (Second PG) Courses in Medical Colleges Regulations — Regulation 7
Andhra Pradesh Regulation of Admission to Super Specialities in the Medical Colleges Rules, 1983 — Rule 7(4)
Andhra Pradesh Regulations of Admissions to Super Specialities in Medical Colleges Act — Section 15, 3
Constitution of India, 1950 — Article 14

Citation : (2002) 5 ALD 53 : (2003) 1 ALT 484

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : Pratap Narayan Sanghi, for the Appellant; Government Pleader, for Medical and Health for Respondent No. 1 K.G.K. Prasad, SC for UHS for Respondent No. 2 and G. Ramagopal, Counsel, for the Respondent

Final Decision : Allowed

Judgement

E. Dharma Rao, J.—The petitioner is a postgraduate in General Medicine from Medical College at Guntur and he completed the said course in September, 1997 in first attempt. The petitioner completed his MBBS degree also from, the same College in the year 1980. It is stated that unlike other examinations, the second respondent-University (NTR University of Health Sciences, at Vijayawada) does not grant any percentage of marks in MD and on the other hand, the results were announced on the basis of grading, namely, A, B, C and D. The subjects in MD course are divided into four parts and to get through the examination one has to necessarily secure more than two grades either "A" or "B". If a candidate gets two or more "C" grades, the candidate is deemed to have been failed in the examination and consequently he/ she has to once again appear for the examination. The petitioner secured two "A" grades and two "B" grades,

whereas third respondent secured "B" grade in all four parts.

2. Pursuant to the notification issued by the second respondent-University for admission into Super Specialty Courses, the petitioner, third respondent and other eligible candidates appeared for the entrance test conducted on 8-5-2002. In the entrance test, the petitioner and third respondent seemed to have secured equal marks. It is to be seen that the requisite qualification for admission into Super Specialty Course is Post-Graduation i.e., M.D/MS. When the two candidates get equal marks in the entrance examination, as per Regulation 7(f) of the Schedule and Regulations for admission into Super Specialty (Second PG) Courses in the Medical Colleges affiliated to the. NTR University of Health Sciences (for short "the Regulations"), preference should be given to the student who secured higher marks in MBBS course. It is stated that the third respondent completed MBBS course in the year 1980 by securing 60.81% marks and passed MD in General Medicine in third attempt in the year 1996, whereas the petitioner completed his MBBS Course in the year 1980 and MD in General Medicine in September, 1997 in first attempt. Therefore, it is stated that by any stretch of imagination it can never be contended by the respondent-University that the third respondent is more meritorious than the petitioner. It is further stated that the very purpose of conducting entrance examination and fixing the eligibility criteria for admission into Super Specialty Course is frustrated by giving unnatural interpretation to Regulation 7(f). Hence, the present writ petition is filed questioning the validity and legality of Regulation 7(f) of the Regulations of the second respondent-university as contrary to Section 3 of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 and the Rules made thereunder. He also sought for a consequential direction to the second respondent-University to consider his case for admission into MD (Neurology) Course in Osmania Medical College, Hyderabad for the academic year 2002-2003.

3. It is submitted by the learned Counsel for the petitioner that Section 3 of the A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (for short "the Act") regulates the admission into educational institutions and it provides that admission to the educational institutions shall be either on the marks obtained in the qualifying examination or on the basis of ranking assigned in the entrance test conducted by such authority and in such manner as may be prescribed. The first respondent-State Government issued Rules in G.O.Ms.No. 740, Medical and Health dated 22-11-1983, for admissions into super-specialty courses, known as A.P. Regulation of Admission to Super Specialties in Medical Colleges Rules, 1983 (for short "the Rules"). Rule 7 of the said Rules deals with method of selection and under Sub-rule (4) thereof, while fixing the eligibility for Super Specialty course, preference has to be given to the marks obtained by a candidate in MBBS course, if two candidates secured equal ranks. Therefore, the learned Counsel for the petitioner submits that the Rules framed by the first respondent are contrary to Section 3 of the Act. Regulation 7(f) of the second respondent-University

provides that if two candidates got equal marks in the entrance test, marks obtained in MBBS upto two decimal places shall be taken into consideration for fixing the merit of the candidates and further, in case of equality of marks in entrance test and percentage of marks in MBBS, the marks obtained in final MBBS upto two decimal places shall be taken into consideration for fixing the merit of the candidates. Therefore, the learned Counsel for the petitioner submits that Regulation 7(f) of the second respondent-University is also contrary to Section 3 of the Act. If it is the manner and method of the second Respondent-University to award grades in MD course, it should have been included in its Regulation 7(f), instead of giving preference to the marks obtained in MBBS Degree, which is a basic qualification for admission into MD Course, whereas MD is the basic qualification for admission into DM course. He also submitted that in other Universities in the Country, when there is tie between two candidates in getting equal ranks in the entrance examination for admission into DM course, the marks obtained in the qualifying examination i.e., MD will be given preference. In support of his contention, the learned Counsel for the petitioner relied upon the Rules framed by the Nizam Institute of Medical Sciences, Hyderabad for Admission into Super Specialty Courses and Rule 6 where of provides that if two candidates get equal marks in the Entrance Test, the fixing of the merit of the candidates should be (i) A candidate who passed MD/MS in the first attempt or with less number of attempts will be given preference; (ii) if there is a tie, the candidate who secure higher marks in final MBBS examination will be given preference and (iii) if there is still a tie, the candidate who secured higher marks in Medicine in MBBS examination for Medical specialties and higher marks secured in Surgery in MBBS examination for Surgical Specialties will be given preference. He also drawn my attention to the Regulations framed by the University of Delhi, wherein under Regulation (4), the procedure for breaking tie of marks in the merit of Written Test is provided, stating that (i) the candidate who has passed the qualifying examination (MD/MS) in the first attempt will be given preference for admission; (ii) if the candidates in the tie of marks have passed the qualifying examination (MD/ MS) Examination in first attempt, then the candidate who has secured more marks in the final profession MBBS examination will be given preference for admission, (iii) if the candidates in the of marks have also equal marks in the final professional MBBS Examination, then the candidate older in age will be given preference for admission. The learned Counsel for the petitioner also placed reliance on the method and practice followed by the Post-Graduate Institute of Medical Education and Research, Chandigarh for admission into Post Doctoral/Post-Graduate Medical Courses, where in it is mentioned that if two or more candidates obtain equal marks in the entrance examination, then inter se merit for selection shall be determined on the basis that (i) a candidate who has made more attempts in passing the various professional MBBS/BDS examination shall rank junior to a candidate who has made less attempts; (ii) if the attempts made in passing in the various MD/ MS/MBBS/BDS professional examination are also the same then a candidate who has obtained higher marks in the final MBBS/BDS examination shall rank senior

to a candidate who has obtained lower marks and (iii) If the attempts made in passing MD/MS/MBBS/BDS professional examination as also the marks obtained in MBBS/BDS final professional are the same, then a candidate senior in age shall rank senior to a candidate who is junior in age. The learned Counsel for the petitioner also drawn my attention to the Regulation XI of the Tamilnadu Government Medical Colleges, wherein it is provided that in case of two or more candidates obtain equal ranks in the total aggregate of 100 marks, the inter se merit of such candidate shall be determined on the basis of (a) marks obtained in the entrance examination (b) least number of appearances in the Post-Graduate examination and (c) Candidate older in age will be preference over younger candidate. The learned Counsel for the petitioner, therefore, contends that since all the Universities in the entire state are strictly governed by Act 5 of 1983, the differentiation in regulations to the Super Specialty Courses of Medical Sciences is absolutely discriminatory and violative of Article 11 of the Constitution of India.

4. It is the case of the third respondent that he passed MBBS with 60.81% of marks in May, 1992 and completed MD (General Medicine) from Andhra Medical College. He states that evaluation of the merit of the candidate is restricted to a particular college among the candidates appeared for the post-graduation course in that college, whereas in MBBS, the evaluation of the merit of a candidate is state wide and with percentage of marks. It is further stated that since he got 60.81% marks in MBBS, he was given first rank and the same had been followed for consideration at the time of admission into DM and M.Ch courses. It is further stated that since there are no percentage of marks in the post-graduation i.e., MD, the rules and regulations were framed incorporating the percentage of marks obtained in MBBS as the criteria when there is a tie in the marks obtained in the entrance examination. He further submits that the second respondent-University is making selections basing on the merit and the statutory rules and regulations in vogue. In sum and substance, he submits that Rule 7(3) of the Rules and Regulation 7(f) of the Regulations are well within the ambit of Act 5 of 1983 and Article 14 of the Constitution of India. He, however, contends that since he got i st rank in DM (Neurology) and anticipating automatic admission in the said course on 31-5-2002, he did not appear for entrance examination of the Sanjay Gandhi Post-Graduation Institute of Medical Sciences, Lucknow, which was scheduled on 26-5-2002 and also the National Institute of Mental Health and Neuro Sciences, Bangalore. He lastly contend that the petitioner should have questioned the rules or regulations, if aggrieved, as and when he received the prospectus.

5. The first and second respondents filed separate counter affidavits stating that in exercise of the powers conferred u/s 3 read with sub-section (1) of Section 15 of the Act, the Government of Andhra Pradesh issued G.O. Ms. No.740, dated 22-11-1983 framing rules and eligibility criteria for admission into Super Specialty courses. The said eligibility criteria was fixed in consonance with the regulations framed by the Medical Council of India in exercise of its powers conferred under Regulation 19 read with Section 33 of Indian Medical Council

Act, 1956. It is stated that, in the absence of any marks to measure the merit of the candidates in the qualifying examination, the first respondent thought it fit to take the marks obtained by the candidates in the MBBS course for fixing the inter se merit of the candidates. It is further stated that comparison with the other Universities is not proper on the part of the petitioner, since the other Universities have framed their own regulations in its wisdom and the same cannot control the admissions process in other University and therefore, is not binding on the second respondent-University.

6. Having regard to the submissions of the learned Counsel on either side, the only question that falls for consideration is whether taking into consideration of the marks obtained in MBBS for fixing the merit of the candidate for admission into DM Course, when two candidates got equal ranks in the entrance examination and MD course being the requisite qualification as contemplated under Regulation 7(f) and as well as Rule 7(4), is correct and proper and whether Rule 7(4) and Regulation 7(r) are contrary to the ambit and scope of Section 3 of the Act?

7. In this context, it is relevant to refer the authoritative pronouncement of the apex Court in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, wherein it was held that it would be wholly unjust to grant the admissions to students by assessing their relative merits with reference to the marks obtained by them not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same and that would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution.

8. The learned Counsel for the petitioner has drawn my attention to the decision of this Court in *Ranjana Granites (P) Limited v. State of AP*. 1996 (2) ALD 1180 (DB), wherein it was held that the executive power of the State under Article 162 of the Constitution is coextensive as well as co-terminus with its legislative power. When the State is denuded of the power on the subject in respect of which the Parliament has got exclusive power to legislate, the State's executive power under Article 162 does not survive. It is to be noticed that Article 246 of the Constitution has specifically demarcated the powers of the Federal Legislature and the Provincial Legislatures and the State Government has no competence to frame rules travelling beyond what is delegated.

9. Relying on the decision of the Supreme Court in *Bharathidasan University v. All India Council for Technical Education* (2001) 8 SCC 676, the learned Counsel for the petitioner contends that when the Regulations of the second Respondent-University are directly opposed to and inconsistent with the provisions of Section 3 of the Act, consequently, it can be held that the Regulation of the Second Respondent-University, insofar as it relates to Regulation 7(f) is concerned, is void and unenforceable.

10. Though Rules and Regulations vary from one University to other university in respect of the admission into Super Specialty Courses and though they are not binding and might be framed in their own wisdom, as held by the Supreme Court, granting of admissions to students by assessing their relative merits with reference to the marks obtained by them not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same and that would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution and therefore, in my considered opinion, giving preference to the marks obtained in MBBS rather than MD, where former is not a qualifying and requisite qualification for admission into DM course, in case two candidates got equal ranks in the entrance test, it would hit Section 3 of the Act and, therefore, void and unenforceable. Though Rules and Regulations of one University, which are framed in its own wisdom under the guise of the powers conferred by Section 3 read with Section 15 of the Act, to regulate the admissions, which may not be the policy matter of other University to control its admissions, they cannot be contrary to the provisions of the Act. It is well settled that the conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. The Rules framed by the rule making authority should be in consonance with the provisions of the Act and not in contravention of the same. I am afraid to accept the contention of the 3rd respondent that when there is no awarding of marks in the qualifying examination, i.e., MD, the rules and regulations were framed incorporating the percentage of marks obtained in MBBS, as the criteria when there is tie in the marks obtained in the entrance examination is correct. Further R-3 is awarding grades in P.O. course is as directed by the Indian Medical Council under the Act if that is the case, the State Government and R-3 should have suitably amended the Sections, Rules and Regulations incorporating grades obtained in P.G. Course as first preference, still there is time, the marks obtained in M.B.B.S. Course. Section 3 contemplates admission on the basis of marks obtained in the qualifying Examination or marks assigned in the Entrance test. Moreover as per Regulation 7[c] the syllabus for Entrance test shall be that of MD/MS standard of NTR University of Health Sciences and not the Syllabus of M.B.B.S. The contention of the third respondent that anticipating his admission in the second respondent-University in DM Course, he could not attend other entrance tests conducted by other Universities does not bar this Court from considering the issues involved in the present case. Being notified that MD is the requisite qualification in terms of relevant qualifying examination in relation to admission to any course of study, as defined in Regulation 3 D(II)(ii), the second respondent cannot take the marks obtained in MBBS for fixing the merit of a candidate for breaking the tie of ranking in the entrance test.

11. In view of the foregoing discussion and authoritative pronouncements of the

Supreme Court, I hold Rule 7 (4) of the Rules and that Regulation 7(f) of the Regulations framed by the respondent-Government of A. P. and second respondent University for admission into Super Specialty courses (2nd PG) is contrary to Section 3 of the Act and also Article 14 of the Constitution.

12. Accordingly, the writ petition is allowed and the second respondent University is directed to consider and admit the petitioner into DM course, if he satisfies other requirements. No costs.

13. Before parting with the judgment, though this Court sitting under Article 226 of the Constitution, cannot direct the Government to enact or promulgate particular provision in a particular way, yet this Court feels it appropriate to suggest to the Government to make suitable amendment to Section 3, Rule 7 under Regulation 7(1) in consonance with the theme of the Indian Medical Council and to avoid further complications, in addition to the marks obtained in qualifying examination/grades for admission into the Super Specialty Courses like Second P.G. course or any other course, where grades are awarded in the qualifying examination, instead of assigning marks, in the interest of the student community at large.