

**(2001) 09 AP CK 0022**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 24335 of 2000**

Dr. K. Malini

APPELLANT

Vs

Secretary, H and F, University and Another

RESPONDENT

**Date of Decision : 21-09-2001**

**Acts Referred:**

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Regulations — Regulation 3, 4, 4A, 4C, 4G  
Constitution of India, 1950 — Article 15(4), 226  
Post Graduate Rules — Rule 3

**Citation : (2002) 5 ALT 560**

**Hon'ble Judges : G. Rohini, J**

**Bench : Single Bench**

**Advocate : V.V.L.N. Sarma, for the Appellant; K.G.K. Prasad for the Respondent Nos. 1 and 2 and Lakshmi Narasimha, for the 3rd Respondent, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

G. Rohini, J.—The writ petitioner is a "MBBS" degree holder. She appeared for Post Graduate Medical Entrance Test for the Academic Year 2000-2001 conducted by the 2nd respondent-University and secured the rank of 1636. She claims that on the basis of the said rank, she is entitled for admission to Post Graduate diploma in Gynecology and Obstetrics in any Medical College in the local area of Andhra University and aggrieved by the action of the respondents in not; allotting a seat to her in the selection held on 30-11-2000, she filed the present writ petition.

2. The case of the petitioner is that she had obtained "MBBS" degree from Rangaraya Medical College at Kakinada, which is affiliated to N.T.R. University of Health Sciences, Andhra Pradesh, Vijayawada, the 2nd respondent herein. The petitioner states that the 2nd respondent-University issued notification dt. 13-10-2000 calling for applications from eligible candidates to appear for the entrance test for admission to Post Graduate Medical courses in the medical colleges affiliated to the 2nd respondent-University for the Academic Year

2000-2001. As per the prospectus issued by the 2nd respondent-University for admission to Post Graduate Medical Courses in the medical colleges affiliated to it, 85 per cent of seats are reserved in favour of the local candidates in relation to the local area as provided in the A.P. Educational Institutions (Regulation of Admission) Order of 1974. Since the petitioner obtained "MBBS" degree from Rangaraya Medical College at Kakinada, which comes within the local area of Andhra University, she appeared for the entrance test as a local candidate. The petitioner also stated that she belongs to BC-B group and in the entrance test held on 15-11-2000 she secured the rank of 1636. She further stated that the Counselling for selection of the candidates was held from 28-11-2000 by the 2nd respondent-University and on the basis of the rank secured by her, she was confident of getting a seat in the Post Graduate diploma course as a local candidate under BC-"B" quota in any one of the colleges in the local area of Andhra University. She stated that in the Counselling her turn came on the afternoon of 30-11-2000, but she could not get a seat in diploma in Gynecology and Obstetrics as expected by her. It is contended by the petitioner that from the selection list displayed, she noticed that the last seat under BC-"B" quota was given to a non-local candidate with Hall Ticket No. 001292 who secured the rank of 441. Immediately she pointed out the same to the selection authorities claiming that she being a candidate coming from Andhra University local area, she is entitled for that seat under the BC-"B" quota, though she secured a lesser rank. Since the concerned selection authority did not consider her claim, she filed the present writ petition seeking a declaration that the action of the respondents in not allotting a seat to her in Post Graduate diploma in Gynecology and Obstetrics in any Medical Colleges in the local area of Andhra University is arbitrary and illegal.

3. The writ petition was admitted on 12-12-2000. Subsequently by order dated 9-2-2001 when this Court pointed out that no order can be passed in the writ petition in the absence of the candidate who secured the rank of 441 and whose admission is being questioned in this writ petition, the petitioner filed W.P.M.P.No. 3156 of 2001 and got impleaded the 3rd respondent herein.

4. On behalf of the 2nd respondent-University, the Registrar of the said University filed a counter stating that 14 degree seats and 28 diploma seats are available within the local area of Andhra University and Nagarjuna University and so far as diploma in Gynecology and Obstetrics (DGO) is concerned, seven seats are reserved for "BC candidates and the said reservation has to be applied among the 85 per cent seats reserved for local candidates as well as 15 per cent un-reserved seats and also the 4 seats allocated for service candidates. It is further stated that so far as service candidates are concerned, the reservation has to be applied taking degree and diploma seats together and that if BC-"B" gets degree seat, BC-"A" or "D" gets diploma and vice versa. It is also stated that 2 seats earmarked for BC-"B" candidates in DGO were claimed by the candidates who secured rank numbers 429 and 436. One more seat earmarked either for BC-"B" or for BC-"C" whoever claims on merit has been allotted to the

3rd respondent, who secured the rank of 441, admittedly higher rank than the petitioner. The respondent-University contended that the procedure followed by them is strictly in accordance with the reservation prescribed, and in accordance with the decision of the Full Bench of this Court in W.A.No. 341 of 1999 in which it is held that the reservation shall be divided both among 85% reserved for local candidates and 15% unreserved. For the said reasons the 2nd respondent pleaded that the contention of the petitioner who is a less meritorious candidate, is unsustainable, and she is not entitled for the relief claimed in the writ petition.

5. The 3rd respondent also filed a separate counter on the same lines. It has been stated in the said counter that the claim of the petitioner that 100 per cent of seats shall be allocated in favour of the local candidates is not justified and the same is contrary to the provisions of the Presidential Order, 1974, and as such there is no merit in the writ petition and the same is liable to be dismissed. It is also stated that she had already joined the Post Graduate diploma course and it is coming to an end and the petitioner failed to make out any case warranting interference at this stage.

6. I have heard Sri V.V.L.N. Sarma, learned Counsel for the petitioner, Sri K.G.K. Prasad, learned Standing Counsel for the 2nd respondent-University, as well as Sri Lakshmi Narasimha, learned Counsel for the 3rd respondent.

7. The learned Counsel for the petitioner submitted that as per paragraph-4(E) of the Prospectus, if a local candidate in respect of a local area is not available for purpose of seats reserved or allocated in favour of local candidates such seats shall be filled in as if it has not been reserved. Nowhere in the Prospectus any special allocation is made under the reserved category i.e., BCs, STCs, SCs etc., for candidates coming from other local areas either basing on caste/ community or on merit. He therefore contended that the seat now allotted to the 3rd respondent is exclusively reserved for BC-"B" candidates from the local area of Andhra University. Therefore, even if the petitioner secured lesser rank in the entrance test, she is entitled for allotment of the said seat as a BC-"B" candidate since it is meant for local candidates. He also submitted that the action of the 2nd respondent-University results in violation of principles of natural justice since no opportunity was given to the petitioner to substantiate her claim for the seat in question. The learned Counsel for the petitioner vehemently contended that the 3rd respondent who is a non-local candidate has been wrongly allotted a seat among the 7 seats reserved for the "SC" local candidates, and therefore, the action of the 2nd respondent-University is liable to be declared as arbitrary and illegal and the petitioner is entitled for allotment of a seat in diploma in Gynecology and Obstetrics in any Medical Colleges in the local area of Andhra University.

8. On the other hand, the learned Standing Counsel for the 2nd respondent-University submitted that the contention of the petitioner that there cannot be any reservation for candidates from other local areas is untenable in view of the Full Bench judgment of this Court in W.A.No. 341 of 1999 in which it is held that

"calculating the reservation for SCs, STs and BCs for all available seats but applying it only to 85 per cent reserved for local candidates, apart from being contrary to the Presidential Order is not in conformity with the relevant Rules and Regulations made by the University and therefore the reservation cannot be restricted to 85 per cent. The learned Standing counsel submitted that as held by the Full Bench, seven seats reserved by BC candidates for the Post Graduate diploma course in Gynecology and Obstetrics shall be distributed both among the 85 per cent seats reserved for local area as well as 15 per cent earmarked for unreserved. He also strongly denied the allegations of the petitioner that the 3rd respondent, a non-local candidate, was allotted a seat out of 85 per cent seats reserved for the candidates of local area and placed before me the proceedings of the Selection committee for Selection of candidates for Admission into Post Graduate Medical courses for the year 2000-2001 and submitted that the 3rd respondent has been given the admission only out of the 15 per cent seats earmarked as unreserved. Accordingly he submitted that the contention of the petitioner is without any substance and under any circumstances, she is not entitled for a seat, since there are number of candidates above her who secured higher ranks in the merit list.

9. It is noted that "Regulation 3" of the Regulations for admission to "Post Graduate Medical Courses" in the Medical Colleges affiliated to the NTR University of Health Sciences, Andhra Pradesh for the Academic year 2000-2001 clearly prescribed reservation of 15 per cent; 6 per cent; and 25 per cent of the total number of seats notified in degree and diploma courses in each group for SCs, STs and BCs respectively in accordance with the Government of Andhra Pradesh Rules. Further Regulation 4(A) of the Regulations provides that admission to 85 per cent of the seats shall be reserved in favour of the local candidates in relation to the local area as provided in A.P. Educational Institutions (Regulations of Admission) Order, 1974 as amended from time to time. It is also clear from Regulation 4(G) that for admission to the remaining 15 per cent of the unreserved seats, the local candidates as defined in Regulation 4 (C) are also eligible.

10. Then coming to the Post Graduate seats allotted to Andhra/Nagarjuna University area Medical Colleges for 2000-2001, it is noted that so far as diploma in Obstetrics and Gynecology is concerned, total seats allotted are 28, out of which 24 seats are reserved for candidates of local area and four seats are earmarked as unreserved and out of the said total 28 seats seven seats are reserved for BCs. Again the net group reservation has been prescribed in detail which says that so far as diploma is concerned, out of total 7 seats meant for BCs., two seats are reserved for BC-"A", two seats are reserved for BC-"B" and two seats are reserved for BC-"D". The remaining one seat is reserved either for BC-"B" or BC-"C" as per merit. Thus total seven seats are reserved for BC candidates and it is clear from the statements mentioned in Annexure-II regarding allotment of seats in each local area that this reservation has to be applied taking both 85 per cent seats reserved for local area and the 15 per cent

unreserved seats together. This aspect is also clarified by the Full Bench of this Court in Registrar, NTR University of Health Sciences, Vijayawada Vs. Dr. G. Babu Rajendra Prasad and another, . In the said case similar issue relating to reservation of seats prescribed under Regulations for admission to Post Graduate Medical Courses for the year 1997-98 fell for consideration by the Full Bench.

11. The Full Bench while considering the question whether the reservations in terms of Article 15(4) of the Constitution of India in favour of S.Cs, S.Ts. and B.Cs could be provided even in respect of 15% of the unreserved seats under the Presidential Order, 1974, held as follows:

"we are of the considered view that on an analysis of the provisions of the P.G. Rules, 1997, specifically Rule 3, reservation for Scheduled Castes, Scheduled Tribes and Backward Classes provides the quantum of reservations for these categories and the contours applicable to these reservations. It is irresistibly inferable that quantum of reservation for the respective categories would operate irrespective of the total number of seats notified which, on contextual understanding of the legal regime under the Presidential Order, would mean "the available seats". In view of Paragraphs 5, 8, 9 and 10 of the Presidential Order and Sections 3, 12 and 15 of the Act V of 1983 read with Rule 3 of the P.G. Rules of 1997 the quantum of reservation for Scheduled Castes, Scheduled Tribes and Backward Classes is 15, 6 and 25% respectively applicable to the total number of seats available in the Post Graduate Degree and diploma courses in various disciplines. Regulation 4 of 1997 Regulations envisages the eligible categories for admission to the remaining 15% of the unreserved seats. There is nothing from which it can be inferred expressly or by necessary implication positive exclusion of the scheme of the reservation for . Scheduled Castes, Scheduled Tribes, etc., for the 15% unreserved seats in terms of the Presidential Order."

"....in totality of the circumstances, it would be consistent with the rule of interpretation of pith and substance that the reservation of Scheduled Castes, Scheduled Tribes and Backward Classes should both be calculated as well as applied to all available seats while in no manner subverting the overriding mandate of the Presidential Order warranting reservation of 85% of the available seats in favour of the local candidates in a non-State-wide University or Education Institution."

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"In view of the observations made, the reservation provided for Scheduled Castes, Scheduled Tribes and Backward Classes and others by the State vide G.O. (P) No. 646 on any annals of the interpretation providing reservation in a block of 100 cannot be restricted to be applied to 85% locals. Thus, the deprived class of non-locals, who are equally placed in the context of the object and nexus for reservation, cannot be denied the reservation in 15% quota left over for non-locals. Proportionate reservation has to go in the 15% of unreserved seats too.

12. In the light of the principles laid down by the Full Bench it has to be held that

the 3rd respondent cannot be denied the seat reserved for B.C.-"B" merely on the ground that she is not a local candidate and applied for admission among the 15% of unreserved seats. Therefore, the contention of the petitioner that the 3rd respondent is not entitled for admission against a seat reserved for B.C.-"B" is not tenable and accordingly rejected.

13. From the proceedings of the Selection Committee placed before me, it is observed that the four seats earmarked for the unreserved category for DGO, three in the local area of Andhra University and Nagarjuna University, candidates are given admission in Andhra Medical College, Visakhapatnam and one candidate has been admitted to Guntur Medical College, Guntur and no other non-local candidate has been given admission. Thus, it is clear that the 2nd respondent-University has not exceeded the four seats allotted for the unreserved category. It is also noted that the 3rd respondent who secured the rank of 441 has been allotted a seat in Andhra Medical College, Visakhapatnam in the un-reserved category as a BC-B candidate. Hence, the contention of the petitioner that the 3rd respondent has been allotted a seat among the 85 per cent seats reserved for the candidates of local area is without any basis and factually incorrect.

14. It is true that if a local candidate in respect of local area is not available to fill any seats reserved or allocated in favour of local candidate in respect of that local area such seats shall be filled in as if it had not been reserved. However, that situation has not arisen here since no seat remained unfilled for want of local candidates. The petitioner who secured the rank of 1636 does not come up for consideration for admission since there are number of candidates who secured higher ranks than her. So far as the 3rd respondent is concerned, it is clearly established on the basis of the material placed before me that she is allotted a seat only among the four seats earmarked for unreserved category, and further the seven seats reserved for B.Cs have been properly filled up in accordance with the principles laid down by the Full Bench in Registrar, NTR University of Health Sciences v. Dr. G. Babu Rajendra Prasad (1 supra). Therefore, the action of the 2nd respondent-University cannot be said to be erroneous on any ground.

15. Apart from the above conclusions arrived at on facts, it is also relevant to note that in the matter of admission to educational courses this Court will not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of India, unless the procedure followed is arbitrary or vitiated by any patent material irregularity or where the mala fides attributed are established. Where specific procedure is prescribed for selection of candidates and selection process was done through duly constituted Selection Committee, the Court will decline to interfere on mere allegations of irregularity without any supporting material and particularly in the absence of any mala fides. It is well settled that this Court will not sit in appeal and substitute its judgment to the opinion of the experts in the absence of any legal or constitutional infirmity. In the case of

Admission Committee, C.I.I. 1995 and Another Vs. Anand Kumar and Another, , the Supreme Court observed that in the absence of any mala fide or any other supporting material, the Court would have preferred to accept the version of the Selection committee and further added that calling upon the Selection Committee to answer and justify each and every selection made, in the absence of any mala fides is to cause impossible burden upon it.

16. In the instant case, for the purpose of selection of the candidates for admission to Post Graduate Medical course the 1st respondent-University constituted the Post Graduate Medical Selection Committee and the said Committee finalized the selection of candidates in accordance with the Rules and Regulations prescribed for admission to Post Graduate Medical Course for 2000-2001. The petitioner has not challenged the validity of constitution of the Selection Committee nor challenged the validity of any provision in the Regulations for admission. It is also pertinent to note that the petitioner has not attributed any mala fides to the members of the Selection Committee. Further, admittedly the 3rd respondent secured much higher rank than the petitioner in the merit list and as stated supra, the procedure followed by the respondents in allotting the seat in question to the 3rd respondent is found to be in accordance with the Regulations. Therefore, in my opinion the petitioner failed to make out any case warranting exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

17. In the circumstances, I do not find force in any one of the contentions raised by the petitioner. The writ petition is devoid of any merit and is accordingly dismissed. No costs.