

(2016) 08 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29205 of 2016.

Dr. Phanindra Kumar Nagisetty - Petitioner @HASH Dr. N.T.R. University of Health Sciences, New Government Hospital Road, Gunadala, Vijayawada, A.P. 520008 and another

Date of Decision : 30-08-2016

Acts Referred:

Andhra Pradesh Reorganisation Act, 2014 — Section 95
Constitution of India, 1950 — Article 226, Article 371D, Article 371D

Citation : (2016) 6 ALT 288 : (2017) 1 AndhLD 100

Hon'ble Judges : Sri. V. Ramasubramanian and Anis, JJ.

Bench : Division Bench

Advocate : Mr. Chintala Sumon Reddy and Rajasekhar Gopalajosyula, Advocates, for the Petitioner; Mr. Taddi Nageswara Rao, Standing Advocate for Dr. NTR University of Health Sciences, for the Respondent No. 1; Additional Advocate General representing Mr. A. Prabhakar

Final Decision : Dismissed

Judgement

Sri. V. Ramasubramanian, J. - The petitioner, who participated in the selection for admission to a Super Speciality Course in Medicine, namely, M.Ch. (Surgical Oncology) and who secured the first rank, has come up with the above writ petition, seeking a Mandamus to declare the action of the respondents in treating all the three seats available for admission only to local candidates and not throwing open even one of those seats for un-reserved categories.

2. Heard Mr. Chintala Sumon Reddy, learned counsel for the petitioner, Mr. Taddi Nageswara Rao, learned standing counsel for Dr. N.T.R. University of Health Sciences, appearing for the 1st respondent, and the learned Additional Advocate General representing Mr. A. Prabhakar Rao, learned standing counsel for the 2nd respondent University.

3. There is no dispute about the fact that the petitioner is qualified to seek admission to a Super Specialty Course, which is described in common parlance as a second post-graduate course, in M.Ch. (Surgical Oncology). There is also no

dispute about the fact that the petitioner secured the first rank in the entrance examination.

4. As per the seat matrix released by the 1st respondent University, which was responsible for conducting the common entrance test, for admission to all Super Speciality Medical Courses, there was only one seat in M.Ch. (Surgical Oncology) in the combined State of Andhra Pradesh. That seat was available in Osmania Medical College, Hyderabad. But, after the bifurcation of the State with effect from 02.06.2014, the State of Telangana increased the seats available in M.Ch. (Surgical Oncology) to three. In other words, the infrastructure for two additional seats, were provided by the state of Telangana, and the Medical Council of India has also permitted the increase in the number of seats from one to three, insofar as M.Ch. (Surgical Oncology) is concerned.

5. After the conduct of the common entrance examination by the 1st respondent University, the 2nd respondent University appears to have released a selection chart for admission to all M.Ch. courses in the State of Telangana for the academic year 2016-2017. As per the said selection chart, the 2nd respondent University has divided the three seats available in M.Ch. (Surgical Oncology) into two categories. These two categories are (i) one seat that was in existence before the bifurcation of the State as a non-State-wide seat, and (ii) two seats allegedly created as State-wide seats after the bifurcation of the State. On the basis of the said logic, the 2nd respondent University has allotted all the three seats, to the local area of Osmania University. The consequence is that the petitioner, who is not treated as a local candidate in Osmania University area, will not get admission to M.Ch. (Surgical Oncology), despite having secured the first rank in the entrance examination. Therefore, questioning the action of the 2nd respondent University, the petitioner is before this Court.

6. In order to test the correctness of the segregation of the three seats by the 2nd respondent University into non-Statewide seats and State-wide seats, it is necessary to take note of the relevant provisions of the Presidential Order and the relevant provisions of the Andhra Pradesh Reorganization Act, 2014.

7. In exercise of the powers conferred by clauses (1) and (2) of Article 371-D of the Constitution, the President issued an order known as "Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974". There are certain definitions provided in Paragraph-2 of the Presidential Order. The expression "available seats" is defined in Paragraph-2(a) of the Presidential Order, to mean, in relation to any course of study, the number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State. The expression "State-wide University" is defined in Paragraph-2(f) to indicate the Andhra Pradesh Agricultural University, the Jawaharlal Nehru Technological University, and the Nizams Institute of Medical Sciences. Similarly, the expression "State-wide educational institution" is defined in Paragraph-2(e), to mean, an educational institution or a Department of an educational institution specified in the Schedule to the Presidential Order.

8. The reason as to why the Presidential Order seeks to distinguish State-wide University and State-wide educational institution from non-State-wide University and non-State-wide educational institution, is that both are governed by different paragraphs of the Presidential order. This can be seen from a close look at Paragraphs-5 and 6 of the Presidential Order. Paragraph-5(1) of the Presidential Order mandates that admission to 85% of the available seats in every course of study provided by the Andhra University, Nagarjuna University, Osmania University, Kakatiya University or Sri Venkateswara University or by any educational institution other than a Statewide University or a State-wide educational institution, shall be reserved in favour of the local candidates, in relation to the local area, in respect of such University or educational Institution.

9. But, Paragraph-6(1) stipulates that admission to 85% of the available seats in every course of study provided by a Statewide University or a State-wide educational institution, shall be allotted in the ratio of 42:36:22, in relation to the local areas specified in sub-paragraphs (1), (2) or (3) of Paragraph-3.

10. To put it in simple terms, Paragraph-5 applies to non-State-wide Universities and non-State-wide educational institutions and Paragraph-6 applies to State-wide Universities and State-wide educational institutions. We have already taken note of the fact that State-wide University means, either the Andhra Pradesh Agricultural University or Jawaharlal Nehru Technological University or the Nizams Institute of Medical Sciences. Coming to what are State-wide educational institutions, one must seek a reference to the Schedule to the Presidential Order. The Schedule to the Presidential Order contains 15 items. The institutions, named in Serial Nos. 1 to 14, are of no relevance to the case on hand. But, Serial No.15 in the Schedule to the Presidential Order contains a list of about eight courses, in Super Specialities in Medicine, which are indicated as State-wide educational institutions. M.Ch. (Surgical Oncology) is not included as one of those eight items, under Serial No.15 of the Schedule to the Presidential Order.

11. Therefore, it is clear that the course, to which the petitioner is seeking admission, is not a State-wide educational institution, within the meaning of Paragraph-2(e) read with the Schedule to the Presidential Order. The University, namely, Kaloji Narayana Rao University of Health Sciences, the 2nd respondent herein, is also not included within the definition of the expression of Statewide University under Paragraph-2(f).

12. Therefore, it is clear that the petitioner is not seeking admission either to a State-wide University or to a State-wide educational institution. Once this is clear, then it follows, as a corollary that what would govern the admission to the present course, is only the provisions of Paragraph-5 of the Presidential Order. Paragraph-5 of the Presidential Order reads as follows:

"5. Reservation in non-State-wide Universities and educational institutions:- (1) Admission to eighty-five percent of the available seats in every course of study provided by the Andhra University, the Nagarjuna university, the Osmania

University, the Kakatiya university or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide Educational Institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

(2) While determining under sub-paragraph(1) the number of seats to be reserved in favour of local candidates any fraction of a seat shall be counted as one:

Provided that there shall be at least one unreserved seat."

13. As we have pointed out earlier, sub-paragraph (1) of Paragraph-5 provides for a reservation of 85% of the available seats in every course of study, to local candidates. Subparagraph (2) of Paragraph-5 stipulates that while determining the number of seats to be reserved in favour of local candidates, any fraction of a seat should be counted as one. However, the provisions of sub-paragraph (2) are circumscribed by the proviso thereunder, which stipulates that at least one seat should be an un-reserved seat.

14. If we apply the prescriptions contained in sub-paragraphs (1) and (2) of Paragraph-5, to the case on hand, it could be seen that the total number of seats available in M.Ch. (Surgical Oncology) are three. If 85% of those seats are to be reserved for local candidates, the number of seats that the local candidates would get, would be 2.55. As per sub-paragraph (2) of Paragraph-5, any fraction should be rounded off to one. Therefore, if sub-paragraphs (1) and (2) of Paragraph-5 alone are counted, the number of seats to be reserved for local candidates would be three. But, the same is circumscribed by the proviso, which states that at least one seat should be an un-reserved seat. The proviso to sub-paragraph (2) is actually restrictive in nature and it curtails the reach of sub-paragraph (2) to a limited extent.

15. In other words, the fall out of sub-paragraphs (1) and (2) of Paragraph-5 together with the proviso thereunder, would be that one out of those three seats should be kept as an un-reserved seat and the remaining two seats should go to the local candidates.

16. At this juncture, it is also necessary to take note of one distinction between Paragraph-5 and Paragraph-6 of the Presidential Order. While Paragraph-5 (1) prescribes a percentage of reservation for local candidates, Paragraph-6 (1) speaks about the distribution of those reserved vacancies, among the local areas carved out in relation to that particular region. The proviso to sub-paragraph (1) of Paragraph-6 makes the distribution provided in sub-paragraph (1) applicable only to cases where the total number of seats exceeds three.

17. We have taken note of the distinction between Paragraph- 5 and Paragraph-6, only to drive home the point that both operate at different levels, and that Paragraph-6 does not have any application to the case on hand, in view

of the distinction between (i) State-wide Universities and non-State-wide Universities and (ii) State-wide educational institutions and non-State-wide educational institutions.

18. The result of the above discussion is that, as per the proviso to sub-paragraph (2) of Paragraph-5, one out of three seats available for M.Ch. (Surgical Oncology) should be kept as an un-reserved seat. If one seat is un-reserved, the person, who has secured the highest rank, would naturally get it. Therefore, the petitioner has come up with the above writ petition.

19. But, it is contended by the learned Additional Advocate General appearing on behalf of the 2nd respondent University that the prescriptions contained in Paragraph-5 of the Presidential Order would apply only to the number of seats available as on the date of the bifurcation of the State, and that the seats created by the respective States after the bifurcation, would go only to the students of that State and cannot be thrown open for being filled up, simply on the basis of merit. In support of this contention, the learned Additional Advocate General sought to draw our attention to the difference between the language used in Article 371-D before the bifurcation and the language used in the Article after the bifurcation. The learned Additional Advocate General also invited our attention to Section 95 of the Andhra Pradesh Reorganization Act, 2014.

20. It is true that in Article 371-D, as it existed prior to 02.06.2014, there was a reference only to the State of Andhra Pradesh. But, by the Andhra Pradesh Reorganization Act, 2014, the words "State of Andhra Pradesh" were substituted by the words "the State of Andhra Pradesh or the State of Telangana". Therefore, the contention of the learned Additional Advocate General is that after the bifurcation of the State, the entire Presidential Order will have to be applied independently to each of the two States, and that there is no question of applying the provisions of the Presidential Order to a combined State, as if both States exist together even as on date.

21. Theoretically, the learned Additional Advocate General may be right in saying that after two States are formed, the provisions of Article 371-D may have to be applied independently to each of the two States. But unfortunately for the 2nd respondent University, the key to the problem is to be found in Section 95 of the Andhra Pradesh Reorganization Act, 2014. Section 95 reads as follows:

"Equal opportunities for quality higher education to all students:- In order to ensure equal opportunities for quality higher education to all students in the successor States, the existing admission quotas in all Government or private, aided or unaided, institutions of higher, technical and medical education insofar as it is provided under Article 371-D of the Constitution, shall continue as such for a period of ten years during which the existing common admission process shall continue."

22. A careful look at Section 95 would show that both the Governments are obliged to maintain the existing admission quotas in all Government, private,

aided or unaided institutions, as provided in Article 371-D of the Constitution, for a period of 10 years, during which the existing common admission process is to continue. The words and phrases, that are of significance in Section 95 of the Andhra Pradesh Reorganization Act, 2014, are (i) "all students in the successor States", (ii) "the existing admission quotas", (iii) "shall continue as such", and (iv) "the existing common admission process".

23. If all the above words and phrases are carefully looked at, it could be clear that what is expected to continue for 10 years by Section 95 is the existing quota under the existing common admission process. These words assume significance, in the light of the fact that the words used in Paragraph-5(1) of the Presidential order are "available seats". Section 95 does not use the expression "available seats". The emphasis in Section 95 is not on the seats, but on the existing quota. In other words, what is sought to be preserved is the quota and not the number of seats.

24. The result is that if any one or more of the two States increases the number of seats, the benefit of such increase should be made available for a period of 10 years under Section 95, to a common admission process with the application of the existing quota, namely, 85% for locals or 85% for locals with a distribution pattern of 42:36:22.

25. The learned Additional Advocate General sought to give a different interpretation to the expression "existing quota", by relying upon the decision of the Supreme Court in *State Bank of India v. Yogendra Kumar Srivastava and others*, (1987) 3 SCC 10. In the said case, the question that arose before the Supreme Court was whether the expression "existing officers" would include probationary and trainee officers or not. The Supreme Court held that having regard to the broad framework of the policy framed by the State Bank of India, the probationary and trainee officers are not to be counted as existing officers.

26. Placing reliance upon the said judgment, it was contended by the learned Additional Advocate General that the expression "existing quota" appearing in Section 95 of the Andhra Pradesh Reorganization Act, 2014, should be understood, only to mean the existing seats as on the date of the bifurcation.

27. But, we do not agree. The most fundamental rule of interpretation of statutes is that the Courts are not entitled either to add or substitute or replace the words that are found in the statute. If Section 95 had been worded in such a way as to put a freeze on the total number of seats to which the existing quota would apply, then it would have been a different matter. So long as the Parliament did not think fit either to use the expression "existing seats" or the expression "available seats" as found in Paragraph-5(1) of the Presidential Order or as defined in Paragraph-2(a) of the Presidential Order, it is not open to this Court to interpret the expression "existing admission quotas" to mean the existing seats. The *Casus Omissus* cannot be supplied by a Court to a statute. Therefore, by the plain language of Section 95, it is clear that even after the bifurcation, the

Parliament thought fit to preserve two things, namely, (i) the existing common admission process, and (ii) existing admission quotas for a period of ten years. It may be a different matter after the expiry of the period of ten years. But, till then, what is sought to be preserved is the quota and the admission process, and not the total number of seats.

28. The next contention of the learned Additional Advocate General is that after the State of Telangana had created additional seats and provided necessary infrastructure for the additional seats, at the cost of the exchequer, it may not be fair to throw those seats open to outsiders. But, such a contention is more emotional than legal and we cannot be called upon to decide any issue on any parameter which is not constitutional.

29. As a matter of fact, the total number of seats for M.Ch. (Surgical Oncology) before the bifurcation of the State was only one. If no additional seats had been created, that seat would be available only to the local candidate. This is by virtue of the full Bench decision of this Court in *Dr. B. Sudhakar, M.D. v. Union of India*, rep. by the Secretary to Govt., Ministry of Home Affairs, Govt. of India, New Delhi and others, (1994) (3) ALT 1 (FB). In that case, before the Full Bench, an argument was advanced that the proviso to sub-paragraph (2) of Paragraph-5, would make it incumbent upon the State to throw open a seat to the unreserved category, if there was only one seat available in a particular course. While rejecting the said argument in Paragraph-32 of its decision, the Full Bench pointed out that though a proviso can curtail the reach of the substantive Section, it cannot destroy the very purpose of the substantive part of the statute.

30. Interestingly, after having held so, the Full Bench of this Court also provided a Tabular column with respect to the application of the existing quota to various students, when the number of seats available in a course varied from one to twenty. The Table provided by the Full Bench of this Court in *Dr. B. Sudhakar* (supra) in Paragraph-25 of its judgment may be usefully extracted as follows:

No. of available seats

Subparagraph (1) - 85% (Reserved for Local)

Sub-paragraph (2)

Counting the fraction of a seat as one

Effect of the proviso

Reserved (Local)

Un-Reserved

Reserved

Un-Reserved

(1)

(2)

(3)

(4)

(5)

(6)

1.

$$1 \times 85/100 = 0.85$$

1

-nil-

?

?

2.

$$2 \times 85/100 = 1.70$$

2

nil-

1

1

3.

$$3 \times 85/100 = 2.55$$

3

-nil-

2

1

4.

$$4 \times 85/100 = 3.40$$

4

-nil-

3

1

5.

$$5 \times 85/100=4.25$$

5

-nil-

4

1

6.

$$6 \times 85/100=5.10$$

6

-nil-

5

1

7.

$$7 \times 85/100=5.95$$

6

1

6

1

8.

$$8 \times 85/100=6.80$$

7

1

7

1

9.

$$9 \times 85/100=7.65$$

8

1

8

1

10.

$$10 \times 85/100=8.50$$

9

1

9

1

11.

$$11 \times 85/100=9.35$$

10

1

10

1

12.

$$12 \times 85/100=10.20$$

11

1

11

1

13.

$$13 \times 85/100=11.05$$

12

1

12

1

14.

$$14 \times 85/100=11.90$$

12

2

12

2

15.

$$15 \times 85/100=12.75$$

13

2

13

2

16.

$$16 \times 85/100=13.60$$

14

2

14

2

17.

$$17 \times 85/100=14.45$$

15

2

15

2

18.

$$18 \times 85/100=15.30$$

16

2

16

2

19.

$$19 \times 85/100=16.15$$

17

2

17

2

20.

$$20 \times 85/100=17.00$$

17

3

17

3

31. It can be seen from the Table provided by the Full Bench in its decision in Dr. B. Sudhakar that when there were only three seats available in a particular course, all the three seats would go to local area, if sub-paragraph (2) of Paragraph-5 alone was applied. But, on the right side extreme column of the Table, the Full Bench indicated the effect of the proviso, when there were three seats available. The effect was that out of those three seats, two will be kept as reserved and one as unreserved.

32. The above Table squarely answers the contentions of the learned Additional Advocate General. In other words, what was available to the local candidates in the State of Telangana in M.Ch. (Surgical Oncology) before the bifurcation was only one seat. What is now available are two seats. Since they have created two additional seats and the number of seats has gone up to three, the proviso to sub-paragraph (2) of Paragraph-5 automatically comes into play, the effect of which is not nullified by Section 95 of the Andhra Pradesh Reorganization Act, 2014, but preserved by Section 95.

33. In view of the above, the Writ Petition is allowed, directing the respondents to treat one out of the three seats in M.CH. (Surgical Oncology), as an unreserved seat, to be available for the most meritorious candidate and fill up the said seat with the most meritorious candidate who has secured the first rank.

34. Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.