
(2013) 08 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23464 and 23359 of 2013

Dr. Rohith P. Reddy

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2013) 6 ALD 266 : (2014) 2 ALT 496

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : K. Vivek Reddy, in WP No. 23464 of 2013; Mrs. K. Malleshwari, in WP No. 23359 of 2013, for the Appellant; A. Prabhakar Rao, for the Respondent Nos. 1, 2 and 4 in WP No. 23359 of 2013 and for the Respondent No. 3 in WP No. 23464 of 2013, Government Pleader for Medical, Health and Family Welfare, for the Respondent No. 2 in WP No. 23464 of 2013 and for the Respondent No. 3 in WP No. 23359 of 2013., for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—Both these writ petitions are taken up together, as desired by the learned Counsel, as the fact situation prevailing in both the cases is somewhat identical. The petitioner in WP No. 23464 of 2013 has studied and completed his M.B.B.S. Degree Course from Osmania University local area. He secured his Post Graduate Degree in General Medicine from the Medical College at Manipal in Karnataka State. When Dr. N.T.R. University of Health Sciences, Vijayawada (for brevity referred to as "University") had taken up P.G. admissions for super specialty medical courses, he opted for admission to D.M. (Cardiology) Course and accordingly appeared at the common entrance examination, where he was declared to have secured 8th rank in the merit order. There are 12 seats available in D.M. (Cardiology) Course. Out of them, 10 seats are declared as State-wide courses, while the remaining 2 seats are treated as Andhra University local area seat and Sri Venkateswara University local area seat each. The 10 State-wide seats are in-turn distributed amongst the three University local areas. Thus, 4 seats were allotted to Andhra University local area, 3 seats to Osmania

University local area and 2 seats to Sri Venkateswara University local area. The remaining 1 seat was treated as unreserved. Since the petitioner has secured an overall 8th merit rank, he could not get selected for D.M. (Cardiology) Course and hence he instituted this writ petition challenging the method adopted by the University granting admission in favour of the eo-nominee party respondent who secured an overall merit ranking of 23.

2. The petitioner in WP No. 23359 of 2013 has passed out from Osmania Medical College and secured M.B.B.S. Degree. He later on prosecuted his M.D. (General Medicine) Post Graduate Degree from the Andhra Medical College, Visakhapatnam. He responded to the notification issued by the University for admission to D.M. (Gastroenterology) Course. At the common entrance test, he was declared to have secured 21st merit ranking. There are 10 seats available in D.M. (Gastroenterology) Course. Of them, the 3 seats apiece available at each of the Gandhi Medical College, Secunderabad, and Andhra Medical College, Visakhapatnam, are declared as State-wide courses. 2 seats available in Osmania Medical College are treated as non-State wide courses. Out of the 2 seats available in Narayana Medical College, Nellore, one is treated as a management quota seat. But however, instead of offering admission to the writ petitioner herein, the one seat in D.M. (Gastroenterology) in Narayana Medical College was granted in favour of the eo-nominee party by the Convenor of the respondent-University, respondent who secured overall 9th merit rank. Hence this writ petition.

3. Pursuant to the 32nd amendment of the Constitution, Article 371D came to be introduced in our Constitution making certain special provisions in respect of employment in Government services and regulating admission to educational institutions run by the State. In terms of clauses 1 and 2 of Article 371D, the President of India promulgated two specific presidential orders, of which, we are concerned right now with the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, henceforth for brevity referred to as "Presidential Order". The expression "Local Area" is defined in Paragraph 2(1)(b) as the local area specified in Paragraph 3 of the Presidential Order for purposes of admission to such University or other educational institutions. "State-wide educational institution" is defined in Paragraph 2(1)(e) as an educational institution or a department of an educational institution specified in the schedule to the Presidential Order. Paragraph 3(1) of the Presidential Order declared that the State comprising of the districts of Srikakulam, Visakhapatnam, East Godavari, West Godavari, Krishna and Prakasam shall be regarded as the local area for the purposes of admission to Andhra University, Nagarjuna University and any other educational institution situated in those parts of the State. Similarly, Paragraph 3(3) of the Presidential Order declared that, that part of the State comprising of the districts of Anantapur, Cuddapah, Kurnool, Chittoor and Nellore, shall be regarded as the local area for purpose of admission to Sri Venkateswara University and to any other educational institution situated in that part. The remaining 10 districts in the State are treated as the local area of

Osmania and Kakatiya Universities. Detailed definition with regard to local candidates" has been provided for in Paragraph 4 and since there was no controversy involved in this regard, it may not be really necessary to deal with it. Paragraph 5 dealt with reservation in non-State-wide Universities and educational institutions. It is set out therein that, 85% of the seats available in every course of study in any educational institution or University shall be reserved in favour of the local candidates in relation to the local area in respect of such University or the educational institution. Paragraph 6 dealt with reservation in State-wide Universities and State-wide Educational Institutions. Paragraph 6(1) has set out that, admissions to 85% of the seats in every course of study provided by a State-wide University or a State-wide Educational Institution shall be reserved in favour of and allocated among local candidates in relation to the local areas specified in sub-paragraph (1), sub-paragraph (2) and sub-paragraph (3) of Paragraph 3, in the ratio of 42:36:22 respectively. For easy grasp, this proportion can be set out as for Andhra University, Osmania University and Sri Venkateswara University local areas. Sub-paragraph (2) thereof would set out that, while determining under sub-paragraph (1) the number of seats to be reserved in favour of the local candidates any fraction of a seat shall be counted as one. It was also further set out therein that, there shall be atleast one unreserved seat. Sub-paragraph (3) would further set out that, while allocating under sub-paragraph (1) the seats amongst the local candidates in relation to different local areas, fractions of a seat shall be adjusted by counting the greatest fraction as one and where the fraction to be counted cannot be selected by reason of the fractions being equal, the selection shall be by lot. It was made clear in the proviso therein that, there shall be atleast one seat allocated for the local candidates in respect of each local area. In other words, after allocating one seat for all the 3 local areas, the biggest of the fractions can be rounded off to one seat.

4. Heard Sri K. Ramakrishna Reddy, learned Senior Counsel on behalf of the learned Counsel for the petitioner in WP No. 23464 of 2013 and the learned Government Pleader for Medical and Health and Sri A. Prabhakar Rao, learned Standing Counsel for the University. Smt. K. Malleshwari, learned Counsel for the petitioner in WP No. 23359 of 2013 has chosen to adopt the arguments advanced by the learned Senior Counsel Sri K. Ramakrishna Reddy.

5. It is mainly contended by Sri K. Ramakrishna Reddy that, the respondent-University has erroneously filled up 15% unreserved seats first instead of taking up and filling up the 85% reserved seats first. According to the learned Senior Counsel, the Presidential Order has intended to provide for educational opportunities equitably to the students hailing from the three regions of the State and hence, provided for, as high a percentage as 85% reservation in favour of the local candidates. A minor fraction of 15% of seats are left as open or unreserved. Therefore, the University ought to have attempted to fill up the seats reserved in favour of local candidates first and then, ought to have made an attempt to fill up the remaining 15% unreserved seats. In fact, on three

different occasions, Division Benches of this Court have granted interlocutory orders in various pending cases directing the University to fill up the 85% of seats in favour of local candidates first. Contrary to those interlocutory orders passed by this Court, based upon the directives now issued by the State Government, the University has filled up the 15% unreserved seats first and as a result of this lopsided procedure adopted by the University, petitioner in WP No. 23464 of 2013 has lost the right of admission to D.M. (Cardiology) Course. A person who has secured a far inferior rank than the petitioner has now got admission. Learned Senior Counsel would further submit that, Paragraph 8 of the Presidential Order conferred power on the President by order to require the State Government to issue such directions, as may be necessary or expedient for purposes of giving effect to the Presidential Order, to every University or other educational institution which shall comply with such directions. Accordingly, the State Government has issued detailed instructions through their G.O.P. No. 646 General Administration Department dated 10.7.1979 and contrary to what has been provided in Annexure-IV of the said policy guidelines, the University has now filled up the seats. It is also contended by Sri K. Ramakrishna Reddy that the State Government without in any manner securing the prior permission from the President, has amended the detailed instructions issued in G.O.P. No. 646 dated 10.7.1979 through their G.O. Ms. No. 42 Higher Education (E.C. 2) Department dated 18.5.2009 and hence, the instructions passed on by the State Government through their G.O. Ms. No. 42 dated 18.5.2009 cannot be given effect to or acted upon by the respondent-University in any manner.

6. The historical reasons which prompted the introduction of Article 371D in our Constitution need not be spelt out in extenso now. Suffice it, for the present, to note that Clauses 1 and 2 of Article 371D had empowered the President to provide for equitable opportunities in the matter of employment in Government services and in the matter of admissions to various educational institutions run by the Universities and other educational institutions under the control of the State. Consequently, 85% of the seats available in educational institutions under the control of the State are reserved or set apart for the sake of the local candidates of the State. The remaining 15% of the seats alone are thrown open treating them as "unreserved". To exclusively deal with the regulation of admission process to these educational institutions, the Presidential Order has been promulgated. Similarly, for regulating the employment in Government services, a separate Presidential Order, which is identical in its terms, content and nature was promulgated by the President. By virtue of clause 10 of Article 371D, primacy has been accorded to what has been provided for in these Presidential Orders, notwithstanding anything contained in any other provision of the Constitution or in any other law for the time being in force. Thus, insulation has been accorded to the provisions contained in the Presidential Orders against any possible attack with reference to the provisions contained in Part-III of the Constitution. This limited protection from attack or insulation vis-à-vis the other provisions contained in the Constitution is only for giving effect and supplying

meaningful thrust to the special provision made for the State of Andhra Pradesh. While giving effect to or working out the special provisions, the State cannot act arbitrarily or whimsically or in a discriminatory manner or in derogation of all constitutional sanctions. Within the limited sphere of flexibility accorded by the special provisions, the State shall act in the manner in which all constitutional values and principles are adhered to. It is important to note that the common injunction contained in Article 14 against the State's actions and similarly the other fundamental rights, particularly those guaranteed under Articles 15 and 16, to the extent that they are relevant and have a role to play in the matter of their application to the local candidates and others was never attempted or dispensed with. In other words, while regulating the admission process, or for that matter, while offering employment opportunities, as the case may be, the requirement of adherence to Articles 14, 15 and 16 cannot be ignored completely. In the context of regulating the admissions to various educational institutions, it is a fundamental requirement that the "inter-se merit ranking order" has got to be faithfully followed and the other non-discriminatory constitutional injunctions have also got to be faithfully carried out.

7. In the instant case, the question to be addressed is whether 15% of the seats which are left unreserved should be filled in first or the 85% reserved seats in favour of local candidates should be filled in first.

8. As was already noticed supra; for achieving the objective of the special provision contained in Article 371D, a major chunk of opportunities in the matter of admission to educational institutions/courses and employment in Government services have been set apart for the exclusive benefit of those who answer the description of a local candidate. Through this method, the special provisions are intended to bring out the advancement of the local candidates. But, at the same time, the core constitutional values which form the rock foundations of the provisions contained in Part-III of the Constitution are not intended to be sacrificed totally. Consequently, certain minimum percentage of seats in educational institutions and vacancies in Government services are thrown open treating them as unreserved. Against this unreserved segment, everyone, who is otherwise eligible, is entitled to compete and by virtue of a superior merit ranking, stake a claim against one such seat or vacancy. As a natural corollary, a candidate who answers the description of a local candidate as well as a candidate who may not fit into the four corners of the said description, are both equally entitled to compete against such unreserved slot. In a given situation, strictly adhering to the merit ranking principle, all the 100% seats/vacancies in a local area can be occupied by the candidates who answer the description of a local candidate. In such a scenario, the candidates 1 to 15 are those who have competed against all others, while the candidates from Slot No. 16 to 100 are those who staked their claim based upon their exclusive privilege of getting selected being a local candidate. The main thrust of the special provision is intended to cater to the requirements of the local candidates. That is the reason why when the guidelines were formulated and circulated through G.O.P. No. 646

dated 10.7.1979, it was made clear that, if there was shortage of 85 local candidates out of 100 meritorious candidates, to the extent of deficiency in this percentage, the other candidates, though superior in merit ranking, shall be replaced by the local candidates to that extent in the merit ranking order. The assured right of selection of 85% local candidates flows from the protection of the special provision, which to that limited extent got insulated vis-à-vis the other provisions of the Constitution. Hence, for purposes of giving effect to this special provision, separate merit lists have got to be drawn for each of the local areas and the candidates in the descending order of merit will get the first call/option.

9. However, the remaining 15% have got to be offered based upon the strict merit ranking. Admission to the premier educational courses such as super specialty or postgraduate medical courses - for that matter even admission to the undergraduate medical courses - must necessarily be made in favour of the most meritorious. The same principle will also hold good in the matter of employment in Government services. The fundamental principle enshrined in Article 14 is that the most meritorious deserve the first right of consideration. Keeping aside the most meritorious, for any reason, and then preferring the less meritorious candidate is not in conformity with the principles of equality and fairness enshrined under Article 14 of our Constitution. Let us illustratively examine a case scenario. Let us suppose that in the merit order, the first and the second rankers do not answer the description of the local candidates while rankers 3 to 10 are local candidates. When there is one seat available for the unreserved segment, it stands to reason that the first ranker should be offered the same and leaving aside the second ranker, admissions can be offered to rankers 3 to 10 as they answer the description of local candidates if all the 8 of them are required to be offered such an admission. In such a scenario, Ranker No. 2 cannot have any grievance, inasmuch as, he can compete only against one seat under the unreserved segment with Rank No. 1. If the 1st ranker has picked up the said seat, thus bringing down the curtain with regard to the competition against the unreserved available seats, the 2nd ranker cannot make any case of discrimination vis-à-vis rankers 3 to 10. In the same illustration, for instance, if the first ranker happened to be a local candidate and rankers 3 to 10 are also local candidates, while the second ranker is not a local candidate, if the admission against the one available seat for unreserved segment is to be offered to the second ranker, but not to the first ranker only on the ground that there are enough seats available under the local candidate segment, for him to get admitted, such a situation would be a travesty of justice. The first ranker is as much entitled to compete as against the second ranker for the one seat available for the unreserved segment. It is entirely a different matter, in the above scenario that, as against available 8 local candidate seats, 9 candidates who answer the description of local candidates, might take all the 9 totally available seats and no other candidate could get admitted. It does not offend the principle of equality contained in Article 14. Merit Ranker No. 2 cannot make any

grievance of his losing the competition with reference to the Merit Ranker No. 1. It, therefore, emerges that those who secure a superior merit ranking, irrespective of the fact whether he answers the description of a local candidate or not can compete against the unreserved segment. What is guaranteed by the special provision is the availability of a minimum of 85% of seats for the local candidates. It is apt to remind oneself that it is not the maximum number or a ceiling fixed for the candidates who answer the description of local candidates, but it is the bare minimum. It would be a different matter where adequate number of candidates for exhausting the entire 85% of seats become available. Even in such a worst case scenario, those who have secured the top merit ranking are still entitled to compete first against the unreserved seats. It, therefore, follows that the 15% unreserved segment of seats have got to be preferred to be filled in first so that, even local candidates can compete and exercise their right of option. Otherwise, the prospects of a less meritorious candidate staking a claim against the 15% unreserved seats cannot be ruled out completely. In such a case scenario, the superior merit ranking of local candidate would work to his disadvantage, which was never the intendment of the special provision carved out by virtue of Article 371D. I am therefore, not in a position to accede to the contention canvassed by the learned Senior Counsel Sri K. Ramakrishna Reddy that the 15% unreserved seats should be filled later on after exhausting the 85% local candidates.

10. It is true that, on three different occasions dealing with interlocutory applications, the Division Benches of this Court directed the University to consider filling up 15% of vacancies later on. As is too well known, at an interlocutory stage, the Court is more concerned with making an assessment of the balance of convenience rather than upon pronouncing a firm opinion on a principle. Therefore, I have preferred to proceed to determine the principle itself by deciding the main case.

11. Sri K. Ramakrishna Reddy, learned Senior Counsel has also raised a contention that, without seeking the prior approval of the President, the State Government could not have passed on the instructions which it did in G.O. Ms. No. 42 Higher Education Department dated 18.5.2009. According to the learned Senior Counsel, the State Government cannot issue any directions as it may consider expedient for giving effect to the Presidential Order without securing the permission of the President of India. Paragraph 8(1) of the Presidential Order is an enabling provision while the President is the competent authority to promulgate the Presidential Orders, drawing power from Clauses 1 and 2 of Article 371D, what the State Government can do so is to issue such directions as may be necessary or expedient for purposes of giving effect to the Presidential Order. So long as the instructions passed on by the State Government are not resulting in breach or violence to the provisions of the Presidential Order, on the other hand, they make an attempt to bring forth the essential spirit of the Presidential Order, no such instruction can be said to be invalid only for the reason that, it has been issued by the State Government without obtaining the

prior permission of the President. The instructions of the State Government, complained of in this case are in fact in conformity with the spirit of the Presidential Order and its compulsion vis-?-vis Article 14 of the Constitution. Therefore, for this reason, it is totally unnecessary to declare the instructions passed on by the State Government in their G.O. Ms. No. A2 dated 18.5.2009 as invalid.

12. The petitioner in WP No. 23359 of 2013 has made an issue of not offering to him the seat in D.M. (Gastroenterology) Course in Narayana Medical College, Nellore. This petitioner has raised the contentions in this regard without having any regard to Paragraph 7 read with Paragraph 3(3) of the Presidential Order. In terms of Paragraph 3(3), Nellore District is regarded as falling within the local area of Sri Venkateswara University. Narayana Medical College is situated in Nellore District. Therefore, the D.M. (Gastroenterology) seat in that Medical College is required to be offered to a candidate who answers the description of a local candidate of Sri Venkateswara University area first. If no such local area candidate is available, Paragraph 7 of the Presidential Order provides the answer in such a situation in the following words:

7. Filling of reserved vacant seats.--If a local candidate in respect of a local area is not available to fill any seat reserved or allocated in favour of a local candidate in respect of that local area, such a seat shall be filled as if it had not been reserved.

13. Applying this principle to the fact scenario, if there is no local candidate of Sri Venkateswara University area available to pick up the D.M. (Gastroenterology) seat in Narayana Medical College, the said seat has got to be treated as if it is not reserved for a local candidate and on that basis it shall be filled. The unofficial respondent in WP No. 23359 of 2013 secured 9th rank as against the 21st rank of the writ petitioner. Between the two of them, it is the unofficial respondent, by virtue of his superior merit ranking who is entitled to be offered admission to D.M. (Gastroenterology) Course. Hence, the contentions canvassed by the writ petitioner are plainly contrary to the provisions contained in Paragraphs 3, 4, 6 and 7 of the Presidential Order. I, therefore, have no hesitation to dismiss this writ petition. For all the aforesaid reasons, I do not find any merit in these two writ petitions and accordingly, both these writ petitions are dismissed. Miscellaneous applications if any, shall stand dismissed. No costs.