
(1997) 04 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19182 of 1996

K. Anil Kumar

APPELLANT

Vs

Govt. of A.P. and Another

RESPONDENT

Date of Decision : 19-04-1997

Acts Referred:

Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into under Graduate Professional Courses through Common Entrance Test) Rules, 1993 — Rule 6, 7

Citation : (1997) 4 ALT 69

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : S. Krishna, for the Appellant; G.P. for Respondent No. 1 and R. Subhash Reddy, SC for JNTU, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—The writ petitioner was offered payment seat in Electrical and Electronics Engineering in Kakatiya Institute of Technology and Science, at Warangal. Subsequently, the 2nd respondent (Convenor, EAMCET-95, J.N.T. University, Hyderabad) issued another Notification for commencing 2nd, 3rd and 4th phase admissions for which candidates in "OC" category from rank 3501 in all local areas were called for interview. Free seats were offered to the candidates and even those candidates who, according to the petitioner, secured lower ranks were given the advantage of free seats. The 2nd respondent's action in denying free seat to the petitioner and allotting free seats to the candidates who were subsequently admitted is called in question in this Writ Petition.

2. According to the petitioner, the 2nd respondent ought to have included in the subsequent phases, the candidates who were offered payment seats in the Engineering Colleges and by not doing so, the 2nd respondent committed an illegal and arbitrary act which was, according to the petitioner, required to be quashed and set-aside and the injustice done to the petitioner by not providing

free seat was required to be remedied.

3. The 2nd respondent filed a counter affidavit, in which he did not dispute the fact that the petitioner belonged to "OC" category, that he secured rank No. 2769 at EAMCET 1995 Common Entrance Test, and that he appeared for interview on 12-7-1995 and was admitted in Kakatiya Institute of Technology and Science, at Warangal, on payment seat. However, according to the 2nd respondent, the petitioner accepted the admission on payment basis on his own choice as no free seats were available on that date of admission. It is also not disputed that 1000 new and additional seats were created subsequently and that he (2nd respondent) was directed to fill up these seats in the university and private colleges in the State. A Notification was thereafter issued to fill up those additional seats by giving an opportunity to the candidates who had appeared in the 1st and 2nd phase of admissions, irrespective of the fact whether they had taken admission or not, as these seats were not available to them at the time of their interview. They were given option to opt for new and additional seats and the admissions were given, if eligible, without conducting interview according to their option. But the petitioner did not take advantage of the same and waited until the disposal of Writ Petition No. 23575/95. According to the 2nd respondent, a direction was given to him (2nd respondent) to allot free seats to two writ petitioners, by order passed on 20-12-1996. The writ petitioner, therefore, filed the present Writ Petition in September, 1996. But by that time, according to the 2nd respondent, all seats were filled up, as 15-12-1995 was fixed as the cut-off date by the competent authority, i.e., A.P. State Council of Higher Education.

4. Further, according to the 2nd respondent, the Convenor had no jurisdiction or power to make any changes or alter the allotments already made. In all private engineering colleges in the state, all the seats in each branch were equally divided into two parts, viz., 50% free seats and 50% payment seats in accordance with the directions given by the Supreme Court as those colleges were run purely on self financing basis. It was, therefore, not possible for him (2nd respondent) to allow the benefit after the lapse of two years and at this belated stage nothing could be done.

5. In similar circumstances, according to the 2nd respondent, W.P. No. 5342/96 was dismissed by this Court on 10-12-1996. W.P.No. 15537/96 was also dismissed by this Court in the month of December, 1996, and that in W.P.No. 19477 of 1996 which decision was reported in 1996 (4) ALT 727, the Division Bench of this High Court held that "a time limit of six months from the date of cause of action is considered as a reasonable period to file a Writ Petition in cases concerning admissions to academic courses, that too professional courses in medicine and engineering".

6. The learned Counsel for the petitioner submitted that the 1st respondent issued A.P. Professional Educational Institutions (Regulation of Admission through. Common Entrance Test) Rules 1993 ("Rules" for short) in G.O.Ms. No.

184 Edn. (ECU) Department dated 20-8-1993 in exercise of the powers conferred by Section 3 read with Section 15 of the A.P. Education Institutions (Regulation of Admission Prohibition of Capitation Fee) Act, 1993 (Act 5 of 1983). Rule 7 of the said Rules lays down the procedure for admission into various professional Colleges/Regional Engineering Colleges and Private Professional Colleges. Rule 3 thereof prescribes the method of admission, and Sub- rule (1) (a) of Rule 3 categorically provides that the admissions to the professional courses shall be made in the order of merit on the basis of ranking assigned to the students in the EAMCET. Rule 4 of Rule lays down that admission into various professional courses shall be governed by the Rules of admission prescribed in the said Rules. The learned Counsel for the petitioner further submitted that these Rules were required to be consistent with the statutory Rules issued by the 1st respondent in G.O.Ms.No. 184 dated 20-8-1993 and in case of any repugnancy, the statutory Rules specified in G.O.Ms.No. 184 dated 20-8-1993 were to prevail.

7. The learned Counsel for the petitioner submitted that the petitioner came to know that several candidates who secured lower rank than him had been offered free seats in Osmania local area under "OC category. He further submitted that although the 1st year of engineering was completed by the petitioner, the branching to the specialised fields was to commence only from the 2nd year onwards as during the 1st year the syllabus for all candidates, irrespective of the branch in which they were considered for an engineering seat, was common. Further, according to the learned Counsel for the petitioner the petitioner would suffer injustice and financial loss if conversion of the payment seat to a free seat based on merit ranking was denied to the petitioner and that he would be the victim of arbitrary method of selection adopted by the 2nd respondent in contravention of the statutory Rules.

8. It would, however, appear that the petitioner failed to take advantage of the option offered to the students who had appeared in the 1st and 2nd phase of admissions to opt for new and additional seats. If the petitioner had exercised the option, he would have been admitted, if eligible, without conducting interview. But the petitioner did not approach the respondents at all and waited until the disposal of W.P.No. 23575/1995. The reason advanced by the petitioner that he was not aware of the same cannot be accepted.

9. In W.P.No. 23575/95, disposed of by an order dated 20-12-1995, the learned single Judge of this Court while dealing with the writ Petition of Sri B.V. Ramana Rao and Sri A. Rajasekhar, observed that after the petitioners were counselled at 2nd phase of admission process on 8-8-1995 and 9-8-1995 respectively, the Government of Andhra Pradesh created roughly 1000 seats in Engineering Course and the respondent authorities were required to distribute those seats among the eligible candidates under the Regulations. The admission to the Engineering Course is governed by Andhra Pradesh Professional Educational Institutions (Regulation of Admission into Undergraduate Professional course through Common Entrance Test) Rules, 1993. Thereafter the Convenor issued a

notification calling for options of the candidates who were already counselled at the first and second phase of admission. In response to the notification the first petitioner submitted his options institution wise and discipline wise on 19-9-1995. The 2nd petitioner followed suit. But their claim for allotment of free seats in any of the preferred institutions or chosen disciplines was rejected, whereas the candidates who secured ranks 4386, 4319 and 4390 belonging to the same class to which the petitioners belonged were given free seats. A decision of this High Court in W.P.No. 24473/95 decided on 14-12-1995 was referred to by the learned single Judge in which the Court had to consider the Rules governing admissions to the Engineering Courses. After referring to Rules 6 and 7 of the Rules and considering the requirement of Article 14 of the Constitution of India as laid down by the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the learned single Judge recorded a finding that the admission procedure adopted by the respondents in the matter of allotment of seats was not in conformity with the provisions of the Rules and it was in total violation of the law declared by the Apex Court in Unni Krishnan's case. With these observations, the Writ Petition was allowed and the respondents were directed to offer free seats to the petitioners in any discipline chosen by them in any of the colleges covered under Osmania local area.

10. The learned Counsel for the 2nd respondent resisted the directions given in W.P.No. 23575/1995 on the ground that the present petitioner did not exercise the option which was given to the candidates who appeared in the 1st and 2nd phase of admission without appearing for interview. But the petitioner waited for the disposal of W.P.No. 23575/95, referred to above, by which the respondents were directed to allot free seats to the two writ petitioners of W.P.No. 23575/95. The present Writ Petition was filed by the petitioner only after coming to know about the result of the above Writ Petition No. 23575/95, but by that time, all the seats were filled up by the Convenor, EAMCET 1995, in view of the fact that 15-12-1995 was fixed as the cut-off date by the competent authority, i.e., the A.P. State Council of Higher Education. He also drew the attention of the Court to the fact that the Convenor had no jurisdiction or power to make any changes or alter the allotments already made because he ceased to exercise such powers from the cut-off date fixed by the competent authority. The learned Counsel for the 2nd respondent further submitted that in all private engineering colleges in the State, all the seats in each branch were equally divided into two parts, viz., 50% free seats and 50% payment seats, as per the orders of the Supreme Court. He further submitted that it was not possible for the 2nd respondent to provide free seat to the present petitioner in view of the fact that the students were at the fag end of the 2nd year and infact EAMCET, 1997 was about to take place.

11. In Unni krishnan's case (1 supra), a scheme was evolved by the Supreme Court in the nature of guidelines, which included that any candidate who fulfils the eligibility conditions would be entitled to apply for admission. After free seats

in professional colleges are filled up, at least 10 days time will be given to the candidates (Students) to opt to be admitted against payment seats. The candidates shall be entitled to indicate their choice for any three colleges (if available). In such a case, he shall comply with the deposit and cash security/ Bank guarantee-taking the institution charging the highest fees as the basis - within the said period of ten days. If he is admitted in an institution, charging less fee, the difference amount shall be refunded to him.

12. The scheme, however, lays down that the results of the entrance examination, if any, held, should be published atleast in two leading newspapers, one in English and the other in vernacular. The payment candidates shall be allotted to different professional colleges on the basis of merit-cum-choice. The allotment shall be made by the competent authority. A professional college shall be bound to admit the students, so allotted. The casual vacancies or unfilled vacancies, if any, shall also be filled in the same manner. The management of a professional college shall not be permitted to admit any student other than the one allotted by the competent authority -whether against free seat or payment seat, as the case may be. Under the scheme, it is made clear that even in the matter of reserved categories, if any, the principle of inter se merit shall be followed. All allotments made shall be published in two leading newspapers as aforesaid and on the notice boards of the respective colleges and at such other places as the competent authority may direct, along with the marks obtained by each candidate in the relevant entrance test or qualifying examination, as the case may be. No professional college shall be entitled to ask for any other or further payment or amount, under whatever name it may be called, from any student allotted to it - whether against the free seat or payment seat.

13. It is further provided under the scheme that after making the allotments, the competent authority shall also prepare and publish a waiting list of the candidates along with the marks obtained by them in the relevant test/ examination. The said list shall be followed for filling up any casual vacancies or "drop-out" vacancies arising after the admissions are finalised. These vacancies shall be filled until such date as may be prescribed by the competent authority. Any vacancies still remaining after such date can be filled by the Management.

14. It is further made clear by the Supreme Court in the said scheme that it shall be open to the appropriate authority and the competent authority to issue such further instructions or directions, as they may think appropriate not inconsistent with this scheme, by way of elaboration and elucidation and that the scheme shall apply to and govern the admissions to professional colleges commencing from the academic year 1993-94.

15. On behalf of the petitioner it was not urged that the institution committed any error or violation of the Supreme Court's guidelines and, therefore, on the ground of non-compliance with the method or procedure to be adopted for the purpose of admission, which could vitiate the allotments made by the Convenor, no cause arises to give a direction to the 2nd respondent to convert or allot a

free seat in Engineering College. A statement by the 2nd respondent in his counter affidavit that the petitioner accepted the admission on payment basis on his own choice has not been disputed. The petitioner also did not dispute the fact that subsequently a notification was issued to fill up 1000 additional seats which had been newly created and a notification was issued to fill up those additional seats by giving opportunity to the candidates who had appeared in the first and second phase of admission, irrespective of the fact whether they had taken admission or not and those seats were not available to them at the time of their interview. The 2nd respondent also states that the petitioner did not take the advantage of the same and waited till the disposal of the Writ Petition No. 23575 of 1995, which was decided on 20-12-1996, but by that time all seats were filled up because, 15-12-1995 was fixed as the cut off date by the competent authority.

16. It is pertinent to note that in Writ Petition No. 23575 of 1995, which was decided on 20-12-1996, a direction was issued by the Court to offer free seats to the petitioners of the said writ petition in any discipline chosen by them in any of the colleges covered under Osmania local area. However, the situation was different in that writ petition, inasmuch as in response to the notification calling for options in regard to the newly created 1000 seats, the petitioners of the aforesaid writ petition exercised their option institution-wise and discipline wise, whereas in the case before us, the petitioner refrained from exercising the option and waited till the outcome of Writ Petition No. 23575 of 1995.

17. The learned Judge in his decision in the aforesaid writ petition also observed that Rules 6 and 7 of the Rules, and the requirement of Article 14 of the Constitution of India as laid down by the Supreme Court in Unni Krishnan's case (1 supra) were not followed by the respondents in the matter of allotment of seats, which was considered as the ground for deciding the writ petition in favour of the petitioners before him.

18. Rule 6 of the Andhra Pradesh Educational Institutions (Regulation of Admission into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 provides for preparation of merit list and assigning ranking. It has not been pleaded by the learned Counsel for the petitioner before us whether any requirement of preparation of merit list and assigning ranking as provided in Rule 6 was not followed or complied with. Rule 7 of the aforesaid Rules provided for procedure to be adopted for Admission into Government/University Professional Colleges/Regional Engineering Colleges and Private Professional Colleges. This Rule contains as many as fifteen (15) Sub-clauses. It has not been urged before me by the learned Counsel for the petitioner, how Rule 7 was violated. The petitioner cannot be complacent merely by making a wild allegation that the action of the respondents was smeared with non-compliance of any magnitude vis-a-vis the provisions of Rules 6 and 7. When violation of any statutory Rules is alleged, it is the person making such allegation who has to satisfy as to which particular requirement of the aforesaid Rules covering a wide ranging procedural requirements was contravened and whether any prejudice

was caused to the petitioner on that account. The petitioner in fact has narrated in his affidavit in paragraph 2 the procedural requirements, but is not making any specific allegation as to which particular requirement in the instant case was not observed. The petitioner also pleads precedence by stating in para 2 of the affidavit that in case of any inconsistency, the admission rules issued by the 2nd respondent would be bad in so far as they are inconsistent with the statutory rules notified in G.O.Ms.No. 184 dated 20-8-1993. However, without throwing any light on his proposition of the action being bad on account of any inconsistency or on account of breach in any material part of the said rules, the burden on the shoulder of the petitioner is not discharged to satisfy the Court how any breach was committed by the respondents. The petitioner also does not come out with any specific averment as to how non-inclusion of his name in the first phase was in contravention of any requirement of law and whether any prejudice was caused or whether he was subjected to any discrimination. The petitioner makes a further statement in his affidavit that he had no alternative, but to accept the payment seat in Electrical and Electronics Engineering in Private Engineering College in Kakatiya University of Technology and Sciences at Warangal. How the petitioner was not left with any other alternative has not been set out in the writ petition, so that the Court may be satisfied that any prejudice or discrimination was caused to the petitioner. If at all the petitioner was serious about such allegations, nothing prevented him from approaching the authorities to secure redressal of his grievances. Obviously, the petitioner took his chance till the disposal of the Writ Petition No. 23575/95, but by that time it was too late because, 15-12-1995 was the cut off date before which the additional seats had to be allotted. It is not disputed before us by the petitioner that neither any seat was vacant in any discipline nor there was any scope to allot free seat to the petitioner, even if there was any justification in the claim advanced by him, and I firmly believe that it would not be in order for the Court to interfere with the allotment of seats made by the competent authorities, when the entire exercise of granting admissions was over and closed unless it was shown by the petitioner that any hostile discrimination was caused to the petitioner at the hands of the respondents or the respondents' action suffered from any legal malafide or any grave and deliberate injustice was caused to the petitioner. If any interference is made by the Court at this stage, it is likely to upset the entire exercise of allotment of students for admission to private Engineering Colleges and was also likely to give rise to a series of such demands which indeed will not set up a healthy precedent. The case before us, therefore, could clearly be distinguished from the facts with which the learned Judge was confronted in Writ Petition No. 23575/1995. In that view of the matter, therefore, it would not be expedient to cause any flutter at this stage in the admission to Engineering Colleges, which has been finalised long back. The writ petition is therefore, dismissed. However, with no order as to costs.