

(1995) 10 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 205/95 and W.P. No. 996/95

K. Namratha Sen

APPELLANT

Vs

University of Health Sciences and Others

RESPONDENT

Date of Decision : 28-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 3 ALT 575 : (1995) 2 APLJ 502

Hon'ble Judges : Syed Saadatullah Hussaini, J; M.N. Rao, J

Bench : Division Bench

Advocate : S.S. Satyam Reddy, K. Ram Reddy, G.V. Reddy and Khaja Moinuddin, for the Appellant; K.G.K. Prasad, for 1st Respondent, C.V. Mohan Reddy, for 2nd Respondent, Philkhana Rama Rao, for 3rd Respondent, P. Innayya Reddy, for Respondents 4, 5, 6 and 8 and G.P. for Medical, Health and Social Welfare for 7th Respondent, for the Respondent

Judgement

M.N. Rao, J.—The writ appeal and the writ petition are inter-linked and so we are inclined to dispose of them by this common order. Writ Appeal No. 205/95 was preferred against the order in W.P. No. 1887/95, dated 24-2-1995, by which a learned single Judge of this Court directed that the petitioner, Miss Maliha Iqbal, be admitted to the I year of the M.B.B.S. Course under the sports and games quota.

2. The brief facts leading to the present writ appeal and the writ petition are as follows:

Admissions to Medical and Engineering Colleges in the State are on the basis of the rank secured in the EAMCET examination. In respect of the academic year 1994-95, the petitioner in W.P. No. 996/95, Miss Namratha Sen, appeared for the entrance test and secured rank No. 13,963. She represented the State of Andhra Pradesh in Volley Ball and her team secured II place in the national championship events conducted by the Volley Ball Federation of India.

3. Under Rule 7-E(ii) of the Rules for admission into first year M.B.B.S. Course

for the academic year 1994-95, 0.25% of the available seats in the M.B.B.S. Course are reserved in favour of games and sports personnel and this reservation works out to three seats - one in each of the three regions of the State (Osmania University Area, Andhra University Area and Sri Venkateswara University Area). The State Government, by G.O.Ms. No. 254, Health, Medical & Family Welfare (E.1) Department, dated 28-4-1993, in consequence of a judgment of this Court in Writ Petition No. 12953/92 and batch, dated 12-2-1993, and after obtaining the opinion of expert bodies and in consultation with the University of Health Sciences, issued guidelines in respect of priorities to be followed for selection of candidates for admission to the seats reserved for NCC quota, Army quota and Games and Sports quota. We are now concerned with the order of priorities in respect of two categories - categories 17 and 23. Category 17 reads as follows:

"Representing the State in the National Championships for Men/Women and winning first place."

Category 23 reads as follows:

"Representing the State in National Championships for juniors and winning the second place."

4. The claim of Miss Namratha Sen is that by virtue of her participation in the national championships for juniors and her team winning the II place, she is entitled for a seat in the I year M.B.B.S. Course.

5. Miss Maliha Iqbal who filed Writ Petition No. 1887/95 from out of which Writ Appeal No. 205 /95 arises, also appeared for the EAMCET examination for the academic year 1994-95 and secured rank No. 13,216. She produced a certificate issued by the Government of India, Department of Youth Affairs & Sports and Sports Authority of India to the effect that she "secured the first place in Lawn Tennis at the National Sports Championship for Women 1988-89 held at Ranchi, Bihar from 8th February to 12th February, 1989 (Team Championship)". The University authorities had decided to select her treating her as falling within the ambit of priority No. 17 - representing the State in the national championships for men/women and winning first place. No formal order of admission could be given to her because of an interim order dated 24-1-1995 granted by this Court in W.P.M.P. No. 1187/95 in Writ Petition No. 996/95 filed by Miss Namratha Sen, directing the University authorities not to fill any of the three seats reserved for games and sports personnel. Miss Maliha Iqbal, therefore, filed Writ Petition No. 1887/95 for a direction that she was entitled to be admitted against the games and sports quota into the I year M.B.B.S. Course in the Osmania University area.

6. The interlocutory application - W.P.M.P. No. 1187/95 in Writ Petition No. 996/95 filed by Miss Namratha Sen and Writ Petition No. 1887/95 filed by Miss Maliha Iqbal came up for disposal before a learned single Judge. After hearing both sides, it is represented before us, that the learned Judge vacated the interim order on 24-2-1995 and thereafter disposed of Writ Petition No. 1887/95

directing the authorities to admit Miss Maliha Iqbal in the I year M.B.B.S. Course in the Osmania University treating her as falling within the ambit of priority No. 17.

7. The question canvassed before us is that Miss Maliha Iqbal was not entitled to be admitted under priority No. 17 since she did not represent the State in the "national championship for men/women and won first place." We had considerable difficulty in resolving this question. The Sports Authority of Andhra Pradesh, one of the respondents, filed a counter-affidavit before us admitting that as per the gradation given by them, Miss Maliha Iqbal came under priority No. 17 and "the said grading was given on the basis of the certificate given to her by the Sports Authority of India and as the certificate mentions that she participated in the National Championship for Women and the certificate further showed that she won the first place. As the certificate showed that Miss Maliha Iqbal has participated in the National Championship for Women, her case was included in item No. 17 of the Gradation List." the correspondence produced before us shows that Miss Namratha Sen's name was shown under priority No. 23.

8. Sri S.S. Satyam Reddy, learned Counsel for Miss Namratha Sen, had addressed a letter to the Director General, Sports Authority of India on 24-3-1995 seeking clarification on the following three points:

1. Whether the Sports Authority of India is competent to hold a National Championship in any sports or games.

2. Whether 13th National Championship for Women held at Ranchi, Bihar from 8th to 12th February, 1989 (as per the enclosed certificate) is a National Championship or is only a National Festival for women.

3. Whether Miss Maliha Iqbal is a National Champion in Lawn Tennis for the year 1988-89.

9. In his reply dated 9-5-1995, the Registrar of Sports Authority of India informed the learned Counsel that:

(i) Only the National Sports Federations are competent enough to hold National Championships in their respective sports disciplines,

(ii) The National Sports Championship for Women held at Ranchi from February 8 to 12, 1989 was a separate competition organised by the Sports Authority of India under the Government of India Scheme for providing more opportunities to women in the sports competitions. The National Sports Festival for Women was first started in the year 1975 as a part of the celebrations connected with the International Women's year and has continued thereafter in order to provide more avenues of competitions to women.

(iii) Miss Maliha Iqbal was not a National Champion in Lawn Tennis in its true sense for 1988-89.

10. Although the Sports Authority of India is a party to this proceeding, desposit our repeated directions - we have adjourned the hearing on three occasions to enable the Sports Authority of India to file a counter, no counter was filed.

11. From the aforesaid narration of facts, what appears to be clear is that the certificate issued by the Sports Authority of India in favour of Miss Maliha Iqbal clearly mentions that she secured the first place in Lawn Tennis at the National Sports Championship for Women 1988-89 held at Ranchi, Bihar from 8th February to 12th February, 1989. It was, therefore, natural for the Sports Authority of Andhra Pradesh, when consulted by the University of Health Sciences, to give gradation, to consider the event at which Miss Maliha Iqbal participated as "the National Sports Championship for men/women" as specified in priority No. 17. Had the certificate been worded differently, there would not have been any possibility for the Sports Authority of Andhra Pradesh to give its opinion that Miss Maliha Iqbal was entitled to priority No. 17. Now it has come to light that the National Sports Championship for Women 1988-89 held at Ranchi, Bihar, at which Miss Maliha Iqbal secured the first place, was organised by the Government of India "for providing more opportunities to women in the sports competitions and the National Sports Festival for Women was first started in the year 1975 as part of the celebrations connected with the International Women's year and has been continued thereafter in order to provide more avenues of competitions to women."

12. The mistake that occurred in giving the rating to Miss Maliha Iqbal was a bona fide and genuine one. She was not at fault when she claimed a seat under the games and sports quota by producing the certificate issued by the Sports Authority of India to the effect that she participated in the National Sports Championship for Women. Priority No. 17 speaks of "National Sports Championship for Men/Women", but not "National Sports Championship for Women". The Sports Authority of India had not, on any previous occasion, brought to the notice of the State Government, University of Health Sciences or the Sports Authority of Andhra Pradesh that the "National sports championship for Women" is altogether a different event unconnected with the "National Sports Championship for men/women". We ourselves found it very difficult to ascertain the correct position and it was only after the matter was adjourned three times, we could get the correct facts.

13. In this fact situation, neither the University of Health Sciences nor the two candidates - Miss Maliha Iqbal and Miss Namratha Sen were at fault. A genuine and bonafide mistake had occurred which had resulted in Miss Maliha Iqbal securing a seat under the games and sports quota. Pursuant to the order of the learned single Judge, she has been admitted to the M.B.B.S. course and she is now continuing her studies. It would be totally unjust and inequitable if we were to cancel her seat. At the same time, we are of the view that Miss Namratha Sen, who was entitled for admission, should not be deprived of the seat.

14. Foreseeing the difficulty that in the absence of the State Government and the

Indian Medical Council being made parties, it would not be possible for this Court to give a direction to create one additional seat, we impleaded them as party-respondents.

15. No additional facts have been brought to our notice by the counsel appearing for the State Government and the Indian Medical Council.

16. Miss Maliha Iqbal; petitioner in Writ Petition No. 1887/95, who is now pursuing the first year M.B.B.S. course in the Osmania University shall not be disturbed. The academic year 1994-95 is over and the next academic year also i.e., 1995-96 has begun. Any direction given in favour of Miss Namratha Sen for admission against a seat in respect of the academic year 1994-95 would not be in her own interest as she would not be in a position to catch up with the syllabus and make up the loss in attendance as one year has already elapsed. The only just course, in the circumstances, would be to direct her admission for the academic year 1995-96 against the games and sports quota by creating one additional seat in the Osmania University area. Miss Namratha Sen shall be admitted into first year M.B.B.S. course in the Osmania University area for the academic year 1995-96 and the necessary sanction shall be accorded by the Indian Medical Council and the State Government. Precedents are not lacking when the highest Court in the country, having regard to the peculiar fact situations, granted similar directions: vide Sandeep Barar and another Vs. State of Punjab and others, ., and Chandigarh Administration and another Vs. Manpreet Singh and others, . We shall, however, make it explicit that creation of additional seats shall not be construed as a precedent.

17. With the aforesaid directions the Writ Petition and the Writ Appeal are disposed of.