

(1992) 03 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12400 of 1991

Miss. Romini Susan Kurian

APPELLANT

Vs

State of A.P. and others

RESPONDENT

Date of Decision : 12-03-1992

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 15, 3
Army Act, 1950 — Section 192
Army Orders — Order 59, Order 79
Constitution of India, 1950 — Article 14, 226

Citation : AIR 1992 AP 380

Hon'ble Judges : Motilal B. Naik, J;Lakshmana Rao, J

Bench : Division Bench

Advocate : A. Panduranga Rao, for the Appellant; Govt. Pleader for Home, R. Ramanujam and R. Satyanarayana Reddy, Standing Counsels for Central Govt., for the Respondent

Judgement

A. Lakshmana Rao, J.—The petitioner appeared for the Common Entrance Test for admission to Medical College for the year 1991-92. The common Entrance Test is known as EAMCET-91. Her roll number was 16633. She secured rank No. 6715 in the Entrance Test. The parents of the petitioner are medical officers working in Army Medical Corps. The father of the petitioner is working at present as Senior Advisor, Cardiology at Command Hospital, Northern Command in the State of Jammu and Kashmir. His wife Mrs. S. Kurian is working at Military Hospital, Secunderabad. The father holds the rank of Colonel whereas the mother holds the rank of Lieutenant Colonel. The father of the petitioner was awarded Vishist Seva Medal (VSM) by the President of India for meritorious service of exceptional order for treating civil and military persons in Nagaland during 1966 to 1969. The prospectus issued by the University of Health Sciences for admission into first year M.B.B.S. course for the academic year 1991-92 provides that 4% of the seats shall be reserved for the children of Ex-servicemen and Servicemen belonging to the State of Andhra Pradesh, including those

serving in other States and persons who are posted and stationed in the State of Andhra Pradesh on the date of submission of application. The order of preference is as follows:--

(a) Children of Ex-servicemen, Armed personnel and BSF or CRPF or Civil Defence Persons killed in action.

(b) Children of Ex-servicemen, Armed personnel and BSF or CRPF personnel disabled in action and who are in receipt of disability pension.

(c) Children of Ex-servicemen, Armed personnel and BSF or CRPF personnel who are in receipt of Gallantry Awards. Merit order of Gallantry Awards:

1. Param Vir Chakra
2. Ashok Chakra
3. Mahavir Chakra
4. Kirti Chakra
5. Vir Chakra
6. Shaurya Chakra
7. Sena, Nausena, Vayu Sena Medals
8. Mention in Despatches.

Merit order of Gallantry Awards for BSF and CRPF personnel shall be as per rules in force.

(d) Children of Ex-servicemen, Armed personnel and BSF or CRPF personnel who have put in 18 years and more of qualified service.

(e) Children of Ex-servicemen, Armed personnel and BSF or CRPF personnel who have put in less than 18 years of qualified service.

NOTE: Candidates who do not come under any of the categories (a) to (e) under this category shall not be eligible for consideration under this quota.

(III) If there is more than one candidate in a particular group in the order of preference indicated above, the selection shall be based on Rank at EAMCET-91.

(IV) Candidates seeking admission under this category should submit documentary evidence in support of their claim from competent Defence Authority.

2. The father of the petitioner submitted a representation dated 17-8-1991 to the Director, Sainik Welfare, Hyderabad requesting that the Vishisht Seva Medal shall be included in the list of Gallantry Awards mentioned in the prospectus. The Director, Sainik Welfare in turn addressed a letter dated 17-8-1991 to the Principal Secretary to Government of Andhra Pradesh requesting to issue

necessary instructions to the Health University for inclusion of Vishisht Seva Medal in the list of Gallantry Awards mentioned in the prospectus for admission into first year M.B.B.S. course. On the very same day, the Director has written another letter to the Deputy Secretary to Government of Andhra Pradesh, Medical & Health Department stating that as per Appendix "C" to Army Order 59/79, Vishisht Seva Medal was listed as distinguished service-devotion to duty award and did not fall under the category of Gallantry Awards enumerated in Appendix-3 to that Army Order. Therefore, he requested that his earlier letter for inclusion of Vishisht Seva Medal in the list of Gallantry Awards shall be treated as cancelled. At this stage, this writ petition has been filed seeking appropriate writ directing the University of Health Sciences to include Vishisht Seva Medal as item 7(a) in paragraph E(i)(c) of the prospectus issued for admission into medical colleges in the State.

3. The State Government framed rules of admission into first year M.B.B.S. course in G.O.Ms. No. 62, Education (Rules) Department, dated 10-2-1989 in exercise of the powers conferred by Section 3 read with S. 15 of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. Rule 9(4) of the A.P. Professional Educational Institutions (Regulation of Admissions into Undergraduate Professional Courses through Common Entrance Test) Rules, 1989, framed under the above Act, provides that 4% of the seats shall be reserved for the children of Ex-servicemen and Defence personnel including the children of Border Security Force and the Central Reserve Police Force residing in Andhra Pradesh. The Rules do not provide any order of preference for selection of the children of the Ex-servicemen. However, the State Government issued G.O.Ms. 256, Education (E.C.) Department, dated 6-10-1990 containing instructions for admission into private Engineering Colleges of the candidates belonging to reserved categories. It provides that admission shall be made from among the eligible candidates qualified at EAMCET in the order of preference mentioned therein, which is identically the same as mentioned in the prospectus issued by the University of Health Sciences referred to above. The University did not consider the claim of the petitioner that she shall be treated as the child of a Gallantry Award winner under category (c) relating to children of Ex-servicemen and Service personnel who are Sri receipt of Gallantry Awards. Having been aggrieved by the action of the University, this writ petition has been filed.

4. It is submitted by Sri A. Panduranga Rao, learned Counsel for the petitioner:

(1) According to the Army Regulations, Vishisht Seva Medal is of more meritorious nature and higher order in the order of precedence than the "Mention in Despatches" and, therefore, it should have been included in the merit order of Gallantry Awards mentioned in the prospectus just above "Mention in Despatches";

(2) Army Order 59/79, which classifies the awards as Gallantry Awards and distinguished service/devotion to duty awards, is administrative in nature and it

does not have any legal force. Therefore, any reliance on such an order for excluding Vishisht Seva Medal from the list of Gallantry Awards is not valid;

(3) The order of preference mentioned in G.O.Ms. No. 256, which contains only administrative instructions for admission into Engineering course, cannot be followed for admission into M.B.B.S. course, that too when the rules framed by the State Government in G.O.Ms. No. 62 dated 10-2-1989, which are statutory in nature, have not been suitably amended; and

(4) When the Osmania University included Vishisht Seva Medal in the list of Gallantry Awards for admission into Engineering College, there is no justification whatsoever in the Health University not including the same Medal in the list of Gallantry Awards for admission into M.B.B.S. course.

5. It is no doubt true that the State Government made rules governing admission into first year M.B.B.S. course in G.O.Ms. No. 62 dated 10-2-1989 in exercise of the powers conferred under the provisions of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. It provides for reservation of 4% of the seats for the children of Ex-servicemen and Defence personnel. It does not prescribe the order of preference. G.O.Ms. No. 256 dated 6-10-1990 contains only administrative instructions and they do not have statutory force. They relate to admission into Engineering Colleges. The instructions prescribe the order of preference; which is identical to the order of preference indicated in the prospectus issued by the University of Health Sciences. The prospectus clearly provides the order of preference to be followed for admission of children of Ex-servicemen and Defence personnel into M.B.B.S. course. The first preference is given to the children of Ex-servicemen and Armed personnel killed in action. Next preference is given to the children of the personnel who became disabled in action and who are in receipt of disability pension. Next preference goes to the children of the personnel who are in receipt of Gallantry Awards mentioned therein. The list of Gallantry Awards does not contain Vishisht Seva Medal. Therefore, the University did not consider the case of the petitioner under category (c) relating to children of Service personnel who are in receipt of Gallantry Awards. In that order of preference, the next category relates to the children of Armed personnel who have put in 18 years and more of qualified service. The last category belongs to children of Armed personnel who have put in less than 15 years of qualified service. When the case of the petitioner, according to the University, did not fall under category (c), her claim was considered under category (d). It is the case of the University that other candidates, who secured higher rank than the petitioner in the Entrance Test, were selected and, therefore, the petitioner could not be provided a seat.

6. The main contention advanced by the learned Counsel for the petitioner is that at per the Regulations made under S. 192 of the Army Act precedence is given to Vishisht Seva Medal and according to the notification dated 16-6-1986 issued by the Secretariat of the President of India determining the order of precedence of wearing of various medals and decorations, Vishisht Seva Medal occupies a

higher place than the Police Medal and Fire Service Medal for Gallantry; Therefore, there is no justification in excluding the Vishisht Seva Medal from the list of Gallantry Awards mentioned in the prospectus. The learned Counsel has drawn our attention to the letter dated 6-10-1985 written by Gen. A. S. Vaidya, the then Chief of the Army, that Param Vishisht Seva Medal, Ati Vishisht Seva Medal and Vishisht Seva Medal winners are the exceptional few who have showed outstanding and exemplary devotion to duty, some times almost amounting to gallantry.

7. Army Order 59/79, which prescribes the procedure for submission of recommendations for Gallantry and distinguished service Awards, enumerates the Gallantry Awards, which are as follows:

- 1) Param Vir Chakra
- 2) Ashok Chakra
- 3) Maha Vir Chakra
- 4) Kirti Chakra
- 5) Vir Chakra
- 6) Shaurya Chakra
- 7) Sena Medal
- 8) Mention in Despatches
- 9) CAS Commendation Card

The list of distinguished service/devotion to duty awards is as follows:

- 1) Param Vishisht Seva Medal
- 2) Ati Vishisht Seva Medal
- 3) Vishisht Seva Medal
- 4) Sena Medal
- 5) Mention in Despatches
- 6) CAS Commendation Card.

8. Though the Army Order may be stated to be in the nature of administrative instructions and does not have statutory force, it clearly demarcates the Gallantry Awards and the distinguished service/devotion to duty awards into two separate categories. In the instant case, it will not be proper for us to embark upon an enquiry whether the enumeration of the awards into two categories in the Army Order is valid or not. We have to proceed on the basis that the Gallantry awards constitute a distinct category different from the distinguished service/devotion to duty awards.

9. The prospectus issued by the University of Health Sciences specifically mentions in the order of preference that under category (c), the children of Ex-servicemen and Armed personnel who are in receipt of Gallantry Awards mentioned therein will be considered. The Gallantry Awards mentioned in the prospectus are identically the same as mentioned in Appendix "B" to Army Order 59/79. Therefore, it cannot be said that the list contains any award other than a Gallantry Award.

10. However, it is vehemently urged by the learned Counsel for the petitioner that as mentioned by Gen. A. S. Vaidya, if a Vishisht Seva Medal is awarded for outstanding and exemplary devotion to duty, some times almost amounting to gallantry and if the Vishisht Seva Medal stands at a higher place over some of the Gallantry Awards in the order of precedence determined in the notification issued by the Secretariat of the President of India, there is no justification whatsoever in excluding Vishisht Seva Medal from the list of Gallantry Awards. It may be noticed that what Gen. A. S. Vaidya stated in his letter dated 6-10-1985 was that "Param Vishisht Seva Medal, Ati Vishisht Seva Medal and Vishisht Seva Medal winners are the exceptional few who have showed outstanding and exemplary devotion to duty, sometimes almost amounting to Gallantry but cannot be given Gallantry Awards". The learned Counsel has also drawn our attention to Regulation 717 specifying the order of preference of awards. Under this order, Vishisht Seva Medal occupies a place higher than a Police Medal for gallantry. Thus Vishisht Seva Medal is not equivalent to a Gallantry Award even according to Gen. A. S. Vaidya. The notification dated 16-6-1976 issued by the Secretariat of the President of India determining the order of precedence relates to only wearing of various medals and decorations and it does not specify the categories of Gallantry Awards and distinguished service/devotion to duty awards. Therefore, in our view, neither the letter of Gen. A. S. Vaidya nor the notification issued by the Secretariat of the President of India throws any light on the issue under consideration. So also, the order of preference of awards specified under Regulation 717 does not mention as to what awards fall under the category of Gallantry Awards and what awards fall under the category of distinguished service/devotion to duty awards. When the prospectus clearly mentioned that only the children of Armed personnel who are in receipt of Gallantry Awards mentioned under category (c) will be eligible for consideration and the Gallantry Awards have been enumerated therein, which are identically the same as mentioned in Appendix "B" to Army Order 59/79, it would not be proper for us to direct the University to include Vishisht Seva Medal, which falls under the category of distinguished service/devotion to duty awards in the category of Gallantry Awards.

11. In this view of the matter, it is not even necessary to go into the question as to whether G.O.Ms. No. 256 dated October 6, 1990 has any application to the admission into M.B.B.S. course. The students seeking admission into any course have to abide by the prospectus issued by the University for admission into that course. It cannot be said that the order of preference prescribed in the

prospectus is contrary to any legal provision in the form of a statutory provision of an Act or a rule. The statutory rules made in G.O.Ms. No 62, dated February 10, 1989 merely provide the percentage of reservation viz., 4% in favour of the children of Armed personnel and they do not prescribe the order of preference, The University has prescribed the order of preference. Such order of precedence is not contrary to any provision of law and there is nothing to show that the order of preference is either arbitrary or unreasonable. The first preference is given to the children of those who are killed in action. The second preference is given to those who are disabled in action and who are in receipt of disability pension. The third preference is given to the children of those who are in receipt of Gallantry Awards. The fourth preference is given to the children of those who have put in 18 years and more of qualified service and the last preference is given to the children of those who have put in less than 18 years of service. The prospectus issued by the University binds the candidates who seek admission and unless any portion of the prospectus is held to be illegal, we cannot direct either amendment of the prospectus or consideration of the claim of a student in a manner otherwise than that provided in the prospectus. In the instant case, as we have already mentioned, the order of preference prescribed in the prospectus cannot be said to be either illegal or improper. In those circumstances, we cannot direct the University to include Vishisht Seva Medal in the category of Gallantry Awards.

12. It is, however, submitted by the learned Counsel for the petitioner that the classification made between Gallantry Awards and meritorious service/devotion to duty awards is based on mini-classification of micro-distinctions which is not envisaged under Art. 14 of the Constitution of India. In support of this contention, the learned Counsel has placed reliance on the decisions of the Supreme Court in *State of Jammu & Kashmir v. T. N. Khosa* ATR 1974 SC 2; *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, ; and *A.S. Iyer and Others Vs. V. Balasubramanyam and Others*, . As we have already mentioned, as per Army Order 59/79, a clear distinction has been made between Gallantry Awards and distinguished service/devotion to duty awards. The University of Health Sciences wanted to give preference under category (c) only to the children of Armed personnel who are in receipt of Gallantry Awards. In our view, the two categories of awards fall into two distinct and different classes. It cannot be said that the classification made between Gallantry Award winners and distinguished service/devotion to duty award winners is not based on intelligible differentia.

13. For the reasons stated above, the writ petition fails and it is accordingly dismissed. There shall be no order as to costs. Advocate's fee Rs. 250/-.

14. Immediately after the judgment has been delivered, the learned Counsel for the petitioner has moved an oral application for leave to appeal to the Supreme Court. In our view this case does not involve any substantial question of law of general importance that need to be decided by the Supreme Court. Therefore,

leave is refused.

15. Petition dismissed.