
(2016) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition Nos.26478 of 2016

Posina Sri Satviki

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 ALT 534 : (2017) 1 AndhLD 32

Hon'ble Judges : V. Ramasubramanian and A. Shankar Narayana, JJ.

Bench : Division Bench

Advocate : Mr. G. Vidya Sagar, Senior Counsel for Smt. K. Udaya Sri and M/s. Venkateswara Rao Gudapati, P. Girish Kumar and N. Subba Rao, Counsels, for the Petitioners; Mr. Taddi Nageswara Rao, Standing Counsel for NTR University of Health Sciences, Government Plead

Final Decision : Disposed Off

Judgement

V. Ramasubramanian, J.—By G.O.Ms. No.254 Health, Medical and Family Welfare (E1) Department, dated 28-04-1993, the Government fixed priorities for selection of candidates for admission to undergraduate medical courses under the quota reserved for NCC candidates. The order of priority prescribed in G.O.Ms. No.254 underwent a change in G.O.Ms. No. 186 Health, Medical and Family Welfare (E1) Department, dated 31-05-2002.

2. On the basis of a communication received from the Deputy Director General, (AP & T), National Cadet Corps Directorate, Secunderabad, dated 23-04-2015, the Government issued modified orders in G.O.Ms.No.65 Health, Medical and Family Welfare (C1) Department, dated 22-07-2015 changing the priorities. But this Government Order did not adopt the same sequence of priorities as indicated by the NCC Directorate in their communication dated 23-04-2015.

3. Therefore, assailing G.O.Ms. No.65, dated 22-07-2015, a batch of writ petitions came to be filed, one of which is W.P.No.26478 of 2015, which is the first of the writ petitions on hand.

4. While G.O.Ms. No.65, dated 22-07-2015, which is under challenge in W.P.No. 26478 of 2015 related to the State of Telangana, there was yet another Government Order in G.O.Ms.No. 23, Higher Education (EC.A2) Department, dated 19-06-2015 that was followed by the State of Andhra Pradesh. The sequence in which priorities were arranged for NCC candidates in G.O.Ms. No.23, dated 19-06-2015 by the State of Andhra Pradesh, was exactly identical to the sequence in which priorities were arranged in G.O.Ms. No.65, dated 22-07-2015 by the State of Telangana. Therefore, a writ petition in W.P.No.27189 of 2015 was filed by two students, challenging the G.O.Ms.No.23, dated 19-06-2015 issued by the State of Andhra Pradesh.

5. It appears that pursuant to the interim orders passed by this Court, the writ petitioners in W.P.Nos.26478 and 27189 of 2015 already gained admissions to Medical Courses. The interim order passed by this Court on 22-09-2015, was taken up on appeal to the Supreme Court in S.L.P. (Civil) Nos.28129 to 28132 of 2015. On 30-09-2015, the Supreme Court ordered notice in the SLPs and passed an interim order making it clear that all admissions secured by the writ petitioners before this Court will be subject to the final decision in the writ petition and that no equity will be created in favour of the writ petitioners. Eventually, the SLPs were disposed of on 14-10-2015 reiterating the earlier order that no equity is created in favour of any of the parties.

6. In the meantime, the State of Telangana issued a Government Order in G.O.Ms.No.75 Health, Medical and Family Welfare (C1) Department, dated 08-09-2015 in supersession of G.O.Ms.No.65, dated 22-07-2015. By this order in G.O.Ms.No.75. the State of Telangana scrupulously followed the same sequence in which priorities were directed to be maintained by the NCC Directorate in their communication dated 23-04-2015. Since this G.O.Ms.No.75, changed the complexion of the game, persons affected by G.O.Ms.No.75, who were obviously the beneficiaries of the G.O.Ms. No.65, have come up with two writ petitions in W.P.Nos.29445 and 29471 of 2015.

7. Apart from the above five writ petitions, there is one more writ petition in W.P.No.31558 of 2015, where only one particular aspect of G.O.Ms.No.75, dated 08-09-2015 alone is under challenge, without a challenge to the G.O. in entirety. Therefore, all these writ petitions are taken up together for disposal.

8. We have heard Sri G. Vidya Sagar, learned senior counsel appearing for the writ petitioner in W.P.No.3 1558 of 2015, Sri Venkateswara Rao Gudapati, learned counsel appearing for the writ petitioners in W.P.Nos.22748, 27189 of 2015 and 22748 of 2016, Sri P. Girish Kumar, learned counsel appearing for the writ petitioners in W.P.No.29445 of 2015, Sri N. Subba Rao, learned counsel appearing for the writ petitioner in W.P.No.29471 of 2015, apart from Sri Taddi Nageswara Rao, learned Standing Counsel for Dr. NTR University of Health Sciences, the learned Government Pleaders for Medical and Health for the State of Telangana and the State of Andhra Pradesh and Sri B. Narayana Reddy, learned Assistant Solicitor General for the Central Government.

9. It is needless to point out at this stage that all the four writ petitions, the first two writ petitions challenging G.O.Ms.No.65, dated 22-07-2015 of the State of Telangana and G.O.Ms.No.23, dated 19-06-2015 of the State of Andhra Pradesh and the next two writ petitions challenging G.O.Ms.No.75, dated 08-09-2015 relate to admissions to Under Graduate Medical Courses for the Academic year 2015-16. Before these writ petitions could be taken up for final disposal, the Academic year 2016-17 opened. Once the academic year 2016-17 opened, one is candidate from the State of Andhra Pradesh has come up with W.P.No.22748 of 2016, seeking a direction to the State of Andhra Pradesh not to follow G.O.Ms.No.111 3 Health, Medical & Family Welfare (C1) department, dated 03-09-2015, which has now replaced as G.O.Ms.No.23 Higher Education (EC.A2) Department, dated 19-06-2015 for the State of Andhra Pradesh.

10. Today, the first of these writ petitions W.P.Nos.26478 of 2015 challenging G.O.Ms.No.65, dated 22-07-2015 may not survive for adjudication in view of the fact that G.O.Ms.No.65 impugned therein, has already been superseded by G.O.Ms.No.75, dated 08-09-2015. But G.O.Ms.No.75, dated 08-09-2015 itself is under challenge in two of the writ petitions. Therefore, if the challenge to G.O.Ms.No.75 is taken up for disposal first, the fate of the other writ petitions may fall in line. Therefore, we shall first take up the challenge to G.O.Ms.No.75.

11. The contention of Sri N. Subba Rao and Sri P. Girish Kumar, learned counsel for the writ petitioners in W.P.Nos.29445 and 29471 of 2015 is that the impugned Government Order G.O.Ms.No.75 seeks to place more meritorious candidates lower in the order of priority than less meritorious candidates. This contention can be best understood only if we list out Priority-II as it was reflected in the first G.O.Ms.No.65, dated 22-07-2015 and the next G.O.Ms. No.75, dated 08-09-2015, in a tabular form for easy appreciation.

G.O.Ms. No.65

G.O.Ms. No.75

Priority-II

Priority-II

a. Medal Winners in Republic Day Camp at New Delhi in any event

(a) Medal Winners in Republic Day Camp at New Delhi in any event:

i. Gold

(i) Gold

ii. Silver

(ii) Silver

iii. Bronze

(iii) Bronze

b. Medal Winners in Para Jumps/Skydiving/Mountaineering/Sailing/Para Sailing/Rafting/Canoeing & Kayaking/Shooting Competitions/Edquestrian conducted by the respective Federations/Associations at National Level/NCC Games at National Level.

(b) NCC Cadets participating at Republic Day Camp at New Delhi.

i. Gold

ii. Silver

iii. Bronze

c. Medal Winners in All India TSC/NSC/VSC for Republic Day Banner Competition.

(c) Medal Winners in All India TSC/NSC/VSC for Republic Day Banner Competition:-

i. Gold

(i) Gold

ii. Silver

(ii) Silver

iii. Bronze

(iii) Bronze

d. Participants in All India TSC/NSC/VSC.

(d) Participants in All India TSC/NSC/VSC.

e. NCC Cadets participates at Republic Day Camp at New Delhi.

(e) Medal Winners in Para Jumps/Skydiving/Mountaineering/Sailing/Para Sailing/Rafting/Canoeing & Kayaking/Shooting Competitions/Edquestrian conducted by the respective Federations/Associations at National Level NCC Games at National Level.

(i) Gold

(ii) Silver

(iii) Bronze

f. Participants of Para Jumps/Skydiving/Mountaineering/Sailing/Para Sailing/Rafting/Canoeing & Kayaking/Shooting Competitions/Edquestrian conducted by the respective Federations/Associations at National Level/NCC Games at National Level.

(f) Participants of Para Jumps/Skydiving. Mountaineering/Sailing/Para Sailing/

Rafting Canoeing & Kayaking/Shooting Competitions Equestrian conducted by the respective Federations/Associations at National Level NCC Games at National Level.

g. National Integration Camp at Andaman & Nicobar Islands, Leh, NER and Srinagar.

(g) National Integration Camp at Andaman & Nicobar Islands, Leh, NER and Srinagar.

(Priority within selected cadets will be given in order of seniority of certificates i.e. C, B and A certificate holders)

(Priority within selected cadets will be given in order of seniority of certificates i.e. C, B and certificate holders)

12. A comparison of Priority-II under both the Government Orders would show that the Medal Winners in All India TSC/NSC/VSC for Republic Day Banner Competition and Medal Winners in specific events such as Para Jumps etc., are placed in Priority-II (b) and (c) in the first Government Order, but are placed in Priority-II (c) and (e) in the next Government order. A mere participation in Republic Day Camp at New Delhi has been placed at Priority-II (b) in G.O.Ms.No.75. It has actually been upgraded from priority II(e) II (b) by G.O.Ms/No.75.

13. The contention of the learned counsel for the petitioners in W.P.Nos.29445 ai 29471 of 2015 is that persons who participate in National events and who secure medals by exhibiting their talents and coming o successful, cannot be placed below tho who merely participate in an event. Such a placement, according to the learned counsel for the petitioners, would result in encouragement of candidates who are less meritorious than candidates who are more meritorious.

14. In response to the aforesaid contentions of the learned counsel for the petitioners, the NCC Directorate has come up with a counter affidavit. In paragraph 4 of the counter affidavit, the NCC Directorate stated as follows:

"..... In reply to para 3 to 10 of the affidavit, I state that a draft copy for amendment of GO was forwarded to Health, Medical and Family Welfare Department of Govt of Telangana State on 23 April, 2015 (copies filed as material paper). Since there are some anomalies in the GO compared to the draft forwarded vide this Date on 23 Apr 2015, a letter was forwarded to Health, Medical and Family Welfare Departments of Govt of Telangana on 17 Aug 2015 to rectify the same (copy filed as material paper). It was also mentioned in the above letter that the Republic Day Camp (RDC) at New Delhi is the most prestigious camp for NCC cadets, which includes Prime Minister's Rally, where the Cadets get an opportunity to interact with the Prime Minister. The Prime Minister's Rally is also attended by Army, Navy and Air Force Chiefs. The TSC/NSC/VSC are of comparatively lesser duration and low in priority as compared to RDC. Accordingly Govt of Telangana has issued G.O.Ms.No.75, dated 22 Jul 2015

(Copy filed as material paper)... "

15. The contention that persons who participate in National Events and win medals are normally taken to be more meritorious than people who merely participate in events, is based upon a commonsense approach. But for the counter affidavit filed by the HCC Directorate, we would have no difficulty in accepting such a contention.

16. But in Para 4 of the counter affidavit, which we have extracted above, the NCC Directorate has given the reasons for upgrading the participants at the Republic Day Camp, over and above those medals winners in national events. In other words, a specialist body has come up with a probable explanation for adopting a particular order of priority.

17. It is too well settled that the jurisdiction of this Court under Article 226 of the Constitution of India is not on the actual decision but on the decision making process. If the decision making process adopted by the respondents appears to be logical, with a particular set of reasons, the validity of such reasons cannot be questioned in our jurisdiction except when those reasons are arbitrary, unreasonable or vitiated by malafides. We do not find any of those things in the explanation offered by the NCC Directorate in Para 4 of their counter affidavit. Therefore, the challenge made to G.O.Ms. No.75 dated 08-09-2015 should go. Accordingly, the first prayer made in W.P. No.29445 of 2015 is rejected and W.P.No.29471 of 2015 is dismissed and G.O.Ms. No.75, dated 08-09-2015 is held to be valid.

18. Once the challenge to G.O.Ms.No.75, dated 08-09-2015 fails, nothing survives for adjudication in W.P.No.26478 of 2015, which challenges G.O.Ms.No.65, dated 22-07-2015. Since G.O.Ms.No.65 has already been superseded by G.O.Ms.No.75, which has now been upheld, W.P.No.26478 of 2015 is dismissed as having become infructuous in view of the supersession of the order impugned therein by a fresh Government Order.

19. In W.P.No.27189 of 2015, the petitioners came up with a challenge to G.O.Ms.No.23 Higher Education (EC.A2) Department dated 19-06-2015 issued by the State of Andhra Pradesh. As we have pointed out earlier, this G.O.Ms.No.23 of the State of Andhra Pradesh was in tune with the G.O.Ms.No.65, dated 22-07-2015 issued by the State of Telangana.

20. After the filing of W.P.No.27189 of 2015, the State of Andhra Pradesh issued another order in G.O.Ms.No.111 Health, Medical & Family Welfare (C1) Department, dated 03-09-2015. Therefore, the petitioners in W.P.No.27189 of 2015 sought an amendment of the prayer. The amendment is allowed and today the challenge in W.P.No.27189 of 2015 is to G.O.Ms.No. 111, dated 03-09-2015.

21. As a result, we have two writ petitions, one in W.P.No.27189 of 2015 and another in W.P.No.22748 of 2016, challenging G.O.Ms.No.111, dated 03-09-2015 of the State of Andhra Pradesh, with the first writ petition relating to the previous

academic year and the next writ petition relating to the present academic year.

22. The short ground on which G.O.Ms. No.111, dated 03-09-2015 is challenged in these writ petitions is that the order of priority indicated in this Government Order is not in tune with the recommendation made by the NCC Directorate.

23. This argument has to be sustained for the simple reason that by a communication dated 23-04-2015, the NCC Directorate actually forwarded a draft order that would indicate the order of priorities. The order of priorities indicated in the communication of the NCC Directorate dated 23-04-2015, is different from the order of priorities indicated in G.O.Ms.No. 111.

24. As we have pointed out earlier, the decision of the NCC Directorate, which is an expert body and which alone is capable of understanding the rules of the game has to be given due weightage, in so far as priorities among persons who hold NCC certificates are concerned. The priorities to be assigned to each one of those categories, depends upon the nature of training received by the candidates. Based upon the nature of training, the NCC Directorate had forwarded their recommendation dated 23-04-2015. Unless the Government have had enough material to show that the priorities arranged by NCC Directorate for reservation of seats to NCC candidates, is wholly arbitrary, there is no reason for the Government to deviate from the order prescribed by the specialised agency.

25. More over, as on date, the admission to professional courses in both the States are taking place under Section 95 of Act 6 of 2014 in common. Therefore, both the States cannot adopt different yardsticks, in the matter of priorities in so far as the reservation for NCC candidates is concerned. If both the States adopt different priorities, even when the counselling is held in common, it would result in chaotic conditions. "Therefore, the Government order G.O. Ms. No.111, dated 03-09-2015 is liable to be set aside. Accordingly, W.P. Nos. 27189 of 2015 and 22748 of 2016 are allowed and G.O.Ms.No.111, dated 03-09-2015 is set aside. The Government of Andhra Pradesh shall adopt the policy as indicated by the NCC Directorate in their communication dated 23-04-2015 so that the policy is in tune with the G.O.Ms.No.75 dated 08-09-2015 adopted by the State of Telangana.

26. However, we make it clear that the allowing of W.P.No.27189 of 2015, shall not result in the admissions already made for the previous academic year 2015-16 being set at naught. Fortunately, the admissions for the current academic year under the quota reserved for NCC has not commenced yet. Therefore, the State shall immediately take steps to bring their policy regarding the priorities in tune with the communication of the NCC Directorate dated 23-04-2015 and G.O.Ms.No.75, dated 08-09-2015 of the State of Telangana.

27. That leaves us with only one more writ petition W.P.No.31558 of 2015. As we have pointed out earlier, this writ petition does not challenge the validity of G.O. Ms.No.75 in entirety. The focus in this writ petition is that under priority-II (b),

persons who participate in the Republic Day Camp at New Delhi as Guest Cadets are not lobe included. The second part of the prayer in W.P.No.29445 of 2015 is also to the same effect.

28. Unfortunately, it appears that all cadets in whatever capacity they participate in the Republic Day Camp at New Delhi, are treated alike and they are now included under priority-II (b). Therefore, it is necessary to see if there is a distinction between a candidate who undergoes training for participation in the Republic Day Camp and a candidate who participates as a guest cadet.

29. Specific averments have been made in the affidavit in support of the writ petition to the effect that persons recommended by eminent personalities, are included as guest cadets to participate in the Republic Day Parade and that too without any kind of training. These persons get included in priority-II (b) by the sheer influence that they have in the society.

30. In response to such a positive averment in the affidavit in support of the writ petition, the Deputy Director General of NCC Directorate has come up with a very strange but truthful additional counter affidavit. In paragraph 4 of his additional counter, sworn to on 21-12-2015 and filed before this Court, the deponent has confirmed that some students are included as guest cadets on the basis of recommendations of eminent personalities, Government Officials etc. What is shocking is the fact that no training is imparted to these cadets who are enlisted to participate as guest cadets. It would be useful to extract the relevant portion of paragraph 4 of the additional counter affidavit filed by the NCC Directorate reads as follows:

" I further submit that in so far as existing Rules/Regulations/Circulars on RDC "Guest Cadets are concerned, there are no explicit written instructions exist on the subject. However, the existing procedure being adhered to by all NCC Directorates is outlined below:-

(a) Recommendations for detailing cadets as "Guest Cadet" are received from eminent personalities, Govt. Officials etc.,

(b) A consolidated list of cadets is forwarded to Directorate General NCC, Ministry of Defence, New Delhi, which allots vacancies to each State Directorate on a pro-rata basis and earmarks specific cadets in the category of "Guest Cadets".

(c) The cadets approved by Directorate General NCC are dispatched to New Delhi along with the regular contingent that represents the States of Andhra Pradesh and Telangana.

(d) The certificate issued to Guest Cadets is nearly similar to that issued to other cadets who Have participated in the Republic Day Camp, the difference being in the effacement "Guest Cadet" being made on the certificate. This certificate is issued centrally by the Directorate General of NCC, Ministry of Defence.

(e) No training is imparted to the cadets detailed to participate as "Guest Cadets"

(f) The cadets who are detailed to participate in Republic Day Camp at New Delhi as "Guest Cadet" do not participate in any competition/test/parade etc at New Delhi.

(g) These cadets get participation certificate as given to other cadets who are selected after vigorous training.

(h) These cadets can claim all benefits which are given to Republic Day Camp participant cadet by the State/Central Govt "

31. The statement made in Para 4 (a) and (e) are sufficient for us to hold that the category of Guest Cadets is nothing but a farce and a back door created for the purpose of including some candidates within the priority list, to enable them to get a seat in professional courses. As a matter fact, the communication dated 23-04-2015 sent by the NCC Directorate to the State Governments as well as the draft Government Order that they enclosed to the said communication, do not speak of any Guest Cadet. We do not know how such a new category was invented and allowed to sneak into priority-II (b).

32. Once the NCC Directorate has attempted to justify the top priority given to mere participants in the Republic Day Camp at New Delhi over and above medal winners of events, it is not possible for them at the same breadth to include Guest Cadets within the priority II (b) despite those candidates not receiving any kind of training at the hands of the NCC Directorate except at the hands of eminent personalities. Therefore, the inclusion of Guest Cadets within the category indicated in priority-II (b) cannot be approved and W.P.No.31558 of 2015 deserves to be allowed.

33. But that is not the end of the issue. As the natural consequence of our allowing W.P.No.31558 of 2015 and the second part of the prayer in W.P.No.29445 of 2015, the writ petitioners should naturally get a seat in the college of their choice, by replacing the respondents 5, 6 or 7. It appears that the 6th respondent in W.P.No.31558 of 2015 has secured admission in Osmania University and the petitioner could secure admission only in Kakateeya Medical College, Warangal. Therefore, in normal circumstances, the petitioner should get a seat in Osmania Medical College and the 6th respondent should be sent to the place where the petitioner is undergoing the course.

34. But there are two practical impediments. The first is that the case relates to the academic year 2015-16. Both the candidates viz., the writ petitioner as well as the 6th respondent have completed one year of the course of study. Any inter change will have to be approved by the Medical Council of India. The Medical Council of India is not a party to the writ petition. Therefore, it may not be possible for us actually to grant any relief to the writ petitioners, as it would result in upsetting certain state of things.

35. In cases of this nature where the petitioners succeed on merits, but are unable to get a relief, it is possible for the Court to award compensation. But in

the given circumstances where the petitioners are already undergoing a course, and also in the background of the fact that the Government order on the basis of which certain admissions were made, has come to be set at naught by this Court, we do not think it appropriate in [the present case to award any compensation. However, we make it clear that for admission to under graduate medical courses for the current academic year 2016-17 under the quota reserved for NCC candidates, the candidates holding Guest Cadet Certificate shall not be treated as coming under priority-II (b) of the Government Order G.O.Ms.No.75, dated 08-09-2015.

36. With the above observations, W.P.Nos.27189 of 2015, 31558 of 2015 and 22748 of 2016 are allowed, W.P.No.26478 of 2015 is dismissed as infructuous and W.P.Nos.29445 and 29471 of 2015 are dismissed. Asa sequel thereto, miscellaneous petitions pending if any shall stand closed.