

(1994) 04 AP CK 0030

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18053 of 1993

R. Sham Singh

APPELLANT

Vs

Convenor EAMCET - 1993, Andhra University College of
Engineering and another

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of
Capitation Fee) Act, 1983 — Section 15, 3

Citation : AIR 1994 AP 308 : (1994) 2 AnWR 14

Hon'ble Judges : P. Venkatarama Reddi, J

Bench : Single Bench

**Advocate : G. Vedanta Rao, for the Appellant; Govt. Pleader for Higher
Education, for the Respondent**

Judgement

P. Venkatarama Reddi, J. 1. The petitioner who participated in the EAMCET-1993 with Hall Ticket No. 57859, has filed this writ petition seeking for a declaration that the petitioner is eligible for consideration under Sports quota and to issue consequential direction directing the respondents to consider the petitioner for admission into B.E, Course for the academic year 1993-94.

2. The petitioner is a Scheduled Caste person. The petitioner represented India at Asian Junior Gymnastics Championship, New Delhi in the year 1992. The petitioner claimed a seat under the Sports quota. If the petitioner is eligible to be considered under the Sports quota, it is not in dispute that he would have got the selection, if he was otherwise eligible. He would have got preference in view of his participation in the Inter-national Spoils Events. But the respondents excluded the petitioner from consideration under the Sports quota for the reason that he failed to get the minimum qualifying marks of 30%. The case of the petitioner is that he being a Scheduled Caste person, is entitled to the benefit of relaxation of marks and his case under the Sports quota should have been considered "without any reference to the criteria of minimum qualifying marks,

3. To resolve this controversy, it is necessary to refer to the relevant Rules and Instructions. The State Government issued G.O.Ms. No. 184 Education (EC.2) Department dated 20-8-1993 framing Rules under S. 3 read with S. 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. The previous Rules on the subject contained in G.O.Ms. No. 62 Education (Rules) Department, dated 10-2-89 entitled the Andhra Pradesh Professional Educational Institutions (Regulation of Admission into Undergraduate Professional Courses through Common Entrance Test) Rules 1989" were superseded by G.O.Ms. No. 183. Thus, comprehensive rules were framed in lieu of the previous rules regulating admissions into First Year Engineering, Agricultural and Medical Courses in the State of Andhra Pradesh. Rule 5(9) is as follows:

"The qualifying marks in the Entrance Test for general category of candidates shall be 30% of the aggregate marks in three subjects. However, there shall be no minimum qualifying marks in respect of candidates belonging to the Scheduled Castes and Scheduled Tribes".

Under the Rules, 15% of the seats in each course in each institution is reserved for the candidates belonging to Scheduled Castes. Half per cent (0.5%) of the seats are reserved in each branch of an institution except medical and dental colleges for the candidates having proficiency in games and sports. The priorities to be adopted for selecting the candidates from the sports quota are laid down in G.O.Ms. No. 192 dated 26-8-1993.

4. A plain reading of Rule 5(9) would make it clear that the criterion of minimum qualifying marks shall not be applied to the candidates belonging to Scheduled Castes and Scheduled Tribes.

5. The stand taken by the learned counsel for the respondents is that the waiver of the requirement as to minimum qualifying marks in relation to Scheduled Caste candidates will hold good only if the candidate concerned comes" within the range of 15% reservation prescribed for Scheduled Castes. According to the respondents, if a Scheduled Caste candidate does not get seat from out of the 15% seats allocated, such candidate should comply with the requirement of minimum percentage of marks if he wants to compete in some other category, such as N.C.C, Ex-servicemen, etc. It is therefore contended by the learned Standing Counsel for the 1st respondent as well as" the learned Govt. Pleader for Higher Education that the petitioner who has got less than the minimum qualifying marks prescribed, has no locus stand! to lay his claim to a seat under Sports quota. I am unable to agree with this contention of the respondents. Considering the object and intendment of the Rule, the Rule cannot be construed in a restricted manner as suggested by the respondents" counsel. The Rule which is meant to advance the educational interests of the Scheduled Castes has to be construed liberally in favour of the Scheduled Caste candidates and if two interpretations are possible, I would prefer the interpretation which advances the *raison d'etre* for the Rule. The idea being that Scheduled Caste candidate should

not suffer any handicap on account of not getting the minimum qualifying marks, it does not matter whether the Scheduled Caste candidate lays his claim under 15% quota or some other quota. As already noted, the Rule is broadly worded and the plain language of the Rule does not admit of the construction sought to be placed by the respondents. If the State Government intended to confine the applicability of the second part of Rule 5(9) only to the Scheduled Caste candidates falling within the purview of 15% reservations, the rule should have been more specific and clear. If the interpretation advocated by the learned Standing Counsel for the respondents has to be accepted, one has to read certain words into Rule 5(9) which construction is not ordinarily permitted. Faced with this situation, the learned Standing Counsel Mr. Harinath has relied upon Instruction No. VII of the Instructions Booklet issued by the Convenor of EAMCET-93, which reads as follows:

"VII. Qualifying marks for EAMCET-93:

The qualifying percentage of marks in the Entrance Test is 30% of the aggregate marks in the three subjects, Mathematics, Physics and Chemistry (i.e., 45 marks out of total 150 marks).

However, for candidates belonging to Scheduled Castes or Scheduled Tribes, no minimum qualifying percentage of marks is prescribed. But their admission will be limited to the extent of the seats reserved for such S.C./S.T. candidates. (Vide G.O.Ms. No. 179 LEN&TE dated 6-6-1986)."

The learned Standing Counsel has placed reliance on the last sentence of Instruction No. VII. But it is to be noted that with the promulgation of comprehensive Rules by G.O.Ms. No. 184 dated 20-8-1993, the previous Rules on the subject including the Rules of 1989 stood superseded or repealed expressly or by necessary implication. Hence, the reference to G.O.Ms. No. 179 dated 6-6-1986 in the Instructions Booklet seems to be based on a misconception that the Rules in that G.O. stills hold the field. It cannot be disputed that the instructions compiled by the Convenor of EAMCET-93 for the guidance of the students cannot override the statutory rules on the subject and if there is a conflict between the instructions and the statutory rules, the rules should prevail. In view of this legal position, the learned-Standing Counsel had to fall back upon Rule 6(a) of the Rules framed in G.O.Ms. No. 184 dated 20-8-93.. Rule 6 deals with preparation of merit list and assigning ranking. It provides preparation of (a) Statewise common merit list; (b) Region-wise common merit list; (c) Minority community merit list; (d) Castewise common merit list; and (e) merit list for other categories of reservation. Rule 5(e) dealing with the last category, says : "There shall be separate merit lists for other categories of reservations mentioned under sub-rule (4) of Rule8 -- Statewise and Regionwise. On the basis of this Rule, it is argued that the criteria of eligibility applicable to the fourth category need not be the same for the fifth category and that a Scheduled Caste candidate if he wants to claim the benefit of Rule 5(9), he should do so only when he is laying claim against the fourth category. In other

words, it is contended that a Scheduled Caste candidate cannot claim double benefit of availing relaxed eligibility criteria-- both against 15% quota and against the other categories open to other castes and communities also. It is difficult to accept this contention on the basis of Rule 6(e). Rule 6 only lays down the manner of preparation of merit list and it has no bearing on the scope and ambit of Rule 5(9). By virtue of categorisation for the purpose of preparation of merit list, it cannot be necessarily inferred that the Scheduled Caste candidate cannot claim the benefit of Rule 5(9) against the quota other than 15% reserved for Scheduled Castes.

6. The learned Standing Counsel Mr. Harinath then contended that the last portion of Instruction No. VII has not been challenged and the petitioner has sought for admission subject to these instructions only. I do not think that the alleged failure to challenge specifically the said instruction or the fact that the petitioner was fully aware of the instruction is not fatal to the maintainability of the writ petition. It is axiomatic that the instructions are only subordinate to Rules and the respondents are as much bound by the rules. When a candidate is claiming the benefit of Rule 5(9) and at the same time challenging the action of the 1st respondent in denying the seat on the ground that Rule 5(9) was not applicable, it amounts to assailing the legality of the last portion of Instruction No. 7. The absence of a specific prayer is too technical a matter to be put against the petitioner. In the view I have taken, the denial of the seat to the petitioner under Sports quota must be held to be illegal and his claim was wrongly overlooked on an incorrect interpretation of the Rules and the writ petition has to be allowed.

7. It is brought to my notice by the learned Standing Counsel, Mr. Harinath that the admissions are closed and the seats under the Sports quota have been filled up and if an additional seat has to be created to accommodate the petitioner, the Government has to accord the necessary sanction. In the circumstances of the case, I consider it just and proper to direct that the petitioner shall be admitted into the First Year Engineering Course against a vacant seat if any available by reason of the seat not having been filled or a candidate having left the institution. In case there is no vacant seat" against which the petitioner could be accommodated, I direct the 1st respondent to send up a report to the 2nd respondent (Secretary, Education Department) expeditiously and on receipt of such report, the Government shall sanction one additional seat in the First Year Engineering Course in one of the institutions in the State. This judgment shall be implemented by the 1st respondent within 15 days from the date of receipt of this order.

The writ petition is accordingly allowed. No costs.

8. Petition allowed.