
(2003) 06 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16466 of 2002 and CC No. 1442 of 2002

Rapolu Satheesh

APPELLANT

Vs

NTR University of Health Sciences and Another

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 21

Citation : (2003) 5 ALD 320 : (2003) 6 ALT 563

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Ratna Reddy, for the Appellant; Y. Padmavathi and B. Narasimha Sarma, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner appeared in the Common Entrance Examination held for selection of candidates for admission into Medical, Engineering and Agricultural Courses in the year 2001 and secured the rank of 5123. He belongs to Scheduled Caste (SC) "B" category. On the basis of his rank, he was selected for admission against a free seat in 1st year M.B.B.S., in Alluru Seetha Rama Raju Medical College, at Eluru. He joined the same on payment of Rs. 1,000/-. Rest of the fee was to be compensated by the Government since the petitioner is a SC candidate. He was admitted in that college in November, 2001 and continued his studies till April, 2002.

2. The Government of India accorded permission for establishment of MNR Medical College at Sangareddy, Medak District, the 2nd respondent herein, for the same academic year. The Convenor conducted the last phase of counselling on 16-4-2002. Candidates who have already been admitted to other colleges were also permitted to participate in the counselling held on 16-4-2002, for the purpose of allotment of candidates to the 2nd respondent college. Since the petitioner felt that the college where he was admitted is far away from his native place, and was unable to bear the expenses, he attended the counselling held on

16-4-2002.

3. The petitioner was selected for admission into 1st year M.B.B.S., Course in the 2nd respondent college in the counselling held on 16-4-2002, on the basis of his rank. On being selected, he was issued an application form and was required to submit necessary documents. He was also subjected to medical examination on 24-4-2002. It is his case that when he approached the 2nd respondent college on 24-4-2002 together with necessary documents and medical certificate, the college insisted on payment of Rs. 40,000/- towards admission fee. It is the case of the petitioner that he was under the impression that he would be admitted on payment of the same fee as he paid when he was admitted in the Medical College, at Eluru. The petitioner submits that had he known that he would not be admitted in the 2nd respondent college unless he pays Rs. 40,000/-, he could not have got his admission in the former college cancelled.

4. The petitioner alleges that when he complained this matter to the N.T.R. University of Health Sciences, the 1st respondent herein, instead of ensuring that he is admitted, they have accorded permission to the 2nd respondent-college enabling them to admit candidates without reference to his social status or rank. With these pleadings, he has filed this writ petition, seeking a Writ of Mandamus, declaring the action of the 2nd respondent in depriving him of the seat in 1st year M.B.B.S., Course as illegal, arbitrary and violative of Articles 14, 15 and 21 of the Constitution of India.

5. The 1st respondent-University filed a counter-affidavit admitting the factum of the petitioner having been selected in the last phase of counselling for admission into 1st year M.B.B.S, Course in the 2nd respondent college. They plead that the 2nd respondent had intimated to them through letter dated 26-4-2002 that four candidates, including the petitioner, did not report for admission and accordingly permission was accorded to the 2nd respondent to fill the vacant seats, so that they do not go waste.

6. The 2nd respondent-college filed counter-affidavit stating that though the petitioner was selected for admission in their college, he did not join it. As regards the allegation of payment of Rs. 40,000/- towards admission fee, it is their case that they have made clear to all the selected candidates that they shall have to pay the registration fee and special fee on the date of selection. According to them, they have fixed Special Fee of Rs. 30,000/- comprising Rs. 10,000/-for library development fee, Rs. 5,000/- for sports facilities, Rs. 5,000/-for cultural activity and Rs. 10,000/- under Rural Medical Health Programme. In addition to the special fee of Rs. 30,000/-, they have also required the candidates to pay Rs. 10,000/-towards refundable deposit. The 2nd respondent contends that the petitioner was given time till 24-4-2002 along with the other candidates to pay the fee and since they did not turn up, they sought permission of the 1st respondent for filling of the vacant seats and on permission being accorded by the 1st respondent, admitted other candidates.

7. When the writ petition came up for hearing for admission on 9-9-2002, the following order was passed:

"Prima facie, the liability to pay tuition fee of a scheduled caste candidate selected for admission will be that of the Government. It is stated that when the petitioner was admitted in one of the private Medical Colleges, namely, Alluru Seetharama Raju College at Eluru, he was charged only Rs. 1,000/- and when the petitioner was allotted a seat at 2nd respondent college in the counselling held on 16-4-2002, the 2nd respondent is demanding an amount of Rs. 40,000/-. The same does not appear to be in consonance with the relevant provisions.

Accordingly, there shall be interim direction to the respondents to admit the petitioner forthwith, on his depositing Rs. 1,000/-(Rupees One thousand only). The 2nd respondent shall be entitled to claim the tuition fee payable by the petitioner from the Government."

8. The respondents have filed vacate stay petitions for vacating the above order. On hearing the same, an order was passed on 22-4-2003 for hearing the writ petition itself. Complaining that the orders of this Court dated 9-9-2002 was not complied with the petitioner filed Contempt Case No. 1442 of 2002. The writ petition as well as the Contempt Case was heard together.

9. Sri M. Ratna Reddy, learned Counsel for the petitioner, submits that the petitioner was selected and admitted in the Medical College at Eluru, on the basis of his rank, against a seat reserved for SC "B" candidate. Since the petitioner is a native of Nalgonda District and since he was finding it difficult to study at Eluru, which is at a distant place, he has participated in the counselling and came to be selected in the 2nd respondent college, which is in Medak District. The learned Counsel submits that refusing to admit the petitioner for non-payment of Rs. 40,000/- was opposed to the relevant rules, particularly, when the petitioner was admitted in the Medical College at Eluru only on payment of Rs. 1,000/-. He submits that the 1st respondent has accorded permission to the 2nd respondent for admitting the candidates against the reserved vacancies, that too, by relaxing the rule of merit.

10. Smt Padmavathi, learned Standing Counsel for the 1st respondent-University, submits that though the petitioner was selected for admission into the 2nd respondent college, he did not join within the stipulated time. According to her, had the petitioner approached the 1st respondent with the complaint, the University would have ensured that no injustice is done to the petitioner.

11. Sri B. Narasimha Sarma, learned Standing Counsel for the 2nd respondent-College, submits that his client was prepared to admit the petitioner on complying with the necessary condition as regards the payment of fee of Rs. 40,000/-. He submits that the college has stipulated Rs. 30,000/- as special fee and Rs. 10,000/- as refundable deposit and the same is payable by all the candidates. In this regard, the learned Counsel relies upon the judgment of this

Court in C. Rajanidhar and Others Vs. Government of India and Others, , and submits that it is permissible for his client to charge the same. The candidate who has paid the said fee of Rs. 40,000/-was admitted in the college.

12. The entitlement of the petitioner to be admitted to the 1st year M.B.B.S., course on the basis of his rank is not in dispute. He has been selected and admitted in the 1st year M.B.B.S., Course at a Medical College at Eluru. He was admitted on payment of Rs. 1,000/- and reimbursement of the fee payable by him by the Government was in process. He has continued his studies for five months i.e., from November, 2001 to April, 2002. As observed earlier, he belongs to SC "B" category. The father of the petitioner is a labourer. He hails from Nalgonda District.

13. The 2nd respondent was accorded permission, to establish a Medical College at Medak District, at a latter stage. The Convenor of 1st respondent-University had undertaken the last phase of counselling on 16-4-2002. Since the petitioner was finding it difficult to study at a distant place at Eluru on account of the financial conditions, he has chosen to attend the counselling to try whether he will be in a position to get admission at the 2nd respondent college, which is nearby to his place of residence. He came to be selected. On being selected, he got his admission in the Medical College at Eluru cancelled. He has undergone medical check up specially arranged by the 1st respondent. Ultimately on 24-4-2002, when he approached the 2nd respondent for admission, he was informed that he has to pay, Rs. 40,000/-. Since the petitioner was not in a position to pay the amount, on 26-4-2002, the 2nd respondent addressed a letter to the 1st respondent seeking permission to fill the vacant seats by other candidates. On permission having accorded by the 1st respondent, the 2nd respondent has filled the seats with the other candidates.

14. A perusal of the list of candidates furnished by the 2nd respondent discloses that the seat earmarked for SC candidate and allotted to the petitioner, was filled up by a candidate who does not belong to SC community, nor holds a rank superior to the rank of the petitioner. The only reason for not admitting the petitioner is that he has not paid the fee of Rs. 40,000/-.

15. The social status of the petitioner is not in dispute. In the State of Andhra Pradesh, not only the seats are reserved in educational institutions including Medical Colleges in favour of the candidates belonging to SC category, but provisions are made for reimbursement of their fee by the Government, if they are admitted in Private Medical Colleges. It was for this reason that the petitioner was admitted in the Medical College at Eluru, only on payment of Rs. 1,000/-.

16. There is nothing on record to show that either the 1st respondent while conducting the counselling, or the 2nd respondent while issuing the application form, have informed the petitioner that even the SC candidates have to deposit the fee of Rs. 40,000/-. Had such information been furnished, the question of the petitioner seeking admission in the 2nd respondent college, to save certain living

expenses, does not arise. Even during the course of hearing of the writ petition, the 1st respondent is not able to place before this Court the actual fee structure as approved by the Government, the amount, which is required to be paid by a SC candidate, and other relevant particulars.

17. Whether one chooses to call it as indifference or negligence, that crept at various levels, the same has resulted in deprivation of admission to a SC candidate and thereby the very Constitutional mandate is subverted. One hardly finds any logic as to how the petitioner was admitted in the first year M.B.B.S., Course in a private Medical College at Eluru, on payment of Rs. 1,000/-, and was permitted to study up to four months and as to how he was denied even the entry in the 2nd respondent college, on the ground that he did not pay Rs. 40,000/-. If at all anything, it wholly discloses the lack of clarity and perfection in the counselling as well as stipulation of fee structure. The petitioner became the victim of the very vice, which the Constitution intended to protect him from.

18. At least when the 2nd respondent approached it seeking permission to fill the seat earmarked for the petitioner by another candidate, obviously without reference to the Rule of Reservation, the 1st respondent ought to have been very careful and verified as to how and under what circumstances a SC candidate was deprived of a seat. The pleadings do not disclose that any attempt was made to fill the seat with another SC candidate. The cumulative effect is that the seat in the 1st year M.B.B.S., Course reserved for SC candidate has been filled up by a non-SC candidate, without reference to the merit in the entrance examination at all.

19. When this Court was in search of the remedy for the petitioner, having regard to the injustice to which the petitioner was subjected to, it has emerged that one seat in the 1st year M.B.B.S., Course for the academic year 2002-2003 in the 2nd respondent college is vacant, since one of the candidates has left it. An affidavit to this effect is filed. When the proposal as to whether the petitioner can be directed to be admitted against such a seat was mooted, the learned Standing Counsel for the 1st respondent opposed the same, placing reliance upon the judgment of the Supreme Court in Medical Council of India Vs. Madhu Singh and Others, .

20. In the case before the Supreme Court, the Patna High Court directed that candidates be admitted into 1st year M.B.B.S., Course, 18 months after commencement of the course. The Hon"ble Supreme Court considered two aspects, which arose in that case, viz., permissibility of midstream admissions and telescoping the seat earmarked for one academic year into the subsequent academic year. It was held that it is impermissible to direct the admission of a candidate in the middle of course; as well as to telescope the seat meant for one academic year to another. Such a contingency does not arise in this case.

21. The admission of the petitioner is for the 1st year M.B.B.S., Course. It is not a case where a candidate has to be inducted into the course for the first time. He

has already been admitted in November, 2001 and continued studies till April, 2002. But for the temptation to join a college nearby his residence, that too, on financial grounds, he would have continued his studies in the college where he was initially admitted. The petitioner had already undergone instructions for more than 4 months. The 1st year M.B.B.S., Course for 2002-2003 is reported to have commenced just about 2 months back. From the point of view of instructions and delay, the case on hand is not at all comparable to the one before the Supreme Court. As a matter of fact, the petitioner does not suffer the loss of instructions for two months, since he has already undergone instructions, for the same course, for a period exceeding four months. As a matter of fact, the petitioner will be forced to lose one academic year.

22. The concept of telescoping the seat of one year into another is found fault with, on the ground that it would result in exceeding the sanctioned strength. Neither the telescoping nor the crossing of sanctioned limit would arise in the present case. One seat for the 1st year M.B.B.S., Course has remained vacant in the 2nd respondent college for the academic year 2002-03. If the petitioner is admitted against the same, it does not result either in telescoping or crossing the limit of sanctioned strength. The 2nd respondent does not exceed its sanctioned strength even if the petitioner is admitted. Therefore, the admission of the petitioner against the existing vacancy in the 1st year M.B.B.S., Course in the 2nd respondent college does not, in any way, violate the judgment of the Supreme Court. On the other hand, refusal to admit the petitioner on any other ground would only amount to perpetuating a wrong to a candidate belonging to SC community on the ground of his poverty and subverting the very Constitutional mandate. Further, the seat has to go waste.

23. This Court is not impressed by the arguments of the learned Standing Counsel that the petitioner is not qualified since he did not undergo the entrance test for the academic year 2002-2003. With eyes wide open, the University accorded permission for filling up 4 seats, including that of the petitioner, with candidates who did not appear in the entrance test at all.

24. So far as the fee structure is concerned, there is any amount of uncertainty as regards the same. A close examination of the decision in C. Rajanidhar case (supra), cited by the learned Standing Counsel for the 2nd respondent, it is evident that the fee to be levied from a candidate belonging to SC community was not at all considered therein. Therefore, it is not possible at this stage, to decide the exact amount of fee that the 2nd respondent is entitled to levy from the petitioner. Inasmuch the petitioner was already admitted against the same course on payment of Rs. 1,000/-, there is no reason to deviate from the same in a different college. The 2nd respondent can claim the fee payable by the petitioner from the Government to the extent permitted under the various Rules. If the petitioner is under obligation to pay any further fee, as may be certified by the competent authority, he may be required to pay the same. However, he cannot be deprived of his studies in the meanwhile.

25. Under these circumstances, the writ petition is allowed, directing the 2nd respondent to admit the petitioner forthwith against the vacant seat in the 1st year M.B.B.S., Course for the academic year 2002-2003, on payment of Rs. 1,000/- by the petitioner. So far as the fee reimbursable by the Government or payable by the petitioner is concerned, it shall be open to the 2nd respondent to take steps in that regard and intimate the developments thereof to the petitioner. If ultimately, it emerges that the 2nd respondent is entitled to collect any amount from the petitioner, over and above the reimbursement made by the Government, the 2nd respondent shall intimate the same to the petitioner, giving reasonable opportunity to him to pay the same. There shall be no order as to costs.

Contempt Case No. 1442 of 2002:

26. Since the writ petition is finally disposed of, the Contempt Case is closed.