
(2013) 12 AP CK 0075
In the Andhra Pradesh High Court
Case No : W.A. No. 1539 of 2013

Rohith P. Reddy

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 27-12-2013

Acts Referred:

Citation : (2014) 2 ALD 617 : (2014) 3 ALT 733

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : K. Vivek Reddy, for the Appellant; A. Prabhakar Rao, G.P. for Medical Health and Family Welfare, Sri N. Ashwani Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kumar, J.—Article 371D of the Constitution empowers the President of India to make special provisions for the State of Andhra Pradesh in the matters of public employment and education. In exercise thereof, the President promulgated the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (for brevity, "the Presidential Order"). Paragraph 6 of the Presidential Order provides for local reservation in Statewide universities and states that admission to 85% of the available seats in every course of study offered by a Statewide university shall be in favour of and allocated amongst local candidates in relation to the local areas specified in paragraph 3, subject to the condition that there is at least one unreserved seat. Paragraph 8 empowers the President to authorize the State Government to issue such directions as may be necessary or expedient for the purpose of giving effect to the Presidential Order. In accordance with this authorization, the State Government issued instructions from time to time, which were consolidated in G.O.P. No. 646, Education Department, dated 10-07-1979. Annexure IV to G.O.P. No. 646 dated 10-07-1979 details the procedure for implementation of the reservation in favour of local candidates in Statewide universities and provides, under paras 3 and 4, that the seats reserved for local candidates of the three university local areas,

viz. Andhra University area, Osmania University area and Sri Venkateswara University area, shall be 85% of the available seats which shall be allocated amongst the local candidates of these areas in the ratio of 42:36:22 respectively. Para 5 thereof provides that a provisional list of admissions shall be drawn up for filling up all the available seats on the basis of the relative merit of eligible applicants duly incorporating the reservations in favour of Scheduled Castes, Scheduled Tribes, Backward Classes, Women etc. The candidates in the provisional list are to be arranged in order of merit or where the rules provide for any other order, in the order so provided. Para 6 states that this provisional admission list is to be subjected to scrutiny to ascertain the number of local candidates in relation to each university local area and if the number of such local candidates equals or exceeds the number of seats reserved and allocated in favour of such university area, the provisional list shall be deemed to be final. Para 7 provides that in the event such scrutiny discloses that the number of local candidates in relation to a particular university area falls short of the required number, the local candidates in relation to the deficit university area or areas, not included in the provisional admission list, shall be arranged in order of merit in a separate list titled "the remainder list" and thereafter, candidates finding a place in the provisional admission list, being non-local candidates (i.e., those who are not local candidates in respect of any of the three university areas) and local candidates of any university area who are in excess of the number of seats reserved for such area, shall be successively eliminated in reverse order from the bottom of the provisional list and shall be replaced by local candidates in relation to the deficit university area from the remainder list in order of merit. Such adjustment shall however be subject to maintaining social and other reservations.

2. While so, the Government of Andhra Pradesh effected amendments to G.O.P. No. 646 dated 10-07-1979 through G.O.Ms. No. 42, Higher Education (E.C. 2) Department, dated 18-05-2009, whereby, while making admissions, it was proposed that the first 15% of the available seats shall be filled up following the combined merit list of all the eligible candidates and thereafter, the remaining 85% of the seats shall be filled up with local candidates only. In terms of this new methodology, paras 6 and 7 of Annexure IV to G.O.P. No. 646 dated 10-07-1979, dealing with Statewide universities, were substituted to the effect that the provisional admission list would be divided into two parts, the first part comprising the first 15% seats filled up on the basis of merit alone, while the second part would comprise the remaining 85% of the seats which would accommodate the local candidates in keeping with the specified percentages for the respective university areas. In the event the second part of the provisional list did not contain any non-local candidates and the specified percentage of reservation for local candidates vis-?-vis each university area was satisfied, the list would be approved. However, if any non-local candidate found mention in the second part, he or she would be removed and replaced by a local candidate, thereby ensuring reservation of 85% of the available seats in favor of local candidates duly satisfying the specified percentages for the three university local

areas.

3. Dr. N.T.R. University of Health Sciences, Vijayawada (for brevity "the University"), being a Statewide university, implemented this amended methodology while filling up seats in D.M. (Cardiology), a super specialty medical course. The appellant, being a non-local candidate for this course, remained unsuccessful in securing a seat despite standing 8th in the merit list. He filed W.P. No. 23464 of 2013 before this Court assailing G.O.Ms. No. 42 dated 18-05-2009 and the consequential action of the State and the University in terms thereof, in filling up the one unreserved seat falling in the 15% segment in the first instance and only thereafter, filling up the 85% local seats. He contended that this methodology was violative of Article 371D of the Constitution, the Presidential Order and the procedure prescribed in G.O.P. No. 646 dated 10-07-1979. He further alleged that implementation of this methodology was contrary to the directions of this Court in similar cases.

4. A learned Judge heard this case along with another similar matter and, by common order dated 20-08-2013, held that there was no merit in the writ petitions and dismissed them. Aggrieved thereby, the petitioner in W.P. No. 23464 of 2013 is in appeal. By order dated 26-09-2013, interim relief was refused to the appellant pending the appeal. It was however made clear that filling up of the last seat in the course would abide by the result of this appeal.

5. Shri K. Ramakrishna Reddy, learned senior counsel appearing for the appellant, contended that the emphasis of local reservations was only to secure 85% of the available seats for local candidates exclusively. This being the import of G.O.P. No. 646 dated 10-07-1979, per the learned senior counsel, the amendments effected thereto under G.O.Ms. No. No. 42 dated 18-05-2009 had the effect of eliminating non-local candidates altogether. He pointed out that earlier, non-local candidates could compete for 15% of the available seats in their entirety, subject to the condition that local candidates were accommodated in 85% of the total available seats in the provisional list. The changed methodology, argued the learned senior counsel, restricts the aspirations of non-local candidates to the first 15% seats of the provisional list in terms of merit and the remaining 85% seats are reserved exclusively for local candidates. This, according to him, would severely impact the rights of non-local candidates. He further contended that when this changed methodology was challenged before this Court in other writ petitions, viz. W.P. No. 11255 of 2010 and W.P. No. 10173 of 2011, two division benches of this Court passed interim orders in both the cases directing the authorities to fill up 85% seats first and thereafter take steps to fill up the remaining 15% as per merit. Learned senior counsel submitted that in view of these interim orders, it was not open to the University to implement the changed methodology and that the learned Judge erred in not holding so, following the earlier directions of this Court.

6. We however find no substance in these contentions.

7. Perusal of the Presidential Order manifests that the reservation provided thereunder in Statewide universities is aimed at securing 85% of the available seats in every course of study for local candidates of the three university areas in the State in the percentages specified. The balance 15% of the available seats, by implication, is to remain unreserved and it would be open to both local and non-local candidates to aspire for the same.

8. It would therefore be a misconception to assume that there is an exclusive reservation of 15% of the available seats for non local candidates. Though Sri K. Ramakrishna Reddy, learned senior counsel, relied on the observations of the Supreme Court in *N.T.R. University of Health Sciences, Vijaywada Vs. G. Babu Rajendra Prasad and Another*, to advance such an argument, we are unimpressed. In the aforesaid case, the Supreme Court was dealing with the issue as to whether social reservations should be implemented in the unreserved 15% seats in the context of the Presidential Order. The question as to whether these 15% seats were reserved for non-local candidates to the exclusion of local candidates was not even in issue. The observations relied upon, however, read as under:

Having regard to the reservations made region wide, indisputably 85% of seats are to be filled up from amongst local candidates whereas only 15% of seats are to be filled up from amongst outside candidates.

9. No doubt, the aforesaid observations of the Supreme Court seem to indicate that 15% seats are to be filled with only outside candidates, but the judgment must be read as a whole and stray observations taken out of context cannot be held to be the ratio decidendi. As pointed out by the Supreme Court in *Union of India (UOI) Vs. Amrit Lal Manchanda and Another*, observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too, taken out of their context. It may also be noticed that in *N.T.R. University of Health Sciences, Vijaywada Vs. G. Babu Rajendra Prasad and Another*, the Supreme Court observed that a policy decision as to the manner in which the reservations should be made would not be open to challenge if it passed the requirements of the Presidential Order. We therefore find that this judgment is of no avail to the appellant.

10. As per the Presidential Order, 85% of the available seats in a Statewide university are guaranteed without exception for local candidates of the respective university areas in specified percentages. Earlier, the manner in which this reservation was secured under G.O.P. No. 646 dated 10-07-1979 was by way of an overall approach, whereby the provisional list, normally drawn up as per merit, was viewed in its entirety so as to ensure that 85% of the available seats were allocated to local candidates as per the specified reservation percentage for each university local area. This methodology was subjected to a change through G.O.Ms. No. 42 dated 18-05-2009, whereby, instead of viewing the provisional merit list in its entirety, a distinction was made by dividing it into two parts. The first part was to comprise the 15% unreserved seats, while the second part

contained the 85% seats reserved for local candidates. Thereby, non-local candidates had to compete for the top 15% positions in terms of merit along with local candidates. It is no doubt true that in a given case, if the top 15% positions in the merit list are taken by local candidates alone, non local candidates would stand completely eliminated. This is because the second part, comprising the 85% seats reserved for local candidates, cannot accommodate a non-local candidate. In effect, local candidates who secured seats independently on their own merit would not be counted against the 85% reservation slots if they claimed positions within the top 15% seats in terms of their own merit.

11. We find no illegality in this system of implementing local reservations under the Presidential Order. As pointed out by the Supreme Court in *Indra Sawhney Vs. Union of India (UOI) and Others*, , the concept of reservation by its very nature implies selection of less meritorious persons. Therefore, a local candidate who secures a seat by virtue of his independent merit in the unreserved 15% slots cannot be permitted to oust a local candidate who requires reservation, by taking up a slot in the reserved 85% seats in the merit list. This methodology does not have the effect of giving first preference to non-local candidates merely because the 15% unreserved slots are taken up first for allotment. On the contrary, local candidates stand to benefit as those amongst them who are most meritorious would secure seats independently and would not be reckoned against the reserved slots. Local candidates who actually require such reservation would then be accommodated in the 85% slots in the second part of the merit list. Once the Presidential Order provided for reserving 85% of the available seats for local candidates without specifying the manner in which it was to be secured, it is for the State to work out the modalities to do so. A change in the methodology in this regard does not brook interference so long as it is just and fair and does not militate against the mandate of the Presidential Order. On a conspectus of the facts obtaining, we find it to be so presently.

12. The learned Judge also held to the same effect while dismissing the writ petition and observed that when there is only one seat available for the unreserved 15% segment it would stand to reason that the first ranker in terms of merit should be offered the same. That being the situation in this case, it is not open to the appellant to contend that such a top ranker should be allotted a seat within the 85% local reservation category and should not be counted against the 15% unreserved category. To do so would mean that the superior merit ranking of a local candidate would actually work to the disadvantage of other local candidates which would be contrary to the intendment of the Presidential Order. The changed methodology introduced by G.O.Ms. No. 42 dated 18-05-2009 is in conformity with the spirit of the Presidential Order and we are in complete agreement with the learned Judge that there is no warrant to invalidate the same.

13. As regards the second contention of Shri K. Ramakrishna Reddy, learned senior counsel, it is true that in similar matters interim orders were passed by

division benches of this Court to the effect that the authorities should first fill up 85% of the seats with local candidates and thereafter take steps to fill up the remaining 15%. However, as pointed out by Shri A. Prabhakar Rao, learned standing counsel for the University, G.O.Ms. No. 42 dated 18-05-2009 was not suspended thereby and the interim orders were restricted to the individual selections which were the subject matter of those writ petitions. Further, being interim orders, they did not have a binding effect upon the learned Judge when he undertook final determination of the present case. As pointed out by the Supreme Court in *Nitco Tiles Ltd. v. Gujarat Ceramic Floor Tiles Mfg. Assn.* (2005) 12 SCC 454, orders passed in interlocutory proceedings do not conclude the merits of the matter and observations made at such interim stage cannot come in the way of either party at the final stage. We therefore find no merit in the contention of the learned senior counsel that the learned Judge committed an error in not following the directions embodied in those interim orders. On the above analysis, we find no reason to interfere with the order under appeal. The writ appeal is devoid of merit and is accordingly dismissed. No order as to costs.