

(1995) 12 AP CK 0030

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20516 of 1995

Shaik Khadervali and Others

APPELLANT

Vs

Regional Admission Committee, 1995-96 and Others

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 15, 3, 4
Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1996) 1 ALT 807

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : R. Venkataramudu, for the Appellant; Govt. Pleader, for the Respondent

Judgement

B. Subhashan Reddy, J.—These writ petitions raise a question as to whether the Rules framed under G.O.Ms. No. 35, Education (Rules) Department, dated 26-2-1990 framed in exercise of the rule making power under Sections 3 and 4 read with Section 15 of Andhra Pradesh Educational Institutions (Regulations of Admissions and Prohibition of Capitation Fees) Act, 1983 (A.P. Act No. 5 of 1983) in prescribing qualifying marks, both for appearing in Entrance Examination, and also in the entrance examination are valid. Under the above rules, the qualifying mark in the qualifying examination i.e. Intermediate examination is prescribed as 45% so as to entitle the candidate for consideration. When a candidate sits for entrance examination, the minimum marks to be obtained are prescribed as 35 per cent. In the instant cases, the petitioners did not secure 45% marks in the Intermediate examination, but were allowed to write entrance examination and in the entrance examination, they obtained higher rankings than other persons to whom admissions were given.

2. Even though the petitioners had obtained higher rankings, they were denied admissions by the respondents on the ground that they had secured less than 45% marks in the Intermediate examination. Mr. R. Venkatramudu, the learned

counsel for the petitioners, submits that this dual imposition of securing 45% in Intermediate examination and also 35% of marks in the entrance examination is illegal and arbitrary and cites a case decided by this court dealing with the same statute and the rules made thereunder in *K. Anand v. Convenor, Engineering, Agricultural Medical Common Entrance Test Hyderabad and Anr.* (1990 AIEC 156) which directly covers this case.

3. Ms. Malleswari, the learned Assistant Government Pleader submits that the rules mentioned above and framed under G.O.Ms. No. 35 should be the criterion and that non-admission of the petitioners into Teacher Training Course is perfectly legal and valid and that since it is 2 1/2 months since the course, has started, no relief can be granted, as the course itself is about 9 months duration. She submits that the imposition of 45% in Intermediate, 35% of marks in entrance examination and higher ranking in the latter are the criteria and such an imposition is not ultra vires the Act.

4. u/s 3 of the above Act, admission to educational institutions shall be made either on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test. As such, in so far as Teacher Training Course is concerned which is governed by the above statutory provision, it can be on the basis of the marks obtained in the qualifying examination i.e. Intermediate examination or in the entrance test. One excludes the other. If the authority opted to give admissions on the basis of the marks obtained in the qualifying examination, the question of conducting entrance examination does not arise at all. But, the respondents having chosen to adopt a method of admission on the basis of the ranking assigned in the entrance test, they are precluded from considering the marks obtained in the intermediate examination for the purpose of admission into the course concerned. No doubt, rules cited by the learned Government Pleader require that a candidate should secure 45% of the marks in aggregate in the qualifying examination in the Open Category and 40% for Scheduled Castes and Scheduled Tribes. Under Sub-rule (10) of Rule 5, again 35% of the aggregate marks is prescribed as the qualifying marks while no such minimum qualifying marks is prescribed in respect of the candidates belonging to SCs & STs. Rule 4(3)(b) of the Rules prescribing the minimum marks to be obtained in the Intermediate examination as 45% in open category and 40% in SC & ST category in addition to ranking in the entrance test is ultra vires the Section 3 of the Above Act as any rule which is beyond the scope of the statutory provision or contrary to the same, cannot sustain and is non est. In so far as the laches aspect is concerned, I do not find any such laches on the part of the petitioners. The petitioners had approached this court even before the start of the course. They also sought for interim orders, but they were negatived. But, the number of seats having regard to the number of petitioners, have been directed to be reserved and they are not filled up. As such, grant of relief event at this stage will not result in unseating any other candidate. In a case like this, the Courts should strive to see that a cause does not fail merely because there is time lapse, more so, when it is not on account of the petitioners.

5. In the circumstances, these writ petitions are allowed and the petitioners shall forthwith be admitted into the Teacher Training Course and whatever time has lapsed, that shall be condoned by the respondents and, if necessary, extra classes shall be taken. The writ petitions are allowed accordingly. No Costs.