

Sarath Prabhakar Vs. State Board of Technical Education and ors.

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Court : Andhra Pradesh

Decided On : Dec-28-1995

Reported in : 1996(1)ALT636

Judge : M.N. Rao and ;T.N.C. Rangarajan, JJ.

Appeal No. : Writ Appeal No. 1421 of 1995

Appellant : Sarath Prabhakar

Respondent : State Board of Technical Education and ors.

Advocate for Def. : Govt. Pleader for Respondent Nos. 1 and 6, ;C. Trivikrama Rao, Adv. for Respondent No. 2 and ;R. Subhash Reddy, S.C. for J.N.T.U. for Respondent No. 3

Advocate for Pet/Ap. : A. Giridhar Rao, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

T.N.C. Rangarajan, J.

1.This writ appeal arises from the order of M.H.S. Ansari, J. rejecting the claim of the petitioner-appellant for a seat in the engineering course for the academic year

1994-95 in N.C.C. quota. The appellant had appeared for the ECET examination meant for polytechnic students, and secured rank No. 1752. The reservation for N.C.C. sports, etc., gave the priorities as follows:

NATIONAL CADET CORPS (N.C.C.)

Priority (1) Participants at International level competitions such as International Youth Exchange Programme with N.C.C. 'C' certificate.

Priority (2) Participants at National level competition such as Republic day Camp Parade in New Delhi with 'C' 'B', 'A' certificates.

Priority (3) Participants at State level competition with N.C.C. 'C', 'B', 'A', certificates.

Priority (4) Holders of N.C.C., 'C', 'B', 'A' certificates.

Note: If there is more than one candidate in a particular group in the order of priority indicated above, the selection shall be based on Rank at ECET.

The petitioner-appellant holds N.C.C., 'C' certificate and had participated in the national level competition. Another student viz., the fifth respondent had N.C.C., 'A' certificate and had participated in the national level competition, and he secured rank No. 488 in the ECET examination. The Convenor gave the seat to the fifth respondent in preference to the appellant. The contention of the appellant before the learned single Judge was that N.C.C., 'C' certificate was superior to the 'A' certificate and, therefore, he should have been given preference. The learned single Judge was of the view that ranking within each priority will be the basis on which the seat has to be allotted and, accordingly, confirmed the allotment of the seat to the fifth respondent on the ground that he has secured higher rank than the appellant in the same priority No. 2

2. In this appeal, the learned counsel for the appellant submitted that the qualifying course for the course being a technical diploma, 'C' certificate could have been obtained only those who have studied and obtained polytechnic certificate because 'A' certificate which is lowest was given only to students of X standard, 'B'

certificate and 'C' certificate after 2 years & 3 years respectively in the college. It was also submitted that according to the note given under the priorities, ranking in ECET was to be the basis only for candidate in the same group, for instance candidates having 'A' certificates to resolve the tie between them, whereas a candidate who has 'C' certificate is definitely superior to one who has 'A' certificate and there is no need to resolve any tie between them. The learned counsel for the respondents supported the order of the learned single Judge and also pointed out that the course had already begun and the admissions had been closed and it is too late to give any seat to the appellant.

3. We have carefully considered the admission rules. We find force in the contention of the learned counsel for the appellant that the rank at the ECET examination is to be relied upon only when there is a tie between the students having same level certificate. It is significant that the note refers to the situation where there is more than one candidate in a particular group. In contrast, in the case of priorities for sports and games, the note reads as follows:

Note: 1. If there is more than one eligible candidate in a particular priority the selection shall be based on rank at ECET.

This note refers to a tie in a particular priority itself. This is obviously because in the case of sports and games, candidates in each priority are equally qualified while in the case of N.C.C., the candidates in each priority will not be equally qualified because those holding 'C' certificates will be superior to those holding 'A' or 'B' certificates. Moreover, as pointed out by the learned counsel for the appellant, 'A' certificate is obtained at the school level itself, while 'C' certificate is obtained by putting three years of training at the college level. In the case of priorities set down to encourage the participation in N.C.C., the long duration of training must necessarily have a greater weight. The learned single Judge took the view that there cannot be a sub-group within priority, But, as the learned Judge himself had noted, those holding 'C' 'B' or 'A' certificates were treated as one group each and the note refers to the resolution of tie in a group. We are, therefore, of the opinion that unless both the candidates are of the same level certificate, the question of preferring one who has a higher rank in the ECET examination, does

not arise. Where the candidates have different certificates, whatever be the ranking in the ECET examination, one with the higher certificate has to be given priority. It follows that the appellant was entitled to the seat, but he has been unfairly kept out of it. Since this resulted in the fifth respondent getting the seat without any action on his part, we are equally of the view that he cannot be deprived of the seat at this point of time as he has already commenced and is attending the course. This does not mean that the appellant can be denied a seat only on the ground that the course had already commenced and the admissions have been closed. Interests of justice require that a solution has to be found to redress the grievance of the appellant who has been unfairly denied a seat by the wrong application of the priority rules. In the case of *K. Namratha Sen v. University of Health Sciences* : 1995(3)ALT575 the Bench of this Court in which one of us (M.N. Rao, J), was party, held that in identical situation, an additional seat should be created for the next academic year and the affected candidate should be allowed the said seat. We are told that the course for the next academic year would begin in January 1996. We, therefore, direct the respondents to create an additional seat at a college in Hyderabad, for the course commencing in January 1996 and allot it to the appellant, without any delay so that he can be admitted to the course at the commencement itself. Writ Appeal is allowed. No costs.