

A. Kavitha and anr. Vs. State of A.P. and anr.

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Court : Andhra Pradesh

Decided On : Sep-15-2003

Reported in : 2003(6)ALD370; 2003(6)ALT480

Judge : D.S.R. Varma, J.

Acts : Andhra Pradesh Rules of Admission to Super Specialties in Medical Colleges Rules, 1983 - Rule 3; Presidential Order, 1974

Appeal No. : WP No. 15594 of 2003

Appellant : A. Kavitha and anr.

Respondent : State of A.P. and anr.

Advocate for Def. : Ramesh Ranganathan, Additional Adv.-General

Advocate for Pet/Ap. : Nooty Rama Mohana Rao, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

D.S.R. Varma, J.

1. The petitioners seek for issuance of a writ of mandamus with the following reliefs:

(a) declaring the amendment carried out to the A.P. Regulation of Admission to Super Specialities in Medical Colleges Rules, 1983, notified through G.O. Ms. No. 409 H&M; and Family Welfare (E.2) Department, dated 24-7-2003, as unconstitutional.

(b) consequently direct the respondents or alternatively declare that the notification published through G.O. Ms. No. 409 H&M; and Family Welfare (E.2) Department, dated 24-7-2003, does not have application over all admission process for Super Speciality Medical Courses notified by the 2nd respondent on 3-5-2003 for the academic year 2003-2004.

(c) consequently direct the respondents to treat and consider the 8 seats notified in various Super Speciality Medical Courses as 'non-State-wide' seats as it is and fill them up by following the principle of reservation for 85% of the same in favour of the local candidates of the local area in which such a seat is available.

(d) to direct the 2nd respondent to take up case and cause of the petitioners herein for admission into DM (Gastro-Enterology) Courses in Andhra Medical College, Visakhapatnam, treating the same as 'non-State-wide' Course seats and fill it up with the petitioners.

(e) to farther direct the 2nd respondent to permit and allow the petitioner to join and pursue DM (Gastro-Enterology) Course in Andhra Medical College, Visakhapatnam, for the academic year 2003-2004.

2. The factual matrix is as under:

The petitioners have successfully completed the Postgraduation Medical Degree (for short 'the P.G. Degree') and appeared for the entrance test conducted by the 2nd respondent-N.T.R. University of Health Sciences (for short 'the University') and secured the ranks by which they became eligible to get admission into Super Speciality Course (in P.G. Degree).

3. The selection to the Super Speciality Course is governed by the Rules called 'A.P. Rules of Admission to super Specialities in Medical Colleges Rules, 1983' (for short 'the Rules') under which, the entrance test was conducted. As per the

schedule, a notification was issued on 3-5-2003. The last date for submission of application forms was fixed as 29-5-2003, the date of entrance test being 18-6-2003. Results were announced on 27-7-2003 and the date and venue of selections was fixed as 10-7-2003. The date of commencement of classes was fixed as 21-7-2003.

4. The date and venue of second selection, if any, was fixed as 28-7-2003 and date of admissions was fixed as 20-8-2003. Basing upon the marks obtained by the candidates, ranking were assigned to the candidates.

5. The 1st petitioner had applied for Super Speciality Course in 'D.M. Gastro Enterology' and the 2nd petitioner has applied for 'D.M. Neurology'. In all, there are 31 seats in Super Speciality Courses available in the State. In terms of the Presidential Order, 1974, promulgated in terms of Clauses 1 and 2 of Article 371-D of the Constitution of India, 85 percent of the Statewide seats were reserved in favour of Andhra University local area, Osmania University local area and Sri Venkateswara University local area in the ratio of 42: 36: 22 respectively and the remaining 15 percent would be open, since State-wide-seats. Further, out of the 31 seats available in various Super Speciality Courses in the three Medical Colleges in the State, viz., Osmania Medical College, Hyderabad, Gandhi Medical College, Hyderabad and the Andhra Medical College, Visakhapatnam, eight seats in various disciplines were declared as 'non-State-wide-seats', and consequently 23 seats have to be reserved to be filled with the candidates belonging to local area in which such seats are available. The results were announced on 2-7-2003, as scheduled, for all the 31 seats. But, only 23 seats, which are identified as 'Statewide seats', were filled up with the successful candidates and the remaining 8 seats were not filled up by the eligible and successful candidates, who are otherwise identified as candidates belonging to Non-State-wide. The reason for this appears to be that Government have published a notification G.O. Ms. No. 409, Health, Medical and Family Welfare (E-2) Department, dated 24.7.2003, amending the 1983 Rules, by adding a sub-rule to Rule 3 of the said Rules. The said newly added sub-rule, viz., 3 (i) reads as under:

'as Super Speciality Courses are having scarce seats and are unevenly distributed, all the Super Speciality Courses in this State are treated as State-wide Courses until further orders'.

6. The above newly added sub-rule 3 (i) is also assailed by the petitioners in this writ petition.

7. Aggrieved by the non-selection of the candidates to the seats under the category of 'Non-State-wide', which are 8 in number, the present writ petition is filed.

8. Sri Nooty Rama Mohana Rao, learned Counsel for the petitioners, contends that the selection notification being issued on 3.5.2003, was issued much prior to the issuance of G.O. Ms. No. 409, dated 24.7.2003, and when once the schedule has been prescribed, the selection of suitable candidates for all the 31 seats would fall for consideration and the same should have been filled up. He contends that withholding the filling up of Non-State-wide-seats, and filling up of state-wide-seats is totally unreasonable and arbitrary. In other words, his contention is that the admission process in the current academic year, for which the notification was issued on 3-5-2003 by the University, should be allowed to be accomplished by the unamended Rules, of 1983, de hors the amendment to the Rules brought in by the Government through G.O. Ms. No. 409. It is his further contention that the right of admission into the other 8 Non-Statewide seats to all the candidates, including the petitioners, had accrued even by 10-7-2003, on which date the selection process for the 23 statewide seats was completed, as prescribed. It is his further contention that inasmuch as G.O. Ms. No. 409 was issued subsequent to the admission notification dated 3.5.2003 issued by the University and as the amendment if any brought to the Rules would, at the most, be prospective but not retrospective, and as such the University cannot take away the right already accrued to the candidates belonging to the 'Non-Statewide', including the petitioners for being considered for admission to the 8 seats which remained unfilled, out of the total 31 seats.

9. Learned Counsel asserts that the said G.O. Ms. No. 409 was issued only at the behest of the 2nd respondent-University.

10. On the other hand, Sri Ramesh Ranganadhan, learned Additional Advocate-General appearing on behalf of the 1st respondent-Government of Andhra Pradesh, contends that by virtue of the G.O. Ms. No. 409, the Government have changed its policy and accordingly even during the process of selections, the said G.O., was implemented, in view of the amendment brought in to the Rules governing the admissions. He further contends that mere Counseling of candidates will not confer any indefeasible right on them to get automatic admission into a particular course of study. Learned Additional Advocate-General has drawn the attention of this Court to the letter No. 13869/W2/2003-1, dated 9.7.2003, addressed by the Secretary, Government of Andhra Pradesh, Medical and Family Welfare Department, to the Registrar of the University, wherein the 2nd respondent-University was requested to conduct Counseling for the enhanced seats (i.e., Non-Statewide seats) as per the procedure followed to fill up the Statewide seats (i.e., existing seats) as was followed by the University in the previous academic year, i.e., 2002-2003. and submits that as a result of the same, the Non-State-wide-seats were not filled up on the day of selections, scheduled on 10-7-2003. He further contends that the very purport of said letter of the Government is to treat the remaining non-State-wide-seats as 'Statewide seats' only.

11. In view of the above set of rival contentions, it is to be noted that the notification was originally issued on 3-5-2003 whereby the selections were scheduled to be held on 10-7-2003 and the classes for the course were to commence with effect from 21-7-2003. The second selection was scheduled to be held on 28.7.2003, to admit some other candidates, in the event of any candidate not joining the course and not attending the classes. The controversial G.O., was issued on 24-7-2003 i.e., after the date of commencement of the classes i.e., on 21-7-2003. Virtually, the last date of admissions would only be on 20.8.2003, by virtue of the commencement of the classes with effect from 21.8.2003. But, the G.O., amending the Rules, was issued on 24-7-2003 and was given effect to from 28-7-2003.

12. Incidentally, it is to be noted that 28.7.2003 is fixed as the second schedule of admission, if any.

13. It is to be further noted that the selections for the remaining and available 8 Non-Statewide seats were not made on 10-7-2003 itself, whereas the G.O. Ms. No. 409 was given effect to from 28-7-2003. The apparent and admitted reason for stalling the selections on 10-7-2003, insofar as the 8 Non-Statewide seats are concerned, seems to be the letter, dated 9-7-2003, addressed by the Government to the Registrar of the University. When the effective date of the G.O. was 28-7-2003, by which time the selections could and should have been completed as per the schedule notified as 3-5-2003 and what would have remained was only a contingent situation where if any candidate does not opt to join the course, the second selection, if any, would be made to fill up such seat or seats, and nothing else. Therefore, for all purposes, the selections could and should have been over even by 10-7-2003 itself and the classes also should have been started with effect from 21-7-2003.

14. To put it in a different way, even if really the intention of the Government in issuing G.O. Ms. No. 409 making amendment to the Rules is to give retrospective effect to the amended rule and fill all the 31 seats by treating them as Statewide seats, in fact, the selections would have been over on 10-7-2003 and the allotment also would have been made with the prospective candidates in the respective seats and the classes would have also commenced on 21-7-2003. Therefore, in the given circumstances, the principle of retrospective operation cannot be permitted to be stretched too far i.e., beyond its very scope and limitation.

15. Even otherwise, the non-selection of 8 candidates to the Non-Statewide seats on 10.7.2003 was not, in fact, due to issuance of G.O. Ms. No. 409, but conspicuously because of the letter dated 9-7-2003 addressed by the Government to the Registrar of the University. It is to be further noted that this letter or the contents of it were not put to the notice of the prospective candidates. In other words, without making the reason known to the successful candidates, the selection of the Non-Statewide seats was abruptly brought to a grinding halt. Hence I am of the considered view that the action of the University in not filling up of the 8 non-State-wide seats as originally notified, on the apparent ground that a letter dated 9.7.2003 was addressed by the Government, is absolutely unreasonable and an arbitrary exercise of powers by both the 1st and 2nd

respondents.

16. Even though it is well-settled that no indefeasible right is conferred on any candidate just by virtue of their attending Counseling for selections, the actions or policies of the Government or other authorities created under a statute like the 2nd respondent in bringing the amendment to the Rules and the object and reasons thereof, has to be tested on the touchstone of arbitrariness or unreasonableness.

17. Interestingly, from reference No. 5 of G.O. Ms. No. 409, it could be seen that the Registrar had addressed a letter, dated 7.7.2003, and perhaps in response to the said letter, the Government had addressed the letter, dated 9-7-2003.

18. From the above, it is clear that the University, wanted to deviate from the rules and the Government with all promptitude, responded by addressing the letter, dated 9-7-2003.

19. As pointed out earlier, there is palpable arbitrariness on the part of the 1st and 2nd respondents in not proceeding with the selections on 10.7.2003 of 8 Non-Statewide seats, the main and real reason being the letter dated 9.7.2003 addressed by respondents 1 and 2, but not G.O. Ms. No,409. Hence the retrospective operation of the G.O. would only aggravate the arbitrary actions already effectuated by the letter, dated 9-7-2003 and consequently lost its relevance and significance.

20. In other words, a right had already accrued to the petitioners and similarly situated other six candidates even on 10-7-2003 itself and the same cannot be taken away by mere issuance of a letter by the Government to the Registrar of the University to fill up the said 8 Non-Statewide seats treating the same as Statewide seats.

21. Further, the facts in the decision of the Apex Court in *Gurdeep Singh v. State of J&K*, 1995 Supp (1) SCC 188, reveal that in the State of Jammu and Kashmir, certain percentage of seats in Medical Courses were reserved for the candidates excelling in certain categories of sports specifically notified as approved sports. At the relevant time 'mountaineering', which was said to be field of expertise of 6th

respondent therein, was not one of approved sports and it was approved long after the completion of selection process. The facts further reveal that the appellant and the 6th respondent therein secured equal marks in the entrance test and since the sport in which the appellant has expertise was specifically notified and approved sport, he was given the seat. But subsequently i.e., long after the completion of the entire selection process, the 'mountaineering' in which the 6th respondent has expertise, was approved. Basing on this recognition of the 'mountaineering' the 6th respondent was selected in the place of the appellant therein under sports quota. The Supreme Court while finding fault with the above process of selecting 6th respondent held at paragraph No. 12 as under:

' The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of respondent No. 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent No. 6. We do so, though, however, reluctantly.'

22. From the above judgment it is clear that obtaining eligibility long after the selection process does not enure to the benefit of the candidate, whose selection was over long back, by way of rejection owing to the rules existing as on that date.

23. The learned Counsel for the petitioners further brings to the notice of this Court that the selections to the educational institutions is governed by Article 371-D of the Constitution of India and in that context, the Presidential Order of 1974 is relevant. The relevant paragraph No. 6 of the Presidential Order, sought to be relied upon by the learned Counsel, runs thus:

'Reservation in State-wide Universities and State-wide Educational Institutions :--
(1) Admissions to eighty-five percent of the available seats in every course of study provided by a State-wide University or a State-wide educational institution shall be reserved in favour of local candidates and allocated among the local

candidates in relation to the local areas specified in sub-paragraph (1), sub-paragraph (2) and sub-paragraph (3) of Paragraph 3, in the ratio of 42 : 36 : 22 respectively (Vide G.O. Ms. No. 816 G.A (SPF-B, dated 26-11-1976 and G.S.R 898-(E), dated 25-11-1976 (Government of India).'

24. He further points out that Para No. 2 (e) of the Presidential Order, 1974, defines 'State-wide Educational Institution' means an educational institution or a department of an educational institution specified in the Schedule to this Order.

25. Now, it is necessary to look into the Schedule and the same is extracted to the extent it is relevant:

THE SCHEDULE

[Vide Paragraph 2(e)]

State-wide Educational Institutions subject to the Control of the State Government.

1. College of Physical Education.

2.....

3. (Dental, Neuro-Surgery, Public Health, Radio Diagnosis and Radio Therapy Department of the Osmania Medical College, Hyderabad.)

4.....

5.....

6.....

7.....

8.....

9.....

10.....

11.....

12.....

13.....

14.....

15. The Super Speciality (2nd Postgraduate) Courses in the following subjects in the Medical Colleges in Andhra Pradesh State; namely:

Sl.No. Name of the Course Name of the Institution

(1).....

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8) D.M. (Nephrology) (i) Osmania Medical College, Hyderabad)

26. It is clear from the above aspect and also the fact that all the 23 seats, which were filled up on 10-7-2003, belong to the State-wide-seats and the rest being not included in the said Schedule, shall have to be treated as Non-Statewide seats.

27. In fact, this situation had been dealt with by a Full Bench of this Court in the decision reported in B. Sudhakar v. Union of India, : AIR 1995 AP86 , whereby the Presidential Order was upheld and while dealing with the vires of paragraphs 2(1) (a), 5 and 6 of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974. The relevant portion at Para No. 55 is extracted as under for ready reference:

'We are conscious of the fact that the creation of a seat in Super-Specialty is not merely an administrative matter under the control of the state Government. It depends on so many factors which include availability of infrastructure and facilities in teaching hospital and fulfillment of the requirements prescribed by the Medical Council of India. As such a direction to create a seat in any Super-Specialty in each local area cannot be given. However, from a perusal of the definition of state-wide educational institution in Clause (e) of Para 2 and the schedule to the Presidential Order, it can be noticed that the only available courses and educational institutions of their kind in the whole state, have been included in the schedule. The President has power to include further courses in the schedule having regard to the spirit of the Presidential Order. We have noticed that earlier, learned Single Judge and Division Benches of this Court made observations for the purpose of inclusion of a single available seat in super-specialities in the Schedule and accordingly Cardiology, Cardio-Thoracis Surgery, Neurology, and Neuro-Surgery (super-specialities) were included in the schedule as State-wide educational institutions. No specific plea is taken by the first respondent-Union of India that the question of inclusion of the seat in question in the schedule as a Statewide institution, was considered by the President. We, therefore, consider it just and necessary to direct respondents 2 and 3 to send appropriate proposal for consideration of the President as to whether the seat in question should be included in the Schedule as a State-wide educational institution for taking a decision in the matter before the commencement of the next academic year. We further direct that as and when it is proposed to introduce a single seat in any super-speciality in any local area in a non-State-wide University or Educational Institution subject to the control of the State Government, steps should be taken to send proposals for consideration of the President for inclusion of the course of study in the super-speciality proposed to be introduced simultaneously, with the proposals initiated for obtaining the approval of the Medical Council of India or any other authority before offering the seat for admission to the eligible candidates.'

28. Therefore, viewed from any angle, the action of the respondents in not filling the 8 Non-State-wide-seats, including the seats which are likely to be allotted to the petitioners, ought to have been treated as Non-Statewide seats and the

selections also could and should have been made accordingly, without giving any effect to the letter, dated 9-7-2003, addressed by the Government to the Registrar of the University, and the G.O.Ms.No. 409, dated 24-7-2003, but however, subject to the eligibility, and in accordance with Para-5 of the Presidential Order, 1974.

29. In the result, the writ petition is allowed with the following directions:

'The 2nd respondent-N.T.R. University of Health Sciences, Andhra Pradesh, Vijayawada, is directed to finalize the selections and admissions for the remaining eight seats in various Super Speciality Courses on the basis and treating them as Non-Statewide seats and without any regard to the Letter N0.13869/E2/2003-1, dated 9-7-2003, addressed by the 1st respondent-Government of Andhra Pradesh to the Registrar, NTR University of Health Sciences, Vijayawada, and the subsequent orders of the State Government contained in G.O. Ms. No. 409, dated 24-7-2003. The said process shall be completed as expeditiously as possible.

30. However, there shall be no order as to costs.

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