



IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

**HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY**

W.P.No.370 of 2022

(Through virtual mode)

Kuchibhotla Srivatsa,
S/o.Kuchibhotla Ravi Sankar,
Aged about 29 years, Occ: Doctor,
R/o.D.No.24A-23-10, S4,
Vijaya Towers, Ashok Nagar,
Pathebada, Eluru, Venkata Rao Peta,
West Godavari,
Andhra Pradesh – 534002. ...Petitioner

Versus

State of Andhra Pradesh,
Represented by its Principal Secretary to Government,
Health, Medical and Family Welfare Department,
Secretariat, Velagapudi Amaravati,
Guntur District & others. ... Respondents

Counsel for the petitioner : Mr. Y.V.Ravi Prasad,
Senior Advocate for
Mr. N.Ashwani Kumar

Counsel for respondent Nos.3 & 5 : Mr. Jupudi V. K. Yagnadutt

Counsel for respondent No.4 : Mr.N.Harinath,
Assistant Solicitor General of India

ORAL ORDER

Dt: 25.01.2022

(per Prashant Kumar Mishra, CJ)

The petitioner is a Post Graduate in Medical Sciences. His prayer in the writ petition is for issuance of Writ of Mandamus declaring the action of respondents herein, more particularly respondent No.3 in not allotting seat for "DM Pediatrics Critical Care" to him in the light of availability of two seats in respondent No.2 – University, i.e., Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER), which arose owing to the fact that no eligible candidates were sponsored by the Government – State/Central Services, and consequently directing the



respondents to allot one of the two seats reserved for "DM Pediatrics Critical Care" to the petitioner in Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER).

2. Admittedly, the petitioner appeared for Institute of National Importance Super Specialty Entrance Test (INI-SS) for DM, M.Ch. and MD Hospital Administration Course January, 2022 Session conducted by the All India Institute of Medical Sciences (AIIMS), New Delhi. Out of five seats, which are available for the subject course, two sponsored seats are available for in-service candidates and one seat for Open Category with the Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) / respondent No.2 and two other Open Category seats are available at Jawaharlal Nehru Institute of Post Graduate Medical Education and Research, Pondichery. The petitioner secured 4th rank in the merit list of open category candidates. Since there are only three seats available in Open Category, the petitioner has not been able to secure admission in any of the above said two Colleges and has been placed at wait list candidate No.1. On completion of the admission process, the two seats reserved for sponsored in-service candidates at Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) has remained vacant for lack of eligible candidates sponsored by the Central or State Government. It is on one of these two unfilled seats the petitioner is claiming his entitlement and consequentially praying for issuance of Writ of Mandamus.

3. According to Mr. Y.V.Ravi Prasad, learned Senior Counsel assisted by Mr. N.Ashwani Kumar, learned counsel for the petitioner, this Court has jurisdiction to entertain the writ petition, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Nawal Kishore Sharma Vs. Union of India and Others*** reported in ***(2014) 9 SCC 329*** wherein it



has been held that even when a part of cause of action has arisen within the territorial jurisdiction of the High Court, the same would have jurisdiction to entertain the writ petition, despite none of the respondents have not its offices or residences within the territorial limits of the High Court. This argument is advanced in opposition to the petitioner's preliminary objection that in the prospectus, it was mentioned that all disputes with regard to any matter shall be subjected to the jurisdiction of Delhi Courts only. In our considered opinion, in view of the decision of ***Nawal Kishore Sharma*** cited supra and also for the reason that a non-statutory prospectus issued by the examination conducting body cannot curtail or takeaway the jurisdiction of the High Court conferred on it under Article 226 of the Constitution of India for issuance of appropriate Writ on the subject matter brought before this Court, denying remedy of approaching the Court, having jurisdiction in the matter, would be against the basic spirit of the provisions under Article 226 of the Constitution of India.

4. In the counter-affidavit filed by respondent Nos.3 and 5, it is stated in paragraph No.6 that though the sponsored seats are lying vacant, the writ petitioner cannot seek any equities as the monetary terms and conditions of a sponsored candidate on deputation are absolutely different with that of a general candidature. According to the said respondents, generally, a sponsored candidate will be having his employer (State/Central etc.) Government sponsorship for a particular subject, which is not available in such State, along with a duly filled certificate by such employer to that effect.

5. But for the stand taken in Paragraph No.6 of the counter-affidavit, which is extracted above, nothing has been stated or brought to the notice of this Court in the course of arguments as to any provision, which prohibits the respondent Nos.3 and 5 to de-reserve the seats, which are



reserved for sponsored candidates. It is not known whether sponsored candidates are available and yet petitioner is claiming his right over the seats on some other ground like having more merit. In the present case sponsored seats are lying vacant. Therefore, the petitioner seeks Writ of Mandamus against the respondents for allowing him to be entertained in one of the sponsored seats, which can be filled by general category candidates, after de-reserving the same.

6. In the case of ***Dr. Sadhna Devi and others Vs. State of U.P.*** reported in ***(1997) 3 SCC 90***, the Hon'ble Supreme Court, by relying upon the decision rendered in the case of ***Jagadish Saran (Dr) Vs. Union of India*** reported in ***(1980) 2 SCC 768***, held that if the seats reserved for SC/ST/OBC candidates cannot be filled up on account of failure of the candidates belonging to these categories to obtain the minimum qualifying marks, then such seats should be made available to the candidates belonging to the general category. The direction of the Hon'ble Supreme Court is that reserved seats should not be allowed to go waste and it should be made available to the candidates belonging to the general category and not de-reserving the seats amounts to national loss.

7. In the case of ***Index Medical College, Hospital and Research Centre Vs. State of Madhya Pradesh and others*** reported in ***2021 SCC OnLine SC 318***, the Hon'ble Supreme Court, while dealing with the similar situation, observed as follows at Paragraph No.26:

"The right to admit students which is a part of the management's right to occupation under Article 19(1)(g) of the Constitution of India defeated by Rule 12(8)(a) as it prevents them from filling up all the seats in medical courses. Upgradation and selection of subject of study is pertinent only to postgraduate medical course. In so far as undergraduate medical course is concerned, the upgradation is restricted only to a better college. Not filling up all the medical seats is not a solution to the problem. Moreover, seats being kept vacant results in huge financial loss to the management of the educational institutions apart from being a national waste of



resources. Interest of the general public is not subserved by seats being kept vacant. On the other hand, seats in recognised medical colleges not being filled up is detrimental to public interest. We are constrained to observe that the policy of not permitting the managements from filling up all the seats does not have any nexus with the object sought to be achieved by Rule 12(8)(a). The classification of seats remaining vacant due to non-joining may be based on intelligible differentia but it does not have any rational connection with the object sought to be achieved by Rule 12(8)(a). Applying the test of proportionality, we are of the opinion that the restriction imposed by the Rule is unreasonable. Ergo, Rule 12(8)(a) is violative of Articles 14 and 19(1)(g) of the Constitution.”

8. It is thus settled that whenever a medical seat, be it under graduate or post graduate or super speciality course, cannot be filled up for want of eligible candidates of that particular category, the Hon’ble Supreme Court has allowed seats to be filled up by the candidates belonging to open category on the principle that allocated seats remaining unfilled would be national waste. In the present case, the seats belonging to super speciality course has to be filled up with sponsored candidates and it is not based on any criteria of social reservations.

9. Accordingly, we allow the writ petition and permit the petitioner to submit a representation before the respondent No.3 or any other competent authority seeking de-reserving one sponsored seat in the course of DMP Critical Care at PG Institute of Chandigarh, i.e., respondent No.2 herein, within one week from today. On such representation being filed by the petitioner, the respondent No.3 or any other competent authority shall decide the same in the light of above observations and keeping in view of the judgments of the Hon’ble Supreme Court cited supra within one week thereafter. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ M.SATYANARAYANA MURTHY, J



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