2020:APHC:10107

HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE TWENTY FOURTH DAY OF JULY

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SMT JUSTICE T. RAJANI

WRIT PETITION NO: 10341 OF 2020

Between:

1. R V R R COLLEGE JKC College Road, JKC Nagar' i Pattabhipuram (PO), Guntur, A,P-522006, Rep by its Secretary and Correspondent Gadde Mangaiah.

...PETITIONER(S)

AND:

1. THE STATE OF AP rep. by its Special Chief Secretary School Education Department, Secretariat Velagapudi Amaravathi
   Guntur District Andhra Pradesh
2. The State Council for education research and Training SCERT, rep. by its Director Ibrahimpatnam Vijayawada A.P
3. The Commissioner and director of School Education Ibrahimpatnam Vijayawada A.P
4. The Convenor DEECET 2018 rep. by its Addl. Director of
   school Education and A.P State Library, Mangalagiri, Guntur District.
5. The Director of Government Examinations, Opp. to Andhra Hospitals Vijayawada.
6. National Council for Teacher Education Southern Regional Committee, Nagara Bhavi Juana Bharati
   Campur Road, Opp. National law School,
   Bangalore 560072, rep. by its regional District.

...RESPONDENTS

Counsel for the Petitioner(s): C.PANINI SOMAYAJI

Counsel for the Respondents: GP FOR EDUCATION (AP)

The Court made the following: ORDER

2020:APHC:10107

HIGH COURT OF ANDHRA PRADESH: AMARAVATHI.

WRIT PETITION Nos. 10701, 9762, 9679, 9765, 9769, 9801, 9815, 10012, 10075, 10341, 10346, 10348, 10519, 10760, 10780 of 2020, 16980, and 20455 of 2019

Between:

M/s.Sree Lakshmi Sreenivasa College of Education and others
… Petitioners

Vs.

The State of Andhra Pradesh, rep. by its Principal Secretary and others
…. Respondents

Date of Judgment Pronounced: 24.07.2020

Submitted for Approval:

SMT JUSTICE T. RAJANI

1. Whether Reporters of Local newspapers may be allowed to see the judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

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T. RAJANI, J

*** SMT JUSTICE T. RAJANI**

+ **WRIT PETITION Nos.10701, 9762, 9679, 9765, 9769, 9801, 9815, 10012, 10075, 10341, 10346, 10348, 10519, 10760, 10780 of 2020, 16980, and 20455 of 2019**

% 24.07.2020

M/s.Sree Lakshmi Sreenivasa College of Education and others
… Petitioners

Vs.

$ The State of Andhra Pradesh, rep. by its Principal Secretary and others
…. Respondents

! Counsel for the petitioners: SRI B. CHANDRA SEN REDDY

Counsel for the Respondents: SRI P. SUDHAKAR REDDY
ADDITIONAL ADVOCATE GENERAL

<Gist :

>Head Note:

? Cases referred:

1. 2010(3) ALT 187
2. 2009(5) SCC 65
3. 2009(9) SCC 514
4. (2014) SCC Oline Ker 18469
5. (2006) 9 SCC 1
6. 2007 SCC Online MP 469
7. 2012(2) SCC 425
8. (1993) 3 SCC 595

SMT JUSTICE T. RAJANI

WRIT PETITION Nos.10701, 9762, 9679, 9765, 9769, 9801, 9815, 10012, 10075, 10341, 10346, 10348, 10519, 10760, 10780 of 2020, 16980, and 20455 of 2019

COMMON ORDER:

Aggrieved by the action of the respondents in not ratifying the spot admissions in Diploma in Elementary Education Course of Convener quota left over seats and Management quota left over seats for students in Elementary Education Course conducted by the petitioner-Colleges for the academic year 2018-20 and not receiving the required first year examination fee online in terms of proceedings, dated 27.05.2020, these writ petitions are filed seeking to declare such action of the respondents, as illegal, and with a prayer to consequently direct the respondents to approve the spot admissions for convener and management quota left over seats for the academic year 2018-20.

2. Since the issue involved in these writ petitions is one and the same, they are disposed of by this common order. For the sake of convenience, the facts in W.P.No.10701 of 2020, are briefly mentioned as under:

3. The petitioner-Colleges have been obtaining the required recognition and affiliation from NCTE and SCERT respectively, for running Diploma in Elementary Education colleges (D.Ed) from time to time. The Institutions train students to impart primary

education i.e., to take classes for students between 1st to 8th standards. Each of these colleges have seats ranging from 50 to 200 seats. In total 70,000 seats are available in the State of Andhra Pradesh for D.Ed course, out of which 80% have to be filled up by the students, who qualified in the DEECET examination. It can be seen that only 40,000 students appear for DEECET examination, out of which many qualifying students opt other courses and the convener is only able to send only 20,000 students as against 56,000 seats allotted to its quota. The Managements of the petitioner D.Ed colleges, as well as all other private D.Ed Colleges in the State, are given to understand that the Government of Andhra Pradesh will permit private D.Ed Colleges to conduct spot admissions with or without DEECET for the left over seats. The Government has been issuing memos permitting the 3rd and 4th respondents to allot the spot admissions to be conducted as well as to reduce the qualifying marks for the academic years when the number of students sent through DEECET have not been sufficient for the colleges to cover the students. The petitioner colleges made representations on 23.08.2018 to consider the spot admissions. In response, the 3rd respondent informed the petitioner-colleges that as per G.O.Ms.No.30, School Education (Prog.II) Department, dated 08.07.2018, (hereinafter referred to as, "GO-30"), candidates eligible for D.Ed course should have secured a rank in DEECET. For obtaining a DEECET rank, the candidate belonging to OC and BC communities shall secure a minimum of 50% marks in DEECET and for Scheduled Caste,

and for Physically Challenged candidates, it shall be 45%. Over the years, there are insufficient number of students attempting DEECET examination and majority of the students do not meet the basic criteria. In the light of the same, the Government of Andhra Pradesh has been permitting the 3rd and 4th respondents to reduce the qualifying marks in the DEECET examination. For the previous year 2018-19, other private D.Ed colleges have challenged the action of the 1st respondent in not ratifying the spot admissions by way of W.P.No.6760 of 2019, which is pending. An interim order was passed to allot spot admissions and permitting the respondents to write examinations. When the respondents refused to ratify the spot admissions in the year 2019, on the ground that GO-30 does not permit the same, some of the colleges challenged the said GO by filing W.P.No.20455 of 2019 (which is one among the present batch of writ petitions). The Parliament has enacted the National Council for Teacher Education Act, 1993 (for short, "NCTE"),which provides for establishment of NCTE with a view to achieve a planned and coordinated development of teacher education system through out the country. The State Government has no power to overrule the decision of NCTE. Section 12(e) under Chapter III of the NCTE clearly lays down that the council is established under the Act of the parliament, having the power to lay down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof. Hence, as the method of selection of candidates for higher education and institution

directly falls under the purview of List 66 of the seventh schedule to the Indian Constitution, the council established under this Act alone has the power to make laws, rules and norms relating to the subject matter. Though GO-30 was passed on 08.07.2018, the same was not implemented. It is only with the permission and consent of the 1st respondent that the petitioner and other private D.Ed colleges have been conducting spot admissions in their D.Ed colleges for over a decade.

The petitioners with the help of the above stated facts and law seek to declare the action of the respondents in not ratifying the spot admissions of convener left over seats and Management quota seats and to set aside GO-30.

4. The respondents did not choose to file counter. The arguments, however, were heard from both the learned counsel for the petitioners as well as the learned Additional Advocate General appearing for the respondents.

5. The petitioners draw strength to the contention that permission should be granted to fill up the management and convener left over seats for the academic year 2018-19, 2019-20, from the act of the respondents for the previous academic years, in which the respondents ratified the admissions made by the petitioner-Colleges and other colleges. There is no dispute that earlier such permissions were granted in ignorance of GO-30. In answer to the said contention, the learned Additional Advocate General, takes the help

of the judgment of the High Court of Andhra Pradesh reported in **KUMARI DONAGIRI VIMALA VS. GOVERNMENT OF AP**[1]. The issue involved is similar. In the said case also, the State Government itself had relaxed the rule. The court observed that no relief can be granted to the petitioners on the basis of such relaxation; admittedly, the rules do not contain any provision by which the State Government is empowered to relax the minimum marks; therefore, the petitioners cannot insist that they are also entitled to the same act of benevolence showed by the State Government in favour of certain students of the academic batch 2006-07; relying on the judgment of the Supreme Court reported in **STATE OF BIHAR V. UPENDRA NARAYAN SINGH**[2] and **STATE OF PUNJAB V. SURJIT SINGH**[3], the court held that the law is well settled that equality cannot be applied when it arises out of illegality and Article 14 of the Constitution of India does not entitle a person to claim negative equality. As in this case, the petitioners in the said case also seem to have neither pleaded nor established that they have a right vested in the Rules for being considered for relaxation from possessing minimum marks. The said contention was rejected.

6. In the case on hand, too, the prayer is based primarily on the fact that the State Government has been benevolent in relaxing the eligibility criteria. The said contention falls to ground if tested on the reasoning projected in the above cited ruling. The second contention

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[1]2010(3) ALT 187
[2]2009(5) SCC 65
[3]2009(9) SCC 514

is that as per admissions procedure specified by NCTE the institutions have an option to choose between entrance marks and/or marks in the qualifying examination. It needs to be examined.

7. The admission procedure, as specified by the NCTE under clause 3.3, is as follows:

> "3.3 Admission Procedure:
>
> Admission shall be made on merit on the basis of marks obtained in the qualifying examination, and/or in the entrance examination or any other selection process as per the policy of the State Government/UT Administration."

8. The petitioners' counsel interprets this particular clause as being an option given to the institutions to select one of the criteria, for the eligibility for the admission of candidates. In order to draw support for the interpretation of the words, "and/or" as meaning only "or", the counsel relies on the judgment of the High Court of Kerala reported in DR.A.BASHEER K.M.M. GOVT. WOMENS COLLEGE, KANNUR V. DR.SALFUL ISLAM A., SMRUTI, SOUTH FORT, MAVELIKARA AND OTHERS[4], the court observed that the usage of the phrase "and/or"has been severely criticized on various instances. It also cites Viscount Simon LC has, in Bonitto v. Fuerst Brothers (1944 A.C. 75 (House of Lords)), wherein the usage was described as "bastard-conjunction". It is interesting to note that in Employees Mut Liability Co. v. Tollefsen (263 NW 376), the said phrase and/or has been criticsed as "that befuddling, nameless thing, that Janus-faced verbal monstrosity,

[4](2014) SCC Oline Ker 18469

neither word nor phrase, the child of a brain of someone too lazy or too dull to express his precise meaning, or too dull to know what he did mean." It was further observed that despite of all those disapprovals, the framers of the University Statutes and the Regulations have chosen to lavishly use the expression, "and/or", which itself has the potential to draw the University to unnecessary litigations. Saying so, the court has dissected the experience prescribed therein meaning to say that the phrase and/or would mean practically only, 'or'. There is no doubt that the interpretation of the phrase, 'and/or' can reasonably be as explained by the said High Court.

9. It now leaves this court to appreciate whether this choice given under the NCTE regulations is for the colleges or for the State Government. The criteria is prescribed for admissions and the requirement is for the State Government. Hence, the option also would be for the State Government. The NCTE has prescribed the criteria and it is for the State Government to permit the admissions by following the said criteria, which can be the marks obtained in the qualifying examination or in the entrance examination. GO-30 has done nothing more than selecting the marks obtained in the entrance examination as the criteria for the admission. The whole argument of the petitioner's counsel is that the prescription made by the State Government is in conflict with the admission procedure prescribed by the NCTE, which in the light of the above discussion, deserves to be dismissed.

10. Reliance placed by the petitioner's counsel on the judgment of the Supreme Court reported in **STATE OF MAHARASHTRA VS. SANT DNYANESHWAR SHIKSHAN SHASTRA MAHAVIDYALAYA**[5], wherein the Supreme Court made it clear that so far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State legislatures and appropriate act subject to limitations and restrictions. It is not disputed that the subject is covered by entry of 25 of List III of Schedule VII to the Constitution, wherein both the Parliament and State Government legislatures have concurrent power to make appropriate act.

11. The learned Additional Advocate General places reliance on the judgment of the Supreme Court reported in **PITAMBRAPEETH SHIKSHA PRASARANI SAMITI VS. STATE OF M.P. & ORS.**[6], wherein a similar issue came up for decision. The facts noted were that the petitioner institutions therein have given admission and if eventually the institutions are granted recognition the students should be permitted to appear in the examination. It was noted that the

[5](2006) 9 SCC 1
[6]2007 SCC Online MP 469

single Judge of the Supreme Court while passing the interim order had clearly stated that the institutions may admit students provisionally at their own risk without accepting fees from them and if they accept fee from the students they would be ready to face the consequences if the petition is decided against them. This answers the argument made by the petitioner's counsel that by virtue of the interim order, permission was given for the petitioner institutions to collect the fee for the earlier academic years and hence, the equities would require the court to permit collection of fees for the academic years 2018-20. It was observed that a day-dreamer can build a castle in the air or for that matter castle in Spain, but it is absolutely inapposite on the part of aspirants registered bodies or institutions to admit students and pyramid the foundation relying on the bedrock of legitimate expectation that the students would be treated as students who have been admitted in such institutions in such courses which are valid in law and an educational institution has to conduct itself in an apple pie order. It also noted that the institutions are under obligation to keep in mind that commercialization of course under 1993 Act is impermissible. As regards equities, the observations made by the High Court of Andhra Pradesh in the ruling (1 cited supra) can be noted. It observed that when admittedly, the Colleges have violated the statutory provisions in admitting the petitioners, no relief can be granted to the petitioners by this court on misplaced sympathies and misconceived equities and interference of the court in such cases encourages colleges to perpetrate their illegal acts. It noted

that the law is well settled that no Mandamus can be issued to the State or its instrumentalities either to refrain or to act contrary to law.

12. In the judgment relied upon by the learned Additional Advocate General reported in **ADARSH SHIKSHA MAHAVIDYALAYA VS. SUBHASH RAHANGDALE**[7]**,** the Supreme Court held that the importance of teachers and their training has been highlighted time and again by eminent educationists and leaders of society. The courts have also laid considerable emphasis on the dire need of having qualified teachers in schools and colleges. There is a need for well equipped and trained teachers. In the last three decades private institutions engaged in teacher training courses/programmes have indulged in brazen and bizarre exploitation of the aspirants for admission to teacher training courses and rank commercialization and the regulatory bodies constituted under the laws enacted by the Parliament and the State legislatures have failed to stem the rot. The cases filed by these institutions, many of which have not been granted recognition due to non-fulfilment of conditions specified in the NCTE and the regulations framed thereunder and by the students who have taken admission in such institutions with the hope that at the end of the day they will be able to get favourable order by invoking sympathy of the court, have choked the dockets of various High Courts and even the Supreme Court. It also took note of the adverse notes made in the case reported in **ST.JOHN'S TEACHERS TRAINING INSTITUTE**

[7]2012(2) SCC 425

(FOR WOMEN) V. STATE OF T.N.[8] In respect of the interim orders being passed in such cases, it held that such teachers, who are allowed to appear at the examination, in question, cannot derive any benefit on the basis of such interim orders, when ultimately the main writ applications have been dismissed by the High Court, which order is being affirmed by the Supreme Court. It was also held that while making admissions, every recognized institution is duty bound to strictly adhere to paras 3.1 to 3.3 of the Norms and Standards for Secondary/Pre-School Teacher Education Proramme contained in Appendix 1 to the Regulations. If any institution admits any student in violation of the norms and standards laid down by the NCTE, then the Regional Committee shall initiate action for withdrawal of the recognition of such institution and pass appropriate order after complying with the rules of natural justice.

13. To summarise, the State has powers to decide on the mode of admission into colleges, which the State has done in this case by virtue of GO-30, which still holds the field. However, such legislation cannot be in conflict with the NCTE regulations. By interpreting clause 3.3 in the manner, as done by the High Court of Kerala in the afore-cited ruling, the criteria laid down for admission into D.Ed course, by virtue of GO-30 cannot be said to be in conflict with the regulations of the NCTE.

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[8](1993) 3 SCC 595

14. In view of the above, this court does not find any merit in these writ petitions and hence, no relief, as sought for by the writ petitioners, can be granted.

15. The writ petitions fail and are, accordingly, dismissed. As a sequel, the miscellaneous applications pending, if any, shall stand closed.

T. RAJANI, J

July 24, 2020
LMV

SMT JUSTICE T. RAJANI

WRIT PETITION Nos. 10701, 9762, 9679, 9765, 9769, 9801, 9815, 10012, 10075, 10341, 10346, 10348, 10519, 10760, 10780 of 2020, 16980, and 20455 of 2019

July 24, 2020

LMV