

THE HON'BLE SRI JUSTICE A.RAJASEKHAR REDDY

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT PETITION Nos.17124 & 17319 of 2017

COMMON ORDER : (by the Hon'ble Sri Justice A.Rajasekhar Reddy)

The case of the petitioners is that they are MBBS students and they have participated in the National Eligibility-cum-Entrance Test (for short 'NEET-PG') offered by the National Board of Examinations, New Delhi for admission into P.G. Medical Courses. The petitioners have secured minimum qualifying marks and were assigned ranks by NEET and they belong to the State of Andhra Pradesh and Telangana respectively. They were also assigned state ranks on applications being made. The state of Andhra Pradesh issued rules known as Andhra Pradesh Unaided and Non-minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses) Rules, 2017 vide G.O.Ms.No.70, Health, Medical and Family Welfare Department dated 03.05.2017 and the State of Telangana has also issued Rules known as Telangana State Unaided and Non-minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses) Rules, 2017 vide G.O.Ms.No.40, Health, Medical and Family Welfare Department dated 09.05.2017. These rules govern admissions into post graduate courses in the respective States.

2. The first respondent in both the writ petitions issued prospectus inviting applications for admission into Post Graduate, Degree and Diploma Courses under Management quota seats for the academic year 2017-18. In the prospectus issued by both the

universities, it is notified that the candidates from all over India are eligible for management quota under Sub-Category-I, which is impugned in the writ petitions, on the ground that the admissions to the P.G. Courses under the management quota shall be restricted to the candidates only belonging to the State of Andhra Pradesh & State of Telangana mainly basing on Article 371(D) of the Constitution of India and the Andhra Pradesh Educational Institution (Regulation of Admissions) Order, 1974 (for short 'the Presidential Order').

3. Counter affidavit is filed by the 1st & 6th respondents in W.P.No.17124 of 2017 stating that the Rules in G.O.Ms.No.70 Health, Medical and Family Welfare Department dated 03.05.2017 were framed in consensus with the Judgment of Hon'ble Supreme Court in Appeal (Civil) No.5041 of 2015 in **PA.Inamdars Vs State of Maharastra¹**, after elaborate discussions with the Private Unaided and Non-minority Medical and Dental Colleges with regard to admissions to Post Graduate, Degree and Diploma Courses making availability of 50% sanction of intake seats, for admitting students by the competent authority basing on the merit in NEET in P.G. Courses. That as per the MCI Regulations and as per G.O.Ms.No.70, the Management is exempted from providing any reservation including local area as per Clause 5 of the Presidential Order. The University has undertaken the process of admissions by conducting counseling for the seats available under management quota without application of Presidential Order to the

¹ AIR 2005 SCC 3226

management seats and the same is confirmed by this Court in ***N.Sai Harishitha Vs. State of Andhra Pradesh***². It is also stated that Section 95 of the Andhra Pradesh Re-Organization Act, 2014 has no relevance in so far as the issue raised by the petitioners is concerned, as the issue in the present cases is applicability of Presidential Order under Management quota seats. That there is no dispute regarding applicability of Article 371 (D) of the Constitution of India and the Presidential Order to the educational institutions which are subject to control under the State Government i.e., Government Institutions or Government aided institutions.

4. The respondents averred that private unaided Medical and Dental colleges are not subject to control of either State Government or Central Government. The role of the State and Central Government is very limited to the prescribing standards and regulating the admissions, which are actually regulatory in nature and the same is done by the State Government by virtue of the directions of the Hon'ble Supreme Court. It is also stated that the judgment relied by the petitioners in ***Sureka Vs Union of India and others***³, ***Dr. Pradeep Jain Vs Union of India***⁴ and ***Sandeep Vs Union of India and others***,⁵ has no relevance in the present cases.

² (2017 (1) ALT 278

³ 1988 (4) SCC 526

⁴ 1984 3 SCC 654

⁵ 2016 (2) SCC 328

5. Sri G.Vidya Sagar, learned senior counsel appearing for petitioners submits that by virtue of Article 371-D of the Constitution of India and the Presidential Order as interpreted by the Apex Court in **Sandeep**'s case(5 supra) admissions to Post Graduate Medical and Dental Management Quota Seats in Private Non-Minority Medical and Dental Colleges in the States of Andhra Pradesh and Telangana have to be restricted to the candidates belonging to Andhra Pradesh and Telangana States. As such, impugned clause in the prospectus is not in tune with Article 371(D) of Constitution of India and Presidential Order. He also contended that as per Section 3(3) of Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act 1982 students belonging to other states can be admitted into Medical and Engineering Colleges in the State on reciprocal basis in accordance with such rules as may be prescribed, but the rules framed by both states in G.O.Ms.No.70, Health, Medical and Family Welfare Department dated 03.05.2017 and G.O.Ms.No.40, Health, Medical and Family Welfare Department dated 09.05.2017 does not provide for any such prescription and in the absence of same, impugned clause in the prospectus is without any basis and beyond the power conferred under the rules. He places strong reliance on Clause 1(a) and 4 of the Presidential order.

6. On the other hand, learned standing counsel appearing for respondent No. 1-University in W.P.No. 17319 of 2017 and learned standing counsel appearing for respondent No. 1-University in W.P.No. 17124 and learned counsel for respondent No. 6 in

W.P.No. 17124 of 2017 contend that a similar issue fell for consideration before a Division Bench of this Court in W.P.Nos. 29716 of 2016 and batch and this Court negated the similar contentions of the petitioners. As such, the issue in these Writ Petitions is squarely covered by the judgment rendered by the Division Bench in **N.Sai Harishitha' Vs. State of Andhra Pradesh(2 supra)**. By relying on the said judgment, they submit that the respondents are private unaided non-minority institutions and they are not controlled by Government and as such, paragraph 5 (1) of the Presidential Order and Article 371-D have no application. They also submit that the judgment relied upon by learned counsel for the petitioners has no application since the issue in the present case was not the issue before the Supreme Court in **Sandeep(5 supra)** and that therefore the decision in **Sandeep** has no application to the present facts of the case.

7. In view of above rival contentions, the only issue that falls for consideration of this Court is :

"Whether the impugned clause in the Prospectus which reads as follows :

"The candidates from All over India are eligible for Management Quota sub-Category-1"

is in consonance with Article 371-D of the Constitution of India and Andhra Pradesh Educational Institution (Regulation of Admissions) Order, 1974 and the rules made in G.O.Ms.No.70, dated 03.05.2017 and G.O.Ms.No.40, dated 09.05.2017?"

8. When the matter was listed for admission on 18-05-2017, this Court granted the following *interim* orders by relying on **Sandeep's** case:

"In view of the aforesaid decision of the Supreme Court, prima facie we are of the opinion that the clause extracted above is not valid in law. Hence, the respondents are directed not to consider the applications of the candidates who do not belong to the State of Telangana and Andhra Pradesh against Management Quota Sub-Category – 1, till the next date of hearing.

Post on 25.05.2017 for instructions of the learned standing counsel."

9. For better appreciation, it will be useful to extract Article 371-D of the Constitution of India, which reads as follows:

"Special provisions with respect to the State of Andhra Pradesh or the State of Telangana –

(1) *The President may by order made with respect to the State of Andhra Pradesh or the State of Telangana, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the States.*

(2) *An order made under clause (1) may, in particular –*

(a) *require the State Government to organize any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may*

be specified in the order the persons holding such posts to the local cadres so organized:

- (b) specify any part or parts of the State which shall be regarded as the local area –*
 - (i) for direct recruitment to posts in any local cadre (whether organized in pursuance of an order under this article or constituted otherwise) under the State Government;*
 - (ii) for direct recruitment to posts in any cadre under any local authority within the State; and*
 - (iii) for the purposes of admission to any university within the State or to any other educational institution which is subject to the control of the State Government;*
- (c) specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made –*
 - (i) in the matter of direct recruitment to posts in any such cadre referred to in sub-clause (b) as may be specified in this behalf in the order;*
 - (ii) in the matter of admission to any such university or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order."*

10. In **N.Sai Harishitha Vs. State of Andhra Pradesh**(2 supra), almost a similar issue fell for consideration before a Division Bench of this Court and the contention of the petitioners therein as observed by the Court is as follows:

"6. of the issue raised in the other two writ petitions is that the Association of Managements of Private Colleges is obliged to follow the Presidential Order, 1974 for admissions to B-category seats. In other words, the contention of the petitioners is that the Managements of Private Medical and

Dental Colleges are entitled to admit students to B-category seats, only if two conditions are satisfied, namely, (a) that they have secured a good rank in NEET-2016, and (b) that they also satisfy the requirement of being a local candidate as per the Presidential Order. In simple terms, the contention of the petitioners is that no candidate, who does not belong either to the State of Andhra Pradesh or to the State of Telangana, as the case may be, can be admitted to B-category seats, merely on the basis of the marks secured in NEET-2016. This, according to the petitioners, is the dictum of Article 371 D of the Constitution, the Presidential Order, 1974 issued pursuant thereto, and the Rules framed thereafter.

11. The contentions raised by the petitioners herein are almost same as admission in that case and present case, pertain to management quota seats in unaided non-minority private medical colleges but the Senior Counsel appearing for the petitioners submits that he is not placing reliance on clause (5) of Presidential Order, but place reliance on Clause(4). But clause (4) only deals with definition of local candidate for educational institutions etc., which according to me is not relevant as the same does not provide for any reservation in favour of local candidate.

12. Article 371-D(2)(b)(iii) specifies that Presidential Order can be made in respect of Educational Institutions which are subject to the control of the State Government.

13. In exercise of the powers conferred by Clauses 1 and 2 of Article 371 D, the President issued an order known as "the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974". The said order came into force on the first day of July, 1974. The said order, hereinafter referred to as "the Presidential

Order, 1974", made it mandatory for the non-State-wide Universities and educational institutions, to carve out 85% of the available seats in every course of study, to be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

14. Clause (5) of the Presidential Order, 1974 mandates the reservation of 85% of the seats for local candidates, reads as follows:

"5. Reservation in non-State-wide Universities and educational institutions:-

(1) Admission to eighty-five percent of the available seats in every course of study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide Educational Institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution."

15. Clause(5) applies to educational institutions which are subject to the control of State Government. Though the learned Senior Counsel has not placed reliance on Clause(5) of the Presidential Order, clause (5) only deals with reservation for local candidates and it is not the case of the petitioners that the respondents-Colleges are controlled by the Government and the counter filed by respondents 1 and 6 in Writ Petition No.17214 of

2017 also states that respondents-colleges are not subject to the control of the State Government. In view of the same, neither Article 371-D(2)(b)(iii) nor clause (5) of the Presidential Order has application to the respondents-Colleges, who are unaided non-minority private medical colleges.

16. The Division Bench in **N.Sai Harishitha's** case while interpreting clause (5) held as follows:

“11. The institutions in question, according to the petitioners, come within the purview of the expression "any educational institution" appearing in Paragraph – 5(1) of the Presidential Order extracted above. Therefore, the contention of the learned counsel for the petitioners is that if what these Managements are running, are educational institutions, such educational institutions would squarely fall within the ambit of Paragraph – 5 (1) of the Presidential order. If they so fall, then they are obliged to reserve seats for local candidates, in accordance with the Presidential Order.

12. But unfortunately for the petitioners, the institutions run by the Managements of Private Medical and Dental Colleges would fall within paragraph – 5 (1) of the Presidential Order, only if they satisfy two requirements namely, (a) that these institutions should be educational institutions in the first instance and (b) that they should also be subject to the control of the State Government. Unless these two requirements are satisfied, the institutions run by these Managements will not be covered by Paragraph – 5 (1).

23. But, all the above arguments lose sight of one important fact. A careful look at paragraph-5(1) of the Presidential Order would show that what is contemplated therein is the control over the educational institution. For the purpose of an easy appreciation, the

relevant portion of 5 (1) alone is reproduced once again as follows:

“by any educational institution (other than a State-wide university or a State-wide educational institution) which is subject to the control of the State Government.

Therefore, what is contemplated by paragraph 5 (1) of the Presidential Order is the control of the State Government over the educational institution. Neither Act 5 of 1983 nor any of the Rules issued thereunder contemplate the control of the State Government over the educational institution. The control over the process of admission of students to the courses, stands on a completely different footing from the control over the educational institution itself.

26. As we have pointed out earlier, the control that is contemplated under paragraph 5 (1) of the Presidential Order is the control over the educational institution and not a mere control over the admission process. If it is clear that the State has a control only over the process of admission, it would follow as a colloary that paragraph 5 (1) of the Presidential Order would have no application. We also have to point out that the word “control” itself is a misnomer in such cases. It is only by a Court made law that the Stage Governments were directed by the Supreme Court to regulate the process of admission of students into professional courses by private unaided institutions. All the statutory enactments as well as the Rules issued by the State Governments are actually regulatory in nature and the same is done by the Stage Governments, by virtue of the directions of the Supreme Court to regulate its procedure. Once this is clear, there can be no second opinion about the fact that the State Governments do not have any control over the educational institution, except to the extent of regulating the process of admission. As a consequence, paragraph 5 (1) of the Presidential Order reserving 85% of the seats for local

candidates, will have no application for admission to the professional courses.

27. Two more important aspects to be taken note of are (1) that the original requirement of any institution securing an essentiality certificate from the State Government is now gone, and (2) that the very object of the Supreme Court directing the conduct of NEET, is to ensure that a merit based process of selection is to be in place. As a matter of fact, a question arose in *Dr.Sandeep and others v. Union of India and others*(3) 2016 (2) SLR 1 (SC) as to whether admission to super specialty courses in medicine could be restricted in certain States, such as, Andhra Pradesh, Telangana and Jammu and Kashmir, to the local students. The Supreme Court held that the undivided State of Andhra Pradesh enjoyed a special privilege under Article 371 D and the Presidential Order, and that, therefore, the application of the domicile test in respect of 15% of the quota made for non local candidates, cannot be said to be illegal.

28. The reverse of the logic applied in Dr. Sandeep (3 supra) is that what we are now concerned with. The Supreme Court was not concerned in Dr. Sandeep (3 supra), with the interpretation to the expression ‘ control of the State Government’ appearing in paragraph-5.

29. It will be interesting to note that on the question as to whether the State Governments exercise control over these institutions, we directed the learned Government Pleaders of both the States to get instructions. Insofar as the State of Andhra Pradesh is concerned, the Principal Secretary to the Government, Health Medical and Family Welfare Department, has stated in his communication, dated 20.09.2016, that the presidential order has no application for admission to B-category seats in unaided non-Minority Private Medical and Dental Colleges in the State of Andhra Pradesh. The same opinion has been communicated by the principal Secretary to the Government of the State of

Telangana also. In other words, the State Governments themselves have conceded before us that the power to regulate admission of students into these colleges, cannot be construed as power of control conferred upon a State Government over these institutions. Once this is clear, the questions raised in these writ petitions have to be naturally answered against the Writ Petitions. Therefore, we hold that the reservation for local candidates, as contemplated under paragraph 5 (1) of the Presidential Order, 1974, would have no application for admission of students to category-B seats in Unaided non-Minority Private Medical and Dental Colleges. However, the Managements of these Private Unaided institutions are supposed to admit students, only on the basis of their performance in NEET 2016, insofar as category-B seats are concerned.”

17. Though learned senior counsel relied on sub-section (3) of Section 3 of the Act 5 of 1983 and also the judgment in **Sandeep** (5 supra) as held by the Division Bench of this Court in **N.Sai Harishitha**(2 supra), the issue before the Supreme Court in **Sandeep** does not pertain to interpretation of expression control of the State Government appearing in para No. 5 of the Presidential Order. The Division Bench after thorough analysis held that the same has no application to the facts of the case. In **Sandeep**, the contention was whether State can restrict admissions only to the State of Andhra Pradesh and Telangana and the Supreme Court rejected the case of the petitioner by relying on Article 371-D of the Constitution of India and the Presidential Order issued thereunder and as rightly held by the Division Bench of this Court, the said judgment was rendered in different contextual background.

18. In view of the above facts and circumstances of the case, we do not see any reason to strike down the impugned clause in the Prospectus and grant relief to the petitioners.

19. Accordingly, both the Writ Petitions are dismissed. There shall be no order as to costs.

20. Consequently, miscellaneous petitions pending if any, shall stands dismissed.

A.RAJASEKHAR REDDY, J

T.RAJANI, J

27.05.2017

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**THE HON'BLE SRI JUSTICE A.RAJASEKHAR REDDY
AND
THE HON'BLE SMT JUSTICE T.RAJANI**



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