

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION NOS: 23420 AND 35173 OF 2022

W.P.No.23420 of 2022

Between:

Dr. GANTA SATVIKA REDDY, Daughter of Dr. Ganta Dayakar Reddy, aged about 26 years, Resident of H.No.1-6-68, RT Road, Dr. Ganta Dayakar Reddy General Surgical Hospital Lane, Suryapet, Nalgonda, Telangana.

...PETITIONER

AND

1. THE STATE OF TELANGANA, Represented by its Principal Secretary, Department of Health and Medical and Family Welfare, Secratariat, Hyderabad.
2. KALOJI NARAYANA RAO UNIVERSITY OF HEALTH AND SCIENCES, Represented by its Registrar, Nizamarpura, Warangal, Telangana-506007.
3. MNR MEDICAL COLLEGE, Represented by its Principal, MNR Nagar, Fasalwadi, Narsapur Road, Sangareddy -502294.
4. MEDICITY INSTITUTE OF MEDICAL SCIENCES, Represented by its Principal, Medchal Mandal, Ghanpur, Telangana - 501401.
5. KANDAKATLA MOUNIKA Particulars not known to the Petitioner, Hall Ticket No.2166149258, Rank 20920.
6. NELLORE NIKITHA Particulars not known to the Petitioner, Hall Ticket No.2166011123, Rank 35569.

(Respondent Nos.5 & 6 are impleaded as per Court Order dated 27-10-2022 vide I.A.No.3 of 2022)

...RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus, declaring the unnumbered paragraph 3 of the Notification issued by the Respondent no.3 under NOTIFICATION FOR EXERCISING WEB-OPTIONS FOR STRAY VACANCY COUNSELLING OF PG MEDICAL ADMISSIONS UNDER MANAGEMENT QUOTA INTO MEDICAL COLLEGES AFFILIATED TO KNRUHS dated 30.04.2022 thereby not permitting the Petitioner to participate in the Stray Vacancy Counseling of PG Medical Degree and Diploma Admissions for the Academic Year 2021-22 under Management Quota as illegal, arbitrary, abuse of executive powers and Consequently direct the Respondent No.2 herein to permit the Petitioner to participate in the Stray Vacancy Counseling of PG Medical Degree/Diploma Admissions for the Academic Year 2021-22 under Management Quo

I.A.NO:1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.2 herein to permit the Petitioner to participate in the Stray Vacancy Counselling of PG Medical Degree/Diploma Admissions for the Academic Year 2021-22 under Management Quota, pending disposal of the above writ petition.

I.A.NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.2 University to consider the credentials of the Petitioner in the Stray Vacancy Counselling dated 30.04.2022 and thereby allot the Petitioner a seat in M.D. DVL course in Medcity Institute of Medical Sciences as the Petitioner is holding a better rank than the Proposed Respondent No.6.

I.A.NO:4 OF 2022

Between:

Kaloji Narayana Rao University of Health and Sciences, Represented by its Registrar, Nizam pura, Warangal, Telangana-506007.

....PETITIONER/2nd RESPONDENT

AND

1. Dr. GANTA SATVIKA REDDY, Daughter of Dr. Ganta Dayakar Reddy, aged about 26 years, Resident of H.No.1-6-68, RT Road, Dr. Ganta Dayakar Reddy General Surgical Hospital Lane, Suryapet, Nalgonda, Telangana.

...RESPONDENT/PETITIONER

2. THE STATE OF TELANGANA, Represented by its Principal Secretary, Department of Health and Medical and Family Welfare, Secratariat, Hyderabad.
3. MNR MEDICAL COLLEGE, Represented by its Principal, MNR Nagar, Fasalwadi, Narsapur Road, Sangareddy -502294.
4. MEDICITY INSTITUTE OF MEDICAL SCIENCES, Represented by its Principal, Medchal Mandal, Ghanpur, Telangana - 501401.
5. KANDAKATLA MOUNIKA Particulars not known to the Petitioner, Hall Ticket No.2166149258, Rank 20920.
6. NELLORE NIKITHA Particulars not known to the Petitioner, Hall Ticket No.2166011123, Rank 35569.

...RESPONDENTS/RESPONDENTS

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order dated 5-5-2022 in W.P.No.23420 of 2022.

Counsel for the Petitioner : SRI.DHARMESH D.K.JAISWAL

Counsel for the Respondent No.1 : GP FOR MEDICAL HEALTH AND FAMILY WELFARE

Counsel for the Respondent No.2 : SRI.A.PRABHAKAR RAO

Counsel for the Respondent No.3 : SRI.D.SRINIVAS PRASAD

Counsel for the Respondent Nos.4 & 5 : -

Counsel for the Respondent No.6 : SRI.V.RAMESH REDDY

W.P..NO: 35173 OF 2022

Between:

Dr. GANTA SATVIKA REDDY, Daughter of Dr. Ganta Dayakar Reddy, aged about 26 years, Resident of H.No.1-6-68, RT Road, Dr. Ganta Dayakar Reddy General Surgical Hospital Lane, Suryapet, Nalgonda, Telangana.

...PETITIONER

AND

1. THE STATE OF TELANGANA, Represented by its Principal Secretary, Department of Health and Medical and Family Welfare, Secratariat, Hyderabad.
2. KALOJI NARAYANA RAO UNIVERSITY OF HEALTH AND SCIENCES, Represented by its Registrar, Nizamarpura, Warangal, Telangana-506007.
3. MNR MEDICAL COLLEGE, Represented by its Principal, MNR Nagar, Fasalwadi, Narsapur Road, Sangareddy -502294.

4. MEDICITY INSTITUTE OF MEDICAL SCIENCES, Represented by its Principal, Medchal Mandal, Ghanpur, Telangana - 501401.
5. MALLA REDDY INSTITUTE OF MEDICAL SCIENCES, Represented by its Principal, Sy. No. 138, Suraram Main Road, GHMC Quthbullapur Jeedimetla, Hyderabad - 500 055.
6. MALLA REDDY MEDICAL COLLEGE FOR WOMEN, Represented by its Principal, Suraram 'X' Road, Quthbullapur Municipality Jeedimetla, Hyderabad - 500 055.
7. Bhaskar Medical College and Bhaskar General Hospital, Represented by its Principal, Bhaskar Nagar, Moinabad Mandal, R.R. District, Hyderabad - 500075.
8. National Medical Commission, Represented by its Chairman Pocket 14 Sector 8, Dwaraka Phase 1, New Delhi 110 001

(Respondent No 8 is impleaded as per Court Order dated 11/10/2022 vide IA No 2 of 2022 in WP No.35173 of 2022)

...RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus, directing the Respondent No.2 University to create supernumerary seat in either of the Respondent No.4 to 7 Colleges with respect to M.D. DVL course in MQ1 B category for the Academic Year 2021-22, as the Writ Petitioner lost her seat earlier in the Medicity Institute of Medical Sciences with respect to M.D. DVL course only due to the conduct of the Respondent No.2 University.

IA.NO:1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.2 herein to permit the Petitioner to attend the classes in any of the Respondent No.4 to 7 in M.D. DVL course for the Academic Year 2021-22, pending disposal of the above writ petition.

Counsel for the Petitioner : SRI.DHARMESH D.K.JAISWAL

Counsel for the Respondent No.1 : GP FOR MEDICAL HEALTH AND FAMILY WELFARE

Counsel for the Respondent No.2 : SRI.A.PRABHAKAR RAO

Counsel for the Respondent No.3 : SRI.D.SRINIVAS PRASAD

Counsel for the Respondent Nos.4 & 5 : -

Counsel for the Respondent No.6 : SRI.V.RAMESH REDDY

Counsel for the Respondent No.7 : ---

Counsel for the Respondent No.8 : SMT.GORANTLA POOJITHA

The Court made the following COMMON ORDER

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

&

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION No.23420 of 2022

&

WRIT PETITION No.35173 of 2022

COMMON ORDER: *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

Both the Writ Petitions are disposed of by this Common Order since the issue involved in both these Writ Petitions is one and the same.

2. Heard Sri Dharmesh D.K. Jaiswal, learned counsel for the petitioner, learned Special Government Pleader for Medical and Health, appearing for the respondent No.1, Sri D. Srinivas Prasad, learned counsel for respondent No.3, Sri Ramesh, learned counsel for the 6th respondent and Smt. Gorantla Poojitha, learned Standing counsel for the National Medical Commission, appearing for the respondent No.8.

3. For the sake of convenience, the facts in W.P. No.23420 of 2022 are here under discussed.

4. It has been contended by the petitioner that she has completed her M.B.B.S course and she has appeared for the

National Eligibility and Entrance Test (NEET)-PG and secured decent rank i.e., 25948 in the said entrance examination. The petitioner has further submitted that she is interested in pursuing M.D. DVL course and accordingly participated in second phase of counselling and got admission in M.D. DVL course under Management Quota where the fee prescribed is Rs.69 lakhs per annum and the petitioner had an opportunity to participate in the Additional Mop Up counseling which was notified on 26.04.2022. In pursuance of the Additional Mop Up counseling notification, the petitioner has participated in the Additional Mop Up counselling. However, in the said Additional Mop Up counselling, the 5th respondent has blocked the seat. Whereas the 5th respondent was already pursuing her M.S. Opthamology in Mamatha Medical College and 5th respondent was allotted the said seat in Convener Quota.

5. The learned counsel for the petitioner has contended that persons who have been allotted under Convener Quota, are not allowed to participate in the Additional Mop Up counseling and as per the notification dt:26.04.2022, it is clear that the candidates who were allotted in the previous phase of counseling under the competent authority Quota, are not permitted to participate in the Additional Mop Up counseling. In spite of the said notification, the

5th respondent was allowed to participate in the Additional Mop Up counseling by blocking the seat in M.D. DVL course in Medicity Medical College and consequently, the petitioner could not get admission into M.D. DVL course and the petitioner has no other option except to take admission in MNR Medical College.

6. Learned counsel for the petitioner has further contended that after Additional Mop Up counseling which was held on 27.04.2022, the University has notified the vacancy of M.D. DVL seat in Medicity Medical College in the form of Stray Vacancy Counseling on 30.04.2022 and same would establish that the 5th respondent has deliberately blocked the seat in the Additional Mop Up counseling and the 5th respondent has not even joined the said course and she was pursuing her M.S. Opthamology in Mamatha Medical College. Because of the illegal action of the respondent University in permitting the 5th respondent in Additional Mop Up Counselling, in spite of the fact that the 5th respondent was granted admission under the competent authority quota, the petitioner could not secure admission in M.D. DVL course in Medicity College.

7. Learned Counsel for the petitioner has further contended that the Academic year has commenced from February 2022 and the petitioner was pursuing her M.D. DVL course in Medicity College and she has been attending classes from February 2022 and when

a vacancy was notified in the Additional Mop Up counseling in M.D. DVL course in Medicity College, the petitioner wanted to opt a seat in the same college but because of the illegal action of the respondent University in permitting the 5th respondent to participate in the Additional Mop Up counseling, the seat was blocked and the petitioner could not get admission in Medicity College.

8. Learned Counsel for the petitioner has further contended that the petitioner wanted to participate in the Stray Counseling which was notified on 30.04.2022, but the petitioner was prevented from participating in the counseling on the ground that the petitioner has already got a mission in the Additional Mop Up counseling in M.D. DVL course in MNR college.

9. Learned Counsel for the petitioner has further drawn the attention of this Court that recognition in respect of MNR college was withdrawn by the National Medical Commission vide proceedings dt.18.05.2022 and thereafter, National Medical Commission has issued proceedings on 27.06.2022, 30.06.2022 and 05.07.2022 wherein a decision was taken by National Medical Commission to shift the students who are admitted in MNR College to other Government Colleges and private colleges. As the recognition in respect of the MNR College was already withdrawn in

terms of National Medical Commission as per the letters referred to above, the petitioner should be shifted to Medicity College while shifting the seat from MNR college to Medicity College.

10. Learned counsel for the petitioner has further contended that in the Stray Vacancy Counselling which was notified on 30.04.2022, the 6th respondent has secured admission in M.D. DVL Course even though the 6th respondent has secured the rank of more than 35000 i.e. 35569, which is more than the petitioner's rank i.e. 25948. Therefore, learned Counsel for the petitioner has contended that an appropriate orders be passed in the present Writ Petition directing the respondents to shift her seat in M.D. DVL course from MNR college where the petitioner has been admitted, to that of Medicity College where the petitioner was already pursuing her M.D. DVL course under Management Quota.

11. Learned Counsel appearing for respondent University has admitted fairly that the 5th respondent has participated in the Additional Mop Up Counselling even though she is not entitled to participate, and appropriate orders be passed in the present Writ Petition.

12. Learned Standing Counsel appearing for National Medical Commission, Smt. Pujitha Gorantla, has vehemently opposed the

relief on the ground that Regulations No.9 and 10 of PG Medical Regulations were not proper in migration/transfer of students undergoing for Postgraduation Super Speciality Course and she has drawn our attention to Regulation No.9 which deals with procedure for selection of candidate for Postgraduate Course and sub-clause 12(3) deals with Migration. The said regulation states that "Under no circumstances, Migration/transfer of student undergoing any Post graduate Degree/Diploma/Super Speciality Course shall be permitted by any University/Authority. The learned Standing Counsel has drawn the attention of this Court in respect of proceedings dt.07.09.2022 wherein the recognition in respect of MNR college has been restored and when once the recognition is restored in respect of MNR college, the regulation No.10, 9(12)(3) will attract and the question of shifting the students does not arise.

13. Learned Counsel appearing for 6th respondent has contended that 6th respondent has taken a seat in Stray Vacancy Counselling and she was admitted in Stray Vacancy Counselling and Stray Vacancy Counselling is being conducted as a last chance to fill up the vacant seats and the 6th respondent has rightly responded to the Stray Vacancy Counselling notification dt.30.04.2022 and as she was eligible, she has been rightly granted admission in M.D. DVL Course and no fault can be attributed in respect of 6th respondent.

14. Sri D. Srinivas Prasad, learned Standing Counsel appearing for MNR College, has contended that in view of proceedings dt.07.09.2022 issued by the National Medical Commission, the recognition of the MNR College has been restored and it has been functioning in full fledged manner and MNR College has not played any role in denying the admission to the petitioner in Medicity College.

15. Learned Counsel for the petitioner has drawn the attention of this Court to the notice issued by the Government of India on 20.04.2022 wherein it clearly states that the candidates joined in the 2nd round whether through All India quota or State quota will not be eligible to participate in a fresh Additional Mop Up Counselling or 2nd stage of All India Quota Counselling. This letter dt.20.04.2022 was violated by the University and the 5th respondent was allowed to participate in the Additional Mop Up Counselling in spite of 5th respondent was granted admission in the 2nd phase of Counselling in M.A. Ophthalmology under the competent authority quota.

16. Learned Counsel for the petitioner has also drawn the attention of this Court to the judgment of the Hon'ble Supreme

Court in **S. Krishna Sradha Vs. State of Andhra Pradesh**¹ wherein the Hon'ble Supreme Court held at para No.13 as under:

"Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed - 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled."

17. The Hon'ble Supreme Court had categorically held that if the court finds that there is no fault attributable to the candidate and

¹ (2020)17 SCC 465

the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles, in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases, direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cutoff date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October.

18. Learned Counsel for the petitioner has contended that the petitioner is not seeking any creation of a seat. Because of the illegal action of the respondent University in permitting the 5th respondent to block the seat in the Additional Mop Up counselling, great injustice has been done to the petitioner. The petitioner is only seeking shifting of seat in M.D. DVL course from MNR College to that of Medicity College.

19. Having considered the rival contentions submitted by the parties, this Court is of the considered view that the petitioner was

denied admission in M.D.DVL course in the Additional Mop Up counselling because of the 5th respondent was allowed to participate in the counselling and blocked the seat even though, the 5th respondent has secured admission in the second phase in M.S. Opthamology under the Competent Authority Quota, but the Regulations clearly prohibited such seat blocking.

20. Therefore, by taking into totality of the circumstances of the case, this court is of the considered view that one seat in M.D. DVL course from MNR College be shifted to Medicity Medical College. This direction is being issued by taking into account that the National Medical Commission itself issued proceedings on 27.06.2022, 30.06.2022 and 05.07.2022 wherein the National Medical Commission has taken decision to shift the students from the colleges where the recognition was withdrawn. This court is not giving any direction to create any supernumerary or additional seat in Medicity Medical College. This court is only directing the respondents to shift one seat in respect of M.D. DVL course from MNR college to Medicity Medical College under exceptional circumstances as a lot of injustice has been meted out to the petitioner by the action of respondent University in allowing the 5th respondent to participate in the Additional Mop Up counselling.

21. With these observations both these Writ Petitions are disposed of. No costs.

As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

SD/-T.TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
(For His Lordship's Kind Perusal)

AND

One fair copy to the HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
(For His Lordship's Kind Perusal)

To

1. The Principal Secretary, Department of Health and Medical and Family Welfare, Secretariat, State of Telangana at Hyderabad.
2. The Registrar, Kaloji Narayana Rao University of Health and Sciences, Nizamarpura, Warangal, Telangana-506007.
3. The Principal, MNR MEDICAL COLLEGE, MNR Nagar, Fasalwadi, Narsapur Road, Sangareddy -502294.
4. The Principal, MEDICITY INSTITUTE OF MEDICAL SCIENCES, Medchal Mandal, Ghanpur, Telangana - 501401.
5. The Principal, MALLA REDDY INSTITUTE OF MEDICAL SCIENCES, Sy. No 138, Suraram Main Road, GHMC Quthbullapur Jeedimetla, Hyderabad - 500 055.
6. The Principal, MALLA REDDY MEDICAL COLLEGE FOR WOMEN, Suraram 'x' Road, Quthbullapur Municipality Jeedimetla, Hyderabad - 500 055.
7. The Principal, Bhaskar Medical College and Bhaskar General Hospital, Bhaskar Nagar, Moinabad Mandal, R.R. District, Hyderabad - 500075.
8. The Chairman, National Medical Commission, Pocket 14 Sector 8, Dwaraka Phase 1, New Delhi 110 001.
9. 11 L.R. Copies.
10. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
11. The Secretary, Telangana Advocates Association Library, High Court Buildings, Hyderabad
12. Two CCs to GP FOR MEDICAL HEALTH AND FAMILY WELFARE, High Court for the State of Telangana at Hyderabad. [OUT]
13. One CC to SRI.DHARMESH D.K.JAISWAL, Advocate [OPUC]
14. One CC to SRI.A.PRABHAKAR RAO, Advocate (OPUC)
15. One CC to SRI.V.RAMESH REDDY, Advocate (OPUC)
16. One CC to SRI.D.SRINIVAS PRASAD, Advocate (OPUC)
17. One CC to SMT.GORANTLA POOJITHA, Advocate (OPUC)
18. Two CD Copies
19. One spare copy

S.A
SW

HIGH COURT

DATED: 27/10/2022

COMMON ORDER

WP.Nos.23420 AND 35173 of 2022



**DISPOSING OF THE WRIT PETITIONS
WITHOUT COSTS.**

(34)
28/11/22
4/12/22