



**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 452/2019**

JUSTICE V. ESWARAI AH (RETD.) ...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. On an oral prayer, the learned Advocate-on-Record for the petitioner is discharged and the petitioner is permitted to argue the case himself.

2. This is a petition by All India Backward Classes Federation through its President who is a former Judge of the High Court in public interest inter-alia for a writ of mandamus seeking a declaration that Rule II (vii) and (viii) of the G.O.Ms No.43 dated 13th March 2013 issued by Respondent No.3 herein (State of Andhra Pradesh) and pari-materia provisions in the relevant Rules issued by Respondent No.4 herein (State of Telangana) as illegal, arbitrary, unconstitutional and against the principles laid

down by this Court.

3. At the outset, Justice V. Eswaraiah (Former Judge), who is appearing in person, fairly states that in the prayer clause of the present Writ Petition Rule II (vii) has been erroneously mentioned and he states that as a matter of fact the challenge in effect is to clauses (viii) and (ix) of Rule II of the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997 and the pari-materia provisions of the Telangana Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 2017. He further fairly states that after the bifurcation of the erstwhile State of Andhra Pradesh into the States of Andhra Pradesh and Telangana, the State of Andhra Pradesh has amended the Rules to bring them in conformity with the judgments of this Court on the issue. He, however, submits that the State of Telangana is yet to amend the Rules to bring them in conformity with the law laid down by this Court in various judgments.

4. Shri Eswaraiah, who appears in-person states that the law insofar as the present issue is concerned has been laid down by this Court in the cases of ***Ritesh R. Sah v. Dr. Y.L.***

Yamul and Others¹, Samta Aandolan Samiti and Another v. Union of India and Others² and Tripurari Sharan and Another v. Ranjit Kumar Yadav and Others³.

5. Placing reliance on the aforesaid judgments of this Court, it is submitted by the petitioner-in-person that the Meritorious Reserved Candidates (hereinafter referred to as 'the MRC'), who are entitled to be admitted against a reserved seat on their own merits have to be treated as open category candidates for the purpose of reservation so that another reserved category candidate is not deprived of his claim to the admission. He submits that due to Rules which are continued by the State of Telangana, if a reserved category candidate, who is entitled to get admission in 'A' Category on his own merits, does not accept the same and decides to take admission in 'B' Category, where he is entitled to be admitted only against a reserved seat, even in such a case the seat in 'A' Category should be filled in by a reserved category candidate. He submits that if that is not done, there will be a reduction of the reserved category seats.

6. Shri Gaurav Agrawal, learned Senior Counsel appears

¹ (1996) 3 SCC 253 : 1996 INSC 258

² (2014) 14 SCC 745 : 2013 INSC 822

³ (2018) 2 SCC 656 : 2018 INSC 25

on behalf of the State of Telangana and Ms. Prerna Singh, learned counsel appears on behalf of the State of Andhra Pradesh.

7. We have heard the petitioner-in-person at length and also heard the learned Senior Counsel and counsel appearing for the respondent-States.

8. Insofar as the judgment of this Court in the cases of **Ritesh R. Sah** (supra) and **Samta Aandolan Samiti** (supra) relied upon by the petitioner-in-person are concerned, the same pertains to the admission in MBBS Course.

9. The law on this issue is very well crystallized by the Constitution Bench judgments of this Court right from the case of **Indra Sawhney and Others v. Union of India and Others**⁴. It will be relevant to refer to the following observations of this Court in the case of Indra Sawhney (supra):

“**811.** In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition

⁴ 1992 Supp (3) SCC 217

candidates.”

10. The aforesaid position was again reiterated by another Constitution Bench of this Court in the case of **R.K.**

Sabharwal and Others v. State of Punjab and Others⁵:

“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the

⁵ (1995) 2 SCC 745 : 1995 INSC 108

Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.....”

11. Again, this Court reiterated the said position in the case of ***Union of India and Others v. Virpal Singh Chauhan and Others***⁶.

12. As such, there should be no difficulty when the issue is with regard to admission in MBBS Course. Insofar as the admission to MBBS Course is concerned, there should be no difficulty inasmuch as the question of taking admission in the specialty does not arise for consideration therein.

13. The difficulty would arise only in the methodology to be adopted while admitting the students in the Post Graduate

⁶ (1995) 6 SCC 684 : 1995 INSC 609

Courses.

14. The petitioner herein is All India Backward Classes Federation represented through its President, who is a former Judge of the High Court. No doubt, that this Court in the case of **S.P. Gupta v. Union of India and Another**⁷, has diluted the rigid rule of *locus standi* insofar as approaching this Court under Article 32 of the Constitution of India or the High Court under Article 226 of the Constitution of India is concerned. It has been held by this Court that when a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or where any burden is imposed in contravention of any constitutional or legal provisions or without authority of law then such a person or determinate class of persons, who by reason of poverty, helplessness or disability or socially or economically disadvantaged position are not in a position to approach the Court for any relief then any member of the public can maintain an application for an appropriate directions, order or writ either under Article 226 of the Constitution of India before the High Court or for

⁷ **1981 Supp SCC 87 : 1981 INSC 209**

breach of any fundamental right before this Court under Article 32 of the Constitution of India seeking judicial redress. It has been held that the Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to larger masses of people who are denied their basic human rights or to whom freedom and liberty have no meaning.

15. However, in the present case it is clear that the issues involved with regard to the reliefs sought by the petitioner cannot be considered unless the Court considers specific cases of grievances raised by any particular individuals. The question involved in the present case would require consideration of various complexities on account of the availability of opportunity to an MRC to slide to any super-specialties or non-availability of such an opportunity and restricting it only to sliding to the same speciality from an open category to a reserved category and the resultant effect thereon on the position of the reservation vis-a-vis the position of the seats available to an open category as against the seats available to a reserved category.

16. No doubt that the concern of the petitioner for

maintaining the percentage of reservation of seats in medical specialities for the reserved category candidates could be genuine but, in our considered view, unless the specific cases of the candidates arise for consideration before the Court, such an issue cannot be decided in abstract. Furthermore, such an issue cannot be decided without hearing other candidates who may be adversely affected by any such adjudication.

17. In our considered view, such a question cannot be considered in a Public Interest Litigation.

18. We, therefore, dispose of this writ petition and observe that whenever any such issue arises for consideration before any of the High Courts, the High Courts would consider the same on its individual merits, in accordance with law, as laid down by this Court.

19. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
FEBRUARY 25, 2025.