

DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

735

(2019) 12 Supreme Court Cases 735

- a* (BEFORE ARUN MISHRA AND INDIRA BANERJEE, JJ.)
DEGA VENKATA HARSHA VARDHAN
AND OTHERS .. Appellants;
- Versus*
- b* AKULA VENTAKA HARSHAVARDHAN
AND OTHERS .. Respondents.
- Civil Appeals No. 8529 of 2018[†] with Nos. ... of 2018[‡],
... of 2018^{††}, ... of 2018^{‡‡}, ... of 2018^{†††}, ... of 2018^{‡‡‡}, ...
of 2018^{††††} and ... of 2018^{‡‡‡‡}, decided on August 24, 2018
- Education Law — Reservation of Seats/Quota/Exemption/Priority/
Affirmative Action/Reverse Discrimination — Migration of Category —**
- c* **General quota seats vacated by meritorious reserved candidates given to reserved candidate of same category, even if meritorious reserved candidate opted for taking benefit of reservation for a better institution or course of his choice — Said course adopted by impugned Government Order, held, valid — By it upper limit of 50% reservation is not breached — Rather it preserves the inter se merit between the reserved category candidates**
- d* — When a candidate belonging to a reserved category qualifies on his own merit in general merit list, he is treated as open and/or general candidate and not included in 50% reservation — When rank of such candidate is not high enough to get admission to a discipline or institution of his choice as a general category candidate, it is possible that he might secure his choice by taking benefit of reservation — And if this is done as per impugned Government Order, such
- e* a candidate would continue to be treated as an open category candidate and seat as per his entitlement as a candidate of the general quota would go to a reserved candidate to which he belonged — This course of action thus not to the disadvantage of a meritorious reserved candidate by placing him at a more disadvantageous position than a less meritorious reserved category candidate — This course of action preserves and protects inter se merit amongst the reserved
- f* candidates (Paras 5 to 10)
- Object of reservation is to eliminate inequality — Therefore, positive measures and comprehensive methodological approach is required (Paras 3 and 4)

- g* [†] Arising out of SLP (C) No. 22000 of 2018. Arising from the Judgment and Order in *Suraparaju Likhitha Manohar v. Dr NTR University of Health Sciences*, 2018 SCC OnLine Hyd 276 : (2018) 5 ALD 11 (Hyderabad High Court, WP No. 29175 of 2017, dt. 7-8-2018)
- [‡] Arising out of SLP (C) No. 22330 of 2018
- ^{††} Arising out of SLP (C) No. 22697 of 2018
- ^{‡‡} Arising out of SLP (C) No. 23061 of 2018
- ^{†††} Arising out of SLP (C) No. 23008 of 2018
- ^{‡‡‡} Arising out of SLPs (C) Nos. 22682-684 of 2018
- h* ^{††††} Arising out of SLPs (C) Nos. 22685-687 of 2018
- ^{†††††} Arising out of SLP (C) No. 22924 of 2018

736

SUPREME COURT CASES

(2019) 12 SCC

— Though there were minor deviations while shifting from manual to online counselling these would not invalidate impugned Government Order — Government given liberty to amend procedure of online counselling — But admissions already made should not be disturbed (Paras 28 to 32) a

— Finding of High Court that reservation by said course of action exceeded 50%, misconceived — Impugned Government Order already upheld Full Bench of the High Court — Thus it could not have been reopened by a Bench of lesser strength — By doing so High Court acted in flagrant breach of judicial discipline — Impugned High Court order, therefore, set aside — Constitution of India — Arts. 14 and 15(1) — Reservation/Concession/Exemption/Relaxation and Affirmative Action — Migration of Category — Professional Colleges/Education — Medical and Dental Colleges — Courts, Tribunals and Judiciary — Judicial Process — Judicial discipline, accountability and comity (Paras 20 to 32) b

Affirming the impugned State Government order and setting aside the impugned High Court judgment, the Supreme Court c

Held :

Impugned Government order is valid

The provisions relating to reservation cannot work to the disadvantage of a meritorious reserved candidate. A meritorious reserved candidate cannot be placed at a more disadvantageous position than a less meritorious reserved category candidate. Candidates from amongst the reserved category who would otherwise come in the open merit list are therefore given the choice of opting for reserved seats without affecting the total number of reserved seats. However, for the purpose of reservation, such a candidate would continue to be treated as an open category candidate and the seat as per his entitlement as a candidate of the general quota would go to a reserved candidate. (Para 7) d

Tripurari Sharan v. Ranjit Kumar Yadav, (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490, followed e

A meritorious reserved category candidate who had qualified for admission on his own merit by reason of his general overall rank, could opt for a reserved seat in a discipline/college of his choice. However, on exercise of such option, the meritorious reserved category candidate would be treated as a candidate of the general category and not of the reserved category. Thus while calculating the limit of 50% reservation, those candidates belonging to reserved category who have found their place on the basis of their merit competing with general candidates are not to be taken into consideration. Such a course of action affords meritorious reserved candidates (MRC), the benefit of reservation insofar as service allocation is concerned, if this is not done, lesser meritorious reserved candidates would be able to secure a better discipline. Therefore, this course of action preserves and protects inter se merit amongst the reserved candidates. (Paras 10 to 12) f

Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1; *Tripurari Sharan v. Ranjit Kumar Yadav*, (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490; *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253; *Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412; *Samta Aandolan Samiti v. Union of India*, (2014) 14 SCC 745 : 6 SCEC 623, relied on g

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DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

737

- Koganti Jayakrishna v. State of A.P.*, 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389, approved
- a Mohd. Abdul Azeez Asad v. State of A.P.*, 2005 SCC OnLine AP 314 : (2005) 3 ALD 455; *B. Kaladhar v. State of A.P.*, 2005 SCC OnLine AP 937 : (2006) 1 ALD 1, cited

Finding of High Court that reservation exceeded 50%, misconceived

- No doubt a meritorious reserved category candidate continues to be an open category candidate, despite sliding down, to opt for a reserved seat. However, the finding of the High Court, that this does not happen anymore, under the online system of counselling is misconceived. (Paras 20 to 22)

Union of India v. Ramesh Ram, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412, relied on

- While considering the data of academic year 2018-2019, the High Court had overlooked the fact that 203 meritorious candidates belonging to Backward Classes, who had ranked well and secured admission to open and/or general category seats, and were treated as general category candidates, have been shown as belonging to the Backward Classes. The number of candidates of the Backward Classes has therefore been shown as 588. If the 203 meritorious reserved class candidates of the general category are deducted from the total number of candidates of Backward Classes, the number of Backward Classes candidates of the reserved quota would only be 392. The 203 meritorious candidates are to be added to the number of open category candidates with addition of 203 to 469 the number of open category candidates would be 672. Thus, the High Court has committed a patent error in holding that reservation has exceeded 50%. (Para 23)

- c Tripurari Sharan v. Ranjit Kumar Yadav*, (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490; *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253; *Samta Aandolan Samiti v. Union of India*, (2014) 14 SCC 745 : 6 SCEC 623, followed
- e Koganti Jayakrishna v. State of A.P.*, 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389, approved

Manual to online counselling

- The impugned Government Order only provides for adjustment and interchange of seats between meritorious reserved category candidates selected under the open category and the reserved category candidates selected under the reserved quota. (Paras 28 and 29)

- The introduction of online counselling appears to have brought about some changes in the process of counselling which might necessitate an amendment of the impugned Government Order for complete harmony. However, the recent introduction of the online system could not have been a ground for setting aside the impugned notification which has been in force for seventeen years, and the validity whereof has been upheld by a Full Bench of the High Court. The judgment and order under appeal is unsustainable. (Para 30)

g Suraparaju Likhitha Manohar v. Dr NTR University of Health Sciences, 2018 SCC OnLine Hyd 276 : (2018) 5 ALD 11, reversed

Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637, cited

Appeals allowed

SS-D/61681/S

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738	SUPREME COURT CASES	(2019) 12 SCC	
<i>Chronological list of cases cited</i>			<i>on page(s)</i>
1.	(2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490, <i>Tripurari Sharan v. Ranjit Kumar Yadav</i>	740d-e, 740f, 743a-b, 743e, 744b, 747g, 749a, 749g-h	a
2.	2018 SCC OnLine Hyd 276 : (2018) 5 ALD 11, <i>Suraparaju Likhitha Manohar v. Dr NTR University of Health Sciences (reversed)</i>	738f, 744c, 750g	
3.	(2014) 14 SCC 745 : 6 SCEC 623, <i>Samta Aandolan Samiti v. Union of India</i>	741d-e, 743a-b, 743e, 744b, 747g, 748g-h, 749g	b
4.	(2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412, <i>Union of India v. Ramesh Ram</i>	741c-d, 741d, 741e, 742e, 742e-f, 742g, 743a-b, 748d, 748d-e	
5.	2005 SCC OnLine AP 937 : (2006) 1 ALD 1, <i>B. Kaladhar v. State of A.P.</i>	743c-d, 745g, 746a, 746b, 746b-c, 746d-e, 747f	
6.	2005 SCC OnLine AP 314 : (2005) 3 ALD 455, <i>Mohd. Abdul Azeez Asad v. State of A.P.</i>	743b-c, 744e-f, 744f-g, 744g, 745a, 745f-g, 747f	c
7.	2001 SCC OnLine AP 1011 : (2002) 4 ALD 389, <i>Koganti Jayakrishna v. State of A.P.</i>	743a, 743a-b, 743b-c, 744c, 744d-e, 744f, 744f-g, 744g, 745a-b, 745e-f, 745f-g, 746a, 746a-b, 746b-c, 746d, 746e, 747e-f, 747f, 747f-g, 749d-e, 749e, 749f-g	d
8.	(1996) 3 SCC 253, <i>Ritesh R. Sah v. Y.L. Yamul</i>	741b, 743a-b, 743e, 744b, 746f, 747g, 748g-h, 749g	
9.	1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1, <i>Indra Sawhney v. Union of India</i>	739e, 740f, 741e, 741f, 743b, 743d-e, 743e-f, 744b-c	e
10.	(1584) 3 Co Rep 7a : 76 ER 637, <i>Heydon's case</i>	745c	

ORDER

1. Leave granted. The appeals have been preferred against the common judgment and order dated 7-8-2018¹, passed by a Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, setting aside a Government Order being GO Rt. No. 550 Higher Education (EC2) Department dated 30-7-2001 (hereinafter referred to as “the impugned Government Order”), to the extent the same permitted the filling up by reserved category candidates, of open and/or general category seats in institutions offering inter alia medical and/or dental courses, which became vacant when meritorious reserved category candidates who had ranked well enough to secure those seats as general candidates, opted for other disciplines or institutions where they could only have secured admission as reserved candidates.

¹ *Suraparaju Likhitha Manohar v. Dr NTR University of Health Sciences*, 2018 SCC OnLine Hyd 276 : (2018) 5 ALD 11

DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

739

2. The relevant portion of the impugned GO Rt. No. 550 of 2001 is set out
a hereinbelow:

“5. After careful consideration and due examination of the issue relating to implementation of reservation of Scheduled Castes/Scheduled Tribes/Backward Classes in engineering and other professional courses the following instructions are hereby issued:

b (i) In the counselling process, the seats to be filled by open competition should be filled up first, wherein the candidates should be called for counselling based on merit alone irrespective of whether they belong to SC, ST or BC in accordance with the instructions issued by the Government in GOMs. No. 996, Employment & Social Welfare, dated 11-11-1975.

c (ii) Next, reservation categories like SC/ST/BC candidates will be counselled to fill the seats earmarked for them in their respective categories. During this process, if a candidate belonging to Scheduled Castes/Scheduled Tribes/Backward Classes, who had taken admission under open competition, opts for a better branch or a better college of his choice for which he or she would be eligible as per the rules of reservation, the seats vacated by him or her in open competition shall be filled with a
d candidate from the same reservation category only, in order of merit.”

3. The Constitution of India envisages equality before the law and equal protection of the laws. The concept of equality inter alia under Articles 14 to 16 of the Constitution of India contemplates elimination of inequalities of status. As held by the Constitution Bench of this Court in *Indra Sawhney v. Union of India*², though equal protection clause prohibits the State from making unreasonable discrimination in providing preference and facilities for any section of its people, nonetheless it requires the State to afford substantially equal opportunities to those placed unequally. Equality contemplated by Article 14 and related Articles, particularly Article 15(1), is secured not only when equals are treated equally but also when unequals are treated unequally. Equal
e treatment of unequals breaches equality. To bring about equality, it is necessary
f to adopt positive measures to eliminate inequality.

4. The basic object of the policy of reservation is to eliminate inequality between classes and/or castes. Reservation in favour of the Scheduled Castes, Scheduled Tribes or Backward Classes provides opportunity to those socially disadvantaged classes to come into the mainstream through education, public appointments, etc., by eliminating stiff competition from the socially strong. A
g comprehensive methodological approach to reservation is necessary.

5. Often, in competitive examinations held for the purpose of selection for admission to educational institutions or may be appointments, some candidates belonging to reserved categories, rank high on their own merit. Depending on their performance in the common entrance test such candidates are often
h placed in the general merit list. Such class of candidates belonging to reserved

categories, who qualify on their own merit, in the general merit list, are for convenience, referred to as meritorious reserved candidates. Meritorious reserved candidates who occupy a general category seat are not counted against the quota reserved for a reserved category candidate, but treated as open and/or general candidates. a

6. A candidate from a reserved category might, by dint of his own merit, rank sufficiently high in an entrance examination, to secure admission to a specific professional course, but not rank high enough to get admission to a discipline or to an institution of his choice as a general category candidate. However, it is possible that such candidate might be able to secure admission to a discipline or an institution of his/her choice, as a candidate of the reserved category to which he belongs. b

7. The law is well settled that provisions relating to reservation cannot work to the disadvantage of a meritorious reserved candidate. A meritorious reserved candidate cannot be placed at a more disadvantageous position than a less meritorious reserved category candidate. Candidates from amongst the reserved category who would otherwise come in the open merit list are therefore given the choice of opting for reserved seats without affecting the total number of reserved seats. However, for the purpose of reservation, such a candidate would continue to be treated as an open category candidate and the seat as per his entitlement as a candidate of the general quota would go to a reserved candidate. c
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8. In *Tripurari Sharan v. Ranjit Kumar Yadav*³, the Supreme Court rejected the challenge to a similar Circular No. 226(24) dated 14-11-1995, which inter alia provided that a meritorious reserved candidate, treated as general merit candidate and allotted a seat in the general merit category might instead, choose a seat from amongst the seats earmarked for that particular reserved category to which he belonged, to gain admission in the college of his preference and on doing so the seat left by the meritorious reserved candidate would go to a candidate of the same reserved category. e

9. In *Tripurari Sharan*³ this Court held: (SCC pp. 663-64, para 11)

“11. This Court has repeatedly, including the judgment in *Indra Sawhney*², concluded that the aggregate reservation should not exceed 50%. Therefore, even when an MRC opts for a seat reserved for reserved category candidates, caution has to be exercised to maintain the reservation to 50%. So also it is not open for the authorities to deny an MRC a seat in the college of his preference based on his merit, if such seat is available at the relevant point of time and the same is reserved for candidates of the reserved category to which the MRC belongs. This is because there may be instances where an MRC may not get a seat in the institution of his choice on the basis of his own merit in the general merit. Under such circumstances, he may opt to be treated notionally as a candidate f
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³ (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490

² *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 h

DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

741

a belonging to the reserved category only for the purpose of getting a seat in the college reserved for reserved category students. If such MRC is to be placed in the reserved merit list of his category, he would be ranking high and may get better choice of institution or course. An MRC cannot be placed in a disadvantageous position by not permitting him to be treated as reserved candidate, as that would amount to making him suffer for his better performance in the competitive examination.”

b **10.** In *Ritesh R. Sah v. Y.L. Yamul*⁴, this Court held that a meritorious reserved category candidate who had qualified for admission on his own merit by reason of his general overall rank, could opt for a reserved seat in a discipline/college of his choice. However, on exercise of such option, the meritorious reserved category candidate would be treated as a candidate of the general category and not of the reserved category. The meritorious reserved category candidate might opt for a seat reserved for the class to which he belongs, only for the limited purpose of getting a better choice of seat.

c **11.** In *Union of India v. Ramesh Ram*⁵, this Court accepted the general proposition that unless a course of action was taken, which afforded meritorious reserved candidates the benefit of reservation insofar as allocation was concerned, lesser meritorious reserved candidates would be able to secure better disciplines. The judgment in *Ramesh Ram*⁵ was, however, rendered in relation to the Civil Services Examination in the context of Article 16 of the Constitution of India and Rule 16(2) of the Civil Services Examination Rules.

d **12.** In *Samta Aandolan Samiti v. Union of India*⁶, this Court, relying upon its earlier decisions in *Indra Sawhney*² and *Ramesh Ram*⁵, held: (SCC pp. 758-61, paras 16, 19, 21 & 24)

e “16. ... It is now a well-entrenched principle of law that those members belonging to the reserved category who get selected in the open competition on the basis of their own merit have a right to be included in the general list/unreserved category and not to be counted against the quota reserved for Scheduled Castes. This was recognised by the Constitution Bench judgment of this Court in *Indra Sawhney*² and has been followed in a series of judgments thereafter. Thus, when certain persons belonging to the reserved category get selected in open competition on the basis of their merit, they are not to be counted in the reserved category against the reserved category quota. It is open to the authorities to fill the posts meant for reserved category candidates from amongst the persons in such categories after excluding those who have found their place in general merit. As a fortiori, while calculating the limit of 50% reservation, those candidates belonging to reserved category who have found their place on the basis of their merit competing with general candidates are not to

f 4 (1996) 3 SCC 253

g 5 (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412

h 6 (2014) 14 SCC 745 : 6 SCEC 623

2 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

be taken into consideration. It is also not in dispute that such OBC/SC candidates who have been included in general category have come in that category on their own merit with no relaxation of the eligibility level i.e. percentage of marks. a

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19. It is stated at the cost of repetition that those members who belong to reserved category but get selected in the open competition on the basis of their own merit have a right to be included in the general/unreserved category. Such MRC are not to be included in the quota reserved for the Scheduled Castes, etc. It is an admitted position that if these persons are excluded, the respondents have not exceeded the quota meant for the reserved category. The respondents, at the time of counselling, have only accorded a higher/better choice to these meritorious reserved candidates (MRC) who got recommended against general/unreserved seats vis-à-vis those reserved category candidates who are accommodated against their quota. It is, therefore, an inter se adjustment between the two kinds of persons belonging to the reserved category. In their inter se merit, these persons who have been able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of candidates belong to the reserved category. Thus, if between these two categories of persons belonging to the same class, higher choice is not given to the persons who are better in merit viz. the MRCs, it would clearly be injustice to them. This was precisely the issue which was referred for decision to the Constitution Bench in *Ramesh Ram*⁵. b
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21. Dealing with the first question which directly arises in the present case, the Court in *Ramesh Ram case*⁵ clarified that a distinction is to be maintained between the cases dealing with the admission to educational institutions and appointment to a service. The Court accepted the general proposition that such a course of action affords meritorious reserved candidates (MRC), the benefit of reservation insofar as service allocation is concerned, if this is not done, lesser meritorious reserved candidates would be able to secure a better discipline. Therefore, this course of action preserves and protects inter se merit amongst the reserved candidates. e
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24. Since we are concerned with the admission to a medical course, the aforesaid judgment in *Ramesh Ram case*⁵ squarely applies to the present case. Thus we find that neither is the upper limit of 50% reservation breached, nor are any rights of the petitioners violated or the action of the respondents have been to their prejudice in any manner. Thus, we do not find any merit in the present petition, which is accordingly dismissed. No costs.” g

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⁵ *Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412

DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

743

13. In *Koganti Jayakrishna v. State of A.P.*⁷ a Full Bench of the High Court upheld the validity of the impugned Government Order. A judgment of the Full Bench is binding on the Division Bench.

14. The High Court considered and referred to its Full Bench judgment in *Koganti Jayakrishna v. State of A.P.*⁷ and the judgments of this Court in *Ritesh R. Sah*⁴, *Samta Aandolan Samiti*⁶, *Tripurari Sharan*³, *Ramesh Ram*⁵ and *Indra Sawhney v. Union of India*², and set aside the impugned Government Order to the extent indicated above, observing that another Full Bench of the High Court had, in *Mohd. Abdul Azeez Asad v. State of A.P.*⁸ distinguished the Full Bench judgment in *Koganti Jayakrishna*⁷.

15. The High Court discussed Rule 8(2) of the Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into Undergraduate Professional Courses through Common Entrance Test) Rules, 1993, which provides for reservation for Scheduled Castes/Scheduled Tribes/Backward Classes in each course in each institution, as well as the Government Order dated 23-4-2005 providing for preparation of 100-point roster which came up for consideration in *B. Kaladhar v. State of A.P.*⁹ and observed that the impugned Government Order being GO Rt. No. 550 of 2001 was contrary to the said rule. However, the High Court has struck down Para 5(ii) of the impugned Government Order on the purported ground that it exceeds the reservation limit of 50%.

16. Relying on the decisions of this Court in *Indra Sawhney*², *Ritesh R. Sah*⁴, *Samta Aandolan Samiti*⁶ and *Tripurari Sharan*³, the High Court has held, and rightly, that the maximum percentage of reservation for all categories, put together, cannot exceed 50%, in view of the mandate of this Court in *Indra Sawhney*². The High Court, however, went on to examine the question of whether the total percentage of reservation had exceeded 50% by reason of the impugned Government Order, and for that purpose called for statistics from the NTR University of Health Sciences and KNR University of Health Sciences for the years 2017-2018.

17. The High Court also referred to the statistics of NTR University of Health Sciences for the academic year 2018-2019, with which we are concerned for the present. The statistics noted in para 43 of the judgment under appeal, are as follows:

7 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389

4 *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253

6 *Samta Aandolan Samiti v. Union of India*, (2014) 14 SCC 745 : 6 SCEC 623

3 *Tripurari Sharan v. Ranjit Kumar Yadav*, (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490

5 *Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412

2 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

8 2005 SCC OnLine AP 314 : (2005) 3 ALD 455

9 2005 SCC OnLine AP 937 : (2006) 1 ALD 1

744

SUPREME COURT CASES

(2019) 12 SCC

Categories	As per seat matrix	As per allotment
OC	672	469
BC	392	588
SC	202	208
ST	81	82
	1347	1347

18. The High Court observed that Para 5(ii) of GO Rt. No. 550 of 2001, that is, the impugned Government Order, is in tune with the decision of the Supreme Court in *Ritesh R. Sah*⁴, *Samta Aandolan Samiti*⁶ and *Tripurari Sharan*³ theoretically, but does not pass the test of *Indra Sawhney*² which was a sine qua non for this Court to uphold similar orders or circulars in the three aforementioned cases. The High Court further observed that in *Koganti Jayakrishna*⁷ the Full Bench had decided the validity of G.O. 550 of 2001 only on theoretical basis.

19. The High Court¹ inter alia observed and held: (*Suraparaju Likhitha Manohar case*¹, SCC OnLine Hyd paras 23, 27, 29, 31-33, 50-51, 59 & 61-62)

“23. Therefore, the question as to whether the executive instructions issued in GO Rt. No. 550 dated 30-7-2001 can go contrary, particularly to Rule 8(2) of the statutory rules issued in exercise of the powers conferred by Section 15(1) of the Capitation Fee Act, 1983, assumed significance, especially in the light of the fact that these statutory rules were required by Section 15(2) to be laid before each House of the State Legislature. But unfortunately, the Full Bench in *Koganti Jayakrishna*⁷ did not examine the question as to whether GO Rt. No. 550, which was in the nature of executive instructions, went contrary, particularly to Rule 8(2) of the statutory rules.

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27. The Full Bench framed four principal issues, as arising for determination in *Mohd. Abdul Azeez Asad*⁸. Issue 3(ii) framed for the consideration of the Full Bench was as to whether the clubbing together of all postgraduate medical courses of study and of degree and diploma of courses was valid or not. In an attempt to sustain the amendment, the decision of the Full Bench in *Koganti Jayakrishna*⁷ was pressed into service before the Full Bench in *Mohd. Abdul Azeez Asad*⁸. Therefore the decision in *Koganti Jayakrishna*⁷ was analysed in a great detail in paras 76 and 77 of the decision of the Full Bench in *Mohd. Abdul Azeez Asad*⁸. Distinguishing the decision of the Full Bench in *Koganti Jayakrishna*⁷, it was held by the

4 *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253

6 *Samta Aandolan Samiti v. Union of India*, (2014) 14 SCC 745 : 6 SCEC 623

3 *Tripurari Sharan v. Ranjit Kumar Yadav*, (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490

2 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1

7 *Koganti Jayakrishna v. State of A.P.*, 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389

1 *Suraparaju Likhitha Manohar v. Dr NTR University of Health Sciences*, 2018 SCC OnLine Hyd 276 : (2018) 5 ALD 11

8 *Mohd. Abdul Azeez Asad v. State of A.P.*, 2005 SCC OnLine AP 314 : (2005) 3 ALD 455

DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

745

a subsequent Full Bench in *Mohd. Abdul Azeez Asad*⁸ in para 77 of the Report as follows: (SCC OnLine AP para 77)

b ‘77. We have carefully considered the conclusions of the learned Full Bench of this Court in *Koganti Jayakrishna case*⁷ on the issue of grouping of Engineering degree courses. We find that the Full Bench majority’s analysis proceeded on an etymological basis of the words “course” and “branch”. There was no lexicographic analysis of the words nor an analysis as to the purposes for which the expression “course of study” preceded by the word “every” is employed in the Presidential Order. Issues such as whether the expression “course of study” is plurisignative and ambiguous and if so whether the expression requires dynamic processing by employing principles of purposive construction or the application of the Heydon’s rule¹⁰ were not considered. We also find that on facts, the decision was one involving degree courses of Engineering study and not specialised courses like postgraduate studies or professional courses involving discreet and insular specialised academic pursuits, as is the case in postgraduate medical studies. In degree courses of study even involving separate disciplines like Civil, Electrical or Electronics Engineering, the course content involves a measure of common curricula in the different disciplines. Only to a limited extent and in the later years, is separate theoretical and practical instruction imparted to the students of the different disciplines. In such factual context of Engineering degree studies, the distinction between the different disciplines is perhaps not absolute. What is true of Engineering degree courses, on the above analysis, does not hold good in the case of postgraduate medical studies. Each postgraduate medical course of study and degree and diploma courses are wholly distinct and specialised courses of study. The judgment in *Koganti Jayakrishna case*⁷ involving as it does an analysis of degree courses in Engineering thus offers no guiding principle on the legitimacy of grouping of postgraduate medical courses of study.’

Thus the decision of the first Full Bench in *Koganti Jayakrishna*⁷ came to be distinguished in *Mohd. Abdul Azeez Asad*⁸.

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g 29. It may be of interest to note that when the matter came up before the Full Bench, in *B. Kaladhar v. State of A.P.*⁹ on the reference so made, a preliminary objection was raised as to the validity of the order of reference, on the ground that it was not open to a Division Bench to doubt

h ⁸ *Mohd. Abdul Azeez Asad v. State of A.P.*, 2005 SCC OnLine AP 314 : (2005) 3 ALD 455

⁷ *Koganti Jayakrishna v. State of A.P.*, 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389

¹⁰ *Heydon’s case*, (1584) 3 Co Rep 7a : 76 ER 637

⁹ 2005 SCC OnLine AP 937 : (2006) 1 ALD 1

the correctness of the Full Bench decision in *Koganti Jayakrishna*⁷. This objection was overruled in para 30 of the report of the Full Bench in *B. Kaladhar*⁹, on the ground that the reference arose not because of a doubt about the correctness of the decision in *Koganti Jayakrishna*⁷, but because of the application of the principles enunciated therein.

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31. In other words, the Full Bench in *B. Kaladhar*⁹ actually came to a conclusion in paras 38 and 39 of the Report extracted above, which strikes at the root of the second part of Para 5(ii) of GO Rt. No. 550. Thus, we have on one hand a Full Bench upholding the validity of GO Rt. No. 550 in *Koganti Jayakrishna*⁷ and on the other hand, a subsequent decision of another Full Bench in *B. Kaladhar*⁹, which has the effect of annihilating the later part of Para 5(ii) of GO Rt. No. 550. ...

32. Therefore, two issues trouble our judicial conscience and judicial propriety. They are:

(i) the conflict between Rule 8(2) of the 1993 Rules, which provides for reservation only course-wise and institution-wise and the executive instructions in GO Rt. 550, which provide for the applicability of the rule of reservation to a cluster of institutions affiliated to a University, which aspect was not touched upon by the Full Bench in *Koganti Jayakrishna*⁷; and

(ii) the effect of the ratio laid down in paras 38 and 39 of the subsequent decision of the Full Bench in *B. Kaladhar*⁹.

33. Therefore, it is not possible for us to rubbish the writ petitions as completely devoid of merits on the ground that they try to resurrect the ghost of GO Rt. No. 550 from the grave to which it was sent by the first Full Bench in *Koganti Jayakrishna*⁷. But for the two aspects that we have mentioned in the preceding paragraphs, the writ petitions challenging GO Rt. No. 550 were not even worthy of a hearing. Apart from two aspects that we have indicated in the previous paragraphs, there is also one more aspect, in the form of statistics, that stare at our face. But we shall go to the statistics, after dealing with the decisions of the Supreme Court starting from *Ritesh R. Sah*⁴.

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50. ... In other words, both the respondent Universities have now shifted to online counselling for admission to medical and dental courses. In the online counselling where candidates exercise web options, the physical allotment of candidates, the physical act of sliding down and the physical act of filling up the vacated seats do not happen. All the steps happen simultaneously in computer systems in which the software is programmed in such a manner.

⁷ *Koganti Jayakrishna v. State of A.P.*, 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389

⁹ *B. Kaladhar v. State of A.P.*, 2005 SCC OnLine AP 937 : (2006) 1 ALD 1

⁴ *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253

DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

747

a 51. Today, all candidates who make applications for admission to undergraduate medical and dental courses, indicate the community to which they belong, the marks secured in higher secondary course, the Statewise and all India rank in NEET and three different choices of the colleges to which they would like to seek admission in the order of priority. The system is programmed in such a manner that a meritorious reserved category candidate, according to his first choice of preference, is accommodated directly into the college or course of his choice, either *b* under the open category or under the reserved category to which he belongs. Therefore, sliding itself does not take place. As a consequence, no one knows who vacated which seat. If one cannot know who vacated which seat, it is not possible to take any particular seat as having been vacated by a candidate belonging to one particular reserved category.

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c 59. The argument that even after sliding, an MRC will continue to be treated as an open category candidate, has found acceptance in all the three decisions of the Supreme Court. But this argument, when it comes to public employment, may cut at the very root of social justice. Article 16(4-A) of the Constitution enables the State to provide for reservation for Scheduled Castes and Scheduled Tribes, even in matters of promotion with consequential seniority. If an MRC, who happens to be a Scheduled Caste, slides down to a post of his choice by exercising his right of reservation and if he continues to be treated as an open category candidate, he may then lose the chance of seeking the benefit of reservation in the matter of promotion. Therefore, treating an MRC, who opts to slide down, as an open category candidate, may do harm especially to Scheduled Castes and Scheduled Tribes.

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f 61. In any case, we make it clear that we are not in this case, taking a view even remotely contrary to the law laid down by the Full Bench in *Koganti Jayakrishna*⁷, though we have pointed out that the subsequent decisions of two Full Benches, one in *Mohd. Abdul Azeez Asad*⁸ and the other in *B. Kaladhar*⁹ give lot of scope for the same. We have only pointed out that the decision in *Koganti Jayakrishna*⁷ was not treated as a final word by two subsequent Full Benches.

g 62. On the fundamental propositions of law laid down by the Full Bench in *Koganti Jayakrishna*⁷ and by the Supreme Court in *Ritesh R. Sah*⁴, *Samta Aandolan Samiti*⁶, *Tripurari Sharan*³, we have tested the impugned government order. The impugned government order, on theory,

h 7 *Koganti Jayakrishna v. State of A.P.*, 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389

8 *Mohd. Abdul Azeez Asad v. State of A.P.*, 2005 SCC OnLine AP 314 : (2005) 3 ALD 455

9 *B. Kaladhar v. State of A.P.*, 2005 SCC OnLine AP 937 : (2006) 1 ALD 1

4 *Ritesh R. Sah v. Y.L. Yamul.* (1996) 3 SCC 253

6 *Samta Aandolan Samiti v. Union of India*, (2014) 14 SCC 745 : 6 SCEC 623

3 *Tripurari Sharan v. Ranjit Kumar Yadav*, (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490

passes the tests laid down in these decisions. But the caveat to which these fundamental propositions were made subject, by all the aforesaid decisions, is not satisfied by the impugned government order in the sense that the manner in which it is worked out, makes the maximum percentage of reservation cross 50%. Therefore, the offending portion of the impugned government order is liable to be set aside.”

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20. It is true, as observed by the High Court, that the decisions of this Court, referred to above proceed on the premise that a meritorious reserved category candidate continues to be an open category candidate, despite sliding down, to opt for a reserved seat. However, the finding of the High Court, that this does not happen anymore, under the online system of counselling is misconceived. The reasoning of the High Court for its finding as aforesaid is not clear and smacks of apparent confusion. The comparative example of the possibility that a meritorious reserved category candidate belonging to the Scheduled Castes who slides down to a reserved post of his choice might lose the benefit of reservation in the matter of promotion, if he continues to be treated as an open category candidate is misconceived since there is no scope for promotion in case of admission to educational institutions, conducting undergraduate medical courses.

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21. The High Court misconstrued and misappreciated the judgment of the Constitution Bench of this Court in *Union of India v. Ramesh Ram*⁵ which related to recruitment to the All India Services, covered by Article 16 of the Constitution of India.

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22. In *Ramesh Ram*⁵, this Court observed that there was an obvious distinction between qualifying in an entrance test for securing admission in a medical college and qualifying in the UPSC examination for filling up vacancies in various civil services. In the case of Civil Services Examinations, some services are more coveted than others and successful candidates compete amongst themselves to secure services of their choice. A meritorious reserved category candidate, who qualifies on his own merit to get a rank in the general list, should not be disadvantaged by reason of being assigned a less coveted service against the vacancies in the general category. Such a candidate, can therefore, choose to shift to the reserved category under Rule 16(2) of the Civil Services Examinations Rules. However, meritorious reserved category candidates who avail the benefit of Rule 16(2) and are adjusted in the reserved category, are to be counted in the reserved quota and the seats vacated by meritorious reserved candidates in the general category pool are to be offered to general category candidates. This principle is not attracted in cases of medical admissions.

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23. The learned Senior Counsel appearing on behalf of the appellants argued, and rightly, that the High Court has erred in holding that reservation had been increased to more than 50% and has also erred in not properly appreciating the ratio laid down by this Court in *Ritesh R. Sah*⁴, *Samta Aandolan Samiti*⁶,

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⁵ (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412

⁴ *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253

⁶ *Samta Aandolan Samiti v. Union of India*, (2014) 14 SCC 745 : 6 SCEC 623

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DEGA VENKATA HARSHA VARDHAN v. AKULA
VENTAKA HARSHAVARDHAN

749

- Tripurari Sharan*³. While considering the data of academic year 2018-2019, as noted in para 44 of the judgment under appeal, the High Court had overlooked the fact that 203 meritorious candidates belonging to Backward Classes, who had ranked well and secured admission to open and/or general category seats, and were treated as general category candidates, have been shown as belonging to the Backward Classes. The number of candidates of the Backward Classes has therefore been shown as 588. If the 203 meritorious reserved class candidates of the general category are deducted from the total number of candidates of Backward Classes, the number of Backward Classes candidates of the reserved quota would only be 392. The 203 meritorious candidates are to be added to the number of open category candidates with addition of 203 to 469 the number of open category candidates would be 672. Thus, the High Court has committed a patent error in holding that reservation has exceeded 50%.
- 24.** According to the counsel appearing for the appellants, the High Court has not correctly appreciated the implications of the change in the system of counselling from manual to online. The online programme is tuned in a way that eliminates the possibility of any deviation from the percentage of seats fixed for the respective categories. Thus, the decision of the High Court is not only contrary to the Full Bench decision of the same High Court but also against the decisions of this Court as by sliding down the open category MRC, the reservation does not exceed 50%.
- 25.** The judgment and order under appeal is fraught with inconsistencies. In para 61, the High Court purported to clarify that the High Court was not taking a view even remotely contrary to the law laid down by the Full Bench in *Koganti Jayakrishna*⁷ but, at the same time, proceeded to set aside Para 5(ii) of the impugned Government Order, which had been upheld in *Koganti Jayakrishna*⁷.
- 26.** As observed above, the decision of the Full Bench was binding on the Division Bench. The impugned Government Order was not set aside by the subsequent Full Benches. The High Court has acted in flagrant breach of judicial discipline, in taking a decision which is contrary to and inconsistent with a Full Court decision. If the High Court found any divergence in the decisions of different Full Benches referred to in the judgment and order under appeal, the High Court ought to have referred the question in issue to a larger Bench. Instead, the Division Bench of the High Court has, in effect, sat in appeal over the decision of its Full Bench.
- 27.** As argued on behalf of the appellants, the validity of the impugned Government Order had been upheld in *Koganti Jayakrishna*⁷. The question should not, therefore, have been reopened by a Bench of lesser strength. Furthermore, the issue was no longer res integra in view of a catena of decisions of this Court including *Ritesh R. Sah*⁴, *Samta Aandolan Samiti*⁶, *Tripurari Sharan*³ where identical Government Orders had been questioned.

³ *Tripurari Sharan v. Ranjit Kumar Yadav*, (2018) 2 SCC 656 : (2018) 1 SCC (L&S) 490

⁷ *Koganti Jayakrishna v. State of A.P.*, 2001 SCC OnLine AP 1011 : (2002) 4 ALD 389

⁴ *Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253

⁶ *Samta Aandolan Samiti v. Union of India*, (2014) 14 SCC 745 : 6 SCEC 623

28. The impugned Government Order provides for two different rounds of counselling. The first round of counselling for open category candidates is to be held as per the merit position alone, irrespective of whether the candidates belong to Scheduled Castes, Scheduled Tribes or Backward Classes. Even reserved category candidates, who qualify for admission on their own merit, have to be treated as open category candidates. The second round of counselling is for Scheduled Caste, Scheduled Tribe and Backward Class candidates. Para 5(ii) of the impugned Government Order, as observed above gives a meritorious reserved category candidate the option of better discipline or better college of his choice for which he or she would be eligible as a reserved candidate and the seats vacated by such meritorious reserved category candidates would have to be filled from amongst candidates of the same category candidate only in the order of merit.

29. The impugned Government Order only provides for adjustment and interchange of seats between meritorious reserved category candidates selected under the open category and the reserved category candidates selected under the reserved quota.

30. The introduction of online counselling appears to have brought about some changes in the process of counselling which might necessitate an amendment of the impugned Government Order for complete harmony. Earlier, what was done in two stages is done in online system at first stage itself. The Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into Undergraduate Professional Courses through Common Entrance Test) Rules, 1993 and in particular Rule 8(2) to thereof may also require amendment. However, the recent introduction of the online system could not have been a ground for setting aside the impugned notification which has been in force for seventeen years, and the validity whereof has been upheld by a Full Bench of the High Court. The judgment and order under appeal is unsustainable.

31. It appears that the procedure prescribed in the impugned Government Order cannot be implemented without some minor deviation consequential to the introduction of the system of online counselling. Such deviations do not in our view invalidate the admissions. It would, however, be open to the Government to amend the impugned Government Order and or alternatively issue a fresh Government Order to harmonise online counselling with statutory rules and government orders. The statutory rules may, if necessary, be amended. However, the admission made this year should not be disturbed. Any vacancies may be filled up on merit basis without disturbing the allocation of seats for candidates of the respective categories.

32. The appeals are, thus allowed and the judgment and order¹ of the High Court under appeal, is set aside. No order as to costs.

¹ *Suraparaju Likhitha Manohar v. Dr NTR University of Health Sciences*, 2018 SCC OnLine Hyd 276 : (2018) 5 ALD 11