

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

+ WRIT PETITION Nos.18674, 22062, 22083 and
22182 of 2023

% Date: 11.09.2023

P.Lokasvi and others.

... Petitioners

v.

\$ State of Telangana,
Represented by its Principal Secretary,
Department of Medical, Health and Family Welfare,
BRKR Bhavan, Tank Bund, Hyderabad,
Telangana,
and others.

... Respondents

! Counsel for the petitioners in W.P.No.18674 of 2023:
Mr.P.S.Rajasekhar

! Counsel for the petitioners in W.P.Nos.22062 and
22083 of 2023: Mr.Peri Prabhakar

! Counsel for the petitioner in W.P.No.22182 of 2023:
Mr.M.Srikanth

^ Counsel for respondents No.1 and 2:
Mr. J.Ramchander Rao,
Learned Additional Advocate General

^ **Counsel for respondent No.3:** Mr. Gadi Praveen Kumar,
Learned Deputy Solicitor General of India

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (1986) 2 SCC 679
2. (2021) 15 SCC 534
3. 2023 SCC Online SC 994
4. (1974) 4 SCC 396
5. (1993) 3 SCC 499
6. (2005) 1 SCC 625
7. (2015) 8 SCC 129
8. (2020) 17 SCC 465
9. (1985) 3 All.ER 300
10. (1994) 5 SCC 509
11. AIR 1958 SC 538
12. (2001) 1 SCC 442
13. (2001) 3 SCC 635
14. 2021 SCC OnLine SC 826
15. (2004) 12 SCC 278
16. (2012) 8 SCC 189

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WRIT PETITION Nos.18674, 22062, 22083 and
22182 of 2023

COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

The petitioners hold NCC 'A' category certificate. In this batch of writ petitions, petitioners who are aspirants seeking admission to MBBS/BDS course for the academic year 2023-2024 assail the validity of Rule 4(iii)(a) of the Telangana Medical & Dental Colleges Admission (Admission into MBBS & BDS Courses) Rules, 2017 (hereinafter referred to as, "the 2017 Rules"). For facility of reference, facts of W.P.No.18674 of 2023 are being referred.

(i) FACTUAL BACKGROUND:

2. The Government of Telangana in exercise of powers under Section 3 read with Section 15(1) of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, has framed the

2017 Rules. The said Rules govern admission to MBBS and BDS courses in the State of Telangana.

3. The petitioner No.2 secured the NCC-A certificate in August, 2019, whereas petitioner No.1 secured NCC-A certificate on 17.08.2021.

4. The National Testing Agency (NTA) issued a notification dated 06.03.2023 for conducting the National Eligibility-cum-Entrance Test (NEET), which was conducted on 07.05.2023. The petitioners appeared in the said examination. The result of examination was declared on 13.06.2023. The petitioners qualified for admission into MBBS/BDS course for the academic year 2023-2024.

5. The Government of Telangana vide G.O.Ms.No.75, dated 04.07.2023, amended the 2017 Rules and substituted the enabling provision prescribing 1% reservation for National Cadet Corps (NCC) candidates by making a provision for grant of grace marks for certain categories of candidates holding 'B' category certificate and excluded students having NCC 'A' and 'C' certificates. In

the aforesaid factual background, these writ petitions have been filed.

(ii) SUBMISSIONS ON BEHALF OF PETITIONERS:

6. Learned counsel for the petitioners submitted that the NEET examination was held on 07.05.2023 and the result of the examination was declared on 13.06.2023. Thereafter, on 04.07.2023, the 2017 Rules have been amended by the State Government. It is, therefore, contended that the petitioners had legitimate expectation that reservation would be provided to them as they hold NCC-A certificate. However, contrary to the legitimate expectation of the petitioners, the 2017 Rules have been amended. It is further contended that the amendment seeks to provide grace marks only to three categories of persons who hold NCC 'B' certificate out of several categories of NCC quota in terms of G.O.Ms.No.75, dated 08.09.2015. It is argued that there is no rational nexus between the rules and the object sought to be achieved. It is, therefore, contended that the amendment to the 2017

Rules is arbitrary and violative of Article 14 of the Constitution of India.

7. It is urged that amendment to the 2017 Rules seeks to alter the position existing as on the date of notifying the entrance examination, which is not permissible in law. It is urged that the amendment to the 2017 Rules has the effect of reducing the number of seats available under NCC quota which would have otherwise been available, if earlier provision prescribing 1% reservation was followed. It is pointed out that the amendment to the 2017 Rules is vague inasmuch as it seeks to amend “Rule 4” of G.O.Ms.No.114, dated 05.07.2017, which does not exist in the 2017 Rules. In support of the aforesaid submissions, reliance has been placed on the decisions of the Hon’ble Supreme Court in **Comptroller and Auditor General of India v. K.S.Jagannathan¹, State of Tamil Nadu v. National South Indian River Interlinking Agriculturist**

¹ (1986) 2 SCC 679

Association² and Sivanandan C.T v. High Court of Kerala³.

(iii) SUBMISSIONS ON BEHALF OF STATE:

8. Learned Additional Advocate General submitted that in the facts of the case and in view of the fact that the 2017 Rules have been amended in exercise of statutory powers, the doctrine of legitimate expectation has no application to the facts of the case. It is pointed out that NEET UG examination was held on 07.05.2023. The result of the aforesaid examination was declared on 13.06.2023. The 2017 Rules have been amended on 04.07.2023 and thereafter the University has issued a notification on 06.07.2023 inviting online applications for admission to MBBS/BDS courses in the State of Telangana. It is argued that no promise at any point of time was extended to the petitioners that the reservation would be provided to them. Therefore, the contention that the petitioners had

² (2021) 15 SCC 534

³ 2023 SCC Online SC 994

legitimate expectation that reservation would be provided to them has no factual foundation.

9. It is pointed out that certificate “A” is a basic certificate of NCC and can be obtained up to 10th standard, whereas NCC “B” certificate would be issued to the students who participate in the activities of NCC up to intermediate level (12th standard). It is further pointed out that NCC “C” certificate can be obtained at graduate level. It is submitted that the contention that Rule 4(iii)(a) of the 2017 Rules is arbitrary or is violative of Article 14 of the Constitution of India, is misconceived.

10. It is contended that in the amendment dated 04.07.2023, reference ought to have been made to Rule 3(IV)(c) instead of Rule 4(iii)(a) of the 2017 Rules. It is further contended that mere reference to a wrong provision does not invalidate the rule. It is also contended that providing reservation or grace marks, is a matter of policy and no mandamus can be issued to provide reservation. It is contended that the amendment in the 2017 Rules had been brought about in view of the communication dated

02.08.2016, sent by the Minister of State for Defence, Government of India, as well as communication dated 20.09.2022 addressed by the Additional Director (P&C), NCC (AP&T). In support of the aforesaid submissions, reliance has been placed on **H.L.Mehra v. Union of India**⁴, **Union of India v. Hindustan Development Corporation**⁵, **Bannari Amman Sugars Ltd. v. Commercial Tax Officer**⁶ and **P.Suseela v. University Grants Commission**⁷.

(iv) SUBMISSIONS ON BEHALF OF UNION OF INDIA:

11. Learned Deputy Solicitor General of India has submitted that primary object of NCC is to create a human resource of organised, trained and motivated youth by training the cadets and to provide leadership in all walks of life who would be available for services of the nation. The further object of NCC is to provide a suitable environment to motivate the youth to take up a career in armed forces. It is contended that object of NCC is not to provide for reservation for candidates having various NCC certificates,

⁴ (1974) 4 SCC 396

⁵ (1993) 3 SCC 499

⁶ (2005) 1 SCC 625

⁷ (2015) 8 SCC 129

who seek admission to MBBS/BDS course. It is further contended that the State Government has amended the 2017 Rules in view of the letter dated 02.08.2016 addressed by the Minister of State for Defence.

(v) REJOINDER SUBMISSIONS ON BEHALF OF PETITIONERS:

12. Learned counsel for the petitioners by way of rejoinder submits that Rule 4(iii)(a) of the 2017 Rules does not exist and judgments cited by the learned Additional Advocate General pertaining to doctrine of legitimate expectation have been considered by the Constitution Bench of the Hon'ble Supreme Court in **Sivanandan C.T** (supra). It is pointed out that even though the communication dated 02.08.2016 was sent by the Minister of State for Defence, yet in the 2017 Rules, a provision for reservation was made, which has been subsequently deleted on 04.07.2023 for which no explanation has been offered. It is submitted that even though the writ petitions were pending before this Court, the University has conducted the counselling for admission to the candidates

under NCC quota. It is argued that in view of the decision of the Hon'ble Supreme Court in **S.Krishna Sradha v. State of Andhra Pradesh**⁸, the petitioners are entitled to relief on the principle of restitution.

(vi) ANALYSIS:

13. We have considered the submissions made on both sides and perused the record. The issues that arise for consideration in these writ petitions are:

- i) Whether doctrine of legitimate expectation applies in case of amendment to the 2017 Rules? If so, whether legitimate expectation of the petitioners has been violated by enacting Rule 4(iii)(a)?
- ii) Whether by amending the 2017 Rules, the rules of the game have been altered midway?
- iii) Whether the impugned rule constitutes an infraction of mandate contained in Article 14 of the Constitution of India?

⁸ (2020) 17 SCC 465

- iv) Whether prescribing reservation or awarding grace marks is a matter of policy? If so, the scope of judicial review? and
- v) Whether the amendment in the 2017 Rules has been made in respect of a non-existent rule? If so, its effect?

(vii) STATUTORY FRAMEWORK:

14. Before adverting to the issues, it is apposite to take note of the 2017 Rules which existed prior to its amendment which prescribed for 1% reservation to NCC candidates. The relevant extract of the unamended Rule is reproduced below:

IV) HORIZONTAL RESERVATION OF SEATS:

- (a) 33 1/3% of seats are guaranteed for women and candidates in each category. This regulation of guarantee shall not be applicable if women candidates are selected on merit in each category from 33 1/3% or more of the seats therein.
- (b) Reservation for special categories:

3% seats shall be reserved for differently abled candidates in each category.

Reservations to physically challenged candidates:
The reservations to physically challenged candidates shall be implemented in each category on the total number of seats for that category in MBBS and BDS courses separately.

KNR University of Health Sciences shall constitute a Medical board comprising of Professors of Orthopaedics and General Medicine Departments from Government Medical Colleges including NIMS. The candidate should appear before the board constituted for assessment of percentage of disability as per the norms of the Government. The decision of the Medical board constituted by the University is final in all respects. The University will notify the list of eligible candidates on the website for exercising options. The candidate should fulfil the eligibility criteria as per Medical Council of India norms as follows:

Reservation to Physically challenged candidates is applicable to locomotor disorders of lower limbs with disability between 50% to 70% as category-I and between 40% to 50% as category-II.

(c) National Cadet Corps (NCC) : 1%

(d) Games and Sports : 1/2% (0.5%)

- (e) CAP (Children of Ex-serviceman and service personnel) : 1%
- (f) PMC (Police Martyrs children) : 0.25%
- ...

15. The 2017 Rules were amended by G.O.Ms.No.75, dated 04.07.2023. Rule 3(2) of G.O.Ms.No.75, dated 04.07.2023 reads as under:

- (2) In Rule 4, after clause (iii), and the paragraph thereunder, the following clause shall be inserted namely,-

“(iii) (a) Grace marks for NCC cadets:

NCC cadets (who have obtained NCC certificates prior to qualifying exam i.e., intermediate or its equivalent) who have qualified NEET UG and who have applied for admission, shall be provided with grace marks to be added to NEET score as follows:

<u>Category</u>	<u>% of Grace Marks</u>
i. Participation in Republic Day Camp (RDC)	: 7%
ii. Participation in Thal Sainik Camp (TSC)/Vayu:	5%
iii. NCC 'B' Certificate	: 3%

The Director NCC, Telangana State shall depute officers to the verification centre as per the requisition from Registrar, KNRUHS, Warangal. The verification officers shall submit candidate wise verified certificates list to Registrar, KNRUHS. The decision of verification officers is

final with respect to verification of above certificates. KNRUHS will prepare merit list after addition of grace marks as per the verified data submitted by the Directorate of NCC.

16. Thus, it is evident that the provision prescribing for horizontal reservation seats in respect of NCC 1% has been substituted by incorporation of Rule 4(iii)(a) and grace marks have been provided.

17. We will now proceed to deal with the issues in the seriatim.

18. **Issues No.(i) and (ii):**

- i) Whether doctrine of legitimate expectation applies in case of amendment to the 2017 Rules? If so, whether legitimate expectation of the petitioners has been violated by enacting Rule 4(iii)(a)?***
- ii) Whether by amending the 2017 Rules, the rules of the game have been altered midway?***

Issues No.(i) and (ii) are interlinked. Therefore, they are taken up together.

18.1. Legitimate or reasonable expectation may arise from an express promise given on behalf of a public authority. It may also arise from existence of a regular practice which a claimant can reasonably expect to continue (See **R v. Secretary of Transport Exports Greater London Council**⁹). In **Bannari Amman Sugars Limited** (supra) the Hon'ble Supreme Court while dealing with the doctrine of legitimate expectation in paragraph 20 held as under:

20. In **Shrijee Sales Corpn. v. Union of India** [(1997) 3 SCC 398] it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified.

⁹ (1985) 3 All.ER 300

Similar view was expressed in ***Pawan Alloys and Casting (P) Ltd. v. U.P. SEB*** [(1997) 7 SCC 251 : AIR 1997 SC 3910] and in ***STO v. Shree Durga Oil Mills*** [(1998) 1 SCC 572] and it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

18.2. A Constitution Bench of the Hon'ble Supreme Court in ***Sivanandan C.T*** (supra) dealt with the doctrine of legitimate expectation. In paragraphs 18, 29, 41 and 60 of decision, it is held as under:

18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals. It recognizes that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honor their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure. (***Salemi v. Mackellar*** ([1977] HCA 26).

29. A claim based on the doctrine of procedural legitimate expectation arises where a claimant expects the public authority to follow a particular procedure before taking a decision. This is in contradistinction to the doctrine of substantive legitimate expectation where a claimant expects conferral of a substantive benefit based on the existing promise or practice of the public authority. The doctrine of substantive legitimate expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence.

41. The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a *bona fide* decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.

60. The following are our conclusions in view of the above discussions:

- (i) The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14;
- (ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following : (i) the legitimacy of the expectation; and that (ii) the denial of the legitimate expectation led to a violation of Article 14;
- (iii) A public authority must objectively demonstrate by placing relevant material before the court that its decision was in the public interest to frustrate a claim of legitimate expectation;
- (iv) The decision of the High Court of Kerala to apply a minimum cut-off to the viva voce examination is contrary to Rule 2(c)(iii) of the 1961 Rules.
- (v) The High Court's decision to apply the minimum cut-off marks for the viva voce frustrates the substantive legitimate expectation of the petitioners. The decision is arbitrary and violative of Article 14.
- (vi) In terms of relief, we hold that it would be contrary to the public interest to direct the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated. They were all qualified and have been serving the district judiciary of the state. Unseating them at this

stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest.

18.3. In **Madras City Wine Merchants' Association v. State of Tamil Nadu**¹⁰, the Hon'ble Supreme Court in paragraph 52 held that doctrine of legitimate expectation applies only in the field of administrative law and it is not permissible to invoke the doctrine as against the legislation. Relevant extract of paragraph 52 reads as under:

52. It was by a rule (subordinate legislation) in exercise of the powers conferred by Sections 17-C, 17-D, 21 and 54 of the Tamil Nadu Prohibition Act, 1937 licences under Bar Rules came to be granted. Those Rules have been repealed by exercise of the same powers under Sections 17-C, 17-D, 21 and 54 of the Prohibition Act. Therefore, this is a case of legislation. The doctrine of legitimate expectation arises only in the field of administrative decisions. If the plea of legitimate expectation relates to procedural fairness there is no possibility whatever of invoking the doctrine as against the legislation...

¹⁰ (1994) 5 SCC 509

18.4. In the light of the aforesaid well settled legal principles with regard to legitimate expectation, we may advert to the facts of the case in hand. In the instant case, the petitioners appeared in NEET UG examination which was held on 07.05.2023. The result of the said examination was declared on 13.06.2023. The 2017 Rules govern the admission to MBBS/BDS courses in the State of Telangana which initially provided horizontal reservation of seats to the extent of 1% to the candidates who obtained NCC certificate. The 2017 Rules were amended on 04.07.2023. By the aforesaid amendment, NCC cadets who participated in the Republic Day Camp (RDC) and Thal Sainik Camp (TSC)/Vayu and candidates who held NCC-B certificate were provided grace marks to the extent of 7%, 5% and 3% respectively. Thus, the rule providing for reservation to the NCC candidates to the extent of 1% was substituted by the provision providing grace marks to the NCC candidates who had participated in RDC and Thal Sainik Camp/Vayu and held NCC-B certificate. The aforesaid rules only apply to the State of Telangana. After the 2017 Rules were

amended on 04.07.2023, a notification was issued on 06.07.2023 inviting online application for admission to MBBS/BDS courses in the State of Telangana.

18.5. Thus, from the facts referred to in the preceding paragraphs, it is evident that even though the submission that position existing on the date of notifying the entrance examination was altered may be correct, but the same has no impact so far as controversy involved in this batch of writ petitions is concerned. The 2017 Rules apply to the candidates seeking admission to MBBS/BDS course in the State of Telangana and the said rules were amended on 04.07.2023 before the University issued a notification on 06.07.2023. The petitioners before applying for registration for admission to MBBS/BDS course knew that the provision prescribing for reservation to the extent of 1% has been substituted by the provision providing for grace marks to the candidates who hold the NCC 'B' certificates. Therefore, the petitioners who hold NCC 'A' certificates could not have any legitimate expectation on 06.07.2023 that 1% reservation would be provided to them.

18.6. In any case, the instant case was a case of exercise of legislative powers by amendment of the statutory rules. Therefore, in view of law laid down by the Hon'ble Supreme Court in **Madras City Wine Merchants' Association** (supra), the doctrine of legitimate expectation cannot be invoked against the legislation. Therefore, the contention that the legitimate expectation, if any, of the petitioners has been violated by amending the rule with effect from 04.07.2023 does not deserve acceptance.

18.7. Accordingly, issues No. (i) and (ii) are answered.

19. **Issue No.(iii):**

iii) Whether the impugned rule constitutes an infraction of mandate contained in Article 14 of the Constitution of India?

19.1. In **Ram Krishna Dalmia v. Justice S.R.Tendolkar**¹¹, the Constitution Bench of the Hon'ble Supreme Court held that Article 14 of the Constitution of India forbids class legislation and it does not forbid

¹¹ AIR 1958 SC 538

reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

19.2. In **K.R. Lakshman v. Karnataka Electricity Board**¹², it has been held that the concept of equality before law means that among equals the law should be equal and should be equally administered and that the

¹² (2001) 1 SCC 442

likes should be treated alike. It has further been held by the Hon'ble Supreme Court that, all that Article 14 guarantees is a similarity of treatment and not identical treatment and the guarantee of equal protection of law and equality before the law does not prohibit reasonable classification. It has also been held that equality before law does not mean that things which are different shall be treated as though they were the same. The Hon'ble Supreme Court has also held that there must be a nexus between the basis of classification and the object of the legislation and so long as the classification is based on a rational basis and so long as all persons falling in the same class are treated alike, there can be no question of violating the equality clause.

19.3. In the instant case, a candidate in order to be eligible to appear in NEET UG examination ought to have passed the 12th standard examination i.e., intermediate examination. NCC-A certificate can be obtained by the students up to 10th standard. Thereafter, if a student is interested in participating in the activities of the NCC up to

12th standard, he can get NCC-B certificate. The NCC-C certificate is granted at the graduate level. The earlier rule prescribing for reservation to the extent of 1% included all the aforesaid categories of students who were NCC A, B and C certificate holders.

19.4. The Minister of State for Defence by a communication dated 02.08.2016 addressed to the State Governments emphasised the need that State Government should provide uniform code of incentives to NCC candidates and best practices of various States were communicated with the communication. The relevant extract of said communication reads as under:

“Since the NCC cadets devote considerable amount of time to pursuing NCC related training activities compromising their valuable studies, it has been discussed at the 21st Joint State Representatives & Deputy Directors General (JSR&D) Conference held on 31st July, 2015 that State Governments should provide them uniform code of incentives. To this effect, best practices of various states have been consolidated and the same is enclosed for ready reference.

I hope you will endeavour positively on this arena and consider various best practices and code of incentives to cadets which will encourage the youth of

this country to enrich their morale with the valuable qualities of unity and discipline.”

19.5. Thereafter, the Additional Director of DDG, NCC (AP&T), by communication dated 20.09.2022 brought to the notice of the State Government that over a period of 6 to 7 years, 1% reservation prescribed for students holding NCC certificates has led to serious misuse of various priorities given in the Government Orders. Therefore, the State Government was requested to take the action for revision of Government Orders. The relevant portion of communication dated 20.09.2022 is extracted below for facility of reference:

“3. Over a period of 6 to 7 years, it has been observed that this 1% reservation has led to serious misuse of various priorities given in the Government Orders with interference/influence from various agencies. To name a few the following are enumerated:

(a) Post EAMCET-2016 some cadets challenged the Note No.1 of the GO's pertaining to qualification exam and after the Supreme Court Judgment an amendment GO in terms of GO Ms.No.123 was issued.

(b) Judgment dated 18th April, 2019 on review application in I.A.No.3 of 2018 in W.P.No.23930 of 2018 setting aside Note No.5 in the Government Orders Ms.No.75 of the Government of Telangana a number of cadets have approached the High Court of both the States of Telangana and Andhra Pradesh for getting priority in NCC Quota for consideration of their participation and winning medal in sailing which was conducted by Sailing Federation of India in which NCC has not fielded a team and the ex-cadets have participated in their individual capacity. This precedence has denied the rightful priority to genuine cadets. More over some more certificates on similar lines of Sailing Federation of India, like Rafting, Rock Climbing, Go Karting etc have cropped up during counselling to professional courses.

4. During the 21st Joint State Representatives & Deputy Director General (JSR&D) Conference held on 30th/31st July 2015, under the chairmanship of Hon^{ble} Raksha Rajya Mantri (RRM), the proposal for incentive to NCC cadets was discussed and it was decided that the State Governments to provide sufficient incentives in academics and professional fields for the highly accomplished NCC cadets which would ensure a big flip to NCC Training. The aim was to ensure that a common minimum standard of incentives is followed by State/UT Governments in university admission

and employment in State Uniform Services. The proposed incentives were forwarded to all the State Chief Ministers through a personal letter (Copy attached with annexure-1) from the RRM.

5. It is therefore advised that a revision of the above referred Government Orders may be considered in consonance with the Annexure-1 of the RRM's letter. The overall merit be based on the performance/rank obtained by the cadets in the entrance examination. Participation in all other NCC activities be incentivized as per directions of RRM letter as mentioned in Para 4 above."

19.6. In pursuance thereof, the State Government amended the 2017 Rules by G.O.Ms.No.75, dated 04.07.2023, and has provided grace marks to the extent of 7% to the candidates participating in Republic Day Camp. Similarly, it provided grace marks to the extent of 5% to the candidates participating in Thal Sainik Camp (TSC)/Vayu Sainik Camp (VSC)/Nau Sainik Camp (NSC). It also provided 3% grace marks to the candidates holding NCC-B certificate.

19.7. It is relevant to note that Rule 3(IV)(c) contained in the 2017 Rules provided for a wholesale reservation to the

extent of 1% in respect of the candidates holding NCC A, B and C certificates. However, by amendment dated 04.07.2023, only grace marks have been provided in respect of NCC-B certificate holders. It is noteworthy that NCC-B certificate can be obtained in intermediate level which is the qualifying examination for appearance in the NEET UG examination. Therefore, grant of grace marks in respect of the candidates who hold NCC-B certificate is linked to participation in the activities of NCC up to intermediate level which is the qualifying examination. Thus, the classification has a reasonable nexus with the object of rule that is to provide reservation to the candidates who have participated in the activities of NCC up to the qualifying examination of NEET UG.

19.8. The candidates holding NCC A, B and C certificates are not similarly situate as NCC A certificate can be obtained up to 10th standard, whereas NCC B certificate can be obtained up to 12th standard (intermediate). The NCC C certificate can only be obtained at the graduation level. Therefore, candidates holding NCC A, B and C

certificates belong to different age groups as well as their education qualification is also different. Therefore, the rule does not seek to treat the similarly situated persons differently, but provides for reservation only in case of the candidates who are involved in the activities of NCC up to intermediate level i.e., qualifying examination. Therefore, the contention that the impugned rule constitutes an infraction of mandate contained in Article 14 of the Constitution of India is misconceived.

19.9. For the aforementioned reasons, the issue No.(iii) is answered in the negative and it is stated that the impugned rule does not constitute an infraction of Article 14 of the Constitution of India.

20. **Issue No.(iv):**

iv) Whether prescribing reservation or awarding grace marks is a matter of policy? If so, the scope of judicial review?

20.1. It is well settled legal proposition that the Courts in exercise of powers of judicial review, do not ordinarily

interfere with the policy decision of the executive unless the policy can be faulted on the grounds of *mala fide*, unreasonableness, arbitrariness or unfairness etc. It has further been held that arbitrariness, irrationality, perversity and *mala fide* will render the policy unconstitutional. It has also been held that Courts are not expected to express their opinion as to whether in a particular situation, a particular policy should have been adopted or not, it is best left to the discretion of the State (See **Ugar Sugar Works v. Delhi Administration**¹³). In **IIT, Kharagpur v. Sautrik Sarangi**¹⁴, Hon'ble Supreme Court has held that it has repeatedly emphasised that in the matters such as devising admission criteria or other issues engaging academic institutions, the Court's scrutiny in judicial review has to be careful and circumspect. It has further been held that unless shown to be plainly arbitrary or discriminatory, the Courts would defer to the wisdom of administrators in academic institutions who might devise policies in regard to admission process, matters of

¹³ (2001) 3 SCC 635

¹⁴ 2021 SCC OnLine SC 826

discipline or other general administrative issues concerning the institution or university.

20.2. In the 2017 Rules, wholesale reservation to the extent of 1% of seats was provided in respect of all categories of students i.e., students who held NCC A, B and C certificates. However, by way of amendment vide G.O.Ms.No.75, dated 04.07.2023, instead of providing wholesale reservation, only grace marks have been awarded to the candidates who hold NCC-B certificate and those who have either participated in the Republic Day Camp, Thal Sainik Camp (TSC)/Vayu Sainik Camp (VSC)/Nau Sainik Camp (NSC).

20.3. The aforesaid prescription of grace marks is based on rational and reasonable criteria inasmuch as it seeks to grant grace marks in respect of NCC-B certificate which can be obtained up to intermediate level. The award of grace marks is confined to NCC-B certificate holders who have participated in the activities of NCC up to intermediate level (12th standard) which is the qualifying

examination for NEET UG. The amendment to the 2017 Rules vide G.O.Ms.No.75, dated 04.07.2023, seeks to exclude either the students who have not participated in the activities of NCC up to intermediate level or have obtained NCC 'C' certificate at the graduate level.

20.4. The matter of prescribing reservation for a category candidates or for awarding of grace marks is a matter of policy. This Court, therefore, has to be wary about interfering with the policy and can interfere with the matter of policy only if the same to be shown to be arbitrary, discriminatory, *mala fide*, irrational or perverse. The policy decision to dispense with reservation to the extent of 1% in respect of candidates belonging to all categories of NCC and to substitute it with awarding grace marks only to candidates holding NCC-B certificate cannot be said to be arbitrary, discriminatory, *mala fide*, irrational or perverse and therefore, no interference is called for.

20.5. Accordingly, issue No.(iv) is answered.

21. **Issue No.(v):**

v) Whether the amendment in the 2017 Rules has been made in respect of a non-existent rule? If so, its effect?

21.1. It is well settled legal proposition that if an authority has a power under the law, merely because while exercising that power, the source of power either is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power, so long as the power exists and can be traced to a source available in law. (See **N. Mani v. Sangeetha Theatre**¹⁵ and **Cantonment Board v. Jagat Pal Singh Cheema**¹⁶). Thus, if power to amend or to pass an order is available to an authority, an amendment or order would not be invalid merely because a wrong provision is referred in the amendment or order.

21.2. In the instant case, the 2017 Rules have been framed in exercise of powers under Section 3 read with Section 15(1) of the Telangana Educational Institutions (Regulation

¹⁵ (2004) 12 SCC 278

¹⁶ (2012) 8 SCC 189

of Admission and Prohibition of Capitation Fee) Act, 1983. The aforesaid provisions empower the State Government to frame the rules. Therefore, the source of power to frame the rules can be traced to Section 3 and Section 15(1) of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, which has not been assailed in these writ petitions. Rule 3(IV)(c) provided for reservation to the National Cadet Corps to the extent of 1%. However, by G.O.Ms.No.75, dated 04.07.2023, in Rule 4 and after clause (iii), namely 4(iii)(a) is sought to be added. However, learned Additional Advocate General fairly submitted that inadvertently, instead of making a reference to Rule 3(IV)(c), reference has been made to Rule 4(iii)(a). The aforesaid incorrect reference will not invalidate the rule. The amendment by G.O.Ms.No.75, dated 04.07.2023, has been made by deleting Rule 3(IV)(c) and instead of Rule 3(IV)(c), Rule 4(iii)(a) has been substituted. It has to be read accordingly. Therefore, the contention that the amendment is made in respect of a non-existent rule does not deserve acceptance.

21.3. The issue No. (v) is answered accordingly.

(viii) CONCLUSION:

22. In view of the preceding analysis, we do not find any merit in the writ petitions. The same fail and are hereby dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

T.VINOD KUMAR, J

11.09.2023

Note: LR copy to be marked.

B/o.
vs/pln