

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5839-5844 OF 2009
(Arising out of S.L.P. (C) No. 15016-15021 of 2009)

Dr. N.T.R. University of Health Sciences,
through Registrar
Versus

.... Appellant(s)

P. Amulya & Ors. Etc.

.... Respondent(s)

O R D E RP. Sathasivam, J.

1) Leave granted.

2) Being aggrieved by the interim order dated 10.06.2009 in WAMP No. 1327 of 2009 in W.A.No. 676 of 2009 and common order dated 23.06.2009 in WAMP No. 1631 of 2009 in W.A. No. 676 of 2009, WA Nos. 755, 543, 793 & 794 of 2009 of the High Court of Andhra Pradesh at Hyderabad, Dr. N.T.R. University of Health Sciences (for short "the University") - the appellant herein, filed the above appeals.

Since these appeals are against the impugned orders passed by the High Court in an appeal filed by the University and of the fact that the main Writ Petition No. 3749 of 2009 is still pending before the High Court, there is no need to traverse all the factual details.

3) Heard learned counsel for the parties.

4) Learned senior counsel appearing for the appellant-University submitted that the University conducted the first year MBBS examination to the students for the year 2005-06 during the period

between 05.09.2006 to 10.10.2006 and the results were declared on 02.12.2006. Out of 4,076 students who appeared in the examination, 992 students have failed. Among the failed students, 436 students had applied for re-verification/re-totalling and out of them 294 students were declared passed. The University declared the results of only those students who had passed all the three subjects in re-verification/re-totalling and has not declared the subject-wise results, since the students who failed in one or two subjects are not entitled to be promoted for the second year MBBS Course as per the Medical Council of India Regulations. On receipt of complaints about certain irregularities in the re-verification/re-totalling process, the University had cancelled the results. The students filed a batch of writ petitions before the High Court challenging the action of the University and the same were allowed by the learned Single Judge. Questioning the same, the University filed writ appeals and a Division Bench of the High Court, vide judgment dated 20.07.2007, set aside the judgment of the learned Single Judge. Aggrieved by the same, the students filed special leave petitions before this Court and by order dated 13.08.2007, this Court directed the University to permit the students to continue their studies on the basis of interim order passed by the High Court on 13.04.2007. Accordingly, the University permitted those students to attend the second year classes and also to appear for the second year MBBS course examination held in October, 2008. On 22.10.2008, this Court in Sahiti and Others vs. The Chancellor, Dr. N.T.R. University of Health Sciences and others, (2009) 1 SCC 599, after

recording the statement of the Additional Solicitor General, who appeared for the University for conducting supplementary examination of all the students who have yet to clear first year MBBS examination directed, inter alia, the University to conduct supplementary examination. Pursuant to the same, the University conducted special supplementary examination in December, 2008. The results of the special supplementary examination were declared in the month of January, 2009. The respondents-students - (1) P. Amulya (2) Fazam Jahangir (3) Kodali Gopi and (4) T. Venkateswara Rao had cleared the first year MBBS examination. They are eligible to be promoted for the second year MBBS only from January, 2009 i.e. from the date of declaration of results. The remaining students (1) D. Kaushal (2) Shaik Firoz Basha (3) Reddy Hema Latha (4) Jakeer Shaik and (5) N. Sindhura were failed and therefore they are not entitled for promotion to second year MBBS course as per the Regulations. The University conducted regular supplementary examination of the first year MBBS in March, 2009 wherein (1) D. Kaushal (2) Shaik Firoz Basha (3) Reddy Hema Latha (4) Jakeer Shaik and (5) N. Sindhura have passed the first year MBBS examination. Thus, according to the University, they are eligible to appear for second year MBBS examination to be held in September/October, 2010.

5) The Division Bench of the High Court, vide order dated 10.06.2009, directed the University to declare the results within a week. Aggrieved by the said order, the University filed an application seeking modification of the said order contending that none of the writ petitioners were permitted to attend the classes

either by the High Court or by this Court and no one fulfilled the criteria laid down in the order dated 10.06.2009 passed in W.A.M.P. No. 1237 of 2009. In spite of the clarification sought, the Division Bench, vide order dated 23.06.2009, confirmed the order dated 10.06.2009 with slight modification. Both these orders are under challenge in these appeals. On 07.07.2009, upon being mentioned by the University, this Court directed maintenance of status quo till 17.07.2009. On 17.07.2009, this Court issued notice returnable on 07.08.2009 and permitted the respondents to file counter if they so desire and also extended the interim order until further orders. On 17.08.2009, when the matter came up for hearing, this Court reserved the orders and in view of urgency in writing examination passed a brief order which reads thus:

"Pending orders, the students who have submitted their applications for taking supplementary examination may be allowed to participate in the examination, provided if they are otherwise eligible."

6) As said earlier, aggrieved by the various interim orders of Single Judge/Division Bench of the High Court, the University has approached this Court. It is relevant to point out that on earlier occasion, this Court in Sahiti (supra), while disposing the same, issued certain directions which reads thus:-

43. Mr Gopal Subramaniam, learned Additional Solicitor General appearing for the respondents, has stated at the Bar that the University is inclined to hold supplementary examination of the students, who have yet to clear the first year MBBS examination.

Therefore, Dr. N.T.R. University of Health Sciences is hereby directed to hold supplementary examination of all students who have yet not cleared the examination of first year MBBS held in September/October 2006.

44. Pursuant to the interim orders, 294 students were permitted to prosecute studies in second year MBBS. If any student/students fails/fail in supplementary examination of first year MBBS examination, the declaration of the results of such candidate/candidates who appear for second year MBBS be withheld or their further course of study be decided based on the Rules and Regulations of the University applicable to such students. It is clarified that the abovementioned direction would apply only to those students who had appeared and failed in the first year MBBS examination held between 5-9-2006 and 10-10-2006.

45. Subject to the direction given above, this Court finds that no ground is made out by the appellants to interfere with the ultimate conclusion reached by the Division Bench and, therefore, the appeals are disposed of accordingly. There shall be no order as to costs."

7) The controversy according to the University is that this Court has directed it to conduct supplementary examination only to those students who have not cleared the first year MBBS examination held between 05.09.2006 and 10.10.2006. In other words, according to the University, only 294 students were eligible to pursue second year MBBS examination. This was not acceptable by the respondents-students. It was pointed out that by virtue of various interim

directions, these students were also permitted to pursue the second year MBBS examination. It is also the definite case of the respondents-students that all of them had completed 18 months course and this Court upheld the cancellation of re-verification/re-totalling and they were also permitted to write the examinations. In view of the same, it is the claim of the respondents-students that the stand of the University that these students stand on a different footing from others is a misconception and such claim cannot be countenanced. The Division Bench, while accepting their stand, also relied on para 44 of the judgment of this Court in Sahiti (supra), which, according to it, applicable to those students who appeared and failed in the first year MBBS examination held between 05.09.2006 and 10.10.2006. In those circumstances, the Division Bench issued direction to the University to declare the results of all those students who appeared and failed in the first year MBBS examination held between 05.09.2006 and 10.10.2006 who cleared/passed all the three subjects of first year MBBS by January, 2009 who were permitted to pursue second year MBBS course under the interim orders. When the University again moved before the very same Bench for modification, it reiterated its earlier decision and declined to accept the stand of the University. Finally, by order dated 01.07.2009, in view of the fact that the results have already been declared, no further cause of action survives for adjudication and closed the main Writ Appeal No. 676 of 2009.

8) Inasmuch as under the interim orders passed by the Single Judge/Division Bench of the High Court, the respondents-students

were permitted to pursue their studies/write examination, and results were also ordered to be declared and also order of this Court dated 17.08.2009 permitting eligible students to participate in the ensuing examination and of the fact that main W.A. No. 676 of 2009 filed against interim orders itself has been closed by the Division Bench of the High Court, we are of the view that no further order is required except directing the disposal of the main writ petition i.e. WP No. 3749 of 2009 pending before the High Court. Accordingly, we request the High Court to dispose of the writ petition preferably within a period of three months. We make it clear that we have not expressed anything on the merits of the case raised by both parties. Subject to the above direction, all the appeals are disposed of. No costs.



.....CJI.
(K.G. BALAKRISHNAN)

.....J.
(P. SATHASIVAM)

NEW DELHI;
AUGUST 28, 2009.