APHC010560132006

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench Sr.No:- [3631]

WRIT APPEAL NO: 873 of 2006

Mohd. Akbar ...Appellant

Vs.

The State of Andhra Pradesh and others ...Respondent(s)

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Reserved for orders on	:	09.10.2026
Pronounced on	:	16.10.2026
Whether only operative part of the judgment is pronounced or whether full judgment is pronounced	:	Full

CORAM : THE CHIEF JUSTICE LISA GILL
SRI JUSTICE NINALA JAYASURYA
Dr. JUSTICE Y. LAKSHMANA RAO

DATE : October 16th, 2026

Present :

Advocate for Appellant:	Mr. Sivaprasad Reddy Venati
Advocate(s) for Respondent(s):	Mr. N. Phanindra for CKR Associates, GP for Medical Health and Family Welfare, Mrs. Tata Venkata Sridevi,Standing Counsel For Dr.NTR University of Health Sciences,

LISA GILL, CJ:

This matter has been placed before us in view of order dated 27.09.2006, whereby a Division Bench of this Court while considering abovesaid writ appeal filed against order dated 28.07.2006, passed in

W.P.No.15613 of 2006 referred the following question for consideration by a Larger Bench:

> *"Whether Rule 7(3) of the Rules and Clause 7.6 of the Regulations, which provide for taking into consideration of the marks secured in the MBBS examination for the purpose of determination of inter-se merit of the candidates securing equal marks in the entrance test held for admission to the super speciality courses are irrational and have no nexus with the object sought to be achieved viz. to select the most meritorious candidates into the super speciality courses?"*

2. Brief factual conspectus required for adjudication of matter is that appellant-writ petitioner sought admission in Super Speciality courses in June 2006. He appeared for entrance examination conducted by Dr. NTR University of Health Sciences, (for short, "University"). He submitted his choice for admission in D.M. (Gastroenterology) as did respondent No.5. Appellant and respondent No.5 secured equal marks i.e. 73% in entrance examination. Respondent-University, in terms of Clause 7.6 of University Regulations (Prospectus for Admission to Super Specialty Courses (DM and M.Ch.) for the Academic Session 2006-07, Dr. NTR University of Health Sciences, A.P., Vijayawada), allowed admission to respondent No.5 in Super Speciality course of D.M.(Gastroenterology). Present appellant, being aggrieved, filed Writ Petition No.15613 of 2006 seeking striking down of Rule 7(3) of A.P. Regulation of Admission to Super Specialties in the Medical Colleges Rules, 1983, (for short, "the Rules, 1983") and Clause 7.6 of University Regulations.

3. Learned writ Court dismissed the writ petition in view of decision of Division Bench of this High Court in **Dr. B.G.V. Giridhar vs. Dr. Ch. Ramakrishna Rao and others[1].** Aggrieved therefrom, present writ appeal was filed by appellant-writ petitioner.

4. Division Bench, considering the said appeal, *prima facie* found that marks secured by candidates in MBBS examination cannot be made basis for determining inter-se merit of candidates for admission to Super Speciality courses, because for purpose of assessing comparative merit for admission in Super Speciality course, marks secured by candidates in Postgraduate course are more relevant and not those of MBBS examinations. It was felt that Division Bench in the case of **Dr. B.G.V. Giridhar(supra)** had not considered applicable Rules and Regulation on the anvil of rationality, inasmuch as whether there is any valid ground or justification for computation of marks secured by candidates in MBBS examination for determining their inter-se merit for purpose of admission to Super Speciality courses.

5. Rule 7(3) of Rules, 1983, reads as under:

> *"**7. Method of selections:***
>
> *(3) If two candidates get equal marks in the entrance test, marks obtained in medicine in MBBS for medical specialties and marks obtained in Surgery for specialties shall be taken into consideration for fixing the merit of the candidates".*

[1] 2002 (6) ALD 331, dated 19.09.2002

6. It was felt by Division Bench that earlier judgment in **Dr. B.G.V. Giridhar (supra)** required reconsideration, as there was an erroneous assumption therein, that there is no distinction between admission to a Postgraduate course and Super Speciality course. Matter was thus referred to a Larger Bench with question as detailed above being framed for consideration. Matter has unfortunately kept hanging fire since then.

7. Learned counsel for parties at the outset brought to notice of this Court that there has been a sea change in applicable laws. Indian Medical Council Act, 1956, then applicable, has since been repealed and replaced by National Medical Commission Act, 2019 (for short, "NMC Act, 2019"). Section 14(1) of NMC Act, 2019 contemplates a uniform national eligibility-cum-entrance test for admission to undergraduate and postgraduate super speciality medical education in all medical institutions governed by Act.

8. Admission to D.M/ M.Ch courses is carried out through NEET-SS, conducted by National Board of Examinations in Medical Sciences (for short, "NBEMS"), which had initially been established by an administrative decision of Government of India in year 1975; subsequently registered as a Society in the year 1982, with said body being legally recognized under Section 37 of NMC Act, 2019. Section 14 of NMC Act, 2019, reads as under:

> *"14. (1) There shall be a uniform National Eligibility-cum-Entrance Test for admission to the undergraduate and postgraduate super-speciality medical education in all medical institutions which are governed by the provisions of this Act: Provided that the uniform National Eligibility-cum-Entrance Test*

for admission to the undergraduate medical education shall also be applicable to all medical institutions governed under any other law for the time being in force.

(2) The Commission shall conduct the National Eligibility-cum-Entrance Test in English and in such other languages, through such designated authority and in such manner, as may be specified by regulations.

(3) The Commission shall specify by regulations the manner of conducting common counselling by the designated authority for admission to undergraduate and postgraduate super-speciality seats in all the medical institutions which are governed by the provisions of this Act: Provided that the designated authority of the Central Government shall conduct the common counselling for all India seats and the designated authority of the State."

9. Learned counsel for respondents further stated that NBEMS releases information bulletin for every competitive medical examination uploaded on its official portal under Section 61(2) of NMC Act, 2019. Clause 10.7 of NEET-SS 2025 Information Bulletin provides tiebreaker criteria. It is provided therein that if candidates obtain same score, inter-se merit is determined by exam based criteria (greater number of correct responses, fewer negative responses), then by age with elder candidate being preferred and finally by candidate securing "higher aggregate marks (in percentage) in all MBBS Professional Examinations". Clause 10.7 of NEET-SS 2025 Information Bulletin reads as under:

"10.7. ***TIE BREAKER CRITERIA:*** *In the event of candidates obtaining the same score for a particular super speciality group, the following tie-breaking criteria will be applied to determine inter-se merit in descending order till a unique inter-se merit is determined for all such candidates:*

A. *Candidate having* ***overall lesser number of negative responses in the entire question paper*** *will be placed at a better merit position i.e. will get a higher rank in the merit list.*

B. *Candidate having* ***lesser number of negative responses in the Section A of the question paper*** *will be placed at a better merit position i.e. will get a higher rank in the merit list.*

C. *Candidate having* ***lesser number of negative responses in the Section B of the question paper*** *will be placed at a better merit position i.e. will get a higher rank in the merit list.*

D. *Candidate having* ***lesser number of negative responses in the Section C of the question paper*** *will be placed at a better merit position i.e. will get a higher rank in the merit list.*

E. *Candidate securing* ***higher aggregate marks (in percentage) in all MBBS Professional Examinations*** *will be placed at a better merit position i.e. will get a higher rank in the merit list. In case of Indian Citizens/ OCI who have obtained their Primary Medical Qualifications from outside India, their FMG Examination marks (in percentage) shall be considered in lieu of aggregate marks (in percentage) in all MBBS Professional Examination.*

The aggregate marks in percentage shall be provided by the applicant while submitting his/her application form to NBEMS. The marks shall be provided as an accurate value rounded down to two decimals.

Example	***Maximum Marks***	***Marks Obtained***	***Aggregate Percentage***	***Percentage to be rounded down to***
A	*600*	*421*	*70.166666*	*70.16*
B	*600*	*416*	*69.33333*	*69.33*

F. *An Older candidate will be placed at a better merit position i.e. will get a higher rank in the merit list."*

10. Learned counsel for respondents submitted that controversy at hand at this stage, by afflux of time and subsequent developments, including change in law, has been rendered academic. It was further submitted that though latest NEET-SS Information Bulletin, retains the tie-breaker criterion of considering marks in MBBS professional exams on the same analogy for admission to Super Specialty course as contemplated under Rule 7(3) of Rules, 1983 and Clause 7.6 of University Regulations, other criterion have also been added. As of now, none has challenged tiebreaker criteria as prescribed in present applicable Regulations and Rules. It was urged that in given factual matrix, any decision carried out in present proceedings would be a decision in vacuum and a completely academic exercise, which has been deprecated by various High Courts as well as Hon'ble the Supreme Court. Controversy should be adjudicated when it is live and presented for adjudication before Court. It was thus prayed that present reference be thus not entered into and Writ Appeal itself be disposed of as infructuous in given facts and circumstances.

11. Learned counsel for appellant- writ petitioner, while submitting that even as of now, criteria of marks obtained by a candidate in MBBS examinations are considered as one of tiebreakers, had candidly stated that in peculiar facts and circumstances of the matter, there is indeed no live controversy as such which survives for adjudication.

12. We have heard learned counsel for parties and have perused the file with their able assistance.

13. Factual matrix is not in dispute, i.e. in respect to appellant-writ petitioner seeking admission to Super Speciality course and having secured same marks as respondent No.5 in entrance test but being denied admission on the ground that marks secured by respondent No.5 in MBBS examinations were higher; filing of writ petition by appellant- writ petitioner, its dismissal and matter being referred by Division Bench for reconsideration of decision in **Dr. B.G. V. Giridhar (supra)**. Subsequent change in applicable laws and Rules is also not in dispute being a matter of record.

14. After repeal of Indian Medical Council Act, 1956 and coming into force National Medical Commission Act, 2019, entire process of admissions to Undergraduate, Postgraduate, Super Speciality medical disciplines in all medical institutions governed by the Act have undergone a sea change. Tiebreaker criteria in Clause 10.7, as reproduced in paragraph 8 above, indicates a number of other criteria, which have been included in case of tiebreaker between two candidates.

15. It was brought to our notice that there is no challenge to said provisions as of now.

16. At this juncture, we take note of judgments of Hon'ble the Supreme Court in **Arnit Das vs. State of Bihar[2],** wherein Hon'ble the Supreme Court, while referring to its earlier judgments in case of **Sanjeev Coke Mfg. Co. vs. Bharat Coking Coal Ltd.,[3] R. S. Nayak vs. A.R. Antulay[4]** and **Dhartipakar**

[2](2001) 7 SCC 657
[3](1983) 1 SCC 147

Madan Lal Agarwal vs. Rajiv Gandhi[5], concluded that Court does not decide matters which are only of academic interest on facts of a particular case.

17. Hon'ble the Supreme Court in **Sanjeev Coke Mfg. Co. (supra)**held that there was no necessity of answering academic or hypothetical questions or to make any 'disembodied pronouncements' on serious questions without controversy being properly placed before it in a real *lis*.

18. Reference can also be made to **K.N. Rajakumar vs. V. Nagarajan and others [6]** and **N. Ravi and others vs. Speaker, Legislative Assembly Chennai and others[7]**, wherein this position was reiterated.

19. In the present case, learned counsel for parties are *ad idem* that there indeed remains no issue alive for determination between parties and any adjudication would be a purely academic exercise having no impact upon position of parties.

20. Keeping in view facts and circumstances as above, we are of considered opinion that question placed before us for adjudication and reconsideration of decision of Division Bench in **Dr. B.G.V. Giridhar (supra)** has indeed become of totally academic interest, with said decision not having any impact upon position of parties. No useful purpose shall be served by undertaking exercise of adjudication upon the issue as referred to Larger

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[4](1984) 2 SCC 183
[5]1987 Supp SCC 93
[6](2022) 4 SCC 617
[7]Writ Petition (Criminal) Nos.206-210 of 2003, decided on 06.10.2026

Bench. In the factual backdrop, writ appeal, as fairly agreed by learned counsel for appellant has by itself become infructuous.

21. Question of considering marks secured by candidates in MBBS examination for the purpose of determination of inter-se merit, in case of a tiebreaker amongst candidates in entrance test for Super Speciality courses, as per applicable law, Rules & Regulations is kept open for adjudication in appropriate proceedings, as may be presented before this Court for adjudication in a live controversy.

22. In normal course matter would have been placed before a Division Bench but in given facts and circumstances, we find no justification in following said course. Writ Appeal is thus disposed of as infructuous leaving above said question open for consideration as and when it arises, in appropriate proceedings.

No costs. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

LISA GILL, CJ.

NINALA JAYASURYA, J.

Date: 16th October, 202 **Y. LAKSHMANA RAO, J.**

SSN

Uploaded on : 17.10.2026
Whether the order is Speaking/Reasoned : Yes / No
Whether the order is Reportable : Yes / No