
(2013) 06 BOM CK 0134

In the Bombay High Court

Case No : Public Interest Litigation Writ Petition No. 3 of 2013

Bahujan Samaj Educational and Cultural Forum and Another	APPELLANT
Vs	
State of Goa and Others	RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 15(5), 16(4), 226
Indian Medical Council Act, 1956 — Section 33

Citation : (2013) 4 ABR 1028 : (2014) 1 ALLMR 791

Hon'ble Judges : U.V. Bakre, J;A.P. Lavande, J

Bench : Division Bench

Advocate : V. A. Lawande and D. Vernekar, for the Appellant; A.N.S. Nadkarni, General, K. Noorani, A.G.A., D. Lawande, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard Mr. Lawande, learned Counsel appearing on behalf of the petitioners and Mr. Nadkarni, learned Advocate General, on behalf of the respondents in both the petitions. By these Writ Petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners have sought following reliefs:--

(a) Grant a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction commanding the respondent No. 2 to follow the law enunciated by the Supreme Court and complete the admission process based on the examination GCET - 2012 by preparing a single merit list of all the candidates including, if any, OBC candidate in merit list and grant admissions on the basis of the merit without adjusting them in reserved category candidate who qualify in the general category on their merits and grant the admissions to the OBC candidates (to the petitioners in Writ Petition No. 27/2013) who are the less meritorious candidates of the OBC reserved category.

(b) Writ of certiorari or any writ, order or direction to quash and set aside the

general list of admitted candidates and to include the meritorious OBC candidate in the general category list and to revive the admitted list of OBC candidate.

(c) Writ of certiorari or any writ, order or direction to the Director of Technical Education (respondent No. 2) to give admission to the less meritorious deserving OBC candidates in the reserved quota for the OBC category in the M.B.B.S. Degree and in the B.D.S. Degree (to petitioner Nos. 1 and 2 of Writ Petition No. 27/2013 in M.B.B.S. Degree and to the petitioner No. 3 of said Writ Petition, in the B.D.S.) by increasing the required number of seats and if there is any prohibition under any university regulation for such admission since the course is already started then such prohibition should be condoned and admission should be given.

2. In P.I.L. Writ Petition No. 3 of 2013, an additional relief is sought which is as under;--

(e) Writ of certiorari or any writ, order or direction to the Director of Technical Education (respondent No. 2) to follow the admission process by preparing a single merit list for all the candidates and to give the admission to the meritorious OBC candidates in seats available in general category, who are in merit in computation of their marks to the general category candidates and not to adjust them in reserved category even if they opted for the reserved category when they are in merit in computation with general category candidates.

3. P.I.L. Writ Petition No. 3 of 2013 has been filed by the Society duly registered under the Societies Registration Act, 1860 and which represents Bahujan Samaj and its members who belong to Scheduled Caste, Scheduled Tribe and Other Backward Classes and by one of the members of the Other Backward Class (OBC). The petitioners allegedly are espousing the cause against discrimination of the members of the Society and the community in general.

4. The petitioners of Writ Petition No. 27 of 2013 are members of the OBC. Petitioner No. 1 is a candidate who opted for admission under OBC category for M.B.B.S. Course and is first on the waiting list under the OBC category for M.B.B.S. Course. Petitioner No. 2 is a candidate who has opted for admission under OBC category, for M.B.B.S. course, who is. second in the admitted list of BDS for reserved category who has opted under OBC category for MBBS course and failed to secure admission. Petitioner No. 3 is a candidate from OBC category who has opted under the said OBC category and was in the waiting list of BDS.

5. According to the petitioners, the admission programme adopted by the respondent Nos. 1 and 2, in Professional Degrees as well as Diploma Courses, is arbitrary and frustrates the object of reservation policy contained in Article 15(4) of the Constitution of India by denying equal protection of law to the members of other backward class to be treated as open candidates while computing the reservation seats.

6. Case of the petitioners, in short, is as follows:--

The centralized admission programme was started by the Government of Goa, Directorate of Technical Education, Alto Porvorim Goa, since the year 1995-1996 in respect of professional degree course and since 1997-1998 in respect of the professional diploma courses. For the purpose of admission, certain criteria were followed by the Government which was in achievement of the object contemplated under Articles 15(4) and 15(5) of the Constitution of India and the said criteria was that the general category candidates were first considered in general category and thereafter, the same was followed by the reserved category. This procedure and practice was followed from the year 1995-1996 till the year 2000-2001. However, from the year 2001-2002, the said procedure has been discontinued and a different procedure has been adopted thereby negating the object of Articles 15(4) and 15(5) of the Constitution. A modification has been done to the effect that the candidates admitted against the reserved category SC/ST/OBC shall be eligible for the concession of the tuition fees and the same has been denied to the candidate of reserved category who can compete in the general category. A notice dated 18.05.2012 was sent by Bahujan Samaj Education and Cultural Forum (Petitioner No. 1 of P.I.L. Writ Petition No. 3/2013) to the respondents requesting them to examine the matter in the context of the object of Articles 14 and 15(5) of the Constitution. On 21.05.2012 the Dy. Director (CAD), in view of the said notice, framed two issues for examination and sent the file to the Law Department. The said two issues were as follows:--

(A) Whether 50% tuition fees concession being provided for the reserved category candidates admitted in seats under the reserved category as against the concession being applicable to the candidates belonging to such category admitted under general category, if eligible at their option.

(B) Whether conducting admission rounds for reserved category candidates before the general category so as to facilitate smooth conduct of admission rounds; due to unavailability of eligible candidate in the merit list of reserved candidate is violative of above Articles.

7. The Law Department before giving a concrete opinion requested the Director of Technical Education to link the files wherein:--

(a) the decision, as regards the procedure followed till the year 2000-2001, taken for charging the concession for the SC/ST/OBC candidate and;

(b) the file wherein a decision was taken to modify the above to restrict the said benefits of concessional fees only for candidates selected against the said category of SC/ST/OBC.

9. The Directorate of Technical Education while considering the remarks of the Under Secretary (Law) and requirements and urgency of the matter proposed some modifications in the approved prospectus with immediate effect in respect of the admission to the professional courses (both Degree and Diploma) for the academic year 2012-2013. In the said proposal of modification, it was also

proposed by the Director of Technical Education in respect of the rounds of the admission, that the said rounds of admission for the general category seats should be conducted before rounds of admission for seats under SC/ST/OBC category are conducted. The current practice of admission is reviewed by the State and its instrumentalities and it has been concluded that logically first round of filling up should be made for the general candidates so that meritorious students of the reserved category would find place in the general category and with respect to the concession in fees structure it was decided that meritorious students belonging to reserved category can benefit for Government fee concession. In view of the above decision taken by the respondents No. 1 and 2, respondent No. 2 issued an announcement in the professional Degree admissions whereby the Government has approved revised schedule of admission rounds for professional Degree courses.

9. The grievance of the petitioners is that though the Government has shown that it was keen in securing the object of reservation policy and to give protection, against discrimination, to the students of reserved category, respondent No. 2, however, in a systematic manner flouted and infringed the fundamental rights of the students by denying them equal protection of law in holding the admission process by giving two different dates for general category and reserved category. According to the petitioners, respondent No. 2 by holding admission rounds on two different dates for two different categories has adjusted the meritorious students in the reserved category seats and this is completely arbitrary and discriminatorily on the part of respondent Nos. 1 and 2. It is alleged that as per the merit list prepared by respondent No. 2 for M.B.B.S., B.D.S., Architecture, and B-Pharm, two candidates from the category of OBC were well within cut off marks of general category candidates and despite this fact, the said candidates were adjusted in the reserved category.

10. The Bahunjan Samaj Educational and Cultural Forum had filed a P.I.L. Writ Petition bearing No. 19/2012 against the respondents. In that P.I.L. Writ Petition, this Court, by order dated 19.07.2012, had directed that all further admissions to the first year of professional Degree Courses, in terms of "common prospectus and GCET-2012 Information" shall be subject to further orders that may be passed by this Court. This Court thereafter on 10.09.2012 passed an order in the said P.I.L. Writ Petition No. 19/2012 directing the respondents to consider the said petition as a representation and consider the grievances raised by the petitioners as members of the community in accordance with law within eight weeks from the date the petitioners appear before the respondents. On 03.10.2012, respondent No. 2 wrote a letter informing the Bahunjan Samaj Educational and Cultural Forum to attend the hearing before the respondents on 10.10.2012. Accordingly, the petitioners raised their grievances before the committee appointed by the respondents and on the same date the matter was argued before the committee. However, some time in the mid of December, 2012, Bahunjan Samaj Cultural and Educational Forum received the undated decision/report of the committee whereby the grievance raised by the petitioners

was held to be not bearing any merit and further consideration. Aggrieved by the said decision, the petitioners have filed the present petitions.

11. On behalf of the respondents, the Director of Technical Education, has filed Affidavit-in-Reply. It is alleged that in terms of the Medical Council of India Regulations, the last date up to which students can be admitted against vacancies arising due to whatsoever reason, is 30th September of each year, beyond which it is impermissible to offer admission to any student for M.B.B.S. Degree Course. It is further alleged that even the Goa University Rules mandate 75% attendance for every academic year. Therefore, according to the respondents, the petitions filed in January, 2013, are grossly barred by delay and laches. The respondents have dealt with all the averments made in the petitions. The respondent alleged that the reliefs sought by the petitioners are de hors the law and cannot be granted.

12. Affidavits-in-Rejoinder have been filed, on behalf of the petitioners, thereby denying the averments made in the reply, which are inconsistent to the contents of the petitions.

13. Learned Counsel for the petitioners submitted that the less meritorious but eligible OBC category students could not get admission in the reserved quota as meritorious candidates from OBC category were adjusted in the reserved category quota and not a single OBC meritorious candidate was given seat in the general category. According to him, when a candidate who is otherwise entitled to be admitted to the M.B.B.S. Course, on the basis of his open merit, though belonging to reserved category, if is adjusted against a seat meant for reserved category, then the purpose of reservation contained in Article 15(4) of the Constitution, will not be achieved. He submitted that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for OBC and if that is done then the same is against the Constitutional mandate of Article 15(4). He pointed out from the records that first four OBC candidates namely (i) Mamlekar Harshall Hiroji; (ii) Komarpanth Sarvesh; (iii) Vaigankar Priyanka Prakash; and (iv) Kshitija Valvaikar who respectively secured 182, 170, 162, and 162 marks, cumulatively, in the subjects Physics, Chemistry and Biology (PCB) were meritorious OBC candidates in the General Category merit list but have been adjusted in the reserved category based on their percentage. He then invited our attention to the general category list of selected candidates wherein the Goa Common Entrance Test (GCET) marks of the last four students are 157. Learned Counsel argued that if the above four OBC category candidates, who were entitled to be selected in the general category on their merits were given seats in the general category, then the other OBC candidates would have become entitled for the reserved seats and these are (i) Virdikar Omesh Vasudev; (ii) Langote Nikhil Damodar; (iii) Naik Antara Anand and (iv) Chari Nichay Babani, who respectively got 132 marks. According to learned Counsel, if the above had been done, then all the three petitioners of Writ Petition No. 27/2013 could have secured admission to their

desired courses. Learned Counsel submitted that if for any reasons the petitioners cannot be adjusted in the seats then they must be ordered to be admitted by increasing required number of seats.

14. On behalf of the petitioners, reliance has been placed on the following judgments:--

- (a) Avinash Singh Bagri and Others Vs. Registrar IIT Delhi and Another,
- (b) Ritesh R. Sah Vs. Dr. Y.L. Yamul and others,
- (c) Manjit Singh Vs. State of Punjab and another,
- (d) Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others,
- (e) Anil Kumar Gupta and Others Vs. State of U.P. and Others,
- (f) Judgment dated 29/11/2010 of Delhi High Court in LPA 611/2010 & 15295/2010 Tej Pal Yadav Vs. Union of India (UOI) and Others,
- (g) Vishal Vs. Panjab University, .

15. Learned Advocate General, on behalf of the respondents, submitted that the Rules in the Prospectus for admission to the professional Degree courses in the State of Goa make it clear that every eligible candidate who is desirous of seeking admission must remain present in person at the admission rounds at admission centre and if the applicant fails to turn up for admission rounds, he forfeits the claim of seat and the seat then is offered to the next person in the merit list. He pointed out that in the Brochure, it was specifically mentioned that a candidate from reserved category can compete for general category seat. He invited our attention to Rule 4.31(a) of the Common Prospectus & GCET-2012 Information. He submitted that when counseling is done for general category, candidates from reserved category should come and if they choose not to compete for that category, the respondent No. 2 cannot then adjust them in the general category since if that is done last ones who are selected will have to go, without any mistake on their part. Learned Advocate General contended that once a meritorious student does not attend counseling, he loses the seat and nothing can be done subsequently. He explained that in the beginning it is not known as to which field out of M.B.B.S., B.D.S., B-Pharm, Architecture or Homeopathy, a student will choose and that this is known on the date of first counseling. Learned Advocate General submitted that certain reserved category students failed to appear for general category admission round, but later on appeared at the reserved category admission round and thus opted for the reserved category seat. He submitted that the records show that those reserved category students who appeared at the general category round and opted for their desired Course, were admitted to the seats in the general category merit list. He therefore, contended that the respondents have not pushed any OBC candidate, who appeared in general category, to the reserved category. He

submitted that there may be various reasons for OBC students not to come for general category. He submitted that the respondents cannot keep certain seats waiting. He submitted that the Rules prescribed in the Prospectus cannot be given a go-bye. According to learned Advocate General, the judgment in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , gives an option to the candidates.

16. On behalf of the respondents, learned Advocate General placed reliance upon:--

Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others,

17. We have perused the averments made in the petitions, affidavits-in-reply and the affidavits-in-rejoinder, the documents annexed thereto and we have considered the submissions made by the learned Counsel for both the parties and the judgments relied upon by them.

18. There is no dispute that the State has to promote the educational and economic interests of the weaker sections of society and protect them from exploitation. In the case of "Avinash Singh Bagri"(supra), relied upon by the learned Counsel appearing on behalf of the petitioners, it is observed that it is not in dispute that SCs and STs are a separate class by themselves and the creamy layer principle is not applicable to them. Article 46 of the Constitution of India enjoins upon the State to promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice and from all forms of exploitation. It is further observed that these socially and economically backward categories are to be taken care of at every stage even in the specialized institutions like IITs. They must make all endeavour by providing additional coaching and bring them up on a par with general category students. We are required to decide the present matter by keeping in mind the above principle.

19. There is no dispute that irrespective of the category under which a student takes admission, a student belonging to SC, ST and OBC, in me State of Goa, is entitled to the tuition fee concession (50%) as applicable. Therefore, the reserved category candidates who get admission either through general category or through the respective reserved category are enticed to concession in tuition fees, as applicable. The concession of tuition fees as is given to the candidates admitted against reserved category of SC/ST/OBC is not denied to the candidates who compete in the general category.

20. The petitions as filed pertain to the academic year 2012-2013. In prayer clause (c), the petitioners have prayed that if there is any prohibition under any University Regulation for such admission since the course has already started, then such prohibition should be condoned and admission should be given, by increasing the required number of seats. The last date up to which students can be admitted against vacancies arising due to whatsoever reason, as fixed by the Medical Council of India Regulations is 30th September, every year. The petitions have been filed in January, 2013. In the case of Mridul Dhar (Minor) and Another

Vs. Union of India (UOI) and Others, , relied upon by the respondents, the Apex Court has held that observance of the time schedule for completion of admission process to MBBS/BDS courses in Government institutes or to State quota in private institutes, as per directive dated 14/5/2003 issued by Ministry of Health and Family Welfare GOI and notification dated 25/2/2004 issued by Medical Council of India u/s 33 of Medical Council of India Act, 1956 is paramount for timely grant of admissions, commencement of the academic session, closure of admissions by 30th September, every year and effective utilisation of the All-India quota of medical and dental seats. The Apex Court has directed that the time table mentioned in notification dated 25/2/2004 relating to M.B.B.S./B.D.S. shall be strictly adhered to by all concerned including States and Union Territories and it would be the responsibility of all concerned including the Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of the Supreme Court and the requisite time schedules, and non-compliance would make them liable for penal consequences. The petitioners were aware of the last date. The question of granting relief (c) by condoning the prohibition, cannot arise. Learned Counsel for the petitioners submitted that if it is not possible to consider the petitioners of Writ Petition No. 27/2013, during this academic year, then they be considered for the academic year 2013-2014.

21. It would be appropriate to quote the relevant provisions of "Common Prospectus & GCET-2012 Information" for admission to the first year of professional Degree Courses (session 2012-2013) in Medicine(M.B.B.S.), Dentistry (B.D.S.), Pharmacy(B. Pharm), Architecture(B. Arch), Homeopathy (B.H. M.S.) (hereinafter referred to as "Prospectus"):

4.20. -- For all categories, separate provisional merit lists shall be prepared and displayed as under:--

- * Medicine, Dentistry and Homeopathy
- * Engineering for all eligible candidates
- * Pharmacy for all eligible candidates
- * Architecture for all eligible candidates

4.21.-- The Provisional merit list of all professional courses and categories will be displayed on the Notice Board at the Admission Centre at Directorate of Technical Education, Porvorim, Goa as per the time and date mentioned in the schedule of Admission and also will be made available on website.

4.22.--All applicants should verify the correctness of their marks & merit position in the provisional merit list. In case of any detected errors, they should immediately(within 24 hours) inform the Chairman, Admission Committee, in writing, failing which, the Admission Committee shall not be held responsible for the consequences of such errors.

4.23.-- Merit lists will be displayed at the Admission Centre at Directorate of

Technical Education, Porvorim, Goa and on the website as per the schedule given in the prospectus.

4.24.-- Every eligible candidate who is desirous of seeking admission shall remain present in person at the admission rounds at the Admission Centre at Directorate of Technical Education Porvorim, Goa as per specified schedule along with Acknowledgment Card, Documents in original & fees. Admitted candidates permitted to withdraw submitted original documents for any purpose, shall have to submit the same to the Admission Committee before the subsequent round of admission. Chairman, Admission Committee may, relax the above provision in genuine cases, with reasons recorded.

4.25.-- Applicants present/reporting for admission will be given an opportunity to select a seat of choice from the seats available at the point of his/her order of merit (merit number). The admission shall be treated to have been completed only after the deposit of original documents and payment of fees. Applicants granted admission during any round shall report to the respective institution within 3 working days of grant of admission, and obtain acknowledgment thereof, failing which their admission is liable to be cancelled, and/or they may not be permitted to attend further admission rounds.

4.26.-- If the applicant fails to turn up for admission rounds as specified in the admission schedule, or does not accept admission offered, he/she shall forfeit the claim of seat as per his/her turn in merit position for that round, and the seat will be offered to the next person in the merit list.

22. The aforesaid provisions of the Prospectus indicate that merit lists of all professional courses and categories are required to be displayed at the Admission Centre and on website, well in advance. Accordingly, in the present case, the Degree merit list of OBC category-M.B.B.S./B.D.S.; as well as the degree merit list-General category-M.B.B.S./B.D.S. was displayed, so that all the candidates could come to know of their position merit-wise, well in advance. Every eligible candidate must remain present in person at the admission rounds. If any applicant fails to turn up for admission rounds, he/she forfeits the claim for seat as per his/her turn in the merit position for that round and the seat is offered to the next person in the merit list. Reserved category candidates have options to get selected either in general category on their own merit or in their respective reserved category quota. Where a reserved category candidate secures admission based on his merit in general category, such seat is not counted against reserved category quota. In other words, while computing the percentage of reservation, such candidate is deemed to have been admitted against general category and not as reserved category. The said Rules of admission contained in the Prospectus, have not been challenged.

23. In the case of Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , the petitioner belonged to reserved category but respondent Nos. 5 to 36 belonging to reserved category, though could have been admitted on the basis of marks

secured in open merit, yet they were admitted as against the reserved category and as a result the petitioner was excluded from getting admission into M.B.B.S. Course. The stand of the Government as well as of the respondent Nos. 5 to 36 was that if the respondents were allowed to take admission in open merit then it will work out gross injustice and will be more harsh to them as they would not get admitted to the colleges of their choice even though they had secured much higher marks than the other reserved category candidates and the candidates securing lower marks would get the premium of being admitted to the colleges of their choice. The question was whether a candidate belonging to the Scheduled Caste or any other reserved category even if he is entitled to be selected for selection for admission in the open competition on the basis of his own merit yet can he be counted against the quota meant for reserved category or will he be treated as an open competition candidate? The Apex Court has held that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provision should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. It has been held that the aforesaid objective can be achieved by finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but in computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate. In the case *supra*, it has been further held that the authorities having admitted the candidates belonging to the reserved category only against seats meant for reserved category even though they were entitled to be admitted on the basis of their merit, the petitioner who could have been otherwise admitted, has been debarred from taking admission. Since the petitioner was a single applicant before the Court, the Apex Court directed that the petitioner be admitted to any one of the colleges where he can be so admitted to the M.B.B.S. Course where seat is still available and if no seat is available then he may be admitted by increasing one seat in any one of the colleges.

24. In the present case before us, the authorities have not admitted the candidates belonging to the reserved category only against seats meant for reserved category even though they were entitled to be admitted on the basis of their merit. Here, as per the Rules of admission contained in the Prospectus, the respondents had given option to the candidates of reserved category to compete

with the candidates of general category and therefore, the counseling session for general category candidates was scheduled before the counseling session for OBC candidates. If a reserved category candidate did not get admission through general category, or did not get the available seat of his choice, as per his merit, then he was free to apply for the respective reserved category. In the present case, the said candidates who could have got admission, against the seats meant for general category, on the basis of their merits, however, did not remain present for the scheduled admission round for general category, held on 20/06/2012, but attended the admission round for OBC category and thus opted to be admitted to M.B.B.S. Course in OBC category. If the contention of the learned Counsel for the petitioners is accepted, then it will mean that respondents, without wish of the selected reserved category candidates, will have to compulsorily resort to adjustment of said selected reserved category students against general category though such reserved category students did not appear at the admission round for the general category students. The above would be in violation of the Rules of admission contained in the Prospectus. The concerned candidates will be left without a right to exercise any option to seek admission either from the general category or the reserved category. There is no provision in the entire Prospectus for the admitting authority to adjust or allot a candidate to any particular course/institution if such candidate does not appear at the scheduled admission round to exercise his/her option.

25. In the case of Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , a reference has been made to the case of "Indra Sawhney v. Union of India", commonly known as Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , wherein it has been held that in this connection, it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates. The above principle has not been violated in the present case. There are candidates belonging to reserved categories who opted for and got selected in the open competition field on the basis of their own merit and they have not been counted against the quota reserved for reserved categories. They have been treated as open competition candidates.

26. In the case of Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , a reference has been made to the case of R.K. Sabharwal and others Vs. State of Punjab and others, , wherein it has been held that when a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserved category and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts, their number

cannot be added and taken into consideration for working out the percentage of reservation. It has been held that the prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. In the present case before us, the prescribed percentage of reservation has not been varied or changed. Similarly, the reserved category candidates have been given option to compete for the non-reserved seats and the number of non-reserved seats which have gone to reserved category candidates, have not been added and taken into consideration for working out the percentage of reservation.

27. In the case of Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , reference has also been made to the case of Union of India and others etc. Vs. Virpal Singh Chauhan etc., , wherein it has been held that while determining the number of posts reserved for Scheduled Castes and Scheduled Tribes, the candidates belonging to reserved category but selected/promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates. In the present case before us, admittedly, with respect to OBC candidates, 17 seats were reserved for M.B.B.S. Course; 7 were reserved for B.D.S. Course; and 12 for B-Pharm course. There is no dispute that all the above seats have gone to reserved category candidates of OBC. No reserved category candidate was forced to opt for admission through reserved category only. Option was left to all candidates to compete for seats through the general category. However, for reasons known to some of the OBC candidates, who were otherwise meritorious and could have got admission through the general category, they did not at all go for admission round of general category candidates but opted for reserved category only. The candidates belonging to reserved category but selected on the rule of merits (and not by virtue of rule of reservation) have not been counted as reserved category candidate. For example, in respect of M.B.B.S. course, one De Souza Ranto Jenoshka had secured 3rd rank in the ST category and 84th Rank in the general category. The said De Souza Ranto Jenoshka appeared for the general category admission round and was admitted on a general category seat Again, for the Engineering course, one Rebello John Agnelo had secured the 2nd Rank in the OBC category and 63rd Rank in the general category. The said Rebello John Agnelo appeared for the general category admission round and in fact was admitted on a general category seat. Similar were the cases with Lingudkar Suraj Subash and Usapkar Reecha Vaman who were ranked 3rd and 11th respectively, in the OBC category and ranked 81st and 182nd respectively, in the general category and admitted in the general category admission round. In respect of B-Pharm course, one Harmalkar Divya D. was ranked 19th in the OBC category and 254th in the general category and the said candidate was admitted in the general category admission round. The above candidates have not been counted as reserved category candidates. Thus, no adjustments can be said to have been done by the respondents.

28. In the case of Manjit Singh Vs. State of Punjab and another, , the petitioner, who belonged to Backward Class, had secured 107 marks and was placed in the

waiting list at serial No. 1 amongst the Backward Class candidates (boys). Separate merit lists for different categories were prepared which had resulted in admission of general category candidates who had secured lesser marks than the petitioner. Seven general category boys and seven general category girls, who had secured lesser marks than the petitioner were shown selected for admission to the ETT Course. Out of five seats reserved for Backward Class candidates, only three candidates had been selected. Thus, instead of getting benefit of reservation provided for Backward Class candidates, the petitioner was put to disadvantageous position inasmuch as had he applied as a general category candidate, he would have easily got admission to the Courses as he would have ranked at serial No. 27 amongst the 33 general category(boys) selected candidates. The learned Division Bench of the Punjab and Haryana High Court held that the petitioner could not be put to a disadvantageous position as against the general category candidates merely because he belonged to reserved Backward Class category inasmuch as general category candidates with lesser marks could not be allowed to steal a march over the petitioner. It has been held that seat meant for backward class candidate, when suitable backward class candidate was available, could not be given to general category candidate.

29. In the case of Manjit Singh Vs. State of Punjab and another, , the petitioner who was a reserved category candidate was not allowed to compete with the general category candidates. But, this has not happened in the present case. Rule 4.31(a) of Prospectus specifically entitles a candidate listed in the merit list to be eligible for all the rounds of admission irrespective of whether he/she has attended/availed admission in the earlier rounds or not. Thus, the candidates of reserved category have not been put to any disadvantageous position. Besides the above, this Rule has not been challenged by the petitioners.

30. Various relevant dates have been mentioned in the affidavit-in-reply filed on behalf of the respondents. The Prospectus was published and was made available to the students in March 2012. Sale of Prospectus with GCET-2012 and admission application forms took place in March and April, 2012. From 26/3/2012, application forms for GCET-2012(Form A) were received at the Application Reception Centre. The last date for receiving forms for GCET-12 at the Application Reception Centre and to collect Admit Card was 05/04/2012. The dates fixed for GCET examination were 08/05/2012 and 09/05/2012. From 30/05/2012, forms for admission (Form B) were received at notified location. On 08/06/2012 the eligibility list was displayed at the admission centre. The last date for compliance with the deficiency in eligibility was 12/06/2012. An advertisement was published in five news papers on-14/06/2012 as well as notified on the website, fixing the date for first round for admissions as from 18/06/2012 to 25/06/2012. In the Prospectus, the first round for admissions was from 18/06/2012 to 22/06/2012. However, in the revised schedule, the first round for admissions was from 18/06/2012 to 25/06/2012. In the initial schedule published in the Prospectus, the counseling session for OBC candidates was scheduled before the counseling session for general category candidates.

However, in the revised itinerary published on 14/06/2012, the counseling for general category candidates was scheduled before OBC candidates. Note-1 to the said advertisement read as follows:

1. The above revised schedule would enable SC, ST and OBC candidates to first opt for seats in general category, if eligible, as per their merit, and thereafter, also in their respective categories, at their option. Provisions of Rule 4.31(b) in the Prospectus shall not be applicable to these candidates.

On 14/06/2012 the provisional merit list was displayed at the admission centre. On 15/06/2012, the final merit list was displayed at the admission centre. From 18/06/2012 to 25/06/2012, the first round of admission took place. From 03/07/2012, three courses namely, Pharmacy, Engineering and Architecture commenced. From 23/07/2012, second round of admission began, the notice of which was published on 16/07/2012 in local dailies Navhind Times, Herald, Gomantak(Marathi), Sunaprant (Konkani) and Tarun Bharat. On 01/08/2012, the Medical College Course for the academic year 2012-13 commenced. On 13/09/2012 and 14/09/2012, the third round of admissions took place. Lastly, on 30/09/2012 and 01/10/2012, the fourth and final round of admission took place.

31. Thus, an option was given to ST, SC and OBC candidates to first opt for seats in general category list. The merit list was displayed prior to the rounds for admissions. All candidates knew before hand as to where they stand as far as merits are concerned. The counseling session for general category was held before the counseling session for OBC candidates. In the present case, the last student selected in the general category got 157 marks. The petitioner No. 1 of Writ Petition No. 27/2013 got 133 marks; the petitioner No. 2 got 132 marks and the petitioner No. 3 got 129 marks. Thus, none of the petitioners had obtained marks more than the last: selected candidate from general category. Even if the said petitioners had applied as general category candidates, they would not have got selected. It is only if four meritorious OBC candidates, who had secured more than 157 marks, namely : Harshal Mamlekar, Sarvesh Komarpant, Prakash Vaigankar and Kshitija Valvaikar had opted for and applied as general category candidates, then they would have succeeded in getting admission to M.B.B.S. Course in the general category and in that case the petitioners could have become entitled to admission through the reserved category. The respondents have not adjusted the said four candidates or for that matter any candidate of reserved category, in the reserved category but the said four candidates themselves knowingly opted for the same. The final merit list was displayed at the admission centre well in advance, i.e. on 15/06/2012. Hence on 18/06/2012, when the said four candidates of reserved category came to attend the counseling session, they very well knew as to where they stand in the merit list and hence could have first competed with general category candidates and if not selected from the same, then could have subsequently attended the counseling session for reserved category. None had forced these four candidates of reserved category to go directly for reserved category, without first going for general

category. For reasons best known to them, they had selected such an option. These four candidates are not parties to the present petitions, to know from them as to why they did not go for general category counseling session.

32. In the case of Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, , the admissions of illegally admitted students, who had already completed one or two semesters, were struck down by High Court. The Hon''ble Apex Court held that the students who were admitted in violation of the relevant rules and regulations have to be allowed to continue their studies despite the careful and weighty finding of the High Court about their wrongful admissions. It has been held that since this situation emboldened the erring authorities of educational institutions of various States to indulge in violating the norms of admission with impunity, a clear warning has to be expressed that in near future, if admissions are quashed for the reason that they were made wrongly, the Court will have to direct that the names of the wrongly admitted students should be removed from the rolls of the institution.

33. In the case of "Anil Kumar Gupta" (supra), the Apex Court, after having pointed out the errors in the rule of reservation and its implementation, observed that the injustice done to the open competition candidates in the admissions in question has to be rectified, to the extent feasible. The Hon''ble Supreme Court directed that in the matter of admissions made pursuant to CPMT 1994, while the admissions already finalised shall not be disturbed, the Uttar Pradesh Government shall create thirty-four additional seats in the M.B.B.S. Course and admit thirty-four students from the OC (Open Category) against those seats.

34. Learned Counsel for the petitioners has relied upon various more authorities. We do not deem it necessary to refer to all of them since we have taken into consideration the principles laid down therein for determining the questions involved in the present matters.

35. In the present case, there is no violation of the reservation policy contained in Article 15(4) of the Constitution of India and any norms set down by the rules and regulations, in respect of admission, and as such, question of directing the respondents to accommodate the petitioners in the courses claimed by them in the year 2013-2014, does not arise. There is no merit in both the petitions. In the result, both the petitions are rejected, however, with no order as to costs.