

(1987) 09 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 1218 of 1987

Dattatraya Satwaji Narwane

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-09-1987

Acts Referred:

Admission to First Year Degree Courses in Engineering and Technology Rules, 1987 — Rule 88
Constitution of India, 1950 — Article 14

Citation : (1988) 1 BomCR 704 : (1988) MhLj 279

Hon'ble Judges : V.P. Salve, J; B.N. Deshmukh, J

Bench : Division Bench

Advocate : Pradeep Deshmukh, for the Appellant; A.H. Joshi, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

B.N. Deshmukh, J.—The petitioner has passed 12th Std. examination and has secured 72% marks in aggregate in mathematics group i.e. in the subjects of physics, chemistry and mathematics and he applied for the admission to B.E. Degree Course in Government College of Engineering at Aurangabad. The petitioner belongs to scheduled caste reserved category. In the petition, the petitioner had contended that even though persons in that reserved category who have secured less number of marks and percentage than the petitioner have been admitted. The petitioner is not admitted to the engineering degree Course on the ground that the petitioner has remained absent at the time of scrutiny as provided by Rule 6(1)(b) of the Rules for admission to the First Year degree courses in engineering and technology for the year 1987-88.

2. In para 4 of the petition, the petitioner has given the names of various students who have scored less number of marks in the relevant group than the petitioner. Out of which some of the students are admitted to the engineering degree course in the Government College of Engineering at Aurangabad. The

petitioner has secured total 216 marks in mathematics group while the students admitted have secured less than 216 marks in total in the relevant group.

3. It is admitted position that the petitioner is denied admission on the sole ground that the petitioner has failed to report and remained absent at the time of the scrutiny of his application. Even though otherwise the petitioner is entitled to be admitted to the engineering degree course for the year 1987-88.

4. The learned Counsel Shri Pradeep Deshmukh appearing for the petitioner, has challenged the provisions of Rule 6(1)(b) requiring the candidates who applied for an admission to remain present and report for the scrutiny of their application. Learned Counsel submits that the provisions of the said rule in so far as they relate to the reporting by the candidate at the time of the scrutiny of applications is arbitrary and has no nexus whatsoever with the object sought to be achieved. According to the learned Counsel that the rules for admission are framed to admit the meritorious and talented students whose inter-se merit is to be considered for giving admission to the degree course. If by this rule the meritorious candidates are deprived of admission merely on the ground that they did not report or remained present at the time of the scrutiny of application, the relevant rule to that extent, therefore, according to him, is violative of Article 14 of the Constitution.

5. According to us, the contentions of the learned Counsel for the petitioner are valid and are required to be up held. The rules must be so interpreted to enhance the cause of meritorious students. The rules cannot be given any interpretation or any meaning which will create obstacle in the way of meritorious students in getting admission to degree course. It is worthwhile to mention the relevant provision of the rule at this stage. Rule 6(1)(b) provides as follows :---

"6.1. (a)

(i)

(ii)

(iii)

(iv)

(b) The first schedule of scrutiny of applications at all the six Centres of admissions will be as under :---

Candidates with corrected total marks (out of 300) to report at 10.00 a.m. (I.S.T.) as below :---

Day and Date Corrected Remarks

Total Marks

Monday, 13th July, 1987 290 and above All categories including

Tuesday, 14th July, 1987 282 to 289 Open S.C., S.T.D.T.

Wednesday, 15th July, 1987 276 to 281 N.T., O.B.C., Physically

Thursday, 16th July, 1987 270 to 275 handicapped and

Friday, 17th July, 1987 265 to 269 Defence

Monday, 20th July, 1987 250 to 264 All categories excepting open

Tuesday, 21st July, 1987 249 and below All categories excepting
Open and O.B.C.

Note.---If necessary, second schedule of scrutiny will be notified separately.

Candidates are advised that, they should not wait for any communication from the admission authority regarding call for scrutiny of their applications and offer of admission against seats available, according to their merit inter-se.

Candidates who claim to have corrected total marks (out of 300) as indicated above, for their respective University areas, should report to their respective admission Centres, with all original Certificates including verified Caste Certificates as per Government rules for scrutiny of their applications, at their cost and risk. After scrutiny of their applications, if candidates are offered admission to any Course, according to their merit inter se and availability of seats, the candidates will have to pay appropriate tuition and other fees and secure the admission offered to them. If a candidate fails to pay the requisite fees, the offer of admission will stand cancelled and the resultant vacancy will be offered to the next eligible candidate from merit list. If there is no seat available for a candidate according to his preference and merit inter se his/her name will be kept on waiting list and he/she will be advised to report again on the date given to him/her by the admission authority.

If any candidate fails to report, in person for scrutiny of his/her application at the time and date prescribed for him/her, he/she will forfeit his/her claim for admission to any course according to his/her merit inter-se and his/her candidature may be considered as null and void and the seat will be offered to the next candidate on the merit list. But if such a candidate reports to the admission authority later than the time and date given to him/her, he/she will be considered for admission if the process of scrutiny of applications is still going on and if a seat is available in any course of his/her choice. In such a case the claim of the candidate for admission to any other course at a subsequent stage of admission will be considered according to his merit inter se, if a seat is available.

If a candidate is not offered course of his choice due to non-availability of a seat for that course at the time of his admission, his name will be kept on waiting list for that course according to his merit inter-se. While filling in any resultant vacancies at a later stage of admission, such candidates on waiting list would be considered for transfer or admission to the course available then which may or

may not involve transfer to another college according to merit inter se. In no case preference of a candidate for a particular college can be guaranteed and he will have to accept or reject the offer when made to him, in writing.

Candidates who are admitted from 13th July, 1987 to 21st July, 1987 at the six admission centres should report to their respective colleges at 11.00 a.m. on Monday, 27th July, 1987.

Any vacancies that may occur would be filled in at the respective admission centres at 11.00 a.m. on Monday 17th August, 1987, for the last time.

Note.---(1) A candidate admitted to a course at a college will have to join that college on the date given to him, failing which his admission will stand cancelled inspite of the fact that he has paid fees at the admission centre.

(2) Candidates who are already admitted but are on waiting list either for choice of course and/or place and candidates who are on waiting list for want of a course, should report on their own, at their cost and risk, to their respective admission centres on 7th August, 1987 and 17th August, 1987 as no separate communication would be sent to them in this regard. The resultant vacancies would be filled in from the candidates who report to the admission centres, according to merit inter se, without waiting for absent candidates who may be high in merit.

(3) If any change in the schedule for filling in resultant vacancies on 7th August, 1987 and 17th August, 1987 would be necessary, the same would be notified at the respective admission centres.

(4) After all the seats are filled in and/or the admission process is over no claim for admission shall be entertained on any grounds whatsoever."

6. According to this rule, date-wise schedule is prepared for the scrutiny of applications commencing from 13th July to 21st July, 1987. The note below this schedule of time-table mentions that if necessary, second schedule of scrutiny will be notified separately.

7. The learned A.G.P. Shri Joshi, who appears for the respondents, relied on the provisions of the rules and submits that the whole scheme of admission is that the candidate is required to remain present at the time of scrutiny because immediately after the scrutiny he is offered admission. That is why, according to him, the presence of the candidate at the time of the scrutiny of the application is absolutely necessary. He further submits that otherwise the procedure of admission will be time consuming and it cannot be possible to complete the admissions of the students within the prescribed time limit. Accordingly, he relies on the provisions of the rules to the effect that if any candidate fails to report in person for scrutiny of his/her application at the time and date prescribed for him/her, he or she will forfeit his/her claim for admission to any course according to the merit inter se and the candidate may be considered as null and void and the seat will be offered to the next candidate from the merit list. The same rule also

provides to the effect that after scrutiny of the applications if candidates are offered admission to any course according to their merit inter se and availability of seats, the candidates will have to pay appropriate tuition and other fees and secure admission offered to him. If a candidate fails to pay the requisite fees, the offer of admission will stand cancelled and the resultant vacancy will be offered to the next eligible candidate from the merit list. Thus, what is provided in the same rule is---

i) the cancellation of candidature if he does not remain present at the time of scrutiny, and secondly.

ii) on failure to deposit requisite fees, the admission shall also stand cancelled.

If these two rules are compared, there seems to be a contradiction because the collected total marks will be arrived at before the scrutiny and after the scrutiny of their applications, they will be offered admission. Therefore, what is provided in the earlier part of the rule is that the admission of the students shall stand cancelled only on his failure to pay the requisite fees till then the offer of admission is valid and is to be treated as good offer. It merely stands cancelled only after the failure of payment of the fees but the candidature itself is considered null and void on the basis of failure to report at the time of the scrutiny is the provision made in the same rule in the later part.

8. We feel that the first of the rule namely cancellation of candidature on failure to pay the fees has alone the nexus with the objects sought to be achieved by these rules regarding making an offer for admission to the meritorious candidates. While the later part which considers the candidature as null and void merely because of his failure to report at the time of the scrutiny has no nexus whatsoever with the object of giving opportunity to meritorious candidates.

9. At the outset, it must be mentioned that it is nowhere provided in the rules as to when the offer for admission is to be made and the date on which the offer is to be made after the scrutiny. The rule provides for the scrutiny of applications of various students starting from 13th July, 1987 to 21st July, 1987, but the rules do not prescribe any date thereafter on which the offer is to be made to the candidate for admission. It is also nowhere indicated in the rules that immediately after the scrutiny, admission is going to be offered. The rules also do not prescribe the time limit within which the candidate is required to make payment of the fees. Any specification in this behalf in the rule or indication to that effect so as to enable the candidate to know before hand that on the date of scrutiny not only admission will be offered but immediately he will be required to make the payment of the fees. According to learned A.G.P. Shri Joshi, in the absence of the specific provision in the rule, the date of scrutiny of the application should be treated as date of offer of admission and should also be treated as a date for payment of the fees. We are unable to agree with such a contention because the consequence by way of penalty for not being present at the time of scrutiny is heavy. The candidate is made to suffer for cancellation of

the admission. We, therefore, feel having regard to the consequences that the attention of the candidate should have been invited specifically in the rules regarding the date and time of the offer of admission.

We are also unable to appreciate the contention on behalf of respondents because the rules themselves clarify that the scrutiny of the applications will be made to determine inter-se merit of the candidate. We do not see any reason as to why the presence of any candidate is necessary to determine the inter se merit of the candidate. We also fail to understand as to why the inter se merit of the candidates even subject-wise cannot be determined in the absence of candidate because the necessary documents including mark-sheets are already obtained by the authorities alongwith the applications. On the basis of these documents and mark-sheets, it is quite possible for the authorities to determine the inter se merit and in fact the same is being determined as a matter of course on the basis of documents which are produced alongwith the application. The presence or absence of candidate, therefore, has no nexus and no relevance for determination of inter-se merit of the candidates. The rules provide that after determination of inter se merit of the candidate, admission is offered to him. So the presence of the candidate at the time of the scrutiny is quite irrelevant consideration for determining the inter se merit.

10. It is also very strange to think that a meritorious student be deprived of his fruits merely because he had remained absent at the time of his scrutiny. The choice of the subjects for branching if any is already made alongwith the admission form and even assuming no such choice is made, the authorities can determine the branches of the candidate on the basis of inter se merit itself. At the most, therefore, it can be said that in the absence of candidate, the candidate has no choice regarding the branch to be offered for admission but that should not deprive a candidate from consideration of his application for the inter se merit for admission and for the entitlement to the branch to which he could be offered admission. We, therefore, see no reason, no rational nor find any nexus between the objects sought to be achieved by the rules and the denial of admission to meritorious candidate based merely on his absence at the time of the scrutiny. That part of the rule requiring candidates to report and the failure to report resulting in candidature being considered as null and void is, therefore, unreasonable and is purely based on arbitrary conceptions. For these reasons, that part of the rule is violative of the provisions of Article 14 of the Constitution of India.

11. The learned Counsel Shri Joshi invited our attention to the form of the application for admission which is annexure to the rules. In the form, a candidate is required to make a declaration under his signature and one on such declarations is as follows :

"I fully understand that the offer of a course or branch of Engineering/Technology will be made to me depending on my inter se merit and availability of a seat at the time of scrutiny of my application, when I will report to the admission

authority according to the schedule of admission [Rule 6.1(a) and (b)]."

On the basis of this declaration, the learned Counsel wants us to hold that the candidates have knowledge that their presence at the time of scrutiny is must because not only the inter se merit at the time of the scrutiny is to be made but the offer of admission is simultaneously made. The learned Counsel, therefore, wants us to interpret the provisions of the rule in the light of the declaration which the candidate is required to sign. We are unable to appreciate this argument, the rules are the guide to interpret the various provisions made in the form but what is mentioned in the form by way of declaration will not govern the interpretation of the rules themselves. We do not find any discrepancy at all in the rules and the prescribed form. A declaration merely says that the offer will be made to a candidate depending on inter-se merit and availability of a seat at the time of scrutiny of the application. When the candidate will report to the admission authority, the words "will be made" and "I will report" indicate that the provision of declaration so far as reporting at the time of scrutiny of the application is not mandatory but merely directory. What is provided by way of declaration enables the candidate to remain present because probably in the absence of such kind of provision the candidates had no right to remain present at the time of the scrutiny. It only enables such candidates who report at the time of the scrutiny to remain present at that time before the admission authority but this does not indicate that it is obligatory on each and every candidate to remain present at the time of the scrutiny. The declaration is merely an enabling provision enabling a candidate to remain present at the time of the scrutiny and such a provision cannot lead to interpret the rules regarding reporting and the presence of candidate as mandatory and compulsory.

12. It is also very pertinent to note that such meritorious candidates who could not remain present at the time of the scrutiny are not considered by way of waiting list also. This also indicates that the rule requiring reporting by the candidate at the time of the scrutiny is harsh and unreasonable because admittedly after completing the regular admission work if any seats remain vacant the candidates from waiting list are considered for admission but such an opportunity is denied to the meritorious candidate who is entitled to get admission at the very outset but that opportunity is also denied to the candidates who merely failed to report at the time of scrutiny of the applications.

13. In the result, we allow the petition. We direct the respondent Nos.1 & 2 to admit the petitioner to the First Year engineering degree course in Government College of Engineering, Aurangabad, for the Current year i.e. 1987-88 forthwith.

14. We are told that the petitioner has opted for mechanical branch. We direct the respondents to consider the inter se merit of the petitioner on the basis of his application and to give him mechanical branch if possible as per his merit otherwise to any other branch to which he could be admitted.

15. We are told that all the reserved seats meant for scheduled castes candidates

for this year are already filled in. We think admission of the petitioner shall not result in the deprivation of admission to any other student who is already admitted and those who are not before us. We, therefore, direct that the petitioner shall be admitted, if necessary, by creating an additional seat.

16. Rule made absolute. No order as to costs.