

(2023) 12 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No.7319 Of 2023

Dr. Sagar Sakharam Walale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 07-12-2023

Acts Referred:

Citation : (2023) 12 BOM CK 0022

Hon'ble Judges : Nitin W. Sambre, J; Abhay J. Mantri, J

Bench : Division Bench

Advocate : Sandeep Marathe

Final Decision : Allowed

Judgement

Nitin W. Sambre, J

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2) The petitioner is presently working as Medical Officer at Primary Health Centre, Jaulka Railway, District Washim. Since he had intention to improve his qualification, he applied for admission as in-service candidate and appeared in the National Eligibility-cum-Entrance Test (NEET) - PG 2023. The petitioner submitted his application stating that he belongs to Backward Class, i.e. NT-C category. The petitioner was declared eligible for admission to post graduate course having scored 147 marks in NEET - PG 2023, but was not granted admission in first three rounds as he was not found qualified on merit. In Stray Vacancy Round-1, the name of the petitioner was reflected in the chart printed on 15/10/2023, thereby considering his claim for NT-C category. Since petitioner failed to produce the non-creamy layer certificate as per the Admission Rules, he claimed that he was entitled to be considered from the open category.

3) By inviting our attention to the application and the admission acknowledgement, Shri Marathe, learned Counsel for the petitioner, would urge

that the petitioner was allotted open quota as he failed to produce non-creamy layer certificate. According to him, the remark that the petitioner is not eligible for admission as per Rules is contrary to the very conditions of the admission, particularly when the Admission Rules contemplate consideration of his claim from the open category in case of his failure to produce the certificate of belonging to non-creamy layer category. According to him, Rule 8.8 of the Admission Rules contemplates that if the petitioner fails to produce the non-creamy layer certificate, his candidature is to be considered from the open category. That being so, the respondents were obliged to consider the candidature of the petitioner from open category. The learned Counsel would further urge that merely because the petitioner failed to produce the non-creamy layer certificate, that by itself would not disqualify his candidature as it is always open for the Authorities to consider his claim from open category under Rule 8.8 of the Admission Rules.

4) Shri Marathe, learned Counsel for the petitioner, placed reliance on the judgment of the Apex Court in *S. Krishna Sradha vs. State of Andhra Pradesh and others* {(2020) 17 SCC 465}, to urge that the present case is an exceptional case wherein Court can direct grant of admission to the petitioner as the cut off date is recently declared as 30th November 2023. According to him, if admission is not granted to the petitioner against the seat, which is already directed to be kept vacant by this Court, the said seat would go waste.

5) While countering the aforesaid submissions, Shri Nahush Khubalkar, learned Counsel appearing for the respondent no.2, would urge that the petitioner is not entitled for consideration of his claim from open category as he initially submitted his claim from reserved category, i.e. NT-C and failed to produce non-creamy layer certificate. According to him, if the Rule wherein it is mandatory to produce the non-creamy layer certificate is not complied with, the claim of the petitioner at the most can be considered in the subsequent rounds and not the CAP Stray Vacancy Round-1. He would harp upon the language of Rule 8.8 of the Admission Rules so as to substantiate the decision of the respondent no.2. In addition, Shri Khubalkar would urge that apart from the fact that cut off date is already declared, in extra-ordinary jurisdiction, this Court should be slow in causing interference even if the seat is going waste as has been claimed by the petitioner. As such, he would urge that the petition is liable to be dismissed.

6) We have considered the rival submissions of the learned Counsel for the parties. The posting of the petitioner as that of Medical Officer with Primary Health Centre, Jaulka Railway, District Washim is not a disputed fact on record. The petitioner's application for getting admitted to the post graduate course through NEET – PG 2023 as an in-service candidate is also not a disputed question of fact. The petitioner having applied for such seat, which is reserved for NT-C candidate, can be inferred from the available registration record of the petitioner with the respondents. The fact remains that the petitioner, on the basis of his candidature, was allotted to Shri Vasantrao Naik Government Medical

College, Yavatmal and his attempt to join the said College was unsuccessful as the Dean of the said College had not permitted him to join the said College as he was not holding non-creamy layer certificate. The said fact could be borne from the admission acknowledgement dated 15/10/2023.

7) The fact remains that the petitioner's initial candidature was from NT-C category as could be inferred from his application form. However, his admission details reflect that in CAP Stray Vacancy Round-1 his candidature was considered from open category and the Dean of the said College had rejected his such candidature as he failed to submit non-creamy layer certificate. Once the petitioner's candidature was considered from the open category and he was allotted to Shri Vasantrya Naik Government Medical College, Yavatmal, we fail to understand as to why necessity for production of non-creamy layer certificate was warranted, particularly at the level of Dean, Shri Vasantrya Naik Government Medical College, Yavatmal. Though Shri Nahush Khubalkar, learned Counsel appearing for the respondent no.2, has invited our attention to the language of Rule 8.8 of the Admission Rules, which reads thus :

"Candidates belonging to Backward Classes/EWS must have claimed so in his online registration for Maharashtra State quota, failing which such a claim will not be entertained subsequently. Candidate belonging to above categories should produce Caste Certificate, Caste Validity Certificate and Non-Creamy Layer Certificate/EWS eligibility certificate (wherever applicable) at the time of physical Document Verification process. Candidate who fails to produce above said certificates will be considered as Open Category Candidate provided he/she fulfils the eligibility criteria of NEET-PG 2023 during subsequent round(s)." the fact remains that failure of the candidate to produce caste certificate, caste validity certificate and non-creamy layer certificate prompts the Authority to consider his candidature from open category in subsequent rounds. The fact remains that round in the case in hand, i.e. CAP Stray Vacancy Round-1, if considered in continuation with the earlier rounds of admission wherein candidature of the petitioner was evaluated, the petitioner's said CAP Stray Vacancy Round can be considered as fourth round as it is an admitted fact on record that earlier three rounds were already over. As such, the embargo created by Rule 8.8 of the Admission Rules as has been sought to be canvassed by the respondent Admission Authority will not act to the detriment of the petitioner so as to infer that the petitioner can be denied admission on the said ground, particularly when his candidature was considered from the open category and that too, in a CAP Stray Vacancy Round, which is fourth in order of rounds of admission.

8) This Court is also required to be sensitive to the fact that pursuant to the order of this Court, the seat which was allotted to the petitioner as an in-service candidate was directed to be kept vacant with further direction to the respondent Authorities to decide his representation. The fact remains that the representation of the petitioner is rejected by the respondent Admission Authority for the aforesaid very reasons, which are covered by the arguments of its learned

Counsel Shri Khubalkar.

9) It is also an admitted fact on record that the cut off date, i.e. 30/11/2023 is already declared by the concerned Authority. However, this Court is required to be sensitive to the fact that the petitioner lodged his claim for admission and has approached this Court with a prayer to pass interim order to keep one seat vacant prior to cut off date. As such, the case of the petitioner for the purpose of admission to post graduate course is required to be evaluated in the aforesaid background of having lodged his claim for admission and contested the claim before this Court much prior to cut off date, i.e. 30/11/2023. It is also not a disputed position that seat, which was directed to be kept vacant, will go waste in case candidature of the petitioner is not considered against the said seat. The fact remains that such seat at this stage cannot be allotted to any other candidate as the admission rounds are already over.

10) The allocation of the petitioner to Shri Vasantao Naik Government Medical College, Yavatmal from the open category sufficiently speaks of his candidature being considered on merit in open category and on merit, he was found eligible to be allotted to the said College from the open category. Once the petitioner is found to be meritorious from the open category, there is no embargo, in our opinion, to exercise the extra-ordinary jurisdiction in favour of the petitioner to direct the respondent Authorities to grant him admission to the post graduate course pursuant to his allocation to Shri Vasantao Naik Government Medical College, Yavatmal.

11) The fact remains that such admission of the petitioner shall not be to the prejudice of any other meritorious candidate as we have already observed that based on the merit of the petitioner from open category, he was selected and his candidature was accordingly sponsored for admission to Shri Vasantao Naik Government Medical College, Yavatmal. In support of our observations that petitioner can be granted admission in exercise of extra-ordinary jurisdiction, we can place reliance on the judgment of the Apex Court in the case of S. Krishna Sradha (supra).

12) In view of above, we deem it appropriate to allow the present petition in terms of its prayer clauses (i) and I(a). We direct the respondents to grant admission to the petitioner to Post Graduate Micro-Biology Course in Shri Vasantao Naik Government Medical College, Yavatmal against the seat, which was ordered to be kept vacant provided the petitioner reports for joining on 11th December 2023 by 10.30 a.m. to the Office of Dean of the said College. Needless to clarify that the petitioner on the very same date shall produce all the relevant documents, which are necessary for processing his prayer for admission and shall deposit the requisite fees within the time stipulated by the Dean of the said College.

13) The petition is allowed in the above terms. Rule is made absolute accordingly. No costs.