

(2000) 03 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 4007 of 1999

Dr. Shardul Dongaonkar

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2000) 2 ALLMR 501 : (2000) 4 BomCR 52 : (2000) 2 MhLj 431

Hon'ble Judges : S.G. Mahajan, J; D.D. Sinha, J

Bench : Division Bench

Advocate : M.M. Agnihotri, for the Appellant; S.J. Chawda, A.G.P., A. Naik and S.V. Manohar, for the Respondent

Judgement

D.D. Sinha, J.—Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith by consent of the parties.

3. Shri, Agnihotri, learned Counsel for the petitioner in this petition is challenging the action of the Dean, Government Medical College, Nagpur, in granting registration to respondent No. 4 Dr. Lavhe against the OBC seat for M.D. (Medicine) in Government Medical College vide order dated 5-2-1999. It is contended that respondent - Dean issued an advertisement inviting applications from registered medical graduates who passed their MBBS examination from recognised medical colleges for registration to Post Graduate courses starting from January 1999. The petitioner applied under the OBC category for registration in the prescribed form giving his preference of subjects (a) MD (Medicine), (b) MD (Chest), (c) MD (Anaesthesia). The respondent - Dean published a merit list for all the faculties. The petitioner was at Sr. No. 11 in order of merit in general category. Respondent No. 4 was at Sr. No. 2 and the petitioner was shown at Sr. No. 6 in the open merit. It is submitted that the petitioner belongs to "Lad" community which is included in OBC category. The petitioner has also obtained necessary caste certificate from the competent authority in this regard. It is contended by the learned Counsel that as per the

advertisement, in all 9 seats were advertised for MD (Medicine). Out of these 9 seats, 6 seats were in GMC and 3 seats in IGM. The reservation of these seats are thus :

i) GMC (6 seats) - 3 open; 1 SC; 1 NT2, 1 OBC.

ii) IGM (3 seats) - 2 open; 1 SC.

4. On 5-2-1999, the respondent - Dean issued an order granting provisional registration to the eligible candidates as per their respective preferences in respective faculties for Post Graduate Degree/Diploma Courses for session starting from January 1999. It is submitted that as per order dated 5-2-1999, the petitioner was given registration against the seat meant for open category in I.G.M.C. Respondent No. 4, who is second in order of merit was given registration against the seat reserved for OBC in G.M.C. It is submitted that as per the relevant provisions, registration of respondent No. 4 should have been given as against the open seat and the registration of the petitioner ought to have been from and amongst the OBC category seat in the G.M.C. It is further contended that as per the undisputed position in law, if a candidate belongs to a reserved category can compete on the basis of his/ her merit with open merit, then his/her admission has to be considered under the open merit and not against the reserved category. In view of this settled position, the learned Counsel contended that the Dean, Medical College ought to have granted registration to the petitioner in the post reserved for OBC in Government Medical College.

5. It is contended by the learned Counsel that when the petitioner was denied his legitimate claim from the OBC category, he has moved the representations before the competent authorities canvassing his grievance in this regard. However, the respondent - Dean, did not take into consideration the representations moved by the petitioner in this regard. The learned Counsel further contended that he had also approached the College Tribunal, however, the proceedings were withdrawn for want of jurisdiction to entertain the matter by College Tribunal. Hence, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, praying the relief referred to hereinabove.

6. Shri Chawda, learned Assistant Government Pleader appearing for respondent Nos. 1 to 3 does not dispute the factual aspect referred to hereinabove including that of legal position.

7. Shri Manohar, learned Counsel appearing for respondent No. 5 contended that this Court may not entertain the present petition which is moved by the petitioner at such a belated stage when more than half of the academic session is already over. The learned Counsel further submitted that respondent No. 4 being given admission in Government Medical College from the OBC category has settled down by now in his studies and since the Education which is pursued by the student is the medical education, therefore, appropriate link between the

teacher and the student is absolutely necessary and such link infact has been established because of lapse of time and being continued in OBC seat of Government Medical College. The learned Counsel further contended that it will be unjust at this stage to disturb the arrangement which is arrived at by the Dean on 5-2-1999 when the first academic session of the Post Graduate Course is almost on the verge of completion. 7-A. Similar contentions are raised by Shri Naik, learned Counsel for respondent No. 4

8. We have given our anxious consideration to the arguments advanced by the learned Counsel for the parties. It is, however, true that the Dean, Medical College, Nagpur, ought to have taken proper care at the threshold itself when the order dated 5-2-1999 was issued, by which the seats were allotted to the petitioner and the respondent as per their respective category and as per their merit. Since, the Dean, Medical College, committed a mistake in not following the legal procedure in this regard while allotting the respective seats in the Post Graduate Course from the category to which the petitioner as well as respondent belong, the present situation has arisen.

9. Looking to the facts and circumstances of the case, neither the petitioner nor the respondent is at fault. The entire fault, in our opinion, lies with the Dean, Government Medical College by not following the procedure contemplated in law and which has resulted in lot of confusion and injustice to the petitioner as well as respondent.

10. Since the petitioner is legally entitled to be considered on the basis of the merit list from the OBC category at the threshold itself, merely because of the mistake committed by the Dean, Medical College while allotting such seats to respondent No. 4, it will not be appropriate to deprive the petitioner, his legitimate right of being considered from the OBC category, to which he belongs. This is also not a case where the petitioner for the first time after the lapse of considerable time, approached this Court. In the instant case, within a period of one month from the date of order dated 5-2-1999 passed by the Dean, Government Medical College, the petitioner moved the representations to the Dean, GMC, Nagpur for the purposes of taking appropriate steps in this regard. However, the administration has failed at every stage which has really created chaos in respect of the admission to the students without there being any fault of the students in this regard. The efforts on the part of the petitioner, therefore, are demonstration of the fact that the petitioner was pursuing the remedy available to him and hence, in our opinion, it cannot be said that the petition can be dismissed on the ground of laches and delay. It is, however, true that by virtue of our order, the arrangement arrived at in view of the order dated 5-2-1999 issued by Dean would be disturbed, however, merely on that ground, we do not feel proper to deprive the legitimate claim of the petitioner in the instant case.

11. For the reasons stated above and since the petitioner is entitled to be given registration in M.D.(Medicine) Post Graduate Course in the OBC category, we

direct the respondent - Dean, Government Medical College to grant such registration to the petitioner in the subject referred to above in the category of OBC. Respondent No. 5 being otherwise entitled to be considered from the open category on the basis of merit, but since there are only three seats in the open category at the Government Medical College, will have to be shifted to Indira Gandhi Medical College and, therefore, we direct the Dean, G.M.C. to give the placement to respondent No. 5 accordingly in I.G.M.C.

12. As far as respondent No. 4 is concerned, we hereby direct Dean, G.M.C., Nagpur, to grant him registration from the open category in the G.M.C., Nagpur in the discipline which is opted by him.

13. With these directions, rule is made absolute in the above terms with no order as to costs.

14. Shri Chawda, learned Assistant Government Pleader undertakes to communicate forthwith the operative part of this judgment to the Dean, Government Medical College, Nagpur, since, the Guides are to be appointed subjectwise today.

15. Office to supply authenticated copy of this judgment to Shri Chawda, learned Assistant Government Pleader.