

(1993) 02 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 2843 of 1991

Ku. Jayshree

APPELLANT

Vs

Dean, Government Ayurvedic College and Others

RESPONDENT

Date of Decision : 25-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : (1996) 1 BomCR 137

Hon'ble Judges : H.W. Dhabe, J;G.D. Patil, J

Bench : Division Bench

Advocate : A.B. Choudhari, for the Appellant; R.C. Madkholkar, A.G.P. and S.K. Sanyal, for the respondents No. 3, for the Respondent

Judgement

H.W. Dhabe, J.—The petitioner sought admission in the Government Ayurvedic College, Nagpur, i.e. the respondent No. 1 in 1991-92 academic session for Post Graduate Courses in one of the six subjects for which the advertisement was issued by the respondent No. 1 Dean on 24-9-1991. In particular, she was interested in admission in the subject of "Kayachikitsa" in which she was at Sr. No. 4 in the merit list for the said subject. There were two seats in the said subject out of which one was reserved for DTNT candidate and another was for in service personnel. Since the said seat was reserved for DTNT candidate in students category, it was obvious that the petitioner could not get that seat in "Kayachikitsa". She had, therefore, preferred the instant writ petition challenging the actual reservation made in the said advertisement and also the policy of reservation adopted by the respondent No. 1 College.

2. The main grievance of the petitioner in this writ petition is that there is an excessive reservation made by the respondent No. 1 College in the above advertisement. At any rate the submission is that applying the principle of rotation, the seat in "Kayachikitsa" should have been thrown open as the said seat has been reserved since 1989-90, which is not only arbitrary and discriminatory but is violative of the relevant rules about reservation of seats.

The learned Counsel appearing for the respondent/College has controverted the above contentions raised on behalf of the petitioner. According to the learned Counsel for the respondent/College no reservation is required to be made in the teachers" category as per rules and if any candidate belonging to any of the reserved categories secured admission in the teachers" category, it was, in accordance with the rules for admission an admission on open merit basis and not on the basis of reservation.

3. To appreciate the rival submissions, it is necessary to refer to some of the relevant rules for admission. The Rules for Admission to "M.D. Ayurved" Post-Graduate Courses relevant for the academic session 1991-92 are contained in the Government Resolution dated 19-7-1991 as amended by the Government Corrigendum dated 24-7-1991. Rule 5 of the said Rules for admission provides for Reservation of Seats. Clause (a) thereof provides for reservation for candidates who pass the qualifying examination from other States. Clause (b) of the said Rule 5 provides that 50 per cent of the total seats in the Post-graduate Degree/Diploma Course in all the subjects taken together for registration available in a year in each College should be reserved for the students of the concerned Government Ayurvedic College as well as the concerned grant-in-aid Colleges in the Maharashtra State and the remaining 50% seats should be reserved for teachers, out of which one seat should be reserved for Non-teaching staff. It then provides that there should be over-all reservation of 34% seats as prescribed by Government for various categories of Backward Class candidates and the admission should be given by rotation during the year as well as every year both category wise and subject-wise.

3-A. Rule 6(a) indicates the percentage of reserved seats for each of the backward classes. Rule 6(b) then provides that the reservation of 24% seats for the three categories of Backward Classes viz. (1) Scheduled Castes and Scheduled Castes converts to Buddhism, (2) Scheduled Tribes and (3) Denotified Tribes and Nomadic Tribes shall be exclusive of the number of other students belonging to the said categories who secure admission in open merit. However, it further provides that the number of students belonging to the aforesaid three categories of back-ward classes who secure admission in 24% quota reserved for them and in open merit shall not exceed 40% of the total number of seats for admission. As regards the candidates belonging to other backward classes, Clause (e) of Rule 6 provides that the 10% reservation for them as shown in Clause (a) is not an over all ceiling for them and that it is open to them to secure more than 10% seats in open merit. It, however, provides that where their admissions in open merit category are less than 10%, the reservation for them under Clause (a) of Rule 6 is to the extent of the short fall below 10%.

4. It is clear on perusal of Rule 5(b) that it does not exclude the category of the teachers or the inservice personnel from the policy of reservation of seats in admission to the Post-Graduate Courses in the Ayurvedic Colleges. It has then to be seen that the reservation of 34% for backward classes is made as per Clause

(d) of Rule 5 on the basis of all the subjects taken together in a year. Further, the policy of reservation has to be implemented by the method of rotation both category wise and subject wise which means that it cannot be implemented either by adopting appropriate roster or by adopting the method of periodisation i.e. by maintaining the prescribed percentage of reservation over a particular period of years subjectwise and category-wise. See AIR 1977 251 (SC) .

4-A. In actual practice, the State Government has clubbed all the Post-Graduate Degree/Diploma seats in all the subjects together and has worked out the reservation upon the same. It is pertinent to see that as regards Post-graduate Diploma Course, the said course is not in all the subjects but is only in one subject of Agadtantra in which there are two seats for the diploma course. Although it is submitted on behalf of the petitioner that there should be separate reservation for Post-graduate Degree/Diploma Course, looking to the fact that the diploma course is only in one subject; and since there is no prohibition to do so, but on the contrary as per Clause (b) of Rule 5, all the seats whether Post-graduate Degree/Diploma Course are taken together for the purpose of determining how many seats are there for teachers candidates and students candidates, exception cannot be taken to the policy adopted by the State Government in making reservation upon all the Post-graduate Degree/Diploma Course seats taken together.

5. Turning to the advertisement in question, it shows that the total number of seats advertised in 1991-92 for post-graduate Degree/Diploma Courses in all the subject was 13 out of which in students category two seats are reserved for Scheduled Caste category, one for S.T. and one for D.T.N.T. and one for O.B.C. As regards the division of these 13 seats between the students and the teachers category, it is clear from the chart given in para 7 of the return filed on behalf of the respondent No. 1, that four seats are allotted in the teachers category which included one seat allotted to in-service personnel, the other 9 seats have gone to the students category. Although the actual division is not 50/50 per cent, it is not necessary to go into that question in the instant writ petition because no teacher candidate has come forward to challenge the said division.

5.A. Perusal of the advertisement along with the details given in para 7 of the return on behalf of the respondent No. 1 would show that actually one seat reserved for OBC candidate in the subject of Sharirkriya is given in teachers" category which would show that the policy of reservation is actually followed in the teachers" category also, although the contention raised on behalf of the respondent No.1 is that it is not so followed in the teachers" category. What appears is that as per the advertisement the reservation is made in all the subjects upon the total number of seats and that the question is considered which of the reservation or open seats should be treated as in either the students" or the teachers" category, depending upon the availability of the reserved category candidates from amongst either of the said categories.

6. Examining the question of excessive reservation in the above facts and circumstances, it would be clear that there are only 4 seats reserved out of 13 for the S.C., S.T. and D.T.N.T. categories whose percentage admittedly does not exceed 40. As regards O.B.C., the reservation provided for O.B.C. is 10% and that the said reservation is complied with by giving admission in the said seat to the candidate in the teacher's category in the subject of Sharirkriya in which the said reservation is made. It cannot therefore be said that there is excessive reservation made for reserved categories by the State Government. However, it would be proper for the State Government to indicate in advertisement the reservation to be made in teacher's category also. Since the reservation is worked out on the basis of the total number of seats available in student's and teacher's category, we cannot accept the submission on behalf of the petitioner that if the percentage is worked out solely with reference to the reservation of the student's category, the said percentage would be excessive. Even if we actually apply the question of percentage to the students category only, there is no doubt that there is slight increase in the percentage because it then works out to about 44.44% on the basis of the 9 seats allotted to the students category in this year. However, even if the above submissions were correct, we would not interfere with the reservation made by the State Government since two academic sessions have passed thereafter and the candidates admitted have almost completed the courses.

7. As regards the grievance that the subject-wise reservation is not complied with by the respondent No. 1, the petitioner has stated that from 1989-90 the seat in Kayachikitsa is reserved for reserved category candidate only and it is not thrown open. The above submission on behalf of the petitioner is not fully correct because in 1991-92 one of the two seats in Kayachikitsa was thrown open. It is different thing that the said seat was reserved for teacher candidate and also that in that category the candidate who has been given admission belonged to S.T. category. As regards the teacher's category, the procedure for admission is given in Rule 7 of the Rules for Admission. According to the learned Counsel for the respondent No. 1 the candidate namely Mrs. Dalal who is given admission in the subject of Kayachikitsa is a senior most teacher and therefore she was given admission in the said category. Since the seat is thrown open in the subject of Kayachikitsa, the petitioner cannot allege any violation of rule of rotation subject-wise, still it would advisable for the respondent No. 1 to arrange the policy of reservation in such a manner that open and reserved category candidates can aspire to get admission in each of the subject in some of the years by arranging the admission in such a manner over a period of years that it should be so possible for them. We cannot therefore accept the submission made on behalf of the petitioner that there is breach of the principle of rotation category wise and subjectwise in the instant case.

8. In the result, the instant writ petition fails and is dismissed. Rule discharged. No costs.