

(1998) 02 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 4609 of 1997 with Civil Application No. 239 of 1997

Ramesh Kumar Rajaymohan

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : AIR 1999 Bom 86 : (1998) 4 ALLMR 659 : (1998) 3 BomCR 702 : (1998) 3 MhLj 122

Hon'ble Judges : R.G. Deshpande, J;A.D. Mane, J

Bench : Division Bench

Advocate : S.C. Bora, for the Appellant; A.M. Kanade, G.P., for the Respondent

Judgement

A.D. Mane, J.—The petitioner has passed his Higher Secondary Certificate Examination conducted by the Maharashtra State Secondary and Higher Secondary Board, Aurangabad Division, Aurangabad, in the month of March, 1996. The petitioner had secured 285 marks out of 300 in Medical Group. Total percentage comes to 95%. The petitioner submitted his application for admission to M.B.B.S. course to the Dean, Government Medical College and Hospital, at Aurangabad on 15-7-1996.

2. On 18-7-1996, Regional Final Merit List was displayed by the designated authority under the rules framed by the State Government, vide Government Resolution dated 6-6-1996 for admission to Medical Course for Academic Year 1996-97. The petitioner was shown at Sr. No. 180 in the said merit list. Rule 4.1.2.3.2 empowers designated authority to fill in 70% seats from amongst the candidates who have passed XII Standard Examination from the School/College situated in concerned University area, as per the Rules. Rule 6.0.2 requires the merit list to be prepared in descending order, either for the category of University or for the State.

3. On 29-9-1996, a notification was published in the local news paper informing that the process of admission would commence from 20-9-1996 and on

30-9-1996. State Merit List was published and name of the petitioner was shown at Sr. No. 180. As per the availability of the seats, the petitioner was likely to get seat at M.G.M. Medical College Mumbai, which is a recognised Medical College, but the petitioner was required to pay tuition fees of Rs. 20,000, as against Rs. 6,000 in the Government Medical College. The petitioner submits that the petitioner was given admission to M.G.M. College at Mumbai on free seat.

4. It is the case of the petitioner that the petitioner was entitled to be wait-listed for selection to the admission of M.B.B.S. course in Government Colleges on merit. The petitioner's name, however, did not appear in the wait list. It is further case of the petitioner that from amongst the wait listed candidates, four candidates were given admission to Government Medical College from free seats category, in total dis-regard to the claim of the petitioner. It is submitted that these four candidates were having less marks than the petitioner.

5. The petitioner, therefore, filed the Writ Petition on 30-9-1996, inter alia seeking reliefs in various forms and one of the reliefs which is now asked, after amending the writ petition, is to issue directions to the respondents to admit the petitioner to the medical course from a free seat in Government College at Mumbai.

6. Before turning to the arguments advanced on behalf of the petitioner, it is relevant to state that during pendency of this petition, the petitioner has filed a Civil Application No. 239 of 1997 pointing out subsequent events. It is pointed out that four candidates, who were wait listed have been admitted to Medical course in the Government Medical Colleges in term of Rule 8.2.0 of the Admission Rules. The petitioner was, however, not given admission and he was singled out. The petitioner has further contended that during pendency of this petition the petitioner has completed first year of his M.B.B.S. course and the term of the second year has just began and therefore, the petitioner also prays that in the given set of circumstances, the respondents may be directed to admit the petitioner in the Government Medical College on a free seat for second year M.B.B.S. course in order to meet the ends of justice.

7. Rule 8.2.0 of the Admission Rules clearly provides that all the candidates selected for admission against merit/payment seat of Private Colleges be wait listed for filling in the seats in the Government Colleges. The petitioner has categorically stated that if his case would have been considered he would have been admitted in the Government College even for the first year M.B.B.S. course, however, the petitioner's legitimate claim has been denied. It is, therefore, submitted by Shri Bora, learned Counsel for the petitioner that there are vacancies in second year M.B.B.S. course in the Government Medical College at Mumbai. If the case of the petitioner is considered as if that he was admitted to Government Medical College under Rule 8.2.0 of the said Rules, the petitioner is entitled to be admitted in Government Medical College for II year M.B.B.S. course.

8. In this context Shri Bora, learned Counsel for the petitioner invites our attention to the decision in Writ Petition No. 4929 of 1996, wherein directions were issued to the respondents to admit the candidate who was denied admission to the first year M.B.B.S. course on account of failure by the designated authority to follow Rule 8.2.0 of the said Rules.

9. Shri Kanade, learned Government Pleader, appearing for the respondents-State authorities, at the out set submits, under instructions that there are vacant seats available to be filled in for second year of M.B.B.S. course in Government Medical College at Mumbai. Shri Kanade, further fairly submits that under Rule 8.2.0 of the Admission Rules, the petitioner ought to have been selected for admission to the Government Medical College for first year M.B.B.S. course.

10. It may be stated that had the petitioner been considered under Rule 8.2.0 for 30% quota, he would have been entitled for selection to the Government Medical College on a free seat. The respondents have considered, for selection to Government Medical College, four candidates who have admittedly lower in rank to the petitioner. That necessarily means that the petitioner, who was similarly situated, has been denied his legitimate claim for admission to Government Medical College on a free seat. These facts, which are averred in the civil application, supporting the writ petition have also not been traversed by the respondents.

11. Now in Writ Petition No. 4929/1996, Sandeep Uttamrao Wankhede v. State and others, decided on 9-12-1996 (Coram : N.P. Chhapalgaonkar and V.K. Barde, JJ.) Rule 8.2.0 came to be considered and it was held that the petitioner who was admitted in a Private College on payment seat was entitled to be considered as wait listed candidate for filling upon the seat falling vacant in Government College. Accordingly, the petitioner in that petition was granted the relief. Had the claim of the present petitioner been considered under Rule 8.2.0 there is no quarrel that the petitioner would have been considered (or admission to Government Medical College irrespective of the fact that he was admitted on a payment seat out of 30% quota in private Medical College.

12. Failure to consider the claim to the petitioner as per the rules governing his admission to a free seat in Government College, undoubtedly, put the petitioner to a greater hardship. It is true that the petitioner has by this time completed his first year M.B.B.S. course in a Private Medical College on free seat, but in the facts and circumstances of the case, and in order to give justice in a case where there has not been proper observance of the rule, the petitioner's claim for admission to free seat in Government College even for second year course could be considered, when it is common ground that there are vacancies at present in Government College at Mumbai.

13. It is true that there is no fundamental right to education for a profession and degree that flows from Article 21 of the Constitution of India, but as observed by Mohan, J. concurring in Unni Krishnan, J.P. and others Vs. State of Andhra

Pradesh and others etc. etc., any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21 of the Constitution of India. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens. It is well settled that the Directive Principles form fundamental feature and constitution enjoins upon the State to implement these directive principles. The directive principles provide the policy, the guidelines and the end of socio-economic freedom under Articles 14 and 16 and the means of implementing the policy to achieve the end say it to be promoted by the directive principles. As observed in the His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, which referred to in para No. 41 of the report in Unni Krishnan's case referred to above :--

"..... So far as courts are concerned where there is no apparent inconsistency between the directive principles contained in part III, which in fact supplement each other, there is no difficulty in putting harmonious construction, which advances, object of the Constitution. It is from the point of view, Articles 14 and 16 play their role to advance social justice....." In para No. 45 of the Unnikrishnan's report, it is clearly stated that, "..... Everyone has the right to education. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit....."

14. The prerogative writ of Mandamus is confined only to public authorities to compel performance of public duty. The scope of Article 226 as explained by Subba Rao, J., in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, is that Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. We may take advantage of the observations of Sabyasachi Mukharji, J., as he then was in case of Charan Lal Sahu Vs. Union of India, and to quote :

"..... Justice is a psychological yearning in which men of vindication of their view point before the forum or the authority enjoined or obliged to take a decision affecting their right. Yet, in the particular situations, one has to bear in mind how an infraction of that should be sought to be removed in accordance with justice.... To do a great right after all: it is permissible some time to do a little wrong....".

15. It cannot be disputed that Article 14 or the principle of non-discrimination is an equitable principle and therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. As observed by J.S. Verma, J., (as he then was) in case of Bhoop Singh Vs. Union of India and others, , capitation fee makes the availability of education beyond the reach of the citizens. The action of (he respondent in not considering the rightful claim of the petitioner for admission to free seat in Government College at the earliest opportunity is not in conformity with Rule 8.2.0. Therefore, it becomes necessary

to protect the right of the petitioner to free seat in Government College. Appearance of injustice is denial of justice, K. Ramaswamy, J., in Kartar Singh v. State of Punjab .

16. It is in these premises, we have no hesitation to accept the contentions of the learned Counsel for the petitioner which also could not be controverted by the learned Government Pleader, appearing for the respondents State authorities, to grant the relief on subsequent change in the circumstances.

17. In the circumstances we direct the respondents No. 1 and 2 to admit the petitioner to the second year M.B.B.S. course in the Government Medical College at Mumbai. Rule is accordingly made absolute. No order as to costs. Civil Application stands disposed of.

18. Petition allowed.