
(1993) 04 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 866 of 1993

Sanjeev Dinkarrao Rokde

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 27-04-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1993) 04 BOM CK 0005

Hon'ble Judges : H.W. Dhabe, J;B.V. Chavan, J

Bench : Division Bench

Advocate : Z.A. Haq, for the Appellant; B.T. Patil, Government Pleader for State, Smt. A.P. Shinde for Respondent No. 5 and D.K. Deshmukh, for the Respondent

Final Decision : Allowed

Judgement

H.W. Dhabe, J.—Parties by counsel. Rule. Heard forthwith.

2. The petitioner has challenged in this writ petition the registration granted to the respondent No. 6 in the course in Diploma in Child Health (for short D.C.H.) in the seat reserved for Nomadic Tribe (for short N.T) candidate which had fallen vacant because one Shri Dr. A H. Jadhao had vacated the same.

3. The facts are that in January, 1992 when the seals were advertised for Post Graduate Registration in various subjects, one seat in D.C.H. was reserved for a N.T candidate. The said seat was filled in by allotting it to Dr. A. H. Jadhao who belonged to the N.T Category. As per the usual procedure, -in July 1992 term also the seats for Post-Graduate registration were advertised. The respondent No. 6, pursuant to the above advertisement issued in July 1992 term applied for one of the seats for Post Graduate Registration giving his first preference for D.C.H. and the second preference for M. D. in Pathology. The respondent No. 6 was allotted the seat in M. D. (Pathology) which he accepted. Accordingly, he was registered as a student for M. D. (Pathology).

4. In January 1993 Dr. A H. Jadhao, who was allotted a seat in D.C.H. in January,

1992, gave up the said seat on being allotted a seat in M.D. (Paediatrics) pursuant to the advertisement issued in January, 1993. The above seat in D.C.H. which fell vacant due to resignation of Dr. A. H. Jadhao, was allotted to the respondent No. 6 as an OBC candidate by the order of the Dean, Government Medical College, Nagpur, dated 29-3-1993 provisionally after it was amongst the reserved category candidates because it appears that according to the respondent-Dean a N.T candidate was not available. Feeling aggrieved, the petitioner has challenged the aforesaid order of the Dean dated 29-3-1993 by way of this writ petition.

5. It is not in dispute that the petitioner is a candidate belonging to N.T Category. The grievance of the petitioner in this writ petition is that his name was contained in the merit list of January, 1992 in the subject of D.C.H. and he was at Sr. No. 5 in the said merit list. Further, according to him, the candidates at Sr. Nos. 1, 2 and 4 in the said merit list of January, 1992 were granted registration in other subjects and therefore, he was entitled to get the seat in D.C.H. which was advertised in January 1992 but fell vacant in January, 1993 since the selected candidate in that seat namely Dr. A. H. Jadhao had resigned. It is further his case that the seat could not have been allotted to the respondent No. 6 because he was already registered in M. D. (Pathology) and unless he gave 3 months notice to give up his registration as required by Rule 6 of the rules for Post-Graduate admissions, his claim could not have been considered by the Dean.

6. The learned counsel appearing for the respondent No. 6 has urged before us that there is a practice in the Government Medical Colleges at Nagpur that when a seat which is already allotted becomes vacant after the second term i.e. July term it is filled in accordance with the merit list of the candidates prepared in the said term. Hence according to him the seat in question, since it fell vacant after July 1992 term, was filled in by a candidate from the merit list in the subject of D.C.H prepared in July 1992 term. Further, since the N.T. candidate was not available in the said merit list, it was rotated amongst the reserved category candidates and was allotted to the petitioner who was an O.B.C. and was the only candidate available in the reserved categories. He has then urged that the respondent No. 6 had already given up the registration in M.D. (Pathology) and therefore, we should not entertain the instant writ petition or at any rate should not disturb the admission given to the respondent No. 6. In support of his above submission, he has relied upon the following Judgments of the Supreme Court. *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, ; *Chandigarh Administration and another Vs. Manpreet Singh and others*, ; *University of Rajasthan, Jaipur vs. Dr. Bhikalal Jain and others*, 1992 (1) SCC 106.

7. In our view, whenever a seat falls vacant, it is obligatory upon the respondent Dean to advertise the said seat before it is allotted to any candidate. The merit list which is prepared is essentially for the seats which are advertised whether in January term or July term of the year. It has to be seen that the State is bound to comply with the mandate of Article 14 of the Constitution which requires that

all eligible candidates must get an opportunity to compete for the seat which is sought to be filled in by the Dean. The said requirement is basic and can be complied with only by advertising the said seat in an appropriate manner or as may be provided for under the rules for admission. In particular, in the instant case, had the seat been advertised, it would have given an opportunity to a N. T. candidate for whom the seat was reserved to apply for the said seat.

8. As regards the alleged practice of operating the merit list of July term for any seat in that year falling vacant after the seats are filled in the said term, apart from the fact that such a practice requires strong evidence to demonstrate such practice and that it is not possible for us to draw an inference of practice merely upon the assertions of the respondents 2 and 6 in their submissions, in our view, there is no rationale for the said practice, which is arbitrary, discriminatory and is violative of Article 14 of the Constitution. It may be seen that the seat which has fallen vacant is not of July 1992 term but of January 1992 term for which there is a separate merit list. It is difficult to see as to why the merit list of July 1992 term has to be followed and not the merit list of January 1992 term although the seat to be filled in is of the January 1992 term. The reason given on behalf of the Dean that January 1992 merit list was not operated because the registrations given in that term were already closed is to say the least, devoid of any merit because the same reasoning could equally be applied to the July 1992 term, registrations in which were also already over when this seat in D.C.H. fell vacant. In fact, before the said seat fell vacant, the advertisement for filling up the Post-Graduate Seats for January 1993 had been given and the Post-Graduate Seats of the said term were also filled in as per the said advertisement after preparing merit list in each subject and it is because the aforesaid student Dr. A. H. Jadhao who had applied for Post-Graduate Seat in Paediatrics pursuant to the advertisement issued in January, 1993 term, got the said seat, that the instant seat in D.C.H. allotted to him in January 1992 term fell vacant. The above submissions made on behalf of the respondents 2 and 6 are thus bereft of any merit.

9. It was, therefore, necessary for the respondent-Dean to advertise the instant seat in D.C.H. before it was filled in. Had the said seat been advertised, the respondent-Dean would have been able to know whether the Nomadic Tribe candidate was available for that seat or not. The admission given to the respondent No. 6 is thus clearly illegal and is violative of Article 14 of the Constitution.

10. As regards the contention raised on behalf of the petitioner that as provided in rule 6 of the rules for admissions it was obligatory upon the respondent No. 6 to give 3 months' notice for giving up his earlier registration and for claiming registration in a new subject, the submission made on behalf of the respondent No. 6 is that said rule is discretionary. In the view, which we have taken above, the above contention raised on behalf of the petitioner need not detain us any more and it is not necessary to deal with the same although we may observe

that there is some force in the above contention raised on behalf of the petitioner. However, careful perusal of rule 6 of the rules for admission in this regard shows that the purpose of providing for three months notice for changing the registration is to enable the notification of the vacancy in the seat which a candidate had given up. There is thus intrinsic evidence in the said rule 6 itself which shows that a vacancy in a seat after it is previously filled in needs to be advertised before it is again filled in. Rule 6 also thus supports our above view that without the advertisement the seat in question could not have been filled in or else it would be arbitrary and violative of Article 14 of the Constitution.

11. As regards the submission made on behalf of the respondent No. 6 that his registration cannot be disturbed because he has already given up the registration in M. D. (Pathology), in our view the said situation is of the making of the respondent No. 6 himself, who has hurriedly tried to get registration in a new subject without even caring to give three months' notice as required by rule 6 before giving up his registration. At any rate, the respondent No. 6 has taken the risk of giving up his earlier registration for getting registration in a new subject which no one can assure to him. His own action cannot therefore create any estoppel against others, apart from the fact that as in the instant case there cannot be any estoppel against law. This contention also need not detain us any more because as we shall presently show the previous seat in M.D. (Pathology) vacated by the respondent No. 6 is still vacant and therefore the submission that an irreparable loss is caused to him by giving up his earlier registration and therefore his present registration in D.C.H. impugned in this petition should not be disturbed, does not survive for consideration. We however, need to observe that the action of the Dean in giving admission to the petitioner in breach of rule 6 of the rules for admissions and without advertising the seat in question is blameworthy and deserves to be deprecated.

12. As regards the above judgments of the Supreme Court relied upon on behalf of the petitioner in support of his contention that his admission in question to D.C.H. Course should not be disturbed, it may be seen that the impugned registration is granted to the respondent No. 6 on 29-3-1993 and thus much time has not elapsed since the date of registration granted to him in this subject. He cannot therefore get the benefit of the judgments of the Supreme Court relied upon by him where long time had elapsed when the matter reached the Supreme Court and the candidate had for such a long time enjoyed the benefit of the admission given to him. It is in these circumstances that the Supreme Court did not disturb the admission of the students in question before them although in the view which it had taken on merits, their admissions were liable to be cancelled.

13. However, fortunately for the petitioner, he would not be put to a loss by giving up his earlier registration. The learned counsel appearing for the State has stated before us that the seat in M.D. (Pathology) vacated by the respondent No. 6 is still vacant because the person to whom it was allotted did not join in the said seat. If the respondent No. 6 desires, the State can be directed to allot the

said seat to him.

14. In the result, the instant writ petition is allowed. The impugned order of the respondent No. 2 Dean dated 29-3-1993 is set aside and it is directed that the respondent No. 2 Dean should advertise the seat in D.C.H. which has fallen vacant because of resignation of Dr. A. H. Jadhao. After the said seat is advertised, it should be filled in, in accordance with the rules. The whole process should be completed within 15 days from the date of this order. The respondent No. 2 Dean is directed to allot the seat in M. D. (Pathology) to the respondent No. 6 if he communicates to the respondent No. 2 Dean his desire to get the said seat within 3 days from the date of this order. Rule made absolute in the above terms. No costs.