

(2018) 07 BOM CK 0086
In the Bombay High Court
Case No : Writ Petition St.No.19728 Of 2018

Shashi Saraswat

APPELLANT

Vs

State Of Maharashtra Through Its Common Entrance Test Cell
Mumbai And Anr

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Citation : (2018) 07 BOM CK 0086

Hon'ble Judges : S.C. DHARMADHIKARI, J;BHARATI H.DANGRE, J

Bench : Division Bench

Advocate : S.M. Gorwadkar, Niranjana A. Mogre, S.B. Kalel,
Shrinivas S. Patwardhan

Final Decision : Allowed

Judgement

BHARATI H. DANGRE, J

1 The petitioner, desirous of acquiring a degree in Medicine appeared for the National Entrance Cum Eligibility Test (NEET) conducted by the CBSE

for the Academic Year 2018 on 6th May 2018. The admissions to the Health Science Courses which includes MBBS and BDS is conducted by the

Commissioner, Common Entrance Test (CET) CELL, Mumbai in accordance with the Rules framed by it and published in the form of an information

brochure for preference system for admission to health science courses in the State Government, Corporation, Private and Minority Colleges. The

Medical Council of India had introduced a mechanism of common counselling for admission to MBBS in all medical education institutions on the basis

of merit list of the National Eligibility Entrance Test. All admissions to the health science courses within the respective categories are to be based

solely on the marks obtained in the NEET, which is prescribed as a single test for

admission to all health science courses for Academic Year 2018?

19. The Central Board of Secondary Education (CBSE) is authorized to conduct the NEET and for the year 2018-19, it was conducted on 6th May

2018. The responsibility of CBSE is limited to conduct the said test, declaration of its result and providing merit list to counselling authorities. The

designated authority for counselling for the 15% All India Quota seats of the contributing states is the Director General Health Sciences, whereas the

counselling for admission to MBBS courses in medical education institutions in State/Union Territory have been left to the respective State/Union

Territory and as far as State of Maharashtra is concerned, it is entrusted to the respondent no.2. The Information brochure published by the

respondent no.2 sets out the mechanism to be followed while filling up the seats to various health science courses in the respective colleges, including

Government/Private and Minority colleges.

2 The petitioner cleared the NEET-2018 conducted by CBSE and secured an All India Rank of 31718. On clearing the said examination and on

scoring the position in the merit list, the petitioner was entitled to participate in the admission process conducted by the Commissionerate, CET Cell

Mumbai i.e. respondent no.1. The father of the petitioner was a defence personnel and posted at Kirkee, Pune, a Havaldar in Military Hospital and he

retired from service on 1st July 2018. In terms of the information brochure for NEET-2018 published by the respondent no.2, 5% of the intake

capacity subject to maximum of 5 seats in each government, municipal corporation and government aided medical colleges are reserved for children of

defence service personnel and ex-defence personnel. For children of defence personnel transferred to Maharashtra from outside who are not

domiciled in the State of Maharashtra, specific quota of one seat called Defence-3 (Def-3) has been reserved in those colleges where seats are

reserved for defence personnel. Annexure-C of the information brochure sets out the provision for the reservation to be provided to children of

Defence personnel and the details about the sharing of seats between the ex-defence and in-service defence category. It also defines Defence

categories and sets out the conditions to be complied with, in order to be eligible for allotment of a seat meant for words of defence personnel. It is not

in dispute that the petitioner is entitled to claim a seat in the Health Science

course as a candidate from defence category. (Def³).

3 On declaration of result of the NEET^{UG}2018, on 4th June 2018, the respondent no.2 published an admission notice for filling up the seats in the

Health Science courses in State of Maharashtra on 6th June 2018. The notice contemplated that the admission process for Health Science course

would require a NEET All India Rank of the candidate and it sets out a schedule for conduct of the selection process. This contemplated an online

registration/application by the candidates between 7th June 2018 to 17th June 2018 and then, publication of a provisional merit list on 19th June 2018.

The next stage contemplated in the notice is that of document verification of the candidates at different centres specified in the notification between

21st June 2018 to 25th June 2018. The said notice then prescribed a stage for online preference filing process which was scheduled from 26th June

2018 to 29th June 2018, followed by declaration of select list of first round on 2nd July 2018. The last date for joining of the selected candidates from

the first round according to the notice was scheduled on 12th July 2018 and the date for commencement of the Academic Session is declared as

1st August 2018.

The said notice conveyed that the candidates should open the website www.mahacet.org or www.dmer.org for online registration

process and the candidates were instructed to read the instructions carefully and the steps for preferring online application were also set out in the

said notification.

4 In terms of the notice, the petitioner registered herself by adopting the online registration process in Defence³ quota within the time limit

prescribed and she filled in the details, including her NEET percentile score, NEET All India rank and she mentioned that her claim is staked against a

seat from a specified reservation: Defence³. She also declared that she is not domicile in State of Maharashtra and she had passed her 10th/12th

standard from outside Maharashtra. She also opted for the centre for verification of document at B.J. Government Medical College, Pune. Subsequent

to the registration by the petitioner and other candidates, the respondent no.2 published a provisional State merit list of NEET^{UG}2018 on 19th June

2018, which included the name of the petitioner at Serial No. 2349 (31718 NEET All India Rank) and her category was reflected as Defence³

3â?. The petitioner also attended the B.J. Government Medical College, Pune for verification of documents and the acknowledgment issued to her

reflects the details of her candidature which included her claim for the specified reservation. A revised provisional merit list came to be published by

the respondent no.2 on 26th June 2018 in which the petitioner was placed at Serial No. 2349 on the basis of her All India Ranking and her category

was shown as DefenceÂ?3 Quota (DÂ?3). The petitioner has placed on record the said revised provisional merit list at ExhibitÂ?G of the petition.

5 The petitioner thereafter was expected to undertake the onÂ?line preference filing process where she was to give the preference of the college,

where she was desirous of prosecuting her studies based on her score and ranking. It is the case of the petitioner that she was in Lucknow at the time

of online filing of the preference form and she undertook the said exercise through a cyber cafe. It is the specific case of the petitioner that on opening

the website and on filling the form number of the petitioner and the login password, the student's page was opened in which code number of 21

colleges were displayed. It is the specific averment made in the petition that on opening the website, the form of the petitioner appeared and on

supplying the login password, students page came to be opened which flashed 21 medical colleges code number. The petitioner under the impression

that DefenceÂ?3 quota was provided in the said medical colleges, selected all the Code numbers under a bonafide belief that they were all Medical

colleges. The petitioner has obtained a print out of the said webÂ?page and has annexed the same along with the petition at ExhibitÂ?H. The petitioner

makes a statement in the petition that she was under a bonafide belief that she had completed the process and had opted for the colleges which were

the colleges to be opted for MBBS course and that she had successfully uploaded her preferences.

It was only when on 4th July 2018, when the selection list of the first round was published, she noticed that against her name, an endorsement to the

following effect was made :

â??CHOICE NOT AVAILABLEâ??

It is at that time, the petitioner realized that the preferences which were selected by the petitioner were of Nursing colleges and they were not the

Code numbers of the Medical colleges. The petitioner was thus ousted from the

selection process for the MBBS course as no seat was available to her in any of the colleges in State of Maharashtra offering MBBS course, since she has not exercised her preference in favour of any such college.

The gross mistake committed by the petitioner occurred to her and with a hope that some solution can be afforded to the error committed by her, she preferred a representation to the respondent no.2 and conceded to the error and the mistake committed by her and requested for its rectification in some way. However, the respondent no.2 orally informed the petitioner that there is no mechanism for rectification of mistakes in filling online preferences and the software/system installed for carrying out the admission process did not permit such an intervention. This action of the respondents and deprivation of the petitioner to secure a seat in MBBS course inspite of her merit, has constrained her to approach this Court by filing the present writ petition. By the said writ petition, she has sought a direction to the respondents to entertain her claim for the MBBS course as per her merit in the Merit list of NEETUGÂ?2018 in DefenceÂ?3 quota by affording her an opportunity to chose medical colleges of her preference.

6 In support of the petition, we have heard the learned senior counsel Shri Gorwadkar, who would concede to the fact that a gross mistake has been committed by the petitioner, but he would submit that perusal of the screenshot which the petitioner has placed on record at ExhibitÂ?H would reveal that on opening the website page which the petitioner sought to enter after using the Code allotted to her reflected 21 colleges and he would submit that the code numbers of the said colleges were commencing from 9311SS to the colleges at Serial no.21 by Code 9228S, were all colleges of Nursing. Shri Gorwadkar concedes to the fact that the petitioner ought to have been careful while clicking/selecting the said colleges and he would also concede to the fact that the Brochure published by the respondent no.2 distinguished the colleges based on the government colleges offering MBBS seats from all the three regions i.e. Rest of Maharashtra (ROM), Vidharbha and Marathwada and also distinctly mentioned the colleges offering courses in Dentistry, Ayurveda BMS, Homeopath BHMS and also the colleges offering courses of B.Sc nursing including private and government. The learned senior counsel would submit that a small mistake should not cost the petitioner so much so as to compel her to opt a nursing

course when she aimed for a MBBS course and had strived hard to secure a merit position in the entrance examination. The learned senior counsel

would also submit that it is inconceivable that no mechanism is provided by the respondent no.2 to deal with such mishaps occurring due to

inadvertence or may be, in some cases, on account of a bonafide mistake committed by a candidate.

7 On the petition being filed, Shri Patwardhan appeared on behalf of respondent no.2 and he tendered an affidavit before this Court sworn by the

Administrative Officer. In the said affidavit, the respondent no.2 has controverted the statements made on behalf of the learned counsel for the

petitioner that there is a technical glitch and what the petitioner could have seen on opening of the page while filling her preference form was only a

list of nursing colleges and not medical colleges. The affidavit proceeds to state that on such a submission being made, a report from the SMB

Systems Private Limited, an entity engaged for conducting the online admission process was sought and it reported that there was no technical glitch

and it is specifically stated in the report that on 27th June 2018, total number of 4344 candidates have filled the online preference form and the

petitioner filled up her form at 7.49 p.m. on 27th June 2018. The report categorically states that there was no technical glitch at any time from 6.00

p.m to 11.55 p.m on 27th June 2018. It is reported that total 1882 students have submitted their online preference forms. The affidavit further sets out

that total 59597 students have registered themselves for online admission process to Health science courses in State of Maharashtra which

commenced from 7th June 2018 and continued till 18th June 2018. It is also stated in the affidavit that based on the placement in the merit list, total

16,000 students were invited for submission of their documents for verification and total number of 15371 students filled up their preference forms,

including the petitioner. The affidavit then gives the details as to the process to be followed for filling up of the preference form and it states that all

health science course colleges in the State of Maharashtra have been given a unique code. The first of the four digits represents the identity of the

course, the second represents the area where the respective college is located and the last two digits are the identity of health science course college.

It is therefore stated that all medical colleges begin with digit 1, whereas code of nursing college begin with digit 9. It is also stated in the affidavit

that elaborate instructions were issued in the information brochure and two dedicated telephone lines were made available to the students who were

desirous of participating in the online admission process. It is also stated that once the preference forms are filled in and merit list is operated, as

against the preference form of the candidates, the process becomes irreversible.

8 The learned counsel Shri Patwardhan would submit that there are 12 seats available in the State of Maharashtra in Defence category and total

73 students had filled in their form from this category. It is stated by Advocate Shri Patwardhan that as on 12th July 2018 which is the last date for

reporting for admissions on completion of the first round of admission, 10 students have reported to college and have taken admission and for the

balance two seats, there are 63 candidates in queue who have filled in preference form for Defence quota. Shri Patwardhan would submit that if

any relief is to be granted to the petitioner at this stage, it would encroach upon the accrued right to 63 other students who have duly applied for and

availed their preferences. On the other hand, it is the petitioner who has committed a mistake in filling up the preference form, for which she herself is

responsible. Shri Patwardhan would submit that the failure on the part of the petitioner to be diligent and clicking the 'submit' button without bothering

to ensure about the preference of the colleges which she is opting, has made the position irreversible and even though the petitioner deserves

sympathy the respondent no.2 authority cannot afford to assist her at the cost of other students who are aspiring to claim two seats available from

Defence category. Shri Patwardhan would therefore, submit that the writ petition deserved to be rejected.

9 We have carefully perused the petition along with its annexures and also the affidavit filed by the respondent no.2 authority along with its annexures.

We have also considered the submissions advanced by the counsel for the parties. It is no doubt true that the information brochure of preference

system for admission to Health science courses in State Government/Corporation/Private and Minority colleges published by the Commissionerate

CET Cell Mumbai i.e. respondent no.2 in detail, sets out the procedure to be adopted for granting admission to the Health science courses in all the

Medical, Dental and other colleges in State of Maharashtra. The said process contemplates an online procedure and attempts to ensure transparency

at all stages. After setting out the eligibility for admission to the MBBS and BDS courses, the information brochure sets out in detail the distribution of seats and the reservations to be provided including the constitutional reservations and the special reservations. Rule 10 of the selection process sets out in detail the selection process to be followed and it stipulates that the selection of the candidates is to be made on the basis of the preference given by the candidates. The preferences will be allowed to be filled online by those candidates who appeared for document verification and are found to be eligible. The seat allocation is to be made centrally on the basis of NEET-UG-2018 merit in the State of Maharashtra and on the basis of the preferences exercised by the candidate.

10 We have carefully perused the Rule pertaining to the selection process and what is very apparent is that a candidate can fill in online preference form multiple times before clicking the 'submit' button. However, when once 'submit' button is clicked, then there is no provision to change the preference. The brochure also makes it very clear that the preference once given will be used for first round and subsequent round(s), including the

Mop Up round of selection/upgradation. We have also noted that the selection process contemplates two or more rounds of selection of candidates

depending upon the availability of vacant seats. The salient feature of the selection process is the merit and preferences submitted by the candidates.

The brochure also makes it clear that the choices of courses and colleges once entered online becomes final and irreversible and this final data is to be

used throughout the selection process for admission to first year health science course for the Academic year 2018-19.

11 The brochure explains and expects the candidates to be very careful while filling the online preference form and clear instructions are given to the

candidates as to the selection of preferences and it is clearly conveyed that NEET-UG-2018, merit list will be operated from NEET-UG-2018

Rank 1 onwards in each round of selection and the candidate getting selected in previous round will be considered for betterment in the subsequent

rounds and betterment means 'higher preference'. A candidate who does not intend to shift is to fill in status retention form and on such form being

filled, the candidate will be considered for any subsequent rounds. Thus, the information brochure has simplified the process for the students, but at the

same time, in order to maintain the consistency, it contemplates operating the NEET 2018 merit list as against the preferences filled in by the students online.

^ We do not, in any way, doubt the mechanism followed by the respondent no.2 nor we have any iota of doubt in our mind that the information

brochure has simplified the procedure and the students are expected to follow the instructions given in the said brochure while filling up the preference

form, but we are confronted with a student like the petitioner who has committed a gross mistake. Admitting that it is a gross mistake, the question is

whether it is so irretrievable that she deserves to be thrown out of the entire process. When we examined the matter from this angle and in light of the

submissions advanced by Shri Patwardhan, we have noted that the petitioner has secured All India Rank of 3178. She registered herself against the

Defence 3 quota within the prescribed time limit and was provided a login password for further operations. It is not in doubt that the petitioner was

found to be eligible in terms of the eligibility criteria prescribed by the respondent no.2 and entitled to claim a seat from the category of defence

(Def 3). In the backdrop of her eligibility on the basis of her placement in the NEET 2018, the name of the petitioner was included in the

provisional State Merit list published on 19th June 2018. The petitioner was thereafter called for verification of the documents at the stage of

document verification and she reported at one of the centres which she had chosen at the time of online registration. At that stage also, no fault was

found with her eligibility or her categorization from Defence 3 category. Subsequent to this, a revised provisional state merit list was published by

respondent no.2 on 26th February 2018. Perusal of the said list would reveal that it is prepared on the basis of the NEET All India Rank and the

students are arranged in a descending order on the basis of their score in NEET 2018. It also contains the CET Cell online form number of a

candidate, name of the candidate, category and the specified reservation claimed. The petitioner is placed at Serial No.2349 in the said list based on

her NEET All India Rank 31718 and against her name, the specified reservation is described as Def 3. Below the name of the petitioner, are the

candidates who are below in NEET All India Rank than the petitioner and necessarily they are the students who have secured less marks in the

examination than the petitioner. Thus, the revised provisional State merit list published by respondent no.2 on 26th February 2018 is based on the merit of a student and the marks secured in the NEET UG 2018. It is this stage at which the candidates preference to a particular course/college is to be considered and therefore, the students are required to fill online preferences. We have revised provisional State Merit list published by the respondent no.2 on 26th February 2018 based on the merit of a student and the marks secured in the NEET UG 2018. It is this stage at which the candidates preference to a particular course/college is to be considered and therefore, the students are required to fill online preferences. We have seen that Rule 10 of the selection process, that contemplates operation of the merit list as against the preference filled in by the students. When after the first round of the selection process on 4th July 2018, the respondent no.2 published the selection list, it operated the provisional merit list published on 26th June 2018 as against the preferences given by the respective students. It was based on the common State merit list and every student from the said merit list was allotted a college as per his preference. The petitioner was not allotted any college since there was no option available to her based on her merit in a college offering MBBS course since she has not opted for that and therefore, in the list, against her name, the remark "choice not available" was endorsed. Perusal of the said list would reveal that the merit of the petitioner, namely, All India Ranking 31718 is not altered and below the name of the petitioner are those candidates who have secured less marks than the petitioner. The next candidate in the list published on 4th July 2018 who takes the (Defence 3) seat is that All India Ranking 36832. Thus, it is clear that the list published on 4th July 2018 operates on the basis of the position of merit which has been consistently based on the NEET All India Ranking and which has not undergone any change. The petitioner has missed out her placement in the list dated 4th July 2018 only on the count that no choice of college was available since she did not opt for any college offering MBBS degree.

The submission of Mr.Patwardhan that if the petitioner is now permitted to participate, the meritorious students would be kept out of the arena, according to us, is not acceptable. In the first round of selection, the list has been declared on 4th July 2018 and the candidates were directed to report

on or before 12th July 2018. The second round of counselling is ongoing and the list, after conclusion of the second round is to be published on 27th

July 2018. It is not our intention to deprive any meritorious student of his/her claim and we have noted the submissions of Shri Patwardhan that out of

12 seats from DÂ3 category, 10 students have reported to the respective colleges on conclusion of first round of selection and now, there are only two

seats in DÂ3 category and there are 63 candidates claiming these two seats. We again reiterate that we have no intention of whatsoever nature to

deprive a meritorious candidate, but we are also very clear in our mind that all the candidates who claim in DÂ3 category quota were aware of their

merit position on the publication of the provisional State merit list of NEET UGÂ2018 on 19th June 2018 and this position was also reflected in the

revised provisional State merit list published on 26th June 2018. In view of the fact that the lists are displayed on the website and the students are fully

aware about their movement in the said process, each student gets a clear idea as to what is his score and what are his chances in getting into a

particular college of his choice, since he is also aware of the merit position and preferences of other students. A candidate from DÂ3 category who

would be considered in the second round is surely a candidate who is less in merit and lower in NEET All India Ranking than that of the petitioner,

since we have seen that a candidate lower in rank than that of the petitioner finds place on the DefenceÂ3 category seat in the list published on 4th

July 2018. Therefore, we do not think that any meritorious candidate who is higher in merit than the petitioner would stake a claim against that seat

when it is made available for the second round. Any candidate who is lower in merit than the petitioner cannot stake the claim as the All India Rank

Merit is the sole criteria for selection to a course and to secure a particular seat. Merely because the petitioner has erred and we emphasize grossly, in

filling the preference form, still the position remains that the merit secured by the petitioner would not be wiped and she cannot be thrown out of the

said process merely because of such an error, solely attributable to her. In any event, we are not pushing the petitioner into the round no.1 as that

round is already over and the students have taken their respective positions. However, we intend to introduce the petitioner in the second round and it

would be open for her only to exercise her choice/preferences in the seats which are vacant and where there is a reservation of DÂ3 category.

Moreso, when a further round of admission is indeed going to be held. That is to be held to ensure that no seat remains unfilled. Equally, any remaining or unfilled seats should not go less meritorious students ought to be the concern of the Authorities.

In such gross circumstances, and only in facts peculiar to this case, we expect the Authorities to take the requisite corrective steps. No precedent can be created by such a course for every mistake not attributable to the authorities but entirely to the candidates is incapable of being corrected if there are no further rounds or no vacant seat left at all. A bonafide exception can therefore be made only to redress the gross injustice to an otherwise meritorious candidate who is the daughter of a defence personnel. Hence, the fear that this course sets a precedent is baseless.

12 In such circumstances, we are of the clear opinion that since ranking of the candidate in NEET UG 2018 is the decisive factor in securing a seat

in a Health Science course and in a college of his/her choice, the petitioner who has incorrectly filled the preference/option form, deserves to be

granted an opportunity in the ongoing selection process by permitting her to fill in the option form and directing the respondent authorities to consider

her options for the MBBS colleges and operate the said options against the vacant seats available for the second round of selection/counselling. Since

it is informed to us that the second round of counselling is ongoing and the list is likely to be displayed on 26th July 2018, we direct the respondent no.2

to undertake the said exercise forthwith. Hence, we pass the following order :—

(i) The respondent no.2 —" Commissioner

Common Entrance Test Cell, is directed to permit the petitioner to offer her choice of preference in the MBBS course against the seats of MBBS

course in the second round of counselling.

(ii) We direct the respondent no.2 to consider the candidature of the petitioner, on the basis of the State merit list of NEET UG 2018 and operate the

preference/option given by the petitioner as against her merit. Position in the second round of counselling to the Health Science courses.

Writ Petition is allowed in the aforesaid terms. No order as to costs.