
(2011) 09 BOM CK 0178
In the Bombay High Court
Case No : W. P. No"s. 4551 and 4634 of 2011

Shreyash Khemuka

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Citation : (2011) 7 ALLMR 761 : (2012) 2 BomCR 368 : (2011) 6 MhLj 888

Hon'ble Judges : S.A. Bobde, J;M.N. Gilani, J

Bench : Division Bench

Advocate : Z.A. Haq in W.P. No. 4551 of 2011 A.S. Chandurkar in W.P. No. 4634 of 2011, for the Appellant; B.H. Dangre, Additional Govt. Pleader for respondent Nos. 1 and 2, J.B. Jaiswal for respondent No. 3, D.S. Raut for respondent No. 4 and N. Lalwani for respondent No. 6 in W.P. No. 4551 of 2011 Mrs. B.H. Dangre, Additional Govt. Pleader for respondent Nos. 1 and 2, J.B. Jaiswal for respondent No. 3, D.S. Raut for respondent No. 6 and N. Lalwani for respondent No. 8 in W.P. No. 4634 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—Rule returnable forthwith. Heard the learned Counsel for the parties finally by consent.

2. By these two Writ Petitions, students seeking admission to the MBBS Course having passed the MHT Common Entrance Test 2011 have prayed that the admission of respondent students who are admitted be cancelled and the respondent authorities be further directed to give admission to the petitioners. The controversy has arisen in respect of the admission to the course of M.B.B.S. for the year 2011 under the scheme for admission framed by the Directorate of Medical Education and Research of the Government of Maharashtra for admission to Government Medical Colleges in the State of Maharashtra. The Rules governing the said admissions are stated in the Brochure. They provide that in each Government College the intake capacity is to be filled up as follows :-

The first category is the All India Quota. This comprises of nominees of the

Government of India and students who have passed the All India Pre-Medical Test. Both types of seats are to be filled up by the Ministry of Health and Family Welfare, Government of India. A total number of 23 seats have been kept at the disposal of the Government of India vide Rule 1.1.2. Thereafter, 15% of the intake capacity of M.B.B.S. and B.D.S. Course are to be filled up by students who have passed the All India Pre-Medical Entrance Examination AIPMT quota. The broad second category comprises of seats to be filled up by the Competent Authority of the State of Maharashtra. This includes seats which remain unfilled after the seats meant for the Government of India nominees and the students who have passed the AIPMT are Filled up. These seats are required to be filled up as follows :--

3% are to be carved out for Physically Handicapped candidates. From the remaining seats, 30% are to be filled up by candidates from the State Merit List. These seats contain seats with constitutional reservation and female reservation as per Rules vide 1.1.4.1. The other 70% seats are to be filled up from colleges situated in the three divisions of Vidarbha, Marathwada and the Rest of Maharashtra and are broadly known as seats in the Regional Quota. These comprise of candidates who may have appeared in the State Competitive Examination but claim admission only in Regional colleges in either of the three regions into which Maharashtra is divided, i.e. Vidarbha Region, Marathwada Region and the Rest of Maharashtra. This category comprises of students who have passed the HSSC examination from the particular region, for instance, a student who has passed his HSSC from a school in Vidarbha is entitled to claim admission to a college which is situated in Vidarbha and so on for the other two Boards.

3. The present case arises in respect of seats which have fallen vacant or remained unfilled from the All India Quota meant for candidates who have passed the AIPMT. As a matter of fact, about 31 seats have fallen vacant from the All India Quota. 31 seats in 14 colleges in the State of Maharashtra have fallen vacant and have been surrendered to the State for being filled up. Rule 2.3.2 which regulates how these seats should be filled up reads as follows :--

2.3.2 : All India quota seats (15% AIPMT quota seats) surrendered back to the state shall retain their original character. Vacancies under GOI Quota shall be filled in by 30% OPEN category candidates.

The Rule does not prescribe anything further. It does not prescribe which authority shall fill up these seats, neither does it prescribe the specific manner in which these seats shall be filled up, that is to say whether the seats shall be subject to any quota based on region or constitutional reservation. The controversy in this petition arises in relation to the filling up of these seats. The DMER has filled up these seats by selecting candidates according to their merit in the State Merit List. He has not selected students from the waiting list in the regional quota.

4. Petitioners in both the petitions are students who have passed their HSSC from the Vidarbha region and have claimed admission to colleges in the Vidarbha region. According to the petitioners, they are in the list for regional candidates, which if operated will entitle them for admission to any of the colleges for which they have given preference in the Vidarbha Region. According to the petitioners, while filling up surrendered seats, the DMER is bound to fill up the surrendered seats from the Merit List of the State from the entire State as well as from the Regional Quota where they are placed. According to the petitioners, when filling up seats, in the first instance, the DMER is bound to fill up the seats available for being filled up by the State in the ratio of 30 : 70, i.e. 30% from the State Merit List and 70% from the Regional Quota, i.e. in the same manner the State Quota is originally filled up vide Rule 1.1.4 infra. Therefore, in the submission of the petitioner the DMER is bound to fill up the surrendered seats also in the same proportion, i.e. 30% from the State Merit List and 70% from the Regional Quota.

5. In support of this submission, Shri Z.A. Haq and Shri A.S. Chandurkar, learned Counsel for the petitioners, relied on Rule 1.1.4 which reads as follows:--

1.1.4 DISTRIBUTION OF SEATS TO BE ALLOTTED BY THE COMPETENT AUTHORITY :

After excluding the seats as provided in Para 1.1.2 and 1.1.3, the remaining seats will be at the disposal of the Competent Authority and available for candidates of the State for Selection in the following manner.

1.1.4.1 : Out of the seats at the disposal of the Competent Authority, 3% seats for physically handicapped candidates will be carved out. From the remaining seats, 30% of such seats will be made available for candidates from the State (State 30% quota) and these seats will be filled on the basis of State Merit List. There will be constitutional, specified (except defence quota seats) and female reservations in these seats as per rules.

1.1.4.2: Distribution of Seats in Regional 70% Quota. After the exclusion of State 30% quota seats mentioned at Para 1.1.4.1 the remaining 70% seats from the colleges situated in the respective Developmental Boards will be filled from amongst the candidates who have passed HSC (or equivalent examination) from the Schools/Colleges situated in the region of the concerned Development Boards, i.e. Rest of Maharashtra, Vidarbha and Marathwada. There will be constitutional, specified (except MKB quota seats) and female reservations for these seats as per rules.

The submission is that there is no other rule which prescribes the manner in which the Competent Authority shall fill up these seats and, therefore, the only way the Competent Authority can fill up seats is in the proportion of 30 to 70. In other words, the submission is that the seats remaining vacant from the All India Quota and surrendered should be filled up in the same manner as seats from the State Quota are filled up.

6. On behalf of the D.M.E.R., Mrs. B. H. Dangre, learned Additional Government Pleader for respondent Nos. 1 and 2, relies on Rule 2.3.2 (reproduced earlier) which reads as follows :--

2.3.2 : All India quota seats (15% AIPMT quota seats) surrendered back to the state shall retain their original character. Vacancies under GOI Quota shall be filled in by 30% OPEN category candidates.

According to the DMER, the surrendered seats were never with the State Government for being filled up according to the State Merit List or the Regional Quota. They are seats which belong to All India Quota for which students from the whole country qualify by appearing for and passing All India PMT. Though these seats are subject to constitutional reservation, their original character is openness and devoid of any provincial or regional reservation. Therefore, the surrendered seats have not been subjected to regional reservation because the introduction of such regional reservation would be contrary to the original character in which there is no regional reservation.

7. After considering the scheme of the rules, it seems that the difficulty has arisen because Rule 2.3.2 does not prescribe the manner in which the seats surrendered from the All India Quota back to the State shall be filled, The only guiding words are that the seats surrendered back to the State shall retain their original character. It is difficult to impose the requirement of Rule 1.1.4 which deals with the filling up of seats by the Competent Authority from the seats remaining after the All India Quota is filled up. In Rule 1.1.4 the Competent Authority is required to fill up the State seats in the ratio of 30% to 70% by filling up 30% from the State Merit List and filling up 70% from the Regional Quota. This Regional Quota is created in order to work out any regional imbalance and to provide opportunity for students from a particular region to seek admission and pursue his studies in a college in the same region from where he passed his HSSC examination. Thus, the character of these State seats covered by Rule 1.1.4 is different from the All India seats in which there are no considerations of removing any regional imbalance or providing any weightage or preference to those students who have passed their HSSC from a particular region. In fact, the purpose of the All India seats is to the contrary and that is to provide for admission to students in any part of the country wherever the students may have passed out from. Thus, the entire All India Quota does not provide for any division or weightage to any region. It may well be said that it is part of the original character of All India Seats that there is no consideration of any regionalism. In these circumstances, it appears that the decision of the DMER to fill up seats surrendered from All India Quota purely on the basis of merit as determined by the State Competitive Examination cannot be faulted. Though it is correct to say as contended on behalf of the petitioners that the DMER is not free to act arbitrarily and whimsically in the matter of filling up seats, in the present case no arbitrariness can be attributed to the action of the DMER in filling up these seats in accordance with the principle of merit. The

DMER cannot be said to have acted illegally or arbitrarily in taking the view that if the seats surrendered from the All India Quota are to be filled up according to their original character, then they should not be subjected to the breakup by introducing the regional reservation as contended by the petitioners, but only on the principle of merit. We are, therefore, of the view that for filling up seats under Rule 2.3.2, i.e. seats surrendered from the All India Quota, there is no requirement in any of the Rules to fill up the said quota from the State Merit List as well as the Regional Quota in the ratio of 30 : 70. This method of filling up State seats from the State Merit List and the Regional Quota is meant for seats meant to be filled up by the State after excluding the All India Seats in the first instance. This method prescribed does not govern the filling up of surrendered seats which may be filled up in accordance with the position of the candidates in the State Merit List as has been done in the present case. The Rules do not require that the seats remaining unfilled from the All India Quota should be filled up as if they are seats from the State Quota.

8. Mr. A. S. Chandurkar, learned Advocate for petitioner, submitted that the State seats must be filled up in the ratio of 30 : 70, i.e. if All India seats are filled up only on the basis of State Merit List, it would increase the quota of 30%. This submission proceeds on the basis that Rule 1.1.4 applies to the filling up of surrendered seats. In our view, filling up of the surrendered seats is not governed by Rule 1.1.4 but is governed exclusively by Rule 2.3.2.

9. We thus see no merit in these petitions which are hereby dismissed. Rule stands discharged with no order as to costs.