

(1992) 10 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 1972 of 1992

Sonia

APPELLANT

Vs

Maharashtra Institute of Technology and Others

RESPONDENT

Date of Decision : 20-10-1992

Acts Referred:

Citation : (1993) 95 BOMLR 826 : (1993) MhLj 1676

Hon'ble Judges : M.S. Vaidya, J;B.N. Deshmukh, J

Bench : Division Bench

Judgement

B.N. Deshmukh, J.—The petitioner after passing her XII standard examination, had applied for admission to 1st year M.B.B.S. Course in private Medical College. She belongs to Scheduled Caste being Mahar by caste, having secured 244 marks in the medical group.

2. For the year 1992-93, in all 1490 seats were available for admission in private Medical Colleges. Out of these, 20% seats are to be filled in by the candidates from Government quota. The total number of seats available in such Government quota of 20% were to the extent of 303.

3. Out of these 303 seats, 43 seats were available for Scheduled Castes; 18 seats were available for Scheduled Tribe; 15 seats were for V.J.N.T.; 31 seats were for Other Backward Classes, while 196 seats were available for candidates belonging to Open Category.

4. There Is no dispute that, for this year, out of 18 seats meant for Scheduled Tribe, only 2 seats could be filled in by Scheduled Tribe candidates, while 16 seats were vacant.

5. The distribution of these 16 vacant seats is the subject-matter of this petition. According to the Petitioner, she is at Sr. No. 1 in the waiting list of the entire State in the reserved category of Scheduled Caste to be admitted in the category of 20% Government quota in the Private Medical Colleges. The Petitioner is

claiming one of those 16 vacant seats, which could not be filled in because of the non-availability of S.T. category candidates.

6. These 16 vacant seats are already filled in by admitting 11 students belonging to O.B.C. category and 5 candidates belonging to V.J.N.T. category.

7. The claim of the Petitioner will have to be considered in the background of the relevant Rules. The Government has framed separate Rules regarding admission of candidates in the 20% Government quota in the private medical colleges. Rule 6 of these Rules deals with reservation. It is not necessary to consider the whole of rule 6 regarding the present controversy. The relevant part of the rule which deals with the re-allocation of vacant seats from any of the reserved categories is as follows :-

The following criteria shall be adopted in respect of vacant seats of SC, ST, VJNT and OBC under rural and urban areas :-

(i) Vacant seats under any of the four categories (SC/ST/DTNT and OBC) in rural area may be filled in by students of the same category in urban area and vice versa of the same university areas.

(ii) If in spite of (i) above seats remain vacant in these four categories, they may be filled in from students of same category of other university areas of the State with reference to inter se merit.

(iii) Seats remaining vacant in rural area in spite of (i) and (ii) above may be filled in from other category students of the urban area and vice versa.

(iv) Seats remaining vacant in spite of (i)(ii) and (iii) may be filled in from other category students in the State with reference to their inter se merit.

The same criteria should be followed in respect of seats vacant under SC, ST, VJNT and OBC under urban area.

8. The learned Assistant Government Pleader relying on the provision of these Rules contended that for filling in 16 vacant seats belonging to S.T. category a common merit list thereafter was prepared of candidates belonging to OBC, SC and VJNT. In that common list, 16 candidates were given admission on the basis of merit. According to him, it so happened in such a common merit list that 11 candidates belonging to OBC and 5 candidates belonging to VJNT were at Sr. Nos. 1 to 16 and, therefore, they were given admission. He has further stated that the last candidate admitted in this category secured 260 marks, while the petitioner has secured only 244 marks.

9. Shri G.M. Jadhav, learned Counsel for the Petitioner, contended that the rule as framed and as implemented is in violation of the ratio laid down by the Larger Bench of this Court in the case of *Ku. Sunanda Maniklal Mutha v. The State of Maharashtra* : (1979)81BOMLR149 . According to him, as already 10 per cent of OBC candidates are given admission, none of the candidates from the OBC category is entitled to be considered thereafter for admission in reserved quota

in excess of already filled in candidates. The candidates belonging to OBC category cannot be considered in reserved quota beyond 10 per cent. Thereafter, they will have to be considered on par with the open category candidates without any reservation. The candidates belonging to SC, ST and VJNT categories alone can exceed their percentages from 13,7 and 4 per cent, respectively upto 40 per cent, of the total number of seats.

10 . In view of the ratio laid down by the larger Bench in Kumari Sunanda's case (supra) when actually 10 per cent, of OBC candidates are already admitted, further OBC candidates could not have been considered in a reserved category even to fill in a seat falling vacant from other reserved categories, as the OBC candidates cannot be considered for admission in a reserved quota in excess of their 10 per cent. The percentage can be exceeded in reserved category in favour of other 3 categories, namely, SC, ST and VJNT only upto 40 per cent, of the total number of seats.

11. Shri Jadhav further invited our attention to the rules framed by the Government regarding admission to the medical colleges of the Government of Maharashtra for the year 1992-93. These Rules are framed on the basis of ratio laid down in Kum. Sunanda's case (supra).

12. The rules framed for admission to private medical colleges regarding the reservation and filling in the vacant seats are not in conformity with the rules framed for admission to the medical colleges of the Government of Maharashtra and in the light of the decision in Kum. Sunanda's case (supra).

13. There is no doubt that the rules so framed and as implemented are in violation of the decision of this Court in Kumari Sunanda v. State (supra). The rules are also at variance with the rules framed for admission to Government medical colleges in the State, more particularly so regarding the vacant seats to be filled in from the reserved categories. In the present case, the undisputed chart supplied to us at page 9A of the Paper Book shows that more than 10 per cent, of seats are already filled in by OBC candidates. 31 such candidates in that reserved category are admitted as against total number of 303 seats. The quota of 10 percent of OBC candidates is exceeded by O .23%. No candidate belonging to OBC category should have been considered in the reserved category for filling in the subsequent vacant seats from the reserved category, as after the completion of 10% quota, the candidates belonging to OBC category will have to be treated on par with open category candidates.

14. If the beneficial construction is to be given to the rule regarding filling in the vacant seats from reserved quota in favour of the reserved candidates only, then the OBC candidates should have to be excluded along with open category candidates for considering the 16 vacant seats from the ST category. The rule if so construed in favour of the reserved categories" candidates in the light of the decision in Kumari Sunanda's case, the common merit list should have been prepared for filling the 16 vacant seats of candidates belonging to SC and VJNT

categories, excluding the candidates from OBC category and 16 seats should have been allotted to the candidates of these two categories, viz., SC and VJNT on the basis of merit by preparing the common merit list of candidates of these two categories only. Instead of doing that, the authorities have prepared the common merit list including the OBC candidates. The 11 candidates who are admitted against these 16 vacant seats were, in fact, not entitled to be admitted. All these 11 seats should have been made available to the candidates belonging to SC and VJNT categories only in accordance with their inter se merit.

15. As the list is prepared in violation of the law laid down by this Court, in our opinion injustice is caused to the candidates belonging to SC and VJNT categories. However, we make it clear that none of the candidates admitted to fill in 16 vacant seats is made party to the petition. Therefore, we cannot consider cancellation of admission of these candidates. At the same time, we cannot overlook the fact that injustice is done to at least 11 candidates from SC and VJNT categories though they were the rightful claimants for the said seats.

16. We are not expressing any opinion at this stage regarding validity of any rule, if made, about filling in of the vacant seats by including the open category and/or OBC category candidates along with other candidates. Our observations are merely to the extent that OBC candidates admitted after filling in 10% quota who are required to be considered on par with open merit candidates.

17. As the matter relates to admission of 11 seats to 1st year M.B.B.S. course, the matter is of importance when we find that there is a keen competition going on for each and every one of the seats.

18. We, therefore, direct the Respondent Nos. 2 and 3 to prepare a fresh merit list of left out candidates belonging to only SC and VJNT candidates to fill in 11 seats, as 5 seats are already filled in by the candidates belonging to VJNT category, and, after preparing such list, the admissions shall be offered to all those 11 candidates in accordance with merit for the 1st year MBBS course, even by creating additional seats. Such admission shall be finalised within a period of one month from the date of receipt of writ of this Court. If the Petitioner stands in the merit list so prepared the claim of the Petitioner shall be considered on the basis of such merit list.

19. With these directions, the writ petition is disposed of. Rule made absolute accordingly. There shall be no order as to costs.