

(2009) 08 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 3348 of 2009

V. Anto

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Central Educational Institutions (Reservation in Admission) Act, 2006 — Section 2(d), 2(d)(iii)
Constitution of India, 1950 — Article 226, 335
University Grants Commission Act, 1956 — Section 3, 4

Citation : (2009) 111 BOMLR 3764

Hon'ble Judges : Ranjana Desai, J; A.A. Sayed, J

Bench : Division Bench

Advocate : G.S. Hegde, instructed by T.J. Pandian, for the Appellant; D.J. Khambatta, A.S.G., S.V. Bharucha, R.V. Govilkar and A. Patil, for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—Rule. The respondents waive service. By consent of the parties, taken up for hearing forthwith.

2. In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed that the respondents be directed to consider the candidature of the petitioner for admission to the MBBS Degree course under Other Backward Class Category (for short, "the OBC") quota in the ensuing academic year in the Armed Forces Medical College, Pune [for short, "AFMC, (Pune)"].

3. The petitioner claims to belong to the OBC. On 17/1/2008, the petitioner applied for Entrance Examination for the admission to the MBBS Degree course in the General Category. He appeared for the written test for the Entrance Examination on 4/5/2008. On 17/5/2008, he sent a letter to respondent 2 i.e. the Director & Commandant, Officer-in-charge, Admission Cell, AFMC, Pune, requesting him that his candidature may be considered under the OBC

reservation quota for admission to the MBBS Degree course. Since, the petitioner did not receive any reply, on 2/6/2008, he made an application under the Right to Information Act, 2005 (for short, "the RTI Act") asking respondent 2 to furnish necessary information to him. The petitioner had also made an application dated 19/6/2008 to the Officer-in-charge under the RTI Act under the Ministry of Personnel and Training asking for specific information as to whether 27% reservation to the OBC students for admission in the MBBS Degree course during the year 2008 is applicable to the AFMC, Pune. According to the petitioner, the Under Secretary to the Government of India, Ministry of Personnel & Training vide his letter dated 3/7/2008 advised him to approach the Ministry of Human Resource Development (for short, "the HRD Ministry").

4. By letter dated 8th July, 2008, the Public Information Officer of the respondents informed the petitioner that paragraphs 14 and 27 of the prospectus provide for reservation for Scheduled Caste / Scheduled Tribe (for short, "the SC / ST") and not for the OBC. The petitioner received letter dated 5/8/2008 from respondent 1 stating that 27% reservation for OBC candidates is not applicable for admission to the MBBS course 2008 at AFMC, Pune as per prevailing instructions.

5. Thereafter, the petitioner sent application dated 13/8/2008 to the HRD Ministry and called for additional information. By letter dated 12/9/2008, the HRD Ministry informed the petitioner that the Central Educational Institutions (Reservation in Admission) Act, 2006 (for short, "the said Act") was applicable to all the Central Educational Institutions established, maintained or aided by the Central Government. The letter further stated that all the Central Government Departments / Ministries are competent for the implementation of the reservation for admission to the Central Educational Institutions under their purview. With this information, the petitioner addressed letter dated 22/9/2008 to the Director General Hospital Services (Armed Forces) being the Appellate Authority & CPIO of Ministry of Defence under the RTI Act seeking information as to whether in view of the information furnished by the HRD Ministry, Department of Higher Education, admission to the MBBS Degree course, 2008 in AMFC, Pune should be granted to the petitioner under OBC reservation quota or not. There was no proper response to this query. The Director General Hospital Services (Armed Forces) & Appellate Authority vide his letter dated 3/11/2008 informed the petitioner that he had directed the CPIO to furnish the address of the Central Information Commissioner to the petitioner. No answer was given to the petitioner's specific question. The petitioner has, therefore, filed this writ petition.

6. The main question raised in this writ petition is whether pursuant to the enactment of the said Act, there must be 27% reservation to the OBC candidates for admission to the MBBS Degree course in AFMC, Pune and, if yes, whether the petitioner's candidature should have been considered under the OBC quota for admission to the MBBS course in AFMC, Pune.

7. We have heard Mr. Hegde, learned Counsel appearing for the petitioner. He

drew our attention to the preamble to the said Act and submitted that the said Act, inter alia, aims at providing reservation to the OBC citizens to certain educational institutions established, maintained or aided by the Central Government. Mr. Hegde submitted that AFMC (Pune) is aided by the Central Government and as such is covered by the said Act and, therefore, the policy of reservation will undoubtedly apply to it. Mr. Hegde pointed out that Section 4 of the said Act contains exemptions. If the legislature wanted to exempt AFMC (Pune), it would have specifically covered it by the Schedule to Section 4(b). He submitted that inasmuch as AFMC (Pune) is not covered by the Schedule to Section 4(b), it is not exempted. Mr. Hegde submitted that Clause 27 of the prospectus of the AFMC (Pune) provides for reservation to SC/ST candidates. Therefore, there is no reason why OBC candidates should not get the benefit of the reservation policy in respect of seats in AFMC (Pune). Mr. Hegde relied on the letter dated 12/9/2008 sent by the HRD Ministry to the petitioner. Mr. Hegde submitted that in the circumstances, this is a fit case where direction should be given to AFMC (Pune) to consider the candidature of the petitioner for admission to the MBBS Degree Course under the OBC quota.

8. Mr. Khambatta, learned Additional Solicitor General appearing for the respondents, on the other hand, submitted that AFMC (Pune) is not governed by the said Act. He submitted that it does not fall in any of the categories mentioned in Section 2(d). With particular reference to Sections 2(d)(iii) and (iv) of the said Act, Mr. Khambatta submitted that the word "and" mentioned therein must be given its ordinary meaning and should be understood in a conjunctive sense and, therefore, both the conditions mentioned therein must be present before an institution can be called Central Educational Institution within the meaning of the said Act. In this connection, Mr. Khambatta relied on *Maharaja Sir Pateshwari Prasad Singh Vs. State of Uttar Pradesh*, . Mr. Khambatta submitted that AFMC (Pune) does not fulfill both the conditions contemplated under Sections 2(d) (iii) and (iv). Mr. Khambatta submitted that since the said Act is not applicable to AFMC (Pune), there is no question of AFMC (Pune) being exempted under the provisions of the said Act. Mr. Khambatta submitted that AFMC (Pune) is an institution of national importance. It is a training institute. It is not like any other ordinary medical college. In this connection, Mr. Khambatta drew our attention to the affidavit of Lt. Col. N.G. Kamat, Officiating Administrative Officer for Commandant. Mr. Khambatta submitted that AFMC acts as a training establishment for medical cadets for commission as officers in the Armed Forces and, hence, reservation policy is not applicable to it. He drew our attention to the judgment of the Supreme Court in *Indra Sawhney etc. etc., v. Union of India and Ors. etc. etc.* AIR 1993 SC 447 where the Supreme Court has stated that in defence services and in the establishments connected therewith, there are no reservations and merit is the only criteria for admission therein. Mr. Khambatta submitted that, therefore, the petition be rejected. 9. The preamble to the said Act states that it is an Act to provide for the reservation in admission of the students belonging to the SC/ST and OBC of citizens, to certain Central

Educational Institutions established, maintained or aided by the Central Government and for matters connected therewith or incidental thereto. Thus, this Act aims at providing reservation inter alia, to OBC citizens to certain Central Educational Institutions established, maintained or aided by the Central Government. For an institution to be covered by the said Act, it must fall in any of the categories mentioned in Section 2(d) of the said Act. Section 2(d) reads as under :

2. Definitions. -In this Act, unless the context otherwise requires,

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(c) xxx xxx xxx xxx

(d) "Central Educational Institution" means

(i) a university established or incorporated by or under a Central Act;

(ii) an institution of national importance set up by an Act of Parliament;

(iii) an institution, declared as a deemed University u/s 3 of the University Grants Commission Act, 1956 (3 of 1956) and maintained by or receiving aid from the Central Government;

(iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in Clause (i) or Clause (ii), or a constituent unit of an institution referred to in Clause (iii);

(v) an educational institution set up by the Central Government under the Societies Registration Act, 1860 (21 of 1860).

10. In our opinion, AFMC (Pune) does not fall in any of the sub-clauses of Section 2(d) of the said Act. AFMC (Pune) does not fall in Section 2(d)(i) because it is not an University established or incorporated by or under a Central Act. Clause (2) of the prospectus shows that it is affiliated to Maharashtra University of Health Sciences, Nashik, which is a State Act. It is merely recognized by the Medical Council of India. It is not established or incorporated by the Medical Council of India. AFMC (Pune) is also not covered by Section 2(d)(ii) of the said Act because though it is an institution of national importance, it is not set up by an Act of Parliament. Mr. Khambatta, learned ASG has confirmed this. AFMC (Pune) is not covered by Section 2(d)(v) because it is not an educational institution set up by the Central Government under the Societies Registration Act, 1860.

11. Before we turn to Section 2(d)(iii) and (iv), it is necessary to refer to the judgment of the Supreme Court in Maharaja Sir Pateshwari Prasad Singh's case (supra) to understand whether the word "and" appearing in Sections 2(d)(iii) and (iv) of the said Act should be given its ordinary meaning and understood in a conjunctive sense or not. In that case, the Supreme Court was concerned with Rule 17 of the Uttar Pradesh Agricultural Income Tax Rules. It reads thus:

17. Sums paid by an assessee as donations to any institution or fund which is established in the Uttar Pradesh for a charitable purpose and is approved by the State Government for the purpose of the rule shall be exempt from liability to agricultural income- tax. . .

Explanation. -In this rule `charitable purpose" includes relief of the poor, education, medical relief and the advancement of any object of general public utility.

12. The appellant therein wanted to get exemption for the charities made by him which satisfied the definition of "charitable purpose" in Explanation to the rule. However, the funds and institutions on which the benefit of the charities had been conferred had not been approved by the State Government. The contention of the appellant was that the word "and" in the body of the rule should be read as "or". It was contended that the approval by the Government is provided for in the rule only to avoid disputes later as to whether the institution or fund not so approved is for a charitable purpose within the meaning of the rule. According to the appellant, where the institution or fund is clearly for a charitable purpose as mentioned in the Explanation, the approval becomes unnecessary and it is useful only in doubtful cases. It was his case that the word "approved ... for the purpose of the rule" only mean "approval for the purpose of acceptance of the institution as having a charitable purpose within the rule" so as to avoid any controversy later. While considering these contentions, the Supreme Court observed that normally the word "and" should be given its ordinary meaning and should be understood in a conjunctive sense. So understood, the rule would require not only that the payment should be to an institution or fund established for a charitable purpose but that institution or fund must also be approved by the State Government for the purpose of the rule i.e. as an institution donation to which would entitle the donor to exemption from agricultural Income Tax. In our opinion, the ordinary meaning given to the word `and" in Maharaja Sir Pateshwari Prasad Singh's case must be given to the word `and" appearing in Sections 2(d)(iii) and (iv) of the said Act making fulfillment of both the conditions set out therein mandatory for an institution to qualify for coverage of the said Act. So read, we find that AFMC (Pune) is not covered by Section 2(d)(iii) of the said Act because it is not an institution declared as a deemed University u/s 3 of the University Grants Commission Act, 1956 though it receives aid from the Central Government. To fall u/s 2(d)(iii) of the said Act, both the conditions must be present i.e. it must be an institution declared as a deemed University and it must be maintained by and receiving aid from the Central Government. Since one of the conditions is not fulfilled, it is not covered by Section 2(d)(iii) of the said Act. AFMC (Pune) is also not covered by Section 2(d)(iv) of the said Act because it is not affiliated to an institution referred to in Clause (i) or Clause (ii) nor is it a constituent unit of an institution referred to in Clause (iii). Therefore, though it is receiving aid form the Central Government, since it does not fulfill the second condition contained in Section 2(d)(iv) of the said Act, it is not covered by it. Thus, by no stretch of imagination can it be said that AFMC (Pune)

is a Central Educational Institution within the meaning of the said Act.

13. Section 3 of the said Act provides for reservation of seats in Central Educational Institutions. Section 3(iii) states that out of the annual permitted strength in each branch of study or faculty, twenty-seven per cent seats shall be reserved for the OBC. Section 4 states the Institutions to which provisions of Section 3 do not apply. Schedule to Section 4(b) contains names of institutions of national excellence, research institutions, institutions of national and strategic importance which are exempted. It is true that AFMC (Pune) is not mentioned therein. However, the petitioner cannot draw any support from this fact because if the said Act itself is not applicable, there is no need to have any provision exempting it from its application. If AFMC (Pune) is not covered by the said Act i.e. if Section 3 does not apply to it then, there is no question of exempting it u/s 4 thereof. It is not possible for us to hold that since there is a provision stating institutions which are exempted from the application of the said Act, those institutions which do not fall under exempted category, must be held to be necessarily covered by the said Act. That is because to be covered by the said Act, they must fall under sub-clauses of Section 2(d). If they do not, there is no question of the said Act being applicable to them. Though HRD Ministry has in its letter dated 12/9/1988 stated that the said Act is applicable to all Central Educational Institutions established, maintained or aided by the Central Government, the above fair interpretation of the relevant provisions of the said Act indicates that AFMC (Pune) is not covered by the said Act.

14. In affidavit in reply filed by Mr. N.G. Kamat, Officiating Administrative Officer for Commandant, it is stated that AFMC (Pune) is a training establishment for medical cadets for commission as officers in the Armed Forces. It is necessary to state the history of AFMC (Pune) which is narrated in the affidavit of Mr. Kamat. AFMC (Pune) was similar to any other medical college affiliated to the University of Pune till January, 1989. Therefore, the selection of the candidates / applicants was on the same basis like any other medical colleges. Only a few students would opt for joining the Armed Forces as Medical Officers and a large number of students would opt for civil life after completing the course successfully. Therefore, some changes were recommended and accepted. The Government of India, granted approval and sanction for establishment of undergraduate wing at AFMC, Pune vide Government of India, Ministry of Defence letter dated 4/7/1962. The students studying at AFMC (Pune) were granted status similar to cadets of IMA/NDA/OTA as sanctioned vide Government of India, Ministry letter dated 7/12/1976. As a consequence, the AFMC, Pune ceased to be like any ordinary medical college and it was treated and, in fact, it functioned and operated as a training institute, like National Defence Academy, Military College of Engineering, Indian Military Academy, Officers Training Academy, etc. From January, 1989 onwards, AFMC, Pune is providing undergraduate degree course in medicine to the students who wish to join and serve the country as commissioned medical officers in the Armed Forces Medical Services (Army, Navy and Air Force). The selection is based on merits through All India Competitive

Examination conducted and controlled by the Director General, Armed Forces Medical Services, New Delhi. The successful candidates are interviewed and only a top few 130 students (105 boys and 25 girls) and a few foreign cadets nominated from friendly countries by Ministry of External Affairs are selected after a strict medical examination of fitness. Those who are selected, do not have option not to join the Armed Forces. They are required to give an undertaking to the effect that they would join the defence services.

15. So far as HRD Ministry's letter dated 12/9/2008 on which Mr. Hegde has placed reliance is concerned, it is stated in the affidavit that though by the said letter HRD Ministry has communicated that reservations prescribed under the said Act are applicable to all Central Educational Institutions, established, maintained or aided by the Central Government, training institutions like the National Defence Academy, Indian Navalship Shivaji, Indian Military Academy, Officers Training Academy, College of Military Engineering and AFMC (Pune) are institutions which are meant for recruiting commissioned officers in the Armed Forces and, therefore, there has never been any reservation in them because they cannot be compared with the other Central Educational Institutions run by the Government.

16. It is contended by Mr. Hegde that the stand of the respondents that there is no reservation in AFMC, Pune is belied by Clause 27 of its prospectus. Indeed, Clause 27 provides for reservation for SC/ST candidates. It reads thus:

SC/ST CANDIDATES:

27. The following procedure will be followed for admission of SC/ST candidates against the reserved seats:

- (a) The SC/ST candidates must qualify in the written examination and come within the zone to be called up for interview.
- (b) They must come within the first 500 in the final combined merit list of boys and girls.
- (c) They must fulfill all other conditions/standards insofar as age, academic qualification, medical fitness, and so on are concerned as applicable to non SC/ST candidates.
- (d) These reserved seats will be in addition to any vacancies secured by SC/ST candidates on the basis of their position on the merit lists.
- (e) If any SC/ST girls / boys are admitted against reserved vacancies the number of girls/boys to be admitted against the general seats will be reduced correspondingly.
- (f) All such candidates will have to sign a bond on the same lines and on the same conditions as other candidates.

17. Clause 27, while providing for reservation imposes stringent conditions on

the candidates. It requires the candidates to qualify in the written examination and to come within the zone to be called for interview. It requires the candidates to come within the first 500 in the final combined merit list of boys and girls. Conditions imposed in Clause 27 are for the purpose of maintaining certain educational standard in the AFMC, Pune, obviously because, it has a great relevance to the defence of India. Upon analysis of various provisions of the said Act, we have already reached a conclusion that the said Act does not cover AFMC (Pune). In spite of this, if AFMC (Pune) has chosen in its discretion to provide for reservation for SC/ST candidates, we cannot opine on that. As to why similar provision is not there for OBC candidates is not for us to say. As the matter stands today, the said Act being not applicable to AFMC, Pune, we cannot by judicial fiat direct AFMC, Pune to reserve seats for OBC candidates. So far as the petitioner's prayer that AFMC (Pune) be directed to admit him to the MBBS Degree course under the reservation quota for OBC is concerned, we may only add at this stage that he scored only 17.5 marks out of 200 and, therefore, could not come in final merit list for interview and medical examination.

18. In this connection, we may refer to the judgment of the Supreme Court in *Indra Sawhney*'s case where the Supreme Court was considering the reservation policy. The Supreme Court referred to Article 335 of the Constitution which refers to claims of SC/ST to services and posts. The Supreme Court expressed that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit alone counts and in such situations, it may not be advisable to provide for reservations. The Supreme Court gave certain examples like technical posts in research and development organizations / departments / institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. The Supreme Court further observed that similarly, in the case of posts at the higher echelons e.g. Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable. The Supreme Court referred to Memorandum dated 13/8/1990 which applies to the rule of reservation to "civil posts and services under the Government of India" only and observed that this means that defence forces are excluded from the operation of the rule of reservation though it may yet apply to civil posts in defence services. The Supreme Court expressed that in certain services and in respect of certain posts, application of the rule of reservation may not be advisable. The Supreme Court noted some of those instances as (1) Defence Services including all technical posts therein but excluding civil posts, (2) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishments engaged in production of defence equipment, (3) Teaching posts of Professors - and above, if any, (4) Posts in super- specialities in Medicine, engineering and other scientific and technical subjects, (5) Posts of pilots (and co-pilots) in Indian

Airlines and Air India. The Supreme Court clarified that the list given above is merely illustrative and not exhaustive.

19. Mr. Khambatta, learned Additional Solicitor General has rightly drawn support from the above observations of the Supreme Court. Since AFMC, Pune, is a training institution, which trains medical cadets for their recruitment as commissioned officers in the Armed Forces, reservation policy cannot be imposed on it by the court. In the circumstances, the respondents cannot be directed to consider the candidature of the petitioner for admission to the MBBS Degree Course under the OBC quota for the ensuing Academic Year 2009 in AFMC (Pune). The petition is dismissed.