
(1991) 02 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 2685 of 1990 alongwith W.P. No. 2812 of 1990

Vinod Kumar Ramlalji Jaiswal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1991) 93 BOMLR 107

Hon'ble Judges : M.S. Deshpande, J;B.U. Wahane, J

Bench : Division Bench

Judgement

M.S. Deshpande, J.—These two writ petitions under Article 226 of the Constitution are directed against the refusal of the respondent No. 2 to consider the petitioners for admission respectively in the post graduate degree course in Sharir Rachana and the Diploma Course in Agad Tantra, though they had admittedly secured a higher percentage of marks than the respondent No. 4 in both the petitions, who had been admitted.

2. Though Shri Trivedi, learned Counsel for the respondent No. 2, stated initially that the fact that higher percentage of marks had been obtained by the petitioners than the respondents No. 4 in the two cases, was not admitted, it is apparent from the return filed in the two cases that there is no dispute about the fact that the two petitioners had secured higher percentage of marks than the respondents No. 4, and if merit were the criterion they should have been preferred for admission to the respondents No. 4.

3. Shri Trivedi urged that the respondent No. 2 acted on Rule 5(a) which relates to reservation of seats and prescribes that 5% seats or minimum one seat of the total seats available for registration for post graduate course in all the subjects taken together shall be reserved for the eligible candidates who pass from other institutions in Maharashtra where facilities for post-graduate studies are not available and provided his/her name appears at the merit list of selected candidates. In his submission, the rule has been scrupulously followed and 5 per

cent of the seats available for admission have been filled from the category provided for and the others could not be considered for admission.

4. Admittedly, the petitioners and the respondents had appeared at the same examination. There could not therefore, be any question of different standards having been applied for deciding the merits of the petitioners and the respondent No. 4. In para. 13 of the return of the respondent No. 2 institution, it has been stated as follows:

Many students of the respondent No. 2 College had applied for admission to M.D. Course in Govt. Ayurvedic College and though they had secured higher number of marks in the concerned subject, they were not considered for admission. This had enraged the students of the College and they had threatened that if any student from Govt. Ayurvedic College was admitted to the respondent No. 2, they would not allow the students to attend the College and agitate against their admissions. In view of the attitude of the Authority of Govt. Ayurved College in not admitting the students of the respondent No. 2 College, though they were otherwise entitled, has resulted in the instant situation. The petitioner was not at all considered in view of the above fact. This respondent submits that even according to the Rules, the petitioner was a student from oilier Institution, and could not be granted admission, except in the 5% quota of other Institutions.

5. While considering Rule 4(A) framed by Bombay Municipal Corporation and Rule 5 of the Maharashtra Government Resolution, dated June 18, 1971, providing college-wise institutional preference for post-graduate degree and diploma courses, the Supreme Court pointed out in Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, that when the University is the same for all colleges, the syllabus, the standard of examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same university, except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions. In such circumstances, college wise institutional preference cannot be supported. Rule 5(a), on which reliance was placed, cannot, therefore, support the action of the respondent No. 2 and would have to be struck down as violative of Article 14 of the Constitution, to the extent it excludes the students from the colleges from the same university, who have taken the same examination, from competing for admission.

6. The next contention was that the remedy which was available to the petitioners under Rule 13 of the Rules, had not been pursued. Under Rule 13(a), a merit list has to be displayed on the notice board in the institution at least three clear working days of the college to the date of interview, and it will be the responsibility of the applicant to see the merit list on the notice board, and any appeal against the merit list must be made by the candidate only to the Dean of the institution concerned within two working days of the college from the date of declaration of the merit list. It is difficult to see how this rule can be pressed into service on behalf of the respondent No. 2, because admittedly, the petitioners

were not to be considered for admission because of Rule 5(a) which provided for a reservation of 5 per cent. We see no merit in the second contention raised on behalf of the respondent No. 2

7. Shri Trivedi urged that in the event of our holding that the admission given to the respondents No. 4 was improper in each of the two cases, they should be allowed to continue, because they have received instruction from November, 1990, and that they should be allowed to keep terms upto April 1991 when the examination would take place. We find that the request is justified, but if it is necessary to waive the rules for allowing the petitioners to be admitted and for respondents No. 4 to be continued, we direct the respondent No. 3 to waive the objections under those rules.

8. In the result, we direct the respondent No. 2 to admit the petitioners to their respective courses with the above directions. There will be no order as to the costs of both the petitions.