

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8853 OF 2018

KUNAL LOTAN CHINCHORE Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER Respondents

...

Advocate for Petitioner : Mr. Vijay Sharma

...

WITH

WRIT PETITION NO. 9623 OF 2018

NILESH ATAMARAM CHAVAN AND OTHERS Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER Respondents

...

Advocate for Petitioners : Mr. S.M. Kamble

...

WITH

WRIT PETITION NO. 9625 OF 2018

MIR SAKINA MIR MOHTASHIM ALI Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS Respondents.

...

Advocate for Petitioner : Mr. R.R. Suryawanshi

...

WITH

WRIT PETITION NO. 9638 OF 2018

PRATIKSHA PANDURANG SANAP Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS Respondents

...

Advocate for Petitioners : Mr. G.K. Kshirsagar

WITH

WRIT PETITION NO. 9639 OF 2018

RUTUJA ASHOK RAHATE Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS Respondents

...

Advocate for Petitioner : Mr. G.K. Kshirsagar

...

WITH

WRIT PETITION NO. 9640 OF 2018

SONALI TARASING SABLE Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER Respondents

...

Advocate for Petitioner : Mr. A.V. Rakh

....

WITH

WRIT PETITION NO. 9641 OF 2018

AJAY TUKARAM SHELAR Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER Respondents

...

Advocate for Petitioner : Mr. A.V. Rakh

...

WITH

WRIT PETITION NO. 9642 OF 2018

BALAJI SOPANRAO MUNDE Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER Respondents

...

Advocate for Petitioners : Mr. A.V. Rakh

...

WITH

WRIT PETITION NO. 9643 OF 2018

PANKAJ PANDITRAO KACHAVE Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Respondents

...
Advocate for Petitioners : Mr. A.V. Rakh

WITH

WRIT PETITION NO. 9644 OF 2018

GANESH SHANTOSHAPPA DANGE

Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

...
Advocate for Petitioner : Mr. A.V. Rakh

...
WITH

WRIT PETITION NO. 9645 OF 2018

ADHOKSHAJ APPA GARANDE

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents.

...
Advocate for Petitioners : Mr. A.V. Rakh

...
WITH

WRIT PETITION NO. 9646 OF 2018

GHOLAP ASHWINI VINOD

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

...
Advocate for Petitioner : Mr. A.V. Rakh

...
WITH

WRIT PETITION NO. 9647 OF 2018

ANVI BALU PATIL

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

...
Advocate for Petitioner : Mr. A.V. Rakh

...

WITH

WRIT PETITION NO. 9648 OF 2018

ANKITA RAJENDRA CHAUDHARI

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Rakh

WITH

WRIT PETITION NO. 9649 OF 2018

HARSHAL SOMNATH SHINDE

Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Rakh

WITH

WRIT PETITION NO. 9650 OF 2018

ANUSHKA ASHOK GODGHATE

Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Rakh

WITH

WRIT PETITION NO. 9680 OF 2018

SUPRIYA NANASAHEB GHAYAL

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Phad

WITH

WRIT PETITION NO. 9681 OF 2018

ROHINI SANJAY DHAKANE

Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Phad

WITH

WRIT PETITION NO. 9682 OF 2018

SAYED NASIR UDDIN SYED MUBEEN

THROUGH GUARDIAN

SYED MUBEEN SYED YASEEN

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Respondents

Advocate for Petitioner : Mr. Z.M. Pathan

WITH

WRIT PETITION NO. 9683 OF 2018

SHREERAJ MANOJK NIKAM

Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Respondents

Advocate for Petitioner : Mr. R.V. Gore

WITH

WRIT PETITION NO. 9684 OF 2018

ANIKET SURYABHAN DIGHE

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Rakh

WITH

WRIT PETITION NO. 9685 OF 2018

PRAJAKTA PRAKASH GAVIT

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Rakh

WITH

WRIT PETITION NO. 9686 OF 2018

PRANJAL ISHWAR RAJPUT

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. A.V. Rakh

WITH

WRIT PETITION NO. 9687 OF 2018

MEHVISH FATEMA MUJAHED FAROOQUI

Petitioner

VERSUS

THE UNION OF INDIA AND OTHERS

Respondents

Advocate for Petitioner : Mr. S.S. Kazi

WITH

WRIT PETITION NO. 9688 OF 2018

SHUBHAM SHANTILAL GORE

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. S.M. Kamble

WITH

WRIT PETITION NO. 9689 OF 2018

PRIYANKA PARAMESHWAR TIDKE

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Respondents

Advocate for Petitioner : Mr. S.M. Kamble

WITH

WRIT PETITION NO. 9700 OF 2018

ROHIT SURESH BADE

Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Respondents

Advocate for Petitioner : Mr. G.K Kshirsagar

WITH

WRIT PETITION NO.9793 OF 2018

Rahul S/o Shivdayal Mahajan

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr. S.M. Kamble advocate for petitioner.

WITH

WRIT PETITION NO.9762 OF 2018

Sanghamitra D/o Madam Wavhale

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr. S.M. Kamble advocate for petitioner

WITH

WRIT PETITION NO.9763 OF 2018

Sukanya D/o Milind Dhaware

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr. S.M. Kamble advocate for petitioner

WITH

WRIT PETITION NO.9752 OF 2018

Sanchika d/o Bhaskar Ahire

Petitioner

versus

The State of Maharashtra and others

Respondents

Mr. S.M. Kamble advocate for petitioner

...

WITH

WRIT PETITION NO.9751 OF 2018

Mansi D/o Mahesh Ravlelu

Petitioner

Versus

The State of Maharashtra and others

Respondents

Mr. S.M. Kamble advocate for petitioner

...

Mr. S.B. Yawalkar AGP for respondent State

Mr. M.D. Narwadkar advocate for respondent No.2

Mr. S.G. Karlekar advocate for respondent No.2.

...

CORAM : R.M. BORDE AND

MANGESH S. PATIL, JJ

...

Reserved on : 21.8.2018

Pronounced on: 3.10.2018

PER COURT :-

1 All the petitioners, who are students aspiring to secure admission to MBBS course, are seeking directions to the Commissioner, Common Entrance Test Cell, Mumbai to consider the preference of each of the petitioners as regards choice of colleges, as against State quota seats in stead of NRI quota seats and to consider them eligible on the basis of aforesaid preferences and merit as State quota candidates and admit them

to the respective colleges, on the basis of individual merits.

2 All the petitioners being eligible for securing admission to the medical courses appeared for the National Eligibility Common Entrance Test (NEET) conducted by the Central Board of Secondary Education. The petitioners contend that a student desirous of participating in the admission process has to tender an application to get himself/herself registered. The petitioners submitted the applications and while furnishing necessary information, recorded their nationality as Indian, in the application form. There is option provided for opting NRI seats. However, the petitioners have specifically recorded 'No' in the relevant column; meaning thereby they do not want to opt for NRI quota seats. Along with application form, according to petitioners, they uploaded documents like Nationality certificate, domicile certificate, SSC certificate, HSC CET Cell, HSC certificate, result sheet of common entrance test, medical fitness certificate, aadhar card etc. After completion of process of document verification which was undertaken on 14.7.2018, the petitioners were issued acknowledgements wherein, it is recorded that they have opted for State quota seats and not for NRI quota seats. The petitioners contend that in view of clause 10.2 of the prospectus, a candidate is required to record the college code. The college code is a four digit number with 'S' or 'N' suffix. Suffix 'S' indicates State quota whereas suffix 'N' indicates NRI quota. The petitioners submitted on-line

preferences and almost all of them opted for State quota seats so far as the Private Medical Colleges are concerned. However, inadvertently, the petitioners have recorded suffix 'N' as against the private colleges. All the petitioners did not secure seats in Govt. medical colleges and as such, their claims were considered for admission to private medical colleges and considering the option recorded by them for NRI quota, they have been allotted private medical colleges, treating them as NRI candidates. The petitioners contend that they lodged a protest with the admission authority and tendered applications, requesting them to consider their claims as State quota candidates. However, their objections have not been considered. The petitioners contend that the first round of admission process has already been concluded and the second round of the process has commenced from 18.7.2018. The petitioners, therefore, seek direction against the admission authority for consideration of their claims for admission to medical courses as State quota candidates.

3 It is true that while furnishing necessary details at the stage of registration, the petitioners have specifically recorded that they do not want to claim seats against NRI quota. The acknowledgement receipts issued to the petitioners also indicate that they have not opted for NRI quota seats. However, while tendering preferences, the petitioners have recorded college code referable to private colleges, along with suffix 'N' meaning thereby, so far as, such of those colleges are concerned, the

petitioners opted for NRI quota. Our attention has been invited to Rules for admission framed by the Government of Maharashtra, Commissioner for Common Entrance Test cell, Mumbai. Rule 10.2.5 records, "candidate must be very careful while filling the On-line preference form." Candidate can fill minimum one preference or any desired number of preferences for NEET-UG 2018. Rules 10.2.6 to 10.2.13 are relevant for consideration which read thus:-

"10.2.6 : If a candidate does not give preference for a code for particular course and particular college (Government /Corporation/Private); then it means that he / she is not interested / desiring to take that Under Graduate Health Science seat. Candidate should note that there will be no change / addition / deletion in his / her list of preference at later date / stage.

10.2.7: The candidates may kindly note while filling the preference form, that NEET UG 2018 merit list will be operated from NEET UG 2018 Rank number 1 onwards in each round of selection. The candidate getting selected in previous round will be considered for betterment in the subsequent round. The betterment herein means the higher preference exercised by the candidate. The Shift in such betterment shall be compulsory and mandatory except for those who have filled 'Status Retention Form.' Such a candidate who has filled Status Retention form will not be considered for any subsequent rounds of selection process for the year 2018-2019. The last date for filling Status Retention Form will be notified along with selection list.

After concluding the first round, for the further round

(s) candidates who have been allotted seat(s) in the earlier round(s) and joined the course, as also the candidate(s) who have not been allotted any seat, will be eligible. In the subsequent round(s), betterment chance(s) will be given to the candidate(s) who have already been allotted seat(s). After selection in any round if a candidate fails to join the college, he/she will be ineligible for the subsequent entire admission process.

It is hereby made abundantly clear that shifting on account of a better choice by a candidate in any round, will be effected only and only if such a candidate in the subsequent round(s) is found entitled for 'change of course' or 'change of college'. Mere possibility of a 'change in category' on account of availability of seat in the same college and/or same course in further round(s) will not amount to 'betterment' as such and therefore, no shifting will be effected in such an eventuality. Such a 'change in category' will include inter-alia change from reserved category to open category or vice-versa. The shift in such better shall be compulsory and mandatory, except those who have filled Status Retention Form. Once a Status Retention is submitted then there is no provision to withdraw or cancel the status retention.

- 10.2.8 Based on preferences given, the seat will be allotted on merit and the allotment will be displayed on website of State CET CELL "www.mahacet.org" & DMER i.e. "www.dmer.org".
- 10.2.9 Candidates as per allotment should report along with all original certificates and a set of attested photo copies of each documents as per NEET UG 2018 brochure, at allotted college as per the schedule. The Dean / Principal should verify all the original

documents before finalizing the admission.

- 10.2.10 A candidate who is selected in first or subsequent round of selection process but does not join the college or cancels the admission after joining, is not eligible for further selection process.
- 10.2.11 After conducting two or more rounds of seats for Government / Corporation / Private aided / Private Unaided / Minority Colleges, if seats remain vacant those seats will be filled in Mop-Up round. The details of Mop-Up round will be declared on the website in due course.
- 10.2.12 INSTITUTION LEVEL ROUND FOR VACANT SEATS AFTER CAP Mop-Up Rounds: If the seat(s) remain vacant in Private Unaided / Private Minority Colleges after all CAP Mop-Up Rounds, the said seats shall be filled in by the Institution through Institution level Round with the prior approval of the Competent Authority. The Dean or Principal of the institutions shall carry out the admission for these vacant seats on the basis of inter-se merit from the list of NEET-UG-2018 eligible candidates as per the directions issued by the Competent Authority during academic year 2018-19.
- 10.2.13 Any issue regarding filling of vacant seats not dealt herein above will be dealt with, when arising fully and finally by the competent authority.

4 It is contended on behalf of admission authority that there are total 59,596 applicants registered themselves for admission to Health Science course in the State of Maharashtra. It is informed that during the first phase of admission, 520 students have tendered complaints which are more or less similar to the

grievances of the petitioners. If at all requests of the petitioners are to be considered and if they are allowed to correct the preferences, which stage has already been concluded, the claims of the other similarly situated students will also have to be considered. Any permission to reset the preferences to such large number of students will have an impact on the merit position of all applicants and will have a cascading effect on the whole admission process. It would be difficult to meet the deadline prescribed by the Honourable Apex Court for completion of admission process. It is further pointed out that the stage of on-line choice preference filling of students did commence on 18.7.2018 and was concluded on 26.7.2018. The admission authority published a Notice on 30.7.2018 for facilitating candidates to edit the preferences. Although it was possible for the petitioners to approach the respondents for corrective action on or before 3.8.2018, till 5 p.m. when the preference filing process was still under way, the petitioners did not take steps. It is contended that the first round of admission to Health Sciences Course is already over. In the second round of admission, merit list is also published and 18.8.2018 is the date prescribed for reporting of the students to respective colleges. At this late stage of admission process, if any indulgence is caused in the matter, it will have serious consequences and the whole admission process will have to be revisited. It is further pointed out that an identical matter raising similar challenge bearing Writ Petition No.8971 of 2018 has been dismissed by this Court and

the Special Leave Petition (SLP (C) No.21235/2018) presented against the said order has been withdrawn. It is pointed out that there was yet another writ petition bearing Writ Petition No.8871/2018 filed on identical grounds, in which this Court has not granted any relief.

5 On perusal of the admission schedule published by the admission authority, it appears that the admission process has almost concluded. As has been informed, the last date prescribed for reporting to the respective colleges by the selected students was 18.8.2018, which has also elapsed. As such, at this late stage of process, it would be imprudent to cause any interference in the matter.

6 The petitioners have invited our attention to definition of Non Resident Indian, which means a person who is not ordinarily resident under sub-section (6) of section 6 of The Income Tax Act, 1961, and includes a person resident outside India under clause (w) of section 2 of the Foreign Exchange Management Act, 1999, and also includes his child or ward. According to the petitioners, they cannot be considered as NRI or the children or wards of the NRIs. Our attention is also invited to Schedule 'U' which contains guidelines for granting admission in NRI quota. It is recorded in Schedule 'U' that the candidate should have claimed the NRI quota seats in the original On-line application form.

7 According to the petitioners, since they have not claimed

NRI quota seats, they cannot be categorized as NRI candidates only because of inadvertent mistake on their part. A candidate desirous of securing admission against NRI seat has to tender a NRI certificate of himself/herself or of his/her mother or father or the real brother or the real sister ordinarily residing abroad. In order to prove NRI status of the sponsor, certain documents are required to be furnished. According to the petitioners, they have neither furnished such documents nor have claimed NRI seats in the applications. As such, as a result of an inadvertent mistake, they shall not be treated as NRI candidates. It is contended on behalf of the admission authority that the admission authority is authorized to issue instructions for regulating the admission process in view of Rule 10.2.13. It is contended that the seats remaining vacant can be filled in by admitting students even against NRT quota.

It is not necessary to go into the aforesaid issue since we are of the opinion that since the admission process has reached at an advanced stage, it would be imprudent to cause interference. If any interference is caused at this stage, it will have cascading effect on the whole admission process. The petitioners have admittedly claimed NRI seats, while recording the preferences and in spite of having an opportunity to correct the mistake they failed to do so. In such circumstances at this late stage, no interference is warranted.

8 The petitioners have relied upon the Judgment of the

Division Bench of this Court in the matter of **Shashi Saraswat versus State of Maharashtra in Writ Petition No.19728/2018** decided on 18.07.2018 to contend that in similar circumstances interference has been caused by the Bombay High Court in respect of admission as against defence quota seats and therefore, the claim of the petitioners may also be considered. It shall be noted that there were only four seats and a very few applications from amongst the defence quota seats were received and there was no likelihood of causing any disruption in admission process as a result of interference. Apart from this, court has specifically recorded that in the peculiar facts and circumstances interference is caused and it shall not be considered as precedent.

The judgment in the aforesaid matter is distinguishable and does not set any precedent. On the contrary, similar petitions have been turned down by this Court and the Supreme Court has also refused to cause interference in the matter and did not entertain the special leave petition challenging the order of the High Court.

9 For the reasons recorded above, no interference is called for. Petitions are devoid of substance and hence stand dismissed.

(MANGESH S. PATIL, J)

(R.M. BORDE, J)