

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4153 OF 2018

SAYALI CHARITABLE TRUST'S
COLLEGE OF HOMEOPATHY, MITMITA,
THROUGH PRINCIPAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Palodkar Devdatt P.

AGP for Respondents No. 1 & 3 :

Mrs. P. V. Diggikar

Advocate for Respondent No. 2 : Mr. S. G. Karlekar

A.S.G. for Respondent No. 4 :

Mr. S. B. Deshpande

...

WITH

CA/2811/2019 IN WP/4153/2018

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CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 28th FEBRUARY, 2019

PER COURT :

1. Petitioner no. 1 seeks direction to regularise the admission of petitioners no. 2 to 10 for the Homeopathy course prosecuted by them in petitioner no. 1 / college for the academic year 2017 – 2018.

2. Mr. Palodkar, learned counsel submits that the petitioners no. 2 to 10 could not register themselves up to 28.11.2017, however, they were present on 29.11.2017. They are coming from remote area, as such, could not report and register their names with petitioner no. 1 / college up to 28.11.2017. Thereafter, on 29.11.2017 at 11 AM. 26 candidates registered. Out of that only petitioners no. 2 to 10 took admission. The learned counsel submits that still there were 39 posts vacant and the same have gone vacant for the whole academic year. It is not the case that more meritorious candidates were deprived of the admission.

3. Mr. Karlekar, learned counsel appearing for respondent no. 2 submits that the the last date for registering the students with the institutions was 28.11.2017 up to 5:00 PM. The list was submitted by the college as to the students registered with petitioner no. 1 on 28.11.2017 up to 5:00 PM, the names of petitioners no. 2 to 10 were not included in it. The learned counsel

submits that though relaxation was given for admitting the candidates though not registered with DMER, still the candidates could only be admitted after they were registered on or before 28.11.2017 up to 05:00 PM with petitioner no. 1 / college. As these petitioners no. 2 to 10 were not registered, petitioner no. 1 could not have admitted these petitioners no. 2 to 10. The admission of these petitioners no. 2 to 10 is not legal and valid. In view of that, their admissions cannot be regularised.

4. We have heard the learned counsel appearing for the other respondents.

5. Petitioner no. 1 is running a Homeopathy college. The programme was published giving the detailed schedule to be adhered to by the colleges for admitting the students. The vacant posts were to be published on the website of DMER on 25.11.2017. The applications were to be filed by the candidates with the respective colleges on or

before 28.11.2017 up to 05:00 PM. The colleges were required to publish on its notice board and the website the merit list up to 09:00 PM. On 28.11.2017. It is in the morning of 29.11.2017 the candidates were required to be admitted to fill in the vacant posts and on 29.11.2017 up to 05:30 PM the list of the admitted candidates were required to be given to AYUSH.

6. The other conditions were that the students who would be given admission should have passed NEET (UG) – 2017 and they should be registered on the website of DMER. It appears that, subsequently the condition of registering with DMER for filling the vacant posts was relaxed under letter dated 27.11.2017 by the competent authority cum Commissioner, State CET Cell, Maharashtra State. The registration with the college by 28.11.2017 up to 05:00 PM was permissible. The said relaxation was given on account of short time available and that large number of seats remained vacant. The said letter was issued on 27.11.2017.

7. Petitioner no. 1 had an intake capacity of 100 students. It had filled in 52 seats, 48 seats were still vacant and were not filled in. It appears that petitioners no. 2 to 10 had not registered with the college on 28.11.2017 up to 05.:00 PM. At their registered place and they came to the college for admission only on 29.11.2017. In fact, petitioner no. 1 ought not to have admitted petitioners no. 2 to 10 as they have not registered with the college up to 05:00 PM. on 28.11.2017.

8. These petitioners no. 2 to 10 have almost completed one year. It is also a matter of record that even after admitting petitioners no. 2 to 10, 39 seats of petitioner no. 1 / college are still vacant. As the 39 seats of the petitioner no. 1 / college are still vacant for the academic year 2017 – 2018 it goes without saying that more meritorious students were not deprived of the admission because of the admission of petitioners no. 2 to 10. The purpose of registering the

students with the college up to a particular time is to ensure that more meritorious students are not deprived of the admission. In the present case, as 39 seats are still vacant, the question of compromising the merit does not arise.

9. It is in these peculiar circumstances and to safeguard the career of these students we exercise our writ jurisdiction though it can be said that the admission of petitioners no. 2 to 10 was irregular. We are also considering the said case as these petitioners no. 2 to 10 are the students who have appeared for NEET (UG) - 2017 examination and thereby satisfied the other conditions. In the interest of petitioners no. 2 to 10, so also, as no other meritorious students are deprived of the admission and these petitioners no. 2 to 10 comply with all other requirements such as having cleared NEET (UG) - 2017, we are protecting their admission, however, at the same time petitioner no. 1 / college for default committed by them is required to be mulct.

10. In the result, we pass following order.

11. The respondents shall not refuse to regularise the admission of petitioners no. 2 to 10 only on the ground that they were not registered with the college on 28.11.2017 up to 05:00 PM. Petitioner no. 1 / college is penalised with costs of Rs. 2,50,000/- (Rs. Two Lacs Fifty Thousand only).

12. The said costs shall be deposited with respondent no. 2 within eight (08) weeks. The costs shall be borne by petitioner no. 1 / college and the same should not be passed on by petitioner no. 1 to petitioners no. 2 to 10.

13. Writ Petition stands disposed of accordingly.
No costs.

14. In view of disposal of the writ petition, the civil application also stands disposed of.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]
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