

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8869 OF 2019

- 1 Ajit Rajendra Bhagwat,
Age: 19 years, Occu.: Student,
R/o A/p: Kurkumbh, Tal-Daund,
Dist. Pune.
- 2 Prachi Santosh Bobade,
Age: 18 years, Occu.: Student,
R/o A/p: Rajaptus, Tal: Bhor,
Dist. Pune.
- 3 Vaishnavi Rohidas Mandhare,
Age: 18 years, Occu.: Student,
R/o A/p: Kamthadi, Tal. Bhor,
Dist. Pune.
- 4 Swapnil Someshwar Khopade,
Age: 18 years, Occu.: Student,
R/o A/p: Nazare, Tal.Bhor,
Dist. Pune.
- 5 Aniket Dilip Mohite,
Age: 18 years, Occu.: Student,
R/o A/p: Bholawade, Tal.Bhor,
Dist. Pune.
- 6 Akshay Srajerao Sawant,
Age: 18 years, Occu.: Student,
R/o A/p: Hawaldarwadi, Post.
Mhaswad, Tal. Man,
Dist. Satara.
- 7 Sushant Sunil Konde,
Age: 18 years, Occu.: Student,
R/o A/p: Khed-Shivapur, Near
Grampanchyat Office, Tal. Haveli,
Dist. Pune.
- 8 Samiksha Sanjay Otari,
Age: 18 years, Occu.: Student,

R/o A/p: Mhaswad, Near Rajwada,
Tal. Man, Dist. Satara.

...Petitioners

Versus

- 1 The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Mantralaya, Mumbai - 400032
- 2 Director Technical Education,
3, Mahapalika Marg, Mumbai,
Maharashtra 400001
- 3 The State Common Entrance Test
Cell,
Through its Commissioner,
Government of Maharashtra,
Fort, Mumbai.
- 4 The Admission Regulatory
Authority,
9th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort, Mumbai –
400 001.

...Respondents

Mr. S.B. Talekar, a/w Ms. Madhavi Ayyappan, i/b Talekar and Associates, for the Petitioner.

Mr. B.V. Samant, Asstt. Government Pleader Writ Cell, for Respondents No. 1, 2 and 4

Mr. Sameer Prabhakar Khedekar, for the Respondent No. 3.

CORAM : S.C. DHARMADHIKARI &
R.I. CHAGLA JJ.

Reserved on : 07 November 2019

Pronounced on : 02 December 2019

JUDGMENT : (Per R.I. Chagla J.)

Rule. Rule made returnable forthwith. Heard by consent of parties.

1. The Petitioners by the present Petition are seeking a declaration that Rules 9(3)(c), 9(3)(d) and 13 of the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Admissions to the Full Time Professional Undergraduate Technical Courses) Rules, 2017 as amended on 5th June 2018 (for short “**the said Rules**”) as well as the Rules 9(3)(c), 9(3)(d) and 13 published in the Information Brochure for Admission to Full Time Professional Undergraduate Technical Courses (Academic Year 2019-20) (for short “**the Information Brochure**”) are ultra-vires Sections 4, 5 and Section 10(7) of the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Admissions and Fees) Act, 2015 (for short “**the said Act**”).

2. In addition, the Petitioners also seek the quashing of the Government Resolution dated 15th April 2017 providing freeship/scholarships and/or waiver of tuition fees to the students belonging to backward and economically weaker sections issued by

the Deputy Secretary of the Government, Higher and Technical Education, Mantralaya, Mumbai.

3. The Petitioners are students who have sought admission to Bachelors degree in Pharmacy (“**B.Pharm**”) in private unaided professional colleges through Centralised Admission Process (“**CAP**”) on the basis of marks secured in Common Entrance Test (“**CET**”) conducted by the State Common Entrance State Cell for the academic year 2019-20.

4. Respondent No. 1 is the State through its Secretary, Higher and Technical Education and Respondent No. 2 is the Director of Technical Education. Respondent No. 3 is the State Common Entrance Test Cell through its Commissioner appointed by the State Government under the said Act. Respondent No. 4 is the Admission Regulatory Authority constituted under the said Act.

5. The brief background of the facts leading upto the filing of the Petition is set out herein below :-

(i) In the year 2015, the said Act came to be enacted.

The said Act provided for admissions to professional

courses by a medium of CET and CAP.

- (ii) In 2017, the State Government framed the said Rules under the said Act. Rule 9 laid down the procedure for conducting CAP whereas Rule 13 provided for the admission process in institutional quota as well as the vacant seats after the CAP rounds.
- (iii) On 15th April 2017, the State Government framed a policy to extend the benefits of freeship/scholarship or waiver in the tuition fees for the students belonging to the educationally and economically weaker sections of the society. However, the policy came with a rider that the student shall be admitted through CAP rounds for being made eligible for these benefits.
- (iv) On 5th June 2018, the said Rules came to be amended. Rules 9(3)(c) and 9(3)(d) enabled the student who had been allotted a seat in the initial CAP rounds to freeze the seat and participate in

further CAP rounds. This made him eligible for participation in subsequent round for betterment.

- (v) In the year 2019, the CET Cell published the Information Brochure for the conduct of the CAP rounds for admissions to the undergraduate technical courses for the year 2019-20.
- (vi) On 3rd July 2019, the provisional merit list came to be published by the CET.
- (vii) On 11th July 2019, the provisional allotment of CAP round-I came to be published. The Petitioners were not allotted any seats.
- (viii) On 21st July 2019, the provisional allotment of CAP round-II came to be published. Students who were allotted seats had once again participated in CAP round for betterment which according to the Petitioners, amounted to blocking the earlier seats which had been allotted to these students. The Petitioners themselves were not allotted any seats.

(ix) On 29th July 2019, the provisional allotment of CAP round-III came to be published. The Petitioners were not allotted any seats. Whereas, according to the Petitioners, around 30 to 40 percent seats are lying vacant due to the blockage of seats by other candidates who although were allotted these seats, participated in the subsequent rounds for betterment.

(x) The academic year 2019-20 was scheduled to commence on 14th August 2019.

6. Accordingly, the Petitioners being aggrieved, have filed this Petition on 6th August 2019.

7. Mr. Talekar, learned Advocate appearing for the Petitioners has submitted that Rules 9(3)(c) and 9(3)(d) and 13 of the said Rules as amended on 5th June 2018 and incorporated in Information Brochure are ultra-vires Sections 4, 5 and 10(7) of the said Act. He has submitted that these Rules are also arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

He has submitted that CAP has been defined under Section 2(c) of the said Act to mean the Centralised Admission Process for admission carried out by the Competent Authority through single window system in a transparent manner for admitting the students for various professional courses in educational institutions. The Competent Authority has been defined under Section 2(e) as the Commissioner of State CET appointed by the Government under Section 10, for conducting CET through CAP for the admissions into Private Professional Educational Institutions. He has referred to certain other provisions of the said Act including Section 3 which provides for the eligibility for admission as well as Section 4 for the manner of admission. Under Section 4(b), it is provided that the admissions to such institution shall be carried out by the Competent Authority through CAP on the basis of the CET and CAP. He has also referred to Section 5 of the said Act which provides for any admission made in contravention of the provisions of the said Act or said Rules made thereunder shall be void. Section 6 provides for allocation and reservation of seats. He has further referred to Section 7 of the said Act which provides for constitution of Admissions Regulating Authority to exercise the powers conferred on and discharge function assigned to it under the said Act. He has referred to Section 9 of the

said Act which provides for functions of the Admissions Regulating Authority. It is provided under Section 9(4) that for the discharge of the functions of the Admissions Regulating Authority and for making enquiry under the said Act, the Authority shall have powers of a Civil Court under the Code of Civil Procedure, 1908 while trying a suit. It is provided in Section 9(5)(iv) that any grievance regarding admission may be admitted before the Authority and shall be decided within a fortnight and before the cut-off date for admission. He has further referred to Section 10 of the said Act which provides for the State Common Entrance Test Cell and its functions, particularly under Sub-Section 7, where it is provided that the admission to every seat including institutional quota shall be made on the basis of merit secured at the CET followed by CAP of the State, subject to reservation policy of the State.

8. He has referred to the said Rules. The courses have been defined under Rule 2(g) to mean full time undergraduate courses including courses in pharmacy with which the Petitioners are concerned. He has referred to definition of institutional quota which is defined under Rule 2(m) which means seats available for admission to eligible candidates at institutional level as declared by

the Government or appropriate authority from time to time. He has referred to Rule 7 which provides for allocation of seats which shall be in accordance with the policy of the Government as specified in schedule I for first year and in schedule II for direct second year of various undergraduate courses. The CAP has been provided for in Rule 9 and under the amended said Rules, in particular, Rule 9(3)(c), it has been provided that the candidate who has been allotted seat other than first preference and accepted the seat by reporting to the Admission Reporting Centre (“**ARC**”) for confirmation of seat acceptance shall be eligible for participation in the subsequent rounds for betterment. In Rule 9(3)(d), it is provided that the candidate who has been allotted seat other than first preference and not accepted the seat by not reporting to ARC for confirmation of seat acceptance shall be eligible for preparation in the subsequent rounds. He has submitted that under Sub-Rule 4 of Rule 9, the conduct of CAP round II and III have been provided. Since the seats are available to round II and III, these are published on the website and the candidates eligible for rounds II and III are allowed to fill in and/or edit online option form filled in by the candidates for the previous round. The seats to be allotted during these rounds shall be available to the eligible candidates falling under the following

categories, (i) candidates as per Sub-Rules 3(c) and 3(d) of Rule 9; (ii) candidates who were not allotted any seat in any of the previous rounds; (iii) candidates who did not participate (failure of filling option form) in previous rounds. He has referred to Rule 9(4)(c) which provides that there should be no further betterment option available to the candidate after round III. The allotment made and/or allotment retained in round III for participating candidates in round III shall be final. He has further referred to Rule 9(4)(f) which provides in case of additional round (if any), the category of candidates mentioned in clause (a) of Rule 9(4) shall be entitled to participate and fill in fresh option form. The candidate need not fill in the previously allotted preference in their preference list. Once the upward allotment is made, the earlier allotment shall stand automatically cancelled. In the event no such upward preference is allotted in this round, the candidate's previous allotment stands retained. He has referred to the amended Rule 12 wherein the seat acceptance fee has been provided as Rs. 1,000/- for all candidates, which fee shall be treated as non-refundable processing fee. He has referred to Rule 13 which provides for admissions in institutional quota and vacant seats after CAP. He has referred to the amended Rule 15 which provides for cancellation of admission and refund of

fees, return of documents by institutions. The candidate submitting on line request for cancellation and upon which the admission shall be treated as cancelled. The candidate shall thereupon lose claim of the seat and such seat shall become available for further allotment. The candidate shall then become entitled to and the institute shall refund the entire fees to the candidate after deduction of Rs. 1,000/- towards processing charges and return all his/her original documents submitted to the institute within two days from submission of duly signed copy of system generated application to the institute.

9. He has also referred to the Information Brochure for the academic year 2019-20 where the information and eligibility and rules for admission to various technical professional undergraduate degree courses in the State of Maharashtra have been provided. These include information on the said Rules which have been published.

10. He has drawn reference to the statement of objections and reasons for the said Act which was published on 12th May 2015 and dated 8th May 2015. He has submitted that as per the statement the two separate committees were constituted by the State

Government under the Chairmanship of the retired Judges of the High Court for regulating the admission process in unaided professional educational courses under control of Higher and Technical Education Department and Medical Education and Drugs Department. The two authorities were set up for regulating the admission process and charging of fees in unaided Private Professional Educational Institutions and conduct of CET through CAP. Considering that the academic year 2015-16 was to commence shortly it was proposed to give such statutory framework immediately.

11. He has submitted that the said Rules which are under challenge viz. Rules 9(3)(c) and 9(3)(d) and Rule 13 have also been published by the Information Brochure for admission to full time Professional Undergraduate Technical Courses for the academic year 2019-20 are ultra vires Sections 4, 5 and 10(7) of the said Act as well as ultra vires of Article 14 of the Constitution of India. He has submitted that although under the said Act, the entire admission process was to be by way of the CET through CAP, the said Rules which are under challenge had permitted the candidates/students to block seats in subsequent rounds and thereby prevented the private

professional unaided Educational institutions filling in CAP seats for full time professional undergraduate technical courses for the academic year 2019-20 by treating them as institutional quota. He has submitted that the Petitioners and several other similarly placed students ought to have been considered for admissions through CAP on the basis of the marks secured in CET as provided under Sections 4 and 10(7) of the said Act. However, transfer of several seats including seats belonging to backward and economically weaker sections who had applied for admissions through CAP to institutional quota disentitled these students from being admitted in CAP as well as the benefit of financial assistance such as freeship/scholarships or waiver of tuition fees as prescribed under Rajarshri Chhatrapati Shahu Maharaj Rajya Shikshan Shulk Pratipurti Scheme provided under Government Resolution dated 15th April 2017. Such denial of financial assistance to the backward and economically weaker sections under Government Resolution dated 15th April 2017 issued by Higher and Technical Education Department is arbitrary, discriminatory, unjust and violative of Article 14 of the Constitution of India.

12. He has submitted that the classification between

the students belonging to backward and economically weaker sections who had been admitted through CAP rounds and the students who although had applied through CAP rounds but are forced to seek admissions in the colleges run by the respective managements after three CAP rounds is artificial, unreasonable, unjust and accordingly, does not satisfy both the tests of reasonable classification laid down by the seven judges bench of the Supreme Court in the case of ***State of West Bengal Vs. Anwar Ali Sarkar***¹

13. He has submitted that the Rules which are under challenge have resulted in the Petitioners and similarly circumstanced students although having applied in the CAP rounds being illegally denied admissions through CAP rounds due to blocking of seats by the candidates/students, who had been allotted seats in institutions which were not of their first choice, but could participate in the subsequent round for betterment of their choice. Accordingly, the Petitioners and similarly, circumstanced students were forcibly transferred to institutional quota. He has submitted that the Respondents should not have allowed the candidates who did not get admission to Technical Courses including Pharmacy as per their first

¹ ***AIR 1952 SC 75***

preference, to participate in II and III rounds and freeze or block more than one seat by paying nominal fees of Rs. 1,000/- towards seat acceptance fees as provided under Rule 12(j) of the Information Brochure and thereby denying the claim of other meritorious candidates who had participated in CAP on the basis of marks secured in CET.

14. He has referred to the letter addressed by the Association of the Management of Unaided Institutes in Rural Areas to the Minister of Higher & Technical Education, Government of Maharashtra dated 22nd July 2019 requesting for conduct of last CAP/Additional Round by Counselling for admission to all B.Pharm and other Technical Courses. The said letter has suggested certain measures which could be adopted by the Minister of Higher and Technical Education in order to make the CAP workable. These measures are :-

“a. Reporting to ARC by all candidates allotted seat in CAP Round-II be made mandatory and allowed them to either freeze or remain in float for betterment in CAP round-III. However, those who will not report to ARC should not be allowed to

participate in CAP – III/additional round to reveal truly interested candidates for admission to B.Pharm. Course.

- b. “Candidates who have not been allotted seat in CAP Round-II and also those who have been allotted seat in CAP Round-II, reported to ARC and have opted for betterment” should only be allowed to participate in CAP Round-III. This will help remove non interested candidates from participating in CAP round-III.*
- c. The Competent Authority should conduct CAP Round -III/Additional Round by counselling like it was done 4 years before, which resulted in 100% admissions through CAP. If last/additional round is conducted by counselling this year, all candidates in next order of merit shall be able to secure admission through CAP rounds and shall get benefits of free ships/scholarships.”*

15. He has submitted that conversion of CAP seats into institutional seats by following illegal procedure of admissions by the State CET Cell is illegal, contrary to the provisions of Sections 4, 5 and 10(7) of the said Act. He has referred to certain information in tabular form in paragraph 31 of the Petition, which gives particulars of the number of seats which are under column against

CAP and at institute level. He has submitted that the statement revealed that several seats have been transferred to the institute level on account of the seats being vacant under CAP rounds. This information is in respect of two colleges. He has further referred to certain other colleges at Exh.M, Exh.N, Exh.O, Exh.P to the Petition. He has submitted that from these particulars, more than 30% to 40% seats to be filled in through CAP could not be filled in. As a result, all these seats are diverted to institutional quota and placed in the hands of the managements of these institutes. He has submitted that the managements of respective private unaided professional educational institutions are filling in the unfilled CAP seats at their discretion. The managements do not strictly follow merit while filling in those unfilled CAP seats. These institutions are charging donations or capitation fees in different forms.

16. He has submitted that for Courses in Health Sciences, which is evident from NEET UG-2019 Information Brochure of preference system to admission to Health Science Courses in the State Government, Corporation, Private and Minority Colleges published by the Commissioner, Common Entrance Test Cell, Mumbai, there are different set of rules. Unlike in Health Science

Courses, the candidates who are allotted seats in technical professional courses are allowed to participate for betterment in the second and third round. Thus, the so called meritorious candidates are allowed to block more than one seat resulting in the students who have secured less marks being denied admission through CAP. He has submitted that according to the data of vacancy position in some of the colleges for the academic year 2019-20 which the Petitioners were able to lay hands on, it appear that only 50% seats are filled in at the end of all the three CAP rounds. He has submitted that the intake of all the pharmacy colleges including Government, aided, private unaided is about 22,000 for which more than 57,000 students have applied for admissions. After diversion or conversion of CAP seats to institutional quota, those seats are filled in treating them as institutional quota. In every college, all the seats are ultimately filled in to its intake capacity. He has submitted that by allowing the CAP seats to be converted into the institutional seats, the financial interests of the private managements who are controlled by prominent, powerful and influential politicians are being promoted. It is ultimately, the students who are made to pay higher fees in respect of the seats in the institutional quota as a result of such conversion from CAP seats to the institutional seats who are the

ultimate losers.

17. He has thus, submitted that the Rules viz. Rules 9(3)(c) and 9(3)(d) and Rule 13 of the said Rules are ultra vires the provisions of the said Act viz. Sections 4, 5 and 10(7) as well as being in violation of Article 14 of Constitution of India. This would also be the case of those Rules which have been published in the Information Brochure. He has submitted that the Petitioners are entitled to the declaration sought. In addition the Government Resolution dated 15th April 2017 issued by the Higher and Technical Department to the extent it denies financial assistance to students admitted to full time professional Technical Courses from the institutional or against CAP quota ought to be quashed. Further, the Respondents are required to be directed to fill in the remaining vacant CAP seats in respect of full time professional undergraduate technical courses for the academic year 2019-20 by holding mop-up or a counselling round.

18. Mr. Samant, the learned AGP appearing for the Respondent Nos. 1, 2 and 4-State has relied upon the Affidavit of Shri. Pramod Ambadas Naik, Joint Director in the office of

Directorate of Technical Education, Mumbai, filed in Reply to the Petition. He has submitted that in accordance with the provisions of the said Act, the Rules have been framed by the State Government and notified by it. Based on these Rules, the Information Brochure has been published by the CET Cell. He has submitted that from the reading of the Rules which are under challenge, as being ultra vires the provisions of the said Act, it is clear that the Respondents have acted in letter and spirit of the said Act. He has submitted that the said Act had been enacted pursuant to the directions issued by the Supreme Court in the case of *P.A.Inamdar*² in enacting a suitable legislation on the subject. He has submitted that from the preamble of the said Act, it is clear that the said Act has been enacted by the Maharashtra Legislature in its wisdom for regulating admissions and fees by Unaided Private Professional Educational Institutions in the State of Maharashtra and the matters connected therewith or incidental thereto. He has submitted that the said Act seeks to achieve the objectives of fairness, transparency, merit based and non-exploitative admission in professional colleges. He has submitted that the said Act has also been enacted for making special provisions for advancement of socially and economically backward classes and for

2 (2005) 6 SCC 537

Scheduled Castes and Scheduled Tribes in relation to admission in the Private Unaided Professional Institutions in the State of Maharashtra in the light of Article 15(5) of the Constitution of India.

19. He has submitted that the allotment process of CAP is designed in a way that at the end of every round, all candidates will have only one seat in their hand. This will apply to all meritorious candidates who get allotment with betterment in second or third rounds and thereupon lose their claim on their previously allotted seats in the earlier rounds and thus, these seats will become open for the other candidates in the same round. These seats are automatically given to the other candidates. He has submitted that in the present case, the CET Cell had conducted the MHT-CET for admissions to various professional courses along with Pharmacy Degree Institutes. The applications were invited from eligible candidates as per the said Rules and the merit list of the candidates were prepared based on the result of CET. The admission process was carried out for conducting three CAP rounds. The Petitioners have only challenged the said Rules after completion of all CAP rounds and at the fag end of this year's admission process. The cut off date for admission to pharmacy courses and all other courses are over.

20. He has submitted that the entire process is computer based without any manual intervention. The computer runs the programme with iterative cycles and gives final allotment distributing only one seat for one candidate as per merit in a round. This prevents at a time more number of seats being block by the meritorious students and care in this regard has been taken in the said Rules. He has submitted that the Petitioners have not got the allotment to the institutions mentioned in their option form for a particular round because more meritorious candidates than that of the Petitioners have acquired those seats in that round in their respective caste category. The Petitioners had filled in their option form being desirous of admission in institutions without considering their position in the merit list. He has submitted that in each of the rounds the Petitioners filled in the names of the same institutions, and accordingly, did not get allotment in these institutions, because of the higher meritorious candidates/students having secured the seats in these institutions in their caste categories.

21. He has submitted that the Petitioners have contended that more than 30% seats to be filled in through CAP remain vacant by the end of the third round, as a result of blocking of

more than 2 seats by one candidate. He has submitted that there are different reasons for large vacancy in any specific institution. He has submitted that the admissions to the particular institute depends on location of the institute, infrastructure facilities in the institute, faculty and staff in the institute, and their experience, teaching learning process adopted to the institute, position of the placements of the students and employability of the course, etc. The seats remain vacant after CAP as candidates may not be desirous of taking admission in such institute and therefore, not filling names of the institutes in the option form. Considering that the candidates could have filled 200 options and put the names of institutes where the seats are vacant, the Petitioner in the present case, have filled in names of only few institutes and that to the same ones. He has submitted that the entire CAP is completely transparent and information of all CAP rounds right from notification to allotment is in public domain. This is readily available on the portal of CET. He has submitted that in the case of unaided institutions, 80% of the intake seats are available for CAP. The vacant seats after completion of CAP rounds are given to the institute to fill by their additional efforts so as to fill the seats upto intake capacity and to reduce vacancy. He has submitted that it is necessary to transfer the

extended seats to the institute or otherwise vacancy at the institute will increase. He has submitted that the CAP process cannot be kept unending and the time frame has been laid down by the Supreme Court due to which more number of rounds cannot be accommodated.

22. He has submitted that the institutes offer admissions to the candidates by following the guidelines under Rule 13 of the said Rule. The admissions to the 20% institutional quota and the vacant seats after CAP is done by the respective institutes. The Principal/Director of the institute carries out all the admissions and the candidates desirous to take admission to such institutional level seats through the institute level admission process willingly apply to the institutes. These admissions may not be considered as admissions through open competition. Accordingly, admissions through CAP is kept as a mandatory provision for giving scholarships, freeships and financial support to the candidates by the Government. He has submitted that EBC Scholarship Scheme is operated in the State from the year 2006-07 and one of the eligible criteria for availing the said scholarship scheme is that the candidate should secure admission through CAP only. There are various Government

Resolutions issued from time to time in this regard. The Government Resolution dated 15th April 2017 is for the purpose of indicating the process of disbursement of the scholarship to the eligible students through their Aadhaar linked bank accounts. This eligibility criteria of admission through CAP is included in the said Government Resolution as State Government policy.

23. He has relied upon the decision of this Court in ***Miss Sayali Shirish Nikumbh Vs. The State of Maharashtra & Ors.***³. This Court had in that decision considered the challenge to the said Government Resolution and it was held that it is not for the Court to issue a direction or an order to the Respondent therein and particularly, the Social Justice and Special Assistance Department of the State Government, contrary to the said Government Resolution. It was held that this Court in the writ jurisdiction cannot carve out any Scheme so as to grant relief to the Petitioner who has chartered his course and taken admission at the institutional level. The Writ Petition (L) No. 1683 of 2019 was accordingly held to be devoid of merits and was dismissed by this Court. He has accordingly submitted that in the present case as well there is no merit in the

3 ***Writ Petition (L) No. 1683 of 2019 Order dated 19.08.2019***

challenge of the Petitioners to the said Government Resolution and the Petition deserves to be dismissed.

24. Having considered the submissions, it would be necessary to refer to the Rules which are under challenge in this Petition. These are Rules 9(3)(c) and 9(3)(d) and 13 of the said Rules as amended on 5th June 2018. These Rules are incorporated in the Information Brochure and read as under:-

“Rule 9(3)(c) : Candidates who have been allotted seat other than first preference and accepted the seat by reporting to ARC for confirmation of seat acceptance shall be eligible for participation in the subsequent rounds for betterment.

Rule 9(3)(d) : Candidates who have been allotted seat other than first preference and not accepted the seat by not reporting to ARC for confirmation of seat acceptance shall be eligible for participation in the subsequent rounds.

Rule 13 : Admissions in Institutional Quota and vacant seats after CAP-

The Director or Principal of the institution shall carry out the admissions for these seats in the

following manner.-

- (a) Admissions shall be made in a transparent manner and strictly as per the Inter-Se-Merit of the Candidates who have applied to the Competent Authority for verification of documents and then to the Institution.*
- (b) Information brochure or prospectus of the Institution which specifies rules of admission should be published well before the commencement of the process of admission. All the information in the brochures should also be displayed on the Institution's website.*
- (c) Institution shall invite applications by notifying schedule of admission and the number of seats in each course to be filled by the institution, by advertisement on the website of the institution and also on the website of the Competent Authority by paying charges as decided by the Competent Authority.*
- (d) Aspiring Candidates fulfilling the eligibility criteria as notified by the Government and specified by the appropriate authority, from time to time, shall apply to the Principal or Director of the respective institution for admission at the Institution level as provided in Rule 3(4)(b) and shall be filled on the basis of Inter-Se-Merit prepared by following the procedure specified in 8(3) of these Rules.*

- (e) The institution shall display the Inter-Se-Merit lists of the Candidates to be filled in at the institution level, in the Institutional Quota and Supernumerary Quota of OCI/PIO. Foreign National, Children's of Indian workers in Gulf Countries along with the vacant seats after CAP, on the notice board and shall publish the same on the website of the institution.*
- (f) The Minority or Non-Minority institution intending to surrender the Institutional Quota (in part or full) of specified courses to the CAP shall communicate two days before the display of seat matrix of CAP Round and the same shall be allotted as per the rules of CAP*
- (g) All the admissions and cancellations shall be updated immediately through online system.*
- (h) If any CAP seat remains or becomes vacant after the CAP Rounds, then the same shall be filled in by the Candidate from the same Category for which it was earmarked during the CAP. Further if the seats remain vacant then the seats shall be filled on the basis of Inter-Se-Merit of the applicants."*

25. The Petitioners have claimed that the above Rules are ultra vires Sections viz. 4, 5 and 10(7) of the said Act, which read as under:-

“Section 4 : The admissions to seats for professional course in every unaided institution shall be carried out in the following manner:-

- (a) admission to seats in a Private Professional Educational Institution excluding institutional quota declared by the Government from time to time, shall be made on the basis of merit by following the procedure of Common Entrance Test (CET) conducted in the manner, as may be prescribed by rules.*

Provided that, the admission to institutional quota shall be on the basis of merit and after following the procedure specified by the appropriate authority.

Provided further that, the State Government may by order issued from time to time exempt any professional course, from requirement of the Common Entrance Test (CET) thereto.

- (b) admission to such institution shall be carried out by the Competent Authority through the Centralised Admission Process on the basis of Common Entrance Test (CET) and Centralised Admission Process (CAP).*
- (c) the Competent Authority shall supervise and guide the entire Centralized Admission Process in such manner as it may specify with a view to ensuring that the process is fair, transparent, merit-based and*

non-exploitative.

Section 5 : Any admission made in contravention of the provisions of this Act, or the rules made thereunder shall be void.

Section 10(7) : Admission to every seat excluding institutional quota shall be made on the basis of merit secured at the Common Entrance Test (CET) followed by Centralised Admission Process of the State, subject to the reservation policy of the State. Provided that nothing in this sub-section shall apply to the Centralised Admission Process, being conducted for the academic year 2015-2016.”

26. It is clear from the preamble of the Act that the said Act has been enacted for regulation of admission and fees by Unaided Private Professional Education Institutions in the State of Maharashtra and for matters connected therewith or incidental thereto. The purpose of the Act appears to be to achieve the objectives of fairness, transparency, merit based and non-exploitive admission in professional colleges.

27. It appears that the Petitioners who sought admission to B.Pharm in private unaided professional

colleges/polytechnics through CAP on the basis of marks secured in CET conducted by the CET Cell for the academic year 2019-20 have challenged the above Rules, at the stage, when they had participated in all three CAP rounds. It was only at the fag end of the year's admission process, when the cut off date for admission to pharmacy courses and all other courses are over that the Petitioners filed this Petition. The main grievance in this Petition appears to be that the candidates who have secured higher marks are free to block seats offered to them in the first round and seek betterment of seats in the next rounds of CAP. That since the candidates have blocked more than one seat, admission is not available to other students in respect of those seats in the remaining second and third rounds. It is the further contention of the Petitioners that it is due to the operation of the above Rules in the process of admission that candidates are permitted to block 2 to 4 seats in the subsequent rounds and as a result of which those seats do not become available to other candidates. The Petitioners have thus, challenged the above Rules as being contrary to the underline spirit behind Sections 4, 5 and 10(7) of the said Act.

28. The provisions of the said Act provide that the

admission to seats in Private Professional Educational Institutions including the institutional quota, declared by the Government shall be made on merit by following the procedure of the State conducted in the manner provided as per the said Rules. The admission to such institutes shall be carried out by the Competent Authority through the CAP. The main purpose of the said provisions under the said Act is to provide admission by following the CAP on the basis of merit. It is accordingly, accepted that the candidates shall apply for admission for the seats in the institutes on the basis of the CET results. The candidates are expected to promptly apply for admission to these seats and can specify various institutes of their choice for which they have applied for admission. In fact, the candidate have a choice of upto 300 institutes and put the names of those institutes where the seats are vacant. The entire procedure is computer based without any manual intervention.

29. In Rules 9(3)(c) and 9(3)(d) of the said Rules, it is provided that the candidates who have sought seats other than first preference ought to accept the seats by reporting to the Admissions Regulating Authority (ARC) for confirmation of the seat acceptance and then only they shall be eligible for participation in the

subsequent rounds for betterment. The computer has a programme with iterative cycles and gives final allotment of only one seat for one candidate as per merit in a round. Therefore, at a time more seats are not blocked by the students.

30. The conduct of CAP rounds is provided in Rule 9(2) of the said Rules and the seats available for Round I is required to be published on the website. It is the candidates whose name appeared in the final merit list of CAP who is eligible to participate in this round by filling in the online option form. Further, Rule 9(3) provides the process during CAP viz. where a candidate is allotted the seat as per his preference, such allotment shall be autofreezed and the candidate shall accept the allotment so made. Such a candidate shall then not be eligible for participating in subsequent CAP rounds. Such candidate is required to report to ARC for verification of documents and payment of seat acceptance fee. Where the candidate does not report to ARC for confirmation of seat acceptance, his claim on the allotted seat shall stand forfeited automatically and the seat shall become available for fresh allotment. Then follows Rules 9(3) (c) and 9(3)(d) as referred to above.

31. The eligibility of the candidates in CAP round II and III have been set out in the categories mentioned in Rule 9(4) and which include (i) the candidates as per Rules 3(c) and 3(d) of Rule 9; (ii) the candidates who have not been allotted any seat in any of the previous rounds; and (iii) candidates who did not participate (failure of filing option form) in previous rounds. It is further provided in Rule 9(4)(b) that candidates who have been allotted seats other than first preference and reported to ARC for confirmation of seat acceptance, whilst filing fresh option form, he/she need not fill the preference already allotted to the candidate in the previous round. Once the upward preference is allotted to such candidate, his earlier seat allotment shall stand automatically cancelled. In the event, no such upward preference is allotted, the previous allotment stands retained. Under Sub-Rule 4(c) of Rule 9, it is provided that there shall be no further betterment option available to the candidate after round III and that the allotment made and/or allotment retained in round III for participating candidates in round III shall be final. Thus, the mechanism provided under the said Rules is to ensure that at a time more number of seats are not blocked by the meritorious students. The entire process is transparent and there can be no complaint that the Petitioners were unaware of the process

when applied for admissions to the seats under the CAP.

32. It appears that the Petitioners have not got allotment of seats in any of the rounds in any institution of their choice mentioned in their option form due to more meritorious candidates i.e. higher than that of the Petitioners having acquired the seats in that round. The Petitioners could have opted for other institutes where they may have had a better chance of securing admission. It further appears that the Petitioners had in the subsequent rounds of CAP filed the option form by filling the name of the same institutes where they had not got the allotment in the previous round and as a result, the Petitioners could not acquire the seats in their respective caste category.

33. There appears to be no merit in the contention of the Petitioners that the Rules are in any way ultra vires the provisions of the said Act. In fact, the seats remain vacant after CAP are as a result of the candidates not being desirous of taking admission in such institutes as well as not filling the names of the institutes in the option form where they would stand a better chance. It is after completion of the three rounds that the seats are given to the

institutions to be filled at the institutional level so that the seats in these institutions do not remain vacant. The vacant seats in CAP are given to the institutions to fill through their additional efforts so as to fill the seats upto intake capacity and to reduce vacancy. In the case of unaided institutes, 80% of the intake seats are available for admission in CAP and balance 20% by way of institutional quota. Rule 13 of the said Rules provides for the manner in which the Director or Principal of the institution shall carry out the admissions for the seats in the institutional quota and vacant seats after CAP. It provides that if any seat remains or becomes vacant after the CAP rounds, then the same shall be filled in by the candidates from the same category for which it was earmarked during CAP. Further, if the seats remain vacant, then the seats shall be filled in on the basis of inter-se-merit of the applicants.

34. The Petitioners have also contended that the seat acceptance fees being charged from the candidates under the CAP is Rs. 1,000/- which is far less than what the candidates would have to pay under the institutional quota seats. This would be the case as the process of seat acceptance for seats in the institutional quota and vacant seats after CAP is provided in Rule 13 of the said Rules. This

provides that the institutions shall invite applications by notifying the schedule of admission and the number of seats in each course be filled in by the institutions by advertisement on website of the institution. The institution has to verify all required documents and thereafter prepare and display the inter-se-merit lists of candidates to be filled in at the institution level. All the admissions and cancellation would be updated instantly through online system. This would thereby justify additional fees charged by the institutions to those candidates who were unsuccessful under CAP. The candidates are not forced to take admission at the institution level due to the admission rules and admission process. The candidates take admission as per their wish to the institute of their choice at the institution level.

35. The entire CAP is thus, transparent and Information of all CAP rounds right from notification to allotment in the public domain. Accordingly, it is not for this Court in its writ jurisdiction to carve out or frame any scheme, if the students fails to obtain admission in respect of the seats applied for by them under the CAP. We accordingly, find no merit in constitutional challenge to these Rules and are of the view that Rules 9(3)(c) and 9(3)(d) and Rule 13 of the said Rules which are also published in the Information

Brochure for admission to the Full Time Professional Technical Courses for the academic year 2019-20, are in conformity with the said Act and not in any way ultra vires the provisions of the said Act or unconstitutional. We find that no case has been made out by the Petitioners for a direction to be issued to the Respondents to hold mop-up or counselling rounds so as to fill in the seats in CAP in full time professional undergraduate technical courses for the academic year 2019-20.

36. The Petitioners have also challenged the Government Resolution dated 15th April 2017 to the extent it denies financial assistance to students admitted to full time professional Technical Courses from the institutional or against CAP quota. The Petitioners have submitted that these students would have otherwise been granted financial assistance had they secured admission to the seats under the CAP.

37. It appears from the said Affidavit of Shri. Pramod Ambadas Naik, filed on behalf of the Respondent Nos. 1 and 2, that this criteria of admission to the institute through CAP for being provided scholarships, freeships and financial support to the limited

meritorious students by the State Government is adopted because candidates admitted through CAP have secured the seat in that institute by competing with other students desirous of getting admissions in that institute on their merit through open competition. The CAP provides a fair and transparent way for securing seats on merits. The candidates not securing the seats under CAP, thus, have to obtain admission at the institution level and hence, this criteria is limited to admission through CAP. The admissions at the institution level cannot be considered as admissions through open competition. Considering that this is a policy of the State Government by which CAP is kept as a mandatory criteria for giving scholarships, freeships and financial support to the candidates by the Government, it is not for this Court in writ jurisdiction to interfere or to frame any scheme to extend the benefits to students who are not successful in securing admission to the seats under the CAP. We do not find any merit in the submission on behalf of the Petitioners that the classification between the students belonging to backward and economically weaker sections who are admitted through CAP rounds and the students who have applied through CAP rounds but are forced to seek admissions in colleges run by the respective managements after the CAP rounds i.e. at the institutional level do not satisfy the test of reasonable

classification laid down by the Supreme Court in ***State of West Bengal Vs. Anwar Ali Sarkar*** (supra). It is to be noted that although the prayer seeks setting aside of the Government Resolution dated 15th April 2017, there is no prayer for setting aside the subsequent Government Resolution dated 15th February 2018 providing freeship/scholarship or waiver of the tuition fees to the students belonging to the backward and economically weaker sections issued by the Deputy Secretary of the Government, Higher and Technical Education, Mantralaya, Mumbai.

38. In view of the above findings, we find no merit in the Petition and the Petition is dismissed with no order as to costs.

[R.I. CHAGLA J.]

[S.C. DHARMADHIKARI, J.]