

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO. 25087 OF 2019

- 1. DATTAKALA COLLEGE OF PHARMACY,**
having its office at
Gat No. 541/2, 527,
Off Pune-Solapur Highway,
Swami-Chincholi Bhigwan,
Taluka : Daund, District : Pune
- 2. YASH A GANDHI**
Age : 20 years, residing at
House No. 1842, Village : Tembhorni
Pune Solapur Road, Taluka : Madha,
District : Solapur
- 3. ATHRAVA C GHADYALJI**
Age : 20 years, residing at Home No.
1907 Haridas Ves, Pandharpur,
District : Solapur

...Petitioners

~ VERSUS ~

- 1. STATE OF MAHARASHTRA**
Through its Department of Higher and
Technical Education Department, 4th
floor,
Mantralaya Annex, Madam Cama
Road,
Nariman Point, Mumbai – 400 032
- 2. DIRECTORATE OF TECHNICAL EDUCATION,**
3, Mahapalika Marg, Opp. Metro

Cinema, Mumbai – 400 001

3. **STATE COMMON ENTRANCE
TEST CELL,**
8th floor, New Excelsior Building, AK
Nayak Marg, Fort,
Mumbai – 400 001

4. **ADMISSIONS REGULATING
AUTHORITY**
9th floor, New Excelsior Building,
AK Nayak Marg, Fort,
Mumbai – 400 001

...Respondents

APPEARANCES

FOR THE PETITIONER	Mr VM Thorat, <i>with Mr MV Thorat & Mr Anukul Seth.</i>
FOR RESPONDENT NO. 3	Mr Rui Rodrigues.
FOR THE RESPONDENT STATE	Mrs AA Purav.

**CORAM : S.C. Dharmadhikari &
G.S. Patel, JJ.**

JUDGMENT RESERVED ON : 5th September 2019

JUDGMENT PRONOUNCED ON : 13th September 2019

JUDGMENT (Per GS Patel, J):

1. The 1st Petitioner is a pharmacy college. Petitioners Nos. 2 and 3 seek lateral admission directly to the second year of the

Bachelor of Pharmacy (“**B.Pharm**”) degree course, both having completed their two-year diploma course. The 1st Respondent is the State of Maharashtra. The 2nd Respondent is the Directorate of Technical Education. The 3rd Respondent is the State Common Entrance Test (“**CET**”) Cell, Mumbai and the 4th Respondent is the Admissions Regulatory Authority in Mumbai.

2. The challenge in this Writ Petition under Article 226 of the Constitution of India is to the alleged denial to Petitioners Nos. 2 and 3 of the benefit of an Economically Weaker Section (“**EWS**”) reservation of 10% to the B. Pharm degree course in the second year. The prayers in the Petition reads thus:

(a) call for the relevant records and proceedings from the office of the Respondent Authorities and after going into the legality of the same, direct the Respondent No.3 to allow the Petitioner No.1 to admit the Petitioner Nos. 2 and 3 against the EWS vacant quota as per Rule No. 13(h) of the information brochure published by the Respondent No.3 to Full Time Direct 2nd Year of Pharmacy (B.Pharm) Degree Course;

(b) hold and declare that the Petitioner Nos. 2 and 3 are eligible for being admitted under EWS quota from the intuitional level round to Full Time Direct 2nd Year of Pharmacy (B.Pharm) Degree Course;

3. At the forefront, we note that an identical issue came before us in *Master Sarvesh Sanjivkumar Kulkarni v State of Maharashtra, through State Common Entrance Test Cell & Ors*,¹ which we decided on 30th August 2019. There, the petitioner sought a mandamus to

1 Writ Petition No. 9683 of 2019.

include him in the EWS category. We noted the factual conspectus, and particularly that the reservation for EWS was over and above the sanctioned intake of the college in question. In *Master Sarvesh Sanjivkumar Kulkarni* admission was sought to a professional undergraduate technical course. The argument before us was that the 10% reservation of EWS could not, after the final CAP (Centralised Admission Process), rounds lapse, but had to be available for filling in vacant seats. Paragraphs 6 to 11 of that decision read thus:

6. Based on the wording of this clause, Mr Warunjikar argues that if the filling of vacant seats after CAP is to be in accordance with this clause, then this clause makes no distinction between reserved seats and those seats which are reserved for a category like EWS. Together, they all form part of the number of seats/intake capacity. Therefore, all remaining or vacant seats have to be filled up and the institution could not have informed the petitioner that the petitioner, as an EWS candidate, is not entitled to admission against a vacant seat in this institute. If all reserved category candidates who are part and parcel of the initial process can compete and opt for vacant seats, then leaving out EWS is discriminatory and that violates the mandate of equality enshrined in Article 14 of the Constitution of India.

7. To appreciate this argument, we called for the necessary information. Mr Patwardhan appeared on behalf of the 1st respondent. He points out that there is a fundamental error in Mr Warunjikar's argument and the petitioner's understanding of the provision. The EWS is in fact not taken to be a reservation forming a part and parcel of the *sanctioned intake capacity* at all. It is a supernumerary percentage. Therefore, unfilled EWS seats must necessarily

lapse. For example, if the sanctioned intake capacity is of 100 seats, that would include all reservations *except the EWS* referred in clause 6. The EWS has a provision which is conspicuously absent in the case of other reservations. As far as EWS seats are concerned, the sub-clause itself says in the clearest terms that this is not to be understood and on par with the reservations for backward category, reservations for persons with disability and reservations for defence service personnel. The wording is that while these seats shall be filled in by the competent authority through CAP as per the policy declared by the Government from time to time (and thus the *process* for filling up these seats is common), the segment of available EWS seats is clearly said to be 10% over and above the sanctioned intake. This sentence is conspicuous by its absence in the case of other reservations. Therefore, when these seats are 'over and above the sanctioned intake' capacity, then, naturally these students cannot be held eligible for competing against vacant seats. The seats for EWS lapse if not filled in any first three rounds. They do not get a further opportunity. That is how the matter has been understood and the clause interpreted by the 1st respondent is the submission of Mr Patwardhan.

8. We leave aside the issue pertaining to an Office Memorandum dated 17th January 2019 issued by the Ministry of Human Resources Development, Department of Higher Education, Government of India on the subject of reservation for EWS for admission in Central Educational Institutions. We simply go by the wording of the information brochure. Pertinently, Mr Warunjikar has not challenged the legality and validity of the information brochure and particularly clause 6(d) thereof.

9. Once reservations have been understood in the aforesaid manner, then we find ourselves unable to agree

with Mr Warunjikar. Clause 6 says that the sanctioned intake and supernumerary seats for various courses would be as set out in sub-clause (1) of clause 6. Then Maharashtra Candidature seats are understood to be those specified in clause 5(1) and the candidates would be identified as Maharashtra Candidature. Then we have a separate institutional quota seat other than minority seats. We do not think that the Tuition Fees Waiver Scheme seats needs any reference in this case because projection of Mr Warunjikar is regarding EWS students alone. Be that as it may, reservations is a heading under which these sub-clauses reproduced above by us appear. There, the percentage of seats reserved for candidates of backward class category belonging to Maharashtra State has been set out. What is clear is that 66% reservation or percentage of seats reserved is out of the total/sanctioned intake capacity. This reservation is separate and distinct from the reservation of 5% seats in each institute for sons and daughters of defence service personnel. Thereafter, there are reservations for persons with disability. In all these sub-clauses, the word employed are percentage (%) of seats of total sanctioned intake of all institutions. This is conspicuous by its absence in the reservation provision for EWS candidates. The reservation for EWS candidates is provided as per Government Resolution dated 12th February 2019. Ten percent (10%) seats are to be reserved for EWS candidate and 'these seats shall be over and above the sanctioned intake'. If that is how these reservations are understood and are to be provided, then, once the Common Admission Process rounds are complete and there are no takers for these 10% EWS seats, these seats lapse. They are no longer construed as vacant seats and to be filled in by the process now undertaken. That process is restricted to such of the seats which remain unfilled or vacant but out of the total or sanctioned intake capacity. Those are not seats

which can be taken to be of a percentage of the total/sanctioned intake capacity or seats over and above the sanctioned intake.

10. The premise of the petitioner has a fundamental flaw. It presumes that on account of the EWS reservation the sanctioned intake has increased by 10%. In other words, the sanctioned intake of a given institution has gone from 100 to 110. That is not correct, and can be simply seen from a numerical calculation. If the Maharashtra backward class reservation is pegged at 66% *of the sanctioned intake*, and the sanctioned intake is 100 (illustratively), then the reserved seats for backward classes are 66 in all. If the sanctioned intake is 'deemed to have increased' to 110, then the reservation would be 66% of 110, i.e. about 73 seats. What is available in any left-over quota (state or institutional) is only the post-CAP rounds vacant seats as computed against the sanctioned intake. The EWS reservation is not an upward revision to the sanctioned intake at all. It is a reservation of seats 'over and above' the sanctioned intake, not an upward revision of the sanctioned intake. Again, illustratively, this means that if all 100 sanctioned intake seats are filled, another 10 seats are available for EWS candidates. If there are not 10 EWS candidates but only, say, three such candidates, then the remaining seven seats lapse. They are unavailable for allotment under any quota as they are not a percentage of the sanctioned intake, but are over and above it. It is only the vacant seats after the CAP rounds *within* the sanctioned intake (in our example of 100 seats) that, on account of being vacant, pass through to the quota allotment process.

11. In these circumstances, we do not think that the interpretation placed by the 1st respondent on these sub-clauses and the clause is so perverse, irrational or unreasonable so as to be construed as violative of the

mandate of Article 14 of the Constitution of India. There is no discrimination for the EWS category is always understood a class apart. There is an intelligible differentiation. This is clear from the sub-clauses of clause 6. This is taken to be a provision to enable economically weaker sections of the society, irrespective of caste, to qualify and become eligible for the seats. If the 1st respondent does not include such seats in the process of filling up the vacant seats, then we do not think that a mandamus can go to the Commissioner to include them as desired by the petitioner.

4. We brought to the attention of Mr Thorat, learned Counsel for the Petitioners in the present matter, our decision in *Master Sarvesh Sanjivkumar Kulkarni*. Having considered it, he moved an amendment which we hereby allow. That amendment is to be carried out in two weeks from the date of pronouncement of this judgment. We proceed on the basis that the amendment is carried out.

5. After the amendment, there is therefore, also in addition to the forgoing prayers, additional prayers b-1 and b-2 which read thus:

(b-1) In the alternative and without prejudice to the above hold and declare that the impugned rule is ultra-vires the reservation policy and/or the GR dated 12.02.2019 and therefore required to be read down to mean that the seats of EWS remaining vacant in CAP round or otherwise are required to be filled in by the EWS Category candidates at institutional level round.

(b-2) Hold and declare that the rule is otherwise discriminatory and therefore required to be read down to mean that the seats of EWS remaining vacant in CAP round

or otherwise are required to be filled in by the EWS category candidates at institutional level round.

6. Mr Thorat for the present Petitioners submits that this case is entirely distinguishable on facts, and even otherwise, from the *Master Sarvesh Sanjivkumar Kulkarni* case. Accordingly, we proceed to examine the facts of the present case. Petitioners Nos. 2 and 3, both 20 years of age, say that they belong to EWS since their combined annual family income from all sources is below Rs.8 Lakhs. They say they hold an appropriate EWS certificate. The 1st Petitioner Pharmacy College has a sanctioned intake of 100 seats. It conducts two types of courses. The first is a four-year B. Pharm degree course. Students are admitted to this degree course directly after they complete the HSC or 12th standard examination. There is also a two-year diploma in Pharmacy (“**D.Pharm**”) and to this, too, students are admitted directly after the 12th standard examination from the science faculty. Students who finish their two-year diploma are entitled to a lateral admission to the second year of the B.Pharm degree course. In other words, a student who opts for the D.Pharm and then the B.Pharm route will take in all five years of education.

7. For the admission to the B.Pharm degree, including for the lateral second year transfers after completing the two-year diploma course, the 3rd Respondent conducts CAP rounds. For this purpose it publishes its rules and information brochure annually. Broadly stated, these rules allow each institute, after three CAP rounds are complete, to fill any remaining vacant seats from what is called the institutional quota in accordance with rules published in the information brochure.

8. On 12th January 2019, Article 15 of the Constitution of India was amended. The newly inserted sub-clause (6) now allowed the making of special provisions for the advancement of EWS. This included private educational institutions whether aided or unaided, but excluding minority educational institutions. The reservations would be subject to a maximum of 10% of the total seats and would be in addition to any existing reservations. Following this, the Maharashtra Government on 12th February 2019 published a policy in keeping with this Constitutional amendment in regard to government employment as also in regard to admission to EWS students' admissions in non-reserved categories. This meant an additional provision for EWS candidates but who are not Scheduled Castes, Scheduled Tribes, Other Backward Classes, Nomadic Tribes or Vimukta Jatis. The Government Resolution specified that the family annual income from all sources would have to be less than Rs. 8 Lakhs for a student to qualify in the EWS category.

9. The 1st Petitioner college is allowed a lateral entry of 10% of its total intake capacity for students migrating into the second year B.Pharm degree course after having completed the two-year pharmacy diploma. Given that the 1st Petitioner's total intake capacity is 100 seats, there are, therefore, 10 such seats to be filled in by lateral entry in addition to the 100 seats in the sanctioned intake.

10. For the academic year 2019–2020, the 1st Petitioner therefore, had 10 such seats for lateral entry. In addition it had five seats which fell vacant during the admission of the second year. According to the 1st Petitioner, there was also an EWS quota of two seats.

11. The information brochure in question is at Exhibit “D” from page 34.

12. We find from a careful examination of this information brochure that the provisions in it from internal pages 9 to 11, running pages 45 to 47 in respect of reservations are exactly the same as the once we considered in the case of *Master Sarvesh Sanjivkumar Kulkarni*. There is no difference at all. By way of abundant caution we reproduce those portions:

“(6) Reservations:

All the reservations given below shall be applicable to **candidates belonging to Maharashtra State only** subject to the fulfilment of the eligibility criteria specified by respective authorities from time to time.

(a) Reservation for Backward Class category Candidates:

The percentage of seats reserved for candidates of backward class categories belonging to Maharashtra State is as given below. The percentage of reservation is the percentages of the seats available for Maharashtra candidates, coming under the CAP. Backward class candidates shall claim the category to which they belong at the time of submission of application for CAP.

Sr. No.	Category of Reservation	Percentage of seats Reserved
01	Scheduled Castes and Schedule Caste converts to Buddhism (SC)	13.0%
02	Schedule Tribes (ST)	7.0%
03	Vimukta Jati (VJ)/De Notified Tribes	3.0%

	(DT) (NT-A)	
04	Nomadic Tribes 1 (NT-B)	2.5%
05	Nomadic Tribes 2 (NT-C)	3.5%
06	Nomadic Tribes 3 (NT-D)	2.0%
07	Other Backward Classes (OBC)	19.0%
08	Socially and Educationally Backward Classes (SEBC)	16.0%
	Total	66.0%

(b) Reservation for sons/daughters of Defence service personnel:

Five percent (5%) seats of the total sanctioned intake of an institute, subject to a maximum of five (5) seats in each institute coming under CAP shall be reserved for Children of ex-service personnel who are Domiciled in Maharashtra State (DEF-1), Children of active service personnel who are Domiciled in Maharashtra State (DEF-2), Children of active service personnel (DEF-3) who are transferred to Maharashtra State but are not domiciled in Maharashtra State, or who are not domiciled in Maharashtra State but their families are stationed in Maharashtra State under the provision of retention of family accommodation at the last duty station on grounds of children's education provided further that, such candidate should have appeared and passed the HSC examination from a school/college situated in the State of Maharashtra.

- (i) These seats are within the sanctioned intake and are available as **State Level seats**.
- (ii) A combined single merit list of all eligible DEF1, DEF2 and DEF3 candidates shall be prepared.

(iii) Candidates claiming these seats shall produce additional documents in Proforma C, D and/or E as applicable.

(iv) This provision is NOT available to the children of **CIVILIAN STAFF** who is working/who has worked in the Indian Defence Service.

(c) Reservation for Persons with Disability Candidate:

Five percent (5%) seats of total sanctioned intake of all the Institutions under CAP shall be reserved for Candidates having following minimum 40% benchmark disability.

Locomotor disability	Intellectual disability
Leprosy cured person	Specific learning disabilities
Cerebral palsy	Autism spectrum disorder
Dwarfism	Mental illness
Muscular dystrophy	Multiple sclerosis
Acid attack victims	Parkinson's disease
Blindness	Haemophilia
Low-vision	Thalassemia
Deaf	Sickle cell disease
Hard of hearing	Multiple Disabilities
Speech and language disability	

A single merit list of all eligible candidates shall be prepared. The allotment of seats reserved for the Candidates with Disability shall be done on the basis of an inter-se merit. **These seats are available for Maharashtra domiciled candidates in HU/SL seats.**

The candidates claiming reservation under this category shall submit the certificates from the authority competent for issuing such certificate. The certificate (Pro-forma) should clearly state that the extent of disability is not less

than 40% (Forty percent) and the disability is permanent in nature.

Note:-

Candidates with Disability should note that on admission to degree course they will not be given any exemptions or additional facility in the academic activities other than those which may be provided by the respective Universities.

(d) Reservation for EWS Candidate:

As per the provisions in Government Resolution No. RaAaDho-4019/pra.kra.31/16-A, dated 12th February 2019, 10% seats shall be reserved for EWS candidates. These seats shall be filled by the Competent Authority through CAP as per the policies of the Government declared from time to time. These seats shall be over and above the sanctioned intake.”

(Emphasis by underlining added)

13. One we have seen this, then there remains no further room for differentiation between the *Master Sarvesh Sanjivkumar Kulkarni* case and the present one. The two cases are on all fours.

14. We only note that the 2nd Petitioner did obtain admission in CAP Round 1 at the college of Pharmacy and Research at Palaskheda Tal. Jamner, District Jalgaon. The 2nd Petitioner declined to take admission at the Jalgaon College. The 3rd Petitioner did not secure any seat. It is in these circumstances that two Petitioners Nos. 2 and 3 are seeking the EWS reservation.

15. By way of the amendments, Mr Thorat draws our attention to the NEET UG-2019 information brochure. Admittedly, this does not apply to the D. Pharm or B. Pharm courses but only to the medical courses. He submits that there is no such lapsing of EWS reservation for medical courses and therefore to allow the lapsing for technical or pharmacy courses is violative of Article 14 as being arbitrary and discriminatory. We need to note the provisions at page 20 of the NEETUG-2019 brochure in regard to EWS reservation. This is how it reads:

“EWS reservation – 10% seats of the available seats will be reserved for EWS candidates. For MBBS/BDS/BAMS/BHMS and BUMS courses, this reservation will be applicable only if Central Government/respective council increases existing seats. For courses other than MBBS/BDS/BAMS/BHMS and BUMS courses 10% EWS reservation will be applicable on available seats (refer annexure-T).”

This clause has to be read with the provision on the next page 21 which clearly states that

seats that remain vacant from the SEBC and EWS category will be allotted to the general category candidates.

16. This makes it clear, in our view, that Mr Thorat’s submission is not prima facie correct. We are not called on to finally decide whether there is a lapsing of EWS and SEBC reservations. We only note that these EWS (and SEBC) seats pass into the general category even in NEET UG-2019. It is sufficient for our purposes to note that there is no absolute requirement for complete parity in

all forms of admission. Moreover, prima facie, the distinction sought to be made does not appear to be correct.

17. Having regard to the these circumstances, and being unable to find any point of distinction or differentiation between this case and that of *Master Sarvesh Sanjivkumar Kulkarni*, we find no merit in the Petition. It is dismissed. There will be no order as to costs.

(S. C. DHARMADHIKARI, J.)

(G.S. PATEL, J.)