

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5024 of 2019

Shri Parimal s/o Prashant Balankhe and others

Versus

State of Maharashtra,

through its Chief Secretary, Mantralaya, Mumbai, Maharashtra, and others.

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's
orders
and Registrar's order

Shri S.P. Bhandarkar, Advocate for Petitioners.

Ms N.P. Mehta, Assistant Government Pleader for Respondent
Nos.1, 5 and 6.

Shri Nahush Khubalkar, Advocate for Respondent No.7.

Coram : R.K. Deshpande & Vinay Joshi, JJ.

Date : 9th September, 2019

This petition claims a declaration that the provisional seat matrix for the academic year 2019-20 MBBS Admission, issued on 6-7-2019 by the State Common Entrance Test Cell, as arbitrary, illegal and in breach of the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006 and the Central Educational Institutions (Reservation in Admission) Amendment Act, 2012. It also seeks a direction to the Government of Maharashtra to protect and keep 1,134 seats intact as available to the open category candidates in the academic year 2018-19.

Initially we heard the matter on 18-7-2019 and passed an order as under :

“ Heard.

2. Respondent No.7 - State of Comon Entrance Test Cell, has published a seat matrix on 06.07.2019, for admission to MBBS Course in the Government Medical College all over the State. The same is also reflected on paper book page nos.18 and 19 of the petition. According to this seat matrix, the total intake capacity of MBBS in the Government Medical Colleges all over the State was 3110 seats during the academic year 2018-19. In the year 2019-20, the same is enhanced to 4080, by increasing 970 seats. This has been done on the basis of the Office Memorandum dated 17.01.2019, issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India.

3. The relevant portion is contained in Clause 2(c) of the Office Memorandum dated 17.01.2019, is reproduced below :

“2(c) Every Central Educational Institution shall, with the prior approval of the appropriate authority [as defined in clause [c] of Section 2 of the Central Educational Institutions (Reservation in Admission) Act, 2006], increase the number of seats over and above its annual permitted strength in each branch of study or faculty so that the number of seats available, excluding those reserved for persons belonging to the EWS, is not less than the number of such seats

available in each category, for the academic session immediately preceding the date of the coming into force of this O.M.”

Guidelines are also issued for calculating additional seats for implementing 10% EWS quota for MBBS Course to implement the Constitutional provisions entrusted on 12.01.2019 by the Constitution (103rd Amendment) Act, 2019. Guideline No.3 therein, is reproduced below :

“(3) in order to implement the 10% EWS reservation quota, the increase in seats has to be effectively 25% of the current intake to ensure that the existing number of general and other quota seats are not affected. Thus, a college with current intake of 100 seats would need to add 25% additional seats i.e. 25.”

4. Relying upon the aforesaid provision, it is urged by the learned Counsel for petitioners, that the increase in the number of seats in the academic session 2019-20 (which in the present case is of 970 seats), is to ensure that the existing number of general and other quota seats are not affected. He submits that in view of this position, the total number of seats for general and open category candidates existing during the academic session 2018-19, was of 1134 seats, which could not be reduced. However, according to him, the factual matrix shows decrease in the number of seats by 259 for

general and open category candidates, which is not only contrary to the intention of introducing the reservation by 103rd Amendment to the Constitution, but, also violates the guarantee to the students seeking MBBS course, contained under Article 14 of the Constitution of India. The relief therefore, claimed is that there cannot be any decrease in the number of seats available for general and open candidates below 1134 , during the academic session 2019-20.

5. Issue notice for final disposal of the matter, returnable on 16.08.2019. Learned A.G.P. for respondent Nos.1, 5 and 6 and Shri N. Khubalkar, learned Counsel for Respondent No.7, waive notice.

6. Copy of this order be furnished to learned counsel for the parties to act upon."

In response to the aforesaid order, the State Government and the Director of Medical Education and Research have filed the affidavit dated 19-8-2019 and the additional affidavit dated 26-8-2019.

We have heard the learned counsels appearing for the parties and gone through in detail the provisions of the Acts, referred to above, along with the Office Memorandum dated 17-1-2019 issued by the Ministry of Human Resource Development Department of Higher Education, Government of India; the communication dated 29-1-2019 issued by the

Under Secretary, Ministry of Health & Family Welfare (Medical Education Policy), Government of India; and the guidelines for calculating additional seats for implementing 10% EWS Quota for MBBS Course by the Board of Governance in supersession of the Medical Council of India.

The factual position that the intake capacity of the Colleges in MBBS Course in the Government/Corporation and Government-aided Colleges was increased by 10% seats for EWS Quota as per the constitutional reservation from 3,110 seats in the State to 4,080 seats, i.e. total 970. In the last year, i.e. 2018-19, the MBBS seats available for open category were 1,133, whereas in spite of increasing the number of seats for the year 2019-20, the number of seats for open category is reduced to 876. It is in this background, we had passed an order dated 18-7-2019, reproduced above.

We are impressed by three things - **(i)** that after introduction of the SEBC reservation, there is no mandate that the seats available for open category in the preceding academic year shall not be reduced, **(ii)** that the guidelines issued by the Medical Council of India do not take into consideration the reservation for the SEBC category, and **(iii)** that due to introduction/implementation of 12% reservation for the SEBC category from the academic year 2019-20, the seats available for open category in the preceding year were reduced. We, therefore, do not find any substance in the challenge raised by the petitioners.

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The petition is dismissed.

(Vinay Joshi, J.)

(R.K. Deshpande, J.)