

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14623 OF 2019

Omprakash Singh Shisodiya,
Age : 37 years, Occu: Student,
R/o: A/P Makhni, Tq: Gangakhed,
Dist: Parbhani

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture,
Mantralaya, Mumbai-32.
 2. The Maharashtra Council of Agricultural
Education and Research, Pune.
Through its Director,
132-B, Bhamburda, Bhosalenagar,
Pune, Maharashtra
 3. The Vasantryao Naik Marathwada
Krushi Vidyapeeth, Krushi Nagar,
Through its Registrar, Vasmat Road,
Parbhani – 431 402
 4. Pusphanjali Balaso Bhosale
Age: Major, Occu: Ph.D. Candidate at VMNKV,
R/o: Ph.D. Candidate of Floriculture and
Landscape,
C/o: The Vasantryao Naik Marathwada
Krushi Vidyapeeth, Krushi Nagar,
Vasmat Road, Parbhani – 431 402
- ...Respondents

Ms P.S. Talekar, Advocate holding for
Talekar & Associates for Petitioner
Mrs V.N. Patil-Jadhav, A.G.P. for Respondent No. 1
Mr S.K. Kadam, Advocate for Respondent No. 2
Mr M.N. Navandar, Advocate for Respondent No. 3
Mr S.V. Adwant, Advocate for Respondent No. 4

**CORAM : S. V. GANGAPURWALA
AND
SHRIKANT D. KULKARNI, JJ.**

JUDGMENT RESERVED ON : 13.02.2020

JUDGMENT DELIVERED ON : 30.04.2020

JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Rule. Rule returnable forthwith. With the consent of the parties, petition is taken up for final hearing.

2. The petitioner is challenging final allotment list published by respondent No. 2 dated 16.11.2019 for Ph.D. seats for Floriculture and Landscaping by invoking Article 226 of the Constitution of India.

FACTUAL MATRIX

3. According to the petitioner, he has completed his post graduation in horticulture with specialization in Floriculture and Landscaping in the year 2009 from respondent No. 2/The Vasantrao Naik Marathwada Krishi Vidyapeeth, Parbhani. The petitioner is from the category of Project Affected Person (In short 'PAP'). He has applied for the admission of Ph.D. for the academic year 2019-2020. According to the petitioner, Agriculture Department for the College of Parbhani had total number of 33 seats for the various courses offered for Ph.D. Out of it, one seat was to be reserved for PAP. He

further contended that out of 33 seats, one seat was offered for Floriculture and Landscaping by respondent No. 3/University and same was further reserved under the University quota from the Parbhani Agricultural College Ph.D. admission quota for the year 2019-2020. He further contended that there are only 4 Agricultural Universities in the State of Maharashtra which provide Ph.D. courses in Floriculture and Landscaping and total number of seats available for the said course in the State of Maharashtra are seven. According to the petitioner, his home University i.e. respondent No. 3 was among these four Universities offering Ph.D. in Floriculture and Landscaping and only one seat was available for the said University and that too reserved from University quota. It is contended by the petitioner that he was eligible candidate for the admission under the University quota in respondent No. 3/University for Ph.D. in Floriculture and Landscaping in the academic year 2019-2020, since he has completed post graduate course from respondent No. 3/University at Parbhani. He has given preference to only one college for Ph.D. i.e. for respondent No. 3/College owing to the University quota reservation declared in the respondent No. 3/University for Ph.D. course in Floriculture and Landscaping discipline.

4. He further contended that he was one of the only two candidates, who had completed the post graduation course from respondent No. 3/University and confident in getting admission as the said one post was reserved for PAP quota in the respondent No. 3/ University.

5. Respondent No. 2 published final merit list on 04.11.2019 for academic year 2019-2020 giving complete details of the candidates such as University name, categories, scores, ranks, etc. The petitioner was ranked 64 whereas respondent No. 4 was ranked 159 in the final merit list.

6. First round of allocation list came to be published by respondent No. 2 on 07.01.2019 and second round allotment list (with conversion) on 16.11.2019. It is contended by the petitioner that though he being fit in merit, he was not allotted one seat out of 7 in Floriculture and Landscaping discipline in various Agricultural Universities in Maharashtra. No student was allocated seat in respondent No. 3/University for the specialization in Floriculture and Landscaping by respondent No. 2 inspite of the fact that the petitioner being there who had opted for respondent No. 3 and also secured his name in the merit list and though that seat reserved for PAP in the College of Parbhani.

7. According to the petitioner, despite respondent No. 4 was lower in rank and secured less marks than the petitioner, seat for Ph.D. in Floriculture and Landscaping was allocated to respondent No. 4. According to the petitioner, respondent Nos. 2 and 3 have committed breach of the conditions for admission of Ph.D. published in the prospectus by the Maharashtra Council of Agriculture Education and Research, Pune. He had immediately preferred a complaint to respondent No. 2, but no outcome.

8. Feeling aggrieved by the allocation of the Ph.D. seat for Floriculture and Landscaping to respondent No. 4 in respondent No. 3/University for the academic year 2019-2020 and denying admission to the petitioner though meritorious and qualified for the said seat, has challenged the admission process by taking aid of Article 226 of the Constitution of India.

9. We have heard the arguments advanced by Ms P.S. Talekar, Counsel for petitioner, Mrs V.N. Patil-Jadhav, Assistant Government Pleader for Respondent No. 1, Mr S.K. Kadam, Advocate for Respondent No. 2, Mr M.N. Navandar, Advocate for Respondent No. 3, and Mr S.V. Adwant, Advocate for Respondent No. 4 at length.

10. Ms Talekar, learned Counsel for the petitioner vehemently argued that as per the admission quota table 2019-2020, there were 33 seats available for Ph.D. and out of it, one seat was reserved for PAP candidate. The petitioner falling under the PAP quota was eligible to get admission for the Ph.D. course in Floriculture and Landscaping for the academic year 2019-2020 in respondent No. 3/ University. The petitioner had secured more marks than respondent No. 4 and eligible candidate to get the admission under the PAP quota in the Floriculture and Landscaping in respondent No. 3/ University. According to Ms Talekar, the petitioner was the only eligible candidate for reservation under University quota. Even then his seat was *mala fidely* allotted to respondent No. 4 by fraudulently showing her eligible under University quota even though she had completed her post graduation from Rahuri Agricultural University and not eligible for the University quota reservation.

11. According to Ms Talekar, the conversion of the University quota to Maharashtra quota was neither permissible nor legal and in any case violative of legitimate expectation of the petitioner. Ms Talekar pointed out that respondent No.4/Pusphanjali Bhosale, though lower in rank as compared to the petitioner, was allotted a seat for Ph.D. in Floriculture and Landscaping discipline for the academic year 2019-2020 in respondent No. 3/University. Ms

Talekar vehemently argued that the act of denying admission to the petitioner in respondent No. 3/ University for Ph.D. in Floriculture and Landscaping course for academic year 2019-2020 is arbitrary and breach of terms and conditions of the admission process published in the prospectus by respondent No. 2. Ms Talekar submitted that conversion of University quota seat to Maharashtra quota after the same is declared and published and the admission process has begun amounts to changing the rules of the game after the game has begun and same is in gross violation of the settled principles of law.

12. The allocation list published by respondent No. 3 on 16.11.2019 is in complete violation of reservation policy provided by the Government in Ph.D. admission quota table for the University of Parbhani for the year 2019-2020. According to Ms Talekar, the act of respondent Nos. 2 and 3 of denying admission to the petitioner is unjust, unfair, discriminatory, and in violation of Article 14 and 21 of the Constitution of India and allotment of seat to respondent No. 4 in final allotment list dated 16.11.2019 needs to be quashed.

13. According to Ms Talekar, there cannot be any reservation for a single post cadre either directly or by device of rotation of roster points. It may amount to 100% reservation. Ms Talekar has placed reliance on following citations in support of her argument.

- (i) *Post Graduate Institute Of Medical Education and Research, Chandigarh Vs. Faculty Association and Others reported in (1998) 4 SCC 1***
- (ii) *Akhilesh Kumar Singh Vs. Ram Dawan and Others reported in (2015) 16 SCC 619***
- (iii) *R.R. Inamdar Vs. State of Karnataka and Others reported in 2019 SCC OnLine SC 1603***
- (iv) *Dr Suresh Chandra Verma and Others Vs. The Chancellor, Nagpur University and Others reported in (1990) 4 SCC 55***
- (v) *State of Karnataka and Others Vs. K. Govindappa and Another reported in (2009) 1 SCC 1***
- (vi) *Dr Chakradhar Paswan Vs. State of Bihar and Others reported in (1988) 2 SCC 214***
- (vii) *State of U.P. Vs. Dr Dina Nath Shukla and Another reported in (1997) 9 SCC 662***

14. Mr S.K. Kadam, the learned Counsel for respondent No. 2/ The Maharashtra Council of Agricultural Education and Research, Pune not disputed the process for admission of Ph.D. course in the academic year 2019-2020. Mr S.K. Kadam, learned Counsel submitted that there were total 33 seats for Ph.D. course with respondent No. 3/University for the academic year 2019-2020. Out

of these 33 seats, 28 seats were available for Ph.D. admission through respondent No. 2. Out of 33 seats, 5 seats were to be filled-in by Indian Council of Agriculture Research, New Delhi. He further submitted that out of 28 seats available with respondent No. 3, one seat was earmarked for other State quota and as such, 27 seats were available for University and Maharashtra quota. One seat was reserved for PAP open category in view of 4 % reservation provided for PAP category in subject of Extension Education, Food Science, Vegetable Science and Agriculture Chemistry. Mr Kadam pointed out that the allocation of seats to the States is on the basis of past year roster. For last academic year i.e. 2018-2019, one seat for the subject of Floriculture and Landscaping was reserved for open category in Maharashtra quota in respondent No. 3/University. As per rotation for the academic year 2019-2020, one seat of the said subject was reserved for University quota. He submitted that petitioner admittedly belongs to open category under the University quota and as such, he was not eligible to be admitted against the reserved seat of the said subject.

15. Mr Kadam further pointed out that the seat in the subject of Floriculture and Landscaping was allotted in the University quota, however, the reserved candidate was not available against the University quota seat in the said subject, and therefore, that seat

was converted to Maharashtra State quota and Respondent No.4 being eligible for that reserved seat having secured highest marks amongst the reserved candidates, she has been granted admission on the basis of her merit. The claim of the petitioner cannot be considered against that reserved seat for admission.

16. Mr Kadam, learned Counsel argued that number of seats for Ph.D. course are very few and as such, the authorities have to follow the serial of roster while reserving the seats. He further submitted that after the process of admission was commenced, a meeting of Deputy Registrar (Academic) of four Agricultural Universities was convened and allotment of seats and subjects were prepared in the said meeting and the said seat matrix was provided to the respective Universities. According to Mr Kadam, respondent Nos. 2 and 3 have followed fair and transparent procedure while filling up the Ph.D. seats. The admission process cannot be quashed merely because information regarding distribution of seat was not displayed on the website either of the office of Council or University. Mr Kadam submitted that the petitioner had applied for Ph.D. course in the subject of Floriculture and Landscaping discipline for the academic year 2019-2020 in respondent No. 3/University alone. The seat in the subject in question was also available at Dr. Punjabrao Deshmukh Krishi Vidyapeeth, Akola in the spot round for open

category but the petitioner failed to attend the said round and the petitioner has to blame himself.

17. Mr M.N. Navandar, learned Counsel for respondent No. 3 and Mrs V.N. Patil-Jadhav, learned Assistant Government Pleader for respondent No. 1/State argued on the line of Mr S.K. Kadam and supported the stand taken by respondent No. 2.

18. Mr S.V. Adwant, learned Counsel for respondent No. 4 submitted that respondent No. 4 has secured highest marks amongst the reserved category candidate and alone eligible for the said seat in the subject of Floriculture and Landscaping discipline in respondent No. 3/University and accordingly, admission was given to her on the basis of her merit.

19. It is now well settled position of law that 100 % reservation is not permissible. For that, we may refer to the citations in case of ***Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and others with connected matters reported in (1998) 4 SCC 1.***

20. In case of ***Dr Suresh Chandran Verma and Others Vs. The Chancellor, Nagpur University and Others reported in (1990) 4 SCC 55,*** wherein it is held by the Hon'ble Supreme Court that the reservation has to be made subject-wise.

21. The case at hand pertains to admission of a student for Ph.D. course in the subject of Floriculture and Landscaping for the academic year 2019-2020 in respondent No. 3/University. It is not in dispute that petitioner has secured 75.50 marks and rank 64 whereas respondent No. 4 has secured 65 marks and 159 rank. It is also not in dispute that petitioner had only opted for respondent No. 3/University for Ph.D. course in Floriculture and Landscaping discipline since he has completed post graduation from the same University. The crux of the matter is conversion of University quota to Maharashtra quota. The present scenario, as we noticed because of conversion of University quota to Maharashtra quota in the midst of the admission process.

22. The petitioner has placed on record a copy of prospectus 2019-2020 for admission to Doctor of Philosophy (Ph.D.) in Agricultural Universities in Maharashtra.

23. Clause 1.6.1. and 1.6.2 relate to Agricultural University quota and Maharashtra quota which read thus -

1.6.1. Agriculture University Quota ['U' Quota]

The candidates who possess the Domicile Certificate of Maharashtra. If doesn't have domicile, the candidates with Maharashtra State as their birth

place in Maharashtra mentioned on their College/School Leaving Certificates or Birth Certificate issued by competent authority of Maharashtra State and those who have passed the qualifying (degree) Examination conducted in the respective jurisdiction of the Agricultural University of Maharashtra, seats reserved for such candidates shall be referred to as 'Agriculture University Quota' ['U' Quota]

1.6.2. **Maharashtra Quota ['M' Quota]**

The candidates who possess the Domicile Certificate of Maharashtra. If doesn't have domicile, the candidates with Maharashtra State as their birth place in Maharashtra mentioned on their College/School Leaving Certificates or Birth Certificate issued by competent authority of Maharashtra, seats reserved for such candidates shall be referred to as "Maharashtra Quota" ['M' Quota]. Therefore, Candidates under the University Quota ['U' Quota] are also eligible for Maharashtra Quota ['M' Quota].

24. Ph.D. intake capacity for the subject is as under :-

Sr. No.	Subject	Intake capacity					Total
		MPKV Rahuri	Dr. PDKV Akola	Agri. College, Nagpur	VNMKV Parbhani	Dr. BSKV Dapoli	
12	Horticulture						
	(c) Floriculture and Landscaping	-	2	2	1	2	7
	Total						7

25. Clause 5.6 of the prospectus is important which reads thus -

5.6 During the admission process, if a candidate is not found for any one of the reserved categories then the said seat shall be filled in as per the procedure mentioned in the Government Resolution, Agriculture and Animal Husbandry, Dairy Development and Fisheries Department, No. MAD 2010/P.No.155/7A dated 20/10/2011. In this GR, the methodology for redistribution of reserved seats is mentioned. According to this after redistribution, total seats are called as 'Convert to Reserve' (CR). For such seats all candidates from reserved category are eligible. If candidates are not available for seats for 'Convert to Reservation', then these seats finally converted for open category. Such seats are called as 'Convert to Open' (CO). All candidates from Maharashtra are eligible for such seats.

26. We have also perused the Government Resolution dated 20th October, 2011 relating to the admission procedure in Agricultural Universities and reservation thereof including social reservation. It is an admitted position that 28 seats were available for Ph.D. course with respondent No.3/University and one seat was earmarked for other State quota. As such, 27 seats were available for University and Maharashtra quota.

27. The petitioner admittedly belongs to open/PAP category under the University quota and thus, not found eligible for admission

against the reserved seat of the said subject though he had secured more marks and higher in rank than respondent No. 4. Further, it is evident from the reply-affidavit sworn by Director (Education) Maharashtra Council of Agriculture, Education and Research, Pune that the seat in the subject of Floriculture and Landscaping was allotted in the University quota. But the reserved candidate was not available against the University quota seat for the said subject. Resultantly, that seat was converted to Maharashtra State quota and respondent No. 4 being eligible against that reserved seat and having secured highest marks amongst the reserved candidates has been granted admission on the basis of her merit.

28. Admittedly, number of seats for Ph.D. are very few in the four Universities, and therefore, the authorities need to follow the serial of roster while reserving the seats in view of Government Resolution dated 20.10.2011. The allocation of subject of Ph.D. in floriculture and landscaping from the year 2016-2017 to 2019- 2020 as evident from the reply-affidavit is as under :-

Academic Year	Quota	Open/Reserve
2016-17	Maharashtra Quota	Open
2017-18	University Quota	Reserve
2018-19	Maharashtra Quota	Open
2019-20	University Quota	Reserve

29. For the last academic year i.e. 2018-2019, one seat in the subject of Floriculture and Landscaping was reserved for open category in Maharashtra quota in respondent No. 3/University. As per the rotation, for the academic year 2019-2020, one seat of the said subject came to be reserved for University quota. The petitioner admittedly belongs to open category though falling under PAP not found eligible for getting admission against the reserved seat for the said subject. Why this scenario we are witnessing ? We find answer in the additional affidavit filed on behalf of respondent No. 2 para No. 3. It is evident that after the process of Ph.D. admission was commenced, a meeting of the Deputy Registrar (Academic) of four Universities was convened and allotment of seats and subjects was prepared in the said meeting and the said seat matrix came to be provided to the respective four Universities. The said seat matrix making allotment of seats amongst four Universities was neither displayed on the notice board of the respective University or in the office of respondent No. 2 nor it was published on the website of respondent Nos. 2 and 3. It was major flaw on the part of respondent No. 2 while converting the seat from University quota to Maharashtra quota.

30. No doubt, the Petitioner was eligible to get admission for Ph.D. course in the subject of Floriculture and Landscaping for the

academic year 2019-2020 when prospectus was published. However, that scenario was changed at the time of commencement of admission process. Respondent Nos. 2 and 3 had kept one seat for reserved category under University quota and they could not get candidate from University quota. Resultantly, converted that post into Maharashtra quota. This change was made by respondent Nos. 2 and 3 without informing to the students, who had applied under the University quota. No intimation seems to have been given to the prospective candidates regarding such change of converting University quota into Maharashtra quota. The officials of respondent Nos. 2 and 3 ought to have made that exercise before commencement of the admission process for Ph.D. course for the academic year 2019-2020. Had they published the information regarding conversion of post from University quota to Maharashtra quota while filling up the Ph.D. seats, distribution of seats, the present controversy could not have seen.

31. Therefore, we are of the considered view to caution the officials of respondent Nos. 2 and 3 not to repeat that mistake in future. They being Agricultural Universities under the control of the State of Maharashtra must show transparency in the admission process of Ph.D. Course. The students shall feel that admission for Ph.D. Course is transparent, as per procedure and on the merit

basis. In the case at hand, we do not find any *mala fides* or ill-motive in non-publishing said information on the notice board or website or any other mode by respondent No. 2. But it was sheer carelessness on the part of officials of respondent No. 2. There is one more aspect which needs to be considered. The petitioner had applied for Ph.D. in the subject of Floriculture and Landscaping discipline only in respondent No. 3/University though he had options of two more Universities in the State where said subject was available. Moreover, in the spot round for open category, the seat in the subject of Floriculture and Landscaping was available at Dr. Punjabrao Deshmukh Krishi Vidyapeeth, Akola, the petitioner did not attend the said round.

32. Having regard to the above reasons and discussion, we do not find any merit in this petition. The seat for Ph.D. in the subject of Floriculture and Landscaping seems to have been given to respondent No. 4 - Pusphanjali Bhosale on the basis of merit and in view of conversion of reservation from University quota to Maharashtra quota. The respondent Nos. 2 and 3 seem to have followed the procedure as laid down in the Government Resolution dated 20.10.2011 *supra*. It is not a fit case to disturb the admission of respondent No. 4 at this stage. We are not inclined to grant any relief.

33. In the light of the above, we pass the following order :-
- (i) The writ petition stands dismissed. No order as to costs.
 - (ii) Rule discharged.

[SHRIKANT D. KULKARNI, J.] [S.V. GANGAPURWALA, J.]

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