

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 5504 OF 2021

Kanak Sanjay Fatwani

..Petitioner

Versus

The Union of India & Others

..Respondents

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Mr Mahesh K Bhosale, Advocate for the Petitioner
Mr A.G. Talhar, ASGI for Respondent Nos.1 and 4
Mr S.B. Pulkundwar, AGP for respondent – State
Mr M.D. Narwadkar, Advocate for Respondent Nos.2 & 3
Mr P.S. Gaikwad & Mr P.D. Meghe, Advocate for Respondent No.5
Mr K.C. Sant, Advocate for Respondent No.6

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**CORAM : S. V. GANGAPURWALA
AND
R. N. LADDHA, JJ.**

DATE : OCTOBER 08, 2021

PER COURT : -

1. The petitioner assails the communication dated 26-06-2020 issued by respondent no. 2 and communication dated 29-01-2021 issued by respondent no. 6, thereby not approving the admission of the petitioner.

2. Mr. Mahesh Bhosale, the learned Advocate for the petitioner, submits that the petitioner had applied for the professional course under Maharashtra University of Health

Sciences from EWS category. The petitioner possesses the necessary certificate of EWS category. The learned Advocate submits that the petitioner was allotted respondent no. 5 – College by respondent no. 4. Pursuant thereto, the petitioner took admission and now after completing one year the respondents are contending that the petitioner does not possess the required eligibility to be admitted from all India quota. In fact, the petitioner had applied from EWS category and from EWS category the minimum marks required are 40% and the petitioner possesses 48.67% of marks in 12th standard and no fault can be attributed to the petitioner.

3. Mr. M. D. Narwadkar, learned Advocate for respondent nos. 2 and 3, submits that the petitioner had applied from State quota as well as all India quota. In all India quota, 15% seats are reserved. In those 15% seats, there is no consideration of EWS category. The petitioner was provisionally allotted respondent no. 5 - College from all India quota. In fact, the petitioner ought to possess minimum 50% marks in 12th standard, which the petitioner does not possess. The petitioner was ineligible to be admitted from all India quota.

4. We have also heard Mr. A. G. Talhar, learned ASGI

for respondents no. 1 and 4.

5. Mr. Sant, learned Advocate for respondent no. 6, submits that respondent no. 6 issued the communication dated 29-01-2021 as the petitioner does not possess the minimum eligibility required.

6. We have considered the submissions.

7. The petitioner had filled in the application form, which is at page no. 11, contending that he belongs to the Economically Weaker Section (EWS) and that the petitioner claimed reservation of EWS.

8. The petitioner possesses 48.67% marks in the 12th standard in PCB group. The petitioner is issued with the provisional allotment letter in round-I on 03-07-2019, whereby the petitioner is allotted respondent no. 5 - College. Pursuant to the provisional allotment letter, the petitioner was admitted in respondent no. 5 - College. The provisional allotment letter states that the allotted quota is all India quota. The petitioner thereafter completed first year. Upon completion of first year, the communication is issued by the respondent no. 3 that the

admission of the petitioner cannot be approved as the petitioner possesses only 48.67% marks in PCB group and does not possess minimum 50% marks.

9. If the petitioner is considered from EWS, the petitioner possesses the minimum eligibility. However, from all India quota, the petitioner does not possess the minimum eligibility required.

10. It appears that each and every party to the petition i.e. the petitioner, the CET cell, respondent no. 4, all are at a mistake of a matter of fact. The petitioner's application suggest that the petitioner had claimed the benefit of EWS. The provisional allotment letter shows that the petitioner is allotted respondent no. 5 – College from all India quota and the petitioner was admitted. After one year the communication is made that the admission of the petitioner cannot be approved.

11. The petitioner has now completed two years. It would be too late now to cancel the admission of the petitioner. Reliance can be placed on the judgment in the case of **Shri Krishnan Versus The Kurukshetra University, Kurukshetra** reported in **(1976) 1 SCC 311**.

12. Considering the fact that the petitioner has completed two years of his education and further that the petitioner had applied from EWS category and the respondent no.4 allotted respondent no. 5 – College to the petitioner, the petitioner is not guilty of suppression of any fact and that the petitioner has joined the college which was allotted to him as per the allotment letter issued by respondent no. 4. We exercise our writ jurisdiction under Article 226 of the Constitution of India to protect the admission of the petitioner.

13. In light of all the aforesaid facts, the impugned communications dated 26-06-2020 issued by respondent no. 2 and dated 29-01-2021 issued by respondent no. 6, are set aside. In case there is no any other impediment, then the admission of the petitioner be approved.

14. Writ Petition stands disposed of in aforesaid terms.
No costs.

[R. N. LADDHA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE