

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

Writ Petition No.396/2018

Ms Vaishnavi Barde V The State of Maharashtra thr its Secretary and others

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. P.D. Meghe, Advocate for petitioner.
 Ms S.S. Jachak, AGP for respondent nos.1 and 2.
 Mr. A.A. Naik, Advocate for respondent no.3.

**CORAM : DIPANKAR DATTA, CJ &
 A.S. CHANDURKAR, J.**

DATE : July, 23,2021.

1. With a view to pursue a career in architecture, the petitioner participated in a process for admission to a college imparting lessons in Architecture. She took the National Aptitude Test in Architecture, 2017 (hereafter 'NATA', for short). It is claimed by the petitioner that she had secured 72 marks, which was more than the qualifying marks of 70.

2. Since it was also necessary for the petitioner to appear at the Joint Entrance Examination, she appeared at such examination and secured 206 marks with a rank of 4454. Upon declaration of results, an ID was issued in favour of the petitioner in respect of first year degree course in Bachelor of Architecture (hereafter 'B.Arch.', for short) for the year 2017. The petitioner also claims to have received a certificate in respect of the Common State Entrance Test issued by the relevant Council. After declaration of results of NATA, 2017, on 14-06-2017, there were various rounds conducted for admission of students to the first year B.Arch. course in the different colleges and ultimately the petitioner emerged as qualified for admission to the B.Arch. course in Smt. Manoramabai Mundle College of Architecture, Nagpur (hereafter 'said college' for short). Since the petitioner claimed

to be a candidate belonging to the OBC category, she was admitted on a seat reserved for such category. While pursuing studies in the first year in the said college, the petitioner was served with a communication dated 11-12-2017 of the Principal of the said college. By such communication, the petitioner was required to produce a Non-Creamy Layer certificate on or before 13-12-2017, failing which her admission would stand cancelled. There was a further condition attached, viz. the issue date of the Non-Creamy Layer certificate should be before the reporting date to the allotted college for pursuing first year B. Arch. course for the session 2017-2018.

3. Aggrieved by such communication, the petitioner invoked the writ jurisdiction of this Court by presenting this Writ Petition. According to her, the direction for production of a Non-Creamy Layer certificate was not lawful.

4. An order dated 23-01-2018 of a coordinate Bench of this Court directed service of notice on the respondents. Also, ad-interim relief in terms of prayer clause (2) was granted. By prayer clause (2), the petitioner prayed for an order staying the operation of the impugned communication dated 11-12-2017.

5. As a result of grant of interim relief, the petitioner continued to pursue her studies in the B.Arch. course and presently she is in the final year.

6. The Writ Petition has been listed today upon exchange of affidavits.

7. In the reply affidavit of the respondent no.2, it has been pleaded as follows :-

"14. As, NCL certificate is required to obtain admission from OBC category, otherwise, the candidate cannot claim the seat from OBC category and may fall under Open category and for both these categories, merit list (cut-off score) are different. The answering respondent submits that by virtue of merit, the petitioner could not have secured allotment in the respondent no-3-College from Open category which the petitioner also knows very well and therefore, for getting admission, the petitioner applied from OBC category without having any NCL certificate and after admission, when the respondent no.3-college is asking for producing NCL certificate, the petitioner is pretending that she is unaware about the same and making false allegations upon the respondents so as to preclude them from initiating any action as per law and requesting to treat her admission as from the open category which she otherwise could not have secured with the respondent-college."

8. On the above backdrop, Mr. Meghe, learned advocate for the petitioner has drawn our attention to a document marked as Annexure-X 1, at page 27 of the Writ Petition. It appears to be document dated 05-01-2018, issued by the Principal of the said college notifying the vacancy position in respect of seats available for the B.Arch. course for 2017-2018 in various categories. We consider it appropriate to reproduce the contents of such document below :-

"ADMISSION POSITION OF 1st YEAR B.ARCH-2017-2018

SANCTIONED INTAKE	:	120
TOTAL SEAT FILLED	:	113
TOTAL SEAT VACANT	:	07 120

CATEGORY WISE VACANT SEAT POSITION:

OBC/SBC	:	02
OPEN	:	03
SC	:	<u>02</u>
TOTAL VACANT SEATS	:	<u>07</u>

This certificate issued as per application dated 05-01-2018 of Dr. Anant Barde."

9. Referring to the vacancy position as above, Mr. Meghe contends that as on 05-01-2018, 3 (three) seats in the open category had not been filled up and, therefore, even though the petitioner might fail in her contention that production of a Non-Creamy Layer certificate is not required, she ought to be treated as general student entitled to admission in the open category. It is the further contention of Mr. Meghe that the stand taken by the respondent no.2 would be of no relevance in a case where seats remain vacant and there is no contender for such unfilled seats. The cut-off mark theory, according to him, would be applicable only if all seats are filled up and the question of non-admission of a candidate is required to be considered in the light of the marks obtained by the last admitted candidate. Also, it is the contention of Mr. Meghe that if relief as sought for by the petitioner is granted, no prejudice will be caused to any third party since 3 (three) of the seats within the intake capacity sanctioned for the said college have not been filled up and the college also has not claimed that any other candidate, securing more marks than the petitioner at the qualifying examination, had expressed interest to be admitted to any of such vacancies. On the contrary, the petitioner will suffer immense prejudice if at this distance of time she is made to discontinue the course of study. Mr. Meghe has, accordingly, prayed for an order in terms of prayer clause (1).

10. Ms. Jachak, learned AGP appearing for the respondent nos. 1 and 2 has drawn our attention to a circular dated 28-04-2017, issued by the Directorate of Government Polytechnic, Maharashtra State. Such circular provides for production of Non-Creamy Layer certificate by the candidates seeking admission in seats reserved for OBC candidates. Referring to such circular, it is the contention of Ms. Jachak that the petitioner could not have been admitted in the B.Arch. Course

for 2017-18 in the OBC category in the absence of the requisite certificate. Accordingly, it is submitted by her that no case has been set up by the petitioner for interference and the Writ Petition ought to be dismissed.

11. Mr. Akshay Naik, learned advocate appears for the respondent no.3-College. According to him, the vacancy position on which reliance has been placed by the petitioner in respect of seats for the first year B. Arch. Course for 2017-2018 is correct. However, it is not open to the said college to regularize the admission of the petitioner and it is ultimately for the State Government to regularize the petitioner's admission.

12. We have heard learned advocates representing the respective parties and considered the materials on record.

13. The insistence of the State that a Non-Creamy Layer Certificate ought to be produced cannot be faulted. However, the contention of Ms. Jachak based on the circular dated 28-04-2017 would pale into insignificance in view of the undisputed fact that though the intake capacity of the said college for the first year B.Arch 2017-2018 course was 120 (one hundred twenty), only 113 (one hundred thirteen) seats had been filled up and of the unfilled 7 (seven) seats, 3 (three) seats still remained to be filled up by general candidates. We find corroboration of the vacancy position certified by the Principal of the said college, extracted above, in a document which is marked Annexure R-2 to the reply affidavit of the respondent nos. 1 and 2. Out of the available 120 (one hundred twenty) seats, 113 (one hundred thirteen) seats were filled up by admission of the same number of students. Although the document being Annexure R-2 does not reveal the exact number of seats in the open category which remained to be filled up after the admission process was completed, we do not find any statement in the reply affidavit of the respondent nos. 1

and 2 that the document issued by the Principal of the said college, at Annexure-X I of the Writ Petition, does not reveal the correct state of affairs. In such view of the matter, the conclusion is inescapable that the contents of the document issued by the Principal of the said college stands admitted by the respondent nos. 1 and 2.

14. Now that we have found that the petitioner was not entitled to be admitted in the OBC category in the absence of the Non-Creamy Layer Certificate but 3 (three) seats in the open category were vacant, the question that arises is, whether the petitioner can be regarded as a student who could have obtained admission as a general candidate in any of the open seats. Since at least 3 (three) seats were vacant, the question of cut-off marks being applicable would not arise. Even though the petitioner may not have obtained marks in excess of the marks obtained by the candidate who was last admitted in the said college, there was no other contender for admission to such vacant seats by the time the admission process closed. The petitioner has studied the B.Arch. course since admission and has also succeeded in securing promotion to the final year. Sight cannot also be lost of the fact that the respondents have not received any claim for admission from any other candidate. This is a case where, in view of the fortuitous circumstance of seats in the open category remaining unfilled and bearing in mind that no prejudice would be caused to any third party, the equities ought to be balanced and the respondent nos. 1 and 2 directed to treat the petitioner as a general candidate who has been admitted in any one of the 3 (three) unfilled seats for the open category.

15. In the peculiar facts and circumstances, we are of the considered opinion that the petitioner is entitled to relief in terms of prayer clause (1) to the effect that her admission in the B.Arch. course 2017-2018 ought to be treated as one made in the open

category. The petitioner shall be treated as a regular student of the said college and her admission be regularized by the respondent nos. 1 and 2 as early as possible but positively within a period of 4 (four) weeks from the date of receipt of a copy of this order.

16. With the aforesaid directions, the Writ Petition stands disposed of. There shall be no order as to costs.

(A.S. CHANDURKAR, J.)

(CHIEF JUSTICE)