

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5393 OF 2022

MAHESH SAMPATRAO PALVE
VERSUS
MINISTRY OF EDUCATION UNION OF INDIA AND
ANOTHER

...
Advocate for the Petitioner : Shri A.A. Joshi h/f Shri Natu Sharad
V.

ASGI for respondent No.1 : Shri A.G. Talhar
Advocate for respondent No.2 : Shri D.B. Gaikwad

...

CORAM : RAVINDRA V. GHUGE
&
ARUN R. PEDNEKER, JJ.

DATE :- 01st August, 2022

Per Court :-

1. On 17.05.2022, the Vacation Judge passed the
following order :-

- “1. Heard learned counsel for the petitioner.
2. Learned standing counsel for UOI submits that the instructions are awaited. The admission of the petitioner has been declined on technical ground. Till the matter is heard, the learned standing counsel, on instructions, is agreeable to keep one post vacant for the admission of the class to which the petitioner belongs. On this condition, the time is extended till 08.06.2022.”

2. By an order dated 10.06.2022, the earlier order was continued. On 28.07.2022, we had passed the following order :-

- “1. By an order dated 17/05/2022, this Court had directed the respondent/School to keep one seat vacant for admission to Class-I, to which the petitioner had applied for admitting his son.*
- 2. We have perused page No.94 of the petition paper book, which is a document dated 11/05/2022, signed by the Principal, indicating that 10 seats have been filled in. However, the document at page No.95, which is dated 13/06/2022, under the signature of the Principal, indicates that 5 seats out of 11 with regard to the students to be admitted under OBC-NCL, were vacant.*
- 3. The learned Advocate for the petitioner submits, that a common pool was created for admitting the students under the R.T.E. and under OBC-NCL. The petitioner’s son could be eligible in either of the categories.*
- 4. It appears that the quota under the R.T.E. was limited to 10 seats and which is said to have been exhausted on 11/05/2022. Page 95 indicates that, 11 seats were earmarked for OBC-NCL and five seats are still vacant as on 13/06/2022.*
- 5. We are, therefore, listing this petition on Monday, i.e. on 01/08/2022 in the ‘passing orders’ category, to be specifically called out at 2.30 p.m.*
- 6. The learned Advocate for the respondents shall ensure that the entire admission file with regard to all the students admitted to Class-I for academic session 2022-2023 with respondent No.2/School shall be placed before us. We make it clear that we would not grant even a single day adjournment.”*

3. We have perused the original file that has been placed before us by the learned ASGI. We have allowed the learned advocate for the petitioner to go through the original file, which the learned ASGI has shown to the Court.

4. It is conceded that there were around 82 candidates, who could be considered for admission and inclusive of the reserved category, there were 67 candidates who were granted admission to the school in the first standard. The petitioner's son was at Sr.No.82. There was no merit list of these students as there was no entrance examination or qualifying test so to say, on the basis of which, the merit list of the students could have been prepared. It is also conceded that the admissions were granted by draw of lots through computerized process and though the petitioner's name was in the list of the candidates, in such draw of lots, his name did not come up for admission.

5. The learned advocate for the petitioner submits that, in fact, he was called by the school on 02.05.2022 to consider his child for admission as there were 24 enlisted candidates from Right to Education (RTE) quota, who were not eligible. However, the first objection raised as against the petitioner's child is that he resides at a distance beyond 8 kilometers, on the

basis of the google map. The petitioner had overcome this obstacle by indicating that it has to be on the basis of the road route and the google map was inaccurate and he was within 8 kilometers. Thereafter, the school raised another objection that his category is mentioned as Backward Class in the third line of the opening paragraph of the caste certificate. However, he points out an identical fact in the certificate of a student by name (Sangram Yogesh Bhalsingh) belonging to “Kunbi” caste, which is recognized as Other Backward Class. Per contra, the caste of Sangram Bhalsingh was accepted though his caste certificate was identical to that of the petitioner. He further points out that there are excess admissions as per the list in the file produced by the learned ASGI.

6. We have perused the said list and it appears that two students, namely, Niharika and Krushnika were admitted at Sr.Nos.41 and 42.

7. The learned ASGI clarifies that these two children at Sr.Nos.41 and 42, are single girl children of their respective parents and since there is a rule which permits the admission of a single girl child of the couple, that the said two students have been admitted through the single girl child quota. He then points

out from the said chart relied upon by the petitioner that 10 students from RTE quota were admitted by 11.05.2022.

8. We have perused the said list and we find that the contention of the learned ASGI is correct. Therefore, our order dated 17.05.2022 directing one seat to be kept vacant, was passed after 10 students from RTE quota were admitted. It is conveyed to us that a candidate may belong to OBC, EWS, SC, ST or any such reserved category, who would be eligible for admission under the RTE quota. This is how 10 students have been admitted in RTE quota and the last candidate was admitted on 11.05.2022.

9. In view of the above and as the petitioner is at Sr.No.82, the candidates till Sr.No.67 have been admitted and there is no vacancy, we do not find that we could issue a direction in the form of a writ for admitting a student, who is at Sr.No.82.

10. As such, this Writ Petition is infructuous and is, accordingly, disposed off.

11. In the event, the petitioner desires to seek admission for his child, next year, he would be at liberty to do so.