

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3602 OF 2022

Mangesh Rajan Dervankar

Age – 23, Occ. Student,

R/at. Sinhagad Technical

Education Complex, Kusgaon

Buduk, Lonavala, Tal. Maval,

Dist Pune – 410 401.

...Petitioner

V/s.

1. Admissions Regulating Authority (ARA)

9th Floor, New Excelsior Building,

A. K. Nayak Marg, Fort, Mumbai – 400 001.

2. The State of Maharashtra

through the Secretary, Social Justice and

Special Assistance Department,

Mantralaya, Mumbai – 400 032.

3. Directorate of Technical Education (DTE)

Maharashtra State, 3, Mahapalika Marg,

Dhobi Talao, Mumbai – 400 001.

4. The Registrar, University of Mumbai

M. G. Road, Fort, Mumbai – 400 032.

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5. The Principal,
Vishwaniketan College of Architecture
Arts and Design (VCAAD) Survey
No.54(2), 57(2), Kumbhivali,
Near Khalapur Toll Naka, Off. Mumbai
Pune Expressway, Tal. Khalapur,
District Raigad – 400 202. ...Respondents

Mr. Anant B. Bobe, for the Petitioner.
Mr. Ajit M. Savagave, for the Respondent No.1 (ARA).
Mr. S. B. Kalel, A.G.P. for the Respondent-State.

**CORAM : A. S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATE : 26 April 2022

JUDGMENT (Per G. A. Sanap, J.)

. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The petitioner is seeking direction to quash and set
aside the order dated 22 October 2021 passed by the respondent
No.1- Admissions Regulating Authority (hereinafter referred to as
'ARA'), whereby the ARA dismissed the Review Application

made by the respondent No.5 – College, seeking reconsideration of earlier order passed by the ARA dated 29 March 2019, whereby the admission of the petitioner to Bachelor of Architecture, was not approved.

3. It is the case of the petitioner that the State Common Entrance Test Cell (for short 'State CET') on 11 June 2018 published admission notice for B. Architecture for the academic year 2018-2019. On 22 June 2018, the petitioner submitted application for caste verification certificate. He completed online registration and document verification at Facilitation Centre and on verification of the documents, the petitioner was found eligible for Non CAP admission only after 22 June 2018. The petitioner passed his H.S.C. with Mathematics and obtained 68% aggregate marks, which are above the eligibility marks of at least 50% in aggregate for Open Category. The petitioner obtained 95.5 marks in NATA (National Aptitude Test in Architecture, 2018) well above the qualifying marks of 70 in NATA. The petitioner was therefore eligible to take admission in Open Category as per the admission notice.

4. The respondent No.5 – College on 28 July 2018, published the time table for admission against vacant seats after culmination of Centralised Admission Process (CAP). The petitioner submitted duly filled in application form for

Institutional Quota Seat and deposited Rs.20,000/-. The respondent No.5 – College granted admission to the petitioner in Institutional Quota Seat to the First Year B. Architecture course and uploaded the necessary admission data to the State CET on 18 October 2018. The State CET on 29 October 2018 published the list of the admitted students on its website.

5. It is the case of the petitioner that he was first in the order of merit of the admitted candidates from the Institutional Quota Seats. He has secured more marks than Open Category candidates, whose admissions have been approved by the respondent No.1 – ARA. There is no reservation for filling up the Institutional Quota Seats. The admission is given on the basis of Inter-se-Merit. The petitioner has paid the fees required to be paid by candidates admitted from the Institutional Quota Seats. According to the petitioner, the State CET had published the information brochure for 2018-2019 and provided the guidelines. The guideline 12(d) has provided that there shall be no reservation under different categories for allocation of seats mentioned in 7(2), 7(3), 7(4) and 7(5). Guideline No.7(4) is meant for Institutional Quota Seats.

6. It is stated that on 1 October 2018, the respondent No.4 – University accorded provisional eligibility to the petitioner. The petitioner has completed the three and half years

(7 Semesters) of the course with average CGPI of more than 7 and currently studying in fourth year of the course. On 8 October 2018, the respondent No.5 – College submitted the merit list alongwith documents for verification to the respondent No.3 – Directorate of Technical Education (DTE) vide letter dated 29 August 2018. The physical verification of the documents was carried out by respondent No.1-ARA. On inspection, the respondent No.1-ARA issued a letter to the respondent No.5 – College and approved 32 admissions and did not approve two admissions from the Institutional Quota Seats. The one admission not approved was of the petitioner on account of non submission of caste validity certificate. It is stated that the petitioner had applied for caste verification certificate, which was issued later on. It is submitted that caste validity certificate was not at all necessary. This objection is ill founded. The respondent No.1- ARA conducted the hearing. The respondent No.1-ARA fixed the hearing on 11 March 2019. Despite notice to the respondent No.5 – College, the representative of the College did not remain present. Vide order dated 29 March 2019, the respondent No.1 -ARA reiterated its earlier decision and refused to accord approval to the admission of the petitioner.

7. It is stated that after this development, the petitioner made an application to the College and requested to extend help. The respondent No.5 – College therefore made representations to

the respondent No.1 – ARA and respondent No.3 – DTE. The respondent No.5 – College, in the said representation pointed out that the admission of the petitioner is in the Institutional Quota Seats to which reservation is not applicable. The caste validity certificate was therefore not required. The respondent No.5 – College further informed respondent No.1-ARA that the admission of the petitioner was on the basis of the merit. The petitioner is not availing any social welfare benefits of the State. The respondent No.5 – College has allowed the petitioner to attend the classes to avoid his academic loss. On 6 November 2020, the respondent No.5 – College filed a formal Review Application for reconsideration of the earlier decision of the respondent No.1-ARA. The respondent No.1-ARA conducted the hearing and rejected the Review Application. It is the case of the petitioner that the reasons have not been recorded by the respondent No.1-ARA while rejecting the Review Application. The grounds set out in the Review Application have not been taken into consideration. The respondent No.1-ARA has rejected the application without assigning the reason. The admission of the petitioner was consistent with State CET Cell information brochure. On these averments, the petitioner has sought the above reliefs.

8. The respondents were duly served. The appearance has been reported by the respondent No.1, respondent Nos.2 and

3. The respondent Nos.1, 2 and 3 have not filed the reply.

9. We have heard the learned Advocate for the petitioner and the learned Advocate for the respondent No.1 as well as Assistant Government Pleader for respondent Nos.2 and 3. We have gone through the Record and Proceedings.

10. The learned Advocate for the respondent No.1 and the learned Assistant Government Pleader for respondent Nos.2 and 3 argued the matter without filing the reply.

11. The learned Advocate for the petitioner took us through the documentary evidence and submitted that the initial order dated 29 March 2019 passed by respondent No.1-ARA rejecting approval to the admission of the petitioner and the subsequent order of respondent No.1-ARA dated 22 October 2021 dismissing the Review Application are *ex facie* contrary to the admitted and undisputed facts on record and as such, cannot be sustained. The learned Advocate relying upon the information brochure, submitted that the petitioner took admission from Institutional Quota Seats and for the said quota, the reservation is not applicable. The learned Advocate pointed out that in all eight candidates were given admission in Institutional Quota Seats on the basis of their Inter-se-Merit and the petitioner was first in the order of merit. The learned Advocate submitted that the respondent No.1- ARA admitted

some other candidates from Institutional Quota Seats who have secured less marks than the petitioner. The learned Advocate took us through the order passed by the respondent No.1-ARA and pointed out that all the contentions raised by the petitioner and respondent No.5 – College justifying the admission have not at all been considered. The learned Advocate submitted that the petitioner for all purposes was treated as a Open Category candidate. The petitioner did not avail any social welfare benefit meant for the backward class category candidates. The petitioner paid the required fees. The learned Advocate therefore submitted that the order of the respondent No.1-ARA is not sustainable. The order passed on 22 October 2021 by the respondent No.1-ARA is required to be set aside and the respondent No.1-ARA is required to be directed to confirm the admission of the petitioner.

12. The learned Advocate for the respondent No.1-ARA submitted that there is no substance in the petition. The contentions have not been supported by the evidence. In short, the learned Advocate for the respondent No.1 submitted that the order passed by the respondent No.1-ARA dated 22 October 2021 rejecting the Review Application is just and proper. No review was warranted of the order dated 29 March 2019 whereby the admission of the petitioner was not approved.

13. The learned Assistant Government Pleader made submission on the basis of record and opposed the petition.

14. In order to appreciate the rival submissions, we have gone through the Record and Proceedings. It is necessary at the outset to state the admitted facts. The petitioner did not apply for admission in the CAP round. He applied for admission in the Institutional Quota Seats. Eight candidates have been admitted to B. Architecture for the year 2018-2019 from the Institutional Quota Seats. The petitioner was first in the order of merit. After getting provisional approval for his admission from the respondent No.4 – University, the respondent No.5 – College admitted him. He paid the required fees as per the information brochure. The petitioner has now been studying in the fourth year of the B. Architecture course. Only one year has remained to be completed to complete his B. Architecture course. It is undisputed that the petitioner has not taken benefit of reservation in any manner.

15. The respondent No.1-ARA vide order dated 29 March 2019 refused approval to the admission of the petitioner. The Principal of the respondent No.5-College vide letter dated 17 June 2019 (Exhibit 'O') made the stand of the College clear. It has been stated in the letter that though the petitioner is from OBC category, he has taken admission under Institutional Quota Seats. The petitioner has submitted all certificates required under

Institutional Quota Seats. The Principal further informed that the petitioner has not made claim under reserved category and had paid full fees applicable for Institutional Quota Seats. The subsequent letter addressed by the Principal of respondent No.5-College to the respondent No.1-ARA is dated 10 July 2019. The same stand has been reiterated in the said letter. Alongwith letter all the documents from the date of publication of advertisement till finalisation of the admission of the petitioner were submitted. After the decision dated 29 March 2019, by letter dated 11 November 2020, the Principal again made a request to reconsider the decision.

16. It is to be noted at this stage that neither while passing the order dated 29 March 2019 nor the order dated 22 October 2021, the respondent No.1-ARA has dealt with the relevant facts and documents submitted by the petitioner and the respondent No.5-College. It is to be noted that in view of specific stand of the petitioner and the respondent No.5-College, it was obligatory on the part of the respondent No.1-ARA to record the reasons on the issues raised by the petitioner and respondent No.5-College. Both the orders are silent about it. It was expected on the part of the respondent No.1-ARA to consider as to whether the reservation was applicable to the Institutional Quota Seats or not. The respondent No.1-ARA was also required to consider whether the petitioner who was selected

on the basis of merit was in fact required to submit the caste validity certificate. The perusal of the order dated 29 March 2019 and 22 October 2021 passed by the respondent No.1-ARA would show that all the issues have not been properly addressed.

17. In this background, it would be necessary to see whether the basic contention of the petitioner and the respondent No.5-College that there was no reservation for the Institutional Quota Seat has been supported by the documentary evidence or not. The main document relied upon by the petitioner is the information brochure for the academic year 2018-2019 issued by the Government of Maharashtra State, Common Entrance Test Cell. One of the courses mentioned in the brochure is First Year of Architecture (B. Arch.). Clause 2(n) defined the 'Institutional Quota'. The Institutional Quota means seats available for admission to eligible candidates at Institution level as declared by the Government or appropriate authority from time to time. The term 'Inter-se-Merit' has been defined under Clause 2(o) of the information brochure. It means the order of merit declared by the Competent Authority in respect of various classes / category of candidates. The relevant guideline is guideline No.12(d). It reads thus-

(d) There shall not be any reservation under different categories in an Unaided Professional Educational Institution, for allocation of seats stated

in 7(2), 7(3), 7(4) and 7(5).

18. In this guideline, there is a specific mention allocation of seats to different categories stated in guideline 7(2), 7(3), 7(4) and 7(5). It would therefore be necessary to revert back to guideline 7(4) which is relevant for the purpose of this petition.

7(4) Institutional Quota Seats :- The Institution can admit Eligible Candidates as specified in Schedule-I and Schedule -II, subject to following conditions:

(i) The Candidates having Candidature mentioned in 5(1), 5(2), 5(3), 5(4) and 5(6) shall be eligible for these seats;

(ii) The maximum 5% seats may be filled in from the NRI Candidates, if it is approved by the Appropriate Authority, at the Institution level.

(iii) If the seats reserved for NRI quota remains vacant, those vacant seats may be filled in by the Institution, from the Eligible Candidates of All India Candidature;

Note : While filling these seats the preference shall be given to the Maharashtra State Candidature Candidates on the basis of Inter-Se-Merit.

19. There is no dispute about the entitlement of the petitioner to apply in the Institutional Quota Seats. Guideline

12(d) specifically provides that there shall not be any reservation for allocation of seats stated in guideline No.7(4). The guideline 7(4) deals with the admission to the Institutional Quota Seats. The guideline 7(4) states that while filling the seats the preference shall be given to the Maharashtra State Candidature Candidates on the basis of Inter-Se-Merit. It is therefore crystal clear that reservation is not applicable as per information brochure to the Institutional Quota Seats. It is seen on perusal of the order passed by the respondent No.1-ARA that this provision which is part of the information brochure for admission to Under Graduate Educational course 2018-2019 have not been taken into consideration. In any event, the petitioner being admitted in Institutional Quota Seats was not required to submit caste validity certificate though he belongs to OBC category. It is further seen that the petitioner being first in the order of merit, was entitled to get admission from the Institutional Quota Seats. It further shows that there was nothing wrong on the part of the respondent No.4-University and respondent No.5-College in granting provisional approval to the said admission.

20. In view of the above, we are of the opinion that the order passed by respondent No.1-ARA initially dated 29 March 2019 and in the Review Application on 22 October 2021 without recording the proper reasons cannot be sustained. If the above facts had taken into consideration, the Competent Authority vide

order dated 29 March 2019 could not have refused the admission. Similarly, after submitting the necessary documents alongwith Review Application, the respondent No.1-ARA was required to give thoughtful consideration to the facts and documents before passing the order dated 22 October 2021. We therefore conclude that for the Institutional Quota the reservation was not applicable. The petitioner was first in the order of merit in the Institutional Quota Seats. The respondent No.1-ARA has approved the admission of the candidates in Institutional Quota Seats, who had secured less marks than the petitioner. In our view, the same yardstick ought to have been applied to the case of the petitioner.

21. It is therefore seen that the order passed without recording the reasons by respondent No.1-ARA is not at all sustainable. The petitioner has prayed for relief to set aside both the orders and accord the approval to his admission. In our view, once it is found that the respondent No.1-ARA has committed wrong, it would be appropriate to issue necessary directions to the respondent No.1-ARA to rectify the mistake and illegality. In view of above, we conclude that the petition deserves to be allowed. Hence, the following order.

ORDER

- (i) The Writ Petition is allowed.
- (ii) Order dated 22 October 2021 passed by

the respondent No.1-Admission Regulating Authority dismissing the Review Petition filed by the respondent No.5-College is set aside. The Review Petition is restored.

(iii) Respondent No.1 is directed to decide the Review Petition filed by the respondent No.5-College and reconsider the earlier decision passed by respondent No.1 on 29 March 2019 whereby admission of the petitioner was not approved to B. Architecture for academic year 2018-2019.

(iv) The decision shall be taken in the Review Petition keeping in mind the observations made in this judgment. The decision shall be taken within 15 days from the date of receipt of the copy of this order.

(v) The petitioner and respondent No.5-College are at liberty to submit fresh documents if required.

(vi) Rule is made absolute in the above terms.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)