

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

WRIT PETITION NO. 2853 OF 2023

Nilesh s/o Ajinath Udmale,
Age : 41 years, Occu. : Student,
R/o Saisakshi Residency,
Plot No. 101, Flat No. 2,
Nandanvan Colony, Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Department of Higher and
Technical Education, Mantralaya,
Mumbai – 32.
2. The Registrar,
Dr. Babasaheb Ambedkar Marathwada
University, Nagsenvan,
Aurangabad. .. Respondents

Shri Swapnil Joshi, Advocate, Shri Mahesh Swami and Ms. Saie
Joshi, Advocates i/by J. P. Legal Associates, for the Petitioner.
Shri S. G. Sangale, A.G.P. for the Respondent No. 1.
Shri S. S. Tope, Advocate for the Respondent No. 2.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT ON : 03.10.2023
JUDGMENT PRONOUNCED ON : 17.10.2023

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard finally
with the consent of learned counsel for the respective parties at

the admission stage.

2. The petitioner is an aspirant of Doctorate (Ph. D.) in Fine Arts, but he is denied admission to the Ph. D. programme 2021 vide communication dated 02.02.2023 issued by the respondent No. 2 for the reason that there was no vacancy with the only research supervisor/guide. He is also seeking direction for extension of validity of the result, declaration of the final merit list and making available research guide from inter disciplinary studies.

3. The petitioner belongs to the Scheduled Caste category. He did his Master in Fine Arts discipline from the respondent No. 2/university. He appeared for Ph. D. Entrance Test (hereinafter referred as to 'PET'). He secured 91 marks in PET- I and 82 marks in PET – II papers out of 100, which result was declared on 20.03.2021. The result was valid upto 16.03.2022 as stated in the result sheet at Exhibit – B. From the declaration of the result his battle started for securing research guide in Fine Arts.

4. He applied for registration as a research student for degree of doctorate of Ph. D. with a research topic ई-शिक्षण व त्यामध्ये ॲनिमेशनचा वापर, यासाठी येणा-या समस्या याचा विश्लेषणात्मक अभ्यास. Thereafter, he appeared for viva voce in which he secured 60.55 marks out of 70 for presentation and 21.13 marks out of 30 for viva voce. He was topping merit list and eligible for Ph. D. programme.

5. The respondent No. 2 was unable to provide research supervisor to the petitioner for the subject of Fine Arts. He made correspondence with the respondent No. 2 requesting for making available research supervisor. In the mean time, the validity of the result was extended from 16.03.2022 to 30.06.2022. He was constrained to approach this Court by filing Writ Petition No. 11319 of 2022. It was disposed of with a direction to the respondent No. 2/university to consider the representation made by him.

6. In pursuance of the directions issued by this Court, the respondent No. 2 communicated decision of the committee vide letter dated 02.02.2023 declaring that it was not possible to provide admission to the petitioner for Ph. D. programme for want of vacancies with the research guide. This communication is questioned in this petition.

7. The respondent No. 2 has filed affidavit in reply opposing the claim of the petitioner. It is stated that Dr. Shirish Ambekar is the only available research guide with whom already four scholars have been studying. The quota is of four scholars and for want of vacancy the Research and Recognition Committee (for 'R.R.C') has rightly taken the decision of not admitting the petitioner. It is further stated that there was already an instruction incorporated in the advertisement dated 30.12.2020 that admission to Ph. D. programme should be subject to availability of vacant seat. It was informed that successful

candidates in the PET examination would have no right to admission to Ph. D. programme. Reliance is placed on Ordinance 1009.

8. It is further stated in the reply that the Ordinance – 1009, which is produced at Exhibit R – 2 stipulates the quota allotted to supervising teacher. Clause No. [F](3) at page No. 169 stipulated quota of four students of Ph. D. Scholars allotted to Assistant Professor. Dr. Shirish Ambekar, who is the Assistant Professor is running out of the quota. It is further pleaded that the result of examination was valid for one year and if within the period no merit list was prepared then the candidate would have to appear again for PET – I and PET – II papers in the next year. As validity of the result of the petitioner is expired, he is not eligible for admission to Ph. D. It is prayed to dismiss the petition.

9. During the course of hearing, the learned counsel Mr. Joshi appearing for the petitioner has placed on record the compilation of fourteen papers. They have been secured from the website of the university. He tried to demonstrate that the petitioner could be accommodated with any research guide of inter disciplinary studies. Previously also on number of occasions such adjustments were made. It is also submitted that on few occasions the quota had been exceeded. The ground of parity is pressed into service to accommodate the petitioner either with Dr. Shrirish Ambekar or with any other research guide.

10. The learned counsel for the petitioner submits that the impugned decision is arbitrary and against the policy. According to him it is permissible to admit the petitioner by providing the research guide of any inter disciplinary studies, if the present research guide in Fine Arts has been running out of quota. He would submit that without verifying the availability of the vacancy, the respondent No. 2/University should not have proceeded to the advertisement and should not have held the Entrance Test for Ph. D. The university has committed grave procedural irregularity causing hardship to the petitioner. He would submit that there is no bar to allot the petitioner to existing research guide Mr. Dr. Shirish Ambekar, though there is already one additional scholar with him. The university failed to follow the instruction No. 1009 [D](b) of the Ordinance 1009-D of Ph. D. programme, which is at page No. 92.

11. It is urged by the learned counsel for the petitioner that the petitioner being meritorious and actually topping the merit list is still unable to get a research guide, which is discriminatory. The learned counsel has relied upon various documents produced on record today to make out a case of parity. He would submit that it is permissible to allot a research guide of inter disciplinary studies to a candidate of Fine Arts. The instances of Mr. Sudesh Darade, Mr. Deepak Pagare, Dr. Shirish Ambekar, Mr. Govind Pawar and Mr. Gajanan Landge are cited. It is also submitted that the allotable quota can be exceeded.

12. He would submit that Dr. Khan, Assistant Professor in

Education has consented in writing which is at Exhibit – U to accept the petitioner as a candidate for Ph. D. In support of this adjustment reliance is placed upon letter dated 22.06.2017 issued by the State Government. He has urged that the parochial approach of the university has resulted into miscarriage of justice.

13. The learned counsel Mr. Tope appearing for the respondent No. 2/university and the learned Assistant Government Pleader for the respondent No. 1 have made submissions as per the affidavit in reply filed by the respondent No. 2. The claim of the petitioner is vehemently opposed by the respondent No. 2 on the ground that the petitioner has run out of period of validity of PET and ineligible. Though on few occasions the quota allotted to research guide was exceeded and on some occasions the candidate of one subject is allotted to the research guide of different subject, these instances were against the ordinance and the policy. No parity can be claimed by citing these instances. He would submit that the petitioner has already lost the chance and has to take recourse to the next Entrance Test.

14. We have considered rival submissions canvassed by the learned counsel for the respective parties.

15. The petitioner claims that denial of admission to Ph. D. programme is arbitrary and publishing advertisement on 30.12.2020 inviting applications for the entrance test without verifying vacancies for the concerned discipline reflects

highhandedness. Clause [D] (b) of Ordinance – 1009 which is at page No. 92 is pressed into service. The university is banking on the condition stipulated in the advertisement and the instructions issued to the candidates appearing for the entrance test, more specifically instruction No. 12 and 13, which are at page No. 29. It is submitted that there is no indefeasible right created in favour of the petitioner.

16. We have gone through the provisions of Clause [D] (b) of the Ordinance 1009. The procedure for admission to Ph. D. Programme contemplates ascertainment of availability of vacancies with research supervisors as prescribed under University Grant Commission (for short 'U.G.C.') norms. It has been brought on record that Dr. Shirish Ambekar is the only research supervisor for the subject of Fine Arts and already five scholars are attached to him. When the permissible quota was of four scholars, the respondent No. 2 should not have issued advertisement inviting applications for the entrance test because vacancies were not available. At the same time, we cannot be oblivious of the conditions incorporated in the advertisement as well as instructions issued by the PET Coordinator, which are produced on record at Exhibit – A.

17. The note in the advertisement dated 30.12.2020 published by the respondent No. 2 reads as follows :

- "Note :**
- 1) ...
 - 2) Success in PET examination or

merely submission of application for Ph. D. registration shall not confer on the candidate right of Admission to PhD programme.

3) Admission to PhD Programme shall be on availability of vacant seats at Research Centres & availability of vacant seats with University recognised PhD Supervisor as per decision of RRC."

18. The instruction Nos. 12 and 13 issued by the PET Coordinator are identical. Though vacancies were not available at the relevant time, it was notified to the public at large that the admission to Ph. D. programme was subject to availability of the vacancies. The above referred Note No. 2 is applies with full force to the situation. The petitioner has no indefeasible right of admission to the Ph. D. programme. We find force in the submissions of the learned counsel for the respondent No. 2/university.

19. We find that the petitioner is meritorious candidate and secured highest marks in the entrance examination PET – I, PET – II papers and the viva voce. However, in absence of vacancy with the research supervisor Dr. Shirish Ambekar, no direction can be issued to allot an additional seat. Dr. Shirish Ambekar had already addressed letter dated 26.11.2020 well in advance stating that there was no vacancy with him. The respondent No. 2/university should have taken cognizance of his intimation. But these lapses on the part of the university may not help the petitioner because the rules do not provide such a situation. We propose to deal with this aspect of the matter a

little later.

20. There has been no dispute about the rule that the validity of the score of PET – 2021 was one year that is upto 16.03.2022. It was extended upto 30.06.2022. The petitioner had filed Writ Petition No. 11319 of 2022 after the expiration of validity and secured the orders on 18.01.2023. The learned counsel for the petitioner has repealed these submissions stating that the petitioner was all the while agitating his grievance right from 28.06.2020. From time to time applications were submitted informing that the validity of the result was for one year only. The applications which are at Exhibit – G are referred to. It is submitted that no fault can be attributed to the petitioner. The respondent No. 2 failed to consider the request of the petitioner within validity period.

21. Clause No. E(g) of Ordinance 1009 – D reads as under :

“1009 [E] Rules and procedure for an Online entrance test for M. Phil./Ph.D. programme.

(1)

a)

b)

g) The university shall issue the certificate to all PET qualified candidates. The certificate shall be valid for one academic year.”

22. In tune with this provision condition No. 1 is stipulated in the advertisement. The petitioner was aware of the period of

validity. He was anxious to secure the admission before its expiration. The period expired on 30.06.2022. He could not be accommodated by allotting him to any research supervisor within the period. There is no provision to admit a candidate after stipulated period of validity. The petitioner might not be at fault, but by that itself it cannot be directed to accommodate him post expiration of validity. The learned counsel for the petitioner is unable to show any provision from Ordinance 1009 or any norms of UGC providing for admission after period of validity.

23. The learned counsel for the petitioner has pressed into service the principle of parity by citing the instances with the help of material placed on record, which are as follows :

- (i) For subject of Pali and Buddhism the quota allotted to research guide was exceeded by an additional seat.
- (ii) For subject of Mass Communication and Journalism the allotted seats were exceeded.

Therefore, there is no impediment to make available Research guide who is already out of quota.

24. Thus, the petitioner could have been allotted to the research guide Dr. Shirish Ambekar. By letter dated 24.05.2022 Dr. Shirish Ambekar had shown his readiness to accept the scholar. We are unable to accept the submissions of the learned counsel for the petitioner. There is no provision to exceed the quota. The purpose of fixing quota is the job of experts. There is no discretion provided to admit additional scholars. The

instances cited above by the petitioner are irregularities, without having any sanctity of the norms and basis of the rules. The petitioner is not entitled to claim parity in the illegality.

25. The learned counsel for the petitioner has vehemently submitted that Fine Arts is one of the subjects of inter disciplinary studies. Even if the research guide for Fine Arts is not available, the research guide of another inter disciplinary studies can be made available to accommodate the petitioner. A reference is made to page No. 13 and communication dated 22.06.2017. It is brought to our notice that Dr. Khan from subject Education is ready to accept the petitioner as a candidate. Besides that the instances are cited by the petitioner of allotting a candidate from one subject to research guide of different subject falling under inter disciplinary studies viz, Sudesh Darade, Dr. Shirish Ambekar, Dr. Govind Pawar, Gajanan Landge, etc.

26. Indeed, the submission of the learned counsel for the petitioner is attractive and based upon sound logic. It is permissible to allot the petitioner to the research guide of another subject falling in the category of inter disciplinary studies. However, in the wake of our finding recorded earlier that the validity of the performance of the petitioner has expired, we are unable to come to the rescue of the petitioner. We have to accept the submissions of the learned counsel for the university that the petitioner has to again appear for the Entrance Examination of PET.

27. The respondent No. 2/University violated the procedure prescribed for admission to Ph. D. programme. Without verifying the vacancies, the advertisement was issued on 30.12.2020. It did not consider the claim of the petitioner within the period of validity that is 30.06.2022 to make available the research supervisor from another subject falling in the inter disciplinary studies. The minimum which could have been done by the respondent No. 2/university was to make available guide promptly to avoid an educational loss.

28. The respondent No. 2 has not tendered any satisfactory explanation. This is discrimination causing great hardship to the petitioner. This is gross violation of the rules. The petitioner is a meritorious scholar and belongs to reserved category. The respondent No. 2 is responsible for loss of valuable years of the petitioner. We deprecate the conduct of the respondent No. 2 and the officers concerned with the process of admission or R.R.C. Their attitude is callous which has resulted in frustration and harassment. The petitioner was not at fault in the process. We therefore deem it appropriate to impose cost of Rs. 50,000/- upon the respondent No. 2. The university shall be at liberty to recover it from the erring officers by conducting appropriate enquiry. The amount of fine shall be paid to the petitioner.

29. For the reasons recorded above, we are not inclined to grant any relief to the petitioner. We dismiss the writ petition. However, we compensate the petitioner by permitting him to

receive Rs. 50,000/- (Rs. Fifty thousands only) to be deposited by the respondent No. 2 within a period of four (04) weeks from today.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Oct. 23