

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

Writ Petition No. 10882 / 2023

Naser Mujahed Khan

Age : 18 years, Occu: Student,
R/o. Bagwan Mohalla, Kranti Chowk,
Parbhani, Tq. & Dist. Parbhani.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Medical Education Department,
Mantralaya, Mumbai.
2. The Commissioner & Competent Authority,
Common Entrance Test Cell, Maharashtra,
Mumbai.
3. Indian Institute of Medical Sciences & Research,
Jalna (IIMSR, Jalna), Tq. & Dist. Jalna
Through its Dean.
4. Dr. V.V. P.F'S. Medical College, Ahmednagar,
Tq. & Dist. Ahmednagar,
Through its Dean.

...Respondents

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Mr. Vishal A. Bagal, Advocate for the Petitioner.

Mr. S.R. Yadav-Lonikar, AGP for Respondent No.1.

Mr. M.D. Narwadkar, Advocate for Respondent No.2.

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

DATE : 4 SEPTEMBER 2023.

JUDGMENT [SHAILESH P. BRAHME, J.] :

. Rule. Rule is made returnable forthwith. Heard learned Counsel for the respective parties finally at the admission stage.

2. The petitioner is seeking direction to allot a seat in respondent no.3/College for under graduate medical course. He has cleared NEET-UG 2023 examination and eligible for UG course of Medical Science. He has been allotted a seat in the respondent no.4/College. He is claiming respondent no.3/College on the basis of NRI quota and Minority quota.

3. The case of the petitioner is that the respondent no.3 is a minority institute. The petitioner cleared NEET 2023 examination with 249 marks having All India rank for counseling 553012 (He is from NRI quota). In the first round of centralized admission process (CAP), he was not allotted any college. He filled in application and uploaded it on 18.08.2023 which is at Exhibit-C. He is not domiciled of Maharashtra. He was allotted respondent no.4/College. He made representation on 07.07.2023 to secure a seat in the respondent no.3/College. However there is no response. Hence he has filed present petition.

4. The learned Counsel for the petitioner submits that considering the score of the petitioner he should have been allotted respondent no.3/College being candidate from NRI-cum-Minority quota. The petitioner is discriminated. Less meritorious students are allotted the respondent no.3/College from Institutional quota of 15%. He would submit that as per Rule 9.3.3 the petitioner is entitled to get a seat in respondent no.3/College

which is a Minority College. He would submit that the omission to allot the respondent no.3/College is arbitrary and against the rules of admissions.

5. The respondent no.2 has filed affidavit-in-reply contesting the claim of the petitioner. It is emphatically stated by the respondent no.2 that the petitioner is not domiciled in Maharashtra, though he is from NRI quota. Since he is not from the State of Maharashtra, he cannot be admitted to respondent no.3/college at this stage of the process. He can be considered for institutional quota at a latter stage. As per Rule 9.4.10, the seats of Minority colleges would be filled in by the minority candidates from within the State of Maharashtra and if seats are available then those can be filled in by the general candidates. The plea of the respondent no.2 is that the petitioner will have to wait for further rounds and at this stage of the process he cannot claim the respondent no.3/College. It is further clarified that the students were allotted respondent no.3/College from NRI-cum-Minority quota as per their eligibility and strictly in accordance with the Rules. It is prayed that the claim of the petitioner is premature and liable to be dismissed.

6. A short question which falls for our consideration is as to whether the petitioner is entitled to be allotted a seat in a respondent no.3/Minority College at this stage of the process of admission. It is necessary to consider the relevant provisions of NEET-UG 2023 information brochure which is produced on record. The following are the relevant provisions :

Rule 3.L “Minority Quota” means seats earmarked for the Minority Community students from within the State of Maharashtra, belonging to the Minority Community to which the institution belongs.

Rule 9.3.3 *15% Institutional quota for MBBS/BDS/BAMS/BHMS/BUMS courses in Unaided Private/Minority colleges shall be filled on the All India basis which shall also include eligible NRI, OCI candidates and candidates from Other than Maharashtra State (OMS). These seats will be filled by competent authority through CAP. Such seats if remain vacant after all CAP rounds will be filled by respective institute through institutional level round.*

Rule 9.4.10 *Criteria For Distribution Of Seats For Minority Institutions:*

All the seats at Minority College will be filled by the respective minority candidate from within the State of Maharashtra and if particular Minority candidate is not available then the remaining seats will be filled by general candidates.

7. The application/registration form is produced on record by the petitioner which is at Exhibit-C. It was uploaded on 18.08.2023 and its page No.23 shows that the petitioner is ward of NRI and he is not domiciled in Maharashtra. It further reveals that the petitioner passed his X and XII standard from outside of Maharashtra. The petitioner has been allotted the respondent no.4/College. He claims the respondent no.3/College being a Minority College. He has filed the present petition at the stage when first round of CAP is over. The matter is heard when the admission process is at the stage between CAP round I and II.

8. The options expressly filled in by the petitioner indicate that he is ward of NRI but he is not domiciled in Maharashtra. Though the respondent no.3/College is a Minority College, the petitioner cannot be treated from the Minority quota. The definition of Minority quota provided by Rule No.3(L) does not cover the petitioner being not domiciled in Maharashtra. The petitioner is not a student within the State of Maharashtra. Therefore, we

accept the submission that he is not eligible to claim a seat from Minority quota. He can claim seat from NRI quota.

9. Rule No.9.3.3 provides for distribution of 15% seats by way of institutional quota. Considering the permissible intake capacity of respondent no.3/College, 23 seats are admissible through the 15% of the Institutional quota which would be filled in from eligible NRI, OCI and OMS candidates through CAP. Further Rule 9.4.10 provides for criteria for the distribution of seats in Minority institutions. The seats of the Minority Colleges have to be filled in by the respective minority students from within the State of Maharashtra. The petitioner does not qualify this particular condition and is unable to claim respondent no.3/College from the seats distributed to such College. In that view of the matter, the petitioner is not entitled to claim respondent no.3/College.

10. A conjoint reading of Rule 3.L, Rule 9.3.3 and Rule 9.4.10 would demonstrate that an NRI, OCI candidate and even candidates from outside Maharashtra can be admitted in a minority college in the 15% institutional quota and even though such admission have to be made only through the CAP rounds that can happen and the seats would be allotted/ filled in, in the institutional level round only after all the admission rounds are over. Candidates who are entitled to seek admission from a minority community is entitled to opt for admission in a minority college in minority quota. The admission rounds enable them to do so. It is only thereafter NRI, OCI or candidates from outside Maharashtra would be eligible to claim a seat in the minority college.

11. The scheme ensures that it is only after a candidate of a particular minority is not available that the remaining seats can be filled in by the general candidates including eligible NRI, OCI and candidates from outside Maharashtra. Since the petitioner is a candidate from outside Maharashtra and is claiming a seat as an NRI candidate, it is only after the CAP rounds are over that he would be eligible to claim a seat in the respondent no.3-minority institute against 15% institutional quota through institutional level round.

12. The petitioner has approached this Court when first round of CAP is over and second round is to commence. As is rightly submitted by the learned Advocate for the respondent no.2 that at this stage of the process, the allotment of a seat to the petitioner in the respondent to.4/College is proper in accordance with law and cannot be changed. However in a subsequent round, if any seat becomes available in the minority college then petitioner's claim can be considered from the institutional quota. The petitioner can be accommodated being from NRI quota. However, at this stage of the process, no seat can be allotted in the respondent no.3/College.

13. The learned Counsel for the petitioner has invited our attention to the amendment made by the respondent no.2 to Rule No.9.3.3. He would submit that the amendment is effected by notice dated 21.08.2023 when the admission process was underway and the amendment is impermissible. The original Rule 9.3.3 or the amended Rule 9.3.3 cannot enure to the benefit of the petitioner. Therefore, we do not propose to go into the validity of the amendment in this petition. Rule 9.3.3 only postulates that the seats of

Institutional quota will be filled in by the competent authority through CAP. As we have already observed that the petitioner's claim from minority quota is not entertainable being outside of the Maharashtra State, the further Rule 9.3.3 will not be helpful to the petitioner.

14. Presently the petitioner has been allotted the respondent no.4/College. In future there is possibility for the petitioner to get seat in respondent no.3/College if any vacancy is available. However, at this stage of the process, we are not persuaded to cause any indulgence. We, therefore, dismiss this petition. Rule is discharged. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]