(1988) 10 BOM CK 0036

Bombay High Court

Case No: Writ Petition No. 2639 of 198

Dr. Vijay Krishnarao Kedare		APPELLANT
	Vs	
State of Maharashtra and Others		RESPONDENT

Date of Decision: Oct. 5, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1989 Bom 148 : (1989) 58 FLR 608 : (1989) MhLj 36

Hon'ble Judges: S.M. Daud, J

Bench: Single Bench

Advocate: P.M. Pradhan, for the Appellant; C.U. Bora, K.J. Presswala and P.M. Patel, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This petition is to obtain petitioner''s appointment as a Registrar in Obstetrics and Gynaecology after quashing that made in favour of Respondent 3.

2. Grant Medical College and the J. J. Group of Hospitals are State run institutions. Rules have been framed to regulate the appointment of Registrars attached to Government Medical Colleges in the State. These rules provide for reservation in favour of the weaker sections categories into 4 Sections viz. Scheduled Castes, Scheduled Tribes, Vimukta Jati and Nomadic Tribes and other Backward Classes. The balance goes to the open category. The sections aforementioned have a minimum and maximum in terms of percentages. For the Scs and the VJNTs the percentages range from 13 to 16and 4 to 5, respectively. For the correct term commencing from 1 July, 1988 the total number of vacancies in the posts of Registrar came to 47. In terms of seats the percentages for the above two categories come to 6:8 and 2:2 respectively. In keeping with the rules the

allocation was made. In the subject of Obstetrics and Gynaecology there were only two vacancies. One was kept in the open category and the other allocated to the St slot. A total of 6 reserved for the SCs were distributed in different subjects, not including Obstetrics and Gynaecology. VJNTs two were distributed one and one between Radiology and Surgery. No St was available for the Obstetrics & Gynaecology seat. Of the two VJNTs selected one was Respondent 3 and she got the benefit of the ST vacancy in Obstetrics and Gynaecology being made available for her Gynaecology being made available for her category. The distribution as between SCs and VJNTs percentage or seat wise was not exceeded.

3. Petitioner''s contention is that the VJNTs could not be the beneficiary of the situation arising from the unavailability of an ST to fill the reservation made for that category in the subject of Obstetrics and Gynaecology. This was because such a conferment led to an excess in their entitlement. It was a different matter that in the final allocation there had been no contravention of the percentage or the seats reserved for VJNTs . A notional fitment could not be excluded in the actual allocation. Therefore, the vacancy in Obstetrics and Gynaecology should have been offered to the SCs. That would have been adherence to the rules in the right sense, for thus only could the letter and the spirit be harmonised. The contention summarised above is contested by the respondents. They would have it that the construction canvassed by petitioner is a mechanical one. Flexibility in the application of the reservation policy is advocated by the rules themselves. In offering the ST vacancy to a VJNT candidate no extra benefit has been conferred on them.

4. I can see no merit in the proposition canvassed by Mr. Pradhan for the petitioner. A cardinal principle of reservation is to be found in Rule IV which reads as follows;-

"Reservation:- The percentage of seats reserved will be as indicated in Column 3 below; the seats remaining vacant from any of the groups after the prescribed percentage is achieved, should be distributed, between the groups subject to maximum percentage prescribed in column 4:"

counsel submits that the framers of the rule have chosen to prescribe the minimum and maximum number as also rotation of subjects amongst the different groups. The interpretation thus has to be one which will maintain and further this blend. ''Alternatives, based on seemingly equitable principles are not acceptable for that would amount to re writing of the rules. There is semblance of plausibility in what the counsel says. If there be no way out, the rule of the literal construction has primacy. But the words used in Rule IV indicate other wise. They prescribe a shifting of the vacancy and this shifting is concededly clock-wise. The SCs precede and not succeed the STs for whom the post was reserved. As against that the VJNT s are the first in the clock-wise movement. They are not to be deprived of the benefit because that would amount to a mythical excess in their quota. It would be different if in the current allocation 2 VJNTs had already been absorbed. What has however happened is that conferment of the vacancy upon the 3rd

Respondent a VNJT does not violate the maximum allocable unto them. One cannot assume that the rule of reservation gives primacy to subjects allocated at the cost of numerical considerations. Significantly, the shifting-of-vacancy provision contained in Rule IV does not law down a fiction that in computing the maximum percentage the mythical shall be reckoned as the real.

5. For the foregoing reasons, the petition fails. Rule discharged with parties left to bear their own costs.

6. Petition dismissed.