

(1984) 01 BOM CK 0054

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 2256 of 1983

Vinay Shehrao Kalbande

APPELLANT

Vs

Dean, Government Medical
College and Hospital, Nagpur
and Others

RESPONDENT

Date of Decision: Jan. 18, 1984

Acts Referred:

- Constitution of India, 1950 - Article 226
- Nagpur University Ordinance - Ordinance 56, Ordinance 57

Citation: AIR 1986 Bom 36 : (1986) MhLj 22

Hon'ble Judges: Mohta, J; Dhabe, J

Bench: Division Bench

Advocate: A.S. Bobde, S.R. Kalbande and P.C. Marpakwar, for the Appellant; B.P. Jaiswal, Addl. Govt. Pleader, M.N. Ingle and N.G. Salao, for the Respondent

Judgement

Dhabe, J.

In this petition, the petitioner challenges the registration granted to the respondent No.2 in post graduate degree course i.e. for M.S. (ENT) in the Government Medical College Hospital at Nagpur.

2. Briefly the facts are that the petitioner, who belongs to the Other Backward Classes (for short O.B.C.) community, passed his M.B.B.S. Examination from the Nagpur University in April 1981. He was a student of Indira Gandhi Medical College, Nagpur, which is affiliated to the Nagpur university. After passing the M.B.B.S. Examination he has completed his one year internee ship during the year 1981-82 and thereafter has registered himself as a medical practitioner with the Maharashtra Medical Council. The respondent No.2 has passed his M.B.B.S. Examination from the Government Medical College, Nagpur. He belongs to the open category. After passing the M.B.B.S. Examination and completing his internship, he

also registered as a medical practitioner with the Maharashtra Medical Council.

2A. An Advertisement dated 1-7-1983 was issued by the Dean, Government Medical College, Nagpur, for registration of the students in post-graduate degree and diploma courses conducted by the said college. The seats available for the candidates in the various subjects were given in the said advertisement. It was stated in the said advertisement that the post-graduate registration would be done in accordance with the rules of the Medical Council of India, the provisions of Ordinance 56 and Ordinance 57 of the Nagpur University (as amended up to date) and the rules contained in GIR. No. MCG/2571/24158/Q dated 18-6-1971 as modified by the G.R. No. MCG/1082/1817/PM-7 dated 30-7-1982.

3. A perusal of para 1 of the above advertisement dated 1-7-1983 shows that for post graduate registration in M.S. (E.N.T.) there was one post available in Category "D" i.e. for the candidate from the Government Medical College, Nagpur, and the same was reserved for a Reserved Category of O.B.C.A perusal of Part III of the advertisement shows that there was no post available for post-graduate in M.S.(E.N.T.) in category B, i.e. for the candidates of the Medical College of the Nagpur University.

4. The petitioner had applied for post-graduate registration in M.S. (E.N.T.). He, however, belonged to Category B, covered by para III of the above advertisement dated 1-7-1983. Since no such post was available in category B covered by para III of the advertisement, the petitioner was not granted post-graduate registration in the subject of M.S. (E.N.T.). However, although post-graduate registration for the post graduate degree in M.S.(E.N.T.) was available to an O.B.C. candidate in category "D", which is a category for institutional candidates i.e. candidates belonging to the Government Medical College, Nagpur, covered by Para I of the advertisement, no O.B.C. candidate was available from the institutional candidates for whom the reservation was made in this subject in para I of the advertisement. The said seat i.e. the post graduate registration in M.S. (E.N.T.) in category "D" covered by para I was, therefore, thrown open and was made available to the institutional candidates who belonged to non-reserved or open category. Accordingly, as per the common merit list the respondent No.2 who had applied for post graduate registration in M.S. (E.N.T.) was given registration in M.S.(E.N.T.) as he belonged to open category, amongst the institutional candidates applying for this seat. The above post graduate registration is granted to the respondent No.2 by the Dean, the Government Medical College, Nagpur. i.e. the respondent No.1 by his letter dated 1-8-1983. It is this letter dated 1-8-1983, granting registration to the respondent No.2 in the post graduate degree course for M.S.(E.N.T.) which is challenged by the petitioner in this petition after making an unsuccessful representation to the Dean in this regard.

5. The principal question which is raised on behalf of the petitioner in the instant writ petition on the basis of the relevant rules is that if a candidate in Reserved Category is not available from amongst the institutional candidates, the said seat

which is for Reserved Category, should go to the candidates in Reserved Categories from amongst the other candidates applying for registration and since the petitioner who was an O.B.C. candidate available from Category B covered by para III of advertisement, the seat which was reserved for O.B.C. in category D covered by para I, should go to him as he belonged to the Reserved Category in O.B.C. although he was a non-institutional candidate. The above contention, as already stated is based upon the construction of the rules relating to post graduate registration framed by the Government.

6. A brief survey of the relevant rules is, therefore, necessary. Originally, by a Government Resolution No. MCG/2571/24158/Q dated 18-6-1971, the Government framed the relevant rules for the selection of candidates for admission to the post graduate courses, whether degree or diploma, conducted in Government Medical Colleges in the State. The relevant rules of the 1971 rules are R.3 and R.5. R.3 deals with the question of reservation of seats for the reserved categories. The total reservation provided therein for the reserved categories is 34% subject to maximum of 42%. Chart in R.3 gives the prescribed percentage for each of the four categories. It is pertinent to note that for the reservation in the category of O.B.C. the prescribed percentage is 10% subject to the maximum of 12%.

7. The original R.5 of the 1971 Rules provided that while selecting candidates. Preference should be given to the eligible candidates from the college or the institution in which the registration for post graduate courses is being granted. The original R.5 about the preference being given to the institutional candidates was, however, struck down by this Court in the writ petn. No. 1988 of 1981 decided on 16-12-1981, Dr. Chintaman v. The Dean, Government Medical College, Nagpur, which led to the substitution of this the new R.5 by the Government by its G.R. No. MCG/1082/1812/PN-7 dated 30-7-1982. As per the new R.5 substituted by the Government Resolution dated 30-7-1982, all the candidates applying for the post graduate diploma or degree registrations were divided into four categories as provided in Cls. (a),(b),(c) and (d) thereof. Separate seats by prescribing separate percentages were provided by the new rule 5 for candidates in these categories.

8. In Cl.(a) of the new R.5, 10% of the total seats available for registration for post graduate degree and diploma are kept for the outside candidates who belong to the Medical Colleges which are situated outside the jurisdiction of the University to which the institution giving registration is affiliated. In the instant case, the outside candidates would be the candidates of the Universities other than the Nagpur University. Cl. (b) of the new R.5 provided for reservation of 10% of the total seats available for registration of the post-graduate degree and diploma in the institutions which are affiliated to the same University to which the institution giving registration. In the instant case such an institution covered by Cl.(b) would be Indira Gandhi Medical College, Nagpur, and the candidates applying for registration therefrom to the courses in the Government Medical College at Nagpur would be

called for the sake of convenience as "the non-institutional candidates belonging to category B." Cl.(c) of the new R.5 provided for reservation of 15% of the total seats in post-graduate degree and 25% of the total seats in post-graduate diploma for in-service personnel such as M.M. & M.S. and the teaching staff in Medical Colleges. It is also provided in this Cl.C that the vacant posts under this clause would be diverted to the institutional candidates. It is further provided in this new R.5 after Cl.C that the percentage allotment stated in Cls.(a) and (b) and (c) includes the Backward Class personnel of M.M. & M.S. and outsiders in the prescribed proportion which is the same as given in R.3 referred to above of the 1971 Rules.

9. Then comes Cl.(d) which is in regard to the availability of post-graduate seats of the candidates belonging to the same institution in which the post graduate registration is being granted. The provisions in Cl. (d) for such candidates known as institutional candidates of open and Backward Classes is that after deducting seats given to the categories in Cls. (a),(b) and (c), the remaining seats would be available to the institutional candidates. Cl. (a) thereafter of the new R.5 emphasises that 34% of the total seats available for registration in the year would be reserved for Backward Classes in the prescribed proportion, which includes the student getting registration under Backward Class category under sub-rules (a),(b),(c) and (d) of the new R.5. Cl.(f) of the new R.5 which is very material for the purpose of this petition shows that in the event of seats for registration remaining vacant from the categories in Cls. (a),(b) and (c) the vacant seats would be filled in by the Institutional candidates. It would be pertinent to note at this stage that R.3 of the 1971 Rules remained intact and was not amended by the G.R. No. MCG/1082/1812/PN-7 dated 30-7-1982 which substituted the original R.5 of 1971 Rules.

10. Before we deal with the principal question raised in this petition, we will dispose of the submission on behalf of the petitioner that it is the amended R.5 which is brought into force by the Government Resolution No.1082/1312/MED-7 dated 20-8-1983 which would govern allotment of seats in post-graduate degree and diploma registration in the Government Medical College at Nagpur. It is clear from the advertisement dated 1-7-1983, that it is issued prior to the aforesaid G.R.dated 20-8-1983. It is further clear that the said advertisement dated 1-7-1983 is issued under the rules as amended by the G.R. dated 30-7-1982. Even the impugned order giving rise to the dispute is issued on 1-8-1983, i.e. prior to the issuance of the new G.R. dated 20-8-1983. It is thus clear that the post-graduate registration impugned in this case is granted under the rules as amended in 1982 and the new rules brought into force from 20-8-1983 are not applicable. In fact, after having realised that because the advertisement and the registration granted pursuant to the same is prior to the new G.R. dated 20-8-1983, the learned counsel for the petitioner did not press this contention before us. The said contention thus fails and stands rejected.

11. Coming to the principal question raised in the instant case, whether the petitioner would be eligible for post-graduate registration in the subject of M.S.(E.N.T.), it is clear and is not in dispute that the petitioner belongs to O.B.C. category and was a non-institutional candidate belonging to category B. According to him, he should have been allotted the post-graduate registration in the subject of M.S.(E.N.T.) because the post in said subject was reserved for a reserved category of O.B.C. although in category D for the institutional candidates. A decision of this Court in Dr. Chintaman v. The Dean delivered in Writ Petn. No. 1988 of 1981 on 16-12-1981 is relied upon in support of his case. The above decision turns on the construction of R.3 of the 1971 Rules, which is of course the same in 1982 because by G.R. dated 30-7-1982, the only Rule that is amended is R.5 of the 1971 Rules and not R.3. It would be at this stage useful to reproduce the relevant extract of R.3 on which reliance is placed by the petitioner for his proposition and which, according to him, has been interpreted in his favour by the aforesaid decision of this Court. The relevant part of R.3 reads as under:

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

Sr.No	Category	Percentage prescribed under Government Resolution dated 10-7-1969	Maximum percentage prescribed after addition
	3	4	
1.	Scheduled castes and Nav Budhas	13	16
2.	Scheduled Tribes including Tribes outside specified areas in Vidarbha	7	9
3.	Denotified Tribes and Nomadic Tribes	4	5
4.	Other Backward Classes	10	12
	Total	34	

12. It is the submission on behalf of the petitioner on the basis of the above extract of R.3 that if any candidate is not available in any of the four groups referred to in the above chart and as a consequence the percentage prescribed therefore is not reached, the said seat should be availed of by the candidate belonging to the other groups in the chart shown above subject to the maximum percentage prescribed in the said group or groups prescribed in column 4 of the above chart. In the decision of this Court cited supra relied upon by the petitioner, the question of grant of registration for M.S. (Ophthalmology) arose under R.5 as it was in 1971 prior to its amendment in 1982. The original R.5, to which we have already adverted to, provided that preference should be given to the institutional candidates while

making post-graduate registration. It is pertinent to note that there was no categorisation of candidates in the original R.5. This Court held in the aforesaid decision that there were two categories of post graduate candidates contemplated by the then existing 1971 Rules : (I) belonging to open categories and (ii) belonging to the Reserved categories. As already seen, the reservation is provided for in R.3 of the 1971 Rules. In other words, it means that out of the total seats available for post-graduation registration, 34% have to be reserved for the reserved categories as enumerated in R.3. It is in the above context that this Court has construed the Rr.3 and 5 existing at that time.

13. In construing R.3, this Court has pointed that there was a mistake in the first part of R.3 in so far as the word "not" between the words "is" and "achieved" was missing, because according to this Court, without that word, the said provision would not make any sense. The view that is taken by this Court on the interpretation of this rule is that if any seats remain vacant in any of the four groups of the reserved categories mentioned in R.3 when the prescribed percentage in that category is not achieved, then the remaining seats should be distributed in the other groups of the reserved categories mentioned in R.3 subject of course to the rider that the maximum percentage in each group as prescribed in column 4 of the chart given in R.3 should not be exceeded. Illustrating further by example, if for instance, there are two seats available for the "Scheduled Caste Category" in R.3 which would satisfy the requisite percentage of 13% prescribed therefor, and if only one candidate is available in the Scheduled Caste Category, then as per the above construction of R.3, the remaining seat out of the two should go to any of the candidates in categories 2,3 and 4 of the Chart in R.3 if a candidate in the reserved category is available in the said categories and if the maximum percentage by reason of such allotment in any of these categories 2,3 and 4 is not exceeded by such an allotment of the seat. According to the above decision, it is only then after the distribution of seats in the other groups of Reserved categories that the seat, if necessary, can be thrown open i.e. can be made available for candidates in open categories.

14. It is, therefore, submitted in the instant case on the basis of the above decision that any seat in the reserved category should be considered for being granted to the candidates in the reserved category, although as per the new R.5, the said candidate may not belong to the same class viz. the institutional candidate in which the seat in M.S.(E.N.T.) was reserved for O.B.C. Since the petitioner was an O.B.C. although non-institutional candidate belonging to category B in the Rule 5, since he belonged to the reserved category, the seat in M.S.(E.N.T.) reserved in category (D) of institutional candidates for O.B.C. should be granted to him by distribution, as contemplated by Rule 3 amongst the Reserved category itself. The question that has, therefore to be considered is whether there is any change introduced by the new Rule 5 in the scheme of allotment of seats for post-graduate degrees and diplomas. It is the submission on behalf of the contesting respondents that after the

new R.5 the reservation and distribution of seats, as contemplated by R.3, would be within the seats allotted to categories (a),(b) and (c) on the one hand and the seats allotted in category (d) for institutional candidates of open and Backward categories on the other. In other words, the submission is that after the amendment of R.5 by the G.R. dated 20-7-1982, merely two broad categories viz. open and reserved as held by this Court in the decision cited supra, are not in existence but primarily the total seats available for registration in the post-graduate degree and diploma are divided in four categories covered by Cls. (a),(b),(c) and (d) of the new R.5.

15. It is, therefore, necessary to see closely and examine the scheme of the new R.5 itself after its amendment in 1982. It is clear on perusal of the new R.5 that separate fixed percentages are allotted for different categories covered by Cls. (a),(b) and (c). The said categories are (I) outside candidates, which means non-University candidates in which the percentage fixed is 10% of the total seats available for post graduate registration; (ii) the non-institutional candidates belonging to category B for which there is fixed percentage of 10% of the total seats available for registration; (iii) in-service candidates in which there is fixed percentage of 15% of the total seats available for post graduate degree and 25% of the total seats for post graduate diploma courses and, (iv) institutional candidates to whom all the remaining seats, after deducting the seats for the above three categories are available. There is nothing to show in the new R.5 that there is any discretion under the said rule or under any other provisions by which the percentage fixed for these categories (a),(b),(c) and (d) can be varied or exceeded. In other words, there is no power to allot more seats to any of the categories enumerated in the new R.5.

16. It may be further seen that not only these percentages are fixed, but the reservation provided for is also with regard to these categories, which would mean that it is from amongst these categories that a reservation would be made for the reserved categories taking into consideration the total number of seats available for these categories. The above scheme of reservation in the new R.5 is clear from the para below Cl.(c) of the said rule because it is provided therein that the percentage of allotment given in Cls.(a),(b) and (c) includes the Backward Class personnel of M.M. & M.S and outsiders in the prescribed proportion so far as these categories are concerned. Similarly, perusal of Cl.(d) of the new R.5 would also show that the reservation for Backward Classes in Cl.(d) is from the seats which are available in Cl.(d) viz. for the institutional candidates.

17. It is, therefore, clear that under the new R.5, the percentage of reservation is not on the basis of the total available seats for post graduation as was the case under the original R.5 of the 1971 Rules but is correlated to the various categories provided in Cls.(a),(b),(c) and (d) of the new R.5 for which percentages are fixed and cannot be varied or exceeded. In our view, therefore, the same principle which may be available in the original R.5 read with R.3 will not available for allotment of seats under the new R.5 i.e. after its amendment in 1982. The crux of the new R.5 is that

the total number of seats available for post-graduate registration are distributed in the fixed proportion by prescribing fixed percentages in the various categories provided in Cls.(a),(b),(c) and (d) of the new R.5 and the reservations for the reserved categories in the fixed percentages is also category wise . It is clear from the advertisement in question in this petition that the allotment of seats in various categories in various subjects including reservations is made on the basis of the above principle and the construction of the new R.5.

18. We are, therefore, of the view that if a candidate for whom the seat is reserved in the category (d) of institutional candidates is not available the seat cannot be given to a candidate belonging to a reserved category covered in other Cls. of candidates viz. (a),(b) and (c) and here in the instant case, the Clause (b) of non-institutional candidates belonging to category B because doing so would result in the enhancement of percentage fixed for a particular category under Cl.(b) of the new R.5. We cannot, therefore, accept the construction sought to be put upon the first part of R.3 that the seat reserved for category D i.e. the institutional candidate, although for an O.B.C. is available for distribution to a reserved category, of the non-institutional candidate belonging to the category B. The distribution of seats, if at all, have to be amongst the same category or categories with reference to whom the percentage of reservation is carved out as per the various categories enumerated in Cls.(a), (b),(c)and (d) of the new R.5. The contention raised on behalf of the petitioner has, therefore, to be rejected. The ration of the decision of this Court in Writ Petn.No.1988 of 1981 decided on 16-12-1981, cannot apply to the facts and circumstances of the instant case, particularly in view of the new R.5 by which the instant case is governed.

19. The matter can be looked from another angle as presented by the counsel for respondent No.2. The respondent No.2 has filed a return in para 6 of which he has given the actual number available as per the prescribed percentages for categories A,B,C and D of the advertisement and has worked out the percentages of reservation. At this stage, it may be noted that as per the advertisement two seats are allotted for reserved candidates in category B of the new R.5. One is allotted to the Scheduled Caste and the other seat is for O.B.C. If one more seat is allotted as a reserved seat in category B, there would be two seats in the reserved category for other Backward Classes, as a result of which, according to the respondent No.2, maximum percentage provided for OBC by R.3 viz. 12% would exceed . It is shown that there are six seats in category B and if two seats are allotted to the other Backward Classes category, the percentage which would work out would be 33.33% i.e. about 1/3 rd.

20. It is not in dispute that even as per the decision of this Court cited supra, while distributing the seats in the reserved categories under R.3 the maximum percentage provided for each of the groups of the reserved categories therein cannot be exceeded. If that is so, then as per Cl.(f) of the new R.5, the seat remaining vacant

after considering the claims of the candidates in Cls. (a),(b) and (c) of the new R.5. must go to the institutional candidates. The total number of seats in category B calculated by respondent No.2, appears to be correct, as it is supported by the calculation of total number of seats available in category B in para III of the advertisement . There is, therefore, much substance in the contention advanced on behalf of the respondent No.2 that allotment of one seat to O.B.C. in the category B of the new R.5 would exceed the maximum percentage provided for that category in R.3. Even otherwise, there is no material placed on record on behalf of the petitioner to show that the allotment of an additional seat in the reserved category for Cl.(b) of the new R.5 would not exceed the percentage prescribed for the said reserved category, in R.3.

21. In this view of the matter, the writ petition fails and is dismissed. However, there would be no order as to costs. Petition dismissed.