INDIA / JUDGMENT

RAMNARESH @ RINKU KUSHWAH AND OTHERS versus STATE OF MADHYA PRADESH AND OTHERS

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Ramnaresh @ Rinku Kushwah and Others v. State of Madhya Pradesh and Others

(Civil Appeal No. 9628 of 2024)

20 August 2024

[B.R. Gavai* and K.V. Viswanathan, JJ.]

Issue for Consideration

Appellants-meritorious reserved candidates, who had passed from the Government Schools and on their own merit were entitled to be selected against the Unreserved Government School (UR-GS) quota were denied the seats against the open seats in the GS quota, on account of erroneous application of the methodology in applying the horizontal and vertical reservation. They were deprived admission in the Academic Session 2023-24 for MBBS Course against the UR-GS category. High Court whether justified in dismissing the writ petitions filed by the appellants.

Headnotes†

Reservation – Horizontal and vertical reservation – Misapplication – Madhya Pradesh Education Admission Rules, 2018 – NEET UG 2023 – Vacancies transferred from one category to other categories, out of 89 unreserved seats for Government School students, 77 were sent to the open category – Appellants filed writ petitions praying that the meritorious students of reserved category who had studied in Government Schools must be allotted MBBS seats of unreserved category government school quota before they are released to the open category – Dismissed – Sustainability:

Held: Not sustainable – Even in case of horizontal reservation, the candidates from the reserved categories like SC/ST/OBC, if they are entitled on their own merit in the GS quota, will have to be admitted against the GS quota (UR seats) – Horizontal as well as the vertical reservation would not be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her or him to be shown in the open general category, is foreclosed – The open category is open to all, and the only condition for a candidate to

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be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him – The methodology adopted by the respondents in compartmentalizing the different categories in the horizontal reservation and restricting the migration of the meritorious reserved category candidates to the unreserved seats is unsustainable – Appellants were deprived of their legitimate claim of admission in the Academic Session 2023-24 for MBBS Course against the UR-GS category – Since the admission process for the said academic session is complete, respondents directed to admit the appellants in the next Academic Session 2024-25 for MBBS Course against the seats reserved for UR-GS category – Impugned judgments quashed and set aside. [Paras 12, 14, 16, 18, 20, 21]

Case Law Cited

Indra Sawhney and Others v. Union of India and Others [1992] Supp. 2 SCR 454 : (1992) Supp 3 SCC 217 – followed.

Saurav Yadav and Others v. State of Uttar Pradesh and Others

[2020] 11 SCR 281 : (2021) 4 SCC 542; S. Krishna Sradha v. State of Andhra Pradesh and Others [2019] 15 SCR 93 : (2020) 17 SCC 465; Sadhana Singh Dangi and Others v. Pinki Asati and Others (2022) 12 SCC 401; R.K. Sabharwal and Others v. State of Punjab and Others [1995] 2 SCR 35 : (1995) 2 SCC 745; Ritesh R. Sah v. Dr. Y.L. Yamul and Others [1996] 2 SCR 695 : (1996) 3 SCC 253 – relied on.

Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar (2020) SCC OnLine Guj 2592 – referred to.

List of Acts

Madhya Pradesh Education Admission Rules, 2018.

List of Keywords

NEET UG; MBBS Course; Reservation; Horizontal reservation; Vertical reservation; Meritorious reserved candidates; Meritorious students of reserved category; Unreserved Government School (UR-GS) quota; Open seats; Open seats in the Government School quota; UR-GS category; UR-GS seats; Open category; General category; Open general category; Unreserved seats.

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Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9628 of 2024

From the Judgment and Order dated 12.01.2024 of the High Court of M.P. at Gwalior in WP No. 23060 of 2023

With

Civil Appeal Nos. 9629-9630 And 9631 of 2024

Appearances for Parties

K Parameshwar, Siddhartha Iyer, Aditya Shanker Pandey, Mrs. Rekha Bakshi, Ms. Yoothica Pallavi, Himanshu Sehrawat, Avijit Mani Tripathi, Advs. for the Appellants.

Nachiketa Joshi, A.A.G., Sunny Choudhary, Sharad Kumar Singhania, Abhimanyu Singh, Padmesh Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, J.

1.

Leave granted.

2. The present appeals challenge the judgments and orders dated 22nd December 2023 and 12th January 2024 passed by the High Court of Madhya Pradesh at Indore in Writ Petition Nos. 23998 and 23437 of 2023, and High Court of Madhya Pradesh at Gwalior in Writ Petition No. 23060 of 2023 respectively. By the said writ petitions, the writ petitioners (appellants herein) had challenged the decision of the Respondent-Department of Medical Education of not allotting MBBS Unreserved (UR) Category Government School (GS) quota seats to the meritorious reserved candidates, who had passed from the Government Schools. The appellants had also prayed for a direction to the Respondent-Department to allot the MBBS seats of Unreserved Category Government School quota to the appellants.

3. Writ petitioners in Writ Petition No. 23060 of 2023 before the High Court have approached this Court by way of appeals arising out of Special Leave Petition (SLP) (Civil) Nos. 2111 and 2285 of 2024, and writ petitioners in Writ Petition Nos. 23437 and 23998 of 2023

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have approached this Court by way of appeals arising out of SLP(C) Nos. 2311-2312 of 2024.

4. Since the facts giving rise to the present appeals as given below are identical and same, the said appeals are decided by the common judgment and order.

4.1 On 19th June 2019, the amendment by the State Government to the Madhya Pradesh Education Admission Rules, 2018 (hereinafter referred to as the "Admission Rules, 2018") were notified. In place of sub-rules (1) and (u) of rule 2 and sub- rule (2) of rule 4, new sub-rules were established that defined "category" and the method to fill vacancies for category wise reservation was established.

4.2 On 7th May 2023, the NEET (UG) Examination was conducted

in which the appellants had participated in.

4.3 On 10th May 2023, the State of Madhya Pradesh notified another amendment in the Admission Rules, 2018. Sub-rule

(f) and (b) were added to Rule 2 that defined "Government School" and the students who could fall under the category of "Government School Students". A new table in existing clause (b) of Schedule-2 detailing the quantum of reservations was added in which 5% of the total seats were reserved for government school students.

4.4 Subsequently, the results of NEET (UG) were declared on 13th June 2023. Then, on 25th July 2023, an advisory was issued notifying that the Admission Rules, 2018 and the amendment thereto dated 10th May 2023 would apply to the counselling process.

4.5 A chart showing the names of the appellants, marks obtained by them in NEET UG – 2023, their categories and their details in the appeals, are as under:

S. No.

Name of Appellant

Marks obtained in NEET UG – 2023

Category Party Details

1.

2.

Ramnaresh Kushwaha

412

Sachin Baghel

390

OBC

OBC

P1 in SLP(C) No. 2111/2024

P2 in SLP(C) No. 2111/2024

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3.

4.

Tapsya Kutwariya

Tasmiya Khan

244

409

5. Muskan

395

6.

7.

Hidau

Deepak Jatav

Vikash Singh

305

297

SC

OBC

OBC

SC

EWS

P3 in SLP(C) No. 2111/2024

P in SLP(C) No. 2311/2024

P in SLP(C) No. 2312/2024

P1 in SLP(C) No. 2285/2024

P2 in SLP(C) No. 2285/2024

4.6 Thereafter, on 22nd August 2023, the State/Respondents issued the seat wise distribution of medical colleges at the end of the 2nd round of counselling. Since several seats remained vacant according to Rule 2 (g) of the Admission Rules, 2018, the vacancies were transferred from one category to other categories. In the instant case, out of 89 unreserved seats for Government School students, 77 were sent to the open category.

4.7 Being aggrieved by the fact that the vacant seats were going to be released to the unreserved category, the aforesaid writ petitions were filed by the appellants before the High Court, where it was prayed that the meritorious students of reserved category who have studied in Government Schools must be allotted MBBS seats of unreserved category government school quota before they are released to the open category.

4.8 The High Court, vide order dated 31st October 2023 dismissed a Writ Petition filed by another candidate seeking similar relief as aforementioned. The High Court in the Writ Petition being WP No. 23060 of 2023 filed by the appellants in an interim order dated 8th November 2023 took note of the earlier order dated 31st October 2023 and recorded that no prima facie case was made out and adjourned the matter to permit the appellants to make additional arguments. The said order dated 8th November 2023 was challenged before this Court vide SLP (C) No. 25963 of 2023, wherein this Court vide order dated 28th November 2023 directed the High Court to decide the petition on merits or the question of interim relief at the earliest, preferably within 2 weeks.

4.9 Ultimately, on 22nd December 2023, the Indore Bench and on 12th January 2024 the Gwalior Bench of the High Court vide the impugned judgments and orders dismissed the writ petitions finding the same sans merits.

4.10 The impugned judgments and orders came to be challenged before this Court and after hearing all the parties, this Court vide order dated 12th August 2024 reserved the judgment and by way of an ad-interim order directed the respondent/State to keep seven seats vacant in MBBS course, so that in the event the appellants succeed, they can be accommodated against the said seats.

5. We have heard Shri K. Parameshwar, learned Senior Counsel appearing on behalf of the appellants and Shri Nachiketa Joshi, learned Additional Advocate General (AAG) appearing on behalf of the respondents.

6. Shri Parameshwar, learned Senior Counsel appearing on behalf of the appellants submitted that the GS quota was introduced by the State of Madhya Pradesh on 10th May 2023. However, the procedure followed by the respondents in sub-classifying the candidates further into categories as UR-GS, SC-GS, ST-GS, OBC- GS and EWS-GS was totally illegal. It is submitted that, in view of the settled position of law as laid down by this Court in the case of

Saurav Yadav and Others v. State of Uttar Pradesh and Others,1 even in case of horizontal reservation, the candidates from the reserved categories like SC/ST/OBC, if they are entitled on their own merit in the GS quota, will have to be admitted against the GS quota (UR seats). He submitted that, on account of erroneous application of policy, an anomalous situation has arisen wherein, in the UR-GS seats, the persons who are much less meritorious than the appellants, who have secured as low as 214, 150 marks, have secured admission, whereas the appellants, who are much more meritorious than the UR-GS candidates have been deprived the admission. It is submitted that the cut-off for UR-GS was 291, OBC-GS was 465, SC-GS was 314 and EWS-GS was 428. He therefore submitted that, on account of erroneous application of the policy, as many as 77 seats classified as UR-GS, were not

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[2020] 11 SCR 281 : (2021) 4 SCC 542 : 2020 INSC 714

filled from the GS quota and had to be released to the open pool of candidates.

7. Shri Parameshwar further submitted that the State, realizing its mistake, has now carried out an amendment on 2nd July 2024 thereby intending to apply horizontal reservation correctly for this academic year in accordance with the judgment and decision of this Court in the case of Saurav Yadav (supra).

8. To meet the situation of the admission for the Academic Session 2023-24 which being already complete, the learned Senior Counsel, relying on the judgment of this Court in the case of S. Krishna Sradha v. State of Andhra Pradesh and Others,2 submitted that the Court should mould the relief and direct the admission to be granted to the appellants in the next academic session by issuing appropriate directions.

9. Shri Joshi, learned AAG appearing on behalf of the respondents submitted that, since the reservation in the GS category was horizontal, the State was justified in making a further sub- classification into OBC-GS, ST-GS, SC-GS, UR-GS and EWS-GS. He submitted that, since it was a case of horizontal reservation, it was not possible to shift the category of vertical reservation like the SC/ST/OBC/EWS to the horizontal category of UR-GS.

10. By now, it is a well-settled principle of law that a candidate belonging to any of the vertical reservation categories who on the basis of his own merit is entitled to be selected in the open or general category, will be selected against the general category and his selection would not be counted against the quota reserved for such vertical reservation categories. Reliance in this respect could be placed on the 9-Judge Bench judgment of this Court in the case of Indra Sawhney and Others v. Union of India and Others,3 and in the cases of R.K. Sabharwal and Others v. State of Punjab and Others4 and Ritesh R. Sah v. Dr. Y.L. Yamul and Others.5

11. However, this Court, in the case of Saurav Yadav (supra), had

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[2019] 15 SCR 93 : (2020) 17 SCC 465 : 2019 INSC 1362

[1992] Supp. 2 SCR 454 : 1992 Supp (3) SCC 217

[1995] 2 SCR 35 : (1995) 2 SCC 745 : 1995 INSC 108

[1996] 2 SCR 695 : (1996) 3 SCC 253 : 1996 INSC 258

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an occasion to consider for the first time as to whether the said principle laid down in the case of Indra Sawhney (supra) and followed subsequently would also apply to the cases of horizontal reservation. Prior to the said judgment, there were conflicting views of different High Courts. This Court, after surveying various earlier pronouncements and considering the views as expressed by the High Courts, observed thus:

> *"43. Finally, we must say that the steps indicated by the High Court of Gujarat in para 69 of its judgment in Tamannaben Ashokbhai Desai [Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar, 2020 SCC OnLine Guj 2592] contemplate the correct and appropriate procedure for considering and giving effect to both vertical and horizontal reservations. The illustration given by us deals with only one possible dimension. There could be multiple such possibilities. Even going by the present illustration, the first female candidate allocated in the vertical column for Scheduled Tribes may have secured higher position than the candidate at Serial No. 64. In that event said candidate must be shifted from the category of Scheduled Tribes to Open/General category causing a resultant vacancy in the vertical column of Scheduled Tribes. Such vacancy must then enure to the benefit of the candidate in the waiting list for Scheduled Tribes-Female. The steps indicated by the Gujarat High Court will take care of every such possibility. It is true that the exercise of laying down a procedure must necessarily be left to the authorities concerned but we may observe that one set out in said judgment will certainly satisfy all claims and will not lead to any incongruity as highlighted by us in the preceding paragraphs."*

12.

It could thus be seen that, this Court approved the steps indicated by the High Court of Gujarat in paragraph 69 of its judgment in the case of Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar6 for considering and giving effect to both vertical and horizontal reservations. In the said case, this Court was considering horizontal reservation for the female candidates. It was observed

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2020 SCC OnLine Guj 2592

that a meritorious reserved category candidate who is entitled to the General category of the said horizontal reservation on his own merit, will have to be allotted a seat from the said General category of the horizontal reservation. Meaning thereby such a candidate cannot be counted in a horizontal seat reserved for the category of vertical reservation like SC/ST.

13.

It will also be apposite to refer to the following observations made by S. Ravindra Bhat, J. in his concurring judgment:

> *"66. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the State's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him."*

[emphasis supplied]

14.

It could thus be seen that the learned Judge clearly observed that the horizontal as well as the vertical reservation would not be seen as rigid "slots", where a candidate's merit, which otherwise entitles her or him to be shown in the open general category, is foreclosed. It was observed that by doing so, it would result in communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. It was observed that the open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.

15. The said view was reiterated by this Court in the case of Sadhana

Singh Dangi and Others v. Pinki Asati and Others.7

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(2022) 12 SCC 401 : 2021 INSC 907

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16.

In view of the settled position of law as laid down by this Court in the case of Saurav Yadav (supra) and reiterated in the case of Sadhana Singh Dangi (supra), the methodology adopted by the respondents in compartmentalizing the different categories in the horizontal reservation and restricting the migration of the meritorious reserved category candidates to the unreserved seats is totally unsustainable. In view of the law laid down by this Court, the meritorious candidates belonging to SC/ST/OBC, who on their own merit, were entitled to be selected against the UR-GS quota, have been denied the seats against the open seats in the GS quota.

17.

It is to be noted that, in the present case, the cut-off for UR candidates was much less as compared to the cut-off for SC/ST/ OBC/EWS candidates. As such, the respondents ought to have admitted the present appellants against the UR-GS categories. It is further to be noted that many seats from UR-GS category were required to be transferred to the General category.

18. Having held that the appellants were deprived of their legitimate claim of admission against the UR-GS category in the Academic Session 2023-24, and since the admission process for the said academic session is complete, we will have to consider as to what relief should be granted in favour of the appellants.

19.

It will be apposite to refer to the observations made by this Court in the judgment of S. Krishna Sradha (supra), which read thus:

> *"13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:*

13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the

candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed — 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time i.e. within one month from 30th September i.e. cut-off date and under no circumstances, the Court shall order any admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it

is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year."

20. Undisputedly, the appellants who were meritorious and who could have been admitted against the UR-GS category were denied admission on account of an erroneous application of the methodology in applying the horizontal and vertical reservation. It is also not in dispute that many of the students, who secured much less marks than the appellants, have been admitted against the UR-GS seats. This is totally in contravention of the law laid down by this Court in the cases of Saurav Yadav (supra) and Sadhana Singh Dangi (supra). We therefore find that as held by this Court in the case of S. Krishna Sradha (supra), it will be appropriate to issue directions to the respondents to admit the appellants in the next Academic Session 2024-25 against the UR-GS seats. Vide order dated 12th August 2024, we have already directed 7 seats to be kept vacant in the event the appellants succeed. The appellants can be very well accommodated against the said seats.

21.

In the rest, we pass the following order:

(i) The appeals are allowed;

(ii) The impugned judgments and orders dated 22nd December 2023 and 12th January 2024 passed by the High Court of Madhya Pradesh at Indore in Writ Petition Nos. 23998 and 23437 of 2023, and High Court of Madhya Pradesh at Gwalior in Writ Petition No. 23060 of 2023 respectively are quashed and set aside; and

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(iii) The respondents are directed to admit the appellants herein in the next Academic Session i.e. 2024-25 for MBBS Course against the seats reserved for UR-GS category.

22. Pending application(s), if any, shall stand disposed of. No costs..

Result of the case: Appeals allowed.

†Headnotes prepared by: Divya Pandey

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