

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6026 OF 2008

(Arising out of S.L.P. (C) No. 17406 of 2006)

State of Maharashtra & Ors. Appellant(s)

Versus

Sneha Satyanarayan Agrawal & Ors. Respondent(s)

WITH

CIVIL APPEAL NO.6027 2008

(Arising out of S.L.P.(C) No. 17832 of 2006)

J U D G M E N T

P. Sathasivam, J.

Leave granted in both SLPs.

C.A. No.6026/2008 @ S.L.P.(C) No. 17406/2006

1) This appeal, by special leave, is directed against the judgment and final order dated 28.9.2006 of the High Court of Judicature at Bombay, Bench at Nagpur, in Writ Petition No. 4515 of 2006, whereby the High Court allowed the said writ petition directing the State – Directorate of Medical Education and Research (hereinafter referred to as “DMER”) to consider Sneha Satyanarayan Agrawal – respondent No.1 herein for giving seat in Indira Gandhi Medical College (hereinafter referred to as “IGMC”), Nagpur by shifting Kirti Shivajirao Ruikar–respondent No.2 herein to Government Medical College (hereinafter referred to as “GMC”), Yavatmal.

2) The facts, in brief, are as under:

On 31.03.2006, Information Brochure for medical courses in Government Colleges in Maharashtra for the academic year 2006–2007 was published and accordingly MHT–CET, 2006 was conducted on 21.05.2006 throughout Maharashtra. First round for verification of documents and filling of preference forms took place during 28.6.2006 to 6.7.2006 and accordingly, on the basis of the same, final allotments were made on 14.7.2006 thereby mentioning 21.7.2006 as the last date for joining. In the first round, admissions were given as under :

State Merit List No.	Name of Student	Name of the College	Quota
963	Sneha Satyanarayan Agrawal – Respondent No.1	Shri Vasantrao Naik Govt. Medical College, Yavatmal	70% Regional

869	Kirti Shivajirao Ruikar – Respondent No.2	Shri Vasantrao Naik Govt. Medical College, Yavatmal	30% State
844	Deepika Nandkumar Mishra – Respondent No.3	Govt. Medical College, Miraj	30% State

In IGMC, Nagpur, twelve seats for women open category were vacant, and as per the Rule, 30% seats have to be filled up from State and 70% seats have to be filled up from Region i.e. four seats from State and eight seats from Region have to be filled up. On 24.8.2006, in the second round of counseling, considering vacant seats and the preference as given by the candidates in the Preference Form, two candidates, namely, 1) Purbi Rabindra Acharya (SML No. 634) – who was admitted in Indira Gandhi Medical College, Nagpur in 30% State quota, preferred and joined B.J. Medical College, Pune and 2) Anuradha Kamalkishore Rathi (SML No. 703) who was also admitted in India Gandhi Medical College, Nagpur in 30% State quota preferred and joined Government Medical College, Nagpur. Therefore, two seats in 30% State quota were vacant. Accordingly, Deepika Mishra, SML No. 844 and Kirti Ruikar, SML No. 869 were given admission against the vacant seats. In view of the same, seats in their earlier places were vacant and two candidates were accommodated. Second round of admissions was finalized on 24.8.2006 and the list was published on 25.8.2006 mentioning 30.8.2006 as the last date for joining. On 28.8.2006, respondent No.1 herein submitted a representation to DMER by fax informing that the admissions of

respondent Nos. 2 & 3 are in violation of Rules depriving her to exercise her higher preference and betterment. However, no action was taken. Being aggrieved by the conduct of the Government, respondent No.1 approached the Bombay High Court, Nagpur Bench by filing a writ petition. On 15.9.2006, respondent No.1 herein filed an application impleading Deepika Mishra as a party respondent and the same was allowed. On 28.9.2006, after hearing the parties, the High Court disposed of the writ petition, by pronouncing only operative part of the judgment, thereby directing DMER to consider shifting of Kirti Ruikar from Indira Gandhi Medical College, Nagpur to GMC, Yavatmal and shifting of Sneha Agrawal, respondent No.1 herein from GMC, Yavatmal to Indira Gandhi Medical College, Nagpur. Later on, on 12.10.2006, full judgment was delivered. In the meantime, the entire admission process was over. Challenging the judgment dated 28.9.2006, the State of Maharashtra has filed the present appeal by way of special leave petition before this Court.

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3) This appeal has been filed by respondent No.1 in S.L.P. (C) No. 17406 of 2006 against the judgment of the High Court of Judicature at Bombay, Nagpur Bench, dated 28.9.2006 in Writ Petition No. 4515 of 2006 challenging the judgment on the ground that the High Court has not issued any direction to correct the error committed by the

respondents.

4) Heard Mr. Shekhar Naphade, learned senior counsel, appearing for the appellants and Mr. Shivaji M. Jadhav, learned counsel, appearing for the respondents.

5) The contention of the first respondent herein, before the High Court, was that while preparing merit list of the second round of IGMC Women Category candidates, first four seats must go to the 30% category and next eight seats must go to the 70% category i.e., State List and Regional List respectively. It was also her claim that in terms of Rule 2.3.1 of Information Brochure of Preference System for admission to Health Science Courses of MHT-CET, 2006 published by the Directorate of Medical Education and Research, this pattern has to be followed in each round while filling up seats in any College/Institute. It was her further claim that every vacant seat is required to be filled in on the basis of the merit and the preference taken together and no single factor can be operated at any point of time i.e., at any later round. It was also the claim of the first respondent that while considering the preference for betterment, the seats meant for 30% quota and 70% quota cannot either way be altered and the seats meant for 30% quota must be filled up according to merit depending on the preference from that category only.

6) On the other hand, it was the claim of the Competent Authority that the procedure carved out by the Directorate of Medical Education and

Research in the Information Brochure of Preference System for admission to Health Science Courses MHT-CET, 2006 has been strictly followed and it was followed from the very beginning. The Authority also denied the contention of the writ petitioner – first respondent herein, that there was any deviation from the rules which is part and parcel of the procedure for admission to MHT-CET, 2006.

7) In order to appreciate the rival contentions, it is useful to refer the Information Brochure of Preference System for admission to Health Science Courses (MBBS/BDS/BAMS/BUMS/BPTh/BOTTh/BASLP/BP&O/B.Sc. [Nursing]) MHT-CET-2006 issued by the Directorate of Medical Education and Research, Government of Maharashtra. Among the various Rules, the following rules are relevant in the present case:

“1.4 DISTRIBUTION OF SEATS TO BE ALLOTTED BY THE COMPETENT AUTHORITY

1.4.1 After excluding the seats as provided in Para 1.2 and 1.3; the remaining seats will be at the disposal at the Competent Authority & available for candidates of the State for Selection in the following manner.

1.4.2 Out of the seats at the disposal of the Competent Authority, 30% of such seats in Colleges will be made available for candidates from the State and these seats will be filled on the basis of State Merit List. There will be constitutional, specified and female reservations in these seats as per rules.

1.4.3 The seats for BUMS, BPTh, BOTTh, BASLP, BP&O and B.Sc. (Nursing) courses will be filled by the candidates from the State Level Merit List only.

1.4.4 **Distribution of Seats in 70% Category**
After the exclusion of State Level seats mentioned at

Para 1.4.2 the remaining 70% seats will be filled from amongst the Candidates who have passed HSC (or equivalent examination) from the Schools/Colleges situated in the region of the concerned Development Board i.e. Rest of Maharashtra, Vidarbha and Marathwada. There will be constitutional, specified and female reservations for these seats as per rules.

1.6 RESERVATION FOR FEMALE CANDIDATES:

30% seats at the disposal of the Competent Authority shall be reserved for female candidates in all the courses. This reservation shall be for all the categories like SC, ST, VJ, NT-1, NT-2, NT-3, OBC, Common, HA, PH & DEF. 30% female reservation shall be provided in 30% State seats & 70% regional seats of that category. If requisite number of female candidates are not available then these seats shall be offered to male candidates of that category.

2. SELECTION PROCESS:

2.1 The selection will be made on the basis of preferences given by the candidates. Only a limited number of meritorious candidates will be called for Counselling and asked to fill the preference form. Counselling sessions are not meant for instant seat allocation at these offices. During these sessions candidates are helped in exercising their preferences for various courses, and the institutions. Seat allocation shall be made centrally at a later date on the basis of MHT-CET-2006 merit list and preferences exercised by the candidates.

2.2 Selection Process shall be as follows:

The preference form shall be available at the office of the Regional Centre as per notified schedule. The duly filled preference form should be submitted at the same office.

Xxx xxx xxxx

2.2.3 The candidates may kindly note while filling the preference form that MHT-CET-2006 merit list will be operated from SML number 1 onwards in each round of

selection. The candidate getting selected in previous round will be considered for betterment in the subsequent round. The betterment herein means the higher preference exercised by the candidate. The Shift in such betterment shall be compulsory and mandatory **except** for those who have filled '**Status Retention Form.**' Such a candidate who has filled Status Retention form will not be considered for any subsequent rounds of selection process for the year 2006–2007. The last date for filing Status Retention Form will be notified along with the selection list.

2.3.1 While filling the seats for any college/Institution state seats (30%) shall be filled first followed by regional seats (70%). The seats for the MKB shall be available as per state merit list only. The seats for Defence category shall be allotted regionwise.

2.6 Seats that have arisen or fallen vacant after the first round shall be made available at the second round of selection on the basis of preference form already submitted. No new preference form will be required for any subsequent round(s). The vacancy position will be made available on website of DMER i.e. www.dmer.gov.in before commencement of the next round."

In the counter affidavit as well as written notes, the Competent Authority – the Director of Medical Education and Research, Mumbai asserted before the High Court that it has strictly carried out the entire admission process in accordance with the above–mentioned Rules and also placed before the High Court the first and the second list of selection as well as the list of vacancies arising in various colleges after the first round and those who are filled up in the second round and also placed on record the preference forms of the writ petitioner, respondent No.3 as well as

candidate at Serial Nos. 9 & 10 in the list of IGM, Nagpur. We have carefully scrutinized the relevant documents in the light of the Rules applicable to issue in question. It is clear that the seats as per Rule 1.4 are to be distributed by the Competent Authority except the seat relating to nominees of the Government of India and of AIEE quota. As per the said Rule, the Competent Authority, out of the seats at its disposal, is required to make available 30% seats in the colleges for the candidates from the State and these seats are to be filled up on the basis of State Merit List. The Competent Authority is also expected to fill up 70% seats from the candidates who have passed HSSC or equivalent examination from Schools/Colleges situated in (A) rest of Maharashtra (R),(B) Vidarbha (V) and (C) Marathwada(M). It is pertinent to mention that any candidate in the State of Maharashtra is entitled to compete in the MHT-CET-2006 and claim the seat from 30% quota. 70% quota is meant for candidates coming from the respective regions and the objective of this distribution is to see that regional candidates get their share in the admission process in their respective regions. As explained by learned senior counsel appearing for the appellants, a candidate is not categorized either in 30% or 70% but the seats are categorized as 30% meant for all the candidates and 70% meant for regional candidates only. The concept of 30% and 70% is followed as provided in Rule 2.3.1 wherein while starting filling up of seats in any institution/college 30% seats belonging to State quota

should be filled in first followed by 70% regional seats which should be done on the basis of the State Merit List. A candidate with the higher number of marks is placed at Serial No.1 and the merit list goes in a descending fashion. Information Brochure shows that the candidates, at the time of their application, are required to fill in the Preference Form and may give as much as 52 preferences in the allotted colleges. While giving preference, the candidate selects colleges on the basis of its status and reputation and the choices are irrespective of the area or region where the college is situated. As per Rule 2.2.2, the selection will be on the basis of merit and the preferences submitted by the candidates in their Preference Form. It also contemplates that there shall be two or more rounds of selection process, depending on the availability of vacant seats. It is demonstrated before us that by keeping this method in mind, the Competent Authority published first list of students selected for Health Science Course through MHT-CET-2006. The information furnished by the Competent Authority shows that it had 2060 seats available for MBBS Course, out of which 307 and 15 seats are for All India quota and Government of India nominee respectively. The Competent Authority, therefore, has 1738 seats at its disposal for MBBS Course. It further shows that this number will increase if out of All India quota the seats are surrendered to be calculated in 30% State quota and if any seats from Government of India nominee are surrendered to be calculated in

70% Regional quota. The Competent Authority published its first list on 13.7.2006 and according to it, the said list goes strictly on the basis of State Merit List and mentions the criteria as to whether the candidate is from rest of Maharashtra, Marathwada or Vidarbha. It mentions the marks obtained by the candidates and the category from which they are considered and also specify the State or Regional quota where the candidate belong. The first list published on 14.7.2006 reads as under:

ADMISSION TO HEALTH SCIENCE COURSE – 2006-07 (1ST ROUND)

INDIRA GANDHI GOVT. MEDICAL COLLEGE, NAGPUR (Annexure-P2)

Sr. No.	State Merit No.	Name of Student	Sex	CET Marks	Region	Category	Quota
1.	634	Acharya Purabi Rabindra	F	186	R	Open	30% W Open
2.	703	Rathi Anuradha Kamalkishor	F	186	V	Open	30% W Open
3.	706	Malpani Priyamvada Praveen	F	186	V	Open	30% W Open
4.	718	Kothari Megha	F	186	V	Open	30% W Open
5.	732	Deshmukh Snehal Subhash	F	185	V	Open	70% W Open
6.	748	Sharma Pragya Sudhir	F	185	V	Open	70% W Open
7	761	Yadav Suman Dhanpat	F	185	V	Open	70% W Open
8.	770	Rathi Bharti Mohanlal	F	185	V	Open	70% W Open
9.	792	Bagga Chandni Baldev	F	185	V	Open	70% W Open
10.	802	Pratapan Priya P.G. Pratapan	F	185	V	Open	70% W Open

11.	904	Pahlajani Neemal Haresh	F	184	V	Open	70% W Open
12.	940	Ruhatiya Shradha Omprakash	F	184	V	Open	70% W Open

As rightly pointed out by learned senior counsel appearing for the appellants, a perusal of the list clearly shows that the Competent Authority, in accordance with Rule 2.3.1, has first filled up the 30% State seats and then filled up 70% Regional seats. It was explained to us that this was done while making allotment of seats in each and every college.

8) After the first round of selection, the candidates go for second round of selection for filling up the seats which have become vacant due to non-joining of a candidate, cancellation of admission and All India surrendered seats (15%). Above-mentioned seats are to be filled up as per Rule 2.6 and are to be operated on the basis of State Merit List and the Preference Form filled in at the very beginning. It is pointed out that a candidate is eligible for the vacant seats to be filled in the second round if (a) have joined and not cancelled the admission (Rule 2.5), (b) have joined and not retained the admission (Rule 2.2.3), (c) are getting admission to a higher preference (Rule 2.2.3) and (d) did not get a college of his choice in the previous round. Considering the above-said Rules and procedures for filling up of the seats in second round, the Competent Authority published a list of candidates selected to Health Science Courses in second round on 25.8.2006 which reads as under:

ADMISSION TO HEALTH SCIENCE COURSE – 2006-07 (IInd ROUND)

INDIRA GANDHI GOVT. MEDICAL COLLEGE, NAGPUR (Annexure-P3)

Sr. No.	State Merit No.	Name of Student	Sex	CET Marks	Region	Category	Quota
1.	706	Malpani Priyamvada Praveen	F	186	V	Open	30% W Open
2.	718	Kothari Megha	F	186	V	Open	30% W Open
3.	732	Deshmukh Snehal Subhash	F	185	V	Open	70% W Open
4.	748	Sharma Pragya Sudhir	F	185	V	Open	70% W Open
5.	761	Yadav Suman Dhanpat	F	185	V	Open	70% W Open
6.	770	Rathi Bharti Mohanlal	F	185	V	Open	70% W Open
7.	792	Bagga Chandni Baldev	F	185	V	Open	70% W Open
8.	802	Pratapan Priya P.G. Pratapan	F	185	V	Open	70% W Open
9	844	Mishra Deepika Nandkumar	F	185	R	Open	30% W Open
10.	869	Ruikar Kirti Shivajirao	F	184	M	Open	30% W Open
11.	904	Pahlajani Neema Haresh	F	184	V	Open	70% W Open

12.	940	Ruhatiya Shradha Omprakash	F	184	V	Open	70% W Open
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The details furnished above relating to second round admission clearly show that it is operated on the basis of merit with State Merit List No.1 at the top and so on. In the last column, the status of the candidates has been furnished. The above mentioned second selection list shows shifting of the candidates on the basis of their merit list and their preferences given for a college, which would amount to betterment in terms of Rule 2.2.3. It is relevant to mention that in IGMC, Nagpur there are twelve seats available for women candidates and out of which four seats go to 30% State quota whereas eight seats goes to 70% Regional quota as per Rule 1.4.2, 1.4.4 and 1.6. In the list pertaining to first round, the candidate at the first serial is Acharya Purabi Rabindra who was admitted in IGMC, Nagpur on the basis of her State Merit List and preference number in the first round. She is from rest of Maharashtra and, therefore, while admitting her in Nagpur she was treated as 30% women. In the second round, she secured a seat at BJMC, Pune as it was for her betterment and higher choice of preference. Therefore, she was shifted to BJMC, Pune from 30% women open for Indira Gandhi Medical College, Nagpur falling vacant. The second candidate in the same first round with State Merit List 708 Rathi Anuradha belong to Vidarbha region who was admitted in IGMC, Nagpur in 30% women open seats for

betterment and on a seat at IGMC, Nagpur falling vacant as she was shifted to GMC, Nagpur. By her shifting second seat of 30% women seat fall vacant at IGMC, Nagpur. It was highlighted that the candidates from State Merit List 706 to 802 who secured admission in IGMC, Nagpur did not get an opportunity to shift according to their preference and since shifting is permissible only if the candidates go for betterment and this being not available, the candidates with State Merit List 706 to 802 were placed as it is in second round admission list. After 802, the first candidate with State Merit List 844 who was at GMC, Miraj admitted in first round on the basis of her merit and on the basis of her preference being at IGMC, Nagpur and the seat at IGMC, Nagpur falling vacant due to shifting of Acharya Purabi Rabindra, was shifted to IGMC, Nagpur. It was explained since Deepika Mishra was from the rest of Maharashtra, when she came to Nagpur her status changes from 70% to 30%, hence she was placed in the vacant seat created due to shifting of Acharya Purabi. Another seat, which had fallen vacant due to shifting of Rathi Anuradha, which had fallen vacant, accommodated as the next woman candidate K. Rulkar with State Merit List 869 who is from Marathwada but admitted to Yavatmal Medical College along with the first respondent herein/writ petitioner on the basis of her preference is shifted to IGMC, Nagpur as the seat which had fallen vacant. Thereafter, the candidates with State Merit List 904 and 940 were already admitted in IGMC, Nagpur in the first

round who did not have any option to shift as there was no seat available in the College/quota of their higher preferences were retained in the same College. The above details demonstrate the operation of list of first round and second round (Annexure P2 and P3).

9) The scrutiny of the above details, particularly, admission list in the first round and second round clearly show that the Competent Authority has strictly followed the rules relating to admission and the procedure of admitting the students on the basis of the State Merit List and the preferences. As rightly pointed out by the State counsel, the more meritorious candidate is entitled to exercise preference first depending on the creation of vacancy in a particular college after the first round and at the end of the final selection, the Competent Authority has to ensure that they have filled in 30% seats from the State quota and 70% seats from the Regional quota. We are satisfied with the writ petitioner/first respondent herein being less meritorious than respondent Nos. 2 and 3 herein cannot be given seat at Indira Gandhi Medical College, Nagpur as claimed by her. A perusal of the list of candidates (first and second round – Annexure P2 and P3) admitted in women reservation category and their SML numbers show that not a single student has been admitted in this category that is lower in merit than the first respondent herein. It is relevant to mention that in the State Merit List the first respondent, namely, Sneha Satyanarayan Agrawal is 963 and the last candidate

admitted in this category is that SML 940 (Ruhatiya Shradha Omprakash – vide second round list – Annexure–P3)

10) For the sake of brevity, we point out that, Rule 1 prescribes for distribution of seats. Rule 1.4 provides for distribution of seats to be allotted by the competent authority which includes 30% seats to be made available for the candidates from the State to be filled on the basis of State Merit List and 70% seats to be filled from the candidates situated in the region i.e. Regional list. Rule 1.6 deals with reservation for female candidates and Rule 2 prescribes selection process post and preference given by the candidates. Apart from the above rules other relevant rules are 2.2.1, 2.2.2 and 2.2.3 which relate to selection process on the basis of preference by the candidates. In accordance with the rules, 30% of the seats available to be filled from State Merit List and remaining 70% to be filled from Regional quota, therefore, the mandates of Rules, 1.4.2, 2.2.2 and 2.2.3 which clarifies that allotment of seat is required to be done strictly on the basis of merit and preferences submitted by the candidates in their respective forms. Rule 2.2.3 also requires the competent authority to follow the said procedure of allotment of seats not only in the first round of admission but also in each round of admission, in such circumstances firstly merit of the candidates is to be considered and then, preferences exercised by him or her while allotting seat to such candidate in the concerned college. In the case on hand, in IGMCC, Nagpur

twelve seats were available for allocation in 30% State quota and 70% Regional quota in the second round of admission. Out of these twelve seats, four seats were reserved for 30% State Quota which are to be filled on the basis of State Merit List and rest on the basis of 70% Regional quota and that too on the basis of merit out of four seats meant for 30% State Quota and in IGMC, Nagpur two seats fell vacant and accordingly these seats required to be filled by the Competent Authority on the basis of State Merit List. As pointed out earlier, respondent No.1 herein was given merit position 963 in the State Merit List and respondent No.2 Kirti Shivajirao Ruikar was at 869 in the State Merit List. Therefore, respondent No.1 is much below in the merit position from respondent No.2 and also from the other candidates. Respondent No.3 Deepika Nandkumar Mishra who stood at position No. 844 in the State Merit List and, therefore, respondent No.1 herein was rightly allotted admission in GMC at Yavatmal as she ranks below in merit position in comparison to respondent Nos. 2 and 3 herein. As stated earlier, the Competent Authority has strictly followed the rules relating to admission and the more meritorious candidates are entitled to exercise the preference first depending on the creation of vacancy in particular college after first round. In addition, the Competent Authority has to ensure that the quota system of 30% and 70% is maintained. Therefore, respondent No.1 being less meritorious than respondent Nos. 2 and 3 cannot be given seat at

IGMC, Nagpur. In our view, the High Court failed to take note of the above relevant aspects and as such the impugned direction of the High Court cannot be implemented as the same will have far-reaching consequences on the entire admission process of Health Science Course in Maharashtra State. Further, it will run counter to the law laid down in *Medical Council of India vs. Madhu Singh and Others*, (2002) 7 SCC 258, as the cut-off date-30.09.2006 was already over and no shifting at this belated stage was permissible as per Medical Council of India's regulations which were held to be mandatory. In our considered opinion, the High Court has misinterpreted the Rules particularly with reference to Preference System of MHT/CET, 2006.

11) In the light of what has been stated above, the impugned judgment and final order dated 28.09.2006 in Writ Petition No. 4515 of 2006 passed by the High Court of Judicature at Bombay, Bench at Nagpur is set aside. Consequently, the said writ petition filed by Sneha Satyanarayan Agrawal before the High Court is dismissed.

12) In the result, Civil Appeal No.6026/2008 (arising out of S.L.P. (C) No. 17406/2006) filed by the State of Maharashtra and Ors. stands allowed. In view of the above conclusion, the other Civil Appeal No.6027/2008 (arising out

of S.L.P.(C) No. 17832 of 2006) filed by Sneha Satyanarayan Agrawal for issuance of certain directions is dismissed. No order as to costs in both the appeals.

.....CJI
(K.G. BALAKRISHNAN)

.....J.
(P. SATHASIVAM)

NEW DELHI;
October 01, 2008.