

State of Maharashtra

Vs

Minoo Noazer Kavarana and Others

Civil Appeal No. 2488 of 1989

State of Maharashtra

Vs

Miss Kavita Kumar Bhatia and Others

Civil Appeals Nos. 2489-2492 of 1989

(M. M. Dutt, Dr. T. K. Thammen JJ)

24.04.1989

JUDGMENT

DUTT, J. –

1. Special leave is granted in all these matters. Heard learned counsel for the parties.
2. These appeals preferred by the State of Maharashtra involve the question as to the admission in the MBBS Course in the Medical Colleges in the State of Maharashtra. In the city of Bombay, there are three Medical Colleges run by the Municipal Corporation of Greater Bombay. Besides the said three Municipal Colleges, there is another college in Bombay, namely, Grant Medical College, which is a government college run by the Government of Maharashtra.
3. Shorn of all details, it may be stated that after providing for 15 per cent of seats under the All India quota and the seats which are to be reserved under Article 15 of the Constitution of India, the Government of laid down a policy of reservation of 70 per cent of the remaining seats for the local students in the city of Bombay and 30 per cent of seats for the students outside Bombay within the State of Maharashtra.
4. Certain students feeling aggrieved by the said method of filling up of the seats in the MBBS Course in the said Medical Colleges in the city of Bombay moved writ petition before the Bombay High Court. A learned Single Judge of the High court took the view that it was not proper on the part of the State Government to first of all fill up the 70 per cent of the seats out of the local Bombay students and thereafter the remaining 30 per cent of seats from amongst the students residing outside Bombay. The learned Single Judge, however, gave no specific direction as to the admission of the writ petitioners, but left it to the State Government for the purpose. The State of Maharashtra preferred a Letters Patent Appeal to the Division Bench of the High Court. The said appeal was summarily dismissed by the bench holding that the two points urged by the Assistant Government Pleader appear to be quite frivolous. The writ petitioners also preferred Letters Patent Appeals before the Division Bench. From time to time, the bench passed some orders. The only

order which is relevant for the purpose of these appeals is dated February 8, 1989. By that order, the Division Bench of the High Court directed creation of 5 additional seats in each of the three Municipal Colleges and 4 additional seats in the Government Medical College, that is, in all, 19 additional seats. Certain directions were also given by the said order for admission of students in those additional seats and also the seats under the All India quota.

5. It has been strenuously urged by Mr. G. Ramaswamy, learned Additional Solicitor General appearing on behalf of the State of Maharashtra, that the High Court was not justified in directing that the 30 per cent of seats meant for the candidates outside Bombay be filled in before the 70 per cent of seats are filled in by local candidates. It may be stated at this stage that by virtue of the judgment in the case of *Nidamarti Maheshkumar v. State of Maharashtra* ((1986) 2 SCC 534) relating to admission in Medical Colleges in Maharashtra, the State of Maharashtra laid down the policy of regional reservation of 70 per cent of seats for the region of Bombay and the remaining 30 per cent of seats for the candidates outside Bombay but within the State of Maharashtra. It has already been noticed that the High Court is of the view that the 30 per cent of seats should have been filled up first and, thereafter, 70 per cent of regional seats should have been filled up. We have not been able to understand the reason for this view of the High Court. If 30 per cent of seats are filled up first, the candidates who are residing outside Bombay will have to compete with the local Bombay students who are also eligible for admission in the said seats. It may so happen that most of the seats meant for candidates outside Bombay may be filled up by the local Bombay candidates. If, however, 70 per cent of seats are filled up first, the more meritorious Bombay students would be admitted and those, who would not be admitted, would obviously be candidates obtaining lesser marks and it will not be difficult for the outside candidates to compete with them for the said 30 per cent of seats. The question whether 70 per cent of seats or 30 per cent of seats should be filled up first is a question which should be left to the discretion of the government. In our opinion, this aspect is not within the purview or the jurisdiction of the court. We do not find any unreasonableness or impropriety in the State Government's decision to fill up 70 per cent of seats first. The High Court was not, therefore, justified in directing admission on the basis of filling up 30 per cent of seats first and, thereafter, 70 per cent of seats and such direction has created some complications in the matter.

6. There is considerable force in the contention of Mr. Ramaswamy that the High Court was also not justified in directing creation of additional seats. The additional seats can be created only if the Indian Medical Council approves of such creation. In the instant case, the Indian Medical Council has vehemently opposed before us the creation of the additional seats. There is also the question of bearing the cost of creation of additional seats. The High Court, in our opinion, should not have directed the creation of additional seats, in exceptional circumstances and for ends of justice, the court may direct the creation of one or two seats after the Indian Medical Council and opportunity of being heard, but surely the court should not direct the creation of so many additional seats when neither the government nor the Indian Medical Council consents to such creation. In the circumstances, it is difficult to sustain impugned of the High Court.

7. We are told by the learned Additional Solicitor General that 4 seats in the Grant Medical College in Bombay and 34 seats in the other Medical Colleges outside Bombay under the All India quota are available for admission. We are also told that there are about 30 candidates who are to be admitted in these seats. Of these 30 candidates, we find that one Sandeep Chaudhary and Miss. Chaudhary Seena, the applicants in Civil Miscellaneous Petitions Nos. 9049 of 1989 and 9050 of 1989 respectively, were already admitted in the 2 out of the 4 seats in the Grant Medical College, Bombay. They were initially admitted in the Gwalior Medical College, but on their representation

they were transferred to the Grant Medical College, Bombay, by the Director General of Health Services in compliance with the guidelines laid down by this Court in its judgment in the case of Amanjit Singh Gill v. Directorate General of Health Services ((1989) 1 SCC 231), but in view of the impugned judgment of the High Court they have been thrown out for no fault of theirs. The admission of these two candidates in the Grant Medical College, Bombay, is restored and will not be disturbed. So far as the remaining 36 seats are concerned (2 seats in the Grant Medical College, Bombay, and 34 seats in the Medical Colleges outside Bombay), the admission to these seats shall be made strictly in order of merit. The appellant shall complete the admission in the said 36 seats within a week from today.

8. The impugned judgments of the High Court are set aside and the appeals are allowed to the extent indicated above. There will be no order as costs.

9. The writ petitions and all other applications for intervention are also disposed of as above without any order as to costs.

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