

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.5503 OF 2004

YOGANAND VISHWASRAO PATIL & ORS.

Appellant (s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

(With appln.(s) for permission to submit additional document(s),
impleadment, prayer for interim relief and and office report)

With Civil Appeal No.5504 of 2004

(With appln.(s) for impleadment, prayer for interim relief and office
report)

Date: 31/03/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. Vijay M. Thorat,Adv.

Mr. Ajay Majithia,Adv.

Dr. Kailash Chand,Adv.

For Respondent(s)

Mr. Maninder Singh,Adv.

Ms. Pratibha M. Singh,Adv.

Mr. Angad Mirdha,Adv.

Mr. Kirtiman Singh,Adv.

Mr. Rajeev Masodkar,Adv.

Mr. Ravindra K. Adsure,Adv.

Mr. Mukesh K. Giri,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties from 2.05 p.m. to 2.50
p.m.

The interlocutory applications are allowed.

The civil appeals are allowed.

No costs.

[T.I. Rajput]

[Phoolan Wati Arora]

Court Master

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5503 OF 2004

Yoganand Vishwasrao Patil & Ors.

...Appellant(s)

Versus

State of Maharashtra & Ors.

...Respondent(s)

With Civil Appeal No.5504 of 2004

O R D E R

The reserved category candidates are the appellants in these appeals challenging the judgements and orders of the High Court which held that in the absence of specific rule ear-marking subject-wise and category-wise seats in reserved category in the Post-Graduate courses, there cannot be any ear-marking of the seats.

In substance, the question for decision is whether a candidate belonging to reserved category but entitled to be admitted in Post-Graduate course on his own merit in the open category, can such admission be counted as an admission in reserved category; if not, whether additional seat will have to be provided to give effect to the reservation since the reserved category candidate was entitled to be admitted in the open category on his own merit and not as a result of reservation. It is a different matter that he may have opted for a seat otherwise specified for reserved category.

...2/-

- 2 -

The aforesaid question is no longer res integra and stands concluded by a decision of this Court in Ritesh R. Sah vs. Dr. Y.L. Yamul & Ors. (1996 (3) S.C.C.253). In this decision, it has been held that:

"In view of the legal position enunciated by this Court in the

aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.....The admission to the medical colleges for the year 1995-96 in the State of Maharashtra is already over and we are not inclined to interfere with the admissions already made, but we do commend that while deciding and publishing the rules for admission in the next academic session, directions given in this judgment should be borne in mind and the rules should be made accordingly."

...3/-

- 3 -

The State of Maharashtra cannot and is not contending that the law laid

down in Ritesh R. Sah (supra) is not binding. None has questioned before us t
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correctness of the legal principles laid in Ritesh R. Sah (supra). The concept of ear-marking of the seats was not given full effect by respondent-State as a result of non-framing of rules and in any case proper rules.

The High Court, by the impugned judgement and order dated 23rd January, 2004, which is the subject-matter of Civil Appeal No.5504 of 2004, partly

allowed the writ petition filed by open category candidates and held that the

respondents shall not be entitled to ear-mark seats for reserved category candidates

in the Post-Graduate medical admission for the Academic Year 2003. The High

Court was of the view that in the absence of specific rule having been framed, the ear-marking is not permissible.

Another writ petition which was filed by the reserved category candidates was dismissed by the High court in terms of the judgement dated 30th January, 2004 in view of its earlier judgement and order dated 23rd January, 2004. This judgement and order is the subject-matter of challenge in Civil Appeal No.5503 of 2004.

In Ritesh R. Sah (supra), though this court did not interfere with the

admissions already made but commended the respondent that while deciding and publishing the rules for admission in the next academic session, directions given in

the judgement should be borne in mind and the rules should be made accordingly.

In fact, the State Government did make rules for the Academic Years, 2000, 2002 and

2003. The Common Entrance Test did not take place in the year 2004. We are told

that the rule made for the year 2000 continued for the year 2001 as well. No rule has,

however, been framed for the year 2005.

4/-

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- 4 -

The legal position has been clarified in Ritesh R. Sah (supra) that a student, who is entitled to be admitted on the basis of merit, though belonging to reserved category, cannot be considered to be admitted in seats reserved for reserved category but, at the same time, provision should be made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the less meritorious reserved category candidate. It was further held that while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation, he will be deemed to have been admitted as an open category candidate. In fairness to the respondent-State, it is not being contended before us that because the rule has not been framed, the State Government is not required to implement the judgement in Ritesh R. Sah (supra) in letter and spirit. In fact, in purported implementation of the decision of this Court, the Director of Medical Education and Research, Mumbai, by communication dated 31st March, 2005 sent to its learned advocate, i.e., Standing counsel, has stated that the directions of this Court are complied in letter and spirit by the competent authority

while making admission to the Post-Graduate courses. The said letter briefly sets out the procedure adopted for admission of a reserved category candidate getting

admission in open category by virtue of his merit position for Health Science Courses.

However, the procedure stated in the said letter is not very clear. The procedure is, however, correctly reflected by the State in the rule it had framed for the year 2000, which reads as under:

...5/-

- 5 -

"vi) Ear-Marking

Reserve category candidate entitled to admission on the basis of merit in an open category seat will have the option of taking admission either against his/her respective category seat or on an open category seat. If he/she opts for the reserved category he/she will be deemed to have been admitted as an open category candidate and not as reserve category candidate. One seat in the college where he/she was eligible for admission against open seat shall be earmarked for a candidate belonging to the respective reserved category. Such earmarked seat will be made available immediately to the successive reserve category candidate from the same category merit during the counselling."

It is not necessary to take note of the rules framed in the years 2002 and 2003 as the rules framed for those years are not clear. It could not be explained as to what was the need to change the ear-marking rule framed in the year 2000.

In view of the aforesaid, we direct that for the admission in Post-Graduate

courses for the Academic Year 2005-2006 and thereafter, the respondent-State would follow the ear-marking rule framed in the year 2000 till such time the rule is amended, if necessary. The amendment, if made, has necessarily to give full effect to the law laid down by this Court.

It is, however, clarified that the admissions made in the Academic Year 2004-2005 would not be affected by this order.

...6/-

- 6 -

In the view of the aforesaid, we set aside the impugned judgements and orders dated 23rd January, 2004 and 30th January, 2004 and direct that the admissions to Post-Graduate courses for the Academic Year 2005-2006 and thereafter would be made in terms of the directions contained herein.

The civil appeals are allowed in the above terms.

No costs.

.....J.

[Y.K. SABHARWAL]

.....J.

[TARUN CHATTERJEE]

New Delhi,
March 31, 2005.