Supreme Court of India
Amitabh Shrivastava vs State Of Madhya Pradesh & Ors on 4 February, 1982
Equivalent citations: 1982 AIR 827, 1982 SCR (3) 186
Author: A Varadarajan
Bench: Varadarajan, A. (J)

PETITIONER:
AMITABH SHRIVASTAVA

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT04/02/1982

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
DESAI, D.A.

CITATION:
1982 AIR 827 1982 SCR (3) 186
1982 SCC (1) 514 1982 SCALE (1)266

ACT:
Rules relating to admission to medical colleges in Madhya Pradesh dated 17-4-1979-Reservation of seats to certain categories-Minimum marks reduced from 50 per cent in the aggregate to 43 per cent, by an executive order dated 10th March, 1980-Stage at which the benefit arising from the said executive order is to be applied, explained-Rules 2, 7, 9 and 20, scope of.

HEADNOTE:
There are six medical colleges in Madhya Pradesh. Admission to the first year of M.B.B.S. Course is on the basis of the qualifying examination. There were 720 seats in those six colleges in the year 1979-80.

Under Rule 7 reservations are made for certain categories. One such is for the sons and daughters of military personnel of Madhya Pradesh and 21 seats in all were reserved for that category.

Under Rule 20, the qualifying marks to be obtained by Candidates other than Scheduled Castes and Scheduled Tribes, shall be 50 per cent in the aggregate and 33 per cent in each of the subjects. In case the required number of candidates for admission are not available, according to the above percentage of qualifying marks, the Board conducting

the pre-medical examinations under Rule 2 shall have power to lower the marks up to 5 per cent in the aggregate for all categories of candidates.

Under Rule 9, in case sufficient number of candidates do not qualify for admission under any reserved category and any seats remain vacant, such vacant seats shall be filled by preparing a combined merit list of all the remaining categories of candidates on the waiting list and the candidates shall be admitted according to merit in the list so prepared.

The appellant who was a son of a military personnel got only 43.6 per cent of marks in the aggregate, and he could not get a seat under the reserved category even after the marks were lowered to 45 per cent under Note 1 to Rule 20 by the Board. Even after that was done, 7 seats remained vacant out of 21 seats reserved for the sons and daughters of military personnel. On 10-3-1980, the Government by an executive order reduced the minimum aggregate to 43 per cent. The Board, prepared a combined list under Rule 9 and applying the minimum of 43 per cent granted admission, as per that list, and refused admission to the appellant. The question arose whether the selection should be based on the combined list prepared under Rule 9 or on taking 43 per cont as the qualifying marks in the aggregate.

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Allowing the appeal by special leave, the Court,

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HELD: Since the minimum qualifying marks were reduced to 43 per cent by an executive order without any provision therefor in the statutory rules, Rule 9 of the statutory rules could not be applied at that stage, and the appellant who had secured 43.6 per cent of marks in the aggregate should have been admitted in the category to which he belonged The difference between 45 per cent in the aggregate, to which the minimum qualifying marks were reduced under Note (1) to Rule 20 and 43.6 per cent of marks in the aggregate secured by the appellant is so little that it could not be a valid or sufficient reason for giving a go-bye, on the ground of merit, to the reservation provided for in Rule 7 of the Rules. [194 G-H, 195 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 853 of 1981.

Appeal by special leave from the judgment and order dated 4.11.1980 of the Madhya Pradesh High Court in Case Misc. Petition No. 167 of 1980.

Shiv Dayal, P.S. Das Gupta and J.B. Dadachanji for the Appellant.

Gopal Subramaniam and S.A. Shroff for the Respondents. The Judgment of the Court was delivered by VARADARAJAN, J. This appeal by special leave is directed against the judgment of K.K. Dube, J. of the Madhya Pradesh High Court in Writ Petition No. 167 of 1980, with whom the learned Chief Justice of that High Court had agreed on a difference of opinion between the learned Judge and A. R. Navkar, J. The petition filed under Article 226 of the Constitution was for the issue of a writ, order or direction for the writ petitioner's admission into one of the medical colleges in Madhya Pradesh for the M.B.B.S. course, commencing in the academic year 1979-80. After hearing the learned counsel for the parties we allowed the appeal by a brief order on 14.1.1982 without any order as to costs, on account of the urgency of the matter, reserving our reasons to be given later, and directed the respondents to admit the appellant to the M.B.B.S course for the academic year 1981-82 for which admissions are admittedly going on even now. We are presently giving reasons.

The Government of Madhya Pradesh, Public Health and Family Welfare Department, have framed Rules on 17.4.1979 for admission into the Medical, Dentistry and Ayurvedic Colleges in the State. In this appeal we are not concerned with the Dentistry and Ayurvedic Colleges. There are six Medical Colleges in the State of Madhya Pradesh affiliated to different universities. There are 720 seats for admission into the first year course in those six colleges. Rule 5(1) of the aforesaid Rules, hereinafter refer to as the Rules, lays down that no candidate shall be admitted to the M.B.B.S. course unless he has passed the B.Sc. Part I (three years degree course Medical Group) examination of the recognised universities of the State with Physics, Chemistry, Biology (Zoology and Botany) or any examination of any other university or board recognised as equivalent thereto with practical tests in each subject provided the candidate has passed in each of those subjects in theory and practical separately. Under rule 6 of the Rules no candidate shall be admitted to the medical college unless he completes the age of 17 years on the 31st December of the year of admission to the college. Rule 1(3) provides for the pre- medical examination being held every year for selection of candidates for admission to the medical colleges in the State and says that all admissions to those colleges have to be made only from the merit list prepared on the basis of the result of that examination except in the case of seats placed at the disposal of the Government of India or other States.

Under Rule 7 certain number of seats have to be reserved for specific categories of candidates passing the pre-medical examination as below :

1. Fifteen percent shall be reserved for women candidates;

2. Fifteen percent shall be reserved for each of the categories of Scheduled Caste and Scheduled Tribes candidates;

3. Seats not exceeding 3 percent may be reserved for children of military personnel who have to produce the necessary certificates.

Apart from those reservations, under Rule 8 seats not exceeding 3 per cent are reserved for nominees of the Government of India and three seats are reserved for candidates nominated by the Government of Jammu and Kashmir in consideration of three seats reserved in the medical colleges in that State for candidates of the State of Madhya Pradesh.

Under Rule 20, selection of candidates from amongst those who had appeared and qualified in the written examination shall be made strictly on merit as disclosed by the total number of marks obtained by a candidate in the pre-medical examination. The qualifying marks for admission shall be 50 per cent in the aggregate and 33 percent in each of the subjects. For Scheduled Castes and Scheduled Tribes candidates the minimum qualifying marks shall be 45 per cent in aggregate and 30 per cent in each of the subject. In case the required number of candidate for admission are not available according to the above percentage of qualifying marks the Board conducting the pre-medical examination under Rule 2 shall have power to lower the marks up to S per cent in the aggregate for all categories of candidates. If even with the relaxation granted by the Board, as above, required number of candidates in the categories of Scheduled Castes and Scheduled Tribes are not available for admission the Government has power to grant special relaxation in the maximum qualifying marks to the extent considered necessary.

Under Rule 9, in case sufficient number of candidates do not qualify for admission under any reserved category and any seats remain vacant, such vacant seals shall be fined by preparing a combined merit list of all the remaining categories of candidates on the waiting list and the candidates shall be admitted according to merit in the list so prepared.

It is not necessary to refer to any of the other rules for the purpose of this appeal.

Indisputably, the appellant belongs to the third category of seats reserved under Rule 7 as he is a son of a military personnel settled in Madhya Pradesh. Sons and daughters of military personnel of Madhya Pradesh are entitled to 21 seats in all out of 720 seats available in the six medical colleges in the State. As per the minimum number of qualifying marks prescribed in Rule 20, namely, 50 per cent in the aggregate and 33 per cent in each of the subjects, children of military personnel secured only 8 seats, and 13 seats in that category remained vacant and all other categories secured only 361 seats and 338 seats of those categories remained vacant. The appellant did not qualify for admission on the basis of the marks specified in Rule 20 for the academic year 1979-80. Then the Board applied Note (1) to Rule 20 which provides for lowering the minimum qualifying marks upto 5 per cent in the aggregate for all categories of candidates. After that was done 6 more candidates belonging to the category of sons and daughters of military personnel and 274 more candidates belonging to all other categories secured admission and 7 seats belonging to the category of children of military personnel and 64 seats of all other categories remained vacant. Even then the appellant could not secure admission as he had secured only 43.6 per cent of marks in the aggregate and 33 per cent in each of the subjects in the pre-medical examination and in the merit list prepared according to rule 9 he ranked 74 and only 71 candidates in that list could be admitted on the basis of merit.

Then the Madhya Pradesh Government issued an executive notification dated 10 March, 1980 regarding relaxation of qualifying marks for the purpose of admission to the medical colleges. That notification is to the effect that for the year 1979-80 candidates who have obtained at least 43 per cent of marks in the aggregate in the pre-medical examination shall be admitted to the medical colleges in the unfilled seats on the basis of merit according to the rules. ordinarily, the appellant who had secured 43.6 per cent of marks in the aggregate in the pre-medical examination and

another candidate in the category of children of military personnel should have got admission after the lowering of the minimum qualifying marks to 43 per cent in the aggregate, leaving 5 seats in that category still vacant. But Rule 9 was applied and a combined list of all the remaining categories on the waiting list was prepared and the candidates were admitted according to merit in the list so prepared and consequently the appellant who belongs to the category of children of military personnel and had secured 43.6 percent of marks in the aggregate in the pre- medical examination could not secure admission. These facts are not in dispute.

The appellant filed a writ petition for the aforesaid relief contending that as minimum qualifying marks have been reduced by the Notification dated 10 3.1980 to 43 percent in the aggregate and as he had secured 43.6 percent marks he should have been given admission in the category to which he belongs. The writ petition was at first heard by K. K. Dube and A.R. Navkar, JJ. A.R. Navkar, J, who decided in favour of the appellant, had observed in his judgment thus:

> "The reduction of percentage of marks for admission by the Government on 10.3.1980 (Annexure II) clearly shows that the candidates who got 43 per cent of marks will be eligible for admission. There is no dispute that the petitioner got 43.6 per cent of marks in the pre-medical examination. Therefore, applying this order of reduction of qualifying marks (Annexure II), I am of the opinion that the right of the petitioner for admission in the medical college cannot be defeated by resorting to Rule 9 of the Rules. As mentioned above, Rule 9 of the Rules, in my opinion, is a mandatory one. It says, if any seats remain vacant, such vacant seats shall be filled in by preparing a combined merit list of all the remaining categories of candidates on waiting list. This was not done when the percentage of marks for admission was reduced from 50 per cent to 45 per cent for all categories. Therefore, in my opinion, it cannot be done to defeat the right of the petitioner... `I am of the opinion that the present petitioner cannot be denied his right of admission to the medical college if he is otherwise eligible to get admission. Denial of admission to him by purporting to act on the strength of Rule 9 of the Rules, in my opinion, will not be justified and will amount to denial to him the protection given to him by Article 14 of the Constitution. The result, therefore, is that the petition deserves to be allowed..."

But K.K. Dube, J. who took the opposite view has, after extracting notification dated 10.3.1980, observed in his judgment thus :

> "The reduced qualifying marks limit is only for filling up the vacant seats and the notification does not seek to amend Rule 20 or substitute 43 per cent for 50 per cent marks in the aggregate as minimum qualifying marks limit laid down under Rule 20. Indeed, the notification does not state that the reduced qualifying marks limit is in substitution of the one provided in Rule 20. That being the position, Rule 9 would necessarily operate, and it is for selecting from amongst the candidates for the number of seats remaining vacant by operation of Rule 9. The petitioner's contention would have some substance if Rule 9 was not there. The effect of Rule 9 is to wipe out the reservation for admission to any of the reserved categories. The main idea is that

> the best candidates be given admission to the medical colleges. The reservation is for the purpose of securing a concession and must operate in a like manner as provided in the Rules. The reservation is not absolute, and, therefore, when the minimum qualifying marks were reduced to 43 per cent it was only for filling up the vacant seats as obtained by operation of Rule 9 of the Rules, according to the merit in the combined merit list. We are unable to agree with the contention that the reduction in the eligibility to 43 per cent in the Government notification dated March 10, 1980 could be availed of by the petitioner and other similar candidates for filling up the 7 vacant seats in the reserved quota of the children of military personnel".

The learned Chief Justice before whom the matter came up on account of the difference of opinion between the two learned Judges who originally heard the writ petition, as mentioned above, while agreeing with K.K. Dube, J, has observed in his judgment thus :

> "When even on reduction of qualifying marks under Note (i) the required number of candidates do not qualify for admission under any reserved category and seats remain vacant, Rule 9 begins to apply and as directed by that Rule "such vacant seats shall be filled in by preparing a combined merit list of all the remaining categories of candidates in the waiting list and the candidates shall be admitted according to the merit in the list so prepared". At this stage there is no further scope for reservation. In other words, the reservation comes to an end after the required number of candidates in a reserved category do not become available on reduction of qualifying marks in the aggregate by the Board in exercise of its power under Note (i) to Rule 20. It is generally expected that there would be a long waiting list of qualified candidates in the general category who would be available for filling in the seats transferred from a reserve category to general category. In 1979, however, it so happened that there were vacancies in the general category, that is, there were not sufficient number of qualified candidates who could have exhausted the general category under Rule 9. It is at this stage that the Government issued the order dated 10th March, 1980. It is in the interpretation and application of this order that difference of opinion has arisen. The Order has not been issued under the Rules. It is an independent order. The order does not expressly refer to any reservation. The order directs selection of candidates for vacant seats on the basis of merit from those who had secured aggregate marks up to 43 per cent. The order was passed at a stage when the reserved categories had come to an end under Rule 20 read with Rule 9 as sufficient number of candidates were not available. In my opinion, therefore, Dube, J. was right in holding that the order dated 10th March, 1980 did not bring back the reservation and selection had to be made on the basis of a combined merit list for all the vacant seats irrespective of whether they originally belong to any reserved category.....
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> There is yet another important factor to be taken notice of. Not only the vacancies in the reserved category of children of military personnel but there were also vacancies in the category of women to be filled in on the basis of a combined merit list and no

> reservation was at all allowed in working out the order of 10th March, 1980. The way in which this order was applied by the Board had apparently the approval of the Government and no other candidate excepting the petitioner has come forward to challenge its application. As already pointed out, the order is not a statutory order. It is an order passed by the State Government in the exercise of its executive power. The Government's approval of the manner in which the Board has applied the order goes to show that that was the intention of the Government in passing the order. Although the approval of the Government of a particular mode of application of an order is not decisive of its meaning and it is for the Court to decide the correct meaning, still when the meaning of an order which is purely executive is in doubt the way in which it has been applied by all concerned is a relevant factor to be taken into account in deciding its true meaning. The uniform application of the order by the Board with apparent approval of the Government for filling in all the vacant seats, goes a long way to show that the Government intended that the order should be applied by preparing a common merit list without continuing the reservations. In these circumstances, even if the interpretation put forward by the learned counsel for the petitioner and accepted by Navkar, J. can be accepted as a possible interpretation of the order, it would not be right for me to hold that it conveys the true meaning"

We are inclined to agree with the conclusion reached by A.R. Navkar, J., though for different reasons. The matter is simple. Under Rule 20, the minimum number of marks prescribed for admission into the Medical Colleges in the State is 50 per cent in the aggregate and 33 per cent in each of the subjects. On that basis, out of the total of 720 seats available in all the six medical colleges in the State only 8 out of 21 of the category of sons and daughters of military personnel, and only 361 out of 699 available for all other categories could be and were admitted in the academic year 1979-80. Rule 9, which has been relied upon by the respondents as well as by K. K. Dube, J. and the Chief Justice says that in case sufficient number of candidates do not qualify for admission under any reserved category, barring, of course, the category of Scheduled Castes and Scheduled Tribes candidates, and any seats remain vacant, such vacant seats shall be filled by preparing a combined merit list of all the remaining categories of candidates on the waiting list and the candidates shall be admitted according to merit in the list so prepared. But that Rule was not applied by the respondents and could not be applied under the circumstances of the case when 338 seats in all other categories and 13 seats of the category of sons and daughters of military personnel could not be filled in 1979- 80 on the basis of the said minimum number of qualifying marks, namely, 50 per cent in the aggregate and 33 per cent in each of the subjects. Then Note (1) to Rule 20 providing for lowering of the qualifying marks upto 5 per cent in the aggregate for all categories was applied. Even then 64 seats of all other categories and 7 seats of the category of sons and daughters of military personnel could not be filled and remained vacant. Then the Government by an executive order issued the notification dated 10th March, 1980 reducing the minimum qualifying marks to 43 per cent in the aggregate, and it is only at this stage Rule 9 was applied with the result that in the category of sons and daughters of military personnel only 2 more candidates could secure admission and 7 seats of that category had to be filled by other categories. We are of the opinion that since the minimum qualifying marks were reduced to 43 per cent by an executive order without any provision therefor in the statutory rules, Rule 9 of the statutory rules could not be applied at that

stage, and that the appellant who had secured 43.6 per cent of marks in the aggregate should have been admitted in the category to which he belongs. We think that the difference between 45 per cent in the aggregate, to which the minimum qualifying marks were reduced under Note (1) to Rule 20 and 43.6 per cent of marks in the aggregate secured by the appellant is so little that it could not be a valid or sufficient reason for giving a go-bye, on the ground of merit, to the reservation provided for in Rule 7 of the Rules. The appellant deserves to be admitted even for this reason. In these circumstances we are unable to agree with the view taken by K.K. Dube, J. and the Chief Justice, and we agree with the conclusion reached by A.R. Navkar, J. The appeal is accordingly allowed without any order as to costs. As already directed the appellant shall be admitted to the M.B.B.S. course for the academic year 1981-82 in the category mentioned in Rule 7 (3) (c) of the Rules.

S.R. Appeal allowed.