IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5536 of 2024

Aryan S/o Naresh Shende,
Age: 20 years, Occupation: Student,
Address: 561- Anand Nagar,
Rani Durgavati Nagar, Nagpur, Maharashtra. ... Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai-400032.

2. The Commissioner,
State Common Entrance Test Cell,
Maharashtra State,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai-400001.

3. Karamveer Dadasaheb Kannamwar (K.D.K.)
Engineer College,
Nagpur,
Through its Principal and Admission Cell,
Great Nag Road, Nandanvan,
Nagpur-440009. ... Respondents

Ms Ayushi Mishra, Counsel for Petitioner.
Mr. Sushil Ghodeswar, Assistant Government Pleader for Respondent No.1.
Mr. Nikhil Gaikwad, Counsel for Respondent No.2.
Mr. Kaustubh Patil, Counsel for Respondent No.3.

CORAM : BHARATI DANGRE AND ABHAY J. MANTRI, JJ.
DATE : 3rd OCTOBER, 2024

JUDGMENT (PER : BHARATI DANGRE, J.) :

1. Rule. Rule is made returnable forthwith. Respective counsel waives service of notice of hearing for the respondents. Heard finally by consent of the learned counsel for the parties.

2. Being aggrieved by the alleged high-handed action on the part of the respondent Nos.2 and 3 in denying a seat to the petitioner in the respondent No.3, Karamveer Dadasaheb Kannamwar (K.D.K.) Engineering College, Nagpur on a flimsy ground of non-production of the caste certificate, and despite a genuine cause being shown by the petitioner, the petitioner has approached this Court seeking the following reliefs :

> *"A. That, by passing a suitable writ, order or direction in the nature of Mandamus, directing the Respondent no.3 to comply with conditions put up by Respondent no.2 and accordingly confirm the admission of Petitioner along with grant him additional time to produce original caste certificate.*
>
> *B. Further be please to Grant Stay to the effect and operation of admission procedure of Cap Round I as there are possibilities that the Respondent no.3 is lightly to allow admission to other candidates as to complete the quota of Cap Round I and that Petitioner no.1 may lost his seat and there will be a drastic loss of whole year in his career life."*

The petition is filed by one Aryan Naresh Shende, who participated in the process initiated by the State Common Entrance Test Cell of the Government of Maharashtra for filling up of the seats for Full Time Professional Under Graduate Course annexed with the Information Brochure published for admissions for the Academic Year 2024-2025.

The petitioner applied for the MHT-CET 2024 for securing admission in an Engineering Course in the State of Maharashtra and participated in

the Centralized Admission Process (CAP) and was allotted his first preference College, i.e. Karamveer Dadasaheb Kannamwar (K.D.K.) Engineering College, Nagpur in the first round, as his score in the CET made him entitled to the seat in the said College on the basis of his merit.

According to the petitioner, as per the Rules of CAP, he opted for the 'Auto Freeze' option, effectively closing the possibility of participation in the subsequent CAP Rounds, as he was satisfied with the allotment of the College and the stream, which he was desirous of pursuing and therefore, he confirmed his admission online and also completed the requisite process by uploading the necessary documents on the web portal. However, the College denied the admission on the ground that the petitioner was unable to produce the original caste certificate, despite the fact that he was possessing the caste validity certificate and submitted a self-declaration undertaking to provide the original caste certificate by the CAP Round-III.

The grievance of the petitioner is that he was denied admission on the seat which was allotted to him in the CAP Round-I and he was even prevented from participating in the subsequent rounds which has put his career to risk, by ignoring his merit and entitlement.

3. We have heard the learned counsel Ms Ayushi Mishra for the petitioner, who faced opposition from the learned counsel Mr. Nikhil Gaikwad representing the Commissioner, State Common Entrance Test Cell, Maharashtra State, and the learned counsel Mr. Kaustubh Patil representing the K.D.K. Engineering College, Nagpur.

The State of Maharashtra, Higher and Technical Education is represented by the learned Assistant Government Pleader Mr. Sushil Ghodeswar.

We have garnered the facts from the petition which contains the necessary pleadings in respect of the reliefs sought therein, which is accompanied with the necessary annexures in support thereof.

The K.D.K. Engineering College, Nagpur, i.e. the respondent No.3, has also filed its affidavit-in-reply, which is accompanied with the copy of Information Brochure published by the respondent No.2 and also the correspondence entered between the respondent No.3 as well as the respondent No.2.

The respondent No.2, Commissioner of State Entrance Test Cell has also filed an affidavit on 24th September, 2024, wherein it is tried to be suggested that the petitioner has approached this Court only upon conclusion of the CAP Round-III, when the Institutional Level Round has

begun and the petitioner chose not to participate in the Institutional Level Round.

Ms Ayushi Mishra, learned counsel for the petitioner, has also submitted her written submissions on 30th September, 2024, reiterating the reliefs sought by the petitioner in the writ petition and contradicting the stand adopted by the respondent Nos.2 and 3, in an attempt to deny the legitimate right of the petitioner of being admitted in a Institution of his choice, based on his merit.

4. From the sequence of dates and events placed before us, we have taken note of some undisputed facts :

(a) The petitioner, who appeared for the MHT-CET, secured a percentile score of 76.0337773 when the result was declared on 16th June, 2024, indicative that the seat secured is valid for the Academic Year 2024-2025.

(b) On participating in the admission process for the Ist Year Decree in Engineering/Technology Admissions 2024, the petitioner was provisionally allotted a seat in the K.D.K. College of Engineering, Nagpur in Computer Science and Engineering based on his merit percentile.

(c) His candidature type was reflected as Maharashtra-A and the category for admission was shown as 'SC'. The seat type allotted to him was GSCH (Home University General SC).

(d) The provisional allotment in CAP Round-I in favour of the petitioner, upon acceptance of the seat being confirmed by him on 16th August, 2024, resulted in 'Auto Freezing'.

5. At this stage, we must also take note of the provision in the Information Brochure, which govern the admissions to the Under Graduate and Post Graduate Technical Courses for 2024-2025, which clearly prescribes that the allotment of CAP Rounds-I, II and III of the Home University seats, other than the Home University Seats and State Level Seats will be carried out as 'inter-se merit' of the candidates having Maharashtra State Candidature and the seats are to be allotted to candidates as per inter se merit, options filled and the seats available at that point of time in the stage of CAP Rounds-I, II and III.

Clause 12 of the Information Brochure for Admission to Under Graduate and Post Graduate Technical Courses (2024-25) contemplate as under :

> *"12. General provisions*
>
> *(a) Allotment in CAP Rounds-I, II and III of Home University Seats, Other than Home University seats and State Level Seats will be carried out as per Inter-Se-Merit of Candidates having Maharashtra State Candidature. The seats will be allotted to Candidates as per Inter-Se-Merit, options filled and seats available at that point of time in the state of CAP Rounds-I, II and III;*
>
> *(g) Allotment against the first available option in the order of preference filled in shall be retained as final allotment;*
>
> *(h) The allotment list displayed on website shall show the provisional allotment offered to the candidates. No personal communication or allotment letters in this regard shall be issued to the Candidates;*
>
> *(i) A candidate who has been allotted a seat shall download the "Provisional Seat Allotment Letter". At the time of seat*

acceptance, candidate has to pay seat acceptance fees through online mode or can be paid at the time of carrying out self scrutiny of the document uploaded in online application system or by a demand draft in favour of the Competent Authority at the Admission Reporting Centre. Seat shall be confirmed by the Reporting Centre after verification of the original documents and ensuring that the Candidate meets all the eligibility norms or has carried out self scrutiny of the document uploaded in online application system, the Online Receipt of acceptance shall be issued by the centre in-charge or by online mode;

(k) Failure to report for seat acceptance shall be considered as if the Candidate has rejected the offer;

(j) Allotted Seat shall be cancelled if, at any time, any of t he document or certificate is found to be invalid or fraudulent and/or the candidate does not meet the eligibility norms."

6. It is a specific case of the petitioner that since he auto-freezed his seat in the respondent No.3-College on 16th August, 2024, he was to report to the respondent No.3-College between 16th August and 18th August, 2024, as the second round of counselling was to commence from 19th August, 2024.

The petitioner appeared before the respondent No.3-College on 17th August, 2024 for physical verification of documents as per CAP Process.

The respondent No.3-College do not dispute that it denied the admission to the petitioner, as he was unable to produce the original caste certificate and it is a specific stand adopted by the College that it was not empowered/authorized to relax the condition to verify the original

documents, at the Institutional Level nor was it empowered to extend the time for verification of the original documents.

7. The specific case of the petitioner, as pleaded before us, is that the petitioner appeared before the respondent No.3-College with all necessary documents in original, which included the certificate of validity accorded in his favour on 7th September, 2022 by the District Caste Certificates Scrutiny Committee, certifying him to be belonging to '*Chambhar*' (Scheduled Caste) but as was not armed with the caste certificate, he adopted a stand, that he had lost the same, when a file containing his educational documents, i.e. 10th and 12th mark sheets, domicile, caste certificate, caste validity, Aadhar, 12th Standard T.C. and academic results of his graduation was lost on 25th June, 2024 from Borivili Market Road, Mumbai and he reported about this loss to DS Brihan Mumbai Police.

According to the learned counsel for the petitioner, he downloaded the caste validity certificate and got it certified, but as far as the caste certificate is concerned, he applied for duplicate caste certificate on 27th June, 2024 itself and produced a receipt of the application preferred to the Competent Authority for the same.

The receipt of payment to the Government through SETU dated 27th June, 2024 is also produced on record for securing the domicile certificate as well as the caste certificate.

She has canvassed before us that once again on 19th August, 2024, an application was preferred for the second time for procuring the duplicate caste certificate by paying the requisite fee and in fact on 26th September, 2024, the petitioner received the caste certificate, which has been placed on record along with the pursis.

8. When the petitioner was unable to produce the caste certificate, as required in terms of Rule 17 of the Information Brochure, which enlisted the documents required to be uploaded along with 'Application Form for Centralized Admission Process', and as far as backward class candidates belonging to SC/ST are concerned, are required to produce the caste/tribe certificate as well as the caste/tribe validity certificate depending upon the category to which they belong.

It is not in dispute that the petitioner produced the validity certificate and also complied with the requirement of submission of other documents in original, including the SSC mark sheet, HSC mark sheet, qualifying examination mark sheet, school leaving certificate, etc. Barring the caste certificate, the petitioner was able to produce all other documents required for completion of the admission process, in original, but he was declined the admission, as he was unable to produce the original caste validity certificate.

9. The respondent No.3 on being confronted with such a scenario, entered into correspondence with the respondent No.2 seeking guidance by informing that one of the students during verification of the documents had disclosed that he has lost the original documents and therefore a query was raised as to whether the student should be admitted without the document.

Such query being raised on 17th August, 2024 at 11.00.20 a.m. received a response from the respondent No.2 to the following effect :

> *"Dear Institute, Kindly refer to page number 73 of the Information Brochure and take decision accordingly."*

10. The respondent No.3-College was thus directed to follow the imperative mandate set out in the Information Brochure, which contemplated thus :

> ***"(5) Reporting at institutes:***
>
> *i. Candidate shall confirm the admission by paying the requisite amount of fee and by submitting required documents in original to respective institute, to which admission is granted as per schedule.*
>
> *ii. If a candidate fails to substantiate the claims made at the time of submitting necessary original documents within the reporting time for CAP Round, the candidate forfeits the claim on the allotted seat.*
>
> *iii. If a candidate is unable to produce original certificates at the itme of his/her admission on account of admission already secured to some other institution, he or she shall produce a certificate from the Head of the institution where he/she has*

> *already taken admission indicating that he/she has been admitted to a particular course in that institution on a particular date and hence original certificates have been retained in that institution. The candidate shall produce the attested copies of the certificates duly attested by the Head of the concerned institution. Such candidates shall be required to pay the fees immediately at the time of admission and such candidates shall be permitted to submit the required original certificates within 04 working days after the date of payment of fees.*

The respondent No.3 thus, acted accordingly and refused confirmation of the provisional admission in favour of the petitioner.

11. The difficulty posed by the petitioner is that since he had auto freezed his seat in the respondent No.3-College, he was not permitted to participate in the subsequent rounds, i.e. CAP Rounds-II and III, the second round commenced on 19th August, 2024, whereas the third round commenced on 6th September, 2024 and was over by 9th September, 2024.

The respondent No.3 has adopted a stand in the affidavit that the schedule for filling the vacant seats after the CAP Rouds-I, II and III from 10th September, 2024 to 13th September, 2024, which was extended till 15th September, 2024, the petitioner did not apply for the vacant seats, which were allotted as per the procedure on 13th September, 2024 and a stand is adopted that no seats are vacant as on date. It is worth to note that on one hand the respondent No.3-College had adopted a stand that once the seat allotted to the petitioner was auto freezed, there was no

scope of participating in the subsequent rounds, then in any case, there was no question for the petitioner to apply for the vacant seats.

What the petitioner is desirous of is the allocation of a seat as per merit, which in fact was allotted to him, but because of his failure to produce the caste certificate in original, though he has received a certificate validating his caste by the Caste Scrutiny Committee, which was produced by him, on hyper-technical ground, the respondent No.3 refused to confirm his provisional admission.

12. The petitioner filed the present petition on 6th September, 2023 and on 13th September, 2024, the learned counsel representing the respondent No.2 sought time to file reply.

Noting the case of the petitioner that he has lost his caste certificate, and recording the argument advanced on behalf of the respondent No.2 that the petitioner had an opportunity to raise the grievance as the date of production of documents was 9th September, 2024 and the seat has not been allotted, this Court passed the order on 13th September, 2024, which read thus :

> *"5) The above facts will have to be placed on record and the Rule directing production of caste certificate even though caste validity certificate is produced will also have to be examined. If the Petitioner's admission is already not cancelled, then time given to the Petitioner to produce the caste certificate stands extended to 24 September 2024."*

13. On 20th September, 2024, the following order was passed :

" Heard the learned counsel for the parties.

2. In spite of order dated 13th September, 2024 and adjournment of 20th September, 2024, the respondent no.2 has chosen not to file an affidavit in the matter.

3. We have already recorded that the petitioner's candidature for his admission to the Engineering Course was cancelled on the ground that he has failed to produce the caste certificate though he has produced the validity certificate.

4. We were expecting the serious and sensitive approach on the part of the respondent no.2 in finding out the solution to the issue as, prima facie, we were of the view that the petitioner cannot be blamed for non compliance viz. non production of caste certificate when he already holds and produced the validity certificate.

5. We have given chance to the respondent no.2 during the course of the day as in the first half we had heard the matter. However, till this time, the respondent no.2 has chosen not to report any concrete solution to the problem created by itself in the matter of the cancellation of candidature of the petitioner.

6. The aforesaid act on the part of the respondent no.2, in our opinion, results into the petitioner losing a specious academic year and that too because of hyper-technical approach on the part of the respondent no.2.

7. The only excuse coming forth from the respondent no.2 is that the portal was closed on 09.09.2024 and only Institutional round was operational till 15.09.2024 to which the petitioner has not given any option. At this stage, the learned Counsel for the respondent no.2 has placed the position of the vacant seats available in Nagpur region and it is submitted that if so opted for the petitioner can be accommodated against any of the seats, which are shown vacant.

8. The learned Counsel for the petitioner seeks time till Monday to make the statement.

9. Stand over to 23.09.2024."

14. On 27th September, 2024, the reply was filed by the respondent No.2 and the matter was directed to be listed on 30th September, 2024 and it was closed for orders and we have pronounced the decision on 3rd October, 2024.

15. As far as the respondent No.2 is concerned, it is not disputed that the petitioner had earlier referred to the police complaint lodged by him on 25th June, 2024, but surprisingly it adopted a stand by stating as follows :

> *"8. That the petitioner has uploaded his scanned original caste validity and caste certificate as per the activity schedule point no.2 At this juncture it is relevant to state here that the petitioner had earlier stated about the police complaint lodged by him dated 25/06/2024 stating that he has lost his original caste validity as well as caste certificate and other documents. This very fact makes it crystal clear that the petitioner has suppressed the reality of his documents pertaining to his caste, because during 15.7.2024 to 31.7.2024 the Petitioner has uploaded his documents after scanning them from originals. That means the Petitioner has original documents during 15.7.2024 upto 31.07.2024 with him. Then the question arises why the Petitioner has lied at the time of verification of original documents at Respondent no.3/College."*
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> The affidavit also contains the following averment :
>
> *"12. It is submitted that the last date of the C.A.P. round 3 was 09/09/2023. Unfortunately, when the petitioner approached this Hon'ble Court i.e. on 13/09/2024 the CAP process and from 10.9.2023 onwards the ACAP and institutional level round had began.*
>
> *13. The All India Council of Technical Education (AICTE) being the Apex authority decides the academic calendar for the students.*

The last upto which 1st year students can be admitted against vacancies for the academic year 2024-2025 are also decided by the AICTE. It is submitted that as per the Schedule for first y ear admissions in B.E. through CAP round 09/09/2024 was the last date and 15/09/2024 was the last date for completion of admission process for B.E. from institutional level round. The said activity schedule was published by the answering respondent on the website for the reference of the candidates."

In Paragraph 15 of the affidavit, the respondent No.2 has placed on record the copy of list of Institutes showing vacancy in reserved category and this includes two Colleges in Wardha and one College in Chandrapur in Nagpur Region and when specifically enquired from the petitioner, as to whether he is ready to accept the admission offered to him in these Colleges, we have received an answer in the negative.

16. In the whole background scenario presented before us, the position which emerged, as on date, is that the petitioner has received a caste certificate on 26th September, 2024, in duplicate.

We must reiterate that the petitioner produced a caste validity certificate before the respondent No.3-College and this certificate of validity clearly refers to the Caste Certificate bearing No.2944/MRC-81/2017-2018 dated 16th April, 2018, issued by the Sub-Divisional Officer, Katol, District Nagpur certifying that Aryan Naresh Shende belong to '*Chambhar* (11) caste/tribe' and this is found to be 'VALID'.

Once the petitioner has received a certificate of validity from the Competent Authority empowered to validate upon the caste certificate, in our opinion, it was too hyper-technical on the part of the respondent Nos.2 and 3 to insist upon the production of the caste certificate in original, when the petitioner had made it clear that he had lost the documents and he had also lodged a complaint to the concerned Police Station long back ago and had preferred an application through SETU, a portal for obtaining the necessary documents, by paying the necessary fee as early as on 27th June, 2024, but unfortunately did not receive the documents.

In any case, when the time to produce the caste validity certificate is given in the admission process of engineering till the last CAP Round, we fail to understand why the respondent Nos.2 and 3 deemed it fit to cancel the provisional admission of the petitioner at the stage of first round, as it is not uncommon that the validity certificates are permitted to be produced till the last round of CAP Process or even at times, the Government has extended the benefit of production of the validity certificates, at a later point of time, when it has become impossible for the Caste Scrutiny Committee to undertake the exercise of validation of the caste claim, for the reason, not attributed to the candidate.

The petitioner landed himself in a fix, as he had auto-freezed the seat based upon the preference and his merit and he was not therefore allowed to move forward for betterment and hence found himself stuck.

17. We do not appreciate the approach of the respondent Nos.2 and 3 in denying him his legal entitlement, completely based on his own merits by adopting a hyper-technical approach, which has resulted into, a counter productive result.

The question before us is what remedial measure can offer solace to the petitioner, so that his legal entitlement is not defeated.

Recently in the case of **Vansh s/o Prakash Dolas** Versus **Ministry of Education and the Ministry of Health and Family Welfare and others**[1], the Apex Court, in a scenario, found no justification in rejecting the claim of the appellant and while setting aside the communication issued by the College cancelling the admission granted to him against the Maharashtra Quota in CAP Round-I without giving an opportunity to show cause, found it to be illegal and arbitrary and faced the hurdle as the current session of MBBS Course had progressed significantly and more than six months had passed, since the session started and no seat was lying vacant in any College in Maharashtra State Quota as on date.

Since an opinion was formed that the appellant was illegally deprived from his rightful admission in the first year of the MBBS Course

1 2024 AIR(SC) 1924

owing to the insensitive, unjust, illegal and arbitrary approach of the respondents and also on account of the delay occasioned in the judicial process, the restitutive relief as conceptualized in **Manoj Kumar** Versus **Union of India and others**[2] was resorted to and we must reproduce the relevant reproduction in the decision in **Vansh s/o Prakash Dolas** (supra), which read as below :

> *"27. This Court in the case of S. Krishna Sradha v. State of Andhra Pradesh and Others*[4] *examined the issue of wrongful denial of admission in a medical course, and propounded the theory of 'restitutive justice' by holding as below:-*
>
> > *"13. In the 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*

2 2024 SCC OnLine SC 163
4 *(2017) 4 SCC 516*

and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, if 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.

13.5. It is clarified that the aforesaid directions pertain to Admission in MBBS Course only and we have not dealt with post graduate medical course."

18. By relying upon the aforesaid observations, their Lordships of the Apex Court noted that due to passage of time, it would neither be desirable nor justifiable to grant admission to the appellant in the on-going session of the MBBS(UG) course. However, considering the fact that the order cancelling the admission of the appellant was issued on 9th August, 2023 and the writ petition came to be filed before the High Court promptly, i.e. on 10th August, 2023, without any delay whatsoever, the appellant was held entitled to restoration of his seat in the first year of MBBS (UG) course in the same college in the next session, i.e. NEET UG-2024.

19. In the present case, since we have already reached a conclusion that the petitioner was wrongfully denied the admission in the respondent No.3-College by adopting a hyper-technical approach, we must definitely offer a solution to prevent the loss to the petitioner, as the petitioner is not at fault and even he approached this Court on 6th September, 2024, i.e. before the last date of CAP Round-III, which was 9th September, 2023,

and this Court by taking cognizance passed necessary orders, to which we have already made a reference.

The last date for admission to Four-Year Under Graduate Technical Courses and Engineering Technology being 13th September, 2024, which has been then extended to 23rd October, 2024, we do not find that the petitioner has missed the bus and we do not want him to do so, by directing him to be admitted in the next academic year, which would be a loss of one year.

20. The Information Brochure itself provide an answer to the dilemma faced by us, as to how could we restore a seat to the petitioner in the respondent No.3-College.

The Brochure prescribe for two type of seats, being the Sanctioned Intake and the Supernumerary Seats for various courses for Under Graduate, Post Graduate, Integrated or Dual Degree Technical Courses, which shall be as per the approval given by the Authority, which is competent for giving approval to the respective courses.

Rule 6(2) of the Brochure contemplated that the supernumerary seats shall be available to the Private Professional Educational Institutions as approved by the Appropriate Authority, from time to time.

Rule 7, sub-clause (5) has categorized the supernumerary seats as below :

(a) Supernumerary Seats for the OCI or PIO, Foreign Students and the children of Indian Workers in Gulf Countries Candidates.

(b) Supernumerary Seats for the Jammu and Kashmir as well as Ladakh Migrant Candidature.

(c) Tuition Fee Waiver Scheme (TFWS) Seats.

21. We have specifically enquired with the learned counsel appearing for the respondent No.3-College as to whether they have filled the supernumerary seats and we have received the response that they have not availed the same.

22. The petitioner having qualified in the Common Entrance Test by securing the requisite number of marks for getting admitted to an prestigious Institution and since the merit and excellence deserve to be the sole criteria, which must receive primacy over the niceties of procedure, we have no hesitation in conferring a seat to the petitioner, though we are required to issue a direction to activate a supernumerary seat, as we do not intend to trample upon the right of the petitioner to be admitted to the respondent No.3-College based on his own merit or to upset any other candidate, who is allotted a seat, substituting the petitioner.

23. In the peculiar circumstances of this case, when we intend to have restitutive justice for the petitioner, who was wrongly deprived of confirmation of the provisional admission, in his favour on a flimsy ground of not possessing the original caste certificate and since we are of the clear opinion that the respondent-Authorities were completely insensitive and

have adopted unjust approach, what we can merely describe as hyper-technical, which has put the career of the petitioner at stake.

In these circumstances, we deem it appropriate to admit the petitioner on a supernumerary seat to be created by the respondent No.3-College, as we do not intend to disturb any other student and we expect the respondent Nos.1 and 2 to grant approval to the said seat, since the rules framed by the respondent clearly contemplate the supernumerary seats.

24. For the foregoing discussion, we allow the petition and pass the following order :

> (i) We issue a writ in the nature of mandamus directing the respondent No.3, Karamveer Dadasaheb Kannamwar (K.D.K.) Engineer College, Nagpur to confirm the provisional admission of the petitioner, Aryan S/o Naresh Shende, in Computer Science and Engineering for the Academic Year 2024-2025, as we find the cancellation of his provisional admission is unjust and unfair to him and amount to denial of his legal entitlement as per merit.
>
> (ii) The petitioner shall report to the Respondent No.3-College on 4th October, 2024 before 5.00 p.m. alongwith the original caste certificate and the respondent No.3-College shall accept the same on record.
>
> (iii) The petitioner shall comply with further necessary formalities, as may be required, by the respondent No.3-College, so as to confirm his provisional admission.

25. Rule is made absolute in the aforesaid terms. Easy on costs.

(ABHAY J. MANTRI, J.) (BHARATI DANGRE, J.)

LANJEWAR