
(2014) 07 BOM CK 0089
In the Bombay High Court
Case No : Writ Petition No. 5954 of 2014

Kirti Pramod Bharadia

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 5 ALLMR 625

Hon'ble Judges : Anoop V. Mohta, J;A.A. Sayed, J

Bench : Division Bench

Advocate : P.V. Thorat i/by M.V. Thorat, Advocate for the Appellant; S.S. Bhende, AGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—Rule, returnable forthwith. Heard finally by consent of parties.

2. The Petitioner/candidate has challenged Rule 4.5 of Rules For Admission to Health Science Courses including M.B.B.S.-MH-CET 2014 Information Brochure (for short, "the Rules") which is reproduced as under:

4.5 The candidate must have passed the qualifying examination i.e. Higher Secondary Certificate (HSC/12th Standard) or equivalent examination, from an Institution situated in the State of Maharashtra (Please refer 4.7, 4.8 Annexure "C" & Annexure "E" for exception) with English, Physics, Chemistry and Biology (Botany & Zoology).

3. Rule 2.19 of the Rules, deals with "Qualifying examination", which reads thus:

2.19 "Qualifying examination" means the examination (i.e. HSC [12th Standard] or equivalent examination) on the basis of result of which a candidate becomes eligible to appear at MH-CET entrance examination for selection to aforesaid Health Science Courses.

4. The Petitioner has filed written submissions and relied upon decisions in Nikhil Himthani Vs. State of Uttarakhand and Others, , Rajiv Purshottam Wadhwa Vs. State of Maharashtra and Others, and Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, . She has also relied on other judgments so referred in the written notes of arguments.

5. The Respondent by its reply dated 2 July 2014 opposed the Petition and the prayers so made on every count. The learned AGP appearing for the Respondent/ State read and referred the relevant Rules and distinguished above judgments. The learned AGP has relied upon the decisions in Ipsa Singh Anil Kumar Singh vs. The State of Maharashtra & ors.⁴, Smt. Surbhi Suresh Joshi vs. State of Maharashtra⁵ and Shubham Lakshman Gaddalay v. The State of Maharashtra & ors⁶.

6. Rule 4.5 thus provides that candidate must have passed qualifying examination or equivalent examination from an institution situated in the State of Maharashtra with the requisite subjects as we are concerned with qualifying examination (12th Standard) and in view of present facts and circumstances of the case, a decision given by the Division Bench of this Court (Aurangabad Bench) in Ipsa Singh Anil Kumar Singh (Supra), in our view, clinches the issue against the Petitioner whereby it is held that Rule 4.5 is valid and cannot be stated to be arbitrary and/or offending the equality clause and thereby rejected the claim. The submission that a Division Bench judgment in Rajiv Purushottam Wadhwa (Supra) was not referred and/or not pointed out wherein, according to the Petitioner, importance was given to the domicile of such candidate as relevant factor to grant admission in such course. We are not inclined to accept that submission as it is specifically observed in the judgment itself that "We, however, clarify that the observation of Rule 4.5 has to be ensured since the 12th Standard Examination is a qualifying examination for admission.". That was a case challenging constitutional validity of Rule 4.4 dealing with a requirement of passing of SSC and/or equivalent examination from an institution situated in the State of Maharashtra. The facts are distinct and distinguishable. As a matter of fact though it was sought to be suggested that that was a case where the admissions were on the basis of results of Std XII exams, para 9(i) of that judgment would make it clear that in that case also admissions to MBBS courses were governed by common entrance examination.

7. Thus the eligibility for admission to the Health Sciences degree courses is that a candidate must have passed the qualifying examination i.e. HSC/12th Standard from an institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology subjects.

8. Admittedly, the candidate completed her schooling in the State of Maharashtra upto 10th Standard as her father and grand father are permanent residents and domicile of State of Maharashtra. The candidate took admission for her 11th and 12th Standard courses of Higher Secondary School at Hyderabad (Andhra Pradesh) and passed HSC Examination from Andhra Pradesh in March 2014.

9. Respondent No. 2/Director of Medical Education & Research on 1 March 2014 through the website-Information Brochure of MH-CET 2014, published the eligibility and the detail procedure for filling up of on-line Application for the entrance examination for admission to the courses for the State of Maharashtra, including M.B.B.S. The candidate filled application form on-line and recorded declaration to the effect that "I have carefully read the Rules and Regulations of MH-CET 2014 Brochure and I agree to abide by them.". She was fully aware of the Rules in question including the basic eligibility criteria as referred above. She participated in the Common Entrance Test 2014 (CET) based on knowledge of the above facts.

10. The result of CET was declared on 5 June 2014. On 18 June 2014 the candidate was informed by the Officer of Respondent that she would not be eligible for claiming M.B.B.S. seat as she did not pass her 12th Standard from State of Maharashtra as required under Rule 4.5, though she is the domicile of State of Maharashtra. Therefore, this Petition for declaration that Rule 4.5 is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India and further declaration that the candidate is eligible, being domicile of State of Maharashtra, to claim M.B.B.S. seat on the basis of her performance in CET.

11. The judgment of the Supreme Court in Nikhil Himthani (supra) is also of no assistance as there was no such issue of qualifying examination, because eligibility criteria referring to insistence for domicile which was a condition for admission for such candidate was declared violative of Article 14 of the Constitution of India. We are not concerned with the residential state preference in the present matter, but we are concerned with the qualifying examination, the main eligibility criteria for such courses in the State of Maharashtra.

12. The submission that in view of CET examination and the result, the merit and the domicile of the candidate should be the criteria for admission and not the qualifying examination in question is unacceptable. The condition of qualifying examination, in our view, is impermissible to relax. The requirement that the candidate must have passed qualifying examination from State of Maharashtra in the subjects so referred, in no way, can be stated to be arbitrary and/or unreasonable. The percentage of marks of those subjects are necessary to decide the merit while selecting and/or considering the merits of the candidate, apart from qualifying entrance examination, just cannot be overlooked. The eligibility criteria so fixed and decided by the Respondent which is well within their power and authority cannot be relaxed at the instance of the candidate, who was fully aware of the main existing eligibility criteria i.e. qualifying examination. The mis-reading and/or their understanding of the Rules cannot be the reason now to accept the submission so made to relax the condition of qualifying examination as contended. The rules, purpose and object behind the same is well within the frame work of law. There is no justification and/or material to accept the case that the Rule is violative of Article 14 of the

Constitution of India. The submission of learned AGP based upon the affidavit so placed on record that the Petitioner is estopped from challenging the Rules in the above background and there is no case of any breach of principle of legitimate expectation, is correct.

13. The submission that the candidate now, in view of above facts, will not be in a position to take admission in the Andhra Pradesh and therefore to consider her case sympathetically is also unacceptable. The qualifying examination which is the basic criteria which has purpose and object to achieve cannot be relaxed in such fashion at the instance of a candidate.

14. The further submission that the Respondents have relaxed Rule 4.4 thereby permitted a candidate who has passed 10th Standard examination even from the institution out of State of Maharashtra, therefore, on the same footing with the passing of 12th standard examination, from the institution from the State of Maharashtra should be relaxed, and/or declared Rule 4.5 itself arbitrary and discriminatory, is also unacceptable. Both these Rules are distinct and distinguishable. The relaxation, even if any, of Rule 4.5 in the year 2014-15 is ultimately policy decision of the State of Maharashtra. This itself means that they have retained Rule 4.5 and insisting for qualifying examination of 12th Standard examination from institution situated in the State of Maharashtra, cannot be stated to be discriminatory and arbitrary and/or beyond their power. The Court, even otherwise, at the instance of such candidate cannot direct to relax the condition so imposed merely because the Petitioner/candidate is domicile of State of Maharashtra. A candidate who has passed HSC Examination from Maharashtra and another from out of State of Maharashtra are two distinct and distinguishable classes. The classification in the above background even referring to Pradeep Jain (supra) in no way can be stated to be discriminatory and/or arbitrary. A candidate is entitled to get admission only if he or she falls within the ambit of eligibility criteria so fixed, unless the criteria is arbitrary, unreasonable and/or discriminatory. We have recorded that this Court has already upheld the validity of Rule 4.5. For above reason, we are also inclined to hold that Rule 4.5 is well within the frame work of law and it is valid.

15. For the above reason, the Petition is dismissed. Rule stands discharged accordingly. No costs.

4Writ Petition No. 5606 of 2013 decided on 17 July 2013 (Aurangabad Bench)

5Writ Petition No. 6065/2013 decided on 15.07.2013 (Bombay High Court)

6Writ Petition No. 5717/2013 decided on 13.09.2013 (Aurangabad Bench)