
(2017) 02 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 902 of 2017

Ms. Mrinmayi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Maharashtra Unaided Private Professional Education Institutions (Regulation of Admission to Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 — Rule 5(C)(i)

Citation : (2017) 4 AIRBomR 345 : (2017) 3 BCR 453

Hon'ble Judges : B.P. Dharmadhikari and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Mr. M.M. Sudame, Advocate, for the Petitioner; Ms. T. Khan, Asstt. Govt. Pleader, for the Respondent Nos. 1 to 4.

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J. (Oral)—Heard Shri M.M. Sudame, Learned Counsel For The Petitioner And Ms. T. Khan, learned A.G.P. for respondent nos. 1 to 4. By their consent, Writ Petition is taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. Submission of learned counsel for petitioner is, qualification contained in Sub-clause (c) of Clause C of Rule 5 of Maharashtra Unaided Private Professional Education Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 (hereinafter referred to as "the 2016 Rules" for short), prescribing a condition of eligibility that stay of parents must be in State of Maharashtra is, violative of Article 14 of the Constitution of India. He is drawing support from the judgment of Hon'ble Supreme Court reported at (2013) 10 SCC 237 (Nikhil Himthani v. State of Uttarakhand and others), particularly findings recorded in paragraph nos.11 and 12 thereof.

3. Learned A.G.P. on the other hand points out that insistence upon residence in State of Maharashtra is to enable a candidate, not otherwise eligible to compete in 85% State quota and by way of exception. The exception has been carved out to provide for employment contingencies and to enable a candidate otherwise domiciled in State of Maharashtra to compete in 85% category. She invites our attention to judgment dated 15.07.2013 delivered by the Division Bench of this Court at Bombay in Writ Petition No.6065/2013 and a judgment dated 13.09.2013 delivered at Aurangabad in Writ Petition No.5717/2013. One of us (B.P. Dharmadhikari, J) is party to the later judgment. She submits that there requirement of Rules of passing 10th [SSC] and 12th [HSC] examination from State of Maharashtra to qualify for 85% quota was questioned as violative of Article 14 of the Constitution of India and that argument has been negated.

4. Provisions impugned before us is contained in Rules framed under the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015. The Rules are called as Maharashtra Unaided Private Professional Education Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016.

5. Rule 5 therein prescribes eligibility norms for Maharashtra State candidates. The candidates satisfying the same are to be considered for 85% State quota seats. The fact that Rules contemplate not only domicile, but, also passing of SSC and HSC examination to qualify for consideration in 85% quota, is not in dispute. There is no challenge to it and no argument, even remotely assailing its validity.

6. Clause (C) (i) of Rule 5, with which we are concerned, reads as under :

"(C) Exception for clause (A)(vi) for SSC or for clause (A)(vii) for HSC or equivalent examinations for Children of employees of the Government of India or its undertaking -

(i) The Children of the employees of Government of India or its Undertaking shall be eligible for admission even though they might have passed the SSC and/or HSC or equivalent examination from the recognised Institutions situated outside the State of Maharashtra, provided that such an employee of Government of India or its undertaking must have been transferred from out of Maharashtra State and posted at a place of work located in the State of Maharashtra and also must have reported for duty, i.e. joined the duty before the last date of submission of preference form."

7. Thus, children of Central Government employees or its Undertaking, not otherwise eligible, have been enabled to compete for this 85% seats though they may have passed SSC and/or HSC examination from outside the State of Maharashtra. This is however, subject to the fact that such employee is transferred within State of Maharashtra by his employer from out of Maharashtra, with further rider that such employee has reported for duty at a place of posting located in State of Maharashtra. He must have also joined the duties before the

last date of submission of preference form by student.

8. According to Shri Sudame, learned Counsel for the petitioner, this stipulation that such employee working outside State of Maharashtra, must have been transferred and joined at a place of posting in State of Maharashtra is, unsustainable as it gives precedents or preference to the residence.

9. The judgment of Hon"ble Supreme Court relied upon reveals that their eligibility criteria for admission to MD/MS/MDS/PG Diploma Courses in Uttarakhand State were being looked into. Eligibility criteria contemplate a candidate who has passed MBBS/BDS examination from Medical College located in Uttarakhand or then a domicile of Uttarakhand, who has passed that examination from Medical/Dental College of other States and were admitted through 15% All India quota. By last norm, candidates domiciled in Uttarakhand, who have passed those examinations of other States and were admitted through Pre-Medical Entrance Test conducted by the State Government concerned, were also qualified.

10. Observations in paragraph nos. 3.1 and 3.2 show that the petitioner Nikhil, was not admitted through Uttarakhand PMT to Medical College and therefore, did not satisfy eligibility criteria for admission to Medical Postgraduate Course under clause [i]. Petitioner was not domicile of Uttarakhand and had not passed MBBS examination from some other college in India. In these peculiar facts, when claim of petitioner could not have been considered at all in Uttarakhand, the Hon"ble Supreme Court has pointed the unconstitutionality of insistence upon residence. Petitioner Nikhil, was permanent resident of Delhi and had qualified in All India PMT in the 15% seats reserved for All India quota and took admission in MBBS Course in 2007 in a Medical College in State of Uttarakhand. After completing MBBS, he appeared in NEET examination in 2013 for admission to Postgraduate Medical Course and qualified in that examination. He stood 60th in State of Uttarakhand. He was thus not eligible to seek admission under any of the norms prescribed.

11. In present facts, bifurcation of seats in 85% and 15% i.e. State quota and All India quota, as also relevance of residence to qualify in 85% quota is, not in dispute. Clause (C) mentioned supra provides for an exception and service contingency in which parents domiciled in Maharashtra are shifted to Maharashtra by their employer, has been taken care of by enabling their children to compete in 85% quota. Petitioner wants to participate in that quota, though his parents have not been transferred to State of Maharashtra.

12. Insistence of passing of SSC/HSC examinations from State of Maharashtra by a student otherwise domiciled in State of Maharashtra was questioned with same argument in two judgments mentioned supra. This Court has found that requirement and insistence valid. These judgments are not in dispute before us.

13. Thus, here an exception has been made for petitioner who did not and could not have passed SSC/HSC examinations from State of Maharashtra on account of

services of his father in Madhya Pradesh, and in that situation, the fact that either of parents must have been transferred to State of Maharashtra and have joined duty at a post within State before last date of submission of preference form, in fact relaxes the otherwise cumbersome condition in main clause in deserving cases as stipulated therein. This requirement is in consonance with the main scheme of prescribing eligibility for 85% seats. As this insistence in main clause is not assailed before us, exception provided therefrom cannot be viewed as arbitrary. Petitioner before us is eligible to compete in 15% All India quota.

14. We therefore, find the grievance as made is without substance. Writ Petition is, therefore, rejected.