

(2015) 06 BOM CK 0234
In the Bombay High Court
Case No : Writ Petition (L) No. 1723 of 2015

Parth Anil Thacker

APPELLANT

Vs

Govt. of Maharashtra and Others

RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Citation : (2016) 1 ABR 453

Hon'ble Judges : Anoop V. Mohta, J; V.L. Achliya, J

Bench : Division Bench

Advocate : M.M. Vashi, Nitin Thacker, Senior Advocates and Aparna Devkar I/b M.P. Vashi Associates, for the Appellant; Anjali Helekar, AGP, Advocates for the Respondent

Judgement

1. Rule. Rule made returnable 15th July, 2015.

2. The Petitioner has challenged the validity of Rule 1.4 r/w Rule 3 of Rules of Admission of First Year of 4 year's full time Degree Courses in Engineering / Technology for the Academic Year 2015-16, which restrict admissions of outside Maharashtra Students only for non-possessing of SSC (X Standard) from Maharashtra State institution. The existing Rules debarred the Petitioner even from applying for process for admission, as he has passed S.S.C. not from recognized institution in Maharashtra State, but from institution in Gujarat through CBSC Gujarat. The Petitioner has secured 96% marks in 10th standard examination. Other related prayers have also made with submission to permit the Petitioner to participate and/or reserve one Engineering seat in Government aided and/or unaided Engineering College, where the Petitioner will get admission as Type "A" candidate on merit.

3. The Petitioner's father is permanent resident of Gujarat. The Petitioner took education till 10th standard in Gujarat. The Petitioner's mother was born and brought up in Maharashtra State. The Petitioner was born in State of Maharashtra. He has birth certificate of State of Maharashtra. For the reasons so averred in the petition, the Petitioner has completed his 11th standard and 12th

standard from the institution of Maharashtra. There is no issue with this factual aspects.

4. Relevant rules/ regulations for getting admission in the course in question are read and referred by the learned counsel appearing for the respective parties. Eligibility criteria for Maharashtra State candidates, principally is that he should have passed H.S.C. (standard XII) examination in institution of State of Maharashtra and secured minimum 50% marks (minimum 45% marks in case of backward class category), specifically in the subjects of Physics, Mathematics and Chemistry/Biotechnology/ Biology/ Technical Vocational subject. He should also obtain a positive composite score after adding 50% of JEE (Main) 2015, that examination was conducted by CBSE. The Petitioner/candidate has also appeared in the same examination. These are basic requirements. Both these marks need to be considered for deciding the merit. The Respondents based upon same, needs to prepare merit list i.e. criteria/basis for getting admission in the desired and/or available Government Colleges/ the institutions of State of Maharashtra. The Maharashtra State candidate principally will be entitled to get admission in the Government aided/ non-aided institutions, based upon the merits so referred above, if fall under Type A category.

5. In the present case, we are concerned with Rule 3.1 and 3.2 specifically serial No. 1, which read thus:-

"3.1 Types of Maharashtra State Candidates and Home Universities:-

A candidate is considered eligible for admission to the seats of Maharashtra State coming under the purview of competent authority subject to fulfillment of any one of the eligibility requirements as listed in the following table.

3.2 Outside Maharashtra State Candidate:

6. No SSC (X standard) certificate is available with the Petitioner for the reasons so stated above but, as required (for Type "A" candidature). The Petitioner has Birth certificate of State of Maharashtra and H.S.C. (standard XII) certificate from State of Maharashtra recognized institution. Notes so recorded above, required the candidate to produce these relevant certificates. Therefore, for want of this S.S.C. certificate, the contention is that the Petitioner is not entitled to get admission and/or cannot be considered for Maharashtra State candidate in Type "A" category. The Petitioner's parents have no domicile certificate of State of Maharashtra. The Petitioner's case also does not fall within the ambit of "son and daughter of State or Central Government" and/or Government of India Employees, as provided in other categories (B, C, D and E). Therefore, the submission that Petitioner needs to be treated from OMS candidate (out of State of Maharashtra candidate), prima facie not acceptable. This requires consideration specifically, in the facts and circumstances of the present case.

7. Normally, we would not have interfered with the rules and regulations and/or clauses so referred above, but in the present circumstances and as we have gone

through the rules and regulations and submissions so made by the learned counsel appearing for the parties, apart from the Supreme Court judgment and the judgment of this Court in case of *Rajiv Purshottam Wadhwa Vs. State of Maharashtra and Others*, (2001) 1 BOMLR 1, to what extent the insistence of candidate passing SSC (standard X) should prevail for other basic requirement of HSC (standard XII) in the recognized institution of State of Maharashtra and birth certificate of the State of Maharashtra also required consideration and cannot be overlooked. The requirement of SSC certificate, even if any, can be taken care of as the Petitioner has definitely passed SSC examination in Gujarat, if situation comes of any tie, as contemplated in other rules can also be decided by the Respondents. Therefore, the Petitioner specifically eligible at least to participate in the process of admission, if insistence of SSC standard certificate in State of Maharashtra given liberal interpretation, specifically when the Petitioner/candidate otherwise eligible and even participated in JEE examination, apart from possessing eligibility requirements, so referred above.

8. The Government/Respondents is the Authority, who conduct various other common entrance test, including for Health Science Course, Engineering Course and their brochures published every year. The State policy for health Science Course and/or for Engineering Course and so also eligibility criteria of this nature normally required to be considered on similar foundation. Exception for SSC (standard X) and/or equivalent examination i.e. the candidate, who has passed SSC and/or equivalent examination out of State of Maharashtra and HSC and/or equivalent examination within State of Maharashtra is being eligible for seeking admission to the course in Health Science, provided that he/she be domicile of State of Maharashtra. There are other exceptions also. Point is, whether the Petitioner fall within this exception here. There is no such specific provision in these rules. He has passed SSC examination from institute situated outside State of Maharashtra, but, passed HSC from State of Maharashtra institute. The issue of domicile of Maharashtra, in view of clause so referred above, may relevant for others, but for the Petitioner being born and possessing the Birth Certificate, needs to be considered as candidate who is otherwise eligible to get the candidature for Maharashtra State (Type A). The mandate in the background of SSC (Standard X) by overlooking passing of his examination in standard XI and XII in State of Maharashtra institution, apart from the birth certificate in question, just cannot be overlooked at this stage, even for participation in the admission process.

9. The Division Bench of this Court in the case of *Rajiv Purshottam Wadhwa* (supra) though dealt with then existing rules, but definitely considered the aspect of SSC and/or equivalent examination certificate of a student who passed X standard from out of State of Maharashtra. Relevant paragraph No. 29 of the said judgment is as under:

"29. In the result, the petition will stand disposed of. We direct that Rule 4.4. of the Rules framed by the Maharashtra University of Health Sciences for admission

to Medical Colleges in the State for the year 2000-2001 will be interpreted to mean that students will be eligible for admission to the 1st year Medical Course in the State, if such students have passed the 10th Standard (S.S.C. or Equivalent Examination from within the State) from an institution within the State of Maharashtra. However, this will not operate to bar a student who is domiciled in or is a permanent resident of the State of Maharashtra from seeking admission though he or she may not have passed the S.S.C. Examination from an institution within the State of Maharashtra. We direct that it would be open to the State Government to frame Rules and/or guidelines to determine whether a student in a given case would be considered as being a permanent resident of the State of Maharashtra or domiciled in the State. The case of students who claim to be eligible under the aforesaid guidelines and/or rules framed by the State Government including the petitioner shall be considered by the University by the application of those guidelines or the Rules in the facts and circumstances of each case. We, however, clarify that the observance of Rule 4.5 has to be ensured since the 12th Standard Examination is a qualifying examination for admission. The case of the petitioner shall be processed on the basis of his performance in the common entrance test. The Admission, if any, granted to the petitioner will be provisional subject to his compliance with the requirement of domicile in Maharashtra."

10. In the present case, the Petitioner even otherwise eligible, but for want of certificate of SSC, the State Government, while enlarging the types of Maharashtra State candidate, though provided Type A to Type E and also provided OMS candidate, have not considered such situation, which we are dealing with today, based upon the averments and undisputed position on record. Now, as per 3.1 Rule, as reproduced above, domicile certificate and/or State Birth Certificate is sufficient.

11. Therefore, all these points require consideration. We will pass final order, once the Respondents / Government file reply and deal with the aspect so raised in the petition, apart from the judgment passed by the Supreme Court, as well as, this Court including the one, which is referred above. There is no doubt so far as the power of State Government is concerned, but the situation so recorded above and the averments so raised, apart from the judgment so referred, we have to test the impugned rules in question.

12. We are inclined to interpret and read down rules and basically 3.1 eligibility requirement, to the extent that the Petitioner required to be permitted to participate in the process of admission, so that his candidature can be considered alongwith others without insistence of not passing SSC examination from institution within State of Maharashtra. The Petitioner is having birth certificate of State of Maharashtra and has possessed basic qualifying examination of X standard from the State of Maharashtra Institution in question, as required. The Petitioner will not be allowed to participate in Gujarat State Government Colleges on the basis of X Standard (SSC) examination passed from the Gujarat State.

13. The Petitioner would be deprived of Government College of his choice, if not considered as Maharashtra State Type-A candidate though passed XII standard from Maharashtra institution, apart from valid birth certificate of Maharashtra State. For deciding merit of students, SSC from Maharashtra and/or from Gujarat is not so mandatory to deny the right of participation in admission process as prayed, basically when he is otherwise eligible. Requirement of passing of standard X/XII from any place State/ University is sufficient for other category/type. The last date to submit on-line form is 18th June, 2015. Therefore, to avoid injustice and hardship and further complications following ad-interim order is passed.

ORDER

- a) Respondent No. 2 is directed to permit the Petitioner to fill the requisite form on website without insistence for SSC X Standard certificate/marks of Maharashtra State institution, but based upon available SSC Certificate, through the procedure available, under the supervision of Dr. Rajeev V. Shetkar, Assistant Director (Tech.) Directorate of Technical Education, Mumbai.
- b) The Petitioner/guardian to approach the office of Respondent tomorrow at 10:30 am alongwith requisite documents, so that the above process can be completed, in time.
- c) The Petitioner's case be considered on merits, accordingly, if eligible otherwise.
- d) This order is subject to further order of this Court.
- e) There is no question of claiming any equity, in case the final order goes against the Petitioner.
- f) All points kept open.
- g) As this order is passed in the presence of the parties and the officers, there is no question of delaying and/or denying the access as stated above for want of authenticated copy.
- h) It is made clear that this order is applicable and restricted only to the facts and circumstances of this case.
- I) Parties are at liberty to apply for appropriate order.
- j) Respondents to file reply within four weeks from today.
- k) The matter be listed for final disposal on 15th July, 2015 (HOB).
- l) Parties to act on the authenticated copy of this order.