
(1998) 08 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 3272 of 1998

Suhas Bhimrao Gadhave

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 14-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 65

Citation : (1998) 08 BOM CK 0055

Hon'ble Judges : N.P. Chapalgaonker, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : D.R. Irale-Patil, for the Appellant; A.M. Kanade, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Heard learned counsel appearing for the respective parties. Leave to amend. Amendment to be carried out forthwith.

"Rule", made returnable forthwith.

The petitioner, represented by his father, passed his H.S.C. Exam from Latur Divisional Board and secured 570 out of 750 marks. He appeared for H.S.C. Exam from Dayanand Science Junior College, Latur and secured 279 out of 300 marks in Physics, Chemistry and Biology Group. He thus secured 93% marks in H.S.C. Exam held in the year March-April 1998 and submitted his application for admission to the Medical and Dental Colleges as per the Rules for Admission framed by the Government on 29th May, 1998, for the academic year 1998-1999. Along with the application, he submitted a "Defence Certificate" in respect of his father, in addition to the other required documents under Rules 5.1 to 5.3 and requested the authorities concerned to consider his application for admission to the M.B.B.S. Course against a seat reserved for "Defence Personnel", on the ground that his father, who is presently working as Police Constable in Osmanabad District, was in the army and had retired before he

joined the State Government Service. However, along with the application form, submitted on 19-6-1998, petitioner had not attached "Domicile Certificate" in respect of his father and the last date for submission of the application, complete in all respect, was 20-6-1998. It appears that "Domicile Certificate" in respect of his father was received on 10-7-1998 and the petitioner, thereafter, immediately approached respondents Nos. 3 and 4 and requested to accept the said "Domicile Certificate" as part of his application, so as to consider his case for admission to M.B.B.S. Course against the seat reserved for "Defence Service Personnel Category". The said request was not considered. He submitted an application, by approaching the respondent No. 2 at Mumbai personally on 28-7-1998, which was received by the respondent authorities at 29-7-1998 along with the Domicile Certificate of his father. It is the case of the petitioner that as there was no response from the respondent authorities in respect of his above prayer, the petitioner has approached this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, praying for directions to the respondents to consider his application for admission to M.B.B.S. course against the seat reserved for "Defence Service Personnel Category".

2. The learned Government Pleader appearing for the respondent has opposed the petition on the ground that the Rules and more particularly Rule 5 read with Annexure "C" of the Admission Rules for the year 1998-1999 (Hereinafter referred to as "Admission Rules" for short) are mandatory in nature and any application submitted till the date prescribed for receipt of the applications shall not be treated to be valid unless it is accompanied by all documents as set out in Rules 5.1 to 5.4 and as in the instant case, petitioner failed to submit "Domicile Certificate" in respect of his father, as required under Rule 3 of Annexure "C" to the Admission Rules, along with the application form submitted on 19-6-1998, the application form of the petitioner has not been considered and held to be valid by the authorities for consideration of admission to M.B.B.S. Course from seat in open category. It is further urged by the Government Pleader that sanctity of the Admission Rules must be upheld and if the requirements of the rules is allowed to be diluted, the admission process to M.B.B.S. and other professional courses would not be finalised within a lime bound period and any sympathetic consideration by the Courts, contrary to the admission rules, will open a Pandora's Box for litigation.

3. The only question for our consideration is whether the petitioner's prayer in the instant case for a direction to consider his application in the category of "Defence Service Personnel" requires to be accepted even though he failed to submit his father's "Domicile Certificate" along with the application form on 19-6-1998. We must emphasize that this Court is in full agreement with the submissions made by the learned Government Pleader, regarding the binding nature of the rules and any indulgence by this Court to water down the requirement of these rules would unnecessarily prolong the admission process and encourage unavoidable litigation. However, if we read rules 3, 4 and 5 along with the requirements as set out in Annexure "C" to of the Admission Rules, it is

clear that the seats reserved under the "Defence Service Personnel Category" are to be allotted from 70% open category seats of Government Medical Colleges and these seats are primarily available only to the children of parents who are "Domiciles of Maharashtra", and, an exception has been carved out in Rule 5(d) of Annexure "C" to the Admission Rules, stating that the requirement of Domicile will not be applicable for an application being considered under "Def-3" Category, which is for a son/daughter of active Defence Service Personnel transferred to the State of Maharashtra from a place outside State of Maharashtra. The "Def-1" category is available for a son/daughter of Ex-defence Service Personnel and "Def-2" category is available for a son/daughter of active Defence Service Personnel. Petitioner's claim is for a seat reserved under "Def-1 Category" as his father has already retired from Armed Forces. Rule 5 states that an application will be considered to be valid only if the requirements in Rule 5.1 to "5.4 are fulfilled. These rules state that some certificates are primary documents like S.S.C. certificate, Nationality Certificate issued by the Defence Magistrate or Metropolitan Magistrate, S.S.C./H.S.C. mark-sheet and Physical Fitness Certificate, which must accompany the application. Rule 5.4 also stated that the application is required to be accompanied by true copies of documents listed in Annexure "C". When we come to the requirement, as stated in Annexure "C", we find that rule 3 reads as under :

To be eligible for a seat in Defence Category parents of such an application who was/is a member of Armed Forces must be a Domicile of Maharashtra State. The applicant will be required to produce the Domicile Certificate in respect of his/her parents issued by the District/Metropolitan Magistrate.

First part of the rule, therefore, mandates that for being eligible for a seat in "Defence Personnel Category", the parent of such an applicant must be a Domicile of Maharashtra State and the second part" of the rule states that a Domicile Certificate in respect to of his/her parents as issued by the District/Metropolitan Magistrate is required to be produced.

4. Mr. Gangapurwala - learned counsel, who with the leave of the Court, assisted the learned counsel for petitioner, submitted before us that there is a difference between accompaniment of documents and documents required to be produced, in as much as the accompaniments are primary documents which must be submitted along with the application form and a certificate like "Domicile Certificate" is simply required to be produced and not unnecessarily that it must be produced with the application form itself. He further submitted that so long as there is prima facie proof - available on record and submitted along with admission form - that applicant's father is a Domicile of Maharashtra, the submission of a proper Domicile Certificate, even at the time of admission, would be a sufficient compliance of the requirement of Rule 3 of Annexure "C" to the Admission Rules.

5. There is no dispute that a perusal of the admission form submitted by the petitioner indicates that he opted for reservation under Def-I category, he

submitted a Xerox copy of his father's Army Services Discharge Book and gave his father's present address at Osmanabad. The authorities have endorsed on the said application thus :

Father's Domicile Certificate not attached for DEF-I.

5-A. There is also no dispute that the petitioner submitted his father's Domicile Certificate on 29-7-1998 and he could not submit the same from 10-7-1998 to 28-7-1998 because respondents Nos. 3 and 4 declined to accept it. It is pertinent to note that a Xerox copy of the Army Services Discharge Book of the Petitioner's father, which was submitted along with the admission form, indicates that petitioner's father was a Domicile of Maharashtra and he retired from Armed Forces before he joined the Police Force in the State of Maharashtra. It is, therefore, clear that along with the application form of the petitioner, there was prima facie proof to show that the petitioner's father was a domicile of Maharashtra (Village Varuda, Station Yedshi, tq. Osmanabad) and there cannot be any better proof regarding his domicile. It may be by way of sheer ignorance that the petitioner could not submit a Domicile Certificate in respect of his father issued by the District Magistrate along with the application form and that requirement he complied only after the last date fixed for receiving the duly filled in application, but much before the merit list was declared by the respondents. We must also consider an important factor that under rule section 65 of the Maharashtra Universities Act, 1994, the State is mandated to publish the Admission Rules six months prior to the Admission Process starts and as against this requirement, the State has published the Admission Rules, for the present year, only on 29-5-1998. By the time these rules are formulated and taken a note of by students, H.S.C. results were published and students were not left with sufficient time. Petitioner's is a case where even along with the admission form submitted by him after 19-6-1998 there was prima facie proof in the form of Army Service Discharge Book of his father to show that his father was born in Osmanabad district and thus, a domicile of Maharashtra and in addition, petitioner had taken sufficient steps to submit a separate Domicile Certificate in respect of his father on 10-7-1998. We, therefore, feel that there was sufficient compliance of rules and petitioner is entitled to be considered for admission to M.B.B.S. course this year. We make it clear that while saying so we have no intention to dilute the compliance of the admission rules.

6. In the premises, we pass the following order.

ORDER

We allow the writ petition and direct that the petitioner's application for M.B.B.S. Course be considered in an appropriate Defence Category and the Domicile Certificate of his father which he has already produced along with his representation dt. 28-7-1998 be taken into consideration.

Rule made absolute. No costs.

7. Before parting with the judgment, we record our appreciation for the able assistance rendered by Mr. Gangapurwala learned counsel.