

(2023) 01 BOM CK 0054
In the Bombay High Court
Case No : ??Writ Petition No. 568 Of 2022

Vandana Ramnaval Jaiswar	Vs	APPELLANT
State Common Entrance Cell		RESPONDENT

Date of Decision : 09-01-2023

Acts Referred:

Maharashtra Unaided Private Professional Educational Institutions (Regulation Of Admission To Full Time Professional Undergraduate Medical And Dental Courses) Rules, 2016 — Rule 12(i)(d)

Citation : (2023) 01 BOM CK 0054

Hon'ble Judges : G.S. Patel, J;S.G. Dige, J

Bench : Division Bench

Advocate : Ramesh Dubepatil, Bhavana Dubepatil, Shraddha Dubepatil, Lancy D? Souza, Deepika Agrawal, VM Parkar, Sameer Khedekar, RV Govilkar, Shaba Khan, PJ Gavhane

Final Decision : Allowed

Judgement

Gs Patel, J

1. Rule. Rule made returnable forthwith and the Petition is taken up for final disposal.
2. It is often said that hard cases make bad law; and this is perhaps an exceptionally hard case. Mindful of that old dictum, while we proceed to dispose of the Petition, we are not making any larger pronouncement of law. Indeed, we cannot for the general principle that obtains not only under orders of the Supreme Court but also following the Government Order dated 10th December 2019 cannot possibly be disturbed. There are, however, three exceptional factors in this case that must, in our view, weigh in favour of the Petitioner if true justice is to be rendered. If we blind ourselves to these factors, the result would be indefensible and inequitable. It is the combination of these three factors, taken together, that make this an outlier case.

3. The Petitioner is a young lady student in the MBBS course in the 2nd Respondent medical college. Her admission to the second-year course has been stopped and denied. Her conditional or provisional admission to the first year MBBS was not approved. Her application for a review before the 5th Respondent, the Admission Regulating Authority, failed. She had no choice but to come to this Court.

4. The sequence of dates runs like this: On 16th October 2020, the result of the NEET test was declared. This was in the midst of the Covid-19 pandemic and lockdown and of the uncertainty attached to those events. That lockdown began on 26th March 2020. The entire admission process was in a state of flux. On 21st October 2020, the Petitioner applied for a caste validity certificate to confirm her claim as being part of the Hindu Chamar caste, a Scheduled Caste.

5. It seems that that for the next two months her application for a validity certificate could not be processed. The Petition recites that during this time, one or more members of the Caste Validity Scrutiny Committee were themselves affected by Covid. The Chairperson himself was affected. The Committee did not meet regularly. But at the same time, the admission process dates were being put in place. This put the Petitioner in a difficult situation, one not of her making. She had applied for a caste validity certificate on 21st October 2020. By 15th December 2020, under the normal scheme envisaged by the Government Order, which is of 10th December 2019, a student must have both a caste certificate and a caste validity certificate at the time of seeking admission. The Petitioner had with her a caste certificate and a receipt of her application for a caste validity certificate. She submitted these to the 2nd Respondent college with an undertaking that the validity certificate would be submitted as soon as it was received.

6. The 2nd Respondent accepted this undertaking on these two documents and gave the Petitioner provisional admission to the first year MBBS on 1st February 2021. She began attending that course. On 30th March 2021, the Petitioner received her caste validity certificate. She submitted it to the 2nd Respondent college the very next day.

7. On 22nd October 2021, the 5th Respondent said that it could not approve the provisional admission to the first year MBBS and rejected the Petitioner's admission on the basis that she did not have a caste validity certificate at the time of admission. The Petitioner challenged this order in this Petition, filed on 17th January 2022. On 18th January 2022, by an interim order this Court allowed the Petitioner to submit her form for the final examination of the first year MBBS to be held from 3rd March 2022.

8. The 5th Respondent has opposed the Petition. It has relied on the 10th December 2019 Government Order and pointed out that this Government Order is not issued in isolation but is itself based on an order of the Supreme Court passed on 6th September 2017.

9. On 3rd March 2022, the Petitioner appeared for the final examination.

10. It seems that the Respondents did not declare the Petitioner's result of the first year MBBS course and by a separate order of 5th May 2022 this Court directed the Respondents to do so. The Petitioner now has provisional admission to the second year MBBS course. Her examination result for the Anatomy subject of the first year MBBS course has been withheld. The final examination of the second year MBBS course is to be held on 19th January 2023.

11. In this context we must have regard to Rule 12(i)(d) of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to full Time Professional Undergraduate Medical and Dental Courses) Rules 2016. The Rule in question reads thus:

"(d) The candidates belonging to SC, ST, V3/DT(A), NT-B, NT-C, NT-D, SBC, OBC categories shall be required to submit the Caste Validity Certificate or proof of application made for obtaining caste validity certificate at the time of submitting the preference form, failing which the category claimed, shall not be granted and the candidate shall be treated as a general candidate. However in case the certificate is not issued by the authorities till the date of submission of preference for, and the candidate is in possession of proof of application for validity of caste he or she shall be allowed to fill the preference form, provided he or she submits the proof of such application made. All such candidates will have to submit an undertaking as per the Proforma provided during counselling. Admission secured by an applicant with pending claim shall stand cancelled if the said claim is invalidated by the scrutiny committee."

12. This Rule was not considered in the Supreme Court's order of 6th September 2017. The Rule has a statutory character. The learned Counsel for the Petitioner is correct in saying that a Government Order cannot override a Rule.

13. But more fundamentally let us look at the exigencies of the situation. The Petitioner applied for a caste validity certificate well in time. This was in the middle of Covid pandemic and lockdown. It is not her fault that the validity certificate could not be obtained. She then did all that she could, which was to produce before the 2nd Respondent college her caste certificate and a receipt of her application for a validity certificate. The college is also not to be blamed because it had before it Rule 12(i)(d) which we have mentioned above. The Petitioner can hardly be faulted because the validity certificate did not come to her hands till 30th March 2021. As soon as it did, she gave it to the college.

14. The Petitioner is really the victim here. We do not see how we can ignore these factors and blindly apply a Government Order as the 5th Respondent contends. We understand the concern of the 5th Respondent that the floodgates should not be opened. We appreciate the general requirement that students cannot on a mere promise of obtaining a caste validity certificate later, block or hold up a seat and thus deprive another student of an opportunity of admission. But that is surely not the case here. Those general principles apply in normal

circumstances. The entire Covid scenario was anything but normal and we do not see how what is applicable in normal circumstances can be blindly applied without necessary adjustment to an extraordinary situation totally beyond the Petitioner's control. Had the Petitioner not applied in advance for her validity certificate, then, undoubtedly, she could not have obtained admission. Rule 12(i) (d) would not come to her aid.

15. The other factor that must be weighed in the balance is that this is not a case of somebody falsely seeking a reserved seat, i.e., seeking a reserved seat on a claim that is later invalidated. This is also not a case where there are others on a waiting list who have been deprived of a seat because of the conditional admission granted to the Petitioner. Of the 50 seats allotted to the college, 49 were filled in. The Petitioner's is the 50th and last seat.

16. We are equally mindful of the fact that the Petitioner has successfully completed her first year MBBS. She now has to appear for the final examination of the second year MBBS. Applying the Government Order without taking into account the other extenuating circumstances would result in considerable prejudice to the Petitioner and a colossal loss overall.

17. We do not lay down any general principle that the Government Order is not applicable or that the principle it follows is not good law. We have merely observed that the conduct of the Petitioner and the 2nd Respondent was within the frame of the statutory Rule and therefore was entirely permissible. That Rule is undoubtedly necessary. It is not only beneficial, but is a rule based on practicality, meant precisely to take care of the in-between position where an aspirant to admission has applied for a validity certificate but not yet received it at the time of admission. All scrutiny committees are already over burdened. It is rarely possible for an applicant before those committees to get validity certificates on time. It is the aspect of Covid and the delay caused by it that persuades us to make this order.

18. We have consciously kept the conspectus of this Petition as narrow as possible. No wider meaning should be attributed to our judgment in this matter. We confine it to the facts of this case.

19. In the result, the Petition succeeds. Rule is made absolute in terms of prayer clauses (a), (b) and (d) which read thus:

"(a) That this Hon'ble Court may be pleased to call for the records and proceedings of Review Application dated 16th November 2021 pending before the 5th Respondent authority and impugned Order dated 22nd October 2021 passed by the 5th Respondent whereby admission of the Petitioner for the first year M+BBS course in the 2nd Respondent college has not been approved and after pursuing the same, the impugned Order dated 22nd October 2021 passed by the 5th Respondent may be quashed and set aside.

(b) That this Hon'ble Court may be pleased to direct the Respondents to allow

the Petitioner to fill and submit examination form with the 2nd Respondent college for Winter examination of first year MBBS course.

(d) That this Hon'ble Court may be pleased to direct the Respondents to allow the Petitioner to appear for Winter examination of first year MBBS course conducted by the 4th Respondent university."

20. The Respondents will also release the results of the Petitioner's examination in Anatomy. The college and all authorities are directed to accept the form of the Petitioner for the second year examination.