

(1997) 09 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 3106 of 1997

Vijay Dattatraya Bhilwadikar

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 05-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 ALLMR 635 : (1998) 2 BomCR 48 : (1997) 3 MhLj 705

Hon'ble Judges : S.S. Parkar, J;A.A. Desai, J

Bench : Division Bench

Advocate : S.M. Paranjape, for the Appellant; S.S. Gokhale, A.G.P., for the Respondent

Judgement

S.S. Parkar, J.—Heard Mr. Paranjape for the petitioner and Mrs. Gokhale, A.G.P, for the Respondent-State.

2. By this writ petition under Article 226 of the Constitution the petitioner has challenged the rejection of the application made by his son for admission to medical course in Bombay. The petition also seeks to challenge the provision of eligibility contained in Rule 3 enacted by the Government for the purpose of giving admission to the children of Defence personnel in Government Medical and Dental Colleges.

3. The petitioner is serving in the Indian Army holding the rank of Lieutenant Colonel. He was commissioned in the Indian Army on 12-5-1974 and was posted in State of Punjab, U. P. and Maharashtra between the years from 1974 to 1980. After the birth of his son by name Shishir in July 1980 he was posted in the State of Rajasthan, U.P., Punjab and Assam. His son had passed his S.S.C. from Punjab and thereafter did his 11th and 12th standard in Science from Maharashtra. He passed his H.S.C. examination by obtaining 92% marks in Physics, Chemistry and Maths Group and 91.66% marks in the Group of Physics, Chemistry and Biology and about 90% marks in the aggregate. He had applied for admission to the Medical College in the prescribed form from the reserved category for

children of defence personnel. Government of Maharashtra has reserved 5% seats in the Medical and Dental Course for the children of Defence service personnel and Ex-Defence personnel. The relevant Rule framed by the Government for the purpose of the eligibility of such children is Rule 3 of Annexure "C" to the Rules for 1997-98 which is as follows :

"To be eligible for a seat in Defence category the parent of such an applicant who was/is a member of the Armed Forces must be a domicile of Maharashtra State. In addition to this, applicant must have passed qualifying examination and S.S.C. examination from the recognized School/College situated in the State of Maharashtra. However, this condition is not applicable to Def-3 below. The applicant will be required to produce a Domicile Certificate in respect of his/her parent, issued by District/Metropolitan Magistrate."

4. The said 5% seats in turn are divided as per the Break-up laid down in para 4 thereof which is as follows :

"Out of the seats so reserved for particular university area, the seats will be distributed in following sub-categories.

(a) Def-1 - For a son/daughter of an ex-Defence Service personnel.

(b) Def-2 - For a son/daughter of Active Defence Service personnel.

(c) Def-3 - For a son/daughter of Active Defence Service personnel transferred to Maharashtra State from outside Maharashtra.

For selection against Def-3 category, an applicant must be able to satisfy that while the parent was duty-bound to move out to Maharashtra State by virtue of parent's bona fide transfer in public interest, the applicant had to continue his studies for the H.S.C. (or equivalent) examination, as he could not shift to Maharashtra State in the middle of the academic term."

5. According to Rule 3, in order to be eligible for applying to this reserved category the applicant's parent must be a member of Armed Forces and domiciled in the State of Maharashtra. In addition the applicant must have passed qualifying examination i.e. H.S.C. and S.S.C. Examinations from the recognised college/school in the State of Maharashtra. The applicant in this case i.e. the son of the petitioner had passed H.S.C. examination from the State of Maharashtra. He had passed S.S.C. examination from the school outside the State of Maharashtra i.e. from the State of Punjab and, therefore, his application came to be rejected on 24th June, 1997 which is challenged before us.

6. Mr. Paranjape, the learned Advocate appearing on behalf of the petitioner contended that the Rule is unreasonable and also discriminative. According to him the petitioner, by virtue of serving in Armed Force, was transferred outside Maharashtra and, therefore, the condition that the child also must have passed S.S.C. from the State of Maharashtra is absolutely unreasonable condition. Secondly, he contends that the unreasonable discrimination has been made

between the children of the persons placed in the situation of the petitioner and the other Defence personnel who are transferred to Maharashtra State from outside Maharashtra. It is pointed out that while so far as the petitioner was concerned, who was domiciled in the State of Maharashtra, his children are required to pass not only the qualifying examination i.e. H.S.C. from the State of Maharashtra but also S.S.C. examination, however, in the case of the Defence personnel domiciled outside Maharashtra but transferred to State of Maharashtra, there is no condition of passing S.S.C. examination from the State of Maharashtra and, therefore, Rule 3 ought to be struck down as being discriminatory when the Rule seeks to make discrimination in respect of two persons who are equally situated.

7. There is substance in the contention raised by Mr. Paranjape on behalf of the petitioner. The petitioner who belongs to the active Defence personnel and had to work outside Maharashtra from time to time due to exigency of service cannot be expected to leave his children in the State of Maharashtra for the purpose of doing S.S.C. Although the petitioner is domiciled in Maharashtra, it may not have been convenient or feasible for him to leave his son in the State of Maharashtra for the purpose of doing his S.S.C, while the petitioner along with his wife and other family members were staying outside Maharashtra at the place where he was posted for duty. Such rule works hardship and is absolutely unreasonable, unfair and unjust. Mr. Paranjape has brought to our notice the decision of the Supreme Court in the case of Meenakshi Malik Vs. University of Delhi and Others, . In that case the Supreme Court was considering the condition prescribed for the Entrance Examination for admission to the Medical College in Delhi which required that the candidate should have received last two years education in any school in Delhi. The father of the candidate was employed in Government service and was transferred to a foreign country by reason of his posting there by the Government. It was held by the Apex Court that such a condition or the rule could not be made applicable in case of the petitioner in that case who had to stay abroad due to his posting there by the Government and, therefore, the condition of receiving last two years education in any school in Delhi was considered as unreasonable.

8. Mrs., Gokhale, learned A.G.P, appearing on behalf of the State contended that the preference in admissions on the basis of residence as well as institutional preference is permissible and has been permitted by the Supreme Court. She placed reliance on the recent decision of the Supreme Court in the case of Anant Madaan and others Vs. State of Haryana and others, . in that case the Supreme Court was considering the condition of eligibility prescribed by the Haryana Government which is to the effect that the candidates had to study 10th, 10+1 and 10+2 classes as regular candidates in recognised institutions in Haryana. The Supreme Court after referring to and relying on its earlier decisions upheld the decision of the Delhi High Court and did not strike down the condition on the ground that the institutional preference was permissible so long as there was no total reservation on the basis of residential or institutional preference. The

question which is posed in this case was not at all raised in that petition. On the contrary the said judgment makes a reference to Meenakshi Malik's case (supra) which we have referred to above and it was pointed out that that was a hard case where the candidate's parent had no real choice in the matter and, therefore, the rigour of conditions requiring that the last two years of education should be received in Delhi was relaxed in that case. The facts in the instant case are squarely covered by the ratio of the decision in Meenakshi Malik's case and in the present case also we find that the rule would work hardship to the candidates whose parents are compelled to stay outside the State of Maharashtra by reason of their posting by the Government outside Maharashtra. In this case the petitioner being a Defence personnel he had no choice at all and had to accept his posting wherever he was transferred.

9. We are, therefore, of the view that the condition laid down in Rule 3 above meant for the children of Defence personnel that the candidate must have also passed the S.S.C. examination from the recognised school or college from the State of Maharashtra cannot be made applicable to the child of persons placed in the situation of the petitioner.

10. Mrs. Gokhale, learned A.G.P, points out that since interim relief was not granted in this case all seats must have been filled and it will not be possible to grant admission to the son of the petitioner by adding to the seats unless other facilities are available. Mrs. Gokhale, however has not been in a position to point out whether all seats are filled up and whether it is possible to accommodate the petitioner's son. Though interim relief was refused, liberty was given to apply for fixed date of hearing and the Respondents were having notice of this Petition.

11. In the circumstances we allow this petition and strike down Rule 3 to the extent it imposes the condition that the child of the defence personnel has to pass S.S.C. examination from the recognised school/college situated in the State of Maharashtra. We also quash and set aside the communication dated 24-6-1997 annexed as Exhibit "F" to the petition intimating the petitioner the invalidity of the claim of the petitioner's son. Since the admissions were finalised during the pendency of this petition of which the respondents had the knowledge, we direct the respondents to decide the claim of the petitioner's son for admission according to the merits from the said reserved category within a period of 15 days. We thus allow the petition in terms of the above and make the rule absolute accordingly.

12. Authorities to act on the ordinary copy of this order duly authenticated by the Sheristadar of this Court.