
(2017) 10 BOM CK 0154
In the Bombay High Court
Case No : 05918 of 2013

Vishnu Namdeo Shinde

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-10-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 10 BOM CK 0154

Hon'ble Judges : R. M. Borde, Vibha Kankanwadi

Bench : DIVISON BENCH

Advocate : R.G. Hange, S.B. Yawalkar, A.V. Hon

Judgement

1. Rule. Rule made returnable forthwith. By consent, heard finally.

2. Petitioner's son Swapnil had appeared for CET examination in 2007-2008. A seat was reserved for him in respondent No. 4 College as per the merit list for Swapnil. The said seat was reserved for Scheduled Caste category from Government quota. Respondent No. 4 had then sent letter to Pravesh Niyantaran Samiti on 15-08-2008 for the approval, after closure of common process 2008-2009. Pravesh Niyantaran Samiti accorded approval to the list submitted by respondent No. 4 on 25-02-2009. Swapnil was admitted from SC quota of the Government as per rules and therefore he was getting tuition and examination fees as per the Government Resolution (GR) dated 09-02-2007. Thereafter Government has issued GR dt. 27-07-2009 to 29-10-2010. By way of both these GRs, the candidates belonging to SC category, who have taken admission to the Course of MBBS were to get tuition and examination fee from the State till the completion of their course. Thereafter, respondent No. 3 had informed respondent No. 4 on 12-07-2012 that the candidates who have been admitted after CAP round are not entitled to get tuition and examination fee from the Government in view of GR dt. 03-02-2012. Petitioner had deposited Rs.1,00,000/ on 18-09-2012 with respondent No. 4 towards fees. A notice has been displayed

on the notice board by respondent No. 4 about 810 days prior to 23-05-2013 calling upon those students to deposit arrears of fees, who are taking benefit of GR dt. 27-07-2009 and 29-10-2010. The last year MBBS exam was scheduled on 23-05-2013. Petitioner apprehended that if fees regarding tuition and examination fees of Swapnil are not paid then he will not be allowed to appear for the exams. It has been contended that the GR has been misinterpreted and tried to be made applicable to Swapnil. It has been contended that the action of respondent No. 4 is arbitrary and violative of Art. 14 of the Constitution of India. Hence, writ jurisdiction under Art. 226 of Constitution of India has been invoked to get the said communication dt. 12-07-2012 by respondent No. 3 to respondent No. 4 set aside. Directions are sought against respondent No. 1 to 3 to deposit tuition and examination fees in respect of Swapnil.

3. Affidavit in reply has been filed by Bapu Dasri, Social Welfare Officer on behalf of respondent No. 3. He has stated that only those reserved category students who are selected through Government CAP round are entitled to get the benefit of scholarship/ free ship/ reimbursement of fees. If seats remained vacant after completion of CAP round, there can be admission at College level according to the intake capacity. It is termed as management quota admission. They are not made through CAP round admission. Pravesh Niyantran Samiti gives approval to lists of students, which are CAP round and management quota/ institutional level. Petitioner was given admission at the institutional level. GR dt. 27-07-2009 and 29-10-2010 pertain to reimbursement of tuition fees and examination fees of the students who have taken admission for professional course in grant in aid or permanent nongrant in aid educational institution. GR clarifies that the students who have taken admission at management level/ institutional level are not entitled to get the benefit of the provisions in the resolution.

4. Reply has also been given by respondent No. 4 in the form of affidavit of Dr. Mrs. Sarita Mantri, Principal of the Institution. It has been specifically stated that intake of the Medical College is 100 students. Out of the same 85 seats were filled by Government and 15% NRI quota. Only 70 students had taken admission out of 85 by the end of third round. Thereby 15 seats remained, hence competent authority had sent selection list of Association CET 2008, as per the orders of this Court and the directions were given to display the list on the website. The College had accordingly published a list on 14-09-2008. Petitioner's son was admitted from SC category after the said procedure. Necessary approval has been taken from Pravesh Niyantran Samiti. The names of the students so admitted has also been approved by Maharashtra University of Health Science. The Social Welfare Department had granted free seat scholarship for two years after the admission to the son of the Petitioner. Thereafter the proposal was sent to Assistant Commissioner, Social Welfare for grant of scholarship to the son of the Petitioner on 14-02-2012; however it has been turned down.

5. Heard learned Counsel for Petitioner, learned AGP for respondent No. 1 to 3 as

well as learned Counsel for respondent no.04. Respondent No. 1 to 3 have disputed the admission of the son of the Petitioner on Government seat. However, the position has been made clear in the affidavit on behalf of respondent No. 4. The intake of respondent No. 4 College was 100 students. Government had sent list of 85 students; however, only 70 students had taken admission from that quota. There were still 15 seats available. It appears that under the orders of this Court at Principal seat and other institutions, the procedure was undertaken to fill those 15 seats. Accordingly, son of the Petitioner was admitted from reserved category. Therefore, it can not be said that the admission of the son of the Petitioner was at the institutional level. It is also to be noted from the documents produced by respondent No. 4 that the admission of the son of the Petitioner has been approved by Pravesh Niyantran Samiti.

6. It is not disputed that son of the Petitioner is from reserved category. Government issued the GR dt. 09-02-2007 for the reimbursement of the tuition fees and examination fees of students from Scheduled caste category, who are taking education in aided as well as unaided institutions imparting professional education. The effect of the said GR was extended from time to time, every academic year. Government Resolution dt. 27-07-2009 clearly states that the students of Scheduled Caste category, who have taken admission in 20-06-2007, 20-07-2008 and 20-08-2009 would get the benefit under the GR till the end of the course. That means till the completion of the course. Thus, it can be seen that a right was created in favour of such students to get reimbursement till the completion of their respective courses, in view of the said resolutions. Any subsequent resolution, will not take away the right of the said students, who were given assurance and actual benefit in the past as per the earlier resolutions. Therefore, the benefit of the scheme ought to have been extended to the son of the Petitioner. Respondents No. 1 to 3 have wrongly concluded that the admission of the son of the Petitioner was at the institutional level and therefore, he is not entitled to get the reimbursement of his tuition fees and examination fees.

7. In *Amol Yashwantrao Bhondwe and others v/s. Aditya Dental College* decided by the Division Bench of this Court on 15th July 2010 (W. P. No. 6250 of 2009), it has been observed that, "After scrutinizing the relevant documents placed on record and carefully appreciating the submissions of the counsel appearing for Pravesh Niyantran Samiti, we are of the view that the candidates whose admission was approved by the Pravesh Niyantran Samiti are entitled for the benefit of reimbursement of tuition fees in view of the policy decision taken by the State.. In view of this decision, the respondents ought to have reimbursed the amount of tuition and examination fees of the son of the Petitioner. For these reasons, the petition deserves to be allowed. Hence we pass following order.

Order

(a) The writ petition is allowed.

(b) Communication dt. 12-07-2012 issued by Assistant Commissioner, Social Welfare Latur - respondent No. 3 to respondent No. 4 is hereby quashed and set aside.

(c) Respondent No. 2 and 3 are directed to reimburse the tuition and examination fees of Swapnil Vishnu Shinde admitted to respondent No. 4 - Maharashtra Institution of Medical Science and Research Medical College, Latur for the third and fourth year of MBBS course within three months from the date of receipt of this order.

(d) Rule made absolute in the above terms. There shall be no order as to costs.