

(1996) 09 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 4296 of 1996

Yogini @ Mona Avinash Nath

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : (1997) 2 BomCR 379

Hon'ble Judges : D.K. Deshmukh, J; A.V. Savant, J

Bench : Division Bench

Advocate : P.M. Pradhan, for the Appellant; R.D. Rane, A.G.P. for respondents Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

A.V. Savant, J.—Heard both sides.

2. On motion made by Mr. Pradhan for the petitioners, the names of the respondents Nos. 4 and 5 are deleted.

3. Rule was issued in this petition on 26th August, 1996 by us and having regard to the nature of the relief claimed, it was made returnable within a period of two weeks.

4. The short point that falls for our consideration is the validity of Rule 3. 3. 3. 2 of the Rules for admission to the medical, dental, ayurved and homeopathy courses in the State of Maharashtra for the academic year 1996-97. The said Rule reads as under :---

"Rule : 3. 3. 3. 2 :---The applicants who have passed S.S.C. (or equivalent) and/or H.S.C. (or equivalent) examination from an Institution situated out-side Maharashtra but within the territory of India and whose parents are domicile of Maharashtra State will be eligible for admission in relaxation of rule 3. 3. 1 and/or 3. 3. 2."

5. The admitted facts are that the petitioner is the daughter of an Officer of the Indian Administrative Service, who was deputed by the Government of India to the United Kingdom in or about 1987 to receive training at Manchester University under the Colombo Plan as part of his duties. Consequently, the petitioner's father was required to take his family to United Kingdom and the petitioner was admitted to the Stamford High School in the VIIIth Class. This change of residence took place because of the deputation of the petitioner's father to United Kingdom as part of his duties. The petitioner passed the General Certificate of Secondary Education (G.C.S.E) Examination, conducted by the Northern Examination and Assessment Board. The certificate at Exh. "A" page 19 shows that the petitioner has passed the said examination, held in the summer of 1993. The certificate at page 20 is to the effect that the petitioner has passed the said examination conducted by the said Board. At Exh. "B" page 21, is the certificate issued in March, 1996 to the effect that the Associated Examining Board, Stag Hill House, Guildford Surrey, would have no objection to releasing the petitioner's raw marks for each component of the examination. At Exh. "C" page 22, is the certificate to the effect that the petitioner is studying Chemistry, Biology and Psychology at "A" level and was eligible to apply for a Degree in Medicine at a British University. At Exh. "D" page 23, is the letter dated 2nd August, 1996, issued by the Registrar of the University of Poona to the petitioner stating that on scrutiny of her certificates it was found that she was provisionally eligible to take the admission for First M.B.B.S. Course subject to the condition of producing Physics Certificate of XIIth Standard.

6. In the affidavit filed by Smt. S.S. Gokhale, the concerned Administrative Officer in the office of the 2nd respondent-Director of Medical Education and Research, it is stated in para 1 that the petitioner has passed the 10th Standard Examination as well as the 12th Standard Examination in Astrom-Under-Lyle-Sixth from College of Lancashire in United Kingdom which is out-side India and therefore, in view of the Rule 3. 3. 3. 2 quoted above, the petitioner was not eligible for admission to the M.B.B.S./B.D.S. Course for the Academic Year 1996-97 as per the Rules of the Government of Maharashtra vide its resolution, dated 6th June, 1996 for the year 1996-97. The fact that the petitioner's father is domicile of the State of Maharashtra is not disputed in the affidavit as is evident from the concluding portion of para 1 of the said affidavit. However, it is stated that since the petitioner's father was on deputation to United Kingdom at Manchester University under the Colombo Plan, the petitioner was not eligible to seek admission since she had passed equivalent examinations, namely, 10th and 12th Standard from U.K. i.e. to say from an Institution outside the territory of India.

7. The question is whether the total ban imposed by Rule 3. 3. 3. 2 quoted above, is at all reasonable and has any nexus with the object to be achieved in framing the Rules.

8. In this behalf we may refer to the corresponding rule framed by the State

Government for admission to the medical and dental courses during the last year i.e. to say Academic Year 1995-96. The Rule 3. 3. 3. 2 appearing at page 5 of the said rules reads as under :---

"Rule 3. 3. 3. 2 :---The applicants who have passed S.S.C. (or equivalent) and/or H.S.C. (or equivalent) examination from an institution situated outside Maharashtra and whose parents are domicile of Maharashtra State will be eligible for admission in relaxation of para 3. 3. 1 and/or 3. 3. 2."

The comparison of Rule 3. 3. 3. 2 for the Academic Year 1996-97 with the corresponding rule of the previous year would show that the following words have been added this year after the words "situated out-side Maharashtra." The added words are "but within the territory of India". Except the addition of the words "but within the territory of India" the rest of the words of the rule are the same this year. The result of this rule introduced this year would be that a student like the petitioner who was compelled to take education abroad as a result of her father's posting as a public servant abroad, is totally prevented from even seeking admission to a medical course this year. The petitioner claims to belong to the reserved category of Scheduled Caste. Assuming that she has passed the corresponding qualifying examinations in Great Britain and assuming that she is eligible to be considered for admission on merits for a payment seat, as stated by Mr. Pradhan, we fail to see any justification for total ban imposed for the first time in the Rules of 1996-97 without any notice to the parents or to the students, which is normally the requirement of such a rule.

9. In this behalf we may refer to the observations made by this Court in its Full Bench decision in the case of Ashwin Prafulla Pimpalwar and etc. Vs. State of Maharashtra and Others, . The learned Judges have with approval quoted the observations of P.D. Desai, J., as he then was, in Kumari Jayashree Chandrachud Dixit v. State 1979 20 Guj. L.R. 614. Said observations are to the following effect :---

"Now, it might be clarified at the outset that though the State Government has every right to frame rules regulating admission to Government Colleges based on certain rational policy and to amend them, if occasion arises, to remove any defect or lacuna, it would be always desirable to formulate and finalise such rules with precision well in advance and to make the rules relating to admission known to the intending applicants at a point of time reasonably anterior to the last date of admission. In a society governed by the rule of law, certain basic principles must be observed. One of such principles is that enactments or orders governing public rights and duties must be open and adequately published and that they should be relatively stable. If such an enactment or order is to guide the people, they must be able to find out what it is and it should not be changed too often. An ambiguous, vague, obscure or imprecise enactment or order is likely to misguide or confuse those who are to be guided by it and too frequent changes would make it well-nigh difficult, if not impossible, for the people to make long-term planning and decisions.

.....If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. This principle would govern the framing of rules for admission to the Government Medical Colleges because those institutions are run out of public funds and the Government in framing its policy in regard to the admission to those Colleges must act with some predictability. Frequent changes made in the rules are likely to introduce uncertainty and, as experience has shown result in plethora of litigation. The State Government would be well-advised, therefore, to consider all the relevant questions relating to its policy in the matter of admission to Government Colleges well in advance of the start of the academic year and to formulate rules based on such policy and make such rules known to the intending applicants by giving to it suitable publicity. No departure should ordinarily be made once such rules are published unless for compelling reasons it is necessary to do so in order to meet exigencies of the situation.it would be desirable for the State Government to give to these rules some permanency after taking into account all relevant facts and circumstances. Besides, it would be desirable to get the rules examined by an independent Committee of experts which might consist not only of Government officials but also outsiders such as the Deans of the Medical Faculty of the Universities and representatives of the Indian Medical Council. Once such rules are framed, they should ordinarily be not amenable to change straightway by exercise of executive powers. Any such amendment, even if necessary, should only be made in consultation with such Committee. It would also be desirable to have the rules examined by the Legal Department of the State Government in order to ensure against possible litigation as also to cast them in suitable precise verbal formula so that interpretation of the rules on account of unhappy or equivocal expression does not raise problems not only the students but also for the Court.".

10. The above quoted observations would make it clear that in a society governed by the rule of law, certain basic principles must be observed. One such principle is that enactments or orders governing public rights and duties must be open and adequately published and that they should be relatively stable. It is necessary that the State Government should consider all the relevant questions relating to its policy in the matter of admission to State Government Colleges well in advance of the start of the academic year and to formulate the rules based on such policy and make such rules known to the intending applicants by giving to it suitable publicity. No departure should ordinarily be made once such rules are published unless for compelling reasons it is necessary to do so in order to meet exigencies of the situation. We asked Mr. Rane, the learned Additional Government Pleader as to whether the Government record shows any justification for a departure from the relevant rules for 1995-96 to the one framed this year. The learned Additional Government Pleader on taking instructions fairly states that he could find no material in the Government file to justify such a departure.

11. In this behalf we wish to emphasise that in all State actions the State and its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. It is well settled that a public authority possesses powers only to use them for public good. This imposes duty to act fairly and to adopt a procedure which is fairplay in action. If this principle is borne in mind and the impugned rule is tested on the touch-stone of Article 14, we have no hesitation in coming to the conclusion that addition of the words "but within the territory of India" is wholly arbitrary.

12. In view of the above, we find that the total ban imposed by Rule 3. 3. 3. 2 for those who have passed S.S.C. or H.S.C. or equivalent examinations from outside the territory of India, but who are otherwise eligible, is totally unreasonable and arbitrary. Indeed such a rule would make it almost impossible for a public servant to adhere to the call of duty and still satisfy the eligibility criteria for his child even to seek admission to a medical course in Maharashtra. In our view such a total ban is wholly unreasonable and we see no rational nexus with the object to be achieved in framing such a rule for admission to the medical courses.

13. Accordingly, we hold that the addition of the words "but within the territory of India", appearing in Rule 3. 3. 3. 2 for the academic year 1996-97 is wholly arbitrary and the same is violative of the guarantee contained under Article 14 of the Constitution of India, which ensures that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. We accordingly strike down the words "but within the territory of India", which have been inserted for the first time in the rules for admission to the medical course in the State of Maharashtra for the academic year 1996-97.

14. We make it clear that with the deletion of the said words, the rest of the rules would be the same as Rule 3. 3. 3. 2 for the last year, namely, academic year 1995-96 which would govern the field.

15. We wish to make it clear that the question of the petitioner being otherwise eligible and-or acquiring or having passed the requisite qualifying examinations, equivalent to the 10th and 12th Standard in Maharashtra is left open. Similarly, the question as to whether the petitioner is otherwise entitled to seek admission in the reserved category as a Scheduled Caste candidate against a payment seat should be decided on its own merits and we make no observations on the merits of these aspects of the matter.

16. The rule is made absolute accordingly and the respondents are directed to consider the petitioner's application for admission in the light of what we have stated above.

17. No order as to costs.