



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10744 OF 2023

Priti Yadav @
Priti d/o BirendraKumar Yadav,
Age: 20 years, Occu.: Student,
R/o. Vrindavan Colony, Yeola Road,
Manmad, Nagadgaon Rural,
Taluka, Nagadgaon, Dist. Nashik.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through, Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai – 02.
2. Directorate of Ayush, Mumbai,
Through its Director,
Shivaji Terminus Area, Fort,
Mumbai, Maharashtra.
3. Maharashtra University of Health
Sciences, Nashik
Through its Vice-Chancellor,
Mharsul, Vani Dindori Road,
Nashik, Maharashtra.
4. Shri. Vivekanand Nursing Homes
Ayurveda College, Ahmednagar
Through its Dean/Director,
Rahuri, Taluka Rahuri,
District Ahmednagar, Maharashtra.
5. Maharashtra State CET Cell,
Through its Commissioner,
New Excelsior Building, A.K. Marg,
Fort, Mumbai, Maharashtra.
6. The Admission Regulatory Authority,
Department of Education,
New Excelsior Building, A.K. Marg,
Fort, Mumbai, Maharashtra.

.. RESPONDENTS

...
Mr. A. D. Ostwal, Advocate h/f Mr. S. S. Munot, Advocate for the petitioner.

Mr. S. J. Salgare, AGP for respondent Nos.1 and 2 – State.

Mr. A. R. Kale, Advocate for respondent No.3.

Mr. Pavan Salunke, Advocate for respondent No.4.

Mr. S. G. Karlekar, Advocate for respondent Nos.5 and 6.

...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 19th APRIL, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

1. Not on board. Upon mentioning, matter is taken on board.

2. The petitioner has prayed for quashing and setting aside the order dated 29.03.2023 passed by Directorate of AYUSH, Mumbai i.e. respondent No.2 and communicated to the petitioner on 19.05.2023, thereby she has been held to be not eligible to take admission in B.A.M.S. course. Further, consequential prayers are also sought. Petitioner also challenges Rule 2(q) and 5 of the Maharashtra unaided Private Professional Education Institutions (Regulation of Admission to the Full Time Professional Undergraduate Ayurved, Unani Homeopathy, Physiotherapy, Occupational Therapy, Speech Therapy, Prosthetic and Orthotics and Bsc.Nursing Courses) Rules, 2016 and clause 4.6 of the NEET UG-2022 Information Brochure of Preference System for admission to Health Science Courses in State Government / Corporation / Private and Minority Colleges issued by the Office of

Commissioner State CET Cell, Maharashtra State Mumbai as violative of Article 14, 19 and 21 of the Constitution of India.

3. The factual matrix leading to the present petition are that the petitioner was aspirant of pursuing her career in Bachelor of Ayurveda Medicine and Surgery (B.A.M.S.). She had given National Eligibility Cum Entrance Test for Under-Graduates (NEET-UG) in the year 2022. She enrolled herself for admission in a medical college through CAP/Mop-up rounds by filling an online application form. She was selected for admission in Shri. Vivekanand Nursing Homes Ayurveda College, Ahmednagar i.e. respondent No.4 on 06.01.2023 in the state quota. She took admission in the said college on 10.01.2023 and submitted all the requisite documents. The Directorate of AYUSH i.e. respondent No.2 by way of its decision dated 29.03.2023 held that the petitioner is not eligible to take admission in B.A.M.S. Course. It is then stated that it was due to her HSC was from outside the State. The petitioner says that she originally hails from Ramapur Village, Taluka Ara, District Bhojpur, Bihar. Her father along with family came to Maharashtra on 11.07.2006, when she was three years old, for joining his services in Indian Railways. The petitioner was in Maharashtra for almost entire period. She is domicile of the State of Maharashtra and accordingly, domicile certificate has been issued by Tehsildar Nandgaon, District Nashik to her. She completed her

education from 1st to 10th standard from the State of Maharashtra, however, due to family reasons, she was required to go to her ancestral home in Ramapur village, Taluka Ara, District Bhojpur, Bihar to complete her 11th standard. But due to Covid-19 pandemic situation and the lock-down imposed, she had to complete her 12th standard from the State of Bihar. She is a meritorious student, but now because of this situation she has been held to be not eligible. She had made several representations to the authorities to consider her background. Hence, this petition.

4. Heard learned Advocate Mr. A. D. Ostwal holding for learned Advocate Mr. S. S. Munot for the petitioner, learned AGP Mr. S. J. Salgare for respondent Nos.1 and 2 – State, learned Advocate Mr. A. R. Kale for respondent No.3, learned Advocate Mr. Pavan Salunke for respondent No.4 and learned Advocate Mr. S. G. Karlekar for respondent Nos.5 and 6.

5. Learned Advocate Mr. A. D. Ostwal appearing for the petitioner has taken us through all the documents annexed and submits that though the petitioner had completed her 1st to 10th standard in Maharashtra, she was required to move to her native place in Bihar just to look after her grandmother, but then unfortunately due to Covid-19 pandemic situation lock-down was imposed and she was required to remain there. She completed her 12th standard from Bihar.

Learned Advocate for the petitioner relies on the three Judge Bench decision of the Hon'ble Supreme Court in **Dr. Pradeep Jain and others Vs. Union of India and others, [(1984) 3 SCC 654]**, wherein it has been observed that, "wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit, must be condemned, and are unconstitutional and void as being in violation of Article 14 of the Constitution." Further, he relies on the decision in **Ahmedabad Municipal Corporation and another Vs. Nilaybhai R.Thakore and another, [(1999) 8 SCC 139]**, wherein the rule that admission was confined to local students for qualifying examination from any of the High Schools or colleges situated within the municipal limits of Ahmedabad was held to be arbitrary, as it provides the classification which is not reasonable and which has no nexus with the object sought to be achieved. He submits that that even in **Shri. D.P. Joshi Vs. State of Madhya Bharat and another, [AIR 1955 SC 334]**, the Constitution Bench of Hon'ble Apex Court held that classification should not be in contravention of Article 14 of the Constitution of India. He further relies on the decisions of the Hon'ble Supreme Court as well as this Court in **P. Rajendran and others Vs. State of Madras**

and others, [AIR 1968 SC 1012], Meenakshi Malik Vs. University of Delhi and others, [(1989) 3 SCC 112], Vaidhehi Subhash Natu Vs. State of Maharashtra and others, [1997 (3) Mh.L.J. 672], Dipali d/o Uttamrao Dakre, Nanded Vs. State of Maharashtra and others, [1999 (1) Mh.L.J. 723], Rajiv Purshottam Wadhwa Vs. State of Maharashtra, through its Department of Medical Education and Drugs and others, [2000 SCC OnLine Bom.359], Rachna Sanjay Kuwar Vs. State of Maharashtra Through Secretary, Medical Education and Medicine Department and another, [2022 SCC OnLine Bom. 530] and Priya Kedar Gokhale and another Vs. State of Maharashtra, Through Ministry of Education and others, [2022 SCC OnLine Bom. 11645] to support his contention that the rule on which the eligibility of the petitioner has been questioned itself is void. He prayed for mercy to protect the admission that has been granted to the petitioner and submitted that if protection is not granted, then a meritorious girl would lose her seat and ambition.

6. Learned Advocate Mr. Karlekar appearing for respondent Nos.5 and 6 categorically submitted that the rules have been tested in many decisions and its constitutional validity has been upheld. Therefore, the petitioner cannot once again challenge the same. He relies on the decision of the Hon'ble Supreme Court in **Rajdeep Ghosh Vs. State of Assam and Others**, [AIR 2018 SC 3832] wherein it has been held that "it is permissible to lay down essential requirements, residential /

domicile in a particular State in respect of basic courses of MBBS / BDS. Object sought to be achieved is that incumbent must serve State concerned and for emancipation of educational standards of people who are residing in a particular State. Rule 3(1)(c) lays down requirement of obtaining education in State and relaxation has been given to wards of State Government employees or Central Government employees or to employee of Corporation / Agency / instrumentality under Government of Assam or Central Government whether on deputation or transfer on regular posting from obtaining education from class VII to XII for period his/her father or mother is working outside State.” Here, in this case, though the petitioner contends that her father is a Central Government employee, yet during her 11th and 12th standard, the father was still posted in Maharashtra, but for domestic reasons, the petitioner had gone to native place in Bihar and took education there. Her case is not so covered in the exception. The same rules were challenged before this Court in **Yash s/o Kumar Waghmare Vs. The State of Maharashtra and others, [Writ Petition No.12210 of 2021 decided on 23.12.2021]**, wherein it was held that :-

“20. The Apex Court in the said case considered whether the classification made in the Rule 3(1)(c) to Rules of 2017 is unreasonable and violative of provisions contained in Article 14 of the Constitution of India. The Apex Court upheld the said Rules and observed that, said Rule is in consonance with the spirit of Article 14 of the Constitution of India. It also observed that, it is

permissible to lay down the essential educational requirements, residential / domicile in a particular State in respect of basic courses of MBBS / BDS / Ayurvedic.

21. In the present case, Rule in question lay down the requirements of obtaining education in the State and relaxation has been given to the children of the employee of the Government of Maharashtra or its undertaking who have joined services since beginning at a place situated outside the State of Maharashtra, but who have been transferred to a place situated within the State of Maharashtra shall be eligible for admission, even though such children might have passed HSC or SSC or equivalent examination from the recognized institution situated outside the State of Maharashtra. The relaxation is also provided to the children of the employee of the Government of Maharashtra or its undertaking who have been posted or transferred or deputed to the place situated outside the Maharashtra. Exception granted to these employees would be reasonable.

22. The policy is formulated by the experts in the educational field. This Court would normally not interfere with the educational policy framed by the experts, unless it is shown that, the policy is manifestly unjust, irrational or arbitrary.”

Again those rules were upheld in **Nibir Jyoti Das Vs. State of Maharashtra and others**, [2021 (5) Mh.L.J. 681]. He, therefore, submitted that under the given circumstances, the petitioner cannot be said to be eligible to get the admission in the State for B.A.M.S. Course.

7. At the outset, we would like to say that though the petitioner has challenged the rules in the entire memo of the petition, the basic ground or the reason for challenge does not appear to have been elaborately stated. When already the rule has been tested by this Court as well as Hon'ble Supreme Court, then it leaves less scope for any further interpretation. In **Priya Kedar Gokhale (Supra)** and **Rachna Sanjay Kuwar (Supra)** taking note of all the earlier decisions almost similar facts have been stated for claiming benefit of State quota. The Hon'ble Apex Court in **Rajdeep Ghosh (Supra)** held that, "Rule 3(1)(c) of the Rules of 2017 were in consonance with the spirit of Article 14 of the Constitution of India. It was observed that it was permissible to lay down the essential educational requirements, residential/domicile in a particular State in respect of basic courses of MBBS / BDS / Ayurvedic." We need not reproduce the observations in those cases once again, as that has been rightly pointed out. The petitioner's case cannot even fall under the exceptional category for the simple reason that during her 11th and 12th standard, her father still remained in Maharashtra. He was discharging his duties, but the petitioner shifted to Bihar allegedly to look after her grandmother. When the rules do not permit such student to take admission or in other words such students cannot be given admission, then it ought to have been considered by the college, which had given admission to the petitioner. All those documents ought to have been considered well in advance,

which could have reduced the difficulties of the petitioner. We do not find that there is merit in the challenge to the rules or the impugned communication. No case is made out for exercising constitutional powers of this Court under Article 226 of the Constitution of Indian. Hence, the writ petition stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm