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2569.22WP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2569 OF 2022

Rachna Sanjay Kuwar

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through Secretary,
Medical Education and Medicine Department,
Mantralaya, Mumbai – 32.
2. Government Maharashtra State
Common Entrance Test Cell
Through Competent Authority and
Commissioner, Maharashtra State,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai – 400 001
Email. Maharashtra.cetcell@gmail.com

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..RESPONDENTS

...
Mr. Shailesh P. Brahme, Advocate for Petitioner.
Mr. S. B. Yawalkar, Addl. G.P. for Respondent No.1
Mr. S. G. Karlekar, advocate for respondent no.2.
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**CORAM : S. V. GANGAPURWALA &
S.G. DIGE, JJ.**

RESERVED ON : 01.03.2022.

PRONOUNCED ON : 11.03.2022.

JUDGMENT (Per S. G. DIGE, J.) :-

. Rule. Rule made returnable forthwith. With consent of the parties taken up for final hearing at admission stage.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner seeks directions against the respondents to correct her NRI quota and to consider her from the State quota for Maharashtra for NEET-UG-2021. The petitioner is also challenging the communication classifying her in NRI quota.

3. Respondent no.1 - Medical Education and Medicine Department is the Department of the Government pertaining to education in Health Sciences. Respondent no.2 - Government Maharashtra State Common Entrance Test Cell, who is the Competent Authority to conduct the common entrance test. The said authority is to oversee the Centralized Admission Process for health sciences courses.

4. Brief facts of the case are as under :-

. The petitioner is aspirant of admission to M.B.B.S. course. The petitioner and her parents are residents of Shahada, Tq. Shahada, Dist. Nandurbar. They have immovable properties at Shahada. The petitioner's father is Scientist in Department of

Space (ISRO), the Government of India. His job is transferable. The petitioner has passed her S.C.C. and H.S.C. examination from Bhopal (State of Madhya Pradesh). The respondents conducted NEET-UG-2021. The petitioner had enrolled for the said entrance test. The petitioner has applied from the reserved category. The caste certificate of Scheduled Caste is issued to the petitioner by the Sub-Divisional Officer, Shahada. On 17th January, 2021, a programme was published by respondent no.2 regarding admission process. When the petitioner uploaded the admission form, automatically the petitioner was classified as NRI. Immediately, the petitioner made representation on 25.01.2022 to respondent no.2, but respondent no.2 did not respond to the representation. Hence the petitioner has approached this Court praying that the petitioner be treated from State quota and not from NRI quota.

5. It is the contention of Mr.S.P. Brahme, learned counsel for the petitioner that the petitioner is domiciled of Maharashtra. The petitioner and her parents are permanent resident of Shahada, Dist. Nandurbar. They have immovable properties at Shahada. A certificate of domicile of State of Maharashtra is issued to petitioner. The petitioner's father is Scientist in Department of Space (ISRO), Government of India. His job is transferable. The petitioner has completed her S.S.C. and H.S.C. examination from Bhopal (State of Madhya Pradesh). When the petitioner submitted form

for examination of entrance test i.e. NEET-UG-2021, the petitioner is classified into NRI category. Due to government service, the petitioner's father is out of Maharashtra. As the petitioner is domiciled of Maharashtra, her application should be considered under State quota and not from NRI quota. He relies upon the judgment in the case of ***Rajiv Purshottam Wadhwa V/s State of Maharashtra, through its Department of Medical Education and Drugs and others*** reported in ***2001(1) All M.R. 824***. In this judgment, the Division bench of Principal Seat of this Court has held that the State Government to consider grant of admission to students who are domiciled but due to certain circumstances have not passed 10th Standard Examination from within State. Learned counsel also relies upon the judgment in the case of ***Dipali D/o Uttamrao Dakre V/s The State of Maharashtra and others*** reported in ***1999(4) Bom. C.R. 136***. In this judgment, the Division Bench of Principal Seat of this Court held that if such a servant, who is in active defence service, is domicile of the State of Maharashtra and was posted outside Maharashtra and, therefore, his children had to take education outside Maharashtra, those children cannot be excluded from consideration to (sic for) admission to the Medical and other professional colleges in the State of Maharashtra. Therefore, the Division Bench had directed the State Government to consider re-writing of the provisos next year so that the Defence personnel are treated on par with other

Government servants.

6. It is the contention of Mr.S.G. Karlekar, learned counsel for respondent no.2 that rules are framed by the experts of education field. At the time of framing rules all aspects were considered and accordingly rules are framed. The rule providing passing of 10th and 12th standards from an institution situated in the State of Maharashtra to avail the benefit of State quota are reasonable and rational. He further submits that the last year also, the said rule was applied. It was not that for the present year only rule has been brought into effect. For all these years, the same rule was in force. He relies upon the judgments in the cases of *Rajdeep Ghosh Vs. State of Assam and others* reported in 2018(17) SCC 524, *Yellamalli Venkatapriyanka and others Vs. State of Maharashtra and others* reported in 2018(6) AIR Bom. R. 323, *Rajiv Purshottam Wadhwa Vs. State of Maharashtra and others* reported in (2001) 1 All M.R. 824, *Nibir Jyoti Das Vs. State of Maharashtra and others* reported in 2021(5) Mh.L.J. 681 and *Yash S/o Kumar Waghmare V/s the State of Maharashtra and others in Writ Petition No.12210 of 2021* decided on 23rd December, 2021.

7. Learned Additional Government Pleader Mr.S.B. Yawalkar for respondent no.1 supported arguments of learned advocate for respondent no.2.

8. In order to appreciate rival submissions, it is necessary to see the relevant rules in respect of subject matter of challenge in present petition i.e. NEET-UG-2021 Regulations. Rule 4.8 of this Regulation prescribes for children of employees of Government of India or it's undertaking, the same is extracted as under :-

"4.8. Exception for SSC (10th) and HSC (12th) or equivalent examinations : Children of employees of Government of India or its Undertaking:-

4.8.1 The children of the employees of Government of India or its Undertaking shall be eligible for admission even though they might have passed the S.S.C. (Std.X) and/or H.S.C. (Std. XII) or equivalent exam from the recognized institutions situated outside the State of Maharashtra, provided that such an employee of Government of India or its Undertaking must have been transferred from outside State of Maharashtra at a place of work, located in the State of Maharashtra and also must have reported for duty and must be working as on the last date of Document verification at a place located in State of Maharashtra.

4.8.2 The candidates belonging to the aforesaid category (1) shall be required to produce the requisite Certificate from the Office at which such an employee of Government of India or its Undertaking has reported for duty as a proof of the fact that such employee has joined the office and/or reported for duty before the cutoff date for eligibility i.e., the last date of submission of document verification. The certificate should contain full name of the employee, designation, transfer order number and

date, date of joining and present status of posting. A copy of transfer order should also be produced at the time of document verification."

9. This rule prescribes criteria for the employees of Government of India or it's undertaking. As per this rule, at the time of last date of documents verification, said Government servant or employee must be serving in the State of Maharashtra. In present case, the petitioner is domicile of Maharashtra, her father's job is out of Maharashtra and the petitioner's S.S.C. and H.S.C. examinations are completed from Bhopal (Madhya Pradesh), which does not fall under rule 4.8. Though the petitioner claiming that she be treated from State quota instead of NRI quota, it is significant to note that the petitioner has not challenged the Regulations of NEET-UG-2021 and rules of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of admission to the Full Time professional under graduate medical and dental Courses) Rule, 2016 added by Amendment Rules, 2019. Under the said Rules, the student who desires to take benefit of the State quota has to pass 10th and 12th standard examination from the institution situated in State of Maharashtra. Even for applying the Doctrine of Reading down the provision has to be challenged.

10. The admission to the private unaided professional educational institution in the State

of Maharashtra is governed by the Maharashtra Unaided Private Professional Educational Institution (Regulation of Admission and Fees) Act, 2015 and Maharashtra Unaided Private Professional Educational Institutions (Regulation of Administrator to the Full Time Professional Undergraduate Medical and Dental Course) Rules, 2016. In Rule 5 of the said Rules, 2016 amendment is made in sub-rule (1) in entry (A), after sub-entry (vii) of Rule 5 as under:

(viii) notwithstanding anything contained in sub-entries (ii), (v), (vi) and (vii), a candidate who has passed SSC or equivalent examination in 2017 or prior to that, from an institute outside the State of Maharashtra is also eligible to seek admission on this criteria, provided he has passed HSC or qualifying examination from an institute in the State of Maharashtra and also possess Domicile Certificate issued by the authority, who is competent to issue such certificate in the State of Maharashtra for educational purpose.

11. Rules, 2016 are brought into effect since August 2016. It prescribed the eligibility criteria for admission to the undergraduate Medical courses affiliated to the Maharashtra Universities of Health Sciences. Initially, for the Academic Year 2016 domicile was not a relevant criteria. If candidate who has passed SSC or equivalent examination from an institute situated outside Maharashtra State and HSC or equivalent examination from an institute situated within Maharashtra State is eligible for seeking admission to the courses, provided that he or she is Domicile of Maharashtra.

12. The Rule applicable since 2018 and followed consistently is that (i) the student should pass 10th and 12th standard from an institution situated within the State of Maharashtra and (ii) must be domicile of State of Maharashtra. Exception is if he has cleared 10th standard prior to the year 2017 from an institution outside the State of Maharashtra, he would still be eligible, provided he has passed 12th standard examination from an institution situated within the State of Maharashtra and he is also domicile of the Maharashtra.

13. The requirement for claiming benefit of State quota was subject matter of consideration before the Hon'ble Apex Court in a case of **Yellamalli Venkatapriyanka and Others Vs. State of Maharashtra and Others** (supra). In the said judgment, the Division Bench also referred to the judgment of the coordinate Division Bench of this Court delivered in a case of **Rajiv Purshottam Wadhwa vs State Of Maharashtra and Ors.** (supra) and had observed that, Division Bench in a case of **Rajiv Purshottam Wadhwa** (supra) was not considering the Rule 4.5 of the said Rule. It was further observed that, after **Rajiv Wadhwa** (supra) judgment there has been a complete change in the Rules and each of the Rules after Wadhwa's case have been prescribing the eligibility criteria on both counts, namely, residential / domicile and

obtaining educational qualifications, in both 10th and 12th standard examinations, cleared from within the State of Maharashtra.

14. The Hon'ble Apex Court in case of **Rajdeep Ghosh Vs. State of Assam and Others** (supra) has 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 Hon'ble 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.

15. In the present case, the petitioner has not completed her 10th and 12th standard from State of Maharashtra. As per Admission Rules, criteria State quota is given to the children of employee of Government of India or its undertaking who are serving in State of Maharashtra. The experts in concerned field has framed these rules. These rules have been modified time to time as per requirements. So it can not be said that it is manifestly unjust or irrational. The petitioner has not challenged the regulations of NEET-UG-2021 and Rules which are brought into effect for admission process.

16. In view of the above, writ petition is dismissed.

17. Rule is discharged accordingly. No costs.

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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