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(1999) 08 BOM CK 0123

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 3705 of 1999

Indur Varun shankar	APPELLANT
Vs	
The State of Maharashtra and another	RESPONDENT

Date of Decision: Aug. 16, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Maharashtra Govt. Rules for Admission to M.B.B.S. and B.A.M.S. Courses, 1994 - Rule 95
- Maharashtra Govt. Rules for Admission to M.B.B.S. and B.A.M.S. Courses, 1997 - Rule 98

Citation: AIR 2000 Bom 13 : (1999) 4 ALLMR 374 : (2000) 2 BomCR 810 : (1999) 3 MhLj 802

Hon'ble Judges: V.K. Barde, J; S.B. Mhase, J

Bench: Division Bench

Advocate: A.H. Kasliwal, for the Appellant; S.B. Bhapkar, A.G.P. and R.N. Dhorde, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.B. Mhase, J.
Heard Shri A.H. Kasliwal, learned Counsel for the petitioner, Shri S.B. Bhapkar learned A.G.P. for respondent No. 1 and Shri R.N. Dhorde, learned Counsel for the respondent No. 2.

2. Rule. By consent of the learned Counsel for the parties, Rule made returnable forthwith.

3. The petitioner has approached to this Court under Article 226 of the Constitution of India being aggrieved by the act of the respondent No. 2 Maharashtra University of Health Sciences refusing the admission to the petitioner for the first Year M.B.B.S. course

as per its letter dated 17-7-1999. The petitioner has passed XIIth standard examination conducted by the Maharashtra State Board of Secondary and Higher Secondary Education, Latur Divisional Board, held in the month of March, 1999 and has been declared successful with 59.17 per cent marks with the P.C.B. group and English. The petitioner has also appeared in Common Entrance Examination Test 1999 conducted by the respondent No. 2 and has obtained 98.75 per cent marks in P.C.B. group. The petitioner belongs to reserved category and the caste certificate issued by the Sub Divisional Officer is dated 6-1-1998 stating that the petitioner belongs to Mannervarlu Schedule Tribe. The petitioner stated that his father is resident and domiciled in the State of Maharashtra and the petitioner has produced a certificate issued by the Degloor College, Degloor stating that the father of the petitioner is a teacher in Physics at Degloor College since 1988 under the Reserved category of Schedule Tribe. The petitioner has also produced on record, apart from the Nationality Certificate, Domicile certificate dated 19-7-1995 wherein it is stated that his father is residing at Degloor, District Nanded and is therefore domiciled in the State of Maharashtra. However, it is stated in the said certificate that the authorities have issued the certificate valid only for the admission to the Medical College. The petitioner was also called for counselling as per the admission rules of the respondent No. 2. However, he was not given admission to M.B.B.S. course, instead a letter dated 17-7-1999 was issued to him keeping him as stand-by. Therefore, the petition.

4. The respondent No. 2 has filed return and has stated that even though the petitioner has passed common Entrance Examination Test, etc., the petitioner has passed Xth standard examination from Hyderabad i.e. from outside the State of Maharashtra and therefore is not eligible for admission to the M.B.B.S. course and the said understanding was given to the petitioner at the time of counselling and to that effect there is an endorsement on his form giving understanding to him that he is only entitled for admission to Pharmacy course and the respondent No. 2 produced a Xerox copy of the admission form submitted by the petitioner which contains the said endorsement signed by the petitioner and further endorsement issuing the stand-by letter to the petitioner by the competent authority. Therefore the respondent No. 2 has submitted that as per Rule No. 4.4 and 4.8 it is necessary for the candidate seeking admission to M.B.B.S., B.A.M.S. courses except Pharmacy to pass the S.S.C. and H.S.C. examination or its equivalent from the State of Maharashtra only, and as the petitioner has passed S.S.C. examination from Hyderabad, from outside the State of Maharashtra, the petitioner is not entitled for admission to M.B.B.S. course in the State of Maharashtra.

5. It is an admitted fact that the petitioner has passed Xth standard examination in the month of March 1997 conducted by the Board of Secondary Education Andhra Pradesh from a school viz. Mark"s High School Somajiguda, Hyderabad and thereafter has taken admission in the State of Maharashtra in A.V. Education Society"s Degloor College, Degloor, District Nanded in XIth standard and thereafter has appeared for H.S.C. examination in the month of March, 1999 and has passed the said examination.

Therefore, the petitioner is a candidate seeking admission to M.B.B.S. course who has passed H.S.C. examination from the State of Maharashtra and S.S.C. examination from the State of Andhra Pradesh. Therefore, the question is whether such candidate is entitled for admission to M.B.B.S., B.A.M.S. etc. courses as per the rules framed by the respondent No. 2.

6. Shri Kasliwal, learned Counsel for the petitioner relied upon the judgment of this Court in Writ Petition No. 1946 and 1994 of 1994 etc. decided by A.A. Halbe and S.G. Mutalik, JJ. on 31-8-1994 wherein the Rule 3.2.2. which was introduced in the year 1994 requiring the passing of S.S.C. or equivalent examination from the recognised schools in the State of Maharashtra was ignored by the said Judges on the ground of legitimate expectations because the earlier rules from 1991-92 to 1993-94 provided that sons and daughters of the parents domiciled in the State of Maharashtra will be eligible for admission to the Medical courses even though they have passed S.S.C. or equivalent examination from outside the State of Maharashtra. The petitioner therefore submitted that his case is covered by the said judgment, and therefore the respondent No. 2 should be directed to give admission to the petitioner for M.B.B.S. course as the petitioner is meritorious candidate. For the said purpose, the learned Counsel for the petitioner relied upon the Rules of Admission framed by the respondent No. 1 from 1996-97, 1998-99 also the rules framed by the respondent for admission to Medical courses for the academic year.

7. Shri R.N. Dhorde, learned Counsel appearing for the respondent No. 2 University submitted that even though the rules framed by the respondent No. 2 in the year 1996-97 provide that the candidates who have passed S.S.C. or Senior Cambridge or Indian School Certificate or equivalent examination and/or H.S.C. or equivalent examination from an institution outside the Maharashtra but within the territory of India, but his parents are domiciled in Maharashtra, were eligible for admission in relaxation of Rule 3.3.1 and/ or 3.3.2 which required passing of both S.S.C. and H.S.C. and/or its equivalent from the State of Maharashtra. The said relaxation was not continued by the State of Maharashtra in the rules framed in the year 1997-98, 1998-99 and 1999-2000. Therefore, he submitted that the ratio of the judgment of A.A. Halbe and S.G. Mutalik, JJ., referred to above and relied by the learned Counsel for the petitioner, cannot be applied to the facts of the present case because in the year 1997-98 the petitioner shifted from Andhra Pradesh to Maharashtra State and appeared for the examination of the XIIth standard in the month of March, 1999, which shows that the day on which the petitioner shifted himself from Andhra Pradesh to the State of Maharashtra the petitioner was aware of the facts that the rules of admission to the medical courses in the State of Maharashtra require that a candidate should have passed S.S.C. and H.S.C. both from the State of Maharashtra and the relaxation which was available in the year 1996-97 has been withdrawn. Shri Dhorde, learned Counsel for the respondent No. 2 further pointed out that this Court in Writ Petition No. 870 of 1997, 871 of 1997, 872 of 1997, and 925 of 1997 by judgment dated 27.6.1997 delivered by Ashok Agarwal and S.D. Gundewar, JJ., have dismissed the Writ Petition No. 925 of 1997 and have also recalled the rule issued in Writ Petition No. 870 of

1997, 871 of 1997 and 872 of 1997 relying upon the judgment of the Apex Court in Anant Madaan and others Vs. State of Haryana and others, wherein the similar view taken by Punjab and Haryana High Court, has been held by the Apex Court as valid.

8. Rules framed in the year 1996-97 provide as follows : (Relevant)

3.3.1. The applicant must have passed Higher Secondary Certificate (XIIth Standard Science) examination of the Maharashtra State Board of Secondary and Higher Secondary Education or the Indian School Certificate Examination (XIIth Standard Science) or any other equivalent examination from an institution situated in the State of Maharashtra.

3.3.2. In addition to the qualification mentioned above only those applicants will be held eligible for selection to Medical, Dental, Ayurvedic and Homeopathic Colleges who have passed S.S.C. or Senior Cambridge or Indian School Certificate or equivalent examination from any of the recognised schools in the State of Maharashtra;

3.3.2. The applicants who have passed S.S.C. (or equivalent) examination from an Institution situated outside 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.

Rules framed by the respondent No. 2 in the year 1997-98 provide the eligibility as follows : (Relevant)

3.(a) The applicant must have passed Higher Secondary Certificate or equivalent examinations in one and the same attempt, from an institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology (Botany and Zoology) as subjects offered, securing not less than 50 percent marks in these subjects taken together. This percentage will be relaxable to 40 per cent for backward class applicants.

(b) The applicant must have passed the S.S.C. or equivalent examination from Maharashtra. (rest of the clauses are not relevant)

Relevant rules framed in the year 1997-98 provided as follows: (Relevant)

4.4. An applicant must have passed Higher Secondary Certificate or equivalent examination in one and the same attempt from an institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology (Botany & Zoology).

4.5 The applicant must have passed the S.S.C. or equivalent examination from Maharashtra; (Both the provisos are not relevant)

Rules framed by the respondent No, 2 for the year 1999-2000 provided for : (Relevant)

4.4.A. Candidate must have passed Higher Secondary Certificate or equivalent examination in one and the same attempt, from an institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology (Botany and Zoology) at the time of admission.

4.8. Candidate must have passed S.S.C. or equivalent examination from Maharashtra.

All these above rules of the relevant years point out that except in the year 1996-97 in all the subsequent years, it is necessary for the candidate seeking admission to M.B.B.S, B.A.M.S. courses, to pass both the examination viz. S.S.C. and H.S.C. or its equivalent from the State of Maharashtra and even though there are exceptions in favour of the employees of the Central Government, Defence Category etc., there is no relaxation of these rules in favour of the candidates seeking admission to these courses who have passed either of S.S.C. or H.S.C. or its equivalent examinations from outside the State of Maharashtra and whose parents have domiciled in the State of Maharashtra as is the exception or relaxation provided in the rules of the year 1996-97 as stated above. Therefore, the scrutiny of the above rules makes it clear that since 1997-98 till today the rule is that a candidate seeking admission to the Medical colleges for M.B.B.S., B.A.M.S. courses shall have passed S.S.C. and H.S.C. or its equivalent examinations from the State of Maharashtra. There is no exemption and or relaxation of those rules in favour of the candidate who has passed either of those examinations from outside the State of Maharashtra, but whose parents have been domiciled in the State of Maharashtra, except the rules of 1996-97.

9. It is pertinent to note that when A.A. Halbe and S.G. Mutalik, JJ., have considered the Rule 3.3.2. in their judgment on 31-8-1994, referred to above, facts in those petition were that the parents of the petitioner in that petition were resident of State of Maharashtra since 1966 and were in Government service and thereafter in private service. A candidate seeking admission had appeared for C.S.B. examination which is equivalent to S.S.C. in the year 1992 from Tamil Nadu as a student of Jawahar Higher Secondary School, Neyveli, and thereafter has joined XIth standard in the State of Maharasthra in academic year 1992-93 and appeared for H.S.C. examination held by the Maharasthra Board of Secondary and Higher Secondary Education, Pune, in the year 1994 and was declared successful in June, 1994, and Rule 3.3.2. requiring a candidate to pass S.S.C. or its equivalent examination from the State of Maharashtra was first time introduced in the year 1994. In the rules which were in existence since 1991 to 1993-94 there was no such rule which required that a candidate must have passed S.S.C. examination from the State of Maharashtra. In the backdrop of these circumstances, after having considered various judgments on the point of legitimate expectations, the learned Judges observed :

"There is no question of the merit of the petitioners and the alteration in the rule in this behalf. Since the merit is the basis of admission, any alteration which might bring forth or extract more merit of the students will have to be upheld. But so far as the geographical location part is concerned, the same cannot be enforced with the same rigour if the merit

requirement otherwise is satisfied. We are, therefore of the view that although the present Rule 3.3.2. cannot be struck down as violative of Article 14 of the Constitution of India, the petitioners at the same time cannot be denied consideration on the basis of reasonable expectation provided they satisfy the exemption of rule relating to domicile of their parents in the State of Maharashtra. We would, therefore, make it clear that although the petitioners are eligible for consideration to the medical courses in view of the exemption clause of domicile of the parents, we do not at all tinker with the validity of the said rule."

Under the rules of the year 1991 to 1993-94 it was clearly provided that sons and daughters of the parents, whose parents have domiciled in the State of Maharashtra will be eligible for admission to the medical courses even if they have passed S.S.C. or equivalent examination from outside the State. Therefore, the students who satisfy this requirement are eligible for consideration. Thus on the basis of this analysis in the facts of that case, the directions were issued to consider that petitioner in the said petition for admission. Here in the present case as the position is available as analysed above, except the Admission Rules of 1996-97 in the Rules framed since 1997-98 onwards, consistent requirement is that the candidate seeking admission to M.B.B.S., B.A.M.S. etc. courses shall have passed both S.S.C. and H.S.C. examination or its equivalent examination from the State of Maharashtra except the boys of the Central Government employees or defence category personnel. These rules have not carved any relaxation in favour of the boys whose parents have domiciled in the State of Maharashtra.

10. What requires to be specifically mentioned in the present matter is that in the year 1997-98 the present petitioner has shifted from Andhra Pradesh to the State of Maharashtra by taking admission in the XIth standard and thereafter appeared for XIIth standard examination. At that time the rules have not provided any relaxation in favour of the candidate whose parents have domiciled in the State of Maharashtra and therefore, at that moment the petitioner was aware of this position and with open eyes he has taken admission in the State of Maharashtra. While in the case which has been relied upon by the learned Counsel for the petitioner that petitioner has appeared for C.S.B. examination in the 1992 and after having passed that examination that petitioner had joined XIth standard in the year 1992-93 and thereafter completed the XIIth standard examination in the month of June 1994 of the Maharashtra State Board of Secondary and Higher Secondary Education. The day on which he took admission in Maharashtra shifting from Tamil Nadu i.e. in June 1992, there was relaxation in favour of such candidates whose parents are domiciled in the State of Maharashtra. The said relaxation was continued in the academic year 1992-93 and 1993-94. It was suddenly withdrawn when the admissions were to be given in the academic year 1994-95 i.e. at the time when the petitioner passed H.S.C. examination, and therefore, that was a fit case of legitimate expectations that the rules will continue to be the same for admission, when he is hoping to pass XIIth standard. As against that, in the present matter when the petitioner took admission at Degloor College in the year 1997-98 the relaxation was withdrawn and the

rules thereafter have not provided any such relaxation in favour of the candidates whose parents are domiciled in the State of Maharashtra in order to get admission to M.B.B.S., B.A.M.S. etc. courses. Therefore, in the facts of the present case the ratio of the judgment which has been relied upon by the learned Counsel for the petitioner, cannot be accepted and there is no case in favour of the petitioner on the ground of legitimate expectations.

11. It requires to be noted that when relaxation was withdrawn in the year 1997-98 Rules, there were petitions before the Bombay Bench bearing Writ Petition Nos. 870 of 1997, 871 of 1997, 872 of 1997, 925 of 1997. Out of these petition rule was issued in Writ Petition No. 870 of 1997, 871 of 1997 and 872 of 1997. However, on pointing out the judgment of the Apex Court in the case of Anant Madaan and others Vs. State of Haryana and others, , the learned Judges dismissed not only Writ Petition No. 925 of 1997, but also discharged the rule issued in Writ petition No. 870 of 1997, 871 of 1997 and 872 of 1997 and thus Rule No. 3(a) and 3(b) from the Rules of Admission for the year 1997-98 have been held as valid one and same position continued so far as these rules are concerned in the subsequent years till today. The respondent No. 2 only has carved out an exception for Pharmacy courses in the present rules, but so far as admission to M.B.B.S., B.A.M.S. and other courses are concerned the rules also do not provide for any relaxation in favour of the candidate whose parents are domiciled in the State of Maharashtra who have passed the examination either S.S.C. or H.S.C. or its equivalent from outside the State of Maharashtra.

12. Reliance was placed on the judgment in the case of Dipali Vs. The State of Maharashtra and others, by the learned Counsel for the petitioner. However, the ratio of the said case also cannot be made applicable to the facts of the present case because in that case admission from the reserved category or Defence-I and Defence-II were considered and in the rules specifically a special reservation was provided for such category. The present case is not from the sons and daughter of the defence category personnel and therefore, the ratio of the said judgment cannot be relied upon.

13. The learned Counsel for the petitioner also relied upon the judgment in the case of Suhas Bhimrao v. State of Maharashtra, reported in 1999(1) Mah.L.J. 287. That is also case of defence category personnel and the point considered is that at what stage the domicile certificate should be produced by the candidate and it has also been observed that domicile certificate submitted later to the submission of the application but much before the date of publication of the merit list is sufficient compliance of Rule 3 and the candidate should have been considered for admission and therefore, the said ratio of the said case is not applicable to the facts of the present case.

14. The learned Counsel for the petitioner also relied upon the judgment in the case of Miss Vaidhehi Subhash Natu Vs. State of Maharashtra and others, wherein the relaxation of Rule 3(b) from the Admission Rules 1997-98 in favour of the children of the Government employees was considered and held to be valid. However, the same is not

the case of the present petitioner. In fact as observed earlier, the relaxation in favour of the candidates like the petitioner was withdrawn since 1997-98 and therefore, the ratio laid down in the judgment referred to above, is not applicable to the facts of the present case.

15. In the result, there is no substance in the petition and petition deserves to be rejected. Accordingly, petition stands rejected. Rule discharged.

16. Petition dismissed.