

(1982) 10 BOM CK 0030

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 1753 of 1982

Madhuvanti Purushottam Thatte

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: Oct. 16, 1982

Acts Referred:

- Maharashtra State Rules Relating to Admission in Government Medical Colleges, 1971 - Rule 16, 3(6)

Citation: AIR 1983 Bom 443 : (1984) MhLj 23

Hon'ble Judges: Tulpule, J; Jamdar, J

Bench: Division Bench

Advocate: S.G. Aney, for the Appellant; W.M. Sambre, Govt. Pleader, for the Respondent

Judgement

Tulpule, J.

The petitioner passed her H.S. C. Examination in March 1982 and secured in the science subjects 250 marks out of 300, which is 83.33%. She applied for admission to the Medical College and for that purpose filled in the form which is prescribed giving therein the information as she thought was necessary and applied to her. The petitioner had secured a First Class at her H. S. C. level examination.

2. Admissions to the Medical Colleges run by the Government are regulated and are governed by rules framed by the State Government in that behalf in the year 1971. These rules provide for addition of marks obtained by a student at the qualifying H. S. C. examination and also deduction. These are called the modified marks. Admissions are according to merit and a list of students who applied and their ranking in the order of merit after corrected or modified totals are made is published on the Notice Board. According to the rules. the petitioner was entitled to get an addition of 3 marks for having secured first class at the S. S. C. examination. Her total marks. therefore. came to 253.

3. The petitioner was not able to get admission even with these marks and was out of the admitted students or the category of students who were likely to be admitted. She then challenged her exclusion or denial of admission to her by this petition on various grounds.

4. The grounds on which the rules framed by the State Government in the year 1971 are challenged can be classified in two ways or two classes. Some of the challenges did not directly enure to the benefit of the petitioner. They are general and question the correctness, legality and nexus of the rules and the preference vis-a-vis admissions to the Medical Colleges. The other class of which are challenged are those which directly enure to the benefit of the petitioner and would, if her contention is Accepted add to her total of marks, increasing or brightening the prospects of admission to the medical college.

5. Rule was issued on this petition and was made returnable on the 8th Sept. 1982. Return was duly filed by the Dean and submissions were made before us both on behalf of the State Government and the Director as well as the Dean of the Medical College, Nagpur.

6. At the hearing of the petition Mr. Aney, the learned counsel for the petitioner was satisfied if that present challenges to the rules which only directly enured to her benefit or capable of giving her additional marks in her total of marks so as to brighten her prospects for admission are only considered. The other challenges which are more or less of an academic nature and are general and would not have directly benefited the petitioner were not pressed before us. We, will not therefore, consider those other challenges to the rules and confine ourselves only to the ones which were pressed before us, which are only three in Number as we shall presently set out.

7. The respondent's contention in the return was that the rules are properly made and they need not be modified or struck down. They are made with a view to secure the larger interest of the people in general and not to benefit any individual. The classification made was also sought to be defendant. The other contention raised in the return was that the petitioner did not claim any particular advantage or basis which she is now claiming in the information or details which she had supplied in the pro forma application and, therefore, she was not granted weightage or addition of marks. Besides respondents also sought to defend the rules and the technical and formal requirement insisted upon in that behalf. In this context respondents contended that the petitioner had not claimed any addition of marks on the ground of her having been eligible to the addition of those marks. For instance against the entry at S. No. 25 in the pro forma application which sought information regarding participation in the sports events, the petitioner had stated "no" meaning thereby that she had not participated in any of those qualifying sports which would have yielded an addition of marks. Similarly, the petitioner had against columns 7D and 8 in the pro forma application, similarly stated "no" Respondents'

contention seems to be therefore that the petitioner not having claimed any weightage on that account was not entitled to that weightage.

8. These columns as will be presently seen. relate to the weightage or additions granted under R. 16 (iv). (ix) and (viii) of the Rules. It will be seen thus that the challenges which are now limited in the present case relate to R. 16 (iv), (ix) and (viii) only.

9. Petitioner's answer to this contention is that in her application she has not stated that she was qualified and was entitled to get these marks because of the understanding which was given to her. All the same it is her contention that she had annexed to her application certificates showing that her father held a Short Service Commission in the Army; that her parents had two children only and further that she had participated successfully in rifle shooting and riding in the courses conducted by Bhonsla Military School. Nasik. These certificates which she had annexed to her application are also annexed (copies) to the petition and are Annexures III and IV. while the information relating to the parents of the petitioner having only two children was communicated by a separate letter. Respondents have not disputed the factual aspect of any of these matters.

10. We will firstly take up the contention or challenge to R. 16 (iv) and (viii). Those sub-rules are in these terms:

"16 (iv) Marks as given under (a). (b) (c) below may be given to a student who has represented his/her college and actually played in an inter-collegiate tournaments arranged by the University. the State Government or a National Sports Authorised Organisation. during the period his/her passing S.S.C. for equivalent examination and qualifying examination as defined in R. 2 (a) and attained the following standards in any of the games, sports or athletics. viz. Hockey, Football, Cricket, Tennis, Tent colt. Badminton, Table-tennis, Tent colt, Badminton. Table-tennis, Basket-ball, Volly-ball, Swimming. Hu-fu-lu Kho-Kho, Athletics, Boxing, Gymnastics, Malkhamb, Chess, Bridge, Squash, Kabaddi, Rowing, Shooting, Diving, water-polo, Wrestling, Weight-lifting, Best Physique Atya-patya, Cycling, Billiards, Ball Badminton, Mountaineering and Self-ball or has represented his/her cottage, during the aforesaid period in Inter-Collegiate debates, elocution competitions or dramatic competitions organised by the University, the State Government or National Authorised Organisation (Wresting include Indian Free Style and Green Roman Style, Judo, etc.

(a) Member of the team that participated in the tournament | 3 marks |

| |

(b) Winner of the Championship in game; where there is | 3 marks | Limited to a maximum

Individual participation | | of 10 marks

(c) For representative participation in debates or elocution | 3 marks |

competitions Dhramation competition | |

"16 (viii) 5 marks will be added if the student is a child of a person belonging to the regular fighting forces whether in service or retired who had rendered full length of service and is not a temporarily commissioned person. This addition of marks is also admissible to children, wives and widows of winners of Military decorations (serving as well as retired and dead personnel) like Veer Chakra, etc. and President's Fire Service Medals for gallantry awards in token of service rendered in the border area of the country irrespective of rank."

11. We do not think that the petitioner is entitled to any addition of marks on the ground that she had qualified for them either under R. 16 (iv) or (viii). As sub-rule (iv) of Rule 16 would indicate these marks are to be given to a student who has "represented his/her college and actually played in an inter-collegiate tournament arranged by the University, the State Government or a National Sports Authorised Organisation." Amongst the branches of the various sports which would qualify for the additional of marks, a number of sports items are given which include mountaineering, riding and also shooting. The contention of the learned counsel for the petitioner was that shooting is never organised as a team event, as also mountaineering. It is an individual event, and participation, therefore, for the team events is not possible in such case. The second contention was that at the National level or the University level or the State Government level, sports or events in riding mountaineering, as also shooting had not been organised. Therefore, the contention is that if a student qualifies or engages in any of these activities of sports, though he may be a very good student thereat, may be because no compositions are held at either University or State or National level, the student is deprived of the prospect of getting marks on that account. Besides it was contented that this has no nexus to the admission in medical colleges or the studies therein.

12. We do not think that the second or latter contention of the learned counsel for the petitioner marks any attention. Obviously, the grant of additional marks for students participating in various sports is to same extent compensate them for extra-curricular activities, in which they obtain proficiency. Besides medical students need not and should not be mere book-worms or concerned with studies only. A student who takes part in sports would be physically better to continue his studies and would also be able to represent his college.

12-A. Sub-rule (iv) of R. 16, clearly indicates a large number of sports therein. But the contention that University, State or National level Tournaments must and ought to be held therein so that without discrimination benefit of participation in all the various sports is available to all the students is, we think, unsound. The qualification for marks is not simple participation in games or sports. It is for participation

games or sports at a certain level and obtaining a certain degree of proficiency therein. A mere participation or a mere fact of having played in all the sports or partaking in any of the tournament or activities which are included in R. 16. (iv) does not entitle any benefit of addition of marks. That he may do so for his own advantage. In order to earn marks he must further acquire a status or proficiency in that branch. in that he must represent institution and must participate in any of these levels of tournaments specified. Unless he does that he does not get any entitlement. We do not think . therefore. that merely because no such competitions or tournaments at various levels were held relating to mountaineering or shooting or riding the petitioner who has participated at the Bhonsla Military Shoot in riding and shooting should be straight way given those three marks. We think that she was correctly denied the benefit and she correctly stated in her application that she was not qualified for it (these three additional marks) under Rule 16 (iv).

13. Same is the position, in our opinion, with regard to the claim for five marks under R. 16 (viii). Mr. Aney contended that the petitioner "s father held a Short Service Commission. The fact that he held a Short Service Commission and had completed the full term of the short service is not in dispute. Sub rule (viii) of R. 16 by itself does not lay down what must be the qualifying period of service. It merely says that five marks would be given to the student whose parents belong "to the regular fighting forces. whether in service or retired" and who " had rendered full length of service." We were unable to find out. nor were the learned counsel in the petition able to enlighten as to what is understood and meant by the expression `full length of service. It is possible that full length of service may vary with the rank held by the person who was in regular fighting forces. We are informed that the full length of service or rather service which entitles him to earn pension and voluntary retirement varies according to the ranks held in the forces. We are, however, in the present case concerned with a definition which has been incorporated in R. 16 (viii) as to what is `full length of service". That we find in sub-rule (6) of R. 3. That rule in its body mentions R. 16A (vi). which we think is really a typographical mistake. But it makes it clear with reference to Army, Navy, Air Force, which are the branches of "regular fighting force" as to what is meant by " full length service" and says "after rendering of full length of service. i.e., 15 years of service". We are not concerned with the other portion of R. 16 (viii) or R. 3 (6). In other words in these very rules at another place relating to regular fighting forces the term and expression `full length of service" has been defined. It is one of the accepted norms of interpretation of rules that where an expression is defined at one place in the rules. then that expression wherever it occurs in latter participation of those rules will have to be understood in the same sense. Therefore, it is quite clear that the expression `full length of service" so far as the admission rules of 1971 are concerned. means 15 years of service. Unless, therefore, 15 years" service is completed. the qualification for getting advantage of five marks under R. 16 (viii) is not earned. We do not think it possible to dissociate. as we have pointed out. R. 16 (viii) from R. 3 (6). Even

otherwise on primary principles of interpretation, we must adopt that interpretation which we think is also consistent and appears to be the intention of the State Government, when it make the rules that in order to earn those five marks there must be rendered 15 years completed service. Since the father of the petitioner had not admittedly rendered any such 15 years of service, she is not entitle to those five marks.

14. The challengers therefore on the basis of these two rules. i.e. Rr. 16 (iv) and (viii) so far as the petitioner is concerned must fail.

15. That leaves us with R. 16 (ix) which is in these terms:--

"16 (ix) One mark shall be added if any of the parents of the students has undergone sterilisation operation and the family has not more than two children living."

16. It was contented on the behalf of the petitioner that the thrust of R. 16 (ix) is towards limited families and against a large family. which is a national objective of family planning. It was contented that family planning can be achieved. in modern days by scientific and other appliances by so many ways other than sterilisation. The most important condition which is laid down is that the family must not have more than two children living. It was so urged that the sterilisation operation is reversible and is easily possible in the case of males with high percentage of success though the percentage of success in female sterilisation operation may not be as much as those in case of males in practise and in theory as also in principle reversion of sterilisation in the case of female is also possible. The rules had been framed in the year 1971, and though they objective remains the same namely limited family, they have not marched in step with the scientific development. It was therefore, urged that were the family is planned and does not consist of more than two children. it would entitle a student under the rules to get advantage of the rule and the student would also be entitle to get an addition of one mark.

17. In this context it was pointed out that looking to keen competition and the large number of persons applying for admission the grant of single addition of mark does not go a long way in securing admission. The rule should therefore be interpreted in the light of its object and not in the light of its technical or formal requirement, which is capable of being defeated. The family which is planned therefore otherwise than by means of resort to sterilisation which is reversible, is deprived of the benefit and the discrimination there is without any rhyme or reason. If the excess is the object of having limited family then sterilisation alone is not capable of achieving that if the family or the other hand is limited the children of such parents who should be said to be more enlightened are discrimination against merely as the formal and technical operation has not been undergone. It was pointed out that it was possible to comply with this formal requirement by the parent undergoing and operation just at the time of the application for admission, though he had achieve by main objective of the planned family.

18. On behalf of the respondents it was pointed out and contended that sterilisation is not reversible. It was also conceded that the principal object of the rule was that families should be limited and plan. In an effort to control the growth of population, the objective of devising disincentives and grant of incentives is certainly laudable and necessary R. 16 (ix) therefore cannot be interpreted in many other way except in it being an incentive to have a limited family.

19. If therefore we interpret this rule in its spirit and in the broad sense in which it was intended to the work then we think the technical and formal insistence upon a formal sterilisation operation need not be enforced. It need not become a pre-condition. If there is a limited family and the limited family is achieve by means other than the sterilisation. We think, the benefit of the rule should be denied merely because of the parents have not shown the further circumspection in undergoing sterilisation operation just before making an application for admission to medical college.

20. It was urged by Mr. Aney the learned counsel before or that the petitioner "s father or mother for the benefit of their daughter could have undergone this operation and secured for their daughter and addition of one mark. It was therefore urged but the technical and formal requirement should be placed as a bar to achieve the object.

21. We think that the benefit of the rule is intended for children of those persons who regulate their family and plan it in accordance with the national objective and goal. If that is so, then we think that is intended to be extended as an incentive and as a benefit which brought not to be denied in a particular case. merely because there was no formal compliance. The rule has to be interpreted in its broad sense and essentially in its spirits. If that is done, the petitioner would be entitle to one mark more to be added to her total.

22. However, that does not ipso facto and automatically entitle the petitioner to be admitted to the Medical College Respondent No. 3 will have to considered other such qualifying candidates who may also become entitle on the basis of our broad interpretation in the light of the objective of the rules there may be and we were unable to find out some other candidates who may be entitle to the addition of one mark on the basis of interpretation placed by us. The Dean will have therefore to considered the cases of all such eligible students and amongst them determine the priority and if on the basis of such priority and consideration the petitioner becomes entitle to admission in the medical college, grant her admission.

23. We therefore partly allowed the petition and direct in the light of observations made about respondent No. 3 to act accordingly and grant admission to the petitioner if she is otherwise found eligible. Our directions should not be interpreted to mean that any students who have been admitted by the interpretation of this rule can become displaced. There admission will remain and be treated as final. Rule

made absolute no order as to costs.

24. Petition partly allowed.