

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1289 of 2015**

Pratiksha Gopal Joshi D/o Shri Gopal Prasad Joshi Aged About 19 Years R/o A- 208, Wallfort Enclave, Pachpedi Naka, District & Taluk : Raipur, Chhattisgarh, India

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary, Ministry Of Health And Family Welfare Mantralaya Parisar Naya Raipur District : Raipur, Chhattisgarh.
2. Directorate Of Medical Education, State Of Chhattisgarh, Through Its Director, Old Nurses Hostel, Dks Bhawan Parisar, District : Raipur , Chhattisgarh.
3. Office Of Occupier/dean (Karyalaya Adhishthata), Late Shri Lakhiram Agrawal Memorial Medical College Raigarh, Through Its Occupier/dean (Adhishthata), Bendrachuwa, District : Raigarh, Chhattisgarh.

---- **Respondents**

Petitioner:	Smt. Fouzia Mirza, Advocate.
Respondents/State:	Shri Prafull N. Bharat, Addl. Advocate General.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per Navin Sinha, Chief Justice****16/09/2015**

1. The Petitioner was a candidate in the general category at the Chhattisgarh Pre Medical Test (hereinafter referred to as "the CGPMT") held on 11.6.2015. She participated in the first round of counseling and was allotted Late Shri Lakhiram Agrawal Memorial Government Medical College, Raigarh (hereinafter referred to as "the College"). The 3rd of July was the last date for admissions pursuant to first round of counseling. On the 2nd of July, she went to the College for admission. On scrutiny of her documents, the College opined that she did not possess the necessary domicile certificate.

The domicile certificate produced by her was not from the competent authority of the State Government as required by Rule 2(c) Chhattisgarh Medical and Dental Education Graduate Entrance Rules, 2015 (hereinafter called 'the Rules') and thus, the need for fresh certificate. The Petitioner with utmost diligence approached the competent authority of the State Government and obtained the domicile certificate on 3.7.2015 by 7:00 pm. The Petitioner had selected the option on-line that she was no more interested in any other counseling and was desirous to take admission in the College in question only. Admission having been denied in absence of proper domicile certificate within prescribed time, the writ petition has been filed.

2. Learned Counsel for the Petitioner submits that 3.7.2015 was the last date for taking admission. Since the Principal of the College on 2.7.2015 had referred the matter to the Director, Medical Education, the Petitioner went to the Office of the Director, Medical Education on 3.7.2015 at 7.00 pm immediately after procuring the domicile certificate. She was asked to proceed to the College. Resultantly, she could not produce her valid domicile certificate before the authorities even though she had secured it on the last date of admission. Referring to (2005) 9 Supreme Court Cases 779 (Dolly Chhanda vs. Chairman, Jee & Ors), it was submitted that since the Petitioner otherwise possessed eligibility qualifications, depending on the facts of a case, there can be some relaxation in the matter of submission of proof of domicile and it will not be proper to apply any rigid principle as it pertains to the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. The certificate issued to the Appellant there in had also suffered from a mistake. Reliance was further placed on (2012) 7 Supreme Court Cases 389 (Asha vs. Pandit B.D. Sharma University of Health Sciences) to submit that in genuine cases,

especially when it would result in affecting a professional career of a meritorious candidate, in rare and exceptional circumstances, the Court can mould the relief.

3. Learned Additional Advocate General appearing for the State submitted that the Rules were published in the gazette on 28.1.2015. The Petitioner was from the open category and did not suffer from any handicap of the nature noticed in paragraph 9 of Dolly Chhanda (supra). Even otherwise, the certificate in Dolly Chhanda (supra) had been obtained from the proper authorities and only the words “not eligible” had been incorporated due to mistake by the authorities. Relief was granted by the Supreme Court in exercise of its powers under Article 142 of the Constitution for doing complete justice.

4. If the Petitioner was a candidate for a competitive examination, she ought to have been more careful, read the Rules published in the gazette and ensured that she had the domicile certificate available from the competent authority of the State Government with her well within time. The domicile certificate issued by any authority of Government of India even if it related to Chhattisgarh, could not be treated as valid under the Rules. Referring to the provisional allotment letter, round – 1, it was submitted that it stated in clear terms that the candidate was required to report at the allotted institute and complete the admission process latest on 3.7.2015 by 5:30 pm. The Petitioner on her own showing, went to the Director of the Medical Education at about 7.00 pm after the time schedule fixed was over. The Court cannot re-write the terms by changing the timing. The provisional allotment letter also stated that in case of non-availability of desired document within time frame for admission, the candidature would be rejected for the academic year.

5. We have considered the submissions on behalf of the parties.

6. If the Rules provided specifically in Clause-2(c) that the domicile certificate had to be from a competent authority of the State Government in the prescribed form, the submission of a domicile certificate from any other authority of the Central Government in the State of Chhattisgarh where the father of the Petitioner may have been working would not amount to compliance with the Rules. The Court in the garb of judicial review cannot issue any directions to accept and act upon a domicile certificate contrary to the Rules or hold it to be a mere irregularity which could be cured even after expiry of time schedule for admission.

7. The facts in Dolly Chhanda (supra) were completely distinguishable. The certificate from the Zila Sainik Board was issued by the competent authority and inadvertently, the words "not eligible" had been written even though her father had suffered permanent medical disability. It was further noticed that her father was only a Naik in the Armed Forces. The Supreme Court observed that the Appellant came from a humble background. Her father, keeping in mind his status, may not have noticed the mistake committed by the Zilla Sanik Board. Moreover, the correct certificate was produced at the stage of second counseling. Persons lower in rank had already been granted admission. It was in those peculiar circumstances that the Supreme Court exercised its powers to do substantive justice under Article 142, which is not available to us under Article 226 of the Constitution.

8. In Asha (supra) the facts were again completely distinguishable. The Supreme Court arrived at a finding that there was no substance in the contention of the Respondents with regard to the absence of the candidate at the time of call for second counseling. It was further observed that in the rarest of rare and exceptional circumstances, the Court may mould the relief appropriately but only after recording the finding that the candidate was not at

fault and had pursued rights and legal remedies expeditiously. In the present case, we find it difficult to arrive at a finding that no fault was attributable to the Petitioner in the facts and circumstances of the case.

9. The Petitioner undoubtedly acted with due diligence and expeditiousness in procuring the required domicile certificate with utmost efficiency. But the time for admissions expired on 3.7.2015 at 5:30 pm while she was able to procure the necessary certificate only after the same at 7:00 pm. Had she been alert and had read the Rules properly, she could have averted the situation by having obtained the domicile certificate from the competent authority at the very inception. Though we have every sympathy for the Petitioner who is at the threshold of her career and it may put her to great loss by having to appear at the competitive exam again next year with all its attendant risks, it is not permissible under Article 226 of the Constitution to render individualized justice on basis of sympathy alone.

10. In the facts of the case, we also cannot give any directions for permitting her to participate in subsequent rounds of counseling or that the last date of admissions are not over, contrary to the Rules and in view of (2014) 10 SCC 521 (Chandigarh Administration v. Jasmine kaur) at paragraph 43:

" ...Therefore, in such of those cases where the court or Board is not in a position to grant the relief within the time schedule due to the fault attributable to the candidate concerned, like the case on hand, there should be no hesitation to deny the relief as was done by the learned Single Judge...."

11. The Writ Petition is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE