

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8236 OF 2010

Bilkish Liyakatali Zardi.

...Petitioner

V/s.

1.Maharashtra University of Health Science
and others.

...Respondents

With

CIVIL APPLICATION NO.1076 OF 2015

IN

WRIT PETITION NO.8236 OF 2010

Bilkish Liyakatali Zardi.

...Applicant

In the matter between

Bilkish Liyakatali Zardi.

...Petitioner

V/s.

1.Maharashtra University of Health Science
and others.

...Respondents

Mr.Rohan Cama with Mr.Mahesh Londhe i/b. M/s.Sanjay Udeshi
& Co., for the Appellant/Applicant.

Mr.S.B.Shetye, for Respondent No.1.

Mr.V.B.Thadani, AGP for Respondent Nos.2 to 4 – State.

CORAM : MOHIT S. SHAH, C.J. AND
G.S.KULKARNI, J.

DATE : 23 APRIL 2015

PC :

1. Heard the learned Counsel for the parties at the final hearing of the Writ Petition.
2. Pravesh Niyantran Samiti had at its meeting held on 12 October 2009 approved the request made by the Association of Managements of Homoeopathic Medical colleges and Association of Managements of Ayurvedic Medical colleges of Maharashtra that if seats remain vacant in first year BHMS and first year BAMS courses even after inviting applications from the students who have passed the ASSO-CET-2009 and MHT-CET-2009, such vacancies may be filled in on the basis of HSC science (XII standard) marks as per the basic eligibility prescribed by the respective Central Councils. The Samiti further directed that such permission was granted only for the academic year 2009-2010 and the same shall not be treated as precedent for the years to come.
3. The said decision thus made it clear that the Samiti intended to grant relaxation from the requirement to pass MHT-CET-2009 and ASSO-CET-2009. The petitioner herein, who had passed ASSO-CET-2009, applied for admission to respondent no.4-R.A. Podar Medical College (Ayurveda) and was granted admission to the first year BAMS course. In her application dated 26 October 2009 (Exhibit J), the petitioner had clearly informed

the Dean of R.A. Podar Medical College (Ayurveda) that she had passed her HSC examination with 64.33% marks and that she could not appear for MHT-CET-2009 but gave ASSO-CET-2009 and secured 74 marks in it.

4. It is thus clear that there was no suppression on the part of the petitioner and that it was open eyes respondent no.4 college admitted the petitioner to first year BAMS course. The admission granted to the petitioner by respondent no.4 college in October 2009 is sought to be cancelled after almost ten months on the ground that the petitioner was granted admission erroneously, though she had not passed the MHT-CET-2009 examination.

5. As far as the eligibility prescribed by the concerned Central Council is concerned, the eligibility criterion is HSC pass with 50% marks.

6. In view of the above, when the petition was taken up for preliminary hearing on 26 October 2010 the Court had granted interim relief to the effect that the the respondent No.1 and respondent No.4 were directed to treat the petitioner as being enrolled in the Bachelor of Ayurved Medicine and Surgery Course offered by the respondent No.4 College and to permit the petitioner to appear in all the examinations in the said course in November 2010 and thereafter.

7. Accordingly, the petitioner was permitted to prosecute her studies in Bachelor of Ayurved Medicine and Surgery course offered by respondent No.4-College. The petitioner was also permitted to appear in all the examinations and has produced mark-sheets of the final BAMS Winter-2013 examination at 'Exhibit -B' and also a Passing Certificate dated 13 March 2014 at 'Exhibit B-1' certifying that the petitioner appeared for and passed the final BAMS examination held by respondent No.1 – Maharashtra University of Health Sciences, Nashik in Winter-2013.

8. In view of the above facts and particularly in view of the fact that the petitioner possesses eligibility criteria prescribed by Central Council of Ayurveda Medicines of passing HSC examination with 50%, by passing HSC with 64.33%, and also in view of undisputed fact that when the petitioner was admitted, the respondent No.4 – College had vacant seats even after admitting students who had passed ASSO-Cet-2009 and MHT-CET-2009 and also that the petitioner had passed ASSO-CET-2009 and secured 74 marks, and also that the Maharashtra Council of Indian Medicine has issued a provisional registration certificate dated 23 April 2014 in favour of the petitioner ('Exhibit F' to the Civil Application), there was no illegality on the part of respondent No.4 in admitting the petitioner to the First year BAMS course.

9. Accordingly, the petition is allowed and the impugned communications dated 31 August 2010 issued by respondent no.1 and communications dated 21 September 2010 and 4 October 2010 issued by respondent No.4 being 'Exhibit P', 'Exhibit Q' and 'Exhibit R' respectively are quashed and set aside. Respondent Nos.1 and 4 shall treat the petitioner having been duly enrolled in the Bachelor of Ayurved Medicine and Surgery course offered by respondent No.4 – College for the Academic year 2009. Respondent Nos.1 to 4 shall issue necessary Internship completion certificate and degree certificate and return all the original documents as being done in the case of the other students. Respondent Nos.1 and 4 shall grant the petitioner all the benefits which have been granted to the students who have admitted to the BAMS course for the Academic year 2009-10 and have passed Winter-2013 final BAMS examination.

10. The petition is allowed accordingly. Civil Application stands disposed of.

(CHIEF JUSTICE)

(G.S.KULKARNI, J.)