

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION No. 1325 OF 2014

IN

WRIT PETITION No. 1153 OF 2014

Sumit Marotisingh Bilgaye -Vrs.- State of Mah. and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.P. Bhandarkar, counsel for Applicant.
Mr. N.R. Patil, AGP for respondent nos. 1 & 4

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 21st SEPTEMBER, 2015

Heard advocate Bhandarkar for applicant – original petitioner and learned AGP for respondent nos. 1,2 & 4. Nobody for respondent no. 3 though it is served.

Advocate Bhandarkar submits that the first writ petition filed vide W.P. No. 2173/11 challenged the order of Caste Scrutiny Committee invalidating his caste claim and therefore there was no question of applicant seeking protection of his education in that matter. After that challenge failed, Writ Petition No. 1153/2014 came to be filed for direction to declare result of MBBS Examination and it was the first petition in which effort to protect education was made. As such, rejection of Writ Petition No.1153/2015 on 7.3.2014 by this court on the ground that earlier writ petition was already dismissed by it and therefore by applying the doctrine of *res-judicata* is not legal and valid. He has invited our attention to provision of Section 11(V) of Code of Civil Procedure. He has also drawn support from paragraph 76 of the judgment of

Hon'ble Full Bench of this Court reported in **2015(1) Mh.L.J. 457** (Arun Vishwanath Sonone Vs. State of Maharashtra and others).

Full Bench of this court has in paragraph 76 observed that it was not required to go into that aspect at length. The question no. 2 which was framed by the full bench reads if its answer to question no.1 in affirmative can such relief of protection of service be granted by High Court in a case where the same relief has been earlier refused by High Court ? The full bench observed that answer to it may involve adjudication of facts and law both. Mere filing of a petition claiming protection and its withdrawal or dismissal by court would not bar a subsequent petition as *res-judicata*. Later observation shows that order of termination may be passed subsequently thereby giving rise to a cause of action independently. Thus, the full bench has pointed out that the issue of *res-judicata* requires consideration of several factors and therefore did not express any opinion on this question.

Section 11 of Code of Civil Procedure regarding principle of *res-judicata* though not expressly applicable to writ jurisdiction, is still relevant. Explanation (V) shows that when a relief is claimed and it has not been expressly granted, for the purpose of that Section 11 it is deemed to be rejected. Explanation (IV) stipulates that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

In present matter, petitioner has completed his MBBS education in 2010. Obviously, W.P. No. 2173/11 was filed thereafter. That writ petition was rejected by this court on 11.1.2011. While rejecting that writ petition this court continued interim protection which it had given to petitioner. Petitioner then approached Hon'ble Apex Court and Hon'ble Apex Court dismissed SLP on 17.2.2012.

Thus, grant of interim protection by this court, dismissal of writ petition filed and rejection of SLP by Hon'ble Apex Court are all events after petitioner obtained MBBS Degree.

Not only this, in the present facts, expressly for protection of education/admission, Writ Petition No. 1153/2014 came to be filed. This court after noticing all above facts held that it was not in a position to take cognizance of such challenge or such request in the fresh petition.

In MCA, review of this order by which this court found itself not competent to take cognizance, is sought. The discussion above shows that said finding has been reached after considering all relevant developments. As such, the arguments being raised before this court which are relevant in appellate jurisdiction, cannot be considered as grounds sufficient to review it. We, therefore, reject Misc. Civil Application. No costs.

JUDGE

JUDGE