

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3306 OF 2016

Kaustubh Sunil Dagdu,
Age: 18 Years, Occu. : Education,
R/o. Rangar Galli, Manwat,
Tq. Manwat, Dist. Parbhani. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai
2. Maharashtra University of Health
Sciences, Dindori Road, Mhasrul,
Nashik, Tq. & Dist. Nashik,
Through its Registrar.
3. Yashwantrao Chavan Ayurvedic Medical
College, Nipani Bhalgaon,
Beed by-pass Road, Aurangabad,
Tq. & Dist. Aurangabad
Through its Principal **RESPONDENTS**

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Mr.A.D.Shinde, Advocate for the petitioner
Mr.A.V.Deshmukh, AGP for Respondent – State
Mr.S.S.Gangakhedkar, Advocate for Respondent
No.2.
Mr.N.D.Sonawane, Advocate for Respondent No.3

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL,JJ.**

Reserved on : 08.07.2016
Pronounced on : 18.07.2016

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition takes exception to the impugned communication dated 05.12.2015 issued by respondent no.2 – Maharashtra University of Health Sciences, Nashik, thereby rejecting the registration and eligibility proposal of the petitioner for 1st Year B.A.M.S. course on the ground of non-submission of creamy layer certificate. There are further prayers seeking directions to respondent no.2 University to grant approval to the proposal of the petitioner's admission, issue eligibility without insisting for submission of non-creamy layer certificate and also to accept the

examination form of the petitioner for 1st Year of B.A.M.S. course.

4. It is the case of the petitioner that he applied for admission to 1st Year B.A.M.S. course in respondent no.3 College. After going through the regular selection process and also ASSOCET, the petitioner was admitted to the B.A.M.S. course. He submitted all the necessary documents along with his admission form. He is prosecuting his studies in 1st Year B.A.M.S. with respondent no.3 College.

5. It is further the case of the petitioner that though his admission is from N.R.I. quota, he was admitted from the reserved category as he belongs to OBC category. Respondent no.3 never asked for the non-creamy layer certificate to the petitioner as the petitioner paid full fees and was not taking or intending to take any

benefit meant for the candidates from OBC category. He would continue to pay entire fees and would not claim any benefit available to the candidate from OBC category.

6. The learned counsel for the petitioner submits that in similar fact-situation in Writ Petition No.912/2012 (Sumedha Satish Deole Vs. Government of Maharashtra and others), decided on 18.12.2012 (Bombay High Court Bench at Nagpur), the petitioner therein was also admitted from N.R.I. quota. She gave up challenge to the Government Resolution and Rules, which were raised in the Petition and only claimed protection to her admission in MBBS course. The High Court held that the studies undertaken by the petitioner on the basis of her claim of belonging to 'Mali' (Other Backward Class) shall stand protected. However, the petitioner would not be entitled to claim any benefits on the

basis of belonging to Other Backward Class in future. It is also observed that the petitioner shall deposit the difference in the fees that is already paid on the basis of belonging to Other Backward Class and payable as an open category candidate, to the concerned College / University and further the petitioner shall file an undertaking before the High Court that neither herself nor her any progeny shall claim any right on the basis of her claim of belonging to Other Backward Class. Therefore, the learned counsel appearing for the petitioner submits that the appropriate orders may be passed in the facts of the present case and the Petition may be allowed.

7. The learned counsel appearing for respondent no.2 relying upon the averments in the affidavit-in-reply submits that in fact, as per the Association of Management of Unaided Private Medical and Dental Colleges,

Mumbai (AMUPMDC) Asso. CET information brochure-2015 Annexure-B, para 6, candidates belonging to Backward Class categories will be required to submit the non-creamy layer certificate. The candidates, who have claimed the Constitutional Reservation in the Original Application form, must submit non-creamy layer certificate at the time of filling the preference form, failing which the category claim will not be granted. The learned counsel also invites our attention to the fact that as per the University Ordinance No.02/2010 para 7, it shall be the responsibility of the Dean / Principal / Director and obligatory for the students, to obtain the enrolment and eligibility, prior to submission of examination form. He/she shall not be allowed to appear for the examination unless the eligibility is issued to him/her by the University.

8. We have heard the learned counsel

appearing for the parties. We have carefully perused the pleadings in the Petition, annexures thereto, reply filed by respondent no.2, the copies of the documents placed on record and in particular the order passed by the Division Bench of the Bombay High Court Bench at Nagpur in Writ Petition No.912/2012 (supra), we are of the opinion that the similar relief as has been granted to the petitioner in Writ Petition No.912/2012, can be granted to the petitioner herein for the following reasons. Admittedly, the petitioner, though, belongs to OBC category and applied from the said category for the admission to B.A.M.S. course, as a matter of fact he is admitted from N.R.I. quota. According to the petitioner, he has already deposited full fees and in future also, he would continue to deposit the fees like the candidate from an open category. The petitioner is also ready to file an

undertaking before this Court that hereinafter neither the petitioner nor his any progeny shall claim any right on the basis of his claim of belonging to Other Backward Class within a period of two weeks from today. Though, the petitioner has taken other grounds in the Petition during the course of hearing, the learned counsel for the petitioner has confined the prayer seeking for similar relief like granted in Writ Petition No.912/2012. In that view of the matter, we pass the following order:

ORDER

i) The studies undertaken by the petitioner on the basis of his claim of belonging to Other Backward Class shall stand protected. However, the petitioner hereinafter would not be entitled to claim any benefits on the basis of belonging to Other Backward Class.

ii) The petitioner shall deposit the

difference in the fees that is already paid on the basis of belonging to Other Backward Class and payable as a open category candidate, if already not paid, to the concerned College / University within a period of three months from today.

iii) The petitioner shall file an undertaking before this Court that hereinafter neither the petitioner nor his any progeny shall claim any right on the basis of his claim of belonging to Other Backward Class. The undertaking shall be submitted within a period of two weeks from today.

iv) The rule is made absolute in the above terms. The Writ Petition stands disposed of accordingly.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE