

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 11641 OF 2015

RAJENDRA EKNATH PANDHARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. R.F. Totala
AGP for Respondent Nos. 1 and 2: Mrs. A.V. Gondhalekar
Advocate for respondent No.3 : Mr. S.B. Deshpande, ASG.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 5TH JULY , 2016.

PER COURT:

1] Mr. Totala, learned counsel for the petitioner, states that the petitioner Nos. 1 and 2 have passed their M.D. from the Government Medical College, Mumbai. They have secured admission through All India Post Graduate Medical Entrance Examination, 2012 (hereinafter referred to as, "*All India Quota*"). Learned counsel submits that petitioners were compulsorily made to submit Indemnity Bond of Rs. 50 Lakhs while submitting the examination form for final examination of MD, pursuant to the directives of the respondent nos. 1 and 2. The original documents of the petitioners, including the mark sheets, passing certificates have been withheld by the college on the instructions of the respondent Nos.1 and 2. Petitioners have received letters from the respondent Nos. 1 and 2, thereby asking the petitioners to undergo compulsory bond service of one year in accordance with the PGM-CET brochure, 2012. Same was in pursuance to Government Resolution dated 28th May, 2010. Petitioners are accordingly serving the bond at the hospitals allotted to them. Learned counsel submits that the condition imposed by the respondents of securing bond of Rs. 50 Lakhs and asking them to serve for one year at the hospital of the choice of the respondents, is not in consonance and conformity with the judgment of the Apex Court in the case of *Anand Vs.State of Kerala reported on*

2001 (VI) SCALE 665. The Apex Court in the said judgment has categorically ruled that any additional condition pertaining to the bond/rural service imposed by the State would not be applicable to the **All India Quota**. The said condition being not in conformity with the judgment of the Apex Court, is illegal and does not stand to any reason. In view of that, the respondents be directed not to enforce the said condition and the said condition in the impugned communication be quashed. He further submits that the petition is filed after the reply received by the petitioners from the Union under the Right to Information Act stating that the State cannot impose the additional condition of eligibility.

2] Learned counsel for petitioner further submits that even the respondents are not entitled to retain the original documents on the ground that the bond period is not completed. The respondents are duty bound to return the original documents, after successfully clearing the Post Graduate examination. Learned counsel relies on the judgment of the learned Single Judge of the Madras High Court in the case of **K. Arun Vs. Director Medical Education in W.P. No. 15217 of 2014**, decided on 17.6.2014.

3] We have heard Mr. S.B. Deshpande, the learned ASG and Mrs. Gondhalekar, AGP.

Mrs. Gondhalekar submits that vide Govt. Resolution dated 28th May, 2010, the State Government has not imposed any additional conditions of eligibility. The condition of bond for serving in rural area and on failure to do so, to pay an amount of Rs. 50 Lakhs is not an additional condition of eligibility. The Government spends huge amount on the education and as the education is provided at subsidized rates, the said condition is necessary. According to learned counsel, this Court in judgment delivered in W.P. No. 2176 of 2011 with connected petitions, dated 5th April, 2011, has considered the judgment of the Apex Court in the case of **Anand** (referred to supra) and has held that imposition of condition of executing bond/serving in rural area, is not an additional condition of eligibility. The

said judgment was delivered even considering the cases prior to the promulgation of the Government Resolution dated 28th May, 2010. According to learned counsel, respondents are not withholding the original documents. If the candidates require the same, only a procedure is prescribed of executing a bond of Rs. 100/- and after complying the said procedure, the original documents are released to the candidates.

4] We have considered the submissions canvassed by the learned counsel for the respective parties.

5] The Apex Court in the case of **Anand** referred to supra, has held that State Government cannot impose any additional conditions of eligibility in respect of those students who have secured admission through All India Quota. Petitioners Nos. 1 and 2 herein have secured the admission through All India Quota. The contention of the petitioners is that, the condition of execution of bond is an additional condition of eligibility. The said argument, if accepted, would be stretching the concept of additional conditions of eligibility too far. The Division Bench of this Court in the case of **Atul S. Sarogi vs. State of Maharashtra and others' in W.P. No. 2176 of 2010**, with connected writ petitions, has considered the judgment of the Apex Court in the case of **Anand** referred to supra, and has held that the condition of bond can not be said to be an additional condition of eligibility. The Division Bench of this Court, in the said judgment has observed as under :-

" We also find considerable substance in the submission of the learned counsel for the State Government and the Municipal Corporation that when the executive instructions contained in the brochure, published well in advance even before the commencement of the concerned entrance examination, provided for execution of such service bond by the students of All India quota, merely because the officers in charge of the administration of the concerned colleges did not

bother to call upon the students to execute the bonds and allowed them to prosecute their studies without execution of service bonds, did not absolve the petitioners from their liability to execute such bonds. When the concerned authorities realized this they called upon the petitioners to execute such bonds and the petitioners did execute such bonds in March, 2009, by prior to their final MBBS examination in October-November 2009. The petitioners thereafter, did not choose to challenge such action of the State Government or the Municipal Corporation for a period of one year from March, 2009 and it was only in March, 2010 or thereafter that the present group of petitions came to be filed. The petitioners cannot therefore, be permitted to challenge the action of the respondent authorities in requiring the petitioners to execute service bonds in the sum of Rs. 5,00,000/- in case of failure to render service.

15. As regards the petitioners' contention based on the order dated 27th July, 2001 of the Supreme Court, we find considerable substance in the submission of the learned Government Pleader for the State Government and the learned counsel for the Municipal Corporation that in **Harsh Pratap Sisodia (supra)** the Supreme Court explained that in the guise of State requirements, the State Government cannot insist upon any additional requirement that student ought to have passed HSC examination in one and some attempt. In the instant case, neither the State Government nor the Municipal Corporation have laid down any eligibility criteria. Therefore, no fault can be found with the impugned action of the respondent authorities in requiring the petitioners to execute service bonds which they did execute voluntarily in March, 2009."

6] The Govt. Resolution dated 28th May, 2010 is on the same lines as the judgment delivered by the Division Bench of this Court in the case of **Atul Sarogi** referred to supra.

7] The other contention of the petitioner that the respondents cannot retain the original documents certainly is reasonable. We had asked the learned AGP regarding the act of retaining the documents. Learned AGP, on instructions, states that taking into consideration the interest of the students, respondents do not retain the documents if the students want the original documents. Only they have to execute a bond of Rs. 100/- and by following the procedure, the documents are returned to them even without completing the bond period.

8] In the light of that, the anxiety of the petitioner regarding respondents retaining the documents, would not subsist. In view of the above, Writ petition is accordingly disposed of. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-