

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10488 OF 2016**

Lubna Shah Asma Ahmad .. Petitioner
V/s.
The State of Maharashtra and ors. .. Respondents.

Ms Dhruti Kapadia for the Petitioner.
Mr. Rohit Deo, Acting Advocate General a/w. L.M. Acharya, Spl.
Counsel, C.P. Yadav, AGP for the Respondent-State.
Dr. Arun Vyas – DMER, present in person.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 14 SEPTEMBER 2016.

P.C.

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The petitioner's parents are defence employees. Her father Col. Ahmad Faiz Moinuddin Haris is presently serving with Army Medical Corps. Her mother Dr.(Ex.Captain) Mrs. S.N. Ahmad used to serve in the Indian Army. The petitioner was born in Delhi on 3 July 1997, but as her parents were posted in Mumbai, she lived in Mumbai from the year 1997 till she completed her SSC from the Convent of Jesus and Mary School in Mumbai (affiliated to Maharashtra State Board) in March 2013. The petitioner has placed on record Certificates to support these facts, including her Domicile Certificate from the appropriate authority.

3] The petitioner's father was transferred from Mumbai to Haryana on 4 May 2012, when the petitioner was minor and on the verge of her completing SSC. Despite such transfer, the petitioner completed her SSC in March 2013, but thereafter, had no realistic option other than to join her family in Haryana, where her father was transferred and posted, on account of his defence services. The petitioner completed her standard 11th and 12th from the institution in Haryana (affiliated to CBSE Board) in the year 2014 and 2015 respectively. The petitioner appeared for National Eligibility-cum-Entrance Test (UG), i.e., NEET and secured 412 marks out of 720. The petitioner has secured all India rank of 32950 and category rank of 19520. On basis of such scores and ranks, the petitioner claims that she has good chance to be admitted in Private Unaided Medical College.

4] The petitioner, in these circumstances, submits that it would be quite unreasonable on the part of the State Government to declare the petitioner as ineligible to secure admissions to Private Unaided Medical College in the State of Maharashtra, on the basis of Section 5(c) of the Maharashtra Unaided Private Professional Education Institutions (Regulation of Admissions and Fees) Act 2015 or Rules made thereunder. The petitioner submits that the provisions have to be reasonably interpreted and when so interpreted, the said section will not apply to the case of the petitioner whose parents were compelled to leave State of Maharashtra during last two years of petitioner's higher secondary education, i.e., 11th and 12th and the petitioner who was then a

minor, had no realistic option other than to join them at Haryana. In support of her submissions, the petitioner places reliance upon the decision of the Hon'ble Supreme Court in ***Meenakashi Malik Vs. University of Delhi and ors – 1989 (3) SCC 112*** as well as decisions of the Division Bench of this Court in ***Vijay D. Bhilwadikar Vs. The State of Maharashtra and anr. - 1998 (2) Bom.CR 48*** and ***Dipali d/o. Uttamrao Dakre Vs. The State of Maharashtra – 1999 (4) Bom.C.R. 136***.

5] Both the Division Bench decisions of this Court upon which reliance has been placed by the petitioner, rely upon the decision of the Hon'ble Supreme Court in *Meenakashi Malik (supra)*. In *Meenakashi Malik (supra)*, the Hon'ble Supreme Court dealing with some what similar factual predicament to what the petitioner now finds herself in, at paragraphs 4 and 5 observed thus:

4. It seems to us that the qualifying condition that a candidate appearing for the Entrance Examination for admission to a Medical College in Delhi should have received the last two years of education in a school in Delhi is unreasonable when applied in the case of those candidates who were compelled to leave India for a foreign country by reason of the posting of the parent by the Government to such foreign country. There is no real choice in the matter for such a student, and in many cases the circumstances of the student do not permit her to continue schooling in India. It is, of course, theoretically possible for a student to be put into a hostel to continue her schooling in Delhi. But in many cases this may not be feasible and the student must accompany a parent to the foreign country. It appears to us that the rigour of the condition prescribing that the last two years of

education should be received in a school in Delhi should be relaxed, and there should be no insistence on the fulfillment of that condition, in the case of students of parents who are transferred to a foreign country by the Government and who are therefore required to leave India along with them. Rules are intended to be reasonable, and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves. We are of opinion that the condition in the prescription of qualifications for admission to a medical college in Delhi providing that the last two years of education should be in a school in Delhi should be construed as not applicable to students who have to leave India with their parents on the parent being posted to a foreign country by the Government.

5. *Accordingly, the denial of admission to the petitioner to a seat in one of the Medical Colleges in Delhi must be held to be unreasonable. It is not disputed that if the condition of schooling for the last two years in a school in Delhi is removed from the way, the petitioner would be entitled to admission in a Medical College in Delhi. In the circumstances, the petitioner is entitled to an order directing the respondent to admit her to one of the Medical Colleges in Delhi.”*

6] Though, we have set out the facts in brief as aforesaid, in this petition, we are really not called upon to decide the issues raised by the petitioner since learned Acting Advocate General, on the basis of instructions from the Officer of the State Government who is present in the Court, has made a statement that the case of the petitioner will be considered for admission to the professional medical or dental courses in private unaided institutions, without insisting upon her having passed the HSC examination from out of any institution in the State of Maharashtra. Learned Acting Advocate General has made a statement that the petitioner will be

treated as eligible for consideration and such consideration shall be made on the basis of merit, in the peculiar facts and circumstances of the present case. We accept such statement and on basis of the same, direct that the case of the petitioner should be considered for admission on its own merits and without insisting upon compliance with the requirement of passing of HSC through any institution within State of Maharashtra.

7] Rule is made absolute in the aforesaid terms. There shall however, be no order as to costs.

8] All concerned to act on the basis of authenticated copy of this order.

(CHIEF JUSTICE)

(M.S.SONAK, J.)