

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 775 OF 2015

Dr. Dnyaneshwar Dutta Dhepale	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 926 OF 2012

Dr. Poonam Ashok Malani	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 927 OF 2012

Dr. Shwetali Tryambak Ahire.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 928 OF 2012

Dr. Annasaheb Ramchandra Kadam..	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 1037 OF 2012

Dr. Rakesh Kisan Ukey.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 1250 OF 2012
WITH
CHAMBER SUMMONS (LDG.) NO. 428 OF 2016

Dr. Ajay Dawar.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 1471 OF 2011
WITH
CHAMBER SUMMONS (LDG.) NO. 423 OF 2016

Sachin Ganpat Makne.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 1472 OF 2011

Abhijeet Anil Bhavsar.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 2333 OF 2013
WITH
CHAMBER SUMMONS (LDG.) NO. 427 OF 2016

Dr. Memon Faisal Allarakha.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 2357 OF 2012

Dr. Milind Suresh Jadhav.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 2387 OF 2012

Dr. Khandagale Shrikrushna Atmaram.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 2416 OF 2013
WITH
CHAMBER SUMMONS (LDG.) NO. 422 OF 2016

Dr. Rahul Satishkumar Singh	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 2473 OF 2012

Dr. Ganesh Kanhu Bhandare	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 2534 OF 2012
WITH
CHAMBER SUMMONS (LDG.) NO. 429 OF 2016

Dr. Asha Rajendra Ganeriwal.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

WITH
WRIT PETITION NO. 2623 OF 2012
WITH
CHAMBER SUMMONS (LDG.) NO. 424 OF 2016

Swapnil Shashikant Mahajan.	...	Petitioner
V/s		
State of Maharashtra & Ors.	...	Respondents

Ms. P.V. Thorat with Mr. Anukul Sheth for the petitioners.
Mr. R. Rodrigues with Ms. Nita Masurkar for Union of India.
Mr. Ganesh K. Gole for Medical Council of India.
Ms. Geeta Shastri, Addl.GP for the State (in WP Nos.775/15; 1471/11; 1472/11; 926/12; 927/12; 928/12; 2357/12; 2387/12; and 2333/13)
Mr.Abhay Patki, Addl.GP for the State (in WP Nos.1037/12; 1250/12; 2534/12; 2473/12; 2623/12; and 2416/13)

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 22nd DECEMBER 2016

P.C.:

1] The main challenge in these petitions is to clause 9(1)(a) of the Post-graduate Medical Education Regulations, 2000 (P.G. Regulations) for admission to post-graduate courses which prescribes that only candidates afflicted with disability ranging from 40% to 70% will be eligible to the benefit of reservation provided for persons with disabilities.

2] In writ petition no. 9556 of 2016 *Rutuja Dattatraya Raut vs. State of Maharashtra & Ors.* decided by us on 21 September 2016, we have held that clause 4(2)(f) of the MCI Regulations relating to admissions to under-graduate medical course, which is virtually the same as clause 9(1) of the P.G. Regulations relating to post-graduate, is legal, valid and does not suffer from any unconstitutionality. In the light of this decision and for the reasons set out by us in our judgment and order dated 21 September 2016, we reject the challenge to clause 9(1)(a) of the P.G. Regulations.

3] However, Ms Thorat, learned counsel for the petitioners has

contended that this court itself should constitute a Committee of Experts or at least direct the respondents to constitute a Committee of Experts to revisit the rationale behind prescribing the disability range of 40% to 70% for determining eligibility of candidates to undergo graduate or post-graduate medical courses. She submits that with the advance of Science and Technology, the range prescribed is not realistic and shuts out several candidates having disabilities, even though, they have the physical competence to undertake the graduation or under-graduation course.

4] We are afraid, that we cannot accede to any such request. The Regulations framed by the Medical Council of India, which is, itself an expert authority, are legislative in character. Apart from presumption of constitutionality, we are of the opinion that the matters such as range of disability, are best left to experts in the field. Once experts have determined such matters in the light of their expertise and experience, it is normally not for this Court to sit in appeal over such matters unless, unreasonableness or arbitrariness is demonstrated. The question as to whether the range ought to be between 40% to 70% or that some other range should be preferred, is a matter which cannot be decided while exercising power of judicial review. We have already held so in the case of *Rutuja Raut* (supra). Accordingly, we are unable to accede to the request of Ms Thorat and convince ourselves to undertake any exercise of appointment of Expert Committee or even to direct the respondents to undertake such exercise.

5] Although, we are rejecting the main challenge raised in each of these petitions, in the peculiar facts and circumstances, we are not

inclined to disturb the benefits obtained by the petitioners in pursuance of the interim orders made in these petitions. This is because most of the petitioners have already completed their post-graduation course by now and one of the petitioners has hardly one year to complete such post-graduation course.

6] To be precise, the petitioners in writ petition nos. 1472 of 2011, 1471 of 2011, 2473 of 2012, 2357 of 2012, 927 of 2012, 926 of 2012, 2387 of 2012, 2534 of 2012, 2623 of 2013 and 1250 of 2012, have already completed their post-graduation course in the year 2015. The petitioners in writ petition nos. 2333 of 2013 and 2416 of 2013 have completed their post-graduation course in the Summer of 2016. The petitioner in writ petition no. 775 of 2015 has substantially completed the post-graduation course though, about one year course still remains to be completed.

7] In so far as the petitioners in writ petition no. 928 of 2012 and 1037 of 2012 are concerned, it is submitted that after the interim order, these students did not opt for admission in the State of Maharashtra but secured admissions in institutions outside the State of Maharashtra against seats reserved for persons with disabilities. Even these petitioners, have already completed their post-graduation course.

8] At this stage, therefore, we do not deem it appropriate to disturb the benefits already obtained by the petitioners. We also note that the petitioners were admitted to the under-graduate medical course (MBBS) as against seats reserved for persons with disabilities. In case of

some of the petitioners, there were disputes as to whether they fell within the prescribed range and this Court, at the stage of grant of interim reliefs, had opined that their candidatures can be considered as against the seats reserved for persons with disabilities. In *Rutuja Raut* (supra), we have referred to certain decisions¹ where students who had completed their MBBS Degree despite disabilities were permitted to join the post-graduation course. Upon cumulative consideration of all these circumstances, including the circumstance that most of the petitioners except perhaps one have already completed the post-graduation course, we are of the opinion that this is not a fit case to divest such petitioners of the benefit already obtained by them.

9] We however clarify that this order is made in the peculiar facts and circumstances of the present case, and therefore, this order or the interim orders in these petitions may not be cited as a precedent in future. We are conscious that interim orders never constitute a precedent. However, we note that such interim orders are repeatedly cited at least at the stage of plea for interim relief. Therefore, we deem it appropriate to clarify this position. All these petitions are disposed of in the aforesaid terms. There shall be no order as to costs.

10] In view of disposal of the writ petitions, chamber summons do not survive and are disposed of accordingly.

(M.S. SONAK, J.)

CHIEF JUSTICE

chandka

¹ Dr. Nazreen Sartaj Ansari vs. Union of India & Ors. (Writ Petition (L) No. 1532 of 2013.
Dr. Deval R. Mehta vs. Union of India & Ors. (AIR 2011 Gujarat 33)