

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

REVIEW APPLICATION (CIVIL) 212 OF 2017
IN
WRIT PETITION NO.8268 OF 2017
WITH
WRIT PETITION NO.8483 OF 2017
WITH
WRIT PETITION NO.8489 OF 2017
WITH
WRIT PETITION NO.8550 OF 2017
WITH
WRIT PETITION NO.8571 OF 2017
WITH
WRIT PETITION NO.8592 OF 2017
WITH
WRIT PETITION NO.8593 OF 2017
WITH
WRIT PETITION NO.8594 OF 2017
WITH
WRIT PETITION NO.8624 OF 2017

Ahana d/o. Abhijit Deodhar and Ors.

....Applicants.

Versus

The State of Maharashtra and Ors.

....Respondents.

Miss. Pradnya Talekar, Advocate for applicants.
Shri. S.B. Talekar, Advocate with Shri. A.B. Girase, Government
Pleader for State.
Mr. A.R. Rathod, Advocate for respondent No. 4.
Mr. V.J. Dixit, Senior Counsel for respondent No. 5.
Mr. Ajay Deshpande, Advocate for respondent No. 8.
Mr. K.C. Sant, Advocate for respondent No. 9.
Mr. Quadri Taher Ali, Advocate for respondent No. 11.
Mr. A.N. Sabnis, Advocate for respondent No. 12.

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The State of Maharashtra and Anr.

....Applicants.

Versus

The Commissioner, Common Entrance
Cell, CET-(Cell), Government Dental
College and Hospital Building,
St.Georges Hospital Compound,
Near CST, Mumbai 400001 and Ors.

....Respondents.

Shri. S.B. Talekar, Advocate with Shri. A.B. Girase, Government
Pleader for applicants.
Mr. M.D. Narwadkar, Advocate for respondent No. 1.
Mr. V.J. Dixit, Senior Counsel for respondent No. 3.
Mr. K.C. Sant, Advocate for respondent No. 7.
Mr. Ajay Deshpande, Advocate for respondent No. 10.
Mr. A.N. Sabnis, Advocate for respondent No. 10.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JULY 27, 2017.**

ORDER : [PER T.V. NALAWADE, J.]

. Both the proceedings are filed for review of the judgment
delivered by this Court on 5.7.2017 in Writ Petition No. 8268/2017
(Aalia Kausar Mohammed Shafee Vs. State of Maharashtra) along

with other petitions. The applicants from Application No. 212/2017 were not the parties to the aforesaid petitions, but they had filed a proceeding in Supreme Court bearing SLP (C) No.Diary No.21288 of 2017 on 21.7.2017. The second Review Application No. 213/2017 is filed by the State Government and Director of Medical Education and Research. Both the sides are heard.

2) The writ petitions were filed for following reliefs :-

"A) For a writ of mandamus order or direction in the nature of mandamus directing the respondents herein to consider the petitioner's claim for the admission to Health Science Courses from State quota of Maharashtra on its own merit, and not to reject the petitioner's claim only on the ground that, the petitioner has not passed S.S.C. Examination from an institution situated in the State of Maharashtra.

B) That, the Clause No.4.5 of NEET UG-2017 Information Brochure, Health Science Courses be declared as ultra virus, null and void and the said clause be quashed and set aside to the extent of the candidates who have passed S.S.C. Examination before the academic year 2017-18 from an institution situated outside the State of Maharashtra and who have taken admission in 11th std. in the academic year 2015-16 in the institution situated in the State of Maharashtra.

C) For a writ of mandamus order or direction in the

nature of mandamus directing the respondents herein not to make Clause No.4.5 of NEET UG-2017 Information Brochure, Health Science Courses applicable to the candidates who have passed S.S.C. examination before the academic year 2017-18 from an institution situated outside the State of Maharashtra and who have taken admissions in 11th std. in the academic year 2015-16 in the institution situated in the State of Maharashtra.

D) Pending hearing and the final disposal of the present Writ Petition, the respondents herein, their servants, agents or anybody claiming through them may kindly be directed to consider the petitioner's claim for the admission to the Health Science Courses from State quota of Maharashtra and not to reject the petitioner's claim on the ground that the petitioner has not passed S.S.C. examination from an institution situated in the State of Maharashtra."

There was challenge to Clause 4.5 of NEET UG-2017 Information Brochure of Health Science Courses, due to which there was no possibility of consideration of petitioners for giving them admission in Health Sciences Courses for the academic year 2017-18 from State quota. The petitioners of the writ petitions have passed S.S.C. examination from other State, but they have passed 11th and 12th standards examinations (H.S.C.) from the institutions of this State. Clause No. 4.5 is as under :-

"4.5 The candidate must have passed the SSC or equivalent examination from an Institution situated in the state of Maharashtra. (Please refer 4.7, 4.8, Annexure "C" & Annexure "E" for exception)"

3) The petitioners of the writ petitions are having domicile certificates issued by competent authority of the State and so, they were claiming that Clause 4.5 of the aforesaid brochure cannot be used against them as this brochure was published first time in June 2017 when the petitioners had already passed H.S.C. examination and NEET. They had also contended that the previous brochure of NEET UG-2016 was not prohibiting the candidates like the petitioners from taking admission for Health Science Courses in this State and so, all of a sudden rules cannot be made to prevent the petitioners from getting admissions in the quota of the State, which is 85%.

4) This Court referred the Clauses of NEET UG-2016 and considered the interim order of this Court made in Writ Petition No. 10158/2016 (Mahatma Gandhi Vidyamandir and Anr. Vs. State of Maharashtra and Ors.) decided on 19.9.2016. This Court considered the circumstances that the Division Bench had refused to grant interim relief when there was challenge to Rule 5 of Maharashtra Unaided Private Professional Educational Institutions (Regulation of

Admission to Full Time Professional Undergraduate medical and dental courses) Rules, 2016.

5) This Court made following observations while giving relief in favour of petitioners :-

"8. There is no question to declare said rule as illegal. Learned Counsel for petitioners submitted that they are concerned with the rules for this year and specifically their right of admission to the courses in question. We are in the present facts and circumstances of the case, dealing with the situation where the petitioners have completed S.S.C. examination/study from the institution/board out of the State prior to the year 2015/2016. The rights accrued in their favour, just cannot be taken away by bringing such impugned clause retrospectively, which ultimately denied their right of further higher education in the State, though they are residents of the State and possess domicile certificate of the State. In our view, such eleventh hour change of criteria is unjust, unreasonable and affects the rights of further study so contemplated. These rights just cannot be taken away by the State or respective authority by implementing such condition though they have power and authority to bring in and/or amend the policy decision. Respondents require to take steps to bring such policy by giving full and/or appropriate due public notice to the concerned students, so that before joining the course or 10th standard within or out of

State of Maharashtra, they would be in a position to take effective and appropriate steps/decisions, in advance.

9. In view of the admitted position on record, we are inclined to observe that the imposition of such clause in the year 2017 should not be the hurdle for getting admission to the concerned courses by the petitioners/candidates who have passed S.C.C. or equivalent examination from the institutions situated outside State specifically when they are in possession of domicile certificate of the State, based upon then existing State representation/policy."

Learned counsel Shri. S.B. Talekar representing State submitted that the rules which are under challenge in Writ Petition No. 10158/2016 at principal seat were suppressed and as they are not considered, the decision needs to be reviewed. On this, learned Senior Counsel Shri. Dixit submitted that though these rules were for giving admissions at that time State CET was there and present rules for NEET UG-2017 came to be prepared to comply the order of Supreme Court dated 18.1.2016 made in Writ Petition No. 76/2015 (Ashish Rajan and Ors. Vs. Union of India and Ors.) and so, brochure prepared in the year 2017 needs to be considered in the present matters and that is done by this Court while giving the relief. This Court has already mentioned the things which are considered by this

Court while giving relief to the candidates who had filed aforesaid writ petitions. This Court specifically held that there is no need to declare the aforesaid rule, clause as invalid, but the clause cannot be given retrospective operation as against the candidates like the petitioners, who had taken admission for 11th and 12th standards prior to coming into force of these Rules and their rights will affect due to such rule. Thus, specific reason is given for which this rule cannot be used as against the petitioners.

6) The learned counsel for the State submitted that this is an error committed by this Court in law and in view of Rule 5 of notification published in 2016 such decision could not have been given. The learned counsel submitted that when the State has come with some specific policy and rules are framed, this Court cannot issue writ of mandamus which will be inconsistent with the policy prepared by the State. He placed reliance on so many cases on this point which are as under :-

(i) (1995) 1 SCC 58 [Commissioner of Sales Tax and ors. Vs. Pine Chemicals Ltd. and Ors.],

(ii) (2005) 4 SCC 741 [Board Control for Cricket in India Vs. Netaji Cricket Club & Ors.],

(iii) (1975) 2 SCC 175 [Anant Mills Co. Ltd. Vs. State of Gujarat and Ors.],

(iv) (2003) 11 SCC 146 [Saurabh Choudhary and Ors. Vs. Union of India and Ors.],

(v) (2013) 3 SCC 641 [Indian Soaps and Toiletries makers Association Vs. Ozair Husain and Ors.],

(vi) (2015) 7 SCC 690 [Zuari Cement Ltd. Vs. Regional Director, Employees State Insurance Corporation and Ors.],

(vii) (1979) 1 SCC 560 [Jagir Singh Vs. Ranbir Singh and Anr.],

(viii) (2001) 4 SCC 309 [Union of India Vs. Rakesh Kumar],

(ix) (2010) 11 SCC 694 [State of West Bengal Vs. Subhash Kumar Chatterjee and Ors.]

(x) (1996) 9 SCC 309 [State of UP and Ors. Vs. Harish Chandra and Ors.]

(xi) (1998) 4 SCC 409 [Supreme Court Bar Association Vs. Union of India] and

(xii) (1998) 2 SCC 602 [A.R. Antulay Vs.R.S. Nayar].

7) The submissions made show that the State had not filed reply in aforesaid writ petitions. The contention that the aforesaid rules were suppressed is not tenable as in the decision there is reference of Writ Petition No. 10158/2016. If the State Government wanted to use the notification dated 18.8.2016, it could have been produced by the State as the State Government was represented by Government Pleader. The specific rule of the notification to which the attention of this Court was drawn is as follows :-

"(vi) The candidate must have passed the SSC or

equivalent examination from an Institution situated in the State of Maharashtra. However, except for the year 2016, candidate who has passed SSC or equivalent examination from an institute situated outside Maharashtra State and HSC or equivalent examination from an institute situated within Maharashtra State is eligible for seeking admission to the courses, provided that he or she is Domicile of Maharashtra."

Rules were made in August 2016 under aforesaid notification and after starting of academic year. The year starts in June. The petitioners of writ petitions had already taken admission for 12th standard (H.S.C.). It was submitted that some candidates had passed H.S.C. from this State even prior to year 2016. So, it was not possible for petitioners to take admission in other State where they had completed S.S.C. after introduction of aforesaid rule. Further, in the past, for the years 2015-2016 and 2016-2017 admittedly brochures showed that there was no such condition. In view of these circumstances, it will amount to use of the rule retrospectively against the petitioners of the writ petitions. Thus, the view taken by the Court is possible view.

8) If the aforesaid rule of notification is seen and the submissions made even in these proceedings that in the year 2015-16 and 2016-17 this condition was not there is kept in mind, then

again we return to the situation which is mentioned in reasoning given by this Court. Thus, the defence of the State was considered by this Court and then the relief was granted. It is difficult to hold that this Court would have given different decision if aforesaid notification was produced before this Court.

9) In view of the scope of the review, this Court holds that contentions made are beyond the scope of review. So many other contentions were made by both the sides. But, considering the scope of review, this Court is avoiding to mention and discuss those contentions in detail. It appears that the Medical Council has prepared a programme for giving admission to the central quota. Copy of order made by the Apex Court in that regard is produced. Similarly, the programme prepared by the State for the State quota is produced. Submission was made for writ petitioners that this Court gave relief to the petitioners on 5.7.2017 and in view of the programme, the writ petitioners and similar candidates have already exercised the option of taking admission through State quota and accordingly, the provisional list of the candidates, who are entitled to get admissions is published. The learned counsels submitted that some of the candidates may be of reserved class (The learned counsels of two respondents submitted that they are from reserved class) and these candidates will suffer if they are asked to try for

central quota. There is force in this submission as 'Kunbi' is OBC in Maharashtra State and there may be many such cases. They can argue the ground of discrimination.

10) The learned counsel for the State submitted that it is noticed by the State that many of the candidates who have passed S.S.C. examination out of the State have obtained domicile certificates from different State and they have applied for admission from State quota in those States also. Such submission cannot be considered in a proceedings like present one. It is always open to the State to ascertain as to whether by making false representation, domicile certificate is obtained in this State by such candidates. In those cases, there will be liberty to the State to take proper action and for that the State can evolve some procedure. For all these reasons, this Court holds that there are no merits in both the review applications and they stand dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/