

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2229 of 2017**

Bhavna Singh D/o Ajeet Singh, Aged About 20 Years R/o Block No. 4, Ashish Nagar West , Risali, Bhilai, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through - The Secretary, Health And Family Welfare Department, Mahanadi Bhawan, New Raipur, District. Raipur Chhattisgarh.
2. Director, Medical Education, Old Nurses Hostel, Raipur District Raipur Chhattisgarh.
3. Pt. Deendayal Upadhyay Smriti Sansthan, Through Registrar, Pt. Deendayal Upadhyay Smriti Sansthan, G. E. Road, Raipur District Raipur Chhattisgarh.
4. Principal, Shri Shankaracharya Institute Of Medical Science, District Junwani, Smriti Nagar, Bhilai District Durg Chhattisgarh.

---- Respondents

For Petitioner	: Shri Anup Majumdar, Advocate.
For Respondent/State	: Shri Prafull N. Bharat, Additional Advocate General.
For Respondent No.3	: Shri N.K. Vyas, Advocate.
For Respondent No.4	: Shri A.D. Kuldeep, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Pritinker Diwaker, Judge

Order on Board**16/07/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. The Petitioner was granted admission in the MBBS course in Shankaracharya Institute of Medical Sciences, Bhilai for the academic session beginning 2016-17. Petitioner pursued her studies, but all of a sudden, the Registrar of the University to which the College is affiliated issued a letter dated 01.07.2017 cancelling the admission granted to the Petitioner. This decision of the

Registrar dated 01.07.2017 is under challenge which is annexed as Annexure P/1 in the present writ application. The primary reason why the admission granted to the Petitioner seems to have been cancelled is that she is a Scheduled Caste belonging to the *Jatav* community and her father originally comes from Bulandshahar in the State of Uttar Pradesh, she cannot claim benefit of reservation of the said caste in the State of Chhattisgarh.

3. The stand of the Petitioner is that she has been born and brought up in the State of Chhattisgarh. She has pursued her education at Bhilai in the District of Durg since her father is an employee of Bhilai Steel Plant, which is a Public Sector Undertaking since 02.07.1988 and the date of birth of the Petitioner is said to be 12.12.1996.

4. The Petitioner's case is that on the basis of migrant certificate issued to her by the competent authority at Bhilai, District Durg, she was granted admission under the State quota on the basis of her rank and position in the College in question, but the University authorities half way down the session of 2016-17, decided to annul the admission of the Petitioner on the ground that she cannot carry the benefit of her caste to the State of Chhattisgarh.

5. Submission of the counsel on behalf of the Petitioner is that even in the State of Chhattisgarh, the presidential notification indicates that *Jatav's* are a Scheduled Caste and the relevant entry is at Sr. No.40, Part-23 of the III Schedule of the Constitution (SC), 1950 notification. In addition to that, it is also her plea that no fraud had been played by her nor any misrepresentation has been done coupled with the fact that she has been born and brought up in the State of Chhattisgarh, she has to be treated as a domicile of Chhattisgarh now even though her father was resident of Bulandshahar in the State of Uttar Pradesh prior to his employment in Bhilai Steel Plant.

6. The stand of the Respondent State authorities is that the benefit of reservation must accrue to the domicile of State of Chhattisgarh. Being resident is one thing but being domicile of the State requires something more than mere residence.

7. In reply thereto, counsel for the Petitioner draws our attention to certain administrative guidelines issued by the State of Chhattisgarh itself. A copy of which is Annexure P/9, this is dated 17.06.2003 issued under the signature of the Principal Secretary of General Administration Department, Government of Chhattisgarh. Counsel for the Petitioner submits that there are four conditions which are laid down as to who shall be treated as local resident of the State of Chhattisgarh. One of the condition is that the person must be born in the State of Chhattisgarh. If this guideline is read with the undisputed fact that the Petitioner was born in the State of Chhattisgarh and has pursued her studies and Jatav is also one of the caste which have been shown in the presidential notification as Scheduled Caste even in the State of Chhattisgarh, therefore, her admission ought not to be cancelled on the ground that she is carrying her caste from another State and that benefit cannot be availed of locally.

8. Without going into the controversy as such, the Petitioner's counsel relies on a Division Bench decision rendered in a similar circumstance decided in a batch of writ applications. The leading case being WPC No.434 of 2017, which is case of Deshmukh Araib Afridi Ahamed & Another v. State of Chhattisgarh & Others and analogous cases, decided on 28.08.2017, the Division Bench held as follows:-

“6. The peculiar situation of the Petitioners is that, after securing admissions in the college, they had carried forward their education for BDS course for more than two academic years. Their studies continued to be protected through interlocutory orders issued by this Court. They are still

continuing in the institutions. The 12 seats which may fall vacant, if they were to vacate, cannot be filled up with reference to the academic years in question. It is not as if the Petitioners were unqualified if they were to be treated as belonging to certain categories on All India basis. The situation in hand need not necessarily result in wrecking the prospects of the writ petitioners. Taking a cue from the decision of the Hon'ble Supreme Court in *Sanjeev Kumar & another Vs. State of Bihar & others*; AIR 2017 SC 1501, though that dealt with a case of reservation in public appointment, we are inclined to take the view that this is an eminently fit case where the Petitioners could be permitted to continue with their education by treating them as lawfully admitted to the course of study, thereby permitting and facilitating their continued study and completion of the course without any objection in that regard, either by the University or the State Government.

7. In the result, these writ petitions are ordered directing that notwithstanding the impugned order, the Petitioners shall be permitted to continue with the course to which they were admitted, leading to their due examination and publication of results from time to time, by the University, in accordance with law. It is clarified that this order is issued solely for the purpose of enabling the Petitioners to complete the BDS Course which they are undergoing and earn such qualification.”

9. Since in the identical situation, a co-ordinate Bench of this Court has taken a view as above and the facts and circumstances in the present case being identical in nature, this writ appeal stands allowed. The impugned order contained in Annexure P/1 dated 01.07.2017 is quashed. The Respondent authorities including the College in question are directed to allow the Petitioner to continue with her studies in the MBBS course without any hindrance. By virtue of the ad-interim order, the Petitioner has continued to pursue her studies and there has not been any break, despite the order dated 01.07.2017 having been issued against

her.

10. The writ application is allowed in the aforesaid terms.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE

Anu