

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 5657 OF 2018

Vishal Bapurao Nagargoje and another.

Petitioners.

Versus

The State of Maharashtra and others.

Respondents.

Mr. A.N. Nagargoje, Advocate for the petitioners.

Mr. N.T. Bhagat, A.G.P. for the State.

Mr. S.G. Karlekar, Advocate for respondent No.3.

WITH

WRIT PETITION NO. 5706 OF 2018

Shivani Nanasaheb Kalyankar.

Petitioner.

Versus

The State of Maharashtra and others.

Respondents.

Mr. D.M. Shinde, Advocate for the petitioner.

Mr. S.G. Karlekar, A.G.P. for the State.

Mr. M.D. Narwadkar, Advocate for respondent No.3.

**CORAM : S.V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

Dated : 14th June, 2018.

ORDER :-

1. The petitioners seek direction against the respondents to consider their claim for the admission to Health Science Course from the State Quota of Maharashtra.

2. The petitioners in both these Writ Petitions have passed their 10th and 12th Standard examination from the institution situated outside the State of Maharashtra. Learned Counsel for the respective petitioners submit that the petitioners are the domiciles of the State of Maharashtra. Domicile certificates to that effect have been issued. It is because of the contingencies and the circumstances beyond control of the petitioners, they were required to stay outside the State of Maharashtra and passed 10th and 12th Standard examination from the institution situated outside the State of Maharashtra. The petitioner in Writ Petition No.5657/2018 has undergone his entire education upto 12th Standard from the institution situated at Delhi, whereas the petitioner in Writ Petition No.5706/2018 has completed his entire education upto 12th Standard from the State of Rajasthan.

3. Learned Counsel submits that Clauses 4.5 and 4.6 of NEET UG-2018 requiring domicile of the State of Maharashtra and

pass 10th and 12th Standard examination from the State of Maharashtra, are illegal. Similar clauses are not appearing in the admission broacher for the State Quota of other States. According to the learned Counsel, when the petitioners are domiciles of the State of Maharashtra possessing requisite Domicile Certificate, they are required to be considered from the State Quota of the State of Maharashtra.

4. Learned A.G.P. submits that the issue is no longer *res integra* in view of the authoritative pronouncement of the Division Bench of this Court in the case of **Shubham Vs. State of Maharashtra** reported in **2014 (1) Mh.L.J. 750**, in the judgment of this Court in Writ Petition No. 9157/2017 dated 18.09.2017 and in the case of **Ipsa Singh Anil Singh Vs State of Maharashtra** in **Writ Petition No.5606/2013** dated 17th July, 2013. Learned Counsel for the petitioners relied on the judgment of Division Bench of this Court in Writ Petition No. 8268/2017 (Aalia Kausar Mohammed Shafee Vs State of Maharashtra and others), dated 5th July, 2017.

5. The Division Bench of this Court in Writ Petition No.8268/2017 (Aalia Kausar Mohammed Shafee Vs State of Maharashtra and others) was considering the rule prescribing

passing 10th Standard from the institution situated in the State of Maharashtra. The Division Bench held that the rule would not have retrospective operation, however, did not hold that the rule is *ultra vires*.

6. A similar condition, which is assailed in the present Petitions, was the subject-matter for consideration before the Division Bench of this Court in the case of **Shubham** (supra), so also in Writ Petition No. 9157/2017 and in the case of **Ipsa Singh** (supra). The Division Bench of this Court has consistently held the said rule to be legal and valid. The State of Maharashtra exercising its rule making powers under sub-ordinate legislation has also framed rule i.e. Rule-5-A (vi) under Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015. Rule 5-A (vi) specifically prescribes that the candidate must have passed S.S.C or equivalent examination from the institution situated in the State of Maharashtra. Further, except for the year 2016, the candidate who has passed S.S.C or equivalent examination from the institution outside the State of Maharashtra and H.S.C. or equivalent examination from an institute situated within Maharashtra State is eligible for seeking admission to the courses, provided that he or she has Domicile of Maharashtra.

7. It is not the subject-matter of debate that the rules are framed by the State Government under its rule making authority provided by the statute and the same are not subject-matter of challenge before this Court.

8. Considering the aforesaid conspectus of the matter, no relief can be given to the petitioners.

9. Writ Petition, as such, are dismissed. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/