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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1814 OF 2018

Dr. Sharvil Thatte & Others ….. Petitioners.
V/s
State of Maharahstra and Others ….. Respondents.

Mr. V.M. Thorat a/w Ms. P.V. Thorat and Mr. Anukul Seth for the Petitioners.
Mr. Drupad S. Patil for the Interveners in CAW/413/2018.
Mr. Ashutosh Kumbhakoni, Advocate General a/w Mr. Akshay Shinde and Mr. Vikas Mali, Asstt. Govt. Pleader for Respondent Nos. 1 to 4/ State.

CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.

DATE: 22nd FEBRUARY, 2018

P.C.:- ***(Per B.R. Gavai, J.)***

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard by consent of parties.

2] Petitioners are challenging condition No.(ii) in the eligibility criteria prescribed in the Notification dated 30/01/2018, issued by the State Government for admission to the post-graduate courses in Unaided Private Professional Educational Institutions in the State of

Maharashtra and condition No.1.2 in the eligibility criteria prescribed in the Notification dated 29/01/2018 issued by the State Government for admission to the Government/Municipal Corporations and unaided medical/dental Colleges for post-graduate courses. The condition, basically under challenge, reads thus:-

> "(ii) The candidate shall be a domicile of State of Maharashtra."

3] Mr. Thorat, learned Counsel appearing on behalf of the Petitioners, submits that the condition, as imposed by the State Government, is contrary to the various Judgments of the Supreme Court, beginning from the case of *Pradeep Jain vs. Union of India & Ors.*[1], which has been consistently followed till the judgment of the Supreme Court in the case of *Vishal Goyal vs. State of Karnataka*[2].

4] He further submits that, not only this but a similar condition which was imposed by the State Government for the academic year 2017-18 was stayed by Division Bench of this Court by Order dated 30/04/2017 passed in Writ Petition No.5283 of 2017. He submits

1 1984(3) SCC 654
2 2014(11) SCC 456

that, the SLP filed by the State Government, challenging the same, was not pressed by the State Government. Learned Counsel therefore submits that, the impugned condition need to be quashed and set aside.

5] Mr. Kumbhakoni, learned Advocate General has vehemently opposed the prayer made by the Petitioners. He submits that, out of 1639 seats for post-graduate courses and 289 seats for diploma courses, 50% of the seats are required to be filled-in under the All India Quota. He therefore submits that, what remains is only remaining 50% quota. He further submits that, if in the said 50% quota, the students who are not originally belonging to State of Maharashtra but coming from other States, are permitted to compete with the students from State of Maharashtra, situation would lead to totally unjust treatment being given to students who are originally belonging to State of Maharashtra. Learned Advocate General further submits that, when the State of Maharashtra incurs huge expenditure on providing educational facilities to the students for the post-graduate courses, it is a reasonable expectation that the expenditure so incurred by it should be utilized for providing facilities to the

students in the State of Maharashtra. He, however, submits that students, who are admitted against the All India Quta for MBBS Course, complete their post-graduation in the State of Maharashtra and after completing it, stay elsewhere and therefore, huge expenditure incurred by the State on providing facilities to such students goes in waste insofar as State of Maharashtra is concerned. Learned Advocate General therefore submits that, the students who are originally from the State of Maharashtra have legitimate claim that atleast 50% of the total seats in the Government/Corporations, Government aided Colleges should be made available to the students who are originally from the State of Maharashtra.

6] Mr. Patil, learned Counsel appearing on behalf of the Intervenors, supports the submissions made by the learned Advocate General. He also submits that, the Rule which is enacted in order to safeguard the interest of the students who are MBBS graduates, seeking admission to post-graduate course and domiciled in the State Maharashtra, needs to be upheld.

7] At the first blush, arguments of learned Advocate General may

appear to be quite attractive. However, in view of the settled legal position, as has been laid down by catena of judgments of the Supreme Court, it will not be even permissible for us to consider the submissions made by learned Advocate General. The Bench consisting of three Hon'ble Judges of the Supreme Court in the case of Pradeep Jain (cited supra), has observed in para 22 thus:-

> "22.....We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course....."

The said position has been consistently followed in various judgments. Reference to all those Judgments, in our view, is not necessary. Lastly in the case of *Vishal Goyal* (cited supra), the condition as imposed by the State of Karnataka while providing institutional preference, also provided that, such students seeking admission in a seat reserved for institutional preference, must also have origin in the State of Karnataka. While holding that such a condition was not permissible, the Apex Court observed thus :-

> "11. Mr. Mariarputhan is right that in *Saurabh Chaudhari v. Union of India [(2003) 11 SCC 146]* this Court has held that institutional preference can be given by a State, but in the aforesaid decision of *Saurabh Chaudhari [(2003) 11 SCC 146],* it has also been held that decision of the State to give institutional preference can be invalidated by the court in the event it is shown that the decision of the State is ultra vires the right to equality under Article 14 of the Constitution. When we examine sub-clause (a) of Clause 2.1 of the two Information Bulletins, we find that the expression "A candidate of Karnatka origin" who only is eligible to appear for entrance test has been so defined as to exclude a candidate who has studied MBBS or BDS in an institution in the State of Karnataka but who does not satisfy the other requirements

> of sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014. Thus, the institutional preference sought to be given by sub-clause (a) of Clause 2.1. of the Information Bulletin for PGET-2014 is clearly contrary to the judgment of this Court in Pradeep Jain case [Pradeep Jain v. Union of India, (1984) 3 SCC 654]."

8] It could thus be seen that, it is a settled position in law that, though it will be permissible to provide reservation on the ground of institutional preference, the condition which requires a candidate who has possessed post-graduate degree also to be domiciled in that State, would not be permissible.

9] In view of the above settled legal position, Petition is allowed and condition No.(ii) in the eligibility criteria prescribed in the Government Notification dated 30/01/2018 and condition No.1.2 in the eligibility criteria prescribed in the Government Notification dated 29/01/2018 is quashed and set aside.

10] Rule is made absolute in the aforesaid terms.

(B. P. COLABAWALLA, J.) **(B. R. GAVAI, J.)**