

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3418 OF 2018

Dr. Prashat Jayant.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Ravindra Lokhande for the Petitioner.

Mr. S. B. Kalel, AGP for the Respondent-State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **March 27, 2018.**

P. C. :

1. With consent of the parties heard finally at the stage of admission.

2. The Petitioner has completed his MBBS degree course with mandatory internship in November 2013. He has sought to quash and set aside condition Nos.1,2,3,4,5, 10 and 11 of Government notification dated 1st November, 2011 and para no. 8.3 of NEET 2018 prospectus issued by the Respondent as violative of Article 14 of the Constitution of India.

3. Before considering the validity of the eligibility criteria, as stipulated in condition Nos.1,2,3,4,5, 10 and 11 of

Government notification dated 1st November, 2011 and para no. 8.3 of NEET 2018 prospectus, it is necessary to refer to the Government Resolution dated 8.2.2008, which has been placed on record by the learned AGP. Clause (1) of this resolution stipulates that candidate who has completed their MBBS or BDS course from Government or Municipal Corporation run medical colleges is required to serve the State Government, local bodies or defence services for a period of one year. If a candidate fails to fulfill this mandatory requirement, the Government Resolution prescribes penalty of Rs.5,00,000/- for candidates who have sought admission year 2004-2005 till 2007-2008 and Rs.10 lakhs for candidates who have sought admission from the academic year 2009 onwards. This penalty is sought to be enforced by the execution of the bond. Clause 4 of this Resolution relaxed the condition under the earlier Government Resolution dated 31st July, 2006 which provided in order to be eligible to appear for post graduate medical entrance test, a candidate had to discharge the obligation of public service. Clause (6) stipulated that the conditions prescribed in the said Resolution would apply to all those who were on the date of the Resolution pursuing their education in Government or Municipal Corporation run medical colleges and also to students admitted through All India Quota as well as those nominated by the Central

Government. The clause (8) stipulated that this Govt. Resolution would come into effect from the common entrance test of 2008 in the case of degree and super-specialty courses and from the common entrance test 2009 in the case of postgraduate courses.

4. The learned AGP has also placed on record Govt. Resolution dated 12.10.2017. Clause (a) of this Resolution provides that unless the candidate renders the mandatory bond service he would not be eligible to appear for MD/MS/ Post Graduate entrance test. Clauses (b) and (c) of the said circular deal with conditions for entrance exams of Post Graduate and Super Specialty courses. Clause (d) provides that the aforesaid policy decision is applicable for admission of post graduate and super-specialty courses from the academic year 2018-2019 onwards. The said clause states that the candidates desirous of taking admission in Post Graduate or Super-specialty course in the year 2018-2019 should complete their Bond Service prior to admission. Clause (e) states that apart from the aforesaid changes specified in clause (a) (b) (c) (d) and (e) all other terms and conditions in respect of Bond Service remain unchanged.

5. Government Resolution notification dated 1/11/2011

prescribes eligibility criteria for PGM -CET Entrance examination to be conducted in the year 2013 and thereafter conducted by the Government of Maharashtra. The Petitioner has alleged that clauses 1 to 5 and 10 to 11 of this Government Resolution are arbitrary, unjust and unreasonable. It would be therefore necessary to make a brief reference to these clauses, which read thus:-

(1) Candidate will be allowed to appear for PGM-CET only twice-first time for the examination conducted before the date of internship completion and second time for the examination conducted after completion of mandatory internship period.

(2) Being eligible and allowed for two attempts as above, if candidate does not take admission to a Post Graduate course, he or she will have to complete the Bond service before taking subsequent attempts of PGM-CET.

(3) PGM-CET-2013 is proposed to be conducted in January/February 2013. Those who are appearing for PGM-CET 2012 as second attempt and desirous to appear for PGM CET 2013(which will be counted as third attempt) will have to complete one year Bond Service.

(4) Candidates appearing for PGM-CET-2012 as third or

more attempt but do not take admission to a postgraduate course will have to complete one year Bond Service before appearing for PGM-CET-2013 for subsequent attempts.

(5) For desirous candidates there is no limit of attempts for appearing to PGM-CET Examination once mandatory one year Bond Service is completed after taking two attempts.

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(10) Candidate will have to complete one year Bond Service before appearing for PGM-CET Entrance Examination for third attempt. Candidate who does not wish to do one year Bond Service will be made eligible for third and subsequent attempts after paying Bond Penalty as per the rules.

(11) Candidate seeking admission to postgraduate course through 50% All India Quota shall have to complete one year Bond Service after completion of Postgraduate Courses.

6. As regards Clause 8.13 of NEET 2018 prospectus, which flows from clause 10 of Government Resolution, dated 8th February, 2008 provides that candidate who has completed MBBS course from

Government/Corporation aided colleges has to complete bond service as per the rules and regulations framed by State Government from time to time. Such candidate can appear NEET PG examination without completion of UG Bond only for two years. After these two years, candidate is not eligible for admission through NEET PG unless he/she completes UG Bond service. Such a non-eligible candidate has to pay bond penalty amount to the Dean before document verification; otherwise, he/she will be treated as ineligible for selection. This clause notes that "*All the candidates who have completed the internship on or before 31.3.2016 are not eligible for admission process through NEET 2018 unless he/she has Bond released certificate on the day of the document verification process.*"

7. Thus, in terms of the Government Resolution dated 8th February, 2008 candidate, who has completed MBBS or BDS course from Government/ Municipal Corporation aided medical colleges has to render one year Bond Service, failing which he/she is liable for penalty of Rs.5 lakhs or 10 lakhs as the case may be. Candidate can appear for PG CET for two years, without completing mandatory Bond Service. However, if he is unable to secure admission in two attempts, he/she cannot appear for the entrance test for the third year without

completing bond service or paying the prescribed penalty.

8. Mr. Lokhande the learned counsel for the Petitioner contends that candidates from private medical colleges are not required to render mandatory bond service. As a consequence the students from private colleges can have easy access to PG seats in Government colleges while the candidates from Government/ Municipal Corporation aided medical colleges render Bond service. It has to be borne in mind that unlike private colleges Government / Municipal Corporation aided medical colleges provide education at a subsidised rate. Hence, the Government can legitimately impose a condition that such Doctors render services in Government/ Municipal Medical colleges or defence services for a stipulated period and makes such bond service an eligibility criterion for postgraduate course. The ultimate object of such condition is to provide healthcare services in rural areas. Suffice it to say that the anxiety of the State Government to provide medical services in rural areas cannot be said to be unjust or arbitrary.

9. At this stage reference can also be made to the decision of the Division Bench of this Court in *Dr. Vinod Shankarlal Sharma and*

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wherein it has been observed thus:

"The State spends a considerable amount of money in providing subsidized medical education. As a condition attaching to the provision of subsidized medical education, it is legitimately open to the State to assert that upon the completion of their studies, such doctors should be required to render public service either in government or municipal medical colleges or in the defence services. The period, which is prescribed for the bond, is service for a period of one year which is not disproportionate. After the completion of service of one year, a super-specialized doctor is free for the rest of his or her professional career to serve elsewhere in the country or wherever. The condition which has been imposed by the State Government of requiring service for a period of one year cannot be regarded as arbitrary or unreasonable. Even as a matter of first principle, the State has a legitimate interest in ensuring that while on the one hand it creates an infrastructure necessary for the pursuit of medical studies especially at the super-specialized level, students who benefit from that

infrastructure and its attendant resource base must contribute back to the community by rendering public service. The importance of the wider social perspective cannot be lost from purview. Patients, who come for treatment to state and municipal run medical colleges are not necessarily confined only to the State of Maharashtra and it is a matter of common knowledge that patients are drawn from within as well as outside the State. Poverty in India does not know geographical boundaries. We do not find any infirmity in the policy decision of the State Government that students who complete their medical degrees from government and municipal run medical colleges must perform public service for a stipulated period in recognition of the fact that the public exchequer bears a large burden of the expenditure incurred on their medical education. Such a requirement is based on a valid rationale and the classification meets the requirements of a reasonable classification for the purposes of Article 14 of the Constitution."

10. In the instant case, unlike the student /candidate from

private medical college, the Petitioner has chosen to avail subsidised medical education at the expense of the State Government. Having chosen to avail such benefit, it is not open for the Petitioner to assert that the condition to work in Government or Municipal Medical Colleges is unjust or unreasonable.

11. At this stage, the learned counsel for the Petitioner relying upon the decision of the Apex Court in *Dr. Shubhra Srivastava vs. STate of Maharashtra* and the decision of this Court in Writ Petition (Stamp) No.14437 of 2017 contends that he should be allowed to participate in counseling and to render Bond Services after completing Post Graduation course. It may be mentioned that in *Dr. Shubhra* (supra), as an interim measure, it was directed to call the Petitioner for counseling /verification of documents subject to the condition that no equity would flow in her favour and eventually if she did not succeed she would furnish the bond as required, failing which her admission to the Post Graduation course would be revoked. Pursuant to the said interim order, the Petitioner had participated in counseling and had taken admission. In the light of the said fact the Petitioner was directed to complete all the formalities required to be done by the Directorate of Medical Education and Research.

12. Relying upon the decision of the Apex Court in Dr. Shubhra,(supra) another Division Bench of this Court had passed a similar interim order. Being an interim order, this decision cannot form a precedent. It is pertinent to note that the Petitioner has completed his medical course with one-year internship in the year 2013. He had not completed the requisite bond service. He had appeared for PGM-CET entrance test for two years. Though he had failed to secure admission despite having appeared for NEET CET for two years, there is no total embargo on appearing for subsequent entrance test. He is eligible to appear for third or subsequent years upon completion of bond service or upon payment of penalty. This eligibility condition is not unreasonable, arbitrary or violative of Article 14 of the Constitution of India. Under the circumstances, the request to allow the Petitioner to appear for entrance test for PG course without completing the Bond service and/or to permit him to complete bond service after completing the PG course cannot be acceded. Such course would be contrary to the Rules and Regulations as well as the eligibility criteria.

13. In the above circumstances, we are not inclined to entertain this petition and the same is hereby dismissed.

14. All concerned to act on an authenticated copy of this order.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]