

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9392 OF 2018

Narendrasinh B. Desai and others

..Petitioners

Versus

Union of India and others

..Respondents

**Mr. M. M. Vashi, Senior Counsel I/by Mr. Rahul Walia, Advocate
for the Petitioners.**

**Mr. R. A. Rodrigues a/w Mr. Dushyant Kumar, Advocate for
Respondent No.1 – UOI.**

**Mr. Shreeshailya S. Deshmukh, Advocate for Respondent Nos.2
& 3.**

**Mr. Rajiv Narula I/by Jhangiani Narula & Associates, Advocate
for Respondent No.4.**

CORAM : B. R. GAVAI &

M. S. KARNIK, JJ.

DATE : 12th OCTOBER, 2018

ORAL JUDGMENT (Per B. R. Gavai, J)

1] The Petitioners have approached this Court being aggrieved by the order dated 17th July 2018, issued by the Respondent No.3, thereby changing the rules provided the criteria for admission to the medical seats allotted to the Union Territory of Dadra and Nagar Haveli.

2] Certain seats from the Medical Colleges of other States available in Central Government Pool are made available to the Respondent No.2 to be allotted to the candidates who are permanent residents/domiciled in the Union Territory of Dadra and Nagar Haveli. It is the contention of the Petitioners that the rules providing criteria for admission against said seats came to be changed by the Respondent No.3, after the admission process for the Academic Year 2018-2019 commenced.

3] While issuing notice dated 23rd August 2018, we had observed that the Respondents were seeking to change the criteria for admission after the students had offered themselves for the qualifying examination i.e. after the NEET. As such, by ad-interim order, we had directed that till further orders the Respondents shall not finalize the list of first year MBBS and BDS course. We had modified the ad-interim order dated 5th September 2018 by permitting the Respondents to finalize the admission of such students who are having permanent residence certificate of Union Territory of Dadra Nagar and Haveli as prescribed. We had further observed that the admission of such of the candidates who are not

having such certificate shall not be finalized.

4] Since it was the contention of the Petitioners that certain candidates were admitted contrary to our interim orders, we had granted leave to amend the Petition vide said order dated 5th September 2018. In accordance with the leave granted by this Court, the Petitioners have amended the Petition so as to implead Respondent Nos.4 and 5, according to the Petitioners, who have been admitted in breach of the order passed by this Court dated 23rd August 2018 as modified by order dated 5th September 2018.

5] Mr. M. M. Vashi, learned senior counsel appearing on behalf of the Petitioners submits that Respondent No.3 has changed the rules after the admission process was started. It is submitted that as per the directions of Respondent No.1 – Union of India, only the permanent residents of Union Territory of Dadra and Nagar Haveli were entitled to be admitted against the seats allotted to the Respondent No.2. However, in contravention to the directions issued by the Respondent No.1, Respondent No.3 has amended the rules after the admission process was started, so as to suit certain candidates. He submits that though as per the requirement of the

Respondent No.2, for being eligible for grant of permanent residency certificate, the candidates' parents must have resided in the area of Union Territory of Dadra and Nagar Haveli for 15 years, giving an allowance that under the relevant rules governing medical admissions requirement for granting such a certificate is concerned, is brought down to 12 years, still the Respondent Nos.4 and 5 did not comply with the said requirement. It is the contention of the Petitioners that though the amended rules have been shown to have been modified on 17th July 2018, in effect they have been published for the first time on 18th August 2018. It is the contention of the Petitioners that the rules have been changed, by which the requirement for being permanent residence which requires the parents to reside in the Union Territory of Dadra and Nagar Haveli for 12 years has been brought down to one which requires parents to reside only for 10 years. It is submitted that this has been done to suit certain candidates, whose parents had not resided for 12 years but had resided only for 10 years. In this background, the Petitioners have approached this Court praying for quashing and setting aside the order dated 17th July 2018/18th August 2018 and the admissions made on the basis of the said rules, which are

contrary to the orders of this Court.

6] He further submits that Respondent No.4 has also shown her to be domiciled in the state of Uttarakhand and had got admission under the quota available to the Uttarakhand. He submits that though as per the prescribed form, a candidate is required to file an affidavit that the candidate has relinquished his claim to be domicile of his parent State and that candidate will not avail dual benefit of two States, a false affidavit is filed by the father of the Respondent No.4. He submits that on this ground also the admission of Respondent No.4 is liable to be quashed and set aside.

7] Mr. Shreeshailya S. Deshmukh, learned counsel appearing on behalf of Respondent Nos.2 and 3 submits that rules were changed by the Respondent No.3 after inviting objections. He submits that draft rules were published on the website of the Respondent No.3. The objections were invited and only thereafter rules came to be changed. He further submits that since the rules have been changed following the procedure, no interference is warranted in the present matter.

8] Mr. Rajiv Narula, learned counsel appearing on behalf of Respondent No.4 submits that the domicile certificate and permanent residency certificate are one and the same things. He submits that Respondent No.4 has been admitted in accordance with the rules which have been changed in accordance with law. He submits that though the rules have been changed after the commencement of the admission process, but much before the seats were allotted to the Respondent No.2 by the Union of India. He submits that seats came to be allotted to the Respondent No.2 in the month of August, 2018, whereas rules have been changed in the month of July 2018. In so far as as the contention of the Petitioners that Respondent No.4 has also shown her to be domiciled in the State of Uttarakhand is concerned, the learned counsel submits that since father of the Respondent No.4 originally belongs to the State of Uttarakhand, the Respondent No.4 was entitled to get a domicile certificate of Uttarakhand. He submits that similarly since the father of the Petitioner had resided in the Union Territory of Dadra and Nagar Haveli for a period of more than 10 years, the Respondent No.4 is equally entitled to get a domicile certificate of Union Territory of Dadra and Nagar Haveli. Learned counsel submits that

the Respondent No.4 has already surrendered the domicile certificate issued by the State of Uttarakhand. In so far as the affidavit filed by the father of Respondent No.4 is concerned, learned counsel submits that the affidavit is filed by the father of the Respondent No.4 and not the Respondent No.4. He submits that since the father of the Respondent No.4 is domiciled in the Union Territory of Dadra and Nagar Haveli and since he was not domicile of any other State, he has rightly filed affidavit. He submits that Respondent No.4 has not filed any affidavit and as such, Respondent No.4 cannot be blamed for having domicile of two States.

9] Vide the order dated 31st July 2018, the Union of India has laid down guidelines for allocation of Central Pool MBBS/BDS seats for the academic year 2018-2019. The eligibility condition has been provided as under :-

“1.2 Eligibility conditions:

Only the children of

- (i) permanent residents of the State/UT concerned;

- (ii) the employees of the State/UT Government concerned;
- (iii) the employees of the Central/Other State/UT Government on deputation to the State/UT concerned and
- (iv) the employees of the Central/other State/UT Govt. posted in and having their headquarters within the State/UT concerned will be eligible.

The children of Central/State/UT Government employees aforementioned should be treated at par with the local resident.”

10] The Respondent No.1 – Union of India has reiterated the guidelines vide order dated 13th August 2018. It will be relevant to refer to clause (i) of paragraph 2 of the said guidelines which reads thus :-

- “(i) It is once again reiterated that only the children of
(i) permanent residents of the State/UT concerned;
(ii) the employees of the State/UT Government concerned; (iii) the employees of the Central/other State/UT Government on deputation to the State/UT concerned and (iv) the employees of the Central/other State/UT Govt. posted in and having their headquarters within the State/UT concerned will be eligible.”

11] The Respondent No.2 vide the Government Notification dated 31st May 2013 published in gazette on 3rd June 2013 has

published the Criteria/Guidelines for Selection/Nomination of Candidates against reserved seats allotted to the Union Territory of Dadra and Nagar Haveli by the Government of India. Clause (2) of the said order, which deals with Eligibility Criteria reads thus :-

“2. ELIGIBILITY CRITERIA.

The allotment of the Central Pool quota seat will be made in the following order of priority.

- (i) First priority should be given to those candidates whose parents are Domicile/Permanent Resident of U.T. of Dadra and Nagar Haveli continuously for last 12 years and the candidates should have continuously studied for at least 5 years in Class 8th, 9th, 10th, 11th and 12th in any of the recognized High School/Higher Secondary Schools of U.T. of Dadra and Nagar Haveli for admission to specified courses not available in U.T. of Dadra and Nagar Haveli.
- (ii) Second priority shall be given to the employees of the Administration of Dadra & Nagar Haveli, fulfilling the following conditions:
 - (a) The Govt. servant should have put in a minimum of 5 years continuous service.
 - (b) He should have resided in this U.T. for a minimum of 5 years continuously.
 - (c) His ward should have studied for the last 5 years in any of the recognized schools of U.T. till passing

the qualifying examination.

- (iii) Third priority shall be given to the Central Govt./State Govt./other U.T. employees on deputation or transfer to Dadra & Nagar Haveli, who are having the place of their duty in U.T. of Dadra & Nagar Haveli and whose children have studied in Dadra & Nagar Haveli and have already stayed in Dadra & Nagar Haveli atleast for 2 years continuously and whose children have studied for atleast 2 yers in any of the recognized High School./H.S.S. of this territory, till the stage of qualifying examination. This category will be considered only for seats remaining after the first two categories are considered.”

Such benefit will only be one time opportunity and benefit for single candidates and the selected candidate will not be allowed to change the course chosen already.”

12] It will also be relevant to refer to Note 1 of the said order :-

“Note : 1. Domicile/Permanent residents means those parents/ guardians (In case father or mother is not alive) of the candidates who are staying for continuous 12 years in this Union Territory. (a) The Mamlatdar, Dadra & Nagar Haveli, will issue necessary certificates to this effect based on ration card, Parliamentary constituency, electoral rolls and other such proofs supported by an affidavit to that effect. (b) The dependence certificate issued by the Mamlatdar, Dadra & Nagar Haveli, will have to be attached to the application in case of those who are claiming guardianship of the candidates.”

13] It could thus be seen that from perusal of the said Eligibility Criteria, it would reveal that first priority should be given to those candidates whose parents are Domicile/Permanent Resident of Union Territory of Dadra and Nagar Haveli continuously for 12 years. It is also necessary that the candidates should have continuously studied for at least five years in class 8th, 9th, 10th, 11th and 12th in any of the recognized High School/Higher Secondary Schools of Union Territory of Dadra and Nagar Haveli. Perusal of the Note-1 would reveal that, it defines the term “Domicile/Permanent resident”. It would reveal that for being Domicile/Permanent residents of Dadara and Nagar Haveli one has to continuously reside for a period of 12 years in the Union Territory of Dadara and Nagar Haveli. The Mamlatdar, Dadara and Nagar Haveli is authorized to issue necessary certificates in this effect based on ration card, Parliamentary constituency, electoral rolls and other such proofs supported by an affidavit to that effect. The dependence certificate is also required to be attached to the application in case of those who are claiming to be guardian of the candidates.

14] It could thus be seen that as per the rules notified in the Government Gazette for being considered eligible for admission to MBBS/BDS course against the seat reserved for the Union Territory of Dadara and Nagar Haveli, it is necessary that one must reside continuously for a period of 12 years in Dadara and Nagar Haveli. The rules on which the Respondent No.3 as well as Respondent Nos.4 and 5 rely are though dated 17th July 2018, on the own showing of Respondent No.3, though the said rules are approved on 17th July 2018, they were notified on 18th August 2018. It could thus be seen that the rules bringing down the requirement of 12 years to 10 years have been published much after the students had appeared for NEET examination i.e. in the month of May 2018. Apart from that it is to be noted that though the rules of 2013 are published in the official gazette, the said rules of July/August 2018 have not been published in the official gazette. Learned counsel for the Respondent Nos.2 and 3 has fairly conceded that they have not been notified on the official gazette. It is further to be noted that though the rules of 2013 are notified by the Respondent No.2, the rules published in the month of August 2018 are published by the Respondent No.3.

15] We are therefore of the considered view that firstly, the rules have not been changed in a legal manner. When the earlier 2013 rules were notified by the Respondent No.2 under the signature of Additional Secretary, Education with the approval of the administrator, the rules which are published in August 2018 are under the signature of the Respondent No.3, who is undisputedly lower in authority than the Additional Secretary, Education. Secondly, the rules have been changed after the candidates had applied for the NEET. As already discussed herein-above, the students have appeared for the NEET examination in the month of May 2018, whereas the so called rules of 2018 are published on 18th August 2018. Undisputedly, in the present case, the rules have been changed not only after the candidates had appeared for NEET but much after the results of the NEET were declared. In our view, this is not permissible in law. Reliance in this respect could be placed on the judgment of the Hon'ble Apex Court in the case of **Parmender Kumar and others Vs. State of Haryana and others**¹. In that view of the matter, we are of the considered view that the Petition deserves to be allowed.

¹ (2012) 1 SCC 177.

16] Rule is therefore made absolute in terms of prayer clause (A).

17] Needless to state that Respondent Nos.2 and 3 shall complete the admission process in accordance with the rules which are notified vide Government Notification dated 31st May 2013 and published in the official gazette dated 3rd June 2013.

18] Needless to state that admissions granted if any in breach of the interim orders passed by this Court dated 5th September 2018 and who are not qualifying as per the 2013 rules and of students who do not possess the requisite qualification i.e. requirement of residence for a period of 12 years prior to the date of application shall stand cancelled.

19] At this stage, Mr. Rajiv Narula, learned counsel appearing on behalf of Respondent No.4 requests for stay of the order for a period of six weeks from today. The said prayer is vehemently opposed by Mr. M. M. Vashi, learned senior counsel for the Petitioners.

20] Taking into consideration the view that we have taken, we are not inclined to grant the prayer made. The said prayer is rejected.

[M. S. KARNIK, J.]

[B. R. GAVAI, J.]