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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO.217 OF 2016
IN
WRIT PETITION NO.2082 OF 2015

Forum of Minority Management
Institutions and others ..Applicants

IN THE MATTER BETWEEN

Forum of Minority Management
Institutions and others ..Petitioners
Versus
State of Maharashtra and others ..Respondents

Mr. S. C. Naidu a/w Mr. T. R. Yadav & Mr. Aniketh Poojari i/by M/s.
C. R. Naidu & Co., Advocate for the Petitioners/Applicants.

Mr. L. M. Acharya, Special Counsel for Respondent - State.

**CORAM: B. R. GAVAI &
SMT. BHARATI H. DANGRE, JJ.**

DATE: 19th APRIL, 2018

P.C.:-

1] The present Notice of Motion is nothing but an abuse of process of law. The Notice of Motion is moved for the following prayers:-

“a. That pending hearing and final disposal of this Petition, this Hon'ble Court be pleased to stay the implementation, enforcement and effect of *the Full*

Time PG Courses Rules, 2016 marked as Exhibit- B to the Affidavit in support, *the Full Time UG Courses Rules, 2016*) marked as Exhibit – C to the Affidavit in support and *the Full time Diploma Courses Rules, 2016* marked as Exhibit – D to the Affidavit in Support.”

“b. That pending hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the State Government permit Minority Educational Institutions to admit minority candidates who fulfilled the eligibility criteria at Institute level that is as per procedure that was being followed in respect of such admission on and up to A.Y. 2015-16;”

2] Mr. Naidu, learned Counsel appearing on behalf of the Applicants/Petitioners states that the Applicants/Petitioners are not pressing for prayer clause (a) inasmuch as such a relief can be granted only after hearing the Petitioners on merits. He, however, submits that, the prayer clause (b) deserves to be granted inasmuch as Rule 7(3) of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions to the Full Time Professional Post Graduate Technical Courses) Rules, 2016, Maharashtra Unaided Private Professional Educational Institutions (Regulations of Admissions to the Full Time Professional Undergraduate Technical Courses) Rules, 2016 and Rule 6(2) of the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Admissions to the Full Time Professional Diploma Technical Courses) Rules, 2016 is ultra vires the provisions of Section 6 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015.

3] It is the contention of the learned Counsel for the Applicants/Petitioners that, the perusal of Section 6 and specifically sub-section (2) thereof would reveal that, at the first instance, minority Institutions have complete liberty to admit students from minority community to which the Institutions belong. He submits that, perusal of the proviso would reveal that only in the event of seats remaining vacant and/or students canceling their admissions, the seats would revert back to the Central Admission Process, to be filled-in by students who have cleared the Central Eligibility Test (CET).

4] Perusal of the Order passed by the Division Bench of this Court dated 2nd May, 2016 would reveal that the Division Bench has observed thus :-

“16] At least prima facie, the petitioners have failed to demonstrate why or in what manner the impugned rules are ultra vires the said Act or otherwise in contravention to provisions contained in Articles 14, 19, and 30 of the Constitution of India. In fact Rule 7(3) of the said Rules provides that the candidates having candidature mentioned in Rule 5(3) of the said Rules shall be eligible for the seats as specified in Schedule-I and

Schedule -II and these seats shall be filled-in, in accordance with sub-section (2) of Section 6 of the said Act. The grant of interim relief, at this stage, will possibly throw out of gear the elaborate admission process devised under the said Rules.”

After observing this, the Court has specifically refused to grant stay to the operation of Section 6(2) of the said Act and Rules 3, 7 and 9 of the said Rules. It is further pertinent to note that the said order was carried to the Hon'ble Apex Court and the Hon'ble Apex Court refused to interfere with the order passed by this Court, though directed this Court to expedite the hearing.

5] Faced with this situation, Mr. Naidu, learned Counsel for the Petitioners, submits that the observations made by the Court were at that sage, that means only for admissions pertaining to the year 2015. If the contention of the learned Counsel for the Petitioner that the order passed by this Court dated 2nd May, 2016 is to be construed only for admissions for the said academic year then similar argument would be advanced at the beginning of every academic session. Taking note of the persuasive skills of the lawyers at the bar, it will open flood gate for the same argument every year at the beginning of academic session for all professional courses. We are of the considered view that such contention is to be heard only to be rejected.

6] In that view of the matter, Notice of Motion is rejected with costs which are quantified at Rs 2 lakhs to be paid to the Tata Memorial Hospital for Cancer Patients. The said amount to be paid within one week from today and receipt thereof be placed on record of the office of the Prothonotary & Senior Master.

(SMT. BHARATI H. DANGRE, J.)

(B.R. GAVAI, J.)