

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.14827 of 2018

Manonit Samuel Jacob

... Petitioner

vs.

1. Central Board of Secondary Education,
rep. By Joint Secretary,
National Eligibility cum Entrance Test (UG) 2017,
Shiksha Kendra-2, Community Centre,
Preet Vihar, Delhi - 110 092.
2. The Director,
Selection Committee,
Directorate of Medical Education,
No.162, Periyar E.V.R. High Road,
Kilpauk,
Chennai 600 010.
3. The Medical Council of India,
rep. By Secretary,
Pocket No.14, Sector 8,
Dwaraka Phase I,
New Delhi - 110 077.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records with regard to the Prospectus 2018-19 issued by the 2nd Respondent and quash Clause 3(g) and (h) as illegal and invalid and consequently direct the 2nd Respondent to issue a corrigendum restoring the years of studies of the Petitioner from Standard VII to Standard XII in Tamil Nadu.

For Petitioner	:	Mrs.Geetha Rameseshan
For 1st Respondent	:	Mr.G.Nagarajan
For 2nd Respondent	:	Mr.T.N.Rajagopalan, Government Pleader assisted by Mr.V.Annalakshmi, Government Advocate
For 3 rd Respondent	:	Mr.V.P.Raman

O R D E R

Petitioner has come up with this Writ Petition seeking to quash Clause 3(g) and (h) of the M.B.B.S./B.D.S. Prospectus for the year 2018-2019, issued by the 2nd Respondent, as illegal and invalid and consequently, direct the 2nd Respondent to issue a corrigendum, restoring the years of his studies in Tamil Nadu, from Standard VII to Standard XII.

2. According to the Petitioner, he was born on 10.09.1999 in Kerala and both his parents are Doctors and they shifted to Chennai in 2011. He stated that he studied at DON BOSCO Matriculation Higher Secondary School, Egmore, Chennai from Standard VII to Standard XII (2011-2017) under the State Board stream and that he completed six years of school education in Chennai, continuously.

3. The case of the Petitioner is that as per the Prospectus issued by the 2nd Respondent in the year 2017, the requisite number of years to qualify for 'Open Category' in the State Quota was that, a student ought to have studied in Tamil Nadu from Standard VIII and completed his/her education in Standard XII, which is a total of five years of education in the State of Tamil Nadu. Accordingly, as he was eligible to qualify as an 'Other State Candidate' in the Open category, the Petitioner appeared for NEET in 2017 and was treated as a Tamil Nadu Open Category (State Quota) student at the time of Counselling in 2017, as per the old Prospectus. Since he did not fare well in 2017 Counselling, he appeared for NEET conducted on 06.05.2018 and secured 449 marks with a percentile score of 96.43 as per the results there were announced on 04.06.2018 and secured All India Rank No.44947.

4. However, the Petitioner was shocked to note that clause 3(g) of the Prospectus for 2018 released by the 2nd Respondent on 11.06.2018 has changed the requisite number of years from 5 years to 7 years, i.e. a candidate should have completed Standard VI to Standard XII in Tamil Nadu. Clause 3(h) of the Prospectus for 2018 states that the candidate, who applies for NEET should apply as a candidate from Tamil Nadu. According to the Petitioner, such a change has been made without any intelligible differentia and reasonable classification among professional course preferring students and against the principle of legitimate expectation.

5. It is the case of the Petitioner that the Tamil Nadu MBBS/BDS Prospectus and Rules were released only on 11.06.2018 and the last date for submitting the Application forms for State

Counselling was 19.06.2018. The Petitioner had only the 2017-18 Prospectus issued by the 2nd Respondent and the 2018 Information Bulletin issued by the 1st Respondent as a guide to prepare and apply for NEET - 2018. The grievance of the Petitioner is that none of those documents nor any other communication from either of the Respondents indicated any change in the Rules regarding eligibility of the candidates.

6. Learned counsel for the Petitioner contended that the sudden change of increasing the requisite years of study from 5 to 7 (from Standard VIII - Standard XII to Standard VI - Standard XII) by the 2nd Respondent in the very last minute, will adversely affect the Petitioner's education, as he was acting under the bonafide belief that he will be automatically eligible as an Open Category student in the State Quota without the requirement of Nativity Certificate, as he had pursued education from Standard VII to Standard XII in Tamil Nadu. It is her further contention that the action of the 2nd Respondent is contrary to the principles of legitimate expectation, as the Petitioner has written NEET 2018 and therefore, the 2nd Respondent is estopped from changing the Rules.

7. In support of her case, learned counsel for the Petitioner has relied on a decision of the Bombay High Court in the case of Aalia Kausar Mohammed Shafee vs. State of Maharashtra in W.P.No.8268 of 2017 batch of cases, wherein, in paragraph 8, it is held as under:

"8.Learned Counsel appearing for respondents pointed out a judgment of a Division Bench of this Court in Writ Petition No. 10158 of 2016 and others (Mahatma Gandhi Vidyamandir and Another Vs. State of Maharashtra and Others) dated 19th September, 2016 and submitted that validity of such rules of 2016-17 have been upheld. There is no question to declare said rule as illegal.

Learned Counsel for petitioners submitted that they are concerned with the rules for this year and specifically their right of admission to the courses in question.

We are in the present facts and circumstances of the case, dealing with the situation where the petitioners have completed S.S.C. examination/study from the institution/board out of the State prior to the year 2015/2016. The rights accrued in their favour, just cannot be taken away by bringing

such impugned clause retrospectively, which ultimately denied their right of further higher education in the State, though they are residents of the State and possess domicile certificate of the State. In our view, such eleventh hour change of criteria is unjust, unreasonable and affects the rights of further study so contemplated. These rights just cannot be taken away by the State or respective 11 / 14902_WP826817.odt authority by implementing such condition though they have power and authority to bring in and/or amend the policy decision. Respondents require to take steps to bring such policy by giving full and/or appropriate due public notice to the concerned students, so that before joining the course or 10 th standard within or out of State of Maharashtra, they would be in a position to take effective and appropriate steps/decisions, in advance."

8. In reply, learned Government Pleader appearing for Respondents 1 and 2 submitted that other State candidates, who are not native of Tamil Nadu and who have studied Standards VI to XII in the respective State, will be treated as 'Open Category' not only in Tamil Nadu, but also in other States. He further submitted that taking note of the fact that the Petitioner has furnished Kerala address in his Application and that he has studied only from Standard VII to Standard XII in Tamil Nadu, he can at the most, compete with students under All India Quota, for which 15% of the seats have been surrendered and there is no connection with the NEET Examination. He went on to state that be it Tamil Nadu, Kerala, Karnataka or any other State in India, NEET Examination is conducted based on the Prospectus, which is issued periodically and there is a policy decision mentioning the standards and that has not been satisfied by the Petitioner and hence, he would not be entitled to the relief sought for.

9. Heard the learned counsel for the parties. Admittedly, the decision relied on by the learned counsel for the Petitioner may not be applicable to the facts of this case, as the rights of the Petitioner have not been taken away retrospectively. It is not a question of changing the decision at the eleventh hour and that the Petitioner, being a native of Kerala, is entitled to compete with other State candidates in Tamil Nadu, or, if he fulfils the conditions stipulated, he would be entitled to a seat under 'All India Quota' in Tamil Nadu or in Kerala or in

any other State.

10. I find much force in the contention of the learned Government Pleader appearing for Respondents 1 and 2, as, effecting changes in the Prospectus is based on the Policy Decision of the Government and knowing well that Prospectus varies periodically, the Petitioner has appeared for NEET 2018 under 'Open Category'. Though, the Petitioner has studied from Standard VII to Standard XII in Tamil Nadu, i.e. for six years continuously, he is a native of Kerala and has not produced his Nativity Certificate, while applying for NEET 2018, as required under clause 3(f) of the Prospectus 2018-2019. Hence, this Court is of the view that the Petitioner, by no stretch of imagination, can be considered under the 'State Quota'.

In fine, the Writ Petition is dismissed with the above observation. No costs. Consequently, connected W.M.P.No.17533 of 2018 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Joint Secretary,
Central Board of Secondary Education,
National Eligibility cum Entrance Test (UG) 2017,
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Pocket No.14, Sector 8,
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+1cc to M/s.Geetha Rameseshan, Advocate, S.R.No.43125

W.P.No.14827 of 2018

cs/06/07/18