IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15285 of 2020

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ANUSHREE MURALI KOOTALI

Versus

STATE OF GUJARAT

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Appearance:
BANSI M KARIA(9320) for the Petitioner(s) No. 1
VIKAS V NAIR(7444) for the Petitioner(s) No. 1
MS. MANISHA L. SHAH, GP with MR K.M. Antani, AGP for the Respondent(s) No. 1
NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 15/12/2020

ORAL ORDER

1. Heard learned advocate Ms. Bansi M. Karia for the petitioner and learned Government Pleader Ms. Manisha L. Shah Shah assisted by the learned Assistant Government Pleader Mr. K.M. Antani for the respondent-State through video conference.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :-

> *A. Your Lordships may be pleased to admit and allow this petition;*
>
> *B. Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus any other appropriate writ, order or direction directing the respondent authorities*

to consider the petitioner as eligible for securing admission in the professional medical education course as per the provisions of Gujarat Professional Medical Educational courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 under State Quota considering the petitioner to be domicile of the State of Gujarat, as per Rule 4 (1-A) of Rule of 2017.;

Alternatively

Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus any other appropriate writ, order or direction directing that rule 4(3)(ii) of the Gujarat Professional Medical Educational courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 shall not apply to the petitioner who is otherwise domicile of the State of Gujarat;

C. Your Lordships may be pleased to pass an order restraining the respondent authorities from rejecting the application of the petitioner on the ground that the petitioner had completed her 10^{th} and 12^{th} from outside the State of Gujarat and further be pleased to direct the respondents to consider the petitioner eligible for admission under State Quota;

D. Pending the admission and final hearing of the petition, Your Lordships may be pleased to restrain the respondents from proceeding ahead with the admission process;

E. Pending the admission and final disposal of the petition, Your

Lordships may be pleased to direct the respondent authorities to consider the case of the petitioner for the purpose of admission in the medical courses in the State of Gujarat;

F. Pending the admission and final hearing of the petition, Your Lordships may be pleased to restrain the respondent authorities from rejecting the applications of the petitioner.

G. Any other and further reliefs in the interest of justice may be granted.

3. The petitioner has approached this Court by way of this petition under total misconception that the Gujarat Professional Medical Education Course (Regulations of Admission and Fixation of Fees) Act, 2017 (for short 'the Rules,2017') framed by the respondent authority in the year 2017 would be applicable to the petitioner or not without considering and without doing research whether the petitioner is governed by the Rule of 2017 for the admission in the medical course or not.

4. The case of the petitioner is that the petitioner was born in the State of Gujarat and has studied upto 7th standard in Gujarat and thereafter, undergone her studies from standard 8 to 12 at Kerala for the academic years 2013-14 to 2017-18. It is the case of the petitioner that the petitioner is domicile in the State of Gujarat and therefore, the petitioner is entitled to get admission in the

medical educational institution for the academic year 2020-2021 on the basis of domicile status of the petitioner in spite of the fact that the petitioner has never studied in standard 12 in Gujarat as required by the rules.

5. Learned advocate Ms. Bansi M. Karia for the petitioner submitted that when the petitioner was admitted in standard 12 in the year 2017, the rules of 2017 were not in existence and came into force with effect from June, 2017 and only on this ground, the petitioner has filed this petition praying for the aforesaid prayers.

6. Learned Government Pleader Ms. Shah assisted by learned Assistant Government Pleader Mr.Antani submitted that requirement of passing of standard 12 from the school situated in the State of Gujarat is in existence since 2008 as per the Rules of Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admissions and Fixation of Fees) Act, 2007. Reliance was placed on Rule 5 of Rule 2007 reads as under:

> *"**5. Eligibility for Admission:-**(1) For the purpose of admission, a candidate shall have-*
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> *(A) passed the qualifying examination with "B-group" or "AB-group" from-*
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> *(i) the Gujarat Board; or*
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> *(ii) The Central Board of Secondary Education Board provided that the school in which the candidate has studied, should have been located in the State of Gujarat;*

(iii)the Council of India School Certificate Examinations, New Delhi Board provided that the school in which the candidate has studied should have been located in the State of Gujarat:

Provided that the candidate seeking admission in Ayurveda shall have passed either the qualifying examination or the 10th examination with Sanskrit subject."

7. It was pointed out by the learned Government Pleader that in every year since 2008 the requirement for eligibility of admission the candidate must have passed with 'B' Group or 'AB' Group the qualifying examination from the Gujarat Board or Central Board of Education Board provided that the school in which the candidate studying should have been located in the State of Gujarat or Council of the Indian School Certificate Examination, New Delhi Board provided that the school in which the candidate studied should have been located in the State of Gujarat. She also invited the attention of the Court to the definition of "B" Group as provided in Section 2(e) and for "AB" Group as provided Section 2(f) of the Rules which reads as under:

*"**2. Definitions:-**(1) In these rules, unless the context otherwise requires,-*

(e) "B-group" means the group comprises the subjects of Biology, Physics and Chemistry in the Science Stream of the Higher Secondary School Certificate Examination (Standard XII, 10+2 pattern);

(f) "AB-group" means the group comprises the subjects of Biology, Physics and Chemistry in the Science Stream of the Higher Secondary

School Certificate Examination (Standard XII, 10+2 pattern).”

8. Learned Government Pleader also referred to the decision of the Division Bench in Special Civil Application No.8590 of 2018 and other allied matters to point-out that the Division Bench of this Court has upheld the validity of the Rules 2017 wherein the Division Bench observed as under:-

> *“34. At the same time, as it is noticed that after Rule 4(3)(ii) of the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 referred above, is upheld by this Court, in view of dismissal of the petition challenging the aforesaid Rule earlier, there is change in the rules by introducing Rule 4(1-A) which is inserted by way of amendment to the Gujarat Professional Medical Educational Courses (Regulation of Admission Undergraduate Courses) Rules 2017, by Notification dated 04.05.2018. In view of insertion of Rule (1-A) of the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017, which prescribe the candidate to be domicile of Gujarat whether requirement of passing of 10th Standard from the school situated in the State of Gujarat, as contemplated under Rule 4(3) (ii) of the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017, as existed earlier to be continued or not, needs consideration by the respondent State. It is the case of some of the petitioners that through they fulfill criteria of domicile and passing requirement of 12th Standard from the school situated in Gujarat, but they are excluded*

> *from the eligibility criteria only on the ground that they have studied 10th Standard from the school outside State of Gujarat. In that view of the matter, as objected the Rules is to give benefit to the candidates who are domicile of the State of Gujarat, we direct the respondent State to take decision forthwith on the said issue whether to continue Rule 4(3)(ii) of the Gujarat Professional Medical Educational Courses (Regulation of Admission in Undergraduate Courses) Rules, 2017 in the same form or not and take appropriate decision accordingly, without loss of any time. ”*

9. Referring the above observations, it was pointed out that subsequently the state authorities have permitted the students, who have appeared in standard 10 on 2017 onwards from schools outside the State of Gujarat but who have passed the 12th standard from the schools situated in the State of Gujarat to be considered eligible for the purpose of admission in medical institutions.

10. It was therefore, submitted that the prayers made in the petition are contrary to the Rules which are prevailing since 2008 and therefore, the same deserves to be dismissed with exemplary cost.

11. Having considered the submissions made by both the sides and having gone through the materials on record, it emerges that the petitioner who was studying in Kerala from 2013-14 to 2016-17 is covered by the prevailing Rules for being eligible for admission in medical institution as the petitioner

has not passed standard 12 from the school situated in the State Of Gujarat and as such the submission made on behalf of the petitioner that the Rules 2017 came into force for the first time after petitioner took admission in the 12th standard in State of Kerala is not tenable at all. The petitioner ought to have been aware about the applicable Rules before approaching to this Court for the purpose of admission to the medical institution. Consistently from 2008 onwards, Rules for the eligibility for admission in medical institution provides that the candidates/students must have passed 12th Standard from the Gujarat Board or school which is situated in the State of Gujarat. In such circumstances, the petition is absolutely misconceived as the same is filed on the basis of the judgment which is not applicable to the facts of the case.

12. Considering the above facts, the petition being devoid of any merit, is dismissed with cost of Rs.10,000/- to be deposited with the Legal Service Authorities within a period of four weeks from today. ***Notice is discharged.***

(BHARGAV D. KARIA, J.)

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