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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7722 OF 2020

Meghavi d/o Vinod Biyani

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. Rajendra Deshmukh, Senior Advocate i/b Mr. Nirmal Rajendra Dayama, Advocate for the petitioner

Mr. A. R. Kale, AGP for respondents - State

Mr. M. D. Narwadkar, Advocate for respondent No. 2

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[CORAM : SUNIL P. DESHMUKH AND
SHRIKANT D. KULKARNI, JJ.]

DATE : 11th NOVEMBER, 2020

ORDER :

1. Petitioner is before us seeking a direction in the nature of mandamus to extend the benefit of exemption of notification dated 19th April, 2019 to her while she has passed SSC examination in 2018 from an institution outside Maharashtra. (Petitioner passed SSC examination in 2019 from Madhya Pradesh).
2. It is the case of the petitioner that her father has been engaged in contractor-ship business in Maharashtra and

adjoining States, including Madhya Pradesh. While father of the petitioner was doing work in Madhya Pradesh in 2018, she had no alternative but to take education in Madhya Pradesh. It is being particularly referred to that the entire family of the petitioner is domiciled in Maharashtra and is from Bhusawal. Major education of the petitioner has taken place in Maharashtra. She had to move to Madhya Pradesh in 10th standard in aforesaid circumstances and had come back to Maharashtra thereafter, where petitioner took admission for 12th standard. Accordingly, the petitioner has passed HSC from Maharashtra. Petitioner, in the circumstances, had appeared for National Eligibility cum Entrance Test (UG) 2020 (NEET) held in June, 2020 and has shown to be desirous to be considered from Maharashtra State quota.

3. It is submitted that the petitioner has scored about 97.8 percentile marks in NEET and that would enable her to have admission to medical course from the State quota in Maharashtra. However, after she had appeared for NEET, as referred to above, desirous for being considered from the Maharashtra State quota. On 4th November, 2020, Government of Maharashtra has issued information broucher laying down procedure for admission to health science courses in the State of

Maharashtra from state quota. Rule 4.5 contained in the same, apparently makes it imperative that student shall pass SSC or equivalent examination from an institution situated in the state of Maharashtra, a condition which apparently petitioner is not able to fulfill, having regard to above.

4. Mr. Rajendra Deshmukh, learned senior advocate, passionately submits that such a condition being insisted upon now for this year, 2020, is onerous and would deprive the petitioner from taking education to health course from the State quota, where she is likely to get admission. He submits that hitherto, every year, concession was being given to students to be considered from the State quota who had passed SSC examination from outside Maharashtra in or before 2017 and the same continued till 2019. He particularly refers to a notification dated 20th April, 2019 issued by Medical Education and Drugs Department of Government of Maharashtra, showing that the concession continued till 2019. He submits that after appearing in NEET examination in June, 2020, on 4th November, 2020, suddenly the concession has been taken away and has ceased to operate.

5. Mr. Deshmukh, learned senior advocate submits that as a matter of fact, it would have been appropriate that while

notification of 2019, referred to *supra* applied retrospectively to students who have passed SSC from outside Maharashtra till March, 2017 for being eligible to apply from State quota, the same ought to have been extended up to the date of the notification i.e. up to April, 2019 and in the process, the petitioner would get benefit of the same. Learned senior advocate further goes on to submit that in not extending the benefit up to the date of the notification, the students like the petitioner, who have passed SSC in 2018 and 2019 from outside Maharashtra would be deprived of opportunity to have admission for health courses in Maharashtra from state quota.

6. Learned senior advocate Mr. Deshmukh, during the course of submissions, points out that petitioner has been put in a very peculiar situation that in spite of being domiciled in Maharashtra, she could not be considered for admission to health courses from the State quota, whereas in Madhya Pradesh, where she has passed SSC examination she would not be considered for admission to health course from State quota of Madhya Pradesh, having passed 12th examination from Maharashtra and she would be deprived of State quota either state and would considered only from all India quota and that would put her in a very pitiable situation, which the court may take into account.

7. Mr. Deshmukh, learned senior advocate draws our attention to that quite a few representations had been made by petitioner to the government, however, those have gone unresponded.

8. He, therefore, submits that unsuspecting meritorious student like the petitioner would be deprived of life time opportunity coming her way and urges to indulge into the request being made under the writ petition. He, as such, prays for interim relief.

9. Mr. Kale, learned AGP appearing for the respondent authorities and Mr. Narwadkar, appearing on behalf of respondent No. 2, however, purport to contend that the cut off date for concession for passing SSC from outside Maharashtra as up to 2017 or before, has been consistent and unaltered all through since 2016 up to 2019. The same had never been extended to the students who have passed SSC in 2018 and/or 2019 outside Maharashtra. Petitioner had taken admission to SSC in Madhya Pradesh in 2018 and, thus, she even while had taking admission to SSC outside Maharashtra, ought to have been aware of that this concession of passing SSC examination from outside Maharashtra was not for such students and could

be availed only by the ones, who had passed SSC from outside Maharashtra in 2017 or before and not afterwards. It is being submitted that otherwise, the basic condition underlying the intention to test authenticity to be from Maharashtra would get dwindled and that is why the concession had been made available only for a temporary period and only for those students who have passed SSC examination from outside Maharashtra in 2017 or before.

10. Learned AGP fairly refers to that, it is not the case that she is deprived of admission to health course entirely, as her claim can always be considered from all India quota though the petitioner may not be entitled to be considered for admission to health course from the State quota.

11. While arguments are advanced on behalf of the parties, as aforesaid, one may have to look into the aspect which would be germane to be considered that eligibility criteria laid down under information broucher is pursuant to the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) (Amendment) Rules, 2016, which have been amended from time to time and lastly it appears in 2019. The rules are made pursuant to rule making powers under the

provisions of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015, which has been enforced in State of Maharashtra.

12. Thus, it is under the legislative function the rules determining eligibility criteria are framed. Thus, it would be hardly possible for a court or judicial authority to encroach upon such a territorial area directing the legislative authorities to substitute its views and extend the benefit of concession hitherto continued also for the students who passed SSC examination from outside Maharashtra after 2017. It would be worthwhile to note that time and again the Apex court has observed that in academic matters the courts should not ordinarily interfere. Looking at the area in which we are called upon to tread, it is difficult for us to indulge into the request being made on behalf of the petitioner.

13. One more aspect that would be required to be considered is that the legislative intent has been apparent that while enactment had been enforced in 2016, in order to avoid injustice to some genuine claims of students, who had passed SSC examination from outside Maharashtra before enforcement of the enactment. A concession had been given of interim nature, to such students, who had taken admission to SSC outside

Maharashtra in 2016 or before and passed SSC in 2017 or before, so that the rigour of having SSC pass from Maharashtra had been relaxed and such concession of cut off date was continued up to 2019. Thus, the legislative intent appears to be clear that such concession could be given to only such students who have passed SSC examination from outside Maharashtra up to 2017 and not afterwards. Since the petitioner had taken admission to SSC in 2018, she would not legitimately expect that concession would continue to be extended even to the students who have passed SSC examination from outside Maharashtra even after 2017.

14. In the circumstances, it is difficult for us to indulge into the request made under the writ petition and writ petition, therefore, is rejected.

[SHRIKANT D. KULKARNI]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE