

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12210 OF 2021**

Yash S/o Kumar Waghmare
Age: 19 Yers, Occ.: Student
R/o C/o Kumar Waghmare,
Rohidas Nagar, Udgir, 413517. ..Petitioner

Versus

1. The State of Maharashtra through
The Secretary, Medical Education & Drugs Dept.
Mantralaya, Mumbai 400 032.
2. The Director of Medical Education
and Research, St. George's Hospital Compound,
Near CSMT, Mumbai, 400 001.
3. The Competent Authority & Commissioner,
CET CELL (DMER),
St. Georges Hospital Compound,
Near CSMT, Mumbai 400 001. ..Respondents

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Mrs. Kalpalata Patil Bharaswadkar, Advocate for
Petitioner.

Mr. S. G. Karlekar, A.G.P. for Respondent Nos.1 and
2.

M. D. Narwadkar, Advocate for Respondent No.3.

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**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

Closed for Orders on : 04.12.2021.

Order Pronounced on : 23.12.2021.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner seeks directions against
respondent nos.2 and 3 to accept the application
form of the petitioner for admission to the Health
Science Course for the Academic Year 2021-22 from
the State quota (85%) medical admission without

insisting for the SSC examination certificate from the institution situated in the State of Maharashtra.

2. After matter was heard for sometime, the learned counsel for the petitioner sought leave to amend the writ petition and subsequently, by way of an amendment assailed Rule (1) (A) (viii) of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 added by Amendment Rules 2019 (hereinafter referred to as 'Rules, 2019'). Under the said Rules, 2019 the student who desires to take benefit of the State quota has to pass 10th and 12th standard examination from the institution situated in the State of Maharashtra.

3. The petitioner herein claims to possess domicile of the State of Maharashtra. The petitioner completed 1st to 7th standard education from the school at Talegaon, Taluka Ahmedpur District Latur. The petitioner passed his 10th standard examination in the year 2018 from the school at Bidar. The petitioner passed his 12th standard examination from the Junior College at Dapka, Taluka Mukhed, District Nanded. The petitioner appeared for NEET examination. The form of the petitioner from the State quota is not accepted for the year 2020 on the ground that, the petitioner has passed 10th standard from the institution situated outside the State of

Maharashtra. Subsequently, the petitioner reappeared for NEET examination in the year 2021 and now again seek admission from the State quota.

4. Mrs. Patil Bharswadkar, learned counsel for the petitioner submits that, forefathers of the petitioner since time immemorial are domiciled in the State of Maharashtra. The petitioner is born and is domiciled in the State of Maharashtra. The petitioner had to take admission in the 9th standard at the Bidar (Karnataka State) in the year 2016 due to domestic issues. He completed his 10th standard in the year 2018 from the school at Bidar and took admission for 11th standard in the State of Maharashtra and has completed 11th and 12th standard from the State of Maharashtra. The learned counsel further submits that, Rule dis-entitling a domicile of State of Maharashtra who has passed 10th standard from an institution situated outside State of Maharashtra is irrational, illegal and does not stand to reason. The said Rule discriminates with the students who have passed 10th standard from an institution situated outside the State of Maharashtra. The said Rule needs to be read down to mean that, Maharashtra State students who have domicile certificate of State of Maharashtra and passed HSC qualifying examination from the State of Maharashtra, but passed 10th standard from outside the State of Maharashtra are eligible and entitled to claim seats under 85% State Quota for Health Science Course.

5. The learned counsel relies upon the judgment of the Division Bench of this Court in a case of **Rajiv Purshottam Wadhwa vs State Of Maharashtra and Others** reported in (2001) 1 AllMR 824.

6. The learned counsel further submits that, the student domiciled of State of Maharashtra and passing SSC from an institution situated outside State of Maharashtra upto 2017 are eligible to apply from State quota. The cut off year of 2017 is arbitrary, oppressive, discriminatory and does not have nexus to the object sought to be achieved. In view of that also the impugned Rules deserve to be struck down, quashed and set aside. The learned counsel relying upon the judgment of the Apex Court in a case of **Meghavi Vs. State of Maharashtra and Anr.** in **Special Leave Appeal No.13621/2020** dated **01.12.2020** submits that, the father of the petitioner therein was a contractor and by virtue of business in the State of Madhya Pradesh, she had to shift from her native town Bhusawal in Maharashtra to prosecute 10th standard in the other State and thereafter, she came back to the State of Maharashtra and completed 11th and 12th standard from an institution situated in the State of Maharashtra. The Apex Court in the said case directed the State of Maharashtra to consider the petitioner therein for admission to the undergraduate medical courses from the State quota. The learned counsel submits that, the petitioner is similarly situated.

7. The learned counsel further relies upon the judgment of the Division Bench of this Court dated **December 17, 2020** in **Writ Petition (ST.) No.96105 of 2020** in a case of **Ms. Vinita Umesh Singh Vs. The Administrator, Dadra & Nagar Haveli, Daman & Diu** to contend that, under the Rules for admission in the first priority category a candidate was required to pass 8th to 12th standard from recognized school in the Union Territory of Dadra and Nagar Haveli, Daman and Diu. The petitioner therein had passed 9th to 12th standard from recognized school of Union Territory of Dadra and Nagar Haveli, Daman and Diu, but had not passed 8th standard from the school situated in the Union Territory. The Division Bench directed, her application to be considered from the first preference and held that asking the student to pass 8th to 12th standard from the institution situated in the Union Territory of Dadra and Nagar Haveli, Daman and Diu is arbitrary and irrational and relevant consideration is passing 12th standard examination.

8. Mr. Narwadkar, learned counsel for respondent no.3 submits that, the Rule providing passing of 10th and 12th standard from an institution situated in the State of Maharashtra to avail the benefit of 85% State quota is reasonable and rational. The learned counsel relying upon the judgment of the Apex Court in a case of **Rajdeep Ghosh Vs. State of Assam and Others** reported in

2018 (17) SCC 524 submits that, similar Rule was subject matter of consideration before the Apex Court. In the said case, Rule 3(1)(c) of the Medical Colleges and Dental Colleges of Assam (Regulations of Admission into 1st year MBBS/BDS Courses) Rules, 2017 (hereinafter referred to as 'Rules, 2017') was subject matter of challenge. Under the said Rule six years schooling from class 8th to 12th standard in the State of Assam was the requirement and that a person should be residing in the State of Assam for a period of 20 years to avail the benefit of State quota seats. Exception was carved out to the students viz. son and daughter of the officers of All Indian Services allotted to the State of Assam. The Apex Court in the said case negatived the challenge to the Rule 3(1)(c) of Rules, 2017 and held that, the said Rule is in consonance with the spirit of Article 14 of the Constitution of India.

9. The learned counsel also relies on the judgment of the Division Bench of this Court in a case of **Yellamalli Venkatapriyanka and Others Vs. State of Maharashtra and Others** reported in **2018 (6) AIR Bom. R. 323** and submits that, similar Rule was assailed and the Division Bench of this Court considered the judgment of the earlier Division Bench in a case of **Rajiv Purshottam Wadhwa vs State Of Maharashtra and Ors.** (supra) relied by the petitioner and held that, Rule thereby contemplating 10th and 12th standard to be cleared from an institution situated in the State of

Maharashtra to avail the benefit of State quota is reasonable and has definite nexus with the object sought to be achieved.

10. The learned counsel further submits that, last year also the said Rule was applied. It is not that for the present year only the Rule has been brought into effect. For all these years the same Rule was in force. The learned counsel also relies upon the judgment of the Division Bench of this Court in a case of **Nibir Jyoti Das Vs. State of Maharashtra and Others** reported in 2021 (5) **Mh.L.J. 681** and submits that, the same Rule was a subject matter of consideration. According to the learned counsel the impugned Rule does not violate the fundamental right. The restriction is reasonable.

11. We have considered the submissions canvassed by the learned counsel for respective parties.

12. Before dilating on the submission canvassed by the learned counsel for parties, it would be fruitful to refer to the relevant Rule viz. subject matter of challenge in the present case.

5. Candidature Type:

(1) Maharashtra State Candidature-

Type	Eligibility Criteria
(1)	(2)
(A)	(i) The candidate must be an Indian National.
	(ii) Except for the year 2016 Persons of Indian

Origin (PIO) or Overseas citizen of India (OCI), Non Resident Indian (NRI) shall not be eligible.

- (iii) Except for the year 2016, the candidate should be Domicile of Maharashtra.
- (iv) The candidate must have completed 17 years of age on or before 31st December of the year of admission to the course. However, for admission to Ayurved and Unani courses, the candidate must have completed 17 years of age on or before 1st October of the year of admission to the course. The Birth certificate indicating name of the candidate, Secondary School Certificate examination i.e. SSC or equivalent examination certificate or School Leaving Certificate endorsing the date of birth may constitute a valid proof. (Age eligibility as may be as prescribed by respective Central Council, from time to time.)
- (v) The candidate must be medically fit.
- (vi) The candidate must have passed the SSC or equivalent examination from an Institution situated in the State of Maharashtra. However, except for the year 2016, candidate who has passed SSC or equivalent examination from an institute situated outside Maharashtra State and HSC or equivalent examination from an institute situated within Maharashtra State is eligible for seeking admission to the courses, provided that he or she is domicile of Maharashtra.
- (vii) The candidate must have passed the qualifying examination.
- (viii) Notwithstanding anything contained in sub-entries (ii), (v), (vi) and (vii), a candidate who has passed SSC or equivalent examination in 2017 or prior to that, from an institute outside the State of Maharashtra is also eligible to seek admission on this criteria, provided he has passed HSC or qualifying examination from an institute in the State of Maharashtra and also possess Domicile Certificate issued by the authority, who is competent to issue such certificate in the State of Maharashtra for educational purpose.

13. The admission to the private unaided professional educational institution in the State of Maharashtra is governed by the Maharashtra

Unaided Private Professional Educational Institution (Regulation of Admission and Fees) Act, 2015 and Maharashtra Unaided Private Professional Educational Institutions (Regulation of Administrator to the Full Time Professional Undergraduate Medical and Dental Course) Rules, 2016. In Rule 5 of the said Rules, 2016 amendment is made in sub-rule (1) in entry (A), after sub-entry (vii) of Rule 5 as under:

(viii) notwithstanding anything contained in sub-entries (ii), (v), (vi) and (vii), a candidate who has passed SSC or equivalent examination in 2017 or prior to that, from an institute outside the State of Maharashtra is also eligible to seek admission on this criteria, provided he has passed HSC or qualifying examination from an institute in the State of Maharashtra and also possess Domicile Certificate issued by the authority, who is competent to issue such certificate in the State of Maharashtra for educational purpose.

14. Rules, 2016 are brought into effect since August 2016. It prescribed the eligibility criteria for admission to the undergraduate Medical courses affiliated to the Maharashtra Universities of Health Sciences. Initially, for the Academic Year 2016 domicile was not a relevant criteria. If candidate who has passed SSC or equivalent examination from an institute situated outside Maharashtra State and HSC or equivalent examination from an institute situated within Maharashtra State is eligible for seeking admission to the courses, provided that he or she is Domicile of Maharashtra.

15. For the Academic Year 2017, twin requirements were mandatory i.e. (i) a student cleared 10th and 12th standard from an institution within the State of Maharashtra and (ii) he should be domiciled of the State of Maharashtra. For the Academic Year 2016-17 the relaxation was provided that is if a student had cleared 10th standard from an institution outside the State of Maharashtra and cleared 12th standard from an institution situated within the State of Maharashtra, he would be eligible for admission in the State quota, provided he is domiciled in the Maharashtra. Subsequently, these Rules are again amended in the year 2019, wherein those students who had cleared 10th standard prior to 2017 from an institution outside the State of Maharashtra, but who has cleared 12th standard within the State of Maharashtra and is also domicile of Maharashtra was eligible for admission from the State quota.

16. The Rule applicable since 2018 and followed consistently is that (i) the student should pass 10th and 12th standard from an institution situated within the State of Maharashtra and (ii) must be domicile of State of Maharashtra. Exception is if he has cleared 10th standard prior to the year 2017 from an institution outside the State of Maharashtra, he would still be eligible, provided he has passed 12th standard examination from an institution situated within the State of Maharashtra and he is also domicile of the Maharashtra.

17. The requirement for claiming benefit of State quota as appearing herein was subject matter of consideration before the Apex Court in a case of **Yellamalli Venkatapriyanka and Others Vs. State of Maharashtra and Others** (supra). In the said judgment, the Division Bench also referred to the judgment of the coordinate Division Bench of this Court delivered in a case of **Rajiv Purshottam Wadhwa vs State Of Maharashtra and Ors.** (supra) and had observed that, Division Bench in a case of **Rajiv Purshottam Wadhwa** (supra) was not considering the Rule 4.5 of the said Rule. It was further observed that, after **Rajiv Wadhwa** (supra) judgment there has been a complete change in the Rules and each of the Rules after Wadhwa's case have been prescribing the eligibility criteria on both counts, namely, residential / domicile and obtaining educational qualifications, in both 10th and 12th standard examinations, cleared from within the State of Maharashtra. It also observed as under:

77. Thus, there is Entry A in the earlier Rule which is substituted by Entry A with its sub-clauses and when it makes a substitution in sub-clause (vii) what it says is notwithstanding anything contained in clause 1 to 5 and 6 for academic year 2016- 17, the candidates complying with the following eligibility conditions shall also be eligible to seek admission for this category. Clause B which has been referred by the Division Bench is without noticing its non obstante clause at all. With its sweep had the clause been noticed or the attention of the Division Bench been invited to it, possibly it would not have rendered a conclusion even at the

interlocutory stage as has been rendered and relied upon. Thus, the order of the Division Bench, without noticing a statutory prescription in its entirety, can safely be termed as per curiam and not binding on us. It could not have also been held to be binding on the State and the respondents before us even though acting in furtherance thereof, they may have granted admissions to some students. It is only for the academic year 2016-17 that the non obstante clause enables the candidates to comply with the eligibility condition in sub-clauses (a) and (b) of clause 7 of Entry A that the relaxation or exemption would apply. It can have no application to the admissions for the academic year 2018-19 when there is a set of Rules as noticed by us hereinabove and firmly in place. It is in these circumstances that the concession of the learned Assistant Government Pleader given or made before the Nagpur Bench of this Court would not bind the State at all. That is a concession on law. No amount of concession and on a question of law can bind the State Government. It is well settled that in matters of constitutional provisions or interpreting of a law or legal provision, it is only the stand of the Advocate General which would ordinarily bind the State. No other counsel, much less, an Assistant Government Pleader can make any statement of this nature which would bind the State.

18. In the said judgment, the coordinate Bench of this Court held that, challenge to the impugned Rules on the ground that they violate the mandate of Article 14 can safely be negatived by holding that the classification is made on a reasonable basis and has a definite nexus with the object sought to be achieved.

19. In a case of **Rajdeep Ghosh Vs. State of Assam and Others** (supra) the challenge was to Rule

3(1)(c) of the Medical Colleges and Dental Colleges of Assam (Regulations of Admission into 1st year MBBS/BDS Courses) Rules, 2017. The said Rule 3(1) (c) prescribed following condition:

1.(a) The candidate must be a citizen of India.

(b) The candidate must be a permanent citizen of Assam. The father/mother or the candidate must be residing in the State of Assam continuously for not less than a period of 20 years. (The certificate at Annexure – I in Application Form at Schedule – I of these rules must be submitted if a candidate is called for counseling):

Provided that this shall not be applicable to the sons/daughters of officers of All India Services allotted to Assam (certificate regarding the service of father/mother of the candidate from the concerned authority/department of Government of Assam must be submitted if a candidate is called for counseling.

(c) The candidate must study in all the classes from class VII to XII in the State of Assam and must pass the Qualifying Examination or its equivalent examination from any Institute situated in the State of Assam. (Certificate at Annexure-II in Application Form at Schedule – I of these rules must be submitted if a candidate is called for counseling.)

Provided that if a candidate studies outside Assam from Class – VII onwards because his/her father/mother is posted outside Assam as a Assam State Government Employee or as a Central Government Employee or as an employee of a Corporation/Agency/Instrumentality under Government of Assam or Central Government whether on deputation or transfer or regular posting then the period for which the said father/mother is working outside the State shall be relaxable for such candidate. (Certificate of employment of father/mother

outside the State indicating the period of service from the concerned authority must be submitted if a candidate is called for counseling.)

(d) Candidate's age should not be below 17 years and above 25 years of age on 31st December of the year in which the admission is sought for;

Provided that the maximum age limit is relaxable by 3 years in case of candidates belonging to SC/ST(P)/ST(H)/OBC/MOBC category.?

20. The Apex Court in the said case considered whether the classification made in the Rule 3(1)(c) to Rules of 2017 is unreasonable and violative of provisions contained in Article 14 of the Constitution of India. The Apex Court upheld the said Rules and observed that, said Rule is in consonance with the spirit of Article 14 of the Constitution of India. It also observed that, it is permissible to lay down the essential educational requirements, residential/domicile in a particular State in respect of basic courses of MBBS/BDS/Ayurvedic.

21. In the present case, Rule in question lay down the requirements of obtaining education in the State and relaxation has been given to the children of the employee of the Government of Maharashtra or its undertaking who have joined services since beginning at a place situated outside the State of Maharashtra, but who have been transferred to a place situated within the State of Maharashtra shall be eligible for admission, even though such

children might have passed HSC or SSC or equivalent examination from the recognized institution situated outside the State of Maharashtra. The relaxation is also provided to the children of the employee of the Government of Maharashtra or its undertaking who have been posted or transferred or deputed to the place situated outside the Maharashtra. Exception granted to these employees would be reasonable.

22. The policy is formulated by the experts in the educational field. This Court would normally not interfere with the educational policy framed by the experts, unless it is shown that, the policy is manifestly unjust, irrational or arbitrary.

23. The Rules do not appear to be arbitrary or unreasonable. Such Rules have also undergone scrutiny of the Apex Court in the case of **Rajdeep Ghosh Vs. State of Assam and Others** (supra) and the Division Bench of this Court in a case of **Yellamalli Venkatapriyanka and Others Vs. State of Maharashtra and Others** (supra). The similar rules are held to be violating these judgments.

24. In light of the above, writ petition is dismissed. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE