

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10345 OF 2019

Yahaya Azam s/o Qurram Ahmed Khan ..Petitioner
V/s.
State of Maharashtra and Ors. ..Respondents

Mr. H.D. Deshmukh for the Petitioner.
Mr. M.A. Deshpande, AGP for the Respondent/State.
Mr. V.S. Kadam for Respondent No.3.
Mr. S.G. Karlekar for Respondent No.4.
Mr. S.K. Kadam for Respondent No.5.

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, J.J.**

**RESERVED ON : 28 JUNE 2022
PRONOUNCED ON : 29 AUGUST 2022**

(Signed judgment is pronounced by Sandipkumar C. More, J. as per clause (i) of Rule 1 of Chapter XI of Bombay High Court Appellate Side Rules, 1960 as C.V. Bhadang, J. is sitting at Mumbai)

JUDGMENT (PER : C.V.BHADANG, J.)

. By this petition, the petitioner is challenging condition No. 10 of para 3 of the Government Resolution dated 31.3.2016 as being violative of Article 46 of the Constitution of India. The petitioner is also challenging the order dated

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6.12.2019 passed by the second respondent Project Officer, Integrated Tribal Development Project (ITDP) refusing to grant reimbursement of the fees paid by the petitioner on the ground of being impermissible as per condition Nos. 9 and 10 of para 3 of the GR dated 6.12.2019.

2. The petitioner was admitted to MBBS course with the third respondent-college in the academic year 2016-17.

3. At the time of the admission, the matter about validation of the caste certificate of the petitioner as belonging to *Tadvi*-Scheduled Tribe was pending with the Caste Scrutiny Committee. On 16.7.2019 the petitioner has been granted a validity certificate in pursuance of order dated 3.7.2019 passed by this court in Writ Petition No. 7624/2018. Insofar as the claim for reimbursement is concerned, the petitioner was directed to approach the State Government and seek clarification. Accordingly, the petitioner approached the second respondent on 31.7.2019. The second respondent by the impugned order dated 6.12.2019 has refused to grant the reimbursement on the ground that the petitioner was admitted to the MBBS Course against Non Resident Indian (NRI) Quota. The second respondent has found that the condition Nos. 9 and 10 of para 3 of the GR dated 31.3.2016 does not permit such reimbursement to students

admitted against NRI quota by the Management at the Institution level.

4. By virtue of an amendment the petitioner has introduced a challenge to the validity of condition No. 10. Insofar a condition No. 9 is concerned, it is contended that the same has been struck down by this court, vide Judgment and Order dated 20.3.2015 in *Bapu Supadu Thorat v/s The state of Maharashtra*¹ in PIL No. 69/2011.

5. We have heard the learned counsel for the parties. Perused Record.

6. It is submitted by the learned counsel for the petitioner that the petitioner does not fulfill the criteria/parameters for being admitted against NRI Quota/category. It is submitted that the petitioner is not a ward of an NRI. It is submitted that the petitioner was admitted by the third respondent-college on the basis of eligibility round as belonging to scheduled tribe category. It is submitted that thus the rights of the petitioner are protected under Article 46 of the Constitution of India. It is submitted that this court in *Bapu Thorat* (supra) has struck down condition No. 9 of para 3 of GR dated 31.3.2016 and therefore, the second respondent was not justified in placing reliance on the same. It is submitted that condition No. 10 also

1 2015 SCC Online Bom 3833

cannot be sustained as being violative of Article 46 of the Constitution of India. The learned counsel has placed reliance on the decision of this court in *Mrudul Namdeo Meshram and others Versus State of Maharashtra*,² in order to submit that the benefit of the scheme cannot be denied on the ground that the petitioner was admitted at the Institute level. The learned counsel has restricted the claim of reimbursement to the fees payable by a student in the ordinary category and not the entire fees paid.

7. The learned AGP has referred to the Affidavit in reply filed by Mr. Vinodkumar Sangle, Assistant Project officer ITDP Aurangabad. It is submitted that the petitioner has been admitted against NRI Quota and is thus ineligible to the reimbursement of fees. It is submitted that the condition No. 10 is valid as it has nexus with the object of the scheme which aims at supporting the students from the backward/reserved categories by reimbursement of the professional fees. It is submitted that a student who gets admission against an NRI quota as sponsored by NRI relative of whom the student is a ward, cannot seek the benefit of the reimbursement. It is submitted that condition no 10 cannot be said to be in breach or violative of Article 46 of Constitution of India.

8. The learned counsel for the third respondent referring to the affidavit in reply filed by Mr. Rajendra Bohra

² 2006 (5) Mh.LJ 359

Dean of the third respondent college has submitted that the petitioner was admitted to the MBBS course in the year 2016-17 from NRI category. It is submitted that at the relevant time the yearly fees for MBBS course for regular admission was Rs.10,50,000/-. The fees for NRI category was Rs.26,50,000/- . It is submitted that the petitioner has paid the fees for the NRI category and cannot now claim reimbursement by challenging the condition No. 10 and claiming otherwise as being admitted under the regular rounds as a candidate belonging to the scheduled tribe category. The learned counsel in this regard has placed reliance on the copy of the application dated 8.9.2016 and the details of the fees paid, which are annexed to the petition. It is thus submitted that the petition is without any merit.

9. We have carefully considered the rival submissions made. The third respondent is a college and hospital run by Mahatma Gandhi Mission University of Health Sciences, Navi Mumbai, (MGM University) which is a deemed university within the meaning of Section 3 of the University Grants Commission Act, 1956. The petitioner secured admission to the MBBS Course in the said college in the academic Year 2016-17 by paying fees of Rs.26,50,000/-. As per the details of the fees produced by the college the petitioner has further paid Rs.26,50,000/- in 2017-18 and Rs.24,00,000/- in 2018-19 totaling to Rs. 77,14,000/-. According to the college, the

petitioner is in arrears of fees of Rs. 42,25,000/-. A copy of the application for admission dated 8.9.2016 shows that it is for admission from the FN/PIO/NRI category. The application is signed by the applicant with a declaration of the authenticity of the contents signed by the father/guardian of the petitioner. According to the petitioner, he was admitted on the basis of NEET from ST category when his tribe claim was pending before the scrutiny committee. It is undisputed that the claim has now been validated as per Certificate dated 16.7.2019.

10. Although the petitioner claims that he could not have been admitted under the NRI category, the application dated 8.9.2016 speaks otherwise. In all probability as the tribe claim of the petitioner was pending at the time of the admission, the petitioner opted to pay fees for the NRI category by applying under the said category.

11. The contention of the petitioner is that his father/guardian or anybody from the family is not an NRI.

12. The condition Nos. 9 and 10 of para 3 of the GR dated 31.3.2016 which are relevant for the purpose read thus:

९) सदरहू योजना ही खाजगी अभिमत विद्यापीठात
(Deemed University) अथवा खाजगी स्वयंअर्थसहाय्यीत

विद्यापीठातील अभ्यासक्रमांसाठी प्रवेश घेणाऱ्या विद्यार्थ्यांना कोणत्याही परिस्थितीत अनुज्ञेय राहणार नाही.

१०) ही योजना अनिवासी भारतीयांकरिता (N.R.I.) विहीत कोट्यात व्यवस्थापनामार्फत देण्यात येणाऱ्या विद्यार्थ्यांना लागू राहणार नाही.

13. It can be seen that condition No. 9 has been found to be invalid by this court vide judgment and order dated 20.3.2015 in PIL no 69/2011.

14. This is what is held in para 26 of the Judgment:

“26. Thus, we hold that the decision of the State Government to treat the socially and economically backward class students in professional colleges run by the deemed universities differently from similar students in the recognised unaided and permanently unaided colleges for the purposes of reimbursement of education fees is arbitrary and violative of Article 14 of the Constitution of India. They form a part of the same class for the object of providing assistance to them in the form of reimbursement of education fees. We hasten to add that depending upon the fee structure, the State Government may, as a matter of policy, can restrict the reimbursement to a particular amount.”

This court thus declared that the benefits of the scheme namely centrally sponsored scheme for post matric scholarship cannot be denied to the students of deemed universities who are otherwise eligible under the scheme. This

court had directed the government to make necessary modifications to the Government Resolutions dealing with the grant of reimbursement to the students of socially and economically backward class from the academic year 2015-16.

15. In view of the decision of this court in the PIL No. 69/2011, we find that the second respondent could not have placed reliance on condition No. 9 of para 3 of the GR dated 31.3.2016.

16. This takes us to condition No. 10 which in terms prescribes that the scheme is not applicable to admissions made by management at institution level, against NRI quota.

17. By virtue of an amendment, the Petitioner has challenged the constitutional validity of condition No.10 on the ground of being violative of Article 46 of the Constitution of India. We are not inclined to accept the contention raised in this regard. Article 46 falls in Chapter IV pertaining to directive principles of State policy. Article 46 provides for promotion of education and economic interest of Scheduled Castes and Scheduled Tribe and other weaker sections. Article 46 reads as under:

46. Promotion of educational, and economic interest of Scheduled Castes, Scheduled Tribes and other weaker sections- The State shall promote with special care the educational and economic interests of the

weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

It can thus be seen that Article enjoins the State as a matter of directive principle of State policy to promote with special care, the education and economic interests of “weaker sections” of the people and in particular of Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. It is difficult to see as to how clause 10 of paragraph 3 of the said Government Resolution can impinge upon Article 46. The Article in our view essentially aims at promotion of education and economic interest of the weaker sections of the people. A student or a ward taking admission against a seat reserved for NRI quota and which is essentially sponsored by a guardian or a relative of the student who is NRI and has sufficient financial means has been held dis-entitled to benefit of reimbursement which in our view is in consonance with overall object of the scheme so that the State within its limited financial resources can extend such benefit to the students who are really in need of the same on account of their social and economic status and being part of the weaker sections of the society.

18. That apart as noticed earlier there is enough documentary material to show that the Petitioner has secured admission against a seat reserved for NRI quota and not as belonging to a scheduled Tribe category. Admittedly, on the date on which the Petitioner had secured the admission, the Petitioner was not having a validity certificate. Thus on the date of the admission in the year 2016-17 the Petitioner was not entitled to be admitted against the seat reserved for Scheduled Tribe candidate. Thus, it is difficult to entertain any such challenge at the instance of the Petitioner who on the date of the admission had no validity certificate and had secured admission against a seat from NRI quota.

19. The contention on behalf of the Petitioner that his guardian and none of his relatives is a NRI cannot be accepted at this distance of time particularly when the Petitioner had secured the admission against such NRI seat and is now claiming benefit of reimbursement on the ground that he is entitled for the same as per the Government Resolution dated 31.03.2016. We find that the claim of the Petitioner that none of his relatives or guardian was NRI runs counter to the facts, which are clearly borne out of record, namely of the Petitioner having secured the admission against NRI seat. If the Petitioner now wants to claim otherwise the admission itself may be rendered susceptible.

However, we would leave the said aspect at that, as we are only concerned with the claim of reimbursement.

20. The reliance placed on behalf of the Petitioner on the decision of the Supreme Court in *Consortium of Deemed Universities in Karnataka (Codeunik) & Anr. v/s. Union of India and Ors.*³ and decision in *Avinash Singh Bagri and Ors. v/s. Registrar IIT Delhi and Anr.*⁴ to our mind is entirely misplaced, as there is documentary evidence to show that the admission was secured against a NRI seat.

21. Thus, although the Respondents could not have placed reliance on condition No.9 (as it has been held invalid by this court) we find that the refusal to grant reimbursement based on condition No.10 is justified. Looked from any angle, we do not find that the rejection of the claim suffers from any infirmity, so as to require interference.

Petition is without any merit and is accordingly dismissed with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.

3 2017 SCC Online SC 2110

4 2009 (8) SCC 220