

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 12754 OF 2022

RUTUJA D/O. SHARAD KHILARI
Age: 20 years, Occupation: Student,
Resident of Village Valan, Tal.: Rahuri,
Dist.: Ahmednagar.

... Petitioner

Versus

1. THE STATE OF MAHARASHTRA,
Through, Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai – 02.
2. THE ADMISSION REGULATING AUTHORITY,
MAHARASHTRA STATE, MAHARASHTRA.
Through its Chairman,
9th Floor, New Excelsior Building,
A.K. Nayak Marg, Near CSMT,
Mumbai. Maharashtra
3. DIRECTORATE OF AYUSH, MUMBAI
Through its Director,
Govt. Dental College & Hospital Building,
P D'Mello Rd, Fort, Mumbai,
Mumbai, Maharashtra
4. MAHARASHTRA UNIVERSITY OF HEALTH
SCIENCES, NASHIK
Through its Vice-Chancellor,
Mhasrul, Vani Dindori Road,
Nashik, Maharashtra.
5. AHMEDNAGAR HOMEOPATHIC MEDICAL
COLLEGE AND HOSPITAL, AHMEDNAGAR
Through its Dean/Director,
Manmad Rd, Savedi,
Ahmednagar, Maharashtra

... Respondents

...

Mr. Abhay D. Ostwal & Mr. Mohit L. Deoda, Advocates for Petitioner.
Mr. S. G. Sangle, AGP for respondent Nos.1 & 3.
Mr. S. G. Karlekar, Advocate for Respondent No.2.
Mr. S. B. Pulkundwar, Advocate for Respondent No.4.
Respondent No.5 is deleted as per Court's order dated 14.12.2022.

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CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 14th December, 2022.

PER COURT:

1. Leave to delete the college, being a formal party. Deletion be carried out forthwith.

2. Considering the grave urgency, we granted circulation of this petition and the same is listed at serial No.919 on today's admissions board (students category). The learned advocate for the petitioner informs us that respondent Nos.2 to 5 have been served with Advocate's notice alongwith copy of the petition paper-book. The learned Government Pleader's office is served with two copies. He places a service affidavit of the father of the petitioner alongwith copies of e-mails and certain documents (29 pages). The same is

taken on record and collectively marked as “X-1” for identification.

3. The petitioner has put forth prayer clauses ‘b’, ‘c’ and ‘d’ as under:

“(b) Records and Proceedings may kindly be called for, and after examining the records and proceedings this Hon’ble Court may kindly be pleased to quash and set-aside the Order dated **18.06.2021** & **02.06.2022** passed by the Admission Regulation Authority, Maharashtra (Respondent No.2) and confirm/approve the admission of the Petitioner to BHMS at Respondent No.5 College. [**IMPUGNED ORDER**]

(c) That this Hon’ble Court may kindly be pleased to issue a *writ of mandamus* directing the Respondent No.2, Admission Regulation Authority, Maharashtra, to approve admission of present petitioner and allow her to appear/seat for 2nd year BHMS examination commencing from 16.12.2022 and accept the caste validity certificate dated 08.03.2021 submitted on 08.03.2021 to the Respondents.

(d) Issue a *writ of mandamus* directing the Maharashtra University of Health Sciences, Nasik (Respondent No.4) to declare results of petitioner for BHMS

(2015) - 1 for Winter-2021 exam forthwith / immediately.”

4. The learned AGP has caused an appearance on behalf of respondent Nos.1 and 3, Mr. Karlekar, the learned advocate appears on behalf of respondent No.2 Admission Regulating Authority, Maharashtra State. Mr. Pulkundwar, the learned advocate appears on behalf of respondent No.4 Health University. Despite service of Advocate's notice, none has caused appearance on behalf of respondent No.5.

5. We have considered the strenuous submissions of the learned advocates and with their assistance, we have gone through the petition paper-book. The sequence of events, are as under:-

Sr. No.	Date	Particulars
1.	13.09.2020	The petitioner appeared for NEET (UG) examination.
2.	16.10.2020	The results for NEET (UG) examination are declared and the petitioner obtained 177 marks.
3.	29.10.2020	The petitioner made an application for Caste Certificate.
4.	06.11.2020	The petitioner was granted Caste Certificate.
5.	11.11.2020	The petitioner filled in the online admission form for Mop-up/CAP round.
6.	19.12.2020	The petitioner was granted non-creamy layer certificate.

Sr. No.	Date	Particulars
7.	24.02.2021	The petitioner made an application to get Caste Validity Certificate.
8.	02.03.2021	The provisional selection list for Mop-up round 2 was declared. The petitioner secured selection in a Homeopathy college.
9.	05.03.2021	As there was a delay in grant of Caste Validity Certificate to the petitioner, the petitioner submitted an affidavit with the authorities promising to produce the same on 08.03.2021.
10.	07.03.2021	Last date for admission to the college, was a Sunday.
11.	08.03.2021	The petitioner was granted caste validity certificate, which she immediately tendered to Respondent no.5. The petitioner was also granted provisional Admission.
12.	19.03.2021 - 21.03.2021	College fees as well as Hostel fees were paid by the petitioner demonstrating that she was granted admission. The petitioner was also issued a bonafide certificate and ID card.
13.	18.06.2021	The admission of the petitioner was not approved by respondent no.2 on the ground that she had submitted Caste Validity Certificate one day after the last date of admission.
14.	18.10.2021	Respondent no.5 college, informed petitioner about the decision taken by respondent no.2 authority on 18.06.2021.
15.	12.10.2021	The respondent no.5 college, with the consent of the petitioner, filed an application for review before respondent no.2 authority to review the decision made by the same authority on 18.06.2021.
16.	01.03.2022 - 12.03.2022	The petitioner appeared for BHMS first year exams conducted by Respondent no.4.
17.	02.06.2022	The respondent no.2 authority rejected the review application filed by the respondent no.5. Hence this petition.
18.	-	The results for BHMS first year examination of the petitioner are withheld by respondent no.4.

Sr. No.	Date	Particulars
19.	16.12.2022 - 26.12.2022	BHMS second year exams will be conducted.

6. Mr. Karlekar, the learned advocate strenuously submits by placing reliance upon Section 4A(3), which is an amendment introduced by Maharashtra No.XXVIII of 2015, that it clearly indicates as under:-

“(3) Upon failure to produce validity certificate on or before such date specified by the Admissions Regulating Authority under sub-section (2), the provisional admission secured, if any, against reserved seat, shall be deemed to be cancelled.”

7. The sequence of events, indicate that the petitioner was expected to tender the caste validity certificate of belonging to OBC, to the college, on or before 7th March, 2021, which was a Sunday. Her proposal was pending with the committee since 24th February, 2021. In record time of 11 days, the competent authority delivered the validity certificate to the petitioner on Monday 8th March, 2021. The petitioner was mandated to tender the validity certificate on 7th March, 2021, which is a Sunday. The committee does not work on Saturday

and Sunday. As such, in this period of 11 days, there were four holidays for the committee on 27th and 28th February, 2021 and 6th and 7th March, 2021. As such, the committee issued the validity certificate to the petitioner, on 8th March, 2021, within 7 days.

8. Mr. Karlekar, the learned advocate submits that when the Admission Regulating Authority declared the last day upto which the validity certificate could be delivered, the college was working on 7th March, 2021 to enable the petitioner to tender the validity certificate. Technically, failure in submitting the validity certificate on or before 7th March, 2021, would automatically lead to the cancellation of the admission of the petitioner.

9. There is no dispute before us that the petitioner got her validity certificate on 8th March, 2021 and delivered the same to the college on the very same day. At the time of verification of documents of individual students, who have been admitted, the college has presented the documents delivered by the petitioner, for verification, so as to lead to the approval of her admission.

10. We have perused Sections 9 and 10 of the General Clauses Act, 1897, which read as under:-

“9. Commencement and termination of time.-(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. Computation of time.-(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.”

11. The issue of exclusion of the first day was considered in ***Tarun Prasad Chatterjee Vs. Dinanath Sharma, (2000) 8 Supreme Court Cases 649***, wherein it was held that in order to apply Section 9, the first condition to be fulfilled is whether a prescribed period is fixed “from” a particular point. When the period is marked by ‘*terminus a quo*’ and ‘*terminus ad quem*’, the canon of interpretation envisaged in Section 9 of the General Clauses Act, 1897 requires to exclude the first day.

12. In the case in hand, there is no much significance as regards the first day as it was a forgone conclusion that the first day would mean and include the day on which the provisional admission of a candidate is granted. The last date in the case before us, is of greater significance. This last date was 7th March, 2021, which fell on a Sunday. Section 10, prescribes computation of time and takes into account, by Central Act or Regulation made after the commencement of this Act, any act or proceeding, which is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period. If the Court or office is closed on that day, or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the

next day, on which the Court or office is open.

13. Mr. Karlekar and Mr. Pulkundwar, the learned advocates submit that as 7th March, 2021 was a Sunday, the office of the college remained open to enable the candidates to deliver the validity certificates, as being the last day. Mr. Pulkundwar, the learned advocate, who represents the University, submits, on instructions, that the college remained open on 7th March, 2021 only to facilitate the convenience of the students, who might be reaching to deliver the validity certificate.

14. There does not appear any bone of contention with regard to the submission of the validity certificate. What is required to be taken into consideration by us, is that Saturday and Sunday falling on 6th March, 2021 and 7th March, 2021, were holidays for the committee in view of the five days working week. The petitioner, therefore, received her validity certificate on Monday, which fell on 8th March, 2021. As held by this Court at Nagpur Bench in ***Writ Petition No.326 of 2020 (Kuldeep Vs. State of Maharashtra and Ors.)*** that it is not within the domain of the student to get the validity certificate as per his will or his time schedule from the committee. It is beyond his control.

15. While, perusing the impugned order dated 2nd June, 2022, which is passed by the Chairman, Admissions Regulating Authority, Maharashtra State, while exercising his powers in the capacity of being a reviewing authority, that the review applicant was directed to cure the lacuna by submitting all the required documents alongwith an affidavit within seven days. We do not find that the reviewing authority has applied its mind to the fact that the present petitioner delivered her validity certificate within one day after the deadline, on 8th March, 2021.

16. Mr. Karlekar, the learned advocate submits that a group of such cases dealing with the scope of the appellate authority / reviewing authority in dealing with the review applications, is coming up on 12th January, 2023, Writ Petition No.8962 of 2022. The timeline prescribed in view of the orders of the Honourable Supreme Court, by the Admission Regulating Authority, are not subject to any change on the pretext of deciding the review applications. The timeline has to be strictly adhered to without any deviation.

17. In the peculiar facts of this case and considering Section 10 of the General Clauses Act, 1897, and in view of the decision of this Court in *Kuldeep Vs. Sate of Maharashtra and Ors.* (supra), we

are of the considered opinion that the benefit of one day needs to be granted to the present petitioner. It is under peculiar circumstances that on the one hand, the committee had holidays on 6th and 7th March, 2021 and on other hand, the Admission Regulating Authority prescribed the deadline on 7th March, 2021, which is a Sunday, creating a serious impediment in the path of the petitioner. We are, therefore, exercising our extraordinary powers and discretion in favour of the petitioner by condoning the said delay of one day.

18. This petition is, therefore, allowed.

19. The impugned decision of the Admission Regulating Authority dated 18th June, 2021 and the review order dated 2nd June, 2022, stand quashed and set aside. The petitioner's admission stands regularized and we direct the Admission Regulating Authority to enter in it's record that the petitioner's admission is confirmed.

20. Before parting with this matter, we need to record our impressions as regards two issues. Firstly, that reviewing authority, which power is invested with the Chairman of the Admission Regulating Authority, should take into account all the attending circumstances and documents placed before the Chairman while

hearing the review application. A reasoned order should be passed unlike the impugned order, which does not reflect any specific reason. Secondly, we advise the Admission Regulating Authority to post the last date of the period during which the documents / validity certificates etc. are to be delivered to the college / institution, to fall on any working day in a week, as far as it could be possible.

21. In view of the above, respondent No.4 University shall declare the result of the petitioner by tomorrow, by 12:00 noon (15th December, 2022) so as to enable the petitioner to appear for the first paper / examination scheduled on 16th December, 2022 at 02:30 pm. As such, the University would convey this direction to the college, as well as, the petitioner shall place a copy of this order before the college by 11:00 am, tomorrow (15th December, 2022).

22. We make it clear that this order would not be treated as a precedent, save and except, in exactly identical set of circumstances.

23. Parties to act on this order dictated in the open Court.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE J.]