

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8539 OF 2022

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1. Ms. Priya Kedar Gokhale
Age - 17 yrs., Occupation - Student,

2. Master Ishaan Kedar Gokhale
Age - 17 yrs., Occupation - Student,

Both r/o. B-303, 'Sangli Apartments'
Copernicus marg, Opposite NGT
New Delhi - 110001

Colonel Kedar D. Gokhale
Aged 49 years, Occ - Service,
Presently posted at CE, Siliguri Zone,
Sevoke Road Military Station,
Salugara, West Bengal 734008

..... Petitioners

Versus

1. The State of Maharashtra
Through Ministry of Education,
Government of Maharashtra,
Mantralaya, Mumbai.

2. The Commissioner & Competent Authority,
State Common Entrance Test Cell,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai - 400001

3. Union of India,
Through Secretary, Ministry of Defence,
DHQ PO,
New Delhi 110011

..... Respondents

Dr. Abhinav Chandrachud I/b. Ms. Yogini A. Ugale for the Petitioner
Mr. N. C. Walimbe, AGP for Respondent No.1 - State
Mr. Sameer Khedekar for Respondent No.2
Mr. A. R. Gole a/w. Mr. Rui Rodrigues for Respondent No.3

**CORAM: S.V.GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

**RESERVED ON :AUGUST 29, 2022
PRONOUNCED ON :SEPTEMBER 12, 2022**

JUDGMENT : (PER : S.V.GANGAPURWALA,J.)

1 Rule.

Rule is made returnable forthwith. By consent of the parties, taken up for final disposal at the stage of admission.

2 The Petitioners assail eligibility criteria in the Notification issued by Respondent No.2 to the extent that same treats the Petitioners as outside Maharashtra candidates for admission to the MAH-CET Examination for the 5 years integrated LLB Course. The Petitioners further seek directions that they may be treated as within the State candidates in category-A of the Notification.

3 The Petitioners are the wards of an Army Officer. The Petitioners have completed 10th and 12th Examination from Army Public School, Dhaula Kuan, New Delhi. It is the case of the Petitioners that due to various postings of their father, the Petitioners have been pursuing their education in the Army Public School, Dhaula Kuan, New Delhi. They have studied in 4th and 5th Standard at Pune, State of Maharashtra. The Petitioners have not passed 10th and 12th standard Examination from the recognized

institution within the State of Maharashtra, hence, are not considered in the 85% quota reserved for the students of the State of Maharashtra.

4 Dr. Chandrachud, learned Advocate for the Petitioners eruditely canvassed the following propositions :

The Petitioners are born in Maharashtra. Their parents are also born in Maharashtra. Their parents have property in Maharashtra. Yet, the Petitioners are not being considered from the State of Maharashtra only because they were compelled to attend 10th and 12th standard at Delhi. The father of the Petitioners being in the office of the Defence Forces, is deployed at various locations throughout the country. They had passed 10th and 12th standard at Delhi only on account of the deployment of their father at various locations throughout the country. The Petitioners cannot be deprived of equal opportunity of education in their parent State only on account of their father being an Officer in Defence Forces and being deployed at various locations throughout the country. The same is unreasonable. The learned Advocate submits that any reservation based on domicile and residence is entirely a separate infringement. It is clear departure from field of justice, fairness and reasonableness guaranteed by the rule of law. There is no justification to validate reservation on the basis of domicile, which is

neither connected to the place of birth, intention to reside at a particular place, but only limited to completion of 10th and 12th standard within the State, especially in respect of wards of armed forces personnel. Deprivation of seats at educational institutions of national importance to deserving and meritorious candidates merely because they have completed their 10th and 12th standard outside the State creates an unjustified classification which offends Article 14 of the Constitution of India. Eligibility criteria based on the Board exams within the State, especially the candidates who are wards of central Government employees, such as Armed Forces Personnel, who are deployed throughout the country in service to the nation is likely to deprive the candidates of CBSE Board, from pursuing the integrated 5 years law under graduate course in Maharashtra Law Colleges, as against the other students who have completed the said exams within the State who shall be facilitated as much as 85% reservations in merit to colleges within the State. Thus, the reservation policy to this extent is discriminatory and needs to be altered to facilitate the students from all Boards, especially the CBSE students to be counted as candidates not from outside the State but within the State, especially since the other criteria of domicile, in its basic definition is satisfied by the Petitioners.

The learned Advocate further submits that in this case, the father of the Petitioners is serving the Nation and for that purpose had to be deployed at various places. It would be arbitrary and unreasonable not to consider the Petitioners from Maharashtra State quota though they are born in Maharashtra, their parents are born in Maharashtra, their properties are in Maharashtra. The learned Advocate relied upon the judgment of the apex court in the case of ***Meenakshi Malik Vs. University of Delhi & Ors.***¹ and submits that the apex court in the said case held that the condition that the last two years education should be received in school in Delhi should be considered as not applicable to the students who were compelled to leave India as their parents being posted outside India by the Government.

He also relies on the judgment of the Division Bench of this Court in the case of ***Rajiv Purshottam Wadhwa Vs. State of Maharashtra***² and submits that in the said case after retirement the father of the Petitioner therein had taken employment in Dubai. The Petitioner completed his 10th standard examination in Dubai. The Rules prescribed that to be considered as student from Maharashtra quota, the 10th and 12th standard examination shall be passed in the State of Maharashtra. The apex court, in the said case

1 1989(3) SCC 112

2 2000 SCC OnLine Bom 359

held that the condition that the students shall pass 10th standard from the institution within the State of Maharashtra shall not operate to bar the student who is domiciled and/or permanent resident of State of Maharashtra. Due to fortuitous circumstances the students may not have passed 10th standard from the institution within the State of Maharashtra. According to the learned Counsel, in the present case, it is because of the fortuitous circumstances, the Petitioners were required to take education in 10th and 12th standard from outside the State of Maharashtra. Reliance is also placed on the judgment of the Division Bench of this Court in the case of ***Archana Sudhakar Mandulkar Vs. Dean, Govt. Medical College, Nagpur and Ors.***³ The learned Counsel submits that in the said case, the Division Bench of this Court held that the requirement of passing Indian School Certificate Examination from an institution located in Maharashtra State is not intended to be applied to the candidates covered by Rule B(3). Servicemen have no control on posting which can be anywhere, including Maharashtra. Rule of denial of admission to a meritorious son / daughter of a serviceman who is domicile of Maharashtra only because of a fortuitous circumstance of his being not posted at the time of his ward studying in 12th standard within the State of Maharashtra cannot have any nexus to the object of the Rule. Mere chance cannot be a valid

³ 1989(3) SCC 112

disqualifying factor. Such a Rule will be arbitrary and unreasonable.

5 Mr. Khedekar, learned Advocate for Respondent No.2 lucidly submits that the Rule is not discriminatory nor arbitrary. Such Rules have been held to be valid. The learned Advocate relies on the judgment of the Division Bench of this Court in case of ***Yellamalli Venkatapriyanka Vs. State of Maharashtra and Anr.***⁴ and submits that the Division Bench considering the judgment of the apex court in the case of *Anant Madaan and Others Vs. State of Haryana*⁵ had held that the preference in admission on the basis of residence as well as institutional preference is permissible. The Division Bench of this Court in the said case held that the Rule of preference on the basis of domicile / requirement of residence is not banned, provided it is within reasonable limits i.e. it does not result in reservation of more than 85% seats in graduate courses and more than 75% seats in post graduate courses. It had distinguished the judgment in the case of ***Rajiv Purshottam Wadhwa (supra)*** relied on by the Petitioner. The challenge to the Rules has been negated by this Court. He submits that in the said case also before the Division Bench, the Petitioner was born in the State of Maharashtra. She was domicile of Maharashtra. She had completed 10th standard from Mumbai (State of Maharashtra) and due to some reasons she

4 ***2018 (6) AIR 323***

5 ***1995 AIR 955***

was sent to Kerala to pursue her 11th and 12th class studies, still this Court held that as she had not completed 12th standard from the institution within the State of Maharashtra, she was not eligible. In the present case, the Petitioners have not studied 10th and 12th standard from the State of Maharashtra.

6 Before we proceed to appreciate the submissions of the learned Advocates for the parties, it would be appropriate to reproduce the relevant Rules of admission, which is as under:

“Candidature Types :

(1) Eligibility Criteria for Maharashtra State Candidature Candidates : -

For Five Year Integrated Degree Course (LL. B-5 Yrs.):

(A) The candidates passing SSC and HSC Examination from a recognized institution in Maharashtra State or the candidates passing equivalent examination (such as 11+1, A level in Senior Secondary School Leaving Certificate Course) from a recognized Board/University of India or outside or from Secondary Board or equivalent, constituted or recognized by the Union or by a State Government, which is in Maharashtra; and

(a) Maharashtra State Candidature Type-A:

A candidate who is Domicile of Maharashtra (Candidate should have Domicile Certificate from the State of Maharashtra) or born in Maharashtra (Candidate should have a Birth Certificate mentioning the Place of Birth which is in Maharashtra).

Explanation:

1. If candidate has completed his/her SSC and HSC or Equivalent Qualifying Examination from the State of Maharashtra, but are not born in Maharashtra or Candidate does not Possess the Domicile Certificate from the State of Maharashtra, then such candidates are not eligible for Maharashtra State Candidature Type-A. They should fill the CET Application form as a Out Side Maharashtra State Candidature Type Candidates i.e. All India Candidature Type.

2. If candidate has completed his/her SSC & HSC or Equivalent Qualifying Examination from the State of Maharashtra, and are not born in Maharashtra but Candidate has a Domicile Certificate from the State of Maharashtra then such candidates are eligible for Maharashtra State Candidature Type-A. They should fill the CET Application form as Maharashtra State Candidature Type-A.

3. Candidates who are born in Maharashtra or Candidate having the Domicile Certificate from the State of Maharashtra but have not completed his/her SSC & HSC or Equivalent Qualifying Examination from the State of Maharashtra, then such candidates are not eligible for Maharashtra State Candidature Type-A. They should fill the CET Application form as an Out Side Maharashtra State Candidature (OMS) Type Candidates i.e. All India Candidature Type.

b. Maharashtra State Candidature Type-B: the Father or Mother of the Candidate is domiciled in the State of Maharashtra (Either father or Mother of the candidate should have a domicile certificate from the state of Maharashtra if candidate is not born in Maharashtra/ Candidate does not possess domicile certificate from the state of Maharashtra).

Explanation: -

1. If candidate has not completed his/her SSC & HSC or Equivalent Qualifying Examination from the State of Maharashtra, then such Candidates are not eligible for Maharashtra State Candidature Type-B though candidates father or Mother Possess the Domicile Certificate from the

State of Maharashtra. They should fill the CET Application form as an Out Side Maharashtra State Candidature Type Candidates i.e. All India Candidature Type.

2. If candidate has completed SSC & HSC from the State of Maharashtra & candidate does not possess domicile certificate from the state of Maharashtra or Birth Certificate from the State of Maharashtra but Candidate's Father or Mother Possess Domicile Certificate from the state of Maharashtra, then such candidates are eligible for Maharashtra State Candidature Type-B. Such candidate should fill the CET application form as a Maharashtra State Candidature type.

c. Maharashtra State Candidature Type-C: - the Father or Mother of the Candidate is an employee of the Government of India or Government of India Undertaking who is posted and reported to duty in the Maharashtra State before the last date for submitting the Application Form for CAP, provided candidate should have completed his/her SSC & HSC from the State of Maharashtra.

Explanation:-

1. If candidate has not completed his/her SSC & HSC or Equivalent Qualifying Examination from the state of Maharashtra, then such candidates are not eligible for Maharashtra State Candidature Type-C. They should fill the CET Application form as an Out Side Maharashtra State Candidature Type Candidates i.e. All India Candidature Type.

2. If candidate has completed his/her SSC & HSC or Equivalent Qualifying Examination from the State of Maharashtra, & Candidate's Father or Mother is an employee of the Govt. of India OR Government of India Undertaking who is posted and reported to duty in the Maharashtra State before the last date for submitting the Application Form for CAP, then such Candidates are eligible for Maharashtra State Candidature Type-C. They should fill the CET Application form as a Maharashtra State Candidature Type.

d. Maharashtra State Candidature Type-D: - the Father or Mother of the Candidate is an employee of the Government of Maharashtra or Government of Maharashtra Undertaking (Provided Candidate should have completed his/her SSC &

HSC or Equivalent qualifying examination from the State of Maharashtra).

Explanation:

1. *If the Candidate has not completed his/her SSC & HSC or Equivalent qualifying examination from the State of Maharashtra, then such candidates are not eligible for Maharashtra State Candidature Type-D. They should fill the CET Application form as an Out Side Maharashtra State Candidature Type Candidates i.e. All India Candidature Type.*

2. *If candidate has completed his/her SSC & HSC or Equivalent Qualifying Examination from the State of Maharashtra, & Father or Mother of the Candidate is an employee of the Government of Maharashtra or Government of Maharashtra Undertaking, then such candidates are eligible for Maharashtra State Candidature Type-D. They should fill the CET Application form as a Maharashtra State Candidature Type.*

e. Maharashtra State Candidature Type-E: -

The candidates passing SSC and or HSC Examination or Equivalent Examination from a recognized institution from a disputed Maharashtra-Karnataka Border Area and whose Mother tongue is Marathi.

Explanation-

1. *The candidates who have not completed SSC and HSC Examination or Equivalent Qualifying Examination from a recognized institution from a disputed Maharashtra-Karnataka Border Area and whose Mother tongue is not Marathi, such candidates come under Out Side Maharashtra State Candidature Type. They should fill the CET Application form as an Out Side Maharashtra State Candidature Type. i.e. All India Candidature Type.*

(2) All India Candidature (Out Side Maharashtra State Candidature Type): - *The Candidates having Indian Nationality are eligible under this Category (Candidate should have Domicile Certificate from the State where candidate belongs or Candidate should have a Birth certificate issued by*

the respective State Government). OMS [Out Side Maharashtra State] candidates i.e. All India Candidature candidates should fill their CET application form in Open Category.

Explanation:-

A) Candidates who have completed their SSC and HSC or Equivalent qualifying examination from Out Side Maharashtra State & born Out Side Maharashtra & having a birth certificate issued by the respective State Government or they possess Domicile certificate from the respective State are come under All India Candidature candidate i.e. Out Side Maharashtra State Candidature Type.

B) Candidates who have completed their SSC and HSC or Equivalent qualifying examination from Out Side Maharashtra State but Born in Maharashtra & having a birth certificate issued by the Govt of Maharashtra or they possess domicile certificate from the Govt of Maharashtra State are come under All India Candidature candidate i.e. Out Side Maharashtra State Candidature Type.

C) Candidates who have completed their SSC and HSC or Equivalent qualifying examination from the State of Maharashtra but they are not Born in Maharashtra & does not possess a birth certificate issued by the Govt of Maharashtra or they do not possess Domicile Certificate from the Govt of Maharashtra State are come under All India Candidature candidate i.e. Out Side Maharashtra State Candidature Type.”

7 The amended admission rules are in force since the year 2017. The Petitioners are desirous of seeking admission for 5 years integrated degree course (LLB – 5 years). 85% of seats are reserved for Maharashtra State Candidature and 15% for all over India quota. The qualifying examination is SSC and HSC or equivalent qualifying examination.

8 It does not appear to be a matter of dispute that the Petitioners are born in State of Maharashtra. The parents of the Petitioners are born in State of Maharashtra, the parents of the Petitioners possess the property at Pune, State of Maharashtra. The father of the Petitioners is an Army Officer in the defence forces and is deployed at various locations throughout the country. The Petitioners are born in Pune on 26th August 2004. From 2003-2012 the father of the Petitioners was posted at Jhansi, Baramulla, Meerut and Gujarat. From 2012 he was posted at Pune. The Petitioners, as such, studied in 4th and 5th standard in Pune. Then again in 2015, the Petitioners' father was transferred to State of Jammu & Kashmir. The family shifted to Delhi. Then from 2017 to 2020, the Petitioners' father was posted in Delhi and presently he is posted in eastern part of India. The Petitioners completed their 10th and 12th standard from Army School in Delhi. The aforesaid are the admitted facts.

9 It is also to be accepted that the Petitioners had no real choice and were compelled to study outside the State of Maharashtra for major part of their educational career, as the father of the Petitioners was an Army Officer. By the very nature of his service, the Petitioners' father was required to be deployed and posted in

various parts of India as culled out above. It is because of the fortuitous circumstances, the Petitioners' father, at the time the Petitioners were studying in 10th and 12th standard was not posted within the State of Maharashtra, the Petitioners could not take education in 10th and 12th standard from the institution within the State of Maharashtra.

10 The Rules of admission to the Educational Institutions, such as MBBS, Post Graduate Medical Admission have undergone challenge in various petitions. The Rules have been held to be valid.

11 In case of ***Archana Sudhakar Mandulkar (supra)*** the Division Bench of this Court held that the requirement of passing Indian School Certificate Examination from an institution located in Maharashtra State is not intended to be applied to the candidates covered by Rule B(3). Servicemen have no control on posting which can be anywhere, including Maharashtra. Rule of denial of admission to a meritorious son / daughter of a serviceman who is domicile of Maharashtra only because of a fortuitous circumstance of his being not posted at the time of his ward studying in 12th standard within the State of Maharashtra cannot have any nexus to the object of the Rule. Mere chance cannot be a valid disqualifying factor.

12 The apex court, in the case of ***Meenakshi Malik (supra)*** observed that the condition that last two years' education should be received in school in Delhi should be considered as non applicable to the students who had to leave India as their parents being posted outside India by the Government.

13 The Division bench of this Court in case of ***Rajiv Purshottam Wadhwa (Supra)*** interpreted Rule 4.4 of the Rules framed by the Maharashtra University of Health Sciences for admission to the medical colleges in the State to mean that the students will be eligible to the admission to the first year medical course in the State if such student has passed 10th standard from the institution within the State of Maharashtra. However, this will not operate a bar to student who is domicile or is a permanent resident of State of Maharashtra for seeking admission though he or she may not have passed SSC examination from the institution within the State of Maharashtra. In the said case the student had passed his 10th standard from Dubai and 11th and 12th standard from the institution in Mumbai (State of Maharashtra). The Division Bench observed that the State Government can consider for grant of admission to the students who are domiciled and/or permanent resident of State of Maharashtra but due to fortuitous circumstances may not have

passed 10th standard examination within the State. The Petitioner's father therein joined defence services in the Indian Air Force and he retired in June 1979. Upon retirement, the Petitioner's father took up an employment at the Airport at Dubai. The Petitioner was born in 1982 and completed his education till 10th standard in Dubai and took admission to 11th standard at Kirti College, Dadar, Mumbai and completed his 11th and 12th standard from the institution in the State of Maharashtra.

14 Per contra, in case of *Yellamalli Venkatapriyanka (supra)*, the Division Bench considered various judgments of the apex court and had negated the challenge to the Rule which required 10th and 12th standard to be passed from the Institution within the State of Maharashtra to claim the benefit of State quota. In the said judgment, the Court distinguished the judgment of the Division Bench of this Court in case of *Rajiv Purshottam Wadhwa (supra)*.

15 The apex court in case of *Dr. Tanvi Behl Vs. Shrey Goel and Ors.*⁶ has referred the following issues to the larger Bench.

25. Accordingly we would propose the following questions to be examined by a larger Bench of this Court:

25.1. As to whether providing for domicile/residence-based reservation in admission to "PG medical courses" within the State quota is constitutionally invalid and is impermissible?

25.2. (a) If answer to the first question is in the negative and if

⁶ (2020) 13 SCC 675

domicile/residence-based reservation in admission to "PG medical courses is permissible, what should be the extent and manner of providing such domicile/residence-based reservation for admission to "PG medical courses" within the State quota seats?

25.2. (6) Again, if domicile/residence-based reservation in admission to PG medical courses" is permissible, considering that all the admissions are to be based on the merit and rank obtained in NEET, what should be the modality of providing such domicile/residence-based reservation in relation to the State/e UT having only one medical college?

25.3. If answer to the first question is in the affirmative and if domicile/residence-based reservation in admission to "PG medical courses" is impermissible, as to how the State quota seats, other than the permissible institutional preference seats, are to be filled up?

16 The said case was with regard to the post graduate medical admission.

17 The Petitioners are born in Maharashtra. For Maharashtra State Candidature Type-A, two criteria are laid down viz. the candidate is domiciled in Maharashtra or born in Maharashtra. Explanation 3 to Rule 3.2(A)(a) further provides that the candidates who were born in Maharashtra but have not completed their SSC or HSC or equivalent qualifying examination from the State of Maharashtra are not eligible for Maharashtra State Candidature Type A. This explanation 3 to Rule 3.2(A)(a) takes away the right of a candidate born in Maharashtra or domiciled in Maharashtra from applying as a Maharashtra State Candidature

Type-A if he has not completed his SSC and HSC or equivalent qualifying examination from an institution located in the State of Maharashtra. Whereas, under the Maharashtra State Candidature Type-C, if father or mother of the Petitioner is an employee of the Government of India or Government of India Undertaking who is posted and reported to duty in Maharashtra State before the last date of submission of form for CAP, provided the candidate should have completed SSC and HSC can apply for Maharashtra State quota. In that case, it is not necessary that the candidate or the father should be domicile or born in Maharashtra.

18 Perusal of the said Rules, it is manifest that the *prima donna* consideration for applying from the Maharashtra State quota is that the candidate should have passed 10th and 12th standard examination from the institution located within the State of Maharashtra. If the candidate has not passed his 10th and 12th standard from the State of Maharashtra then though the candidate or his parents are domiciled in the State of Maharashtra and /or candidate is born in Maharashtra, he is not to be considered from the State quota. The said Rule would undermine the domicile based reservation. The Maharashtra State Candidature Type-A is meant for the candidate who is domiciled in Maharashtra or born in Maharashtra. However, further condition of passing 10th and 12th

standard examination from the institution within the State of Maharashtra would debar a candidate who is domiciled or born in Maharashtra from taking admission even if because of the fortuitous circumstances he could not take education in 10th and 12th standard from the State of Maharashtra. The present case would be an illustration of the same. The parents of the Petitioners are born in Maharashtra, they are permanent residents of Maharashtra, they have immovable property situated at Pune, State of Maharashtra, the Petitioners are born in Maharashtra, however, because the father of the Petitioners is in service of the nation viz. Officer in Army, is deployed throughout the country and as observed above was deployed after the birth of the Petitioners, at various States. The Petitioners could not complete 10th and 12th standard from the State of Maharashtra. At the time the Petitioners took admission in 10th standard the father of the Petitioners was posted in Delhi and immediately, it appears, he was transferred to the eastern region of the country and in that circumstance, the Petitioners had to complete their 10th and 12th standard from Delhi. When the Petitioners were in 4th and 5th standard, the father of the Petitioners was posted in Pune, Maharashtra and they took education in 4th and 5th standard from Pune, Maharashtra. The Rule, in itself may not be *ultra vires*. Some standards will have to be set for a domicile based

reservation. The condition that candidate passing 10th and 12th standard from State of Maharashtra may not be unreasonable or arbitrary. However, further distinction or exception will have to be made. There may be cases where the candidate / student does not have a choice, such as the rigours service conditions of the parents by virtue of which they are posted throughout the country in the service of the nation and; other, who voluntarily for their business or any other purposes, go to other State. In the former, it would be an involuntary and compelling circumstances, whereas in latter, it would be a voluntary act. The State ought to consider the cases of the candidates who are domiciled in Maharashtra or born in Maharashtra but because of the fortuitous circumstances, such as the service conditions of the parents who are in service of the nation are required to be deployed outside the State. In such cases, relaxation can be provided by the State Government to such candidates of non completing SSC and HSC from the State of Maharashtra. If such exception or relaxation is not provided, the same would be harsh and would be disentitling the candidates domiciled in Maharashtra or born in Maharashtra from taking benefit of Maharashtra State quota. On the other hand, even if the candidate or the parents are not domicile of Maharashtra nor born in Maharashtra but are employees of the Government of India and

have joined the duty in Maharashtra State just before filling in form of CAP round and the candidate appears in SSC and HSC examination from the State of Maharashtra would be eligible for admission from the Maharashtra State quota.

19 The benefit of Maharashtra State quota is extended (by an exception) to the candidates whose father or mother is in Government of India service and is transferred just prior to filling in the CAP round by the candidate and the candidate who has done only his 10th and 12th standard from the State of Maharashtra would be eligible to be considered for the Maharashtra State though not domiciled in Maharashtra and the candidates who are born in Maharashtra or whose parents are born in Maharashtra and domiciled in Maharashtra and are Government of India employee but because of their posting outside the State of Maharashtra, the candidate could not study his 10th and 12th standard from State of Maharashtra is precluded from taking admission from the Maharashtra State quota. The same would be unreasonable. Basically, the Maharashtra State quota is to be provided for the persons domiciled, born in the State of Maharashtra. The factual matrix in case of ***Meenakshi Malik (supra)*** decided by the apex court and in case of ***Archana Sudhakar Mandulkar (supra)*** are similar to the facts of the present case.

20 In case of ***Rachana Sanjay Kuwar Vs. State of Maharashtra***⁷ the Division Bench of this Court to which one of us (S.V.Gangapurwala,J.) was a party, had not permitted the candidate to be considered from Maharashtra State quota. In the said case, the candidate had immovable property at Shahada. The father of the Petitioner was scientist in the Department of Government of India. The Petitioner passed her SSC and HSC examination from Bhopal. The Petitioner therein sought admission from the Maharashtra State quota. this Court denied the relief to the Petitioner therein as the Petitioner had not challenged the regulations and the rules of the Maharashtra Unaided Private Professional Educational Institutions (Regulations of Administrator to the Full Time Professional Undergraduate Medical and Dental Course) 2016.

21 In the present case, the Rules are challenged. In view of the aforesaid discussion though we hold that Rules are not *ultra vires*, however, we may hasten to add that same needs to be read down to provide relaxation or exemption for those candidates who are born in Maharashtra and whose parents are domicile of Maharashtra but due to fortuitous circumstances such as the parent is in service of the Government and serving the nation and due to service condition is deployed in various parts of the country could not complete their

⁷ 2022 SCC OnLine Bom 530

SSC or HSC from State of Maharashtra.

22 In the light of the above, the Respondents shall consider the Petitioners for admission from the Maharashtra State quota.

23 Rule is made absolute in the aforesaid terms.

24 The Writ Petition stands disposed of accordingly. No costs.

(MADHAV J. JAMDAR,J)

(S.V.GANGAPURWALA,J)