IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2278 OF 2022

Gautam Khemchand Khubnani
...Versus...
The Dean, Government Medical College, Nagpur and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri S.V. Bhutada, Advocate for petitioner
Shri N.S. Rao, A.G.P. for respondent No.1
Shri N.S. Deshpande, A.S.G.I. for respondent No.3

CORAM : SUNIL B. SHUKRE & SMT. M.S. JAWALKAR, JJ.
DATE : 27/04/2022

Heard Shri Bhutada, learned Counsel for the petitioner, Shri N.S. Deshpande, learned A.S.G.I. for respondent No.3 and Shri N.S. Rao, learned Assistant Government Pleader for respondent No.1.

2. By this petition the petitioner is seeking a direction to the respondents for confirmation of the admission to the M.D.(Forensic Medicine Programme) in the Government Medical College, Nagpur i.e. respondent No.1 against the General/EWS category from the All India Quota, as per the provisional allotment letter dated 20/04/2022 issued to the petitioner.

3. The petitioner had appeared for NEET/PG examination conducted in the year 2021 and in this

examination petitioner secured 267 marks out of 800. Initially, the petitioner did not qualify for admission in the General/EWS category. But, when there was a revision in the cut off marks for this category, the petitioner found himself to be eligible to take part in the admission process. Accordingly, the petitioner submitted his candidature on the portal for admission process operated by respondent No.2 on 15/03/2022. Considering the score of the petitioner, seat in respondent No.1 College for M.D. (Forensic Medicine Course) was provisionally allotted to the petitioner vide allotment letter dated 20/04/2022. Such an allotment of seat to the petitioner was against the quota made for General/EWS category students. Obviously, therefore, petitioner was required to submit the eligibility certificate of his belonging to EWS category, as per the Central Government norms. This is the condition prescribed in the Information Bulletin and Counseling Scheme.

4. The difficulty of the petitioner is that though the petitioner possesses eligibility certificate for the year 2019 and for the years 2022-23 in the prescribed format issued by the competent authority, the petitioner is not in possession of eligibility certificate for economically weaker section issued by the competent authority for the years 2021-22. In fact, as pointed out by learned Counsel for the petitioner, submission of this certificate is the requirement of the various conditions of admission.

5. Learned Counsel for the petitioner submits that even though petitioner made his efforts for obtaining EWS eligibility certificate from the competent authority i.e. Tahasildar, Nagpur (City), for the years 2021-22, the Tahsildar, Nagpur is not willing to issue a certificate for the previous year and he is insisting upon issuing a certificate for the present. Learned Counsel for the petitioner submits that the petitioner has been issued an income certificate by Tahasildar, Nagpur (City), the competent authority for issuing EWS eligibility certificate for the years 2019-20, 2020-21, 2021-22 and submits that this income certificate should be sufficient for fulfilling the criteria prescribed for economically weaker section students. He points out from this certificate, that income of the petitioner for any of the three years mentioned in the income certificate does not exceed the ceiling of Rs.8,00,000/- per annum and therefore this certificate should be considered by the authority as substantially satisfying the requirement of submission of EWS eligibility certificate for the year 2021-22 and ultimately what matters is not the form but the substance of the fact required to be proved by an individual.

6. Learned Counsel for the petitioner further submits that even otherwise two EWS eligibility certificates issued to the petitioner should be sufficient for indicating the fact that even for the year 2021-22 the petitioner fulfilled the criteria in the category of economically weaker

section and therefore, now the authorities must not insist upon submission of EWS eligibility certificate in the prescribed format for the years 2021-22.

7. Shri Deshpande, learned A.S.G.I. submits that when the information bulletin requires eligibility certificate for the year 2021-22, the year in which the PG examination was held, it must be produced before the authority by the candidate who is allotted provisional seat against EWS category. He submits that submission of eligibility certificate by EWS candidates is an essential condition of their admission against the seat meant for EWS students and if the certificate in the prescribed format as required is not produced, no relaxation can be granted by this Court. Similar is the argument by learned Assistant Government Pleader for respondent No.1.

8. On going through the relevant conditions of the information bulletin, we find substance in the submissions of the learned A.S.G.I. and learned Assistant Government Pleader for respondent Nos. 3 and 1 respectively and no merit in the submissions of the learned Counsel for the petitioner. The information bulletin requires that EWS certificate as per the Central Government norms must be submitted by a student desirous of securing admission against EWS seat. This condition has been reproduced in the information bulletin in the form of answers given to

question No. 7 and the relevant portion thereof is extracted as below:

x. The Candidate should also bring the following certificates, if applicable **(Essential document)**

a) ….

“b) EWS Certificate as per the Central Govt. Norms. **(Essential document)”**

9. It would be clear that submission of EWS certificate as per the Central Government norms is one of the essential conditions of allotting the EWS reserved medical seat to a student who has been found to be qualified for such admission. EWS eligibility certificate, therefore, must be produced by the student for the year in which examination is held. The NEET-PG examination in the present case has been held in September, 2021 and therefore the relevant year for which EWS certificates should have been produced by the petitioner is of 2021-22. Admittedly, this certificate has not been issued to the petitioner and therefore petitioner cannot be said to be fulfilling the said essential condition.

10. Now the question is whether income certificate on which reliance has been placed by the petitioner can be directed to be treated as a document sufficiently and substantially fulfilling the essential condition of submission of EWS certificate has to be dealt with. In our view, the

answer to the question has to be given as in the negative for the reason that when a particular criterion is prescribed as the essential condition, it must be fulfilled strictly and in the manner stated in the information bulletin. No doubt, income certificate cited by the learned Counsel for the petitioner indicates income indicative of the financial position of the petitioner for the years 2019-20, 2020-21 and 2021-2022. But this certificate though indicative of the income of the petitioner as well below Re.8,00,000/- for the years 2021-2022, cannot be considered to be something equivalent to the EWS eligibility certificate issued by the authorities in the prescribed format. The EWS certificate in the prescribed format is issued not only on the basis of the income certificate but also on the basis of some other documents, some of which are important from the viewpoint of consideration of the income of the candidate for the relevant period. These important documents are such as; property tax receipt and electricity bill. There are, of course, other documents as well like passport, school leaving certificate, birth certificate, old EWS, copy of Adhar Card of applicant's father and ration card which are also required for the purpose. But, in order to ascertain the income of the aspirant for the current year, apart from income certificate such documents as property tax showing the worth of the property and electricity bill showing the consumption of electricity would also be important. It is pertinent to mention here that property tax paid and consumption of electricity are some of the indicators of the living pattern of a person and it is generally believed that higher the capacity to pay tax or consume electricity, higher is the possibility of the person having more income. So, income certificate cannot be considered to be a document which would fully and satisfactorily substitute the EWS eligibility certificate.

11. Apart from what is stated above if any relaxation to petitioner in the submission of EWS certificate for the relevant year is granted by directing the authorities to consider the income certificate as a good substitute for the EWS eligibility certificate, there would be a possibility of causing injustice to several other students who may have been equally situated but who have not approached this Court. Granting relief to the petitioner may give rise to a possibility of other similarly situated students contending that if they had known that this condition was not essential and was relaxable, they would also have made similar claim as the petitioner. In such an eventuality, there would be arbitrariness and discrimination vis-a-vis similarly situated students which is not permissible.

12. Learned Counsel for the petitioner also submits that when the EWS eligibility certificate issued for the year 2022-23 is there and there is also eligibility certificate issued for the year 2019, it can be reasonably presumed that

even for the year 2021-22, the income of the petitioner is well below the ceiling fixed for the purpose. The argument cannot be accepted for the reason that income of a person who earns it through industry or business, keeps on varying and it is only the income of a salaried person which has a predictable pattern. The petitioner not being a salaried person, it cannot be presumed that his income for the year 2021-22 must have also been within the same range as it was for the previous and subsequent year.

13. Even otherwise, as stated earlier, no relaxation could be granted to the petitioner in respect of a condition which is an essential condition or otherwise, situation would open floodgates for similar petitions. Besides a thing which is enjoined to be done in a particular manner, must be done in that manner only or otherwise not (see Taylor V. Taylor (1835) 1 Ch.D. 426 and Nazir Ahmed V. Emperor, AIR 1936 PC 253).

14. In the result, we find no substance in the petition. The petition stands dismissed.

(JUDGE) **(JUDGE)**

Jayashree..