

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9044 OF 2023

Vaishnavi D/o Somnath Surashe,
Age : 19 years, Occu : Education,
R/o : Plot No. 787, Kate-Pimpalgaon Road,
Palkhed, Tq. Vaijapur, Dist. Aurangabad

.. Petitioners

Versus

1] The State of Maharashtra,
Through the Secretary,
Woman and Child Development
Department, Maharashtra,
3rd Floor, New Administrative Building,
Madam Kama Road, Hutatma Rajguru Chowk,
Mumbai – 32.

2] The Divisional Deputy Commissioner,
(Women and Child Development),
Opposite to Shivaji High School Road,
Bahadurpura, Khadakpura,
Aurangabad – 01.

3] The District Woman & Child
Development Officer,
Khokadpura, Aurangabad

.. Respondents

...
Advocate for petitioner : Mr. Madhu Milind Joshi
AGP for the respondent – State : Mr. A.S. Shinde
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 09 AUGUST 2023

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate for the petitioner.

2. The petitioner is coming with following prayers :-

- “B. By way of appropriate writ, order or directions in the nature of Writ, be pleased to quash and set aside the impugned Government Resolution dated 06.04.2023 holding that, said Government Resolution is illegal, illogical, ultra virus, without jurisdiction and power, without any foundation and basis, in violation of the principle of equality and in violation of fundamental right of the petitioner to the extent of the age limit of 18 years to the candidate making eligible to obtain orphan certificate and benefit from orphan category;*
- C. By way of appropriate writ, order or directions in the nature of Writ, be pleased to hold that, the petitioner is entitled to apply and to get the orphan certificate and further to apply in the education for getting benefit from orphan category for further education;*
- D. By way of appropriate writ, order or directions in the nature of Writ, be pleased to direct the respondents to relax the age limit of 18 years enabling the petitioner to apply from Orphan category for further education and to direct the respondent No.3 / District Women and Child Development Officer to accept the application of the petitioner and to issue orphan certificate to the petitioner at the earliest possible and within stipulated time.”*

3. The learned advocate for the petitioner submits that by virtue of the impugned government resolution, only a person whose both parents have died before he attains the age of 18 years have been considered entitled to reservation. The petitioner lost one of his parents before she attained the age of 18 years but the other parent died soon after she attained the 18 years of age. In view of the definition of the orphan to whom this reservation policy is made applicable she has been deprived of right to claim a similar reservation. It is discriminatory. There is no rationale in excluding the persons whose one of the parent dies before 18 years but the other parent dies

after attaining that age. He would submit that the resolution is therefore violative of Article 14 of the Constitution of India.

4. The learned advocate would further submit that the whole purpose of passing the resolution is to extend benefit to the orphans. The petitioner is missing the opportunity. As it is, several seats for medical admission against that category are going vacant for at least 2 years and if the persons like the petitioners are considered by relaxing the strict definition of 'orphan' contained in the resolution, similarly placed individuals would be benefited and no one would be put to any prejudice.

5. The learned AGP strongly opposes the petition. He submits that there is no unreasonable classification. A class can be clearly defined of the persons whose both parents have died before his attaining the age of 18 years. It is a well defined class, there is no discrimination. Even if the petitioner is not getting the benefit of the policy because one of her parents has died after she attained the age of 18 years, no such discriminatory stand of relaxation in the policy matters can be taken to extend its benefit to the petitioner. It would be beyond the purview of the powers of this Court under Article 226 of the Constitution of India being a policy matter.

6. We have carefully considered the rival submissions and perused the papers.

7. Admittedly, the reservation has been provided to the orphans by the impugned resolution. It defines a class of persons called 'orphans' to mean all those whose both parents have died before the age of 18 years. It cannot be said that there is no rationale at all. If one of the parents of an individual is still alive till that individual attains 18 years of age, obviously, there would be somebody to look after him / her. The whole purpose of the policy seems to be to provide reservation only to such individuals who have lost both the parent before attaining the age of 18 years.

8. The classification between orphans and the persons whose one of the parent dies before the 18 years of age but the other parent survives at that age and dies subsequently is a reasonable classification based on intelligible differentia bearing in mind the object sought to be achieved by providing reservation to the orphans.

9. Indeed it is a matter of policy. The government has decided to provide reservation to the orphans as defined in the government resolution. We, in exercise of the power under Article 226 of the Constitution of India, cannot cause any interference in the policy matter.

10. Extending any relaxation in the definition of the 'orphan' for the petitioner, would, in-fact be a matter which would be beyond the purview of this Court.

11. The writ petition is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/