



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4883/2023

Apurva Manohar Kumbhalkar, aged about 18 years,
Occupation: Student, Presently Resident of P-03/04
War Memorial Colony, Cantonment, Kanpur Cantt.
Kanpur Nagar, Uttar Pradesh – 208 004.

PETITIONER

.....VERSUS.....

1. State of Maharashtra through its Secretary,
Medical Education and Medicine Department,
Mantralaya, Mumbai – 400 032.
2. State Common Entrance Test Cell, State of
Maharashtra through its Commissioner,
Maharashtra State and Competent Authority
at 8th Floor, New Excelsior Building, A.K.
Nayak Marg, Fort, Mumbai – 400 001.
3. Directorate of Medical Education and Research,
through its Director at Govt. Dental College &
Hospital Building, St. George's Hospital
Compound, Mumbai – 400 001.

RESPONDENTS

Shri A.A. Naik, counsel for the petitioner.
Ms N.P. Mehta, Additional Government Pleader for the respondent nos.1 and 3.
Shri N.A. Gaikwad, counsel for the respondent no.2.

CORAM : A. S. CHANDURKAR AND ABHAY J. MANTRI, JJ.

DATE : NOVEMBER 10, 2023.

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the
learned counsel for the parties.

2. The petitioner seeks a declaration of her eligibility for seeking admission in the 85% State quota offered by the second respondent – State Common Entrance Test Cell for the NEET UG-2023 by reading down Clauses 4.5, 4.6 and 4.8 of the Information Brochure issued by the second respondent alongwith Clause 5(1)(c) of the Maharashtra Unaided Private Professional Education Institutes (Regulation of Admissions to the Full Time Professional Undergraduate and Dental Courses) Rules, 2016 (for short, ‘the Rules of 2016’).

3. The petitioner is domiciled in the State of Maharashtra and a certificate to that effect dated 17.06.2022 has been issued to her. The petitioner’s father is serving on the post of Senior Scientific Officer at the Collectorate of Quality Assurance attached to the Directorate General of Quality Assurance of the Ministry of Defence at Kanpur, Uttar Pradesh. For that reason, the petitioner was required to pursue her Secondary School Certificate examination as well as Higher Secondary School Certificate examination from Uttar Pradesh by appearing in the said examinations conducted by the Central Board of Secondary Education. Under the Information Brochure issued by the second respondent, the eligibility for admission to the Health Science Degree courses in the 85% State quota is that the candidate must be a domicile of the State of Maharashtra—Clause 4.2, the candidate must have passed the Secondary School Certificate examination or equivalent examination from an Institution situated in the State of Maharashtra – Clause 4.5 and the

candidate must have passed the qualifying Higher Secondary School Certificate examination from an Institute situated in the State of Maharashtra—Clause 4.6. Under Clause 4.8.1, children of employees of the Government of India are eligible for seeking admission under the State quota even if they have passed the Secondary School Certificate examination and/or Higher Secondary School Certificate examination from Institutions situated outside the State of Maharashtra provided that the employee of the Government of India or its undertaking must have been transferred from outside the State of Maharashtra at a place of work located in the State of Maharashtra and must have reported for duty and must be working on the last date of document verification at a place located in the State of Maharashtra.

4. In the backdrop of the aforesaid Clauses in the Information Brochure, Shri A.A. Naik, learned counsel for the petitioner submitted that Clause 4.8.1 providing for a limited scope for children of employees of the Government of India or its undertaking to be eligible for 85% State quota is restrictive in nature and is applicable only to the children of employees who have been transferred in the State of Maharashtra and have also reported for duty. He submitted that Clause 4.2 requiring a candidate to be a domicile of the State of Maharashtra is the only relevant Clause and if for fortuitous circumstances such child is required to accompany his/her parents to the place of transfer beyond

the State of Maharashtra creates an artificial discrimination. Referring to the judgment of the Division Bench in *Priya Kedar Gokhale & Another Versus State of Maharashtra, Through Ministry of Education & Others* [2022 SCC OnLine Bombay 11645] it was submitted that in somewhat similar circumstances these very Clauses though held valid were read down to provide for relaxation or exemption for those candidates born in the State of Maharashtra and whose parents are domiciled in the State of Maharashtra but on account of fortuitous circumstances, the parent is required to serve the Government of India or its undertaking outside the State of Maharashtra as a result of which such candidate is required to complete the Secondary School Certificate examination or Higher Secondary School Certificate examination outside the State of Maharashtra. On the same analogy, it is submitted that the provisions of Clauses 4.5 and 4.6 of the Information Brochure be read down so as to enable the petitioner to pursue her education in the 85% State quota. Reliance was also placed on the decision in *Meenakshi Malik Versus University of Delhi & Others* [(1989) 3 SCC 112]. The learned counsel further pointed out that the validity of the admission Rules had been upheld by the Division Bench in *Yellamalli Venkatapriyanka Versus State of Maharashtra & Another* [2018 (6) ABR 323] and hence vires of the said Rules cannot be challenged again. By reading down the said Rules the petitioner could be granted the relief of seeking admission in the 85% State quota. It was pointed out that pursuant to the interim

order dated 03.08.2023 the petitioner has secured admission and was now pursuing her further studies. The learned counsel also referred to the decision in *Samtel India Ltd. Versus Commissioner of Central Excise, Jaipur* [(2003 11 SCC 324)] and *Pankaj Bansal Versus Union of India & Others* [2023 SCC OnLine SC 1244] in that regard.

5. Ms N.P. Mehta, learned Additional Government Pleader for the respondent nos.1 and 3 and Shri N.A. Gaikwad, learned counsel for the respondent no.2 opposed the aforesaid submissions. According to them since no challenge to the Rules of admission was raised and as the very same Rules had been held to be *intra vires* in view of the decision in *Yellamalli Venkatapriyanka* (supra), the claim of the petitioner did not deserve acceptance. It was urged that the Rules having been held to be valid, it was not necessary to read down the same. The case of the petitioner was required to be examined in the light of Clause 4.8.1 but since the petitioner's father was still serving in Uttar Pradesh the petitioner could not claim any benefit under the said Clause. It was then submitted that the petitioner did not claim any specified reservation from the defence quota and as per Clause 9.4.4 such choice of claiming the quota could not be exercised after filling the admission form. It was therefore submitted that the petitioner was not entitled to any relief whatsoever.

6. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents on record. The factual aspects as regards the petitioner and her parents being domiciled in the State of Maharashtra is not in dispute. The requirement of Clause 4.2 of the Information Brochure is satisfied by the petitioner. Since the petitioner passed her Secondary School Certificate examination and Higher Secondary School Certificate examination outside the State of Maharashtra, she does not satisfy the requirement prescribed by Clauses 4.5 and 4.6 of the Information Brochure. The exception provided by Clause 4.8.1 in such circumstances is available only when the parent of such child seeking admission in the 85% State quota is transferred from outside the State of Maharashtra at a place of work located in the State of Maharashtra and has also reported for duty and is working on the last date of document verification. The petitioners father has not been so transferred and hence the petitioner is not entitled to seek exemption in this Clause.

7. The Division Bench in *Priya Kedar Gokhale & Another* (supra) was faced with a somewhat similar situation where the parents of the petitioners as well as the petitioners were domiciled in the State of Maharashtra. The petitioners' father was an Officer of the Defence Forces and was posted beyond the State of Maharashtra. In that backdrop the petitioners completed the 11th and 12th Standard classes

from an Institution outside the State of Maharashtra. Considering challenge to the Rules in that context, the Division Bench referred to the decision in *Meenakshi Malik* (supra) and various other decisions to observe that the rule of denial of admission to a meritorious son/daughter of a serviceman who is domicile of the State of Maharashtra only due to fortuitous circumstances of his not being posted within the State of Maharashtra when the ward was studying in the 12th Standard examination did not have any nexus with the object of the Rule. Merely chance could not be a valid disqualifying factor. It was observed that the *prima donna* consideration for applying in the State quota was being a domicile of the State of Maharashtra. The benefit of such State quota was extended to the candidates whose father or mother was in Government service but was transferred just prior to filling in a form of CAP round would be entitled to the benefit of 85% State quota. On the other hand, even if a candidate is domiciled in the State of Maharashtra but the parent is not transferred in the State of Maharashtra such candidate would be deprived of the State quota. On this premise while upholding the validity of the Rules the Court read down the same to provide relaxation or exemption for a candidate born in the State of Maharashtra and whose parents were domiciled in the State of Maharashtra but due to fortuitous circumstances such parent is in service of the Government of India and is deployed outside the State of Maharashtra as a result of which the

candidate could not complete the Secondary School Certificate examination or the Higher Secondary School Certificate examination from the State of Maharashtra. A direction was issued to the Authorities to consider the said petitioners for admission in the State quota. It is informed that this direction stands duly complied with by the Authorities.

8. While issuing notice in the writ petition on 03.08.2023 an interim order was passed directing consideration of the petitioner's candidature under 85% State quota provisionally subject to final outcome of the writ petition. The petitioner has since secured admission in the 85% State quota and is pursuing her education.

It is true that the validity of Clauses 4.5 and 4.6 has been upheld by the Division Bench in *Yellamalli Venkatapriyanka* (supra). It is for this reason that a fresh challenge to the very same Clauses cannot be entertained. The learned counsel for the petitioner has thus sought to rely upon the decision in *Pankaj Bansal* (supra) wherein a similar contention that in absence of challenge to the Constitutional validity of the relevant statutory provision the prayer for reading down that provision could not be considered has been dealt with. It was held that when a situation is not considered while upholding the validity of the statutory provision, it was open for the Court to consider an interpretation of the said provision which accords with the

Constitutional principles. Hence for these reasons we do not find that the failure to question validity of Clauses 4.5 and 4.6 of the Information Brochure would preclude the petitioner from praying for making an exception or relaxation in the case of the petitioner. We are therefore inclined to follow the ratio of the decision in *Priya Kedar Gokhale & Another* (supra) and hold that in the peculiar facts of the case as the petitioner's parents as well as the petitioner are domiciled in the State of Maharashtra but in view of fortuitous circumstances due to which the petitioner's father is serving with the Central Government beyond the State of Maharashtra, the petitioner would be entitled to relaxation of the rigours of Clause 4.8.1. We may note that it is not the case of the petitioner that she had sought consideration of her candidature under the Defence quota. Hence the provisions of Clause 9.4.4 would not be attracted in the facts of the present case. We observe so as similar relief was sought in *Vansh Prakash Dolas Versus The Ministry of Education & Others* [**Writ Petition No. 5141 of 2023**] decided on 05.09.2023. The said petitioner's father though domiciled in Maharashtra was working with the Border Security Force outside Maharashtra. However as the request for Defence category claim was not made by the said petitioner as per Clause 9.4.4 of the Information Brochure, he had been denied admission. This Court did not interfere as the requirement of Clause 9.4.4. was not satisfied. The facts of the present case are quite distinct.

9. For aforesaid reasons, the interim order dated 03.08.2023 is made absolute by following the ratio of the decision in *Priya Kedar Gokhale* (supra). Since the petitioner's candidature has been considered under the 85% State quota and she has been thereafter admitted she would be entitled to complete her education accordingly. The same would be by way of a relaxation/exception to Clause 4.8.1 of the Information Brochure.

10. Rule is made absolute in aforesaid terms with no order as to costs.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)