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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14475 of 2023

Dr.Vilas s/o Raghunath Dukare,
Age-30 years, Occu-Presently
pursuing PG studies at the
Government Medical College,
Miraj, Dist.Sangali

-- PETITIONER

VERSUS

1. The State OF Maharashtra,
Through it's Principal Secretary,
General Administration Department,
Mantralaya, Mumbai – 400 032.

2. District Collector,
Chatrapati Sambhajnagar,
Dist.Sambhajnagar

3. Sub-Divisional Officer,
Paithan-Phulambri Headquarters,
Dist.Sambhajnagar

4. Tahsildar, Paithan,
Dist.Chatrapati Sambhajnagar

5. Dr.Shantanu Keshavrao Kundgir,
Age-42 years, Occu-Service,
r/o Medical Officers Quarters,
Rural Hospital, Virar, Tq. Virar,
District Palghar

6. Dr.Balaji Ashok Bhise,
Age-36 years, Occu-Service,
R/o Kundal, Tq.Palus,
Dist.Sangali

7. Common Entrance Test Cell,
Through the Commissioner,
Maharashtra State, Mumbai
8th floor, New Excelsior Building,
A.K.Nayak Marg, Fort, Mumbai – 400 001

-- RESPONDENTS

Mr.S.S.Thombre, Advocate for the Petitioner.
Mr.A.B.Girase, Govt.Pleader a/w Mr.P.K.Lakhotiya, for Respondent Nos.
1 to 4/State.
Mr.S.G.Karlekar, Advocate for Respondent No.7.
Mr.VM.Thorat h/f Mr.A.N.Patale, Advocate for Respondent No.6.

(CORAM : RAVINDRA V. GHUGE AND
R.M. JOSHI, JJ.)

DATE : APRIL 26, 2024

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. On 20.11.2023, the learned Vacation Bench of this Court passed an ex-parte ad-interim order with regard to the cancellation of the Petitioner's Economically Weaker Section (EWS) Certificate, dated 13.09.2023. The Petitioner's eligibility was sought to be challenged by Respondent Nos. 5 and 6 herein, before the SDO, Respondent No.3 herein. After hearing the Petitioner, Respondent No.3 had passed an order on 13.09.2023, thereby cancelling the EWS certificate of the Petitioner.

3. On 27.03.2024, after extensively hearing the learned Advocates and after considering their lengthy submissions, we had passed the following order :

“1. Leave to add the Common Entrance Test Cell through the Commissioner, Maharashtra State, Mumbai, as Respondent No. 7.

*2. **Issue notice** to the added Respondent, returnable on 22nd April, 2024. Mr. S.G. Karlekar, learned Advocate, waives service of notice on behalf of Respondent No. 7.*

3. On the aspect of eligibility of the Petitioner, to be declared as a person belonging to the Economically Weaker Section Category (EWS), in the light of clause ‘c’ (1 and 2) of the Government Resolution dated 12.02.2019, prima facie, we find that the petitioner, whose salary per month is Rs. 1,00,000/-, cannot be included in the category of EWS. The EWS certificate, which his mother has received indicating her income to be below Rs. 4,00,000/- per annum, is de-hors the rules and discounting the income of the Petitioner, who is a medical officer in the Government service and

draws around Rs. 1,00,000/- per month. The ceiling on the EWS family income is Rs. 8,00,000/- and the entire family income has to be taken into account. On these premises, the Petitioner's income, coupled with his mother's income, would be around Rs. 16,00,000/- per annum.

4. The learned Advocate for the Petitioner raises an issue which cannot be ignored. He contends that there are 25 seats available for the in-service candidates in the Medical Service for the purpose of of the PG admissions. All these 25 reserved seats for EWS have been occupied by the in-service candidates, including the Petitioner. Each one of them is a medical officer as like the Petitioner. Each of these 25 candidates earns Rs. 1,00,000/- per month as salary. The learned Advocate, therefore, raises an issue that the Petitioner alone cannot be singled out for cancellation of his EWS certificate, when all other identically placed 24 candidates are still admitted in their PG courses as in-service candidates.

5. We are, therefore, directing the Petitioner to file his additional affidavit to give us the list of those 24 candidates, their designation and their gross salary in order to enable us to come to a conclusion as to

whether it is the Petitioner alone who is disqualified or whether it is all these 25 candidates who are sailing in the same boat. Let such affidavit/undertaking be filed on or before 15th April, 2024.

6. *The learned AGP & the learned Advocate Mr. S. G. Karlekar, would also enter an affidavit-in-reply to clarify their position by taking instructions from the CET Cell, Respondent No. 7 herein.*

7. *List this Petition on 22nd April, 2024 in the “**urgent orders**” category. Needless to state, the ad-interim relief granted to the Petitioner by the learned Vacation Court, on 20.11.2023, would continue till the next date.”*

4. The Petitioner has put forth prayer clause B, C, D and E as under :-

“B. This Hon’ble Court may pleased to hold and declare that the proceedings initiated against the petitioner by Respondent No.3-Sub-Divisional Officer, Paithan, in respect of cancellation of EWS certificate issued in favour of the petitioner, are unjust, arbitrary, illegal and without any jurisdiction.

C. By issuing an appropriate writ, order, or directions, the impugned notice dated 27th October, 2023 issued by Respondent No.3 – Sub Divisional Officer, Paithan, may kindly be quashed and set aside.

D. Pending hearing and final disposal of this writ petition, the further proceedings before the Respondent No.3 – Sub Divisional Officer, Paithan, initiated by impugned notice dated 27th October, 2023 may kindly be stayed, and for that purpose, issue necessary orders.

E. Pending hearing and final disposal of this writ petition, Respondent No.3 – Sub Divisional Officer, Paithan may kindly be restrained from cancelling the EWS Certificate issued in favour of the Petitioner, and for that purpose, issue necessary orders.”

5. With the aid of the amendment, the Petitioner has put forth amended prayer clauses B-1, C-1, D-1 and D-2, which read as under :-

“B-1. By issuing a writ of mandamus / certiorari, orders, directions or any other appropriate writ in like nature, the impugned order dated 20.11.2023 passed by Respondent No.3, thereby cancelling the EWS certificate granted in favour of the petitioner, may kindly be quashed and set aside and dismiss the appeal filed by Respondent Nos. 5 and 6;

C-1. By issuing a writ of mandamus, orders, directions or any other appropriate writ in like nature, Respondent No. 7 – CET Cell may kindly be restrained from cancelling the PG admission which has been granted in favour of the petitioner with further directions to allow the petitioner to complete the PG course for which he has been admitted from EWS in-service category candidate;

D-1. Pending hearing and final disposal of this writ petition, the effect, operation and implementation of the impugned order dated 20.11.2023 passed by Respondent No.3, thereby cancelling the EWS Certificate granted in favour of the petitioner, may kindly be stayed,

and for that purpose, issue necessary orders.

D-2. Pending hearing and final disposal of this writ petition, the respondent No.7-CET Cell may kindly be restrained from cancelling the PG admission which has been granted in favour of the petitioner with further directions to allow the petitioner to complete the PG course for which he has been admitted from EWS in-service category candidate;”

SUBMISSIONS OF THE PARTIES

6. The Petitioner claims to be a permanent resident of village Vihamandwa, Taluka Paithan, District – Aurangabad. He claims to be residing with his mother and wife. An agricultural land admeasuring 4 Acres is in the name of his mother, as per the 7/12 extract. 8 Acres of land is jointly owned in the name of the Petitioner and his brother Vikram Raghunath Dukare, as per the 7/12 extract. It is contended that there is an oral partition between the Petitioner and his brother Vikram, the latter residing separately with his family. It is stated that Vikram does not reside along with the Petitioner and his mother.

7. The Petitioner completed MBBS before joining the PG course. Before joining the PG medical course, he was a medical officer at the Primary Health Centre at Borsar, Taluka Vaijapur, Dist.Aurangabad. Admittedly, his selection to the PG medical course has been on the basis of the reservation for the Economically Weaker

Section (EWS) category. In order to get the EWS certificate, the mother of the Petitioner applied to the Tahsildar. The income certificate dated 11.09.2023, was issued to the mother of the petitioner by the said Tahsildar. For 3 financial years, the income of the mother is shown to be exactly Rs. 4,00,000/- (Rs Four Lakhs) per year.

8. The Petitioner claims that he falls under the EWS category. The ceiling for the EWS certificate, is Rs.8,00,000/- per annum. He applied to the Tahsildar for securing such certificate. The Tahsildar issued the EWS certificate dated 13.09.2023, within 2 days of the mother getting the income certificate.

9. The Petitioner's photograph is affixed on the EWS certificate, dated 13.09.2023. It is mentioned in the certificate that, "as per norms prescribed by the Government of Maharashtra, General Administration Department and GR No.राओधो 4019/ प्र.क.31/16-अ dated 12.02.2019", his/her gross family annual income for the year 2022-23 from all sources, is Rs. 4,00,000/- which is less than Rs. 8,00,000/-. Therefore, it is certified that he/she is within the category of economically weaker section.

10. We find that the Petitioner has not suppressed any aspect in this matter, in the sense that the Petitioner has boldly stated that his annual income of Rs. 12,00,000/- (Rs. Twelve Lakhs) is not to be included and is not to be considered by the Tahsildar while issuing him an EWS certificate. The foundation of making such submission, according to the Petitioner, lays in the GR dated 12.02.2019, more specifically clause 'क' (1 & 2), which reads as under :-

“क. आर्थिकदृष्ट्या दुर्बल घटकांच्या आरक्षणाच्या लाभासाठी पात्रता :-

१. ज्या अर्जदाराच्या/उमेदवाराच्या कुटुंबाचे एकत्रित वार्षिक उत्पन्न रु. ८ लाखाच्या आत असेल त्या अर्जदारास/उमेदवारास आर्थिकदृष्ट्या दुर्बल समजण्यात येईल व या आरक्षणाच्या लाभासाठी तो पात्र राहील.

२. या आरक्षणाच्या लाभासाठी कुटुंब म्हणजे अर्जदाराचे उमेदवाराचे आई-वडील व १८ वर्षा खालील भावंडे तसेच अर्जदाराची/उमेदवाराची १८ वर्षाखालील मुले व पती/पत्नी यांचा समावेश होईल. कुटुंबाच्या एकत्रित उत्पन्नात त्याच्या कुटुंबातील सदस्यांच्या सर्व स्रोतांमधून मिळणा-या उत्पन्नाचा समावेश असेल म्हणजेच वेतन, कृषी उत्पन्न, उद्योग-व्यवसाय या व इतर सर्व मार्गातून होणारे, अर्ज दाखल करण्याच्या दिनांकाच्या मागील आर्थिक वर्षाचे वार्षिक उत्पन्न एकत्रितपणे रु. ८ लाखापेक्षा कमी असावे.”

11. There have been lengthy arguments of the learned

advocates representing the parties before us. The Respondents insist that the income of the candidate also has to be considered while taking into the account the annual income of the Applicant's family. The parties are, however, united in submitting that the GR dated 12.02.2019, is specifically for the purposes of admissions to the extent of 10% reservations in the PG courses for the EWS category and the Petitioner and similarly situated candidates are covered by the said GR.

12. The issue before us is as regards the manner of computing the income of the family of the applicant, for the purpose of issuing the EWS Certificate. The Petitioner's contention is that while granting the EWS certificate, the income of the family of the applicant alone is to be considered. The income of the applicant has to be excluded and it is only the income of his family, that is to be reckoned with.

13. The learned Government Pleader has drawn our attention to a communication by the Deputy Secretary, General Administration Department of the Government of Maharashtra, dated 06.11.2023, addressed to the District Collector of Chhatrapati Sambhajnagar. He has clarified on the basis of the Government Resolution and which is

quoted in his communication, which reads as under :-

“सदर शासन निर्णयातील परि.२(क) (२) मध्ये कुटुंबाची व्याख्या दिलेली आहे. त्यामध्ये “कुटुंब म्हणजे अर्जदाराचे/उमेदवाराचे आई-वडिल व १८ वर्षाखालील भावंडे तसेच अर्जदाराची/उमेदवाराची १८ वर्षाखालील मुले व पती/पत्नी यांचा समावेश होईल. कुटुंबाच्या एकत्रित उत्पन्नात त्याच्या कुटुंबातील सदस्यांच्या सर्व स्रोतामधून मिळणा-या उत्पन्नाचा समावेश असेल म्हणजेच वेतन, कृषि उत्पन्न, उद्योग- व्यवसाय या व इतर सर्व मार्गातून होणारे अर्ज दाखल करण्याच्या दिनांकाच्या मागील आर्थिक वर्षाचे उत्पन्न एकत्रितपणे रु.८ लाखापेक्षा कमी असावे,” असे नमूद आहे. केंद्र शासनाच्या दिनांक १९.९.२०२२ मध्ये स्पष्ट केल्याप्रमाणे, राज्य शासनाच्या कुटुंब व्याख्येत, ज्या लाभाध्यासाठी अर्ज केला आहे त्याच्या कुटुंबाच्या उत्पन्नामध्ये त्याच्या “स्वतः” चा समावेश आहे.”

14. The Petitioner has relied upon a GR dated 25.03.2013, which is with regard to the Creamy Layer issue when it comes to a social reservation. This is in connection with the various Scheduled Tribes and Reserved Categories mentioned therein and he contends on the basis of a clarification at internal Page no.11, that if a candidate's family falls in the Creamy Layer or Non-Creamy Layer, the income of the family can be seen and not that of the applicant.

15. He has adverted to certain contingencies that have been discussed, which read as under :-

एखाद्या उमेदवाराचे आई / वडील या पैकी एक किंवा दोघेही शासकीय (केंद्र किंवा राज्य शासनातील सेवेत) सेवेत असतील आणि त्यांच्या शासकीय सेवेतील पदांचा दर्जा निश्चित झाला असेल तर सदर उमेदवाराचा उन्नत / प्रगत गट (क्रिमिलेअर) हा त्याच्या स्वतःच्या स्तरानुसार किंवा उत्पन्नानुसार किंवा त्याच्या पतीच्या / पत्नीच्या स्तरानुसार किंवा उत्पन्नानुसार निश्चित न करता त्याचा किंवा तिचा उन्नत / प्रगत गट (क्रिमिलेअर) हा केवळ त्याच्या किंवा तिच्या आई किंवा वडिल / दोघांच्या शासकीय सेवेतील स्तराच्या / दर्जाच्या (ACCORDING TO THE STATUS OF HE PARENT/S IN THE GOVERNMENT SERVICE) आधारे विहित नियमानुसार निश्चित केला जाईल.

म्हणजेच, -

(i) एखाद्या उमेदवाराच्या (महिला / पुरुष उमेदवार) उन्नत / गटाचे (क्रिमिलेअर) निर्धारण - हे केवळ त्या उमेदवाराच्या आई किंवा वडील / दोघांच्या शासकीय सेवेतील स्तराच्या / दर्जाच्या आधारे विहित नियमानुसार निश्चित केले जाईल.

- एखाद्या उमेदवाराच्या उन्नत / गटाचे (क्रिमिलेअर) निर्धारण करतांना त्या उमेदवाराचा स्वतःचा दर्जा / उत्पन्न किंवा त्याच्या पति / पत्नीचा दर्जा / उत्पन्न गृहित धरले जाणार नाही.

- एखाद्या विवाहित / अविवाहित महिला उमेदवाराबाबत उन्नत / गटाचे (क्रिमिलेअर) निर्धारण करतांना त्या महिला उमेदवाराचे स्वतःचे किंवा पतीचे किंवा दोघांचेही कोणत्याही मार्गाने होणारे उत्पन्न किंवा तीचा / तीच्या पतीचा शासकीय सेवेतील दर्जा (STATUS) गृहित न धरता केवळ तीच्या आई / वडीलाचा किंवा आई आणि वडील या दोघांचा सेवेतील दर्जा (STATUS) / इतर मार्गां ने होणारे उत्पन्न गृहित धरले जाईल.

- एखादा उमेदवार (महिला/पुरुष) जरी स्वतः शासकीय सेवेत कोणत्याही पदावर (वर्ग अ, ब, क अथवा ड) कार्यरत असला तरीही त्याच्या उन्नत / गटाचे (क्रिमिलेअर) निर्धारण करतांना त्या उमेदवाराचा स्वतःचा दर्जा / उत्पन्न किंवा त्याच्या पति / पत्नीचा दर्जा / उत्पन्न गृहित न धरले जाता केवळ त्याच्या/ तीच्या आई/ वडीलाचा किंवा आई आणि वडील या दोघांचा सेवेतील दर्जा / इतर मार्गां ने होणारे उत्पन्न गृहित धरले जाईल.

(ii) सदर निर्धारण करतांना उमेदवाराच्या आई / वडील किंवा आई आणि वडील या दोघांचेही शासकीय सेवेतून वेतनाव्दारे प्राप्त होणारे उत्पन्न किंवा शेत जमीनीपासून होणारे उत्पन्न गृहित धरण्यात येणार नाही.

(iii) सदर निर्धारण करतांना उमेदवाराच्या

आई/ वडील किंवा आई आणि वडील या दोघांचेही मागील सलग तीन वर्षांचे इतर मार्गाने होणारे उत्पन्न ग्राह्य धरले जाईल. तथापि, सदर तिन्ही वर्षांच्या उत्पन्नाचे एकत्रिकरण करून त्याची प्रती वर्षाची सरासरी पाडण्यात येणार नाही.

उन्नत व प्रगत गटामध्ये (क्रिमिलेअर) मोडत नसल्याबाबतचे नॉन-क्रिमिलेअर प्रमाणपत्र देतांना संबंधित उमेदवाराच्या आई / वडील किंवा आई आणि वडील या दोघांच्याही मागील सलग तीन वर्षांचे इतर मार्गाने होणारे उत्पन्न (वेतनापासून होणारे उत्पन्न व शेत जमीनीपासून होणारे उत्पन्न वगळून) हे रु ४.५० लाख प्रती वर्षी यापेक्षा (किंवा शासनाने या संदर्भात वेळोवेळी विहित केलेल्या प्रती वर्षी उत्पन्न मर्यादेपेक्षा) कमी असणे आवश्यक आहे.

16. The learned Advocate Mr. Thorat, representing Respondent no.6, submits that the Petitioner has made an attempt to confuse 2 aspects, viz. (a) the social status of the parents and, (b) the issue with regard to the Creamy Layer/ Non-Creamy Layer. These have nothing to do with the special reservation for the EWS category. The learned Government Pleader joins him in submitting that the EWS category has nothing to do with the Creamy Layer issue and both the issues are distinct and different.

CONCLUSION ON THE AMBIT OF THE EWS CERTIFICATE

17. We, having given a deep thought to the provisions of the GR dated 12.02.2019 and considering the language used in the clauses

~~2-φ~~ (1&2) read with the **explanation** of the State Government conveyed vide the communication dated 06.11.2023, it is apparent that an EWS certificate is for a candidate to take advantage of the family being economically weak. The ceiling is of Rs. 8,00,000/- per year. When the Petitioner himself is drawing Rs. 12,00,000/- per annum, falling back upon the income of the family, excluding his income and contending that the family earns less than Rs.8,00,000/- and, therefore, he belongs to the EWS category, is a fallacious contention, which is not palatable.

18. The object is to grant admission to the PG course to a candidate who belongs to an EWS category. The Petitioner himself draws thrice of the income of his parents and prays that his income to be excluded and only the income of his parents be taken into account, is bound to create an anomaly. We would have been impressed by his submissions that if any GR or decision of the Government with regard to the EWS would have unequivocally said so that, if a candidate desires to acquire an EWS certificate, his income shall be excluded and the income of his parents should be considered. We do not find any such GR or any such policy decision of the Government which is placed

before us which may project or substantiate the contention of the Petitioner that the Applicant's income will have to be excluded.

19. The communication dated 06.11.2023, specifically refers to this GR dated 12.02.2019 and clarifies (from the reproduced portion as above) that the family of the Petitioner shall include the Petitioner's parents and other close relatives and the income of the family shall mean the total income of the family members, except those who are excluded from all sources of income put together. Sources of income also include agricultural activities, business, industries, etc. When the income of close relatives is also to be considered, it is beyond imagination to think that the income of the Candidate, who is to derive advantage of the Certificate, should be excluded. As such, we find that the contention of the Government that the income of the candidate has to be considered while issuing the EWS Certificate, is well placed.

WHETHER THE PETITIONER HAS TO RESIGN IF ADMISSION TO THE PG COURSE IS SECURED

20. The Petitioner has canvassed before us that his income needs to be excluded because, no sooner he secures admission to the

PG course as an in service candidate, having drawn salary of Rs. 1,00,000/- per month, he has to quit the employment and he is rendered unemployed. With this, his income comes down to NIL and therefore, it must be accepted that the Petitioner's income, while considering the issuance of the EWS certificate, has to be excluded.

21. The above issue raised by the Petitioner of quitting his job as a Medical Officer, if he secures admission to the PG course, has a straightforward answer in clause 4.6 of the GR dated 19.07.2023, which reads thus :-

“४.६ वाचा क्र.१३ येथील दि.१९.०३.२०१९ रोजीच्या शासन निर्णयातील व त्यामध्ये वेळोवेळी करण्यात आलेल्या सुधारणेसह अतिदुर्गम (Remote), दुर्गम (Difficult) व ग्रामीण (Rural) भागातील घोषित आरोग्य संस्थांमध्ये किमान ०३ वर्षे सेवा दिलेल्या तसेच उपरोक्त ४.१ ते ४.५ मधील अटी पूर्ण करणाऱ्या सेवांतर्गत वैद्यकीय अधिकारी यांना वैद्यकीय शिक्षण व औषधी द्रव्ये विभागाच्या वाचा क्र.१५ येथील शासन निर्णयान्वये पदव्युत्तर अभ्यासक्रमाकरीता राखीव ठेवण्यात आलेल्या राज्य कोव्यातील २० टक्के जागांवर प्राधान्याने प्रवेश देण्यात येईल. घोषित आरोग्य संस्थांमधील सर्व पात्र सेवांतर्गत उमेदवारांना प्रवेश दिल्यानंतर राखीव २० टक्के कोट्यातील शिल्लक / रिक्त राहणाऱ्या जागांवर ज्या वैद्यकीय अधिकाऱ्यांची अघोषित संस्थांमधील नियमित सेवा ही किमान ०३ वर्षे किंवा त्याहून अधिक असेल अशा वैद्यकीय अधिकाऱ्यांना त्यांच्या NEET PG या

पदव्युत्तर प्रवेश परीक्षेतील गुणवत्तेनुसार प्रवेश देण्यात येईल. सदर सर्व तैद्यकीय अधिकारी प्रतिनियुक्तीस पात्र राहतील.”

22. It is, thus, apparent from the above reproduced portion that no ‘in-service’ candidate like the Petitioner, upon being selected for the PG course on the basis of the EWS certificate, is required to resign. He can continue on deputation since he has an option for deputation. The clause actually means that all the Medical Officers would be eligible for deputation. The learned Government Pleader submits that with such deputation, the income of the Petitioner is not reduced.

IMPUGNED ORDER

23. The Petitioner is before us on the ground that Respondent- No. 6 had wrongly made an application to the S.D.O. for cancellation of the EWS certificate of the Petitioner. According to him, there is no scope for Respondent No. 6 to approach the S.D.O. with such an application. The learned Advocate representing Respondent No. 6, as well as, the learned Government Pleader have drawn our attention to the GR dated 12.02.2019, more specifically Clause 2-ड (2)(i). For clarity, we are reproducing Clause 2-ड as well as the sub clauses here under :-

“२) आर्थिकदृष्ट्या दुर्बल घटकासाठी आवश्यक पात्रता प्रमाणपत्र मिळण्यासाठी लाभधारकाकडून आवश्यक कागदपत्रांसह अर्ज प्राप्त झाल्याचा दिनांकापासून एका महिन्यात (३० दिवसांच्या आत) लाभधारकास पात्रता प्रमाणपत्र देणे बंधनकारक राहिल. ते देण्यास नकार दिल्यास अथवा चुकीचे दिल्यास त्या विरुद्ध अपिल दाखल करण्याची कार्यपद्धती खालीलप्रमाणे विहित करण्यात येत आहे.

(I) सक्षम प्राधिकाऱ्याच्या निर्णयाविरुद्ध अपिलिय अधिकारी म्हणून त्यांच्या कार्यक्षेत्राचे उपजिल्हाधिकारी किंवा जिल्हाधिकारी यांनी नामनिर्देशित केलेला उपजिल्हाधिकारी पदापेक्षा कमी दर्जाचा नाही असा अधिकारी हे राहतील.

(ii) वर (i) माध्ये नमूद केलेल्या अपिलिय अधिकाऱ्याच्या निर्णयाविरुद्ध अपिलिय अधिकारी म्हणून त्यांच्या कार्यक्षेत्राचे जिल्हाधिकारी हे राहतील.

(iii) वरील अपिलिय अधिकारी यांना अपिल प्राप्त झाल्याच्या दिनांकापासून एका महिन्यात (३० दिवसांच्या आत) निर्णय देणे बंधनकारक राहिल.”

24. We have considered the strenuous submissions of the learned Advocates on the interpretation of these clauses. The clause relevant to this case with regard to the submission of the Petitioner, would be Clause 2 which permits an Applicant to move an application for receiving an EWS certificate. The competent authority, which is the Tahsildar, is placed under an obligation that he would issue such a certificate, of course after being convinced, within 30 days. If he

refuses to give such a certificate, the Applicant can assail the same by moving an appeal before the S.D.O.

25. The bone of contention before us is with regard to the following words in the sub clause, “चुकीचे दिल्यास त्या विरुद्ध अपिल दाखल करण्याची कार्यपद्धती खालीलप्रमाणे विहित करण्यात येत आहे”. Clause (i) prescribes that the Appellate Authority should be an Officer not below the rank of a Deputy Collector. It is further provided that the decision of the Appellate Authority can be challenged before the District Collector who is also duty bound to deliver an order within 30 days.

26. Considering the rival contentions of the parties, especially the Petitioner contending that Respondent No. 6 had no scope to move an appeal and the Respondents contending that Clause (2) does not restrain any aggrieved person from moving such an appeal, we find that the said Clause (2) reproduced above, cannot be said to be totally unambiguous or very clear. Nevertheless, it does convey a meaning that if a ‘wrong certificate’ is issued, which could also mean that a ‘certificate is wrongly’ issued, an appeal can be preferred for challenging such a decision.

27. Considering the language as is used in the said Clause, in order to ensure that it is not rendered nugatory, we deem it appropriate to hold that an aggrieved person can file an appeal if a wrong certificate is issued, which would further mean even a 'certificate wrongly issued' to the Applicant. No doubt this Clause needs fine tuning by the State Government in order to convey a clear and unambiguous meaning, in the face of an argument before the Court that the said Clause does not permit any aggrieved party to move an application for challenging the decision of the Tahsildar. With the language used in the Clause 2, as it stands before us today, we are interpreting it in the larger interest of the society, to mean that aggrieved person would include, a person whose grievance is as regards a 'wrong certificate' or a 'Certificate wrongly issued', to enable him to file an appeal for challenging the Certificate on being directly affected by the issuance of such a certificate.

ALLEGATION OF VICTIMIZATION BY THE PETITIONER

28. The learned Advocate for the Petitioner has canvassed that there are not less than 13 such candidates, who are in-service candidates, who are identically placed as like the Petitioner, who have

also been working as Medical Officers and who have secured admission to the PG Course after obtaining similar EWS Certificates. We had called upon the learned Government Pleader to give us a list of the said 13 candidates. It appears that the Government Pleader's Office has not been able to place these names before us on the spurious plea that they have written to the CET cell to deal with such candidates. We are afraid that this submission cannot be appreciated since it is the Court which is calling upon the Office of the Government Pleader to place the names before us.

29. The learned Government Pleader informs us that a loose document (3 pages), dated 12.10.2023, is filed, which is the communication by the Deputy Director of Economic Administration. Same is marked as 'X-1' for identification. The Commissioner, Medical Services, Mumbai had written to the State CET Cell setting out the names of 11 persons, including the Petitioner, who all are working as Medical Officers, drawing Rs.1,00,000/- salary per month and all have secured admission to the PG course on the basis of such EWS certificate. The learned Advocate Mr.Karlekar has tendered a compilation of 7 pages before us. The same is taken on record and

marked as 'X-2' for identification. He indicates from page No.4 of 'X-2' , that the 13 in-service candidates who have been selected from the category of EWS, are Medical Officers working in different Government Medical Colleges and Hospitals in Maharashtra.

30. It is shocking that various Tahsildars in Maharashtra have issued such EWS Certificates, which are illegal and unsustainable. It does appears from the above that, the contention of Mr.Thombre is true and sustainable, that he alone has been singled out for cancellation of EWS certificate and all other 12 candidates have safely secured their medical admissions to the PG Course.

31. Mr.Thorat, the learned Advocate draws our attention to the order passed by this Court at the Principal Seat, dated 31.10.2023, in WP No.13402/2023 filed by Respondent No.6 herein namely **Balaji Ashok Bhise and Another Vs. State of Maharashtra and Others**, wherein this Court disposed off the Petition by allowing the Petitioner to file a complaint to the concerned Authorities for seeking admission in place of the present Petitioner before us, namely Vilas Raghunath Dukare, who according to him, was not qualified. The learned Government

Pleader submits that it is in this backdrop that the communication **X-1** has been forwarded to the State CET Cell to verify the EWS certificates of 10 other candidates, as per the list enclosed to **X-1**.

32. The learned Government Pleader submits that considering the controversy emerging from this Writ Petition and in the light of the firm and consistent statement made by the Petitioner that the 12 persons mentioned in the list at Page No.4 of the document '**X-2**', it would be scrutinized by the Government by initiating appropriate steps and by ensuring that the principles of natural justice are followed and all the stake holders are given adequate opportunity of explaining their case as against such EWS Certificates.

33. For the reasons and our conclusions recorded above and by recording the above statement of the Government, **this Writ Petition is dismissed. Rule is discharged.** The pending **Civil Applications would not survive and disposed off.** Needless to state, the State Government as well as Respondent no.7 shall initiate legal and appropriate steps to scrutinize and verify the EWS Certificates issued to the other in-service candidates who have secured admission to the PG course, immediately.

34. At this juncture, the learned Advocate for Respondent No.6 submits that he had approached this Court at the Principal Seat in Writ Petition No.13402/2023, much prior to the cut off date, which is 30.10.2023. In fact, his Petition was filed on 19.09.2023 which is 41 days prior to the cut off date. Before he could secure his admission, the present Petitioner approached this Court before the cut off date, on 20.11.2023 and the Vacation Court passed an order on 20.11.2023 thereby protecting the present Petitioner. This has stalled the admission process and the he is not at fault. He prays that his admission may be secured.

35. The learned Advocate for the State CET Cell draws our attention to the fact that the cut off date 30.11.2023, is already over.

36. We are of the view that the act of the Court or an order of the Court should not cause any prejudice to any litigant. The latin phrase "*Actus Curiae neminem gravabit*" would mean that though this Court has passed an ad-interim order, which is now vacated with the dismissal of this Petition, the right of Respondent No.6 or any other

eligible candidate, should not be affected. Respondent No.6 has relied upon the judgment of the Hon'ble Supreme Court in **National Medical Commission Vs. Mothukuru Sriyah Koumudi and Others [(2021) 14 SCC 805]** to support his contention that if a person is illegally denied admission and is held entitled to the admission for a PG Course, such admission cannot be denied.

37. The learned Advocate representing the State CET Cell places reliance upon the judgment of the Hon'ble Supreme Court in **Ashish Ranjan and others Vs. Union of India and Others [2016(11) SCC 225]** and the guidelines of the National Medical Commission (NMC). He submits, in addition to his contention that the cut off date is over, that there are at least 2 candidates who have scored more marks than Respondent No.6, from the open category to which he belongs, in the same subject, at Sr.No.14 and 64 of the list **X-2**. The Petitioner is at Sr.No.164 and Respondent No.6 is at Sr.No.187. A list of the merit students, category wise, is placed before us which is marked as '**X-3**' for identification.

38. We would not go into this aspect because this is not an

issue that is addressed to us. The Petitioner is before us and on merits, the Petition has been dismissed. Nevertheless, in the interest of the education of students, we can only observe that these cases may be considered by the State CET Cell in accordance with the prescribed Rules and the view taken by the Hon'ble Supreme Court in National Commission (supra) and if there is no other legal impediment, an appropriate decision may be arrived at since we are informed that a post reserved for EWS in-service category, falling vacant, will have to be transferred to the open category.

(R.M.JOSHI, J.)

(RAVINDRA V. GHUGE, J.)