

Mohite

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4415 OF 2024

Kailash Kashinathrao Pawar
Age 35 years, Occ.Medical officer Group A
Having address at:- Late Indira Gandhi
Memorial Hospital, Bhiwandi, Dist.Thane ... Petitioner

Versus

1. State of Maharashtra
Through its Desk Officer,
Public Health Department,
having office at G.T.Hospital,
Complex building 10th Floor,
New Mantraya, Mumbai
2. Chief Administrative Officer
and Deputy Director of Health Services
Mumbai Circle, Thane,
Having office at : Regional Mental Hospital area
Thane West 400 604 ... Respondents

Mr.Balasaheb Deshmukh for the Petitioner
Mr.Sachin H. Kankal, A.G.P. for the State

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 26th March, 2024

ORAL JUDGEMENT (PER: G.S.KULKARNI, J.) :

1. A short question which arises for consideration in the present proceedings is whether the right of an in-service candidate to pursue a post graduation in medicine, can be taken away by denying a 'no objection', merely for the reason of pendency of a departmental enquiry.

2. This Petition, under Article 226 of the Constitution of India, has prayed for the following substantive relief.

“a) Be pleased to issue writ of certiorari or writ in nature of certiorari, or any other appropriate writs, orders, directions, calling from the record and proceedings of the impugned order dated 30/01/2024 and 09.02.2024, and after going through the legality validity and propriety of the same, be pleased to quash and set aside order of rejection of No objection certificate / letter dated 30/01/2024 and 09.02.2024 issued by the Respondents and further be a pleased to direct the Respondents to issue No objection certificate being in service candidate for PG Course the reasons and circumstances mentioned herein above.”

3. The petitioner is a qualified doctor having an MBBS degree. He is in the service of the Government of Maharashtra as a Medical Officer, since 12th May 2015. He is presently posted at the Indira Gandhi Memorial Hospital, Bhiwandi, District Thane.

4. The petitioner intends to pursue a Post Graduation Course in Medicine, as an in-service candidate, for which he is required to apply for the National Eligibility cum Entrance Test (NEET P.G.). To pursue the post graduation course, as an in-service candidate, he is required to obtain a No Objection Certificate (NOC) from the Deputy Director of Health Services – Respondent No.2.

5. It is the petitioner’s case that earlier, the petitioner had obtained a NOC in October 2021 to appear at the NEET P.G. examination. Such NOC was granted to the petitioner on 23rd February 2021. The petitioner had duly filled

up the NEET P.G. 2021 application form. He appeared at the said examination in which he scored 247 marks. The petitioner had accordingly become eligible for admission to the P.G. course. However, the petitioner could not pursue the P.G. course, as the NOC granted to him, was cancelled by respondent no.2 on the ground that the petitioner was involved in criminal proceedings lodged by his wife *interalia* alleging an offence punishable under Sections 493 and 498A of the Indian Penal Code. Also divorce proceedings were initiated between the petitioner and his wife, (Petition No.A-106/2021 dated 24th January 2024) which are stated to be disposed of by a decree of divorce being granted dissolving the marriage.

6. In the above circumstances, the petitioner, being aggrieved by the cancellation of the NOC and the consequent inability of the petitioner to pursue the P.G. course had approached this court in Writ Petition No.4045 of 2022. By an Order dated 7th April 2022, a co-ordinate Bench of this Court rejected the said Writ Petition. Being aggrieved by such orders passed by this Court, the petitioner approached the Supreme Court by filing a Special Leave Petition, which was rejected by the Supreme Court by an Order dated 13th May 2022 which *interalia* recorded that the observations made in the judgment of this Court should be restricted only for the purpose of deciding the said case and not otherwise.

7. It is the case of the petitioner that, in the earlier proceedings, the respondents had contended that the pendency of the criminal case as instituted by the petitioner's wife was not disclosed in the application filed for NOC and / or for appearing for the NEET P.G. examination. It was hence held that the recall of the NOC was justified.

8. To pursue his inherent desire and interest in higher education, the petitioner again duly filled up the relevant form for obtaining an NOC, in which he disclosed all the necessary particulars so that he would be granted an approval to appear for the NEET P.G. which is scheduled to be held in May / June 2024. However, such application of the petitioner has been rejected by the impugned communication dated 9th February 2024, on the ground that a departmental enquiry is pending against the petitioner. The relevant portion of the impugned communication reads thus:

(Official Translation of a photocopy of a LETTER, typewritten in Marathi)

EMBLEM GOVERNMENT OF MAHARASHTRA DEPUTY DIRECTOR, HEALTH SERVICES, MUMBAI BOARD, THANE Regional Mental Hospital Complex, Thane(W) 400604.	
Telephone No. 022-25821474/25826514	E-mail : ddhsthane@rediffmail.com

Outward No. Estt./Section-2/PG/Dr. Pawar/4616-10/24

Date : 09.02.2024.

Subject :- Regarding granting permission for In- Service Post Graduation.

Reference :- Government Letter No. Miscellaneous-2024 /M.No.69/Service-3 dated 30.01.2024

In connection with the above-mentioned subject, by the above-referred letter, you have been informed that Government Memorandum dated 15.06.2022 in respect of the Departmental Enquiry against you, has been issued and served upon you and as the departmental enquiry pursuant thereto is going on, permission cannot be granted to you as an In-service candidate for the post-graduation course, in view of the provisions mentioned in Government Resolution dated 19.07.2023.

Hence, photo copy of the above-referred letter is enclosed herewith for your information.

(sd)
(Shri Shailesh Patankar)
Chief Administrative Officer
Deputy Director, Health Services,
Mumbai Board, Thane.

9. For such reason, the petitioner has been informed that the petitioner cannot be granted permission / NOC to pursue the P.G. course in Medicine as an in-service candidate. It is such decision of respondent no.2 which is the subject matter of challenge before us.

10. The learned counsel for the petitioner, in support of his contention, would submit that the reasons as stated in the impugned communication are *per se* arbitrary. It is his submission that the departmental enquiry is pending against the petitioner for quite some time, which was initiated in August 2022. It is contended that the same has not moved forward. He submits that the pendency of the departmental enquiry cannot be taken to be any impediment in the petitioner pursuing the P.G. course, as what is sought to be undertaken by the petitioner is to achieve a higher qualification. It is next submitted that, in fact the matrimonial proceedings which were initiated by his wife no more survive, as such proceedings filed by the wife have already come to an end, resulting into a decree of divorce being granted. Although not relevant, the

criminal proceedings are, however, stated to be pending which, according to the petitioner, form the basis of the departmental enquiry as initiated against the petitioner, under the departmental charge sheet dated 22nd August 2022, copy of which is placed at page 62 of the paper book. In these circumstances, it is submitted that the pendency of the departmental enquiry as also the criminal proceedings ought not to hinder the petitioner's pursuit of higher education, namely of obtaining a degree of post graduation in medicine. In support of such contention, the petitioner has placed reliance on the decisions of this Court, in *Dr.Amol Kalidas Chavan vs. Directorate of Health Services and another*¹ and the second decision being in *Dr.Satish s/o Daryappa Gadade vs. The State of Maharashtra and Ors.*²

11. We find that in **Dr. Amol Kalidas Chavan**'s case (Supra) a departmental enquiry was initiated against the petitioner and for such reason, an NOC was denied. The Division Bench of this Court, considering the fact that although more than 5 years had lapsed, and the enquiry was not being completed, directed the respondents to issue NOC to the petitioner, subject to further decision that would be taken by the respondents in the departmental enquiry against the petitioner.

12. In *Dr.Satish s/o Daryappa Gadade* (Supra), the petitioner was serving as a Medical Officer at a Primary Health Centre. He was facing departmental

1 Writ Petition No.4368 of 2021 decided on 16th March 2021

2 Writ Petition No.1106 of 2024 decided on 20th February 2014

proceedings at the instance of another employee. There was failure of the authority to complete the departmental proceedings even after lapse of more than two years, which was observed to be of prejudice to the said petitioner, as he was deprived of an opportunity of securing admission to PG degree / Diploma course. It is in such circumstances, the petitioner had prayed that departmental proceedings be concluded expeditiously, and that subject to the outcome of the same, the Petitioner be granted admission to P.G. degree / diploma course. On such backdrop the Division Bench of this Court directed the Government - Director of Medical Education & Research, to consider the claim of the petitioner for admission to PG degree / diploma course, as an in-service candidate and, if found eligible, include his name in the merit list provisionally. It was directed that admission of the petitioner as an in service candidate shall be subject to the outcome of the departmental proceedings initiated against him.

13. Mr.Deshmukh, the learned counsel for the petitioner, would submit that both the said decisions would support the petitioner's contention and the relief as prayed for by the petitioner be granted.

14. On the other hand, Mr. Kankal, the learned A.G.P. has supported the impugned decision. He has drawn our attention to the G.R. dated 19th March 2019 and more particularly clause 4.5, official translation of which reads thus:

“4.5 It is necessary that a Medical Officer shall provide service by remaining present at the Head Quarter. No incident, such as a seriously ill patient did not get treatment, post-mortem was not performed, should have happened during the said period on account of the absence of the Medical Officer. If such an incident had happened and if it is proved during the course of preliminary enquiry, and also if a Departmental Enquiry is ordered against the officer concerned, and if a Departmental Enquiry or Criminal Case is pending / has been initiated against the Medical Officer in connection with any other ground, then he shall be considered to be ineligible for appearing for the (NEET PG) Entrance Test.”

15. Mr. Kankal would submit that this is clearly a case where departmental proceeding is pending against the petitioner and, hence, the impugned decision to refuse the NOC to the petitioner, would not call for an interference.

16. Having heard the learned counsel for the parties and having perused the record, we find substance in the contentions as urged on behalf of the petitioner, for more than one reason. In our opinion, in the peculiar facts and circumstances of the case, and more particularly, having given due consideration to the charges as levelled in the departmental charge sheet, issued to the petitioner, in our opinion, pendency of the departmental enquiry, ought not to be a ground, so as to take away the right of the petitioner, as an in service candidate to pursue higher education. We are also of the clear opinion that clause 4.5 of the Government Resolution (G.R.) dated 19th March 2019 is not applicable in the present case, so as to refuse a NOC to the petitioner, to pursue the P.G. course.

17. There is another fundamental issue namely that the right to education is a substantive legal right of a person and is regarded to be a right emanating from Article 21 of the Constitution. In our opinion, this would be true, even if higher education is to be pursued as an in-service candidate. The position in law in this regard can be seen from catena of decisions of the Supreme Court, which we discuss hereunder.

18. The Supreme Court in **Miss. Mohini Jain Vs. State of Karnataka & Ors.**³ has held that the right to education flows directly from right to life. It was held that the right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The court in such context observed thus:

“9. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making “right to education” under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

... ..

12. “Right to life” is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

13. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and

3 AIR 1992 SC 1858

expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

14. The “right to education”, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution.

17. We hold that every citizen has a “right to education” under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.

(emphasis supplied)

19. The above principles are reiterated by the Supreme Court in the case **State of Tamil Nadu & Ors. Vs. K. Shyam Sunder & Ors.**⁴ wherein the Supreme Court observed thus:-

“20. Even before the said amendment, this Court has treated the right to education as a fundamental right. (Vide *Mohini Jain V. State of Karnataka* [AIR 1992 SC 1858]; *Unni Krishnan, J.P. Vs. State of A.P.* [AIR 1993 SC 2178]; and *T.M.A. Pai Foundation Vs. State of Karnataka* [92002)8 SCC 481].”

20. In **Society for Unaided Private Schools of Rajasthan Vs. Union of India**⁵ the Supreme Court observed thus:

“27. At the outset, it may be stated, that fundamental rights have two aspects—they act as fetters on plenary legislative powers and, secondly, they provide conditions for fuller development of our people including their individual dignity. Right to live in Article 21 covers access to education. The word “education” was read into Article 21 by the judgments of this Court. However, Article 21 merely declared “education” to fall within the contours of right to live.

(emphasis supplied)

⁴ (2011)8 SCC 737

⁵ (2012)6 SCC 1

21. The Supreme Court in **Janhit Abhiyan Vs. Union of India**⁶ has quoted with approval the observations of the Supreme Court in **Miss. Mohini Jain** (supra) and **Unni Krishnan, J.P. Vs. State of A.P.**⁷, when the Supreme Court observed thus:-

261. In the case of Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645, the decision in the case of Mohini Jain (supra) came up for consideration before a larger Bench of this Court. While not approving the judgment in toto, the above concept was further expanded and refined. It was observed as under: (Unni Krishnan case, SCC pp. 731-35, paras 168-75)

“168. In Brown v. Board of Education [98 L.Ed. 873 : 347 US 483 (1954)] Earl Warren, C. J., speaking for the U.S. Supreme Court emphasised the right to education in the following words:

“13. Today, education is perhaps the most important function of State and local governments It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”

169. In Wisconsin v. Yoder [32 L.Ed.2d 15 : 406 US 205 (1971)] the court recognised that:

“11. ... Providing public schools ranks at the very apex of the function of a State.”

The said fact has also been affirmed by eminent educationists of modern India like Dr Radhakrishnan, J. P. Naik, Dr Kothari and others.

170. It is argued by some of the counsel for the petitioners that Article 21 is negative in character and that it merely declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Since the State is not depriving the respondents'-students of

6 (2023)5 SCC 1

7 AIR 1993 SC 2178

their right to education, Article 21 is not attracted, it is submitted. If and when the State makes a law taking away the right to education, would Article 21 be attracted, according to them. This argument, in our opinion, is really born of confusion; at any rate, it is designed to confuse the issue. The first question is whether the right to life guaranteed by Article 21 does take in the right to education or not. It is then that the second question arises whether the State is taking away that right. The mere fact that the State is not taking away the right as at present does not mean that right to education is not included within the right to life. The content of the right is not determined by perception of threat. The content of right to life is not to be determined on the basis of existence or absence of threat of deprivation. The effect of holding that right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law.

171. In the above state of law, it would not be correct to contend that Mohini Jain [Mohini Jain v. State of Karnataka, (1992) 3 SCC 666] was wrong insofar as it declared that “the right to education flows directly from right to life”. But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? Mohini Jain [Mohini Jain v. State of Karnataka, (1992) 3 SCC 666] seems to say, yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the “State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. Article 45 says that “the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”. Article 46 commands that “the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of

exploitation”. Education means knowledge — and “knowledge itself is power”. As rightly observed by John Adams, “the preservation of means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country”. (Dissertation on Canon and Feudal Law, 1765) It is this concern which seems to underlie Article 46. It is the tyrants and bad rulers who are afraid of spread of education and knowledge among the deprived classes. Witness Hitler railing against universal education. He said: “Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction.” (Rauschning, The Voice of Destruction : Hitler speaks.) A true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means : (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. We may deal with both these limbs separately.

(emphasis supplied)

22. It is thus clear, that right to education is implicit in the right to life and personal liberty guaranteed and flowing from Article 21 of the Constitution. Such right of an in-service candidate, who intends to pursue education, needs to be recognized, however, certainly, such pursuit to higher education would be governed by the terms and conditions of the employment, when it comes to the exigencies of service. This would certainly not mean, that such right can be denied or taken away, merely in view of the pendency of any departmental proceedings or criminal proceedings against the employee. In this context, it may also be observed that issuance of an NOC is with an object and reason that

a candidate is required to be available to discharge the duties of public employment or for any justifiable reason, it is appropriate to not permit an employee to pursue further education as an in-service candidate which can only be for some genuine reason touching the employment. In such eventuality, the State Government as an employer would have an authority not to permit the in-service candidate to undertake the P.G.course, unless the employee fulfills the necessary criteria which may be prescribed under the Government policy. However, any criteria which is arbitrary or illegal which would *per se* take away the rights of higher education as recognized by the Supreme Court cannot be foisted on an in-service candidate. Moreover in fixing such norms, the State Government is required to be alive to the fact, that such employees were not privileged to complete their education in the present case, hence, there is nothing wrong to pursue further education as an in-service candidate.

23. It also cannot be overlooked that the State cannot have a policy, rule or regulation which would adversely affect the citizen's pursuit to education which he intends to achieve, much less of those who are in employment, as right to education is now recognized to be a facet of the right to liberty under Article 21 of the Constitution of India. Further, Article 41 of the Constitution mandates the State to secure the right to education, as one of the directive principles of State policy. Also in-service candidate achieving higher education would ultimately enure to the public benefit.

24. Insofar as the facts of the present case are concerned, although the no objection of the petitioner, has not been rejected on the pendency of the criminal proceedings, however, considering Mr. Kankal's submissions in the context of paragraph 4.5 of the G.R. dated 19 March 2019 it can be seen that the criminal proceedings which are pending against the petitioner, are also proceedings which have arisen from a matrimonial dispute and in which a decree of divorce between the petitioner and his wife, has already been granted by the competent Court. It is also stated that the co-employee, against whom the petitioner's wife had a grievance which was the subject matter of the FIR against the Petitioner, has also not lodged any complaint / FIR against the petitioner. It also appears from the departmental charge sheet, that the basis of the departmental enquiry is on the complaint as made by the petitioner's wife who is already divorced and on some information which was part of a newspaper report, which was also based on her police complaint.

25. Be that as it may, today it cannot be ascertained as to what would be the outcome of the departmental proceedings and as to when the proceedings would stand concluded. However, merely for the reason that the departmental or the criminal proceeding of the nature in question are pending, the petitioner cannot continue to suffer on his pursuit and his intention to achieve higher education, and for which NOC was applied for.

26. In the light of the above discussion, we are of the view that the impugned decision of the respondent rejecting NOC to the petitioner is arbitrary as also discriminatory. The petitioner cannot indefinitely suffer on account of the departmental enquiry pending against him. Similarly, pending criminal case initiated by his former wife, cannot take away or extinguish the petitioner's aspiration to achieve higher education/qualification. Such proceedings take long years to attain finality, in view of the hierarchy of appeals being provided both in the departmental proceedings or in the criminal proceedings. It would be hence, harsh and unreasonable to prohibit the petitioner to pursue his post-graduation till such proceedings attain finality. The precious years available to the Petitioner to pursue PG examination cannot be wasted.

27. In the aforesaid circumstances, we are inclined to allow the petition by directing the respondents to grant NOC to the petitioner to undertake NEET PG course. Hence, following order:

ORDER

- a. The impugned decision dated 9th February 2024 rejecting the petitioner's application for grant of NOC by the respondents to pursue PG Medical Education by undertaking NEET 2024 examination, is quashed and set aside.
- b. The respondents are directed to grant NOC to the petitioner within a period of two weeks from the date a copy of the order is made available.

- c. Needless to observe that if the petitioner, qualifies the PG NEET-examination, he shall undertake the P.G. course subject to the outcome of the departmental proceedings and an appropriate decision in that regard be taken by the State Government, in the event the departmental proceedings are decided against the petitioner.
- d. Disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)