

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15396 OF 2024**

Shivesh Santosh Pandey .. Petitioner

Versus

The Commissioner & Competent
Authority State Common Entrance
Cell, Maharashtra and Ors. .. Respondents

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Ms Nazneen Khatri a/w Mr. Mohamed Adil Khatri and Mr.
Sagar Samel, for the Petitioner.

Ms Kavita N. Solunke, AGP, for the Respondent – State.

Mr.Nitin Dhumal, for Respondent No. 2.

Mr. Sameer Khedekar a/w Ms Bharti Gerella, for
Respondent No. 3 (CET Cell)

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**CORAM: SANDEEP V. MARNE &
MANJUSHA DESHPANDE, JJ.
(Vacation Court)**

DATED : 30th OCTOBER, 2024

P.C:-

1. The petitioner has filed this Petition seeking permission for consideration of his category from 'Non-Resident Indian' (**NRI**) to 'Open Institutional Quota' (**IQ**) for MBBS admission for the Academic Year 2024-2025.

2. It is an admitted position that the petitioner does not fulfill the criteria needed for NRI category. However he

committed a mistake by opting for NRI category, which comes within the Institutional Quota. The petitioner is now desirous of seeking admission to Respondent No. 2 – College, in respect of 15% Institutional Quota round. However, since he was unable to upload the documents for NRI category, his candidature is not being considered even for Open Institutional Quota category.

3. The learned Counsel appearing for Respondent No. 1 State CET Cell would place reliance on Rule 13(f) of the Maharashtra Unaided Private Professional Education Institution (Regulation of Admissions and Fees) Rules, 2016, which reads thus:

“(f) It is hereby made abundantly clear that shifting on account of a better choice given by a candidate in any round, shall be effected only and only if such a candidate in the subsequent rounds is found entitled for ‘change of course’ or a ‘change of college’. Mere possibility of a ‘change in category’ on account of availability of seat in the same college and/or same course in the further rounds shall not amount to “betterment” as such and therefore, no shifting shall be effected in such an eventuality. Such a ‘change in category’ shall include inter-alia change from reserved category to open category or vice-versa. The shift in such betterment shall be compulsory and mandatory, except those who have filled Status Retention Form.”

4. However, upon being queried, as to whether a student selecting NRI category gets any advantage or reservation in the matter of admission to the MBBS course, answer is in the negative. It appears that the only leeway that may be granted to NRI category students is exemption from

producing the passing certificates for 10th and 12th grade possibly on account of the fact that such students clear the equivalent examinations abroad. Beyond granting exemption from producing passing certificates of 10th or 12th grade, a student belonging to NRI category does not get any advantage or reservation for the purpose of securing admission to the MBBS course. In that view of the matter, it is difficult to believe the expression 'change in category', used in Rule 13(f) would get attracted in a case involving NRI students. The objective behind incorporating Rule 13(f) is to ensure that the students are not permitted to change the reservation category depending on availability of seats as the rounds progress. In the present case, since there is no reservation for grant of admission to NRI students, in our view, Rule 13(f) would have no application to the present case.

5. It is more than apparent that the petitioner has committed an inadvertent error in selecting NRI category, despite the fact that he does not possess the necessary documents to justify his presence in NRI Quota. All that the petitioner seeks in the present petition is consideration of his category from NRI Quota to Open Institutional Quota, so as to facilitate admission against the vacancies reported to the Respondent No. 2- Management, after completion of the Stray Vacancy Round-1.

6. Mr. Dhumal, the learned Counsel appearing for Respondent No. 2- Management would submit that, after

completion of the Stray Vacancy Round-I, nine students have been recommended to Respondent No.2-Management by the CET Cell for being filled in through the Institutional Quota round.

7. Ms. Khatri, the learned counsel for Petitioner would submit that in the event of any of the nine recommended students not reporting to the College, the candidature of the petitioner be considered through Open Institutional Quota.

8. In our view therefore, the petitioner can be granted an opportunity to correct his mistake by consideration of his category as Open Institutional Quota, which does not cause any prejudice to any student. However such consideration shall be restricted only against any vacancy remaining unfilled after consideration of candidatures of recommended candidates by State CET Cell. In that view of the matter, we allow the Petition in terms of prayer clause (a), which reads thus:

“(a) This Hon’ble Court may be pleased to issue writ of Mandamus or any other appropriate writ in the nature of Mandamus or any other appropriate Direction or Order thereby directing the respondents to accept and consider the category of the Petitioner in NEET Roll No.3114110398 bearing CET Application No. 245059954 from Non-Resident Indian (NRI) category to Open Institutional Quota (IQ) category for MBBS admission academic year 2024-25 on such terms and conditions as this Hon’ble Court may deem fit and proper.

8. It is made clear, that this order is passed in the light of the peculiar facts and circumstances of the present case and this order shall not be treated as a precedent in other case.

(MANJUSHA DESHPANDE, J.) (SANDEEP V. MARNE, J.)