



9-WP-4945-24,....

1/49

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

WRIT PETITION NO.4945 OF 2024

Mansi D/o Chandrakant Raut,
Aged 20 years, occupation Student,
R/o Plot No.18, R.M.S. Colony,
Manewada Road, Nagpur-440024 ... Petitioner

-vs-

1. The State of Maharashtra,
Through Secretary, Medical Education and Medicine Department,
Mantralaya, Mumbai – 400032
2. Commissioner, State CET Cell,
Maharashtra State, Mumbai 8th Floor,
New Excelsior Building, A. K. Nayak Marg,
Fort, Mumbai 400 001 (M.S.) ... Respondents

WITH

WRIT PETITION NO.4919 OF 2024

Maryam Arif Husain,
Aged 19 years, Occu. Student,
R/o Dipak Chowk, Akola,
Tah. and District – Akola ... Petitioner

-vs-

1. The State of Maharashtra,
Through the Secretary, Medical Education and
Drugs Department,
Mantralaya, Mumbai – 400032
2. State Common Entrance Test Cell,
State of Maharashtra, through its
Commissioner, Maharashtra State,
and Competent Authority, 8th Floor,
New Excelsior Building, A. K. Nayak Marg,
Fort, Mumbai 400 001.
3. Maharashtra University of Health Science,
Dindori Road, Mhasrul Gaon, Nashik,
District-Nashik Maharashtra 422004,
through its Registrar. ... Respondents

WITH
WRIT PETITION NO.4980 OF 2024

Ishwari Kailas Kawane
Aged about 18 years,
Occ. Student, R/o Ambuji Nagar,
Bhatkuli, Amravati 444602
District-Amravati ... Petitioner

-vs-

1. State of Maharashtra,
through its Secretary, Medical Education
and Medicine Department,
Mantralaya, Mumbai – 400032
2. State Common Entrance Test Cell,
State of Maharashtra, through its
Commissioner, Maharashtra State,
and Competent Authority at BM 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 R. L. Khapre, Senior Advocate assisted by Shri P. Deshpande, Advocate
for petitioner in WP/4945/2024.

Shri Ram Karode, Advocate for petitioner in WP/4919/2024.

Shri Khitij Kothale, Advocate for petitioner in WP/4980/2024.

Shri D. V. Chauhan, Senior Advocate/Government Pleader with Shri H. D.
Marathe, Assistant Government Pleader for respondent No.1.

Shri Nahush S. Khubalkar, Advocate for respondent No.2/State CET Cell.

CORAM : BHARATI DANGRE AND ABHAY J. MANTRI, JJ.

DATE : October 04, 2024

Common Judgment : (Per : Bharati Dangre, J.)

1. The three writ petitions raise challenge to the condition of
eligibility criteria contained in the Information Brochure of NEET UG-

2024 for admissions to Health Science courses, on the ground that it violate Articles 14 and 15 of the Constitution of India, are heard by us finally at the request of the counsel representing the petitioners and decided by this common judgment.

Since the issue raised in these petitions is common, by clubbing the writ petitions we have adverted to the pleadings raised in the respective petition, as well as the stand taken by the Commissioner-State CET Cell, Maharashtra State, Mumbai i.e. respondent No.2, since the affidavits in reply are filed on behalf of the said Authority.

By consent of parties, we issue **Rule**, by making the same returnable forthwith.

We have heard learned Senior Counsel Shri R. L. Khapre for the petitioner-Manasi in Writ Petition No.4945/2024, Shri Ram Karode learned counsel appearing for the petitioner Maryam in W.P. No.4919/2024 and Shri Kshitij Kothale, learned counsel for petitioner Ishwari in W.P. No.4980/2024. We have also heard the learned Senior Counsel Shri D. V. Chauhan, Government Pleader with Shri H. D. Marathe, learned Assistant Government Pleader for the State Government and Shri Nahush S. Khubalkar, learned counsel for respondent No.2 in all the three petitions.

2. For implementation of the NEET UG-2024, the office of the

Commissioner, State CET Cell, Maharashtra State Mumbai has published a Information Brochure of Preference System for admission to Health Science Courses in State Government/Corporation/Private & Minority Colleges, setting out the Schedule of Selection Process for Health Science Courses and also prescribing the eligibility for admission.

The Brochure is accompanied with Annexures 'A' to 'LL' which include the MCI Regulation (Annexure-N), Notification regarding Eligibility for Various Courses (Annexure-P), Maharashtra Unaided Private Professional Education Institution (Regulation of Admissions and Fees) Act, 2016 and other Gazzette/Rules (Annexure-S), in addition, to the various resolutions issued by the State Government from time to time as well as the amendments notified by the Medical Council of India.

The Brochure published by respondent No.2 is also accompanied by the guidelines for granting admissions in NRI quota and also the notification determining of overseas citizens of India (OCI) category.

The Commissionerate, State CET Cell, Maharashtra is responsible for the conduct of admission process to Health Science courses in Government/Corporation Government aided Colleges and unaided private/minority Colleges on the basis of merit list of the National Eligibility Entrance Test (NEET)-UG-2024. The Designated Authority

for counseling for 15% (MBBS/BDS) All India Quota seats of the contributing States is the Directorate General of Health Services (DGHS), New Delhi).

Clause 1.7 of the Brochure read thus :

“ Instructions in this information brochure are liable to change based on decisions taken by Central Government/National Medical Commission (NMC)/ National Commission for India System of Medicine (NCISM)/National Commission for Homeopathy (NCH/ State Government/Competent Authority/Constitutional Authority/ Hon’ble Supreme Court and High Court from time to time.”

3. For the academic year 2024-2025, Online NEET-UG was conducted by the Competent Authority of the Government of India, New Delhi and the Commissioner, State CET Cell, Maharashtra was designated as Competent Authority for selection and admissions for the colleges in the State of Maharashtra and the admissions are to be made on the availability of seats at disposal of the Competent Authority in State Quota Seats for Central Government/Unaided Private & Minority Colleges under Health Science Courses from State of Maharashtra. The Competent Authority is authorised to supervise and control the selection process by implementing the procedure set out in the Brochure.

The Director of Medical Education and Research, Mumbai was

appointed as Nodal Officer to guide and supervise admission process, whereas the Director of AYUSH, Mumbai is appointed as Nodal Officer to guide and supervise admission process of BAMS/BHMS/BUMS.

4. As indicated, above Information Brochure prescribe the eligibility for admission for Health Science Degree Courses and contemplate that a candidate must be an Indian National and must be registered with State CET Cell, Mumbai on its website.

The petitions revolve around Clause 4.5 of the Brochure which is part of the eligibility conditions prescribed to fill in the seats in the Colleges situated in the State of Maharashtra.

Clause 4.2 require a candidate to be a domicile of Maharashtra (Except candidates appearing for institutional quota and the categories specified in clauses 4.7 and 4.8).

Clause 4.5 which is questioned before us, read thus :

“4.5 The candidate must have passed the SSC or equivalent examination from an Institution situated in the state of Maharashtra.

Exemption : *Candidate who has passed SSC or equivalent examination in 2017 or prior to that, from an institute outside the State of Maharashtra is also eligible to seek admission, provided he has passed HSC or qualifying examination from an institute in the State of Maharashtra and also possess Domicile Certificate issued by the authority, who is competent to issue such certificate in the State of Maharashtra for educational purpose gazette no.MED-1018/C.R.405/18/Edu-2 dated 20/04/2019.”*

It is also necessary for us to visit the provision in Clause-4.6 which read as follows :

“4.6 The candidate must have passed the qualifying examination i.e. Higher Secondary Certificate (HSC/12th Standard) or equivalent examination, from an Institution situated in the State of Maharashtra (Please refer 4.1.3, 4.1.4, 4.7, 4.8, Annexure “C” & Annexure “E” for exception) with English, Physics, Chemistry and Biology (Botany & Zoology) at the time of document verification.

Since the condition of Domicile of Maharashtra is made applicable with an exception under clauses 4.7 and 4.8, we must also reproduce the same :

4.7 Exception for SSC (10th) and HSC (12th) or equivalent examinations: children of employees of the Government of Maharashtra or its Undertaking :-

Children of employees of the Government of Maharashtra or its Undertaking posted on deputation or transfer to a place outside the State of Maharashtra; or transferred from outside to a place situated within the State of Maharashtra :-

4.7.1 *The Children of such employees of the Government of Maharashtra or its undertaking who have joined service since beginning at a place situated outside the State of Maharashtra but who have been transferred to a place situated within the State of Maharashtra shall be eligible for admission even though such children might have passed the S.S.C. (Std.X) or H.S.C.(Std.XII) or equivalent examination from the recognized Institutions situated outside the State of Maharashtra; provided that, such employee of the Government of Maharashtra or its Undertaking must have been posted or transferred or deputed at a place of work located in the*

State of Maharashtra and also must have reported for duty i.e. joined the duty before the last date of document verification.”

4.7.2 The candidates belonging to the aforesaid category at 4.7.1 shall be required to produce the requisite Certificate from the office at which such employee of Government of Maharashtra or its undertaking has reported for duty, as a proof that such employee has joined the office and/or reported for duty before the cut off date for eligibility, i.e. the last date of submission of Preference Form. The certificate shall contain full name of the employee, designation, transfer or posting order number and date, date of joining and present status of posting. A copy of transfer or posting order should also be produced at the time of document verification.

4.7.3 The Children of such employees of Government of Maharashtra who have been transferred or deputed to a place situated outside the State of Maharashtra or who have returned to the State of Maharashtra after initial transfer/deputation shall be eligible for admission even though such children might have passed the S.S.C. (Std.X) and/or H.S.C. (Std.XII) or equivalent examinations from the recognized Institutions situated outside the State of Maharashtra.

4.7.4 The candidates belonging to the aforesaid category at 4.7.3 above shall be required to produce the requisite Certificate from the Office at which such an employee of Government of Maharashtra or its Undertaking has reported for duty. The certificate should contain full name of the employee, designation, transfer order number and date, date of joining and present status of posting. A copy of transfer order should also be produced at the time of document verification.

**4.8 Exception for SSC (10th) and HSC (12*) or equivalent examinations:
Children of employees of Government of India or its Undertaking :**

4.8.1 The children of the employees of Government of India or its Undertaking shall be eligible for admission even though they might have passed the S.S.C. (Std.X) and/or H.S.C. (Std. XII), or equivalent

exam from the recognized Institutions situated outside the State of Maharashtra, provided that such an employee of Government of India or its Undertaking must have been transferred from outside State of Maharashtra at a place of work, located in the State of Maharashtra and also must have reported for duty and must be working as on the last date of Document verification at a place located in State of Maharashtra.

4.8.2 Candidates belonging to the aforesaid category 4.8.1 shall be required to produce the requisite Certificate from the Office at which such an employee of Government of India or its Undertaking has reported for duty as a proof of the fact that such employee has joined the office and/or reported for duty before the cutoff date for eligibility i.e. at the time of document verification. The certificate should contain full name of the employee, designation, transfer order number and date, date of joining and present status of posting. A copy of transfer order should also be produced at the time of document verification.

4.8.3 The Children of the officers of the All India Services, officers of the Central Government Services or its Undertaking and Defence Personnel (including all types of defence services and/or paramilitary forces viz. CRPF, BSF etc.) having domicile certificate of the State of Maharashtra and posted outside the Maharashtra, shall be eligible for admission even though they might have passed the SSC and/ or HSC or equivalent examination from the recognized Institutions situated outside the State of Maharashtra.

4.8.4 The Candidates belonging to the aforesaid category at 4.8.3 above shall be required to produce the requisite certificate from the office at which such officer of All India Services, Central Government Services or its Undertaking and Defence Personnel has reported for duty, as a proof of the fact that he has joined the office or reported for duty before the cut off date for eligibility, i.e. the last date of submission of preference form. The certificate shall contain full name of the employee, designation and posting order number and date, date of

joining and present status of posting.

5. The con-joint reading of the aforesaid clauses would reveal that it has set out the eligibility for a candidate, to be offered CAP seats i.e. the seats filled through Centralised process of the State CET Cell i.e. respondent No.2.

With the exception under Clauses 4.7 and 4.8, the eligibility criteria include a stipulation of passing SSC or equivalent examination from the recognized Institutions situated in the State of Maharashtra and also the stipulation of passing the qualifying examination i.e. HSC (12th Standard) or equivalent examination, also from an Institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology subjects.

The exception is made to this eligibility criteria in favour of children of employees of Government of Maharashtra and Government of India or its Undertaking who are posted on deputation or transferred to a place outside the State of Maharashtra or transferred from outside to a place in state of Maharashtra.

6. With this background being set out, we must turn our attention to the facts placed before us.

As far as the lead petition being Writ Petition No.4945/2024 is

concerned, the petitioner claim that she is bonafide resident of Nagpur in the State of Maharashtra. Her father working in Jaika Finance Limited, one of the companies run by Jaika Group of Companies was working in Nagpur from 11/11/1996 and was transferred to Raipur by order dated 24/04/2010 and since the petitioner was minor then, she moved with her family to Raipur and continued to reside at Raipur from 2010 to 2020 and as such she completed her Secondary School Examination from Raipur in the year 2020.

The father of the petitioner was transferred from Raipur to Nagpur by order dated 23/01/2023 and it is the contention of the petitioner that her father requested for voluntary transfer to Nagpur since Nagpur offered better educational facilities.

In anticipation of the transfer order, the petitioner shifted to Nagpur in the year 2020 itself and she completed her 11th as well as 12th standard in 2022 from one of prestigious institution i.e. Shivaji Science, Junior College in Nagpur.

It is the case of this petitioner that she is a bonafide resident of Nagpur and she is armed with a Domicile Certificate issued by the Competent Authority.

Aspiring to be a doctor, she participated in the NEET selection process held on 07/05/2024 and she was declared successful by securing a good ranking and therefore she was desirous in getting

admission from State quota. However, since Clause 4.5 determining the eligibility for the student seeking admission contemplated that the candidate must have passed the SSC or equivalent examination from an Institution situated in the State of Maharashtra, she lost her chance to secure a seat in the State quota and this is the cause for her to approach this Court as the said condition is discriminating, and marring her chance for procuring seat in State quota though she is a domicile of the State of Maharashtra.

In Writ Petition No.4919/2024, the petitioner domicile of the State of Maharashtra had cleared her SSC examination from International Indian School, Alkhubar, Saudi Arabia. Her parents for the purpose of service, migrated to Gulf country and she completed her education till 10th standard in Soudi Arabia (CBSE pattern) though all the while her parents as well as she herself continued with the status of permanent residents and domicile of State of Maharashtra. She returned to India on 27/03/2021 accompanied by her parents and thereafter passed her 11th and 12th standard from Akola.

In the year 2023, the petitioner appeared for NEET examination but her candidature was not considered from State quota though liberty was conferred upon her to apply from IQ/NRI quota. However, on account of financial crisis she was unable to avail the same.

Once again in the year 2024, the petitioner appeared for NEET

examination and secured 632 marks out of 700, thereby creating a fair opportunity for her to get admitted in the college in Maharashtra.

Even this year, in the wake of the stipulation in the Information Brochure for NEET UG-2024, the petitioner apprehends that since she has not cleared her 10th standard from the State of Maharashtra, her candidature may not be considered against 85% State quota and this is the reason she has chosen to approach this Court.

In third petition i.e. Writ Petition No.4980/2024, the petitioner-Ishwari Kailas Kawane has cleared her Secondary School examination from Central Board of Secondary Education from St. Thomas School, Shinai, Adipur Kutch-Bhuj District, Gujarat.

The petitioner claim to be domicile of State of Maharashtra and she cleared her HSC from the Maharashtra State Board of Secondary and Higher Secondary Board, Pune through Amravati Divisional Board i.e. from State of Maharashtra.

Even this petitioner feel the heat of the relevant Rule of eligibility which in addition to domicile of the State of Maharashtra has also imposed the condition of passing of SSC and HSC examination from State of Maharashtra. The petitioner apprehend that she will not be allotted a seat from 85% State Quota in MBBS admission despite she being otherwise eligible on merit, only on the ground that she has passed SSC examination from some other State and hence her request

is to read down Clause 4.5 of the Information Brochure.

7. In this factual background, we have heard the learned Senior Counsel Shri R. L. Khapre for the first petitioner Manasi Raut who has assailed the relevant clause in the Information Brochure on two broad counts; the first being, the eligibility criteria for a professional course imposed by the respondent No.2 through the Information Brochure amount to restriction on the fundamental right of the petitioner guaranteed under Article-19(1)(g) which can be restricted only in the manner set out under Clause-2 of Article 19 which read thus :

“(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India) the security of the State, friendly relations with Foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.)”

The second premise on which the said clause is assailed is the ground of Article-14, as it is contended that if the wards of Government employee and its Undertaking are extended the benefit of availing a seat from State quota by relaxing the condition of passing 10th standard examination from State of Maharashtra, the students

whose parents are in private employment, are denied the same without any justifiable cause.

The learned Senior Counsel would urge before us that the father of the petitioner Manasi was working in a private Company which is having multi State Units and his job took him to Indore, but, since better educational avenues were contemplated in Maharashtra, he shifted the petitioner to Maharashtra and she passed her 12th standard from the State of Maharashtra and there is no reason why the benefit extended to the wards of employees of Government of India/its Undertaking shall not be extended to the petitioner.

He would place reliance upon the decision of the Apex Court in case of *Bijoe Emmanuel and ors. vs. State of Kerala and others. (1986) 3 SCC 615*, to buttress the submission that reasonable restrictions on the right under Article 19(1) of the Constitution can only be imposed by a “law” and no executive or departmental instructions and subordinate legislation, by any stretch of imagination can be construed as “law”.

The learned Senior Counsel has also placed reliance upon a decision in *Vansh Prakash Dolas vs. The Ministry of Education & The Ministry of Health & Family Welfare & Ors. (SLP (C) Nos(s).26179-26180 of 2023)* decided by the Apex Court, when the distinction between two categories of employees in the Government of India Services; (i) those posted in Maharashtra and (ii) those posted outside

Maharashtra was held to have no nexus with the intent and purpose of the guidelines/Rules and the same was read down.

8. It is the submission of Mr. Khapre that merit alone should be given preference and merit cannot be compromised by making reservations based on other considerations like residential requirement etc. He has also placed reliance on the decision of the Apex Court in case of *Nikhil Himthani vs. State of Uttarakhand and ors. (2013) 10 SCC 237* and also a decision of this Court in case of *Dr Gagandeep Mahi and ors. vs. State of Maharashtra and ors. (2017) SCC OnLine Bom 1116*. Yet another decision on which he has placed reliance is in case of *State of Maharashtra and ors. vs. Dr Sharvil Thatte and ors. (2020) 19 SCC 163*, holding that though it will be permissible to provide reservation on the ground of institutional preference, the condition which requires a candidate to be domicile of that State is impermissible.

9. Shri Ram Karode, the learned counsel appearing for the petitioner Maryam Husain joined hands with Shri Khapre, learned Senior Counsel in raising a challenge to the eligibility criteria.

Advocate Kshitij Kothale, appearing for the petitioner Ishwari Kawane, focused his argument on the fact that the exceptional clause in the Information Brochure, make an exception in favour of the

employees of Government of India and its Undertakings but deprive a private employee from its benefit and he would question this discrimination by submitting that the petitioner's father is the son of the soil and for job purpose, he moved to Gujarat seeking employment, but all the while remained domicile of the State of Maharashtra. He would submit that in private job also, employees are transferred or they look for green pastures and may shift from one job to another, then why deny the benefit to them.

In addition, learned counsel Shri Kothale by inviting our attention to Clause-4.5 prescribing the eligibility criteria, would submit that the requirement of candidate having passed SSC or equivalent examination would also contemplate passing SSC through any other Board like CBSC or ICSC which has a PAN India operation and therefore the embargo created under Clause-4.5 shall not apply to his client.

10. During the pendency of the petitions, the Medical Education and Drugs Department of State of Maharashtra on 15/03/2024 amended the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) (Amendment) Rules, 2024 whereby adding the following sub-entries in Rule 5 of the Rules of 2016 to the following effect :

- (iii) *The Children of the officers of the All India Services, officers of the Central Government Services and Defence Personnel including all types of defence services) having domicile certificate of the State of Maharashtra and posted outside the Maharashtra, shall be eligible for admission even though they might have passed the SSC and/or HSC or equivalent examination from the recognized Institutions situated outside the State of Maharashtra.*
- (iv) *The Candidates belonging to the aforesaid category at (iii) above shall be required to produce the requisite certificate from the office at which such officer of All India Services, Central Government Services and Defence Personnel has reported for duty, as a proof of the fact that he has joined the office or reported for duty before the cut off date for eligibility, i.e. the last date of submission of preference from. The certificate shall contain full name of the employee, designation and posting order number and date, date of joining and present status of posting.”*

11. Learned Senior Counsel Shri Devendra Chauhan, the learned Government Pleader opposed the writ petitions including the Amendment Rules, by which the benefit of exemption has been extended to the wards of employees associated with Defence or Government bodies like All India Services.

Dealing with the contention that this benefit must also be extended to the wards of the employees working in private sectors

Undertakings, Shri Chauhan would assertively contest the submissions, by submitting that the Public Sector/Government Employment and the Private Sector Employment are two different classes which stand on two totally different pedestals and they can never be treated as equal. According to him, Public/Government service is a different class as it has the control and supervision over the employment either by Central Government or by State Government and the most significant aspect is the employment in the Government is basically for the benefit of general public. In contrast, a private employment is principally for profiteering of the management under whose employment a person work and the private employment is controlled by private sector. In addition, according to him, public employment is governed by the constitutional scheme under Articles 14, 16, 309 and 311 of the Constitution of India, but as far as Private Sector employment is concerned, there is no such constitutional guarantee applicable to such employment.

The terms and conditions of a public employment, in addition are governed by a set of Rules which may be statutory in nature at times, but are uniformly applicable to the employees of State or Central Government which is completely absent in private sector is his specific submission.

Shri Chauhan, has invited our attention to the decision of the Constitutional Bench of Apex Court in case of *Roshan Lal Tandon vs. Union of India*, **AIR 1967 SC 1889** and in particular the observations made in para 6, to the following effect:

“6. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Governing Servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by stature or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Governing servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are

exclusively determined by law and not by agreement between the parties concerned. ”

12. Mr. Chauhan would submit that unequals can never be treated as equal and it is always permissible to have classification which has a reasonable nexus with the object which is sought to be achieved and Article 14 of the Constitution prohibits “class legislation” but permit “reasonable classification” for the purpose of legislation and as long as classification is not patently arbitrary, it would be justified.

13. We have given our anxious consideration to the factual scenario presented before us in the three writ petitions in the backdrop of the impending eligibility criteria prescribed by the Information Brochure.

Dealing with the first contention of the learned Senior Counsel Shri Khapre that this Information Brochure is nothing more than executive directions, we must at the outset dispel this contention, as we conclude that it is not merely executive instructions, as have noted that the Information Brochure is prepared by the Directorate of Medical Education and Research, Maharashtra State Mumbai and approved by the Medical Education and Drugs Department, Government of Maharashtra and upon the directions issued by the State Government, the office of Commissioner, State CET Cell has published the said Brochure in the form of “ Information Brochure of Preference System

for admission to Health Science Courses in State Government/Corporation/Private & Minority Colleges ”.

This Information Brochure is published by the respondent No.2, Commissioner, State CET Cell, much in advance before declaration of NEET UG-2024 result on 30/06/2024.

The Information Brochure is accompanied with the Maharashtra Unaided private professional Education Institution (Regulation of Admissions and Fees) Act, 2015 (for short, “The Act”) and also Rules of 2016 framed thereunder.

The Act of 2015 enacted by the State Legislature provide for regulation of admissions and fees by Unaided Private Professional Educational Institutions in the State of Maharashtra and for matters connected therewith or incidental thereto.

Under Section 7 of the said Act, an Authority is constituted known as “ the Admissions Regulating Authority” to exercise powers conferred on and to discharge the functions assigned to it. The functions of the Admissions Regulating Authority are specifically set out in Section 9 which read as below :

- (i) conducting and monitoring CET through CET Cell established under this Act;*
- (ii) verification of admission proposals and final approval thereof;*
- (iii) cancellation of admission if found contrary to the*

provisions of this Act;

(iv) redressal of grievances from the Stake-holders.

In addition to the above Authority, under Section-10 of the Act, a State Common Entrance Test Cell is constituted, which shall be headed by an officer working under the control of the Admissions Regulating Authority, not below the rank of the Joint Secretary, nominated as the Commissioner of State CET.

Sub-section (4) of Section-10 prescribes the Common Entrance Test for admissions to Unaided Institution shall be conducted by the Competent Authority with a proviso being appended that the State Government may allow such admissions through CET conducted by the authorities of the Central Government.

Sub-sections (6) and (7) of Section-10 are also necessary to be reproduced, which read thus :

(6) The Cell shall take all decisions in respect of conduct of the Common Entrance Test in a fair manner maintaining the required confidentiality. It shall appoint examiners, evaluators, moderators and persons for assignment of software development required for the conduct of examination, evaluation and result processing, and also appoint persons as service providers required for the conduct of the online examination and shall undertake printing of various documents, etc. It shall exercise financial powers for execution of all activities related to conduct of CETs.

(7) Admission to every seat excluding institutional quota shall be made on the basis of merit secured at the Common Entrance Test (CET) followed by Centralized Admission Process of the State,

subject to the reservation policy of the State :

Provided that, nothing in this sub-section shall apply to the Centralized Admission Process, being conducted for the academic year 2015-2016.

14. In exercise of powers conferred by Section 23 of the Act of 2015 (Mah. XXVIII of 2015), the Government of Maharashtra has framed Rules to regulate the admissions to the First year of the Full Time Professional medical and Dental Undergraduate Courses, in the Unaided Private Professional Educational Institutions in the State of Maharashtra i.e. Rules of 2016.

Rule 2 (e) defines “Courses” to read thus :

(e) “Courses” means the Undergraduate Medical Courses or Undergraduate Dental courses, as the case may be, conducted in the State as per the approval of the MCI and DCI and affiliated to MUHS.

Further, the “National Eligibility-cum-Entrance Test” or “NEET” is defined as under :

(o) “National Eligibility-cum-Entrance Test” or “NEET” means the examination conducted by Central Board of Secondary Education, Delhi for admission to under graduate Medical and Dental Courses.

15. Some other definitions which deserve consideration in the Rules are as below :

(q) : “Qualifying Examination” means the Higher Secondary

Certificate (12th Standard) or equivalent examination, from an institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology (Botany and Zoology) at the time of admission ;

(s) : “SSC” means the Secondary School Certificate (Standard X) examination conducted by Maharashtra State Board of Secondary and Higher Secondary Education as per the provisions of the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (Mah.XLI of 1965) or its equivalent certificate awarded by a recognized Board.

16. The Rules of 2016 have also set out the candidature type in Rule-5 and sub-rule (1) thereof prescribe for Maharashtra State Candidature.

This is further sub regarded the categories (A),(B) and (C) which read thus :

- (A) (i) The candidate must be an Indian National*
- (ii) Except for the year 2016, Persons of Indian Origin (PIO) or Overseas Citizens of India (OCI), Non Resident Indians (NRI) shall not be eligible.*
- (iii) Except for the year 2016, the candidate should be Domicile of the State of Maharashtra*
- (iv) The candidate must have completed 17 years of age on or before 31st December of the year of admission for the course. The Birth certificate indicating name of the candidate, Secondary School Certificate examination i.e. SSC or equivalent examination certificate or School Leaving Certificate endorsing the date of birth shall constitute a valid proof of age. (The eligibility of age shall be as prescribed by MCI & DCI from time to time).*

- (v) *The candidate must be medically fit.*
- (vi) *The candidate must have passed the SCC or equivalent examination from an Institution situated in the State of Maharashtra. However, except for the year 2016, candidate who has passed SSC or equivalent examination from an institute situated within Maharashtra State is eligible for seeking admission to the courses, provided that he or she is Domicile of Maharashtra.*
- (vii) *The candidate must have passed the qualifying examination.*
- (B) ***Exception for clause (A)(vi) for SCC or clause (A) (vii) for HSC or equivalent examinations for children of employees of the Government of Maharashtra or its Undertaking : -***
 - (i) *The Children of such employees of the Government of Maharashtra or its undertaking who have joined service since beginning at a place situated outside the State of Maharashtra but who have been transferred to a place situated within the State of Maharashtra shall be eligible for admission even though such children might have passed the SSC or HSC or equivalent examination from the recognized Institutions situated outside the State of Maharashtra; provided that, such employee of the Government of Maharashtra or its Undertaking must have been posted or transferred or deputed at a place of work located in the State of Maharashtra and also must have reported for duty i.e. joined the duty before the last date of submission of preference form.*
 - (ii) *The candidates belonging to the aforesaid category at (i) above shall be required to produce the requisite certificate from the office at which such employee of Government of Maharashtra or its undertaking has reported for duty, as a proof that such employee has joined the office and/or reported for duty before the cut off date for eligibility, i.e. the last date of submission of Preference Form. The certificate shall contain full name of the employee, designation, transfer or posting order number and date, date of joining and present status of posting. A copy of transfer or posting order should*

also be produced at the time of filling the preference form.

(iii) *The Children of such employees of Government of Maharashtra or its undertaking who have been transferred or deputed to a place situated outside the State of Maharashtra or who have returned to the State of Maharashtra after initial transfer or deputation shall be eligible for admission even though such children might have passed the SSC or HSC or equivalent examinations from the recognized Institutions situated outside the State of Maharashtra.*

(iv) *The candidates belonging to the aforesaid category at (iii) above shall be required to produce the requisite certificate from the office at which such employee of Government of Maharashtra or its undertaking has reported for duty, as a proof that such employee has joined the office and/or reported for duty before the cut off date for eligibility, i.e. the last date of submission of Preference Form. The certificate shall contain full name of the employee, designation, transfer or posting order number and date, date of joining and present status of posting. A copy of transfer or posting order should also be produced at the time of filling the preference form.*

(C) Exception for clause (A) (vi) for SSC or for clause (A) (vii) for HSC or equivalent examinations for Children of employees of the Government of India or its undertaking,-

(i) *The children of the employees of Government of India or its Undertaking shall be eligible for admission even though they might have passed the SSC and/or HSC or equivalent examination from the recognized Institutions situated outside the State of Maharashtra; provided that, such an employee of Government of India or its undertaking must have been transferred from out of Maharashtra state and posted at a place of work, located in the State of Maharashtra and also must have report for duty, i.e. jointed the duty before the last date of submission of preference form.*

(ii) *The Candidate belonging to the aforesaid category at (I) above shall*

be required to produce the requisite certificate from the office at which such an employee of Government of India or its undertaking has reported for duty, as a proof of the fact that such employee has joined the office or reported for duty before the cut off date of eligibility, i.e. the last date of submission of preference form. The certificate shall contain full name of the employee, designation, transfer and posting order number and date, date of joining and present status of posting. A copy of transfer or posting order should also be produced at the time of filling the preference form.

17. We must note that by Notification dated 15/03/2024, the State Government has added further categories i.e the Children of the officers of the All India Services, officers of the Central Government Services and Defence Personnel having domicile certificate of the State of Maharashtra and posted outside the Maharashtra.

We have already reproduced the amendment above.

18. In the wake of the aforesaid statutory scheme contained in the Act of 2015 read with the Rules of 2016, since it is the Common Entrance Test (CET) Cell which is constituted as 'Admission Regulation Authority' for conduct of the Common Entrance Test, it is empowered to declare the Information Brochure for the NEET-UG and PG to be conducted in the State of Maharashtra and since the power is exercised by the Commissioner, State CET Cell, Maharashtra State, Mumbai under the Maharashtra Unaided Private Professional Educational

Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Course) Rules, 2016 to fill in the CAP seats through centralised process of admission for all the UG Medical courses or Undergraduate Dental courses conducted in the State as per the approval of MCI and DCI and affiliated to Maharashtra University of Health Sciences (MUHS), we find the Brochure to include all necessary details for the conduct of the admission process in accordance with the Rules of 2016, which confer the Competent Authority with the power of conduct of Common Entrance Test (CET) and declare its result and pursuant thereto detailing out the schedule regarding the CAP rounds admissions on the basis of institutional quota, admissions by Minority Educational Institutions and other matters relating to admissions.

When we compare the Brochure with the Rules of 2016, we find that the process that has been set out in the Rules of 2016 is included in the form of the Information Brochure for effecting admissions to the Health Science courses and the same is made applicable to all the colleges under the control of State Government/Corporations/Private and Minority Colleges.

19. In the light of the aforesaid scheme, we do not find substance in the argument of learned Senior Counsel Shri Khapre that the

Information Brochure is merely executive instructions as it is appended with the Act of 2015 as well as the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Course) Rules, 2016, as well as the directions issued by the State Government implementing the policy of reservation including EWS category reservation etc.

Further, this issue is no more *res integra* and in case of *Yellamalli Venkatapriyanka vs. State of Maharashtra, Thr. its Dept. of Medical Education & Drugs, Mantralaya and anr.* **2018 SCC OnLine 10293**, to which one of us (Bharati Dangre, J.) is a party, a similar challenge was raised and decided in relation to the admission to the Medical courses for the academic session 2017-18.

An exhaustive reference is made to the Information Brochure in the backdrop of the fact placed before the Court in relation to the common admission process carried out by the Competent Authority/Commissioner for the UG Medical courses or UG Dental courses conducted in the State by the approval of the MCI and DCI and for the colleges affiliated to the Maharashtra University of Health Sciences.

With the special focus on the eligibility criteria prescribed and subsequently criteria prescribed in Clause-4.1.2, the arguments were

advanced as the challenge was raised to the stipulation of passing 10th and 12th standard examinations from the State of Maharashtra in addition to a candidate being domiciled of Maharashtra or staying in Maharashtra for minimum period of ten years.

20. With reference to the Maharashtra Act XXVIII of 2015 as well as the Rules of 2016 framed thereunder, the State Government of Maharashtra through the learned Advocate General advanced a submission that the eligibility criteria prescribed viz. Of passing 10th and 12th standard examination from the institution within the State of Maharashtra, has been upheld by the Court repeatedly and it was also urged that for the academic year 2017-18, the Government of Maharashtra had clarified by issuing a resolution dated 13/04/2017 but it has made the aforesaid Rules and they would be applicable as amended even to the Government/Municipal Corporation/Aided colleges, Minority Medical Institutions and reliance was placed on the decision in case of *Shalini Kotian v. State of Maharashtra (WP No.6608 of 2016)* holding that the Maharashtra Act XV and Rules framed thereunder can be made applicable to the State or Municipal run medical colleges.

21. The argument advanced on behalf of the petitioners that if the candidate fulfill the requisite condition of being domiciled in the State

of Maharashtra, then the 10th and 12th standard examination being passed and cleared from outside the State did not create any embargo in securing admission under UG Health Science courses and the consistent policy appeared to be the 12th standard examination would be taken within the State of Maharashtra, all of a sudden now the requirement was passing 10th and 12th standard examination from within the State of Maharashtra and particularly from an institution within the State which is coupled with the requirement of domicile of the State.

This argument was dealt with by referring to the judgment of the Apex court in case of *Dr Pradeep Jain v. Union of India v. Union of India (1984) 3 SCC 654*, when the Apex Court dealt with the challenge to the requirement of domicile as to whether the admission of the sons of the soil and whether reserving seats on the basis of place of birth would result in a discrimination while seeking admission to a medical college. In addition by referring to another decision in case of *Jagdish Saran v. Union of India (1980) 2 SCC 768*, it was highlighted that the primary consideration in selection of candidates for admission to the medical colleges must be merit, as the publication of any Rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.

In para 56, the Division Bench held thus :

“ 56. This and the subsequent paragraph has been heavily relied upon by the petitioners' counsel to urge that there is an extent to which the residential requirement can be prescribed and equally institutional preference. This cannot completely exclude admissions of students from other Universities and States on the basis of merit which is on open competition. However, in subsequent paragraphs, the State Government's difficulties are noted and then the percentage carved out. It is not disputed before us that the percentage today is eighty five per cent seats from within the State and fifteen percent on All India basis. This is how the seats have to be filled in. However, we find that assuming that everything has a correlation or nexus with the requirement of residence or domicile, additional stipulation being set out would not necessarily violate the mandate of Article 14 of the Constitution of India. Whether the conditions as are found in the impugned Rules are in addition to what has been prescribed as a residential or domicile requirement or could be viewed independent thereof assuming they have a close connection with the requirement of domicile or residence. We have enough materia! on record to hold that there is a definite nexus with the object sought to be achieved.”

22. The Division Bench also dealt with the argument about the NEET Brochure being only the administrative instructions and we must reproduce the relevant portion of paragraphs 60 and 62 which read thus :

“ 60. We are unable to accept this contention for more than one reason. In the NEET Rules, styled as NEET Brochure and which is placed on record in all cases, it is evident that the introduction starts with the MCI Regulations. It is stated that common counselling is now a requirement added. It says that there shall be a common counselling

for admission to MBBS courses in all medical Institutions on the basis of merit list of the NEET. The Designated Authority for counselling for 2015 All India Quota seats of the contributing States shall be the Directorate General of Health Services (DGHS). The counselling for admissions to MBBS course in all Medical Educational Institutions in a State/Union Territory including Medical, Educational Institutions established by the Central Government, State Government, University, Deemed University etc. shall be conducted by the State/Union Territory Government. Such common counselling shall be under the overall superintendence, direction and control of the State/Union Territory. It is in these circumstances that for filling up the seats in the State Quota of eighty five per cent, that the State Government made the said Rules or the information document.”

“ 62. It has always been held that these Rules and Regulations, though not strictly referable to any legislation like the Maharashtra Act XXVIII of 2015, are nonetheless referable to the Executive power of a State which is to be found in Article 162 of the Constitution of India. That is on par with the power to make laws and in relation to the subjects or fields in which the State is empowered to make laws. There is a proviso, but we do not see any force in the contentions of Ms. Taiekar that with this proviso in place, if any Rules of the nature made with the stipulation as are impugned would run counter to the principle of merit and which is carved out with reference to such legislations as are squarely referable to Schedule VII List I styled as the Union List. We do not see how when the process is defined, demarcated and clearly segregated In the above manner, can we hold that the State Government is denuded of any power to make the Regulations or Rules as are found in place. We may at once clarify that we are most unhappy with the manner in which the Maharashtra Government proceeds for though the Department styled as Department of Medical Education and Research through its

Directorate is in place or there is a separate Directorate, a gentleman styled himself as Commissioner CET Cell puts in something like an Information Brochure on the website and publishes it as if it is an advertisement. There is a sanctity attached to everything, including this common counselling and common admission process. This Commissioner is not a law unto himself. He may style himself as a competent authority, but we do not see how when the State Government itself speaks on more occasion than one, through the above Directorate and, in fact, has spoken as late as on 13th April, 2017, can this gentleman assume that he is everything in relation to this process and it is exclusively his control, monitoring and superintendence which would govern the conduct of admissions. We would highly appreciate that hereafter this gentleman is not put in charge of issuing such Brochures and when the State Government in exercise of its rule making powers takes recourse to substantive provisions contained in section 23 of the Maharashtra Act XXVIII of 2015. It has very clearly spoken and by issuing the Government Resolution traceable to Article 162 of the Constitution of India dated 13th April, 2017, stating that the rules in place for private institutions in terms of Maharashtra Act XXVIII of 2015 and particularly section 23 thereof would apply also for filling in the seats in the State run or Municipal Corporation controlled medical colleges.”

23. Dealing with the challenge about the requirement of passing 10th standard examination from the State of Maharashtra and in particular Clause-4.1.2, the detail consideration is to be found in paragraph 65 which reads thus :

“ 65. We do not see how any eligibility for admission to Health Science degree courses as has been prescribed by this clause cannot be prescribed in law. Can we then ignore all these sub-clauses and

the stipulations therein? Each one of them would have to be read together and harmoniously. While they outline the condition of residence and domicile in the State of Maharashtra in clause 4.1.2, even an overseas citizen of India candidate will be eligible provided he has passed the tenth and twelfth standard examination from the State of Maharashtra and is a domicile of Maharashtra or staying in Maharashtra for a minimum period of ten years. Thus merely because a condition by which the candidate is required to be a domicile of Maharashtra is set out separately and the other two conditions with regard to passing of SSC or equivalent and HSC/qualifying examination or equivalent with the subjects set out therein have been distinctly inserted, that We can conclude that they have absolutely no nexus or relation with the object sought to be achieved. Eventually, the object sought to be achieved is that a candidate, domiciled in the State of Maharashtra and fulfilling the requirement of educational qualifications required for admission to the degree course obtained within the State of Maharashtra, alone is eligible. This condition can be prescribed either together with the domicile or separately. Once it is so prescribed to hold that there is no nexus at all or it has no relation with the object sought to be achieved would not be proper. If there is a departure from the rule of merit permissible in terms of the Hon'ble Supreme Court verdict itself on two grounds, one of which is the interest of the State, then, to safeguard and protect it, such condition has been inserted. It cannot be termed as superfluous or ignored totally for mere domicile may not justify earmarking of eighty five per cent seats for the State of Maharashtra. If the State of Maharashtra is held to be entitled to fill in these eighty five per cent seats by students residing within its limits and for protecting achieving the larger cause of obtaining doctors for public health facilities and caring, then, all the more, the argument of the counsel appearing for the petitioners on the point of nexus cannot be accepted. If there was ever any doubt even that stands cleared by

clauses 4.17 and 4.18 of the Brochure, which reads as under:

4.17 All those candidates who have passed the SSC. (Std. X) and/or H.S.C. (Std. XII) or equivalent examination/s from an Institution/s situated outside the State of Maharashtra and not Domicile of Maharashtra are not ELIGIBLE for admission to Health Science courses except, those exempted under Rule 4.7 4/8 Defence & MKB and NRI quota (41.2) in private unaided college.

4.18 Admission to Health Science Courses is subject to the grant of eligibility by Maharashtra University of Health Science, Nashik."

24. In addition the contention that the said clause violate Article 14 is also subsequently dealt with in para 66 which read thus :

" 66. It is common ground that Article 14 permits reasonable legislation, but permits classification within reasonable limits. The classification so made, if questioned, must be established to have a nexus with the object sought to be achieved. There ought to be a rationale and reasonableness behind inserting such provisions as are to be found In the clauses and sub-clauses. While defining and outlining eligibility for admission and bearing in mind the larger objective of the interest of the State, if these conditions pertaining to educational qualifications being acquired within the State are inserted, then, they are not falling foul of the constitutional mandate. We can safely reach this conclusion based on the judgments of the Hon'ble Supreme Court and the principles enshrined therein."

25. Earlier decision in case of *Smt Surbhi Suresh Joshi v. State of Maharashtra (Writ Petition No.6065/2013)* which was relied upon by the learned Advocate General, was exhaustively referred to in addition to another decision in Writ Petition No.5606 of 2023 decided on

17/07/2013 by the Aurangabad Bench, which upheld requirement of candidate passing a qualifying examination from within the State and it was specifically noted that such Rules were in force for the last several years. Holding that this particular Court had rejected the argument from time to time when it raised challenge to the requirement that the candidate must have passed qualifying examination from the State of Maharashtra, in no way can be said to be arbitrary or unreasonable.

In addition, in para 71 of the said decision, it is held thus :

“ 71. The learned Advocate General then urged that in Writ Petition No. 5717 of 2013, a Division Bench presided over by Hon'ble B.P. Dharmadhikari, J. had negatived the challenge to these Rules. That Judgment also makes a reference to the decisions of the Hon'ble Supreme Court In the field. Pertinently, it made reference to the judgment in the case of Mohan Bir Singh Chawla v. Punjab University, Chandigarh, the passages of which we have reproduced above and holds that it practically looks into all earlier judgments. The Hon'ble Supreme Court makes reference to all the decided cases and holds that the impugned Rule was, however, treated as a rule providing preference on the ground of domicile/residence. The educational requirement of passing qualifying examination and a prior tenth standard examination is but an extension or facet of the same. In the circumstances, the challenge was negatived and with the same reasoning.”

26. In conclusion, the Division Bench has particularly held that falling back on the assertions made in case of *Dr Pradeep Jain* (supra)

which desire to achieve true and real equality, as it was aware of the ground situation and the diversities in the State and therefore it was held that if the State has its own peculiar situation not just on account of geographical locations, but several other relevant and connected factors and they have to be borne in mind, that a level playing field must be made available so that the local talent is utilised for protecting and safeguarding the interest of the State.

If a particular State is desirous of utilising its talent so as to promote and protect its public health care then, it was concluded that there is not justifiable ground on which a deviation can be claimed from the observations of the Apex Court.

27. In our considered view, both challenges raised by learned Senior Counsel Shri Khapre are answered by the Division Bench in case of *Yellamalli Venkatapriyanka* (supra).

We are confronted with identical argument and identical Rule, laying down a contemplation of the candidate availing the State quota to be domiciled in State of Maharashtra and having passed his/her SSC (10th Std.) and/or HSC (12th Std) or equivalent examination from the recognized institution situated in State of Maharashtra with an exception being carved out in favour of children of employees of Central Government or its Undertaking or State Government who are serving in State of Maharashtra.

The argument that the restriction imposed by the aforesaid Rule violates Article-19(1) (g) is also turned down by the Division Bench in case of *Nibir Jyoti Das vs State of Maharashtra and ors.* **2021(5) Mh.L.J. 681** when the entire law on this subject was reproduced, including the decision of the Apex Court in case of *D.P. Joshi vs. State of Maharashtra*, **AIR 1955 SC 334** and the judgment contained a prelude which stretched the history of the Rules for the year 2016 to 2020, as well as academic year 2017 prescribing the condition of passing of 10th and 12th Std. Examination from the institution situated within the State of Maharashtra, when the domicile was not a requirement, whereas in the academic year 2017 when in addition to the condition of clearing 10th - 12th from the institution situated in Maharashtra, domicile was also added as an additional requirement.

Once again the Division Bench examined the issue with reference to the 2015 Act along with 2016 Rules, having being framed in exercise of statutory powers conferred by Section 23 of the Act of 2015.

Dealing with the challenge to the constitutional validity of a legislation by reference to Article-19 of the Constitution and for determining whether the restriction imposed is a reasonable restriction falling within the scope of Article-226, the test which would be required to be satisfied, being the test of reasonableness was referred to and it was held that the Brochure satisfy the test by answering it as

following :

“ 52. Taking a cue from the ratio decidendi of *Dharam Dutt (Supra)*, it can safely be concluded that the Company and the medical college having had full enjoyment of their rights under sub-clauses (c) and (g) of clause (1) of Article 19, they cannot claim as a Fundamental Right that they must be allowed to admit students in the 85% State quota without any restriction being imposed and irrespective of domicile, and thereby achieve whatever object they have in mind in this behalf. Admission of students irrespective of domicile would be an incidence of the right guaranteed under Article 19(1)(g) of the Constitution and the restriction imposed in this regard by Rules 5 and 8 of the 2016 Rules cannot, in view of the dictum in *Dharam Dutt (supra)*, be tested by reference to clause (6) Article 19. The impugned restriction would be required to satisfy constitutional validity applying the test of reasonableness as propounded in *K G. Row (supra)* and. as noted earlier, the reasonableness of the impugned law, i.e.. Rules 5 and 8 of the 2016 on the anvil of Article 14 has been tested and satisfied when the coordinate bench decided *Yellamalli Venkatapriyanka (supra)*. This conclusion would, in effect, foreclose a discussion on the second question.

57. While dealing with the writ petition of *Yellmalli Venkatapriyanka (supra)*, the coordinate bench noted the stand of the State Government as appearing from an affidavit of Dr. Pravin H. Shingare, Director of Medical Education and Research, Government of Maharashtra, to the effect that Rule 5 of the 1997 Regulations empowered the State Government to frame its own eligibility criteria in respect of 85% State quota. It is in pursuance thereof that Rules 5 and 8 of the 2016 Rules prescribe who would be eligible to be accommodated in the 85% State quota and such prescription has been judicially upheld up to the Supreme Court.

Paragraph 38 of the decision traces paragraph 27 of the affidavit where the exact reason advanced by the Government appears for putting in place the stipulations of passing SSC and ITSC examinations from institutes situate in Maharashtra coupled with the requirement of possessing a domicile certificate taking into account the interest of the State, and the local and regional requirements to weed out candidates who are not in continuous residence within the State of Maharashtra for 15 years preceding the qualifying examination.

63. *Article 19(6) of the Constitution authorizes restriction on the right guaranteed under Article 19(1)(g) to be imposed, inter alia, in the interests of the general public. Having regard to the aforesaid authorities, this Bench is of the considered opinion that the restriction imposed on such a right is in the interest of the general public and in tune with clause (6) of Article 19. The authority competent to impose restriction has done so by a law, enactment whereof was within its competence. Such restriction was imposed keeping in mind local and regional needs. From paragraph 47 of the decision in Rudrika Pushpraj Bhatele (supra), it is revealed that Delhi, Gujarat, Karnataka, Kerala, Punjab, Tamil Nadu and West Bengal have reserved 85% seats for being filled up by students having domicile/permanent residence in the respective States. The State of Maharashtra has not adopted a policy which is at variance with the policies of the other States across the country. The petitioners are seeking declaration/directions of the nature which would undo whatever has been settled by the Supreme Court in the various decisions referred to above and adopted by the State in furtherance thereof.”*

28. The possible ground for raising a challenge to the requirement of passing 10th and 12th examination from an institution within the State

of Maharashtra coupled with the condition of domicile thus have received seal of this Court on more than one occasion and we are not in any way desirous of reopening the same again.

29. In all the three cases before us we have noticed that the petitioners have passed the 10th standard examination from out of the State of Maharashtra and are thus denied seats in the State quota (85%) in the CAP rounds pursuant to the conduct of Common Entrance Test (CET) by the respondent No.2.

It is the argument advanced by the learned counsel Shri Kshitij Kothale and Shri Ram Karode, that when an exception is carved as regards applicability of the said condition of passing 10th and 12th standard examination from an institution within the State of Maharashtra in favour of children who are employees of Government of India or its Undertaking or Government of Maharashtra by virtue of the amendment in favour of the children of the officers of the All India services, officer of the Central Government Services and Defence Personnel, who are posted out side Maharashtra and despite this, their wards have been held eligible for admission, then why this benefit is not extended to the children of an employee serving in private sector.

We must at the outset note that the distinct class of the Government employees either of All India Services, Central

Government Services of its Undertaking and Defence Personnel, who stand on a different pedestal than those who are engaged in private employment.

When a person is serving the Government, whether Central Government or its Undertaking or the State Government or Defence, necessarily it is service to the State, and in a broader sense it is a service to the public and when Article 14 of the Constitution prescribe that the State Government shall not deny to any person equality before law or equal protection of law within the State, basically the aim in bringing equality amongst the equals.

Undisputedly Article-14 of the Constitution contemplate similar treatment to persons under similar circumstances, without any discrimination provided they must be similarly situated as equitable treatment is given to the persons without discrimination, though it is permissible to have a reasonable classification.

It is quite straight position of law that law should be equal amongst equals, meaning it should be applicable in such a way that similarly situated persons enjoy equitable treatment. Like should be treated alike and not in every situation, treating unequals as equal would lead to inequality; people in different circumstances do not deserve to be treated alike.

30. In short, Article-14 prescribe that law should not be applied to everyone uniformly and it should be applied in such a way that individuals belonging to a group of some similarly situated are treated in the same way, who definitely do not fall within the same class.

Article-14 prohibits class legislation and violation of right to equality, while it permit reasonable classification, as an exception to right to equality.

Class legislation imply improper or irrational differentia or discrimination of people for the benefit of certain class of people based on such unreasonable or arbitrary selection of class from large number of people.

In contrast, reasonable classification refers to a classification of certain groups, that are similar in regards some characteristics and it is expected that they deserve similar treatment. However, to satisfy the test of reasonable classification, a sound test has been laid down with two essentials; classification must be founded in an intelligible differentia which distinguish those that are grouped together from others and the differentia must have a rational relation to the object sought to be achieved by the proposed legislation or law.

31. It is on numerous occasions the higher Courts of this country have applied the test of reasonable classification and upheld the same.

Applying the aforesaid test, since right to equality under Article 14 is not obsolete in nature but a qualified one, we find substance in the argument of the learned Government Pleader that the two classes before us, the Central/State Government employees or employees of All India Services, Defence Personnel form a different class as they enjoy the protection under Constitution itself and their services are determined by such Rules formulated either by the State Government or by the Central Government. Apart from this, they render public services, in contrast to the employees of a Company/Private employment who render services to the employer and are not necessarily in the nature of public services.

The classification of these two classes stand on an intelligible differentia, being the purpose and object of the services being rendered to; one meant for public welfare and the other meant for profiteering and earning a source of livelihood and we find that the differentia offer a reasonable nexus with the Rules of 2016, as amended by Rules of 2024, since it provide an exception to the eligibility for admission to Health Science degree courses, which are conducted through the State CET Cell to fill in 85% State quota seats by prescribing that the candidate must be domicile of the State of Maharashtra and in addition he/she must have passed SSC (10th Std.) or equivalent examination from the institution situated in the State of Maharashtra and must have

passed a qualifying examination i.e. HSC (12th Std.) or equivalent examination from the institution situated in the state of Maharashtra.

Exception in form of Clause-4.7 and 4.8 and as introduced in Rule-5 of the Rules of 2016 by amendment notified on 15/03/2024 is in favour of the wards of those employees who were serving with the Government of India or its Undertaking or Government of Maharashtra or Defence Personnel and since they are governed by the service conditions applicable to them which include a condition for change in their posting/transfer from time to time and it may not be possible for their wards to fulfill the condition of passing 10thStd (SSC) and/or 12th Std.(HSC) from an institution situated in State of Maharashtra despite the fact that the candidate is a domicile of Maharashtra.

It is to deal with such a scenario, when passing of the 10th/12th standard examination from an institution in the State of Maharashtra may not be a feasibility as the ward being minor had to travel with his/her parents and may not fit into the criteria prescribed in Rule 4.5 and 4.6 and for this reason, could not be kept away from a seat in a medical college located in the State of Maharashtra though he/she is domicile of State of Maharashtra but could not satisfy the requirement of passing 10th and 12th Std. examination from an institution situated in Maharashtra or of clearing either of the examination from the institution situated in the State of Maharashtra.

We thus find reasonable nexus with the differentia adopted to the creation of two classes which stand on completely different footing as private employment may not have the benefit of Government employment or employment in Defence, All India services etc. Getting a posting/transfer in the State of Maharashtra may not be in the hands of an employee who serves either the Central or State Government or the Defence, in contrast to a private employment where a person can choose the State in which he want to accept the employment and which definitely in his better interest or at the most the interest of the Company but not definitely in the larger public interest that he is required to serve at a particular place, for the administrative convenience of the employer.

32. For the aforesaid reasons, we find the exception in favour of the wards of employees of employees of State/ Central Government or its Undertaking, All India Service, Defence Personnel situated in different circumstances/situations which cannot be compared with the three petitioners before us whose parents are serving in private employment and who have been denied the admission as they failed to fulfill the condition of passing their 10th Std. (SSC) examination from an institution situated in the State of Maharashtra; they have passed the 10th Std. (SSC) from outside the State of Maharashtra i.e. Chhatisgarh,

Dubai and Gujarat respectively.

We therefore find no merit in these three petitions and we record that as the condition 4.5 of the Information Brochure has reasonable nexus to the object sought to be achieved and the petitioners cannot claim the right to be admitted against 85% quota reserved for the candidates who are domiciled in the State of Maharashtra in Government Medical Colleges as well as Government Aided Medical Colleges.

Undisputedly, the petitioners are entitled to compete in 15% quota in the medical colleges situated in the State of Maharashtra as an All India candidate.

Finding no merit in these three petitions, the same are dismissed.

Rule is discharged. No order as to costs.

(Abhay J. Mantri, J.)

(Bharati Dangre, J.)