



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

WRIT PETITION NO. 5325 of 2024

Adwait Sanjay Kamdi,
Aged 18 years,
R/o. Row House No.B-4, Dadaji Park,
Near Beltarodi Police Station,
Beltarodi, Nagpur.

...

PETITIONER

Versus

1. The State of Maharashtra, through
Principal Secretary, Department of Education,
Mantralaya, Mumbai-32.
2. The Principal Secretary, Department of Health
and Family Welfare, Mantralaya,
Mumbai-32.
3. Maharashtra State Common Entrance Test Cell,
through its Chairman,
8th floor, New Exelsior Building,
A.K.Nayak Marg, Fort,
Mumbai-1.
4. NKP Salve Institute of Medical Sciences and
Research Centre and Lata Mangeshkar Hospital,
Digdoh Hills, Hingna Road,
Nagpur-440019,
through its Dean.

..

RESPONDENTS

Mr. Ashutosh C. Dharmadhikari, with Mr. Anuj D. Hazare, Advocates for
petitioner.
Mr. Neeraj Patil, Assistant Government Pleader for respondent nos. 1 & 2.
Mr. Nikhil Gaikwad, Advocate for respondent no.3.
Mr. Atharv S. Manohar, Advocate for respondent no.4.

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

DATE : 10th OCTOBER, 2024

JUDGMENT (Per BHARATI DANGRE, J.)

1. Being aggrieved by the action of the Maharashtra State Common
Entrance Test Cell, Mumbai- the respondent no.3 and N. K. P. Salve

Institute of Medical Sciences and Research Centre and Lata Mangeshkar Medical College, respondent no.4, in not considering the petitioner in the State quota for under graduate MBBS course and by holding him ineligible as per Rules framed under NEET Health Science Brochure-2024, the petitioner - Adwait Sanjay Kamdi has approached this Court, seeking the following reliefs:

‘(i) Hold and declare that the action and decision on part of the respondents, and specially, the MHCET Cell in holding the petitioner not eligible for being admitted in the state government quota at NKPSMC in terms of the Provisional Selection Letter and not permitting the petitioner to seek admission through the state government quota for the MBBS course in the academic year 2024-25 is arbitrary and illegal, and by holding so;

(ii) quash and set aside the decision of the MHCET Cell reflected from the emails dated 04.09.2024 at ANNEXURE Z, and through the remarks of the ‘Scrutiny/Admission Committee’ through a letter received on 04.09.2024, at ANNEXURE Z1 and direct the respondents to finalise and grant permanent/final admission to the Petitioner in the MBBS course for the academic year 2024-25 from the state quota in NKPSMC Nagpur, as per the Provisional Selection Letter dated 31.08.2024, at ANNEXURE Y, in the interest of justice;’

By way of an ad-interim relief, a direction is sought to the respondents not to finalize the process of admission of the MBBS course for the year 2024-25 and admit the petitioner provisionally in the respondent no.4-College in terms of Provisional Selection Letter issued in his favour for keeping one seat vacant in the College of respondent no.4, in the interest of justice.

2. On 09.09.2024 by recording the factual background to the following effect, by way of an ad-interim order, the respondent nos. 3 and 4 were directed to grant admission to the petitioner provisionally in the 85% State quota, subject to result of the petition.

The factual background was recorded in the order to the following effect:

“2. The father of the Petitioner who was employed with the Government of India undertaking/BPCL, on account of which since his posting was in Bina, District Sagar in Madhya Pradesh, the Petitioner cleared his SSC examination from the Madhya Pradesh Education Board. The father of the Petitioner thereafter has resigned and taken up employment in the Private Company in Maharashtra.”

3. It is not disputed, that both the Petitioner and his father are domiciled in the State of Maharashtra. The Petitioner is being denied consideration for MBBS admission by the Respondent 'No.3, though the Petitioner has been provisionally selected for admission by the Respondent No.4, on the ground that in terms of clause 4.5 of the brochure (page 51), the Petitioner did not pass his SSC examination from an institution situated in the State of Maharashtra.”

3. We have heard learned counsel Shri Ashutosh Dharmadhikari for the petitioner, learned Assistant Government Pleader Shri Neeraj Patil for the respondent nos. 1 and 2, learned counsel Shri Nikhil Gaikwad for respondent no.3 and learned counsel Shri Atharva Manohar, for the respondent no.4.

In the wake of the urgency expressed and by consent, we have taken up the petition for hearing at the stage of admission by issuing '**Rule**'. Rule is made returnable forthwith.

Shri Dharmadhikari, learned counsel for the petitioner while narrating the factual background would submit that the petitioner is domicile of the State of Maharashtra and his father was posted at Bina, District Sagar in the State of Madhya Pradesh at Bina Refinery of the Bharat Petroleum Corporation Limited (BPCL), a Government of India Undertaking.

On account of posting of his father in Madhya Pradesh, the petitioner completed his education till 10th standard (CBSE Board) from District Sagar, Madhya Pradesh in the year 2022. However, he passed qualifying examination of HSC (12th standard) from the State of Maharashtra as he sought admission in the 11th standard in Central Point School, Katol Road, Nagpur.

Since the petitioner is interested in pursuing the medical field, he appeared in the NEET-UG-2024 examination and scored 614 marks with an All India Ranking of 62146.

Being domicile of the State of Maharashtra, he was desirous of securing a seat in the Medical Colleges in the State of Maharashtra and deemed it appropriate to compete in the 85% State quota and registered himself on the website of Maharashtra State Common Entrance Test Cell (MHCET Cell), the competent authority for registration in the Maharashtra quota and responsible for carrying out the process for conselling and admissions in the Medical Colleges situated in the State of Maharashtra.

For participating in the online admission process, he uploaded the necessary documents and also paid the necessary fees so that his

candidature would be considered as per the merit along with the preference indicated by him.

In the State merit list published by MHCET Cell, the petitioner's name is reflected at Serial No.5378 and he was shown to be a candidate eligible to appear in the CAP (Centralize Admission Process) Round-1.

4. The petitioner having been registered with the respondent no.3-MHCET Cell filled in his college preferences on the online portal on 30.08.2024 and locked his choices within the prescribed time lines.

A provisional list for CAP Round – 1 was released on the portal of the respondent no.3 and he was allotted a seat in respondent no.4 College in the open quota.

Not only this, he was also issued a 'Provisional Selection Letter' (CAP-1) indicating that he is provisionally admitted in respondent no.4-College in open quota in first year MBBS course. The Provisional Selection Letter is placed at Annexure 'Y', referring to the selection of the petitioner to an open seat in MBBS course in respondent no.4 College.

This letter also advised that the candidate shall contact the allotted college for details before proceeding for admission by physical joining process and that the selection is provisional, and it shall be confirmed subject to verification of original documents, at the time of physical joining.

5. Pursuant to the said letter, the petitioner uploaded the relevant documents and appeared for its physical verification in the College on 03.09.2024 but since the procedure could not be completed, he was

directed to report along with the requisite documents on 04.09.2024 for establishing his entitlement as per Clause 4.8.1 of the Information Brochure.

Accordingly, the petitioner appeared before the respondent no.4-College along with the documents and upon scrutiny carried out by the Scrutiny Committee of the College, it sought guidance from the MHCET Cell, on the feasibility of claiming exemption from applicability of Clause 4.8.1, an exception to the requirement of passing of SSC (10th standard) and HSC (12th standard) or equivalent examination from the recognized institution in the State of Maharashtra, the exception in favour of employees of the Government of India or its Undertaking.

To the misfortune of the petitioner, the MHCET Cell communicated that the petitioner is not eligible to claim an exception and upon receipt of the said guidance, the respondent no.4-College declared him to be ineligible.

6. The College while seeking guidance, projected before the MHCET Cell, that the father of the petitioner was working with BPCL in Bina Refinery, a Public Sector Company of the Government of India from 09.07.2009 to 07.08.2024 and he resigned from services and joined Reliance Industries Limited and came to be posted at Reliance Petrochemical Complex at Nagothane, District Raigard in Maharashtra on 13.08.2024.

His son Adwait Kamdi passed SSC examination from the State of Madhya Pradesh and HSC examination from the Maharashtra State 'but

since his father is not transferred under the Government posting from where he was working and urgency regarding availing of 4.8.1 facilities for seeking admission to MBBS course, was put-forth since the next day was the last date of CAP Round-1’.

7. It is in this background facts, the petitioner instituted petition on 05.09.2024 and on the very same day the notice was issued to the respondents. On 09.09.2024, ad-interim order came to be granted, which we have already reproduced above and this order continue till date.

8. Shri Dharmadhikari, learned counsel for the petitioner has assertively submitted before us that the case of the petitioner would fall within exception to Clause 4.5, which make it imperative that the candidate to avail the 85% State quota must have passed SSC or equivalent examination from an institution situated in the State of Maharashtra, as Clause 4.5 provides for exception in the form of Annexures ‘C’ and ‘E’.

According to him, as far as Clause 4.6 is concerned, the petitioner has passed his qualifying examination i.e. HSC (12th Standard) from an institution situated in Maharashtra and therefore, this requirement is complied by him.

According to the petitioner, his father was engaged with BPCL which is an Undertaking of the Government of India and since Clause 4.8.1 is an exception to the stipulation of passing of SSC (10th standard) and HSC (12th Standard) or equivalent examination by the children of

employees of Government of India or its Undertaking, he would be covered by the exception as at the relevant time when the petitioner passed his 10th standard examination from an institution outside the State of Maharashtra, his father was posted in Bina Refinery of the BPCL in District Sagar, State of Madhya Pradesh and it is for the candidates like the petitioner, who are the wards of employees of the Government of India or its Undertaking, for whom it is not possible to pass the 10th standard examination from an institution situated in the State of Maharashtra, the benefit is conferred, by carving exemption from the condition of passing 10th standard examination from an institution situated in the State of Maharashtra.

9. Shri Atharva Manohar, learned counsel for the respondent no.4- College and Shri Neeraj Patil, learned Assistant Government Pleader for the State would heavily rely upon the decision of the Apex Court in the case of *Vansh s/o Prakash Dolas vs. Ministry of Education and the Ministry of Health & Family Welfare and others*, reported in **2024 SCC Online SC 342**.

10. In order to resolve the controversy as regards the eligibility of the petitioner, we must take a note of the eligibility prescribed for admission to Health Science Degree Courses by the Information Brochure, which is in form of the Rules governing the admission procedure.

Clause 4 of the said Information Brochure prescribed eligibility and it is imperative that the candidate must be an Indian National and in addition he must be registered with MHCET Cell, through online

application on the website of MHCET Cell. Clause 4.2 is a condition stipulated that the candidate must be domicile of the State of Maharashtra (except with an exception provided therein). Clauses 4.5 and 4.6 prescribed thus:

“4.5 The candidate must have passed the SSC 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)

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.

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.”

11. Clause 4.7 provides an exception in respect of children of employees of the Government of Maharashtra or its Undertaking; whereas, Clause 4.8 stands in the form of an exception for the children of Government of India employees or its Undertaking and since we are concerned with Clause 4.8, we deem it appropriate to reproduce the same as under:

“4.8 Exception for SSC (10th) and HSC (12th) 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 The 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 cut off 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 (Annexures: HH&II).

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.”

12. The petitioner has passed his SSC examination from the CBSE affiliated school DAV BORL Public School, Bina, District Sagar, in Madhya Pradesh in the year 2022.

His father was an employee with BPCL, a Public Sector Company of Government of India from 09.07.2009 to 07.08.2024 and was posted at Bina, District Sagar, Madhya Pradesh, and hence the petitioner cleared his SSC examination from the Madhya Pradesh. He took his qualifying examination of HSC, from an institution situated in Maharashtra, though his father Sanjay Bhagwanji Kamdi, was posted at Bina District Sagar in the State of Madhya Pradesh. However, from 13.08.2024 he took up a job with Reliance Industries Limited and was posted at Reliance Petrochemical Complex at Nagothane, District Raigad in Maharashtra.

It is not in dispute that the petitioner and his parents are domicile of the State of Maharashtra and the BPCL, the employer of the father of the petitioner, issued a certificate reflecting/certifying that Mr. Sanjay Kamdi was permanent employee of the BPCL and he joined BPCL on 09.07.2009 and resigned on 07.08.2024.

The Reliance Industries also issued a certificate reflecting that Mr. Sanjay Kamdi was employed with them since 13.08.2024 in the capacity of Senior General Manager and working at NMD Petrochemical Complex, Nagothane, District Raigad, Maharashtra.

13. The question that arises for consideration is whether the petitioner is entitled to avail the benefit of Clause 4.8, as it is the stand adopted by the respondent no.3 that on the last date of document verification, the

father of the petitioner was no more employed with Government of India undertaking, BPCL as he had resigned on 07.08.2024 and since the petitioner no longer continue in the category of a ward of an employee of Government of India undertaking and he is not entitled to exemption.

We do not subscribe to the opinion of the respondent no.3 and its counsel, since we have noted that for availing a seat in 85% State quota in the Medical Colleges in the State of Maharashtra, a candidate must be domicile of the State of Maharashtra and in addition, he must have passed his SSC (10th Standard) and the qualifying examination i.e. HSC (12th Standard) from an institution situated in the State of Maharashtra but Clause 4.8 provides an exception in respect of children of employees of the Government of India or its Undertaking, considering that these employees are liable to be transferred from time to time and if they are posted out of Maharashtra, it is not possible for their children to pursue their education from an institution situated in the State of Maharashtra but on being transferred to Maharashtra at a place of work located in State of Maharashtra, his ward can pursue his further education in the Medical Colleges situated in the State of Maharashtra as the employee is going to serve in the State of Maharashtra.

This stipulation is however hedged with the proviso, by prescribing that such an employee of Government of India undertaking must have been transferred from outside the 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.

In continuation, Clause 4.8.2 therefore prescribe that the candidates, who are desirous of availing the benefit of Clause 4.8, shall produce requisite certificate from the office at which such employee has reported for duty as a proof of the fact that he has joined the office and/or should report for duty before the cutoff date of eligibility i.e. at the time of document verification. As far as Clause 4.8.3 is concerned, it pertains to the children of the officers of the All India Services, officers of Central Government or its Undertaking and Defence Personnel (including defence services and/or paramilitary forces viz. CRPF, BSF, etc.) having domicile of Maharashtra and posted outside the State of Maharashtra, even though their ward has passed SSC or HSC or equivalent examination from the recognized institution situated outside the State of Maharashtra.

14. The latter part of Clause 4.8.1 was the subject matter of a Special Leave Petition before the Apex Court in the case of *Vansh Prakash Dolas* (supra) and the facts involved therein reflected that the appellant was domicile of the State of Maharashtra and his father was employed in BSF. Owing to the deployment of his father, he was compelled to pass his SSC and HSC education from the school outside the State of Maharashtra.

On his participating in NEET-UG-2023 for the undergraduate MBBS course against the State quota, he was allotted a provisional selection letter but his admission was cancelled and the appellant claimed his entitlement on the basis of Clause 4.8.1 of the NEET-UG-2023

Information Brochure providing an exception to the ‘children of employees of the Government of India or its Undertaking’.

15. The Hon’ble Apex Court in reference to Clause 4.8.1, to be read along with the condition, that the parent of the candidate should have transferred back to the State of Maharashtra and also have reported for duty, must be working as on the last date of the document verification, found it as a condition impossible to fulfill, and we must reproduce the relevant observations in paragraph 21 of the law report.

“21. In the extant admission process, a slight modification has been made in the guidelines inasmuch as, now as per clause 4.8.1 of Information Brochure, the children of employees of the Government of India or its Undertaking have been made eligible for admission even though they might have passed SSC and/or HSC or equivalent exam from a recognised institution situated outside the State of Maharashtra. However, while making such relaxation, a condition has been imposed that the employee of Government of India or its Undertaking being the parent of the candidate should have been transferred back to the State of Maharashtra and also have reported for duty and must be working as on the last date of the document verification at a place located in Maharashtra. We feel that this condition as imposed by the guidelines, creates a stipulation which would be impossible for the candidate or his parent to fulfill. It may be reiterated that the place of posting is not within the control of the employee or the candidate. Thus, the distinction drawn by the clause between two categories of Employees in the Government of India services (i) those posted in Maharashtra and (ii) those posted outside Maharashtra has no nexus with the intent and purpose of the guidelines/rules and hence the same deserves to be read gown to such extent. Thus, this Court has no hesitation in providing that the candidate(s) who are born in Maharashtra and whose parents are also domicile of the State of Maharashtra and are employees of the Government of India

or its Undertaking, such candidate(s) would be entitled to a seat under the Maharashtra State quota irrespective of the place of posting of the parent (s) because the place of deployment would not be under the control of the candidate or his parents.”

16. As far as the rationale in providing an exception by exempting the wards of employees of the Government of India or its Undertaking from passing the SSC (10th standard) and/or HSC (12th standard) or equivalent examination from the institutions situated in the State of Maharashtra, is to grant the benefit to such candidate, who, though domiciled in the State of Maharashtra, because of the deployment of his parent, was required to pursue his 10th standard and 12th standard from the institution situated outside the State of Maharashtra.

If this rationale in introducing Clause 4.8.1 is to be kept in mind, probably we see a clarity, in the facts before us.

The petitioner was required to complete his education upto 10th standard from the State of Madhya Pradesh, since his father continued to serve with the Undertaking of the Government of India but he prosecuted his 12th standard, from the institution in the State of Maharashtra and thus, satisfying the stipulation of taking the qualifying examination from an institution in the State of Maharashtra. But, when he appeared for the SSC examination, he could not have located himself in Maharashtra on account of employment of his father in the State of Madhya Pradesh and therefore, he had taken the examination from the State of Madhya Pradesh.

What is relevant today is not the condition of transfer of his father into the State of Maharashtra but fortuitous circumstances which compelled the petitioner to take his 10th standard examination from an institution outside the State of Maharashtra, as his father was deployed in Bina, District Sagar, Madhya Pradesh and the petitioner was minor then, who accompanied his father for all the while and prosecuted his education from 1st to 10th standard from the State of Madhya Pradesh.

The exception of passing of SSC (10th standard) and HSC (12th Standard) examination by the employees of Government of India or its Undertaking must yield benefit in his favour, as though a domicile of the State of Maharashtra, he was compelled for writing 10th standard examination from the State of Madhya Pradesh (CBSE Board), but keeping in mind the rationale in introducing the exception, in favour of person who is domicile of the State of Maharashtra, we see no reason why the benefit of Clause 4.8.1 shall not be extended to the petitioner and we find the argument of his father resigning, before the date of document verification, to be not creating any impediment in his way.

We specifically put up a query to Shri Gaikwad, learned counsel appearing for the respondent no.3, what would be a situation of a candidate whose father has retired from the service of the Government of India or its Undertaking before the last date of document verification or he has unfortunately demised, then whether the benefit of this Clause should have been refused to such a candidate and his answer is in the negative.

17. For the aforesaid reasons, since the petitioner was constrained to pass his SSC examination from outside the State of Maharashtra as his father was serving with an Undertaking of the Government of India, though he is domicile of the State of Maharashtra, he had to take examination from the institution situated outside the State of Maharashtra, in our opinion, he cannot be deprived of participating in the 85% State quota meant for the candidates who are domicile of the State of Maharashtra and for this reason, we deem it appropriate to confirm his admission in respondent no.4-College granted by way of an ad-interim order dated 09.09.2024.

We direct the respondent nos.3 and 4 to take all necessary steps for confirming the petitioner's admission on the open seat which was allotted to him provisionally on 31.08.2024, in first year MBBS course in CAP-1 round.

Rule is made absolute in aforesaid terms. No order as to costs.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE , J.)

Andurkar.