IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.132 OF 2017

Miss. Lubna Shoukat Mujawar ...Petitioner

Versus

1. State of Maharashtra,
Through its Department of Medical
Education, Mantralaya, Mumbai.

2. Director of Medical Education and
Research, Government Dental College,
And Hospital Building, 4th Floor,
Saint George's Hospital Campus,
P. Demello Road, Fort, Mumbai-1.

3. The Collector,
Mumbai Suburban District,
Administrative Building, 10th Floor,
Government Colony, Bandra (E),
Mumbai – 400 051.

4. Lokmanya Tilak Municipal Medical
College and Hospital, Sion,
Mumbai – 400 022.

5. Maharashtra University of Health
Sciences, Nashik
Dinadori Road, Maharashtra,
Nashik – 422004. ...Respondents

WITH
INTERIM APPLICATION (L) NO.22264 OF 2021
IN
WRIT PETITION NO.132 OF 2017

Miss. Lubna Shoukat Mujawar ...Applicant

In the matter between:-

Miss. Lubna Shoukat Mujawar ...Petitioner

Versus

1. State of Maharashtra,
Through its Department of Medical
Education, Mantralaya, Mumbai.

2. Director of Medical Education and
Research, Government Dental College,
And Hospital Building, 4th Floor,
Saint George's Hospital Campus,
P. Demello Road, Fort, Mumbai-1.

3. The Collector,
Mumbai Suburban District,
Administrative Building, 10th Floor,
Government Colony, Bandra (E),
Mumbai – 400 051.

4. Lokmanya Tilak Municipal Medical
College and Hospital, Sion,
Mumbai – 400 022.

5. Maharashtra University of Health
Sciences, Nashik
Dinadori Road, Maharashtra,
Nashik – 422004. ...Respondents

WITH
INTERIM APPLICATION (L) NO.26534 OF 2023
IN
WRIT PETITION NO.132 OF 2017

Miss. Lubna Shoukat Mujawar ...Applicant

In the matter between:-

Miss. Lubna Shoukat Mujawar ...Petitioner

Versus

1. State of Maharashtra,
Through its Department of Medical
Education, Mantralaya, Mumbai.

2. Director of Medical Education and
Research, Government Dental College,
And Hospital Building, 4th Floor,
Saint George's Hospital Campus,

P. Demello Road, Fort, Mumbai-1.

3. The Collector,
Mumbai Suburban District,
Administrative Building, 10th Floor,
Government Colony, Bandra (E),
Mumbai – 400 051.

4. Lokmanya Tilak Municipal Medical
College and Hospital, Sion,
Mumbai – 400 022.

5. Maharashtra University of Health
Sciences, Nashik
Dinadori Road, Maharashtra,
Nashik – 422004. ...Respondents

Mr. D. V. Sutar with Ms. Anjali Shaw with Mr. Deepak Jain with Ms. Latika Kabad for Petitioner.

Mr. R. V. Govilkar, Senior Advocate with Ms. Shaba N. Khan with Mr. Mihir Govilkar for Respondent No.5-MUHS.

Mr. Abhay L. Patki, Addl. GP for Res/ State. No. 1 to 3.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

Date on which the Arguments were Heard : 7th MAY 2024.
Date on which the Judgment is Pronounced : 9th May 2024.

JUDGMENT :- (Per Jitendra Jain, J.)

1. **Rule**. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge the action of Respondent No.3-Collector and Respondent No.4-College vide communication dated 8th

October 2013 and 1st February 2014 respectively by which the Petitioner's admission to medical course in Respondent No.4-College is sought to be cancelled on account of invalidity of Non-Creamy layer Certificate (hereinafter referred as "said Certificate") on the basis of which the Petitioner had taken admission to the said course.

Narrative of events:-

3. The Petitioner in the year 2012-13 enrolled herself for MBBS course with Respondent No.4-College under OBC category and on the basis of the said Certificate.

4. A Writ Petition was filed by one of the aspiring MBBS student before this Court seeking inquiry with respect to admission to the MBBS course through the OBC category on the basis of the Non-Creamy Layer Certificate. The said Writ Petition was numbered as 7456 of 2012. Pursuant to the orders passed in the said Writ Petition, an enquiry was conducted against all the students who had obtained the admission to MBBS course on the basis of the such Certificate.

5. The Petitioner's father who had obtained the said Certificate was called for hearing by the Enquiry Committee in the month of April and October 2013. The Enquiry Committee came to the conclusion that the Petitioner's father has mis-represented to the Authorities while making application for the said Certificate. The Committee observed

that on the one hand, the Petitioner's father stated that he has given Talaq on 9th October 2008 to his wife and, therefore, the income of the wife was not shown while making the application but at the same time in his statement stated that for the betterment of the children, he used to stay along with his wife. The Committee also doubted the documents on the basis of which the Talaq was granted. The Committee, therefore, concluded that the Petitioner's father has obtained the said Certificate by giving false information.

6. On the basis of the above Enquiry Report, Respondent No.3-College on 8th October 2013 cancelled the said Certificate and consequently, Respondent No.4-College vide communication dated 1st February 2014 cancelled the admission of the Petitioner to the MBBS course. It is on this backdrop that the present petition was filed before this Court on 5th February 2014 challenging the cancellation of the admission and the said Certificate.

7. This Court on 11th February 2014 granted interim relief to the Petitioner by staying the operation of communication dated 1st February 2014, issued by Respondent No.4-College cancelling the admission and further permitting the Petitioner to continue with her MBBS course. The said interim relief continues till today. On 5th April 2019, in a motion taken out by the Petitioner, following order was passed:-

> *"5. However, it is clarified that until further orders, by way of status quo, a decree obtained by the Petitioner on the basis of impugned order passed by this court shall not be disturbed. It is further directed that hereinafter the Petitioner would not be entitled to any of the benefits of which a candidate belonging to OBC is entitled to."*

8. Thereafter, on 6th December 2023, on the request made by the Petitioner, the following order was passed:-

> *"The Petitioner has sought Degree Certificate of MBBS, contending that under the interim order Petitioner has completed the Degree Course. Since the Writ Petition itself is pending, we deem it appropriate to list the Writ petition on board on **14th December 2023** at the bottom of the Admission Board."*

Submission of the Petitioner:-

9. The Petitioner has filed notes of arguments giving dates and events upto 2022. The Petitioner submitted that on 25th July 2017, she has completed her MBBS course and passing certificate was issued to that effect. The Petitioner has also completed her internship as well as served as a Medical Officer in Kolhapur District during the period 22nd January 2022 to 11th October 2022. The Petitioner in the year 2022 has also completed Diploma Course Obstetrics and Gynecology from Shifaa Hospital at Bengaluru, Karnataka. The Petitioner submitted that since her father had given Talaq to her mother on 9th October 2008, the income of the mother was not mentioned by her father while making application for the said Certificate. The Petitioner submitted that her parents were staying together for the sake of the Petitioner and, therefore, merely because they were staying together, the income of

both the parents should not be considered for the purpose of the said Certificate, since they had already obtained Talaq in 2008. The Petitioner further submitted that if the income of her father is considered then the Certificate has been correctly issued as per the Government Resolution dated 14th October 2008, wherein the upper limit of annual income prescribed for obtaining the said Certificate was Rs.4,50,000/-, which was more than what her father was earning. The Petitioner submitted that there is no false information given by her father and, therefore, the action of Respondent Nos.3 and 4 cancelling the Certificate and the admission is illegal and bad in law. The Petitioner has also relied upon the decision in the case of ***Indira Sawhney Vs. Union of India & Ors.***[1], ***Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota Vs. Shukla & Brothers***[2], and lastly, ***State of Orissa Vs. Dhaniram Luhar***[3]. In support of her submissions.

Submission of the Respondents:-

10. The learned Senior Counsel for Respondent No.5-University has relied upon the Enquiry Report and submitted that the Petitioner's father had given false information with respect to the Talaq and also falsely stated that the Petitioner's parents were staying separately when

1 1999 SUPP. 5 SCR
2 2010 (4) SCC 785
3 (2004) 5 SCC 568

infact they were staying together. The learned Senior Counsel further submitted that such a course of action adopted by the Petitioner's father to obtain admission is improper and would set a wrong precedent, if the same is accepted. The learned Senior Counsel further submitted that till today, the income of the Petitioner's mother is not disclosed although, she was working with the Corporation. The submission made by the Petitioner that her mother is a Class-III employee is also not borne out from any record and same is merely stated across the bar and, therefore, no cognizance of the same should be taken. The learned Senior Counsel strongly opposed the petition and the prayers sought therein and justified the action of cancellation of the admission. The learned Counsel for Respondent No.1-State adopted the submissions made by the learned Senior Counsel for Respondent No.5-University and submitted that no lenient view should be taken merely because the Petitioner has completed her course under the interim orders of this Court.

11. We have heard the learned counsel for the Petitioner, Respondent No.1-State and the learned Counsel for Respondent No.5-University and with their assistance have perused the documents annexed to the petition and Affidavit-in-reply.

Analysis & conclusions:-

12. The Petitioner's father in his application dated 25th June 2012

for obtaining Non-Creamy Layer Certificate has stated that his wife is a housewife and her income is Nil. This statement is found to be incorrect since his wife was working with the Corporation as stated by the petitioner as Class-III employee. Therefore, the statement made in the application is found to be incorrect. The reason why the Petitioner's father had given the wrong information would be to avoid being hit by the upper limit of the income which was Rs.4,50,000/- as per Government Resolution 2013 for obtaining the certificate. If the income of the wife would have been given then the total income of the family would have exceeded Rs.4,50,000/- since the Petitioner in the said application has stated that his is income was Rs.4,37,815/- for the financial year 2011-12. It is for this purpose that the Petitioner's father, to circumvent the upper limit specified by Government Resolution had made a false statement.

13. In the application, the Petitioner's father stated that Afroz Jahan, housewife was having no income whereas before the Enquiry Committee, he has stated that on 9th October 2008, he had given Talaq to his wife. If that be so then there was no need for the Petitioner's father in the application made for the certificate to state that Afroz Jahan is his wife. This would lead us to conclude that either the document dated 9th October 2008 giving Talaq is not genuine or the information provided in the application dated 25th June 2012 is

incorrect. In either case, the application is based on an incorrect, wrong and false information.

14. In the application dated 25th June 2012, the Petitioner's father stated that Afroz Jahan income is Nil whereas it is later on surfaced that Afroz Jahan was an employee of the Corporation. Therefore, even on this count, the information mentioned in the application is false.

15. In view of above, the findings of the Enquiry Committee that the application dated 25th June 2012 for Non-Creamy Layer Certificate is obtained on the basis of false information and therefore, any certificate obtained on such basis is correctly required to be cancelled.

16. It is important to note that the claim of the Petitioner's father is that on 9th October 2008, he had given Talaq to his wife but on enquiry, it was found that all the family members including wife were staying together. When confronted with this, the Petitioner's father sought to justify that although he had given Talaq, he was staying with his wife for the betterment of the children. In our view, this is self-contradictory and an afterthought and therefore, the Enquiry Committee was justified in rejecting such a contention.

17. It is also important to note that the Government Resolution and the Office Memorandum providing for upper income limit for

determining the Non-Creamy Layer Certificate do not state that the income of only one of the parents should be considered. In our view, if the total income of both the parents are considered together, then in the absence of any income proof being shown of the mother of the Petitioner although she was employed, an adverse inference would be taken. Therefore, the contention of the Petitioner that even if the income of both the parents is considered, the income of Rs.4,50,000/- would be considered is to be rejected moreso when there was no material on record to show that the Petitioner's mother was Class-III employee.

18. Looked from any angle, there can be no doubt that the basis of cancelling the certificate and the admission is justified since the same was based on false, incorrect and suppression of information. Therefore, the Petitioner's prayer to quash the communication dated 8th October 2013 is to be rejected.

19. However, under the interim orders of this Court which were in operation from February 2014 onwards, the Petitioner has completed the course of MBBS and therefore, it would not be proper at this stage to withdraw the qualification obtained by the Petitioner moreso when the Petitioner has qualified as a Doctor. In our country, where the ratio of the Doctors to the population is very low, any action to withdraw the

qualification obtained by the Petitioner would be a national loss since the citizens of this country would be deprived of one Doctor. However, as observed by us above, the means of obtaining the admission was unfair and has deprived another eligible candidate. We are conscious of high competition in admission to medical course and we are also conscious about high expenses to be incurred to enrol for the said course under the Open Category. However, that would not justify that the student should obtain the unfair means nor would it justify the action of the parents to be a part of the unfair means for getting the admission under the OBC Category. If the medical profession is based on a foundation of false information then certainly it would be a blot on the noble profession. In our view, for that matter the foundation of any student should not be built on the basis of the false information and suppression of the fact. Therefore, in our view, to balance the convenience, we propose to pass the following order :-

O R D E R

(i) Respondent No.3 was justified in cancelling Non-Creamy Layer Certificate of the Petitioner dated 8th October 2013 on the basis of which the admission was obtained in Respondent No.4-College. The Enquiry report is upheld.

(ii) However, on account of passage of time, the qualification obtained by the Petitioner should not be withdrawn by

Respondent No.4 and Respondent No.5, and the said respondents are directed to confer the degree to the Petitioner.

(iii) The admission of the Petitioner in Respondent No.4-College right from year 2012 till completion of the MBBS course would be considered in the "Open Category" and the Petitioner shall pay difference in the fees which an Open Category Candidate was required to pay for the entire course. The said difference in fees shall be deposited by the Petitioner with Respondent No.4-College within a period of 12 weeks from the date of uploading the order.

(iv) The Petitioner is also directed to pay cost of Rs.50,000/- to Respondent No.4-Hospital within a period of 12 weeks from the date of uploading the order.

20. The writ petition is disposed of in above terms. No order as to costs.

21. In view of disposal of Writ Petition, both the Interim Applications do not survive and are disposed of.

[JITENDRA JAIN, J.] [A. S. CHANDURKAR, J.]