



2024 INSC 235

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). _____ OF 2024
(Arising out of SLP (C) No(s). 26179-26180 of 2023)

VANSH S/O PRAKASH DOLAS

....APPELLANT(S)

VERSUS

**THE MINISTRY OF EDUCATION &
THE MINISTRY OF HEALTH &
FAMILY WELFARE & ORS.**

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Leave granted.
2. The appellant has approached this Court for assailing orders dated 5th September, 2023 and 26th October, 2023 passed by the Division Bench of the Bombay High Court Bench at Nagpur in Writ Petition No. 5141 of 2023 and Misc. Civil Application (Review) No. 980 of 2023 in Writ Petition No. 5141 of 2023, respectively.
3. The appellant is a domicile of the State of Maharashtra and
his father is employed in the Border Security Force (BSF) as a Head Constable (General Duty) [HC(GD)]. Owing to the deployment of his

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father outside the State of Maharashtra, the appellant was compelled to complete his Secondary School Certificate (Standard X)(SSC) and Higher School Certificate (Standard XII)(HSC) education from a school outside the State of Maharashtra.

4. The appellant appeared in NEET-UG, 2023 craving admission in the undergraduate MBBS course against the State quota and upon being found meritorious, he was issued a provisional selection letter (CAP1) by the State Common Entrance Cell, Maharashtra on 4th August, 2023 and was allotted a seat in respondent No.6-College. The appellant completed the requisite formalities and paid an amount of Rs.13,500/-by way of admission fees. It may be noted that the appellant had applied for admission under the Other Backward Class/Non-Creamy Layer (OBC/NCL) category as being domicile of the State of Maharashtra.

5. However, without issuing notice and without providing any opportunity of being heard to the appellant, respondent No.6-College issued a letter/communication dated 9th August, 2023 cancelling the admission of the appellant.

6. The letter/communication cancelling the admission was challenged by the appellant by filing Writ Petition No. 5141 of 2023 before the Bombay High Court, Nagpur Bench raising a pertinent

ground that the appellant was entitled to the exception as provided under clause 4.8 of the NEET UG-2023 Information Brochure (hereinafter referred to as 'Information Brochure') which pertains to the 'Children of employees of Government of India or its Undertaking' and that cancellation of his admission was totally illegal and arbitrary.

7. The High Court, after considering the entirety of facts and circumstances dismissed the Writ Petition No. 5141 of 2023 vide order dated 5th September, 2023 holding that the appellant did not satisfy the requirements of clauses 4.8 and 9.4.4 of the Information Brochure. It was held that since the appellant did not select specified reservation i.e., in the category of Children of Defence personnel(DEF), while submitting the online application form, he was precluded from raising such a claim at a belated stage, as being impermissible in view of the rider contained in clause 9.4.4 of the Information Brochure.

8. Being aggrieved and dissatisfied with the order dated 5th September, 2023, the appellant filed Misc. Civil Application (Review) No. 980 of 2023 which too was rejected vide order dated 26th October, 2023. These two orders are assailed in the present appeals.

9. Mr. Kshitij Kothale, learned counsel representing the appellant urged that the High Court misconstrued the appellant's claim to be one under Children of Defence personnel(DEF) category because the appellant had sought admission under the OBC/NCL category as being domicile of the State of Maharashtra.

10. He contended that the appellant and his parents are domicile of the State of Maharashtra. The appellant fulfils the requisite criteria for being admitted in the State quota and stood in merit and was allotted a seat in the OBC/NCL category as a domicile of the State of Maharashtra and, thus, cancellation of appellant's admission by the order dated 9th August 2023 is absolutely unjust and arbitrary in addition to being in gross violation of principles of natural justice.

11. Learned counsel urged that two Division Benches of the Bombay High Court, one at Nagpur Bench in ***Archana Sudhakar Mandulkar v. Dean, Govt. Medical College, Nagpur and others***¹ and the other at Principal Seat at Bombay in ***Rajiv Purshottam Wadhwa v. State of Maharashtra(through it's Dept of Medical Education and Drugs & Others***² examined a

¹ 1986 SCC OnLine Bom 262

² 2000 SCC Online Bom 359

similar set of rules/guidelines as prevailing in the present case and while reading down the rules, provided relief to the candidates therein who were similarly circumstanced as the appellant. He placed reliance on the following excerpts(*infra*) from the judgment in the case of **Archana Sudhakar Mandulkar**(*supra*) and contended that the impugned orders are bad in the eyes of law and the appellant herein deserves the relief sought for by directing the respondents to create an additional seat and thereby protecting admission of the appellant in the ongoing session of MBBS (UG) course:-

“3. Shri Kherdekar, the learned counsel for the petitioner, contended that having regard to the object of the Rules, its background, the language used in Clause B(5) and the ratio of various Supreme Court decisions on the validity of various reservations on region/residence basis, the requirement of passing Indian School Certificate Examination “from an institution located in Maharashtra State” is not intended to be applied to the candidates covered by Rule B(3). It seems to us that the contention is well-founded. Course and the examination of the Indian School Certificate Examination is common all over India. Serviceman has no control on his posting which can be anywhere. Rule of denial of admission to a meritorious son/daughter of a serviceman who is domicile of Maharashtra only because of a fortuitous circumstance of his being not posted at the time of his ward studying in 12th Standard within the State of Maharashtra cannot have any nexus to the object of the Rule. Mere chance cannot be the valid disqualifying factor. Such a Rule will not only be arbitrary and unreasonable but will permit discrimination between two classes of servicemen of Maharashtra domicile lactually posted at material time (i) in Maharashtra and (ii) outside Maharashtra. This classification will be clearly invidious having no nexus whatsoever to the object sought to be achieved. Supreme Court has repeatedly held against denial of admissions only on the basis of residence and/or region. Canons of interpretation mandates that interpretation which

leads to unconstitutionality has to be avoided, and harmonious construction to be preferred, if possible. Thus the Rule will have to be interpreted keeping the above principles in view. The Rule is not clearly worded and does present some difficulty in construing it. It is not as if that Clause C applies universally and without exception to all admissions under the Rule. Take for example cases covered by Rule B(4)(iii) — reservation for son or daughter of Non-resident Indians of Maharashtra origin. Even 20 per cent seats out of category B(3) are reserved for Defence Personnel transferred to the Maharashtra Region. It is in this light and background that Rule B(5) has to be read. The terminology “after excluding validly reserved seats” used in Rule B(5) is significant. It means that all parts of Clause C do not universally apply to validly reserved seats under Clause B. This is not to suggest that no part of Clause C applies to any varieties of reservations mentioned in Clause B. All will depend upon a specie of reservation and its intendment. Construed in that light it seems to us that the last part of Rule C(3)(ii) reading as “from an institution located in Maharashtra State” is not intended to be applied to candidate covered by Clause B(3).”

12. *Per contra*, learned counsel representing the respondents controverted the submissions advanced by the appellant’s counsel. He submitted that the appellant could not have been considered for admission under OBC/NCL category under the State quota because he is not covered under clauses 4.5, 4.6 & 4.8 of the Information Brochure. The appellant did not stake a claim for admission in defence personnel quota and hence, he could not have been given a seat under the said category by virtue of the stipulations contained in clause 9.4.4 of the guidelines. On these grounds, he sought dismissal of the appeals.

13. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned orders.

14. There is no dispute that the appellant and his parents are domicile of the State of Maharashtra. The appellant's father is serving in the Border Security Force(BSF). Owing to deployment of his father outside the State of Maharashtra, the appellant passed his SSC and HSC exams from an institution outside the State of Maharashtra.

15. Clause 4.8 of the Information Brochure provides an exception/relaxation for claiming seat in the Maharashtra State quota to Children of employees of Government of India or its Undertaking who have passed SSC and/or HSC or equivalent examination from the recognized institutions situated outside the State of Maharashtra. However, this clause imposes a rider that such employee of Government of India or its Undertaking being the parent of the candidate seeking admission in the course under the State quota “**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 the State of Maharashtra". The appellant's father was deployed outside the State of Maharashtra in connection with service of the nation and thus, proviso to Clause 4.8 was relied upon by the respondents while cancelling the admission granted to the appellant in CAP1.

(emphasis supplied)

16. Undisputably, but for the above rider in the guidelines, the appellant is qualified to seek admission in the State Domicile (OBC/NCL) category by virtue of clause 4.8 of the Information Brochure and also stands in merit. However, the proviso creates a situation which would be impossible for the appellant to surmount. The appellant who is a domicile of the State of Maharashtra, cannot control the place of deployment of his father who is serving in the paramilitary force i.e., Border Security Force(BSF). Needless to state that the place of deployment cannot be the choice of the employee serving in the armed forces or a paramilitary force. Being the child of a soldier serving on the country's frontiers, the discriminatory and arbitrary treatment meted out to the appellant under the guidelines cannot be countenanced. The High Court, while denying relief to the appellant held that he had not selected any specified reservation

under the head of Children of Defence personnel(DEF) as provided in Clause 9.4.4 of the Information Brochure. However, the fact remains that the appellant had submitted his OBC/NCL credentials/certificates along with the application form and, his claim for admission was clearly against the Maharashtra State quota as being a domicile of the State of Maharashtra whose father was deployed as a Head Constable(General Duty)[HC(GD)] in BSF.

17. The appellant's application was considered favourably and vide communication dated 4th August, 2023, he was granted admission in respondent No.6-College. He also paid the admission fees etc. However, without issuing any notice and without providing opportunity of being heard to the appellant, respondent No.6-College issued the letter/communication dated 9th August, 2023 cancelling his admission in the course. The said letter/communication was promptly challenged by the appellant by filing the captioned writ petition before the Nagpur Bench of the Bombay High Court on the very next day i.e. 10th August, 2023 and he was also provided interim protection by the Court.

18. Before the High Court, the appellant had placed reliance on the Division Bench judgment in the case of **Archana Sudhakar Mandulkar**(*supra*). The relevant guidelines/rules of admission as

extracted in the judgment of **Archana Sudhakar Mandulkar**(*supra*) are quoted hereinbelow for the sake of ready reference: -

“Relevant Clauses of Rules for admission (M.B.B.S.) 1986–87:

Clause B deals with “Reservations”.

Sub clause (1) of Clause B refers to Backward Class etc., sub-clause (2) to Central Government, sub-clause (3) to sons and daughters of servicemen and ex-servicemen, sub-clause (4) to miscellaneous other reservations including son/daughter of Nonresident Indians of Maharashtra origin and sub-clause (5) to Regional Reservation.

Clause B(3) reads thus:—

“(3) Reservation for sons and daughters of servicemen and ex-servicemen— 5 percent seats of the intake capacity of the college limited to five shall be reserved for the children of servicemen as well as ex-servicemen who are domiciles of Maharashtra. The seats so reserved are inclusive of merit;

Clause B(5) reads thus:-

“(5) Regional Reservation— Subject to the exception mentioned in Rule C(6)(iv) below, 70 percent of open seats, after excluding validly reserved seats, available in Government Medical Colleges situated within the jurisdiction of any University in Maharashtra, shall be reserved for the candidates who are eligible as per Rule C below and have passed the requisite qualifying examination from the School/College situated within the jurisdiction of the same University.”

19. The relevant extract from guidelines/rules of admission prevailing in NEET-UG, 2023 germane to the controversy at hand is quoted hereinbelow for sake of ready reference: -

"4.8 Exception for SSC (10th) and HSC (12th) or equivalent examinations:

Children of employees of Government of India or its Undertakings:-

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 Maharashtra.

4.8.2....”

20. On going through the extracted portion of the Division Bench judgment in the case of **Archana Sudhakar Mandulkar**(*supra*), we find that in an almost identical situation which prevails in the case at hand, the Division Bench read down the rule/guideline which provided that the ward of servicemen should have passed his/her 12th standard from an institution located in the State of Maharashtra. The Division Bench held that the servicemen or his ward desiring admission under the State quota could not have had any control over his posting which can be anywhere. The Division Bench held that the rule of denial of admission to a meritorious son/daughter of a serviceman who is domicile of Maharashtra only because of a fortuitous circumstance of his being not posted at the time of his ward studying in 12th standard within the State of Maharashtra cannot have any nexus to the

object of the rule. Mere chance cannot be a valid disqualifying factor. Such rule will not only be arbitrary and unreasonable but will permit discrimination between two classes of servicemen of Maharashtra domicile actually posted at the material time (i) in Maharashtra and (ii) outside Maharashtra. This classification will be clearly invidious having no nexus whatsoever to the object sought to be achieved.

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 down 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.

22. The Division Bench of Bombay High Court at Nagpur while rejecting the writ petition filed by the appellant, fell into manifest error in not considering case of the appellant in the correct perspective. For that reason, the impugned judgment is unsustainable in facts as well as in law. *A fortiori*, the letter/communication dated 9th August, 2023 issued by

respondent No. 6 cancelling the admission granted to the appellant against the Maharashtra State quota in CAP1 without giving opportunity to show cause is also illegal and arbitrary and deserves to be quashed and set aside.

23. However, there is a practical hurdle which comes in the way of the appellant for being provided admission in the MBBS course in the current session which has progressed significantly from August, 2023. More than six months have passed by since the session started. As per the reply of the respondents, no seat is lying vacant in any college in Maharashtra State quota as on date.

24. Undisputably, the appellant has been illegally deprived from his rightful admission in the first year of the MBBS course owing to the insensitive, unjust, illegal and arbitrary approach of the respondents and so also on account of the delay occasioned in the judicial process.

25. This Court in the case of ***Manoj Kumar v. Union of India and Others***³ considered the concept of restitutive relief. Hon'ble P.S. Narasimha, J. speaking for the Bench, observed that concomitant duty of the Constitutional Court is to take reasonable measures to retribute the injured which is the overarching

³ 2024 SCC OnLine SC 163

Constitutional purpose. The relevant paras from the aforesaid judgment are extracted below:-

“19. We are of the opinion that while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to retribute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to secure justice.

20. In public law proceedings, when it is realised that the prayer in the writ petition is unattainable due to passage of time, constitutional courts may not dismiss the writ proceedings on the ground of their perceived futility. In the life of litigation, passage of time can stand both as an ally and adversary. Our duty is to transcend the constraints of time and perform the primary duty of a constitutional court to control and regulate the exercise of power or arbitrary action. By taking the first step, the primary purpose and object of public law proceedings will be subserved.

21. The second step relates to restitution. This operates in a different dimension. Identification and application of appropriate remedial measures poses a significant challenge to constitutional courts, largely attributable to the dual variables of time and limited resources.

22. The temporal gap between the impugned illegal or arbitrary action and their subsequent adjudication by the courts introduces complexities in the provision of restitution. As time elapses, the status of persons, possession, and promises undergoes transformation, directly influencing the nature of relief that may be formulated and granted.

23. The inherent difficulty in bridging the time gap between the illegal impugned action and restitution is certainly not rooted in deficiencies within the law or legal jurisprudence but rather in systemic issues inherent in the adversarial judicial process. The protracted timeline

spanning from the filing of a writ petition, service of notice, filing of counter affidavits, final hearing, and then the eventual delivery of judgment, coupled with subsequent appellate procedures, exacerbates delays. Take for example this very case, the writ petition was filed against the action of the respondent denying appointment on 22.05.2017. The writ petition came to be decided by the Single Judge on 24.01.2018, the Division Bench on 16.10.2018, and then the case was carried to this Court in the year 2019 and we are deciding it in 2024. The delay in this case is not unusual, we see several such cases when our final hearing board moves. Appeals of more than two decades are awaiting consideration. It is distressing but certainly not beyond us. We must and we will find a solution to this problem.”

26. Seen in the light of the above judgment, it is now to be considered as to the measures of restitutive relief which can be provided to the appellant in the present case.

27. This Court in the case of ***S. Krishna Sradha v. State of Andhra Pradesh and Others***⁴ examined the issue of wrongful denial of admission in a medical course, and propounded the theory of ‘restitutive justice’ by holding as below:-

“13. In light of the discussion/observations made hereinabove, a meritorious candidate/ student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical

⁴(2017) 4 SCC 516

course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that

a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain to Admission in MBBS Course only and we have not dealt with post graduate medical course.”

(emphasis supplied)

28. In the light of the above judgment, it would neither be desirable nor justifiable to grant admission to the appellant in the on-going session of the MBBS(UG) course. However, considering the fact that the order cancelling the admission of the appellant

herein was issued on 9th August, 2023 and the writ petition came to be filed before the High Court promptly i.e. on 10th August, 2023, without any delay whatsoever, the appellant is entitled to restoration of his seat in the first year of MBBS(UG) course in the same college in the next session, i.e., NEET UG-2024.

29. We further direct that until a suitable rectification is made in the guidelines/rules, candidate(s) domicile of the State of Maharashtra having acquired SSC and/or HSC qualification from any recognized institution: -

(i) Whose parent(s) are domiciles of Maharashtra and employed in the Central Government or its Undertaking, defence services and/or in paramilitary forces viz. CRPF, BSF, etc. and;

(ii) Such parent(s) are posted at any place in the country as on the last date of document verification, shall be entitled for a seat in MBBS Course in the Maharashtra State quota.

30. It is further directed that the appellant shall be provided admission in the 'OBC category domicile of State of Maharashtra child of person serving the Government of India' in the first year of the MBBS(UG) course commencing from the year 2024 by creating

an additional seat so as to ensure that there is no reduction in the quota of seats to the candidates who succeed in the NEET UG-2024.

31. The impugned orders are set aside. The appeals are accordingly allowed.

32. We also direct respondent No.6-College and respondent No.5-State of Maharashtra to pay compensation to the tune of Rs.1 lakh(Rs. 50,000/- each) to the appellant for the deprivation of one year and harassment on the account of illegal and arbitrary cancellation of his admission.

33. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(RAJESH BINDAL)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI
March 20, 2024.