2024:BHC-OS:19610-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 33329 OF 2024

Anna Mathew .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr. V.M. Thorat and Ms. Pooja Thorat *a/w Mr. Amar Bodke, Mr. Kiran Singh, Ms. Trisha Chowdhari for the Petitioner.*

Ms. Jyoti Chavan, Addl.G.P. *for the Respondent No.1.*

Ms. Meghna Gowalani *for Respondent Nos. 2 and 3.*

CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE: NOVEMBER 27, 2024

Oral Judgement (*Per Somasekhar Sundaresan J.*)

1. Rule. Rule is made returnable forthwith. Respondents waive service. By consent, heard finally.

The Challenge:

2. This Petition challenges two facets of the regulatory framework governing admissions to the post-graduate Health Science (medical) courses in the State of Maharashtra. The Petitioner has graduated from the MBBS course from the Christian Medical College, Vellore, Tamil Nadu ("***CMC Vellore***"), but domiciled in the State of Maharashtra. Admissions to such

post-graduate courses are split between two main 'quotas' – one for MBBS graduates from colleges situated within the State ("***State Quota***"); and another for MBBS graduates from colleges situated outside the State ("***All-India Quota***").

3. The State of Maharashtra has published a policy document titled *Procedure for Selection and Admission for Medical Postgraduate Courses at Maharashtra* ("***NEET-PG-2024***"), which sets out the admission process for post-graduate courses. Paragraph 8.2 and Paragraph 8.3 of the NEET-PG-2004 ("***Impugned Provisions***"), which set out the terms on which a candidate would qualify for the State Quota, have been challenged in this Petition as being unreasonable, discriminatory and thereby arbitrary, violating the principle of equality before the law and equal protection of the law, guaranteed under Article 14 of the Constitution of India.

4. The Petitioner, having chosen to leave Maharashtra for pursuing MBBS in Tamil Nadu, is challenging the conditions imposed for belonging to the State Quota on the premise that she is subjected to discrimination among other domiciles. Having considered the contentions of the parties in relation to the law and policy on the subject, we have no hesitation in holding that there is nothing manifestly arbitrary in the Impugned Provisions to warrant judicial interference under Article 226 of the Constitution of India.

5. Pleadings in the Petition vaguely allude to "Rule 5(A)"[1], which is evidently a reference to Rule 5(1)(A) of the *Maharashtra Unaided Private*

[1] The pleadings refer to Rule 5(A) but erroneously place the rule in the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 ("***the Act***")

Professional Educational Institutions (Regulation of Admission to the Full Time Professional Post Graduate Medical and Dental Courses) Rules, 2017 ("***Rules***"). Some pleadings also ambiguously invoke Article 15 of the Constitution of India. However, the prayers in the Petition only seek to strike down the Impugned Provisions. For felicity, the prayers are extracted below:-

> *(a) call for the relevant records and proceeding from the office of the Respondents and after going into the legality of the same, hold and declare that Rule 8.2 of NEET-PG-2024 is unconstitutional and ultra vires to the extent that the same is violative of Article 14 of Constitution of India.*
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> *(b) hold and declare that Rule 8.3 of NEET PG-2024 is unconstitutional and ultra vires to the extent that the same is violative of Article 14 of the Constitution of India.*

Impugned Provisions:

6. At the threshold, the Impugned Provisions that are under challenge, ought to be noticed and are extracted below:

> *8.2* ***All candidates, who have passed final M.B.B.S degree course examination from the college situated in Maharashtra State*** *and completed one year internship training by 15th August 2024* ***from a recognized medical college*** *(**Annexure-F**) included in the Schedule as per provisions of the NMC act, 2019 and the repealed Indian Medical Council Act, 1956 are eligible. The* ***Medical College should have been affiliated to the Maharashtra University of Health Sciences*** *or Medical College* ***affiliated to Deemed University*** *as per University Grant Commission Act of 1956 under section 13/A,* ***situated in the State of Maharashtra****. The candidate who has obtained provisional or permanent registration either from the National Medical Commission (NMC)/erstwhile MCI or Maharashtra Medical Council (MMC) or other state Council will be eligible for registration for NEET-PG 2024.* ***Candidates who have passed MBBS examination from foreign University are not eligible for Neet-PG 2024 admission process under Competent Authority, State CET Cell.***
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> *8.3* ***The candidates who are domiciled in the State of Maharashtra and who have obtained admission under 15% All India quota of Government Medical Colleges/AIIMS/Central Government Institutions for MBBS course in a medical college/institution situated outside Maharashtra State*** *and thereby have* ***obtained***

> ***the degree from a University situated outside the State of Maharashtra will also be eligible*** *for selection process of NEET-PG 2024. Such candidates should submit (i) certificate from the Dean of respective medical college stating that the candidate was admitted under 15% All India Quota of Government Medical College/AIIMS/Central Government Institutions for MBBS course, and (ii) Candidate's Domicile certificate of Maharashtra State by virtue of residence.*
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> ***[Emphasis Supplied]***

7. It will be seen that in terms of Paragraphs 8.2 of NEET-PG-2024, any candidate who is an MBBS graduate from a recognised medical college or institution situated in Maharashtra and has completed one year internship training by August 15, 2024 would be eligible for admission to post-graduate courses in Health Sciences in Maharashtra under the State Quota irrespective of domicile. The college in question, ought to have been affiliated to the Maharashtra University of Health Sciences or to a Deemed University recognised by the University Grant Commission, but in all cases, it ought to be situated in Maharashtra.

8. Under paragraph 8.3 of the NEET-PG-2024, MBBS graduates who are domiciled in Maharashtra but have obtained the MBBS degree from a college or institution situated outside Maharashtra would qualify for the State Quota for post-graduate courses in Maharashtra, if they had obtained admission under the All-India Quota, to the MBBS course in any Government Medical College or the All India Institute of Medical Sciences ("***AIIMS***"), or any other Central Government Institution.

Analysis and Findings:

9. Since the admission process was underway, we agreed to give priority in hearing the Petition. We have heard, at length, Mr. V.M. Thorat and Ms. Pooja

Thorat, Learned Counsel on behalf of the Petitioner; Ms. Jyoti Chavan, Learned Addl. GP for the State of Maharashtra; and Ms. Meghna Gowalani for Respondents No. 2 and 3 (the State's admissions regulatory authority and the entrance test cell).

10. At the heart of the challenge mounted by the Petitioner is the Petitioner's desire to pursue a post-graduate course in Mumbai, in either the MD (Medicine) or MD (Pediatric) courses. However, the Petitioner seeks to compete for a State Quota seat. The Petitioner is indeed eligible to seek admission in Maharashtra colleges through the All-India Quota and has, in fact, through this route, secured admission to the MD (Pediatric) course at the Seth G.S. Medical College, Mumbai. However, the Petitioner has pleaded that while she is likely to secure admission in any college for MD (Pediatric) in Mumbai, she is desirous of securing admission to MD (Medicine) in Nair Hospital or J.J. Hospital in Mumbai. If she is permitted to compete within the State Quota, she is likely to get admission to either course in any medical college of her choice in Mumbai.

11. The Petitioner has been ranked 1061 in the National Eligibility cum Entrance Test ("***NEET***") exam for post-graduate courses, for 2024. Among the State Quota seats, the Petitioner would compete only with MBBS graduates from colleges in Maharashtra, who have ranked equal to or above her rank. Under the All-India Quota, the Petitioner would have to compete with MBBS graduates from all over India (outside Maharashtra) who are ranked above or equal to her. Presumably such graduates with a higher rank would be more in number as compared with graduates from Maharashtra. As a result, the Petitioner's grievance is that she would be unable to get the widest choice of courses across the widest possible colleges in Mumbai, which she perceives to

be an unfair discrimination against her in her capacity as a domicile of Maharashtra. It is on this basis that the Petitioner has mounted a challenge to the constitutional validity of the Impugned Provisions.

Rules not challenged:

12. At the threshold, it should be noted that the Impugned Provisions are, in their very conceptualisation, only an extract of the policy found in Rule 5 (titled "*Candidate Type*") of the Rules, which were made way back in 2017. Indeed, the Rules have been elaborated upon by Government Resolutions from time to time, with factors being tweaked over the years. However, suffice it to say, the treatment of MBBS graduates from colleges in Maharashtra as Maharashtra State Candidates, and the requirement that Maharashtra-domiciled graduates from colleges outside Maharashtra ought to have obtained their MBBS admission through the All-India Quota, have been a foundational policy features of Rule 5 of the Rules. It is not the NEET-PG-2024 that has introduced these requirements. Rule 5(1) deals with who would constitute a Maharashtra State Candidate. Paragraph 8.2 of the NEET-PG-2004 corresponds to Rule 5(1)(A). Paragraph 8.3 of the NEET-PG-2024 corresponds to Rule 5(1)(B) of the Rules.

13. As stated earlier, although the Petition has vaguely pleaded that "Rule 5(A)" (erroneously alluded to and placed as a provision in the parent Act) is unconstitutional, the *vires* of that rule is not under challenge. The Rules partake the character of delegated legislation made under the Act. They are tabled in the State Legislature for potential modification by the Legislature, and form an integral component of the law governing the subject. The prayers in the Petition do not impugn the Rules and the Impugned Provisions cannot be interfered with, unless Rule 5 is interfered with. When a specific

clarification was sought from Ms. Thorat, Learned Counsel for the Petitioner during the hearing, she explicitly clarified that the Rules are not intended to be challenged, and that the pleading in the Petition is an error, which may be ignored. She would confirm and assert that challenge in the Petition is to the Impugned Provisions as prayed for (and extracted above), and submit that even if they are not struck down, in the facts of the Petitioner's case, the Impugned Provisions could be read down to enable her to be treated eligible for participation in the State Quota, in view of the merits of her credentials.

14. In our opinion, if the Rules constituting subordinate legislation stand undisturbed, the foundation of the Impugned Provisions would stand firm without erosion. Any interpretation of the Impugned Provisions ought to be in conformity with the Rules. In the confirmed absence of a challenge to the Rules, there is no scope to strike down the Impugned Provisions or read them down in a manner that is in conflict with the Rules.

Impugned Provisions Valid:

15. The Petitioner's grievance is that since her MBBS degree is from Tamil Nadu, she would not be an eligible candidate under the State Quota due to Paragraph 8.2 of the NEET-PG-2004. Therefore, that paragraph is assailed as discriminatory by reason of the preference it gives to graduates from Maharashtra including domiciles of other States over candidates domiciled in Maharashtra with graduation from outside Maharashtra. With her status as a student domiciled in Maharashtra, although not a graduate from Maharashtra, the Petitioner seeks to be treated as a candidate eligible for the State Quota.

16. Paragraph 8.3 stands in her way because for such Maharashtra-domiciled graduates from colleges outside Maharashtra, the candidate ought

to have secured admission for MBBS through the All-India Quota in any government medical institute, or the AIIMS or any Central Government Institution. Here the consideration of the classification is two-fold. The first is the choice of only Central Government Institutions, other government medical institutes and AIIMS, and the second is the choice of the All-India Quota route to admission to such institutions. Whether these are reasonable choices is what falls for consideration. The Petitioner neither graduated from such an institute nor obtained admission even in the highly-reputed CMC Vellore through the All-India Quota.

17. Initially, when the matter was argued, we were given an impression by the Learned Counsel for the Petitioner that in 2016, when the Petitioner was admitted to the MBBS course, the admission process for CMC Vellore did not entail an all-India competitive exam and the consequential route of the All-India Quota. According to the Learned Counsel, CMC Vellore had its own admission process in 2016. Consequently, it was submitted, that Paragraph 8.3 was unconstitutional because it left out from the State Quota, Maharashtra-domiciled graduates of highly-ranked institutions such as CMC Vellore even while it included State-domiciled graduates from AIIMS and other government institutes, resulting in an arbitrary discrimination. We were told that only since 2017, CMC Vellore came into the ambit of the standard entrance process followed by all medical colleges across the nation for the MBBS course, and that only in 2017, the All-India Quota component became applicable for the admission process.

18. It was also submitted by Ms. Thorat that AIIMS too had its own examination for admission process in 2016, and there was no reason to differentiate between graduates of AIIMS and CMC Vellore, when each college

had its own path outside the All-India Quota. Such differentiation being unreasonable, it was submitted that our intervention in judicial review was warranted.

19. As a result, it was submitted, the Petitioner was simply being left out of the State Quota when it was not even possible to have obtained admission through the All-India Quota to CMC Vellore. A judgement of the Supreme Court in *Nikhil Himthani Vs State of Uttarakhand & Others*[2] (***Uttarakhand Case***) was presented to argue that discrimination in the form of a stipulation on the manner of admission through a particular examination, was unconstitutional. In that case, a student domiciled in New Delhi was unable to get admitted to a post-graduate course in Uttarakhand despite having graduated in that State. Uttarakhand's admission policy provided that an Uttarakhand graduate from a government medical college in that State would be eligible provided she had obtained admission through that State's pre-medical entrance test. Such test was only applicable to government colleges and when the student had taken admission to MBBS it was not a government college, but later became one. The Supreme Court held the student to be eligible since the college he graduated from had not been a government college when he had taken admission to MBBS, and therefore, there was no entrance examination for him to take for admission. However, subsequently, that college indeed became a government college and the graduate from that college could not be discriminated against because he did not sit for a pre-admission test that did not exist at the relevant time.

[2] (2013) 10 SCC 237

20. We were of the *prima facie* view that if the aforesaid submissions were true, the matter required consideration. It would have meant that CMC Vellore's name having been missed out from Paragraph 8.3 despite being on par with AIIMS, it would present a possibility of directing that CMC Vellore graduates be treated on par with AIIMS graduates. However, when pressed on the actual position in this regard, it became clear to us that in 2016, there was no separate process for admission to CMC Vellore. Candidates could apply for the MBBS course only by participating in the NEET. Indeed, on the basis of the All-India Quota, candidates from any part of India could secure admission to CMC Vellore.

21. Consequently, the ***Uttarakhand Case*** is of no assistance to the Petitioner. It was a case of the policy accepting only graduates of a certain set of colleges and that candidate was indeed a graduate of one of those colleges. When that student took admission, it was not a government college and the pre-admission test was not even applicable at that time. On those facts, the Supreme Court ruled that the condition ought to be read down in favour of that candidate. The policy in question in the ***Uttarakhand Case*** conforms to Paragraph 8.2, which renders every MBBS graduate from a Maharashtra college eligible. Differentiating among that class in the peculiar facts of that candidate was interfered with. Paragraph 8.2 makes no such sub-clarification. It simply renders every MBBS graduate from a college in Maharashtra eligible. Paragraph 8.3 has a sub-classification in the form of the type of college and the manner of admission to such college, but on facts, it is now admitted there is no question of CMC Vellore not being amenable to an entrance process that was applicable to all other colleges.

22. CMC Vellore, being a recognised minority institution, it indeed had a larger preferential quota for students from the Christian community. CMC Vellore is a highly-ranked institution (currently ranked third in India) and is a coveted institution for under-graduate Health Sciences courses. Therefore, only top-ranking and highly meritorious students from the All-India Quota may be able to secure admission through the All-India Quota route to CMC Vellore. It also became clear, as a matter of fact, that the Petitioner secured admission to CMC Vellore only in her capacity as a member of the minority Christian community. Although the All-India Quota route was available for admission to CMC Vellore, the Petitioner did not make the cut through that route, but indeed secured admission in her capacity as a Christian.

23. Once it is clear that despite preference being given to Christian minority community candidates at CMC Vellore, indeed there was scope for admission to CMC Vellore through the All-India Quota, and that candidates had indeed secured admission to MBBS at CMC Vellore through the All-India Quota, it would follow that the condition imposed in Paragraph 8.3 does not impose a condition incapable of being met.

24. On the contrary, it becomes clear that since a Maharashtra-domiciled student seeking to secure admission to an MBBS course in a college outside Maharashtra would need to be a high-performing and top-ranking student to secure admission in a government institution under the All-India Quota, imposing such a requirement constitutes imposing a standard of merit. In our opinion, such a condition stipulates a filter of strong credentials and merit for an outside graduate to be let into the State Quota in Maharashtra. Indeed, even such a candidate is not ineligible to pursue post-graduation in Maharashtra. It must not be forgotten that all these considerations are only for

the sole and narrow purpose of a candidate being treated as eligible for the State Quota. Candidates who do not meet these stipulations would nevertheless have access to the admissions process in Maharashtra from the All-India Quota component. They would fall in the other 50%, which caters to the non-State Quota graduates. In our opinion, there is nothing wrong in such an approach in the policy. Policy-makers who draft subordinate legislation ought to be given reasonable play in the joints to address the local social considerations, and the Impugned Provisions represent a reasonable exercise of such policy formulation. There is nothing perverse in the policy choice underlying the Impugned Provisions, and nothing unreasonable or discriminatory in the policy choice, which itself relates to a sub-class of candidates i.e. the State Quota.

25. Therefore, we are of the opinion that Paragraph 8.3 allowing non-Maharashtra candidates who are domiciled in Maharashtra to apply for post-graduate courses in Maharashtra, provided they had adopted the All-India Quota route of securing admission to MBBS in government medical colleges outside Maharashtra, is an objective, reasonable and defensible requirement. Of course, it may naturally follow that only a few highly meritorious candidates may make the cut for admission to an institution such as AIIMS. That would mean that the factor of domicile is only being checked and balanced by infusing an element of high merit as an attendant condition for allowing such factor.

26. Unlike AIIMS and other government colleges, CMC Vellore is not a government college. Leaving out non-government colleges from the stipulation in Paragraph 8.3 too is reasonably objective. One may argue that the choice of leaving out non-government medical colleges is unwise and they ought to be treated on par with AIIMS, leaving intact the requirement of the

All-India Quota for admission to the MBBS course that the candidate has graduated from. A view that a State policy measure is unwise would not stand elevated to that measure being unconstitutional. One must see manifest perversity and arbitrariness from the provision. Since one-half of the post-graduate seats in Maharashtra are in any case left to graduates from outside Maharashtra and the conditions imposed only deal with infusing a condition of merit for treating such graduates as State Quota candidates, there is nothing manifestly unreasonable and arbitrary in Paragraph 8.3. To reiterate, a perceived lack of wisdom in a policy would not translate into an absence of constitutional validity. Paragraph 8.3 of NEET-PG-2024 (which is but based on Rule 5(1)(B) of the Rules) brings in the domicile factor as an exception to the general rule that MBBS graduates from colleges outside Maharashtra would not qualify for the State Quota. In making such exception for Maharashtra-domiciled graduates from outside the State, the bar has been raised by letting only high-ranking students use the element of domicile to qualify for the State Quota. In any case, a student who does not make the cut indeed may apply through the non-State Quota, and succeed in getting admission in Maharashtra (as the Petitioner has indeed done).

27. Ms. Chavan has also drawn our attention to the brochure of rules published in 2016 for admission to CMC Vellore, and Maharashtra's brochure for post-graduate admissions in 2016, to point out the Petitioner consciously secured admission in 2016 to CMC Vellore and that too using the Christian minority quota, being fully aware that her approach would make her ineligible for the State Quota for post-graduate if the same principles continued to apply when she graduated. That is precisely what has happened, Ms. Chavan would submit, to point out that now the Petitioner is seeking to shrug off the consequences of the conscious choice she had then made. When the Petitioner

could have taken admission in any of the colleges referred to in Paragraph 8.3 through the All-India Quota or to any medical college in Maharashtra, but chose to enter CMC Vellore with a minority quota seat, the Petitioner has forfeited her prospects of being considered eligible for a State Quota seat. A conscious choice having been made in 2016, it is not fair or equitable, Ms. Chavan would argue, for the Petitioner to invoke a perceived right to belong to the Maharashtra State Quota on the basis of her domicile alone. There is considerable force in Ms. Chavan's submission, but that is a matter of equity. It would not be determinative of testing the constitutional validity of the classification assailed, but would assisting in determining whether the equitable and discretionary jurisdiction under Article 226 of the Constitution of India ought to be exercised in the manner sought by the Petitioner.

28. The Petitioner had received offers of admission to MBBS even in colleges situated in Mumbai, and could have pursued MBBS in any government college outside Maharashtra, but made a conscious choice to join CMC Vellore through a quota other than the All-India Quota. She was truly entitled to make such choice, it being her desire to be associated with a high-ranking college such as CMC Vellore. In making that choice, the Petitioner consciously chose not to be regarded as a State Quota candidate for her future post-graduate aspirations in Maharashtra. Indeed, even now, she can compete in the non-State Quota component of seats for the post-graduate course, and she has actually successfully done so. Therefore, her grievance on her entitlement being denied to her is purely a matter of "chance litigation" to bring in an element of constitutional invalidity to somehow widen the range of choices now available, shrugging off the consequences of choices already made in the educational path.

29. Therefore, in our opinion, the Petitioner's exclusion from being a State Quota candidate, by reason of either of the Impugned Provisions in the NEET-PG-2024, contains no element of unfairness or arbitrariness. No interference in judicial review is called for. The policy choices made in the Impugned Provisions are fair, reasonable and constitutionally valid.

30. The State, in our opinion, has been well justified in adopting the policy position adopted in Rule 5 of the Rules into the Impugned Provisions.

Summary of Conclusions:

31. As regards Paragraph 8.2 of the NEET-PG-2024, it should not be forgotten that even for admission to the MBBS course, there is a preference for students who have passed out of secondary school and higher secondary school examinations in the same State, to be regarded as a local student. We allude to the under-graduate criteria, not for stating that it would have a bearing on the constitutional validity of NEET-PG 2024, but to point out that the policy objective of providing an environment of continuity and stability of location for students in their education path within one State, graduating at each stage from within the same State, is well known and regarded.

32. Paragraph 8.2, in fact, is a provision which only stipulates that MBBS graduates from a college within Maharashtra would be eligible for the State Quota seats for post-graduate courses in Maharashtra. Consequently, an MBBS graduate from a college in Maharashtra, regardless of his domicile, would be eligible to pursue post-graduate courses in Maharashtra colleges under the State Quota. All other students from all over India are eligible to apply in the All-India Quota for post-graduate studies in Maharashtra. This is a rational, fair and reasonable framework, with nothing perverse or manifestly

arbitrary in it, to warrant an intervention by way of judicial review. The policy simply applies the same principle of providing stability and continuity in opportunity for graduates of colleges within Maharashtra.

33. Therefore, we find no basis to hold that the provisions of Paragraph 8.2 of the NEET-PG-2024 contain any unreasonable classification to render it unconstitutional or manifestly arbitrary, warranting any interference by us.

34. As regards Paragraph 8.3, the requirement for the post-graduate candidate who may be domiciled in Maharashtra but has graduated from outside Maharashtra, to qualify for the State Quota in Maharashtra is that admission to the MBBS course from which the candidate has graduated, ought to have been obtained through the All-India Quota. We fail to see how this is an unreasonable requirement. The proposition that so long as an MBBS graduate is domiciled in Maharashtra, such candidate should be automatically eligible under the State Quota without any additional requirement being imposed, may be a policy choice but that is not the choice made in the Rules or in the NEET-PG-2024. It is trite law that a perception of a policy choice being unwise cannot lead to the choice being unconstitutional. It may be noted that in *Dr. Sharvil Thatte & Ors. Vs. State of Maharashtra & Ors.*[3], by a judgement dated February 22, 2018, a Division Bench of this Court struck down a provision that required a candidate to be domiciled in Maharashtra to be considered a valid candidate under the State Quota. An obligation that a candidate ***must*** be domiciled to qualify for the State Quota; or an entitlement that a candidate who ***is*** domiciled would automatically qualify for the State Quota; or for that matter such a candidate shall be domiciled but subject to

[3] Writ Petition No. 1814 of 2018

other conditions being met, are all policy choices that the executive and legislative arm must be permitted to make with a reasonable play in the joints. When a choice is made, the judiciary may examine if the policy choice is manifestly arbitrary or perverse and thereby determine the constitutional validity. Perceived lack of wisdom in a policy choice or hardship being occasioned to some segment of society would not automatically make a provision unconstitutional.

35. We find that in Paragraph 8.3, the domiciliary element is drafted into enabling candidates to qualify with the State Quota despite having graduated from outside the State, but with the condition that only students of such high calibre that they were able to obtain admission to government institutes outside Maharashtra under the All-India Quota would qualify. We are not convinced that such a requirement is manifestly arbitrary, warranting an interference by a constitutional Court. On the contrary, under Paragraph 8.3, the tag of being domiciled is not being permitted to undermine Paragraph 8.2. Therefore, a requirement that objectively emphasises the need for high merit to break into the State Quota is a rational objective, considering that the mere element of domicile should not be allowed to undermine students who had invested their efforts and energies into the MBBS course in the State of Maharashtra. Such a requirement also presents an empirically measurable criterion, which also makes it reasonable and objective.

36. There is another facet of the matter that cannot be ignored. When a student makes a choice in pursuing the MBBS course in a particular State, it would follow that the student would be eligible to be treated as a candidate for the State Quota for post-graduate courses in that State. For instance, the Petitioner would be eligible as a State Quota candidate for post-graduate

courses in Tamil Nadu, including in the reputed CMC Vellore that she chose to join. The Petitioner is now seeking to make a new choice that she would now like to come into the State Quota component for admissions to post-graduate courses in the city of Mumbai. Even in Mumbai, it is the Petitioner's own admission that she would be likely secure admission in MD (Medicine) and MD (Pediatrics) across colleges in the city, but not in each and every college by reason of having to compete in the All-India Quota. Every perceived hardship and inconvenience arising out of a legislation or policy, would not result in the legislative provision or policies being regarded as unconstitutional. So long as the policy measure is reasoned and objectively comprehensible, and the measures are commensurate with the objective, judicial review must be slow to make interventions.

37. Since the Petitioner has actually secured admission to a post-graduate course in the Seth G.S. Medical College, Mumbai, it is evident that this Petition is nothing but a form of "chance litigation" to gamble through litigation, a prospect of widening the scope for admission when competing with other candidates. We say nothing beyond noticing the deep sense of entitlement at every stage of choice being made in the course of the journey with education at premium institutions.

38. Therefore, we have no hesitation in holding that neither of the Impugned Provisions is in the realm of manifest arbitrariness, requiring interference from us. The underlying policy is reasonable, rational, justifiable and defensible. Consequently, we dispose of the above Writ Petition without any intervention with either of the Impugned Provisions, and without any measure of reading them down to enable the Petitioner to compete with State Quota candidates.

Case Law on sub-classification – Manish Kumar:

39. We are fortified in our views expressed above by how Courts have time and again emphasised that every differentiation and every perceived discrimination in treatment, would not attract the vice of arbitrariness. Whether the basis of being mindful and discriminating in the exercise of discretion is reasonable is the test to be followed. The following extracts from a judgment by a three-Judge Bench of the Supreme Court in *Manish Kumar v. Union of India and Another*[4] (***Manish Kumar***) elaborately sets out the law on the subject, and would be instructive for the case at hand:-

> ***211.*** *In Ameerunnissa Begum, which involved the challenge to law made by the Nizam as Raj Pramukh of the former State of Hyderabad, we need notice the following : (AIR p. 94, para 11)*
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> > *"11. The nature and scope of the guarantee that is implied in the equal protection clause of the Constitution have been explained and discussed in more than one decision of this Court and do not require repetition.* ***It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects;*** *and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate.* ***Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonably arbitrary; that it does not rest on any rational basis having regard to the objects which the legislature has in view."***
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> ***
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> ***214.*** ***In Triloki Nath Khosa, this Court was called upon to pronounce on subordinate legislation which according to writ petitioners denied them the guarantee of Article 14****. This Court held, inter alia, as follows : (SCC pp. 29-31, paras 18-19, 21 & 31-32)*

[4] (2021) 5 SCC 1

"18. This submission is erroneous in its formulation of a legal proposition governing onus of proof and it is unjustified in the charge that the record discloses no evidence to show the necessity of the new Rule. '11. (b) ***there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.*** *' (Ram Krishna Dalmia, AIR p. 547, para 11.) A rule cannot be struck down as discriminatory on any a priori reasoning.*

'15. ... That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the Rules offend Article 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration.' [State of U.P. v. Kartar Singh, (1964) 6 SCR 679 : AIR 1964 SC 1135 at p. 1138, para 15]

The burden thus is on the respondents to set out facts necessary to sustain the plea of discrimination and to adduce "cogent and convincing evidence" to prove those facts for 'there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification *In Govind Dattatray Kelkar v. Chief Controller of Imports & Exports (at AIR p. 842, para 12) Subba Rao, C.J., speaking for the Court has cited three other decisions of the Court in support of the proposition that '****unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by pleading the necessary material before the Court that the said classification is unreasonable and violative of Article 16 of the Constitution*** *'.*

19. Thus, it is no part of the appellants' burden to justify the classification or to establish its constitutionality. ...
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21. ... ***Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis****. ...*

***

31. ***Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints****; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes*

characterised by different and distinct attainments. ***Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved****.*

32. ***Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view****. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object."*

(emphasis supplied)

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223. ***In the context of the argument that a sub-class cannot be created within a class, the following decisions of this Court were relied upon by the Union*** *to contend that it depends on the availability or absence of a rational basis.*

224. ***In Lord Krishna Sugar Mills Ltd. v. Union of India****, the petitioners challenged the constitutionality of the Sugar Export Promotion Act, 1958 apart from certain orders passed thereunder.* ***The contention taken by the petitioners was that since the declared object of the Act was to earn foreign exchange, compelling only sugar manufacturers which manufactured by vacuum pan process to export sugar was discriminatory. They also pointed out that manufacturers of commodities other than sugar were not compelled to export in the same manner and there was further discrimination.*** *It was while* ***repelling this contention that the Court laid down*** *as follows : (AIR p. 1131, para 21)*

"21. In our opinion, this argument is without substance. The power of Parliament to make laws in relation to foreign exchange is manifest. Entry 36 of the Union List specifically confers jurisdiction on Parliament to legislate in relation to foreign exchange. That Entry, if interpreted widely, would embrace within itself not only laws relating to the control of foreign exchange but also to its acquisition to better the economic stability of the country. The need for foreign exchange to finance the various development schemes was, very properly, not disputed. It is, thus, plain that the object of the Act is in the public interest. If we are to exist as a progressive nation, it is very necessary that we carve out a place for ourselves in the international market. The beginning has to be made, and many a time, it is at a great loss. ***That the Central Government has selected the sugar industry for an export***

> ***programme does not mean that it cannot make a classification of the commodities, bearing in mind which commodity will have an easy market abroad for the purpose of earning foreign exchange. During the Suez crisis, sugar was exported in large quantities from this country, and earned 12.4 crores as foreign exchange. There is nothing on the record to show that export of other commodities was not also undertaken, though it was pointed out in arguments that manganese ore was also exported in a similar manner to earn foreign exchange. It is quite obvious that the Central Government cannot order the export of all and sundry manufactured commodities from the country, without being assured of a market in foreign countries***. *Necessarily, the Government can only embark upon an export policy in relation to those products, for which there is an easy and readily available market abroad. For this reason also,* ***sugar produced by the vacuum pan process may have been selected, because such sugar is perhaps in demand abroad and not sugar produced by any other process.*** *It must be realised that goods manufactured in our country have to stand heavy competition from goods produced abroad, and even this export can only be made at great sacrifice, and is made only to earn foreign exchange, which would not, otherwise, be available."*
>
> ***
>
> ***231.*** *We are of the view that the principles, which governed the* ***legitimacy of the sub-class within a class, is based, essentially, on the very principles, which are discernible in regard to reasonable classification*** *under Article 14. It is clear that* ***the law does not interdict the creation of a class within a class absolutely. Should there be a rational basis for creating a sub-class within a class, then, it is not impermissible.*** *This is the inevitable result of an analysis of the judgments relied upon by the petitioner themselves viz. Sansar Chand Atri v. State of Punjab.* ***The decisions, which have been relied upon by the Union and which we have adverted to, clearly indicate that a class within a sub-class, is indeed not antithetical to the guarantee of equality under Article 14****.*
>
> ***
>
> ***249.*** *We see considerable merit in the stand of the Union. This is not a case where there is no intelligible differentia. The law under scrutiny is an economic measure. As laid down by this Court, in dealing with the challenge on the anvil of Article 14, the Court will not adopt a doctrinaire approach. Representatives of the people are expected to operate on democratic principles. The presumption is that they are conscious of every fact, which would go to sustain the constitutionality of the law.* ***A law cannot operate in a vacuum. In the concrete world, when the law is put into motion in practical experiences, bottlenecks that would flow from its application, are best envisaged by the law givers. Solutions to vexed problems made manifest***

> ***through experience, would indeed require a good deal of experimentation, as long as it passes muster in law. It is no part of a court's function to probe into what it considers to be more wise or a better way to deal with a problem***.
>
> ***[Emphasis Supplied]***

40. The articulation of the law in ***Manish Kumar,*** governing challenges to classification within classes, is a pointer to the approach Courts ought to adopt. Our analysis and findings above comport to the judgement in ***Manish Kumar***.

41. Rule is accordingly discharged and the Writ Petition is dismissed. We have persuaded ourselves not to impose costs purely because the Petitioner is a student.

42. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] **[B. P. COLABAWALLA, J.]**

Laxmi