

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (St) No.96887 OF 2020

1.Mr.Amol Jagdish Baviskar
2.Mr.Zakir Anwar Shaikh
3.Mr.Prashant Prabhakar Tokekar ...Petitioners

Versus

1.The Minister, The Higher And Technical
Education Department Mumbai,
2. The Upper Secretary, The Higher and
Technical Education Department, Mumbai
3. The State Common Entrance Test Cell,
Maharashtra State, Mumbai.
4. The State of Maharashtra ...Respondents

Mr.Sachin Dhakephalkar, for the Petitioners.

Mr.B.V.Samant, AGP for the State.

Mr.Rui A.Rodrigues, for Respondent no.3 (CET).

.....

CORAM : DIPANKAR DATTA CJ &
G.S.KULKARNI, J.

DATED : DECEMBER 11, 2020.

ORAL JUDGEMENT (Per G.S. Kulkarni, J.) :

Rule. Rule returnable forthwith. Respondent waives service. By
consent of the parties, heard finally.

2. A short issue which arises for consideration in this petition is as to whether it was legal and proper for the State Government to issue Circular dated 16 March 2020 to the effect that from the current academic year 2020-21, for admissions to the MBA and MMS courses, candidates who have appeared for the GMAT, MAT and ATMA and XAT examinations would not be eligible to participate in the admission process and only those candidates who have appeared for the MAH-MBA/MMS CET, GMAT and CAT examinations (collectively “**the MS-CET**”) shall only be considered eligible. The impugned Government circular also records that a proposal to make consequential amendment to the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Technical Courses) Rules, 2017 (for short “**said Rules**”) is being undertaken.

3. The petitioners are students who have appeared for the ATMA, i.e, AIMS Test for Management Admission, which was held on 6 July 2020. They appeared on the assumption that the result of the said examination would be considered valid for admission to the MMS/MBA courses, as was previously considered by the respondent-State Government. They appeared for the said examination with an intention

of pursuing the MMS /MBA courses for the academic year 2020-21. It is their case that as a matter of policy of the State Government the ATMA entrance test results as also results of GMAT, MAT, XAT was a valid criteria for seeking admission to the MMS/MBA courses, till the impugned Government circular was notified.

4. The petitioners contend that as under the prevailing criteria they had an option of appearing at the ATMA entrance exam instead of the MS-CET, they did not appear for the MS-CET which was held on 14 March 2020 and 15 March 2020. The petitioners have appeared for the ATMA and have cleared the same. The petitioners contend that by virtue of the impugned Government Circular the petitioners now would not be eligible to seek admission to the MMS/MBA course, as their eligibility would not be within the purview of Rule 10(2) (a) of the said Rules. The petitioners had not noticed the impugned circular before appearing at the ATMA test, as also they were not put to sufficient notice of the fact that the MS-CET would be the only valid test for admissions to the courses like MMS/MBA. The petitioners contend that peculiarly the State CET exam was conducted on 14 March 2020 and 15 March, 2020 which is before the issuance of the impugned Government Circular which was issued on 16 March, 2020. The

petitioners contend that in this situation they not only lost their chance to appear for the MS-CET held for admissions for the current academic year 2020-21 but also as a consequence thereof, would lose the entire academic year as they are now not eligible to seek admission to the 15% seats. The petitioners being seriously prejudiced by this sudden change of the admission criteria also made a representation to the State Common Entrance Test Cell, so that their academic year is not wasted, however without any avail.

5. Mr. Dhakephalkar, learned counsel for the petitioners would submit that the eligibility criteria for admission to the said course could not have been altered by the State Government to the prejudice of the petitioners. This more particularly when all along the State Government had considered the results of the said GMAT, ATMA, XAT as a valid criteria for grant of admissions to the courses like MBA/MMS, as also acknowledged by the impugned Government circular. It is submitted that such action on the part of the State Government is abrupt and arbitrary and violative of the petitioners rights under Article 14 of the Constitution. Mr. Dhakephalkar would also submit that the reasons for issuance of the impugned Government Circular that the mark-sheet of such test (other than the Maharashtra State CET) are not

available on the website for cross checking and hence there is likelihood of manipulation of marks is also not tenable. It is submitted that such assumption is incorrect as the marksheet of the students who have undertaken such entrance examination is available on website of these examining bodies for verification. It is submitted that the petitioners are otherwise fully qualified, except for the impugned Government circular by virtue of which the petitioners would be held ineligible. Mr. Dhakephalkar would hence submit that the impugned Government circular dated 16 March 2020 be quashed and set aside in so far as it is made applicable from the academic year 2020-21.

6. A reply affidavit has been filed on behalf of the State Government by Shri Pramod Ambadas Naik, Joint Director, Technical Education DTE, Maharashtra State to contend, that in exercise of powers conferred by Section 23 of the Maharashtra Unaided Private Professional Education Institutions (Regulation of Admissions and Fees) Act, 2015 the Government of Maharashtra had notified rules to regulate admissions to the First and the Direct Second year admissions for the full time professional post graduate technical courses which includes Engineering, Technology, Pharmacy and Management etc. vide notification dated 24 April, 2017, being the said Rules as noted by us.

It is stated that Rule 5 of the said Rules prescribe various types of candidature. Further sub-rule (2) of Rule 5 provides for the All India candidature by which candidates having Indian nationality are eligible for admission under such category. It is stated that Rule 7 provides for allocation of seats showing the percentage of allocation of seats for various types of candidates to be in accordance with the policy of the Government as specified in Schedule-I for first year of various Post Graduate courses, wherein, 15% of the sanctioned intake are allocated to the All India Candidature Seats. Such candidates as falling under Rule 5(2) of the said rules become eligible for these seats. It is contended that by a notification dated 4 June 2019, the Government of Maharashtra had notified the eligibility conditions and requirements for admissions to the professional educational post graduate courses as per Schedule B appended to the said notification. The criteria which was prevailing for 'All India Candidature', who claimed admissions in the 15% quota to the MBA/MMS course, was the score obtained by the candidates in the ATMA, XAT, MAT and GMAT examinations. This criteria subsisted till the academic year 2019-20 along with MH-CET, CAT and CMAT examinations. It is contended that however the Admissions Regulating Authority found that in the academic year 2018-19 in admissions to the MBA/MMS courses, 31 candidates had procured

bogus score cards of the ATMA examination. The Directorate of Technical Education was accordingly informed vide letter dated 3 October 2019 to verify and submit a report to the Admission Regulating Authority. On an inquiry as made with the ATMA (the agency conducting the examination), it was found that 26 candidates had procured bogus score cards to secure admission to the MBA/MMS course for the academic year 2018-19. The institutions were accordingly informed to cancel their admissions and initiate criminal action against them by letter dated 6 December 2019 issued by the Admissions Authority. Such instances were also found in the academic year 2019-20 by respondent no. 3- State Common Entrance Test Cell. This time about 187 candidates were found to have registered on the basis of bogus ATMA score cards and a show cause notice was issued to such candidates. It is contended that in such situation the State CET cell by its letter dated 6 September 2019 informed the Directorate of Technical Education for removing the ATMA, XAT, MAT examinations from the eligibility conditions for admission for the MBA/MMS course, from the academic year 2020-21. The Directorate of Technical Education deliberated on this issue in a Committee constituted for suggesting such changes and a policy decision was taken not to consider the said ATMA, XAT, MAT, GMAT examinations for admissions

to the MBA/MMS course which came to be notified by the impugned Government Circular, as also a corresponding amendment to the rules was carried out and a notification to that effect was issued on 9 July 2020. It is therefore contended that such action on the part of the State Government is justified and valid.

7. On behalf of respondent no. 3-State Common Entrance Test Cell, a reply affidavit of Shri Pankaj Kumar is placed on record to contend that the impugned Government circular dated 16 March 2020 reflects a policy decision taken by the State Government. It is contended that respondent no. 3 is the implementing authority under the Act and the Rules.

8. An additional affidavit is filed on behalf of the petitioners to place on record further information, namely, that the case of the State Government that the mark-sheets of ATMA, XAT, MAT, GMAT being not available online for cross verification is not correct, inasmuch as the mark-sheets of the petitioners who have undertaken said examinations are already available on the website of the said examining body namely **atmaaims.com**. It is contended that even the All India Council for Technical Education (AICTE) has issued circular on 19 November 2020

notifying that first preference will be given to those candidates who have appeared in any of the entrance test mentioned in Approval Process Handbook (APH) 2020-21 and who are so qualified irrespective of their marks secured in the degree course, as long as minimum marks as per the APH 2020-21 are secured. The AICTE circular also mentions that if vacant seats are still available, candidates shall be selected based on the merit in the qualifying examination and that the States may also use this relaxation while allotting seats through counseling.

9. Mr. Samant, learned AGP for the State and Mr. Rodrigues, learned counsel for respondent no. 3-State Admissions Authority, have made submissions that the reasons as set out in the Government Resolution are reasonable and justify the State Government to take such policy decision to change the criteria. They however would not dispute that the MH-CET was held by the State government on 14 March, 2020 and 15 March, 2020 prior to the issuance of the impugned Government circular.

10. Having heard learned Counsel for the parties, it is quite clear that the candidates score at the ATMA, XAT, MAT, GMAT was considered to be a valid criteria for admission to the 15% quota for admission to

MBA/MMS courses upto the academic year 2019-20, as per the State Rules in vogue, as noted by us. The students who intended to pursue the MBA and MMS courses were thus under a valid assumption that the same criteria would be continued for the next academic year namely the current academic year 2020-21. Under such bonafide belief the petitioners who intended to avail of the said benefits, had accordingly planned to appear for the ATMA, XAT, MAT, GMAT which was to be held in or about July,2020. Since the other option was open, the petitioners decided against appearing at the MH-CET which was conducted by the State Admission Authority on 14 March 2020 and 15 March 2020. However, quite surprisingly after the MS-CET was conducted on 14 March 2020 and 15 March 2020 the State Government issued the impugned circular changing the criteria for admission to MBA/MMS courses by cancelling the eligibility of students who would undertake the ATMA, XAT, MAT, GMAT which was so far held to be valid examination for such admissions.

11. In our opinion it was certainly arbitrary for the State Government to notify such change of the admission criteria after it held the MS-CET on 14 March 2020 and 15 March 2020. The consequence which has emerged from such action of the State Government is quite far

reaching. The petitioners and such similarly placed students never in the wildest of their imagination thought that they would be rendered ineligible for the MMS/MBA courses having decided not to appear for MS-CET and that this would prove fatal to their prospect of securing an admission in the 15% seats, for which the eligibility criteria, was of the candidate having appeared at the ATMA, XAT, MAT, GMAT, being a valid criteria as on the date the MS-CET was conducted on 14 March 2020 and 15 March 2020.

12. The consequence of the impugned Government Circular is harsh and drastic for the students who intended to secure admission to the MBA/MMS course on the basis of ATMA, XAT, MAT, GMAT entrance tests. There is much substance in the contentions as urged on behalf of the petitioners that by such abrupt change in the criteria, the petitioners would suffer loss of one year. In our opinion, it would have been reasonable for the State Government to notify such change in the admission criteria well in advance so that the students could have a reasonable period to prepare themselves and avail the opportunity of appearing at the MS-CET. Such opportunity is certainly deprived to the petitioners.

13. It is settled law that any action on the part of the State Government and more particularly when it is affecting the education prospects of the students, is required to be reasonable and of a nature which would not adversely affect the candidates by any sudden change in the admission criteria. In the present case it is writ large that the MS-CET was conducted earlier and thereafter the criteria immediately came to be changed by issuance of the impugned Government Circular dated 16 March 2020. The petitioners were hence, deprived of opportunity to appear at the MS-CET, in which they would have otherwise appeared if they were to be aware about such change in criteria well in advance.

14. As a result of the above deliberation we are certain that the impugned circular dated 16 March 2020 ought not to create any prejudice to the petitioners to seek admissions to the MBA/MMS course for the academic year 2020-21.

15. Before parting we may observe that we have considered the reasonableness of the impugned Government Circular from the point of view of its applicability for present academic year, hence we have not examined the merits on the basis of which such policy decision was

taken. We may also observe that it is certainly within the powers of the educational authorities to provide for an appropriate admission criteria as also to take appropriate strict action, if admissions are procured on bogus documents.

16. We accordingly, partly allow the present petition by the following order:-

ORDER

(i) The impugned decision as contained in the Government Circular dated 16 March 2020 declaring that the results of ATMA, XAT, MAT, GMAT entrance tests not be a valid eligibility criteria for admissions to the MBA/MMS courses, and only the Maharashtra State CET, CMAT and CET would be considered as valid entrance examinations, shall not operate for admissions being made for the academic year 2020-21 and may operate from the next academic year 2021-22.

(ii) The respondents are directed to consider the petitioners eligibility for admission on the basis of ATMA, XAT, MAT, GMAT examinations for the admission process being undertaken for the current academic year 2020-21.

(iii) Rule is made absolute in the above terms. No costs.

17. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

G.S.KULKARNI, J.

CHIEF JUSTICE