

JUST IN

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■ Development of Multi Storied Parking lot on land belonging to private owners

Your View

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By The Way

A new client had just come in to see a famous lawyer. "Can you tell me how much you charge?", said the client. "Of course", the lawyer replied, "I charge \$200 to answer three questions!" "Well that's a bit steep, isn't it?" "Yes it is", said the lawyer, "And what's your third question?"

90:10 quota matter

M/s. Hariani & Co., rejoices in the setting aside and quashing of the resolution dated 18 June 2009 issued by the Government of Maharashtra (directing 90% seats to be reserved for students passing standard X examination from SSC Board for XI standard admissions and 10% seats for the students passing from other Boards, including ICSE and CBSE) by the Hon'ble High Court, Bombay on 6 July 2009 in Writ Petition (lodging) No. 1204 of 2009. M/s. Hariani & Co., was an integral part of this litigation representing about 90 students and parents of students passing from ICSE & CBSE boards.

Fact shell

The aforesaid Government Resolution dated 18 June 2009 ("GR") was issued by the Government of Maharashtra providing reservation of 90% seats to the students of Standard X passing their examination from the Maharashtra State Board, Pune (SSC Board) for XI standard admissions and balance 10% to the students passing from the other Boards (ICSE, CBSE etc).

The GR was challenged by various Boards/Parents/Students by filing Writ Petitions in the Hon'ble Bombay High Court. The GR was challenged on the ground that the same was unconstitutional, arbitrary, defeating the golden rule of merit cum preference. Further, that the Government had no authority in law to regulate and control the admissions to unaided and/or minority unaided and aided institutions and also on the grounds of equity in terms of Article 14 of the Constitution of India.

The effect of 90% reservation would leave only 10% seats for students of all other Boards in the entire State of Maharashtra in the preferential colleges which every student of higher merit intends to join on the strength of his hard work and merit.

During the pendency of the Writ Petitions a number of Applications were also filed to intervene in the matter. The interveners included the Teacher Parent Association opposing the Petitions and supporting that GR while others intervened to support the case of the Petitioner and prayed for quashing of the GR.

The State defended the GR by taking a stand that it is not a reservation but merely a classification and/or providing of a quota on rationale and reasonable basis. It contended that the method of conducting examinations by the SSC,

CBSE & ICSE Boards, the subjects, the assessment of marks, the syllabus and the grade of students are different for these boards. A strong historical justification was provided for treating students differently and separately passing from the SSC and non-SSC boards. The State submitted that what is guaranteed to a student is his admission to a college but not in a particular preferred college. According to the State Government this was a policy decision which will do justice to the students coming from both the streams and accordingly, no prejudice has been caused to the students passing from other boards.

CONCLUSION

After hearing lengthy arguments advanced by Senior Counsel appearing for the parties over a span of about 7 days, the Hon'ble High Court whilst setting aside the GR has come down heavily on the State Government and following are some of the observations in its order dated 6 July 2009:

1. The decision of the Government is "*arbitrary, without any data and basis and without any proper application of mind.*"
2. All the "*infirmities are patent on the record and the GR has been issued only for achieving political ambitions and to favour students belonging to the SSC Board.*"
3. The Government "*has created an artificial classification when in reality, there is no distinction between the students coming from the different streams of the Boards.*" The classification made, amounts to erosion of the constitutional protection of equality available to the students of all the Boards.
4. "*The distinction stated in the affidavits with regard to forming the basis of classification is hardly realistic and this view had already been taken*" by the High Court, Bombay in the "Percentile case" last year.
5. The Statutory Board had "*no effective participation*" and "*has practically slipped into the hands of the Government functionaries*". They are "*not expected to act on the will of an authority particularly in relation to the matters of such importance which will have great impact not only on the future of the students but on the education system of the State itself.*"
6. The GR "*though attempts to create equality, in fact is entirely founded on principle of inequality, patent discrimination and arbitrariness.*"
7. If the GR is accepted "*then it will be an epitome of unfairness that the students of the higher merit could not be permitted to seek admission to the colleges of their choice.*"

-Viloma Shah & Parag Patil, Advocate Assistants
Ranjit Shetty, Partner

"I am very happy with the decision rendered by the Hon'ble Bombay High Court in the 90:10 quota case. Our (the petitioners') stand is vindicated and children of non-SSC Boards, who have also worked equally hard like students of the State's SSC Board will get a level playing field to pursue their dream careers by seeking admission into colleges of their choice. Equality is a fundamental right granted to every citizen of India by the Constitution of India, and this decision clearly is a thumping victory for the petitioners"

-Pheroze A. Dhanbhoora
P.A. Dhanbhoora & Co., Chartered Accountants
(Parent of an ICSE student)

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