

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.08.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.21026 of 2016
and W.M.P.Nos.17989 and 17990 of 2016

Tejaswinin Thappeta (Minor)
Represented by her Father &
Natural Guardian
Sree Balaji Thappeta Petitioner

Vs.

- 1.Union of India,
Represented by the Secretary,
Ministry of Health and Family Welfare,
New Delhi-1.
- 2.Jawaharlal Institute of Post Graduate
Medical Education & Research (JIPMER)
Represented by its Director,
Puducherry - 605 006.
- 3.Medical Council of India,
Represented by its Secretary,
Dwaraga Phase,
New Delhi. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondents to admit the petitioner into the M.B.B.S. Course under OBC category quota course for the academic year 2016-2017.

For Petitioner : Mr.Manoj Sreevalsan

For Respondents: Mr.P.Saravanan,
Special Central Govt. Panel
Counsel [R1]

Mr.G.Rajagopalan,
Additional
Solicitor General assisted by

Mr.M.T.Arunan [R2]
Mr.V.P.Raman [R3]

O R D E R

A perusal of the material placed before this Court would disclose among other things that the petitioner after passing Higher Secondary Examination had applied for admission to M.B.B.S. course for the academic year 2016-2017 conducted by the second respondent and the on-line registration commenced on 07.03.2016 and the registration closed on 04.05.2016. The petitioner had submitted the on-line application through her school, namely Sri Chaitanya Narayana Junior College, Vijayawada and also underwent entrance examination coaching at Sri Chaitanya Narayana Junior College, Vijayawada and the said institution had also processed the entire submission of the application form through on-line on behalf of all its students including the petitioner herein. The petitioner had also obtained Other Backward Class certificate issued by the Tahsildar, Anantapur Municipal Corporation, Revenue Department, Government of Andhra Pradesh stating that she belongs to "Kummara" or "Kulala" or "Salivahana" (OBC). The petitioner was under the hope that since she had secured very good marks, she would be selected to admission to first year M.B.B.S. course under OBC category. However, to her shock and surprise, when the results were announced, she found that though she secured overall percentile of 99.90000288 marks, she has been categorized under Unreserved category. The reason was due to inadvertent mistake/error committed by the coaching institution which filled up the on-line application form by stating that the petitioner belongs to Unreserved category instead of OBC category and therefore, prays for appropriate orders.

2. The learned counsel appearing for the petitioner would submit that this Court, while entertaining the Writ Petition, has passed an interim order dated 20.06.2016, directing the second respondent to permit the petitioner to attend the counselling to be held on 21.06.2016 under OBC category in the M.B.B.S. Course for the academic year 2016-2017 for the purpose of verification of documents in terms of the prospectus issued by the second respondent and also made it clear that the said interim order is subject to the result of this writ petition and the petitioner herein, by virtue of the interim order, cannot claim any equity at the time of final disposal of the writ petition. Accordingly, the petitioner has participated in the counselling. In the first phase of counselling, 28 candidates belong to OBC category were called and as per the marks obtained by the petitioner, she should have been ranked 16th and whereas, only 8 of them had remained absent and therefore, the petitioner should have been moved up and but for the non submission of the OBC certificate, she would have been selected under the said category. It is the further submission of the learned counsel appearing for the petitioner that the petitioner had also participated in the selection process of counselling for getting admission in any

one of the Government Medical Colleges in Andra Pradesh and the result is also awaited and she has a very bright opportunity of joining the prime institution viz., JIPMER to pursue her career and prays for appropriate orders. The learned counsel appearing for the petitioner in support of his submissions placed reliance upon a judgment of the Hon'ble Supreme Court of India in Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another [(2016) 4 SCC 754].

3. Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General assisted by Mr.M.T.Arunan, learned Standing counsel appearing for the second respondent has drawn the attention of this Court to the counter affidavit and would submit that the petitioner in the entrance examination had secured 99.90002888 percentile and was ranked 134 in the General Unreserved category as per the application in the merit list for the academic year 2016-2017 and though there was a gap of 16 days from the last date of application to download the hall ticket with another gap of 16 days from the down loading of her hall ticket to the examination date. The petitioner did not take any steps to rectify the mistake, claiming her candidature under the OBC category and only at the time of counselling process, realised the said mistake and approached this Court. It is further contended by the learned Standing Counsel appearing for the second respondent that the institution is nowhere responsible for the lapse on the part of the petitioner and if the prayer sought for by the petitioner is granted, which is in violation of the terms of the prospectus, the candidates coming next to her lose selection for no fault of them and the petitioner is not all eligible to be admitted under OBC category for the academic year 2016-2017 batch and prays for dismissal of this Writ Petition.

4. This Court has considered the rival submissions and also perused the materials placed before it.

5. It is the specific case of the petitioner that the petitioner had submitted on-line application through Sri Chaitanya Narayana Junior College, Vijayawada, in which, she underwent coaching for entrance examination and the said institution has only processed the on-line application of the candidates admitted in the said institution and while filling up the relevant columns, an inadvertent mistake had crept in and instead of filling the relevant columns that the petitioner belongs to Other Backward Class, it was wrongly entered as Unreserved Category. The fact remains that the petitioner was issued with OBC Certificate by the Government of Andra Pradesh, Revenue Department in AP02 81579835, dated 29.01.2016 stating that she belongs to "Kummara" or "Kulala" or "Salivahana" Community, which is recognised as Backward Class in terms of the various resolution passed and it was also further stated that she does not belong to

persons/sections (Creamy Layer) mentioned in Column No.3 of the schedule to the Government of India, Department of Personnel & Training proceedings dated 08.09.1993, which came to be modified in a subsequent O.M.dated 09.03.2004 and 14.10.2008. Therefore it is not in serious dispute that the petitioner belong to Other Backward Class category.

6. The effect of the production of OBC certificate, after the last date mentioned in the advertisement, came up for consideration before the Hon'ble Supreme Court of India in the Judgment reported in Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another [(2016) 4 SCC 754]. The facts of the case would disclose that the Department of Health and Family Welfare, Government of NCT of Delhi had published an advertisement inviting applications for selection to the post of staff Nurse and the last date of submission of the application was fixed on 21.01.2008. The appellant therein though submitted his application before the due date and was issued with admit card for entrance examination and was shortlisted for selection, however his name did not appear in the final list of selected candidates. On enquiry, he was informed that he was not selected to the said post for the reason that he had failed to submit the OBC certificate issued by the appropriate authority along with the application form before the last date of submission of application form. The appellant therein made a challenge to the said rejection order by filing a writ petition before the High Court of Delhi, which allowed the writ petition and it was put to challenge by the official respondents in the said writ petition. The Division Bench of Delhi High Court, has set aside the order passed by the learned Single Judge and upheld the order of rejection order. Therefore, the matter reached the portals of the Hon'ble Supreme Court of India by filing a Special Leave Petition and on admission, it was converted as civil appeals. The Hon'ble Supreme Court of India has taken into consideration the judgement in Indra Sawhney Vs. Union of India [1992 Supp (3) SCC 217 : 1992 SCC (Labour & Service) Supp 1] and in paras 15 and 18 observed as follows:

"15...These words embody the raison detre of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the

exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal. (Indra Sawhney case, SCC pp. 433-34 para 251)

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"18. In our considered view, the decision rendered in Pushpa is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in Indra Sawhney and Valsamma Paul wherein this Court after interpretation of Articles 14, 15, 16 and 39-A of the directive principles of State policy held that the object of providing reservation to the Scs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned Single Judge. Hence, the impugned judgment and order passed by the Division Bench is Letters Patent Appeal No.562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in Indra Sawhney and Valsamma Paul. Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned Single Judge in Ram Kumar Gijroya Vs. Govt. (NCT of Delhi) is hereby restored.

The appeals are allowed. No costs".

7. In the considered opinion of this Court, the above cited decision is fully applicable to the facts of this case. No doubt, while filling up the on-line application, the institution, in which, the petitioner has undergone coaching for entrance examination, has wrongly filled the relevant columns as if the petitioner belong to Unreserved category and factually, the petitioner belongs to OBC category and the certificate issued by the Department of Revenue of the

Government of Andra Pradesh dated 29.01.2016, in AP02 81579835 also establish the said fact. The father of the petitioner, releasing the mistake, had approached the second respondent for rectification of the same. However, he was informed that since the counselling is going on, such a request cannot be entertained and therefore, the petitioner has filed this writ petition.

8. The petitioner by virtue of the interim order dated 20.06.2016 was permitted to attend the counselling process be held on 21.06.2016 under OBC category and as per the status list after first round of counselling (category wise) released by the second respondent, the petitioner is coming well within the zone of consideration under OBC category. Therefore, the non submission of the OBC certificate, would not indicate that she belongs to OBC category at the time of filling up the on-line application. In the considered opinion of this Court it is purely an inadvertent mistake and even as per the counter affidavit of the second respondent, the petitioner had secured 99.9000288 percentile in the entrance examination and therefore, she cannot be deprived the benefit of reservation for joining the M.B.B.S. Course for the year 2016-2017.

9. In the result, this writ petition is partly allowed and the second respondent shall take into consideration the status list after first round of counselling (Category wise) released by them and if the petitioner comes within the zone of consideration under OBC category, shall grant her admission into M.B.B.S. Course under OBC category quota for the academic year 2016-2017 subject to fulfillment of other norms. The second respondent is directed to complete the said exercise as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsm

To

The Director, Jawaharlal Institute of Post Graduate Medical Education & Research (JIPMER)
Puducherry - 605 006.

+ 2 CCs to Mr.M.T.Arunan, Advocate sr no 45805[22/8/16]

+ 1 cc to Mr.Manoj Sreevalsan, Advocate SR.45704

Writ Petition No.21026 of 2016

KJI(CO)

En 16.08.16

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