

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.1135 of 2016
& C.M.P.No.14558 of 2016

Jawaharlal Institute of Post-Graduate
Medical Education & research (JIPMER)
Represented by its Director
Pondicherry

...Appellant/Respondent No 2

Vs.

1.Tejaswini Thappeta (Minor)
Rep. By her father & natural guardian
Sree Balaji Thappeta
D.No.5-135-A, Bhairavanagar
Ananatapur, Andhra Pradesh 515 001

2.Union of India
Rep. By its Secretary
Ministry of Health and Family Welfare
New Delhi

3.Medical Council of India
Rep. By its Secretary
Dwaraga Phase
New Delhi

...Respondents/Petitioner/
Respondents 1 & 3

Writ Appeal filed against the order passed dated 10.08.2016
passed in W.P.No.21026 of 2016.

WP.No.21026/2016:Petition under Article 226 of the Constitution
of India praying this Court to direct 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 Appellant : Mr.G.Rajagopalan,
Addl.Solicitor General of India
for Mr.M.T.Arunan

For respondents : Mr.Manoj Sreevalsan for R1

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel for the respective parties.

2. It appears that though the writ petitioner/1st respondent herein had secured 99.9000288 percentile in the entrance examination and she was ranked 134 in the General (UR) category and further secured 987 marks out of 1000 in the Intermediate Examination conducted by the Board of Intermediate Examination, Andhra Pradesh, just because her on-line application for admission to M.B.B.S. course for the academic year 2016-2017 had been submitted through her School/coaching centre viz., Sri Chaitanya Narayana Junior College, Vijayawada, who committed an inadvertent mistake/error in the on-line application form, by stating that the petitioner belongs to Unreserved category instead of OBC category, even though the writ petitioner had 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), she could not get admission into the M.B.B.S. Course under OBC category quota, for the academic year 2016-17. The Writ Petition filed by the 1st respondent herein was partly allowed by the learned Single Judge by order dated 10.08.2016. Aggrieved by the said order, the appellant/2nd respondent has filed the present Writ Appeal.

3. The learned Single Judge, by taking note of the fact that the in the first phase of counselling, 28 candidates belong to OBC category were called and as per the marks obtained by the writ 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. Further the learned Single Judge, by going through the specific case of the petitioner that she was issued with OBC Certificate by the Government of Andhra Pradesh, Revenue Department in AP 02-81579835, dated 29.01.2016 and that she does not belong to section of Creamy Layer mentioned in Column No.3 of the schedule to the Government of India, Department of Personnel & Training Proceedings dated 08.09.1993 etc, and by following the ratio laid down by the Supreme Court in the case reported in Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another [(2016) 4 SCC 754] and Indra Sawhney Vs. Union of India [1992 Supp (3) SCC 217 : 1992 SCC (Labour & Service) Supp 1], held that it is purely an inadvertent mistake and even as per the counter affidavit of the 2nd 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 2016-17.

4. Now, before this court, the learned counsel appearing for the 1st respondent submitted that the 1st respondent attended counselling under OBC category in the M.B.B.S. Course for the purpose of verification of documents in terms of the prospects issued by the 2nd respondent.

5. The learned Additional Solicitor General of India submitted that while the 1st respondent furnished her on-line application only under Unreserved category, the admission sought for by her under OBC category, is in violation of the terms of the prospectus.

6. However, in this case, as noted by the learned Single Judge, reservation not sought under OBC in the on-line application is purely because of the inadvertent mistake of the institution, which filled up the form, however, necessary community certificates of the 1st respondent that she belongs to OBC category, has been produced before counselling. Further, even though the 1st respondent was hopeful in getting the seat even under Unreserved category, only by a fraction of marks in the total cut off marks, she could not get admission. However, she is very much eligible to be considered for admission as she holds Rank No.16 in the OBC and if the writ petitioner/1st respondent herein is not considered for admission under OBC category, other rank holders behind her would get the opportunity for admission, which would only lead to anomaly and the meritorious candidate viz., the 1st respondent would be denied admission in the selection process.

7. The reasoning given by the learned Single Judge following the ratio laid down by the Supreme Court in the cases (i) Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another [(2016) 4 SCC 754] and (ii) Indra Sawhney Vs. Union of India [1992 Supp (3) SCC 217 : 1992 SCC (Labour & Service) Supp 1], would come to the rescue of the 1st respondent, who is stated to be belonging to backward section of the society and the reservation is only meant to be addressed to the social, educational and economic backwardness.

8. The learned Single Judge, after going through the factual position directed the second respondent to take into consideration the status list after first round of counselling and if the writ petitioner come 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. In our view, the said direction was given after taking note of the other extraneous

circumstances of the case and by following the ratio laid down by the Supreme Court (cited supra). Such being the case, we find no reason to interfere with the order of the learned Single Judge. Accordingly, we confirm the order of the learned Single Judge and the Writ Appeal is dismissed. However, the decision taken by this court is on the consideration of extraneous facts and circumstances of the case and the same cannot be treated as precedent for other cases. No costs. Consequently, connected CMP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nvsri
To

1. Tejaswini Thappeta (Minor)
Rep. By her father & natural guardian
Sree Balaji Thappeta
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2. Union of India
Rep. By its Secretary
Ministry of Health and Family Welfare
New Delhi

3. Medical Council of India
Rep. By its Secretary
Dwaraga Phase
New Delhi

+1 cc to Mr.M.T.Arunan Advocate sr 51873/16

+1 cc to Mr.Manoj Srivalsan Advocate sr 51860/16

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