

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.40102 of 2015

ORDER :

Heard Sri G. Ramachandra Reddy, counsel for petitioner; the learned Government Pleader for Medical Health (Telangana) for respondent nos.1 and 4, Sri T. Nageswararao, learned Standing Counsel for respondent nos.2 and 3, and Sri B. Sudhakar Reddy, counsel for 5th respondent.

2. The petitioner had obtained Bachelor in Unani Medicine degree and had appeared for the Common Entrance Test conducted in 2015-16 for admission into Post-Graduate Course in Unani Course (M.D. Unani Course). She secured 36th rank in the merit list. She belongs to BC-E category from Osmania University region. However, even though she obtained a higher rank than the 5th respondent, who secured 55th rank, the 5th respondent was provided admission. This is challenged in the present Writ Petition.

3. The petitioner contends that the 5th respondent had, in fact, obtained a community certificate stating that she belonged to BC-E category, and she had in fact undergone the B.U.M.S. Course (the under-graduate course) on that basis only, but when she applied for

admission to the Post-Graduate Course in 2015-16, she claimed to belong to BC-B category. The petitioner therefore contended that respondent nos.1 to 4 ought not to have accepted that 5th respondent belonged to BC-B category and could not have given admission to her to the Post-Graduate Course on that basis. She contends that if 5th respondent is not granted admission to the said course, the petitioner, who has got a better rank would have got admission to the said course.

4. The counsel for petitioner contended that as per the prospectus a candidate claiming reservation under the B.C. community quota has to produce a certificate of her social status in the form specified and appended as Annexure – II to application; Clause 15 (5) of the prospectus mandates that an applicant should enclose along with filled-in application form, the certificate of caste or social status as in the proforma issued by Mandal Revenue Officer; sub-clause (11) of Clause 15 directs that application submitted without the social status or caste certificate would be rejected automatically; in the counter filed by 2nd respondent it is specifically stated that although the 5th respondent applied for M.D. (Unani) course under the BC-B category, she did not enclose thereto her social status certificate as in the proforma issued by the Mandal Revenue Officer as mandated by sub-Clause (5) of Clause 15, and she only submitted or

enclosed a copy of receipt issued by the Andhra Pradesh On-line acknowledging receipt of an application filed by 5th respondent for issuance of a community certificate dt.18.08.2015. He contended that even in the hall-ticket issued to 5th respondent for attending the said entrance exam there is a remark "*caste proof not clear*", and this itself indicates that even respondent nos.2 to 4 entertained a doubt about the genuineness of her claim to belong to BC-B community, and therefore, the respondent nos.2 to 4 ought not to have admitted the 5th respondent to M.D. (Unani) course on the basis of community certificate produced by 5th respondent at the time of counseling, particularly when such community certificate was issued on 03.10.2015.

5. The learned Standing Counsel for respondent nos.2 and 3 did not dispute the terms of prospectus referred to above and was unable to explain how the 5th respondent's application for admission into the M.D. (Unani) course could have been considered when the 5th respondent did not enclose social status/community certificate in the proforma issued by the Mandal Revenue Officer along with her application. It is the stand of learned Standing Counsel for respondent nos.2 and 3 that on 16.11.2015, when counseling took place, a social status certificate was produced by 5th respondent showing that

she belonged to BC-B category. According to respondent nos.2 and 3, the 2nd respondent directed 4th respondent to send the social status certificate submitted by candidates to the District Collector concerned for enquiry, and since the District Collector had confirmed that the 5th respondent belonged to BC-E category on 09.12.2015, the 5th respondent came to be admitted to M.D. (Unani) course.

6. The counsel for 5th respondent has produced the community certificate issued by Mandal Revenue Officer concerned on 03.10.2015 to 5th respondent. He did not dispute the fact that the On-line application for the M.D. (Unani) course was submitted by 5th respondent on 09.09.2015 without enclosing the community certificate attesting to the caste status of BC-B claimed by 5th respondent, and admitted that 5th respondent had submitted only the receipt issued on 18.08.2015 by the Andhra Pradesh On-line acknowledging receipt of application by 5th respondent for issuing a community and date of birth certificate, claiming BC-B community status. He relied upon Rule 19 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 issued vide G.O.Ms.No.58 Social Welfare (J), dt.12.05.1997 under the Andhra Pradesh

(Scheduled Castes, Scheduled Tribes and Backward Class) Regulation of Issue of Community Certificates Act, 1993, and contended that if an enquiry relating to community status of any applicant for a community certificate under that Act is getting delayed, the above Rule permits the competent authority to inform this fact to the Principal of Educational Institution or other competent authority to admit a candidate to the course of study as a provisional admission which will be subject to the final order to be passed by competent authority under this Act. He therefore contended that since the Revenue Divisional Officer, who is the competent authority had issued the community certificate on 03.10.2015 to 5th respondent stating that she belongs to BC-B category, the admission already granted to petitioner may not be disturbed.

7. The learned Government Pleader for Medical and Health adopted the submissions of the learned Standing Counsel for 2nd respondent-University.

8. From the facts narrated above, it is clear that the prospectus issued by 2nd respondent-University for admission to the M.D. (Unani) course mandates under Clause 4.2 that a candidate claiming reservation under the BC community quota to produce a certificate of her social status in the form specified and appended as Annexure – II in the application, and Clause 15(5) mandates that the social status/community certificate in

the proforma issued by Mandal Revenue Officer should be enclosed to the filled-in application form submitted by an applicant for admission to the said course. It is also not disputed that note (1) below sub-Clause (11) of Clause 15 of the prospectus mandates that applications submitted without such social status certificate or other certificates mentioned in Clause 15 would stand rejected automatically.

9. In the present case, the 2nd respondent-University has categorically stated that what was enclosed to 5th respondent's application for admission to the M.D. (Unani) course claiming BC-B category was only an attested copy of receipt issued by the Andhra Pradesh Online acknowledging receipt of application made by 5th respondent to issue a community certificate to 5th respondent under BC-B category. This application was made by 5th respondent on 18.08.2015. It is not in dispute that prior thereto the 5th respondent had claimed admission to the Under-Graduate Unani Course as belonging to BC-E community and not BC-B community. Therefore, by filing this application, the 5th respondent wanted a change in her community status, i.e., from BC-E to BC-B category. That the 2nd respondent also entertained a doubt about the status of 5th respondent is clear from the hall-ticket issued to 5th respondent which

specifically states in the marks column that “*caste proof not clear*”.

10. Having regard to the note (1) referred to above in the prospectus below sub-Clause (11) of Clause 15, I am of the considered opinion that 2nd respondent ought not to have considered the application of 5th respondent for admission to the M.D. (Unani) course since it is the admitted case of 2nd respondent that 5th respondent did not submit her social status certificate in the proforma issued by Mandal Revenue Officer along with her application. The purpose behind the rule so mentioned in the prospectus is clear, i.e., to avoid any controversy about the eligibility of any candidate and to ensure that the process of admission gets completed without any subsequent detailed enquiries into issues such as social status. Having framed such a norm, the 2nd respondent should have strictly adhered to it, and could not have made any exception in the case of 5th respondent.

11. Coming to the contention of 5th respondent that Rule 19 of the Rules framed under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997, the said Rule states as under :

“Provisional admission/appointment : - If the last date for admission to an educational institution/appointment

to an office/post is getting expired, and there is delay in finalizing the enquiry and issuing of Community, Nativity and Date of Birth Certificate by the Competent Authority, then the Competent Authority may inform the Principal of that educational institution/appointing authority/employer or such other authority competent in this behalf, to admit/appoint the candidate, on the basis of the declaration given by the candidate/parent/guardian before the Competent Authority, while applying in Form I/II as per Rule 5, for the issuance of the Community, Nativity and Date of Birth Certificate. Such admission or appointment shall only be provisional and valid for three months from the date of the communication by the Competent Authority to the Principal/employer/appointing authority as the case may be, and shall cease to be valid after the issuance of the Community, Nativity and Date of Birth Certificate by the Competent Authority, based on the conclusion of the enquiry.”

12. In my opinion, such a rule might come in handy in a situation where an application for a community certificate is made before the competent authority for the first time, and the purpose of the rule appears to be to facilitate a student to get admission pending adjudication of her community status by the competent authority, since the student would not have any control about the duration of such an enquiry. The said rule cannot be applied to a situation where the student wants a change of the community status. Therefore, the reliance by the counsel for 5th respondent on the said Rule is misplaced.

13. In this view of the matter, the Writ Petition is allowed, and respondent nos.2 to 4 are directed to set aside the admission of 5th respondent to the M.D. (Unani)

course under the BC-B category; and consider the claim of petitioner for admission into the said course under the BC-E category keeping in mind the rank obtained by petitioner in the said category.

14. The said exercise shall be completed within three (03) weeks from the date of receipt of copy of the order. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27-01-2016

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