

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.Nos.1904 and 1908 of 2018
and
C.M.P.Nos.15376 and 15387 of 2018

W.A.No.1904 of 2018:

Unnamalai, M.R. Appellant/Petitioner

-vs-

1.Tamil Nadu Dr.M.G.R.Medical University,
rep.by its Registrar,
No.69, Anna Salai, Guindy,
Chennai-600 032.

2.The Principal,
RVS Dental College and Hospital,
Kumaran Kottam Campus, Trichy Road,
Kannampalayam, Coimbatore-641 402.

3.The Secretary,
Selection Committee 2017-18,
Director of Medical Education,
151, EVR Periyar Road, Kilpauk,
Chennai-600 010.

4.The Dental Council of India
rep.by Chairman,
Aiwan-E-Galib Marg, Kotla Road,
Opposite to Mata Sundari College for Women,
Near I.T.O., New Delhi-110 002.

... Respondents/Respondents`

W.A.No.1908 of 2018:

The Principal,
RVS Dental College and Hospital,
Trichy Road, Kannampalayam,
Coimbatore-641 402.

... Appellant/2nd Respondent

-vs-

1.Tamil Nadu Dr.M.G.R.Medical University,
rep.by its Registrar,
No.69, Anna Salai, Guindy,
Chennai-600 032.

2.The Secretary,
Selection Committee 2017-18,
Director of Medical Education,
151, EVR Periyar Road, Kilpauk,
Chennai-600 010.

3.The Dental Council of India
rep.by Chairman,
Aiwan-E-Galib Marg, Kotla Road,
Near I.T.O., New Delhi-110 002.

4.Unnamalai, M.R. Respondents

Appeals filed under Clause 15 of the Letters Patent, against
the order passed by this Court in W.P.No.17690 of 2018 dated
03.08.2018.

Prayer in WP.17690/18:Filed under Article 226 of the
constitution of India for issue of writ of mandamus to direct
the respondents to forthwith accept the petitioner's community
certificate belonging to Nagaram Community and to allow her to
continue and complete the BDS course on the basis of the
admission made in the second respondent college.

W.A.No.1904 of 2018:

For Appellant :: Mr.L.Chandrakumar

For Respondents:: Mr.Haja Mohideen Gisthi for R1

Mr.Isaac Mohanlal, Sr.Counsel for
Mr.Godson Swaminath for R2

Mr.C.Munusamy, Spl.GP for R3

Mr.P.R.Gopinath for R4

W.A.No.1908 of 2018:

For Appellant :: Mr.Isaac Mohanlal, Sr.Counsel
for Mr.Godson Swaminath

For Respondents:: Mr.Haja Mohideen Gisthi for R1
Mr.C.Munusamy, Spl.GP for R2
Mr.P.R.Gopinath for R3
Mr.L.Chandrakumar for R4

COMMON JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.)

The case of the appellant in W.A.No.1904 of 2018 is that after completing her studies in Higher Secondary School, she has applied for professional course of NEET in 2017-2018 for MBBS/BDS admission. She belonged to Nagaram Community, which is recognised as Backward Community. On the basis of the Community Certificate of her mother and that the Nagaram Chetti community is classified as Backward Class, she was admitted to the first year BDS Degree course in the second respondent-College in August-September 2017. By proceedings of the first respondent addressed to the second respondent, it was informed that she had not satisfied the eligibility marks of 131 for UR candidate, whereas she had obtained only 107. It was stated by the authority that the appellant is not eligible to pursue the course, as she belongs to UR/OC. It was further stated that on 09.05.2018, the appellant produced her Community Certificate showing as BC community. However, on 02.06.2018, the second respondent-College was informed by the first respondent-University that as the name of the appellant is not found in the Selection Committee list, it was requested to get the allotment order for the appellant from the Selection Committee of Tamil Nadu for inclusion in the Selection Committee list.

2. With the above background, the appellant in W.A.No.1904 of 2018 filed a writ petition before this Court in W.P.No.17690 of 2018 praying for issuance of a Writ of Mandamus to direct the respondents to forthwith accept her Community Certificate belonging to Nagaram Community and to allow her to continue and complete the BDS course on the basis of the admission made in the second respondent-College.

3. After hearing both sides, the learned single Judge dismissed the writ petition by order dated 03.08.2018. The relevant paragraphs of the order are extracted hereunder:

"9. The second respondent-College ought not to have admitted the students. In this case, the student has taken up the examination. As it is clear wilful mistake on the part of the College in admitting the students, if this is allowed, it will give a wrong signal to every college to admit the students and try to get it ratified. As the student had already been admitted, this Court is of the view that College shall not be permitted to fill up the Management Quota for the academic year 2018-2019. If this is done, a strong signal will be given to all the Colleges that are admitting the students in the Management Quota, and that, if any College commits mistake, the filling up of management quota seats in its entirety, shall be stopped, as it is not good for the society to mushroom the growth of ineligible Doctors.

... ..

14.The purpose of NEET is to ensure that the meritorious students are allotted seats and the contention that the seats are vacant, cannot be a ground for a person securing lesser marks to get admission in the College. If this is allowed, every College will start admitting the students under some pretext or the other, thereby defeating the purpose of NEET and the directions of the Apex Court. Hence, I am of the view that the petitioner will not be eligible to be accommodated. Therefore, the prayer of the petitioner that as the Community that she belongs to is Nagaram, she may be allowed to continue BDS course and the admission was made by the second respondent-College, cannot be accepted. The contention that it is only for the purpose of filling up the application, she has mentioned as UR, and that she did not have any certificate at that point of time, and that, she genuinely belongs to BC, cannot be a ground for continuing the course. It may be true that she belongs to BC, but for the reasons stated supra, for the purpose of the continuation of the course, she is not entitled to the relief.

15.It is the duty of the petitioner/student to fill up the Community in the application form. If a wrong Community is mentioned, the candidate can be considered only in the UR category and at a later point of time, even if the genuine Community Certificate is produced, the candidature of the student need not be considered in the Community to which the student belongs to."

4.Challenging the order passed by the learned single Judge, the student has come up with W.A.No.1904 of 2018 and the college has come up with W.A.No.1908 of 2018.

5.The learned counsel appearing for the student has submitted that the student belongs to Nagaram Community and she had also produced her Community Certificate that she belongs to Nagaram Community, a classified BC Community, based on which the college had chosen to provisionally admit her and allowed her to continue and complete the 1-year BDS Course. Further, the provisional selection was not made in any of the seats reserved for Government quota. The counsel also submitted that the order of the learned single Judge denying continuance and completion of the BDS Course consequent upon admission and continuance for the entire academic year and that too, when the student was to take part in the first year examination, for which the fee, etc. were all collected in advance and in spite of having undergone the first year course, the direction to the effect that no right to continue in the course at this distance of time without cancellation of the provisional selection is opposed to well settled principles of law amounting to denial of legitimate

expectation. Stating so, he prayed for setting aside the order passed by the learned single Judge and to grant the prayer as sought for in the writ petition.

6.The learned senior counsel appearing for the college has submitted that as per the usual procedure, whenever there were lapsed seats, the College would wait till the closing date for admission and if no further candidates were forwarded by the Selection Committee, the College will fill up the seats by itself, as there would be no other option left. In this case, 5 lapsed seats were filled up by strictly following the merit list published by the Selection Committee, following NEET ranking and the College filled up 26 lapsed seats under the Management Quota following the merit list. Out of 60 candidates forwarded by the Government, 2 did not join and 2 seats over and above 5, also fell vacant. The appellant was among the 26 candidates admitted by following NEET ranking. The appellant has secured 107 marks, which is the cut-off mark fixed for the students under BC category. Her admission was provisional, subject to production of the Community Certificate, as she claimed that she belongs to BC community.

7.Mr.C.Munusamy, learned Special Government Pleader appearing for the Selection Committee has submitted that during the time of counselling, the original documents/ certificates in respect of the Nativity Certificate and the Community Certificate issued by the competent Revenue Authority, of each candidate, were verified by the Selection Committee and only eligible candidates were allowed to take admission to MBBS/BDS course as per merit and rule of reservation. The candidates who have not fulfilled the above said condition of Nativity, were not allowed to take admission. He also submitted that based on the order of the Supreme Court in W.P.(C).No.267 of 2017, dated 09.05.2017, in order to ascertain the number of seats that still remain vacant after the counselling, the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion of counselling, the State Government shall determine the number of seats that are still vacant and thereafter, shall forward a list of students in order of merit, equalling to ten times the number of vacant seats to the medical college, so that in case of any stray vacancy arising in any College, the said seat may be filled up from the said list. As such, the list of candidates as per merit list, has been handed over to the Colleges and the Management has filled up the seats accordingly. He further submitted that based on the direction issued by the Hon'ble Supreme Court in W.P.(C).No.267 of 2017, the appellant in W.A.No.1904 of 2018 has been allotted a seat for BDS course in the second respondent-College during the academic year 2017-2018 session, but she has failed to produce any substantial proof in support of her community. Hence, her name was not considered for registration. Moreover, she has applied under UR

category. The marks in the NEET-UG 2017 to be eligible for UR category was 131, but the appellant/candidate has secured 107. Therefore, it mandated the deletion of her name from the Selection Committee list and her name was not included in the list of registration sent to the first respondent-Dr.M.G.R. Medical University. Stating so, he prayed for dismissal of the appeal.

8.Heard the learned counsel on either side and perused the materials available on record.

9.It is the submission of the learned counsel for the Selection Committee that during the time of counselling, the original documents/ certificates in respect of the Nativity Certificate and the Community Certificate issued by the competent Revenue Authority, of each candidate, were verified by the Selection Committee and only eligible candidates were allowed to take admission to MBBS/BDS course as per merit and rule of reservation. The candidates who have not fulfilled the above said condition of Nativity, were not allowed to take admission. But the fact remains that the application filed by the appellant/student for getting Community Certificate was delayed to be considered by the Government. Since she was not able to get the Certificate at the relevant point of time, she applied under the UR category.

10.The college has also given provisional admission to the student, subject to production of the Community Certificate, as she claimed that she belongs to BC community. Indisputably, the competent authority has issued a certificate stating that the candidate belongs to Backward Community and for the Backward Community qualifying mark is 107, which she scored in NEET exams. Thus there is no misrepresentation by the student nor any mistake committed by the college. The moment she got the certificate, she has produced it before the college. Thus, we find no suppression on the part of the student. It is only an irregularity and not illegality. Further, she has been admitted in the college under Management quota and completed the first year.

11.In these circumstances, we are of the view that the admission of the appellant in W.A.No.1904 of 2018 /student, in the second respondent college need not be disturbed. Hence, we set aside the impugned order passed by the learned single Judge and direct the respondents in W.A.No.1904 of 2018 to forthwith accept the appellant's community certificate that she belongs to Backward Community and approve her admission and to allow her to continue and complete the BDS Course on the basis of the admission made in the college. In view of the above findings, the directions issued against the college / the appellant in W.A.No.1908 of 2018 are liable to be set aside and accordingly set aside.

12.With the above observation and direction, the writ appeals are allowed. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Guindy, Chennai-600 032.
- 2.The Principal,
RVS Dental College and Hospital,
Kumaran Kottam Campus, Trichy Road,
Kannampalayam, Coimbatore-641 402.
- 3.The Secretary,
Selection Committee 2017-18,
Director of Medical Education,
151, EVR Periyar Road, Kilpauk,
Chennai-600 010.
- 4.The Chairman,
Dental Council of India
Aiwan-E-Galib Marg, Kotla Road,
Opposite to Mata Sundari College for Women,
Near I.T.O., New Delhi-110 002.

+1cc to Government Pleader SR.NO.65846
+1cc to Mr.L.Chandra kumar, Advocate SR.NO.65572
+1cc to Mr.Isaac Chambers SR.NO.65554
+1cc to Mrs.P.Rajalakshmi, Advocate SR.NO..65470
+1cc to Mr.S.Haja Mohideen Gisthi, Advocate SR.NO.65321

PVS(CO)
sm:26.10.2018

W.A.Nos.1904 and 1908
of 2018
and
C.M.P.Nos.15376 and 15387
of 2018