

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17690 of 2018
and
W.M.P.No.20957 of 2018

Unnamalai.MR.

.. 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-10.
 4. The Dental Council of India,
Represented by Chairman,
Aiwan-E-Galib Marg, Kotla Road,
Opposite to Mata Sundari College for Women,
Near I.T.O., New Delhi-110 002.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a 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.

For petitioner : Mr.L.Chandrakumar
For respondents: Ms.P.Rajalakshmi for R-1

Mr.Issac Mohanlal, Senior Counsel
for M/s.H.Mary Sowmi Rexi for
M/s.Issac Chambers for R-2

Mrs.V.Annalakshmi, Govt. Advocate for R-3

Mr.Haja Mohideen Gisthi for R-4

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a 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.

2. It is the case of the petitioner that after completing her studies in Higher Secondary School, she has applied for professional course of NEET in 2017-2018 for MBBS/BDS admission. The petitioner 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 of 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 the petitioner had not satisfied the eligibility marks of 131 for UR candidate, whereas she had obtained only 107. It is stated by the authority that the petitioner is not eligible to pursue the course, as she belongs to UR/OC. It is further stated that on 09.05.2018, the petitioner 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 petitioner is not found in the Selection Committee list, it was requested to get the allotment order for the petitioner from the Selection Committee of Tamil Nadu for inclusion in the Selection Committee list.

3. By filing counter affidavit, learned Senior Counsel appearing for the second respondent-College submitted that the College is a private self-financing institution. It is stated that the annual intake for BDS course was 100, out

of which, 65% of the seats are allotted as Government quota and the remaining 35% seats are to be filled up under the Management quota. The Government, for the academic year 2017-2018, has forwarded only 60 candidates under its quota for 65 seats and the remaining 5 seats fell vacant due to non-allotment of the students to the College by the third respondent-Selection Committee.

4. It is further contended by the learned Senior Counsel appearing for the second respondent-College that in the Management quota, through the third respondent-Selection Committee, only 9 candidates joined the College out of 35 and the remaining 26 seats remained vacant. The last date for admission was 10.09.2017 and the counselling for BDS was over on 07.09.2017. 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 third respondent-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 petitioner was among 26 candidates admitted by following NEET ranking. The petitioner 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. At the time of admission, the petitioner stated that she never claimed any benefits using her BC Community Certificate and therefore, she did not have the Community Certificate with her. It is further stated that she requested some time for production of her Community Certificate and she was provisionally admitted in the second respondent-College for the academic year 2017-2018. The petitioner's name was not included in the Selection Committee list and she was not issued with the allotment order due to non-production of her Community Certificate. The College has sent several letters for production of the Community Certificate and the last one was on 19.04.2018. Since the petitioner has not availed any benefits using the Community identity, she has declared herself as an unreserved candidate in the NEET application. The College expected the petitioner to produce the Community Certificate to get her name included in the Selection Committee list and get the allotment order. It is further stated that she was permitted to continue the course due to her parents' insistence, who stated that they would

produce the Community Certificate soon. It is also stated that since the petitioner has produced her Community Certificate now, the official respondents and the University may be directed to accept the Community Certificate and approve her admission. Hence, learned counsel for the second respondent-College submitted that taking note of the vacant seats in the College and that the petitioner has completed the first year, she may be permitted to pursue the further years and are willing to abide by the order of this Court.

5. The learned Government Advocate appearing for the third respondent, by filing counter affidavit, 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, they were not allowed to take admission. The merit list for admission to the Government Medical/Dental Colleges and the Government quota seats in self-financing college/Dental College will be prepared among the applicants from the State of Tamil Nadu based on the State merit by following the rule of reservation and that the merit list for admission to the Management Quota--MBBS/BDS seats in self-financing medical/dental colleges, will be prepared among the applicants from All Over India based on State merit only. The State of Tamil Nadu has followed the marks obtained by the candidates in the NEET alone for preparing the merit list. As per the schedule prescribed by the Apex Court in W.P.No.711 of 2017, dated 22.08.2017 filed by Ashish Rajan and others, the last date for filling up the vacancies for the concerned academic year was 04.09.2017 and all admissions to MBBS course in Government and self-financing colleges were completed.

6. It is further contended by the learned Government Advocate appearing for the third respondent-Selection Committee 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.

7. It is further submitted by the learned Government Advocate appearing for the third respondent-Selection Committee that based on the above direction of the Supreme Court, the petitioner 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 petitioner/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. The third respondent prayed for dismissal of the Writ Petition, as it is devoid of merits.

8. Heard both sides and perused the materials available on record.

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.

10. If the students who have been admitted by the College by violation of the process in the Management quota, are allowed to become Doctors, the Society at large will be affected. It is mandatory to mention the Community in the NEET application. If the Community is mentioned, at a later point of time it cannot be changed. Under the guise of provisional admission, the College cannot justify their stand to regularise the illegality. As stated supra, even though she belongs to BC, she has to declare it in the NEET

application, failing which, she cannot fall back upon that Community.

11. The contention of the learned Senior Counsel appearing for the second respondent-College that they have received only the Government fee for the Management Quota, cannot justify their stand. Looking at from any angle, the College does not want to lose a seat and the money payable for the seat as fees. That is the reason why they have collected the Government fee for the Management Quota. If the entire seats are filled up, numbering 100, then, for all the 35 seats under the Management Quota, certainly the fees would have been collected at the rate prescribed for the Management Quota and not under the Government Quota. They would have collected only Management Quota fee and not the fee prescribed for the Government seat.

12. In this case, the petitioner has secured 107 marks in NEET and she has been declared that she belonged to UR. The eligibility under UR category is 131, but the petitioner has secured only 107 marks. The facts discussed in the previous paragraphs are not in dispute. The case of the petitioner is that she did not have the Community Certificate at the time applying for NEET. In this case, it is not in dispute that the petitioner has mentioned in the application as UR category. It is mandatory that the application will have to be filled up and that it is open for the petitioner either to select the Community to which she belongs to or give up the Community and accept the seat based on the merit list by declaring her Community as OC/UR.

13. The contention of the petitioner that even though she has stated that she did not have the Community Certificate at the relevant point of time, she has filled up the application and that is the reason why she has mentioned as UR, cannot be accepted. In the NEET, the category is mentioned. The petitioner will have to mention the category to which she belongs to. When once she fails to mention, it is deemed that she has given up the Community that she belongs to, even though she may belong to BC. The contention is that the College has also admitted her provisionally, subject to the production of the Community Certificate. Strictly speaking, the College should not have admitted her, as her name does not find place in the Selection Committee. The name of the petitioner/candidate was also not forwarded. Even though the petitioner belongs to BC community, she has declared that she belongs to UR, and she has given up the BC category for the purpose of getting admission into the College. It is contended that the seats are vacant and that

there are seats allotted by the Government, numbering 60 and that 2 students out of 60 seats that have been allotted by the Government, has gone vacant, and that, out of 35 seats in the Management Quota, only 9 have been filled up and the remaining fell vacant. The vacancy in the Management Quota cannot be a ground for permitting the petitioner/candidate to pursue her course.

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.

16. For the foregoing reasonings, the Writ Petition is dismissed with a direction to the second respondent-College that for the academic year 2018-2019, the Management Quota seats shall not be filled up by the College for the irregularities committed by them. The petitioner has no right to continue in the Course, as she has secured only 107 marks and for getting a seat, she must have secured 131 marks meant for OC/UR. The petitioner has given up the BC Community at the time of filling up of NEET application and she preferred to apply under UR category. The Community mentioned in the NEET application will be final and it cannot be altered even if the person belongs to a different Community insofar as medical course is concerned.

No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

CS

To:

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-10.
4. The Dental Council of India,
Represented by Chairman,
Aiwan-E-Galib Marg, Kotla Road,
Opposite to Mata Sundari College for Women,
Near I.T.O., New Delhi-110 002.

+1 cc to MR.S.HAJAMOHIDEEN GIRSTHI Advocate SR.NO. 53498
+1 cc to MR.L.CHANDRAKUMAR Advocate SR.NO. 53415
+1 cc to MR.GOVERNMENT PLEADER Advocate SR.NO. 54084
+1 cc to MR.ISAAC CHAMBERS Advocate SR.NO. 53335

W.P.No.17690 of 2018

GMR(CO)
ASK(20/08/2018)

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