

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 16/7/2019****Order Delivered on 19/07/2019****WPC No. 2387 of 2019**

1. Angel Paul Masih D/o Shri Rajesh Paul Masih, Aged About 18 Years, R/o House No. 309-G, Vivekanand Ward No.06, Durga, Chowk, Kondagaon, District Kondagaon (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through the Secretary, Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (CG)
2. Directorate Of Medical Education, Raipur Through Its Director, Old Nurses Hostel, DKS Bhawan Parisar, Raipur, District Raipur (CG)
3. Dean, Late Baliram Kashyap Smiriti Government Medical College, Dimrapal, District Jagdalpur (CG).

---- Respondent

For Petitioner	:	Shri Mateen Siddique, Advocate
For Respondents	:	Shri Gagan Tiwari, Dy. Govt. Advocate.

Hon'ble Shri P. R. Ramchandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J****19/07/2019**

1. Challenge in this petition is to the action on the part of respondent authorities in denying admission to the petitioner in Government Medical College at Jagdalpur.
2. The petitioner student, an aspirant for admission to the medical course, has preferred this petition for grant of following reliefs:-

“10.1 This Hon'ble Court may kindly be pleased to quash the impugned order dated 09.07.2019 issued by the respondent Dean, Late Shri Baliram Kashyap Memorial Medical College, Jagdalpur (Annexure-

P/1)

10.2 This Hon'ble Court may kindly be pleased to direct the respondent authority to admit the petitioner on the basis of finding given by the Director, Director of Medical Education vide dated 08.07.2019 in MBBS seat at Baliram Kashyap Memorial Medical College, Jagdalpur or in alternative to consider the case of petitioner and allow the petitioner for participate in counselling/admission process in MBBS course & also direct to do afresh counselling or consider the candidature of petitioner in next counselling for NEET (UG) 2019.

10.3 This Hon'ble Court may kindly be pleased to direct the respondent authority to consider the case of petitioner on the basis of Social Status Certificate Dated 08.07.2019.

10.4 This Hon'ble Court may kindly be pleased to grant any other relief(s)/writ(s), order(s) in favour of the petitioner, which the Hon'ble Court deemed fit & just in the facts & circumstances of the case, including awarding of the costs to the petitioner.”

3. Facts of the case, in brief, are that the petitioner appeared in the National Eligibility Entrance Test, 2019 (for short 'NEET') held for admission in MBBS Course as a Scheduled Tribe (Female) Category candidate. The petitioner had secured 86.77036 percentile and her overall merit ranking is '185397'. Her overall rank in unreserved category was '2655' in the State of Chhattisgarh, whereas in the reserved category of Scheduled Tribe (Female), the petitioner was ranked 83rd all over the State. After coming out successful in the entrance examination, provisional allotment letter (Annexure P-8) was issued to the petitioner allotting her seat reserved for Scheduled Tribe (Female) category at 'Late Baliram Kashyap Medical College, Jagdalpur', subject to scrutiny of original testimonials of the petitioner. On 8.7.2019 the petitioner appeared before the authority concerned for admission in the said college but the same was denied to her for want of scrutiny of her original

testimonials.

4. Learned counsel for the petitioner submits that though there is mention of Rule 7 of the 'Chhattisgarh Medical, Dental & Physiotherapy Under Graduate Admission Rules, 2018' (for short 'the Admission Rules of 2018') in the Annexure P-1, but the admission was denied to the petitioner only on the ground that due to closure of scrutiny portal at 4.30 p.m. of 8.7.2019, the scrutiny of the documents of the petitioner could not be done, but this cannot be attributed to the petitioner because she reached the said institute at about 1.00 p.m. i.e. much prior to closing of scrutiny portal. He further argued that even Rule 7 (iii) of the Admission Rules, 2018 is not applicable in the present case because the original documents issued in favour of the petitioner after the date of registration for first counselling can be considered in the second round of counselling which took place after the date of issuance of original document i.e. permanent caste certificate. He also submitted that the petitioner at the time of her registration has already uploaded temporary caste certificate issued by the competent authority i.e. Tahsildar, Konta, District South Bastar Dantewada certifying that she belongs to 'Gond', a scheduled tribe, and therefore permanent caste certificate obtained by the petitioner after the date of registration for counselling will not, in any manner, change the social status of the petitioner. He submits that despite issuance of letter dated 8.7.2019 (Annexure P-10) by respondent No.2 himself according permission for admission, the admission has been denied to the petitioner. Reliance is placed on the judgements of the Hon'ble Supreme Court

in the matters of **Dolly Chhanda v. Chairman, JEE & ors** reported in **(2005) 9 SCC 779**; **Ram Kumar Gijoriya v. Delhi Subordinate Services Selection Board and another** reported in (2016) 4 SCC 754 and also the order dated 22.8.2017 passed by this Court in WPC No.2182/2017.

5. On the other hand, learned counsel appearing for the State submits that the State Government has framed the Admission Rules, 2018 and Rule 7 (ii) specifically provides that a candidate applying for registration for counselling is required to scan and upload all his/her original documents/ testimonials in the online counselling portal. He further submits that Rule 7 (ii) provides that any original document issued after the date of registration shall not be admissible. It further provides that if the documents are not uploaded in the portal, as required under Rule 7 (ii), the candidate will become ineligible for process of counselling. He submits that Admission Rules of 2018 specifically provide that if the original documents as mentioned in Rule (xxi) are not uploaded in the online counselling portal at the time of registration itself, then the said candidate will not be considered for the purpose of counselling as he/she will become ineligible to be considered in the procedure for counselling. He also submitted that the authorities who were sitting at scrutiny centre have taken into consideration that petitioner did not comply with Rule 7 (ii) and referred Rule 7 (iii) in the Annexure P-1, but only due to letter of respondent No.2 (Annexure P-10), she was considered. He further submits that even letter of Annexure P-10 is contrary to the Admission Rules, 2018 and therefore cannot be taken into

consideration.

6. We have heard learned counsel for the parties and perused the documents annexed with the writ petition.
7. The question which arises for consideration of this Court is whether the petitioner can be permitted to participate in second round of counselling as she on the date when appeared for counselling was possessing requisite caste certificate i.e. Scheduled Tribe category, issued in her favour only on 8.7.2019 i.e. the date on which she appeared for verification of document and the said certificate was issued much after closing date of registration.
8. In the matter of **Dolly Chanda v. Chairman, JEE & ors** reported in **(2005) 9 SCC 779** the Hon'ble Supreme Court has considered the issue regarding non-production of proof of qualification (reservation as scheduled tribe category) on the date fixed and held as under:-

“6. The appellant has filed a copy of the certificate dated 3.10.2001 issued by Signal Abhilekh Karyalaya, Signals Records, Post Bag No.5, Jabalpur (M.P.), which certifies that Ex-NK Manoranjan Chhanda resident of VPO Larambha, District Sambalpur (Orissa) is suffering from permanent disability. The certificate produced by the appellant on 7.7.2003 was issued by Zilla Sainik Board on 28.6.2003 and in this certificate a mistake had crept in, namely, in Column No.3 pertaining to "Disabled/killed in war/hostilities", the words "not eligible" were written. This mistake was rectified in the second certificate issued by the Zilla Sainik Board on 16.7.2003 where in Column No.3 the words "Permanently disabled" were written. The factual position, viz., that the appellant's father Manoranjan Chhanda was discharged from army on account of permanent disability is not at all disputed by the respondents. Similarly, the correctness of the second certificate issued by the Zilla Sainik Board, Sambalpur, wherein it was mentioned that Ex-NK Manoranjan Chhanda had suffered permanent disability is also not disputed. The only ground on which the appellant's candidature was rejected is that at the time of the counselling on 7.7.2003 she failed to produce the

certificate to show that she belongs to a reserved category.

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

9. This Court in WPC NO.2182/17, parties being Princy Meshram v.

State of CG & anr, has also dealt with almost identical issue and while allowing the writ petition has observed as under:-

“6.The aforesaid position notwithstanding, we may notice that the Petitioner is hardly 18 years of age. A girl child belonging to a community which has been identified as Scheduled Caste needs support to progress and to achieve the goal of multi-facet equality within the framework of the constitutional goals. Under such circumstances, taking a cue from the relevant provisions of Part III as well as from the Directive Principles of State Policy in the Constitution of India, we are inclined to take a lenient view on the peculiar facts and circumstances of the case in hand and hold that the Petitioner deserves to be permitted, on sympathetic grounds, to participate in the counselling process which has reached the second round. She would be permitted to participate in view of the certificate which she has shown to exist, provided that she produces its original before the authority at the time of counselling.”

10. Perusal of Annexure P-3, which is caste certificate issued by the

Tahsildar, Konta, District South Bastar Dantewada, reveals that

petitioner herein belongs to Gond caste, a scheduled tribe. Admit card (Annexure P-5) of the petitioner shows that the petitioner appeared in the examination under the category of scheduled tribe.

11. It is not disputed that last date for registration for the purpose of counselling was '28.6.2019' and as per Rule 7 (ii) of the Admission Rules, 2018, at the time of registration for counselling the candidate is required to scan and upload all relevant and requisite documents in the online counselling portal. It further mentions that if the original documents are not scanned and uploaded, the candidate concerned will become ineligible for counselling process. It is not the case of the petitioner that she made application for grant of permanent caste certificate before the last date of registration for counselling i.e. '28.6.2019', and for the fault of others or some other reason, the permanent caste certificate could not be issued to her. Rather, it is a case where application for grant of permanent caste certificate itself has been made on 5.7.2019 i.e. after the expiry of date of registration for counselling, as is evident from Annexure P-4 which is permanent caste certificate in which at the top the date of filing of electronic application is mentioned as '5.7.2019'. Date of issuance of caste certificate is '8.7.2019'.
12. Respondent No.2 on the same day i.e. on 8.7.2019 had issued a letter mentioning therein that prior to the date of registration for counselling, permanent caste certificate has not been obtained and uploaded, the petitioner was declared ineligible on the ground that the same could be obtained only on 8.7.2019. She uploaded temporary caste certificate at the time of registration for counselling

and therefore treating her to be a candidate belonging to scheduled tribe, allotment of a medical seat be made in her favour on the basis of Allotment No.A185 i.e provisional allotment letter.

13. In view of the specific provision under Rule 7 of the Admission Rules, 2018, respondent No.2 does not have any authority to permit admission contrary to the admission rules framed by the State Government. Respondent No.2 cannot by-pass the Rules framed by the State Government. Therefore, the learned counsel for respondents is right in saying that in the reply to the writ petition they have specifically pleaded that Admission Rules, 2018 do not permit any candidate to be considered for counselling when the original document has not been issued before the last date of registration i.e. 28.6.2019, and the said document will not be accepted. In fact, the candidate will be declared disqualified for proceeding of counselling and thereby they have also pleaded that the petitioner cannot derive any benefit by virtue of letter dated 8.7.2019 contrary to the Admission Rules, 2019 as the said letter has been issued without jurisdiction.
14. As regards the reliance on the judgment in Ram Kumar Gijroya (supra), the subject matter for consideration in that case was with regard to recruitment proceedings, whereas in the present case by way of Admission Rules, 2018 itself the petitioner has been declared ineligible for counselling as she failed to satisfy the requirement prescribed under the Admission Rules, 2018 i.e. Rule 7 (ii) & (iii).
15. Another case relied upon by learned counsel for the petitioner is Dolly Chhanda (supra) which is also distinguishable on facts. In

case of Dolly Chhanda (*supra*), the candidate has enclosed all the relevant documents issued prior to the date fixed but one of those documents, which was certificate issued by Zila Sainik Board for which the petitioner therein was claiming reservation found to be erroneous on account of authority issuing it. However, subsequently during second counselling correct certificate was produced and in that facts and circumstances of the case the Hon'ble Supreme Court has directed for consideration of the candidature of the appellant therein for providing admission in any Medical College of the State in the current academic year.

16. In the case at hand, as discussed above, the petitioner failed to scan and upload permanent caste certificate along with other documents in the online registration portal. Infact, the said document has been issued only on 8.7.2019 against application dated 5.7.2019 i.e. much after expiry of date of registration. Even the Admission Rules, 2018 very specifically provide that no document will be accepted which has been issued after the expiry of date for online registration for counselling as on the date of registration of candidate originals of all the documents necessary for admission are to be scanned and uploaded in the online counselling portal.
17. In the order passed by a Division Bench of this Court in WPC No.2182/17 and relied upon by the learned counsel for the petitioner it has been very specifically mentioned that the order has been passed on sympathetic ground and further it has been held in categorical terms that said direction should not be treated as a

precedent. If the petitioner who claims herself to be a member of scheduled tribe community fails on account of not complying with the provisions of the Admission Rules, 2018 then she could blame to herself only and other candidates belonging to same category will have an opportunity for consideration to be admitted in the seat reserved for scheduled tribe community (female).

18. Looking to the cut-throat competition between the students in their own category, candidates who are in queue after fulfilling all the requirements of the Admission Rules, 2018, cannot be deprived of their right of consideration as rights of other candidates, who are below the petitioner, accrued on the date petitioner became ineligible for non-compliance of Rule 7 (ii) of the Admission Rules, 2018. It will not be appropriate to grant the reliefs as sought for by the petitioner contrary to the admission rules and therefore reliefs sought for in Para-10.1 & 10.2 of the petition are declined.

19. However, keeping in the mind the status of petitioner and the purpose of reservation enshrined in the Constitution of India, we direct that if after completion of counselling of registered candidates, any seat of the category of ST (Female) remains vacant, the petitioner be considered for admission on the basis of permanent caste certificate issued to her on 8.7.2019, subject to satisfaction of the authority with regard to its contents and veracity.

20. The writ petition accordingly stands disposed off.

Sd/-
(P.R. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-