

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8132 OF 2019

Afreen Manjurahamad Momin Petitioner
Vs.
Commissionerate,
Common Entrance Test Cell & Others Respondents

Mr. Milind Deshmukh for the Petitioner.
Mr. V.M. Mali, AGP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.

DATE : JULY 24, 2019

P.C:

1. After having heard the petitioner's Advocate, we do not think that the petitioner can be granted any relief in writ jurisdiction.

2. The petitioner claims to be a successful candidate. Having cleared the HSC Examination, the petitioner, who belongs to the Other Backward Class ("OBC") category, relied

upon a Caste Certificate issued to the petitioner and a Caste Validity Certificate issued to the petitioner's father.

3. The petitioner appeared for the HSC Examination in February, 2019 and secured 58.77 per cent marks.

4. Thereafter, the petitioner appeared for the National Eligibility-Cum-Entrance Test for Under Graduate ("NEET-UG") Courses - 2019 and secured 321 marks out of 720. The petitioner's All India Rank is 225371 and under the OBC category 99040 with 83.95 percentile. The petitioner claims to be eligible to take admission in under-graduate courses in medicine. The petitioner filled-up the online registration/application form and specifically staked her claim against OBC. Meaning thereby, the category was Other Backward Class and the admission was sought against the seat reserved for the OBC. The petitioner could not produce the Non-Creamy Layer Certificate as that was not received. The status of her application form was, therefore, shown as incomplete/pending.

5. Number of candidates from various reserved categories were not possessing Caste Validity Certificate, though they applied in time and therefore the Government of Maharashtra extended the time to forward such a Certificate.

6. It is clear that the petitioner was called for physical document verification on 1-7-2019. Though the Caste Validity Certificate was not insisted, but issued or received later on, as the petitioner could not produce the Non-Creamy Layer Certificate, the category assigned for admission purpose was shown as open.

7. The petitioner says that her name is listed at serial No.18282 with All India Rank as 225371 and she was supposed to submit her preferences of college by 11-7-2019. Annexure "H" is relied upon but the petitioner could not obtain a link to upload her preferences. That was attempted from 7-7-2019 till 11-7-2019. A representation online was also made and inquiries were made on telephone. Now the petitioner could not produce the Non-Creamy Layer Certificate and having been

determined as an open category candidate, she was not considered for admission as she had not obtained 50% marks in Physics, Chemistry and Biology group taken together in the HSC Examination.

8. She was not considered for admission. In para 12 of the writ petition the petitioner states as under:-

“12. The Petitioner further most respectfully states and submits that, the careful perusal of notification of Exhibit-C shows that there is no mentioning of the word Non-Creamy Layer itself shows that the eligibility for health courses is 40% in PCB Group taken together for OBC Category and as per the annexure B of information brochure the Non-Creamy Layer Certificate is necessary for allotment of seats in reservation category and if the candidate from OBC Category is not seeking seat from Reserved category no question of giving Non-Creamy Layer Certificate arises.”

9. The only contention raised before us is now that the petitioner is treated as an open category candidate, she should be granted admission without any such certificate and assuming that she can be still treated as admitted from OBC category, she does not cease to be so merely because she fails to produce this Non-Creamy Layer Certificate.

10. Taking up the last contention first, we do not see any substance in the same. The petitioner claims to be belonging to OBC. She is possessed of a Caste Certificate and a Caste Validity Certificate. However, on the strength of the same alone, she cannot claim admission for if the seat is reserved for the OBC, the production of the Non-Creamy Layer Certificate is necessary. That is held to be a valid stipulation and there are several decisions in the field, including that of the Hon'ble Supreme Court of India which do not permit dispensation with this condition. Taken together with production of a Caste and Caste Validity Certificate, this is a valid condition for seeking admission to the OBC category. This condition is held to be valid because if a person from the OBC is affluent and has enough earning, then, such a candidate should give way to a deserving candidate, who, but for poverty, is unable to prosecute higher studies. That is why this criteria has been prescribed.

11. Turning to the second contention, we do not think that the petitioner can choose, at this belated stage, to treat

herself as a open category candidate. For that course to be adopted, there must be a specific rule and it cannot be the choice of the petitioner/candidate. Then, the petitioner will no doubt be treated as a candidate who is not seeking admission against any reserved seat but open seat. There is tough competition for such seats and if the petitioner is low down in the merit list, there is no question of the petitioner entering the course. The petitioner cannot then rely upon the status either as OBC or a meritorious student within the OBC category. The petitioner is aware of this for she has, in para 11 of the petition, categorically stated that, she had not obtained 50% mark in PCB group and therefore she was not considered for admission.

12. We do not think that in the absence of any pre-established or pre-existing legal right and corresponding legal/public duty, we can grant any relief to the petitioner for a writ of mandamus cannot be issued now, particularly to direct the first respondent to allow the petitioner to give preferences of colleges and to take admission to Medical Courses as per the NEET-UG 2019 admission process. The petitioner cannot be

allowed to participate in a second round, as prayed. There is no merit in the writ petition and it is dismissed.

(SANDEEP K. SHINDE, J.)

(S.C. DHARMADHIKARI, J.)