

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
Writ Petition No.19982 of 2019
and W.M.P.Nos.19484 & 19486 of 2019

Y.Vidusha (Minor)
Rep.by Natural guardian (Father)
K.YasodharanPetitioner

Vs

1.The State of Tamil Nadu,
Rep.by its Principal Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The Secretary,
Selection Committee,
Director of Medical Education (DME),
No.156, Poonamallee High Road,
New Bupathy Nagar, Chetpet,
Chennai-600 031.

3.Medical Council of India,
Pocket-14, Sector-8,
Dwarka Phase-1,
New Delhi-110 077. Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to include the name of the petitioner in the Provisional Rank List for MBBS/BDS 2019-2020 Sessions Government Quota and in the Provisional Rank List for MBBS/BDS 2019-2010 Sessions Management Quota according to her qualifying NEET Mark i.e., 450 out of 720 by issuing addendum and consequently permit the petitioner to participate in the counselling scheduled to be held on 11.07.2019 or in any other date according to her qualifying mark in the NEET examination.

For petitioner : Mr.U.Karunakaran
For R1 : Mr.S.Suresh Kumar, GA
For R2 and R3 : Mr.Abdul Saleem

O R D E R

The petitioner herein is a citizen of Srilanka born to Indian father. Therefore, she is a Overseas Citizen of India (OCI) as defined under Section 2(ee) r/w Section 7A of the Citizenship Act, 1955 (as amended by Central Act No.1/2015).

2. She studied standard VI to X at Camford International School at Coimbatore and continued her studies at Bangaluru and completed her XII standard from Sri.Chaitanya Techno School, Bangalore, Karnataka under CBSE syllabus during the month of May 2019.

3. She participated in the NEET (UG) 2019 examination and secured 450 marks out of 720. While applying for NEET, she has mentioned in the Nationality column as OCI (Overseas Citizen of India) and community category as OBC (Other Backward Class). With this score in NEET she applied for admission in MBBS/BDS in Tamil Nadu both under Government Quota as well as Management Quota. She enclosed all the documents enlisted in the prospectus. She applied under OCI category. As per the prospectus, OCI candidates will be considered as open category candidate and they are not eligible for any kind of reservation. So in the application she mentioned her community as OC. While so, when the rank list released by the 2nd respondent on 06.07.2019 her name did not find place either in the Government Quota or in the Management Quota. As per her score in NEET (450/720) she should have been placed between 3035 and 3096 in the Government Quota list and between 2981 and 3015 in the Management Quota list. On knowing her name missing in the rank list released by the 2nd respondent, the petitioner has given a representation on 08.07.2019.

4. In view of the admission counselling schedule to commence on 11.07.2019. The petitioner has approached this Court invoking Art.226 of the Constitution of India to issuance of writ of Mandamus to direct the 2nd respondent to include her name in the provisional rank list and permit her to participate in the ongoing admission counselling.

5. The 2nd respondent entered appearance and filed counter. The records were called and perused.

6. According to this respondent, the application of the petitioner was considered due to non production of relevant certificate to show she is a OCI. Her NEET score card indicates she is OCI and belong to OBC. Whereas in the application submitted to the 2nd respondent, the

petitioner has mentioned as person belong to OC open category. She has enclosed community certificate, which say she belong to Backward Class. In her Transfer Cert enclosed along with the application, Nationality is shown as Srilanka. In the absence of certificate of OCI and inconsistence information given in her application, her application was not found eligible.

7. Her request to consider the OCI certificate at this stage cannot be entertained in view of Clause 6(iii) of the prospectus which bars any change in the online application form after the same being uploaded. Further if the certificate is accepted belatedly and her name is included in the provisional list in the middle of the selection process, the entire merit list has to be redone and the respondent as well as the other aspiring students will be forced to face severe hardships.

8. On scrutiny of the records, which was produced by the 2nd respondent, this Court did not find any document to prove the petitioner is OCI. The learned counsel for the petitioner concedes that the petitioner did not enclosed her OCI certificate since in the list of documents mentioned in the prospectus OCI certificate not mentioned. Further in the NEET score card against the Nationality the petitioner has clearly mentioned as OCI. Therefore, the 2nd respondent ought to have included the petitioner name in the rank list.

9. Per contra, the learned counsel for the respondent would submit that in the document enclosed by the petitioner (Transfer Certificate) the Nationality is shown as Srilanka. Since the petitioner's own document show her as Srilankan, she was found ineligible to participate in the counselling.

10. The prospectus issued by the 2nd respondent under Clause 3(b) clearly say that, Overseas Citizens of India, who are registered under Section 7A of the Citizenship Act, 1955 (Central Act 57 of 1955) are eligible to apply for MBBS/BDS Degree Courses subject to the production of proof of such registration. However, OCI candidates will not be eligible for any kind of reservation and will be treated only as Open Category.

11. While so, the petitioner ought to have produced proof of her OCI status while applying, which she has failed. She cannot after drawing the list seek inclusion of documents. The petitioner has studied her XI and XII standard outside Tamil Nadu. Her father being native of Tamil Nadu, she has produced documents to show her father's native and community. Since OCI candidates are

treated as OC and not eligible for any kind of reservation, she ought to have enclosed her OCI certificate and not her community certificate. After mentioning that she claim under OC, she has enclosed her community certificate showing her as BC.

12. In the said circumstances, the 2nd respondent has rightly not considered the petitioner to include her name in the merit list. Now this Court notice that the petitioner herein is the Overseas Citizen of India and she possess appropriate certificates to that effect. Unfortunately, she has not enclosed the certificates while applying. Therefore, the respondent on scrutinizing her Transfer Certificate found that her Nationality is Srilankan and accordingly, they have rejected her application.

13. In the said circumstances, this Court is of the view that the petitioner shall be included in the merit list and assigned appropriate place in the merit list by the 2nd respondent with prospective effect. Any such inclusion shall have only prospective effect and the petitioner shall not claim any advantage on the inclusion of her name, detrimental to the candidates already participated and exercised their choice in the counselling, which has already taken place.

14. Accordingly, this Writ Petition is partly allowed with the following directions:

The 2nd respondent herein is directed to assign rank of the petitioner as per her score in the NEET and this ranking shall noway affect the candidates who have been already selected and allotted seats and it will have prospective effect from today. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

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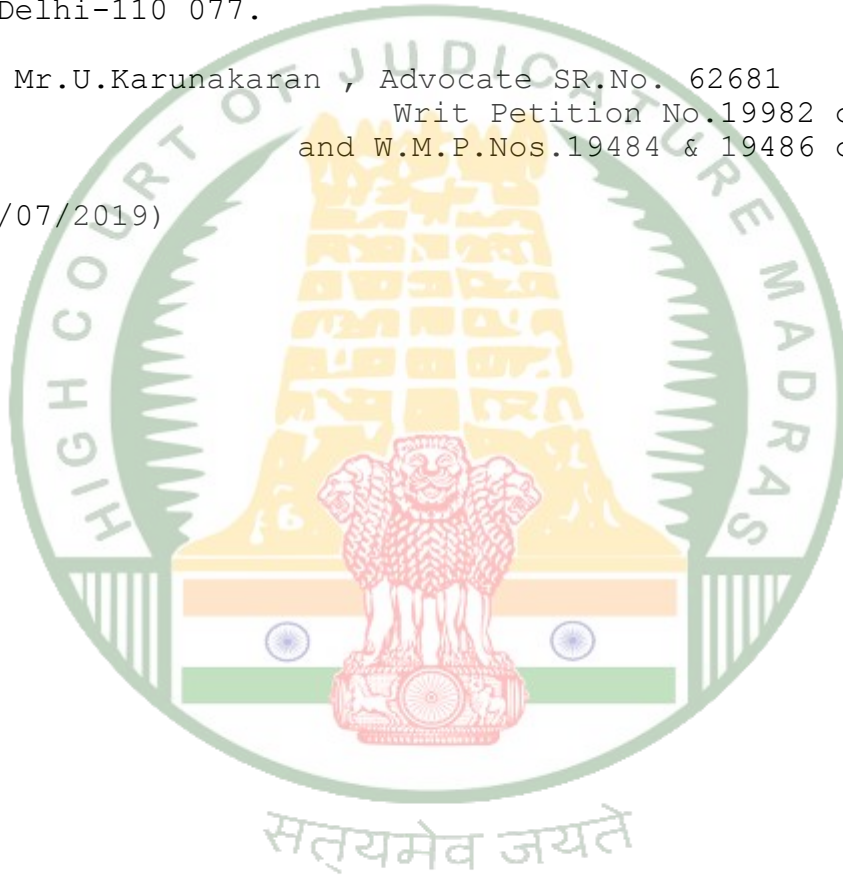
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+1cc to Mr.U.Karunakaran , Advocate SR.No. 62681
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mr co
A.SK(24/07/2019)



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