

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 27.08.2020

Delivered on 28.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.11530/2020 &WMP.Nos.14097 & 14099/2020

Shifa Khairun

..Petitioner

Versus

1. The Government of Tamil Nadu
rep.by its Secretary to the Government
Health and Family Welfare Department
Secretariat, Fort St George,
Chennai 600 009.
2. The Selection Committee
Directorate of Medical Education
No.162, Periyar EVR High Road
Kilpauk, Chennai 600010.
3. The National Board of Examination [NBE]
Medical Enclave, Ansari Nagar,
P.O.Box No.4931, New Delhi,
Ring Road, New Delhi 110 029.
4. Medical Counselling Committee [MCC]
Allotment Process-Counselling,
Directorate General of Health Services
Ministry of Health & Family Welfare,
Government of India, Nirman Bhavan,
Maulana Azad Road, New Delhi 110 011.
5. The Medical Council of India
Pocket-II, Sector-8, Dwaraka Phase-I
New Delhi 110 077.

.. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the impugned 'Prospectus for admission to post graduate degree/diploma

courses in Management Quota including NRI of Self Financing Medical Colleges in Tamil Nadu 2020-2021 Session as per G.O.[D] No.319, Health and Family Wealth [MCA-1] Department dated 11.03.2020 and as amended from time to time'' dated 12.03.2020 issued by the 2nd respondent and quash the same insofar as it stipulates a last date for submission of application by the petitioner and direct the 2nd respondent to allot a seat to the petitioner in NEET-PG 2020 if found eligible.

For Petitioner : Mr.N.L.Rajah, Senior counsel
assisted by Mr.Naveen Kumar Murthi

For R1 : Mr.E.Balamurugan, Spl.GP

For R2 : Mr.Vijaymehanath

For RR3&5 : Mr.V.P.Raman

For R4 : Mr.Rajesh Vivekanandan

ORDER

- (1)The present writ petition has been filed challenging the Prospectus issued by the 2nd respondent for admission to Post Graduate Degree / Diploma Courses, insofar as it stipulates a last date for submission of application and for a consequential direction to the 2nd respondent to allot a seat to the petitioner if found eligible.
- (2)The petitioner completed her MBBS Course and has registered herself before the Tamil Nadu Medical Council. The petitioner belongs to Muslim 'Labbaik class' which is treated as a 'Backward Community' by the State Government.
- (3)The petitioner participated in the NEET Examination and secured 250 marks. The petitioner applied for NEET-PG under 'General Category'. The cut-off mark for 'General Category' was fixed as 366 marks and for the 'Other Backward Class [OBC] Category', it was fixed as 319 marks. The petitioner did not fall within the cut-off marks during the first and second round of the counseling conducted by the National Board of Examination [NBE], New Delhi. This pertains to the counseling under the Central quota.
- (4)The cut-off marks was reduced during the mop-up round for General candidates from 366 marks to 275 marks and for OBC candidates from 319 marks to 230 marks.
- (5)At this point of time, the petitioner realised that even though she belongs to 'OBC Category', she had wrongly mentioned in the application form that she belongs to 'General Category'. The petitioner immediately approached this Court and filed WP.No.9838 of 2020 to direct the NBE to permit the

petitioner to participate in the mop up round counseling as an OBC candidate. The final order passed by this Court in WP.No.9838 of 2020, dated 27.07.2020 is extracted hereunder:-

'11.It is clear from the above judgments that this Court has taken a consistent view in matters of this nature where it is found that a inadvertent mistake has been committed by a candidate while filling the application. This Court does not want to take a different view and rather, will fall in line with the earlier views expressed by this Court.

12.In view of the above discussion, this writ petition is disposed of with the following directions:

(a) The 2nd respondent is directed to place the petitioner at the bottom of the merit list meant for Other Backward Class community candidates who have been called for the counseling for the Post Graduation course.

(b) After filling up the seats based on the merit list already prepared in respect of Other Backward Class candidates, if any vacancies arise, the case of the petitioner shall be considered by treating him as an Other Backward Class candidate, provided that the petitioner satisfies all the requirements, and

(c) The candidates who are already shown in the Other Backward Class category in the merit list shall not be disturbed in any manner by the intervention of the petitioner, who is directed to be considered as an Other Backward Class candidate. No costs.'

- (6)The petitioner participated in the said counseling and she was not able to get any seat under the Central quota.
- (7)Insofar as the State quota is concerned, a separate Prospectus is issued by the 2nd respondent and a candidate has to separately apply under this quota. The applications were received on-line from 15.07.2020 to 18.07.2020 and the petitioner, admittedly did not apply through on-line.
- (8)The petitioner has again approached this Court, challenging the Prospectus insofar it stipulates last date for submission of application and the petitioner has sought for a direction to the 2nd respondent to permit her to participate under BCM quota. The petitioner wants to participate in the mop up round for the management quota seats.
- (9)Mr.N.L.Rajah, learned Senior counsel assisted by Mr.Naveen Kumar Murthi, learned counsel appearing for the petitioner submitted that the 2nd respondent has issued a tentative counseling schedule for admission to PG Degree / Diploma

courses 2020-21 only for BCM, SCA and ST candidates. The learned Senior counsel submitted that the petitioner is a BCM candidate and she is not permitted to participate in the mop up counseling since the petitioner did not apply under the State quota on-line within the stipulated time. He would further submit that even though the petitioner should have submitted the on-line application on or before 18.07.2020, the petitioner was not sure about the submission of such an application as a BCM candidate since she had applied under the 'General Category' in the Central quota. The status of the petitioner to participate as a OBC candidate was recognised by this Court only when an order was passed on 27.07.2020 and by then, the last date for submission of application under the State quota was over.

(10) The learned Senior counsel, by bringing to the notice of this Court some of the terms and conditions of the Prospectus submitted that the petitioner was apprehensive to apply as a BC candidate in the State quota since it may be construed as a misrepresentation and there was a risk of the petitioner not being permitted to apply for the course for two subsequent years. It is only due to this apprehension, the petitioner did not submit the on-line application for the State quota on or before 18.07.2020.

(11) The learned Senior counsel, by bringing to the notice of this Court certain judgments, submitted that the failure on the part of the petitioner to register on-line within the due date is a condonable lapse and therefore, in the interest of justice, the petitioner can be permitted to participate in the mop up counseling under the State quota as a BCM candidate. The judgments relied on by the learned Senior counsel is enlisted hereunder:-

- Judgment of the Rajasthan High Court dated 28.07.2017 in Nancy Yadav V. Rajasthan University for Health Sciences, Prathap Nagar, Tonk Road, Jaipur, through its Registrar and 2 others.
- Judgment of the Allahabad High Court in Maa Gayatri Private Industrial Training Institute and Another Vs. State of U.P and 3 others reported in 2016 SCC on-line All 1597.
- Judgment of the Rajasthan High Court in Kavita Choudhary v. The Registrar [Examination], Rajasthan High Court, Jodhpur and Another reported in 2017 SCC on-line Raj 3612.

(12) Per contra, Mr. Vijaymehar, learned counsel appearing on behalf of the 2nd respondent submitted that the claim made by the petitioner is totally unsustainable. The learned counsel submitted that the submission of an application under the State quota is an independent act which has nothing to do with the application made by the petitioner under the Central quota. The learned counsel submitted that the petitioner ought to have applied for the State quota as a BCM candidate on or before 18.07.2020. Once the petitioner lost this opportunity, she

- cannot be accommodated at a later point of time. The learned counsel submitted that if such applications are entertained, it will open flood gates and the authorities will have to completely rework the list that has already been prepared for the mop up counseling. He would further submit that there is absolutely no justification on the part of the petitioner to rush to this Court at the last moment and seek for a permission to participate in the mop up counseling even without submitting an application to participate in the counseling. The learned counsel, therefore, sought for dismissal of this writ petition.
- (13) This Court has carefully considered the submissions made on either side and the materials available on record.
- (14) The petitioner is a qualified Doctor who is aged about 25 years and therefore, she is expected to act with alacrity while submitting applications on-line. We are living in an Era where almost all the applications are submitted on-line and submission of application in its physical form is almost coming to an end. Of course, the present generation has already become well acquainted in participating in various selections by submitting applications on-line.
- (15) The petitioner seems to have a pattern to commit one mistake after another and every time she expects this Court to condone the same and allow her to participate in the selection. The first mistake that was committed by the petitioner was at the time when she applied before NBE under the 'General Category'. The marks secured by the petitioner in the NEET Examination was nowhere near the cut-off marks, both under the 'General Category' as well as under the 'OBC Category'. This was the status during the first two rounds of counseling under the Central quota.
- (16) The cut-off marks for the mop up round was reduced for 'General Category' candidates, from 366 marks to 275 marks and for 'OBC Category' candidates, from 319 marks to 230 marks. At this point of time, the petitioner realises that she had applied under the 'General Category' and not under 'OBC Category'. If the petitioner had applied under the 'OBC Category', she would have come within the cut-off marks. Therefore, she immediately approached this Court and sought for the permission to participate in the mop up round counseling.
- (17) At that point of time, apart from the petitioner, there were several others who also approached this Court and sought for a similar direction. This Court, after considering the earlier orders passed by this Court, thought it fit to give one last opportunity to the petitioner and other similarly placed persons to participate as an OBC Candidate. The directions issued by this Court has been extracted supra.
- (18) The petitioner was allowed to participate as an OBC Candidate and she did not get the seat in the Central quota.
- (19) Each candidate who undergo the selection for the PG Course, is aware of the fact that he/she must apply for the Central

quota and the State quota separately. The petitioner was also clearly aware about the same. However, the petitioner, for reasons best known to her, did not submit the on-line application on or before the due date, i.e., 18.07.2020. Based on the applications submitted under the State quota, steps have been taken by the 2nd respondent to prepare the list and call the candidates for counseling.

- (20) The petitioner having failed to get a seat under the Central quota, again thought it fit to approach this Court to give a try to participate in the selection under the State quota, even without submitting an application. The justification given by the petitioner for not submitting the on-line application on or before 18.07.2020, is that the order was passed by this Court in the earlier writ petition permitting the petitioner to participate as an OBC candidate, only on 27.07.2020. It is important to bear in mind that this Court did not declare the petitioner to belong to the OBC Category for the first time and this Court only recognised the fact that the petitioner, even though belonging to the OBC Category, by mistake applied under the 'General Category'. The order passed by this Court on 27.07.2020 had nothing to do with the petitioner independently applying under the State quota by submitting the application on or before 18.07.2020. The attempt made by the petitioner to link the order passed by this Court on 27.07.2020 and the submission of the application under the State quota on or before 18.07.2020, is completely erroneous and unsustainable. The so-called apprehensions in the mind of the petitioner, as submitted by the learned Senior counsel appearing on behalf of the petitioner, is totally misconceived.
- (21) The petitioner has also made an attempt to take advantage of paragraph No.5 of the earlier order. For proper appreciation, paragraph No.5 is extracted hereunder:-

''5. Mr. Akhil Akbarali, learned Government Advocate appearing on behalf of the Directorate of Public Health and Preventive Medicine, submitted that the petitioner has also applied under the State quota and she is being considered as a BC candidate. Mr. Vijaymeharath, who is also appearing for the Selection Committee of Directorate of Medical Education reiterated the said submission''

- (22) This observation was made on the supposition that the petitioner applied under the State quota. However, it is an admitted case that the petitioner did not apply for the State quota on or before 18.07.2020. Therefore, the petitioner cannot be allowed to take advantage of the above observation made by this Court.
- (23) The 2nd respondent has already prepared the list of candidates who will participate in the counseling to be conducted and if the petitioner is allowed to participate at

this stage, under the BCM Category, it will amount to giving premium for the mistake committed by the petitioner. That apart, the 2nd respondent has to completely re-do the list to accommodate the petitioner. It will not be fair to put the 2nd respondent to hardship for the mistake committed by the petitioner. That apart, permitting the petitioner to participate in the counseling even without submitting an application, will open flood gates. This Court cannot, again and again come to the rescue of the petitioner at every stage and at some stage, the petitioner must be made to realise her mistakes so that she does not commit such mistakes in future. The judgments cited by the learned Senior counsel appearing on behalf of the petitioner will not apply to the facts of the present case and those directions were given considering the peculiar facts in those cases. In the facts of the present case, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India and permit the petitioner to participate in the counseling under the State quota even without submitting the on-line application.

(24) In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Government of Tamil Nadu
Health and Family Welfare Department
Secretariat, Fort St George,
Chennai 600 009.
2. The Selection Committee
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No.162, Periyar EVR High Road
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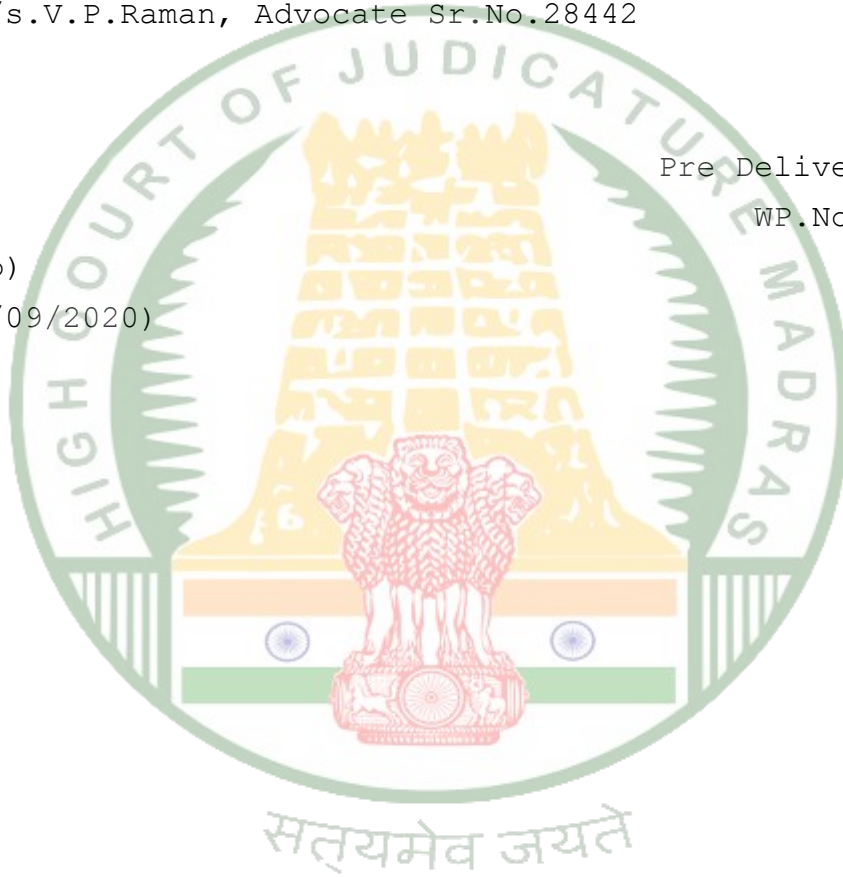
+lcc to M/s.Naveen Kumar Murthi, Advocate Sr.No.28106

+lcc to M/s.V.P.Raman, Advocate Sr.No.28442

Pre Delivery Order in
WP.No.11530/2020

vsn ii (co)

rr ii (14/09/2020)



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