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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 22.12.2020

+ W.P.(C) 10542/2020 and CM Nos. 34095/2020 & 34132/2020

EDEM SANKETH Petitioner

Through Mr.Sandeep Prakash Agarwal,
Senior Advocate with Mr.B. Shravanth Shanker
and Ms.Deepali Singhal, Advocates

versus

UNION OF INDIA & ANR. Respondents

Through Mr.Arn timer Kumar, Senior Penal
Counsel for Union of India for R-1
Mr.Dushyant Parashar Adv. and Mr.Manu
Parashar Adv. for R-2/AIIMS

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No.33868/2020(early hearing)

The application is allowed.

W.P.(C) 10542/2020

1. This writ petition is filed seeking a direction to the respondents to declare the non-inclusion of the petitioner in the OBC (NCL) Category in the List of Candidates Provisionally Eligible for Online Seat Allocation dated 14.12.2020 issued by respondent No. 2 as discriminatory, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India.
2. The petitioner completed his MBBS in March 2019 and undertook an

internship which he completed in October, 2020. The Combined Entrance Test (CET) is conducted by AIIMS for admission into January 2021 session of postgraduate courses [MD, MS, DM (6yrs.), MCh (6yrs.) and MDS] at Institutes of National Importance (INI) for medical education. It is stated that the said INI-CET is administered by the Examination Section of AIIMS who has the sole authority on all aspects related to Combined Entrance Test including conduct of examination, declaration of results, seat allocations, etc.

3. The petitioner registered for the INI Combined Entrance Test (INI-CET, January 2021 Session). As per the requirements, he submitted the State Government issued caste certificate. The admit card notes that the petitioner belongs to the OBC (NCL) category. The petitioner appeared for the said INI-CET-January 2021 Session conducted on 20.11.2020. The petitioner obtained an overall rank of 202 and his percentile was 99.704 in the category of OBC(NCL).

4. On 11.12.2020, the petitioner received an email stating that his caste certificate was found not to be in order as the same was valid only for State Governments. The petitioner was asked to re-upload other documents to substantiate the claim of candidature as OBC/EWS by 11.12.2020 by 5.00 P.M. The petitioner is said to have obtained a fresh caste certificate as prescribed by the Information Brochure issued by respondent No. 2 and re-uploaded the same before the dead line. On 14.12.2020, respondent No. 2 issued the List of Candidates Provisionally Eligible for Online Seat Allocation. The name of the petitioner was not included in the OBC Category. It is pleaded that the non-inclusion of the name of the petitioner in the OBC (NCL) Category by the respondents is arbitrary, discriminatory and

violative of the petitioner's fundamental rights. Hence, the present writ petition.

5. The respondent AIIMS has filed a counter-affidavit. It is pointed out in the counter-affidavit that the Prospectus, Part-A, Note 2 specifies the dates of validity of the OBC (NCL) certificate to be between 27.10.2019 to 20.11.2020. Note-4 clarifies that the list of reserved communities must be in the Central Government List. This is so as OBC eligibility of various States is not the same as OBC lists eligible for Central Government Institutions whereas all the institutions covered by the INI-CET exam are Central Government Institutions. Further, the prospectus states that if the valid certificates are not issued within the stipulated date in terms of Note 2, the applicant would be considered in the General Category. It is also stated that Appendix B of the Brochure specifies the performa and format of the OBC certificate. It is clarified that the certificate uploaded by the petitioner was not as per the performa and format of the OBC certificate and thus, has been rejected as it does not specify that the OBC list is as per the Central Government list and is eligible for seats in the Central Government Institutions as specified in Note 2 of the prospectus and as given in Appendix B of the prospectus. The same is the position regarding the second certificate that was uploaded by the petitioner.

6. The respondents have also filed an additional affidavit reiterating the pleas raised in the counter-affidavit. It has further been stated in the additional affidavit that over 80,000 candidates had appeared including 21000 candidates of the OBC Category in the said exam. It is stated that AIIMS cannot be expected to suo moto search for evidence in support of the candidates who have applied for reservation if they themselves have failed

to produce such evidence. The onus of providing correct and requisite information lies on the applicants which the petitioner has filed to discharge despite two opportunities. In the absence of correct documents from the applicants, it would be impossible for the respondents to confirm as to whether the petitioner is eligible under the reserved category. The exams would never be conducted in a timely manner if such an onerous responsibility was thrown on the respondents. It is further stated that in case, if for some reason this court were to accept the case of the petitioner, the respondent AIIMS will have to cancel the ongoing counselling and seat allocations. All applications that have been rejected due to non-provision of requisite documents will have to be re-assessed. AIIMS will have to depute manpower to search for evidence in support of the claims of the applicants. Further, even if the relief is only given to the petitioner, it will affect the seat allotment of all the candidates below the petitioner in the rank and the counselling process will have to be stopped and re-done.

7. I have heard learned senior counsel for the petitioner and learned counsel for the respondents.

8. Learned senior counsel for the petitioner has taken me through Appendix B of the prospectus which is the Performa of the Certificate for OBCs. He has pointed out that as per the performa, various resolutions of the Government of India which spell out the backward classes to whom admission to Central Educational Institutions is applicable have been spelt out. He has pointed out that the petitioner belongs to the caste 'Padmasali' as per resolution No. 12011/68/93-BCC(C) dated 10.09.1993 published in the Gazette of India Extraordinary on 13.09.1993. The caste 'Padmasali' is included as a backward caste. Hence, it is stated that clearly and

unequivocally, the petitioner belongs to a caste recognized by the Central Government as an OBC caste. It is pleaded that the certificate filed by the petitioner is legal, valid and in terms of the prospectus issued. He also relied upon the judgments of the Division Bench of this court in the case of **Anil Kumar & Anr. vs. Union of India, (2013) 136 DRJ 131 (DB)** and **Hari Singh vs. Staff Selection Commission & Anr., (2010) 116 DRJ 668 (DB)**.

9. Learned counsel for the respondent AIIMS has reiterated his contentions as stated in the additional affidavit and in the counter-affidavit.

10. I may first look at the prospectus issued for the Institutes of National Importance Combined Entrance Test (INI-CET) for the PG courses for January 2021 Session. Note 4 reads as follows:-

“NOTE 4. An applicant will be eligible to get the benefit of community reservation only in case the particular caste to which the candidates belong is included in the list of reserved communities issued by the Central Government. The candidates will be eligible to get the benefit of the Economically Weaker Section reservation only in case the candidate meets the criteria issued by the Central Government and in possession of such eligibility certification. If an applicant indicates in his/her application form for INI-CET that he/she belongs to General category but subsequently communicates to the Examination Section to change his/her category to a reserved one, such request shall not be entertained. Further, once a candidate has chosen a reserved category, no request shall be entertained for change to other reserved category viz SC to ST, ST to SC, OBC to SC/ST or SC/ST to OBC, SC to EWS, EWS to ST, OBC to EWS, EWS to OBC. This also applies to other INIs categories.

The certificates uploaded by applicants for reservation/relaxation will be preliminary scrutinized at the time of seat allocation (Phase III of INI-CET). If the certificate uploaded by applicant to support their claim for community reservation are not found valid or not found issued within dates

mentioned in Note2, then the applicant's candidature shall be considered as of general category and will be considered for unreserved seats in all INIs subject to qualifying cut-off percentile applicable.

....”

11. Reference may also be had to Appendix B-Performa for Certificate for Other Backward Classes which reads as follows:-

**“PROFORMA FOR OTHER BACKWARD CLASS (OBC)
CERTIFICATE**

**(Certificate to be Produced by other Backward Classes applying
for Admission to Central Educational Institutions (CEIs), Under The
Government of India)**

This is to certify that Shri/Smt./Kum. _____ Son /
Daughter _____ of _____ Village/Town
Shri/Smt. _____ of _____ District/Division
_____ in the _____ State belongs to the _____
Community which is recognized as a backward class under:

- i. Resolution No. 12011/68/93- BCC(C) dated 10/09/93 published in the Gazette of India Extraordinary Part I Section I No.186 dated 13/09/93.
- ii. Resolution No. 12011/9/94-BCC dated 19/10/94 published in the Gazette of India Extraordinary Part I Section I No. 163 dated 20/10/94.
- iii. Resolution No. 12011/7/95-BCC dated 24/05/95 published in the Gazette of India Extraordinary Part I Section I No. 88 dated 25/05/95.
- iv. Resolution No. 12011/96/94-BCC dated 09/03/96.
- v. Resolution No. 12011/44/94-BCC dated 06/12/96 published in the Gazette of India Extraordinary Part I Section I No. 210 dated 11/12/96.
- vi. Resolution No. 12011/13/97-BCC dated 03/12/97.
- vii. Resolution No. 12011/99/94-BCC dated 11/12/97.
- viii. Resolution No. 12011/68/98-BCC dated 27/10/99.
- ix. Resolution No. 12011/88/99-BCC dated 06/12/99 published in the Gazette of India Extraordinary Part I Section I No. 270 dated 06/12/99.

- x. Resolution No. 12011/36/99-BCC dated 04/04/2000 published in the Gazette of India Extraordinary Part I Section I No. 71 dated 04/04/2000.
- xi. Resolution No. 12011/44/99-BCC dated 21/09/2000 published in the Gazette of India Extraordinary Part I Section I No.210 dated 21/09/2000.
- xii. Resolution No. 12015/09/2000-BCC dated 06/09/2001.
- xiii. Resolution No. 12011/01/2001-BCC dated 19/06/2003.
- xiv. Resolution No. 12011/04/2002-BCC dated 13/01/2004.
- xv. Resolution No. 12011/09/2004-BCC dated 16/01/2006 published in the Gazette of India Extraordinary Part I Section I No.210 dated 16/01/2006.

Shri/Smt./Kum.

_____ and/or his family
ordinarily reside(s) in the _____ District / Division of
_____ State.

This is also to certify that he / she does not belong to the Persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the Government of India, Department of Personnel & Training O.M. No. 36012/22/93-Estt.(SCT) dated 08/09/93 which is modified vide OM No. 36033/3/2004 Estt. (Res.) dated 09/03/2004 or the latest notification of the Government of India.

Dated:

District Magistrate /Competent Authority Seal

.....”

12. Given the aforesaid criteria as stipulated in the prospectus issued by the respondent, I may now look at the certificate filed by the petitioner dated 16.10.2020 which reads as follows:-

“COMMUNITY AND DATE OF BIRTH CERTIFICATE

1. This is to certify that the Sri/Srimathi/Kumari EDEM SANKETH S/o / D/o / M/o / F/o / W/o / H/o / C/o Sri. EDEM BAPUJI of KHAIRTABAD village/Town of Khairtabad Mandal of HYDERABAD District of the Telangana State belongs to Padmasali-17/(BCB) Community which is recognized as B.C. under:

The Constitution (Scheduled Castes) Order, 1950
The Constitution (Scheduled Tribes) Order, 1950

G.O. Ms. No. 1793, Education, dated 25-9-1970 as amended from time to time (BCs) S.Cs., S.Ts. list (Modification) Order, 1956, S.Cs and S.T.s.(Amendment) Act, 1976.

2. It is certified that the date of birth Sri/Srimathi/Kumari EDEM SANKETH is day 03 Month APRIL Year 1996 (in words) Zero Three – April- One Nine Nine Six as per the declaration given by his/her Father/Mother/Guardian and as entered in the School records where he/she studied.

Certified by

Sd/-

Name: SMT. SM HASINA
Designation: TAHSILDAR
Mandal: KHAIRTABAD”

13. A close scrutiny of the certificate filed by the petitioner shows that it is not as per the format given in Appendix B of the Prospectus. Clearly, the certificate had to specify as to which particular category as spelt out in (i) to (xv) of the Appendix B, the petitioner’s caste belongs to. There is no such stipulation in the caste certificate filed by the petitioner. The certificate filed by the petitioner does not spell out the caste of the petitioner belongs to which of the resolutions/notifications as spelt out in Appendix B (i) to (xv).

14. I may also note that learned senior counsel for the petitioner has pointed out that as per the said certificate filed by the petitioner, the petitioner belongs to ‘Padmasali Caste’. He has also taken me through the

Resolution of the Ministry of Social Welfare dated 13.09.1993 being No. 12011/68/93 (Serial No. (i) of the Appendix B) which specifies at serial No. 55 that 'Padmasali' is an OBC caste, Entry No. 17 in the State List of Andhra Pradesh and Entry No. 196 in the Mandal List. Hence, it was strongly urged that the petitioner is from a backward caste which is recognized by the Central Government.

15. The plea of the learned senior counsel for the petitioner may be correct as the caste 'Padmasali' appears to be a backward caste recognised by the Central Government. Unfortunately, the caste certificate filed by the petitioner is not as per the format prescribed in the prospectus issued by the respondent i.e. Appendix B.

16. As rightly pointed by the respondents in their counter-affidavit, there were 21000 applications received from candidates from OBC castes. It is not possible for the respondents to individually scrutinize each caste certificate and dwell deep to see as to whether the caste of the applicants is as per the approved Central List. If the respondent were expected to indulge in such an exercise, the entire process of conducting examination would be an endless exercise. Unless the certificate that is filed by the applicant is as per the format prescribed in Appendix B, the respondents are justified in rejecting such an application irrespective of actual facts of a particular case.

17. This court in the case of *Injamam Ul Hossain vs. All India Institute of Medical Science & Ors.*, W.P.(C) 8593/2020d dated 02.12.2020 has already held that the terms and conditions of the prospectus are normally binding on the candidates. This court had held as follows:-

“16. I may look at the legal position regarding the Status of the terms of the Information Bulletin. Reference may be had to

the judgment of the Supreme Court in the case of *National Board of Examinations vs. G. Anand Ramamurthy & Ors., (2006) 5 SCC 515* where the Supreme Court was dealing with the following contentions:-

“5. According to Mr Gopal Subramaniam, the respondents herein are not eligible to sit for examination and, therefore, the permission granted by the High Court permitting to sit for the examination is not proper and not called for. Clause 7.12 specifically provides that the candidates should be in possession of the recognised postgraduate degree qualification as specified under each speciality given in the syllabus for medical and surgical super specialities respectively. Clause 7.12 sub-clause (ii) stipulates that candidates should have completed the prescribed three years' training in the speciality after postgraduate degree from an institution recognised by the MCI/NBE/university as specified under each speciality. According to Mr Gopal Subramaniam, the respondents will be completing three years' training only by 30-6-2006. They are not qualified and eligible to appear for June 2006 examination.”

The Supreme Court held as follows:-

“7. We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality. The High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise, the High Court was not correct in applying the doctrine of

legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. The High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates were requested to refer to the latest Bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as aforesaid which would encompass and include all instructions relating to schedule of examinations. It is also mentioned in the Bulletin in no uncertain terms that the instructions contained in the Bulletin including the schedule of examinations were liable to changes based on the decisions taken by the governing body of the petitioner from time to time. Hitherto examinations were being conducted twice a year i.e. in the months of June and December 2006. There could be no embargo in the way of the petitioner bona fide changing the examination schedule, more so when it had admittedly

and categorically reserved its rights to do so to the notice and information of Respondents 1 and 2. In any event, the completion of three years' training is a necessary concomitant for appearing in the DNB final examination.”

17. Reference may also be had to the judgment of a co-ordinate Bench of this court in the case of ***Priyanka Chaudhary vs National Board of Examinations, 2016 SCC OnLine Del 5691*** where it was held as follows:-

“1. The petitioners are candidates, who applied for admission to the Diplomat of National Board Centralized Entrance Test. It is contended that in the entrance test, the petitioners got ranks between 29 to 119. Based on their merit all the petitioners were invited for the first round of counseling and petitioners as per the then available seats exercised their option and took confirmed seats in different disciplines.

2. It is contended that post the first round of counseling certain candidates, who had taken admission opted out and accordingly the seats opted by those candidates fell vacant and are now included in the second round of counseling which would commence from 21st October, 2016.

3. It is contended that the petitioners who are far higher in merit should also be eligible for participating in the second round of counseling and given an opportunity to opt for the seats which have fallen vacant. One example that has been cited is that a seat in radiology in Artemis Hospital, Gurgaon was opted by a candidate who ranked 24 in the entrance examination. The said candidate has not joined the course and accordingly the said seat is now available and has been included in the second round of counseling. It is submitted that the said seat is a much sought after seat and is being offered to candidates who

rank about 6001.

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9. Clause 13.7 of the Information Bulletin reads as under:

“Candidates opting for a confirmed seat are NOT eligible to participate in subsequent round(s) of counseling irrespective of their joining/nonjoining/resignation from the seat already opted for.”

10. The petitioners had participated in the first round of counseling without demur. Perusal of the information bulleting shows that candidates had the option not to appear in the first round of counseling and could have chosen to wait for the subsequent rounds. However, once the candidate has exercised the option to participate in counseling and has opted for a confirmed seat, as per the information bulletin, the candidate is not eligible for participation in subsequent rounds of counseling.

11. The petitioners were well aware of the rules laid down by the information bulletin and despite the same the petitioners participated in the counseling process without any demur. The petitioners have opted for confirmed seats and have taken admission. No doubt that the petitioners are meritorious, but on account of the application of the rules as laid down by the information bulletin, which is clear in terms of its application, the petitioners are clearly ineligible to participate in the second round of counseling commencing from 21st October, 2016.

12. Similar view has been expressed by the co-ordinate bench in *Shikha Aggarwal* (2011 SCC OnLine Del 3538) wherein it is held as under:

“6. The cause of heartburn of the petitioner is that the first round of counseling is held for the top in the merit list to pick the stream and college/institute/hospital of his choice and the second round is held for the next in the merit list alongwith the opportunity to the ones who have already participated in the first round to change their stream in case some seats fall vacant, but the respondent board does not envisage the participation of the students who have already participated in the first round to again participate in the second round and thus robs the candidate the opportunity to take up another stream which could be available in the second round and was not available at the first. The contention of the counsel for the petitioner is that the premier Institute such as AIIMS and others give provisional admissions in the first round leaving the window of opportunity open for them to change their choice in the second round and thus the same should be the procedure followed by the respondent Board. The National Board of Examinations administering the DNB degree has the liberty to frame its own rules and regulations and the rules of counseling or any other cannot be termed as unreasonable by comparing with the rules set forth by the AIIMS or any other body conducting examinations.

7. It is also a settled legal position that a candidate after participating in the selection process of taking the entrance examination and the counseling process cannot turn around and challenge the same as the rules and guidelines framed by the respondent-Board were within the knowledge of the petitioner before participating in the same and therefore, the petitioner thus waives off her right to challenge the said counseling

procedure once having taken the said examination. It would be relevant here to refer to the judgment of the Apex Court in the case of Dhananjay Malik v. State of Uttranchal (2008) 4 SCC 171 which has reiterated the said legal position in the following words:

*“In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.”
(Underlining supplied)”*

18. Reference may also be had to the judgment of the Madras High Court in the case of ***Dr. Sandeep P.S. vs Government of India, 2020 SCC OnLine Mad 1263*** where the court held as follows:-

“33. It is settled law that the prospectus is the vital document which governs the admission procedure. A candidate who participates in the selection process based on the prospectus cannot turn around and challenge the very prospectus or a clause in the prospectus unless it is shown to be illegal or irrational. This court had in a number of cases relating to admissions to postgraduate Medical education has consistently held that the candidates who had applied for admission based on the conditions set out in the prospectus cannot challenge the conditions. Of course in the case on hand the petitioners

had approached the court before the first round of counselling had commenced. However the counselling in effect commenced on 01-05-2020 and the candidates were required to furnish their online choices by 08-05-2020. The first counselling was done on 22-05-2020. The petitioners had filed the first writ petition on 17-05-2020 and were favoured with an interim order on 26-05-2020. The petitioners were aware of the existence of *Clause 4.5* in the handbook even when they had applied for admission. They had chosen to apply and also indicate their choices in compliance with the requirements of the instructions in the handbook. Only after exercising their choices the petitioners chose to challenge *Clause 4.5* on 17-05-2020. Mr. G. Sankaran, would vehemently contend that since the petitioners had approached the court before the first round of counselling itself, there is no delay and they cannot be non-suited on the ground of delay. I am unable to accept the said submission of the learned counsel for the petitioner for more than one reason. As rightly pointed out by the learned Senior Counsel appearing for the second respondent if the petitioners' challenge is accepted the entire counselling process will have to be restarted in the sense all the candidates who had been allotted a seat in the first round of counselling and who had frozen their seats should also be given an opportunity to take part in the second round of counselling which would necessarily result in further delay in the process which has already been delayed by the pandemic. There are about 700 candidates who had frozen the seats allotted to them in the first round of counselling. If *Clause 4.5* is tweaked and they are also allowed to participate in the second round of counselling while retaining the seats allotted to them in the first round those 700 seats should also be shown as seats available in the second round of counselling. The second respondent in its counter affidavit has explained as to how this process accumulates more seats in the mop up round of counselling which go to candidates with lesser

comparative merit. The Honourable Supreme Court in *Alapati Jyostna* (Supra) has considered the prevalent situation and after taking note of the fact that nearly 700 candidates had been allotted seats and have frozen their seats had refused to issue any directions for the present year. The Honourable Supreme Court in the said decision has also recorded the assertions made in the response filed by the Medical Council of India that a common counselling or a single online counselling in the coming years would definitely take care of the grievances. I am therefore of the considered view that it would not be appropriate for this court to interfere with the counselling at this stage for the present year.”

19. Clearly, the terms of the prospectus would be binding on the candidates. The petitioners participated in the entrance examination and also participated in the counselling based on the terms of the prospectus and they cannot now turn around and seek concessions which are contrary to the terms of the prospectus. If the plea of the petitioners were to be accepted, then all the candidates who have not been able to submit their documents of having passed the qualifying degree as on 31.08.2020 would also have to be given the same relief. This would naturally cause confusion. In any case, the stipulations as noted above are reasonable and fair and cannot be termed to be arbitrary. There are no reasons to interfere in the procedure prescribed by the respondents. The respondent cannot accommodate to the schedules of all the universities in the country.”

18. I may now look at the two judgments of the Division Benches of this court relied upon by the learned senior counsel for the petitioner.

19. In the case of *Hari Singh vs. Staff Selection Commission & Anr.(supra)*, the case was relating to selection to the post of Sub-Inspector. The selection was being carried out by the Staff Selection Commission to

recommend names for the appointment to the Central Police Organization. That was also a case in which the dispute pertained to a case of a petitioner who was an OBC candidate who did not fall in the creamy layer and whose selection could not take place as the OBC certificate submitted by him was not in the prescribed format. The court allowed the writ petition holding as follows:-

“39. Despite the aforesaid being the clear prescription in the application form itself, the respondents entertained, the petitioner's application even though, admittedly, he had not submitted the OBC certificate in the prescribed proforma as contained in Annexure VIII along with his application form. The petitioner was, in fact, issued an admission certificate showing his category as an OBC candidate. Not only that, upon his clearing the written examination he was called for the PET and medical test on 15th and 16th July, 2008 at Dehradun, Uttarakhand. He was also granted an opportunity to submit his OBC certificate in the prescribed proforma for Central Government offices as per Annexure VIII of the notice of examination, issued by the competent authority on or before 14th September, 2007. This clearly shows that the rigours of the terms and conditions contained in the notice of examination were relaxed by the respondents themselves, firstly, by recognizing the petitioner as an OBC category candidate (as noticed in his admission certificate) and, secondly, by granting him further time to produce the OBC certificate in the prescribed proforma on 15th/16th July, 2008, when the petitioner was required to appear for PET and medical test at Dehradun, Uttarakhand. No doubt, the respondents took an undertaking from the petitioner on 15th July, 2008 to the effect that as he has not submitted the OBC certificate in the prescribed proforma contained in Annexure VIII, he may be considered as a general category candidate. But the respondents did not act upon the undertaking and continued to treat the petitioner as an OBC category candidate and continued to grant him further opportunities to produce the OBC certificate even

thereafter. This is evident from the communication dated 04th May, 2009 issued by the respondent SSC, whereby the petitioner was called for interview on 25th May, 2009. Even in this communication the petitioner was granted yet another opportunity to submit his OBC certificate in the prescribed proforma as per Annexure VIII of the notice of examination and it was stated that upon failure to do so the candidate would be treated as an unreserved category candidate subject to fulfillment of other eligible conditions. Even more importantly, in the results published in the employment news for the period 16-22 May, 2009, the name of the petitioner was mentioned at serial No. 148 and his category was shown as an OBC candidate. No doubt, the reflection of the petitioner as an OBC category candidate in his admission certificate and in the result published in the Employment News of 16-22 May, 2009 was “provisional” in terms of Note-II set out hereinabove in paragraph 7, but the fact remains that the respondents did not enforce the strict terms contained in the notice of examination and even in their subsequent communications continued to grant more and more time to the candidates to submit, *inter alia*, the OBC certificates in the prescribed proforma for Central Government offices.

40. The aforesaid conduct of the respondents, as also the policy set out in Note II (extracted by us in para 7 hereinabove) clearly shows that the respondents did not consider the requirement of submission of the OBC certificate in the prescribed proforma along with the application form, sacrosanct. Such a certificate could be submitted even later. This conduct of the respondents also appears to be in consonance with the decisions relied upon by the petitioner which we have already discussed hereinabove. We are, therefore, of the view that the OBC certificate in the prescribed proforma for Central Government offices could have been submitted even after the last date for submission of the application form. Since the respondents have themselves granted repeated opportunities to the candidates for submission of the OBC certificates from time to time, we are of the view that the same could have been submitted even after the date of

interview and within a reasonable time before the actual declaration of the final results.”

20. Hence, it was on the facts of the said case, that court came to a conclusion that the rigours of the terms and conditions contained in the notice of examination were relaxed by the respondents themselves. Hence, this court concluded that the OBC certificate in the prescribed proforma could have been submitted even after the last date. In the present case, there is no such plea raised and there is no such finding that can be recorded. Clearly, the judgment is not applicable to the facts of this case. It also does not pertain to admission to educational institutions where the time schedules are usually sacrosanct.

21. The next judgment relied upon by the learned senior counsel for the petitioner is in the case of *Anil Kumar & Anr. vs. Union of India (supra)*. That was also a case relating to recruitment to the post of Assistant Sub-Inspector with Central Industrial Security Force. The petitioners had applied in the category of Other Backward Class but were treated as Unreserved Category. The Division Bench also relied upon the judgment in the case of *Hari Singh v. Staff Selection Commission (supra)*. The court held that the production of caste certificates before the last stage of the selection process conforms to the concerned Office Order.

22. Clearly, in the present case, the petitioner has not been able to produce the caste certificate as per the format prescribed before the release of the selection list. There is nothing to show that the timelines prescribed for submitting the prescribed OBC caste certificate were flexible. In any case, now in the present case, the provisional selection list has already been released on 14.12.2020. It is not the case of the petitioner that he has even

now been able to file the caste certificate in the prescribed format.

23. There is clearly no merit in the petition and the same is dismissed.

Pending applications also stand dismissed.

JAYANT NATH, J

DECEMBER 22, 2020

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