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

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***Judgment Reserved On:*** 14.10.2020

***Judgment Pronounced On:*** 03.11.2020

+ W.P.(C) 7767/2020

SUSHMA AMBATI

..... Petitioner

Through Mr.Mukesh Mohan Goyal, Adv.

versus

MINISTRY OF EDUCATION & ANR.

..... Respondents

Through Mr.Rajendra Sahu, Senior Panel

Counsel for R-1/UOI.

Mr.Arjun Mitra, Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

**CM APPL. No.25587/2020(exemption)**

Allowed subject to all just exceptions.

**W.P.(C) 7767/2020 & CM APPL. No.25586/2020(stay)**

1. This writ petition is filed by the petitioner seeking a direction to the respondents to declare the result of the daughter of the petitioner, Ms.Kedar Priya Ambati of JEE (ADVANCE) 2020 considering her to be in the OBC-NCL category (OBC Non-Creamy Layer).

2. It is submitted by the petitioner that respondent No.2 conducted the JEE (ADVANCE) examination which was held on 27.09.2020. The petitioner and her daughter belong to OBC-NCL category. The daughter of the petitioner appeared in the JEE (MAINS) 2020 exam and opted for the category OBC-NCL. The result of the petitioner was declared and she has a common rank list of 14731 whereas for the OBC-NCL the same would have

worked out to 3098. It is pleaded in the petition that the daughter of the petitioner got herself enrolled on the web portal for the JEE (ADVANCE) 2020. There was some confusion as the petitioner did not have available the OBC-NCL certificate in the latest form. The petitioner, therefore, unselected the category OBC-NCL. The petitioner received an SMS on 29.09.2020 seeking to confirm if the petitioner wants to continue with the change in the category in the student portal with cut off as 01.10.2020. The petitioner did not confirm the change and through the communication dated 30.09.2020 informed respondent No.2 that they want to continue with their original selection of OBC-NCL. On 05.10.2020 an email was received stating that the category cannot be changed and it will be the same as mentioned in the JEE (MAINS). It is further stated that the admit card of the daughter of the petitioner for the said exam also showed the category as OBC-NCL. Reliance is also placed on the email dated 05.10.2020 which states that the category of a candidate as entered in the data base will be final and shall remain the same in JEE (ADVANCE) 2020 examination and request for change of category will not be entertained.

3. On 05.10.2020, when the results were announced of JEE (ADVANCED), the rank of the petitioner's daughter for the OBC-NCL category was not shown. Hence the present writ petition.

4. It is the case of the petitioner that the rules provide that the category of the student cannot be changed. Hence, it is pleaded that the result of the petitioner's daughter be declared in the category of OBC-NCL.

5. Respondent No.2 has filed its counter affidavit. It has been stated in the counter affidavit that the petitioner's daughter has changed her category

on her own after accepting and confirming the action and hence there is no merit in the writ petition.

6. It is stated that as per JEE (ADVANCE) 2020 information brochure the category of a candidate has to remain the same as it was in the JEE (MAINS) 2020. Reliance is placed on the Clause 3 of the Information Brochure. As per the Brochure the actual category certificate has to be uploaded on or before 26.09.2020. Later on, it was found that many candidates faced difficulty in producing the category certificate within the stipulated period up to 26.09.2020. It was provided that in the context of the OBC-NCL and GEN-EWS certificates the possibility of a candidate may not be able to collect the certificate within the stipulated time has been taken care of. Therefore, it was provided that such a candidate may submit a declaration in lieu of the certificate. A lot of candidates found difficulty in procuring the certificate within the stipulated time. A total of 2152 OBC-NCL, GEN-EWS candidates opted for change of category to General category during the JEE (ADVANCE) 2020 registration. This is because they declared that they were not in a position to submit a valid category certificate within the stipulated time period of 26.09.2020. Later on, it was informed that the last date to submit the category certificate was extended from 26.09.2020 to the start of seat allocation, which is 17.10.2020 due to COVID-19 related issues and several requests from the candidates. On account of this change in last date for submitting of the said category certificate it was announced that such candidates who now feel that they are now in a position to bring a valid certificate are being given another chance to reconfirm their change to general category. It was announced on the website on 15.09.2020 and 25.09.2020 that valid category certificate should

be uploaded at the time of reporting after seat allocation. On 16.09.2020, a message was sent that a candidate can revert back to the OBC-NCL, GEN-EWS category starting from 29.09.2020 till 30.09.2020. On 29.09.2020 another message was sent to confirm the change of category from OBC-NCL/GEN-EWS and to submit the confirmation by 01.10.2020 noon. On 06.10.2020, a message was sent based on the confirmation of the candidate for JEE (ADVANCE) noting the change of the category has been changed to general for all Joint Seat Allocation Authority (in short the 'JoSAA') related activities.

Further the change could only be carried out by a candidate after logging into the candidate portal, using his credential of user ID and Password and not through any other means. This option was available only at a specified times namely on 29.09.2020 to 01.10.2020. As a safeguard, the candidate seeking change in category from OBC-NCL or GEN-EWS to general category were asked to confirm the action on two occasions before the change was accepted. Once the confirmation after the two step process is complete the reversion to OBC-NCL/GEN-EWS from general cannot be undone. This was made clear to candidates on the message seeking confirmation.

7. It is stated that out of 2152 candidates who wanted to change their category to general category 592 confirmed the change for the remaining candidates 1560 who did not confirm the change, the change in their category OBC-NCL or GEN-EWS was retained and the category rank was computed and published accordingly on 05.10.2020. Reliance is also placed on the judgment of the co-ordinate bench of this court in the case of *Ujjwal*

***Tripathi vs. Director General National Testing Agency*** in W.P.(C) No. 5104/2019 decided on 23.05.2019.

8. The petitioner has also filed an additional affidavit. In the said additional affidavit, it is stated that the exam of the daughter of the petitioner was on 27.09.2020. The petitioner was not in a position to select any other option but to select the third option. The third option states that the petitioner is not a valid OBC-NCL candidate. The additional affidavit reiterates the contention of the petitioner, namely, that the admit card that was issued to the petitioner's daughter noted the category of the petitioner's daughter as OBC-NCL. On 29.09.2020 the petitioner's daughter received a system generated SMS seeking confirmation of the change by 01.10.2020 but the petitioner's daughter did not confirm the change of category since she was regularly in touch with respondent No.2. It is reiterated that the rules and regulations of respondent No.2 do not permit change in the category. Reliance is placed on the brochure of JEE (MAINS) 2020. It is stated that now the petitioner's daughter has received a valid caste certificate and hence should be allowed to participate as an OBC-NCL candidate.

9. I have heard learned counsel for the parties.

10. Learned counsel for the petitioner has strongly stressed that under the terms of the brochure for the JEE (MAINS) no change in the category will be done after the last date of JEE (MAINS) 2020 application. Reliance is heavily placed on the email communication dated 05.10.2020 issued by respondent No.2 where again it is stated that category cannot be changed and it will be the same as mentioned in the JEE (MAINS). Reliance is also heavily placed on the admit card of the daughter of the petitioner issued for the JEE (ADVANCE) 2020 which also shows the category of the daughter

as OBC-NCL. Based on the above, it has been strongly urged that there can be no occasion or reason for the category of the daughter of the petitioner to be changed from OBC-NCL to the general category as has been done.

11. In my opinion, the pleas raised by the petitioner are unfortunately misplaced. In para 9 of the petition, it is clearly admitted that the petitioner has unselected the category of OBC-NCL. Para 9 of the petition reads as follows:

“9. That it is submitted that the daughter of the Petitioner got herself enrolled for JEE (ADVANCED) 2020 on the web-portal. However, since there was some confusion and Petitioner was not available with OBC-NCL certificate in the latest Form, therefore, unselected the category OBC-NCL. The petitioner received an SMS on 29.09.2020 seeking to confirm if the petitioner want to continue with change in category in student portal with cut off as 01.10.2020 12:00 hrs. The petitioner did not confirm the said change. The petitioner through her email communication dated 30.09.2020 informed the respondent No.2 that they want to continue with their original selection of OBC-NCL.”

12. Similarly, in the additional affidavit, it is again admitted that at the time of registration one pop-up appeared on the screen, which shows three options. The petitioner selected option three on account of having no other choice as stated. Option 3 was “Not a valid OBC-NCL candidate”. The said option, which is annexed as Annexure P-9 to the additional affidavit reads as follows:

“Yes, I have OBC-NCL certificate issued on or after April 1, 2020.

I have not been able to collect the said certificate as of now. I will upload the Declaration in Lieu of OBC-NCL Certificate. OBC-NCL certificate will be uploaded on or before 26/09/2020.

Not a valid OBC-NCL candidate.”

13. Clearly, the petitioner again admitted that the petitioner’s daughter is not a valid OBC-NCL candidate.

14. In the light of the above facts the plea now raised relying upon various documents to claim that there can be no change in the category of the petitioner from OBC-NCL to general is misplaced.

15. It is also a fact that on 16.09.2020 as stated in the counter affidavit of respondent No.2 as the last date for filing of valid caste certificate was extended the candidates were given an option to revert to the OBC-NCL category. It is not the case of the petitioner that any steps were taken to revert back to OBC-NCL category.

16. Reference in this context may be had to the judgment relied upon by learned counsel for respondent No.2 in the case of *Ujjwal Tripathi vs. Director General National Testing Agency*(supra). That was also a case where a student belonging to EWS was treated by the National Testing Agency which conducts JEE (Mains) as a general category candidate.

“14. Even if this were to be taken as an inadvertent act on the part of the petitioner, this Court cannot be oblivious of the fact that the JEE (Advanced) Examination is a humongous exercise, which involves lakhs of students and, if courts are to interfere in such matters, treating the change of category as inadvertent, or as an accidental slip on the part of candidate, a Pandora’s box would inevitably be opened.

15. Candidates who apply for such examinations are required to be vigilant and ensure that they are circumspect while applying,

and while making entries, especially where the entire process of application, as is this case, takes place online.

16. Mr. Shukla requests this Court to take a sympathetic view of the matter, as, in his submission, if the petitioner is not allowed to appear in the JEE (Advanced) Examination, he would lose his chance to secure higher education in the IITs.

17. This Court sympathises with the situation in which the petitioner finds himself, but expresses its inability to come to his aid.”

17. The above judgment is clearly applicable to the facts of the case. The petitioner has admittedly while filling up the relevant form voluntarily agreed to be treated as a general category candidate. The petitioner cannot now be permitted to wriggle out of the said exercise.

18. There is no merit in the petition. The same is dismissed.

**JAYANT NATH, J.**

**NOVEMBER 03, 2020/v**