

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION (W) NO.25/2022 IN WRIT PETITION NO.5535/2021

KU.SHRUSHTI RAMCHANDRA DHUMAL

Vs.

STATE COMMON ENTRANCE TEST CELL, MUMBAI, THROUGH ITS
 COMMISSIONER AND COMPETENT AUTHORITY AND ORS.

 Office Notes, Office Memoranda of
 Coram, appearances, Court's Orders
 or directions and Registrar's order

Court's or Judge's Order

Shri P. K.Raulkar, Advocate for petitioner.
 Shri N.A.Gaikwad, Advocate for respondent no.1.
 Shri Kuldeep Mahalle, Advocate for respondent no.4.
 Shri A.A.Madiwale, Assistant Government Pleader for respondent no.5.

CORAM :- A.S.CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ

DATED :- JANUARY 04, 2022.

This civil application has been filed for recalling the ad-interim order dated 27.12.2021 passed in Writ Petition No.5535/2021 in the context of the directions issued in paragraph 7 thereof. Writ Petition No.5535/2021 has been filed by the petitioner seeking a direction against the Maharashtra Council of Agriculture Education & Research, Pune to protect the provisional admission of the petitioner from the Scheduled Tribe category in the B.Sc. (Hons) Agriculture Degree Course till the Scrutiny Committee decides the tribe claim of the petitioner of belonging to 'Thakur' Scheduled Tribe. While issuing notice in the writ petition, the following ad-interim order was passed:

" 1 to 6.....

7. Considering the fact that the school record of 1925 of the petitioner's great grandfather, viz. Sakharam Dhondiba, who was admitted in Zilla Parishad Kendriya Prathamik Madhyamik School, Mahagaon, depicts the entry as that of

Thakur, i.e. of pre-Independence era, it is directed that the petitioner's claim for admission be considered from the seat reserved for Scheduled Tribe category until further orders"

This application has been moved by the respondent no.1 in which it has been stated that as per the Schedule of Admission, the last date for submission of original documents alongwith requisite fees was upto 5.30 p.m. on 22.12.2021. After 5.30 p.m. on that date the seats that remained vacant from the reserved category were made available to the candidates from the open category. The present writ petition was filed on 24.12.2021 and by the time the ad-interim order was passed on 27.12.2021, the last date as per the Schedule which was indicated to be 22.12.2021 had also passed. It is further stated in the civil application that on 31.12.2021 the respondent no.1 has issued a fresh notification and has extended the date for the fourth round of admission till 06.01.2022. By referring to the Admission Brochure published by the respondent no.1 pertaining to admissions for academic session 2021-22 and especially Clauses 3.2 (H) and (K), it is submitted that with regard to candidates whose claims for validity are pending their applications could be considered for admission on furnishing relevant information indicating the pendency of the validity proceedings. However as per Clause 3.2(K), by the last date of the admission process the requisite documents on the basis of which admission is claimed have to be produced. In the light of aforesaid, it is submitted that the direction to consider the claim of the petitioner for admission from the seat reserved for Scheduled Tribe category can be worked out only till 06.01.2022 as that is the last date on which the fourth round would come to

an end. It is therefore prayed that the ad-interim order dated 27.12.2021 be recalled to the aforesaid extent.

The learned counsel for the petitioner has opposed the aforesaid submissions and has placed reliance on the order passed by the Honourable Supreme Court in Civil Appeal No. 3761/2020 (*Yuvraj and Ors. Vs. The State of Maharashtra and ors.*) decided on 20.11.2020. He submits that the claim for issuance of the validity certificate is pending with the Scrutiny Committee and it would not be possible to obtain a validity certificate before the last date of the admission process. Since the petitioner is in possession of old documents which indicate that her forefathers belong to 'Thakur' Scheduled Tribe, the petitioner's admission ought to be considered from the seat reserved for the Scheduled Tribe category. He further submitted that within a short period the Scrutiny Committee would not be in a position to decide the tribe claim of the petitioner. Hence the order dated 27.12.2021 does not deserve to be recalled.

We have perused the Admission Brochure as well as the Circular dated 31.12.2021 issued by the respondent no.1. It is undisputed that as per the said Circular the fourth round of admission would come to an end on 06.01.2022 at 5.30 p.m. As per Clause 3.2(H) of the Information Brochure in case of candidates whose validity claims are pending before the Scrutiny Committee, such candidates are permitted to upload their applications alongwith details of such pending proceedings. However as per Clause 3.2(K) the concerned candidate if admitted on a reserved seat is required to submit the relevant document on the basis of which he has

sought admission by the last date of the admission process, failing which aforesaid admission process would stand cancelled and the seat would become available to the open category.

We find that though it is a fact that validity proceedings are pending before the Scrutiny Committee, any direction to the respondent no.1 treat the petitioner as being admitted to a seat reserved for Scheduled Tribe category has to be in accordance with the Admission Brochure and especially Clauses 3.2.(H) and (K) referred to above. It is pertinent to note that the petitioner has not challenged the relevant Clauses of the Admission Brochure which require production of the relevant validity certificate till the last date of the admission process. For this reason, the reliance placed on the decision in *Yuvraj and ors.* (supra) does not assist the case of the petitioner since the constitutional validity of Rule 9.4.1 of the NEET UG-2020 Brochure had been specifically challenged therein. We note that similar relief was sought in Writ Petition Nos. 4914/2021 and 4915/2021 but the same was not granted on 03.12.2021.

In view of aforesaid, the ad-interim order dated 27.12.2021 is clarified in the following manner :

- (i) The petitioner's claim for admission for a seat reserved for Scheduled Tribe category shall be considered by the respondent nos.1 and 4 in accordance with the Admission Brochure and especially Clauses 3.2(H) and (K) thereof.
- (ii) The petitioner is free to appear before the Scrutiny Committee on 05.01.2022 and attempt to persuade the Scrutiny Committee to issue

appropriate validity certificate in accordance with law.

Civil Application is disposed of in aforesaid terms.

The authenticated copy of this order be supplied to the learned counsel for the parties.

(PUSHPA V. GANEDIWALA J.)

(A.S.CHANDURKAR, J.)

Andurkar..