



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD)No.319 of 2022

and

W.M.P (MD)Nos.244 and 245 of 2022

D.M.Hemadharshini

D/o. Manikandan

residing at 417/5, Ramana Maharishi Nagar,
Chettinayakanpatti, Dindigul West,
Dindigul District.

.. Petitioner

Vs.

1.The State of Tamil Nadu

rep. by its Secretary,
Department of Backward Classes,
Most Backward Classes & Minorities,
Welfare Department,
Fort St. George, Chennai - 600 009.

2.The Director of Medical Education,

DMS Complex,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 10.

3.The Selection Committee

rep. by its Secretary,
Admission for MBBS & BDS Course 2021-2022 Session,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 10.

4.The District Collector,

Office of the District Collectorate,
Dindigul, Dindigul District.

5.The Thasildar,

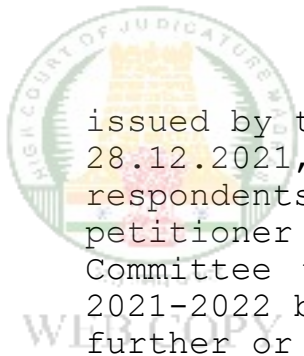
Dindugal West Taluk,
Dindigul, Dindigul District.

6.The Deputy Zonal Thasildar,

Dindigul, Dindigul District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus calling for the records relating to the impugned order



issued by the 5th respondent Thasildar in Na.Ka.No.5104/2021/A3 dated 28.12.2021, quash the same and further direct the 5th and 6th respondents to issue Hindu Navithar Community Certificate to the petitioner and consequently direct the 3rd respondent Selection Committee to consider the petitioner for admission to MBBS course 2021-2022 by treating her under Most Backward Category and pass such further or other orders.

For Petitioner

: Mr.Isaac Mohanlal
Senior counsel for
Mr.T.Cibi Chakraborty

For Respondents

: Mr.S.Shaji Bino,
Special Government Pleader.

ORDER

[Made by PARESH UPADHYAY, J.]

Challenge in this petition is made to the order passed by the fifth respondent dated 28.12.2021, rejecting the representation of the petitioner, seeking certificate that she belongs to Most Backward Class (Hindu Navithar).

2. Learned Senior Advocate for the petitioner has submitted that the parents of the petitioner do not belong to the same community. The mother belongs to Hindu Navithar community which is considered as Most Backward Class and the father does not belong to any reserved category i.e., he belongs to General Category. The petitioner's elder brother did not ask for any such certificate, since he did not require it. It is submitted that, the petitioner intends to pursue MBBS Course, where she needs this certificate, she is entitled to it, and therefore she had asked for such certificate, which is denied by the respondent authorities, which is illegal. It is submitted that, rejection of the claim of the petitioner by the respondent authorities, as contained in the impugned order is illegal. It is submitted that, the brother of the petitioner did not want such certificate itself is no ground that it will be denied to the petitioner. It is submitted that this petition be allowed.

3.On the other hand, learned Special Government Pleader for the respondents has vehemently opposed this petition. It is submitted that, the rejection of the claim of the petitioner by the fifth respondent is strictly in accordance with law and therefore no interference be made by this Court. Attention of this Court is invited to the contents of the counter dated 25.01.2022, more particularly, para : 5 thereof and it is submitted that this petition be dismissed.

4.Having heard the learned advocates for the respective parties and having considered the material on record, this Court finds as



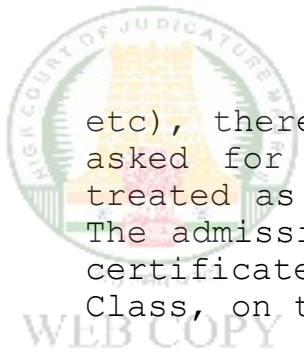
4.1 The point at issue before this Court is, whether the petitioner belongs to Hindu Navithar community, which is treated as Most Backward Class, and if she belongs to that community, whether she is entitled to get certificate to that effect.

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4.2 The parents of the petitioner do not belong to the same community. It is not in dispute that the mother of the petitioner belongs to Hindu Navithar community which is considered as Most Backward Class in the State. It is also not in dispute that the father of the petitioner does not belong to any such community which can be considered as Most Backward Community or any Reserved Category i.e., he is considered as General Category.

4.3 The policy of the State is that, in such cases i.e., when the parents do not belong to the same community, the child can opt for either of the community of his / her parents. This being the policy, the petitioner would certainly be entitled to get the certificate as asked for by her. The objection by the respondent authorities is NOT that, the mother of the petitioner does not belong to Hindu Navithar community, which is considered as Most Backward Class in the State, however the objection is that the elder brother of the petitioner had not asked for such certificate and therefore he is treated as General candidate and therefore the petitioner (his Sister) also has to be treated as General Category. This action of the State, is illegal and can not be sustained.

4.4 Further, the petitioner's elder brother did not ask for any such certificate, since he did not require it. The petitioner intends to pursue MBBS Course, where she needs this certificate, which she is entitled to and therefore she had asked for such certificate. Denial of such certificate to her, on the ground of her brother not asking for it, is legal perversity since an irrelevant factor is considered by the Authorities. The sister's case should not get prejudiced by what her brother had done, or some inaction on the part of her parents. Though not required, had such certificate been asked for by the parents of the petitioner for their elder son also, it would have certainly been granted by the Authorities. Then the present petitioner would not have faced any difficulty - this is the stand of the State. The object of the beneficial policy of the State can not be achieved by such implementation. Not only it is unjust and improper, it is illegal and unconstitutional since the fundamental right of this daughter is affected by this. Further, the posts / vacancies which are reserved for Reserved Category students / candidates are certainly reserved for them, but the converse would not be true. In other words, the posts which are not reserved can not be said to be reserved for unreserved students / candidates. The brother of the petitioner studying on an unreserved post, since he is treated as General Category candidate, needs to be seen from this view. We find that, in case of the brother of the petitioner, since he was not pursuing any such course (like MBBS



etc), there was no necessity and therefore such certificate was not asked for by him or on his behalf. That itself should not be treated as disqualification of his sister - the present petitioner. The admission of the petitioner in MBBS Course is dependant on such certificate. She must get it, since she belongs to Most Backward Class, on the basis of the community of her mother.

4.5 For all the above reasons, we find that the contest put forward by the State is unsustainable and the same needs to be rejected. On overall consideration we find that, the claim of the petitioner is in accordance with law and she must get relief asked for by her.

5. It is noted that the date of filing of this petition is 06.01.2022. Notice was issued by this Court on 10.01.2022. The impugned order passed by the fifth respondent is dated 28.12.2021, which is already held to be illegal. The petitioner should not suffer for the wrong of the respondent authorities. The case of the petitioner, ultimately will have to be considered on the basis of her standing with this certificate, right from the first counselling, however it is informed to the Court that, the first round of counselling for admission in MBBS course this year is over. The second round is, tomorrow or atleast in next few days. It is quite possible that, had the case of the petitioner been considered in the first round of counselling, not only she would have got admission in MBBS Course, but she would have got college of her higher preference also. It could be Government college also, where the amount of fees to be paid would be very less. These aspects, if required, may be examined in separate proceedings, if instituted by the petitioner. It would be expected from the Admission Committee to consider these aspects also, atleast in the second round of counselling.

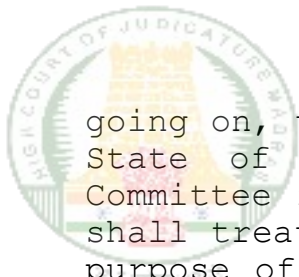
6. For the reasons recorded in a separate order dictated in the open court today (23.02.2022), the following order is passed:-

(i) The present Writ Petition (MD) No. 319 of 2022 filed by D.M.Hemadharshini, D/o. Manikandan residing at 417/5, Ramana Maharishi Nagar, Chettinayakanpatti, Dindigul West, Dindigul District, is allowed.

(ii) It is declared that, the petitioner is entitled to get Community Certificate belonging to Most Backward Class (Hindu Navithar). Consequently, the order dated 28 December 2021 passed by the fifth respondent (The Tahsildar, Dindigul West Taluk) denying issuance of such certificate to her, is quashed and set aside.

(iii) The fifth respondent (The Tahsildar, Dindigul West Taluk) is directed to issue Community Certificate in favour of the petitioner, treating the petitioner belonging to Most Backward Class (Hindu Navithar), within a period of two weeks from today.

(iv) Since the fifth respondent (The Tahsildar, Dindigul West Taluk) may need reasonable time to carry out the above direction, and considering the fact that the admission / counselling process is



going on, the second respondent (The Director of Medical Education, State of Tamil Nadu) and the third respondent (The Selection Committee for Admission for MBBS & BDS Course 2021 - 2022 Session), shall treat the copy of this order at this stage, sufficient for the purpose of treating the petitioner belonging to Most Backward Class (Hindu Navithar).

(v) Respondents 2 and 3 (The Director of Medical Education, State of Tamil Nadu and The Selection Committee for Admission for MBBS & BDS Course 2021 - 2022 Session) are directed to consider the case of the petitioner for the purpose of Admission to MBBS & BDS Course 2021 - 2022 Session, the counselling of which is undergoing now, treating her as Most Backward Class (Hindu Navithar) candidate.

(vi) The first round of counselling of the said admission process is already stated to have been over before few days and the second round thereof is indicated to be on 24 February 2022 or thereafter. Had the case of the petitioner been considered in the first round of counselling, where she would have got admission, is an aspect which may be gone into separately.

(vii) Mr.S.Shaji Bino, learned Special Government Pleader shall intimate this order to the fifth respondent (The Tahsildar, Dindigul West Taluk) and also to the third respondent (The Selection Committee for Admission for MBBS & BDS Course 2021 - 2022 Session), today, by separate communications.

7.No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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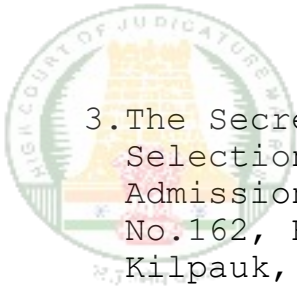
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Sub Assistant Registrar(CS)

smn

To

- 1.The Secretary,
Department of Backward Classes, Most Backward
Classes & Minorities Welfare Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
- 2.The Director of Medical Education,
DMS Complex,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 10.



3.The Secretary
Selection Committee
Admission for MBBS & BDS Course 2021-2022 Session,
No.162, EVR Periyar Salai,
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4.The District Collector,
Office of the District Collectorate,
Dindigul, Dindigul District.

5.The Thasildar,
Dindugal West Taluk,
Dindigul, Dindigul District.

6.The Deputy Zonal Thasildar,
Dindigul, Dindigul District.

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-8547[F] dated 24/02/2022)

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-8207[F] dated 23/02/2022)

+1 CC to M/s.SPL GP (SR-8366[F] dated 24/02/2022)

W.P(MD)No.319 of 2022
23.02.2022

MGJ(25.02.2022) 6P 10C