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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 25th August, 2022+ W.P.(C) 12213/2022

MONU KHAN

..... Petitioner

Through: Ms. Samriti Ahuja and Ms. Nancy,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Manish Kumar, Senior Central
Government Counsel for R-1. UOI.
Ms. Seema Dolo, Advocate for R-2/
NTA.
Mr. Arjun Mitra, Advocate for R-3/
JEE (Advanced).**CORAM:****HON'BLE MR. JUSTICE SANJEEV NARULA****JUDGMENT****SANJEEV NARULA, J. (Oral):****C.M.(APPL)...../2022 (for filing additional documents)**

1. A copy of an application for filing additional documents has been handed over across the board.
2. Registry is directed to number the application.
3. Considering the grounds stated therein as well as the documents annexed, the same is allowed. Let the additional documents be taken on record.
4. The application stands disposed of.



W.P.(C) 12213/2022 & C.M. APPL. 36615/2022 (for interim stay)

5. The Petitioner – Mr. Monu Khan, an aspirant of B.Tech. course, appeared in the Joint Entrance Examination (Main) 2022 [***JEE (Main)***] under the ‘General/(UR)’ Category. He has not qualified for Joint Entrance Examination (Advanced) 2022 [***JEE (Advanced)***] in the said category, but has scored a percentile which is higher than the cut-off for the General Economically Weaker Section category [***Gen-EWS***]. Now, after declaration of JEE (Main) results, and the announcement of Common Rank List [***CRL***], and just before the conduct of JEE (Advanced) which is scheduled on 28th August 2022, he seeks to be included the list of qualified Gen-EWS candidates appearing for the said exam.

6. The scheme of the JEE examinations, is as follows:

- i. A candidate is required to register by filling-up an online application form, through which a “*system generated application number*” is allocated. Once submitted, there is no provision to rectify the application. For applying as an EWS candidate, an aspirant has to either upload an EWS certificate for the relevant year, or file a self-declaration to that effect.
- ii. Candidates are allowed two opportunities to write the JEE (Main), which are described as Session 1 and Session 2. However, it is not mandatory to appear in both the sessions. Scores are obtained on a percentile basis, and are not an aggregate or average of the marks obtained. If a candidate appears in both the sessions, the higher score of the two is considered as final for each subject, the total of which



forms the “*Total NTA Score*” of the candidate.

- iii. NTA announces the “*All India Rank based on Final NTA Score*” which is a rank list, and further declares “*Cut-off Total NTA Score based on Paper 1 (B.E./B.Tech.)*” for General as well as Reserved categories. These are used by candidates for – (i) seat allocation to many premier engineering colleges such as NITs, NSIT, DTU [“*NIT+ institutions*”] through a Joint Seat Allocation Authority [“*JoSAA*”] which considers the All India Rank; and/or (ii) qualifying to write the JEE (Advanced) for attaining admission into IITs through the cut-off NTA Score for the said exam.¹
 - iv. On 7th/8th August, 2022, NTA declared the *Cut-off Total NTA Score based on Paper 1 (B.E./B.Tech.)*. The cut off for the general/unreserved category is 88.4121383 and the cut off for Gen-EWS category is 63.1114141.
7. The case of the Petitioner, in brief, is as follows:
- i. Petitioner’s mother is a cancer patient and at the time of filling-up the application [on 2nd March 2022] for JEE (Main), she was undergoing chemotherapy treatment. For this reason, Petitioner got his form filled through a friend, who mistakenly mentioned the category as “General” instead of “EWS”.
 - ii. On 6th April 2022, NTA published a notification titled ‘*Correction in*

¹ According to a rulebook handed over by the Respondent, titled *Business Rules of JoSAA*, - “*Indian Institutes of Technology [IITs] offer several academic programs for which admission is on the basis of JEE (Advanced) 2022. National Institutes of Technology [NITs], Indian Institute of Engineering Science and Technology, Shibpur [IIEST], Indian Institutes of Information Technology [IIITs or Triple-I-Ts] and a few other technical Institutes funded fully or partially by Central or a State government [Other-GFTIs] (referred to as NIT+) offer academic programs for which admission is on the basis of JEE (Main) 2022.*”



particulars of the Online Application Form of Joint Entrance Examination (Main) – 2022 Session 1 – Reg.’ which opened a window from 06th to 08th April, 2022 (9 p.m.) to edit or modify particulars in the application form. However, Petitioner was given no intimation of the same *via* email or message or otherwise, and was thus deprived of this opportunity. No such opportunity was given before Session 2.

- iii. Petitioner sat for the JEE (Main) and obtained a score of 77.6026313 in Session 1 and 71.8024074 in Session 2. On the basis of the cut-off for General Category, he is ineligible to appear for JEE (Advanced). But, as he belongs to Gen-EWS Category and has scored more than the qualifying percentile prescribed for the said category, he is qualified to appear for JEE (Advanced) and NTA should be directed to allow him to write the exam.

8. Ms. Samriti Ahuja and Ms. Nancy, counsel for the Petitioners, strenuously asserted that Petitioner's request should be entertained in light of the purportedly unique facts and circumstances of the case. Their submissions are summarised below:

- i. The Petitioner is a meritorious student aged 18 years with a bright career opportunity ahead and should not be prejudiced due to inadvertent error that has occurred while filling-up the application form. In terms of the '*Notice to Candidates*' issued by the Joint Admission Board of JEE (Advanced) which is attached as Annexure-1, the Petitioner has only a one-time opportunity to appear for JEE (Main). This is thus his first and last attempt, and in case his category is not changed, it is the end of



the road for him as far as JEE examinations are concerned.

- ii. Given the medical condition of his mother, the Petitioner was neither able to fill the form himself, nor correct his category in the application form during the rectification window.
- iii. It is suggested that Petitioner may be put at the bottom of the qualifying cut-off rank list in the EWS Category, to ensure that no prejudice is caused to other Gen-EWS candidates who are in the qualified pool for JEE (Advanced). They nevertheless do not have any vested right, since no seat has been allocated to them as yet. On the basis of their NTA Score, they would only be entitled to apply for admissions in NTA+ institutions, and therefore, the inclusion of the Petitioner in the list of qualified Gen-EWS candidates would not negatively impact other rank-holders. In support of this proposition, reliance is placed on the decision of the Division Bench of this Court in **Charu Kain v. High Court of Delhi**,² and of the Supreme Court in **Commissioner of Police and Anr. v. State of Umesh Kumar**.³
- iv. Petitioner must be allowed to register for JEE (Advanced) and denial of this request would violate his fundamental right under Article 15(6) and 16(6) of the Constitution of India, which provides for 10% reservation in the EWS Category.

9. *Per contra*, Ms. Seema Dolo, counsel for Respondent No. 2/ NTA,

² W.P.(C) 9230/2022 decided on 03rd June 2022.

³ 2020 10 SCC 448. Reliance was placed on the following paragraph:

“19. The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In *Punjab S.E.B. v. Malkiat Singh*, this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment.”



and Mr. Arjun Mitra, Advocate for Respondent No. 3/ JEE (Advanced), made the following submissions:

- i. Petitioner does not have any *bonafide* claim and thus, the entire basis for seeking mandamus is unfounded. The Petitioner has written in an e-mail communication dated 09th August, 2022, addressed to the NTA, that, “(...) *When I applied for jee mains, unfortunately I didn't upload ew's certificate (...)*”. However, the EWS certificate relied upon by the Petitioner, on the face of it, has been issued on 02nd August 2022, which is way after the Petitioner had attempted both Sessions 1 and 2. Therefore, both the EWS Certificate and the email communication are clearly an after-thought, intended as a last-ditch effort to make the cut-off, by attempting to obtain a favourable order from this Court.
- ii. There is no policy of NTA to allow any modification to the application forms, yet, due to the large number of requests, a one-time opportunity was provided to the candidates to amend their particulars in the rectification window specified in the notice dated 6th April 2022. Even then, the Petitioner did not avail of the same. There is no policy of NTA to send intimations to individual candidates when such rectification window is notified; it was a public notice freely available on NTA's website. Petitioner should have been vigilant in case he was genuinely interested to rectify the so-called error. Now, Petitioner has approached the Court at the eleventh hour, and should be estopped from taking advantage of his own delay and lackadaisical attitude.
- iii. Other eligible candidates who have qualified the cut-off criteria for Gen-EWS and are ranked below the Petitioner will be prejudiced if such a relief is granted. As regards Petitioner's suggestion of being



placed in the bottom of the list of qualified Gen-EWS candidates, the same cannot be entertained as it is neither permissible nor feasible; and would lead to a chaotic situation.

10. The Court has considered the aforementioned contentions.

11. While the Court sympathises with Petitioner on account of the factual background narrated in the petition and particularly the illness of his mother, however, the above narration cannot form the legal basis for granting the prayer sought in the present petition, which reads as follows:

- “(a) *Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction to the respondents to allow the Petitioner to register and to appear in the Joint Entrance Examination (JEE) Advance to be held on 28.08.2022;*
- (b) *Award Costs of the Writ Petition to the Petitioner;”*

12. It is both an attractive argument and a seemingly innocuous prayer of the Petitioner, to be placed at the bottom of the rank list of eligible candidates in Gen-EWS category, in order to not prejudice the other candidates while also obtaining the relief sought above. However, upon closer inspection, for reasons stated hereinafter, the request is impermissible, as it would have other far-reaching consequences.

13. In light of the scheme of examination narrated above, JEE (Advanced) is conducted specifically for admissions into IITs on the basis of the rank held by the students in the JEE (Main). In order to be eligible, a candidate has to achieve the prescribed cut-off score. As of now, Petitioner has not qualified as a General category student. In order to make it to the cut-off list as an EWS candidate, first his category needs to be changed from ‘General (UR)’ to ‘Gen-EWS’. Such a change of category would also necessarily mean that the score cards issued to the Petitioner by the NTA would have to be changed, and would thus entail a change in the Petitioner’s



“All India Rank based on Final NTA Score”. Pertinently, it is to be remembered that the NTA score, as noted above, is valid not just for IIT (Advanced), but also for seat allocation in NIT+ institutions through the JoSAA. Thus, Petitioner’s NTA score for JEE (Advanced) cannot be changed without impacting the rank list for NIT+ institutions, in the Gen-EWS category.

14. Further, Percentile, by its necessary meaning, is a function of rank obtained by some candidate vis-à-vis other candidates who appeared in the same test. The Petitioner’s rank in the list of qualified Gen-EWS candidates is intrinsically linked with his percentile obtained and is determined by a mathematical formula. Presently, in the said rank list, the Petitioner has a CRL (general) of 206786, but his rank in ‘Gen-EWS’ is blank. As the Petitioner’s placement in the list of qualified Gen-EWS candidates has to be on the basis of the NTA score; he cannot be placed in the bottom of the list of qualified Gen-EWS candidates, since his percentile entitles him to be placed higher-up in the list. Hence, the fallout of allowing the prayer for sitting in the JEE (Advanced), would certainly entail upsetting the final list of qualified Gen-EWS candidates, which, in the opinion of the Court, would have the ripple effect of upsetting and redrawing the Common Rank List for seat allocation for Gen-EWS candidates for the NIT+ institutions, which cannot be allowed.

15. That said, the next pertinent question is whether Petitioner is entitled to claim such modification of his online application of JEE (Main) as a matter of right. The answer to the above has to be in the negative. The Petitioner contends that there is no vested right in favour of the candidates who qualified the Gen-EWS cut-offs, but forgets that he is not better off, as



no vested right has accrued in his favour either, to claim correction of category.

16. The relevant provision in the *Information Bulletin for JEE (Main)-2022* issued by NTA, dealing with applications of reserved category candidates, is extracted hereinbelow:

“5.1.1. For Candidates claiming to the GEN-EWS category

GEN-EWS certificate (Annexure-IA) needs to be uploaded in the Online Application Form of JEE (Main) – 2022 which should have been issued on or after 01 January 2022 in consonance with the latest guidelines of the Government of India. If any GEN-EWS candidate fails to submit the GEN-EWS certificate (issued on or after 01 January 2022) at the time of online registration, the candidate has to upload a declaration [Declaration in Lieu of Gen-EWS Certificate at Annexure-IB] to that effect (Reference: No. F. No,20013/01/2018-BC-II). ”

17. As per the above provision, in case a candidate is unable to submit the Gen-EWS certificate at the time of online registration, he has the option to upload a self-declaration to that effect in the prescribed format. Thus, if Petitioner’s family income was less than the threshold for being categorised as EWS, Petitioner could have easily filed a declaration in lieu of the certificate, which was admittedly not done.

18. Further, the Information Bulletin indeed did not permit any modification, which is evident from the following clause contained therein:

“Candidates are requested to fill in the Application Form very carefully. No corrections will be permitted once the Application Form is submitted.”

19. Nevertheless, on 06th April, 2022, NTA allowed corrections in the particulars of the online application of JEE (Main) Session 1. The said notice reads as follows:

“PUBLIC NOTICE
06 April 2022

Sub: Correction in particulars of the Online Application Form of Joint Entrance Examination (Main)– 2022 Session 1– Reg



NEUTRAL CITATION NO: 2022/DHC/003260

In view of the numerous representations received from the candidates regarding giving them an opportunity to edit/modify their particulars in the Online Application Form of JEE (Main)– 2022– Session 1, National Testing Agency has decided to provide the first and final opportunity to the candidates for modifying their particulars in the Online Application Form of JEE (Main)– 2022 Session 1. The details of the same are as given below:

<i>Exam/ Session</i>	<i>Duration for Correction in Particulars</i>	<i>Field for Corrections</i>
<i>JEE (Main)– 2022 Session 1</i>	<i>06th April to 08 April 2022 (up to 09:00 P.M.)</i>	<i>As per Annexure I</i>

All the registered candidates for the said Examination are advised to visit the website and verify their particulars. They are further advised to make correction/s in their particulars, in their respective Application Form, in required.

The candidates are allowed to make the corrections, latest by 08 April 2022 (up to 09:00 P.M.). Thereafter, no correction in particulars, whatsoever, will be entertained by NTA under any circumstances. The additional fee (wherever applicable) shall be paid by the candidate concerned either through Credit/Debit Card/Net Banking/ UPI and PAYTM. Since, it is a one-time facility extended to the candidates to avoid any hardships to the candidates are informed to do the correction very carefully, as no further chance for correction will be given to the candidates.

For further clarification related to JEE (Main)– 2022, the candidates can also contact 011-40759000 or email at jeemain@nta.ac.in.

*(Dr. Sadhana Parashar)
Senior Director (Exams)”*

20. It can be seen that the Petitioner had an opportunity to request for corrections by 08th April, 2022, which too was not availed of. No provision of the Information Bulletin or any other rule/policy has been cited which required NTA to individually intimate the correction window facility to each candidate, and more specifically to the Petitioner. Being a public notice, it was in the public domain and Petitioner ought to have been vigilant if there was indeed an error in his application form that he was aware of. Petitioner raised neither complaints nor queries immediately upon realising his purported mistake. In fact, he appeared in both Session 1 and Session 2 examinations as General category candidate without any protest. It is much later, once the results were known, and it dawned on him that he has not



cleared the JEE (Main) as a General candidate, that he set about upon a circuitous route to appear for JEE (Advanced). An EWS Category certificate was obtained by him only on 02nd August, 2022 from Government of Uttar Pradesh declaring that Petitioner belongs to General/ Pathan Caste and that his gross annual income of his family is below 8 lakhs for the financial year 2021-22. This certificate is concededly issued much after he had filled the online application form and appeared in both the sessions as General Category candidate. The after-thought is clearly evident from such a conspectus of facts.

21. It must also be noted that EWS is a reservation claim on the basis of annual income of the family. It is issued on the basis of documents/declaration furnished by an applicant before the concerned authority. Such certificates are valid on a year-to-year basis, in absence whereof, the claim for EWS category cannot sustain. Therefore, in the facts of the instant case, the Petitioner's entitlement to appear for the JEE (Advanced), which was premised on the reservation for EWS, in the absence of a self-declaration filed by him, can only sustain with effect from 02nd August, 2022 (being the date of issuance of the category certificate). For such reasons, the foundation of the petition – that Petitioner belongs to EWS category at the time of filing of the application form in March, 2022 for Session 1 JEE (Main) and that his friend allegedly made a mistake in filling-up the category as “General” instead of “EWS” – is not convincing. Petitioner's *bona fides*, however extreme the circumstances may have been for him, have not been demonstrated.

22. The judgments relied upon by the Petitioner are entirely inapplicable. The judgment of the Division Bench of this Court in **Charu Kain** (*supra*), is



distinguishable as the factual circumstances in the said case were entirely different. Therein, Petitioner belonged to Scheduled Caste category and had erroneously filed her candidature under the General category. The claim of reservation on the basis of belonging to SC category was a right which stood in favour of the Petitioner on the basis of her birth, unlike the reservation claimed under EWS category which is linked to the annual income of the family. Thus, this judgement cannot support the case advanced by the Petitioner.

23. Further, the reliance placed on *Commissioner of Police (supra)* is also misplaced. The said judgment pertains to service law, where the Court observed that inclusion of a candidate in the selection list does not create a vested right of appointment to a position. The said judgment therefore has no relevance whatsoever to the facts of the present case.

24. For the foregoing reasons, the Court does not find merit in the present petition.

25. Dismissed, along with other pending applications.

SANJEEV NARULA, J

AUGUST 25, 2022

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