

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 WRIT PETITION NO.2266 OF 2023

SAFIYA RAFIQUE TAMBOLI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

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Advocate for Petitioner : Mr. Bolkar Yogesh B.
AGP for Respondent No.1: Mr. S.K. Tambe
Advocate for Respondent No.2 : Mr. M.D. Narwadkar
Advocate for Respondent No.3 : Mr. A.D. Khot
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 23rd FEBRUARY, 2023.**

PER COURT :-

1. The petitioner is an 18 years old girl student, who has secured admission under a legal and valid admission process pursuant to the NEET-UG-2022 examination. She was selected to join the B.H.M.S. course and she was allotted a medical college at Jalna, through the creamy layer quota. The last date for joining the college was 01.02.2023 up to 5.00 p.m. The petitioner reached the college on 01.02.2023. As the formalities to report to the college for admission were being completed, the petitioner was informed that she would not be allowed the report since her creamy layer certificate was not in the form Annexure G. She was advised to get the certificate converted into a particular form. She got the said certificate on 06.02.2023. However, she was placed in the open category and her admission was cancelled as she did not qualify from the open category.

2. The learned advocate for respondent No.2, the Commissioner and the competent authority, State Common Entrance Test Cell, Maharashtra, submits that clause 9.4.1 of the NEET-UG-2022 information brochure of preference system for admission to Health Science Courses requires that the candidate from the non creamy layer certificate must produce such certificate when the physical verification of the documents is undertaken. The candidate who fails to produce the certificate will be considered as open category candidate. Reliance is placed on a judgment delivered by the learned Full Bench of Punjab and Haryana High Court in ***Raj Singh vs. Maharshi Dayanand University, 1994 (4) R.S.J. 289 (P & H)***, in which it has been concluded that such brochure has a binding effect on the applicant as well as the institution and has the force of law.

3. There is a slight distinction in the facts of the present case and those emerging before the Full Bench judgment of Punjab and Haryana High Court. In the instant case, the petitioner did have a creamy layer certificate. It is not that she secured the admission to the B.H.M.S. course without having the creamy layer certificate. She did have such certificate. It is only that the certificate issued by the competent authority was not in the proper form which was prescribed by respondent No.2.

4. In our view, when she did have the creamy layer certificate which was uploaded when she had sought admission from said quota,

the college should have allowed her to join and should have given her time to get the certificate converted into a particular form, as required by the authorities. What was actually happened is that her admission is treated as cancelled. We are informed that there were 12 vacancies available with the same college as per the list published by respondent No.2 on the official website, on 21.02.2023. Two seats have now been filled in and 10 are vacant. This is confirmed by the learned advocate for the college.

5. In view of the above, this petition is allowed. The petitioner shall fulfill the formalities of tendering the non creamy layer certificate to respondent No.3 college, which is at page 23 of the petition paper book. The same has also been uploaded and delivered to respondent No.2 by e-mail on 13.02.2023 at 11.00 a.m. Let such certificate be filed with the college, on or before 28.02.2023.

6. The litigating parties need not wait for this order to be uploaded on the official website of the Bombay High Court and shall abide by the same, since it has been dictated in the open court. Consequentially, respondent No.2 shall declare that the petitioner's admission is confirmed, within 10 days from today.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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