



W.P.No.26523 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	06.10.2023
PRONOUNCED ON :	10.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.26523 of 2023
and W.M.P.No.25927 of 2023

S.Soniya (minor)

Rep. By her father/

Natural Guardian A.Sasikumar

... Petitioner

Vs.

1. Union of India,

Rep. By the Administrator,

U.T.of Puducherry.

2. The Chief Secretary,

Chief Secretariat, U.T.of Puducherry.

3. The Tahsildar,

Department of Revenue and Disaster Management,

Taluk Office, Oulgaret, U.T.of Puducherry.

4. The Additional Co-ordinator (Admission),

Centralised Admission Committee (CENTAC),

Directorate of Higher and Technical Education,

Government of Puducherry.

... Respondents



W.P.No.26523 of 2023

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the act of the respondents treating the petitioner as S.C.(migrant) for admission in Government Quota – UT-SC in NEET based UG medical course as violative of the circular No.BC,12025/2/76- SCT.I dated 22.03.1977 and circular No.39/37/73-SCT.I dated 21.05.1977 and consequentially direct the respondents to treat the petitioner as SC in Government Quota-UT-SC in NEET based UG medical course.

For Petitioner : Mr.Achari & Antoni

For Respondents : Dr.B.Ramaswamy,
Additional Government Pleader (Pondy)

ORDER

Per J.NISHA BANU, J.

This Writ Petition is filed praying for Writ of declaration declaring the act of the respondents, treating the petitioner as 'S.C.(migrant)' for admission in Government Quota – UT-SC in NEET based UG medical course as 'violative' of the circular No.BC,12025/2/76- SCT.I dated 22.03.1977 and circular No.39/37/73-SCT.I dated 21.05.1977. The petitioner also seeks for a consequential direction to the respondents to treat the petitioner as 'SC' instead of 'S.C.(migrant)'.



W.P.No.26523 of 2023

WEB COPY

2. It is averred in the writ petition that the petitioner is the daughter of one A.Sasikumar. She was born at Puducherry and completed her 12th standard at Puducherry. She had applied for **National Eligibility cum Entrance Test (NEET) Under Graduate(UG) counselling for Bachelor of Medicine and Bachelor of Surgery (MBBS) 2023.**

3. Originally, the father of the petitioner was a resident of Tamil Nadu. He married one Malathy, who was a resident of Puducherry. Petitioner was born to them. When the father of the petitioner had applied for community certificate in Puducherry for him, the Tahsildar/ the third respondent herein had issued with a community certificate categorizing him as 'SC (migrant)'. Thereafter, he submitted an application for obtaining community certificate for his daughter viz., the petitioner. She was issued with Caste Certificate vide Certificate No.3349/Too/F/2023 by the Department of Revenue and Disaster Management, Puducherry, stating that the petitioner belongs to Hindu-Arundhathiyar (Migrant)-Scheduled Tribe.



W.P.No.26523 of 2023

4. According to the learned counsel for the petitioner, the act of the third respondent in categorizing the petitioner as 'SC (migrant)' is violative of the notification issued by the Government of India vide its circular No.BC, 12025/2/76-SCT.I dated 22.03.1977 and circular No.39/37/73-SCT.I dated 21.05.1977.

5. The main grievance of the petitioner's father is that since the petitioner has been categorized as 'SC (migrant)', her name was not found in the draft merit list for NEET based UG medical Courses 2023-24 under Government Quota – UT-S.C. issued by the fourth respondent. His further contention is that if the petitioner's community was categorized as 'S.C.' alone instead of 'SC (migrant)', then her name would have been included in the draft merit list and there would have been a possibility of being selected.

6. The learned counsel for the petitioner would submit that since the fourth respondent is proceeding with the publication of merit list and if the same is permitted, then the valid right of the petitioner would get defeated. Hence, the petitioner has preferred the present writ petition.



W.P.No.26523 of 2023

WEB COPY

7. At the time of admission, we directed Mr.J.Kumaran, learned Additional Government (Pondicherry) to take notice for the respondents. We also directed the 4th respondent to keep one seat vacant. Thereafter, the matter was listed for arguments. Third Respondent filed counter affidavit.

8. The learned counsel for the petitioner relied upon the judgment of (i) ***Rameshbhai Dabhai Naika vs. State of Gujarat*** reported in (2012) 3 SCC 400, wherein the Supreme Court held that in inter-caste marriages, the determination of caste of the off-spring is essentially a question of fact and that there is only a presumption that the child has the caste of the father and it is neither conclusive not irrebuttable. The learned counsel for the petitioner also relied upon the judgment of (ii) ***Rumy Chowdry vs. the Department of Revenue*** [W.P.C.No.8780 of 2019] and judgment of this court (iii) ***S.Sumathy vs. Union of India*** [W.P.No.9586 of 2014].

9. Dr.B.Ramasamy, learned Additional Government Pleader (Pondy) reiterated the submissions in the counter affidavit and submitted that the Ministry



W.P.No.26523 of 2023

of Social Justice and Empowerment, (Scheduled Castes Development Division - Revision of Lists Cell), Government of India, Shastri Bhavan, New Delhi, through its letter vide No.12017/2/2018 SCD (R.L.Cell) dated 22.02.2018 has listed out the instructions on issue of Scheduled Caste Certificate to Migrants from other States/Union Territories. The relevant portion is as under:

"it was clarified that the Scheduled Caste / Scheduled Tribe person on migration from the state of his/her origin to another state will not lose his/her status as Scheduled Caste/ Scheduled Tribes but he / she will be entitled to the concessions / benefits admissible to the Scheduled Castes / Scheduled Tribes from the state of his/her origin and not from the state where he/she has migrated".

10. The learned Additional Government Pleader (Pondy) also referred to the judgment of the Hon'ble Supreme Court of India in ***Punit Rai vs. Dinesh Chowdhary*** made in Appeal (Civil)No.659 of 2003, wherein at paragraph no.27, it has been observed that:

"The caste system in India is engrained in the Indian mind. The person, in the absence of any statutory law, would inherit his caste from his father and not his mother, even in a



W.P.No.26523 of 2023

case of inter-caste marriage”.

WEB COPY

11. The learned Additional Government Pleader (Pondy) would submit that the father of the petitioner had declared his community as Arunthathiyar (Migrant) while submitting his application dated 06.06.2023 for issuance of caste certificate to the petitioner. Accordingly, the caste certificate in the prescribed format was issued to the petitioner that she belongs to Hindu Arunthathiar (Migrant) Caste.

12. The learned Additional Government Pleader (Pondy) would submit that the only remedy for the petitioner is to prefer an appeal. Instead the writ petitioner is making an attempt to secure medical seat by suppressing material facts through CENTAC admission, which would gravely affect the scope of genuine origin Scheduled Caste candidates of Puducherry.

13. Heard both sides and perused the records.

14. In the case on hand, petitioner's father belongs to a migrant Arunthathiyar caste, recognised as Scheduled Caste in the state of his origin, Tamil



W.P.No.26523 of 2023

Nadu. Petitioner's mother belongs to Hindu - Adi Dravida Caste (Origin), which is recognised as scheduled caste in the Union Territory of Puducherry. So both the parents belong to Scheduled Caste. The question which arises for consideration in the present case is, when the father's caste is given as S.C.(migrant) and mother's caste is S.C, then, whose caste is to be applied for their child.

15. In the case of *Rameshbhai Dabhai Naika vs. State of Gujarat* reported in **(2012) 3 SCC 400**, the Supreme Court held that it is a factual aspect and depends on the facts and circumstances of each case.

16. It is to be pointed out herein that the father of the petitioner, in his application for issuance of caste certificate, has specifically mentioned that he belongs to migrant SC category. But as far as the petitioner is concerned, he had a choice either to apply as Hindu Adi Dravidar, as it is the caste of her mother on the basis of domicile or to apply under Arunthathiyar sub-caste, as it is based on the origin of the petitioner's father.

17. Secondly, this Court would deal with the question whether the act of the



W.P.No.26523 of 2023

Authorities is in violation of the circular No. BC, 12025/2/76-SCT.I dated 22-03-1977 and circular No.39/37/73-SCT.I dated 21-05-1977 or not. It is evident from the facts of the case that both the petitioner and her father reside within the limits of Union Territory of Puducherry. The status of a migrant scheduled caste has already been discussed by the Hon'ble Apex Court in the case of ***Pondicherry Scheduled Caste People's Welfare Association vs. Union of India*** at paragraph no.7. The relevant portion of the same is extracted as under:

“ The Scheduled Caste students in these cases were all issued Scheduled Caste Certificates by the Revenue Authorities of Pondicherry based on the Community Certificate issued by the competent authority in the State of Tamil Nadu. It is also worth mentioning here that in all these certificates, it is clearly indicated that Community Certificates were issued under the provisions of the Constitution (Scheduled Castes) Order, 1950 meaning thereby it was not on the basis of the Constitution (Pondicherry) Scheduled Castes Order, 1964. The children of these Scheduled Castes migrated from Tamil Nadu were not given the benefits of Reservation earmarked for the Scheduled Castes of Pondicherry. The denial of such benefits of reservation made them to file the writ petitions. ”



W.P.No.26523 of 2023

According to the Schedule annexed to the Constitution (Puducherry) Scheduled Caste Order, 1964, Arunthathiyar sub-caste is not categorized as a Scheduled caste. Also, it is noteworthy that the petitioner was issued with the certificate on 16.03.2023 i.e., that is even before she applied for the NEET UG examinations. The father of the petitioner had never objected to the decision of the Authorities when such a certificate declaring the petitioner as SC Migrant was issued.

18. The Circular in **BC12025/2/76/SCT1 dated 22.03.1977** speaks about the terms and conditions that are applicable for reservation of seats in case of migration of SC and ST from one State to another. Para **2** (ii) provides that where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a Scheduled Tribe only in relation to the State to which he originally belong and not in respect of the State to which he has migrated.

19. This court while dealing with a case involving similar set of facts, in W.P.No.9586 of 2014, ***[S.Sumathy Vs 1.Union of India Represented by Secretary Revenue, Government of Puducherry and another]***, by order dated 04.09.2023



[wherein one of us was a party to Judgement, J.NISHA BANU], held as under:-

WEB COPY

“ 10. We have already pointed out that, in the State of Puducherry, Hindu Adidravida (Parayar) is considered as Scheduled Caste community. The only issue that we have to see is whether it is the origin of the mother or origin of the father, that has to be considered.

11. The office memorandum which was originally relied upon by the respondents to deny the Scheduled caste benefits to the writ petitioner i.e., dated 10.11.2000 has been declared unconstitutional and it has been upheld by the Division Bench as well as by the Supreme Court. Consequently, the law that is in force today, is the office memorandum dated 03.08.1995 which has been held valid. This position having been approved by the Supreme Court, we have to apply the same to the facts and circumstances of the present case. The facts putforth above would go to show that the petitioner-son was brought up entirely in the State of Puducherry under the care and custody of his mother, who is of Puducherry origin and belongs to Scheduled caste community. Therefore, judgments of this Court will apply in all force to the facts of the case.

12. Accordingly, this writ petition stands allowed. The respondents are directed to issue a caste certificate to the petitioner's



W.P.No.26523 of 2023

son (Bharath Rajan), within a period of four(4) weeks from the date of receipt of a copy of this order. No costs. “

20. In view of the above discussions, we hold that the petitioner herein who is fully brought up in Puducherry and who is of Puducherry origin, is entitled for Scheduled caste community.

21. Therefore, following the ratio applied in the above cited case ***[S.Sumathy Vs 1. Union of India Represented by Secretary Revenue, Government of Puducherry and another] -W.P.No.9586 of 2014 dated 04.09.2023***, if we assess the case on hand, there is no dispute regarding the fact that the mother of the writ petitioner was born and brought up at Pondicherry and is a 'origin' Scheduled Caste. It is admitted by the 3rd respondent in the counter that the petitioner's mother was a native of Puducherry and belongs to Hindu Adi Dravida community recognized as Scheduled Caste in Puducherry. She married a migrant person, also belonging to the same community. Therefore, even on the part of the Government of Pondicherry, there is no dispute regarding the fact that the community of the parents of the applicant is one and the same and it is recognised



W.P.No.26523 of 2023

as a Schedule Tribe in Pondicherry also. Therefore, except for the reason that the father of the applicant is a migrant, on no other ground the claim of the petitioner has been rejected by the respondents. In these circumstances, we hold that the caste certificate issued by the 3rd respondent is not sustainable. Accordingly, this writ petition stands allowed. The 3rd respondent is directed to issue a caste certificate to the petitioner (S.Soniya), forthwith on receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B.,J]

[N.M.,J.]

10.11.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

Note: Issue order copy on 10.11.2023.

nvsri

To:

1. The Administrator, U.T.of Puducherry.
2. The Chief Secretary,
Chief Secretariat, U.T.of Puducherry.
3. The Tahsildar, Department of Revenue and Disaster Management,



W.P.No.26523 of 2023

Taluk Office, Oulgaret, U.T.of Puducherry.

4. The Additional Co-ordinator (Admission),
Centralised Admission Committee (CENTAC),
Directorate of Higher and Technical Education, Government of Puducherry.

J.NISHA BANU, J.,
and
N.MALA, J.,

nvsri

Order made in
W.P.No.26523 of 2023



WEB COPY



W.P.No.26523 of 2023

10.11.2023