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W.P.No.26731 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.26731 of 2023

Dr.Pratheeksha

.... Petitioner

Vs.

1.The National Board of Examination
Medical Enclave, Ansari Nagar
P.O.Box No.4931, Ring Road
New Delhi - 110 029.

2.The Medical Counselling Committee
Allotment Process - Counselling
Directorate General of Health Services
Ministry of Health and Family Welfare
Government of India
Nirman Bhawan, Maulana Azad Road
New Delhi - 110 011.

3.The National Medical Commission
Pocket-II, Sector-8, Dwaraka Phase-I
New Delhi - 110 077.

... Respondents



W.P.No.26731 of 2023

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent to permit the petitioner to participate in the Post Graduate Medical Counselling by considering petitioner as Other Backward Community candidate on par with order made in W.P.No.13387 of 2023 dated 28.06.2023.

For Petitioner : Mr.I.Syed Sibghatulla

For Respondents : Mr.R.Thirunavukkarasu
Central Govt. Standing Counsel for R1

Mr.K.Srinivasamurthy
Senior Panel Counsel for R2

Ms.Shubharanjani Ananth for R3

ORDER

The petitioner herein had applied for NEET examination for Medicine PG course for the academic year 2023-2024, wherein she had indicated her category as OBC. The cut-off mark prescribed for OBC category is 257, whereas the petitioner has scored 269 marks. However, while registering for counselling, the petitioner has given her category as General, for which the cut-off mark is 291. Now the petitioner seeks an issuance of writ of



W.P.No.26731 of 2023

mandamus, directing the first respondent to permit the petitioner to participate in the NEET PG 2023 Counselling under the OBC category, as per the order passed in a similar matter in W.P.No.13387 of 2023 dated 28.06.2023, after all rounds of counselling.

2. The learned counsel for the petitioner made a statement as has been outlined above, and added that an inadvertent error in mentioning the correct category in the online application for registration for counselling, should not cost her future, and hence, prayed that her case may be considered by the first respondent as a last case after filling up the seats, for if any seats still remain to be filled up.

3.1 This is not the first case, nor will it be the last, that has visited this court under Article 226 of the Constitution, with a candidate repenting for a mistake, a perfectly avoidable lapse, occasioned purely due to lack of requisite care, with a plea for judicial intervention. This Court is painfully dismayed over the growing misconception generously entertained on the role and scope of judicial review which the petitioner and those of her ilk entertain. Driven perhaps by a false sense of perception that the judiciary is a haven to cover one's faults, a section of our citizens are willing to shame



W.P.No.26731 of 2023

the role of judicial review by gambling on its process. The pattern is templated: the sympathy cords will be fine-tuned and symphonies will be played by the well-chiselled talents from the Bar to ensure that the pathos they produce overpower the intellectual responses of the courts. Overwhelmed by empathy, Courts do at times, unwittingly breach the outer contours of activism, and stray-walk outside the periphery of judicial review.

3.2 Judicial Review of administrative action which the Constitution envisages, is intended to ensure that the State and its instrumentalities, which may have been endowed with the powers of a giant, do not act like a giant, and to confine their conduct within the framework of the rule of law. Judicial review, therefore, is no more than ensuring that those who are bound by the Constitution, act within the bounds of Rule of Law. The role of the Court is hence limited to ensure that none oversteps the line, including the legislature viz-a-viz Part III of the Constitution.

3.3 Judicial review is often overlapped by judicial pro-activism. Judicial activism may have a role when the Courts are left to depend only on their sense of justice, guided by the Constitutional consciousness for



W.P.No.26731 of 2023

accomplishing a Constitutional objective. The underlying principle is that Courts cannot plead helplessness to address a state of affairs which the Constitution considers as abhorrent to sustain. It is not a therapy of choice, but of need. It may involve an interpretation of a legislation, or a construction of a rule, with a lean towards Constitutional conceptualisation of justice. It may also include the power to fashion something new out of a legislative voidness, but at no time it may be attempted in rejection of the rules and the laws that exist. It is underscored that judicial discipline expected of the Courts is but an alternative statement for judicial restraint, and in this pursuit, the Court cannot get tempted when riding the wheels of justice.

4.1 Let the facts before this court now be tested on the plane of the principles stated above. Indisputably the petitioner is at fault. It is her lapse. And none of the respondents before the Court have breached the rule of law – in the context, of the procedure prescribed for medical admission. Where then is the space of judicial review here, and why should the Court be proactive and issue directions to the respondents, more so when they have not crossed the Lakshman Rekha?



W.P.No.26731 of 2023

4.2 Now, unless the Court chooses to patronise the faults of the petitioner and chooses to run its own mechanism for medical admissions, it is impermissible to do it. Having stated thus, this Court acknowledges its sympathy for the petitioner, but sympathy cannot replace the Constitutional consciousness which the Court is expected to possess and exhibit. It needs to be underscored that even the Courts are bound by the Rule of Law. Therefore, unless this Court considers that it has powers to roam free beyond the bounds of the rule of law, it cannot create a non-existing space for issuing any directions. If this is ignored, then we will have a dual system, one by the rule of law for some, and another, the rule of the Court, for a few. That would be an allergen that ill-suits the health of Constitutional governance.

5. In the context of this case, if a direction were to be issued to the respondents, which cannot be given contrary to a well-structured mechanism for medical admission, fine-tuned and monitored by the Hon'ble Supreme Court, we may end up having: (a) All India Quota, (b) State Quota and (c) Management Quota, with multiple sub-quotas based on reservation policies, and to cap them all, a newer variety of quota - the Court quota. How does it sound? Once a reform in medical admission is contemplated,



W.P.No.26731 of 2023

and procedure is established, it is necessary that this Court steps back to allow the system to work itself. Hence this Court made a statement in the earlier paragraph that petitioner has misconceived the scope of judicial review terribly.

6. To hazard a thought, if in an exam-situation, what happens if a student omits to spot a question, or gives a wrong answer unknowingly, or forgets an answer? Is there a solution in law to remedy them? In an acutely competitive environment such as the one which prevails in medical-admissions, where the chasers for the seats are several folds more than the number of seats, and where the rank-list is prepared based on 8th or 10th decimal marks, there can hardly be any place for any one to make a mistake. And, if it happens, it happens. Court cannot open a window for wild card entries through its channel with its orders. It is necessary to remember that in its thirst and quest to do justice, Court has a duty not only to those litigants who are before it, but also to all those who are not before it. When a procedure is designed, granting equal opportunities to the equally placed, adjusted with necessary reservations, the Court cannot disturb the prospects of anyone who has played the game as per the rule, lest there will be a premium for those who ignore the rules of the game. And it will create a



W.P.No.26731 of 2023

class in itself – a class of preferred candidates because the Court has given them a wild card entry. This Court, however, does not advocate that one who has committed an inadvertent error should necessarily be punished, but only emphasizes that it has an obligation to reckon the prospects of the candidates who are not before it.

7. How then to deal with the case of the petitioner, more particularly her prayer? She only requires a direction that her case may be considered after the stray-counselling, and to accommodate her only if there are any seats still remaining vacant. Admittedly, this relief is least likely to affect the prospects of other candidates. But it still requires this Court to open the official portal for uploading the correct information/document. If this is done, then it has to be extended to all those who are similarly placed. It is not possible. This apart, the combined effect of the orders of the Hon'ble Supreme Court in *Nihila P.P. Vs The Medical Counselling Committee & Others* [2021 SCC OnLine SC 3283] and *Anjana Chari S.N. Vs Medical Counselling Committee & Others* [W.P.(civil) 174 of 2022, dated 30.03.2022: MANU/SCOR/36141/2022] is that there can be only four rounds of counselling, and if any seats that still remain vacant, they, by necessary implication, lapse for that academic year. This direction of the



W.P.No.26731 of 2023

Hon'ble Supreme Court cannot be breached.

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8. This Court therefore, can only suggest to the respondents that, subject to the approval of the Hon'ble Supreme Court, a window may be opened for all those candidates, who might have missed an opportunity due to certain inadvertent faults such as the one occasioned to the petitioner, grant them an opportunity to correct them after the conclusion of the stray-counselling, and to prepare a rank list for these candidates, and to try accommodating whoever who is willing to join the unfilled up seats. Instead of letting some medical seats lapse, an attempt may be made to fill them up.

9. To conclude, playing within the bounds of law and summoning its sense of equity and justice, this Court merely make a suggestion to the respondents to consider the case of the petitioner after all the rounds of counselling, if some seats still remain vacant, but only after obtaining necessary approval for the same from the Hon'ble Supreme Court.

10. Wishing the petitioner good luck, this Court informs her that it may not be possible for it to go any further than what it has done above, for, unlike Louis XIV, this Court cannot proclaim that it is a law unto itself, but as a



W.P.No.26731 of 2023

creation of the Constitution, is also bound by rule of law. This petition is accordingly disposed of. No costs.

11.09.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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Note : Issue order copy today (11.09.2023)

To:

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Pre-delivery order in
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