
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9218 OF 2024

Harshwardhan P. Patil

.. Petitioner

Versus

State of Maharashtra & Ors

.. Respondents

Ms.Pooja Thorat, with Trisha Choudhary, Advocates for the Petitioner.

Mr.A. I. Patel, Addl. G.P., with Mr.M. M. Pable, AGP, for Respondent Nos.1 and 2.

Mr.Ravindra Pachundkar Patil with Dhananjay Bhosale, Advocates for Respondent No.3/CET.

Mr.Rui Rodrigues with Vinit Jain, Advocates for UOI/Respondent Nos.4 to 6.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: SEPTEMBER 6, 2024

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking a direction to Respondent Nos.2 and 3, as well as Respondent Nos.4 and 5, to allow the

Petitioner to apply for the counseling process for admission to Medical / Dental Courses for the Academic Year 2024-2025 under the OBC category.

3. This Writ Petition is filed in very peculiar facts. Initially, the Petitioner applied for online registration for NEET UG 2024 examination in February 2024 in the Open category. According to the Petitioner, this was because at the time of filing of the online registration, the Caste Certificate of the Petitioner was not issued and was pending due to the ongoing elections. It was in these circumstances that the Petitioner applied for online registration for NEET UG-2024 in the “Open” Category. The examination is now conducted and the results are also declared. The Caste Certificate has now been issued to the Petitioner by the State of Maharashtra. The caste claimed by the Petitioner is “Kunbi” and the Petitioner has now, as late as on 8th August 2024, also obtained the Caste Validity Certificate, though this has happened after the filing of the above Petition.

4. It is in these circumstances that the Petitioner seeks that he be allowed to apply for the counselling process for admission to Medical/Dental Courses for the Academic Year 2024-2025 in the OBC category.

5. When this matter had initially come up on 30th July 2024, the learned counsel appearing on behalf of Respondent No.3 had, on the basis of written instructions received, stated that the admission process for UG Medical Courses had not yet started and hence the Petitioner had not been refused or disallowed to apply under the OBC category for the State Counselling. It was further stated that once the counselling process for the State quota starts, the Petitioner will be able to apply by online application form, wherein, he can claim his category quota, i.e., OBC or any other constitutional reservation as per his documents. There would be no restriction for the candidate to apply under a constitutional reservation even if he had appeared for the NEET Exams under the “General” category. However, the admission to medical courses will be based on merit and submission of category claim documents, i.e., Casts Certificate, Caste Validity Certificate, and the Non-Creamy Layer Certificate valid up to March 2025.

6. These instructions were received by the advocate for Respondent No.3 by an e-mail, and which were taken on record on 30th July 2024 and marked “X” for identification. In the light of this e-mail, the grievance of the Petitioner against Respondent Nos.2 and 3 was taken care of.

7. However, the grievances still remained as against Respondent Nos.4 and 5. Mr. Rodrigues appearing on behalf of Respondent Nos.4, 5 and 6, on 30th July 2024, sought time to take instructions, especially in light of the e-mail that was addressed by Respondent No.3, clarifying that the Petitioner can apply for counselling under the OBC category (for the State Quota), subject to him producing the Caste Certificate, Caste Validity Certificate and the Non Creamy Layer Certificate. The matter was therefore adjourned to 2nd August 2024.

8. On 2nd August 2024, a further weeks time was taken by Mr.Rodrigues to take instructions and file an affidavit, and which was granted by the Court. Thereafter, Respondent Nos.5 and 6 filed their affidavit dated 8th August 2024. In this affidavit, Respondent Nos.5 and 6 have stated that the present Writ Petition is not maintainable for the reasons stated in the affidavit, and more particularly in view of the fact that Respondent No.5 (i.e. Medical Counselling Committee) and Respondent No.6 (i.e. Directorate General of Health Services) have statutory obligations, which have pan India effect, and not confined to a particular State. As far as the facts of the present case are concerned, Respondent Nos.5 and 6 contended that the Petitioner has made a belated application for issuance of a Caste Certificate on 14th June 2024, and which is subsequent to the date of

NEET UG 2024 results i.e. 6th June 2024. In the affidavit it is stated that the Caste Certificate was in fact issued to the Petitioner on the very same date. It is the case of Respondent Nos.5 and 6 that the Petitioner applied for NEET UG 2024 examination on 22nd February 2024 in the “Open” category and appeared for the examination on 5th May 2024. Nothing prevented the Petitioner from applying under the “OBC” category at the time of filling up of their online application for participating in the NEET UG 2024 examinations, especially when there was a provision in the Information Bulletin that no Caste Certificate was required at the time of filling up of the online application and the same was to be produced only at the time of counselling. It is therefore the case of Respondent Nos.5 and 6 that the Caste Certificate applied for by the Petitioner was done belatedly and in fact the said Caste Certificate has not even been scrutinized and validated by the Statutory Committee. It is on this basis that Respondent Nos.5 and 6 submitted that the Petitioner cannot, at this stage, be permitted to change his category from “Open Category” to “OBC Category”. In support of this argument Mr. Rodrigues relied upon a decision of the Single Judge of the Delhi High Court in the case ***of Sharanya Kaja v/s Directorate General of Health Service (DGHS) & Ors (AIR Online 2022 Del 246)***.

9. Over and above this, Mr.Rodrigues submitted that the results of the examination which are received by Respondent No.5 are non editable in nature. Hence, Respondent No.5 cannot change the category or any other particulars filled in the results. Mr. Rodrigues stated that MCC (Respondent No.5) does not change/edit/modify/alter any information (name, date of birth, category, Nationality, contact details etc) entered by the candidates at the time of the online submission of the applications/registration form for counselling, under any circumstances. The data entered at the time of the registration on the National Testing Agency Portal is pre-populated and will be used for the counselling process. Once this is the case, Mr.Rodrigues submitted that an exception cannot be made in the case of the Petitioner as that would lead to merit violation and would also be detriment to all other participating candidates. It is in these circumstances that Mr.Rodrigues submitted that the above Petition holds no merit and the same ought to be dismissed.

10. We have heard Ms. Thorat the learned counsel appearing on behalf of the Petitioner, as well as Mr.Rodrigues, the learned counsel appearing on behalf of Respondent Nos.4, 5 and 6. It is not in dispute that the Petitioner applied and filled out an online application/registration form on the NTA portal for the NEET UG 2024 examination under the “Open”

category. This was done on 22nd February 2024. It is also not in dispute that the results of the examination were declared on 6th June 2024 and the Petitioner applied for issuance of a Caste Certificate to the State of Maharashtra only on 14th June 2024. The reason why the application was made only on 14th June 2024 is because of the reasons more particularly stated in the additional affidavit of the Petitioner dated 5th September 2024. In the said affidavit, what has been set out is how the “Kunbi” caste were categorized as “OBC”. In this affidavit it is stated that the “Kunbis”, a community associated with the Agriculture, are grouped under the Other Backward Classes (OBC) category in Maharashtra and enjoy reservation benefits in education and Government jobs. When Marathwada was part of the Hyderabad province till the 1960’s, Marathas were counted as Kunbis and when it became part of Maharashtra, many were counted as Marathas and not OBCs. Even after the formation of Maharashtra, historical documents and record indicated that Marathas were originally identified as Kunbis and they were socially and economically backward. It was a longstanding demand of agitators to restore their Kunbi status to enable them to avail of the OBC quota.

11. It is thereafter stated in the said affidavit that in May 2023, the Devara Committee was constituted, to collate the records of Marathas as

Kunbis from the Nizam era. The Devara Committee prepared a report which is of approximately 40 lakh pages. The said Committee was constituted after a Maratha activist created a stir in political circles. Thereafter, on 7th September 2023, the Shinde Committee was established by the State of Maharashtra. The Shinde Committee was formed to decide the methodology to issue other Backward Class Certificates to Marathas and find proof to establish Marathas as Kunbi OBCs. The Devara Committee also handed over the compiled data to the Shinde Committee. The Shinde Committee thereafter submitted a report to the State of Maharashtra, and based upon the said report, the Chief Minister of the State of Maharashtra, in January 2024, emphasized the need of meticulous planning and execution of the survey and directed the officials to display the records of the persons whose Kunbi records are found in every village through notice boards and various channels.

12. Since the family of the Petitioner in the past was identified as Maratha and all the documents in his school record show his caste as “Hindu-Maratha”, based on the aforesaid drive of the State of Maharashtra, the father of the Petitioner, on 9th February 2024, made an application to the Tehsildar to provide the details and records of his Great Grandfather who were tillers/farmers/peasants to show whether the same were recorded as

caste “Kunbi” in the past. This information was made available to the Petitioner only on 14th June 2024, when they applied for their Caste Certificate, and which was granted on the same date.

13. Once we find that this is the reason why the Caste Certificate was applied for belatedly, we are of the opinion that the fault does not lay at the door-step of the Petitioner. We say this because the Petitioner became aware that he belongs to the “Kunbi” caste only once the drive initiated by the State of Maharashtra was completed and the records of the Petitioner were compiled and a Caste Certificate was issued to him. It now transpires that after the filing of the Petition, a Caste Validity Certificate has also been issued to the Petitioner and which is dated 8th August 2024. A copy of the said Caste Validity Certificate is also tendered to the Court and taken on record and marked “X-1” for identification.

14. Once these are the facts, we are of the opinion that the Petitioner ought not to be denied an opportunity of applying under the OBC category, especially considering that the Petitioner came to know that he belongs to the Kunbi caste only on 14th June 2024. It is in this light that we find that the decision relied upon by Mr. Rodrigues in the case of of *Sharanya Kaja (supra)* is wholly misplaced. The facts in that case clearly show that at the

time of filling out the application for registration, the Petitioner in that case, was fully aware that she belonged to a particular caste. Despite that she chose to apply in the “Open” Category. It is in this light that the Delhi High Court took a view that she cannot be allowed to change her category at a belated stage and that too when there was a provision in the Information Bulletin that no Caste Certificate was required at the time of filling out the online application and the same was required to be produced only at the time of counselling. The facts in the present case are completely different. In the present case, as mentioned earlier, the Petitioner was unaware, at least till 14th June 2024, that she belongs to “Kunbi” caste. Once she became aware of this, she immediately applied for changing her category from “Open” Category to OBC. In these circumstances, and taking the peculiar facts and circumstances of the case into consideration, we are of the view that necessary directions ought to be given to Respondent Nos.4 and 5 to allow the Petitioner to apply for the counseling process for admission to Medical /Dental courses for the Academic Year 2024-2025 under the 15% All India quota in “OBC” category. We accordingly allow the above Writ Petition in terms of prayer clause (b) which reads thus:-

(b)direct the Respondent 4 and 5 to allow the Petitioner to apply for the counselling process for admission to medical/dental courses for Academic year 2024-2025 under 15% All India quota in OBC category.”

15. Since the choice filling/ locking is to begin from 6th September 2024 to 10th September 2024 for Round-2 of counselling, the Petitioner will be permitted to fill his choices between 6th September 2024 to 10th September 2024 under the “OBC” category.

16. It is needless to clarify that all other compliances will have to be done as required by MCC.

17. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

18. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]