

The High Court of Madhya Pradesh : Bench At Indore

DIVISION BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA &
HON'BLE MR. JUSTICE RAJENDRA KUMAR (VERMA)

Writ Petition No.2309/2022

Petitioner - Purva Balke

versus

Respondent(s) - 1. The State of Madhya Pradesh
Through Principal Secretary,
Medical Education Department,
Vallabh Bhawan, Bhopal (M.P.)

2. Commissioner,
Medical Education Department,
Satpuda Bhawan, Bhopal (M.P.)

Indore, dated 15.02.2022

As per Vivek Rusia, J:

Shri Harshwardhan Sharma, learned counsel for the petitioner.

Shri Aditya Garg, learned Government Advocate for the respondents / State.

ORDER

The petitioner has filed the present writ petition seeking permission to participate in counselling in ST Category instead of UR / NRI quota. According to the petitioner, she belongs to the Schedule Tribe Category and permanent resident of the Tribal area i.e. District - Jhabua (M.P.). She has passed Higher Secondary Examination in academic session 2019 – 20 in the stream of Biology as ST student. She appeared 2nd time in the National Eligibility-cum-Entrance Test 2021 (NEET) under ST Category. The admit card was issued by the respondents under ST category.

Thereafter, a score card was issued, showing her ranking 4540th under ST Category and 224236th all India rank. A merit list for the State of M.P. was published, in which her rank is 4743. The petitioner filled a form to participate in the counselling on 24.01.2022 through online portal but due to inadvertence, she has wrongly selected a category under **UR / NRI** quota instead of **ST** Category. This mistake came to her knowledge on 25.01.2022 and she immediately submitted a representation to the respondents seeking permission to correct the category, thereafter approached this Court.

02. The respondents have filed a reply by submitting that the petitioner filed her registration form through MP OnLine on 22.12.2021 and the last date of registration was 21.01.2022. The petitioner had ample time to get the said mistake corrected on or before 21.01.2022. After closing the registration, there is no provision to correct the entry. It is further submitted that an advisory was issued for all the candidates on 21.12.2021 and as per Clause – 3, the time limit was fixed to correct all the entries. The respondents have placed reliance over Rule 6 of Madhya Pradesh Chikitsa Siksha Pravesh Niyam, 2018 which also prohibits that no such request for change or amendment of entries in the registration form would be considered after the cutoff date. However, Rule further provides that after the second round and last round of counselling (mop up) again the registration shall be opened and the students who could not get themselves registered earlier can apply for registration. The respondents have placed reliance over a judgment passed by Division Bench of this Court in the case of *Arushi Mahant & Others v/s The State of Madhya Pradesh & Others (W.P. No.18699/2020)*, in which in similar circumstances, the Division Bench has dismissed the writ petition.

03. We have heard learned counsel for the parties and perused the record.

04. The photocopy of the registration form submitted by the petitioner is filed as Annexure-P/8 in this writ petition. She has mentioned UR / NRI under the candidate's category/class (filled by the candidates). Apart from this, on the second page also she has mentioned a category in M.P. State 'UR'. Facts remain that the mark-sheet, admit card and score card confirms that she appeared as ST Category student. As per Rule 6 of the Rule of 2018, after the expiry of the last date, no change is permissible in the registration form before counselling. Recently, a similar problem came up before the Division Bench of this Court in the case of *Madhav Sharma v/s The State of Madhya Pradesh & Others (W.P. No.2357/2022)* decided on 09.02.2022 in which it has been held that language of Rule 6, in our opinion, clear and unambiguous and it should be given to in spite of any consequence. Rule 6 is inserted by lawmakers with a conscious view that if the position or factual aspects are permitted to change, it will create chaos for the examining authorities and the writ petition was dismissed. Paragraphs – 15 to 19 are reproduced below:-

“15. The language of Rule 6 aforesaid, in our opinion is plain, clear and unambiguous. Thus, it should be given effect to in spite of any consequence. The purpose of inserting Rule 6 is already dealt with in sufficient detail by the previous Division Bench in *Ayushi Saraogi (supra)*. We are in respectful agreement with the view taken by the Division Bench in the case of *Ayushi Saraogi (supra)*. If any other interpretation is given to the said Rule, it will certainly defeat the very purpose of inserting the said Rule in the statute book. Rule 6 is inserted by law maker with a conscious view that if position or factual aspects are permitted to be changed, it will create chaos for the examining authorities.

16. In the case of *Surjeet Kaur (supra)*, the Apex Court considered the previous judgments on the point and opined as under :-

“11. It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions.

12. In *State of Punjab v. Renuka Singla* [(1994) 1 SCC 175], dealing with a similar situation, this Court observed as under:

“8. ... We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations...”

13. Similarly, in *Karnataka SRTC v. Ashrafulla Khan* [(2002) 2 SCC 560 : AIR 2002 SC 629], this Court held as under:

“27. ... The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injuncted by law.”

(Emphasis Supplied)

17. This judgment makes the legal position clear like a cloudless sky. If constitutionality of a Rule is not called in question, by adopting an interpretative process, we cannot defeat the plain language and purpose of the Rule. We are unable to accept the contention of learned counsel for the petitioner that present defect was curable and Rule is not coming in the way of the petitioner.

18. The judgments cited by learned counsel for the petitioner are based on different factual backdrop and different statutory provisions. Although heavy reliance was placed on the judgment of the Supreme Case in **Molar Mal** (supra). Suffice it to say, in our view, the object to frame admission rules was to prescribe a procedure for the purpose of admission process. While doing so, Rule makers have provided specific methods, checks and prohibitions to ensure smooth conduct of examination/ selection. Thus, object of said rule cannot be stretched in the manner suggested by learned counsel for the petitioner. The judgments cited by learned counsel for the petitioner cannot be pressed into service in the facts and circumstances of the present case.

19. In view of foregoing analysis, no case is made out for our interference. The petition fails and is hereby **dismissed.**”

05. The respondents are correct in contending that if one student is permitted to change the category it would disturb the entire selection / merit list, and it would be impossible to find out

how many students will be affected. The petitioner has failed to establish as it was an inadvertent mistake or she herself filled the form in NIR / UR quota. If one candidate is permitted to change the category, large numbers of students may come to claim a change in the category in case of not getting admission to the college of their choice. In view of the above, the petitioner cannot be permitted to participate in the counselling under ST Category as per Rule 6 aforesaid.

06. It is very unfortunate that the petitioner, being ST Category student who comes from remote tribal areas of this country has persuaded the studies up to Class – XII and cleared NEET Examination with good rank, inadvertently has submitted the registration form under the wrong category and did not correct the same before the last date. Taking into consideration the facts and circumstances in totality and suggestion given Shri Vivek Dalal, learned Additional Advocate General present in the court, the petitioner can be permitted to re-register herself in pop up round in the last round of counselling. As a special case, looking to the overall facts and circumstances of the case, we are hereby directing respondents to permit the petitioner to participate in the last round of counselling by re-registration and the same shall not be treated as a precedent.

With the aforesaid, the Writ Petition stands partly allowed.

(VIVEK RUSIA)
J U D G E

(RAJENDRA KUMAR (VERMA))
J U D G E

Ravi