

HIGH COURT FOR THE STATE OF TELANGANA

MAIN CASE No:

W.P.No.15117 of 2023

PROCEEDING SHEET

Sl. No.	Date	ORDER	OFFICE NOTE
3.	20.06.2023	<p><u>HCJ & NTRJ</u></p> <p>Heard Ms. Sagarika Koneru, learned counsel for the petitioner.</p> <p>Issue notice.</p> <p>Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India waives notice for respondent No.1, 2 and 7.</p> <p>Mr. N.Praveen Kumar, learned Government Pleader for Health, Medical and Family Welfare Department waives notice for respondent No.3.</p> <p>Ms. Gorantla Sri Ranga Pujitha, learned counsel waives notice for respondent No.5.</p> <p>Respondent No.4 be served through the learned Government Pleader for Education.</p>	<p>Transferred to I/o folder, before corrections, if any.</p>

		<p>Petitioner to serve respondent No.6 through personal mode and thereafter file proof of service.</p> <p>This petition has been filed under Article 226 of the Constitution of India seeking a declaration that Medical Council of India Post Graduate Medical Education Regulations, 2000, is <i>ultra vires</i> and unconstitutional. An alternative prayer has been made to read down the said Regulations by providing reservation for transgenders in terms of the decision of the Supreme Court in National Legal Services Authority v. Union of India ((2014) 5 SCC 438). Petitioner further seeks a direction to the respondents to provide for a separate category for transgenders in the Post Graduate medical admission.</p> <p>From a perusal of the writ affidavit, it is seen that petitioner had completed her MBBS course in the year 2017 from NTR University of Health Sciences, Vijayawada. It is stated that because of her fluid sexuality, petitioner had undergone a sexual reassignment surgery on 07.02.2022 and</p>	
--	--	--	--

		<p>thereafter she is living as a transgender person.</p> <p>Petitioner appeared in the PG NEET 2022 examination securing All India Rank of 155010 with 261 marks out of 800. It may be mentioned that petitioner belongs to “Madiga” caste which is recognized as a Scheduled Caste. At the time of counselling for both All India Quota and State Quota seats in November, 2022, it came to the notice of the petitioner that she was placed under the “female” category, even though she had registered herself as belonging to the third gender. In the counselling, petitioner was considered as a “Scheduled Caste” candidate only ignoring her third gender status.</p> <p>Referring to the decision of the Supreme Court in National Legal Services Authority (supra) and also the Transgender Persons (Protection of Rights) Act, 2019, including Section 4 thereof, petitioner had submitted a number of representations before the respondents, including one on 21.01.2023, to confer her the benefit of</p>	
--	--	--	--

		<p>reservation as a transgender person in the Post Graduate medical admission in the State of Telangana. As no decision was taken thereon, petitioner had approached this court by filing W.P.No.3096 of 2023 which was disposed of by this court vide order dated 07.02.2023 directing the respondents therein to consider the representations submitted by the petitioner by duly taking into account the law laid down by the Supreme Court in National Legal Services Authority (supra) and thereafter to pass an appropriate order in accordance with law. Petitioner was given liberty to file fresh representation as well.</p> <p>We may mention that following the aforesaid order of this court, respondent No.5 passed an order dated 18.05.2023 holding that since the Post Graduate Medical Education Regulations, 2000 has no provision for reservation on the basis of gender, representation of the petitioner could not be considered.</p> <p>This has compelled the petitioner to approach</p>	
--	--	---	--

		<p>this court again seeking the relief as indicated above.</p> <p>In the hearing held on 16.06.2023, learned counsel for respondent No.5 sought for time to obtain instructions.</p> <p>Thereafter, on 19.06.2023, on the basis of submissions made by learned counsel for respondent No.5, the following order came to be passed:</p> <p>Following our order dated 16.06.2023, learned counsel for respondent No.5 submits that as per instructions received by her, petitioner belongs to SC category and accordingly has availed reservation on account of SC category. What petitioner seeks is reservation within reservation as a member of the third gender.</p> <p>However, learned counsel for the petitioner has objected to the same by saying that petitioner was clubbed with female candidates though as per the judgment of the Supreme Court in National Legal Services Authority v. Union of India [(2014) 5 Supreme Court Cases 438], not only members of the transgender</p>	
--	--	--	--

		<p>community are required to be treated as third gender, but a direction has been issued by the Supreme Court to the Central and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission to educational institutions and for public appointments.</p> <p>In view of the stand taken by learned counsel for respondent No.5, we direct her to obtain further instructions as to the marks secured by the last admitted candidate belonging to SC and OBC categories in NEET-PG 2023 admission.</p> <p>Learned Government Pleader for Health, Medical and Family Welfare Department shall also obtain instructions as to the steps taken by the State Government in this regard.</p> <p>List tomorrow i.e., 20.06.2023 as the first item.</p> <p>In the hearing today, learned counsel for respondent No.5 submits that persons belonging to the transgender community are provided reservation benefits, including in Post Graduate</p>	
--	--	---	--

		<p>medical admission as persons belonging to socially and economically backward classes of citizens. She submits that the benefit of reservation so provided has to be worked out by the Central Government as well as by the State Government authorities while admitting students into the different Post Graduate courses. She further submits that insofar admission under the NEET PG 2022 is concerned, the admissions were concluded in September, 2022, and therefore at this stage, admission in the said course for the said year would not be possible. On a query by the court, she submits that counselling for NEET PG 2023 would commence from mid July, 2023.</p> <p>Mr. N.Praveen Kumar, learned Government Pleader for Health, Medical and Family Welfare Department submits that as of today, no rules have been framed by the State of Telangana providing for reservation to members belonging to the transgender community insofar admissions and public employment are concerned.</p>	
--	--	--	--

Ms. Sagarika Koneru, learned counsel for the petitioner submits that petitioner again appeared for NEET PG 2023 securing 291 marks this time out of 800 marks, and having All India Rank of 100216. However, from the instruction, copy of which has been placed before us, she submits that petitioner has only been treated as a “Scheduled Caste” candidate and her special status as belonging to the third gender has been completely overlooked.

While this court would look into the larger issue raised by the petitioner in the writ petition, we put a query to learned counsel for the petitioner as to what interim order she would pray for at this stage.

Learned counsel for the petitioner submits that one seat in the Post Graduate course in the medical colleges both under the State quota as also under the central quota should be earmarked for the petitioner.

Having regard to the above contentions, we

direct the respondents to file a detailed affidavit by the next date.

In the meanwhile, as and when counselling commences for NEET PG 2023, respondents, more particularly respondent No.6, shall extend the benefit of third gender status in addition to the petitioner's status as a "Scheduled Caste" candidate while considering her admission in any of the courses either under the central quota or under the State quota for NEET PG 2023 in a manner which is beneficial to the petitioner.

In the event petitioner faces any difficulty, it is open to the petitioner to apprise the court about the same on the next date of hearing.

List again on 20.07.2023.

HCJ

NTRJ

vs