

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.09.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition Nos. 31388, 31741 and 33390 of 2016
and
W.M.P.No.28837 of 2016

W.P.No.31388 of 2016

Vishnu Bargavi.S

... Petitioner

Versus

The Director,
NEET Exam,
Shiksha Kendra, 2,
Community Centre,
Preet Vihar, Delhi 110 092.

... Respondent

Prayer in W.P.No.31388 of 2016: This writ petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records in Roll Number .86410498 (Application No.5039895), dated 16.08.2016 on the file of respondent and quash the same and further direct the respondent to change the category of the petitioner from "UR" to "OBC" and in consequences thereof issue a certificate according to eligible category.

W.P.No.31741 of 2016

K.Kevin Germanus

.. Petitioner

Versus

The Central Board of Secondary Education,
National Eligibility cum Entrance Test Unit,
Shiksha Kendra, 2, Community Centre,
Preet Vihar,
New Delhi 110 301,
Rep.by its Secretary

.. Respondent

Prayer in W.P.No.31741 of 2016: This writ petition is filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondent to consider the representation submitted by the petitioner dated 30.08.2016 and to declare the petitioner as qualified in National Eligibility

Cum Entrance Test - II (NEET-II0 2016, based on the marks secured by the petitioner in the category Other Backward Class (OBC) based on the Community Certificate submitted by the petitioner.

W.P.No.33390 of 2016

S. Sathesh Kumar

.. Petitioner

Versus

The Director,
Central Board of Secondary
Education (C.B.S.E.)
NEET Branch,
Shiksha Kendra-2, Community Center,
Preet Vihar, Delhi 110 092.

.. Respondent

Prayer in W.P.No.33390 of 2016: This writ petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the respondent dated 16.08.2016 in respect of Application No.5220893 and Roll No.86401821 and quash the same and further direct the respondent to declare the petitioner's daughter's result as qualified in NEET II (UG) 2016 under OBC category.

For Petitioners : Mr. V. Raghavachari in WP No. 31388
Mr. G. Sankaran in WP No. 31741
Mr. S. Angamuthu in WP No. 33390

For Respondents : Mr. G. Nagarajan in all the Writ
Petitions

C O M M O N O R D E R

These Writ Petitions have been filed by three students, who have appeared for the National Eligibility cum Entrance Test (in short NEET) conducted by the respondents. According to them, they have submitted their applications for NEET (II UG) 2016 by stating that they belong to General category instead of claiming them as belonged to OBC category by inadvertence. The petitioners, either belong to BC or OBC community respectively and therefore they come within the reserved category for the purpose of admission into medical college. Even though there was a chance for altering or amending the applications at the earliest point of time, they were not permitted to do so by the respondent because they sought for at a later point of time. After the result for the NEET examination were published by assigning rank, they found that if they were treated as per their communal status, the marks secured by them could be more than the marks required for them to be declared as a 'pass' in the NEET examination. According to them, they have scored more than the cut off mark which is

fixed as 118 for OBC candidates. The petitioners scored more than the cut off mark viz., 133, 135 and 134 respectively. Hence, the present writ petition has been filed for the reliefs stated above.

2. The learned counsel appearing for the respective petitioners would submit that if the petitioners are treated as per their communal status, they would have automatically been declared as 'pass' in NEET. According to the counsel for the petitioners, a pass in the NEET examination plus the mark secured in the board examination are the basis for getting admission into Private medical colleges but as per the decision of the Hon'ble Supreme Court those who could not get through in NEET examination are not eligible to get admission in India. Whereas private colleges in the Country are adopting different yardstick inasmuch as they consider a mere pass in the NEET examination along with the total marks secured by them in the schooling for the purpose of assigning merit for admission into medical college in so far as Tamil Nadu is concerned. At any rate, the petitioners, by inadvertence, indicated their communal status erroneously and that by itself should not be put against them to deprive their chance for securing admission into medical college. It is further submitted that as far as the State of Tamil Nadu is concerned, passing NEET is not compulsory in so far as it relates to those students who have sought admission in Government Medical Colleges or the State or the seats submitted by the private colleges to government. The learned counsel further submits that if the mistake crept in the applications submitted by the petitioners is permitted to be corrected, it will not change the rank secured by the other persons. It is further submitted that 30.09.2016 is the last date fixed for admission into medical colleges as per the decision rendered by the Honourable Supreme Court and therefore, the learned Counsel for the petitioners prayed this Court to allow the writ petitions as prayed for.

3. The learned counsel for the respondent has filed a counter affidavit in which it is stated that nearly 8,00,000 candidates have applied for NEET examination and marks obtained by the candidates by percentage wise as well as the cut off score secured by them is the basis for counselling. As per the information bulletin issued for the NEET, it is clearly stated in clause No.8 that any correction pertaining to the photograph, signature and right hand index finger impression will be intimated through e-mail and SMS and the same will be available in the candidate's login account. Except this, other corrections are not permissible and therefore, it is the responsibility of the candidates to ensure that accurate information are furnished. The particulars filled in the application form may be carefully indicated as options exercised once cannot be changed later, including the particulars relating to the examination centre, city and language etc. It is further stated that NEET examination was held on 24.07.2016 for which results have been declared on 16.08.2016. The examination was conducted at 1040 centres in

52 Cities all over India and abroad and NEET-II was conducted at 739 centres in 56 Cities in India. The examination was conducted as per the direction given by the Honourable Supreme Court of India, hence, the question of the petitioners finding fault with the respondent cannot be countenanced. The responsibility of the CBSE is limited to conducting the entrance test, declaration of result and providing All India Rank to the Counselling authorities/admitting institutes. While so, the prayer now sought for by the petitioners cannot be countenanced. The question of correcting the petitioner's communal status cannot be entertained as it is their responsibility to follow scrupulously the informations furnished in the bulletin. The petitioners have come up with these writ petitions only after declaration of result and that too after the marks/rank is declared by the respondent. Therefore, the learned counsel for the respondent prayed for dismissal of the writ petitions.

4. I heard the learned counsel on either side and perused the materials placed on record. This is a peculiar case where the petitioners have inadvertently indicated their communal status in the application submitted by them for writing the NEET examination. According to the petitioners, by virtue of such mistake, they should not be made to lose one full year and consequently prayed this Court to safeguard their right. It is also pleaded before this Court that merely they have committed mistake in filling up the applications particularly with reference to their communal status, it resulted in the alteration of the ranks secured by them. Therefore, they would contend that by virtue of such mistake, they should not be thrown out from the purview of getting admission to the medical course especially for the current academic year.

5. The last date of admission for medical course is 30.09.2016 as declared by the Honourable Supreme Court and therefore, taking into consideration the urgency involved, this Court has heard these writ petitions at the instance of the counsel for both sides today.

6. On a careful reading of the averments contained in the affidavits filed in support of the respective writ petitions, it is very clear that the petitioners have participated in the NEET examination conducted by the respondent. Such examination has been conducted as per the direction of the Hon'ble supreme Court. As per the information bulletin issued for participating in the examination, it is the responsibility of the students to ensure that correct particulars are filled up. It is clearly indicated in the information bulletin that if any mistake had crept in the filling of the applications, the students cannot be permitted to seek for amendment of the same at a later point of time. In spite of specific conditions incorporated in the information bulletin, at the time of filling up the applications, the petitioners have inadvertently indicated their communal status and it has resulted in alteration of their rank. Therefore, the petitioners have approached the respondents with a representation informing that

their communal status has been wrongly indicated in their applications, but by citing the clauses contained in the information bulletin, their request has not been entertained by the respondents.

7. Be that as it may. Admittedly, the communal status indicated by the petitioners in their application submitted for writing the NEET examination is erroneous and contrary to the community certificate issued to them. When the petitioners sought for alteration of the rank on the basis of their communal status, the respondent refused to do so. Normally in the process of writing examination for merit ranking to the Medical Course, certificate verification will not be conducted. No doubt the petitioners have approached the respondent belatedly after the results have been published.

8. In this context, useful reference can be made to the latest order dated 28.09.2016 passed by the Honourable Supreme Court in Civil Appeal No. 9836 of 2016 etc., (State of Maharashtra and others vs. Dr. D.Y. Patil Vidyapeeth and others) wherein the Honourable Supreme Court, by quoting the words of Justice Oliver Wendell Holmes, Jnr, Associates Justice, US Supreme Court, Soldier, Jurist and Philosopher (1841-1923) observed as under:-

"The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy avowed or unconscious, even with the prejudices which judges share with their fellow men, have had a great deal more to do than syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics"

9. Applying the said yardstick in this case, the petitioners admittedly belonged to backward class, but what was indicated in the application form is contrary to their communal status. However, such mistake committed by the petitioners should not be put against them to deny their fundamental right to get admitted into medical college based on their communal status. When a student commits some mistake and seeks for alteration of such mistake at a later point of time, taking into consideration that his future will be in stake by reason of such mistake, this Court, invoking the powers conferred on it under Article 226 of The Constitution, in order to do complete justice, feels that the plea of the petitioners can be entertained. On the other hand, if the relief sought for by the petitioners is not allowed, the petitioners, having passed NEET examination, could not be considered for admission into medical college and it will prejudice them.

10. From the mark sheets given to each of the petitioners, it is clear they have secured 133, 135 and 134 marks

respectively which is admittedly higher than the cut off marks fixed for backward class community, which is fixed at 118. If the application of the petitioners is treated as the one entitled by candidates belonging to OBC community, definitely, they would have been treated as passed in the NEET examination. But, in view of the very declaration of the communal status in the application form, now, the petitioners are being declared as 'fail' candidates, meaning thereby, they cannot pursue their studies in the current academic year. Whereas, if their communal status is treated as per their entitlement, then, they can be declared as 'pass' and resultantly they could pursue their studies in the current academic year itself. Should this great opportunity of studying for one year in the prime time of their life be deprived because of the mistake committed by them in not filling up the application form correctly. Definitely, this Court can come to their rescue especially when the authorities themselves have thought it fit that after the submission of the application form, if the student is permitted to correct the contents of the application form, it would affect their merit in the examinations. This, according to the respondents, is as per the notification No. f (50)/CBSE/NEET/2016/ dated 25.06.2016, wherein it is stated as follows:-

"1. Looking into the requests received by the Board from the candidates to permit them to make correction in their data submitted in NEET-II application form, the Board has decided to provide ONE TIME CORRECTION OPPORTUNITY to the candidates only in the data which may affect the merit

11. It is evident that the CBSE itself has stated that correction, if any, made with respect to the data in the application can be permitted to be corrected as a one time measure to the student. In the present case, the petitioners have incorrectly indicated their communal status in the application form. If it is permitted to be altered, it will not change the status of the merit of the student as petitioners will be only declared as a 'pass' in the NEET examination especially when they have scored above the cut off marks. In such event, they will become eligible to continue their studies, which should not be deprived.

12. Now, the question arises is with respect to delay. No doubt, the time is fixed for correction of the incorrect data, if any, furnished in the application form. Admittedly, the petitioners did not seek for correction of such data in time. However, merely because of the inadvertent mistake in indicating their communal status in the application form, which can be perceived as a minor mistake and it is one contrary to the community certificate issued to them, they should not be penalised. In fact, the Division Bench of the Delhi High Court, in the decision rendered in (Union of India and others vs. Pradeem Tomar) reported in (2015) SCC Online Del 8699, by relying upon the order passed by the Honourable Supreme Court,

has carefully held in Para Nos. 11, 13, 16 and 17 that even if an application has not been submitted in the prescribed form, it can be permitted to be corrected, which reads as follows:-

"11. The respondent's application form got rejected on the sole ground that he had not signed his application form. There is no dispute apropos the educational qualification of the respondent, he was provisionally found eligible for verification of documents and Medical Examination on the basis of the written examination held in May and June 2012 and the PET. Having successfully cleared the process of verification and medical examination which were pre-requisites for final selection of the candidate, he was placed on the provisional panel for the post of Grade Pay Rs.1800/- Pay Band Rs.5200-20000 in Ambala Division and was asked to report to the office of Sr.DFO, Northern Railway, DRO Office, Ambala for further joining formalities.

12. Undeniably, every candidate seeking to apply for the post in response to any advertisement is required to go through the instructions in the advertisement scrupulously and carefully so that his/her application is not rejected due to any deficiency at their end. No candidate should be callous in his/her approach. Having said this, it is equally not expected of any recruiting agency to be so laid-back in its approach in not taking due care and precaution to scrutinise each and every application atleast till the stage of completion of the selection process. In the facts and circumstances of the case what is even more harrowing is the fact that when the stage of issuing an appointment letter reaches, some procedural deficiency in the application form not connected with any of the eligibility conditions which are fundamental pre-requisites to seek appointment on the said post viz., qualification, experience, age, etc., is made as a ground for rejection of the candidature.

16. To err is human, is a well accepted notion. So far as the applicability of this notion in the field of service or recruitment is concerned , the error should be of a very trivial nature and due to an inadvertent error on the candidate's part, which by no means is deliberate or intentional or to derive some undue advantage. In any case, even where such kind of error takes place, it is for the recruiting agency to point out the same at the earliest possible stage so that the candidate can know the fate of his candidature instead of allowing him to fully participate in the entire selection process to be told

at the end that he cannot make it because of the application being not signed or some column having been left blank or the form being not filled with the required ball point pen, etc. Rejection on such grounds after the completion of the entire selection process will certainly be devastating and catastrophic for the candidate, especially the one who had participated in all the processes laid down for the selection and was declared successful and is now just waiting for his letter of appointment. In a country like ours, where getting a job is scarce and far between, getting a job, let alone a dream job is like a dream come true, and one can very well imagine the trauma a person would have to undergo, if at a belated stage, he gets to know that his candidature has been turned down, owing to an inadvertent error.

17. Rejection can be justified only at some early stage, not at the stage of final selection. The argument of administrative convenience cannot be used to jettison the mandate of Article 14. Nothing prevented the petitioners, from properly scrutinising the application form at the initial stage itself, which would stand the test of Article 14 of The Constitution."

13. In the above order passed by the Division Bench of Delhi High Court it was held that the authorities thought it fit to allow amendment atleast after some time, why not the same yardstick be applied in the present case where, especially, it would affect the merit of the claim of the petitioners. Further, as stated earlier, the claim of the petitioners relating to their communal status will be verified at the time of admission and if he does not belong to a particular community, then he or she cannot be admitted to the course. Therefore, there is adequate safeguards made both to the petitioners as well as the respondent in the event of the claim of the petitioners is entertained. As mentioned above, if the status of the petitioners is changed, it will not affect the other candidates and they will only be declared as 'pass' in the examination enabling them to pursue their course in the current academic year itself. In such view of the matter, definitely, the claim of the petitioners has to be considered by this Court.

14. Considering the facts and circumstances of this case, this Court is of the view that the petitioners shall be treated as per their communal status irrespective of the mistake committed by them while filling up the application forms for appearing in the NEET examination. Accordingly, a direction is issued to the respondent to treat the petitioners as per their communal status and to pass appropriate orders thereof. It is made clear that this direction is issued taking into

consideration the peculiar facts and circumstances involved in this case and it need not be taken as a precedent. Accordingly, all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd/rsh

To

1.The Director,
NEET Exam,
Shiksha Kendra, 2, Community Centre,
Preet Vihar
Delhi 110 092.

2.The Secretary,
Central Board of Secondary
Education(NEET)
Shiksha Kendra-2, Community Center,
Preet Vihar, Delhi 110 092.

+ 1 cc to Mr.G. Sankaran, Advocate Sr.56145
+ 1 cc to Mr.S. Angamuthu, Advocate sR.56058
+ 1 cc to Mr.G. Nagarajan, Advocate SR.56179

WP Nos. 31388, 31741
and 33390 of 2016

SCD(CO)
EU 30/09/2016

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