

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 7.10.2016.

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.35180 of 2016,
W.P.No.35770 of 2016 & WMP 30726 of 2016,
W.P.No.35890 of 2016 & WMP 30823 of 2016,
W.P.No.35437 of 2016

and

W.P.No.35685 of 2016 & WMP Nos.30676 & 30677 of 2016

W.P.No.35180/2016

D.Sathish

Petitioner

Vs

- 1 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 Secretary. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the Respondent to consider the representation submitted by the petitioner dated 15.09.2016 and to declare the petitioner as qualified in National Eligibility Cum Entrance Test - II (NEET-II) 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.35770/2016

- 1 R.Sai Aditiya Narayanan (Minor)
Rep by father & natural Guardian
A.Radhakrishnan Petitioner

Vs

The Director N.E.E.T
Central Board of Secondary Education (Head
Office) Shikshar Kendra NO.2 Community
Centre Preet Vihar Delhi- 110 092 Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to Roll No.86410672 (Application No.5048716) dated 16.08.2016 on the file of the respondent and quash the same and further direct the respondent to issue certificate declaring that the petitioner is qualified for admission under OBC category to MBBS/ BDS courses for the current year viz. 2016-2017

W.P.No.35890/2016

1 Akash Krishna

Petitioner

Vs

1 The Director
National Eligibility cum Entrance Test Exam
Shiksha Kendra 2 Community Centre Preet
Vihar New Delhi-110 301

2 The Regional Officer
Central Board of Secondary Education New
NO.3 Old No. 1630A J Block 16th Main Road
Anna Nagar West Chennai-600 040

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to quash the 1st respondent order dated 16.08.2016 in respect of application number 5142271 and roll number 83504323 further direct the 1st respondent to change the category from General Category to OBC in respect of application number 5142271 and roll number 83504323 in their records and issue a fresh certificate reflecting the same.

W.P.No.35437/2016

S.Prabu Vignesh
rep by his natural Guardian Mother
Mrs.S.Kavitha

Petitioner

Vs

1 Joint Secretary National
Eligibility cum Entrance Test Central Board
of secondary Education Shiksha Kendra 2
Community Centre Preet Vihar Delhi- 110 092

2 The Secretary
Selection Committee Directorate of Medical
Education Chennai-600 010

3 The Director Public Health
and preventive Medicine Directorate of
Health Services 359 Anna Salai Teynampet
Chennai-600 006.

4 Tamilnadu Medical Council
Rep by Secretary NO.914 Poonamallee High
Road Arumbakkam Chennai Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to declare the petitioner is qualified National Eligibility Cum Entrance Test - II (NEET- 2016) based on the marks secured by him in OBC Category.

W.P.No.35685/2016

1 M.S.Darsana Petitioner

Vs

The Director
NEET Exam Shiksha Kendra 2 Community
Centre Preet Nihar Delhi-110 092. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus calling for the records in Roll Number 86404647 (Application No.5191200) dated 17.07.2016 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.

For Petitioner in W.P.No.35180/2016: Mr.G.Sankaran
For Petitioner in W.P.No.35770/2016: Mr.V.Shanmuganathan
For Petitioner in W.P.No.35890/2016: Mr.D.Sathyaraj
For Petitioner in W.P.No.35437/2016: Mr.R.Ezhilarasan
For Petitioner in W.P.No.35685/2016: Ms.Damithalakshmi

For NEET : Mr.G.Nagarajan, CGSC
For R2 & R3 : Mr.Digvijaypandian, AGP

COMMON ORDER

Petitioner in W.P.No.35437 of 2016 seeks to amend the prayer to so as to quash the order dated 19.8.2016 rejecting his request to challenge the status from 'Unreserved' to 'OBC' on the ground that it is only a mistake. After hearing both sides, the request of the petitioner is accepted and the petitioner is permitted to amend the prayer so as to set aside the order dated 19.8.2016 rejecting his request to challenge the status from UR to OBC. Office is directed to incorporate the change in the prayer.

2. All these writ petitions are filed by the students, who have written the National Eligibility cum Entrance Test (NEET). According to them, in the applications, they have, inadvertently and by mistake, stated their community as 'Unreserved' (UR). But, according to them, all of them belong to OBC.

3. Each one of them had made individual representations by 'email'/in person to the authority concerned, though belatedly, in some cases much belatedly, even after the results have been published. But, the fact remains that their status is always guaranteed under the Constitution and their right to have that basic need for education. Their main contention is that when the cut off mark fixed by the NEET for passing the examination insofar as OBC is concerned, is 118, whereas, every one of them has got more than that. Now, their request is that they may be treated as passed candidates. They do not want to make any alteration. Their mistake in their applications should not deter them atleast in getting a pass so as to enable them to get necessary admission in the private colleges which under law they are entitled to. In this connection, they would also refer to a judgment in similar circumstances, in respect of three students, wherein this court has already allowed the writ petitions where the last date for admission was 30.9.2016 and thereafter, pursuant to a Supreme Court judgment dated 6.10.2016, only in respect of four States, the period for admission in the colleges was extended upto 7.10.2016. Therefore, the request of the petitioner today is that, even if they are declared as passed candidates in the NEET examination, they would be eligible to get admission in any private college in the four States and to that extent they seek a relief from this court taking into consideration the earlier order passed by this court. Therefore, they would contend that the writ petitions may be allowed.

4. Learned counsel appearing for the first respondent mainly would contend that the change in the status was permitted

earlier and these writ petitioners did not avail the opportunity. He would also contend that once the examination is over, they have no legal right to change the pattern or status.

5. As far as the State Government is concerned, they would contend that NEET is not applicable to State quota and as far as they are concerned, there are no seats vacant. In any way, as far as the State is concerned, they are not concerned.

6. These writ petitions are taken into consideration in an extra ordinary circumstance, mainly on the ground that an order of the Supreme Court dated 6.10.2016 is brought to the notice of this court where a complete list of vacant seats all over India is given in that order itself numbering about 113 seats in MBBS seats and 65 seats in BDS in All India quota and they would also bring to the notice of the court that the Supreme Court has categorically stated as under:-

"At this juncture, it is submitted by Mr.Gaurav Sharma, that this Court has granted extension of time to the States of Kerala, Karantaka, Madhya Pradesh and Uttar Pradesh to fill up their State Quota Seats. Needless to say, the State quota also includes the seats that have been reverted from All India Quota. The rest of the seats which find mention in the chart not belonging to the four States shall be filled up by the concerned States by adopting a transparent procedure, regard being had to the criteria followed for filling up All India Quota seats. We may hasten to clarify, the States shall not treat them as seats which have been reverted to the State quota from All India Quota but fill them up by taking the merits in All India Quota. Needless to say the whole thing shall be completed by 7.10.2016."

7. In that view of the mater, since today is the last date viz, 7.10.2016, by virtue of getting an order following the earlier order of this court dated 29.9.2016, in W.P.No.31388 of 2016, they seek to be admitted in the vacant seats by making the change in their status. In the said case also I have very categorically pointed out that mere passing also is not enough they will have to establish that their status as OBC by producing necessary documents/certificates to the college concerned for admission and the college should be satisfied with their status of OBC, and as rightly pointed out since the seats should not be kept idle wasted and still there are seats available by virtue of getting this order, some students may be able to get their life pattern changed, this court thought it fit to allow these petitions following the earlier order of this

court.

8. This court has held in the above said case as under:-
"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."

8. In that view of the matter, all these writ petitions are allowed. All the petitioners will be treated as OBC candidate in the NEET examination and pursuant to their marks as published in the NEET as cut off mark is more than 118, they will be declared as eligible and passed candidate for NEET examination for the purpose of admission alone in respect of the States as permitted by the Honourable Supreme Court. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssk.

To

- 1 Joint Secretary National
Eligibility cum Entrance Test Central Board
of secondary Education Shiksha Kendra 2
Community Centre Preet Vihar Delhi- 110 092
 - 2 The Secretary
Selection Committee Directorate of Medical
Education Chennai-600 010
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NO.3 Old No. 1630A J Block 16th Main Road
Anna Nagar West Chennai-600 040
- +1 CC to D. Sathyaraj, Advocate Sr.No.58047
+1 CC to M/s. S. Sethuraman, Advocate Sr.No.58067
+1 CC to M/s. R. Ezhilarasan, Advocate, Sr.No.58100
+5 CC to G. Nagarajan, Advocate Sr.No.58083, 58082
+1 CC to Government Pleader, Sr.No.58081
+1 CC to M/s. K.V. Shanmuganathan, Advocate Sr.No.58062
+1 CC to G. Sankaran, Advocate Sr.No.58009
+1 CC to M/s. Damitha Lakshmi, Advocate Sr.No.58075

W.P.Nos.35180 of 2016 & batch

MP1 CO
MD : 07/10/2016

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