

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2017

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

W.P.No.5238 of 2017 and
WMP.No.5560 of 2017

M.Romans

.. Petitioner

vs

1. The President,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahathma Gandhi Marg (Ring Road),
New Delhi-110 029.
2. Medical Counselling Committee (MCC),
Government of India,
Directorate of General Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi-110 001. .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to declare the petitioner as qualified in the All India NEET-PG Exam, 2017, based on the marks obtained by the petitioner under the Backward Class (OBC).

For Petitioner : Mr.A.S.Balaji

For Respondents : Mr.Dhruva
for M/s.Anand, Samy and
Dhruva for R1
Mr.G.Venkatesan, CGSC for R2

ORDER

The Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to declare the petitioner as qualified in the All India NEET-PG Exam, 2017, based on the marks obtained by the petitioner under the Backward Class (OBC).

2. The petitioner is a Doctor and he is also duly registered with the Tamil Nadu Medical Council on 21.03.2016. It is stated that the petitioner belonging to Backward Class Community, namely, Christian Nadar. He has also obtained the Community Certificate duly issued by the concerned Revenue Authority. The petitioner, aspiring for the Post Graduate Course, has written the National Eligibility-cum-Entrance Test, shortly known as "NEET". The application has to be made only

through Online and the bulletin was a self-contained code. The petitioner had applied and allotted ID.No.CD1656307. The results were published for the NEET PG 2017. An official website of the National Board of Examination published the results on 13.01.2017. The petitioner had scored 667.6650 out of 1500 marks. However, the petitioner was not selected because the petitioner has wrongly ticked "General Category (UR)" instead of "OBC Category".

3. It is now stated by the petitioner that in the Prospectus, there were only 5 categories of communities, namely, Un Reserved (UR), Other Backward Caste (OBC), Scheduled Caste (SC), Scheduled Tribe (ST) and Person with Disabilities (PWD). The NEET PG 2017 Examination is conducted by the Educational Board of Examination for the States and Universities to use marks scored by a candidate and as per the reservation policy. In the prospectus Clause 14.6 and Clause 14.7 deal with the types of results for All India Quota, State/Union Territory Quota, Private Medical

Universities, Institutions and Colleges and publication of results therefor. Clause 13.1 deals with reservation for All India 50% quota seats. Clause 14.1 deals with the Qualifying Criteria for different categories of candidates as detailed below:

Category	Passing Criteria
General	50% Percentile
SC/ST/OBC	40% Percentile
PWD	45% Percentile

4. The clause 17 deals with the Counselling for the said quota seats and provide Medical Colleges, Institutions, Universities, Deemed Universities etc. as per the applicable regulations/eligibility criteria, reservation policy etc. using the NEET PG Course. As stated earlier, the petitioner had scored 655.1766 out of 1500. The said mark is above the cut off, fixed for the backward community. As the petitioner had applied under Un Reserved Category, the required percentage is 50% whereas the petitioner actually belongs to the Backward Community and the required cut off is only 40%, but the petitioner has secured above 40%. As the mistake was

committed by the candidate, while filling up the form inadvertently as "Unreserved", the petitioner could not qualify for the selection in the Backward Class Category List. The petitioner seems to have realised the mistake only after the publication of the results on 13.01.2017. Therefore, he gave a representation on 22.02.2017 to the respondents to rectify the mistake in the communal category and include the name of the petitioner as per the scores in the Other Backward Classes Category. As there was no response, the petitioner is before this Court with this Writ Petition.

5. The learned Counsel for the petitioner argued that the fact that the petitioner belongs to the "Other backward Classes Community" is not in dispute, but, he has wrongly ticked the "Unreserved Category" and the said mistake was committed due to inadvertence. The NEET-PG 2017 scores are only for the purpose of giving the rank list to the State, Union Territories, Private Medical Colleges, Universities etc. without applying the reservation criteria. It is the concerned States,

Union Territories and the Medical Colleges and Universities to apply the reservation procedure before allocating the students. In fact, in Clause 16.3, it is stated that the National Board of Education does not verify the information provided by the candidates during Online registration and hence the candidature will be purely provisional subject to the fulfillment of eligibility criteria as mentioned in the Information Bulletin for NEET-PG 2017. Therefore, the marks that is scored by the petitioner entitle him to be called for Counselling under the said quota in the "Other Backward Classes Category".

6. A Counter affidavit has been filed by the 1st respondent, namely, National Board of Examinations, stating about the back ground of conducting the examinations, official structure and their objectives. Mainly, it is stated that this respondent is only an Examination Conducting Body and it has no control over the allocation of seats. This respondent does not own, control or have any further role in seats allocation process and their role ends once the results are published. Thereafter,

the onus shifts to the respective universities/institutions. Further, according to this respondent, there is no cause of action that has arisen for the petitioner to file the present writ petition. It is reiterated that the category and other information regarding the candidate are provided by the candidate only and no intervention is made by this respondent at any point of time.

7. It is also stated that a plain perusal of Clause (iii) (e) of the Disclaimer in the Information Bulletin for NEET-PG 2017 reveals that no changes are acceptable after 31.10.2016. This respondent is duty bound to declare the results in respect of the Entrance Examinations, namely, NEET-PG by 15.01.2017 as per the Hon'ble Supreme Court Direction dated 12.02.2016 made in *Anand S. Biji v. State of Kerala and others* in *I.A.No.10/2016* in *I.A.No.16/2012* in *C.A.No.1944/1993*. Pursuant to the information supplied by the candidate and the performance of the examinations, results are generated in respect of all the candidates based on the category of the

candidate and minimum qualifying criteria mentioned in the Information Bulletin.

8. It is further stated that primarily, there are two types of results, namely, result for All India 50% quota seats and result for State Quota Seats. The petitioner has scored 655.1766 out of 1500, but the cut off score for OBC is 843.2654. Therefore, even assuming that the candidate is treated under the OBC Category for All India 50% quota seats, the petitioner does not qualify for online counselling towards the All India 50% Quota Seats. As far as the result for state quota seats is concerned, the same shall be prepared by the concerned State. Changing the category and thereafter, the result and rank of a candidate, after the result has been declared will have an impact on the ranks of several other candidates. The answering respondent adds that vide its Notice dated 14.01.2017 had declared the result for All India 50% Quota Seats and has forwarded the same to the Ministry of Health and Family Welfare MoHFW (Medical Counselling

Committee-MCC) vide letter dated 21.01.2017. The MCC is now the bona fide custodian and owner of the results. Therefore, the present writ petition has to be dismissed.

9. Heard both sides.

10. The petitioner, who has committed an error in filling up the Online Application, is before this Court after the examination is over and the results are published. The grievance of the petitioner is that by mistake, he has chosen the wrong category, insofar as her community is concerned. According to him, he belongs to "Other Backward Classes Community". But, he had chosen to mark "Unreserved" which is "Unreserved Category". Though he does not want any alternative, the mistake in the application ought not deter him from getting a pass so as to enable him to get necessary admission at least in Private Colleges which he is legally entitled to. It is further contended that the fact remains that his status is always guaranteed under the Constitution of India and his

right to have his basic need for education, the community to which the petitioner belongs is already determined. But, it is only the entry in the application form that now deter him from getting OBC quota for the purpose of counselling. Even if he is declared as a passed candidate in NEET Examination, he would be eligible to get admission in any private college only after he has scored above the cut off mark.

11. Clause 10.6 deals with making any correction in the information provided by them during online registration till the end of the Registration Window i.e. 31st October 2016. As stated earlier, admittedly, the petitioner has realised his mistakes only after the results were published. He was not included in the list of candidates qualified for counselling. Therefore, as per the Information Bulletin, correction of the information which is wrongly entered by him at the time of applying could not have been corrected on or before 31.10.2016. However, the very same Bulletin provides that after the said date of 31.10.2016 within which corrections

online can be done, it is open to the candidates to approach the concerned Counselling Authority for the same.

12. Clause 16.3.c specifically states that the National Board of Education does not verify the information provided by the candidates during the Online Registration and hence, the candidature will be purely provisional subject to fulfillment of the eligibility criteria as mentioned in Information Bulletin for NEET-PG-2017 and criteria of State/Universities/Institutions concerned. However, Clause 16(3)(b) provides as follows:

"NBE shall be providing only the data of candidates and their scores in NEET-PG 2017 to the States/Private Universities/Institutes without applying eligibility criteria, reservation criteria etc of the concerned States/Union Territories, Private Universities or Institutes. It may be noted that for State Quota seats/admission to Private Universities/Institutes, final eligibility, state category, State Category rank, benefit for inservice candidates, rural posting (if applicable) etc. shall be determined/generated by the designated

agency/authority/University of the concerned States as per applicable Regulation and/or their eligibility criteria, guidelines and applicable reservation policies."

A reading of the same, however, clearly indicates that even though the candidates had filled in the Online application erroneously, it is open to him to approach the concerned Counselling Authority to consider the same.

13. Clause 3.1. mentions that NEET-PG 2017 is a qualifying-cum-ranking examination for admission to MD/MS/Post Graduate Diploma Courses for 2017 admission session. Clause 13 speaks about the reservations. Clause 13.2.a speaks that the reservation policy and guidelines applicable in different States/Union Territories of India will be followed for their respective State/Union Territory Quota Seats. Clause 13.2.b also specifically mentions that the existing State quota remains undisturbed. Clause 13.2.c states as follows:

"NBE shall be providing only the data of candidates and their results without applying the

reservation prevalent in the States/Union Territories of India/Private Medical Colleges/Institutes/Universities. The merit list/category wise merit list for the States/Union Territories/Private Medical Colleges/Institutes/Universities concerned shall be generated by the States/Union Territories/Universities themselves as per applicable guidelines and reservation policies."

14. This being so, the NEET Examination is conducted only for the purpose of ranking based on the marks. But the merit list category wise has to be generated only by the concerned States as per the applicable guidelines and reservation policies. Therefore, the 2nd respondent cannot have any impediment in considering the case of the petitioner based on verification of testimonials with respect to the community to which the petitioner belongs.

15. Accordingly, the Writ Petition is disposed of on the following directions:

1. The petitioner is directed to approach the 2nd

respondent to consider himself for selection based on his marks and community; and

2. The 2nd respondent is directed to draw the merit list based on the community and the marks obtained by the petitioner without reference to the fact that he has applied under Unreserved Category.

No costs. Consequently, connected Miscellaneous Petition is also closed.

21.04.2017

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Index: yes/No

Internet: yes

To

1. The President,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahathma Gandhi Marg (Ring Road),
New Delhi-110 029
2. Selection-cum-Counselling Authority
NEET PG 2017,
The Directorate of Medical Examination,
Kilpauk, Chennai-600 010.

Index: yes/No

Internet: yes

Issue order copy on 24.04.2017

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PUSHPA SATHYANARAYANA,J.,

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W.P.No.5238/2017

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<http://www.judis.nic.in>