

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.4838 of 2017 and
WMP.No.5057/2017

Dr.S.R.Keerthana

.. Petitioner

vs

1. National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahathma Gandhi Marg (Ring Road),
New Delhi-110 029
rep. by its Secretary
 2. Selection-cum-Counselling Authority
NEET PG 2017,
The Directorate of Medical Examination,
Kilpauk, Chennai-600 010.
 3. The Director of Public Health and Preventive
Medicine, No.359, DMS Complex,
Teynampet, Chennai-6.
- .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to declare the petitioner as candidate belonging to OBC category in the NEET-PG Examination based on the Backward Class Community Certificate of the petitioner and further declare her as eligible and qualified for the ensuing admission and counselling in National Eligibility-cum-Entrance Test PG 2017 based on the marks secured by the petitioner in the category Other Backward Class (OBC).

For Petitioner : Mr.M.S.Nandakumar

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 1st respondent to declare the petitioner as candidate belonging to OBC category in the NEET-PG

Examination based on the Backward Class Community Certificate of the petitioner and further declare her as eligible and qualified for the ensuing admission and counselling in National Eligibility-cum-Entrance Test PG 2017 based on the marks secured by the petitioner in the category Other Backward Class (OBC).

2. The petitioner is a Doctor, having completed 5 1/2 years Integrated Medical Course at Chennai Medical College and Research Centre in 2014. The petitioner also had completed the Compulsory Rotary Resident Internship during March, 2015 in the same Institution and the award of the degree for MBBS was given on 22.07.2015. The petitioner is also duly registered with the Tamil Nadu Medical Council on 19.10.2015. It is stated that the petitioner belonging to Backward Community, namely, Kallar, which is classified as Serial No.43 in G.O.Ms.No.28, Backward Class and Most Backward Class Welfare Department, dated 19.07.1994. She has also obtained the Community Certificate duly issued by the 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.CD1690792. 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 681.5436 out of 1500 marks which comes to 45.436%. However, the petitioner was not selected under the Unreserved Category (UR).

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). There was no category or column for Backward Caste mentioned in the bulletin. Therefore, the petitioner had selected the Column Un-Reserved (UR). 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 681.5436 out of 1500 which comes to 45.436%. 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% and the petitioner has secured 45.436%. 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, she immediately gave a representation on 22.01.2017 in person as well as through RPAD 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 also has sent a reminder through e-mail on 16.02.2017. It is also stated that the petitioner had applied to Sri Ramachandra University, Chennai for the Post Graduate Course. The said application was also rejected as the petitioner is considered not having scored the cut off marks. It is the contention of the petitioner that the mistake is not intentional or deliberate, but it is due to inadvertence.

5. The learned Counsel for the petitioner argued that the fact that the petitioner belongs to the backward community is not in dispute. But, since there was no specific column for Backward Class and not knowing whether the petitioner will come under the category "Other Backward Classes" as mentioned in the prospectus had chosen to go under Unreserved Category (URC). 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 fulfillment of eligibility criteria as mentioned in the Information Bulletin for NEET-PG 2017. Therefore, the marks that is scored by the petitioner entitle her to be called for Counselling under the said quota in the Backward Class 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 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 681.5436 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. This respondent has not received any representations or e-mail from the petitioner. 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, she has chosen the wrong category, insofar as her community is concerned. According to her, she belongs to Backward community. But, she had chosen to mark Unreserved which is Unreserved Category. Though she does not want any alternative, the mistake in the application ought not deter her from getting a pass so as to enable her to get necessary admission at least in Private Colleges which she is legally entitled to. It is further contended that the fact remains that her status is always guaranteed under the Constitution of India and her right to have her 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 her from getting OBC quota for the purpose of counselling. Even if she is declared as a passed candidate in NEET Examination, she would be eligible to get admission in any private college only after she 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 her mistakes only after the results were published. She 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 her 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 her 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 and 3rd respondents to whom already the representations have been made 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 respondents 2 and 3 to consider herself for selection based on her marks and community; and

2. The respondents 2 and 3 are directed to draw the merit list based on the community and the marks obtained by the petitioner without reference to the fact that she has applied under Unreserved Category.

No costs. Consequently, connected M.P. is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. Secretary,
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.
3. The Director of Public Health and Preventive
Medicine, No.359, DMS Complex,
Teynampet, Chennai-6.

+1 CC to Mr. N.S. Nandakumar, Advocate sr 24392

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