



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2017

CORAM

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THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P.(MD)No.10623 of 2017andWMP(MD)No.8109 of 2017

B.Nesalin Isha (Minor)
rep. by father and natural guardian
Babu Chandra Sekaran

: Petitioner

-vs-

1.The Director N.E.E.T.,
Central Board of Secondary Education (Head Office)
Shikshar Kendra No.2,
Community Centre Preet Vihar,
Delhi-110 002.

2.The Secretary,
Central Board of Secondary Education,
CBSE Bhawan, Shikshar Kendra,
Community Centre Preet Vihar,
Delhi-110 002.

3.The Controller of Examination,
Tamilnadu Dr.M.G.R Medical University,
No.69, Anna Salai,
Guindy, Chennai-600 032.

4.The Principal,
Rajas Dental College and Hospital,
Thirurajapuram,
Tirunelveli-627 105.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, to direct the 1st respondent to issue certificate declaring the result of the petitioner as qualified in NEET based on her communal status to enable the 3rd respondent university/Tamil Nadu Dr.M.G.R Medical University to register the petitioner in the BDS Course A.Y 2016-2017 onwards within a time frame.

For Petitioner : Mr.M.Joseph Thatheus Jerome

For R1 and R2 : Mr.S.Kadarkarai

<https://hcservices.ecourts.gov.in/hcservices/> respondent : Mr.C.Karthick

For 4th respondent : No appearance

O R D E R

The prayer sought for in this writ petition is to direct the 1st respondent to issue certificate declaring the result of the petitioner as qualified in NEET, based on her communal status to enable the 3rd respondent University/Tamil Nadu Dr.M.G.R Medical University to register the petitioner in the BDS Course A.Y.2016-2017 onwards within a time frame.

2. According to the petitioner, she has completed her Higher Secondary Education in the month of March 2016 and secured 871 marks in the Government examination. She applied for writing NEET examination through online on 06.02.2016. The petitioner belongs to BC, but while applying through online, she inadvertently marked her community as "Others" instead of "OBC" under the Central Government, which is equivalent to BC category specified by the State Government.

3. The petitioner would further state that she secured 141 marks in the NEET examination and only thereafter, she noticed that she has wrongly mentioned her community as "Others", instead of OBC and therefore, she sent a representation to the 3rd respondent, on 29.08.2016. Since, the petitioner had secured 141 marks in the NEET examination, over and above the cut off mark for OBC, which was 118, she was admitted in Rajas Dental College and Hospital, Thirurajapuram, Tirunelveli, under the management quota and she is continuing her studies.

4. It is further stated that the petitioner filed a writ petition in W.P.No.17281 of 2016 seeking for a direction to the 3rd respondent therein to consider her representation, dated 29.08.2016. This court on 18.10.2016 passed an order, directing the 3rd respondent therein to consider the representation of the petitioner, on merits and in accordance with law. Thereafter, the petitioner was directed to submit a revised result issued by the first respondent declaring that the petitioner was qualified in NEET based on her communal status, failing which the petitioner will be discharged from the course. Hence, the present writ petition.

5. I have heard the rival submissions made on either side and perused the materials available on record.

6. The main grievance expressed by the petitioner is that she had committed a mistake, while filling up the application through online. In similar facts, this court in a batch of writ petitions in W.P(MD)Nos.35180 of 2016 etc, following the decision of the Hon'ble Apex Court in the case of State of Maharashtra and others (https://hcservices.eDorts.Doy.Mhcservices/1 Vidyapeet and others) has observed that the petitioners, in that case, shall be treated as per communal status, irrespective of the mistake committed by them while



filling up the application forms for appearing in the NEET examination. The relevant paragraph is extracted hereunder:-

"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."

7. In the instant case, it is not in dispute that the petitioner belongs to Backward community and by permitting the petitioner to alter her communal status would not alter/change the status of the merit of the student and the petitioner will be only declared as pass in the NEET examination to pursue her studies.

8. In the light of the above facts, this court is of the considered opinion that the petitioner is entitled to succeed in the writ petition.

9. In the result, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

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No.69, Anna Salai,
Guindy, Chennai-600 032.

+1CC to Mr. Joseph Thathrus Jerome, Advocate, SR.No. 66908

+1CC to Mr. C. Karthik, Advocate, SR.No. 66878

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