

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.03.2018

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.2613 of 2018

Sharmee Sri

..Petitioner

vs

1. Director,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road)
New Delhi - 110 029.
2. The Director,
Medical Council of India,
Pocket -14, Sector -8
Dwarka Phase -1,
New Delhi - 110 077.
3. Medical Counselling Committee (MCC)
Government of India,
Directorate of General Health Services,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi - 110 001.

(R3 suo-motu impleaded as per the order
of this Court dated 28.02.2018)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to change the category of the petitioner from 'General Category' to OBC in relation to the Application Registration No.555044159 Candidate ID:5555051348 Registration Dated 1.11.2017 and consequentially issue the rank according to eligible category and thereby direct the respondents to consider for eligibility under OBC Category in the PG Medical admissions.

For Petitioner	: Mr.P.Srinivas
For R1	: M/s.Anand Samy Dhruva
For R2	: Mr.V.P.Raman
For R3	: Mr.G.Venkatesan

O R D E R

This writ petition has been filed for a Mandamus, directing the respondents to change the category of the petitioner from General Category to OBC in the application Registration No.555044159 dated 01.11.2017, Candidate ID:5555051348 and consequently, issue the rank, by considering the eligibility of the petitioner under OBC category in the PG Medical admission.

2. According to the petitioner, she belongs to Hindu Yadava Community, which falls under the OBC Category. To that effect, she was issued with a certificate by the Tahsildar, Gingee. After completion of MBBS Course, she applied for NEET PG 2018 through online, during the course of which, she wrongly mentioned her category as General instead of OBC, due to inadvertent mistake. Hence, she submitted a representation dated 31.01.2018 to the respondents requesting to change her category from General to OBC. Finding no response on the said representation, she has approached this court with the present writ petition for the above stated relief.

3. The learned counsel for the petitioner submitted that the petitioner admittedly, belongs to the OBC category, however, due to inadvertent mistake, she has wrongly ticked the General Unreserved Category, while submitting application for NEET PG 2018 through on-line. The learned counsel further submitted that if the petitioner is treated under OBC category, she would be eligible to get admission in the PG medical courses, as the cut-off scores for OBC candidates is 281 marks and the petitioner has scored 309 marks. The learned counsel also submitted that in similar circumstances, this Court, by order dated 21.04.2017 in WP.No.5238 of 2017, after considering the relevant provisions contained in the Information Bulletin for NEET PG 2017 issued by the National Board of Education, disposed of the said writ petition, in favour of the petitioner. Therefore, the learned counsel prayed for similar order in this writ petition as well.

4. The first respondent has filed a detailed counter affidavit, inter alia stating that it is only an examination conducting body and has no control over the allocation of seats, that too, after the results are published. In such circumstances, the onus shifts to the respective Universities/institutions where the counseling commences.

5. Heard both sides and perused the records.

6. Concededly, the petitioner belongs to OBC category. However, the petitioner has wrongly stated her category as General in the application submitted for NEET PG 2018 through on-line. According to the petitioner, such error is an

inadvertent mistake. To substantiate her claim, she has enclosed a copy of the certificate issued by the competent authority at page 11 of the typed set of papers filed along with this writ petition.

7. This Court is of the opinion that to err is human and the wrong selection of the category by the petitioner, due to inadvertent mistake, cannot dis-entitle her to get admission in the PG Medical courses, as she secured more than the cut off marks prescribed for OBC category.

8. Further, in similar circumstances, in the order referred to by the learned counsel for the petitioner, dated 21.04.2017, made in WP.No.5238 of 2017, this Court has disposed of the said writ petition, observing as follows:

"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."

9. Following the aforesaid order, this Court is inclined to dispose of this writ petition in the same lines, as the issue involved in both the cases is one and the same.

10. Accordingly, the Writ Petition is disposed of, with the following directions:

(i). The petitioner is directed to approach the third respondent to consider herself for selection based on her marks and community; and

(ii).The third 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 she has applied under Unreserved Category.

There is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Director,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road)
New Delhi - 110 029.
2. The Director,
Medical Council of India,
Pocket -14, Sector -8
Dwarka Phase -1,
New Delhi - 110 077.
3. Medical Counselling Committee (MCC)
Government of India,
Directorate of General Health Services,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi - 110 001.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.20386
+1cc to Mr.V.P.Raman, Advocate, S.R.No.20702 (04.04.18)
+1cc to Mr.G.Venkatesan, Advocate, S.R.No.20700 (04.04.18)
+1cc to M/s.Anand Samy Dhruva, Advocate, S.R.No.20995 (04.04.18)

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