

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16982 of 2018
and WMP.No.20236 of 2018

S.Geetha

.. Petitioner

Vs

1. The Chairperson
NEET Examination
Central Board of Secondary Education,
Shiksha Kendra, 2-Community Centre,
Preet Vihar, New Delhi-110092
2. The Director
Selection Committee
Directorate Medical Education,
No.162, Periyar High Road,
Kilpauk, Chennai-600 010
3. The Secretary
Medical Council of India
Dworakha Phase, New Delhi-110077.

..Respondents

PRAYER :

Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Mandamus, directing the 2nd respondent to consider the petitioner's representation dated 04.07.2018 by classing under S.T and allotting appropriate community Rank.

For Petitioner : Mr.M.Lalbagadur

For Respondents: Mr.G.Nagarajan - R1
Mr.Manishankar, AAG
Assisted by
Mrs.V.Annalakshmi, GA- R2
Mr.V.P.Raman - R3

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ORDER

The petitioner has come forward with the present writ petition to issue writ of mandamus directing the 2nd respondent to consider the petitioner's representation dated 04.07.2018 by placing under S.T and allotting appropriate community Rank.

2. The case of the petitioner is that he has made representation to the 2nd respondent herein on 04.07.2018 and the same has been despatched at 3.19pm, whether it has reached the 2nd respondent or not, is a moot question. That apart, the petitioner has also sent E-mail to the 2nd respondent on the same date.

3. The learned Counsel for the petitioner has submitted that the petitioner belongs to Scheduled Tribe Community and he has also enclosed a copy of the certificate issued by the authorities of Andhra Pradesh.

4. Though no counter is filed, the learned Additional Advocate General, appearing for the 2nd respondent has submitted that in Clause 18 of Prospectus, it is clearly mentioned with regard to the obtaining of Community Certificate from the competent authorities and as to how the seats have got to be considered. The relevant portion of Clause 18 is extracted below;

"18. COMMUNITY CERTIFICATE:

(a) Candidates should produce Community Certificate obtained from a competent authority of the Revenue Department as detailed below;

No	Name of the Community	Issuing Authority
1.	Scheduled Tribe (ST)	Revenue Divisional Officer of their native place or Sub-Collector of their Districts (except Chennai), P.A (General) to Collector of Chennai. The Community Certificate card issued by Tahsildars upto 11.11.1989 is valid.
2.	Scheduled Caste (SC)/Scheduled Caste- (Arunthathiyars) (SCA)	Tahsildar of Native Taluk of the Candidate

No	Name of the Community	Issuing Authority
3.	Backward Class/ Backward Class (Muslim) (BCM)/ Most Backward Class/Denotified Communities (MBC &DNC)	Headquarters Deputy Tahsildar / Zonal Deputy Tahsildar/ Deputy Tahsildar (Certificates)

The candidature of ST candidate claimed after submission of application without ST status Community Certificate will be treated under Open Competition.

(b) If a candidate of Tamil Nadu origin obtains Community Certificate from other State, it will be considered under Open Competition.

(c) If a candidate submits a false/fabricated Community Certificate, Nativity Certificate or any other certificate, if it is detected at a later point during the course of the study, it will result in expulsion of the candidate from the course and also criminal proceedings will be initiated against the candidate and the parents as per provision of law."

5. Heard both sides and perused the materials available on record.

6. The petitioner has filed the writ petition even before his representation reached the respondent sent through post. Taking note of the prospectus, more particularly Clause 18, which is extracted supra, it has been categorically mentioned therein that if any candidate of Tamil Nadu obtains the Community Certificate from other State, his/her candidature would be considered only under Open Category.

7. In my view, the petitioner would not be entitled to get any relief in this writ petition, since the petitioner has produced the community certificate issued by the State of Andhra Pradesh and seeking relief to consider her candidature under the reserved category. That apart, the Apex Court in the decision reported in 1990 (3) SCC 130 (Mari Chandra Vs. Dean, SGS Medical College) had an occasion to consider with regard to domicile/origin and rejected the case of the candidate by relying upon the circular dated 22.02.1985 issued by the Government of India, Ministry of Home Affairs, in which, it is stated that, "It is also clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment etc.,

will be deemed to be a Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the State to which he has migrated." The Supreme Court in that decision held as follows;

"24. Having so held, now the question is, as to what is to happen to the petitioner in this case. As we have held, the petitioner is not entitled to be admitted to the Medical College on the basis that he belongs to Scheduled Tribe in his Original State....."

8. In this case, de-hors the question of migration, it is an admitted fact that the petitioner has obtained community certificate from the State of Andhra Pradesh and in view of Clause 18(b) of the Prospectus, the petitioner will not be entitled to any relief and her candidature can be considered only under the Open Category and not under the reserved category.

9. Accordingly, the writ petition stands dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairperson, NEET Examination
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3. The Secretary, Medical Council of India
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+1cc to Mr.M.Lalbagadur, Advocate, S.R.No.43975
+1cc to the Government Pleader, S.R.No.44912

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CS/26/07/18