

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.07.2019

Pronounced on : 04.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.17044 of 2019
and W.M.P.No.16596 of 2019

Minor M.Sakthynathan,
Rep., by his father and Natural Guardian,
S.Magesh Kumar.
... Petitioner

Versus

- 1.National Testing Agency (Government Agency)
Rep., by its Governing Body,
IITK. Outreach Centre, C.20,
1A/8, "C" Block, Phase-2,
Industrial Area, Sector 62,
Noida, Uttar Pradesh.
- 2.The Director General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi-110 011.
- 3.The Medical Council of India,
Sector 8, Pocket 14, Phase-I,
Dwarka,
New Delhi- 110 077.
- 4.The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai- 600 010.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue a Writ of Mandamus, or other appropriate Writ, Order or Directing in the nature of a Writ, directing the respondents to change the category of the Petitioner from "U.R." to "O.B.C" in his application No.190410018133, dated 01.11.2018 and consequently direct the respondents to issue a Certificate according to the Eligibility category of the petitioner.

For Petitioner

: Mr.K.Selvaraj

For R1

: Mr.G.Nagarajan

For R2

: Mr.B.Rabu Manoharan SC

For R3
For R4

: Mr.V.P.Raman
:Mr.Abdul Saleem

O R D E R

The petitioner herein, who is an aspirant of medical seat, has wrongly mentioned his community as Unreserved 'U.R' instead of 'O.B.C.'. (Other Backward Community). As far as the State of Tamil Nadu is concerned, there is no category as OBC. They are either MBC or BC. Therefore, the petitioner was not able to fill the online application properly. After release of the result, the present writ petition is filed to direct the first respondent who conducted the examination to change the category of the petitioner as 'U.R' to 'O.B.C.'

2. In support of his submissions, the learned counsel for the petitioner has produced a bunch of judgments passed by this Court on various occasions entertaining such request in the writ petition.

3. The learned counsel for the first respondent would submit that the National Testing Agency is the nodal agency conducting the eligibility examination. After releasing the exam results including the ranking list, the role of the first respondent comes to an end. As far as the corrections in the application form is concerned, candidates were given opportunity to correct the errors twice. First before the examination and second after the examination.

4. After the last date of receiving the application, the first respondent made a Public Notice informing all concerned candidates, about the correctional facility available for them starting from 14.01.2019 to 31.01.2019. After examination, once again correction facility was offered for the candidates from 27.05.2019 to 31.05.2019. The petitioner herein, even after giving two opportunities, has not availed the opportunities to carry out corrections in his application. Only on 05.06.2019, he has made an application to carry out corrections.

5. In the Counter filed by the first respondent, it is stated that,

The Writ Petition is neither maintainable in law nor sustainable on facts and is liable to be dismissed. At this stage it is pertinent to note that taking into consideration any inadvertent mistake that might have been committed by the candidates applying for NEET-UG 2019 Examination (in the information Bulletin of NEET-UG 2019 Examination), it was clearly stated that the candidates will be provided facility to correct any bonafide mistake in their online application form during the period 14.01.2019 to 31.01.2019. Such facility was in fact provided and the candidates were informed about the same through a Public Notice issued to this effect through the NEET-UG website. A copy of such Public Notice is enclosed as Annexure R-1/1. However, the petitioner did not avail this facility to change his category.

4.It is also significant to note that notwithstanding sufficient time given to the candidates from 14.01.2019 to 31.01.2019 for correction, again another opportunity was given even after writing the examination and before result published (i.e.) from 27.05.2019 to 31.05.2019, a copy of the said Public Notice dated 27.05.2019 issued to this effect by Respondent No.1 for the information through the NEET(UG) website (www.nta.neet.nic.in), is annexed as Annexure R-1/2. In fact several candidates availed this second opportunity and benefited. Even this second opportunity seems to have not been availed by the petitioner. Under these circumstances all the allegations made including the grounds in the Writ Petition are hereby denied.

5.It is pertinent to note that after the results were published all the details of the candidates who passed in the NEET-UG 2019 Examination have been forwarded to Respondent No.2 on 11th June 2019 and thereafter the 1st respondent (NTA) has no role to play or make any correction of the particulars of the candidates."

6. The learned counsel appearing for the petitioner would submit that this Court from time and again had emphasized that it will not be proper to apply any rigid principle in respect of a matter which pertains to the domain of procedure. Every infraction of the rules/information brochure relate to

Certificate) need not necessarily result in rejection of candidature. If the applicant was able to produce the Certificate before the application was scrutinized for admission, rejection of such application amounted to giving greater value to the procedure, than to the substantive right.

7. The learned counsel has also circulated several judgments passed by this Court on similar occasions, entertaining the writ petitions of this nature and directing the respondents to carry out the corrections sought. The recent judgment of this Court passed in W.P.No.13228 of 2019 dated 19.06.2019 was also brought to the notice of this Court.

8. The first respondent has brought to the notice of this Court regarding two opportunities given to those candidates, who have given wrong information earlier to carry out the corrections. The first one before taking examination and the next one after the examination. Even after affording opportunities twice, the petitioner has not carried out the correction. The contention of the petitioner is that rigid principle of procedure should not override his substantive right. This Principle may not apply to this case, because if the petitioner is permitted to change his community after drawing the rank list, this may affect the substantive right of other candidates, who have given the correct information about their community and expecting seats under particular communal quota.

9. Hence, this Court finds no force in the submissions made by the learned counsel for the petitioner. Hence, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. It is made clear that if the candidate desires to join under Management quota, the concern management/Institute and authorities are at liberty to consider the candidate under the respective communal roster based on the genuineness of the documents produced by the candidate.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Governing Body,
National Testing Agency (Government Agency)
IITK. Outreach Centre, C.20,
1A/8, "C" Block, Phase-2,
Industrial Area, Sector 62,
Noida, Uttar Pradesh.

2.The Director General of Health Services,
Ministry of Health and Family Welfare,
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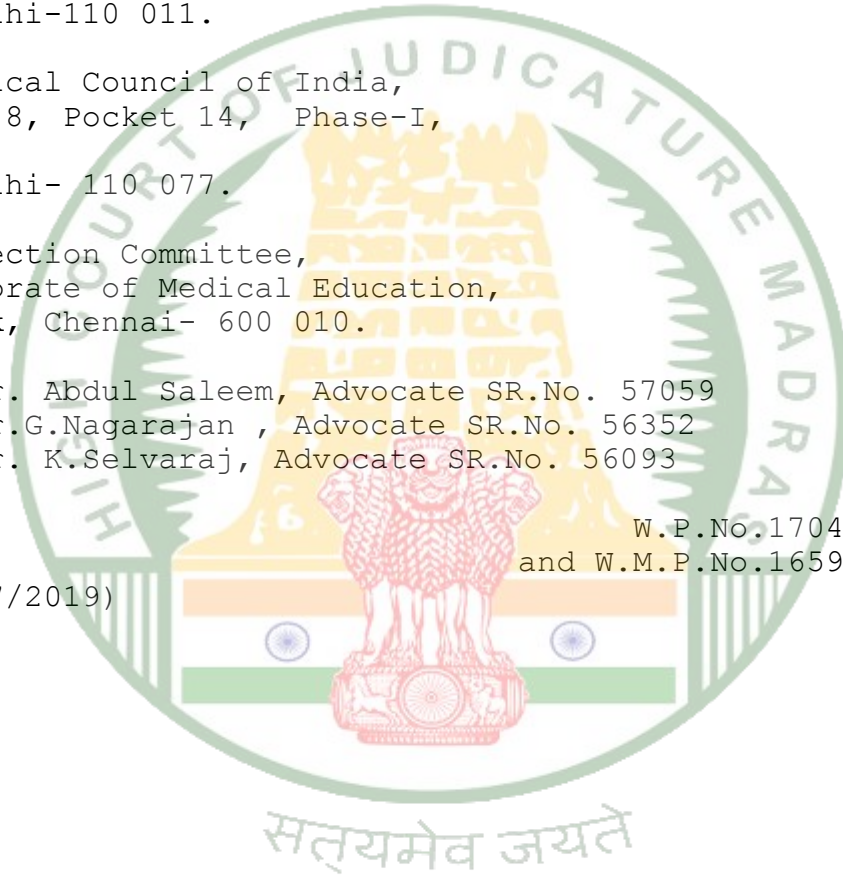
3.The Medical Council of India,
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4.The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai- 600 010.

+1cc to Mr. Abdul Saleem, Advocate SR.No. 57059
+1cc to Mr.G.Nagarajan , Advocate SR.No. 56352
+1cc to Mr. K.Selvaraj, Advocate SR.No. 56093

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A.SK(09/07/2019)



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