

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.03.2020
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.5846 of 2020
and W.M.P No.6855 of 2020

Sarvajit GA @ Sarvajit Gangaatharan

Petitioner

vs.

1. The National Board of Examinations (NBE),
Represented by its Executive Director,
Ansari Nagar,
Mahatma Gandhi Marg,
New Delhi 110 029
2. The Director General of Health Service,
(PG Admissions),
Nirman Bhavan,
New Delhi.
3. The Medical Council of India,
Represented by its Secretary General,
MCI Building, Pocket 14,
Section 18, Dwaraka Phase - I,
New delhi 110077.
4. The Additional Director of Medical Education/
Secretary Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai 600 010

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to treat the category of the petitioner as Other Backward Class -Non Creamy Layer Category in the National Eligibility Cum Entrance Test (Post Graduate) for admission to MD/ MS/ Post Graduate Diploma Courses Session 2020 and permit the petitioner to participate in the counselling for admission to post graduate medical courses (MD/MS/Post Graduate Diploma Courses) for the year 2020.

For Petitioner : Mr.R.Prem Narayan

For Respondents: Mr.J.Madhanagopal Rao for R2

Mr.V.P.Raman for R3

Mr.Abdul Saleem for R4

O R D E R

This writ petition has been filed for a direction to the respondents to permit the petitioner to participate in the PG admission counseling by considering him as a candidate coming within the OBC Category.

2. The case of the petitioner is that he completed MBBS degree in the year 2019 and the petitioner claims that he belongs to OBC Category. When the petitioner applied for the NEET - PG examination, he had mentioned in his application that he belongs to the General Category instead of OBC category.

3. The petitioner took the written examination and he secured 360 Marks. The cut-off that was fixed for the general category was 366 and for the OBC category, it was fixed as 319. The petitioner found that he was not selected as he did not come within the zone of consideration to be considered in the general category. The petitioner however found that he was well within the cut-off mark for being considered under the OBC Category. The petitioner made a representation in this regard on 27.02.2020. Since the same was not considered, the present writ petition has been filed before this Court.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

5. The issue that has been raised in the present writ petition was considered in an earlier order passed by this Court in WP No.6182 of 2020 dated 10.03.2020. The relevant portions in the Judgment is extracted hereunder :-

13. In the present case, the petitioner has taken a very clear stand that by inadvertence, instead of mentioning as Other Backward Class category, the petitioner has mentioned in the application as 'General' category. The petitioner does not come within the zone of the consideration if he is taken under 'General' category. However, considering the cut off marks fixed for the Other Backward Class category, the petitioner comes within the zone of consideration since, he has scored 350 marks and the cut off fixed for the Other Backward Class category is only 319 marks.

14. At this juncture, it will be relevant to place reliance upon the judgment of this Court in W.P.No.23522 of 2017 dated 05.09.2017. The relevant portions in the judgment are extracted hereunder:

5. Upon hearing the learned counsels on either side, it is evident that the petitioner when applied for NEET examination, has wrongly mentioned the

community category as UR, even though the community certificate issued by the competent Revenue Official indicates that he belongs to BC community. Apart from the said fact, the transfer certificate issued by the School, where the petitioner studied, also indicates that he belongs to BC community. Moreover in the provisional merit list published for considering the candidates under Government Quota seats, the petitioner was shown as BC candidate with the Rank No.21844. Therefore, this Court is of the view that the petitioner can be shown some indulgence by placing him at the bottom of the list of the candidates belonging to BC community only for considering the admission to BDS course, as admittedly the counselling to MBBS course is already over and therefore, the petitioner cannot seek for any remedy in respect of such course. This Court, has in fact entertained similar prayers and granted the relief in respect of the persons who approached this Court, before publication of the merit list and commencing of the counselling. But this petitioner has approached this Court, only after publication of the merit list and after commencement of the counselling and therefore, his name has to be placed only at the bottom of the list of the candidates belonging to BC category. Accordingly, this writ petition is disposed of, by passing the following order:

- (a) The respondents are directed to place the petitioner at the bottom of the merit list meant for BC community candidates, called for counselling to BDS course.
- (b) The candidates who are already shown in BC category of such merit list shall not be disturbed in any manner.
- (c) After filling up the seats based on such merit list already prepared in respect of BC category students for BDS course, if any vacancies arise, the petitioner's case can be considered by treating him under BC category, provided the petitioner satisfies that the marks obtained by him in the NEET examination would fall under the zone of consideration for the BC category.

15. In the above judgment, the facts are very similar to the present case and it is seen that the petitioner therein belonged to Other Backward Class community. But by inadvertence, he had wrongly mentioned the category as 'General' in the application. While considering the said case, this Court has condoned the mistake committed by the

petitioner therein subject to certain conditions. This Court is in agreement with the reasoning given in the above judgment and this Court is of the considered view that the petitioner can also be considered in the same lines as dealt with in the above judgment.

16. It will also be relevant to take note of another judgment passed by this Court in W.P.No.3547 of 2019 dated 13.03.2019. The relevant portions in the judgment are extracted hereunder:

5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the first respondent and the learned Special Government Pleader (Higher Education) on behalf of the second and third respondents and perused the materials placed before this Court.

7. Earlier, this Court also had an occasion to pass a similar order in a similar case, wherein, a similar mistake had crept in at the time of applying, i.e., there was a mistake in respect of community while applying online, which, could not be changed subsequently. By virtue of the order dated 21.04.2017 passed in that writ petition in W.P.No.4838 of 2017, the petitioner therein was directed to approach the respondents 2 and 3 to consider the status of the petitioner therein based on her marks and community.

8. Further, this Court passed an order on 08.03.2019, in W.P.No.6886 of 2019, wherein, another learned Standing Counsel for the first respondent produced a communication dated 08.03.2019, which was given by the first respondent, giving discretionary power to the counselling authority to consider the admission of the similarly placed candidate under the OBC Category.

9. In such backdrop, the respondents 2 and 3 are directed to draw the merit rank of the petitioner, based on the community, after verification, and the marks obtained by him, without reference to the fact that he applied under the General Category.

17. It is clear from the above judgments that this Court has taken a consistent view in matters of this nature where it is found that an inadvertent mistake has been committed by a candidate while

filling the application. This Court does not want to take a different view and rather, will fall in line with the earlier views expressed by this Court.

18. In view of the above discussion, this writ petition is disposed of with the following directions:

- (a) The 2nd respondent is directed to place the petitioner at the bottom of the merit list meant for Other Backward Class community candidates who have been called for the counseling for the Post Graduation course.
- (b) After filling up the seats based on the merit list already prepared in respect of Other Backward Class candidates, if any vacancies arise, the case of the petitioner shall be considered by treating him as an Other Backward Class candidate, provided that the petitioner satisfies all the requirements, and
- (c) The candidates who are already shown in the Other Backward Class category in the merit list shall not be disturbed in any manner by the intervention of the petitioner, who is directed to be considered as an Other Backward Class candidate.

6. The above Judgment will squarely apply to the facts of the present case also. The petitioner in this case has taken a very clear stand that by inadvertence instead of mentioning as OBC Category, he has mentioned in the application as a candidate falling under the general category. From the above Judgment, it is clear that such inadvertent mistake will have to be condoned and an opportunity must be given to the petitioner to participate during counseling.

7. In view of the above discussion, this writ petition is disposed of with the following directions:

- (a) The 2nd respondent is directed to place the petitioner at the bottom of the merit list meant for Other Backward Class community candidates who have been called for the counseling for the Post Graduation course.
- (b) After filling up the seats based on the merit list already prepared in respect of Other Backward Class candidates, if any vacancies arise, the case of the petitioner shall be considered by treating him as an Other Backward Class candidate, provided that the petitioner satisfies all the requirements, and
- (c) The candidates who are already shown in the Other Backward Class category in the merit list shall not be

disturbed in any manner by the intervention of the petitioner, who is directed to be considered as an Other Backward Class candidate.

Consequently, connected miscellaneous petition is closed.
No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The National Board of Examinations (NBE),
Represented by its Executive Director,
Ansari Nagar,
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New Delhi 110 029
2. The Director General of Health Service,
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New Delhi.
3. The Medical Council of India,
Represented by its Secretary General,
MCI Building, Pocket 14,
Section 18, Dwaraka Phase - I,
New delhi 110077.
4. The Additional Director of Medical Education/
Secretary Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai 600 010

+1cc to Mr.R.Prathap Narayan , Advocate SR.No.22762
+1cc to Mr.T.Sundaravadanam , Advocate SR.No.22970
+1cc to Mr.V.P.Raman , Advocate SR.No. 23088

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A.SK(16/03/2020)
A.SK(24/03/2020)