

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.6182 of 2020
and W.M.P No.7266 of 2020

A.L.Vivek

Petitioner

vs.

1. The National Board of Examinations (NBE),
Medical Enclave,
Ansari Nagar,
P.O.Box No.4931,
New Delhi,
Ring Road,
New Delhi - 110 029.
2. Medical Counseling Committee (MCC)
Allotment Process - Counseling,
Directorate General of Health Services,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhawan, Maulana Azad Road,
New Delhi - 110 011.
3. The Medical Council of India,
Pocket-II, Sector - 8,
Dwaraka Phase - I,
New Delhi -110 077.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to permit the petitioner to participate in the PG admission counseling on the respective counseling slots as applicable for his score as per the schedule of counseling commencing from 12th March, 2020.

For Petitioner : Mr.N.Senthilkumar

For Respondents: Mr.Anandsamy Dhruva for R1

Mr.K.S.Jeyaganesan
Senior Panel Counsel for R2

Mr.V.P.Raman for R3

O R D E R

Mr.Anandsamy Dhruva, learned counsel takes notice for the 1st respondent. Mr.K.S.Jeyaganesan, learned Senior Panel Counsel takes notice for the 2nd respondent. Mr.V.P.Raman, learned counsel takes notice for the 3rd respondent.

2.By consent from all the sides, this writ petition is taken up for final disposal.

3.This writ petition has been filed for issuance of a writ of mandamus directing the respondents to permit the petitioner to participate in the PG admission counseling to be held from 12th March 2020.

4.The case of the petitioner is that he graduated (MBBS) from Sri Ramachandra (Deemed) University, Chennai. The petitioner also claims to have completed the internship and he has registered himself before the Tamil Nadu Medical Council. The petitioner applied for Post Graduation course and in the application he had mentioned that he is participating under 'General' category. According to the petitioner, he belongs to the "Other Backward Class" category and that by inadvertence he had mentioned in the application as 'General' category.

5.The petitioner took the written examination and he scored 350 marks. The cut off that was fixed for the 'General' category students was 366 and for Other Backward Class students it was 319. The petitioner found that he was not selected as he did not score the cut off marks that was fixed for 'General' category. At that point of time, he realized that even though he belongs to the Other Backward Class community, by mistake, he had applied under the 'General' category. According to the petitioner, he had obtained sufficient marks in the NEET examination to be considered under the Other Backward Class category. He made a representation in this regard to the respondents. Since there was no response, the present writ petition has been filed before this Court seeking for appropriate directions.

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

7.The learned counsel appearing on behalf of the 2nd respondent submitted that the petitioner had consciously applied under the 'General' category and he cannot be allowed to shift his stand during the course of selection and be permitted to compete as an Other Backward Class candidate. The learned counsel submitted that the petitioner has to be considered only in accordance with the particulars given by him in the

application and he cannot be allowed to change his stand in the middle of selection. The learned counsel further submitted that there are already candidates who had applied under this category and the petitioner, at this point of time, cannot be allowed to participate under the Other Backward Class category and the same will be result in intervening with the rights of the candidates who have correctly applied under the Other Backward Class category. The learned counsel, therefore, submitted that the relief claimed by the petitioner is unsustainable and the present writ petition is liable to be dismissed.

8.The learned counsel appearing on behalf of the 3rd respondent also adopted the arguments made by the learned counsel appearing on behalf of the 2nd respondent and submitted that the candidate should not be allowed to change his stand and shift the category under which he has not applied.

9.The learned counsel appearing on behalf of the 1st respondent submitted that there is already a representation pending before the respondents and the same will be considered strictly in accordance with law.

10.The learned counsel for the petitioner submitted that the inadvertent mistake that was committed by the petitioner should not be put against him. Since the petitioner has scored very high marks in the NEET examination, he is qualified to be considered under the Other Backward Class category. The learned counsel further submitted that a community certificate has already been granted to the petitioner by the competent authority which states that the petitioner belongs to Other Backward Class category. The learned counsel further submitted that the petitioner should not be deprived of the chance to participate in the counselling under the Other Backward Class category.

11.This Court has carefully considered the submissions made on either side and also the materials available on record.

12.There are a catena of decisions, wherein, it is now settled that a person can be permitted to participate in the selection only in line with the application that is submitted by the candidate and the candidate will not be allowed to shift his stand during the middle of the selection process. It is always possible that a candidate who belongs to a particular community may opt not to seek for reservation and may decide to participate under the 'General' category. Once a candidate makes such a conscious decision, thereafter, a candidate should never be allowed to shift his stand on the basis of the marks that is ultimately scored in the examination.

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.

Consequently, connected miscellaneous petition is closed. No Costs.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

ssr

To

1. The National Board of Examinations (NBE),
Medical Enclave, Ansari Nagar,
P.O.Box No.4931,
New Delhi, Ring Road, New Delhi - 110 029.
2. Medical Counseling Committee (MCC)
Allotment Process - Counseling,
Directorate General of Health Services,
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3. The Medical Council of India,
Pocket-II, Sector - 8,
Dwaraka Phase - I,
New Delhi -110 077.

+1 CC to Mr.K.S.Jeyaganesan, Advocate sr 20906.
+2 Ccs to Mr.N.Senthilkumar, Advocate sr 20898
+1 CC to Mr.V.P.Raman, Advocate sr 21009.

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SP(11/03/2020)