

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.10355 of 2020

and WMP.No.12584 of 2020

Dr. Sarat Anandh,
S/o. Thiru.Nethaji

...Petitioner

Vs.

1. The National Board of Examination,
Medical Enclave,
Ansari Nagar,
P.O.Box.No.4931,
Ring Road, New Delhi - 110 029.

2. The Medical Counselling Committee,
Allotment Process - Counselling,
Directorate General of Health Service,
Ministry of Health and 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 Constitution of India, seeking Writ of Certiorari and Mandamus, calling for the records relating to the rejection/communication dated 17.07.2020 made by the 1st respondent and quash the same and direct the first respondent to permit the petitioner to participate in the extent of stray vacancy counselling to be held on 04.08.2020 filling up the Post Graduation seats by considering the petitioner as Other Backward Candidate.

For Petitioner : Mr.D. Veerasekharan

For Respondents : Mr.V.P.Raman [R1 & R3]

Mr.Rabu Manohar [R2]

ORDER

On consent given by either side, the main writ petition itself is taken up for hearing, since the issue involved in this writ petition is covered by the earlier order passed by this Court.

2. This writ petition has been filed challenging the communication of the first respondent rejecting the request made by the petitioner to participate in the selection as a OBC candidate.

3. The case of the petitioner is that the petitioner participated in the NEET examination and secured 274 marks. The further case of the petitioner is that at the time of submitting the online application, by inadvertence, the petitioner has filled up the particulars against the column "community" as "General" instead of "OBC". According to the petitioner, this was an inadvertent mistake and the same should not be put against the petitioner, more particularly, due to the fact that the petitioner falls under OBC category and he has the necessary community certificate to substantiate the said claim. According to the petitioner, the community certificate has also been uploaded at the time of applying for the NEET examination.

4. The petitioner was not able to participate during the first and second round of counselling, since the petitioner was not coming within the cut off mark. During the Mop-up round, the cut off mark got reduced for General candidates from 366 marks to 275 marks and for OBC candidates from 319 marks to 230 marks. The petitioner sent an E-mail to the second respondent requesting for participation in the Mop-up round as a OBC candidate. The said request was rejected by the first respondent by communication dated 17.07.2020. Aggrieved by the same, the present writ petition has been filed before this Court.

5. Mr.D.Veerasekaran, learned counsel appearing on behalf of the petitioner submitted that even after the Mop-up counselling was over, several seats remained unfilled and therefore a stray vacancy round has been fixed for the deemed Universities to fill up the seats and time has been extended up to 14.08.2020. The learned further submitted that the petitioner has to submit the application on or before 07.08.2020. It was further submitted that the issue involved in the present writ petition is covered by the earlier order passed by this Court in W.P.No.9838 of 2020. The relevant portions in the order is extracted hereunder:

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

8.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.

9. 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.

10. 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 <http://www.judis.nic.in> 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.

11. 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." सत्यमेव जयते

6. The learned counsel for the petitioner by relying upon the above order submitted that the petitioner can also be permitted as an OBC candidate to participate in the stray vacancy round.

7. Heard Mr.V.P.Raman, learned counsel appearing on behalf of the first and third respondents and Mr.Rabu Manohar, learned Senior Central Government Standing Counsel appearing on behalf of the second respondent.

8. There is no requirement to go into the issue that has been raised in the present writ petition, since it is covered by the earlier order passed by this Court. According to the petitioner, he is coming within the cut off mark for the OBC candidate and there are lots of vacancies which remain

unfilled and therefore, a similar order can be passed to enable the petitioner to participate in the stray vacancy round.

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

(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.

No costs. Connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-)

True Copy

Sub-Assistant Registrar

To

1. The National Board of Examination,
Medical Enclave, Ansari Nagar, P.O.Box.No.4931,
Ring Road, New Delhi - 110 029.
2. The Medical Counselling Committee,
Allotment Process - Counselling,
Directorate General of Health Service,
Ministry of Health and 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.

+1 cc to Mr.D.Veerasekaran, Advocate, SR.26265

+1 cc to Mr.Raman, Advocate,sr.26334.

Mg(co)

krd 19/8

<https://hcservices.ecourts.gov.in/hcservices/>

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