

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2020

DELIVERED ON: 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WP NOS.16679, 15942, 16000, 16296, 16398, 16578 AND 16582 OF 2020
AND

WMP NOS.20393,20669,20558,20562,19842 AND 19911 OF 2020

Minor S.Sivakumar,
Rep.by his father and guardian
Mr.S.Sukumar, S/o.Sampath,
Door No.11/261, Medavakkam,
(Near Stay Ladies Hostel),
Chennai 600 100.

...Petitioner in
W.P.No.16679, 15942 of 2020

A.Adarsh

... Petitioner in WP.No.16000 of 2020

Alwyn Aaron P.(Minor)
Rep.By His Father and Guardian
SH.Prabhakaran.J

... Petitioner in WP.No.16296 of 2020

P.Dharun Kumar

... Petitioner in WP.Nos.16398,
16578 of 2020

S.Vijay Koknath

... Petitioner in WP.No.16582 of 2020

सत्यमेव जयते
Vs.

1. Secretary to Government,
The Government of India,
Ministry of Human Resources Development,
New Delhi.

2. The Chair Person,
National Testing Agency,
9C/20, 1A/B, Sector 62 IITK Outreach Centre,
Noida, Uttar Pradesh.

3. The Senior Director,
[NEET (UG)],
9C/20, 1A/B, Sector 62 IITK Outreach Centre,
Noida, Uttar Pradesh.

4. The Director of Medical Education,
[NEET Counselling 2020],
162 E.V.R. Periyar Salai,
Kilpauk, Chennai.

... Respondents 1 to 4 in
WP.Nos.16679, 15942 of 2020

5. National Medical Commission,
Represented by its Board of Governors,
[Ministry of Health and Family Welfare],
Pocket 14 Section VIII,
Dwaraka Phase - 1,
New Delhi - 111 077.

... 5th Respondent in WP.No.16679, 15942

... 3rd Respondent in WP.Nos.16000, 16398 of 2020

6. National Testing Agency,
Rep. By TSG, NEET Unit,
Additional Block-C-20/1A 8, Sector-62,
Noida, Uttar Pradesh 201 309.

.. 6th Respondent in W.P.No.16679 of 2020

... 1st Respondent in WP.Nos.16000 of 2020
16578, 16582 of 2020

2. The Director General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi - 110 011.

4. The Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.

... 2nd & 4th Respondents in
W.P.No.16000 of 2020

1. National Board of Examinations,
Representation by its Director,
New Delhi.

2. Associate Dean for Graduate Medical Education (ADGME)
NEET 2020-3rd Floor,
Nirman Bhavan, New Delhi-110001
Email Id-adgme@nic.in

3. The State of Tamil Nadu,
Rep.By its Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.

4. The Medical Counseling Committee
Directorate General of Health Services,
E/2A, First Floor, Rajaji Bhavan,
Besant Nagar, Chennai-90

... Respondents 1 to 4 in WP.Nos.16296 of 2020
... 2 to 4 Respondents in 16578 & 16583 of 2020

1. The National Board Examination (NBE)
Medical Enclave, Ansari Nagar,
P.O.Box.No.4931,
New Delhi, Ring Road,
New Delhi-110029.

2. Medical Counselling Committee (MCC)
Allotment Process - Counselling,
Directorate General of Health Services,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan, Maulana Azad Road,
New Delhi - 110 011.

... Respondents 1 & 2 in WP.Nos.16398 of 2020

Prayer:-

W.P.Nos.16679, 15942 of 2020:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order made in NTA/NEET (UG)/2019/F.12D, dated 02.11.2020 passed by the 6th respondent and quash the same and consequently direct the respondents to change petitioner's community status from UR to OBC in the category Column in his application No.200410906618, so as to enable him to secure admission to MBBS course for the academic year commencing from 2020-2021 by converting his ranking in the category of OBC instead of UR category on the basis of the community certificate.

WP.No.16000 of 2020:-

Petition praying to issue a Writ of Mandamus, or other appropriate Writ, Order or Direction in the nature of a Writ, directing in the respondents to change the category of the Petitioner from "U.R." to "O.B.C." in his Application No.200410182583 and consequently direct the Respondents to issue a certificate according to the Eligibility category of the petitioner.

WP.No.16296 of 2020:-

Petitions praying to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction particularly in the nature of Writ of Mandamus directing the Respondents to consider the representation of the petitioner on 01.11.2020 and consider the petitioner under OBC category instead of UR category for admission to UG courses in NEET UG 2020.

WP.Nos.16578 & 16583 of 2020:-

Writ of Mandamus directing to the Respondents to consider the petitioner under OBC category instead of UR category for admission to UG courses in NEET UG 2020.

WP.No.16398 of 2020:-

Petition praying to issue a Writ of Mandamus or any other Writ or Order or Proceeding or direction in the nature of Writ, to Direct the 1st Respondent to consider and permit the petitioner to UG Medical admission counseling, under the Other Backward Community category, based on the petitioners score in the NEET(UG)-2020 examination in the respective counseling slots as applicable for his score.

For Petitioners in

W.P.Nos.15942 and 16679 of 2020 : Mr.G.Ethirajulu

W.P.No.16398 of 2020 : Mr.G.Ethirajulu
for Mr.U.Chandramouli

W.P.Nos.16296,16578 and
W.P.No.16582 of 2020 : Mr.ARL.Sundaresan
Senior Counsel
for M/s.AL.Ganthimathi

W.P.No.16000 of 2020 : Mr.K.Selvaraj

For Respondents in

W.P.No.16679 of 2020 : Mrs.Sunita Kumar for R 1
Central Govt. Standing Counsel
for R 1

: Mr.V.P.Raman
Standing Counsel
for R 2, R5 & R6

Mr.G.Nagarajan
Standing Counsel for R 3
Mr.E.Manoharan,
Special Government Pleader for R 4

W.P.No.15942 of 2020 : Mrs.Sunita Kumar for R 1
Central Govt. Standing Counsel
for R 1

Mr.V.P.Raman
Standing Counsel for R 2 & R5

Mr.G.Nagarajan
Standing Counsel for R 3
Mr.E.Manoharan,
Special Government Pleader for R 4

W.P.No.16000 of 2020 : Mr.G.Nagarajan
Standing Counsel
for R 1

Mr.Madanagopala Rao
Standing Counsel
for R 2

Mr.V.P.Raman
Standing Counsel
for R 3

Mr.Abdul Saleem
Standing Counsel
for R 4

W.P.No.16398 of 2020 : Mr.V.P.Raman
Standing Counsel for R 1 & R3
Mr.Subburanga Barathi for R 2

W.P.Nos.16296 of 2020 : Mr.V.P.Raman
Standing Counsel for R 1

Mr.G.Nagarajan
Standing Counsel for R 2

Mr.E.Manoharan
Standing Counsel for R 3

Mr.Abdul Salem
Standing Counsel for R 4

W.P.No.16578 of 2020: Mr.G.Nagarajan,
Standing Counsel for R 1
Mr.K.Srinivasamurthy
Standing Counsel for R 2
Mr.E.Manoharan,
Special Government Pleader for R 3
R 4

W.P.No.16582 of 2020 : Mr.G.Nagarajan
Standing Counsel for R 1

Mr.Madanagopala Rao
Standing Counsel for R 2

Mr.E.Manoharan
Special Government Pleader for R 3

Mr.Abdul Saleem
Standing Counsel for R 4

COMMON ORDER

The issue involved in all these Writ Petitions are common and hence all the Writ Petitions are taken up and heard together and this Common Order is passed.

2. All the petitioners after completing their Higher Secondary course, took the National Eligibility cum Entrance Test (hereinafter called as 'NEET') during the month of September 2020. At the time of submitting the application through online, the petitioners while mentioning their communal status, have identified themselves to fall under the Unreserved (UR) category. The results were declared during the month of October 2020 and the scorecard/mark statement was issued to each petitioner and only at that point of time, the petitioners

realized that even though they fall under the OBC category, by mistake they have mentioned as UR category in the online application. Therefore, the petitioners made a representation to the National Testing Agency (NEET Unit) to change their communal status from UR to OBC, on the ground that it was an inadvertent mistake made at the time of submitting the application. Except in one case in W.P.No.16679 of 2020, in all the other cases, the representation was not considered and hence Writ Petitions have been filed for the issue of Writ of Mandamus to direct the respondents to permit the petitioners to participate in the counselling under the OBC category by making necessary changes in their application and scorecard and by altering their overall ranking. Insofar as in W.P.No.16679 of 2020, is concerned the request was rejected by the National Testing Agency and questioning the same, the said Writ Petition has been filed seeking for consequential directions.

3. Heard Mr.ARL.Sundaresan, Senior Counsel, Mr.G.Ethirajulu, and Mr.K.Selvaraj learned counsel for petitioners and Mr.G.Nagarajan, Standing Counsel, Ms.Sunita Kumari, Central Government Standing Counsel, Mr.V.P.Raman, Standing Counsel, Mr.Madhanagopala Rao, Mr.Subburangabarathi, Mr.Srinivasa Murthi, Central Government Standing Counsel, Mr.Abdul Saleem, Standing Counsel and Mr.E.Manoharan, learned Standing Counsel appearing on behalf of respondents.

4. Counter affidavits have been filed in all the writ petitions. Since a common ground has been taken in the Counter affidavits, it will suffice if the relevant portions are extracted from one of the counter affidavits. For the sake of convenience, the averments made in the counter affidavit in WP No. 16679 of 2020, filed by the Joint Director of the National Testing Agency, are extracted hereunder:

"6. It is submitted that in the Information Bulletin issued by the NIA, Clear instructions were given regarding the filing of applications etc. It is also pertinent to note that by taking into consideration of the possibility of the wrong information might be filled by the candidate including the category, etc., NTA had given several opportunities to rectify the mistake. The following statement will clearly prove that several opportunities were given to the candidates to rectify the defects in the applications.

REVISED SCHEDULE FOR VARIOUS ACTIVITIES IN NEET (UG) 2020

S.No.	Events	Date/Period
1.	Application period (Public Notice dated 02.12.2019).	02.12.2019 – 31.12.2019 (upto 11.50 p.m.).
2.	Application period extended (Public Notice dated 31.12.2019).	02.12.2019 – 06.01.2020 (upto 11.50 p.m.).
3.	Opportunity to submit the Application to registered candidates who have already completed the Step-1 of submission of Application Form (Public Notice dated 31.01.2020).	03.02.2020 – 19.02.2020 (upto 11.50 p.m.)
4.	Correction facilities to interested candidates in their online application form (including category change) announced through:	Correction period
	Public Notice dated 31.01.2020	15.01.2020 to 31.01.2020
	Public Notice dated 13.03.2020	13.03.2020 to 19.03.2020
	Public Notice dated 01.04.2020	01.04.2020 to 14.04.2020
	Public Notice dated 14.04.2020	14.04.2020 to 03.05.2020
	Public Notice dated 15.05.2020	15.05.2020 to 31.05.2020
	Public Notice dated 06.07.2020	04.07.2020 to 15.07.2020
	Public Notice dated 15.07.2020	15.07.2020 to 20.07.2020
	Public Notice dated 23.09.2020	23.09.2020 to 30.09.2020
5.	Release of Admit Card	27.08.2020

S.No.	Events	Date/Period
6.	Examination conducted across the country (Public Notice dated 20.08.2020 and Press Release dated 21.08.2020).	13.09.2020 (2 to 5 p.m.)
7.	Facility to challenge provisional Answer Keys (Public Notice dated 27.09.2020).	27.09.2020 (2 p.m.) to 29.09.2020 (2 p.m).
8.	Display of OMR/Answer Keys and Recorded Responses of all candidates on the Official Website of NTA and facility to challenge the Recorded Responses (Public Notice dated 05.10.2020).	05.10.2020 (6 p.m.) 07.10.2020 (6 p.m.)
9.	Examination for COBID-19 affected candidates (Public Notice dated 12.10.2020).	14.10.2020 (2 to 5 p.m.)
10.	Declaration of Result (Public Notice dated 12.10.2020, Press Release dated 17.10.2020).	16.10.2020
11.	Result vide Letter No.NTA/NEET/Result/ 2020 along with All India Rank (AIR) has been handed over to DGHS, Ministry of Health & Family Welfare for Counselling Admission.	26.10.2020

7. It is submitted that thus it is clear that the candidate can't have any grievances against this respondents that no sufficient opportunities were not given to rectify the wrong particulars, including the category change. Consequently, the question of changing the petitioner's community category from UR' to OBC' cannot be entertained at all. In this case already the results were declared on 16.10.2020 and the Result along with All India Rank of the candidates has been handed over to the Office of the Director General Health Sciences, Ministry of Health & family Welfare and the Counselling Authorities on 26.10.2020 for

counselling/ admission and NTA has no role to play further.

8 It is submitted that as already stated the question of correcting the Petitioner's community cannot be entertained as it is the fault of the Petitioner for not filling the application properly with reference to the community, notwithstanding the clear instructions given in the Information Bulletin that the candidates should be very careful in filing the application form. Apart from that the petitioner has not utilized as many 8 opportunities given to correct the online applications form. But the petitioner has ventured to file this Writ Petition after seeing the cut off marks for NEET 2020-2021 examination. Hence, it is purely an afterthought and the Writ Petition is liable to be dismissed even on this short ground.

9 Apart from that it is also pertinent to note that as already stated nearly 13.67 lakhs candidates have appeared in NEET examination and marks obtained by the Candidates on percentage wise as well as cut off score for counseling and ALL INDIA QUOTA seats were also declared on 16.10.2020. At this stage, it is not possible to make changes in the category of any of the candidates after perpetration of results as it will result in renumbering of the merit list etc., in respect of various categories of candidates. For example, by including a General Category candidate in the OBS list will disturb the merit position of all candidates having equal or less than the marks of the candidate whose category has been changed. The candidate cannot take the benefit by simply calling his/her mistake and carelessness while filling up the form as "Inadvertent and not Willful". Thus, viewed from any angle there are no merits in the above Writ Petition and the same is liable to be dismissed even on this ground.

5. The common ground that has to be taken into consideration in the present case is that, none of the petitioners will fall within the zone of consideration at the time of selection, unless they are fitted under the OBC category. Therefore, the only issue that arises for consideration in all these Writ Petitions is as to whether the petitioners can be permitted to participate in the selection process under the OBC category by condoning the mistake

committed by them while submitting the application, as if, they come under the UR category.

6. Taking the NEET Examination has been made mandatory for participating in the selection for medical courses from the year 2017 onwards. Submitting the application through online mode has now become a norm and the students of the present generation are getting well acquainted with this new norm. The particulars provided in the online application is taken as the basis for determining the overall ranking of a candidate, taking into consideration the marks secured in the entrance examination. The counter affidavit filed by the National Testing Agency reveals the fact that nearly 13.67 lakh candidates appeared for the NEET Examination during this academic year. The schedule that has been extracted supra explains the various stages of the entire process undertaken by the agency and this agency has handed over the rank list to the DGHS, Ministry of Health and Family Welfare on 26.10.2020, for the purpose of conducting the counselling.

7. The common ground that has been taken in all the Writ Petitions is that the inadvertent mistake committed while submitting the online application while filling up the category, should not be put against the young students, who are aspiring to undergo the medical course and become doctors. This is more so since all the petitioners belong to the OBC category and the same is substantiated through the Community Certificates issued by the Competent Authority and which has been filed along with the Writ Petitions. The learned counsel appearing on behalf of the petitioners also brought to the notice of this Court some of the earlier Orders passed by this Court in W.P.No.20999 of 2017, dt. 08.08.2017, W.A.No.772 of 2017, dt. 08.08.2017 and W.P. (MD).No. 16216 of 2017, dt. 29.08.2017. By pointing out to these Orders, it was impressed upon this Court to take into consideration the plight of the candidates and condone the inadvertent mistake committed by the petitioners and permit them to participate in the selection under OBC category.

8. A careful consideration of the Orders passed in the above two Writ Petitions shows that those were cases where the merit list was not issued and the counselling had not taken place when the request was made. Those Orders will have no application in the present case since admittedly the merit list has already been published by the National Testing Agency. Insofar as the Order passed in the Writ Appeal is concerned, it related to a completely different selection for Bachelor of Design conducted by National Institute of Fashion Technology.

The Division Bench took into consideration the peculiar facts of the case and granted the relief. That does not mean that this Order can be taken as a precedent in every case where such mistakes are committed in filling up the application, forever. It must be borne in mind that a precedent cannot be followed mechanically by Courts without seeing the facts of the particular case. Even little difference in facts, can make a precedent inapplicable to the facts of a given case.

9. In the present case, the mistake committed by the petitioners while filling up the category by itself cannot be seen as a factor which sealed the fate of the petitioners. The petitioners and other candidates were provided with various opportunities to make corrections in the particulars that were provided while filling up the online Application Form, including their category. Right from January 2020 up to September 2020, at least during eight occasions candidates were informed to make corrections if there are any mistakes in their applications submitted by them through online. It is not known as to why the petitioners did not utilize this opportunity to correct the category from UR to OBC. The stand taken by the petitioners that such opportunities given by the Testing Agency through online mode, was not known to them, is totally unacceptable to this Court.

10. The results of NEET were declared on 16.10.2020 and it was handed over to the DGHS on 26.10.2020, for counselling. If the petitioners are permitted to change their category from UR to OBC after the rank list is published, it will definitely affect the substantive rights of other candidates who have given the correct information with regard to their category/communal status. If such correction is permitted at this stage, it will open floodgates and it will also result in the authorities redoing the entire exercise by preparing the rank list once again. In fact, when the very same issue came up before this Court during the previous academic year in W.P.No.16330 of 2019, W.P.No.17040 of 2019 and W.P.No.17044 of 2019, dt. 04.07.2019, this Court by order dt. 04.07.2019 rejected the claim made by the petitioners therein on the ground that the candidates who do not undertake the corrections in spite of several opportunities given to them, cannot be permitted to knock the doors of this Court after the rank list is published. This Court held that if the change in community is permitted after the drawing of the rank list, it will affect the substantive rights of the other candidates who have given the correct particulars and are coming under the communal quota. This Court is in complete agreement with the reasoning given in these three Orders.

11. This Court must maintain some consistency in matters of this nature and more particularly when this Court has taken a particular view in the previous academic year, on the very same issue. If this Court keeps changing its views every academic year on the very same issue, it will bring inconsistency and result in utter chaos. The litigants, who approach this Court should be given a clear picture on the view taken in a particular issue and it should not keep vacillating from one Judge to another.

12. It is true that Courts were taking a lenient view in matters of this nature, at the time when submitting online applications was at a very nascent stage. Today all applications, whether applying for a course or applying for an employment, it happens only through online. The concerned Authorities/Departments process the applications only based on the particulars given in the application. In the present case, opportunities were also given to correct the mistakes in the application on various occasions. Therefore, the candidates must be doubly careful while filling up the application and it should be sent only after proper verification. Courts cannot keep on condoning the mistakes year after year and somewhere the Courts must close the gate and stop interfering in cases of this nature. Any directions issued by this Court results in overburdening the authorities to redo the entire exercise for the mistakes committed by some candidates. Considering the volume of applications received by the Testing Agency and preparing the rank list, it will not be fair to make the agency undertake the exercise of preparing the rank list all over again. Such directions will also affect the rights of the other candidates who are participating in the same selection after giving the correct particulars. It is high time that the candidates will have to be made to own up for the mistakes committed by them. It is true that it will have an adverse effect on the aspiration of the candidate, but however somewhere the line has to be drawn by the Courts.

13. In view of the above discussion, this Court is not inclined to grant the relief sought for by the petitioners and accordingly, all the Writ Petitions stands dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

1. Secretary to Government,
The Government of India
Ministry of Human Resources Development,
New Delhi.
2. The Chair Person,
National Testing Agency,
9C/20, 1A/B, Sector 62 IITK Outreach Centre,
Noida, Uttar Pradesh.
3. The Senior Director,
[NEET (UG)],
9C/20, 1A/B, Sector 62 IITK Outreach Centre,
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4. The Director of Medical Education,
[NEET Counselling 2020],
162 E.V.R. Periyar Salai,
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8. The Director,
National Board of Examinations,
New Delhi.
9. Associate Dean for Graduate Medical Education (ADGME)
NEET 2020-3rd Floor,
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10. The Secretary to Government,
State of Tamil Nadu,
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11. The Medical Counseling Committee
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Allotment Process - Counselling,
Directorate General of Health Services,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan, Maulana Azad Road,
New Delhi - 110 011.

+1cc to M/s.V.P.Raman, Advocate, S.R.No.38496
+2cc to Mr.M.Ganesan, Advocate, S.R.No.38204 & 38205
+1cc to Mr.K.Selvaraj, Advocate, S.R.No.38206
+1cc to M/s.K.Srinivasamurthy, Advocate, S.R.No.38152
+1cc to M/s.A.L.Gandhimathi, Advocate, S.R.No.38490
+1cc to Mrs.Sunita Kumari, SPC, Advocate, S.R.No.38346
+1cc to Mr.A.Murugan, Advocate, S.R.No.38738
+1cc to M/s.K.Subburanga Bharathi, Standing Counsel, S.R.No.38732

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SAI (CO)
CS/16/12/2020

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