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W.P.No.26129 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.26129 of 2022
and W.M.P.No.25208 of 2022

Minor I Shafrin Fathima
Rep.by her Father A.Ismail
No.10, East Street
Via.Achanpudur Post
Tirunelveli District 627 803.

.... Petitioner

-Vs-

- 1 The Government of India
Rep. by its Secretary Department of Health
and Family Welfare Ministry of Health and
Family Welfare Room No.348 A Wing Nirman
Bhavan New Delhi
- 2 The Medical Counselling Committee
(MCC) Rep. by its Chairman DGHS.
Ministry of Health and Family Welfare
Government of India Room No.348 A Wing
Nirman Bhavan New Delhi-
- 3 The Associates Dean for Graduate Medical
Education (ADGME) Directorate
General of Health Services Nirman Bhavan
New Delhi-110 001.
- 4 The National Medical Commission
Rep. by its Chairperson Sector 8
Pocket 14 Phase-I Dwarka New Delhi-110 077.



W.P.No.26129 of 2022

5 The Selection Committee
Directorate of medical Education Kilpauk
Chennai-600 010.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to forthwith change the category of the petitioner from General (UR) to OBC (Other Backward Class) in her Application No.220410189142 and her Roll Number is 4113020917 for the NEET (UG)-2022 for UG Counselling for MBBS / BDS and Nursing-2022.

For Petitioner : Mr.K.Selvaraj

For Respondents : Ms.V.Sudha
Standing Counsel – for RR 1 to 3

Ms.Shubharanjani Ananth
Standing Counsel – for R4

Ms.M.Sneha, Standing Counsel – for R5

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the respondents to forthwith change the category of the petitioner from General (UR) to OBC (Other Backward Class) in her Application No.220410189142 and her Roll Number is 4113020917 for the NEET (UG)-2022 for UG Counselling for MBBS / BDS and Nursing-2022.



W.P.No.26129 of 2022

WEB COPY

2. The petitioner has passed Higher Secondary Course examination during May 2022 and the petitioner, in order to undergo the medical course, has submitted an on-line application to write the NEET UG-2022 examination. Her Application No.is 220410189142 and her Roll No. is 4113020917. She belongs to OBC community and the competent authority viz., Tahsildar, Kadayanallur has also given a certificate that the petitioner belongs to OBC and she was issued OBC certificate dated 31.05.2022.

3. When that being so, the petitioner at the time of making the on-line application, since it has been done through an E-Seva Kendra, the data entry operator instead of mentioning the community to which the petitioner belongs as OBC, has chosen as General ie Unreserved (UR) category.

4. Only after the examinations were over and results were published, after verifying the marks obtained the petitioner noticed that she was considered as General (UR) category. Then only she realized the mistake committed through the data entry operator while making the on-line application. Therefore, in order to change the community of the petitioner from 'General (UR)' to 'OBC' the petitioner has given a representation to the respondents on 07.09.2022. However, so far the same has not been considered and no change of community



W.P.No.26129 of 2022

has been permitted, the petitioner has approached this Court by filing the present writ petition.

5. Heard Mr.K.Selvaraj, learned counsel for the petitioner, who would submit that this kind of mistake has occurred at the time of filling the on-line application by the data entry operator as the student would not be permitted to enter the data and only the data entry operator employed in the E-Seva Kendra would be able to enter the data. Therefore, in order to rectify this mistake when similarly placed persons like the petitioner had approached this Court, this Court had shown its indulgence in number of cases.

6. In this context, the learned counsel for the petitioner has relied upon the following judgments.

6.1. In W.P.No.6078 of 2022 dated 16.03.2022 (**K.Sanjeev Ganesh -vs- The Government of India and others**), this Court has given the following directions.

“ 6. There is thus a direction to R3, represented by Mr.Subbu Ranga Bharti, learned Standing Counsel to consider the request of the petitioner, made on 14.03.2022 via e~mail, verify the community certificate that is stated to



W.P.No.26129 of 2022

be enclosed with the aforesaid representation and if the same is in order, carry out the change in category of the petitioner from UR to OBC, within a period of one week from today.

7. This writ petition is disposed in the above terms. Consequently, connected miscellaneous petition is closed. No costs."

6.2. In W.P.No.7108 of 2022 dated 24.03.2022 **(D.Deepika Shree -vs- The Government of India and Others)**, a learned Judge of this Court has given the following directions.

" 6.Hence, there is a direction to R2 to permit the petitioner to participate in the mop-up and stray vacancy rounds for Counselling for MBBS/BDS and Nursing for 2021 as and when they take place and consider her candidature in the category of OBC.

7.This writ petition is disposed, as above. No costs. Consequently, connected miscellaneous petition is closed."

6.3. Likewise, in another case in W.P.No.19405 of 2022 dated 27.07.2022 **(L.Anjana -Vs- The Government of India and others)**, this Court has passed the following orders.



W.P.No.26129 of 2022

WEB COPY

“ 5. The petitioner claims that by inadvertence, in her on-line application, she has mentioned her Community as General (UR) instead of Other Backward classes (OBC). She has written the NEET examination for the Post Graduate Medical courses. The counselling is scheduled to take place on 01.08.2022. According to the petitioner, due to the inadvertent mistake committed by her, in her on-line application, she is now considered under the General (UR) category instead of Other Backward Classes(OBC). In such circumstances, she has given a representation to the respondents on 05.06.2022 requesting the 3rd respondent to consider her application under the OBC category.

6. The learned counsel for the petitioner also drew the attention of this Court that in similar matters, a direction had been issued by this Court to the 3rd respondent to consider the request of the applicants after verification of the Community Certificates enclosed by them along with the representations.

7. The petitioner has also enclosed her Community Certificate dated 24.11.2019 along with his writ petition, which discloses that she belongs to Other Backward Classes (OBC) category. A copy of the on-line application has also been filed along with this writ petition, wherein, she has mentioned inadvertently the category as General, instead of Other Backward Classes.

8. No prejudice would be caused to the respondents, if



W.P.No.26129 of 2022

the petitioner-s representation referred to supra is considered on merits and in accordance with law by the respondents, within a time frame to be fixed by this Court.

9. For the foregoing reasons, this Court directs the 3rd respondent to consider the request of the petitioner-s representation dated 05.06.2022 after verifying the Community Certificate that is stated to be enclosed with the aforesaid representation and if the same is in order, carry out the change in category of the petitioner from UR to OBC, within a period of one week from the date of receipt of a copy of this order."

7. Pursuant to the above orders passed by this Court, the authority concerned viz., the third respondent ie., the Directorate General of Health Services, Government of India, having changed the community from 'General (UR)' to OBC, had also informed the same to the respective students / applicants. One such order dated 19.01.2022 reads thus,

" This letter is in reference to the subject matter mentioned above; the undersigned office hereby informs you that the category of petitioners in the aforementioned matter have been converted their category from UG Counselling 2021 conducted by MCC, DGHS.

- *W.P.No.24794 of 2021 order dated 18.11.2021 : UR-EWS to OBC*
- *W.P.27127 of 2021 order dated 17.12.2021 : UR to OBC"*



WEB COPY



W.P.No.26129 of 2022

However, in order to participate in State Counselling with the changed category the candidates are advised to approach their respective State DME, MCC. DGHS does not take responsibility for category conversion for State Counselling.”

8. Similar orders have been passed in number of cases.

9. However, Ms.V.Sudha learned Standing Counsel appearing for respondents 1 to 3 on instructions and on the basis of the counter affidavit filed by them would submit that, insofar as the change of community from General to OBC is concerned, it is not a matter of course and this kind of mistakes if at all to be corrected, could have been corrected at the earliest, and after the examinations are over and after the results are published, it cannot be changed. Moreover, the learned Standing Counsel would submit that the information was furnished by the examination conducting body viz. National Testing Agency (NTA) who has to be approached and only NTA has to make those corrections and then only it would be communicated by the third respondent.

10. In this context, the learned Standing Counsel has relied upon a decision of the Delhi High Court made in **W.P(C) No.13210 of 2022 in “Pallem Vennela -vs- Union of India and Others” etc., batch.** By relying upon the same, the learned Standing Counsel would further submit that unless



W.P.No.26129 of 2022

and until the NTA is directed by this Court to rectify it and communicate to the third respondent, the third respondent cannot act upon and pass any orders on the request of the petitioner dated 07.09.2022, she contended.

11. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

12. It is a fact that the petitioner belongs to OBC community and the competent authority viz., the Revenue Department has issued the community certificate. At the time of making the on-line application for NEET UG-2022 examination, this mistake has occurred and only recently this has been realized after the results were published by verifying the ranking given to the petitioner. This kind of mistakes are being committed by the petitioner and other such students and number of such students have already approached this Court and a series of orders have been passed as stated supra, where directions were given to the Directorate General of Health Services / third respondent to make rectification and accordingly communicate the same to the respective students. These orders having been accepted by the third respondents, were complied also and the materials have been placed before this Court for perusal.

13. On a perusal of the same, this Court feels that, whether the NTA has



W.P.No.26129 of 2022

to communicate or any other internal agency has to communicate, it is an internal communication between the third respondent and other agencies like NTA and therefore, in this context since earlier orders have been passed by this Court in number of cases, where directions were issued only to the third respondent ie., Directorate General of Health Services to act upon and that has been acted upon as evident from the orders passed by the third respondent as quoted herein above, this Court has no hesitation to hold that in this case also a direction can be given to the third respondent only to act upon and thereafter communicate to the petitioner the change in community at the earliest.

14. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the third respondent to consider the application submitted by the petitioner dated 07.09.2022 in the light of the discussion herein above made and accordingly after changing the community of the petitioner from 'General' to 'OBC', communicate the same to the petitioner.
- The needful as indicated above shall be undertaken by the third respondent within a period of two weeks from the date of receipt of a copy of this order.
- It is made clear that, in this regard if any internal verification



W.P.No.26129 of 2022

or communication has to be obtained or verified by the third respondent with any other agency like NTA that also can be undertaken by the third respondent and needful shall be complied with and communicated within the period indicated as above.

15. With the above directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

17.10.2022

Index : Yes/No

Internet : Yes/No

KST

Note : Issue order copy tomorrow (18.10.2022)



W.P.No.26129 of 2022

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W.P.No.26129 of 2022

R. SURESH KUMAR, J.

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17.10.2022