



WEB COPY



W.P.No.28975 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.11.2022**

CORAM :

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

W.P.No.28975 of 2022

Thivan Mydeen

... Petitioner

-Vs-

1.National Testing Agency,
UG NEET,
(An autonomous organization
Under the Department of Higher Education,
Ministry of Education, Government of India),
First Floor, NSIC-MDSP Building,
Okhla Industrial Estate,
New Delhi – 110 020.

2.National Medical Commission,
Rep. by its Chairman,
Pocket – 14, Sector – 8, Dwarka Phase – 1,
New Delhi – 110 077.

3.The Directorate General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan, Union of India,
New Delhi – 110 108.

... Respondents

[R3 impleaded as per order dated 08.11.2022 made in
W.M.P.No.28700 of 2022 in W.P.No.28975 of 2022]

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to consider petitioner representation through mail dated 10.09.2022.



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For Petitioner : Mr.A.Jayaprakash
For R1 : Ms.R.Sunita Kumari,
Standing Counsel
For R2 : M/s.Shubharanjani Ananth,
Standing Counsel
For R3 : Mr.J.Madana Gopal Rao,
Senior Counsel for Central Government

ORDER

The prayer sought for herein is for a Writ of Mandamus, directing the respondent to consider petitioner representation through mail dated 10.09.2022.

2.The petitioner's daughter written NEET (UG) – 2022 and obtained ranking. Based on which, though the petitioner belongs to OBC community, when she made an application, she had wrongly mentioned it as NRI quota instead of making it as OBC community. That has been taken into account by the respondents including the NTA, who conducted the NEET UG and accordingly, the so called ranking list have been given to the petitioner's daughter only by considering the petitioner's daughter as a NRI and not a OBC community. That has been realized by the petitioner only later on. There upon, the petitioner wanted to change the category from NRI to OBC. Accordingly, he has given e-mail representation to the third respondent and also hard copy of the representation to the third respondent on 10.09.2022. The said



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representation submitted by the petitioner to the third respondent, who has been subsequently impleaded as one of the party respondent in the writ petition, since has to be considered by the said respondent, the petitioner in order to get a direction by way of Mandamus to consider the same and pass orders, has approached this Court by filing this Writ Petition.

3.Heard Mr.A.Jayaprakash, learned counsel appearing for the petitioner, who having reiterated the aforesaid, would seek indulgence of this Court.

4.Heard Ms.R.Sunita Kumari, learned Standing Counsel appearing for the first respondent, M/s.Shubharanjani Ananth, learned Standing Counsel and Mr.J.Madana Gopal Rao, learned Senior Counsel for Central Government, who take notice for the second and third respondents.

5.The issue raised in this Writ Petition is no more *res-integra*, as in many such cases of the similar nature, where the community quota since has been initially asked for, subsequently, they wanted to change it to a particular Community quota based on the certificate issued in this regard by the Competent Authority of the State Government concerned, those cases having been considered were ordered.



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6.The following orders passed by this Court in W.P.No.29435 of 2022

dated 07.11.2022 can be usefully referred to herein :

“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 Bharthi, 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 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



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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.

“ 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



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

8. 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 to make rectification and accordingly communicate the same to the respective students. These orders having been accepted by the DGHS, were complied also.

9. Therefore, this Court feels that, in this context since earlier orders have been passed by this Court in number of cases, where directions were issued only to the Directorate General of Health Services to act upon, this Court has no hesitation to hold that in this case also a direction can be given to the DGHS / respondents 2 and 3 to act upon and thereafter communicate to the petitioner the change in community at the earliest.”



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7. In this case also, the petitioner's daughter is similar in place, where, even though she was given OBC certificate by the Competent Authority, the petitioner's daughter at the time of making an application has made application claiming under NRI quota instead of OBC quota. Therefore, in order to change the category from NRI to OBC, the prayer sought for by the petitioner through the representation dated 10.09.2022 can very well be considered by the respondents, especially the third respondent. Hence, this Court feels that the Writ Petition can be disposed with the following order:

- (i) That there shall be a direction to the respondents, especially the third respondent to consider the representation submitted by the petitioner dated 10.09.2022 in the light of the discussion herein above made and accordingly after changing the community of the petitioner from 'NRI' to 'OBC', communicate the same to the petitioner.
- (ii) The needful as indicated above shall be undertaken by said respondent within a period of two weeks from the date of receipt of a copy of this order.
- (iii) It is made clear that, in this regard if any internal verification or communication has to be obtained or verified by the third respondent with any other agency



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like NTA that also can be undertaken by them and needful shall be complied with and communicated within the period indicated as above.

8. With these directions, the Writ Petition is disposed of. No costs.

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(2/2)

Index : Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

Note: Issue order copy on 14.11.2022.

sp/drm

To

1. National Testing Agency,
UG NEET,
(An autonomous organization
Under the Department of Higher Education,
Ministry of Education, Government of India),
First Floor, NSIC-MDSP Building,
Okhla Industrial Estate,
New Delhi – 110 020.

2. National Medical Commission,
Rep. by its Chairman,
Pocket – 14, Sector – 8, Dwarka Phase – 1,
New Delhi – 110 077.

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R.SURESH KUMAR.J..

sp

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