



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 10TH DAY OF AUGUST, 2023
PRESENT
THE HON'BLE MR JUSTICE G.NARENDAR
AND
THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO. 12859 OF 2023 (EDN-RES)

BETWEEN:

DR. LAKSHMI P GOWDA



...PETITIONER

(BY SRI. GAUTAM S. BHARADWAJ., ADVOCATE)

AND:

1. NATION NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES, MAHATMA GANDI MARG (RING ROAD), ANSARI NAGAR, NEW DELHI - 110029
2. MINISTRY OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF KARNATAKA, #105, I FLOOR, VIKAS SOUDHA, BANGALORE - 560 001
REPRESENTED BY PRINCIPAL SECRETARY.

...RESPONDENTS

(BY SRI. H.SHANTHIBHUSHAN, DSG FOR R1,
SRI. LAXMINARAYAN, AGA FOR R2.)



THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO PERMIT THE PETITIONER TO AMEND/MODIFY HER CATEGORY AS OTHER BACKWARD CLASSES IN THE NATIONAL ELIGIBILITY CUM ENTRANCE TEST-PG (NEET-PG) APPLICATION BEARING No. 23661000587 ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, G.NARENDAR J., MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner and the learned Deputy Solicitor General on behalf of respondent No.1 and the learned Additional Government Advocate on behalf of respondent No.2.

2. The facts in a nutshell are that; the petitioner is a Doctor by profession having completed her Under Graduation and is an aspirant for a Post Graduation course. That she enrolled in the National Eligibility Cum Entrance Test-PG (NEET-PG) and completed the entrance examination. She was assigned registered No.23661000587. The examinations having been completed and the answers scripts having been evaluated



it has been declared that the petitioner has secured 218 marks and assigned All India Ranking of 144331.

3. It is the case of the petitioner that she belongs to *Vokkaliga* caste which is categorized under the Other Backward Category (OBC) in the State of Karnataka. That while filling-up the online registration application, the petitioner had failed to choose her caste under the quota reserved for OBC and inadvertently classified herself as competing under the General Merit Category (GMC). This was despite her having categorically described herself as belonging to the *Vokkaliga* Caste, entitled to reservation under the OBC. That in support of her caste status, she has also produced the caste certificate issued by the Tahsildar, Mulbagal Taluk, Kolar District which clearly reflects the status of the petitioner's caste as *Vokkaliga* which is categorized as Category-IIIA of the Backward Classes.

4. The petitioner on a review of her application found that she had committed an error and that the



information provided by her under the particular column claiming herself to be a 'General Merit' candidate being erroneous, she made a representation on 26.04.2023. A copy of which is produced as Annexure-J. The said representation came to be answered by a letter dated 12.05.2023 (Annexure-K), which reads as under:-

***"NATIONAL BOARD OF EXAMINATIONS
IN MEDICAL SCIENCES***

*(Autonomous body under Ministry of Health &
Family Welfare, Govt. of India)*

Ref No: 51011/NBEMS/DoEc/E/2023/23491

Dated: 12-05-23

Subject: Requesting to consider the caste certificate issued by the Tehsildar and permit me to avail the benefit of OBC (i.e. Other Backward Classes) category quota in the counseling round of NEET-PG 2023-23-reg.

Dear Sir,

This is with reference to your above referred letter regarding above captioned subject matter.



Please be apprised that the role of NBEMS is limited to the conduct of NEET-PG and handing over the results to the designated counseling authority.

As per NBEMS records, the information filled in by you in the application form under the head category is "General". As per the clause 8.27 of the Information Bulletin of NEET-PG 2023-

"NBEMS does not edit/modify/alter any information entered by the candidates at the time of online submission of application form under any circumstances. Any requests for change in category, Date of Birth, PWD status etc by NBEMS shall not be entertained. Candidates are advised to carefully enter the information in the application form. The Category/PwD status filled by the candidates while applying for NEET-PG 2023 will not be changed by Medical Counseling Committee (MCC) of DGHS, Govt of India at the time of counseling. The details of the candidates will be pre-populated in Counseling Registration Form as provided by them while filling up the NBEMS Application form for NEET-PG 2023. Any representation in this regard will not be entertained by MCC".

In view of the above, any change in the information filled in by you in the application form is not permissible at this stage."



5. The learned counsel for the petitioner would submit that, she approached this Court by way of the instant writ petition on 15.06.2023. The learned counsel for the petitioner would submit that the petitioner is aged about 23 and that error was a result of inadvertence and oversight. The fact of the petitioner hailing from a caste entitled for reservation is not in dispute. The fact that the petitioner is eligible to seek for admission is also not in dispute but subject to order of merit and would pray that the petitioner despite being qualified for consideration, is now being sought to be turned away at the threshold itself. That if such an attempt is permitted, it could cause severe hardship and could mar the career prospects of the petitioner.

6. Per contra, the learned Deputy Solicitor General vehemently repudiates the contention advanced by the counsel for the petitioner and would submit that the petitioner having been indolent and negligent does not deserve any sympathy or sympathetic consideration of his



case by this Court. That such misplaced sympathy would result in a deluge and would have a catastrophic effect on the process. He would submit that the process as evidenced by the reply, having reached to a point of no return, it would be inappropriate for this Court to attempt to turn the clock back. In support of his contentions, the learned Deputy Solicitor General has placed reliance on the following rulings:-

*Sharanya Kaja vs. Directorate General of Health Services (DGHS) and Others*¹ and would take the Court through para 11 which reads as under:-

"11. *I find myself agreeing with the respondents' plea that, in case, such changes from unreserved category to OBC category are permitted at such a belated stage, the same is likely to result in the respondents being inundated by a deluge of requests from other candidates in similar circumstances, thus causing chaos in the entire counselling process, which would inevitably cause grave hardship and inconvenience to the other students who have taken part in the NEET-UG and*

¹ 2022 SCC OnLine Delhi 348



therefore, I am, not inclined to grant any relief to the petitioner, as sought for, at this belated stage.

7. On a reading of the above, we are not inclined to accept the same for the reason that the question of there being a deluge, is in our considered opinion, presumptuous. We say so, because if we have to accept the same then, this Court would have to presume that the majority of the applicants have committed errors in filling-up the applications. There is neither a circumstance nor any material before this Court, for this Bench to presume so. Presumption can be of a fact and it is not open for the Courts to assume certain facts, when there is no material placed before the Court to demonstrate the same.

8. Secondly, the learned Deputy Solicitor General, places reliance on the ruling in *Abhishesh Chaudhary vs. Delhi University and Another*² and would place reliance on para 6, which reads as under:-

² 2022 SCC OnLine Delhi 829



"6. I also find merit in Mr. Rupal's plea that any such change of category after declaration of the results of the entrance examination would have far reaching repercussions on the entire admission process and would cause grave prejudice to the other students who had applied in the right categories. I have also considered the decision in W.P. (C) 8415/2018 titled Anuj Pratap Singh v. Union Public Service Commission, heavily relied upon by the petitioner, but find that the same does not forward the case of the petitioner. In the said decision, the Court was dealing with a situation where a candidate had, by mistake, entered his date of birth as 31.03.1991 instead of 30.03.1991 and therefore, the Court had permitted him to carry out the said correction. However, the present case is evidently not one of a mistake, but a case where a candidate, after having applied for admission in one reserved candidate is now seeking to change his category to another reserved category, which cannot be said to be a case of an inadvertent mistake.

9. It is also pertinent to note that the instant ruling is partially reliant on the previous ruling as the author is one and the same. It is reasoned by the learned Single Judge that an attempt by the petitioner therein was



to change the reservation category i.e. from one category of reservation to another category of reservation which is not the case on hand and we are unable to accept the findings recorded by the learned Single Judge in view of the facts and circumstances of this instant case. Firstly, the presumption that the change of Category would have far reaching repercussions, in our considered opinion, is inapplicable to the facts and circumstances of this case as no material is placed as to what would be the impact of permitting the name of the petitioner to be included in the list of reserved candidates. It is not that the petitioner is seeking her name to be entered in multiple reservation Categories, but on the contrary, she is merely claiming that her name be included in respect of the quota reserved in respect of IIIA-Category. The candidates who would be entitled are only such of those candidates who hail from the said caste. Secondly, it is not in dispute that a cut off mark is stipulated for every round of counseling and only such of those candidates who have scored at the cut off mark level or above, it would come into consideration.



Hence, to hold that it would revise the entire list or it would straightaway enable the petitioner to become part of the group of candidates entitled for admission is misplaced. Secondly, the instant case is distinguishable on the ground that the petitioner is seeking for migration not from the one reserved category to another reserved category as per relied upon the judgment but is one of seeking for migration from General Category to a Reserved Category.

10. Thirdly, the learned Deputy Solicitor General would place reliance on an unreported ruling of the learned Single Judge of the Madras High Court dated 28.06.2023 rendered in W.P. No.13387/2023 and connected matters. We have perused the judgment in detail. The learned Single Judge has allowed the writ petition but subject to the condition that the petitioner therein should be placed at the bottom of the merit list, which in our opinion, amounts to Court altering the merit list contrary to the marks obtained by the candidates,



which does not appeal to this Bench. The entire objective of the NEET exercise is to ensure that meritorious candidates are not denied their due. If that be the objective, then the direction to place a candidate at the bottom of the merit list merely because she has approached the Court, would in our opinion would not be doing complete justice to the merit of the candidate and also as noted above, would be contrary to the objective of the process of NEET which incidentally has been conceived on the insistence of the Hon'ble Apex Court.

11. In that view, we do not find the said ruling coming to the aide of the learned Deputy Solicitor General. Lastly, the Deputy Solicitor General has placed reliance on another ruling of the learned Single Judge of the Madras High Court rendered in W.P. No.16679/2020 and other connected writ petitions and relies on para 11 and 12 of the order, which read as under:-

"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."

12. We have perused the judgment and the probable the reasons behind the result, ordained by the learned Single Judge of the Madras High Court in W.P. No.13387/2023 and connected matters, could be the facts recorded in paragraphs 3 and 5, which read as under:-

"3. The case of the petitioner is that she participated in the NEET-PG examination for the year 2023 on 05.03.2023 conducted by the first respondent and secured 277 marks. 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 she has the necessary community certificate to substantiate the said claim.

5. The learned counsel for the petitioner submits that the issue involved in this writ petition has already been decided by this Court in W.P.No.10355 of 2020 vide order 05.08.2020. The relevant portion in the order is extracted hereunder:

"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 remains 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."

13. At the outset itself, we can safely state that the case of the instant petitioner is distinguishable from the



facts of the case involved therein. In the instant case, the respondents have not placed on record any material to demonstrate as to whether any opportunity has been given to the petitioner to seek to correct her mistakes.

14. It is also not in dispute that the examinations were held in January and the application to correct the entry was made way-back in April-2023 itself. Despite the petitioner being diligent and making a request, we do not find any ground justifying the failure of the respondents to consider the representation. The reply as extracted above and found at Annexure-J does not address any of the grounds of the representation. It, in our opinion, is a sheer failure on the part of the respondents in addressing a genuine request of the candidate and that too for a Post Graduation seat.

15. It cannot be gainfully argued that the petitioner can make an attempt in the coming year because it would mean that the petitioner would be required to face competition from a few more thousands of candidates who



pass-out after the Under Graduate courses and be eligible to participate in the Post Graduate entrance test. It is also forthcoming that the counseling is to be continued till 10th of October i.e. nearly 60 days remain for the same for the counseling to end. Hence, to deny an opportunity to the petitioner would be inequitable as observed supra.

16. It is not that the introduction of the petitioner into the merit list would open up the floodgates as the counseling depends not only on the number of candidates, but also on the cut off marks that may be fixed by the competent authority. The question of the petitioner being permitted participation would depend on the fact as to whether she has obtained the qualifying marks. Mere alteration of list will not prejudice any of the candidates found in the merit list. Sheer inadvertence should not be a ground to deny a candidate of an opportunity if she is otherwise duly entitled on merit, for it would be contrary to the very objective of the NEET process itself, that is, an opportunity to the best of the lot.



17. That apart, as is well known to err is human, if that be the age old saying and if such minor errors cannot be condoned, despite the petitioner having been diligent in approaching for redressal, in our considered opinion, we would not be dispensing complete justice as the reliance on the observations of the learned Single Judge in para 12, is in our opinion, appreciable for setting high moral standards, but the fact remains that to err is human and to be human is to be fallible and we disagree with the finding that it would have adverse effect on the aspirations of other candidates so long as there is no material to demonstrate that relief granted to the petitioner would disrupt the entire exercise, we deem it appropriate to grant the relief.

18. Accordingly, writ petition is allowed. There shall be a direction to the respondent No.1 to permit the petitioner to correct the entry in Column No.7 of the application/score card and amend it to read from General to OBC and there shall be a further direction to the



respondents to insert her name in the order of merit in accordance with the marks in the list of candidates for consideration against the OBC quota.

19. Be that as it may, as requested by the learned Deputy Solicitor General, we make it clear that this order shall not be treated as a precedent.

20. There shall be no order as to costs.

Ordered accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

CHS
List No.: 1 SI No.: 6