

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 242 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 16228 of 2023****With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 242 of 2024**=====
ADMISSION COMMITTEE FOR PROFESSIONAL MEDICAL EDUCATIONAL
COURSES REPR. BY MEMBER SECRETARY

Versus

ALPESHKUMAR RAMSINH RATHOD S/O RAMSINH RATHOD & ORS.
=====

Appearance:

MS MANISHA LAVKUMAR, ADDITIONAL ADVOCATE GENERAL AND
SENIOR COUNSEL ASSISTED BY MR. KM ANTANI(6547) for the
Appellant(s) No. 1

for the Respondent(s) No. 2,3,4,5

MR ANAND L SHARMA with MS HIMANSHI R BALODI(8919) for the
Respondent(s) No. 1MS HETAL G PATEL AGP for the Respondent(s) No. 3
=====**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE****Date : 26/03/2024
ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)**

1. Having heard learned counsels for the parties and perused the record, we find it relevant to note that the petitioner herein got admission in MBBS Course in the college known as Government Medical College, Vadodara in SEBC category by submitting a Caste Certificate dated

20.08.2018, which is appended at Page 14 of the paper-book. The Domicile Certificate dated 13.10.2021 issued to recognize the petitioner being a domicile of State of Gujarat by birth, is also appended at Page 15 of the paper-book.

2. These two documents form basis of granting admission to the petitioner treating him as a domicile of the State of Gujarat belonging to the SEBC category. However, upon scrutiny of the aforesaid documents, the Caste Certificate dated 20.08.2018 has been cancelled by the Scrutiny Committee by an Order dated 29.08.2023 wherein, it is recorded that the Caste Certificate issued to the petitioner was incorrect, inasmuch as, the petitioner does not belong to the caste 'Teli', a Socially and Economically Backward Community (SEBI) in the State of Gujarat, rather, he belongs to a caste 'Teli', which is of Other Backward Class category in the State of Uttar Pradesh.

3. We may further record that there is no challenge to the decision of the Scrutiny Committee as admittedly, the petitioner does not have relevant material/evidence for declaration of him being belonging to 'Teli', a SEBC category caste in the State of Gujarat.

4. We may further record that the bare perusal of

the caste certificate at 'Page 14' of the Paperbook indicates that the documents which formed the basis of issuance of such certificate were 'School Leaving Certificate', 'Ration Card', 'Affidavit attached to the Application' and 'Certificate of Talati'. None of these documents could form basis of issuance of Caste Certificate by Taluka Development Officer, Taluka Panchayat Meghraj, Aravalli. We, therefore, have a serious doubt about the manner in which the Caste Certificate has been procured by the petitioner.

5. Be that as it may, the fact remains that the order of cancellation of the certificate is not the subject matter of challenge before us, nor it has been challenged before any Competent Authority. With the cancellation of the Caste Certificate, which was the basis of admission of the petitioner in SEBC category in the college in question, the admission of the petitioner in MBBS Course automatically came to an end and has, thus, been cancelled by the Admission Committee vide Order dated 01.09.2023. Consequential order of cancellation was passed by the College concerned.

6. The Writ Petition challenging the cancellation of admission by the Admission Committee and with the prayer to restore the petitioner's admission by shifting his category from SEBC to General/Open category, has been

filed in the month of September, 2023.

7. The learned Single Judge, though did not find any error in the decision of the Scrutiny Committee in passing the Order dated 01.09.2023 in cancelling the admission of the petitioner, however, has proceeded to grant indulgence to the petitioner on the plea of equity, noticing that this Court is empowered to do substantial justice while acting as a Court of Equity and noted that the petitioner belongs to a humble background and he has secured good marks in NEET (UG-2022 Entrance Examination). He was, otherwise, got placed in the list of open category as well and was, thus, eligible to be admitted in a medical college as per the ranking in the Open Category. The learned Single Judge in this view of the matter has proceeded to hold that in case indulgence is not granted to the petitioner, who could have got admission in the open category as per his merit and inspite of scoring very high marks in NEET Entrance Examination, he would not get admission in MBBS Course since the admission process is long over. In these facts and circumstances, while invoking extraordinary jurisdiction of this Court, on equitable grounds, the learned Single Judge has proceeded to hold that the petitioner is entitled to a chance to complete his MBBS Course, which seat would otherwise remain vacant for the entire term.

8. While setting aside the Order of cancellation of admission of the petitioner passed by the Admission Committee dated 01.09.2023 and the consequential Order dated 08.09.2023 passed by the College concerned, a further direction has been given by the learned Single Judge, which bothered us a lot.

9. The learned Single Judge has directed the Respondents – Admission Committee to not only restore the admission of the petitioner in MBBS Course at the Government Medical College, Vadodara, but also directed the College concerned to ensure that the academic year of the petitioner is not wasted and the petitioner shall be permitted for appearing in the Supplementary Examination to save his one academic year by cooperating with the Respondent Authorities.

10. Testing these reasonings given by the learned Single Judge in securing not only admission of the petitioner but his one year wasted in the litigation, we may note that there is no quarrel to the fact that the admission of the petitioner in MBBS Course in the college at Vadodara was provisional, subject to the verification of the documents/ testimonials submitted by him at the time of securing admission. During the course of scrutiny itself, after the admission was completed on 01.11.2022, the Order was passed by the Scrutiny Committee on

29.08.2023 in holding that the petitioner cannot get the certificate of SEBC category as he does not belong to the said reserved category of the State of Gujarat. The fact that the petitioner has challenged the decision of the Admission Committee, which was in turn based on the decision of the Scrutiny Committee, would not be a reason to grant any leverage/indulgence to the petitioner as it would amount to granting undue indulgence to a person who approaches a Court of law though, he got certificate, to which he was not entitled to.

11. As observed herein before, we have our serious doubts about the manner in which the Caste Certificate dated 20.08.2018 has been issued to the petitioner. Before the Scrutiny Committee, the petitioner was granted opportunity of hearing and he could not produce any relevant document to grant him the caste certificate of 'Teli' caste belonging to the SEBC category in the State of Gujarat. It is, therefore, difficult to accept that the petitioner herein is innocent and he got Caste Certificate by lawful means.

12. Be that as it may, the fact remains that the Caste Certificate, which was basis of the admission of the petitioner in SEBC category has been cancelled by the Competent Authority and in the result, no infirmity can be attached to the decision of the Admission Committee in

canceling the admission.

13. The decision to save admission of the petitioner merely by the fact that he has attained high marks in the NEET Examination and could have secured admission in the Open category in any of the colleges in the State of Gujarat, cannot be a reason to secure his admission in the college concerned, i.e. Government Medical College, Vadodara. Moreover, there is no reason to secure one academic year of the petitioner, which he had lost because of his own actions. No fault can be attributed to either Admission Committee or any of the authorities of the College concerned.

14. We may take aid of the decision of the Apex Court in **Bhubaneswar Development Authority versus Madhumita Das & Ors** reported in **2023 SCC ONLINE SC 977**, in the similar fact situation, wherein reserved category certificate was canceled by the Competent Authority, the Apex Court has noted that the Respondent therein had obtained employment against the post reserved for Scheduled Castes to which he was clearly not entitled. The effect is to displace a genuine candidate who would otherwise have been entitled to the post. The punishment therein, which was imposed after a disciplinary inquiry of termination of employment was upheld with the observation that the benefit which the

candidate therein had obtained in securing employment against the reserved post, would have to be set aside once the caste claim has been rejected. Taking note of the decision of **Chairman and Managing Director, Food Corporation of India v. Jagdish Balaram Bahira** reported in **2017 (8) SCC 670**, it was further noted therein that the intent of the candidates, who secured access to reservation inspite of the fact that they do not belong to reserved community, is not to be seen where a civil consequence of withdrawing the benefits, which have accrued on the basis of the false caste claim is in issue. The Court has further held that granting protection to individuals, who are ineligible for the post, would have a delirious effect on good governance as well; (i) as it would allow the ineligible person to gain access to scarce public resources; (ii) violates the rights of eligible persons; (iii) perpetuates illegality by unduly bestowing benefits on an ineligible person.

15. On the issue of exercise of extraordinary discretionary jurisdiction by this Court, we may take note of the decision of the Apex Court in **Manish Goel Vs. Rohini Goel** reported in **(2010) 4 SCC 393** cited by Ms. Manisha Lavkumar, the learned Additional Advocate General appearing for the Appellant wherein, it is held that while exercising wide plenary extraordinary jurisdiction vested for in the Constitutional Courts, extraordinary care

and caution has to be observed. Such a jurisdiction is to be exercised by the consideration of justice and call of duty. The power has to be exercised with great care and due consideration, but while exercising the power, the order should be passed taking into considerations all binding precedents, otherwise, such an Order would create problems in the future. It was further observed in Paragraph '14', as under:

“14. Generally, no court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not pass the orders or directions which are contrary to what have been injected by law.”

16. Taking note of the above decisions of the Apex Court wherein, a note of caution has been added in the matter of exercise of extraordinary discretionary jurisdiction and the reason for cancellation of admission secured by the petitioner in SEBC category, we are in respectful disagreement with the exercise of the equitable jurisdiction conferred on this Court in favour of the Respondent herein, who has secured admission on the basis of the Caste Certificate, which the petitioner was not entitled to and which could not have been otherwise issued by the Competent Officer. The place which the

Respondent herein – Original Petitioner has secured in the Medical College has also resulted in denying opportunity of securing admission to an otherwise eligible candidate belonging to SEBC Category in the State of Gujarat. The result is that an ineligible person, i.e. the Original Petitioner has secured admission in MBBS Course in the category, to which he does not belong; and this has resulted in violating the right of an eligible candidate who would have secured admission on the seat occupied by the petitioner. Any indulgence granted to the petitioner by exercising equatorial jurisdiction, as has been exercised by the learned Single Judge, would perpetuate illegality by unduly bestowing benefits on an ineligible person.

17. In view of above discussion, the reliance placed by learned Counsel for the Original Petitioner – Respondent No. 1 upon the decision of this Court in **Priyanka Vs State Of Gujarat rendered in Special Civil Application No.7178 of 2008**, is of no help. As noted herein above, any indulgence granted to the petitioner would result in nothing but perpetuating an illegality as the original petitioner's admission could not be secured by any rule of law.

18. In view of above discussion, we are afraid to concur with the opinion drawn by the learned Single Judge. We, therefore, allow the Appeal setting aside the

Order passed by the learned Single Judge. In the result, the writ petition stand dismissed. No order as to costs.

19. Civil Application shall stand disposed of in view of the disposal of the main appeal.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

SAHIL S. RANGER