

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4843/2011 and C.M. No.9827/2011 (stay)**

Decided on: 09.11.2011

IN THE MATTER OF :

ANITA MEENA

..... Petitioner

Through: Mr. Deepender Hooda, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Avnish Ahlawat with
Ms. Latika Chaudhary, Adv. for R-2 & 3.
Ms. Shawana Bari, proxy counsel for
Mr. Mohinder Rupal, Adv. for R-4 & 5.

W.P.(C) 6078/2011 and C.M. No.12278/2011 (stay)

DHARMENDRA KUMAR

..... Petitioner

Through: Mr. Deepender Hooda, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Avnish Ahlawat with
Ms. Latika Chaudhary, Adv. for R-2 & 3.
Ms. Shawana Bari, proxy counsel for
Mr. Mohinder Rupal, Adv. for R-4 & 5.

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HON'BLE MS.JUSTICE HIMA KOHLI

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petitions are filed by the petitioners praying *inter alia* for issuance of directions to respondents No.2 & 3/Netaji Subhash Institute of Technology to admit them to the Bachelor of Engineering (Computer Engineering) Course and the Bachelor of Engineering (Instrumentation and Control Engineering) Course respectively at the Institute.

2. For the sake of convenience, only the facts of W.P.(C) 4843/2011 are referred to. The brief facts of the case are that the petitioner who belongs to the Scheduled Tribe Category, and is a permanent resident of Delhi, passed class XII examination in the academic year 2010-11 and appeared in the All India Engineering Entrance Examination-2011. On 7.7.2011, the petitioner appeared for counseling and admission in the respondent No.2/institute, along with the relevant documents including a certificate of caste under the category of Scheduled Tribes issued by the appropriate authority in the State of Rajasthan. However, respondent No.2/institute objected to the said certificate and declined to accept the candidature of the petitioner on the ground that for the said Scheduled Tribes Certificate to be accepted, it was required to be issued by respondent No.1/Govt. of NCT of Delhi. On the very next day, the petitioner approached respondent No.1/Govt. of NCT of Delhi for issuance of a Scheduled Tribes Certificate, which was duly issued in her favour

(Annexure P-5). The said certificate certified that the petitioner belonged to the Meena Caste/Tribe and that the same was being issued on the basis of the Scheduled Tribes Certificate issued in favour of the father of the petitioner, a resident of District Jaipur, Rajasthan.

3. It is the case of the petitioner that even after producing the aforesaid certificate issued by respondent No.1/Govt. of NCT of Delhi, respondents No.2 & 3 rejected her candidature. Aggrieved by the same, the petitioner made a representation dated 9.7.2011 to the respondent no. 5/University of Delhi complaining against respondents No.2 & 3. The Deputy Dean, Students Welfare, University of Delhi, South Campus, New Delhi, made an endorsement on the complaint of the petitioner to the effect that once the petitioner had produced a Scheduled Tribes Certificate from Rajasthan, that in itself would be valid for grant of admission to her, and further that, considering the fact that the petitioner had approached the institution within time prescribed, respondents No.2 & 3 should look into her case.

4. On 11.7.2011, the petitioner again approached respondents No.2 & 3 with the aforesaid observations made on the complaint, but the same was still not considered and as a result, she has filed the present petition claiming that denial of counseling and admission to her is illegal and arbitrary on the part of the respondents.

5. Notice was issued in W.P.(C) 4843/2011, vide order dated 13.7.2011 and in W.P.(C) 6078/2011, vide order dated 23.8.2011. While issuing notice, an order was passed on the interim application filed by the petitioner, wherein it was directed that pending disposal of the present petition, the petitioner would be allowed to participate in the counseling which was scheduled to be held on 14.7.2011. It was further made clear that the admission of the petitioner to the course in question would be purely provisional and would not create any special equity or right in her favour, and that the said provisional admission would be subject to the final outcome of the present writ petition.

6. After the completion of pleadings in the present writ petition, on 10.8.2011, counsel for the petitioner pointed out that out of 85% seats allocated for the Delhi region, 7.5% seats were reserved by respondents No.2 & 3 for the Scheduled Tribes category and the petitioner being one of the eligible candidates from Delhi and also belonging to the Scheduled Tribes category, is entitled to admission for the said course on the strength of the aforesaid 7.5% quota.

7. The aforesaid submission made on behalf of the petitioner was opposed by the counsel for the respondents No.2 & 3, who stated that the petitioner could not have been granted admission under the Scheduled Tribes category as the certificate produced by her was issued by the Govt. of NCT of Delhi, only certifying that she belonged to a Scheduled Tribe

which had been notified in Rajasthan, however since no Scheduled Tribes have been notified in the State of NCT of Delhi, she cannot avail the benefit of the said reservation. After recording the submissions of both the sides, respondents No.2 & 3 were directed to file an additional affidavit stating the manner in which they had filled the 36 seats which constitute the 7.5% quota in the Scheduled Tribes category and the certificates produced by them, if it was their case that no Scheduled Tribes had been notified in Delhi. It was further directed that as an interim arrangement, the petitioner would be permitted to attend her classes in respondent No.2/college till the next date of hearing.

8. Pursuant to the aforesaid order, an additional affidavit was filed by respondents No.2 & 3 on 3.9.2011, relevant portion of which is reproduced herein below:

"5. That under Delhi S.T. Category 7.5% of total seats are reserved for the Scheduled Tribe Category against which 44 students of ST category have been admitted by the respondent Institute during Academic Session 2011-12 as per past practice, on the basis of the Cabinet decision No.1667 dated 12.7.2010 of the Government of Delhi forwarded by the Department of Training & Technical Education, Government of Delhi for information and necessary action, vide their letter No.1(1058)/2009-SB/453-58 dated 21.7.2010 (Annexure R-1 colly). The complete details of such students and the details about their certificates furnished by them are Annexed as R-2.

6. That the candidates who were given admission against the ST reserved category are having certificate issued by the Competent Authority of the

Government of Delhi.

7. That accordingly the respondent is in the process of issuing the show cause notice to these candidates as to why their candidature should not be cancelled.”

9. On a pointed query addressed to the counsel for respondents No.2 & 3 as to whether the respondents have issued any notice to show cause to the 44 students who have been admitted for the academic session 2011-12 under the Scheduled Tribes quota of 7.5% of the total seats based on certificates issued by the competent authority of the Govt. of Delhi, the reply is in the negative.

10. Further arguments were addressed by the counsels today. Counsel for the petitioner relies on a judgment of the Division Bench in the case of UOI vs. B.R. Ambedkar Memorial Fund, reported as **127 (2006) DLT 557 (DB)** to submit that once a person has obtained the necessary SC/ST Certificate from a particular State and he later on migrates to the Union Territory of Delhi, he would still be entitled to the benefit of reservation in the Scheduled Tribes quota based on the notification dated 27.8.2003 issued by the Central Government. While deciding the aforesaid writ petition, the Division Bench followed the decision of the Supreme Court in the case of S. Pushpa & Ors. vs. Sivachanmugavelu & Ors., reported as **(2005) 3 SCC 1**, wherein it was held that ;

"21. ... If a State or Union Territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union Territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Schedule to the Presidential Order issued for such Union Territory."

11. Counsel for the petitioner submits that in the aforesaid decision in S. Pushpa (supra) (3-Judges), the Supreme Court had considered an earlier Constitution Bench judgment rendered in Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College reported as **(1990) 3 SCC 130** (5-Judges), wherein it had been held when a Scheduled Caste or Tribe migrates, he does not and cannot carry any special rights or privileges granted to him in the original State to the State to which he has migrated. After consideration of the aforesaid decision, the judges in S. Pushpa (supra), had distinguished the cases of Marri Chandra (supra) to hold that the ratio laid down in it would be applicable only when the migration was from one state to another, and not where the migration is to a Union Territory.

12. However, counsel for the respondents No.2 & 3, submits that the aforesaid decision of the Supreme Court in the case of S.Pushpa (supra)

has been considered *per incuriam* by the Supreme Court in its subsequent decision in the case of Subhash Chandra & Anr. vs. DSSSB & Ors., reported as **2009 (15) SCC 458**, inasmuch as it was passed in ignorance of a binding precedent of a larger Constitutional Bench in the case of Marri Chandra (supra). It was further held that the dicta laid down in the S. Pushpa (supra) would be *obiter* inasmuch as following the principle laid down in the said judgment would lead to an absurdity. Thus, as per the counsel for respondent No.2 & 3, the principle laid down in Marri Chandra (supra) that the benefit of reservation cannot be availed by a person belonging to a Scheduled Tribe person in the state to which he migrates, had to be followed.

13. Counsel for respondents No.2 & 3 further states that the Supreme Court in Subhash Chandra's case (supra) noted that no Presidential Notification has been issued under Article 342 of the Constitution of India identifying Scheduled Tribe for the Union Territory of Delhi and that only a Presidential Order under Article 341 in regard to the Scheduled Castes has been notified. She further submits that the law in that regard is well settled now and that there being no Scheduled Tribe notified in the Union Territory of Delhi, the petitioner cannot claim admission on the basis of a Scheduled Tribes Certificate issued to her by the Govt. of NCT of Delhi by relying in turn on a certificate issued to the father of the petitioner by the competent authority in the State of Rajasthan certifying him to be a

Scheduled Tribe as notified in the State of Rajasthan. She further relies on a recent decision of the Division Bench dated 25.7.2011 in a batch of matters, lead matter being **WP(C)No.610/2011** entitled 'DSSSB & Anr. vs. Mukesh Kumar & Ors.', wherein the judgment of the Supreme Court in the case of Subhash Chandra (supra) was followed and it was held that benefit of reservation in another State and merely because they have managed to obtain a Scheduled Caste/Tribe certificate in Delhi based on the certificates of their parents issued by other States, cannot entitle them to avail the benefit of reservation in that Delhi.

14. This Court has considered the submissions made by both sides and examined the documents placed on record. The law settled in the case of Subhash Chandra (Supra) and followed by the Division Bench in the case of DSSSB & Anr. vs. Mukesh Kumar & Ors. (supra), being quite clear, needs no further elucidation and is binding on this court. Under ordinary circumstances, in view of the fact that there are no Scheduled Tribes notified in Delhi, this Court would not have hesitated in holding that the petitioner could not obtain the benefit of reservation in the 7.5% quota reserved for Scheduled Tribes based on a certificate in that regard, but the additional affidavit filed by respondents No.2 & 3 reveals that for reasons best known to them, they have continued to maintain the said 7.5% quota for Scheduled Tribes candidates for the academic year 2011-12, by relying on a Cabinet decision of the Govt. of NCT of Delhi dated

12.10.2010 to the effect that the existing quota of 7.5% for Scheduled Tribes candidates may be continued till an appropriate decision is taken in respect of the revised draft bill entitled 'The Delhi Educational Institutions (Reservation in Admission) Bill, 2010'. It is inexplicable as to why respondent/Govt. of NCT of Delhi would create a 7.5% quota for Scheduled Tribes, if there are no notified Scheduled Tribes in Delhi. If there are no notified Scheduled Tribes in Delhi, and no person belonging to a Scheduled Tribe notified in another State is permitted to be granted admission in Delhi, then it would result in an absurdity inasmuch as the 7.5% quota seats would remain vacant.

15. It is also an undisputed position that for the academic session 2011-12, not only have the respondents maintained the 7.5% quota in respect of Scheduled Tribes candidates, but they have also proceeded to grant admission to 44 students in the said category, on the strength of Scheduled Tribes certificates obtained by them from the Competent Authority in Delhi, based on the certificates issued to their parents by other States. Once having granted admission to 44 students in the said category it is rather strange that the petitioners, who were also similarly placed, were not granted a similar advantage. Be that as it may, the position which emerges today is that the aforesaid 44 students have been admitted and are continuing to study in respondent No.2/Institution. Respondents No.2 and 3 have filed their additional affidavit on

03.09.2011 stating *inter alia* that the institute was in the process of issuing notices to such candidates to show cause as to why their admission should not be cancelled, yet no such steps in that regard have been taken till date. By now, the first Semester is virtually over.

16. In such circumstances, this Court can either direct respondents No.2 & 3 to initiate the necessary steps to cancel the candidature of the aforesaid 44 students, who have already got admission in the 7.5% quota reserved for Scheduled Tribes category, thus jeopardizing their academic careers in mid-stream, or in the alternate, treat the petitioners at par with the aforesaid 44 students belonging to the Scheduled Tribes category and to permit them to continue their studies in the courses in question in the respondent No.2/institution.

17. Considering the fact that the predicament the petitioners finds themselves in is not of their own making , it would be a grave injustice to them to make them suffer a setback in their academic career for no fault of theirs, due to the callous attitude of respondents No.2 & 3. Respondents No.2 & 3 have erroneously relied on a cabinet decision of the Govt. of NCT of Delhi dated 12.10.2010 and have maintained the existing quota of 7.5% for Scheduled Tribes candidates, for the academic year 2011-2012, and proceeded to grant admission to 44 candidates based on their flawed understanding of the decision of the Supreme Court in the case of Subhash Chandra (supra), while at the same time arbitrarily

denying admission to the petitioners, who are similarly placed as the aforesaid 44 candidates.

18. Counsel for the petitioner states that pursuant to the interim order dated 10.8.2011, the petitioner in W.P.(C) 4843/2011 has not only been regularly attending classes, but has also appeared for the mid-semester examinations held in the month of September 2011, which fact is not denied by the counsel for respondents No.2 & 3. However, it is submitted by the counsel for respondents No.2 & 3 that despite the fact that the petitioner in W.P.(C) 6078/2011 was also granted provisional admission in the Institute and vide order dated 23.8.2011 was further permitted to attend the classes during the pendency of the writ petition, he has neither attended the classes nor has he taken the mid-semester examinations. The aforesaid contention is not denied by the counsel for the said petitioner.

19. Therefore, in the interest of justice and equity, this Court deems it appropriate to permit the petitioner in W.P.(C) 4843/2011 to continue her studies in the Bachelor of Engineering (Computer Engineering) course at respondent No.2/Institute. However, while allowing the present petition, it is made clear that this order shall not be treated as a precedent in any other case, as the same has been passed on the peculiar facts and circumstances of the present case, as set out in the preceding paragraphs. W.P.(C) 4843/2011 is allowed, while leaving the parties to

bear their own costs.

20. On the other hand, despite a similar latitude being granted to the petitioner in W.P.(C) 6078/2011, he has admittedly not been attending the classes regularly and has not even sat for the mid-semester examinations. It appears that the said petitioner is not interested in pursuing the course as applied for by him at the respondent No.2/Institute. As a result, this Court is not inclined to allow the petition filed by him. Accordingly, W.P.(C) 6078/2011 is dismissed, along with the pending application, with no order as to costs.

DASTI under the signatures of the Court Master.

NOVEMBER 09, 2011
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(HIMA KOHLI)
JUDGE