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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No. 6522 of 2011

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Reserved on: 3rd October, 2011
Pronounced on: 30th November, 2011

VIBHA VERMA

. . . PETITIONER

Through: Mr. Ashok Gurnani,
Advocate.

VERSUS

DELHI TECHNOLOGICAL
UNIVERSITY & ORS.

. . . RESPONDENTS

Through: Ms. Avnish Ahlawat,
Advocate for Respondent
Nos. 1 & 2.

Ms. Ruchi Jain, Advocate for
Respondent No.3/UOI.

Ms. Purnima Maheshwari,
Advocate for Respondent
No.4.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. The petitioner passed the Senior Secondary School Examination conducted by the Central Board of Secondary Education (hereinafter referred to as 'CBSE'), Delhi in May, 2010. In order to get admission in Engineering Course, she applied for appearance in All India Engineering/Architecture

Entrance Examination (AIEEE), 2011, which is conducted by CBSE, Delhi. Admission card was issued to her. She got herself registered with Netaji Subhash Institute of Technology (University of Delhi) by taking recourse to online registration. She further wanted herself to be treated in the category of "Other Backward Class" (OBC) and mentioned as such in the particular box by her in the aforesaid registration. The petitioner has obtained Caste certificate showing that she belongs to OBC category, she had obtained such a certificate from the Office of Tehsildar, Sadar – Etah, Uttar Pradesh, as per which she belongs to Lodhi caste, which is an OBC in Uttar Pradesh. She had also obtained similar caste certificate issued by the Government of India from the Office of Sub-Division Magistrate, Uttar Pradesh. Lodhi caste is identified and recognized as OBC in the State of Uttar Pradesh and is not related to Creamy Layer.

2. However, that the aforesaid status by the petitioner has not been recognized while the Delhi Technological University (formerly known as Delhi College of Engineering) has vide communication dated 20.8.2011, her admission is cancelled on the ground that she could not produce appropriate documentary evidence/certificate for OBC category. The

stand taken by the respondent No.1 is that the petitioner is supposed to produce a certificate for this category issued by the Govt. of NCT of Delhi. The certificates produced by the petitioner, which are issued by the Office of Tehsildar, Sadar-Etah, U.P. as well as the Government of India have not been treated as sufficient to enable her to take advantage of getting admission under the category of OBC.

3. In these circumstances, challenging the action of the respondents, present writ petition is filed with following prayers:

" PRAYER

It is, therefore, most respectfully prayed that the Hon'ble court in view of the facts and circumstance explained above, may kindly be pleased to:

- i) Issue a writ of Certiorari quashing the notice (Annexure-J) including any rule regulation circular notification or guidelines including statute issued by respondents No.1 and 2 and the notice issued by Respondent No.1 and 2 as reproduced in para No.9 of the Writ Petition, being ultra vires of the Constitution of India and of the National Commission for Backward Classes 1993 more particularly of Section 2(a) and 2(c) thereof.
- ii) Issue a writ of Certiorari quashing the letter dated 20.08.2011 (Annexure-G) issued by Respondent No.1 cancelling the admission of the petitioner with respondent No.1.
- iii) Issue a writ of Mandamus and any other appropriate writ or direction, directing the respondent No.1 to grant admission to the

petitioner with respondent No.2 as a student of engineering of 1st year as per her rank in the reserved category of other backward classes.

- iv) With prejudice to the above, a declaration that Annexure H issued by Respondent No.4 does not cover the issue of a caste certificate relating to admission in an educational institution and relates to reservation for jobs only and in cases, it is, applicable for reservation for backward classes for admission in an educational institution, the same is ultra vires.
- v) With prejudice to the above, a declaration that the issue of issuance of a certificate for backward classes is governed by Article 15(5) of The Constitution of India and under the National Commission for Backward class Act 1993 and Respondent No.5 by means of a Writ of Mandamus or by any appropriate writ or direction, be directed to lay down the policy regarding the recognition (sic. recognition) of a certificate for Other Backward Classes for the entire territory of India and having the recognition (sic. recognition) for entire territory of India and not based on State to State or Union Territory to Union Territory basis."

4. It may also be pointed out that as per the list of OBC issued and maintained by Govt. of NCT of Delhi, caste Lodhi, Lodha, Lodh, Maha Lodh fall within the category of caste under OBC. The only question, which arises for consideration in the aforesaid circumstances is as to whether, that to accord status of OBC, it is incumbent to have the certificate issued by the Govt. of NCT of Delhi. Since it is a pure question of law and there is no dispute on facts, counsel for the parties,

the respondents chose not to file the counter affidavit and matter was argued finally. We may point out at the stage that as per the respondents, the matter was squarely covered by the common judgment of the Division Bench of this Court dated 25.7.2011 rendered in three writ petitions with lead case being W.P.(C) No.610/2011 entitled **DSSSB & Anr. Vs. Mukesh Kumar & Ors.** That was a case related to Scheduled Caste candidates on the identical question, viz., whether it was necessary to have Scheduled Caste certificate of Delhi origin issued by the competent authority of the Government of NCT of Delhi for getting the benefit of reservation . The Court answered the same in the affirmative relied upon the judgment of the Apex Court in the case of **Subhash Chandra & Anr. Vs. DSSSB & Ors.**, 2009 (11) SCALE 278. The relevant portion is extracted below, which provides the *raison d'être*:

"7. At the very outset, we may state that there is no dispute that the Competent Authorities of Govt. of NCT of Delhi had issued Scheduled Caste Certificates in favour of the respondents on the basis of the certificates to their parents by other States. On a perusal of the decision in **Subhash Chandra & Anr.** (supra), it is clear as crystal that the Apex Court has followed the decisions in **Marri Chandra Shekhar Rao** (supra) and the **Action Committee** (supra). The Constitution Bench in **Marri Chandra Shekhar Rao** (supra) has clearly laid down that a candidate recognized as a member of Scheduled Tribe and

Scheduled Caste in his original State on his migration to another State, would not be entitled to get the benefit of reservation of seats. After laying down the principles, their Lordships have stated thus:

"23. Having construed the provisions of Articles 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those Scheduled Caste and Scheduled Tribe students who get the protection of being classed as Scheduled Caste or Scheduled Tribes in the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary (sic in voluntary) transfer, will they be WP(C) entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to another is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the Scheduled Castes or Scheduled Tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has or migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to Scheduled Castes and Scheduled Tribes by virtue of the provisions under Articles 341 and 342 of the Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration."

8. In the case of the **Action Committee** (supra) another Constitution Bench referred to the decision in

Marri Chandra Shekhar Rao (supra) has opined thus:

"16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution".

" 9. In the case of **Subhash Chandra & Anr.** (supra) their Lordships were dealing with the notifications and circulars issued by National Capital Territory of Delhi in terms of Clause (1) of Article 341 of the Constitution of India and in that context their Lordships have expressed thus:

"Both the Central Government and the State Government indisputably may lay down a policy decision in regard to reservation having regard to Articles 15 and 16 of the Constitution of India but such a policy cannot violate other constitutional provisions. A policy cannot have primacy over the constitutional scheme. If for the purposes of Articles 341 and 342 of the Constitution of India, State and the Union Territory are at par on the ground of administrative exigibility or

in exercise of the administrative power, the constitutional interdict contained in clause (2) of Article 341 or clause (2) of Article 342 of the Constitution of India cannot be got rid of."

10. From the aforesaid pronouncement of law, it is vivid that Scheduled Castes or Scheduled Tribes in one State cannot get the benefit in another State. The parents of the respondents may belong to the castes of „Chamar“, „Jatva“, „Kali“ and „Pasi and those castes may have been notified in terms of Scheduled Caste Order or Scheduled Tribe Order issued in terms of Clause (1) of Article 341 or Article 342 of the Constitution of India in a particular State but the respondents who have obtained the certificates in Delhi on the basis of the certificates of their parents issued by other States and have migrated to Delhi, cannot avail the benefit. Thus, the view expressed by the tribunal that they belong to Scheduled Castes in the National Capital Territory of Delhi because of the said notification and, hence, what is only required is the authentication and verification of the same is not in consonance with the decisions of the **Marri Chandra Shekhar Rao** (supra), **Action Committee** (supra) and **Subhash Chandra & Anr.** (supra)."

5. Submission of Mr. Gurnani, learned counsel appearing for the petitioner, however, was that the aforesaid decision of the Division Bench of this Court will not be applicable and he tried to make the following distinction:

- (i) OBC is a different category, entirely distinct from Scheduled Caste and Scheduled Tribe categories and different provisions of the Constitution applied in the case of OBC category.
- (ii) The case of the petitioner was governed by the National Council for Backward Classes, 1983.

(iii) The judgment of the Supreme Court in ***Subhash Chandra & Anr. (supra)*** as well as this Court's judgment in ***Mukesh Kumar & Ors. (supra)*** were concerned with the reservation in employment which has been treated different than the reservation in the field of educational institutions.

6. Dilating the aforesaid arguments, Mr. Gurnani submitted that by the Constitution First Amendment Act, 1951, Article 16(4) was added which reads as under:

"16 (4) Nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Similarly, vide the Constitution 93rd Amendment Act, 2005, Article 15(5) was added to the Constitution, which reads as under:

"(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provisions by law, for the advancement of any socially and educationally backward classes of citizens of for the Scheduled castes and the Scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30."

7. He further argued that Article 340 of the Constitution of India provides for appointment of a Commission to investigate the conditions of backward class and Article 341 of the Constitution of India deals with the power of the president of India providing that the President with respect to any State or Union Territory or where it is a State after consultation with the Governor thereof by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes who shall be for the purpose of the Constitution of India be deemed to be Scheduled Caste in relation to that State or Union Territory as the case may be. This Article also provides that the Parliament may by law include in or exclude from the list of Scheduled Caste specified in the notification issued under Clause 1, any caste, race or tribe or part of or group within any caste, race or tribe, but the same as aforesaid in notification issued under the said clause shall not be varied by any subsequent notification.

Article 342 of the Constitution of India provides in the same terms the power of the President and Parliament with respect to Scheduled Tribes.

9. His argument was that as a result thereof, a perusal of Articles 341 and 342 shows that with respect to Scheduled Caste and Scheduled Tribes, the President of India may issue the notification and the Parliament also by law include or exclude from such list any caste, race or tribe or part of or group within any caste, race or tribe.
10. He also placed strong reliance on the judgment of the Supreme Court in the case of **Indira Sawhney and Others Vs. Union of India**, 1992 Sup. (3) 217. He summed up his submission by arguing that keeping in view the purpose that the backward classes are to be uplifted in all spheres of life including the education (admission in educational institution) and in service, methods are to be evolved for their identification and upliftment through the territory of India and not confined to a particular State (province) or group of States (provinces) or Union Territory or group of Union Territories. A person who has been identified as backward in one particular State (province) or Union Territory does not lose the requirement of being uplifted if migrated for one reason or other to another State (province) or Union Territory.

11. We are not persuaded by the aforesaid submission of learned counsel for the petitioner. The distinctions which the learned counsel has pointed out will have no bearing or effect on the outcome of the case of the petitioner. No doubt, **Mukesh Kumar** (supra) was a case which concerned with scheduled caste candidates. However, the issue was identical, namely, whether it was necessary to have a certificate of Delhi origin issued by competent authority of the Government of NCT of Delhi for getting the benefit of reservation. Whether this benefit of reservation is claimed by a scheduled caste candidate or by a OBC candidate will not make any difference. The focal point is the determination of competent authority whose certificate is necessary for claiming the benefit of reservation. In **Mukesh Kumar** (supra), this Court decided that in order to avail such a benefit of reservation, it is necessary to have certificate of Delhi origin issued by the Government of NCT of Delhi. Once that is the competent authority, namely, Government of NCT of Delhi, this principle will apply to every other category seeking benefit of reservation, whether it is scheduled tribe or OBC. Likewise, it would not make any difference whether benefit is sought for employment or for

admission in the educational institutions. We are, therefore, of the opinion that judgment of the Division Bench in ***Mukesh Kumar*** (supra) squarely applies. We thus find no merit in this writ petition which is accordingly dismissed.

THE ACTING CHIEF JUSTICE

**(SIDDHARTH MRIDUL)
JUDGE**

NOVEMBER 30, 2011

Pmc/pk