

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.09.2013

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LPA 587/2013 & CM Nos.12374-76/2013

ANKIT ROY

.... Appellant

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

.... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Laliet Kumar alongwith Mr Deepak Vohra.

For the Respondent : Mr Mukul Talwar alongwith Mr S. Mohapatra.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present appeal has been filed challenging the common judgment delivered by a learned Single Judge of this court on 07.08.2013 in W.P.(C) 4748/2013 and other connected writ petitions. The appellant had filed the writ petition being W.P.(C) 4748/2013, *inter-alia*, challenging the action of the respondent university in not considering the appellant as a candidate belonging to a Scheduled Caste for the purposes of admission to the B.Tech Programme for the academic session 2013-14 against seats reserved for Delhi. The learned Single Judge has disposed of the writ petition (along with the other matters raising similar issues) by holding that candidates

who did not belong to the communities which were included in the list of Scheduled Castes in relation to Delhi in the Presidential order issued under Article 341(1) of the Constitution of India, would not be entitled for admission to the respondent university against the seats reserved for candidates belonging to the Scheduled Castes from Delhi. Only those candidates who belong to communities included in the schedule to the Presidential order in relation to Delhi would be entitled to be considered for admission against the Delhi reserved category seats provided they are residents of Delhi.

2. The appellant belongs to Rajbanshi Caste which is included in the list of Scheduled Castes in relation to the State of West Bengal but is not included in the list of Scheduled Castes in relation to Delhi as per the Presidential order and, thus, the learned Single Judge has upheld the decision of the respondent university in not considering the appellant for admission to the colleges affiliated to the respondent university against the seats reserved for SC category for Delhi.

3. The question that arises for consideration in the present appeal is whether a candidate, who belongs to a notified Scheduled Caste in relation to a State other than Delhi, would be entitled to be treated as belonging to a Scheduled Caste for the purpose of admission against seats reserved under the Delhi Reserved category for Scheduled Castes.

4. The appellant was born in Delhi on 31.05.1995. The parents of the appellant had, a few years prior to his birth, migrated from West Bengal to Delhi. The appellant is stated to belong to Rajbanshi Caste which is a

specified Scheduled Caste in relation to the State of West Bengal as per Part XIX of the Constitution (Scheduled Caste) Order, 1950, as amended from time to time. However, Rajbanshi is not specified as a Scheduled Caste in relation to Delhi as per the Constitution (Scheduled Castes) (Union Territories) Order, 1951 issued under Article 341(1) of the Constitution of India, as amended from time to time.

5. The appellant is stated to have completed his entire schooling in Delhi. After successfully completing his Senior Secondary schooling, the appellant appeared for the common entrance test (CET) conducted on 19.05.2013, for admission to the BE/B.Tech Courses in various colleges and institutions. The results of the common entrance test were declared and the appellant was ranked at no.8682 in the order of merit. The appellant was required to submit his preferences of the institutes affiliated with the CET. On 04/05.07.2013, the appellant was called upon by the respondent university for physical verification and submission of the requisite attested documents. The documents submitted by the appellant included a certificate issued by the Office of the Executive Magistrate, Model Town, Delhi certifying the appellant as belonging to the Rajbanshi Caste. The certificate further stated that the same had been issued on the basis of the Scheduled Caste/Tribe Certificate dated 17.07.1976 which had been issued to the father of the appellant, who was stated to be the resident of village Bazrapukur, PO Nayabariat, Distt. South Dinajpur, West Bengal, by the ADM, West Dinajpur, Balurghat, West Bengal at the material time.

6. The online counselling was conducted by the respondent university for admission to various colleges/institutions on 24.07.2013 and it is

contended that the appellant was not considered in the Scheduled Castes Category and was not allowed to participate in the counselling for the students belonging to Scheduled Castes for the purposes of admission against reservation for the Delhi Reserved category. Subsequently, the appellant received a communication dated 24.07.2013 wherein he was informed that he had been considered by the respondent university as belonging to the category of “All India SC, Gen”.

7. It is contended on behalf of the appellant that since the appellant had passed the qualifying examination from Delhi and had also submitted the reservation certificate issued from Delhi, the appellant had fulfilled the criteria for admission against the Delhi reserved category. The appellant has further relied upon the decision of the Supreme Court in the case of S. Pushpa & Others v. Sivachanmugavelu & Others: (2005) 3 SCC 1 and the decision of the full Bench of this Court in Deepak Kumar & Others v. District & Sessions Judge, Delhi and Others: 192 (2012) DLT 602 (FB) in support of his contention that a candidate belonging to a specified community listed as a Scheduled Caste/Scheduled Tribe in relation to a State would be entitled to the benefit of reservation available for SC/ST category in the Union Territories including Delhi. It was submitted on behalf of the appellant that in the case of *S.Pushpa (supra)* the Court considered the eligibility of Scheduled Caste candidates who had produced certificates, issued by the Puducherry Administration on the basis of certificates issued by the Governments of Tamil Nadu, Andhra Pradesh and Kerala, for appointment against posts reserved for Scheduled Castes in the services of the Union Territory of Puducherry (then known as

Pondicherry). The Supreme Court upheld the decision of the Government of Puducherry to proceed on the basis that SC/ST candidates who were eligible to be appointed to posts/services under the Central Government against reservation for SC/ST candidates would also be eligible to be appointed against the posts reserved for SC/ST candidates in the Union Territory of Puducherry. The appellant, thus, contended that since SC candidates in relation to other States were eligible for reservation in respect to employment under the Central Government and Union Territories and as the appellant admittedly belongs to a Scheduled Caste, he would be eligible for admission under the Delhi Reserved category.

8. The learned counsel appearing for the respondent university has contended that while the appellant may be considered for admission under the Delhi General category or under the category of Scheduled Castes on all India basis, the appellant would not be eligible to be considered under the Delhi Reserved category as the appellant could not be considered as belonging to a Scheduled Caste in relation to Delhi, since, the caste of Rajbanshi is not a specified caste in relation to Delhi in the Presidential order issued under Article 341(1) of the Constitution of India. The learned counsel for the university has also relied on the decision of a Constitution Bench of the Supreme Court in the case of **Marri Chandra Shekhar Rao v. The Dean, Seth G.S. Medical College & Ors.**: (1993) 3 SCC 130 in support of his contention that a candidate who belongs to a Scheduled Caste/Scheduled Tribe in relation to a State would not be entitled to benefit of reservation on migration to another State where the community to which he belongs is not specified as a Scheduled Caste/Scheduled Tribe in

relation to that State. It is further contended on behalf of the respondent university that the decision of *Marri Chandra Shekhar Rao (supra)* is good law and the later decision of the Supreme Court in the case of *S. Pushpa (supra)* is not applicable as the same was delivered on the basis of a circular issued by the Government of Puducherry by virtue of which any Scheduled Caste candidate throughout the country who was eligible for a post reserved for services under Central Government would also be eligible for employment against post reserved for Scheduled Caste/Scheduled Tribe under the Puducherry Administration. The Court held that the policy of the Government of Puducherry to extend the benefit of reservation to candidates belonging to Scheduled Castes/Scheduled Tribes in relation to other State was not unconstitutional, however, the same would not mean that in absence of such policies, a candidate belonging to a Scheduled Caste/Scheduled Tribe in relation to any State would be eligible for seeking admission in institutions in other Territories (i.e other than the State in relation to which the community of the candidate is declared as a Scheduled Caste/Scheduled Tribe).

9. It was further asserted by the learned counsel for the respondent university that it had been the consistent policy of the university to admit only those students against the Delhi Reserved category who belong to Scheduled Castes/Scheduled Tribes in relation to Delhi as per the Presidential order issued under Article 341(1) of the Constitution of India. Our attention was further drawn to the SC certificate submitted by the appellant which clearly stated that the certificate was issued on the basis of an earlier certificate issued to the father of the appellant in 1976 in the State

of West Bengal. The certificate issued to the petitioner could thus only be read as certifying the appellant to belong to a Scheduled Caste in relation to the State of West Bengal and could not be considered as a certificate issued in Delhi.

10. We have heard the learned counsel for the parties at length.

11. The controversy in the present case is whether the appellant, who belongs to a community specified as a Scheduled Caste in relation to West Bengal, is entitled to be admitted for B.Tech Programme being conducted by the respondent university against seats reserved for the Scheduled Castes in the Delhi Reserved category.

12. We are in agreement with the view that the decision of the Supreme Court in *S. Pushpa (supra)* and the decision of the full Bench of this Court in *Deepak Kumar & Others (supra)* are not relevant inasmuch as both these decisions were concerned with reservation in employment and were not concerned with admissions to educational institutions. In the case of *S. Pushpa (supra)*, the subject matter of the writ petition involved a circular dated 06.01.1993 issued by the Government of Puducherry which provided that all orders regarding reservation for Scheduled Castes/ Scheduled Tribes issued by Department of Personnel in respect of posts/services under the Central Government were also applicable to posts/services under Puducherry Administration. The circular further clarified that any Scheduled Caste candidate throughout the country would be eligible for reserved vacancy under the Central Government. It was, *inter-alia*, contended on behalf of the writ petitioner in that case that as the Supreme

Court in ***Marri Chandra Shekhar Rao*** (*supra*), had held that the benefit of reservation would not be available to candidates who have migrated from other States, the benefit of reservation in employment with the Puducherry Administration could not be extended to those candidates who were from Schedules Castes/Scheduled Tribes in relation to other States. It was contended on behalf of the writ petitioners that if the communities to which the candidates belonged were not listed in the Schedule to the relevant Presidential order issued under Article 341(1) or Article 342(1) of the Constitution of India in relation to the Union Territory of Puducherry, the benefit of reservation for employment in Puducherry would not be available to those candidates. This contention was not accepted by the Supreme Court and it was held that the earlier decision in ***Marri Chandra Shekhar Rao*** (*supra*) would not be applicable if a Union Territory adopted a policy whereby the benefit of reservation was also extended to candidates belonging to Scheduled Castes and Scheduled Tribes who had migrated to the Union Territory from other States. The Supreme Court held that a policy of the Government of the Union Territory to extend the benefit of reservation to candidates belonging to Schedules Castes/Schedules Tribes from other States would not fall foul of Article 16(4) of the Constitution of India even though the communities of the migrant candidates were not mentioned in the Schedule to the Presidential Order issued for that Union Territory.

13. In our view, the decision of the Supreme Court in ***S.Pushpa*** (*supra*) is not an authority for the proposition that a Government of a Union Territory is bound to extend reservation in admissions to educational institutions for candidates belonging to Scheduled Castes/Scheduled Tribes

even if they are not listed in the Schedule to the Presidential Order issued in relation to that Union Territory. This is also clear from paragraph 21 of the judgment in *S.Pushpa (supra)*, the relevant extract of which is reproduced below:

“... If a State or Union Territory makes a provision where under 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....”

14. It is also relevant to state that paragraph 3 of the circular dated 06.01.1993 which was the subject matter of discussion in *S.Pushpa (supra)* also expressly provided as under:-

“3. However, in the case of other benefits like scholarships, admission to educational institutions, etc., the benefits should be confined to the Scheduled Castes of this Union Territory.”

Thus, in any event, decision of the Supreme Court in *S.Pushpa (supra)* would not have any application to issues relating to reservation in admission to educational institutions.

15. The decision of the full Bench of this Court in *Deepak Kumar & Others (supra)* is also a case of reservation in relation to services and even though a reference to reservation for the purpose of educational institutions has been made in paragraph 2 of the said decision, the judgment has been rendered in the context of reservations in employment and not in relation to admissions to educational institutions. In our view, the learned Single Judge has rightly held that the decision did not address the issue involved in the writ petitions including the petition preferred by appellant.

16. Article 15 of the Constitution of India prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. However, Article 15(4) provides that nothing in Article 15 or in Article 29(2) of the Constitution of India shall prevent the State for making any special provisions for advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes. Whilst equal protection of laws and non discrimination are the part of the basic structure of the Constitution of India, reservations in admissions to educational institutions for socially and educationally backward classes and Schedules Castes/Schedules Tribes is permissible in order to ensure real equality of opportunity, considering the disadvantageous position of candidates belonging to these categories. Sabyasachi Mukharji, CJ delivering the judgment of the Constitution Bench in the case of **Marri Chandra Shekhar Rao** (*supra*) observed as under:-

“9. It appears that Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of underdevelopment to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for including a community in the list of Scheduled Castes and Scheduled Tribes. The social conditions of a caste, however, varies from State to State and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country.”

17. Providing special treatment to the under-privileged is a necessary facet of equality as treating un-equals as equal would also be a form of discrimination. The founding fathers being conscious of this included special provisions relating to certain classes including Scheduled Castes and Scheduled Tribes in the Constitution. Part XVI of the Constitution of India (Articles 330 to 342) contain the special provisions relating to certain classes including Scheduled Castes and Scheduled Tribes. Article 330 and Article 332 of the Constitution of India provide for reservations of seats, for Scheduled Castes and Scheduled Tribes, in the House of the People and the Legislative Assemblies of the States respectively. Article 335 of the Constitution of India provides that in making appointments to the services and posts in connection with the affairs of the Union or of a State, the claims of members of Scheduled Castes and Scheduled Tribes would be taken into consideration. Article 338 and Article 338A of the Constitution of India provides for establishment of the National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes which are, *inter alia*, charged with the duty to investigate and monitor all matters relating to the safeguards, under the Constitution of India and other laws, provided for the Scheduled Castes and Scheduled Tribes respectively. Article 341 of the Constitution of India is relevant and is reproduced hereunder:

“341. Scheduled Castes - (1) The President may with respect to any State or Union territory, and 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 which shall for the

purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

A plain reading of Article 341(1) indicates that the President has the power to specify the castes, races or tribes as Scheduled Castes in relation to the Union Territory and States. It is, thus, apparent that a caste, race or tribe specified by the President would be deemed to be a Scheduled Caste only in relation to the State or the Union Territory in respect of which that caste, race or tribe has been specified. An under-privileged community in one State which requires assistance or safeguards may not be considered as an under-privileged community in another State and may not be in need of any assistance in that State. The power of the President under Article 341(1) and Article 342(1) of the Constitution declaring certain communities/races/castes/tribes or groups as Scheduled Castes/Scheduled Tribes cannot be read without reference to the State in relation to which the declaration is so made. The entire scheme of providing additional benefit to Scheduled Castes/Scheduled Tribes is premised on their members being as under-privileged in a particular State or Union Territory.

18. The affirmative action of providing reservation in favour of certain communities is based on the premise that the said communities are under-privileged in that State. If a person belonging to Scheduled Caste/

Scheduled Tribe migrates to another State he may not suffer the disadvantages that have been suffered by communities who are included as Scheduled Castes/Scheduled Tribes in that State and thus, may not require the aid of reservation. Inclusion of such migrant candidates for benefit of reservation in favour of the under-privileged communities would surely be at the cost of candidates belonging to Scheduled Tribes and Scheduled Castes in relation to that State.

19. In the case of *Marri Chandra Shekhar Rao (supra)*, the Supreme Court considered the case of a student belonging to a Scheduled Tribe who sought benefits of reservations in a State other than in relation to which his community was deemed to be a Scheduled Tribe. In that case, the writ petitioner was born in Gouda community in the State of Andhra Pradesh. Gouda community is listed in the Schedule to the Presidential Order issued under Article 342(1) of the Constitution of India in relation to the State of Andhra Pradesh, however, the said community does not find mention in the Schedule in relation to Maharashtra. The father of the writ petitioner in that case joined the services of a Government of India Undertaking and was posted at Mumbai (then known as Bombay). The writ petitioner, thus, came to reside in Mumbai and completed his Secondary and Higher education in Mumbai. On clearing his 12th standard examination from the Maharashtra State Board of Secondary and Higher Secondary Examination, the writ petitioner applied for admission to the medical colleges run by the Municipal Corporation and sought admission against seats reserved for Scheduled Tribes. The benefit of reservation was denied to the writ petitioner as he was not considered as belonging to a Scheduled Tribe in

relation to the State of Maharashtra. The Supreme Court interpreted Article 341 and 342 of the Constitution of India and held as under :-

“13. ...It, however, appears to us that the expression “for the purposes of this Constitution” in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which there are used.”

20. The Supreme Court in *Marri Chandra Shekhar Rao (supra)* was also guided by the view of Dr B.R. Ambedkar expressed in the Constituent Assembly debate, in response to a question raised by Mr Jai Pal Singh. The relevant extract from the reply by Dr. Ambedkar is as under:-

“21. He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal

area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a Scheduled Tribe going outside the Scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.... ”

In *Marri Chandra Shekhar Rao (supra)*, the Supreme Court concluded that the writ petitioner would not be entitled to be admitted to the medical college on the basis that he belong to a Scheduled Tribe in the State of Andhra Pradesh.

21. In view of the decision of the Constitution Bench in the case of *Marri Chandra Shekhar Rao (supra)*, the benefit of admission against reserved seats would not be available to the appellant who belongs to a Scheduled Caste in relation to the State of West Bengal, unless the policy of extending the benefit of reservation to Scheduled Castes/Scheduled Tribes in relation to other States is adopted by the Government of NCT of Delhi in admissions to educational institutions. The appellant has not placed any policy of the Government of NCT of Delhi which enjoins the respondent university to grant admissions to students belonging to SC/ST

category in relation to other States, against seats reserved for SC/ST candidates of Delhi.

22. The other contention that needs to be considered is whether the appellant was entitled to be admitted against a Delhi Reserved category in terms of the admission brochure and the clarification issued by the respondent university.

23. The Admission brochure issued by the respondent university disclosed its reservation policy for 2012-13 as under:-

“The Reservation Policy for the University Schools, Indira Gandhi Institute of Technology, Govt. Institutes and Self Financing Colleges/Institutions affiliated with this University, other than minority institution, for the academic session 2012-13 was as under:-

For University Schools, IGIT and Government Institutions	For Institutions located Outside Delhi in NCR	Self Financing Institutes/ Colleges in NCT of Delhi
(i) 85% of the Sanctioned Intake shall be allocated for Delhi Region wherein reservation of seats was as under SC-15% ST-7.5% Def-5% PH-3% OBC-27%	Admission will be made on all India Basis and reservation of seats was as under SC-15% ST-7.5% Def-5% PH-3%	85% of the total sanctioned intake, except the management seats allocated for Delhi students wherein reservation of seats was as under SC-17% ST-1% Def-5% PH-3%
15% of the Sanctioned Intake shall be allocated for Outside Delhi Regions wherein reservation of seats will be as		15% of the total sanctioned intake, except the management seats allocated for the Outside Delhi Students wherein

under		reservation of seats was as under
SC-15%		SC-15%
ST-7.5%		ST-7.5%
Def-5%		Def-5%
PH-3%		PH-3%

- Reservation in OBC Category is not applicable for Master's Level and Post Graduate Diploma programmes.

Note 1. The candidate seeking admission under reserved categories/ classes has to mandatorily produce the caste/category certificate in his/her name at the time of counselling. The certificate in name of either of the parent (Mother/Father) is not acceptable and the candidate will not be entitled even for provisional admission.

2. The reservation certificate should be issued from the respective state/region in which the reservation is claimed e.g. in case any candidate claims for the seat reserved for DSC/DST/DOBC category then he/she has to bring SC/ST/OBC certificate issued by Govt. of NCT of Delhi and also should have passed his/her qualifying exam from Delhi School/College.

3. 10% of the total seats (as per CET Code) will be allocated as management quota seats as per policy of Govt. of NCT of Delhi.”

24. The above reservation policy was for the academic session 2012-13 and a further note was provided in the Admission Brochure to the effect that the reservation policy for the Academic Session 2013-14 was under the consideration of the Government of NCT of Delhi and would be notified

subsequently. The appellant has stated that there is no change in the reservation policy in relation to SC/ST. The learned counsel for the appellant has also drawn our attention to the clarification issued regarding admissions in the reserved categories which clarifies that admissions in the reserved categories would be permissible if the following conditions were fulfilled:-

- “1. If Qualifying examination is passed from Delhi and Reservation certificate issued from Delhi for SC/ST/OBC categories, then admission is permissible under Delhi Reserved category.
2. If Qualifying examination is passed from Outside Delhi and Reservation certificate issued from anywhere in India, including Delhi for SC/ST categories, then admission is permissible under Outside Delhi Reserved category.
3. If Qualifying examination is passed from Delhi and Reservation certificate issued from Outside Delhi for SC/ST categories, then admission is permissible only under Delhi General category.
4. For Institutes in NCR Region (Not in Delhi) All India basis:- If Qualifying examination is passed from anywhere India and Reservation certificate is issued from anywhere in India, then admission is permissible under Reserved category, irrespective of the region from where certificate has been issued.”

25. The reservation policy read along with the clarification contained in the Admission Brochure clearly indicates that in order to be considered for admission against seats reserved for Delhi Reserved category, the student should have passed his/her qualifying examination from Delhi school/college and should bring the SC/ST/OBC Certificate from the

Government of NCT of Delhi. It is contended on behalf of the appellant that he has fulfilled both these conditions since his certificate of Scheduled Caste has been issued in Delhi. We are unable to accept this contention since the certificate issued to the appellant itself discloses that it is issued to the appellant based on an earlier certificate issued to his father in the State of West Bengal. This certificate only certifies that appellant belongs to the Rajbanshi Caste which is listed in the Presidential Order as a Scheduled Caste in relation to the State of West Bengal. The said certificate cannot be construed as certifying the appellant as belonging to a Scheduled Caste in relation to Delhi. The condition that the reservation certificate must be issued by the Government of NCT of Delhi would, in our view, not include a certificate issued which certifies a candidate to belong to a Scheduled Caste/Scheduled Tribe in relation to another State and which is issued solely on the basis of an earlier certificate issued by the concerned Authority of that State. Thus, in our view, the appellant would not be entitled to admission against the Delhi Reserved category. A similar view has also been taken by the Supreme Court in the case of **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tributes in the State of Maharashtra and Anr. vs. Union of India and Anr.:** (1994) **5 SCC 244**. In this case, the Supreme Court considered the instructions issued by the Ministry of Home Affairs, permitting the issuance of Scheduled Caste/Scheduled Tribe certificates by prescribed authority to persons who had migrated from other States and examined the effect of such certificates and held as under:-

“8. In course of time persons belonging to Scheduled Castes/Scheduled Tribes who had migrated from one State to another in search of employment or for education purposes and the like, experienced great difficulty in obtaining Caste/Tribe Certificates from the State from which they had migrated. To remove this difficulty experienced by them the earlier instructions contained in the letter of 22-3-1977, and the subsequent letter of 29-3-1982, were modified, in that, the prescribed authority of a State/Union Territory was permitted to issue the Scheduled Caste/Scheduled Tribe Certificate to a person who had migrated from another State on production of a genuine certificate issued to his father by the prescribed authority of the State of the father's origin except where the prescribed authority considered a detailed enquiry necessary through the State of origin before issue of certificate. It was further stated that the certificate will be issued irrespective of whether the Caste/Tribe in question is scheduled or not in relation to the State/Union Territory to which the person has migrated. Of course, this facility did not alter the Scheduled Caste/Tribe status of the person in relation to the one or the other State. The revised form of the certificate was circulated. Further, it was clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of education, employment, etc., will be deemed to be Scheduled Caste/Tribe of the State of his origin only and will be entitled to derive benefits from that State and not from the State to which he had migrated. By this clarificatory order forwarded to Chief Secretaries of all States/Union Territories, the only facility extended was that the prescribed authority of the State/Union Territory to which a person had migrated was permitted to issue the certificate to the migrant on production of the genuine certificate issued to his father by the prescribed authority of the State of the father's origin provided that the prescribed authority could always enquire into the matter

through the State of origin if he entertained any doubt. The certificate to be so issued would be in relation to the State/Union Territory from which the person concerned had migrated and not in relation to the State/Union Territory to which he had migrated. Therefore, the migrant would not be entitled to derive benefits in the State to which he had migrated on the strength of such a certificate....”

26. In view of the above discussion, we do not find any merit in the present appeal. We agree with the view taken by the learned Single Judge in the impugned judgment and dismiss the present appeal and vacate the interim order. Accordingly, all applications stand disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

SEPTEMBER 11, 2013
RK/MK