

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 19.09.2013
Judgment pronounced on : 30.09.2013

+ **W.P.(C) 5228/2013 & CM No.11733/2013 (for directions)**

JYOTI RANI

..... Petitioner

Through: Mr. A. Subba Rao & Mr. K.L.D.S. Vinober,
Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY AND ANOTHER

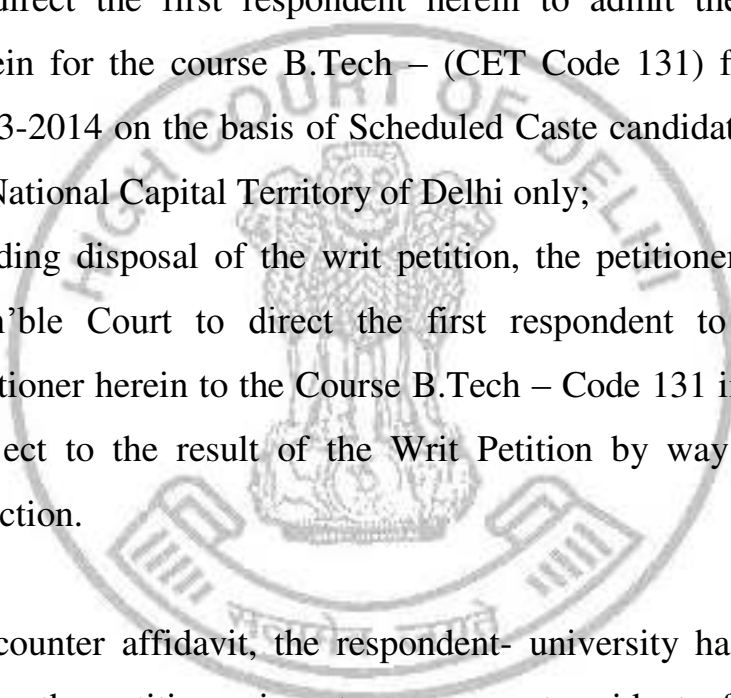
..... Respondents

Through: Mr. Mukul Talwar & Mr. Vipin Kumar,
Advs. for R-1.Ms. Zubeda Begum, Standing
Counsel
for the GNCTD/R-2.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The petitioner before this Court belongs to '*Balmiki*' community, which is notified as Scheduled Caste in the National Capital Territory of Delhi, under Constitution (Scheduled Castes) Union Territory Order, 1951. '*Balmiki*' is also notified as a Scheduled Caste in the undivided State of Punjab in terms of the Constitution (Scheduled Castes), 1950. The petitioner applied for admissions as a Delhi Scheduled Caste candidate to the B.Tech. course of the respondent- Guru Gobind Singh Indraprastha University. She, however, was denied admission to the aforesaid course. Being aggrieved, she is before this Court seeking the following reliefs:

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- a) to issue a writ of mandamus or any other appropriate direction writ or order declaring the action of the first respondent University in denying the admissions to the petitioner herein as Scheduled Caste category candidate of National Capital Territory of Delhi to the course B.Tech (CET Code 131) for the year 2013-2014 as illegal, arbitrary and violative of Article 15(4) of the Constitution of India;
 - b) to direct the first respondent herein to admit the petitioner herein for the course B.Tech – (CET Code 131) for the year 2013-2014 on the basis of Scheduled Caste candidates reserved of National Capital Territory of Delhi only;
 - c) pending disposal of the writ petition, the petitioner prays this Hon'ble Court to direct the first respondent to admit the petitioner herein to the Course B.Tech – Code 131 immediately subject to the result of the Writ Petition by way of interim direction.

2. In its counter affidavit, the respondent- university has taken the plea that since the petitioner is not a permanent resident of Delhi, her family having migrated to Delhi from Punjab, she is not entitled to admission under the category of 'Delhi Scheduled Castes'. It is also pointed out in the counter affidavit that the Scheduled Caste certificate issued to the petitioner has been issued on the basis of Scheduled Caste certificate of her father. However, this is not the case of the respondent – university in the counter affidavit that '*Balmiki*' community notified as

Scheduled Caste in Delhi is different from 'Balmiki' community notified as Scheduled Caste in the State of Punjab.

3. In W.P(C) No.4748/2013 Ankit Roy versus Guru Gobind Singh Indraprastha University and others and the connected matters decided on 7.8.2013, this Court held as under:

“(i) The candidates belonging to the communities, which are not included in the list of Scheduled Castes for Delhi, in the Presidential order, will not be entitled to admission in I.P. University, against the seats reserved for Scheduled Castes candidates;

(ii) The candidates, belonging to the communities, included in the list of Scheduled Castes, in the Presidential order, in relation to Delhi will be entitled to be considered for admission in I.P. University, against the seats reserved for S.C. Candidates only if they are residents of Delhi, in terms of the Presidential order dated 20th September, 1951, as amended from time to time, by the law made in this regard.”

4. An appeal being LPA No.587/2013 was filed by the petitioner in the aforesaid writ petition. The said writ petition was dismissed vide order dated 11.9.2013. During the course of the judgment, the Division Bench took the following view with respect to the caste certificate issued to a person, on the basis of the caste certificate of the father:

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 Tribes in the State of Maharashtra and Anr. vs. Union of India and Anr.: (1994)5 SCC 244.**

In view of the above referred decision, the petitioner cannot claim admission as Scheduled Caste candidate in Delhi merely on the strength of the caste certificate issued to her on the basis of caste certificate issued of her father.

5. The main issues which arise for consideration in this case are (i) whether the petitioner belongs to the 'Balmiki' community which has been notified as Scheduled Caste in Delhi and (ii) whether the petitioner can be said to be a resident of Delhi. If both these conditions are met, she

would certainly be entitled to be considered as a Delhi Scheduled Caste for the purpose of admission in the respondent- GGSIP University.

6. In Action Committee (supra), on which reliance is placed by the learned counsel for the respondent, the Apex Court, *inter alia*, observed and held as under:

“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule 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".

The import of the above referred decision, in my view, is that if a person, who belongs to a community notified as Scheduled Caste in State X, migrates to State Y and there is another community by the same name in the State Y and that community has also been notified as Scheduled Caste in the State Y, he will not be entitled to the benefits available to the community bearing the same nomenclature in the State Y, provided the

community notified as Scheduled Caste in State X and the community notified as Scheduled Caste in the State Y are different communities/ castes though known by the same nomenclature. This is not the view taken by the Apex Court that even if the community notified as Scheduled Caste in State X as well as the community notified in State Y are one and the same community, the benefit available to the members of the said community shall be available in the State Y. The words “if there be another caste bearing the same nomenclature in another State” make the legal position quit clear in this regard. The test to determine, whether a person, who migrates from State X to State Y, will get the benefits available to the Scheduled Castes in State Y or not, will depend upon whether the community known by the same name in State Y, is the very same community which is notified as a Scheduled Caste in State Y or is a different community, though known by the same name, in State Y.

7. In the case before this Court, this is not the case of the respondent-university, in the counter affidavit or even during arguments that the ‘*Balmiki*’ community notified as Scheduled Caste in Delhi is in fact, a community different from ‘*Balmiki*’ notified as Scheduled Caste in Punjab. In the absence of any such plea and contention, it would be difficult to say that the community known as ‘*Balmiki*’ and notified as Scheduled Caste in Delhi and the community known as ‘*Balmiki*’ and notified as Scheduled Caste in Punjab are two different castes/ communities. This is more so, considering that the undivided State of Punjab was a bordering State of Delhi and a large number of inhabitants of Delhi are the persons who migrated from Punjab to Delhi during partition of the country in the year 1947 and even thereafter. In any case,

since it is the State which notifies a particular community/ caste as Scheduled Caste, the onus, in my view, would be on the State, if it denies benefit of reservation in a case such as the case before this Court, to plead and substantiate that the community/ caste notified as a Scheduled Castes in Delhi is different from the caste/ community notified as Scheduled Caste in another State, despite the fact that in both the places the community bears the same nomenclature. A citizen, who has no access to the material on the basis of which a caste/ community is notified as scheduled Caste in a State/ Union Territory will never be in a position to establish that the community bearing the same nomenclature in the States X and Y are in fact one and the same community and not two different communities. Therefore, the onus in this regard cannot be placed upon the citizen X concerned.

8. The next question which arises for consideration is as to whether the petitioner can be said to a resident of Delhi or not. The case of the petitioner, which was not disputed during the course of arguments, is that she was born and brought up in Delhi. During the course of arguments on an enquiry made from the learned counsel for the petitioner as to whether the father of the petitioner was born before or after the Constitution (Scheduled Castes – Union Territory) Order, 1951 came to be notified. The learned counsel for the petitioner stated that the father of the petitioner was born after the aforesaid Order had been notified.

It is nobody's case that the family of the father of the petitioner had temporarily shifted to Delhi, from Punjab, but continued to have a permanent residence in Punjab. It would, therefore, be difficult to dispute that the petitioner is a permanent resident of Delhi. In fact, even the father

of the petitioner would be a permanent resident of Delhi if his family had for all intents and purposes migrated from Punjab to Delhi for ever, did not continue to have a permanent residence in Punjab and did not intend to return back to Punjab. If a person temporarily migrates from one State to other for the purpose such as securing employment or education, he may not be taken as a permanent resident of State to which he migrates, but, a person who leaves one State forever and shifts to another State so as to have a permanent abode in that State should certainly be treated as a resident of the State to which he has shifted for ever, with no intention to return to the State from which he migrated.

9. The Government of India, in order to clarify the legal position with respect to the term 'resident', issued a communication dated 22.3.1977 addressed to the Chief Secretaries to all the State Governments/ Union Territories which, *inter alia*, reads as under:

1. As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-state area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in

different States /U.Ts may not both be treated to belong to Scheduled Caste/Tribe or vice-versa. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order applicable in his case, say, for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that Order in relation to his State/UT. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order.

2. It is to ensure the veracity of this permanent residence of a person and that of the caste /tribe to which he claims to belong that the Government of India has made a special provision in the proforma prescribed for the issue of such certificate. In order that the certificates are issued to the deserving persons it is necessary that proper verification based primarily on revenue records and if need be, through reliable enquiries, is made before such certificates are issued. As it is only the Revenue Authorities who, besides having access to relevant revenue records are in a position to make reliable enquiries, Government of India insists upon the production of certificates from such authorities only. In order to be competent to issue such certificates, therefore, the authority mentioned in the Government of India (Department of Personnel and Administrative Reforms) letter No. 13/2/74-Est (SCT), dated the 5th August, 1975, (copy enclosed) should be the one concerned with the

locality in which the person applying for the certificate and his place of permanent abode at the time of the notification of the relevant Presidential Order. Thus, the Revenue Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/UT issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State/Union Territory. In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribes status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a Caste/Tribe.”

10. The above referred communication, in my view, cannot be applied to the present case for two reasons. Firstly, even father of the petitioner was born after issue of the Constitution (Scheduled Castes-Union Territory) Order, 1951 and the aforesaid communication does not say that if the father of the person concerned was born after issue of the Presidential Order, the person concerned will not be treated as a permanent resident of the State in which he is living and will not be issued a caste certificate. Moreover, even the aforesaid communication places emphasis on the permanent residence of the person concerned, which to my mind means that it applies only to a person who temporarily, for reasons such as benefit of livelihood or seeking better education migrates from one State to other. It does not refer to a person who permanently and forever shifts from one State to another without any intention of returning to his erstwhile State and without having a

permanent residence in the said State. In my view, it would be absolutely illegal, arbitrary, illogical and unjustified to treat a person who permanently and forever migrates from State X to State Y, with no intention to shift back to State X and without retaining a permanent residence in State X to be a permanent resident of State X and not a permanent resident of State Y. In my view, such a person must necessarily be treated as a permanent resident of State Y. Any other interpretation of the aforesaid communication will result in denial of such beneficial and socially desirable provisions to the persons belonging to a community which is notified as a Scheduled Caste in the State in which he is permanently settled. It will also be discriminatory to the persons of the same community, who have migrated from another State to settle permanently in another State vis-à-vis those members of the community, who also are permanent residents, but, whose ancestors had not migrated from another State. There can be no reasonable classification between those permanent residents of the same community whose ancestors migrated from another State and those permanent whose ancestors did not migrate from some other State. Therefore, any discrimination with the permanent resident Scheduled Caste persons of a State solely on the ground that their ancestors had migrated from another State, would be violative of their fundamental right of equality, guaranteed by Article 14 of the Constitution, when the persons whose ancestors had migrated from another State, and the persons whose ancestors were the original residents of the State, belong to one and the same community.

11. It is quite possible that those members of the community, who migrated from one State to another in order to permanently settle down

there with no intention to return back to the State from which they have permanently migrated, continue to suffer, in the State to which they have migrated, from the same disadvantages and disabilities which afflicted those from their community whose ancestors were the original residents not migrants. Therefore, it would be highly discriminatory and illegal to deny the benefit of reservation to such members of the community when the community to which they belong is notified as a schedule caste in the State from which their ancestors migrated as well as in the State in which they are permanently settled.

12. For the reasons stated hereinabove, I hold that the petitioner is entitled to be considered as a Delhi Scheduled Caste candidate for the purpose of admission to respondent- GGSIPU. Vide order dated 10.9.2013, this Court had directed that one seat in Scheduled Caste category shall be kept reserved for the petitioner. If otherwise found eligible, the petitioner, if she so desires, shall be admitted against the aforesaid seat. The writ petition stands disposed of accordingly. No order as to costs.

V.K.JAIN, J

SEPTEMBER 30, 2013/rd/bg