

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 9210 OF 2013**

Ms. Himani Jitendra Patel
Vs.

....Petitioner.

Resident Deputy Collector,
Dadra Nagar Haveli, Silvassa & ors

....Respondents.

Mr. A.A. Kumbhakoni, Senior Advocate with Mr. A.M. Kulkarni for the
Petitioner.

Mr. S.S. Deshmukh for the Respondent Nos. 1 and 2.
Ms. Pooja Thorat i/by Mr. M. V. Thorat for Respondent No.3.
Mr. M. R. Prajapati for the Respondent No.5.

**CORAM : SMT. VASANTI A. NAIK AND
C.V. BHADANG, JJ.**

DATE : 13.01.2015

P.C.:-

By this Petition, the Petitioner challenges the certificate of the Respondent No.3 that the Respondent No.3 belongs to the caste “chamar” which falls in the Scheduled Castes. The Petitioner seeks an order restraining the Respondent Nos. 2 and 4 from admitting the Respondent No.3 to the M.B.B.S. Degree Course on the seat reserved for the Scheduled Castes.

The Petitioner claims to belong to the Scheduled Castes and on the

basis of the caste validity certificate, the Petitioner claims admission to the M.B.B.S. Course in the Respondent Nos. 2-College on a seat reserved for the Scheduled Castes. The Respondent No.3 also claims to belong to Scheduled Castes and since the Scrutiny Committee was not constituted for considering the caste claims of persons residing in Dadra & Nagar Haveli to which the Respondent No.3 belongs, the Respondent No.3 had sought admission to the M.B.B.S. Course on the seat earmarked for the Scheduled Castes only on the basis of the caste certificate. The Petitioner has challenged the caste certificate of the Respondent No.3 on the ground that the same is false as the Respondent No.3 does not belong to the Scheduled Castes. It is the case of the Petitioner that the father of the Respondent No.3 was the resident of Vapi, Gujarat. It is stated that the claim of the Respondent No.3 of belonging to Scheduled Castes is false and the Respondent No.3 was not entitled to admission in the M.B.B.S. Course.

The Respondent No.3 has seriously disputed that the Respondent No.3 does not belong to the Scheduled Castes. It is stated that the Respondent No.3 belongs to the Scheduled Caste and the caste certificate is issued to the Respondent No.3 after due verification of her caste claim. The grounds raised by the Petitioner for challenging the caste certificate of the Respondent No.3 are specifically denied by the Respondent No.3.

The Petitioner and the Respondent No.3 had sought admission to the M.B.B.S. Course at Gandhi Medical College, Bhopal in the year 2013.

In the absence of any interim order in the Petition, the Respondent No.3 was admitted to the M.B.B.S. Course in the said College in the year 2013 and the Respondent No.3 is taking education in the 2nd Year of the said course. Several disputed questions of facts arise for determination this case.

It is canvassed on behalf of the Petitioner on one hand that the Respondent No.3 does not belong to the Chamar caste which falls in the Scheduled Castes and on the other that it is the submission of the Respondent No.3 that the Respondent No.3 belongs to the Scheduled Castes. The issue involved in this writ petition can be decided only after permitting the parties to tender evidence, both oral and documentary. Both the parties have relied on several documents while making their respective submissions in regard to the validity of the caste claim of the Respondent No.3. The Hon'ble Supreme Court has time and again directed that no admission to the specialized and technical courses like M.B.B.S should be granted after the cut off date. The cut off date for the admission in this case was 30.09.2013. In this background, keeping the matter pending in this Court, would be futile. The judgment reported in Asha v. Pt. B. D. Sharma University of Health Sciences,¹ and relied on by the counsel for the Petitioner would not be of any assistance for advancement of the case of the Petitioner any further. The Hon'ble Supreme Court has observed in the said judgment that in very rare and exceptional cases of

1 (2012) 7 SCC 389

unequivocal discrimination or arbitrariness or pressing emergency, admission to a course would be permissible after the cut off date, but such power may preferably be exercised only by the Courts. The Hon'ble Supreme Court has granted limited powers to the Courts to direct the admission of a student in a course after the cut off date in very rare and exceptional cases of unequivocal discrimination or arbitrariness. We do not find that this is a case of unequivocal discrimination or arbitrariness as the Petitioner has challenged the caste certificate of the Respondent No.3. Also, the cut off date in this case was 30.09.2013 and the Respondent No.3 is in 2nd Year M.B.B.S. Course.

In view of the aforesaid, the writ petition is dismissed with no order as to costs. The points raised in the petition are however kept open.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)