

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2234 OF 2016**

Pranjali Bhalchandra Shirsat } Petitioner
versus
State of Maharashtra and Ors. } Respondents

Mr. A. A. Kumbhakoni - Senior Advocate
with Mr. Akshay P. Shinde for the
petitioner.

Mr. B. B. Sharma - AGP for the
respondents.

**CORAM :- S. C. DHARMADHIKARI &
 B. P. COLABAWALLA, JJ.**

DATED :- AUGUST 19, 2016

ORAL JUDGMENT :- (Per S.C.Dharmadhikari, J.)

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus or any other appropriate writ, order or direction in the nature thereof, directing respondent no. 2 to consider her as belonging to Other Backward Category (OBC) in the second round of admission for MBBS degree course for academic year 2016-17.

2. Very few facts are required to be referred to for the purpose of appreciating the submissions of the petitioner's senior counsel.

3. As already referred above, the admissions are to the MBBS degree course. The academic year is 2016-17. The petitioner is

citizen of India residing in Mumbai, whereas, all the respondents are the authorities as per the rules and regulations for these admissions, particularly to MBBS degree course.

4. The petitioner states that the second round of allocation of seats is expected to commence from 17th August, 2016. The petitioner has been a bright and intelligent student throughout her career. She has successfully completed her S. S. C. examination by securing 95.40% marks and H. S. C. examination by securing 83.85% marks. She claims that she belongs to Vaishyawani caste, which is recognised as OBC under Government Resolution No. CBC-10/2014 dated 1st March, 2014, as amended from time to time. The competent authority has issued a caste certificate and the petitioner has also obtained the caste validity certificate. Thus, armed with these two certificates and the educational qualifications, the petitioner applied for the Maharashtra State Common Entrance Test for procuring admission in MBBS degree course under the OBC category. The petitioner filled in the application form, copy of which is at Annexure 'F'. Before proceeding further, we would reproduce hereinbelow the relevant particulars in the form as filled in by the petitioner herself:-

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7. Candidate is Domicile of- In Maharashtra	
8. Category of Candidate – OBC (Caste recognised is Maharashtra	8(a). I possess Caste Certificate - Yes
8(b). I possess Caste Validity Certificate (CVC) – Yes	8(c). I possess Non-Creamy Layer (NCL) Certificate – No
.....	
12. Total Annual Family Income – Above Rs.6 lacs	

”

5. The petitioner states that on the date of presentation of this application, she did not possess the non-creamy layer certificate. She, therefore, mentioned in the column regarding possession of such a certificate as negative/No.

6. She appeared for this common entrance test conducted by the second respondent/competent authority on 5th May, 2016. The result of the said examination was declared on 1st June, 2016. The petitioner obtained 178 marks out of 200 marks in the said examination. On 10th June, 2016, State Merit List was declared and the petitioner was placed at serial number 1600. In the result, the category under which the petitioner had applied is mentioned as OBC. The petitioner states that the list was thereafter amended on 20th July, 2016. The petitioner is now placed at serial number 1589. On the declaration of the result of this examination, the petitioner applied for admission in the first round on 15th June, 2016 and submitted her preference. In para 9 of the writ petition, the petitioner has stated thus:-

“9. The Petitioner states that the Petitioner applied for admission in the 1st round of MBBS on 15.06.2016 and submitted her preferences. The petitioner states the Petitioner did not possess the Non-Creamy Layer Certificate at the time of filing this preference form for the reasons beyond her control. Therefore, the Petitioner was treated amongst general category candidates in 1st round of admission of MBBS though the form was filled as OBC candidate. Having realized the Petitioner visited the office of the Respondent No. 2 and requested to consider her candidature under the OBC category. The Petitioner even requested the Respondent No. 2 that the Petitioner is ready to file an undertaking that she will submit the Non-Creamy Layer Certificate within some reasonable time. However the Respondent No. 2 refused to accept the request made by the Petitioner on the basis that in pursuance of the Government Resolution 31/05/2016 the Petitioner cannot claim the benefit of the OBC Category as the Petitioner is required to submit submit Non-Creamy Layer Certificate by 2/7/2016. The Petitioner thereafter got the copy of the said Government Resolution from the internet. Hereto annexed and marked as Exhibit-I is copy of the GR dated 31.05.2016. Clause 6 of Annexure-B of the said Government Resolution reads thus:

However, such a Non-Creamy Layer Certificate shall be produced in any case on or before the last date of filling up Preference Form, failing which the category claim will not be granted.”

7. The petitioner then narrates as to how due to unavoidable circumstances, the non-creamy layer certificate could not be submitted. That certificate is issued in every financial year. The petitioner relies upon the last date for filing of returns as per the Income Tax Act, 1961. The petitioner submits that the TDS returns for the month from January to March of previous financial year are to be filed on or before 15th May, 2016. Usually Form No. 16 and TDS certificates are issued by the end of June of every financial year. It is, therefore, filing of the income tax

returns, which is possible only by July that her father could ascertain his income. It is only thereupon the certificate was obtained. That certificate was obtained on 8th August, 2016. The petitioner immediately, on 10th August, 2016, rushed to respondent no. 2 and submitted an application for consideration of her candidature from OBC category. However, the second respondent has refused to accept the request by stating that it is mandatory to produce the non-creamy layer certificate at the time of documents verification and this process of document verification was done by respondent no. 2 on the date of filing of preference form on 15th June, 2016 and the last date of filling preference form and making changes, if any, was 2nd July, 2016. The petitioner states that she still has an opportunity to obtain admission under OBC category for there are subsequent rounds. The first round is over on 29th July, 2016. The second round is yet to be declared. This was the position on the date of filing of this petition.

8. It is such circumstances she submits that the relief in terms of the above prayer be granted.

9. Mr. Kumbhakoni learned senior counsel appearing for the petitioner submits that the petitioner has candidly and fairly stated that she was unable to state in the form of admission that

the non-creamy layer certificate is possessed by her for on that date, she did not possess it. Therefore, she opted for admission as an open category candidate. Later on, she found that there are rounds and for filling up the seats of the MBBS degree course. She, therefore, moved in the matter and by making an application to the competent authority, she obtained this non-creamy layer certificate before the second round could commence. Therefore, they were not justified in refusing the request.

10. Mr. Kumbhakoni emphasises that it was never in dispute or doubt that the petitioner is a OBC. It is only the proof of the income and below a specific limit in the form of a certificate which could not be produced. Therefore, her status and her caste was never in doubt. Only a proof or evidence of the income was to be provided and could have been furnished later on. The object and purpose of reservation of seats for OBC candidates would be wholly frustrated if such a hyper technical approach as adopted by the authorities is permitted. Mr. Kumbhakoni relied upon the judgment of the Hon'ble Supreme Court of India, firstly in the case of *Dolly Chhanda vs. Chairman, JEE*¹.

11. Mr. Kumbhakoni submits that this judgment was followed by a Division Bench of this court in the case of Miss. *Neha*

¹ (2005) 9 SCC 779

*Achrekar vs. Technical Education*² decided on 20th July, 2015. Finally, he brings to our notice a judgment in the case of *Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and Anr.*³.

12. On the other hand, Mr. Sharma learned AGP appearing for the respondents would submit that there is a sanctity attached to the process. There is a further sanctity attached to the cut off dates, which are determined much in advance. The entire schedule of admission cannot be disturbed or interfered by this court at the instance of a candidate like the petitioner, when the rounds of admission have already commenced. There could be numerous candidates who would claim similar benefit. They may have also obtained the certificates well in advance but could not furnish them. Therefore, the disruption that would be caused by any intervention of this court would send a wrong message and signal not only to the student community but to all concerned. He would submit that the petitioner was well aware of all these dates. Mr. Sharma has relied upon a clause in the admission brochure, which is styled as “Information Brochure of Preference System for admission to Health Science Courses” and declared by the Government of Maharashtra State Common Entrance Test Cell,

² Writ Petition No. 4746 of 2005

³ (2016) 4 SCC 754

Mumbai. Relying upon clause 1.12, Mr. Sharma would submit that the cut off date for the eligibility shall be determined and/or decided for all purposes including for applicability of all these rules and regulations by considering the last date of submission of preferences form. That is the cut off date. If on that date the candidate is found ineligible, meaning the last date of submission of preference form, in terms of these rules and regulations, and if such an ineligible candidate acquires the requisite eligibility after the cut off date i.e. the last date of submission of preference form, such subsequent acquisition of eligibility will not make an ineligible candidate eligible for any purpose whatsoever, much less for the purpose of admission.

13. Mr. Sharma would submit that in the judgments delivered and rendered by the Hon'ble Supreme Court of India, the facts were slightly different. There was nothing to the contrary nor a specific prohibition, else the Hon'ble Supreme Court judgments would have read otherwise. In the face of such a stipulation and which is not under challenge, it will not be permissible to entertain the application of the petitioner. It is common ground that the petitioner's father knew the income and knew the status so also the clauses in the rules/brochure. The petitioner has also stated in the column of income, which we have reproduced above

that the same is above Rs.6 lacs. That is above the cut off or prescribed limit for being certified as a OBC non-creamy layer candidate. In these circumstances, Mr. Sharma would submit that the petitioner should not be permitted to turn around and claim the benefit at this belated stage. Consequently, the petition be dismissed.

14. Since the petition was filed by a candidate and mentioned urgently for admission, we have, with the assistance of both the counsel, carefully perused the entire petition and all annexures thereto. We have also perused the information brochure of preference system, copy of which is tendered by Mr. Kumbhakoni during the course of the arguments.

15. The petitioner before us has stated on facts that she filled in an application form. In that application form, copy of which is at Annexure 'F' at page 21 of the paper book, it has been stated by her that her category of candidature is OBC, the caste recognised in Maharashtra. She possesses the caste certificate and the caste validity certificate. However, what is conveniently omitted and to be referred is the Schedule 'B' at page 30 of the paper book to the Government Resolution dated 31st May, 2016. That is clarifying as to how the admissions pursuant to the common entrance test for the academic year 2016-17 would be regulated and duly

completed. A reference is made to this Annexure 'I' and it is submitted that the petitioner even requested the second respondent that she is ready to file an undertaking that she will submit the non-creamy layer certificate within some reasonable time. However, respondent no. 2 refused to accept the request on the basis that in the face of this Government Resolution, the petitioner cannot claim benefit of the OBC category, as the petitioner was required to submit the non-creamy layer certificate by 2nd July, 2016.

16. Page 30 of the paper book Annexure 'B' to this Government Resolution is clear. It is titled as "Constitutional Reservations". The candidates recognised by the State of Maharashtra as belonging to the backward classes shall alone be eligible to claim admissions as against the seats reserved for such backward class categories indicated and at serial number (vii) the OBC including Special Backward Class is mentioned. For that category, 19% reservation is carved out. The candidate belonging to the backward class categories would be required to submit caste certificate and caste/tribe validity certificate. Thereafter, who are the competent authorities is indicated.

17. The non-creamy layer certificate is stipulated by clause (6). That reads thus:-

“6) NON-CREAMY LAYER

A candidate belonging to 'Creamy Layer' amongst the categories (iii), (iv), (v), (vi) and (vii) must note that the provision of reservation is NOT applicable to him/her. A candidate claiming benefit of reservation under the categories (iii), (iv), (v), (vi) and (vii) above will be required to produce Non-Creamy Layer Certificate in the name of candidate as specified in the Government resolution No. सीबीसी १०/२००८/प्र.क. ६९७/मावक, दिनांक १३/०१/२००९. The certificate in prescribed proforma stating that it is valid upto 31st March of next year of the current MHT CET examination and should be submitted at the time of filling up of Preference Form. The Non-Creamy Layer Certificate is issued by Sub-Divisional Officer/Deputy Collector/Collector of the district.

However, such a Non-Creamy Layer Certificate shall be produced in any case on or before the last date of filling up of Preference Form, failing which the category claim will not be granted.”

18. A perusal of this clause would indicate as to how a candidate belonging to Creamy Layer amongst Vimukta Jati, Nomadic Tribes (B), (C) and (D) and OBC must note that the provision of reservation is not applicable to him/her. The candidate claiming benefit of reservation under these categories will be required to produce non-creamy layer certificate in the name of candidate as specified in the Government Resolution dated 31st January, 2009. The certificate must be in prescribed proforma stating that it is valid up to 31st March of next year of the current MHT CET examination and should be submitted at the time of filling up of preference form. However, such a certificate shall be produced in any case on or before the last date of filling

up of preference form, failing which, the category claim will not be granted.

19. In the face of such a stipulation, which binds the petitioner as also the respondents, more particularly when it is not questioned or impugned as contrary to law or ultra vires the constitutional provisions, then, we cannot grant the relief as prayed in the writ petition. The petitioner has categorically mentioned in the writ petition itself that in the application form, though she claimed as belonging to OBC, she did not possess the non-creamy layer certificate. She did not possess this certificate till 2nd July, 2016, which was the last date for filling up the preference form and making changes, if any, therein. It is in these circumstances, when she took her chance in the first round of admission for MBBS degree course as open category candidate, but having not been successful therein, in the second round, she expects the court to recognise her OBC status and allow some proof of the income below the specified limit to be furnished belatedly.

20. She claims benefit of the two judgments, one delivered by the Hon'ble Supreme Court of India and one by this court. In the Hon'ble Supreme Court judgment in the case of *Dolly Chhanda* (supra) the appellant passed 10+2 (science) examination

conducted by the Council of Higher Secondary Education. She was desirous of joining a medical course. She appeared in the Joint Entrance Examination, 2003 under the reserved MI category being daughter of an ex-serviceman on the ground of permanent disability. Clause 2.1.4 of the information brochure carved out certain reserved seats for children/widows of personnel of armed/paramilitary forces of Orissa, killed/disabled in action during war or peacetime operation. The petitioner pointed out that during the course of scrutiny of papers, it was revealed that in the certificate issued to her father by the Zilla Sainik Board, in column 3, which pertained to disabled/killed in war/hostilities, the words "not eligible" were written. Since the certificate did not satisfy the requirement of the reserved MI category, her candidature was rejected. The candidates who had secured ranks at 24 and 26 were granted admission. The petitioner produced the disability certificate which was issued to her father by the army authorities, but in view of the requirement of clause 2.1.4 of the information brochure, the same was not accepted. The appellant's father then requested the Zilla Sainik Board to rectify the mistake and it issued a fresh certificate on 16th July, 2003, which mentioned "permanently disabled" in column 3. It is in these circumstances and when another round of counseling had been fixed on 29th October, 2003 on account of

increase in seats that the appellant went to the admission centre and requested for being given admission on the basis of the fresh certificate issued by the Zilla Sainik Board, which certified that her father had been discharged from the armed forces on the ground of permanent disability. The candidates who had secured rank from 27 to 30 in the MI category were called for counseling, but the appellant's candidature was not considered. The case of the appellant was that it was a mistake of Zilla Sainik Board which had committed error in not issuing a correct certificate but the said mistake having been rectified in the second certificate, she was entitled to admission. It is such a writ petition containing complete factual details, which should not have been dismissed, according to the Hon'ble Supreme Court of India, by the Orissa High Court. It is in those circumstances that the Hon'ble Supreme Court reiterated the general rule in para 7. Its applicability, however, must depend on the facts and circumstances of each case. The category under which the admission was claimed was MI category being daughter of an ex-serviceman, who was discharged from the armed forces admittedly on the ground of permanent disability. About that, there was never a dispute. The proof of that, though available with the Board, it still issued a certificate contrary to it. That is how it rectified its mistake and upon rectification of that mistake by the Zilla Sainik Board, the

discretionary relief was granted on the principle which has been laid down in para 7 and reiterated in para 8.

21. In the case before the Division Bench of this court, in the case of *Miss Neha Achrekar* (supra), the petitioner appeared for the examination styled as Common Entrance Test. She passed it. Her only problem was that she belonged to OBC category but did not have the non-creamy layer certificate when she filled up the form. She obtained it before approaching the court. The allotment of students to the colleges had not started. It is in these circumstances, the petitioner, who had appeared in the Common Entrance Test held in February, 2005, did not have the non-creamy layer certificate. The instructions, which were found and contained in the rules of admission to the course, as referred in para 4 did not contain a negative stipulation as in our case and reproduced above. Now, a distinct condition and stipulation is in place. It is in these circumstances that though the petitioner before this court in the Division Bench case had applied for admission and did not possess the non-creamy layer certificate, her application was still considered, though in the meanwhile she opted for open category. The Division Bench, in para 9, therefore, held that there was a provision of relaxation. The petitioner honestly filled the form in the open category since she did not

have the non-creamy layer certificate at the relevant time. The fact that she has been issued the caste certificate enabled the court to hold that her claim was not after thought. It is only the non-creamy layer certificate which could not be obtained within the limitation i.e. upto 12th July, 2005, that relief was granted by this court in its extraordinary, equitable and discretionary jurisdiction. This court did not ignore any negative stipulation.

22. Before us, we would have to ignore such a stipulation expressly made. It is in these circumstances, we find much substance in the contentions of Mr. Sharma. We cannot exercise our equitable, extraordinary and discretionary jurisdiction to alter the cut off date and disturb the process for quite some students, who are higher in merit, would come forward and request, on the basis of our order and judgment, that the competent authority should consider their claim as well. In such circumstances we do not think that the judgment in the case of *Ram Kumar Gijroya* (supra) can be of any assistance.

23. As a result of the above discussion, the writ petition fails. It is dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)