

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2028 OF 2014

Miss. Aishwarya Dhananjay Patil
Adult, Occ.: Student
R/At: Shriniwas 1st Floor
Chetana Hospital Building
Sambhaji Nagar,
MIDC, G Block, GP116
Chinchwad
Pune 411 019

.. PETITIONER

VERSUS

- 1) State of Maharashtra
- 2) District Collector
District Pune
- 3) Byramjee Jeejeebhoy
Government Medical College
Rd, Near Pune Railway Station,
Somwar Peth, Sanjay Gandhi Rd,
Agarkar Nagar, Pune,
Maharashtra 411 001
- 4) Maharashtra University of
Health Sciences, Nashik
(An ISO 9001:2008 Certified
University)
Dindori Road, Mhasrul,
Nashik: 422 004.
Tele:(0253) 2539237-38
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.. RESPONDENTS

Mr. AV Anturkar, Sr.Counsel a/w Mr.Rushikesh C. Borge i/by Sugandh B.Deshmukh, Advocate for Petitioner;

Mr. VP Malvankar, "A" Panel Government Pleader Writ Cell for Resp. Nos.1 & 2;

Rajshekhar V.Govilkar a/w Mihir Govilkar, Adv. For Resp.No.4

**CORAM : V.M.KANADE &
P.R.BORA, JJ.**

RESERVED ON :- 3rd MARCH, 2017
PRONOUNCED ON:- 5th MAY, 2017

JUDGMENT (PER: P.R.BORA,J.)

1) The petitioner has filed the present petition taking exception to the order dated 10th February, 2014 passed by District Collector, Pune (Respondent No.2), whereby he has cancelled the Non-creamy Layer Certificate issued to the petitioner on 8th June, 2012.

2) The petitioner has secured admission in BJ Medical College, Pune (Respondent No.3) for the MBBS Course on the seat reserved for the candidates belonging to Other Backward Classes (OBC). The petitioner belongs to 'Kunbi' caste,

which falls in Other Backward Class (OBC). The Caste Scrutiny Committee has validated the caste certificate of the petitioner and has accordingly issued Caste Validity Certificate in favour of the petitioner.

3) Benefits of Reservation in the appointments in the Government services and in admissions for the various educational courses are available and applicable only to such O.B.C. Candidates who fall in the category of Non-creamy Layer. O.B.C. Candidates are, therefore, required to furnish "Non-creamy Layer Certificate' Procedure for issuance of such 'Non-creamy Layer' certificate has been prescribed in Government Circulars time to time issued and consolidated in the Circular dated 25th March, 2013. Before getting the admission in BJ Medical College, Pune on the seat reserved for OBC, the petitioner had furnished the Non-creamy Layer certificate issued in her favour on 8th June, 2012 by District Collector, Pune.

4) One Gauri Hemantkumar Gharat, who was also aspiring for admission to MBBS Course at any Government Medical College from the OBC quota, filed writ petition No.7456/2012 before this court, alleging that false Non-creamy Layer certificates have been issued by the concerned authorities to undeserving candidates, who, in fact, do not fall within the category of Non-creamy Layer. The said petitioner, therefore, sought an enquiry into the Non-creamy Layer certificates issued in favour of Respondent Nos. 7 to 23 in the said petition. The present petitioner is one of the said Respondents and the objection is raised as about the Non-creamy Layer certificate issued in her favour. As is revealing from the record, some orders were passed by this Court in the aforesaid writ petition No. 7456/2012, directing enquiry into the Non-creamy Layer certificates issued in favour of Respondent Nos. 7 to 23 in the said writ petition. Accordingly, such enquiry was conducted by the committee consisting of Regional

Deputy Commissioner, Social Welfare, Pune Region,
Pune and Additional Collector, Pune.

5) In the aforesaid enquiry, the certificate issued in favour of petitioner was found to be false. The District Collector, Pune, therefore, issued a show cause notice to father of the petitioner, calling upon him to show cause as to why the Non-creamy Layer Certificate issued in favour of the petitioner, shall not be cancelled. Father of the petitioner submitted his explanation/reply to the said show cause notice. After conducting due enquiry vide order dated 10th June, 2014, the District Collector, Pune cancelled the Non-creamy Layer certificate issued in favour of the petitioner on 8th June, 2012. Aggrieved by, the petitioner has filed the present petition.

6) Shri A.V.Anturkar, learned Senior Counsel appearing for the petitioner, assailed the impugned order on several grounds. The

learned Sr.Counsel submitted that the Collector, Pune has utterly failed in appreciating the import of the Government Circular dated 25th March, 2013. The learned Counsel further submitted that as provided in the said Government Circular, while computing the income of the professionals, the category in which father of the petitioner falls, the income received from agriculture, the income received from the property, i.e. other source, cannot be clubbed together and has to be counted separately.

7) The learned Counsel further submitted that father of the petitioner had furnished the entire record pertaining to his income for the proceeding three years, i.e. from 2009-2010, 2010-2011 and 2011-12 while seeking the Non-creamy Layer certificate. The learned Counsel further submitted that while issuing the Non-creamy Layer certificate in favour of the petitioner on 8th June, 2012, the authority, which issued the said certificate, has appropriately

considered the record as about the income placed before it and only thereafter the said certificate was issued. The learned Counsel further submitted that however in the subsequent enquiry, the Committee, which conducted the enquiry, exceeded its limits and probing into the other aspects pertaining to the income of the father of the petitioner, gave an opinion that the petitioner was not eligible for the Non-creamy Layer certificate.

8) The learned Sr.Counsel further submitted that the District Collector, Pune, placing implicit reliance on the report so submitted by the said Committee, without applying his mind and ignoring the Government Circular and the guidelines issued in this regard time to time, wrongly and erroneously cancelled the Non-creamy Layer certificate issued in favour of the petitioner. The learned Counsel further submitted that the Committee, at the first instance, and thereafter the District Collector,

Pune, wrongly and incorrectly clubbed the professional income of the father of the petitioner with his income received from other sources and the same has resulted in illegal cancellation of the Non-creamy Layer certificate issued in favour of the petitioner.

9) The learned Sr.Counsel invited our attention to the detailed explanation submitted by father of the petitioner vide his communication dated 7th February, 2014 addressed to Collector, Pune and also to the other documents filed on record, which contain the Income Tax Returns time to time filed by father of the petitioner and the Profit & Loss Account for the relevant period pertaining to Chetana Hospital, which is being run by father of the petitioner. Referring to all these documents, the learned Sr.Counsel submitted that the Non-creamy Layer Certificate has been wrongly cancelled by Respondent No.3 and, therefore, prayed for setting aside the impugned order.

10) Shri V.P.Malvankar, learned AGP and Shri RV Govilkar, learned Counsel appearing for Respondent No.4, supported the impugned order.

11) We have carefully considered the submissions advanced by the learned Sr.Counsel appearing for the petitioner, the learned AGP appearing for State and the learned Counsel appearing for other respondents. We have also perused the impugned order, the report submitted by the Committee consisting of the Regional Deputy Commissioner, Social Welfare, Pune Region, Pune and Additional Collector, Pune and the documents placed on record by the petitioner.

12) Since the Non-creamy Layer certificate was issued in favour of the petitioner in the year 2012, the income of the petitioner and her father for the preceding three years will only be relevant for consideration.

13) The petitioner has filed on record the

Income Tax Assessment Orders of the assessment made under the provisions of Section 143(1) of the Income Tax Act, 1961 for the Assessment Years – 2010-2011; 2011-2012 and 2012-2013. As is revealing from the Assessment Order for the year 2010-2011, the father of the petitioner, has reported his income from the profession to the tune of Rs.4,88,877/- and the same was accepted by the Assessing Officer. The petitioner has also placed on record the Profit and Loss Account for the period ended on 31st March, 2010, i.e. of the Assessment Year 2010-2011, wherein the net profit is shown to the tune of Rs.4,88,877=30 ps. In the Assessment Order, for the Assessment Year 2011-2012, the professional income is shown to the tune of Rs.4,79,053/- and for the Assessment year 2012-2013, the income has been shown to the tune of Rs.5,42,629=17 ps. In the profit and loss account for the year ended on 31st March, 2011, the net profit has been shown to the tune of Rs. 4,79,052=77 ps., whereas in the profit and loss account for the period ended on 31st March,

2012, net profit is shown as Rs.5,42,629=17 ps.

14) It was sought to be canvassed by Shri Anturkar, learned Sr.Counsel that for the purposes of issuance of Non-creamy Layer certificate only taxable income of father of the petitioner was liable to be considered which for all the three relevant years, was less than Rs. 4,50,000/-.

15) We are however not at all convinced with the submissions so made by the learned Sr.Counsel. All the Government Circulars including that of 25th March, 2013 and more particularly the annexures thereto clearly provide that gross income of father/mother of a candidate/student, seeking benefit of Non-creamy Layer certificate, shall be less than Rs. 4,50,000/- in the preceding three years of issuance of such certificate. No doubt, the agriculture income is excluded from the said gross income. However, from the aforesaid

provision, it is quite clear that what is to be considered is the gross professional income of father/mother of a student/candidate and not their taxable income.

16) In the instant case, the documents placed on record by the petitioner and the documents, which were produced by father of the petitioner before the Collector, Pune, clearly reveal that in each of the three preceding years, the gross professional income of father of the petitioner was more than Rs.4,50,000/-. Lastly, lame attempt was made by learned Sr.Counsel to submit that the revised income tax returns were filed by the father of the petitioner, wherein the losses of the current year were shown to have been deducted from the income of the concerned Assessment Year, and as such, the net income of father of the petitioner for all the three preceding years was held to be less than Rs. 4,50,000/-. We reject this contention also in view of the fact that according to the relevant

provision, the gross professional income in every financial year of last preceding three years is only relevant for the purposes of issuance of Non-creamy Layer certificate. We reiterate that overwhelming undisputed documentary evidence is available on record in the form of profit and loss Accounts pertaining to all the three preceding years, which unambiguously shows that the professional income of father of the petitioner in each of the three preceding years was more than Rs. 4,50,000/-. As such, we do not find that the Collector, Pune has committed any error in cancelling the Non-creamy Layer certificate earlier issued in favour of the petitioner.

17) We are constrained to observe that father of the petitioner is a qualified surgeon, possessing the degree of Master of Surgery (M.S.) and runs a well-equipped hospital in the name and style as "Chetana Hospital" in Chinchwad Pune. In the enquiry, which was conducted by the

Committee and the report which was submitted by the Tahsildar to Collector, Pune, it is revealed that the Chetana Hospital, which is owned and run by father of the petitioner is 16 bedded hospital, having consultancy rooms, X-ray room, Casualty room, operation theater, waiting hall etc. The said report further reveals that the approximate value of building of the hospital is around Rs. 1 crore. In the enquiry, it is also revealed that the father of the petitioner had participated in an auction for purchase of a plot belonging to Maharashtra Industrial Development Corporation, admeasuring 714 sq.mtrs. for which the upset price was Rs.21,945/- per sq.mtr., i.e. Rs.1,56,68,730/- in total. The report further reveals that father of the petitioner could not succeed in the said auction and had, therefore, filed a writ petition in the High court, which was disposed of on the ground that true and correct information was not brought before the Court by the petitioner. We may not enter into the correctness of the aforesaid information,

suffice it to say that father of the petitioner is capable of aspiring for such a property worth crores of rupees. The report also reveals that in the hospital run by father of the petitioner, more than 25 persons are employed. We have purposely mentioned all these facts so as to indicate that such a person had opted for Non-creamy Layer certificate and initially had succeeded in securing the same. We regretfully state that such a well placed person did also make such undesired attempt, which has resulted in depriving one genuine and deserving candidate, from getting the admission in Government Medical College for M.B.B.S. Course.

18) In view of the fact that the Non-creamy Layer Certificate, on the basis of which the petitioner has secured the admission for MBBS Course from the OBC quota, has been cancelled by the competent authority, i.e. Collector, Pune, and the said decision has now been confirmed by this court, the admission of the petitioner for

MBBS Course is, in fact, liable to be cancelled. However, it is the matter of record that an interim order was passed by this court in the present petition protecting the admission of the petitioner to the MBBS course and till this date the same is in force.

19) In the arguments itself an alternative submission was advanced by the learned Sr.Counsel appearing for the petitioner that in case the court reaches to the conclusion that the petitioner does not fall in the category of Non-creamy Layer, the petitioner undertakes not to take any further benefit of her OBC caste, however, her admission for MBBS course shall at least be protected. The submission so made has of course been opposed by the learned AGP as well as the learned Counsel for Respondent No.4.

20) The material on record reveals that the petitioner took admission for MBBS course in the academic year 2012-2013. It is thus evident that

she is now on the verge of completing the said course. The question, therefore, arises, whether the education so obtained by the petitioner deserves to be protected ?

21) In the matter of Dattu Namdeo Thakur Vs. State of Maharashtra – 2012 1 SCC 549, the Hon'ble Apex court has held that, disturbing the educational career or employment of a candidate, which has become final with the passage of time, will not be in the interest of anyone.

22) The order passed by the Hon'ble Apex court in the case of Dattu Thakur (cited supra) was based on earlier order passed by the Apex Court on 6.9.2010 in Civil Appeal No.7411/2010 in the case of Swati Vs. State of Maharashtra and Ors. In the case of Swati, the Hon'ble Apex court though dismissed the appeal filed by her, directed that the benefits that had already been enjoyed by her and the degree obtained by her in the BDS course, which she had completed, would

continue. Of course, the Court had further directed that she would not be entitled to any further benefits under the Caste certificate issued to her and that whatever advantage she may have obtained by way of payment of fees at the reduced rate, were to be made good by her by paying the difference. In the case of **Dattu** also, the Hon'ble Apex court had directed the petitioner that if the petitioner had obtained any concession by way of reduction in fees as a reserved candidate, he will have to make good the same by paying the difference in fees that is being paid by the general candidates.

23) In the case of Sandip Subhash Parate Vs. State of Maharashtra - 2006 6 Bom.C.R. 556 also, the Hon'ble Apex court did protect the education obtained by the petitioner for the course of B.E., to which he had obtained the admission claiming to be belonging to scheduled tribe by submitting the caste certificate belonging to scheduled tribe, which ultimately was cancelled

by the competent authority, by directing the petitioner to re-compensate the State by paying a sum of Rs.1,00,000/-. In the said matter, the doctrine of proportionality was pressed into service by the Hon'ble Apex court.

24) We may also usefully refer to the decision of the Hon'ble Apex court in the case of State of Maharashtra Vs. Milind – (2001) 1 SCC 4. Milind's case was relating to the admission in the Medical College. The question that arose for consideration in that case was, whether it was open to the State government or Courts or other authorities to modify, amend or alter the list of scheduled tribe and in particular whether Halba Koshti was sub-division of Halba tribe. The Hon'ble Apex court held that it was not permissible to amend or alter the list of scheduled tribe by including any sub-division or otherwise. However, on facts, it was observed by the Hon'ble Apex court that the respondent therein, i.e. Milind had been admitted in Medical

Course in S.T. Category more than 15 years back. It was further observed by the Hon'ble Apex court that though said Milind deprived one scheduled tribe student of a medical seat, the benefit of that seat could not be offered to other genuine scheduled tribe student at that distance of time even if said Milind's admission was to be annulled; and if his admission was annulled, it will lead to depriving the services of a doctor to the society on whom public money had already been spent. In those circumstances the Hon'ble Apex court held that invalidation of caste of said Milind will not affect the degree secured by him or his practice as a doctor. It was, but made clear that said Milind could no more claim to be belonging to scheduled tribe.

25) It was sought to be canvassed by learned Counsel appearing for the respondents that the decision in the case of Milind may not be applicable to the facts in the present case, since while deciding the said matter, the Hon'ble

Apex court has not laid down any principle of law, but in the peculiar circumstances of the said case, the decision was rendered. Reference was then made to two judgments of the Hon'ble Apex court, first in the case of Bank of India Vs. Avinash D. Mandvikar – (2005) 7 SCC 690 and the other Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde – (2007) 5 SCC 336.

26) It is true that in para 7 of the judgment in the case of Suresh Burde (cited supra), the Hon'ble Apex court said that the decision of the Apex court in **State of Maharashtra Vs. Milind**, does not lay down any such principle of law that where a person seeks appointment by producing a false caste certificate, his services can be protected and an order of reinstatement can be passed, if he gives an undertaking that in future, he and his family members shall not take any advantage of being a member of a caste which is in reserved category.

27) We are, however, not convinced with the submission so made. In the same judgment, i.e. in the case of **Suresh Burde (cited supra)**, the Hon'ble Apex court in para 13 thereof has made the following observations, -

"13. The principle, which seems to have been followed by this Court is, that, where a person secures an appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. However, where a person has got admission in a professional course like engineering or MBBS and has successfully completed the course after studying for the prescribed period and has passed the examination, his case may, on special facts, be considered on a different footing. Normally, huge amount of public money is spent in imparting education in a professional college and the student also acquires the necessary skill in the subjects which he has studied. The skill acquired by him can be

gainfully utilized by the society. In such cases the professional degree obtained by the student may be protected though he may have got admission by producing a false caste certificate. Here again no hard and fast rule can be laid down. If the falsehood of the caste certificate submitted by the student is detected within a short period of his getting admission in the professional course, his admission would be liable to be cancelled. However, where he has completed the course and has passed all the examinations and acquired the degree, his case may be treated on a different footing. In such cases only a limited relief of protection of his professional degree may be granted.

28) In the subsequent judgment in the case of Union of India Vs. Dattatray s/o Namdeo Mendhekar and Ors. - (2008) 4 SCC 612, the Hon'ble Apex court has considered all the aforesaid three judgments in the case of Milind, in the case of **Avinash Mandvikar** and in the case

of **Suresh Burde**. As has been observed by the Hon'ble Apex court in the said judgment, in cases of admission to educational institutions, the protection extended by Hon'ble Apex court in the case of Milind, will be applicable only where a candidate had successfully completed the course and secured the degree and not to cases where the falsehood of the caste certificate is detected within a short period from the date of admission.

29) In para 38 of its judgment in the case of State of Maharashtra Vs. Milind (cited supra), the Hon'ble Apex court has observed thus, -

"38. Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practicing as doctor. In this view and at this length of time it is for nobody's benefit to annul his Admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical

course by the admission given to respondent 1. If any action is taken against respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No.16372 of 85 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

30) There are some more cases on this issue. However, we may not indulge in referring to all those cases. Suffice it to mention that the

judgments by the Hon'ble Apex court referred to herein before, lay down a principle that depending upon the facts of the case, the education of the candidates concerned can be protected in spite of the fact that the caste claims on the basis of which, the admissions were secured by the said candidates were ultimately invalidated.

31) From the judgments on the issue, it is further transpired that such a relief has been granted by the Hon'ble Apex court only in the cases where it was noticed by the Hon'ble Apex court that the social status certificates were not obtained by the concerned by misrepresentation or by playing fraud.

32) The facts involved in the instant matter, if considered in background of principle laid down by the Hon'ble Apex court, we are of the opinion that the alternative prayer made by the petitioner to protect her education deserves

consideration.

33) As noted earlier, the petitioner has secured the admission for MBBS course in the year 2012-2013 and now, she is on the verge of completing the said course. This court, on 26th February, 2014, has passed the following order, -

“. Leave to add B.J. Government Medical College, Pune as party respondent. Amendment to be carried out forthwith.

2. Issue notice to Respondent Nos. 1 to 3, returnable on 26th March, 2014. Private notice is also permitted by all possible modes.

3. Considering the fact that the petitioner has got certificate on 8 June 2012 and now the same is cancelled by order dated 10 February 2014 on the basis of Government Circular dated 25th March, 2013, we are inclined to observe that the Respondents not to take any coercive steps based upon the impugned order, till next date.”

The record shows that the interim order so passed

was time to time continued and till date is in force.

34) As has been observed by the Hon'ble Apex court in the case of Milind (cited supra), in the present matter also, the Government has already spent huge amount on education of the present petitioner. No doubt one OBC candidate has been deprived from seeking admission to medical course because of the admission given to the petitioner. However, annulment of the admission of the present petitioner may not have any fruitful results. The benefit of that seat now cannot be offered to a genuine OBC candidate even if the admission of the petitioner is annulled. On the contrary, if the admission of the petitioner is annulled, it will lead to depriving the services of a doctor to the society on whom public money had already been spent.

35) In so far as element of fraud or misrepresentation is concerned, we reiterate that

father of the petitioner, who himself is a qualified surgeon, having degree of M.S and is running 16-bedded hospital, should not have indulged in securing the admission for his daughter from the quota reserved for OBC by obtaining Non-creamy Layer Certificate. We, in the peculiar facts and circumstances of this case are, however, not inclined to stretch the issue as regards the purported commission of fraud by the petitioner. It is not in dispute that petitioner belongs to Other Backward Class and the Caste Scrutiny Committee has also validated her caste. It is thus evident that but for her not falling in the category of Non-creamy Layer, she was entitled to be admitted to the post reserved for O.B.C. candidate. As urged by the learned Senior Counsel, the petitioner and her father might have been under a bonafide belief that petitioner comes within the purview of Non-creamy Layer. We, therefore, albeit with much reluctance accept the request made by the learned Senior Counsel that the petitioner be allowed to

obtain the degree of M.B.B.S. The same shall, however, be subject to payment of Rs.10,00,000/- to the State Government so as to recompense the State to some extent for the expenditure incurred by the State on the petitioner for imparting education as a reserved category candidate.

36) In the foregoing circumstances and for the reasons stated, though we are rejecting the request of the petitioner to quash and set aside the order dated 10th February, 2014 passed by Respondent No.2, we are inclined to protect the education and the degree of the petitioner for the course of M.B.B.S., of course, upon certain conditions. Hence, the following order, -

O R D E R

i) The order dated 10th February, 2014 passed by the District Collector, cancelling the Non-creamy Layer certificate issued in favour of the petitioner, is confirmed;

ii) The petitioner is however allowed to continue her studies in MBBS course and obtain the said degree from Respondent No.4 subject to the following conditions, -

(a) That, petitioner shall file an undertaking in this Court to the effect that, she shall not claim or seek any benefit in future, of her belonging to Other Backward Class for further studies or in securing the employment;

(b) That, petitioner shall deposit with the State Government an amount of Rs.10,00,000/- (Rupees ten lacs) towards the expenditure incurred by the State on her education within six months from the date of this order;

(c) After successful completion

of the course by the petitioner, Respondent No.4 shall award the degree of M.B.B.S. to the petitioner as per their usual norms.

(d) That, petitioner shall file a further undertaking in the form of a bond that immediately, after obtaining the degree of MBBS, for next five years she shall render her services as the Medical Officer in any of the Primary Health Center/s run by the State Government or Local Bodies. It is clarified that the petitioner is not precluded from doing post-graduation if she so desires and if she gets such an admission before completing the bond period of five years, she shall rejoin the Primary Health Center after doing post-graduation to serve the remaining period;

(e) If the petitioner fails to comply with any of the aforesaid conditions, the State Government may take necessary steps for re-calling the degree/s granted to the petitioner.

37) The Writ Petition stands disposed of in the aforesaid terms.

(P.R.BORA)
JUDGE

(V.M.KANADE)
JUDGE

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