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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO. 1425 OF 2017**

**1. Miss Magdeline James Simon**

Age 20 yrs., Occu. Student,  
R/at. CGS Colony, 16 C-3, Navyuvak  
CHS, Bhandup (W),  
Mumbai 400 042.

**...Petitioner**

***Versus***

**1. The State of Maharashtra Thru the  
Principal Secretary, Higher Technical  
Education, Mantralaya.**

Mumbai 400 051.

**2. The Directorate Higher Technical  
Education Dept.,**

49, Kherwadi Aliyarwar Jung Road,  
Bandra (E), Mumbai 400 041.

**3. Divisional Caste Scrutiny Committee**

3<sup>rd</sup> Floor, New Administrative Bldg. No.2,  
R.C. Marg, Chembur (E),  
Mumbai 400 071.

**4. The Principal of Padmabhushan  
Vasantadada Patil Pratisthan College of  
Engineering,**

Sion, Chunabhatti, Mumbai 400 022.

**...Respondents**

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Mr. Milind Ashokrao Ingole, for the Petitioner.

Mr. M.A. Sayed, AGP for the State – Respondents Nos. 1 and  
2.

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**CORAM: B.R. GAVAI AND  
RIYAZ I. CHAGLA, JJ.  
DATED: 21st July 2017**

**J U D G M E N T :- (Per Riyaz I. Chagla J.)**

1. The Petitioner by the present Petition is challenging impugned letter / order dated 5th May 2017 issued by Respondent No.2 to Respondent No.4, whereby the Petitioner's admission in the Respondent No.4 college has been rejected on the ground of the Petitioner not having complied with the OBC category. The Petitioner was communicated the rejection by the letter of Respondent No.4 dated 9th May 2017 which is also impugned herein. The Petitioner also challenges the impugned letter / order dated 28th February 2017 issued by Respondents Nos. 2 to 4 for rejection of the OBC claim of the Petitioner.

2. The Petitioner was born and brought up in Mumbai and her family had shifted to Mumbai 40 years back from the State of Tamil Nadu. The Petitioner's family belonged to the State of Tamil Nadu. In the list of OBC prepared by the

Central Government for the State of Tamil Nadu, the Petitioner comes under the category of OBC. The Petitioner belongs to caste of 'NADAR'. The caste of 'NADAR' was included in the list of OBC prepared by the Central Government for the State of Tamil Nadu, having Sr. No. 104.

3. The Petitioner has done her education in Mumbai and has cleared the first, second and third year semester of the degree of Bachelor of Engineering in Electronics and Telecommunication from the Respondent No.4 college which is affiliated with the University of Mumbai. The Petitioner was issued caste certificate as OBC based on the Petitioner's forefather having been granted caste certificate. The Petitioner's father is also having caste certificate of OBC from the appropriate authority from the State of Tamil Nadu.

4. The Petitioner obtained the certificate of OBC from the Sub Divisional Officer of Eastern Suburban, Mumbai Suburban District. The Petitioner had obtained an admission in the Respondent No.4 college on the basis of her caste certificate. The Respondent No.4 college is under the control

of Respondents Nos. 1 and 2. The Petitioner's father has paid the requisite fees to the Respondent No.4 college. The Petitioner being certain of obtaining admission from the Management quota had furnished all requisite documents for admission. The Respondent No.4 college had furnished the caste certificate for scrutiny to the Respondent No.2. The Petitioner claims that the Respondent No.2 without giving the Petitioner an opportunity of the hearing in violation of principles of natural justice declined the claim of the Petitioner as OBC on the ground that in the Central list prepared for the State of Maharashtra, the caste of the Petitioner was not included. The Petitioner's admission to Respondent No.4 college was cancelled on the ground that Petitioner did not hail from the OBC category and had not obtained 50% mark in the interim test. Respondent No.4 communicated to the Petitioner by letter dated 9th May 2017 referring to letter dated 5th May 2017 issued by Respondent No.2 to Respondent No.4 for cancellation of admission of the Petitioner. The Petitioner had prior to the cancellation having obtained admission to Respondent No.4 college for Bachelor of Engineering in the branch of Electronic and

Telecommunication Engineering, appeared in the examination conducted by the University of Mumbai for engineering and had passed the said examination in first class in 2016. The Petitioner claims to have obtained admission to the Respondent No.4 college for the academic year 2016-2017 and had paid the entire fees. The Petitioner has subsequent to the filing of the Petition challenging the rejection of the Petitioner's admission, learnt of letter dated 28th February 2017 issued by Respondent No.2 to Respondent No.4 declining the Petitioner's claim of OBC, which has also been challenged by amending the Petition.

5. Shri Ingole, learned advocate for the Petitioner has submitted that the Petitioner had obtained certificate of OBC from the Sub Divisional Officer, Eastern Suburban, Mumbai Suburban, Dist. Mumbai as well as a caste validity certificate being issued by the competent authority of the State of Tamil Nadu. The Respondent No.4 college was also informed of the Petitioner having been granted the OBC community certificate by letter dated 4th April 2017 from the Tahasildar, Vilavancode, Tamil Nadu. Shri Ingole has also submitted that

the Petitioner had obtained admission to Respondent No.4 college in 2015 for Bachelor of Engineering and cleared her first, second and third year semester of degree of Bachelor of Engineering in Electronic and Telecommunication from Respondent No.4 college. Shri Ingole has contended that the Respondent No.2 without complying with the principles of natural justice had declined the claim of the Petitioner as belonging to OBC and had cancelled her admission. Shri Ingole has accordingly contended that the cancellation of the Petitioner's admission to the Respondent No.4 college be quashed and set aside.

6. Shri Sayeed, the learned AGP for the Respondents Nos. 1 and 2 has submitted that the NADAR caste come in the list of OBC prepared by the Central Government for the State of Tamil Nadu and not in the Central list prepared by the State of Maharashtra. Shri Sayeed, AGP has accordingly contended that it is well settled that the members of the OBC notified in other States such as Tamil Nadu in the present case would not come within the purview of OBC for the State of Maharashtra. Shri Sayeed has accordingly submitted that

Respondent No.2 was justified in the declining the Petitioner's claim of OBC for the State of Maharashtra.

7. We are of the considered view that the Petitioner's claim of belonging to OBC for the State of Maharashtra has been justifiably rejected by Respondent No.2 since the 'NADAR' caste of which the Petitioner belongs is in the list of OBC prepared by the Central Government for the State of Tamil Nadu. The Central list prepared by State of Maharashtra does not list the 'NADAR' caste as OBC. The Apex Court in the case of ***Subhash Chandra & Anr. Vs. Delhi Subordinate Services Selection Board and Ors.***<sup>1</sup>, has held that -

***“Clause (4) of Article 16 of the Constitution, as noticed hereinbefore, cannot be made applicable for the purpose of grant of benefit of reservation for Scheduled Caste or Scheduled Tribes in a State or Union Territory, who have migrated to another State or Union Territory and they are not members of the Scheduled Castes and Scheduled Tribes.” (In that recipient State).***

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1 (2009) 15 Supreme Court Cases 458.

The Apex Court has relied upon the Constitution Bench judgment of that Court in ***Marri Chandra Shekhar Roa V. Seth G.S. Medical College***<sup>2</sup>, wherein it was held in the context of education in a medical college that when a person is held to be a member of the Scheduled Caste for one State, he cannot be treated as such in another.

8. In the light of the above Apex Court judgment, we are of the considered view that the Petitioner's caste of 'NADAR' listed as OBC in Tamil Nadu cannot be treated as OBC in the State of Maharashtra.

9. We accordingly dismiss the Petition. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

( B.R. GAVAI J.)

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<sup>2</sup> (1990) 3 SCC 130.