

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10301 OF 2018

Dipshikha d/o Banvarilal Varma

Petitioner

versus

The State of Maharashtra and another

Respondents

Mr. A.G. Deshmukh advocate for the petitioner
Mr. P.S. Patil, AGP for respondents.

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CORAM : **R.M. BORDE AND**
MANGESH S. PATIL, JJ

Date : 19TH SEPTEMBER, 2018

PER COURT :-

1 Heard.

2 The petitioner claims to belong to Nhavi caste, which is recorded in other backward classes (OBC) category. She has been admitted to B.A.M.S. course as against a seat, prescribed for OBC category. The caste certificate issued to the petitioner was referred for verification to the scrutiny committee in the year 2016. However, the committee has directed invalidation and further canceled and confiscated the same.

3 It is not a matter of dispute that the father of the petitioner has migrated from the State of Uttar Pradesh, after the cut off

date. The caste Nhavi has been included in OBC category by order dated 13.10.1967. It does appear that the petitioner has completed education up to third standard in a primary school at Mahamayanagar, Uttar Pradesh. It is obvious that the petitioner has migrated from the State of Uttar Pradesh to the State of Maharashtra after the cut of date. There is abundant evidence placed on record to disclose that the family of the petitioner has migrated from the State of Uttar Pradesh. Thus, the petitioner is not entitled to claim benefits in the State of Migration i.e. the State of Maharashtra, however, is entitled to claim benefits in the State of origin i.e. State of Uttar Pradesh, in view of the Judgment of the Supreme Court in the matter of **Marri Chandra vs. Dean, G.S. Medical College, Mumbai** (4, 1990 DGLS 275 (soft) : 1990 (3) SCC 130 and **Action Committee Vs. Union of India & anr.** (1994 (5) SCC 244. The Supreme Court, in the matter of Action Committee has observed in paragraph No.16 thus:-

" 16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled 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 migrated. 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 case 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 purpose of this Constitution. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. "

4 The issue as to whether the decision in case of Action Committee dealing with the case under Articles 341 and 342 relating to Scheduled Castes and Scheduled Tribes would be applicable to the OBC category, has also been answered by the Supreme Court in the affirmative in case of **M.C.D. vs. Veena & ors** (2001 (6) SCC 571). It is specifically observed by the Supreme Court that an ancillary question as to whether OBCs of the State other than Delhi can not be treated as OBCs in Delhi and can not be extended the benefits related thereto in Delhi. Referring to the decision in case of **Marri Chandra vs. Dean, G.S. Medical College, Mumbai**, the Supreme Court has observed in para No.6 of the Judgment that the castes or groups

are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the consideration on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of the caste. These aspects are to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.

5 Similar view has been adopted by the Division bench of this Court in an Unreported Judgment of this Court in **Chetna w/o Rajendra Tank vs. committee for Scrutiny of Caste Certificates of persons & others**(2005 (6) Bom.C.R.920) and **Mrs. Savitri Shivaji Kumbhar versus The State of Maharashtra and others**(in Writ petition No.7792/2005 dated 22.3.2006). The inference that necessarily has to be drawn is:-

(a) A person belonging to a caste or tribe which is notified for that State is entitled to the benefits wholly in that State and not the State where he/she migrates

(b) If a caste or tribe is notified as a caste or tribe in both the State, it does not necessarily mean that the migrant is entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste or tribe of the migrant state.

6 In view of the decisions referred to above, we are of the considered opinion that, the scrutiny committee has adopted a correct approach in directing invalidation of the caste certificate issued to the petitioner. No interference is called for in the petition and the same is rejected.

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(MANGESH S. PATIL, J)

vbd

(R.M. BORDE, J)