

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10868 OF 2019

1. Dipak Kumar Jagubhai Patel
Son of Jagubhai Narsinhbhai
Rohit, Date of birth: 09.09.1974,
age 44 years 07 months, and
residing at: House No.147/1,
Opp. Police Line, Near Sub-Jail,
Silvassa, Ultan Falia Road, Dadra
and Nagar Haveli 396 230.
2. Mihir Dipak Patel
Son of Dipak Kumar Jagubhai Patel,
Date of Birth: 20.02.2000, age 19
years 05 months, and residing
at House No.147/1, Opp. Police
Line, Near Sub-Jail, Silvassa,
Ultan Falia Road, Silvassa, Dadra
and Nagar Haveli 396 230.

.... Petitioners

- Versus -

1. Union of India
through – Secretary,
Ministry of Health and Family
Welfare (Department of Health
& Family Welfare) Ministry of Health
and Family Welfare, Government of
India, Nirman Bhavan, New
Delhi – 110 011.
2. Administrator,
Union Territory of Dadra and Nagar
Haveli, Office of the Administrator,
Dadra and Nagar Haveli, Daman
and Diu, Silvassa – 396 230.
3. Director of Education,
Union Territory of Dadra and Nagar
Haveli, Directorate of Education,
PWD Complex, 1st & 2nd Floor,
Block-5, Silvassa, Dadar & Nagar
Haveli (U.T.) 396 230.

4. Ms. Shraddha P. Rathod,
aged and residing at :
Naroli, UT of Dadra and Nagar
Haveli, Silvassa 396 235.

5. National Modern Medical
Education and Research
Institute, through its Dean -
Dr. Deepak Howale, Sayali
Road, Silvassa, U.T. of Dadra
and Nagar Haveli 396 230.

.... Respondents

Mr. M.M. Vashi, Senior Advocate with Mr. Rahul G.
Walia & Ms Asmita Pendharkar for the Petitioners.
Mr. S.S. Deshmukh for Respondent Nos.2 & 3.
Mr. R.K. Mendadkar for Respondent No.4.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : NOVEMBER 18, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. This writ petition was admitted by this Court by passing a detailed order on 23-7-2019. That order reads as under:-

"1. Heard both sides.

2. A strong prima-facie case is made out in favour of petitioner no.1 who is the father of petitioner no.2 who has been held to be of a scheduled caste. He was recognised and granted facilities and extended the concessions as well. Petitioner no.2 is the son of petitioner no.1 and since his term came to an end, they have been residing in Silvassa. Admission to petitioner no.2 is denied on the ground that the candidate, namely petitioner no.2 and his parents have migrated from the State of Gujarat. The petitioner no.1 says that, he is the son of one, Jagubhai Narsinhbhai Rohit, a Retired

Government Servant of the Union Territory Administration, Silvassa. He was not treated as a Migrant. He retired from the service in the year 2008 and the petitioner no.1 is the son, whereas petitioner no.2 is his grandson. Petitioner no.2 was born and brought up in Silvassa and has been continuing to reside in the Union Territory of Dadra and Nagar Haveli, Silvassa. In the circumstances, the following order is passed:

ORDER

- (I) Rule.*
- (ii) We have heard both sides on interim reliefs.*
- (iii) In the light of the strong prima-facie case being made out, balance of convenience being in favour of the petitioner no.2 and petitioner no.2 will suffer grave and irreparable loss and injury, if admission is not granted.*
- (iv) There shall be interim order in terms of prayer clause (e).*
- (v) Let the petitioner no.2 be granted admission provided he complies with all other requirements of the Rules.*
- (vi) Respondents waive service."*

2. The respondents to this writ petition appear to have been aggrieved and dissatisfied with the order of this Court and approached the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India passed an order and a copy of this order was placed on record. The order of the Hon'ble Supreme Court of India reads thus:-

"Heard.

With the consent of learned counsel for the parties, we set aside the impugned order passed by the High Court. We request the High Court to take final call on writ petition as expeditiously as possible preferably within six weeks as the matter concerns to admission in the medical college.

Accordingly, the special leave petition is disposed of.

Pending applications, if any, stand disposed of."

3. In the light of the order passed by the Hon'ble Supreme Court of India and the specific direction therein to dispose of this matter as expeditiously as possible, that we listed it on the re-opening of this Court after the Diwali Vacation.

4. We have heard both sides and with their consent this final Judgment and Order is passed in the petition.

5. The petitioners before this Court are Dipak Kumar Jagubhai Patel and Mihir Dipak Patel. Mihir Patel is the son of Dipak Kumar Jagubhai Patel, the petitioner No.1. The 1st respondent is the Union of India through the Secretary, Ministry of Health and Family Welfare, having its office at the address mentioned in the cause title, whereas the 2nd respondent is the Administrator of the Union Territory of Dadra & Nagar Haveli. The respondent No.3 is the Director of Education of the said Union Territory ("UT"), whereas the 4th respondent to this petition is a student admitted to the Government Medical

College at Silvassa against a seat reserved for the Scheduled Caste (“SC”).

6. The 5th respondent is National Modern Medical Education and Research Institute.

7. The petitioners in this writ petition say that the Provisional Common Merit List, issued in the month of July, 2019, depicted the name of petitioner No.2 at serial No.44 whereas the 4th respondent's merit position was 114. The remark against his name is SC-0002. This is the position of petitioner No.2 in the merit list. The merit position No.1, in the SC category, is one Ms Tejalben Rohit. She has secured merit position at No.28. She was adjusted against the general seat. She gave up her claim to the sole reserved seat. Thus, the sole reservation for the SC in the Medical College was not granted to any SC candidate. It was kept as available for a meritorious student next in rank in the SC category. The petitioners, therefore, expected that the 2nd petitioner would walk in easily into the seat and without obstacle or hindrance. However, the petitioners were shocked and surprised to note the contrary from the documents styled as impugned list dated 20-7-2019. Therein, as against the name of petitioner No.2, the remark SC-0002 was scored off and removed. This was done without any notice to the 2nd petitioner.

8. The claim of the petitioners is that, the 1st petitioner as also the 2nd petitioner are residents of Silvassa. Their schooling and education has taken place in Silvassa. The petitioners have categorically stated in para 3.2 of this petition that petitioner No.1 is the son of Jagubhai Narsinhbhai Rohit. The said Jagubhai is a retired Government servant of the UT Administration. He was never treated as a migrant. He received all service benefits being a SC candidate, including the benefit of reservation in promotion. He retired from service in the year 2008. The 1st petitioner is the son of this Jagubhai. The petitioner No.1 also had a sister Meenaben Jagubhai Patel, since expired, and even she was granted the benefit of the SC seat for Chemical Diploma Engineering under the SC quota from Silvassa. Paragraphs 3.2, 3.3 and 3.4 of the writ petition read as under:-

*"3.2 Petitioner No.1 is the son of Shri Jagubhai Narsinhbhai Rohit, a Retired Government Servant of Respondent Union Territory Administration. He was never treated as a Migrant and he received all service benefits being a SC Candidate including benefit of Reservation in Promotion. He retired from service in the year 2008. Petitioner No.1 and 2 are son and grandson of Jagubhai Narsinhbhai Rohit. Here it is also relevant and interesting to note that Petitioner No.1 had a sister Late Smt. Meenaben Jagubhai Patel and even she was granted the benefit of a **SC Seat for Chemical Diploma Engineering under SC Quota OF Silvassa at D.D. Institute of Technology at Nadiad which she changed to Diploma in Civil Engineering against SC Seat at Girls Government Polytechnic Athava Gate, Surat.***

3.3 Petitioner No.2 is the son of Petitioner No.1 and

grandson of Shri Jagubhai Narsinhbai Rohit. Shri Jagubhai N. Rohit has been working in Silvassa since the year 1969 when he came to be initially appointed under the Administrator of Dadra and Nagar Haveli Silvassa in the MEDICAL Department. The said Shri Jagubhai N. Rohit retired from the Department of Revenue under the Administrator of Dadra and Nagar Haveli Silvassa. Thus, he was a Government Servant throughout his life and is now receiving pension from the Government of India, Union Territory of Dadra and Nagar Haveli Silvassa. Shri Jagubhai N. Rohit was born in Gujarat and after his initial appointment in the year 1969 in the Union Territory of Dadra and Nagar Haveli, Silvassa he has continued to reside at the said place till date.

*3.4 As stated above, Petitioner No.2 is the son of Petitioner No.1 viz. Shri DIPAK KUMAR JAGUBHAI PATEL and was born in Silvassa on 9.9.1974. Hereto annexed and marked as **Exhibit "D"** is a copy of the Certificate dated 10.07.1989 issued by the Mamlatdar of Dadra and Nagar Haveli, Silvassa. Further, the Petitioner No.1 studied at the Government High School in Dadra and Nagar Haveli, Silvassa, till his Higher Secondary Certificate i.e. **12th Std.**"*

9. In para 3.4, it is stated that petitioner No.2 is the son of petitioner No.1 and the grandson of Jagubhai. He was born in Silvassa on 9-9-1974. Annexed as Exhibit "D" to the petition is a copy of Certificate dated 10-7-1989, issued by the Mamlatdar of Dadra & Nagar Haveli ("**D&NH**"), Silvassa. Further, petitioner No.1 studied at the Government High School at D&NH at Silvassa till his Higher Secondary Certificate. On 10-7-1989, petitioner No.1 was certified as belonging to the SC by the Mamlatdar and that certificate of the Mamlatdar was relied upon throughout by petitioner No.1. On 5-3-2018, the Mamlatdar has issued Permanent Residency Certificate to petitioner No.1 indicating that petitioner No.1 is residing at

D&NH, Silvassa since 44 years. The petitioner No.2 was born in Silvassa on 20-2-2000. He completed his entire education, that is, till 12th standard in Silvassa itself. Reliance is placed upon Exhibits “H” and “I”, namely, the Birth and School Leaving Certificates of petitioner No.2 as also Exhibit “J”, copy of the Certificate of Age, Nationality and Domicile.

10. The petitioner also relies upon Exhibit “K”.

11. It is stated that, on passing 12th standard, petitioner No.2 applied for the National Eligibility cum Entrance Test (“**NEET**”) for 2019. The petitioner No.2 desired admission for the Academic Year 2019-2020 in Government Medical College, Silvassa. The policy for such admission was published on 6-6-2019, copy of which is at Exhibit “L”. The petitioners found that only one seat was notified as reserved for the SC category in this Medical College. The petitioner No.2, after the other meritorious candidate above him was admitted against a general seat, giving up her claim for the reserved seat, expected to be admitted as of course. However, it is stated that relying upon para 2.3 of the policy, the admission appears to have been denied to him. Thus the exclusion of a meritorious candidate of the SC category and denial of admission to him is the subject-matter of challenge in this petition.

12. Two more paragraphs are relevant for our purpose

to decide this petition and they are paras 3.9 and 3.10. The said paragraphs are reproduced hereinbelow:-

*“3.9 On passing the 12th Std. the Petitioner No.2 applied for NEET (National Eligibility cum-Entrance Test) for the year 2019. The Policy for admission in MBBS Course in Government Medical College, Silvassa for the academic year 2019-2020 was published on 6.6.2019. Hereto annexed and marked as **Exhibit “L”** is a copy of the said Policy as published by the Respondents. As the Petitioner No.2 belongs to Scheduled Caste and the number of **Medical Seats** reserved for SC Category for the year 2019-2020 was notified to be only **1 seat** for Dadra and Nagar Haveli, Silvassa Government Medical College and due to his Merit Position, he should have been selected against the said Seat. However, all of a sudden, the Respondents are not treating the **Petitioner No.2 as Scheduled Caste for the benefit of Admission against the said one SC Seat**. Further, in para 2.3 of the said Policy which pertains to Eligibility for the Reserved Seat it was stated as under:*

*“2.3 **Seats reserved for SC/ST/OBC/PWD candidates in Dadra & Nagar Haveli or Daman & Diu will be filled up only by candidates of the UT of Dadra & Nagar Haveli or Daman Diu respectively, who are entitled to such reservations. Candidates who or their parents have migrated from other states to UT of Dadra Nagar Haveli or Daman & Diu shall not be entitled to avail benefits of these seats.**”*

*3.10 Thus, the Petitioners respectfully state and submit that only the candidates or their parents who have migrated from the other State are not entitled for the benefit of the reservation as per the said Policy. As both the Petitioners were born and brought up in Silvassa they were absolutely eligible for the benefit of Scheduled Caste Category Seat as per the policy of the Respondents themselves. Here it is also relevant and interesting to note that the Petitioners belong to **“HINDU ROHIT” Caste and the same is Recognized under the Constitution (Dadra & Nagar Haveli) Scheduled Castes/Tribes Order, 1962, in Union Territory of Dadra & Nagar Haveli, Silvassa.**”*

13. It is claimed that the petitioners cannot be treated as

migrants. There is no question of the policy distinguishing or discriminating against those who are throughout residents of Silvassa. If there is any proof of such non-discrimination, that is to be found in Circular dated 10-7-1995, issued by the Administrator, D&NH. The cut-off date mentioned therein is 1-1-1990 and a copy of this Circular is annexed as Exhibit "M" to this petition. Once such is the position emerging from the records and documents officially maintained, then denial of admission is the subject-matter of challenge in this writ petition. There are various grounds and consistent with the assertion in the memo of the petition raised to challenge the denial.

14. The prayers in this petition and relevant for our purpose are prayers (a) to (c) and they read thus:-

"(a) This Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ or direction in the nature of Certiorari to call for records and proceedings which led to the passing of two impugned orders/Lists as notified on 20.7.2019 (Exhibit "A" and "B") and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same to the extent of DENIAL OF SC STATUS to Petitioner No.2 and GRANT of ADMISSION to Respondent No.4.

(b) This Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other order or direction in the nature of Mandamus directing the Respondents to Grant Admission to Petitioner No.2 against the One SC Seat for MBBS in the Government Medical College Silvassa for the year 2019-2020.

(c) This Hon'ble High Court may be pleased to hold and declare that the denial of SC Status to Petitioner No.2 by the Respondents is absolutely illegal and accordingly quash and set aside the same with further direction to grant ADMISSION to Petitioner No.2 by

***treating him as an SC Candidate for the purpose of
ADMISSION to MBBS course in Respondent No.5
Government Medical College for the Academic
Year: 2019-2020."***

15. This writ petition has been filed on 23-7-2019 and upon it being duly served, the above order was passed.

16. An affidavit in reply is filed by the Director, Medical and Health Department, UT of Daman and Diu. In this affidavit in reply, which has been affirmed on 9-10-2019, the assertion of the respondent UT/Administrator is that the petitioners' ancestors migrated to the UT of D&NH in the year 1969 from the neighbouring State of Gujarat. As a matter of fact, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 was issued notifying four castes as Scheduled Castes within the area of D&NH under Article 341(1) of the Constitution of India. Therefore, it becomes clear that the entry of the ancestors of the petitioners is after the Presidential Order of 1962. Hence, for the purpose of education or employment, petitioner No.2 has to be considered as migrant. He cannot be allowed to avail the benefit of reservation meant for the SC as that is meant for local SC people. In other words, the Scheduled Caste persons residing in the UT of D&NH prior to issuance of this Constitutional Order alone are entitled to avail of the benefits.

17. The office of respondent No.3 allotted the seat from the Medical College under the SC category to respondent No.4. The respondent No.4 has paid the fees and her admission is thus secured and final.

18. Thereafter, the Director purports to enlighten this Court on the legal and the Constitutional position. When the petitioners purport to rely upon a Judgment of the Hon'ble Supreme Court, reported in (2019) 6 SCC 434 {**Director, Transport Department, Union Territory Administration of Dadra and Nagar Haveli, Silvassa and Others Vs. Abhinav Dipakbhai Patel**}, this Director boldly tells us that the observations in this Judgment of the Hon'ble Supreme Court are contrary to its own Judgment rendered by a Five Judge Bench and in paragraphs 4, 5, 6(XI) & (XII), this gentleman says as under:-

"4. I say that, however, the grievance of the Petitioners is not sustainable as the Petitioners ancestor migrated to the Union Territory of Dadra and Nagar Haveli in the year 1969 from the neighbouring state of Gujarat. I say that, as a matter of fact the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 was issued thereby notifying four castes as scheduled castes within the area of the Dadra and Nagar Haveli under Article 341(1) of the Constitution of India. Therefore it becomes clear that the entry of the ancestors of the Petitioner's is after the Presidential Order of 1962 and hence for the purpose of reservation in the education or employment the Petitioner no.2 has to be considered as migrant and cannot be allowed to avail the benefits of reservation in the category of scheduled caste which is earmarked only for the local people residing in the Union Territory of Dadra and Nagar Haveli prior to the issuance of the

Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962.

5. *I say that, the office of Respondent No.3 allotted the seat in the Medical College under SC Category on 20.07.2019 in favour of the Respondent No.4 (Ms Shraddha P Rathod). I say that, thereafter the Respondent No.4 on 23.07.2019 at 10.36 am paid the fees and at 10.50 am she was given Admission order. I say that, therefore, the Respondent No.4 has been allocated the seat under the scheduled caste category.*

6. *I say that, before dealing with the factual aspects in the present petition, the following legal submissions are essential to place the correct position of law before this Hon'ble Court as under:-*

I. to X.

XI. It is submitted that, the observations made by Hon'ble Supreme Court in the matter of (2019) 6 SCC 434 Director Transport Department DNH V/s of Abhinav Patel are contrary to the observations of the Constitution Bench judgments of the Hon'ble Supreme Court in the matter of Bir Singh V/s Delhi Jal Board reported at 2018 SCC online SC 1241 and the Marri Chandra Shekhar Rao [(1990) 3 SCC 130 : (1990) 14 ATC 671].

XII. It is submitted that in the judgment of Bir Singh V/s Delhi Jal Board reported at 2018 SCC online SC 1241 it is categorically observed that the person belonging to a scheduled caste in one state cannot be deemed to be a scheduled caste person in relation to any other state to which he migrates for the purpose of employment or education. It is further observed by the Hon'ble Apex Court that the expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Article 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand can find to the geographical territories of the Union Territory in respect of which the lists of scheduled castes/scheduled Tribes have been notified by the presidential orders issued from time to time."

19. Thereafter, there is an affidavit in rejoinder filed by petitioner No.1. The rejoinder is affirmed by the father of petitioner No.2, who is petitioner No.1. In this affidavit in

rejoinder, it is stated by him that, "Rohit" caste was not notified as SC under the Constitution (Dadra and Nagar Haveli) Order of 1962 is a misleading and erroneous contention. The caste "Chamar" and "Rohit" are one and the same. A Gazette Notification dated 23-3-2015, which clarifies this position, is relied upon in support of this contention. It is stated that Entry 2 was substituted with "Chamar, Rohit". Then it is stated that the predecessor-in-title of the petitioners Jagubhai shifted to Silvassa due to his appointment in Government service under the Administration of Silvassa in the year 1969. Jagubhai was extended all benefits of reservation with regard to his progression in service and he finally retired from the post of Land Reform Officer (Department of Revenue). Exhibit "RJ-2" is a copy of the Promotion Order issued in favour of Jagubhai Narsinhbhai Rohit. The said promotion was granted against the reserved vacancy to Jagubhai.

20. The petitioner No.1 then says that he was born in Silvassa in the year 1974. The entire family was continuously residing in Silvassa from 1969. The petitioner No.2 was also born in Silvassa. It is claimed that there is no question, therefore, of these persons being categorised or treated as migrants. The Circular dated 10-7-1995 was issued wherein it was clearly stated that, the migrant SC/ST employees who have been already appointed prior to 1-1-1990 will continue to

enjoy all the benefits of reservation as provided in the Rules. Hence, assuming without admitting that the petitioners' family can be treated as migrants, undisputedly, they have been residing in the UT prior to 1-1-1990 and therefore they were rightfully extended the benefits of reservation. There is gross abuse and misuse of power to favour respondent No.4. The NEET score of respondent No.4 is 201 and her merit position is 114. The petitioner No.2 has NEET score of 342 with 86 percentage and is at merit No.44.

21. It is in these circumstances that the petitioners claim that they have rightly relied upon the latest Judgment of the Hon'ble Supreme Court. That is consistent with the policy for admission enunciated on 6-6-2019. It is in these circumstances that this rejoinder says that the writ petition be allowed.

22. Now we find that the contest is taken over by respondent No.4. Pertinently, the UT Administrator and the UT as also the Union of India subsequently give up their stand in the affidavit in reply. They leave it to the 4th respondent beneficiary to defend their action.

23. The 4th respondent has filed an affidavit through her father and natural guardian. The said affidavit in rejoinder relies upon the fact that the Mamlatdar may have issued the Certificate of 5-3-2018 but that is belied by other set of

documents, namely, Ration Card issued in December, 2003 by the Mamlatdar, Pardi, District Valsad, State of Gujarat. The affidavit in rejoinder, dated 5-11-2019, seeks to prove that petitioner No.1 and the grandfather of petitioner No.2 are voters of Pardi Assembly Constituency. The entries in the Register of Voters for this Assembly Constituency are relied upon.

24. The petitioner No.1 has filed a rejoinder to this affidavit as well. While repeating and reiterating the assertions in the memo of the writ petition as also the rejoinder filed to the affidavit of the Director of Medical and Health Department, Silvassa, petitioner No.1 Dipak Kumar Jagubhai Patel says that he has completed his education in Silvassa. He has been working in Silvassa. He has a PAN Card issued in Silvassa. The business is conducted in Silvassa. The Income-Tax Returns from the year 2003 onwards are regularly filed from Silvassa. The petitioner No.1 is staying in Silvassa since birth and the business is conducted from Silvassa itself. It is stated that in the year 2003, the 1st petitioner was 30 years old and thereafter on year to year basis the Income Tax Returns are filed in Silvassa. The family is residing at Silvassa at the house, the details of which are provided in the petition. This house was constructed in the year 1994 on the plot of land purchased by Jagubhai in the year 1991 when he was working under the said UT as a Civil Servant. The house was built on a land after

taking due permission from the Collector's office at Silvassa. A Ration Card was issued to the first petitioner in the year 1995 in Silvassa itself. A Passport has been issued as well. A Ration Card was issued prior to 1994 with the number, as reflected therein. The old Ration Card of prior to 1994 is also relied upon in para 4 of this affidavit in rejoinder. Then entries pertaining to Gas connection are relied upon. The Driving Licence is also relied upon. The grandfather's and the father of petitioner No.2's licences are also relied upon to urge that the family are residents of the UT and have never gone and resided anywhere else. The assertion in the affidavit in reply is dealt with in para 13 of this additional affidavit in rejoinder by pointing out that the said Jagubhai was born in Gujarat and his family, including the elder brother continue to stay in Gujarat. Jagubhai shifted to Silvassa in the year 1969 when he was appointed as a Civil Servant under the UT. He retired from service in the year 2008. The petitioners were born in Silvassa. Jagubhai as also petitioner No.1 never voted in Gujarat State Election or General Elections to Lok Sabha in Gujarat. The petitioner No.1 states that Jagubhai's name continues to be reflected due to the residence of others in the family in Gujarat. The 1st petitioner's name does not appear in the Voters' List for that constituency. If petitioner No.1 was residing in Gujarat, his name would have appeared in the Voters' List. The Voter ID Card issued to petitioner No.1 is of Silvassa. It is for that constituency and in

the Voters' List maintained for the same, the name of petitioner No.1 is appearing. Exhibit "R12" is relied upon and which is a copy of the Voter ID Card issued in Silvassa to petitioner No.1.

25. The rest of the assertions in the writ petition have therefore been reiterated. It is claimed that the assertions of Pankaj Rathod, father of 4th respondent, are utterly false and misleading.

26. It is on the above material that we have heard the counsel appearing for the petitioners.

27. Mr. M.M. Vashi, learned Senior Counsel appearing for the petitioners, assisted by Mr. Rahul Walia, would submit that petitioner No.2 has been denied admission wrongfully and erroneously. There is gross violation of the Constitutional mandate of equality, fairness and reasonableness enshrined in Article 14 of the Constitution of India. The petitioners could never have been treated as migrants. The whole policy in relation to migrants is inapplicable to the petitioners' case.

28. Mr. Vashi was at pains to take us through the documents, copies of which are annexed to the petition. He would submit that there is absolutely no dispute about the merit list. In the merit list, the name of petitioner No.2 has been shown as User Id: 02281, Roll No.180100985, General Merit –

00044, All India Rank 196871, the NEET score is 342 and 86.03 is the percentile. That is the position which was in the General Merit List. However, insofar as the SC category is concerned, petitioner No.2's name is also shown and reliance is placed in that regard on Exhibit "B", page 47 of the paper-book. It is claimed that placement of respondent No.4 is much below and the NEET score is also much below petitioner No.2's. Thus the argument of Mr. Vashi is that insofar as Exhibit "C" is concerned, that is a Common Merit List of UT of D&NH (First Priority) – 2019 at page 50 of the paper-book. Above petitioner No.2, in the SC category, is Tejalben Rohit. As far as petitioner No.2 is concerned, the position is taken as SC-0002. The petitioner No.2's name is Mihir Patel, his NEET score is 342 and percentile 86.03. As far as the 4th respondent is concerned, she is in the SC category much below with NEET score 201 and percentile 67.00.

29. Mr. Vashi would submit that this undisputed factual position cannot be lost sight of by relying on documents which have no relevance. In fact it is stated at Exhibit "D", page 57 of the paper-book, which is a Certificate issued by the Mamlatdar that Dipak Kumar is residing at Village Silvassa in the UT of D&NH since birth. The Certificate is issued on the strength of the School Leaving Certificate and Ration Card and it was issued on 10-7-1989. Mr. Vashi would then rely upon Exhibit

“E” (page 58 of the paper-book) to urge that petitioner No.1 is not only Hindu Rohit SC but residing with his family in Silvassa. Then, the Certificate of Age, Nationality and Domicile is relied upon by Mr. Vashi to urge that the family is domiciled in Silvassa. It has deep and firm roots. The Permanent Residency Certificate, copy of which is at page 60 (Exhibit “G”) of the paper-book, is based on contemporaneous record according to Mr. Vashi.

30. It is in these circumstances that petitioner No.2’s Birth Certificate assumes significance. The Birth Certificate carries identical entries as would appear in the primary document pertaining to petitioner No.2. Same is the position with regard to the School Leaving Certificate of petitioner No.2 which carries the entry in the Caste Column – Scheduled Caste Hindu-Chamar. Mr. Vashi would rely upon the Certificate of Age, Nationality and Domicile issued in favour of petitioner No.2. Mr. Vashi would submit that there was an admission taken in a school in Silvassa by petitioner No.2 at which time a Certificate was issued by the Administration of D&NH. That reiterates the position with regard to petitioner No.2.

31. Mr. Vashi then relies upon the Gazette Notification, copy of which is at page 66 (Exhibit “L”) of the paper-book, setting out policy for admission to MBBS Course in Government

Medical College, Silvassa, D&NH for the Academic Year 2019-2020. Mr. Vashi would submit that as far as reservation of seat is concerned, the categorisation is set out and then it is pointed out in para 2.3 that seats reserved for SC/ST/OBC/Persons with Disability candidates in the UT will be filled in only by candidates of the UT of D&NH or Daman and Diu respectively, who are entitled to such reservations. Candidates who or their parents have migrated from other States to UT of D&NH or Daman and Diu shall not be entitled to avail benefits of these seats.

32. Mr. Vashi would submit that this para has absolutely no applicability to the case at hand. The petitioners are not migrants. The petitioners have pointed out in the memo of the writ petition how they are not, and cannot be treated as migrants. Pertinently, according to Mr. Vashi, the Administration of the UT has never disputed the existence and contents of the documents, copies of which are annexed to the writ petition, nor have they dealt with the crucial paragraphs of the writ petition referred to and reproduced hereinabove. In the teeth of this, when they deny admission to petitioner No.2, then, their conduct smacks of arbitrariness and Mr. Vashi would urge that from the assertions in the writ petition and the correspondence prior to the petition, one can safely assume that the admission in favour of respondent No.4 is granted in a *mala fide* manner.

Mr. Vashi would submit that the affidavit of the Director of Medical and Health Department, UT of Daman and Diu seeks to mislead this Court and in that regard Mr. Vashi would submit that we must carefully read this affidavit for what it keeps back from the Court. There is absolutely no question of confusing Scheduled Tribes with Scheduled Castes. Secondly, there is no question of urging that as the Scheduled Castes Order under the Constitution has been notified in the year 1962, the petitioners should be treated as migrants. By what standard can the petitioners be treated as migrants has not been set out in this affidavit. It is falsely stated that the duly notified Order of 1962 would envisage that the petitioners must be found to be residing in the UT in the year in which this Notification has been issued. On that basis alone, the petitioners have been treated as migrants, but such an assertion flies in the face of the authoritative pronouncement of the Hon'ble Supreme Court.

33. Mr. Vashi, therefore, would submit that the affidavit does not deny that the petitioners and their ancestors started residing in the UT of D&NH from the year 1969. However, this affidavit falsely says that the benefit of reservation under the category of SC cannot be extended to them as they are migrants from the State of Gujarat. However, this affidavit is conspicuous by its silence in not dealing with the assertion that Jagubhai, the grandfather of petitioner No.2, was availing of all

benefits meant for the SC in this UT.

34. Mr. Vashi would submit that we should not rely upon the stand of respondent No.4, for she is a beneficiary of an illegal and unconstitutional act. She cannot support the stand of the other respondents.

35. For the aforesaid reasons, Mr. Vashi would submit that the Judgment of the Hon'ble Supreme Court in the case of **Abhinav Dipakbhai Patel** (supra) clinches the issue. Mr. Vashi has taken us through this Judgment and with particular emphasis on paras 10, 11 and 13 to 15 thereof. Mr. Vashi submits that the very contention raised before us by the 4th respondent is dealt with in this Judgment and it has a binding force. The UT is trying to wriggle out of a binding Judgment and it cannot urge that this Judgment is not setting out the correct position in law.

36. Mr. Vashi has relied upon the affidavit filed in rejoinder of petitioner No.1.

37. Mr. S.S. Deshmukh, appearing for the UT, would argue consistent with the stand of the Director of Medical and Health Department. He would submit that the position as set out in that affidavit is accurate.

38. Mr. Mendadkar, appearing on behalf of the 4th respondent, submits that the petitioners claim to be belonging to Hindu Rohit Scheduled Caste, recognised as such by the Constitutional Scheduled Castes Order for D&NH. It is claimed that in the year 1989, when the Caste Certificate came to be issued in favour of petitioner No.1, Rohit was not notified as SC under this Order of 1962. The Caste Certificate at Exhibit "E", page 58 of the petition, has been issued without inquiring whether "Rohit" is a Scheduled Caste as notified by the list. Therefore, this Caste Certificate is *void ab initio*.

39. Mr. Mendadkar then submits that if the family of the petitioners has migrated from the State of Gujarat to the UT in the year 1969 for employment purpose, then, their entry from the State of Gujarat and migration in this UT is admittedly after the Scheduled Castes Order of 1962. In such circumstances, going by the law laid down by the Hon'ble Supreme Court, the admission granted to the 4th respondent cannot be said to be illegal, much less unconstitutional. The petitioners are falsely alleging that respondent No.4 is not a Scheduled Caste. In fact she has a Caste Certificate dated 23-11-2012, issued by the Mamlatdar, D&NH. Mr. Mendadkar then submits that the grandfather of petitioner No.2 never availed of benefits of SC, if at all he was ordinary resident of D&NH on the deemed date, that is, 30-6-1962. It is in these circumstances, that Rohit was

not the notified caste. Chamar was notified as SC. Therefore, this Caste Certificate issued by the Mamlatdar suffers from an patent illegality. For all these reasons, it is submitted that the writ petition be dismissed.

40. Mr. Mendadkar was at pains to submit that the additional affidavit of the 4th respondent shows as to how the petitioners' family has been residing in the State of Gujarat.

41. For a proper appreciation of the rival contentions, firstly, it would be necessary to carefully peruse the Judgment of the Hon'ble Supreme Court, heavily relied upon by the petitioners.

42. That Judgment was rendered by a Bench of Two Judges of the Hon'ble Supreme Court. Therein, the respondent Abhinav Dipakbhai Patel was appointed as an Assistant Motor Vehicle Inspector. The respondent claimed to be belonging to "Dhodia" caste, which is recognised as a Scheduled Tribe ("**ST**") category in the State of Gujarat as well as in the UT of D&NH. He holds a Caste Certificate which was issued by the Competent Authority concerned in the State of Gujarat. He shifted his residence from Gujarat to the UT of D&NH. He had documentary evidence and proof to establish and prove his residence in the UT. An advertisement was issued inviting applications for filling up two posts of Assistant Motor Vehicle

Inspectors, one of them being reserved for the ST category. It was made clear in the advertisement that all Indian citizens could apply for appointment to the post. However, persons having Domicile in D&NH would be given weightage. The respondent applied for selection to the post and after scrutiny of 114 applications that were received, it was found that three candidates belonging to the General category and two from the ST category were eligible. A written examination was held but the respondent found that the result of the written examination for the ST vacancy was not announced while announcing the result for the unreserved post on 11-7-2015. As there was no response to the representations made by him, he approached the National Commission for Scheduled Tribes, Government of India. The National Commission, being convinced that the respondent was a resident of the UT of D&NH and that he belongs to a ST category, directed the representative of D&NH to seek a clarification from the Ministry of Home Affairs, Government of India and appoint the respondent thereafter. The Ministry of Home Affairs, Government of India clarified that the respondent was eligible for appointment. Though there was correspondence between the UT Administration and the Government of India, so also the National Commission, in spite of an order passed by the National Commission on 25-7-2016 directing issuance of a letter of appointment, but no action being taken thereon, that a Civil Writ Petition was filed in this

Court.

43. The UT was aggrieved and dissatisfied with the Judgment and Order of the High Court. Hence, it appealed to the Supreme Court and in its argument it contended that it has framed a policy and as far as reserved categories are concerned, only local candidates were to be considered. As far as the respondent is concerned, the argument was that there can be no difference between migrants of the ST from one State to another and from one State to a UT. However, there was a separate Presidential Order issued for notifying the STs in D&NH and migrants cannot claim the benefit of reservation in the UT. There was a weightage given to local candidates in the selection process. Hence, the benefit of reservation under the ST category was restricted only to local candidates and not migrants. This Court was not impressed with this argument and held that the respondent was a resident of the UT and though he migrated from the State of Gujarat, he was entitled to be considered for appointment as a reserved category candidate. On the basis of these findings, it directed the appellant/UT to appoint the respondent as Assistant Motor Vehicle Inspector with effect from the date of appointment of other candidates from the same selection process.

44. The precise argument that is canvassed before us

came to be canvassed before the Hon'ble Supreme Court and paras 8 to 15 of this Judgment are relevant. They are reproduced hereinbelow:-

“8. The learned counsel appearing for the Appellants referred to various circulars which indicate the policy of the Union Territory that the reservation was applicable only to the locals and not to the migrants. He argued that the benefit of reservation can only be claimed by a person who is domiciled in the Union Territory. According to him, residence of at least 10 years is required for a person to be considered for appointment on a public post as a Scheduled Tribe. To justify the action of the Union Territory in refusing to appoint the respondent, he relied upon the judgment of this Court reported in Action Committee on Issue of Caste Certificate to SCs/STs in the State of Maharashtra v. Union of India [(1994) 5 SCC 244], [S. Pushpa v. Sivachanmugavelu \[\(2005\) 3 SCC 1\]](#), Puducherry SC People Welfare Assn. v. State (UT of Pondicherry) [(2014) 9 SCC 236 and [Bir Singh v. Delhi Jal Board \[\(2018\) 10 SCC 312\]](#).”

9. The learned Senior Counsel appearing for the respondent referred to the office memorandum issued by the Union Territory to argue that there is a clear indication from the memorandum that there is no exclusion of Scheduled Tribes of other States from being considered for appointment to a public post in the reserved category. The local candidates were given the benefit of weightage which applies to Scheduled Tribes as well. Amongst the four candidates who were found eligible and who participated in the written examination, the respondent secured the highest marks and was eligible for being appointed in the unreserved post according to the law laid down by this Court. Even as per the office memorandum dated 26.12.2013, which pertains to the direct recruitment in group ‘C’ posts, the Scheduled Tribe candidates who were selected on their own merit without relaxed standards shall be appointed in the posts earmarked for the open category. The learned Senior Counsel argued that it is settled law that a resident of the Union Territory is entitled to be

considered for appointment to the public post as a reserved category candidate. He cannot be deprived of the status as a member of a reserved category candidate only on the ground that he is a migrant. It was submitted that there is no doubt that the respondent had been residing in the Union Territory for six years before the date of the advertisement. He referred to the judgment of this Court in Bir Singh (supra) to argue that the law laid down in Pushpa (supra) case has not been disturbed.

10. *By the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962, the President declared "Dhodia" caste as a Scheduled Tribe in relation to the Union Territory of Dadra and Nagar Haveli regarding members thereof who are residents in that Union Territory. A circular was issued by the appellants on 10-7-1995 by which the benefit of reservation in government offices for Scheduled Castes/Scheduled Tribes candidates would continue in respect of persons who were appointed prior to 1-1-1990 and a separate decision shall be taken for future appointments. Persons belonging to Scheduled Castes/Scheduled Tribes domiciled in the Union Territory Administration of Dadra and Nagar Haveli are to be considered for appointment to public posts in reserved categories as per the office memorandum dated 1-9-2006. The said notification was in respect of direct recruitments to Group 'C' and 'D' posts. While reiterating that the benefit of reservation for appointment to public posts shall be restricted to those castes/tribes included in the notification applicable to the Union Territory, in the Letter to the Ministry of Home Affairs dated 13-9-2013, it was conveyed that priority/preference shall be given to the locals. It is not disputed that the said priority shall be applicable to candidates belonging to open category as well as reserved categories. The Government of India approved the said proposal regarding weightage/preference to local people in direct recruitment in respect of Group 'B', 'C' and 'D' posts. The Government of India was of the opinion that exclusive reservation for local people would be unconstitutional. Thereafter, a decision was taken by the Union Territory of Dadra and Nagar Haveli that weightage of 20 additional marks shall be given to the locals in both open and reserved categories for direct recruitment to category 'C' posts in the Union Territory.*

According to the advertisement, a candidate applying in the reserved category should produce a certificate issued by the competent authority. All Indian citizens were eligible to apply for selection to the post of Assistant Motor Vehicle Inspector and the candidates were informed about the weightage to be given to the locals.

11. In Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College [(1990) 3 SCC 130] the Petitioner belonged to 'Gouda' community in the State of Andhra Pradesh which was recognized as a Scheduled Tribe in the Presidential Order issued for the said State. He applied for admission in a medical college in the State of Maharashtra and claimed the benefit of reservation. 'Gouda' community was not recognized as a Scheduled Tribe in the Presidential Order issued for the State of Maharashtra, and on that ground he was denied the benefit of reservation. It was held by this Court that he had no legal right to claim benefit of reservation in the State of Maharashtra as his community was not included as a Scheduled Tribe in the Presidential Order issued for the State of Maharashtra.

12. Appointments of Selection Grade Teachers made by the Directorate of Education, Government of Pondicherry was the subject matter of a judgment of this Court in S. Pushpa (supra). An advertisement was issued for recruitment of 350 General Central Service Group 'C' posts of Selection Grade Teachers out of which 56 posts were reserved for Scheduled Caste candidates. As sufficient number of Scheduled Castes candidates were not available in the Yanam and Mahe regions of the Union Territory of Pondicherry, candidates registered in the neighbouring employment exchanges in the States of Tamil Nadu, Andhra Pradesh and Kerala were also sponsored. The question that arose for consideration therein was whether a migrant Scheduled Caste candidate belonging to another State was eligible for appointment to the post which is reserved for a Scheduled Caste candidate in the Union Territory of Pondicherry. The Central Administrative Tribunal was of the opinion that migrant Scheduled Caste candidates were not entitled to claim the benefit of reservation in the matter of employment in the Pondicherry Government Service. This Court

reversed the judgment of the Central Administrative Tribunal by observing that there is no violation of any provision of the Constitution of India in making the selection and appointment of migrant Scheduled Caste candidates against the quota reserved for Scheduled Castes in the Union Territory of Pondicherry.

13. *Government Orders issued by the Pondicherry Government extending the benefit of reservation for admissions in colleges was extended only to the members of the Scheduled Castes who were originally from the Union Territory. While referring to the notification issued under Articles 341(1) and 342(1) of the Constitution of India, this Court in Puducherry SC People Welfare Assn. (supra) decided that no amendment, modification, alteration or variation of the Presidential Order is permissible by an executive power. Altering the word "Resident" in the Presidential Order to "Origin" by an executive order amounted to altering the Presidential Order, was held to be impermissible by this Court in the said judgment.*

14. *In view of the difference of opinion relating to the extension of benefits or concessions allowed to Scheduled Caste candidates belonging to a particular State in another State, the matter was referred to a Constitution Bench. In Bir Singh's case (supra), this Court was of the opinion that the correctness of the view expressed in S. Pushpa (supra) did not require reconsideration. The Constitution Bench also reiterated that the Presidential Notification issued under Articles 341 and 342 cannot be altered or modified by the Executive. The upshot of the above discussion is that a person belonging to a Scheduled Caste or a Scheduled Tribe which is notified by the President for a Union Territory is entitled to be considered as a reserved candidate provided he is a resident of the said Union Territory.*

15. *There is no dispute that the respondent was a resident in the Union Territory of Dadra and Nagar Haveli for six years prior to the date of advertisement. He stated in the Writ Petition that he owns an apartment in which he was residing and he married a woman from "Dhodia" tribe in the Union Territory. He further stated*

that his name is in the Voter's List in the Union Territory. These facts have not been disputed by the appellants. The central issue raised by the appellants before the High Court was that a person should be a local in the Union Territory which meant that migrant Scheduled Tribes cannot be given the benefit of reservation. The Presidential Notification issued for the Union Territory of Dadra and Nagar Haveli extends the benefit of reservation to the Scheduled Tribes mentioned therein on the basis of residence and not on the basis of origin. We find no force in the point canvassed by the learned counsel for the appellants that the reservation for Scheduled Tribes in the Union Territory of Dadra and Nagar Haveli is not available to migrant Scheduled Tribes. A feeble attempt was made by the learned counsel for the appellant that the requirement of residence is for a period of 10 years for a person to claim the benefit of reservation. There is no material which was placed on record in the High Court in support of the said submission and there was no such averment in the counter affidavit filed in the Writ Petition. This point was not raised before the High Court and no such ground is taken in the Special Leave Petition for which reason the said contention does not merit any consideration. Other points canvassed by the learned Senior Counsel for the respondent need not be adverted to in view of the order we propose to pass. Gross injustice is caused to the respondent by the action of the appellants in not appointing him in spite of the advice of the Union of India and the direction issued by the National Commission for Scheduled Tribes. The appointment of the respondent as Assistant Motor Vehicle Inspector does not brook any further delay."

A perusal of the same leaves us in no manner of doubt that reference has been made to the cut-off date of 1-1-1990. These are considered to be persons residing in the UT. They were entitled to the benefits of reservation. The Hon'ble Supreme Court found that the larger controversy need not be addressed because there was no question of the respondent being treated

as a migrant. The reference to the Larger Bench in the case of **Bir Singh Vs. Delhi Jal Board and Others**, reported in (2018) 10 SCC 312, was then pointed out to the Bench deciding Abhinav Dipakbhai Patel's case (supra) and it held that the Presidential Notification cannot be altered or modified by the Executives, but in para 15 the Hon'ble Supreme Court relied upon the facts peculiar to Abhinav Dipakbhai Patel's case and concluded that the central issue raised by the UT before the High Court was that a person should be a local in the UT which meant that migrant STs cannot be given the benefit of reservation. The Presidential Notification issued for the UT of D&NH extends the benefit of reservation to the STs mentioned therein on the basis of residence and not on the basis of origin. Therefore, the Hon'ble Supreme Court found no force in the point canvassed by the Administrator that the reservation is not available to migrant STs. Then the factual material has also been referred to and peculiar to the case of Abhinav Dipakbhai Patel, the respondent. On the basis of these materials, the High Court Judgment was upheld and the Appeal of the UT was dismissed.

45. We are not only shocked and surprised but equally pained to note that the Administrator as also the Director of Medical and Health Department, Silvassa files an affidavit and seeks to dilute the binding effect of this Judgment. It is further

shocking that the counsel for this UT argues before us, on the strength of the contents of this affidavit, that there is divergence of opinion in the Judgments of the Hon'ble Supreme Court. The view expressed in Abhinav Dipakbhai Patel's case runs counter to that rendered in the Constitutional Bench Judgments. Thus, the attempt is to convince us that the Larger Bench decision would bind this Court and not the one in Abhinav Dipakbhai Patel (supra).

46. We find that the stand of the UT and the D&NH Administration as also the 4th respondent beneficiary are identical. In fact, the UT is speaking for the 4th respondent. This shows that there is every attempt made to justify the departure and deviation from the order of merit in this case.

47. When there was an authoritative pronouncement by the Hon'ble Supreme Court in the case of Abhinav Dipakbhai Patel and as far back on 7-5-2019, then, we do not see how an affidavit with the above noted assertions could have been filed before us. This shows scant respect for the authoritative pronouncement of the Hon'ble Supreme Court .

48. A Judgment of the Hon'ble Supreme Court cannot be read in the manner suggested by Mr. Deshmukh and Mr. Mendadkar. The binding effect of a Judgment can never be diluted by urging that some aspect of the controversy has been

missed or that the Supreme Court failed to note and consider all the arguments touching the controversy before it. Way back in the year 2002, in another authoritative pronouncement of the Hon'ble Supreme Court, a Three Judge Bench has succinctly discussed this issue in the case of **Director of Settlements, A.P. and others vs. M.R. Apparao and another**, reported in AIR 2002 SC 1598. The Hon'ble Supreme Court held thus:-

"7. So far as the first question is concerned, [Article 141](#) of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under [Article 141](#) would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of

the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see AIR 1970 SC 1002 and AIR 1973 SC 794). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See 1984 (2) SCC 402 and 1984 (2) SCC 324).

49. The attempt before us is to show that the petitioners cannot rely on the Judgment of the Hon'ble Supreme Court in Abhinav Patel (supra) for it considered the case of a candidate seeking employment in the Administration of the UT. Secondly, that was a case of Dhodia ST while we are dealing with a candidate belonging to the SC. We have noticed from the foregoing paragraphs that none of the factual averments in this writ petition are denied by the UT. Yet, it maintains that petitioner No.1 and his forefathers are migrants.

50. This aspect of the matter requires us to refer to every piece of evidence relied upon.

51. Pertinently, paras 3.2, 3.3 and 3.4 of the writ petition, which have been reproduced by us, are not dealt with at all. The refusal to deal with them can safely be presumed to be a admission in this case. There is absolutely no comment in

regard thereto. When essential factual averments are not denied, then they are to be taken as admitted.

52. A faint attempt is made to dispute the contents of the Certificate issued by the Mamlatdar.

53. Now that Certificate, copy of which is at page 58 of the paper-book, is dated 10-7-1989. It says that Dipak Kumar Jagubhai Patel of Silvassa, UT of D&NH belongs to Hindu-Rohit caste. The argument of Mr. Mendadkar is that Rohit caste was not a SC on the date when this Certificate was issued.

54. The other argument and which has been built upon para 2.3 of the Policy of 6-6-2019 pertains to migrants. Now, these are two distinct arguments as far as aspects of migrants are concerned. Para 2.3 could not have been relied upon for it flies in the face of the authoritative pronouncement in the case of Abhinav Dipakbhai Patel. Pertinently, no attempt was made to seek a review or reconsideration of the view taken in Abhinav Dipakbhai Patel's case by the UT. The policy says, candidates who or their parents have migrated from other States to UT of D&NH or Daman & Diu shall not be entitled to avail benefits of the seats reserved for the SC/ST/OBC/Persons with disabilities.

55. In Abhinav Dipakbhai Patel's case, the Hon'ble Supreme Court has expressly referred to the central issue

purported to be raised by the UT in that case. The central issue was that the person should be a local in the UT which meant that migrant STs cannot be given the benefit of reservation. The Hon'ble Supreme Court, in para 15, held that, the Presidential Notification issued for this UT extends the benefit of reservation to the STs mentioned therein on the basis of residence and not on the basis of origin. It is in these circumstances, it negated the argument that reservation for the STs in this UT is not available to migrant STs.

56. Therefore, so much for this policy as it is dated 6-6-2019 whereas the Judgment in the case of Abhinav Dipakbhai Patel was rendered on 7-5-2019. Thereafter, the attempt that is made by Mr. Mendadkar is pertinently not made in same terms by the UT but it says that the Scheduled Castes Order of 1962 notified some castes as SCs. The entry of the petitioners' ancestors is after this Order of the President of India. Then, an attempt is made to show that the UT of D&NH is monitored by the Central Government and there is free entry for SC/ST persons in the matter of reservation coming from other States. This is an assertion which has not found favour with the Hon'ble Supreme Court. Then, again an attempt is made to show that persons entitled to benefit as a member of a particular SC from outside the UT would be eligible for reservation in the UT, is not correct. The fact that separate

Constitutional Orders are issued for the UT closes the door for migrants. Now the whole affidavit is attempting to show that there is migrancy in this case and which migrancy disentitles petitioner No.2 from seeking admission. If that was the central issue or point, then, it was not necessary for the Administrator to say that the Judgment in Abhinav Dipakbhai Patel's case is contrary to the Constitutional Bench Judgments. We are, therefore, of the clear view that the UT having not made any distinction between the Caste Rohit and Caste Chamar, has in fact admitted that Chamar as also Rohit were Scheduled Castes. The SC Certificate issued therefore by the Mamlatdar is not challenged by the UT. If the UT cannot do so, we fail to understand as to how the beneficiary of the act of the UT can raise any dispute or challenge to this Certificate. Firstly, this Certificate is not challenged by the 4th respondent by an independent action but in the writ petition filed by the petitioners alleging that petitioner No.2 is denied admission despite being meritorious. The 4th respondent also does not dispute that in the order of merit and particularly of SC candidates, petitioner No.2 stands higher in rank and his name is above that of the 4th respondent. The 4th respondent says that the Certificate dated 10-7-1989, issued to Dipak Kumar, petitioner No.1, cannot be relied upon because Rohit was not the name of the Scheduled Caste mentioned in the Presidential Order of 1962. This Certificate is therefore null and void.

57. Now, a copy of the Presidential Order for the UT for the Scheduled Castes is annexed at page 95 (Exhibit "A") of the paper-book. That is a Notification dated 30-6-1962 and the same reads as under:-

*"The Gazette of India
EXTRAORDINARY
PART II – Section 3 – Sub-section (I)
PUBLISHED BY AUTHORITY,
=====*
No.68] NEW DELHI, SATURDAY, JUNE 30, 1962/ASADHA 9,1884
=====
**MINISTRY OF LAW
(Legislative Department)
NOTIFICATIONS
New Delhi, the 30th June 1962**

G.S.R. 390. - The following Order made by the President is published for general information:-

C.O. 64
**THE CONSTITUTION (DADRA AND NAGAR HAVELI) SCHEDULED
CASTES ORDER, 1962**

In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President is pleased to make the following Order, namely:-

1. *This Order may be called the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962.*

2. *The castes, races or tribes, or parts of, or groups within, castes, races or tribes specified in the Schedule to this Order, shall, for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to the Union territory of Dadra and Nagar Haveli so far as regards members thereof resident in that Union territory.*

Provided that no person, who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste.

THE SCHEDULE

- (1) Bhangi
- (2) Chamar

- (3) Mahar
- (4) Mahyavanshi, Dhed.

S. RADHAKRISHNAN, President
[No. F 19(2)/62-LI]

G.S.R. 391. - The following Order made by the President is published for general information:-

C.O. 65
THE CONSTITUTION (DADRA AND NAGAR HAVELI) SCHEDULED
CASTES ORDER, 1962

In exercise of the powers conferred by clause (1) of article 342 of the Constitution of India, the President is pleased to make the following Order, namely:-

1. This Order may be called the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962.
2. The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities specified in the Schedule to this Order, shall, for the purposes of the Constitution, be deemed to be Scheduled Tribes in relation to the Union territory of Dadra and Nagar Haveli so far as regards members thereof resident in that Union territory.

THE SCHEDULE

- (1) Dhodia.
- (2) Dubla including Halpati.
- (3) Kathodi.
- (4) Kokna.
- (5) Koli dhor including Kolgha.
- (6) Naikda or Nayaka.
- (7) Varli.

S. RADHAKRISHNAN, President.
[No. F 19(2)/62-LI]
R.C.S. SARKAR, Secy."

58. Chamar appears at serial No.2 of the Schedule.

59. Now an attempt is made to show that the Mamlatdar entered the caste as Rohit and not Chamar. If that was the

position, then the counsel for the respondents need not have shown us the Amendment Order styled as the Constitution (Scheduled Castes) Orders (Amendment) Act, 2015, namely No.4 of 2015. According to them, in the Schedule to the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962, Entry No.2 should be substituted as Chamar, Rohit. We do not see how this or the other document at page 192 of the paper-book can carry the case of the 4th respondent any further. Page 192 of the paper-book reads as under:-

*“[THE CONSTITUTION (DADRA AND NAGAR HAVELI)
SCHEDULED CASTES ORDER, 1962
C.O. 64*

In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President is pleased to make the following Order, namely:-

1. *This Order may be called the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962.*

2. *The castes, races or tribes, or parts of, or groups within, castes, races or tribes specified in the Scheduled to this Order, shall, for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to the Union territory of Dadra and Nagar Haveli so far as regards members thereof resident in that Union territory:*

Provided that no person, who professes religion different from the Hindu [the Sikh or the Buddhist] religion, shall be deemed to be a member of a Scheduled Caste.

THE SCHEDULED

- | | |
|----------------------------|----------------------------|
| 1. <i>Bhangi</i> | 3. <i>Mahar</i> |
| [2. <i>Chamar, Rohit</i>] | [4. <i>Mahayavanshi.</i>] |

It says that once the President is pleased to make the Order and in that Order the words “resident in that Union territory”

having been inserted, the migrants cannot be granted the benefit. The counsel is confused between residency and migration. Residency in the UT and even if it is assumed to be a continuous one or for a certain or specified period, still there is no document which says that it should date back to 30-6-1962, namely, the date of the initial Constitutional Order. This argument of the 4th respondent overlooks the admission of the UT on facts. The UT in its affidavit does not dispute that it had on 10-7-1995 enunciated its policy by a Circular. The said policy says that the benefit of reservation to those SC/ST employees who have migrated from other States has been formulated and it has now been ordered by the Administrator, Daman & Diu and D&NH that the migrant SC/ST employees who have already been appointed prior to 1-1-1990 will continue to enjoy all the benefits of the reservations, as provided in the Rules. This Circular (Exhibit-M, page 76) recognised persons appointed prior to 1-1-1990 as entitled employees. They would get the benefit of reservation if they are from SC/ST category. Their family members born and brought up in Silvassa cannot be denied the benefit of reservation.

60. It is categorically asserted, in the writ petition, that Jagubhai Patel was employed in the services of this UT. That Jagubhai had served this UT since 1969 when he came to be initially appointed in the Medical Department. He retired from

the Department of Revenue under the Administrator of D&NH, Silvassa. He was a Government servant throughout his life and is now receiving pension from the Government of India, Union Territory. Jagubhai N. Rohit was born in Gujarat and after his initial appointment in the year 1969, he has continued to reside in the UT till date. The father of petitioner No.2, petitioner No.1, was born in Silvassa on 9-9-1974.

61. Pertinently, Jagubhai had retired from service in the year 2008. Jagubhai was granted the benefit of reservation in promotion as well. These facts have not been denied by the UT Administrator/Administration in its reply. The 4th respondent cannot be heard to controvert the same. We do not think that the desperate attempt made by the 4th respondent to support the admission granted to her can be accepted.

62. Equally, we do not find that the reliance placed on the Voters' List for the assembly elections can be accepted. It may be that the family has a residence in the State of Gujarat but there is overwhelming record to the contrary proving the residence of the petitioners in the UT. The factual assertions in the affidavits in rejoinder filed by the petitioners have gone uncontroverted.

63. To our mind, therefore, this is a case fully covered by the Judgment of the Hon'ble Supreme Court rendered in the

case of Abhinav Dipakbhai Patel. The denial of admission to a meritorious student like petitioner No.2 smacks of nothing but arbitrariness, unreasonableness and unfairness in State action. It violates the mandate of Article 14 of the Constitution of India. Every Governmental or State action has to be fair, just and non-discriminatory so also non-arbitrary. The State cannot discriminate between meritorious students nor can it prefer a lesser meritorious student by denying admission to the more meritorious student when he/she is otherwise eligible. This being the position before us, we have no alternative but to proceed and quash the admission granted to the 4th respondent/Ms. Shraddha P. Rathod. We proceed to do so and allow the petition accordingly. We, therefore, make the Rule absolute in terms of prayers (a) to (c) of the writ petition.

64. At this stage, Mr. Mendadkar seeks a stay of our Judgment and Order cancelling the admission of the 4th respondent and directing the UT to admit petitioner No.2.

65. We find that in the case at hand an interim order was already passed in favour of the petitioners. However, that was challenged by the Union of India and the Administrator in Special Leave to Appeal (C) No.21912 of 2019. The Order of the Hon'ble Supreme Court dated 20-9-2019 quashed the interim order by consent but directed that the writ petition

suresh

3-WPOJ-10868.2019.doc

should be decided within six weeks as the matter concerns the admission in the medical college.

66. Given the gravity and seriousness of the issue so also admission being denied to a meritorious candidate erroneously and illegally, we do not think that we can accede to the request of Mr. Mendadkar and that request is refused.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)