

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.326 of 2020

Kuldeep s/o Sanjay Deshmukh,
Aged about 23 years, Occu. Student of 6th Semester
2nd Year BE Civil Engineering Course,
R/o. Nehru Bal Sadar, MIDC Hingna Road,
Nagpur.

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra through its Secretary,
Ministry of Tribal Welfare and Social Justice,
Mantralaya, Mumbai-400 032.
2. Director,
Directorate of Technical Education,
Admission Regulatory Authority,
3, Mahapalika Marg,
Opp. Metro Cinema, Mumbai-400 001.
3. Joint Director,
Technical Education, Divisional Office,
Area of Government Polytechnic,
Sadar, Nagpur.
4. Rashtrasant Tukdoji Maharaj Nagpur
University through its Registrar,
Nagpur.
5. Principal,
Dr. Babasaheb Ambedkar College of
Engineering and Research ,
Wanadongri, Hingna Road, Nagpur.
6. The Commissioner,
State Common Entrance Test Cell,
Maharashtra State, 8th Floor,
New Excelsior Building,
A.K.Nayak Marg, Fort, Mumbai-400 001.

..... **RESPONDENTS**

Shri N.C.Phadnis, Advocate for petitioner.
Shri D.P.Thakre, Additional Government Pleader for respondent nos. 1 to 3.
Shri Atul Pande, Advocate for respondent no.4.
Shri N.S.Khubalkar, Advocate for respondent no.6

CORAM : A.S.CHANDURKAR and URMILA JOSHI-PHALKE, JJ.
DATED : 13th JULY, 2022

JUDGMENT (Per A.S.Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner who is a student has obtained Diploma in Polytechnic. He was admitted in the second year of Bachelor of Engineering (BE) (Civil) course in the academic session 2018-2019. Since the petitioner claimed that he belongs to 'Kunbi' Other Backward Class (OBC) category, he had sought verification of his caste claim by making an application in that regard on 13.07.2018 to the Scrutiny Committee. When that process was pending the petitioner through the Admissions Regulating Authority-respondent no.2 was granted admission at the respondent no.5-College affiliated with the respondent no.4-University. On 27.12.2018 the Joint Director of Technical Education informed the Principals of all the concerned colleges in Nagpur Division that deficiencies in the admission forms of the students who were admitted for the academic session 2018-2019 be directed to be removed by 31.12.2018. Insofar as the College where the petitioner

was admitted, the Admissions Regulating Authority (ARA) on 11.01.2019 informed the College that such discrepancies in respect of two students including the petitioner had not been removed. It was stated that the receipt of the application made for obtaining a caste validity certificate was not submitted. The petitioner was issued a validity certificate by the Scrutiny Committee on 19.03.2019 which was after the cut off date 31.08.2018. Though the validity certificate was submitted to the College where the petitioner was admitted, his admission against a seat reserved for OBC category was not regularised. In that backdrop, the petitioner has filed present writ petition seeking regularisation of his admission and permission to appear in the subsequent examinations conducted by the University.

3. Shri N.C.Phadnis, learned counsel for the petitioner submitted that as required by the provisions of Section 4A of the Maharashtra Scheduled Caste, Scheduled Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Category Classes and Special Backward Category(Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short, the said Act) the petitioner had made an application for issuance of validity certificate to the Scrutiny Committee and alongwith his application form a receipt in that regard was duly submitted. An application for caste validity certificate was made on 13.07.2018 while the scrutiny form for seeking admission was submitted on 13.08.2018 alongwith a copy of the receipt. The State

Common Entrance Test Cell on 18.08.2018 granted admission to the petitioner after considering the declaration given by the College that it had verified the petitioner's identity. All this was done prior to the cut off date which was 30.08.2018. By virtue of an interim order passed in the writ petition, the petitioner had appeared in the subsequent examinations but his results were not being declared for the reason that his admission had not been regularised. According to the learned counsel, since all steps that could be possibly taken by the petitioner as a student had been taken, he could not be faulted for having received the validity certificate after the specified date. The petitioner having pursued and completed his education, his results ought to be declared by treating his admission to be regularised. During all this period, the College or the Competent Authority did not proceed to cancel the petitioner's admission by acting under the provisions of Section 4A(3) of the said Act. Hence the petitioner was entitled to the benefit of the education taken by him. It was prayed that the petitioner was entitled to grant of reliefs as prayed for.

4. Shri N. S. Khubalkar, learned counsel appearing for the State Common Entrance Test Cell opposed the aforesaid submissions. According to him, even if the petitioner had made an application for issuance of validity certificate to the Scrutiny Committee, he had failed to produce the validity certificate prior to the date specified by the Admissions Regulating Authority.

There was no compliance with the provisions of Section 4A (2) of the said Act and hence the petitioner's admission was deemed to be cancelled under Section 4A (3) of the said Act. At the highest, the Admissions Regulating Authority could consider whether the petitioner could be treated to be eligible for admission from Open category in accordance with law prevailing at that time. There was no fault committed by the Authorities in refusing to treat the admission of the petitioner as a valid admission. He therefore submitted that the writ petition was liable to be dismissed.

Shri D.P.Thakre, learned Additional Government Pleader for Admissions Regulating Authority submitted that it was mandatory for the petitioner to have submitted the caste validity certificate by 30.08.2018. Since the same was not done, the petitioner's admission could not be regularised. The Authorities could consider the eligibility of the petitioner for admission from the Open category as per Section 4A (4) of the said Act.

Shri Atul Pande, learned counsel for the respondent no.4-University submitted that it was for the Admissions Regulating Authority to consider the prayers for regularising the petitioner's admission.

5. We have heard the learned counsel for the parties at length and we have perused the relevant documents on record. It is an undisputed position on record that on 13.07.2018 the petitioner had moved an application before the Scrutiny Committee seeking verification of his caste

claim. He was issued a receipt to that effect and alongwith the scrutiny form that was submitted while seeking admission a copy thereof was annexed. The said scrutiny form is dated 13.08.2018. Acting on the basis of that form the petitioner was granted admission on 18.08.2018. The petitioner was issued validity certificate on 19.03.2019 which is after the specified date that was 30.08.2018. In the aforesaid factual backdrop, it would be necessary to consider whether the petitioner's admission could be regularised as he received the validity certificate after the specified date.

6. Since the provisions of Section 4 (A) of the said Act have been pressed into service, it would be necessary to refer to the said provisions which read as under :

“4A (1) The provisions of this Section shall apply in respect of admission to the professional courses for the academic year 2018-2019.

(2) Notwithstanding anything contained in this Act, a person possessing a Caste Certificate and who has applied for or on whose behalf an application is made by the educational institution for verification of Caste Certificate and issue of validity certificate, and the same is pending before the Scrutiny Committee shall be eligible for participating in the admission process on the basis of Caste Certificate, subject to the following conditions, namely :-

(i) he shall produce a proof to the effect that he has made an application for issue of validity certificate to the Scrutiny Committee or that such application has been made on his behalf to the Scrutiny Committee;

(ii) he shall produce his validity certificate to the admission authorities on or before such date as may be

specified by the Admissions Regulating Authority in consultation with the State Government.

Provided that, the date referred to in clause (ii) shall be before the date of closure of admission process in respect of the admission to the concerned professional course for the academic year 2018-2019.

(3) Upon failure to produce validity certificate on or before such date specified by the Admissions Regulating Authority under sub-section (2), the provisional admission secured, if any, against reserved seat, shall be deemed to be cancelled.

(4) Nothing in sub-section (3) shall be construed as preventing the relevant authority for considering such person eligible for admission to the professional course, from the open category in accordance with the law for the time being in force.”

The aforesaid provisions indicate that a candidate possessing a caste certificate and who has applied for verification of that certificate is eligible to participate in the admission process despite the fact that the caste claim is pending before the Scrutiny Committee. Such admission is subject to the candidate producing a proof to the effect that an application for issuance of a validity certificate has been made to the Scrutiny Committee and the candidate produces validity certificate before such date as may be specified by the Admissions Regulating Authority. Failure to do so would result in the admission being deemed to be cancelled and the Competent Authority in such a situation can consider such candidate eligible for admission from the Open category.

7. Specified date in the present case is 30.08.2018. The petitioner on 13.07.2018 which is prior to specified date had made an application for issuance of a validity certificate. This fact was disclosed in the scrutiny form while seeking admission to the Second Year BE course. The petitioner received the validity certificate on 19.03.2019 and hence according to the learned counsel for the State Common Entrance Test Cell as the validity certificate was received after 30.08.2018, the petitioner's admission was deemed to be cancelled. We find that this stand taken by the State Common Entrance Test Cell is not in consonance with the provisions of Section 4A (2) of the said Act.

8. For participating in the admission process a candidate is required to produce a proof to the effect that he has made an application for issuance of a validity certificate to the Scrutiny Committee. Having made such application and having been granted admission, the insistence for production of validity certificate on or before the specified date by such candidate is not contemplated. This is for the reason that having applied for issuance of a validity certificate a candidate would have no control over the issuance of a validity certificate prior to the specified date inasmuch as it is for the Scrutiny Committee to consider the claim for issuance of validity certificate by following the procedure prescribed by the said Act and the Rules framed

thereunder. In other words, in cases where a proof of having made an application for issuance of validity certificate as submitted for participation in the admission process, it is likely that the validity certificate would be received after the specified date. It would therefore not be permissible to hold as contended by the learned counsel for the State Common Entrance Test Cell that sub-clause (i) as well as (ii) of sub-section(2) of Section 4A of the said Act have to be complied with by such candidate. Both the sub-clauses cannot go hand in hand as the student has no control over the date on which the Scrutiny Committee would complete the proceedings for issuance of a validity certificate. It is for that reason and with the object that a student should not lose an academic year for want of validity certificate that a provision has been made for producing a proof of having made an application for issuance of a validity certificate to the Scrutiny Committee that would enable such candidate to participate in the admission process. We find that sub-clauses (i) and (ii) of Section 4A (2) are independent of each other and operate in different spheres. A candidate who already possesses a validity certificate has to produce the same before the specified date while a candidate who has made an application for issuance of a validity certificate to the Scrutiny Committee has to produce a proof to that effect. It is on production of such proof that his application for grant of admission is considered.

9. In this regard we may usefully refer to the maxim “*lex non cogit ad impossibilia*” that has been considered and applied by the Division Bench in *Municipal Council, Morshi vs. Tulsiram Vishwanath Gadbail* [1977 *Mh.L.J.* 735] and *Rajkumarsingh vs. The Amravati University and others* [1996 (2) *Mh.L.J.* 627]. It has been held therein that one cannot expect performance of an act that is impossible. Law would excuse non-performance of an act which becomes impossible of performance on account of reasons beyond the control of a party. Having applied for grant of a validity certificate, the issuance of such validity certificate by the Scrutiny Committee is not in the hands of such applicant. It would be requiring such applicant to do the impossible.

For this reason sub-clause (i) of Section 4A (2) would have to be read independent of sub-clause (ii) of Section 4A (2) of the said Act. In other words, sub-clause (i) of Section 4A (2) would be applicable in cases where a candidate does not possess a validity certificate and had made an application for issuance of the same to the Scrutiny Committee while sub-clause (ii) would be applicable to a case where a candidate possesses a validity certificate and is thus required to produce the same on or before the specified date. In the present case, the petitioner had applied for grant of a validity certificate on 13.07.2018 and he received the validity certificate on 19.03.2019. Since the case of the petitioner is covered by the provisions of Section 4A (2)(i) of the said Act and it was impossible for him to produce the

validity certificate before the specified date, his admission was not deemed to be cancelled. For this reason it would be unjust to cancel his admission for failure to produce the validity certificate before 30.08.2018. It would have been a different matter if sub-clause (i) of Section 4A (2) was absent in the said provision. In that situation, failure to produce the validity certificate on or before the specified date would result in deemed cancellation of the admission. This is however not the case.

10. Hence for aforesaid reasons, we are satisfied that since the petitioner had moved an application for issuance of a validity certificate to the Scrutiny Committee prior to the specified date and was thereafter admitted to the professional course, his admission was not liable to be cancelled by relying upon Section 4A (2)(ii) of the said Act. In these facts therefore the provisions of Section 4A (3) and (4) of the said Act would not be attracted. The petitioner having completed the said professional course, his admission is entitled to be treated as having been regularised with the submission of the validity certificate. Consequentially, the respondent nos.4 and 5 shall declare the results of the petitioner of 8th Semester by treating him to be regular student of the Bachelor of Engineering (Civil) course.

Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)