



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9579 OF 2022

Miss. Anisa Arashad Diwan
Age: 19 years, Occu: Student,
R/o. Near Ambika Garden, Islampur,
Tal. Walva, Dist. Sangli.

..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Technical Education Department,
Mantralaya, Mumbai – 400 032.
2. The Joint Directorate of Technical
Education Regional Department, Pune.
3. The Admission Regulating Authority,
Through its Secretary, Mumbai.
4. The Commissioner,
State Common Entrance Test Cell,
Maharashtra State, 8th Floor, New
Excelsior Building, A. K. Nayak Marg,
Fort, Mumbai.
5. The Director of Vishwakarma Institute
of Information Technology, Pune
S. No.3/4, Kondhawa Bd. Pune.

..Respondents

Mr. Nikhil N. Pawar a/w Mr. Sarvajit B. Patil for the Petitioner.

Mr. N. C. Walimbe, Addl. G. P. a/w Mr. A. R. Metkari, AGP for
Respondent Nos.1 & 2 (State).

Mr. Sameer P. Khedekar for Respondent Nos.3 & 4.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Arguments heard on : 6th FEBRUARY 2024
Judgment is delivered on : 22nd FEBRUARY 2024

JUDGMENT: (per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner a student who belongs to Julaha-Other Backward Class challenges action of Respondent No.5-College, whereby the College vide letter dated 25th July 2022 has cancelled the admission on the ground that there is a delay in submitting the Caste Validity Certificate.

3. **Brief facts are as under :-**

- (i) The Petitioner appeared for Higher Secondary Exam in Science Stream in the exam conducted in the month of February 2020 and she cleared the said exam with 74.15% marks. Since, the Petitioner was aspiring to enroll herself in the Engineering Course, she applied and appeared for State Common Entrance Test (CET) conducted by Respondent No.1 and scored 80.60 Percentile in the said exam.
- (ii) Based on the above marks scored by the Petitioner in the CET, she was allotted in CAP Round-II Respondent No.5-College for the course of Mechanical Engineer in the category of “OBC” candidates.

(iii) On 8th December 2020, CET cell of Respondent No.1 issued admission notice for B.E./B.Tech course for academic year 2020-21. As per the said notice, the candidate was required to fill online form and the scrutiny of the documents would also be conducted based on the documents uploaded with the Application Form. As per Serial No.14 of the said notice, which is applicable to admission under CAP Round-II, the candidate who have been allotted the seat in Round-II shall pay the “Seat Acceptance Fee” by online mode. The cut-off date for admission for the academic year 2020-2021 was 14th January 2021 and the last date of uploading the data by the institute was 15th January 2021 for students who were allotted seat under CAP Round-II. As per Serial No.2 of instruction for candidates as per the aforesaid notice, it was stated that the candidates belonging to reserve categories shall produce ‘Caste Validity Certificate’ valid upto 31st March 2021. Further it is stated therein that if such candidates fail to produce the original certificate or receipt of Caste/Tribe validity certificate, Non Creamy Layer certificate and EWS certificate issued by competent authority at the time of verification by E-Scrutiny center, then such candidates will be treated as General category candidates for CAP Admissions. Instruction No.9 stated that seat will be confirmed by Allotted Institute after verification of original documents and after

ensuring that the candidate meets all the eligibility norms. The admission in-charge of the Institute shall issue Online Receipt of admission confirmation to the candidate. Serial No.10 of the instructions states that reserve candidates, who submitted receipt of Caste Certificate during the E-document verification and confirmation period should scan and submit Caste Certificate at the time of payment of seat acceptance fee and submit original certificate at Allotted Institute on or before 31st December 2020, otherwise these candidates shall be considered as Open category candidates and there allotment, if any, shall be cancelled.

- (iv) On 11th December 2020, the Petitioner applied for Caste Verification Certificate to validate her certificate of 2013 on the basis of which she had secured her school admission.
- (v) The Petitioner along with her application form had filed receipt/token dated 14th December 2020 evidencing that she had made application for Caste Verification Certificate. On 29th January 2021, the Respondent No.1-State CET Cell issued receipt-cum-acknowledgement of confirmation of admission to First Year of Under-Graduate Technical Course in Mechanical Engineering to the Petitioner under “OBC category”. The Respondent No.5 on 29th January 2021 issued receipt for fees received from the Petitioner

towards admission to F.Y.B.Tech- Mechanical Engineering Course under CAP-OBC.

(vi) On 26th March 2021, the District Caste Certificate Scrutiny Committee issued a Validity Certificate pursuant to an application made by the Petitioner and certified that based on the documents verified by the said Authority, the caste of the Petitioner is “Julaha-OBC” as per Original Caste Certificate dated 25th September 2013 is valid. This Validity Certificate was emailed by the Petitioner-Student to Respondent No.5-College and immediately thereafter physical copy was also filed with Respondent No.5-College on 27th March 2021.

(vii) On 13th August 2021 and 16th August 2021, Respondent No.5-College issue a show cause notice to the Petitioner-student to show cause as to why the admission for academic year 2020-2021 should not be cancelled since there was a delay in submitting the Caste Validity Certificate. The Petitioner vide letters dated 17th August 2021 and 9th September 2021 submitted her reply to the said show cause notice inter alia giving reasons why there was a delay in submitting the caste certificate and prayed for dropping the show cause notice. Thereafter these proceedings did not progress any further.

- (viii) On 30th August 2021 and 30th May 2022, Respondent No.5 accepted fees from the Petitioner for admission to 2nd year and 3rd year B.Tech Mechanical Engineering Course.
- (ix) On 5th October 2021, the Petitioner's result for FY of the course was declared as passed.
- (x) However, on 25th July 2022, Respondent No.5-College vide the letter of even date cancelled the admission of the Petitioner for academic year 2020-21 on the ground that at the time of admission the Petitioner did not submit the caste certificate but there was a delay in filing the same and further Respondent Nos.1 and 3 have refused to grant admission.

4. It is on the aforesaid backdrop that the present petition is filed challenging the cancellation of admission of the Petitioner by Respondent No.5-College on the recommendation by other Respondents.

Submissions of the Petitioner :-

5. The Petitioner submitted that she had made an application for Caste Validity Certificate on 11th December 2020 and a receipt/token to that effect was submitted with the Respondents. However, the Caste Scrutiny Authority issued a Caste Validity Certificate only on 26th March 2021 and thereafter immediately on 27th March 2021 she submitted the same to Respondent No.5-College. The Petitioner, therefore, submitted

that the delay in submitting the same cannot be attributed to her. The Petitioner further submitted that her admission was confirmed on 29th January 2021 and therefore the instruction as per admission notice to submit the caste certificate on or before 31st December 2020 could not be applied in her case since her admission was post the said of 31st December 2020. The Petitioner further submitted that she was already holding the Caste Certificate since 2013 and what was submitted a verification of the said certificate and since same was filed as soon as it was issued by the Caste Scrutiny Committee, same should be treated as in compliance with the instruction issued as per the admission notice. The Petitioner, therefore, submitted to regularize her admission and quash the communication, whereby her admission is cancelled.

Submissions of the Respondents:-

6. Per contra, the Respondents submitted that the Petitioner as per the admission notice was required to submit her original Caste Verification Certificate on or before 31st December 2020 and since same was submitted on 27th March 2021, there was a delay and as per the instruction issued to the candidate if the Caste Verification Certificate is not filed before the cutoff date then admission is liable to be cancelled and therefore the action of the Respondents in cancelling the admission is justified. The Admissions Regulating Authority had informed the

College on 1st December 2021 that the Petitioner's admission was not approved. The Respondents prayed for dismissal of the petition on the ground that the cutoff date for submitting the caste certificate cannot be extended.

7. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the Petition.

Analysis and conclusion :-

8. Admittedly, the Petitioner was allotted seat by Respondent No.4 in Respondent No.5-College in CAP Round-II on 29th January 2021. Therefore, the Instructions for Candidates in admission notice that the caste certificate should be submitted at the Allotted Institute on or before 31st December 2020 would not be applicable to the Petitioner's case and therefore the basis of cancelling the admission is not in accordance with the admission notice. The cut-off date of 31st December 2020 as mentioned at Serial No.10 of the Instructions would be applicable to those candidates who were allotted seat in CAP Round-I. We have not been shown any document by the Respondents, whereby insofar as the candidate who were allotted seat in CAP Round-II are concerned had to submit original certificate on or before a particular date. The last date for completion of admission under CAP Round-II as

per the schedule mentioned in admission notice was 15th January 2021, but in the said schedule there is no mentioned about the last date for submitting the original caste certificate. In such a scenario, in our view, even if it is assumed that the Petitioner was required to submit original certificate on the day when the admission was confirmed which in the instant case is 29th January 2021, then even in such a scenario there being no clarity in the admission notice on this issue, certainly the Petitioner cannot be penalized on account of such non clarity on the date of submitting the Caste Verification Certificate.

9. Even otherwise, the Petitioner had made an application on 11th December 2020 for Caste Verification Certificate. The Respondents confirmed her admission on 29th January 2021. The Petitioner along with the application had filed a receipt/token issued by the Caste Scrutiny Authority evidencing of her making an application for caste certificate and this receipt/token was filed before 29th January 2021 with Respondent No.5-College. The Caste Scrutiny Committee issued the validity certificate only on 26th March 2021 and immediately thereafter the Petitioner submitted the said certificate with Respondent No.5 on 27th March 2021. In our view, once the Caste Scrutiny Committee issues a Validity Certificate it would relate back to the date on which the application was made by the Petitioner which was 11th December 2020.

Furthermore, the Petitioner having enclosed the token/receipt of her having made an application for issue of Caste Validation Certificate and this certificate having being issued on 26th March 2021 and having submitted the same on 27th March 2021, even the filing of the said certificate would be treated as replacement of the token/receipt filed along with the application form which is before 29th January 2021. Therefore, even if it is assumed that the Caste Verification Certificate has to be filed at the time of the admission confirmation, in the instant case it would be treated as having being filed on 29th January 2021 since the Caste Validation Certificate will replace the token/receipt which was enclosed along with application form. Therefore, even on this ground, in our view, it cannot be said that there is any delay in submitting the Caste Verification Certificate.

10. The Petitioner was possessing caste certificate dated 25th September 2013 and it was this Caste Certificate which was required to be verified by the caste scrutiny committee which was done on 26th march 2021 and therefore the said caste validity certificate having being filed and there being no dispute on the genuineness of such a certificate, in our view, the respondents were not justified in cancelling the admission. The Supreme Court in the case of Charles K. Skaria & Ors. vs. Dr. C. Mathew & Ors.¹ and Dheerender Singh Paliwal vs. Union Public

1 (1980) 2 SCC 752

Service Commission² has observed that if a particular fact was already in existence and only its verification was required to be done then merely because there is a delay in submitting such a verification certificate, the same cannot be a reason to hold such person disentitled. It is to be noted that on verification of one's social status, the recognition granted would mean that the claimant and his / her family members possessed such status since inception. In our view, ratio of these decisions squarely apply to the case of the Petitioner.

11. The CET Cell issued receipt-cum-acknowledgment of confirmation of admission to the course for the academic year 2020-21 on 29th January 2021. The College accepted the fees for the First Year B-Tech Engineering Course on 29th January 2021. The Petitioner submitted her Caste Validity Certificate with the College on 27th March 2021. On 13th August 2021 and 16th August 2021, the College issued a show cause notice to the Petitioner to cancel her admission which was replied by the Petitioner vide letters dated 17th August 2021 and 9th September 2021. Despite these facts, the College accepted fees from the Petitioner for 2nd year and 3rd year course on 30th August 2021 and 30th May 2022. In our view, the College having issued show cause notice on 13th August 2021 that was replied by the Petitioner on 17th August 2021 further proceeded to accept the fees for the subsequent two years of the

2 (2017) 11 SCC 276

course. This conduct would imply that the Respondents were deemed to have extended the date of submission of the Caste Validity Certificate. We, therefore, are of the view that in these peculiar facts, the College was not justified in cancelling the admission after having accepted the fees for the next two academic years. The fact that the Respondents did not take any action for almost a period of one year after issuing the show cause notice that was promptly replied would also be a factor to be considered in favour of the Petitioner. There is no justification given for such a long delay and thereafter to cancel the admission on 25th July 2022 especially when the Admission Regulating Authority informed the College on 1st December 2021 itself about the fate of the Petitioner's admission. The College ought to have taken such a decision at the earliest. Therefore even on this count, the action of the College to cancel the admission cannot be justified.

12. We are conscious of the fact that after the cut-off date, the seats cannot be filled up, but the present case is not a case of filling up the seat after cut-off date. The issue in the present case is delay in submitting the Caste Validity Certificate after the cut-off date. We have already observed above, as to how the cut-off date of 31st March 2020 is not applicable to the present case and even if it is applicable then even in that scenario we have observed that the Caste Validity Certificate

having been submitted on 27th March 2021 would replace the token/receipt fee which was filed before the date of admission and therefore there is a compliance as per the requirement. Cancellation of the Petitioner's admission in her third year of studies would only result in the said seat going vacant thus depriving a candidate from the Other Backward Class category for whom it was reserved from pursuing the course. No other candidate from the OBC category can now be admitted in the said course.

13. The Petitioner had made an application on 11th December 2020 for issue of caste validity certificate. However, the Scrutiny Committee issued certificate on 26th March 2021 and immediately thereafter on 27th March 2021, the Petitioner submitted the same with Respondent No.5. The Petitioner's admission was confirmed on 29th January 2021. The delay if any in non-submitting the caste validity certificate on or before the admission date certainly cannot be attributed to the Petitioner and therefore even on this count the cancellation of admission by the Respondents cannot be justified.

14. The Petitioner as to today is at the fag end of her completing B-Tech Engineering Course. The consequence of cancelling the admission at this stage would not be of any advantage to anyone since the said seat cannot be now allotted to any other person and the

Petitioner having successfully reached at the fag end cannot be pushed back. On the contrary, the Petitioner having almost completed her course would be worst off since knowledge acquired by her would be of no use to the society or to her in the absence of her qualification. The object of giving benefit to “OBC Category Students” for seeking admission would be frustrated in the present case. If that is the Constitutional mandate then we will be failing in our duty if an admission of bright engineer is cancelled at the fag end of her course, merely on the ground that there is delay in submitting the Caste Validity Certificate especially when we have already observed that there was no a delay in submitting the Caste Validity Certificate. We cannot hold the requirement of submitting the Validity Certificate in the facts of the present case as suggested by the Respondents since it would result in causing manifest injustice to the Petitioner.

15. The view which we have taken is supported by the decision of Nagpur Bench of this Court in the case of **Kuldeep s/o Sanjay Deshmukh vs. State of Maharashtra & Ors.**³ to which one of us (A.S. Chandurkar, J.) is a Member wherein on somewhat similar facts, the admission of the student therein was regularized.

16. Viewed from any angle, in our view, the College was not justified in cancelling the admission of the Petitioner. We, therefore, pass

³ Writ Petition No.326 of 2020 dated 13th July 2022

the following order :-

ORDER

- (i) The communication dated 25th July 2022 issued by the Respondent No.5-College cancelling the admission of the Petitioner is quashed and set aside.
- (ii) The Respondents are directed to permit the Petitioner to complete her course of B-Tech Mechanical Engineer by permitting her to appear for the exams and if for any year the marksheet is not issued then the same be issued forthwith.
- (iii) Writ Petition is allowed in terms of prayer clause (a)

(a) To issue appropriate writ, order or direction under Article 226 of the Constitution of India.

i) To hold and declare that, the impugned action of the Respondent No. 2, 3 and 5 for not accepting the Caste Validity Certificate dated 26.03.2021 issued by the District Caste Certificate Scrutiny Committee Sangli sent by the Petitioner on 27.03.2021 through E-Mail and by physical dated 30.03.2021 to the Respondent No. 5 College is arbitrary, illegal and bad in Law.

ii) To quash and set aside the Letter/Communication dated 25.07.2022 issued by Respondent No. 5 College thereby cancelled the admission of the Petitioner and to be revoke the said decision of cancellation of admission of the Petitioner in the Respondent No. 5 College and further necessary direction may be issued to the Respondent No. 2 and 3 to accept the Caste Validity Certificate dated 26.03.2021 issued by the District Caste Certificate Scrutiny Committee Sangli in favour of the Petitioner;

iii) To hold and declare that, the Petitioner is eligible and qualified for Course of Mechanical Engineering for the academic year 2022-23 of the Respondent No. 5 College by considering Caste Validity Certificate dated 26.03.2021 issued by the District Caste Certificate Scrutiny Committee Sangli in favour of the Petitioner;

- (iv) Rule is made absolute in above terms with no order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)