

(2001) 09 GUJ CK 0027
In the Gujarat High Court

Case No : Special Civil Application No's. 6312 and 6629 of 2001

Dr. Kashyap Surendrabhai Naik

APPELLANT

Vs

Dr. D.N. Shah or his Successor

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Constitution of India, 1950 — Article 15(4), 226

Citation : (2001) 21 GLH 725

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : Arun H. Mehta in Special Civil application No. 6312 of 2001 and G.M. Joshi, in Special Civil application No. 6629 of 2001, for the Appellant; Manisha Shah AGP for Respondent No. 1, Mitul K. Shelat, for Respondent No. 2, B.M. Mangukiya, in Special Civil Application No. 6312 of 2001, Manisha Shah AGP for Respondent No.1, Mitul K. Shelat for Respondent No.2 and B.M. Mangukia for Respondent No. 3 in Special Civil Application No. 6629 of 2001, for the Respondent

Judgement

R.M. Doshit, J.—Both these petitions involve similar set of facts and identical question of law. Both these petitions are, therefore, with the consent of the learned advocates decided by this common judgment and order.

2. The petitioner in Special Civil Application No. 6629 of 2001 is a Doctor belonging to Socially & Educationally Backward Class as well as Nomadic Tribe. She seeks admission to Post Graduate Medical course on the seat reserved for Socially & Educationally Backward Class. The petitioner in Special Civil Application No. 6312 of 2001 also belongs to Socially & Educationally Backward Class as well as a Nomadic Tribe. He also seeks admission to the Post Graduate Medical course on a seat reserved for Socially & Educationally Backward Class. Both the said petitioners had secured admission to Medical College at undergraduate level as a member of Nomadic Tribe on a surplus seat reserved for Scheduled Tribes. The question is whether they can now claim admission to Post Graduate Medical Course as Socially & Educationally Backward Class

candidates. One more question arises so far as the petitioner in Special Civil Application No. 6629 of 2001 is concerned i.e., whether she can be said to be belonging to a creamy layer so as to exclude her from the benefits of the reservation for Socially & Educationally Backward Class.

3. It appears that in the matter of admission to Medical Colleges, the Government has provided for reservation for several categories of candidates namely, Scheduled Castes, Scheduled Tribes, Socially & Educationally Backward Classes. Be it noted that no reservation has been provided for the persons belonging to Nomadic Tribes/Denotified Nomadic Tribes. However, under the prevalent policy, the Government offers surplus seats reserved for Scheduled Tribes to the candidates belonging to the Nomadic Tribes/Denotified Nomadic Tribes. It was under this policy that the petitioners secured admission to Medical Colleges at the Under Graduate Level i.e., though both the petitioners belong to Socially & Educationally Backward Class, they failed to secure admission on the seats reserved for such communities. However, they also happen to be belonging to Nomadic tribes and they secured admission on unutilised seats reserved for Scheduled Tribe candidates. In course of time, both the petitioners have passed their degree examination and have secured Bachelor's Degree. Both have sought admission to the Post Graduate Medical Course in the seats reserved for Socially & Educationally Backward Classes.

4. Mr. Mehta has submitted that Article 15(4) of the Constitution empowers the State Government for making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes & Scheduled Tribes. It is under the said power that the State Government has formulated the policy of reservation in admission to the medical courses at Under Graduate level as well as Post Graduate level. It is, thus, the constitutional right of the petitioners to claim admission on the seats reserved for Socially & Educationally Backward Classes. It is fortuitous circumstance that though the petitioners belong to Socially & Educationally Backward Class, they could not secure admission on the seats reserved for such candidates at the Under Graduate level. The petitioners, therefore, cannot be denied admission to Post Graduate Medical Courses on the reserved seats because they had failed to secure such admission at the Under Graduate level. The action of the respondents is thus arbitrary and unconstitutional. In support of his arguments, he has relied upon the judgments in the matters of Sida Nitinkumar Laxmankumar Laxmanbhai and Another Vs. Gujarat University and Others, ; Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, ; and of Ajay Kumar Singh and Others Vs. State of Bihar and Others, .

5. Learned AGP Mrs. Manisha Shah has appeared for the respondents and has contested the petition. She has relied upon the counter-affidavit and has submitted that the petitioners have entered the Medical College at Under Graduate level as the members of the Nomadic Tribes and they, therefore, cannot now seek admission as members of the Socially & Educationally Backward

Classes. She has further submitted that the claim of the petitioners has been closely scrutinized by the College Council in its meeting held on 16th July, 2001. The said decision reads as under :-

Kum. Goswami Madavi A. Sr. No. 9 of SEBC category of other than M.S University students was asked to produce order from the court that her custody was since to her grand mother, failed to produce the same in the interviews on 16-07-2001. She told the council that she got admission in M.B.B.S as a NT student.

She got the NT caste certificate in 1984 during her M.B.B.S admission but on the basis of certificate issued on 21.6.1994 in SEBC category. She had applied for post graduation in the SEBC category she took DCP on 02-07-2001 in the SEBC category. The council decided as since she has obtained admission in B.B.B.S as a NT category student, in postgraduation also she should be considered in the same category and she cannot be offered M.D Psychiatry and DCP which she took on 02-07-2001 as it is meant for SEBC category students. Then she was offered DCP Registration which was meant for ST category students. But she decline to accept.

The College Council decided that a candidate can get admission in postgraduation in the category in which he/she got admission in M.B.B.S course. This is to be incorporated in residency notice in future.

6. She has further submitted that that is the practice being followed by the College Council for the last two-three years. She has submitted that this Court should not exercise power of judicial review under Art. 226 and should not interfere with the admissions to the Post Graduate courses, unless the procedure is found to be arbitrary. In support of her contention, she has relied upon the judgments in the matters of Hemant L. Leuva Vs. H.S. Shah, Chairman, Admission Committee and Dean, and of Hetalkumar B. Shah v. Maharaja Sayajirao University & Anr., [1993 (2) GLH 691].

7. Learned advocate Mr. Mangukia appearing for the respondent no.3 - Dr. P. Devang has submitted that now that the respondent no. 3 has been given admission and the academic year has also started, his admission should not be affected adversely. He has relied upon the judgments of the Hon'ble Supreme Court in the matters of Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, and of Sanatan Gauda Vs. Berhampur University and others, .

Mr. Joshi has relied upon Divorce Deed of the parents of the petitioner in Special Civil Application No. 6629 of 2001 and has submitted that in view of the prevalent rules, the petitioner cannot be said to be a person belonging to creamy layer and she, therefore, cannot be denied admission to Post Graduate Medical Course on a seat reserved for Socially & Educationally Backward Classes.

8. In the matter of Dr. Sida Nitinkumar Laxmanbhai [Supra], a similar question

of admission to Post Graduate Medical course was the matter at dispute. The question was whether a candidate belonging to Socially & Educationally Backward Community can claim admission to the Post Graduate Medical Courses on reservation seat as well as unreserved category. The Court held that, "...the special provisions conferring certain benefits on members belonging to Scheduled Castes/Scheduled Tribes and Socially & Educationally Backward Class and the reservation made in their favour under the provisions of Arts. 15(4) and 16(4) of the Constitution are not in substitution of any other right which may otherwise be available to all the citizens of the country. Benefits of reservation and special provisions do not and in fact cannot substitute or supplant any other right of an individual belonging to Scheduled Caste/Scheduled Tribe or any other weaker section of the society. These benefits would be in addition to the already existing fundamental rights and other rights. If any scheme of reservation or special provisions is conditional or dependent upon truncating the fundamental or any other right of an individual, such scheme of reservation or special provision would be contrary to constitutional provisions and law to the extent that it curtails the fundamental right or any other right."

Similarly, in the matter of Ritesh R. Sah [Supra], the Hon"ble Supreme Court has held that, "... the contention that provision for reservation at the stage of admission to post graduate medical course is uncalled for and contrary to public interest, cannot be accepted. Firstly, the assumption on the basis of which this argument is addressed is untenable. A candidate who is seeking reservation at the stage of admission to post graduate medical course may not have availed of the benefit of reservation at the stage of admission to M.B.B.S course as he would have been admitted on his own merit in the general quota [open competition quota] but because the competition at the level of post-graduate medical course is extremely acute, he may have to seek the benefit of reservation. Therefore, the assumption that a student seeking benefit of reservation at the stage of admission to post graduate medical course has already enjoyed the benefit of reservation once previously is not necessarily true. Secondly, there is no rule under Article 15(4) that a student cannot be given the benefit of reservation at more than one stage during the course of his education career." The Court further held that, "...in view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantageous position than the other less meritorious reserved category candidates."

Similar is the view expressed by the Hon"ble Supreme Court in the matter of Ajay Kumar Singh & Ors. [Supra].

9. In the matter of Hemant L. Leuva [Supra], this Court has held that, "the Court cannot, in absence of any legal or Constitutional infirmity, substitute its judgment

for that of academicians, as if sitting in appeal. It is well settled that, the High Court cannot, in the exercise of its jurisdiction under Art. 226 of the Constitution (a) relax rules governing admission to educational institutions or rewrite them, (b) devise a scheme of its own relating to admission, in place of that made by statutory authority, (c) direct the educational institution to admit a particular candidate to a course contrary to rules. In matters relating to internal working of an educational institution and more particularly, in the matter of admissions, the Court will not interfere unless the act complained of is clearly beyond jurisdiction or contrary to the statutes, rules or regulations governing the institution, or there is a statutory duty which the authority has failed to perform or the impugned act is mala fide or arbitrary."

10. In the matter of Hetalkumar B. Shah [Supra], this Court has held that, "it is made abundantly clear from the aforesaid observations that judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which is authorized or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court. Under Article 226 this Court would have no jurisdiction to sit in appeal against the decision of the autonomous body not to relax the condition in favour of the petitioner. The Court must not usurp the discretion of public authority which is empowered to take its own decision."

In the matter of Krishna Priya Ganguly [Supra], the Hon''ble Supreme Court has deprecated the practise of granting provisional admission, pending the proceeding.

11. In the matter of Sanatan Gauda [Supra], the Hon''ble Supreme Court set-aside the action of the University in refusing to declare the results of the petitioner of the Pre-Law and Inter-Law examination. The said action of the University was set-aside, being barred by the principles of estoppel.

12. In the present case, it is an undisputed fact that both the petitioners belong to Socially & Educationally Backward Class as well as Nomadic Tribes. It is also an admitted fact that at the time of their admission the Medical College at Under Graduate level, both held the certificate of their belonging to Nomadic Tribe as well as to Socially & Educationally Backward Classes. The Government has not provided for any reservation for the persons belonging to Nomadic Tribes/De-Notified Nomadic Tribes. The petitioners did not secure admission to Medical College on the seats reserved for Socially & Educationally Backward Classes. However, under the prevalent policy of the State Government, the unutilized seats reserved for Scheduled Tribes were offered to the petitioners and that is how, the petitioners secured admission to the Medical College at the Under Graduate level. However, in my view, the petitioners" securing admission to Medical College as Nomadic Tribe candidates would not deprive them of the benefit that is conferred upon them as being the persons belonging to Socially & Educationally Backward Classes.

As observed in the judgments referred to hereinabove, it is competent to State Government to offer reservation at the Post Graduate level also. It is equally competent for a student to claim admission on the reserved seats at Post Graduate level, though he may not have secured admission at the Under Graduate level as a reserved category candidate. Hence, in my view, the petitioners are entitled to the benefit of reservation for Socially & Educationally Backward Classes and they cannot be denied that benefit merely because they failed to secure admission on such reservation at the Undergraduate level and had to secure admission as Nomadic Tribe candidates. It is merely fortuitous circumstance where the petitioners had to secure admission as Nomadic Tribe candidates because they failed to get admission as Socially & Educationally Backward Class candidates. Be it noted that except the bare statement made in the counter affidavit, no admission rules have been framed or the policy decision taken that the candidates entering the Medical College at Under Graduate level on any of the reserved categories shall avail of the admission at the Post Graduate level also in the same category. Even if such were the rules, would be arbitrary and unconstitutional, as observed in the matter of Sida Nitin Kumar Laxmanbhai [Supra]. In my view, therefore, the College Council is wholly unjustified in denying the admission to the petitioners at the Post Graduate level on the seats reserved for Socially & Educationally Backward Classes.

13. As regards the question whether the petitioner in Special Civil Application No. 6629 of 2001 can be said to be a person belonging to creamy layer, reference can be had to the Government Resolution dated 1st November, 1995, as explained in Circular dated 8th June, 1999. Under the said Resolution, several categories have been excluded from the benefit of reservation for Socially & Educationally Backward Classes. The relevant are - (a) where both the parents are Class-I Officers; (b) either of the parents is a Class-I Officer and (c) both the parents are Class-I officers but one of them has died or has been permanently incapacitated. It is an undisputed fact that the petitioner's mother was appointed as a Class-II Officer in the services of the State Government and has since been promoted as Class-I officer of the State Government. However, she and her husband are divorced since the year 1992 and now she is a single mother. Moreover, the petitioner has also produced a copy of certificate dated 16th December, 2000 issued by the City Mamlatdar, Ahmedabad certifying that the petitioner belongs to Socially & Educationally Backward Class and does not belong to creamy layer. The petitioner having produced certificate issued by the competent authority, there is no reason why the same should not be believed. Considering the certificate issued by the Competent Authority, I hold that the petitioner in Special Civil Application No. 6629 of 2001 is entitled to seek admission to the Post Graduate Medical Courses on the seat reserved for Socially & Educationally Backward Class.

14. In view of the above discussion, the impugned decision of the College Council dated 16th July, 2001 in so far as it refers to the petitioner in Special Civil Application No 6629 of 2001 is quashed and set-aside. The College Council is

directed to regulate admissions to the reserved seats in Post Graduate Medical Courses, keeping in view the above decision. The said exercise shall be completed within fifteen days from today. Rule is made absolute. Parties shall bear their own costs. Registry is directed to maintain copy of this order in each of these petitions. Direct service is permitted.