

(2008) 03 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 7853 of 2005

Julaha (Ansari) Safiullah Jamaluddin

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 03 GUJ CK 0046

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Hashim Qureshi, for the Appellant; Trusha Patel, AGP for Respondent 1, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case appear to be that it is the case of the petitioner that the petitioner belongs to Ansari (Julaha) - Muslim caste and as per the petitioner, the father of the petitioner and the brother are also issued certificates for such reserved category. On 6.11.2003, a caste certificate was issued by the Deputy Direction (Developing Caste), certifying that the caste of the petitioner is Musalman - Julaha and based on the said certificate, the petitioner applied for admission to PTC and he was granted admission in the year 2004. It appears that thereafter on 6.12.2004, respondent No. 2 initiated the proceedings, calling upon him to remain present for verification of the caste certificate and thereafter, he further gave the opportunity of hearing to the petitioner and the order dated April 20, 2005 has been passed by him, whereby the earlier caste certificate issued on 26.9.2002 by the Dy. Director is cancelled. It is under these circumstances, the petitioner has approached this Court by preferring the present petition.

2. Heard Mr.Qureshi, learned Counsel appearing for the petitioner and Ms.Patel, learned AGP for the State Authorities. Respondent No. 3 is served, but nobody has appeared on behalf of respondent No. 3.

3. It appears that the principal contention of the petitioner is that he belongs to

Musalman - Julaha caste and the caste of the father was also mentioned in the School record and his brother is also issued certificate for such purpose. It is his contention that even in the original School record of his place of birth at Gorakhpur, his caste is mentioned as Musalman - Julaha. It has been submitted that respondent No. 2 in the impugned order has relied upon the material for which no opportunity has been given to see the report or to cross-check or verify the said aspect and it has, therefore, been submitted that the decision for cancellation of the certificate is in breach of the principles of natural justice and, in any case, is not warranted, since the petitioner belongs to Musalman - Julaha caste.

4. Whereas on behalf of the respondents No. 1 and 2, it is the contention of the learned AGP that the original record was got verified as mentioned in the order and it was found that the word "Julaha" is subsequently added and, therefore, as such, the petitioner belongs to Islam (Ansari) caste and he has taken undue benefit by production of the record, which did not exist genuinely and, therefore, the order passed for cancellation of the certificate is legal and valid.

5. It further appears that pending the petition the petitioner has continued to prosecute the studies of PTC and the admission is not cancelled. Not only that, but on 13.5.2005 this Court (Coram: M.R. Shah, J.) had passed the following order:

In view of the fact that it is not possible for this Court to hear the matter today due to shortage of time, S.O. to 26th June, 2005. By way of ad-interim relief and without prejudice to the rights and contentions of either parties and with a specific understanding that the petitioner will not claim any equity the petitioner is permitted to appear in ensuing 2nd year PTC examination. The respondents are directed to allow the petitioner to appear in the 2nd year PTC examination commencing from 16th May 2005 without prejudice to the rights and contentions of the parties and the same will not create any equity in favour of the petitioner which is also agreed upon by the petitioner and that the result of the petitioner in 2nd year PTC examination should not be declared till further orders. D. S. is permitted today.

6. In view of the aforesaid order, the petitioner has appeared in the second year PTC Examination, which is final year examination and the result is not declared since it is so ordered by this Court.

7. The learned Counsel for the petitioner submitted that even if this Court finds that the order passed by the Director for cancellation of the certificate does not deserve to be interfered with by this Court since there are disputed questions of facts and the petitioner is to be relegated to other remedy of civil suit for establishing the status as that of Muslim - Julaha, the orders may be passed by this Court, directing the College Authority - respondent No. 3 herein to declare the result with the further direction that until it is so declared by any competent order of the Civil Court, the petitioner shall not make use of the reserved

category of economically backward class and shall claim rights as that of general category only. He also submitted that as the situation has become irreversible inasmuch as the petitioner has already prosecuted the studies and as also appeared at the examination of PTC, if this Court finds, the petitioner is ready to deposit the appropriate penalty subject to the final decision, which may be taken by the Civil Court in appropriate Civil Suit.

8. Whereas, on behalf of the State Authorities, the contention of the learned AGP is that if the certificate is cancelled and the petitioner was not entitled to the benefits of the reserved category of OBC and having taken such benefit, the result may not be ordered to be declared by this Court and it is the contention of the learned AGP that it is the case of fraud and the penalty would not be a substitute or that this Court on the sympathetic consideration may not permit the declaration of the result. She submitted that if the petitioner has taken any undue benefits of the certificate issued on any incorrect record, then in that case the petitioner has to face the consequence of taking undue benefit, to which he was not legally entitled. Therefore, it has been submitted that this Court may dismiss the petition, without directing the College Authority to declare the result.

9. The matter as such can be segregated into three parts; one is examining the legality and validity of the order of respondent No. 2 for cancellation of the certificate; the second is for the finality to be attached to the decision of respondent No. 2 for cancellation of the certificate; and the third is for appropriately dealing with the situation created, not only pending the petition, but on account of the interim order passed pending the petition by this Court.

10. It is an undisputed position that the certificate was issued by the Dy. Director on 26.9.2002 vide No. 6732, copy whereof is produced at Annexure C. Therefore, based on the certificate, not only the petitioner has applied for admission to PTC, but he has been considered for admission to PTC by respondent No. 3 and the petitioner has been admitted for the course of PTC based on the certificate issued on 26.9.2002 to the effect that the petitioner belongs to Musalman - Julaha, which is a caste falling in the category of the Other Backward Class (OBC) - reserved category. It appears that on 12.11.2003, the proceedings are initiated for production of the evidence in support of the certificate and the petitioner was directed to remain present with the parents/guardians before respondent No. 2. The petitioner has produced certain documents to support his claim that the petitioner, his father as well as his brother, as per the School record, belong to Islam - Musalman - Julaha caste. It also appears that the petitioner and his father have migrated from U. P., and the basis of the record of the School in Gujarat is the basis of the record of the School in Gorakhpur, U.P. It appears from the impugned order of the respondent No. 2 that pending the proceedings, the respondent No. 2 has received report from the Social Welfare Officer, Head Office, Developing Castes, Gandhinagar, stating that the original record of the School of Ahmedabad, whose certificate is produced, was verified with the original certificate and it appears that in the original certificate of Lalbahadur

Shastri Poorva Mdhyamik Vidhyalay, Gorakhpur, the word "Julaha" is mentioned by a different ink and, therefore, it is subsequently added. The Respondent No. 2 in the impugned order has also referred to the said report at internal page 3 of the impugned order. Therefore, it can be said that the record of the School at Ahmedabad, which is prepared on the basis of the School at Gorakhpur, hence the certificate of the School at Ahmedabad and of Gorakhpur are doubtful. As per respondent No. 2, who has acted upon the report, the word "Julaha" is subsequently added and, therefore, cannot be relied upon. Under these circumstances, at the most it can be said that the respondent No. 2, in view of the aforesaid report, was justified in cancelling the certificate granted by the Dy. Director, but thereby it cannot be said that such would prevail for all time to come.

11. As a matter of fact, if a conclusive declaration is to be given on the aspects as to whether the petitioner belongs to Islam (Ansari)- Julaha caste or Islam - Julaya caste, which is one of the castes in the reserved category of OBC, a full-fledged evidence may also be required to be led by the petitioner for such purpose. At such inquiry, it will be required for the petitioner to establish, by reliable and authenticated material, to show that the petitioner belongs to a particular caste declared in the reserved category. Until such appropriate declaration is made, the petitioner cannot claim the status of a reserved category. Therefore, even if the certificate is cancelled by respondent No. 2 of a reserved category, in view of the evidence available before him, it cannot be said that the petitioner would be remediless. The petitioner in such circumstances, once the certificate is cancelled, would not be entitled to take any benefit of reserved category until such status is conferred upon him by an Officer authorised for such purpose. If the competent officer finds that on the basis of the evidence available before him, a person cannot be said as belonging to a particular caste, the remedy for such person in such circumstances, would be to get appropriate declaration from the competent Civil Court, for such purpose. It is only at such suit, there can be elaborate leading of evidence, production of documents, opportunity for examination and cross-examination of the witnesses and thereafter, a conclusive declaration can be issued if it is so proved that a person belongs to a particular caste or a community. If such declaration is so given by the competent Civil Court only thereafter, the person concerned may be required to approach once again the officer concerned for issuance of such certificate and after verifying the genuineness of the order of the competent Civil Court, the competent officer may be required to act upon for issuance of such certificate.

12. In the present case, the matter is at the stage of cancellation of the certificate by the officer on the basis of the material available before him. If the petitioner is so aggrieved, the remedy for the petitioner would be to approach before the Civil Court for seeking appropriate declaration. Even otherwise also, this Court, in a petition under Article 226 of the Constitution of India, cannot conveniently undertake the exercise of resolving the disputed questions of facts.

Therefore, the proper course for the petitioner would be to resort to the civil suit for seeking appropriate declaration that the petitioner belongs to Musalman - Julaha caste. Hence, it appears that even if the order for cancellation of the certificate is to operate, the only consequence would be that the petitioner would not be entitled to benefit of the reserved category, but thereby it cannot be said that the petitioner will be deprived of from resorting to the remedy of appropriate suit for declaration that the petitioner belongs to a particular caste or community. However, it does appear from the record and more particularly the perusal of the order passed by the respondent No. 2 for cancellation of the certificate that the exercise of the power for cancellation of the certificate by respondent No. 2 cannot be said as unjust or arbitrary, but such exercise of power shall be subject to the remedy of the petitioner to seek appropriate declaration from the Civil Court that the petitioner belongs to Musalman - Julaha caste. The aforesaid shall conclude the aspects of first and second parts of the petitions.

13. Concerning to the third part, it appears that it is undisputed that the certificate remained in operation until the same came to be cancelled by the impugned order. It is also undisputed position that pending the operation of the certificate the petitioner applied for admission of PTC in reserved category and the petitioner was granted admission. At the stage when the certificate came to be cancelled, it became subject matter of this petition as observed and reproduced hereinabove, the order dated 13.5.2005 came to be passed by this Court, whereby the petitioner was permitted to appear in the examination and the result was ordered not to be declared. As per the petitioner, he has appeared at the examination and the result is not declared in view of the interim order passed by this Court. When the matter is considered for final disposal, irreversible situation has happened as under:

- (i) The certificate of the reserved category operated and was used for seeking admission to PTC.
- (ii) One seat of reserved category in PTC in Government College is already utilized on account of the operation of the certificate and admission having been granted to the petitioner.
- (iii) The petitioner has prosecuted the studies of PTC and has completed the study of PTC.
- (iv) The petitioner has appeared at the examination and rather was permitted to appear at the examination pursuant to the interim order passed by this Court.

14. It is true that in normal circumstances, if the decision for cancellation of the certificate is not interfered with by this Court, the consequence may arise for leaving the party to face the adverse circumstances or the consequences, as the case may be. However, in view of the aforesaid peculiar facts and circumstances of the case and the situation narrated hereinabove, if the admission granted to the petitioner on the reserved category based on the certificate, which is

subsequently cancelled, is declared as illegal, no useful purpose would be served, because the seat has already been utilized and such benefit of the reserved category now cannot be transferred or allocated to any other student, who otherwise may be legitimately entitled for the benefit. This Court, in case of "Shirin S. Qureshi v. National Institute of Fashion Technology" reported in 2004(1) GLH was required to consider more or less similar fact situation. In the said decision, this Court, inter alia, observed at paragraphs 6, 7, 8, 9 and 10 as under:

6. There cannot be any dispute on the point that any false representation by any student cannot be allowed to be tolerated. Similarly, there cannot be also dispute on the point that a reserved seat should and must go to the category for which reservation is made and nobody else should be allowed to make use of the reserved seat who is not entitled as per the policy of reservation. There can also be no dispute on the point that if a student has made false representation at the time of getting admission, such student cannot be allowed to take any undue benefit of his/her own wrong. However, had it been a case at the time when the student was just admitted, and the admission is cancelled on such ground the matter would be different. This Court while exercising power under Article 226 would have dismissed the petition at the threshold, because normally such student cannot be allowed to invoke the jurisdiction of this Court who himself or herself is party to false representation.

7. But in the present case, three peculiar and irreversible situations have arisen on account of the gap of time. One is that though the certificate which was produced was of "SEBC" category, the college authorities have also not verified the application form with the certificate itself at the time of admission and not only that but thereafter also until the course is completed and even the examinations are over, except viva voce, no steps are taken for cancellation of the examination by the respondent-college. The second is that the petitioner has undergone the studies for a period of about two years and the process of study is completed and it is only at the time of viva voce examination, the admission is cancelled. The third is that, even if this Court is to uphold the decision of the authority of cancelling the admission, the same is not to result into making room for benefitting the "SC" candidate, who otherwise, would have been entitled to admission because even if the admission is cancelled for the seat of 2001, now in the year 2003 no student can be admitted on such seat nor a degree can be conferred on such "SC" candidate. The aforesaid is coupled with one additional aspect that the petitioner is otherwise belonging to "SEBC" category which is also Socially and Economically Backward Class identified by the State Government and it is not the case of the respondent authority that any student belonging to "SC" category had made any complaint when they did not get the admission on reserved quota of S.C. In view of the aforesaid peculiar facts and circumstances, I find that if the impugned order for cancellation of the admission is maintained it may result into wastage of public time and money of not only the student but also of the respondent-institution because when any student is admitted in any

academic course, which is, in the present case, a professional course of Fashion Designing, even if the student pays the fees, the institution itself is also required to incur expenses for maintenance of the college. If the cancellation of admission is maintained it may also result into wastage of time and money, inasmuch as, time consumed for undergoing course for two years cannot be restored back nor such time can be allotted to any person who otherwise would have been entitled for. As such, on account of delay caused in taking action by the respondent-authority, an irreversible situation is created which if allowed to be maintained, would result into damage to all and benefit to none. I am also inclined to make the aforesaid observations in view of the decision in the case of Harphool Singh (supra) as well as another decision of the Delhi High Court in the case of Inder Parkash Vs. Deputy Commissioner and Others, , which is also considered by Rajasthan High Court while taking decision in the case of Harphool Singh (supra).

8. However, I am not inclined to fully agree with the reasoning recorded by the Delhi High Court as well as Rajasthan High Court in the above referred cases, and I further find, that the student who has made representation, which as per the case of the institution was false. but as for the student, it was bona fide, cannot be allowed to get away scot free. If such misrepresentations are leniently viewed the consequences would be that a student may be tempted to undertake such type of wrong disclosure or misrepresentation while securing admission in any academic course. Therefore, I find that even if this Court is to ultimately hold that the student should be allowed to appear in the final viva examination since she has already completed the course and on account of delay an irreversible situation has arisen, this Court should impose penalty upon the student so as to have deterrent effect of such conduct on the part of the students. If such penalty is not imposed, it may encourage such false misrepresentation on the part of the students and secondly may result into procuring the benefit without suffering any penalty whatsoever.

9. During the course of hearing, Mr.Tirmizi learned Counsel appearing for the petitioner under instructions has fairly submitted that since it is, in any case, a mistake though may be bona fide, the petitioner would be agreeable to pay the penalty as may be imposed by the Court or any other condition which this Court may find it proper, and he submitted that the petitioner is also ready to pay the penalty of Rs. 50,000/- for such mistake that has occurred in the application form, though otherwise, the petitioner has successfully completed the study. I would have examined the matter further, but in view of the aforesaid submissions made by Mr. Tirmizi, I find it proper to leave the matter at that stage, except observing that the petitioner should also suffer the penalty for life time, to see that such misrepresentation, may be bona fide, will not be leniently viewed and not only the petitioner but other students also may get an example that such misrepresentation is to attract heavy penalty.

10. In view of the aforesaid observations and discussion, I find that the following directions shall meet with the ends of justice:

(A) The petitioner shall pay penalty of Rs. 50,000/- within a period of two weeks from today to the respondent-authority and shall also submit written apology for the mistake that has occurred in the application form, with an assurance that such mistake shall never be repeated by her in future during her life time. Such apology shall also be filed with the respondent-authority within a period of two weeks from today.

(B) Upon the petitioner fulfilling the earlier direction, the respondent shall hold the viva voce examination of the petitioner and shall declare the result of the petitioner of final G.M.T. Examination in accordance with law.

15. In the present case also, more or less the same fact situation arises for consideration. Therefore, I find that in view of the decision of this Court in case of "Shirin S. Qureshi" (supra) upon imposition of appropriate penalty, the action of prosecuting the studies in PTC can be allowed, but upon the declaration by the petitioner that the petitioner shall not take any benefit of the reserved category until such status is conferred by the competent authority known to law and till then the petitioner shall continue to claim status as that of general category only.

16. As regard the declaration of the result is concerned, as observed earlier, it is on account of the interim order passed by this Court, the petitioner was permitted to appear in the examination. At this stage, it would be worthwhile to extract the view of the Apex Court in case of "R. Vishwanatha Pillai Vs. State of Kerala and Others", and more particularly the observations made at paragraph 28, which reads as under:

In this case we find that the appellant had joined the Regional Engineering College in the year 1992. He completed the course of his studies in the year 1996 under the interim orders of this Court which were subject to the final orders to be passed in the writ petition. No purpose would be served in withholding the declaration of the result on the basis of the examination already taken by him or depriving him of the degree in case he passes the examination. In terms of the orders passed by the Constitution Bench of this Court in *State of Maharashtra v. Milind and Ors.*, (supra) we direct that his result be declared and he be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him. His caste certificate has been ordered to be cancelled. Henceforth, he will be treated as a person belonging to the general category for all purposes.

17. Therefore, I find that keeping in view the aforesaid observations of the Apex Court, the result of the petitioner can be allowed to be declared with the clarification that the petitioner shall not be treated as belonging to OBC category in future, either for obtaining service or for any other benefits, since the caste certificate has been cancelled and the petitioner shall be treated as a person belonging to the general category for all purposes. However, the aforesaid shall continue until the appropriate declaration is given by concerned Civil Court and

based on such declaration a certificate is issued by the competent authority.

18. The learned AGP heavily relied upon the decision of the Apex Court in case of " Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others, for contending that it was a case of fraud and, therefore, the delay in detection of the fraud would not confer any equity upon the petitioner and it may be declared by this Court that the admission taken by the petitioner based on the certificate, which was based on the concocted record as illegal and the result also may not be ordered to be declared.

19. In the case before the Apex Court in case of "Ram Preeti Yadav" (supra), the Apex Court, in terms, found that it is not only found a case of fraud, but such was within the knowledge of respondent No. 3 before the Apex Court and it was also coupled with the circumstances that earlier writ petition was filed, which was dismissed and for the same cause, but with different prayer, another writ petition was filed, which was allowed by the High Court. In the present case, the allegation of fraud is by way of ex parte version and it cannot be said that the fraud is proved. At the most, it can be said that the certificate which is produced of the School of Gorakhpur is doubtful. Further, no evidence has come on record that the certificate is not genuine. The inquiry and the version by the officer of respondent No. 2 are ex parte and, in any case, there is no verification of certificate in the School at Gorakhpur after comparison of original record. Therefore, I cannot accept the contention of the learned AGP that it is a case of proved fraud. Consequently as the present case not being a case of fraud, the decision is of no help to the learned AGP in supporting her contention.

20. In view of the above observations and discussions, the impugned order passed by respondent No. 2 is not interfered with, but with the observations that it would be open to the petitioner to file appropriate civil suit for appropriate declaration that the petitioner belongs to Musalman - Julaha caste. It is further observed that if such a declaration is given by the Civil Court, thereafter it would be open to the petitioner to move the authority for issuance of the certificate in accordance with law.

21. It is also directed that the result of the petitioner of PTC shall be declared on condition that:

(i) the petitioner deposits an amount of Rs. 20,000/- with respondent No. 2 within a period of six weeks from today as penalty and;

(ii) submits declaration before the respondent Nos. 2 and 3, within a period of six weeks from today, that until the certificate is granted afresh after the declaration, if any, of the Civil Court, the petitioner shall not claim benefits of OBC category, as if the petitioner belongs to Musalman - Julaha caste, and shall treat himself as that of general category only.

22. After the aforesaid conditions are complied with, respondent No. 3 shall declare the result of the petitioner immediately.

23. It is clarified that if the aforesaid suit is filed by the petitioner, the Civil Court shall independently examine the matter and shall not be guided by the order of this Court for declaring the result of PTC or any other observations pertaining that to.

24. The learned AGP prays that the operation of this order for declaration of the result be stayed for some time, so as to enable the State to approach before the higher forum, if it is so desirous.

25. Considering the facts and circumstances, as six weeks" time is otherwise also available, the said prayer is declined.

26. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly.