

(2011) 05 GUJ CK 0111
In the Gujarat High Court

Case No : Letters Patent Appeal No. 612 of 2008 in Special Civil Application No. 7389 of 2008 and 613 of 2008 and Letters Patent Appeal No. 613 of 2008 in Special Civil Application No. 7388 of 2008

Thakore Bhalabhai Umabhai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 05 GUJ CK 0111

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : K.B. Pujara, for the Appellant; N.J. Shah, Asstt. Government Pleader and H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—We have heard learned Counsel Mr. K.B. Pujara for the Appellant, learned Assistant Government Pleader Mr. N.J. Shah for Respondent Nos. 1 and 2, and learned Counsel Mr. H.S. Munshaw for Respondent No. 3.

2. These Letters Patent Appeals have been filed challenging order passed by learned Single Judge dated 14.5.2008, passed in Special Civil Application No. 7388 of 2008 and Special Civil Application No. 7389 of 2008.

3. The facts are that the Appellants are blind. They applied for recruitment for the post of Vidhyasahayak (Music) pursuant to the advertisement dated 17/19.4.2007. Pursuant to the said advertisement, blind candidates were eligible and they were to be given priority over the other candidates. The Appellants filled in their forms, wherein they claimed that they belonged to Socially and Economically Backward Class (SEBC). But, in support of their claims, the Appellants did not file any certificate as the Appellants were under impression that since blind persons have got priority, as per the advertisement, they would be selected. However, since the Appellants did not submit their caste certificate

along with the applications, the Respondents treated the Appellants to be in Open General category and there, the Appellants could not succeed.

4. It is admitted to the counsel for the Respondents that had they been considered in SEBC category, they would have secured first and second position respectively.

5. The learned Counsel for the Appellants has alleged in para 5 of the writ petitions that other less meritorious candidates have been given appointment in SEBC category. It has been stated that the Appellants claimed that five candidates had also not submitted their SEBC certificates along with their applications, but their certificates were subsequently accepted by the Respondents at the time of interview on 2.5.2008. This fact was denied by learned Counsel Mr. H.S. Munshaw in the affidavit-in-reply filed on behalf of Respondent No. 3, which is taken on record. But, in para 2 itself, Respondent No. 3 has admitted that one candidate Mr. Bakul Dhrangi belonging to Scheduled Tribe category had also not submitted his caste certificate, but he was permitted to produce his caste certificate of Scheduled Tribe category at the time of interview.

6. On the argument of the learned Counsel for the parties, we are of the considered opinion that once the Respondents permitted Mr. Bakul Dhrangi to submit his caste certificate at the time of interview, though he had not submitted the caste certificate along with his application, similar being the case of the Appellants in SEBC category, the Respondents were required to accept the caste certificates submitted by the Appellants at the time of interview and they could not discriminate the Appellants only on the ground that the caste certificate of Scheduled Tribe category could be accepted at the time of interview. This reason given by the Respondents is not acceptable to us and the action of the Respondents is violative of Article 14 of the Constitution of India in view of the fact that in SEBC category, the Appellants have received the highest marks and as a matter of fact, they are first two toppers who are blind but have topped even in SEBC category in spite of their handicap.

7. In the result, both these appeals succeed and are allowed. Order of the learned Single Judge dated 14.5.2008 passed in Special Civil Application No. 7388 of 2008 and Special Civil Application No. 7389 of 2008 is set aside. The Respondents are directed to consider the caste certificates of the Appellants in SEBC category and accept their caste certificates and adopt the same procedure for selection which has been adopted in the cases of other candidates. In case, the Appellants are found successful, they shall be considered for appointment. The aforesaid exercise shall be completed by the Respondents on or before 30th June 2011.