

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6176 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NIRAV JETHABHAI KARMATA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6176 of 1997
MR TUSHAR MEHTA for Petitioner No. 1
MS MANISHA LAVKUMAR, Learned A.G.P. for Respondent No. 1-4
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2002

ORAL JUDGEMENT

This petition has come up for final hearing today. In view of the order which the Court proposes to pass, it is not necessary to set out all the facts in detail.

2) The petitioner applied for admission to the First MBBS course and claimed the benefit of reservation available to Scheduled Tribe candidates. The authority in-charge of admissions to the medical courses did not accept the petitioner's case that he belongs to a Scheduled Tribe. The petitioner submitted that since the District Social Welfare Officer, Junagadh had already issued a certificate in favour of the petitioner stating that he belongs to Rabari community which is a Scheduled Tribe, the authorities were not justified in insisting upon production of a certificate from the Mamlatdar.

3) While admitting the petition on 21-10-1997, this Court passed the following order :-

"Rule. By way of interim relief, it is ordered that during the pendency of the petition the certificate which is issued in favour of the petitioner by the Director of Scheduled Tribes' Development, State of Gujarat dated 27-7-1994, which is at Annexure "E" and the consequential certificate issued by DSWO, Junagadh, which is at Annexure "B" to the petition, will not be revoked."

Pursuant to the aforesaid interim order, the petitioner's case was considered for admission to the first MBBS on the basis that the petitioner belongs to a Schedule Tribe and the petitioner accordingly secured admission to the first MBBS course.

4) The matter has reached final hearing today. Mr. Tushar Mehta for the petitioner states that the petitioner has already passed his MBBS examinations and is doing internship.

5) Ms. Manisha Lavkumar, learned A.G.P. for the respondent authorities submits that the petitioner had secured admission to the first MBBS course on the strength of the Vigat Darshak Card issued by the Deputy Director of Tribal Development pursuant to the report submitted by Mr. Malkan, officer of the State Government. The learned A.G.P. further submits that as per the Government Resolution dated 21-9-1994 the Mamlatdar is the competent authority to issue certificate, whether a persons belongs to Scheduled Tribe or not. It is further submitted that the authorities have come across two certificates issued in favour of the petitioner certifying the petitioner as belonging to Rabari Community. In one certificate No. 82 dated

13-9-1990, the petitioner is shown as Karmata Niravbhai Jethabhai residing at Dhamanines, Taluka Bhanvad of Jamnagar district, which was issued by the District Social Welfare Officer, Jamnagar District Panchayat while in the other certificate No. S/W/P/7/97 dated 21-9-1997 issued by the District Social Welfare Officer, Junagadh District Panchayat, the petitioner is shown as Karamata Niravbhai Jethabhai residing at village Sandbheda, Taluka Talala of District Junagadh. It is submitted that since the petitioner has been coming forward with such different certificates, the authorities entertain doubt about the genuineness of the petitioner's claim.

Ms. Manisha Lavkuamr, learned A.G.P. further submits that the question would again crop up when the petitioner applies for admission to post graduate medical courses and therefore, the controversy is required to be decided on merits.

The learned A.G.P. further states that the Commissioner for Tribal Development by his order dated 6th March, 2000 has cancelled the Caste Certificate dated 21st April 1997, issued in favour of Jethalal Varsangbhai Karmata, who is petitioner's father.

6) Mr. Tushar Mehta for the petitioner states under the instructions that the petitioner's father is Jethalal Varsangbhai Karmata, but he is not a resident of Shaktinagar in Mangrol Taluka of Junagadh district described at Sr. No. 12 in the order of Commissioner of Tribal Development dated 6-3-2000. The petitioner's father had never obtained any Caste Certificate and that this is also apparent from the order dated 20-10-2000 of this Court in Special Civil Application No. 2813 of 2000. Mr. Mehta further states that the petitioner's mother belongs to Dhamanines, Taluka Bhanvad of District Jamnagar and petitioner's father has been residing at Village Sandbheda in taluka Talala of Junagadh district and therefore, there are two certificates as both the parents of petitioner are belonging to Rabari Community. Mr. Mehta further submits that admission rules themselves provide that Caste Certificate was required to be obtained from any of the officers listed in the Rules and District Social Welfare Officer is one of them.

7) It is not necessary for the Court to go into the merits of the controversy raised in the petition because by virtue of the mandatory interim order dated 21-10-1997 the petitioner has already secured admission to the first MBBS course on the basis that he belongs to a Scheduled Tribe; with passage of time the petitioner has also

passed the final MBBS examination and is doing the internship. The petition would, therefore, be required to be disposed of as infructuous.

At the same time it is required to be noted at this stage that the efficacy of the contents of Vigat Darshak Card has already been examined by the Division Bench of this Court in the judgement dated 31-8-2000 in Letters Patent Appeal 1670 of 1999 in Special Civil Application No. 4593 of 1999 and in connected appeals. The said appeals filed by the State of Gujarat were partly allowed and the direction given by a learned Single Judge of this Court requiring the authorities to proceed only on the basis of the Vigat Darshak Card has been set aside and the principles for examining the question whether a candidate belongs to Scheduled Tribe or not have been laid down in the aforesaid judgement.

8) It, therefore, appears to the Court that it would be in fitness of things to dispose of this petition as infructuous at this stage, with a specific clarification that the interim order dated 21-10-1997 shall not bind the respondent authorities while considering any claim for reservation which the petitioner may make for the purpose of admission to the post graduate courses or for employment under the Government or any authorities on the basis that the petitioner belongs to a Scheduled Tribe. As and when the petitioner makes such a claim it will be open to the authorities to examine the petitioner's claim in accordance with law and the principles laid down by this Court in Letters Patent Appeal No. 1670 of 1997.

It is clarified that this Court has not gone into the merits of the controversy between the parties and the Court has not interfered with the admission granted to the petitioner on the basis that he belongs to a Scheduled Tribe only because with the passage of time the petitioner has already completed the MBBS course and therefore, the petitioner's admission to the MBBS course on the basis of the petitioner belonging to a Scheduled Tribe shall not be disturbed and therefore, the petitioner's admission to the First MBBS, Second MBBS and Third MBBS on the basis that he belongs to a Scheduled Tribed shall be treated as final and will not be distrubed, subject to the aforesaid clarification for future purposes.

9) The petition is accordingly disposed of. Rule is discharged with no order as to costs.

(M.S.Shah, J.)

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