

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13668 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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

ASHA D BHATT

Versus

DIRECTOR OF PRIMARY EDUCATION & 1

Appearance:

1. Special Civil Application No. 13668 of 1994
MR YV SHAH for Petitioner
MS DARSHNA PANDIT AGP for Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 31/01/2003

ORAL JUDGEMENT

Heard the learned advocates.

Pursuant to the advertisement published in the month of July, 1994, the petitioner had applied for admission to Primary Teachers Training College in the State of Gujarat. The admissions were processed by the Centralized Recruitment process. The results thereof was published in the newspaper on 9th December, 1994. The admissions to the female candidates of unreserved category stopped at 75.42%. Admittedly, the petitioner had not secured such high marks. She, therefore, could not secure admission to the Primary Teachers Training College. Feeling aggrieved, she has preferred the present petition.

The contention is two fold. Mr. Shah has submitted that as disclosed in the results published on 9th December, 1994, certain seats were reserved for Economically Backward Class candidates. Mr. Shah has submitted that the advertisement [Annexure-A to the petition] did not refer to any reservation for Economically Backward class candidates. Had such mention been made, the petitioner could have applied in the category of Economically Backward Class Candidates. The petitioner has thus been denied an opportunity of admission as a reserved category candidate. He has also submitted that in any view of the matter, the reservation on the sole criterion of economic conditions i.e., for Economically Backward Class candidates is unconstitutional and requires to be set-aside. Mr. Shah has submitted that existing rules governing admission to Pre-Primary & Primary Teachers Colleges namely the Gujarat Educational Institutions [Pre-Primary & Primary Teachers Training Colleges] Rules, 1984 [hereinafter referred to as, "the Rules of 1984"] have been amended under the Government Notification dated 28th October, 1994 by the Gujarat Educational Institutions [Pre-Primary & Primary Teachers Training Colleges] {3rd Amendment} Rules, 1994. Under the said Rules prior to its amendment on 28th October, 1994, under Clause-4 of Appendix-V thereto, reservation in the matter of admission was made as under :-

Scheduled Caste	7%
Scheduled Tribes	14%
Socially & Educationally	
Backward Classes	10%

The said Clause 4 since its amendment under the above referred Notification dated 28th October, 1994 [3rd Amendment] makes reservation as under :-

Scheduled Caste 7%
Scheduled Tribes 14%
Socially & Educationally
Backward Classes 7%
Economically Backward Classes 2%

Mr. Shah has submitted that Article 15 of the Constitution of India does not envisage reservation in the matter of admissions to an educational institution on the sole criterion of economic status and that is the view expressed by the Hon'ble Supreme Court in the matter of Indra Sawhney v. Union of India & Ors. [AIR (1993) SC 477]. Nevertheless, the State Government has, contrary to the above referred decision of the Supreme Court, provided for reservation solely on the basis of economic status which requires to be quashed and set-aside. Mr. Shah has relied upon the judgment of the Division Bench of this Court in the matter of State of Gujarat v. Bindu Niranjani Doctor & Ors. [Letters Patent Appeals Nos. 698 of 1994 & 699 of 1994 :: Decided on 29th December, 1994 :: Coram-B.N Kirpal, J. as he then was & A.N Divecha, J.].

In the above referred judgment in the matter of Re:- Bindu Niranjani Doctor [Supra], a similar reservation based on the economic status of a candidate with respect to the admission in the medical college was the subject matter of challenge before this Court. The learned Judges of this Court has referred the judgment of the Hon'ble Supreme Court in the matter of Indra Sawhney [Supra] and has held that, "this is clearly impermissible in view of the aforesaid decision of the Supreme Court. This being so, the reservation of 2% is hereby quashed and set-aside."

In view of the above judgments of the Hon'ble Supreme Court and of this Court, the reservation to the extent of 2% for Economically Backward Classes made under Clause-4 of Appendix V of the Rules of 1984 is contrary to Article 15 of the Constitution and requires to be quashed and set-aside.

In the result, the petition is allowed with costs. Sub-clause (iv) of Clause 4 (1) of Appendix V to the Rules of 1984, as amended under Government Notification dated 28th October, 1994, is quashed and set-aside. Rule is made absolute accordingly. Since the

admission in question is that of 1994, in view of passage of time, no consequential orders are made.

[Ms. R.M Doshit, J.]

Prakash*