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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3464 OF 2015**

Barkha Rajesh Manik ..Petitioner
Vs.
State of Maharashtra & ors.Respondents
.....
Mr. Ramchandra K. Mendadkar for petitioner.
Mr. Rajesh Kanojia I/b. Res Juris for respondent No.3.
Mr. V.M. Mali for State.

.....
**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

**RESERVED ON : 5th FEBRUARY, 2019
PRONOUNCED ON : 28th FEBRUARY, 2019**

JUDGMENT (PER M.S.KARNIK, J.):-

Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. The petitioner by this Petition filed under Article 226 of the Constitution of India challenges the judgment and order dated 19th May, 2014 passed by respondent No.2 – Divisional Caste Certificate Scrutiny Committee No.1, invalidating the caste claim of the petitioner as belonging to Bava, Nomadic Tribe.

3. The facts of the case in brief are as under :

The competent authority granted caste certificate to the petitioner on 3/6/2011 as belonging to 'Bava' which is recognized as Nomadic Tribe-B Category in the State of Maharashtra. The petitioner applied to respondent No.2 – Committee for grant of caste validity certificate on 7/7/2011. Pending the decision of respondent No.2, the competent authority and Director of Medical Education, Maharashtra, granted admission to the petitioner in the First year M.B.B.S. degree course against the reserved category seat.

4. By a communication dated 21st September, 2012, the respondent No. 4 – college informed the petitioner that she was granted admission in view of the undertaking given by her to produce caste validity certificate within 90 days and that failure to produce the same would result in non registration of her name with the respondent No.3- University. As the caste claim of the petitioner was not being decided, she had approached this Court on the earlier occasion by filing Writ Petition No.11412 of

2012. This Court directed the Committee to decide the caste claim within a period of two months from 19th December, 2012, which time was further extended.

5. By an order dated 22/4/2013, the caste claim of the petitioner came to be invalidated. This order was challenged by the petitioner by way of Writ Petition No. 4763 of 2013 in this Court principally on the ground of non compliance of statutory provisions contained in the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. The order dated 22/4/2013 was quashed and set aside and the matter was remitted back to the Committee for fresh consideration. The matter was thereafter heard by the Committee and by the impugned order dated 4th March, 2014, the caste claim of the petitioner was invalidated.

6. Challenging the impugned order invalidating the caste claim of the petitioner, the petitioner has filed this

Petition. On the date of the filing of this Petition, she had already appeared for the First Year M.B.B.S. examination held by the respondent – University and the results were awaited. The petitioner moved this Court for appropriate interim reliefs, as according to her, in view of the adverse orders passed by the Scrutiny Committee – respondent No.2, she was not being permitted to prosecute the studies any further. On 14th August, 2015, this Court passed the following interim order :-

“ORDER :

In nutshell, it is the contention of the learned counsel for the petitioner that the petitioner is prosecuting her study in MBBS course and now she is a student of 2nd MBBS course. Because of the adverse order passed by the Caste Scrutiny Committee, the petitioner will not be able to continue her studies and appear for 2nd MBBS course.

2. Having regard to the submissions advanced and the challenges raised in the petition, we are of the view that in order to meet the ends of justice the interim relief deserves to be granted. Hence the following Order :

ORDER

I) We, therefore, grant interim relief in terms of prayer clause (d) to the limited extent that the petitioner should not be prevented to prosecute her 2nd MBBS course for the Academic Year 2015-16 on the ground of invalidity of caste claim, which is impugned in the present petition. However, it is clarified that for the reasons other than invalidity of caste claim, respondents No.3 and 4 shall be entitled to take appropriate action.

3 Ad-interim order passed in the matter is subject to final order to be passed in the petition.

4 The petitioner will not be entitled to claim equity on the basis of interim order passed in the matter.

5 S.O. to 11/09/2015.

6. Parties to act on the basis of authenticated copy

of this order."

7. Thereafter, the petitioner filed Civil Application No.2517 of 2016 in this Petition for appropriate directions as respondent Nos.3 and 4 were refusing to accept the examination form of the petitioner for 3rd year M.B.B.S. examination. This Court passed the following order dated 28th September, 2016 in the Civil Application :

P.C. :

Not on board. Taken on production board in view of the urgency.

2. Parties through their Counsel. Heard learned Counsel on the Civil Application. On due consideration the Civil Application is allowed in terms of prayer clause (a).

3. By way of interim order we direct Respondent Nos. 3 and 4 to accept examination form of the petitioner for 3rd year (I) M.B.B.S. examination to be held in Winter of 2016 and to allow her to appear in said examination and also to declare result of the said examination.

4. Allowing of the Petitioner to appear in the said examination and declaration of her result shall be subject to further orders of this Court passed in the main Petition and the Petitioner shall not be entitled to claim any equity on the basis of this interim order.

5. Petition be listed for admission on 15th November, 2016. In the meanwhile Respondent State to file reply.

6. Parties to act on the authenticated copy of this order.

7. Civil Application is disposed of.

8. The matter was thereafter listed for 'Admission' on few occasions. On 21st January, 2019, we directed learned AGP

to produce the original record so that the matter itself could be disposed of finally. When the matter came for hearing on 31st January, 2019, learned counsel for the petitioner made an alternate and without prejudice submission. The order dated 31st January, 2019 passed by this Court reads thus :-

P.C.:

1 After this matter was heard for some time on the earlier occasion and we reserved orders today, before we started dictating the orders, Mr. Mendadkar made an alternate and without prejudice submission.

2 He says that assuming without admitting that the petitioner has failed to discharge the burden cast upon her by law and she could not conclusively establish that she belongs to "Bava" which is synonym of "Gosavi" and categorised as a nomadic tribe, it is recognised as such in the State of Maharashtra, still, being an otherwise meritorious student, securing a higher grade throughout, interest of justice would be served if she is allowed to obtain her mark sheet and result for the final MBBS examination. She has given this examination from a recognised medical college affiliated to the Maharashtra University of Health Sciences. Simply because she was unable to procure a caste validity certificate, the Maharashtra University of Health Sciences has directed the Grant Medical College not to declare her result and issue the mark list.

3 We indicated to Mr. Mendadkar very clearly that such a submission is in the realm of guess work and conjecture. Today, the result is kept in a sealed cover and the petitioner cannot proclaim that she has passed and is, therefore, an MBBS. In the event the petitioner wants to put forward such an alternate and without prejudice argument, the least that is expected is that the petitioner must know that she has cleared the examination. That is not how this assertion is based.

4 We, therefore, indicated to Mr. Mendadkar that we will direct the Maharashtra University of Health Sciences to produce the petitioner's result in a sealed cover for our perusal. That cover will be opened in the Court, we will peruse

her result and in the event she has passed the examination, then, we will consider this alternate and without prejudice argument which clearly invokes our sympathy and nothing else. It is not a legal argument but an argument purely seeking mercy from this Court.

5 Hence the following order :

- (a) Mr. Govilkar will inform the University to comply with our directions and produce the result of the petitioner in a sealed cover on the adjourned date.
- (b) Stand over to 5th February, 2019."

9. On 5th February, 2019, learned counsel for the petitioner once again apprised the petitioner of the order dated 31st January, 2019 and its legal consequences, when the petitioner stated that in the event, she is successful in the final year M.B.B.S. examination, then, she would give up her claim as belonging to Bava – Nomadic Tribe. The order dated 5th February, 2019 reads thus :-

P.C.:-

1. Heard both sides.

2. The petitioner is present in court. After Mr.Mendadkar once again apprised her of the order dated 31st January, 2019 and its legal consequences, the petitioner says that in the event she is successful in the final year MBBS examination, then, she has decided to give up her claim as belonging to Bava - Nomadic Tribe. She and her family, including the progeny will not claim any benefit of this status nor any concession or relaxation flowing from the grant of the caste certificate issued by the competent authority. That caste certificate will not be relied upon to claim any concession meant for this Nomadic Tribe.

3. It is on this basis and after having once again satisfied ourselves that the petitioner voluntarily gives up her claim, in the presence of the parties and their counsel, we opened the

sealed cover brought before the court by the counsel appearing for the Maharashtra University of Health Sciences. That sealed cover contains the result of the final year examination attempted by the petitioner. Pursuant to that sealed cover being opened, we are satisfied that the petitioner has cleared and passed the said examination.

4. Now, Mr. Mendadkar says that with a view to reinforce her stand before this court, she will file an undertaking on the above lines giving up her claim voluntarily. She will file such undertaking knowing fully well the legal consequences and that there is no pressure, force or coercion on her. That the larger interest of the public will not be adversely affected because the impugned order of the scrutiny committee has been challenged in this court and it is this court which has allowed her to continue the studies for MBBS degree course.

5. In the light of the fact that this undertaking will be given on or before 11.30 a.m. on 6th February, 2019, we reserve the final orders.

10. In compliance of the order dated 5th February, 2019, the petitioner has duly filed an Undertaking stating that the petitioner nor her family nor her progeny would henceforth claim any benefits to the Caste/Tribe as belonging to Bava-Nomadic Tribe.

11. Thus, it is after satisfying ourselves that the petitioner voluntarily gave up her claim, in the presence of the parties and their counsel, the sealed cover containing the result of the final year examination attempted by the petitioner was opened. We find that the petitioner has passed the said

examination.

12. It could thus be seen that pursuant to the interim directions of this Court, the petitioner was permitted to appear for the exams and she has now completed her M.B.B.S. course. As indicated earlier, pursuant to the petitioner's Undertaking to voluntarily giving up her claim as belonging to Bava- Nomadic Tribe, we had directed the counsel for the University to produce the result of the final year examination which revealed that the petitioner had cleared and passed the final year examination also. Now that the petitioner has completed the entire M.B.B.S. course, and that larger interest of the public will not adversely be affected, because in a challenge to the impugned order of the Scrutiny Committee, it is this Court which has allowed her to continue the studies in M.B.B.S. degree course, and also in view of the fact that an Undertaking in terms of the order dated 5th February, 2019 has duly been filed, no useful purpose would be served by depriving the petitioner the fruits of her passing the final year examination of the M.B.B.S. Course. Let the degree

certificate be also issued to her.

13. In this view of the matter, the Undertaking of the petitioner is accepted. As the petitioner has passed in the final year M.B.B.S. examination, she is free to pursue her career further but without hereafter taking any benefit of the caste certificate that of Bava – Nomadic Tribe.

15. Rule is made partly absolute in above terms with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)