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**Deepesh Pakhru Vs. the State of Maharashtra and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/354331

**Court** : Mumbai

**Decided On :** Jul-11-2001

**Reported in** : 2001(4)ALLMR640; 2001(4)BomCR637; (2001)4BOMLR500; 2001(4)MhLj636

**Judge** : H.L. Gokhale and ;D.B. Bhosale, JJ.

**Appeal No.** : Writ Petition (Ldg.) Nos. 1753 to 1762 of 2001

**Appellant** : Deepesh Pakhru

**Respondent** : The State of Maharashtra and ors.

**Advocate for Def.** : A. Kalyanram, ;Gitanjali Prabhu and ;Milind More, A.G.P. and ;R.M. Sawant, G.P.

**Advocate for Pet/Ap.** : R.V. Govilkar, Adv.

**Disposition** : Petitions dismissed

**Judgement** :

**H.L. Gokhale, J.**

1. All these petitioners are graduate students, who have applied for the admission to M.B.A./M.M.S. course for which Common Entrance Test was conducted in the month of May, 2001. The interviews for the successful candidates were and are

being held in the month of July, 2001. The petitioners were required to fill necessary application forms for these courses and while filling the forms, they were required to state as to whether they were claiming admission in the open category or for a reserved backward class.

2. It is the admitted position that none of the petitioners mentioned in their forms that they belonged to any backward class. Since the marks of all the petitioners were quite low, there was no chance of their being considered for the interview in the open category. At this stage, they have tried to contend by filing these petitions that they belong to the backward classes and now they ought to be considered on the basis of this new information which has been supplied in the petitions. Inasmuch as the petitioners did not claim earlier that they belong to any particular backward class and since they had not furnished the caste certificates along with the application forms. Mr. Govilkar, learned counsel for the petitioners submits that in the application form there was no requirement of submitting the caste certificate along with the forms. Be that as it may, by enclosing their caste certificates they have now come to this Court praying that the respondents be directed to consider the petitioners as the eligible candidates for the admission to these post-graduate courses in the particular reserved categories.

3. Mr. Govilkar, learned counsel for the petitioner drew our attention to the various clauses from the Information Brochure. He drew our attention to the particular form to be filled in. That form however clearly requires the category to be specified. Then he drew our attention to the clause 6.1.8 of the Brochure, which requires the candidates to produce caste certificate at the time of Group Discussions and Personal Interviews. Thereafter he referred us to the detailed procedure of Admission which is held in different rounds and which is provided at page 22 of this Brochure. These details in all provide for four rounds. As far as the reserved categories are concerned, upto first 3 rounds namely rounds numbered as (a), (b), and (c), if any seats remain vacant in the particular reserved category after filling the seats by the candidates who have applied for that particular reserved category, these vacant seats are to be made availableto the candidates of other reserved categories. It is only thereafter i.e. under round (d) that if there are still any vacancies they will go to the open category. Mr. Govilkar has submitted that

though these petitioners are now belatedly seeking admission in the reserved, category,.they should be considered at the end of round (c) and by keeping them at bottom of the list of candidates of these various reserved categories.

4. Mr. Govilkar firstly relied upon the order of a Division Bench of this Court dated 25th June, 2001 (Coram : A. P. Shah and S. A. Bobde, JJ.) in the case of Ishita M. Patani v. State of Maharashtra and Ors. This order in turn refers to another order dated 7.9.2000 passed by this Court in Writ Petition No. 4775 of 2000. Mr. Govilkar states that both these matters were pertaining to admission to medical courses and initially while filling the forms those candidates had also not claimed admission in the reserved category. The order in Writ Petition No. 4775 of 2000 was not shown to us but the order in the case of Ishita Patani refers to Writ Petition No. 4775 of 2000 as a similar case.

5. Now when we see this order, all that this order states is as follows:

'Heard the learned counsel for the parties.

Since the petitioner has not claimed admission in the reserved category she is being treated as a candidate belonging to the general category. Our attention is drawn to the order dated 7.9.2000 passed by this Court in Writ Petition No. 4775 of 2000 wherein in a similar case the authorities were directed to place the name of the petitioner therein at the end of select list of the concerned backward class category and to consider the petitioner if there are vacant posts in that category after completion of round 2. On inter se merit along with similarly situated candidates before such vacant seats are transferred to the open category. We direct the respondents to follow the same procedure in respect of the present petitioner. We however make it clear that the above direction will be subject to the production of the caste validity certificate.'

Thereafter this order directs the Caste Scrutiny Committee to decide the candidate's application for grant of caste validity certificate in eight weeks and that the petitioner's admission will be liable to be cancelled if petitioner's caste claim is rejected by the Scrutiny Committee. The order further states that the petitioner will not claim any equity on account of the admission under this order and disposes of

the petition.

6. Mr. Govilkar wants us to follow the same course. However, the order relied upon gives to reasons as to why the particular course was being adopted. In the circumstances, we cannot help but read this order as confined to that case only and not creating any binding precedent.

7. Mr. Govilkar then referred to the Oral Judgment dated 2nd July 2001 given by a Division Bench of this Court at Aurangabad (Coram : S. B.MhaseandA. P. Deshpande, JJ.Jinagroup of matters, the main matter being (Nita Dharmlal Dhanorlyav. State of Maharashtra. In those matters what had happened was that all the candidates concerned had claimed that they belong to the reserved categories. Not only that but they had also applied to the Caste Scrutiny Committee for the scrutiny of their castebut the verification of the caste had not been completed. This is what is specifically mentioned in para 3 of that Judgment which reads as follows:-'Petitioners in all these writ petitions are from reserved categories. They are seeking admission to different medical courses. However, they were not granted admissions by the Competent Authority because the petitioners were not possessed of the caste validity certificate on the day of counselling. The caste claim of each of the Petitioner is pending with the Caste Scrutiny Committee and accordingly they have submitted the certificates before the Competent Authority. Inspite of that, their claims were not considered and they were not granted provisional admission and for the said purpose the Competent Authority has relied upon the Rule No. 5.5.1. I.e.. Constitutional Reservations (BC) (Annexure-B) to the Rules for Admission, 2001.'

8. Those students in the Aurangabad matters faced difficulty under Rule 5.5.1. which required them to produce the caste validity certificate either at the time of first round or at the time of subsequent round. They were however not able to produce the certificate because the scrutiny was not completed in time. Now, if a candidate is not responsible for this situation he cannot be made to suffer and that is why by referring the Judgment of Apex Court in a case of Ku. Madhuri Patil and another v. Addl. Commissioner, Tribal Development and Ors. the Division Bench observed that the rule 5.5.1. was contrary to the law laid down by the Apex Court.

As per para 12.3 of the procedure laid down in that Judgment of the Apex Court, the candidates were required to apply for verification of the caste to the Scrutiny Committee at least six months in advance. Now, if the candidate had applied and if his caste claim is still not scrutinised, yet he would suffer due to a strict reading of Rule 5.5.1, That is why the Division Bench permitted the applications of all such candidates.

9. Mr. Govilkar referred to para 4(v) of the Judgment of Aurangabad Bench, and submitted that the entire Rule 5.5.1. will no longer survive and hereafter the candidates of reserved category need not submit caste certificates and the claim need not be scrutinised. This submission will lead one to ignore what is stated in the entire judgment including para 4(v). Thus at the end of para 3, the assurance of the Secretary of Medical Education and Drugs Department is recorded as follows :-

'It has been further assured to this Court that the Petitioners and similarly situated all other reserved category candidates to whom the admissions have been denied because they do not possess the caste validity certificate, but whose claims are pending before the Scrutiny Committee for validation will be considered for the provisional admission for the year 2001-2002, and they will be considered at their original merit position. It has also been submitted to this Court, that the change in aforesaid Rule will be published in the newspapers, having wide circulation.'

Thereafter in para 4(iv) it is directed as follows :-

'In view of the apprehension of the respondents that some times, the candidates try to complete the course on the basis of provisional admission, it is hereby directed to the Scrutiny Committee that the caste claims of the candidates to whom the provisional admission have been given by therespondent-Competent Authority, shall be disposed of within a period of 12 weeks.'

It is on this background that the Division Bench has recorded in para 4(v) :-

'It has been further assured to this Court that Rule as is published i.e.Rule No. 5.5.1. (Annexure -B) in the Rules for Admission, 2001, will not appearin the Rules

which will be published henceforth,'

10. Thus the Judgment itself directs that the caste claim of thesecandidates shall be disposed of within a period of 12 weeks. Otherwisethere was no need for the Court to observe that their caste claim bescrutinised as directed in para 4(iv). In the circumstances Rule 5.5.1. is only modified under that Judgment to provide that all those candidateswho have applied for scrutiny in time but whose caste claim is notscrutinised by the time their turn for the seat comes up, should beconsidered either at the time of first round or subsequent round. Theywill still be eligible and will be considered subject to the completion ofthe pending scrutiny within a specified short time. That alone is importof this Judgment and not beyond that.

11. In our view it was necessary to clarify the effect of the order in the case of Ishita Patani and Judgment in the case of Nita Dhanoriya because they are quite likely to be misused as is seen in the present case. Here we have some ten petitions wherein at the last moment the candidates are coming to the Court and saying that they had not mentioned their backward caste in the application form and still the authorities be directed to first consider them for admission as backward class candidates, subject to scrutiny of their claim thereafter. The submission is that they are seeking a placement only at the bottom of the reserved category list, and their caste admission will be subject to the scrutiny of their caste claim. In the event they are lucky to get the admission but if the scrutiny report goes against them they will challenge it and will also contend that having been given admission their education should not suffer. The result of this approach will be that the students from the open category who are waiting for such an excess reserved category seat, and who could be having better marks will not get such seats though they are otherwise .entitled to these seats under the rules. The seat would have gone to a candidate from open category with better marks. This is obvious because if these petitioners having applied in the open category had any chance of getting such an excess seat over flowing from the reserved category, they would not have sought that they be considered as belonging to the reserved category, and be kept at the bottom of the list of reserved category candidates. Giving no reasons whatsoever as to why they did not seek admission in the reserved category when they filled form and now suddenly seeking a switch over

without any supporting documents (except highly dubious certificates given by Executive Magistrate) is height of dishonesty.

12. And who are the candidates who are seeking admission by this backdoor method? None of the petitioners have given any reason whatsoever as to why they did not claim the admission on the basis of the backward class when they filled the forms. They have given no particulars whatsoeveras to how they are Justifying their claim of belonging to the particular caste nor have they annexed any document or photocopies thereof (such as school record etc.). The only document that they have annexed is a typed copy of a caste certificate obtained from an Executive Magistrate. And in four of these ten cases viz. those of Mitesh Shah, Jaydeep Raval, Mehul Kapoor and Namrata Maturlal, the applications to the Magistrate were made on 5th or 6th of July (Thursday and Friday) and the Certificates were issued on 9th July (Monday) of 2001 and on the very day these petitions were filed. In the other matters the certificates were obtained a couple of years earlier but in any case there is no explanation as to why the caste claim was not made in the form. We are not entertaining these petitions and hence we are not saying anything more about the caste certificates which are obviously obtained byway of after thought. However, we cannot avoid but saying that prima facie they do not inspire any confidence.

13. Provisions of reservations are made for the benefit of the backward class students since they suffer from a number of handicaps. A candidate filling such form surely knows that reservation is provided and he also knows that he can claim it if he belongs to any such community. The rule therefore rightly directs the candidate to fill the form properly and reading anything more therein as. In the case of Ishita Patani (supra) is likely to deprive a more meritorious student in favour at such a last minute backdoor entrant. It is no use saying that the admission is subject to scrutiny of the caste. The result will be that the Committee will be burdened with this work of the last minute entrants who did not put up their claim in the form Itself. Such a course is not at all called for and there is likelihood of misuse as clearly seen in the present case. The judgment in Nita Dhanoriya's case (supra) rightly permitted an opportunity only to those who had made their claim on the basis of reservation arid whose scrutiny was pending. It can't be

stretched to those who, suddenly remember their backward background at the last moment. This is not to say that, that the Court cannot make an exception but that will only be in absolutely justifiable case where complete explanation is available for not mentioning the caste in the form and there are strong documents in support of the caste claim. Such occasions are obviously very rare.

14. In the circumstances, there is no question of giving any direction as sought by the petitioners. All these petitions will stand dismissed.

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