

Heena Mohanlal Merchant Vs State of Maharashtra and others

Court: Bombay High Court

Date of Decision: June 8, 1990

Acts Referred: Constitution of India, 1950 Article 226

Hon'ble Judges: H.H. Kantharia, J

Bench: Single Bench

Advocate: K.K. Singhvi, S.K. Singhvi, Aditya Chitale and B.N. Singhvi, for the Appellant; A.R. Shinde, Asstt. Government Pleader and V.K. Khatu, for the Respondent

Final Decision: Allowed

Judgement

H.H. Kantharia, J.

The petitioner after passing her Higher Secondary School Examination (XII Standard) in June, 1984 applied for

admission for medical course under a reserved seat for other backward class on the ground that she belonged to "Hindu Darji" caste. She was

admitted to first year M.B.B.S. course in Sheth G. S. Medical College, Parel, Bombay provisionally for the academic year 1984-85 in the

reserved seat under the category of other backward class (Shimpi) subject to verification of her caste claim by the Caste Verification Committee.

It appears that her caste certificate was verified and invalidated by the said Committee. It was held by the Committee that the petitioner did not

establish that she was "Shimpi" as her father's school leaving certificate showed that he belonged to "Hindu Darji" caste which was not notified as

other backward class in the State of Maharashtra and that "Darji" and "Shimpi" are not the same. The Committee also held that although "Darji"

means tailor a person claiming to be "Darji" cannot be conclusively called "Shimpi". According to the Committee, the caste "Shimpi" denotes not

only that the person is by caste "Shimpi" but also his traditional occupation of "Shimpi" i.e. tailor and here the caste and the occupation coincide

which cannot be the case of a person who calls himself "Darji". The Committee, therefore, ruled that "Darji" and "Shimpi" are not the same.

2. The said decision of the Caste Verification Committee was communicated by the Director of Social Welfare, Maharashtra State, Pune (the third

respondent) to the second respondent (Dean, Sheth G. S. Medical College) who by his letter dated August 27, 1985 cancelled the admission of

the petitioner. That compelled the petitioner to file the present petition invoking writ jurisdiction of this Court under Article 226 of the Constitution

of India. This Court while admitting the writ petition by order dated March 3, 1986 granted interim relief to the petitioner directing that pending

hearing and final disposal of the petition, the Dean of the Sheth G. S. Medical College and the University of Bombay (the fourth respondent) shall

not give effect to or act upon in furtherance of the decision of the Caste Verification Committee and that is how the petitioner continued her studies

for the medical course. In the meanwhile, the petitioner also challenged the decision of the Caste Verification Committee before the Divisional

Commissioner, Konkan Division, Bombay who by his order dated November 29, 1985 dismissed the appeal of the petitioner. The writ petition

was thereafter suitably amended and the decision of the Commissioner was also impugned.

3. In support of the petition, Mr. Singhvi submitted that both the Caste Verification Committee and the Commissioner committed grave error in not

appreciating the fact that ""Darji"" and ""Shimpi"" is one and the same caste and that in Gujarati and Hindi tailors are called and known as ""Darji"" and

in Marathi they are called ""Shimpi"". The learned counsel also drew my attention to the material on record that the petitioner's ancestors had been

carrying on the traditional occupation of tailoring for ages and the petitioner and her father were born and brought up in Maharashtra and are the

permanent residents of Maharashtra. Merely because the school record of the petitioner and that of her father shows that they described

themselves as ""Darji"" does not mean that they are not ""Shimpi"", further urged Mr. Singhvi. On the other hand, Mr. Shinde, learned Asstt.

Government Pleader, submitted that had ""Darji"" and ""Shimpi"" been the same thing, it would have been so stated by the Government while

publishing the list of the Other Backward Classes. The submission of the learned Government counsel is that ""Darji"" has not been equated with

Shimpi"" in the list of the Other Backward Classes and, therefore, the caste claim of the petitioner was correctly rejected.

4. It is difficult for me to persuade myself to agree with the submissions of Mr. Shinde for the simple reason that it is not the case of the

Government that ""Darji"" is not tailor as ""Shimpi"" is. It is also not in dispute that a tailor is described as ""Darji"" in Gujarati as also in Hindi. It is no

doubt true that in Marathi a tailor is described and known as ""Shimpi"" but that certainly does not mean that a tailor who describes and calls himself

Darji"" is not ""Shimpi"". It is quite possible that in a certain locality in Maharashtra itself where most of the population is of Gujarati or Hindi speaking

people ""Shimpi"" may be described, called and known as ""Darji"". If it was the case of the Government that the petitioner's father was not a tailor by

caste but he was only carrying on the business of a tailor then the petitioner would not be entitled to the benefits available to the Other Backward

Classes. But it is not the case of the Government that the petitioner or her father belonged to some other community and are not tailors by caste.

On the contrary, the record shows that the petitioner's father was born in 1925 at Chinchani in Thane District in Maharashtra and his ancestors

had been traditionally carrying on the occupation of tailor for the last several years and the petitioner's father himself has been carrying on the said

occupation for the last forty years for which he has a tailoring establishment by name "'A Squire'" situate at Hughes Road, Bombay-36 and holds a

registration certificate issued by the Bombay Municipal Corporation under the Shops and Establishments Act which proves that the petitioner's

family was engaged in the traditional occupation of tailoring work. Merely because the petitioner's father was enrolled in the primary school as

Darji'" does not mean that he is not "'Shimpi'". It is pertinent to note that "'Darji'" means a tailor as "'Shimpi'" means. You call a tailor "'Darji'" or

Shimpi'" are synonymous. It is common knowledge that "'Darji'" and "'Shimpi'" is one and the same caste being tailor but in Gujarati or Hindi it is

known as "'Darji'" and in Marathi it is known as "'Shimpi'". The Caste Verification Committee and the Divisional (Commissioner lost sight of this very

important reality of life and took quite a hyper-technical view of the matter. Such technical attitude defeats substantial justice. The concerned

authorities should have taken a practical and realistic view of the matter. They should also have kept in mind that the petitioner was born in

Bombay in the year 1965 and had taken all her education in Bombay and was a permanent resident of Bombay. Under the circumstances, in my

opinion, the petitioner was legitimately entitled to the benefits and concessions available to the Other Backward Classes in Maharashtra. Hence, I

hold that the decision taken by the Caste Verification Committee, Pune and upheld by the Divisional Commissioner, Konkan Division, Bombay

invalidating the caste claim of the petitioner was wrong and bad in law. This error apparent on the face of the record has to be corrected.

5. In the result, the impugned orders passed by the Caste Verification Committee, Pune and confirmed by the Divisional Commissioner, Konkan

Division, Bombay are quashed and set aside. The order passed by the Dean of the Sheth G. S. Medical College cancelling the admission of the

petitioner to the M.B.B.S. course of studies is also consequently quashed and set aside and her admission is accordingly regularised. I am informed

that by virtue of the interim orders passed by this Court the petitioner has by now passed her M.B.B.S. examination and also completed the

internship but the University of Bombay is withholding her results and conferment of degree only because her admission to the M.B.B.S. class was

cancelled by the Dean of the Sheth G. S. Medical College. In the premises aforesaid, the University of Bombay is directed to declare the final

results of the petitioner and confer on her the degree of M.B.B.S. if permissible as per the rules and regulations of the University.

6. Writ petition thus succeeds and the same is allowed. Rule is made absolute in terms aforesaid but with no order as to costs.