

CASE NO.:  
Appeal (civil) 231 of 2007

PETITIONER:  
State of Maharashtra & Ors

RESPONDENT:  
Sanjay K. Nimje

DATE OF JUDGMENT: 16/01/2007

BENCH:  
S.B. Sinha & Markandey Katju

JUDGMENT:  
J U D G M E N T  
(Arising out of SLP(C) No. 6581 of 2006)

S.B. Sinha, J.

Leave granted.

This appeal is directed against a judgment and order dated 19.08.2005 passed by a Division Bench of the High Court of Judicature of Bombay in Writ Petition No. 4158 of 2005 whereby and whereunder the writ petition filed by the respondent herein was allowed.

Respondent was appointed in the services of the Government of Maharashtra on 29.06.1995. Respondent claimed to be belonging to Halba community, a scheduled tribe. The caste certificate procured by the respondent from the competent officer having been doubted, the matter was referred to the Caste Certificate Scrutiny Committee, Nagpur on 27.08.1999 for verification. The respondent was found to be belonging to 'Koshti' caste which comes within the category of 'special backward class' and not within the scheduled tribe category.

The question as to whether 'Koshti \026 Halbas' are members of the Scheduled Tribe or not came up for consideration before this Court in State of Maharashtra v. Milind and Others [(2001) 1 SCC 4], wherein it was held that they were not.

In view of the finding of fact that the respondent herein was not a member of the scheduled tribe but was a 'Koshti', his caste certificate was invalidated by an order dated 24.06.2004.

A writ petition thereafter was filed by the respondent before the High Court praying inter alia for the following reliefs:

"A) That by passing a suitable writ, order or direction in the nature of mandamus or certiorari or any other appropriate writ, order or direction, a quash and set aside the order \005dated 24.6.2004 passed by the Respondent No. 2 Committee invalidating the tribe claim of Petitioner that he belongs to Halba, Scheduled Tribe.

B) It be held and declared that in view of Government Resolutions dated 15.6.1995 and 30.6.2004 the services of Petitioner's are liable to be protected thereby issuing such order to the Respondent No. 2 and 3.

C) During the pendency of present petition by

passing an order ad interim in nature stay the effect, operation and implementation of the order \005dated 24.6.2004 invalidating tribe claim of Petitioner and/ or in the alternative restrain the Respondents No. 1 and 3 from passing any adverse order consequent upon invalidation of tribe claim of petitioner by Respondent No. 2 Committee."

It appears that the respondent accepted the findings of the Caste Scrutiny Committee. However, relying on or on the basis of a purported government resolution dated 15.06.1995 whereby and whereunder the services of persons who were appointed prior thereto were sought to be protected, the Division Bench of the High Court by reason of the impugned judgment directed that although the respondent was appointed on 29.06.1995, having regard to the fact that he had been selected on 15.06.1995, he was entitled to protection in terms of the said resolution stating:

"5. In the present case the Petitioner was selected on 15th June, 1995 and got the appointment order on 29th June, 1995. Since Maruti Sandipan Jadhav the Petitioner in Writ Petition No. 422 of 1997, is entitled to get the benefit under the Government Resolution dated 15th June, 1995 the same principle should be applied to the Petitioner in the present petition.

6. In the result, the petition is allowed. The impugned order of dismissal dated 27th May 2005 is quashed and set aside. The Respondents are directed to reinstate the Petitioner with continuity of service but without back wages and to regularize his service in the light of the Government Resolution dated 15th June, 1995\005"

Mr. S.S. Shinde, learned counsel appearing on behalf of the appellants, would submit that having regard to the decision of the Caste Scrutiny Committee, the impugned judgment cannot be sustained particularly in view of the fact that he was appointed on 29.06.1995.

Mr. Manish Pitale, learned counsel appearing on behalf of the respondent, on the other hand, would submit that in a case of this nature and particularly in view of the fact that the question as to whether 'Koshti-Halbas' are the members of the scheduled tribe or not had authoritatively been pronounced only in Milind (supra); this Court may protect the services of the respondent. Reliance in this behalf has been placed in a similar case in Civil Appeal No. 3375 of 2000 decided on 12.12.2000, which is in the following terms:

"The appellant having belonged to Koshti caste claimed to be included in the scheduled tribe of Halba and obtained an appointment as Assistant Engineer. When his appointment was sought to be terminated on the basis that he did not belong to scheduled tribe by the Government a writ petition was filed before the High Court challenging that order which was allowed. That order is questioned in this appeal. The questions arising in this case are covered by the decision in State of Maharashtra Vs. Milind & Ors. 2000 (7) SCALE 628 and was got to be allowed, however, the benefits derived till now shall be available to the appellant to the effect that his appointment as Assistant Engineer shall stand protected but no further. The appeal is disposed of accordingly."

Indisputably, the State of Maharashtra enacted "Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "the 2000 Act"). Section 6 of the 2000 Act laid down the procedure for the verification of caste certificate. Section 7 thereof provides for confiscation and cancellation of a caste certificate in the event the same appears to be false. Section 10 provides for withdrawal of the benefits secured on the basis of the false caste certificate in the following terms:

"10. Benefits secured on the basis of false Caste Certificate to be withdrawn. (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Co-operative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrear of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate, by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he had contested the election for local authority, Co-operative Society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

The Caste Scrutiny Committee was initially constituted in terms of the decision of this Court in Kumari Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors. [(1994) 6 SCC 241]. The Committee which was now constituted in terms of the 2000 Act issued a notice upon the respondent. He was given an opportunity of hearing. The principles of natural justice had, thus, been complied with. The Caste Scrutiny Committee opined that the respondent failed to prove that his socio-cultural traits, characteristics, festivals and customs match with those of Halba, Scheduled Tribe community. It was found that the father of the respondent himself had given details of his family tree as also socio-cultural traits which categorically showed that the respondent was not a member of the Scheduled Tribe community. Even the primary school leaving certificate of the respondent's father clearly showed that they belonged to 'Koshti'. It was ordered:

"After considering all the documents and facts and in exercise of the powers vested vide Government Resolutions quoted in the preamble at Sr.No.1, the Caste Scrutiny Committee has come to the conclusion that Shri Sanjay Krushnarao Nimje does not belong to the Halba Scheduled Tribe hence his claim towards the same is held invalid. His caste certificate granted by the Executive Magistrate, Nagpur vide R.C.No.287/MRC-81/88-89, dated 1.9.88 is hereby cancelled confiscated."

It is accepted that an undertaking was filed by the respondent accepting the order passed by Appellant No. 3 \026 Committee before the High Court in the following terms:

"The Petitioner is filing this pursis/undertaking that he accepts the order passed by the Respondent No.2 Scrutiny Committee and further undertakes that he or his legal heirs/progeny will not claim any benefit as a schedule Tribe Candidate either in education or in employment.

In view of the Government Resolution dated 15.6.1995 and the judgment of this Hon'ble Court, filed along with this petition as Annexure T, the services of the Petitioner be protected and he may be continued in service by giving specific directions to the Respondent employer."

Indisputably, on 7.12.1994, 'Koshtis' were declared to be as Special Backward Class category. By reason of the said Government Resolution dated 15.06.1995, it was directed:

"The reservation as aforesaid given to Special Backward Class category is applicable to direct recruitment and promotions and the Creamy layer criteria is not applicable to this category. The persons from this category who have entered into service and has obtained promotion on the basis of Schedule Tribe Certificates, they should not be reverted or terminated from service."

Respondent admittedly was appointed on 29.06.1995. Although he might have been selected on 15.06.1995, ex facie, the said Government Resolution dated 15.06.1995 would have no application in his case.

Once the respondent became disentitled to obtain the benefit of the said Government Resolution dated 15.06.1995, the 2000 Act will apply in his case.

The 2000 Act being a legislative Act would prevail over any Government Resolution. A Government Resolution may be beneficent in nature but it is well-settled that a benefit under a Government Resolution cannot be extended to a person who does not satisfy the conditions precedent thereof.

In any event, the effect of the judgment of this Court as also the provisions of a statute in the light of the constitutional provisions contained in Articles 341 and 342 of the Constitution of India cannot be diluted by reason of a Government Resolution or otherwise.

The extent of jurisdiction of the Caste Scrutiny Committee came up for consideration before this Court in State of Maharashtra and Others v. Ravi Prakash Babulalsing Parmar & Anr. [2006 (10) SCALE 575 : 2007 (1) SCC 80] wherein this Court categorically held that the Caste Scrutiny Committee has the requisite jurisdiction in relation thereto, stating:

"The makers of the Constitution laid emphasis on equality amongst citizens. Constitution of India provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter."

We may also notice that ordinarily a person, who has obtained appointment on the basis of a false certificate, cannot retain the said benefit. [See Bank of India and Another v. Avinash D. Mandivikar and Others, (2005) 7 SCC 690, Ram Saran v. I.G. of Police, CRPF & Ors. 2006 (2) SCALE 131 and The Superintendent of Post Offices & Ors. v. R. Valasina Babu, Civil Appeal No. 5868 of 2006, disposed of on 14.12.2006]

In a situation of this nature, whether the court will refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India or not would depend upon the facts and circumstances of each case. This aspect of the matter has been considered recently by this Court in Sandeep Subhash Parate v. State of Maharashtra & Ors. [2006 (8) SCALE 503]

From the order of the Caste Scrutiny Committee itself, it is evident that the father of the respondent was shown in the primary school register as belonging to 'Koshti' caste. They were not members of Scheduled Tribe. They were not even 'Koshti-Halbas'. It may be true that an authoritative pronouncement in this behalf came for the first time in Milind (supra), but it is not a case where the respondent pleaded and proved bona fide.

Respondent was not the member of a tribe. If a person is not a member of a tribe, the question of the said tribe being a scheduled tribe would not arise.

Thus, it is a clear case where the provisions of the 2000 Act would

apply. We see no reason as to why the statutory provisions should not be directed to apply in the instant case. It may be that at one point of time, keeping in view of the stand taken in particular case, some indulgence had been shown. Indulgence might have been shown to the students or who were found to have acted bona fide but the same would not mean that this Court would pass an order contrary to or inconsistent with the provisions of a legislative act.

Our attention was drawn to an order dated 12th December, 2000 passed in Civil Appeal No. 3375 of 2000, but it does not appear the provisions of the 2000 Act had been brought to the notice of this Court therein. Furthermore, we are not aware as to the fact involved therein and, thus, the same cannot be treated to be a precedent.

For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. In the facts and circumstances of the case, however, we make no order as to costs.

