



2021 INSC 391

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.370 OF 2017

CHANDRABHAN

Appellant

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondents

O R D E R

This appeal challenges the judgment and order dated 06.04.2016 passed by the High Court of Bombay, Nagpur Bench, Nagpur in Writ Petition No.2153 of 2016.

The basic issue that arose in the instant proceedings was whether the appellant was right in his submission that he belonged to Scheduled Tribe, named, "Halba".

After going through the record, the Caste Scrutiny Committee negated the submission and gave a positive finding that the claim so propounded by the appellant was completely unsustainable and that he did not belong to the Schedule Tribe, named, "Halba".

It must be stated that a Constitution Bench of this Court in *State of Maharashtra v. Milind & Others*¹, was called upon to decide whether "Halba-Koshtis" from the State of Maharashtra could be

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ated as "Halba/Halbi".

The Constitution Bench concluded:

"36. In the light of what is stated above, the following positions emerge:

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. Anirudh Patra* and *Dina v. Narain Singh* did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter."

However, it was observed by this Court:

"38. Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No.16372 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

The decision in *Milind & Others (supra)*, was delivered on 28.11.2000.

Soon thereafter, the 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, enacted by the State Legislature came into force on 17.10.2001. Section 10 of the said Act is to the following effect:

"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 arrears 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 has 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."

Considering various questions including the observations made in paragraph 38 of the decision of this Court in *Milind & Others* (*supra*) and the impact of the aforesaid legislation enacted by the State, a three-Judge Bench of this Court in *Chairman and Managing Director, Food Corporation of India & Others v. Jagdish Balaram Bahra*

& *Others*², concluded as under:

62. The regime which obtained since 2-9-1994 under the directions in *Madhuri Patil* [*Madhuri Patil v. Commr., Tribal Development*, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] was granted a statutory status by the enactment of Maharashtra Act 23 of 2001. Section 7 provides for the cancellation and confiscation of a false caste certificate whether it was issued before or after the commencement of the Act. The expression "before or after the commencement of this Act" indicates that the Scrutiny Committee constituted under Section 6 is empowered to cancel a caste certificate whether it was issued prior to 18-10-2001 or thereafter. Section 10 which provides for the withdrawal of benefits secured on the basis of a false caste certificate which is withdrawn is essentially a consequence of the cancellation of the caste certificate. Where a candidate has secured admission to an educational institution on the basis that he or she belongs to a designated reserved category and it is found upon investigation that the claim to belong to that category is false, admission to the institution necessarily falls with the invalidation of the caste certificate. Admission being founded on a claim to belong to a specified caste, tribe or class, it is rendered void upon the claim being found to be untrue. The same must hold in the case of an appointment to a post. Therefore, the absence of the words "before or after the commencement of this Act" in Section 10 makes no substantive difference because a withdrawal of benefit is an event which flows naturally and as a plain consequence of the invalidation of the claim. Moreover, as we have seen even prior to the enactment of the State legislation, the benefit which was secured on the basis of a caste claim was liable to be withdrawn upon its invalidation. The Act has hence neither affected vested rights nor has it imposed new burdens. The Act does not impair existing obligations in Sections 7 and 10.

66. One of the considerations which is placed in store before the court, particularly when an admission to an educational institution is sought to be cancelled upon the invalidation of a caste or tribe claim is that the student has substantially progressed in the course of studies and a cancellation of admission would result in prejudice not only to the student but to the system as well. When the student has completed the degree or diploma, a submission against its withdrawal is urged a fortiori. In our view, the State Legislature has made a statutory decision amongst competing claims, based on a public policy perspective which the court must respect. The argument that there is a loss of productive societal resources when an educational

qualification is withdrawn or a student is compelled to leave the course of studies (when he or she is found not to belong to the caste or tribe on the basis of which admission to a reserved seat was obtained) cannot possibly outweigh or nullify the legislative mandate contained in Section 10 of the State legislation. When a candidate is found to have put forth a false claim of belonging to a designated caste, tribe or class for whom a benefit is reserved, it would be a negation of the rule of law to exercise the jurisdiction under Article 142 to protect that individual. Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an avenue to support those who make untrue claims to belong to a caste or tribe or socially and educationally backward class. These benefits are provided only to designated castes, tribes or classes in accordance with the constitutional scheme and cannot be usurped by those who do not belong to them. The credibility not merely of the legal system but also of the judicial process will be eroded if such claims are protected in exercise of the constitutional power conferred by Article 142 despite the State law.

69. For these reasons, we hold and declare that:

69.1. The directions which were issued by the Constitution Bench of this Court in para 38 of the decision in *Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117]* were in pursuance of the powers vested in this Court under Article 142 of the Constitution;

69.2. Since the decision of this Court in *Madhuri Patil [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349]* which was rendered on 2-9-1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for:

(a) the issuance of caste certificates;

(b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;

(c) the procedure for the conduct of investigation into the authenticity of the claim;

(d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;

(e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and

(f) Prosecution for a criminal offence.

69.3. The decisions of this Court in *R. Vishwanatha Pillai* [*R. Vishwanatha Pillai v. State of Kerala*, (2004) 2 SCC 105 : 2004 SCC (L&S) 350] and in *Dattatray* [*Union of India v. Dattatray*, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] which were rendered by Benches of three Judges laid down the principle of law that where a benefit is secured by an individual—such as an appointment to a post or admission to an educational institution—on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

69.4. The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

69.5. By Maharashtra Act 23 of 2001 there is a legislative codification of the broad principles enunciated in *Madhuri Patil* [*Madhuri Patil v. Commr., Tribal Development*, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349]. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates [Sections 6(2) and 6(3)]; cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

69.6. The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18-10-2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is

invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

69.8. The decisions in *Kavita Solunke* [*Kavita Solunke v. State of Maharashtra*, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609] and *Shalini* [*Shalini v. New English High School Assn.*, (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] of two learned Judges are overruled. *Shalini* [*Shalini v. New English High School Assn.*, (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] insofar as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

69.9. *Mens rea* is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

69.10. The judgment of the Full Bench of the Bombay High Court in *Arun* [*Arun v. State of Maharashtra*, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] is manifestly erroneous and is overruled; and

69.11. Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act 23 of 2001 holds the field."

The conclusions arrived at by this Court in *Jagdish Balaram Bahra & Others (supra)*, are thus clear that the impact of the legislation which came into effect on 17.10.2001 must have full and unhindered effect and operation.

Once the claim of the appellant that he belonged to "Halba" stood negated by the Caste Scrutiny Committee, no advantage can thereafter be extended to the appellant. Any such extension would be running counter to the legislation as well as the authoritative pronouncement in *Jagdish Balaram Bahra & Others (supra)*.

The civil appeal is, therefore, dismissed, without any order as to costs.

.....J.
[UDAY UMESH LALIT]

.....J.
[AJAY RASTOGI]

NEW DELHI;
AUGUST 10,2021.