2020 INSC 91

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 742 of 2020
(Arising out of SLP(C) No 21619 of 2017)

The Chief Regional Officer
The Oriental Insurance Co Ltd .... Appellant(s)

Versus

Pradip and Anr ....Respondent(s)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Delay condoned.

2 Leave granted.

3 The first respondent was appointed as an Assistant by the appellant on the basis of a claim that he belonged to a Scheduled Tribe, namely, the Dhangad community. As the record shows, he belongs to the Dhangar community (a nomadic tribe) and not to the Dhangad community (listed as a Scheduled Tribe for Maharashtra). The first

respondent claimed the benefit of belonging to a Schedule Tribe on the basis of a caste certificate dated 17 August 1984 issued by the Executive Magistrate, Hingna. The appellant called upon the first respondent to submit the caste certificate by a letter dated 15 February 2011. The appellant then addressed a communication on 14 July 2011 to the issuing authority which, by a communication dated 9 May 2014, informed the appellant that the caste certificate was not registered in its records. In August 2014, the first respondent was called upon to submit a fresh caste certificate. The first respondent did not submit a fresh caste certificate, but approached the issuing authority and then submitted a letter dated 14 August 2014 to the appellant whereby the issuing authority had stated that the caste certificate had been issued from the office of the Executive Magistrate. On 3 August 2015, the first respondent applied for verification of his caste certificate to the Scrutiny Committee. The first respondent submitted an application before the Scrutiny Committee on 15 February 2016. By an order dated 25 April 2016, the Scrutiny Committee invalidated the claim. The Scrutiny Committee noted, in the course of its order, that the first respondent had submitted an application on 15 February 2016 merely seeking protection of his service. The Scrutiny Committee observed that the first respondent was well aware of the fact that he did not belong to the Dhangad Scheduled Tribe, but belonged to the Dhangar Community, which is a nomadic tribe. It noted that the documents which had been submitted by the first respondent pertained only to the Dhangar Community and not to the Dhangad Scheduled Tribe. The documents pertaining to the first respondent and his father were scrutinized by the Committee which came to the conclusion that there was no merit in the claim of the first respondent of belonging to the Dhangad Scheduled Tribe.

4 Aggrieved by the order of the Scrutiny Committee, the first respondent instituted a writ petition[1] before the High Court of Judicature at Bombay Bench at Nagpur. The relief which was sought in the writ petition was for the protection of his services in view of a Full Bench decision of the High Court in **Arun Sonone** v **State of Maharashtra**[2] (**Arun Sonone**). The first respondent also challenged the order of the Scrutiny Committee.

5 The High Court, by its judgment and order dated 11 July 2016, issued a direction to the effect that the services of the first respondent were liable to be protected, in view of the judgment of its Full Bench in **Arun Sonone**.

6 Assailing the judgment of the High Court, it has been submitted on behalf of the appellant by Mr Dinesh Mathur, learned counsel, that the judgment of the Full Bench of the Bombay High Court in **Arun Sonone** has been overruled in a decision of a three-Judge Bench of this Court in **Chairman and Managing Director, Food Corporation of India** v **Jagdish Balaram Bahira**[3] (**FCI**).

7 In its judgment in **FCI**, this Court has held:

> "48…Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a

1 Writ Petition No 2846 of 2016
2 2015 (1) Mh LJ 457
3 (2017) 8 SCC 670

> representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained…
>
> A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter, a detriment is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is intended."

8 We may note at this stage that in paragraph 59 of the judgment, this Court has observed thus:

> "59. The Full Bench judgment of the Bombay High Court in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] has essentially construed the judgments in Kavita Solunke [Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609] and in Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] as having impliedly overruled the earlier Full Bench judgments in Ganesh Rambhau Khalale [Ganesh Rambhau Khalale v. State of Maharashtra, 2009 SCC OnLine Bom 20 : (2009) 2 Mah LJ 788] and Ramesh Suresh Kamble [Ramesh Suresh Kamble v. State of Maharashtra, 2006 SCC OnLine Bom 1078 : (2007) 1 Mah LJ 423] . In view of the conclusion which we have arrived at in regard to the earlier decisions rendered by the two-Judge Benches 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] , we are unable to subscribe

to the view expressed by the Full Bench in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] . 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] holds that: (SCC OnLine Bom para 75)

(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from employment or cancellation of appointments that have become final prior to the decision in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] on 28-11-2000;

(ii) the benefit of protection in service upon invalidation of the caste claim is available not only to persons belonging to Koshti and Halba Koshti but is also available to persons belonging to the special backward category on the same terms.

The High Court has even gone to the extent of holding that the decision in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] was in the nature of prospective overruling of the law which was laid down by the Bombay High Court. The above view of the Bombay High Court is clearly unsustainable. Neither the judgment in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] nor any of the judgments of this Court which have construed it have held that Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] was an exercise in prospective overruling. The High Court was in error in holding so. The decision of the Full Bench in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] is unsustainable. The Full Bench had evidently failed to notice that cases where the protection was granted by this Court following the invalidation of a caste claim was in exercise of the power conferred by Article 142 of the Constitution, depending upon the facts and circumstances of each case. The jurisdiction under Article 142 is clearly not available to the High Court in the exercise of its jurisdiction under Article 226. The High Court erred in arrogating that jurisdiction to itself.”

9 Hence, the basis of the judgment of the High Court is unsustainable as a result of the law which has been laid down in the judgment in **FCI**. The decision of the Bombay High Court in **Arun Sonone** has been disapproved.

10 Faced with this difficulty, Mr Soumya Chakraborty, learned senior counsel appearing on behalf of the respondent, has relied upon an Office Memorandum dated 8 April 2019 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. The Office Memorandum is extracted below:

> "OFFICE MEMORANDUM
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> Subject: Orders of Hon'ble Supreme Court in Civil Appeal No 10396/2018 arising out of SLP No. 13011/2018 Gajanan Marotrao Nimje & Others Vs RBI & Others and Civil Appeals Nos 10387-10388/2018 arising out of SLP Nos 18555-18556/2018 SG Barapatre & Others Vs Shri Ananta Gajanan Gaiki & Others regarding Appointment of candidates belonging to Halba/Halba Koshti/Koshti caste/community against vacancies reserved for the Scheduled Tribes; representations received – Regarding
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> ****
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> With reference to the subject cited above, attention is drawn to the Hon'ble Supreme Court judgment dated 11.10.2018 in Civil Appeal No 10396/2018 arising out of SLP No. 13011/2018 Gajanan Marotrao Nimje & Others Vs RBI & Others In which the Apex Court has, inter-alia, passed the following order:-
>
> > ",…all appellants (who are from Ha/ba Koshti/Koshti/Halba communities) shall be placed below the list of the general category candidates as on 28.11.2000 and will be continued as such till their superannuation. All the benefits which the appellants earned as reserved category candidates after 28.11.2000 will be surrendered/recovered. After 28.11.2000 the benefits available to the reserved category candidates will be given to the members of the reserved category regarding whom there is no dispute. There shall be no recovery of any benefits from the employees who are already

> superannuated…"
>
> 2. A similar stand has been taken by the Hon'ble Supreme Court in Civil Appeals Nos 10387-10388/2018 arising out of SLP Nos 18555-18556/2018 SG Barapatre & Others Vs Shri Ananta Gajanan Gaiki & Others dated 10.10.2018 as under:-
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> > "For all purposes, those people will get themselves arrayed in the general category as on 28.11.2000 and placed below the last of the general category candidate as on that date."
>
> 3. All Ministries/Departments are requested to furnish action taken in the light of the above judgments. Copies of the aforesaid judgments are annexed herewith for ready reference."

Reliance has also been placed on another circular dated 20 June 2019 issued by the Government of India, Department of Revenue, Central Board of Direct Taxes. Both circulars have relied upon the judgments of a two-Judge Bench of this Court in **S G Barapatre** v **Shri Ananta Gajanan Gaiki**[4] (**Barapatre)** and **Gajanan Marotrao Nimje** v **The Reserve Bank of India**[5] (**Nimje**).

11 In order to consider the background in which the above circulars are issued, it would be necessary to advert to certain significant facets having a bearing on the above two decisions of this Court.

12 In **Barapatre**, the appellants were in appeal before this Court against the orders passed by the Nagpur Bench of the Bombay High Court. The High Court noted that the appellants had declined to subject themselves to a scrutiny of their caste certificate, as a consequence of which their services were directed to be discontinued. When the matter

4 Civil Appeal Nos 10387-10388 of 2018

5 Civil Appeal Nos 10396 of 2018

travelled in appeal before this Court, a two judge Bench of this Court, by its judgment dated 10 October 2018, noted that the same issue had earlier been considered by the High Court, leading to a judgment dated 1 November 2012 in Writ Petition No 5198 of 2009 and connected matters. The High Court, in the course of its earlier judgment, had issued the following directions:

> "18. In that view of the matter, we find that the petitioners are entitled to limited relief, that they are praying for. In the result, the impugned show cause notices are quashed and set aside. It is declared that the petitioners would be entitled to protection of their appointments. It is further declared that if any benefits are granted after 28.11.2000 on the basis that they belong to Scheduled Tribes, the respondent Authorities are at liberty to withdraw the said benefits and restore the position as on 28.11.2000. The respondents to take further necessary steps in accordance therewith."

This Court noted in its decision in **Barapatre** that Food Corporation of India challenged the order of the High Court dated 1 November 2012 before this Court in Special Leave Petitions under Article 136 of the Constitution which were dismissed on 12 April 2013. Review petitions were also dismissed on 26 February 2014. In this background, the Bench of two judges in the judgment dated 10 October 2018 in **Barapatre** observed as follows:

> "8. Therefore, the said judgment qua the employees, who were parties to those writ petitions have become final. The benefits which have been granted, as per the judgment specifically referred to in paragraph 18 of the judgment, which is extracted above, cannot be taken away in collateral proceedings.
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> 9. We make it clear that the employees covered by the said judgment shall only be entitled to the benefits which have been granted specifically in paragraph 18 of the judgment referred to above. For all purposes, those people will get themselves arrayed in the general category as on 28.11.2000 and placed below the last of the general category candidate as on that date."

13 The above observations make it abundantly clear that the challenge by the Food Corporation of India to the order of the Bombay High Court had been rejected on 12 April 2013 and as a result of the decision *inter partes*, the order of the High Court had attained finality. Consequently, this Court clarified in paragraph 9 of the above order that **only** the employees covered by the earlier judgment shall be entitled to the benefits which have been granted specifically by the High Court in paragraph 18 of its judgment, which has been extracted above.

14 The decision of the two judge Bench of this Court in **Nimje** was delivered on 11 October 2018, a day after **Barapatre**. The judgment, which pertained to the Reserve Bank of India, again adverted to the earlier decision of the High Court dated 1 November 2012. The judgment of this Court extracted paragraph 18 of the judgment of the High Court (quoted above) based on which the Reserve Bank of India had issued a circular dated 1 July 2013. It was in this background that this Court, in its judgment dated 11 October 2018, observed as follows:

> "7. Apparently, there was some confusion with regard to the implementation of the judgment dated 01.11.2012 in the judgment in Writ Petition No.1512/2004 and connected matters.
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> 8. Based on the recent judgment of this Court passed in Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others, reported in (2017) 8 SCC 670, the High Court passed the impugned order directing the termination and recovery of the benefits.
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> 9. We are afraid, in the peculiar background of the appellants and the history of the previous litigation of the same issue, the High Court is not justified in passing such an omnibus order. There is no case for anybody leave alone the writ petitioners that at the time of entry in service, the appellants played any fraud. There was no case that the petitioners therein had played any fraud in obtaining the certificate or employment. In any case the appellants, it is pointed out that, even assuming that they do not belong to Scheduled Caste or Scheduled

> Tribe, fall either under the most backward or under the backward category, who were also entitled to some reservation at the time of recruitment. In order to avoid any litigation on this aspect only, the High Court in its wisdom passed the judgment dated 1.11.2012, that all the petitioners therein will be put in the general category.
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> 10. It will be relevant to note that the common judgment dated 01.11.2012 was challenged before this Court and the special leave petition(s) and the review petition(s) were also dismissed.
>
> 11. Having regard to the background, as above, we are of the view that the appellants are entitled to the protection granted by the same High Court in the judgment dated 1.11.2012 in Writ Petition No.1512/2004. In any case the parties to the writ petition cannot be disturbed collaterally and the judgment operated as a judgment in rem in view of the circular dated 1.7.2013 issued by the Reserve Bank of India and since the litigations were pursued by the respective associations."

15 The above observations indicate that it was in the peculiar background, which was noted by this Court, that the protection of services was granted. Again, it is necessary to note that in paragraph 10 of the observations which have been extracted above, this Court has noted that the common judgment of the High Court dated 1 November 2012 had been challenged before this Court and both the Special Leave Petitions and the Review Petitions were also dismissed.

16 The above narration would indicate that the decisions in **Barapatre** dated 10 October 2018 and **Nimje** dated 11 October 2018 were rendered in a context where, prior to the decision of the three judge Bench in **FCI**, the order of the High Court dated 1 November 2012 had attained finality. Since the order of the High Court *inter partes* had attained finality before the decision in **FCI,** the matter had to rest there. Both **Barapatre** and **Nimje** are decisions of a two judge Bench and do not lay down any principle of law contrary to the binding three judge Bench decision in **FCI**. Neither the DOPT circular dated 8 April 2019 nor the circular dated 20 June 2019 of the Department of Revenue

can depart from the principles laid down in **FCI**. The circulars must hence be construed to apply only to the peculiar facts noted in **Barapatre** and **Nimje** which we have explained earlier. Any other construction of the circulars will render them *ultra vires*. The government by an executive act cannot possibly over-ride the binding decision of the three judge Bench of this Court in **FCI**. In the decision in **FCI**, this Court held :

> "65. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that the Government is bound by its own circulars is well settled but it cannot apply in a situation such as the present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment."

17 The present case is governed by the judgment in **FCI**. Admittedly, the issue pertaining to the protection of the services of the first respondent had not attained finality prior to the decision of the three judge Bench in **FCI** to which we have made a reference earlier. The High Court has granted protection to the first respondent purely on the basis of the Full Bench judgment in **Arun Sonone**, which has specifically been overruled by this Court.

18 In the circumstances, we allow the appeal and set aside the impugned judgment and order of the High Court dated 11 July 2016. In consequence, the Writ Petition filed by the first respondent shall stand dismissed. There shall be no order as to costs.

……..…..…..……..…….....J.
[Dr Dhananjaya Y Chandrachud]

……..…..…..……..…….....J.
[K M Joseph]

New Delhi;
January 27, 2020