

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4009 OF 2017

**BINITA JAGRAM RATHOR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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**Advocate for Petitioner : Katneshwarkar P.R.
AGP for Respondents: Mr.A.R.Kale for R.1 to 3.
Adv.Mr.Uday Malte for R.4.
Adv.Mr.A.V.Hon for R.5.**

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**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 19/07/2017

PER COURT :-

1] This Petition is fully covered by the recent judgment of the Hon'ble Supreme Court of India in the case of **Chairman and Managing Director FCI and others V/s Jagdish Balaram Bahira and others** passed in Civil Appeal No.8928/2015 decided with other cases on 6/7/2017.

2] The conclusions of the Hon'ble Supreme Court read as under :

57 For these reasons, we hold and declare that

- (i) The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in **Milind** were in pursuance of the powers vested in this Court under Article 142 of the Constitution.
- (ii) Since the decision of this Court in **Madhuri Patil** which was rendered on 2 September 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;

(iii) The decisions of this Court in **R.Vishwanatha Pillai** and **Dattatray** 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*.

(iv) 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;

(v) By Maharashtra Act XXIII of 2001 there is a legislative codification of the broad principles enunciated in **Madhuri Patil**. 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 (Section 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;

(vi) 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 October 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;

(vii) 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;

- (viii) The decisions in **Kavita Solunke** and **Shalini** of two learned Judges are overruled. **Shalini** in so far 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;
- (ix) *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;
- (x) The judgment of the Full Bench of the Bombay High Court in **Arun Sonone** is manifestly erroneous and is overruled; and
- (xi) 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 XXIII of 2001 holds the field. “

3] We are of the clear view that in the light of this authoritative pronouncement, no reliance can be placed on the judgment of Hon'ble Supreme Court of India in the case of **State of Maharashtra V/s Milind and others reported in AIR 2001 S.C. 393.**

4] The Hon'ble Supreme Court has clarified that the Constitution Bench directives in para 38 of the decision in Milind cannot be uniformly applied and to all cases for they are not laying down a law but are traceable to Article 142 of the Constitution of India.

5] The Hon'ble Supreme Court in its conclusion specifically referred to **R. Vishwanatha Pillai V/s State of Kerala and another reported in (2004) 2 SCC 105** and held that these were rendered by three Judge Bench and they lay down the correct principle of law. It is in such circumstances, that we do not think that the petitioner can claim any relief in writ jurisdiction.

6] We have perused the order of the scrutiny committee and do not find any serious legal infirmity or perversity in the same. The petitioner admittedly resided in the State of Uttar Pradesh earlier. He has not been able to produce the required proof so as to establish and prove that he belongs to the Scheduled Tribe. The claim has been negated by applying the correct legal principles.

7] Once this order of the scrutiny committee cannot be interfered with, then, we cannot allow the petitioner to raise another claim and that is, that having paid full tuition fees and on par with an open candidate, now, the petitioner be treated as an open candidate. Even this course is not legally permissible and having secured the admission against a reserved seat and completed the studies. In such circumstances payment of fees on par with an open candidate is of no consequence. The Writ Petition is therefore dismissed. No costs.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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