

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.199 OF 2017***

Umesh S/o Hariram Nandanwar
Aged about 51 years,
Occupation : Service,
R/o Otr No. MPT/M/244/II/1,
“C” Type, NPT Colony,
Head Land Sada,
Mormugao, Goa 403 804.

... Petitioner

Versus

1. Schedule Tribe Caste
Certificate Scrutiny Committee
through its Member/Secretary,
Giri Peth, Nagpur,

2. Chief Mechanical Engineer,
Mormugao Port Trust,
Mormugao, Goa.

.... Respondents

Mr. Narayan Dattaram Govekar, Advocate for the Petitioner.

Mr. Yogesh V. Nadkarni and Ms. D. Shirgam, Advocates for
Respondent No.2.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 18 April 2018.

Oral Judgment (Per N. M. Jamdar, J)

By this petition, the Petitioner has sought a prayer for protection of the services of the Petitioner with Respondent No.2- Mormugao Port Trust, in view of the decision of the Full Bench of this Court in the matter of *Arun Sonone vs State of Maharashtra and others*¹.

2. On 25 June 1982, the Petitioner secured a caste certificate as belonging to Halba Scheduled Tribe. The Petitioner was appointed on the post of Clerk with Respondent No.2 on 7 December 1987. The Petitioner was removed from the services on 7 April 2014 in view of the vigilance report during verification of the caste certificate. The Writ Petition was filed by the Petitioner bearing No.2744 of 2014 at Nagpur Bench of this Court. Notice was issued in the petition on 17 June 2014 and ad-interim relief was granted protecting the services of the Petitioner. Thereafter, the Writ Petition was disposed of directing the Petitioner to appear before the Scheduled Tribe Certificate Scrutiny Committee at Nagpur. The Petitioner appeared before the said Scrutiny Committee at Nagpur and the Scrutiny Committee by order dated 28 September 2016 invalidated the caste certificate issued

¹ 2015(1) Mh, L.J.457

by the Executive Magistrate, Pauni, District Bhandara. The Petitioner thereafter filed a Writ Petition bearing No.5987 of 2016 seeking protection in services in terms of the decision of the Full Bench in the case of *Arun Sonone V/s State of Maharashtra and others*. By order dated 25 January 2017, the Division Bench (Nagpur Bench) opined that since the employment of the Petitioner did not fall within the jurisdiction of the Nagpur Bench and that the Respondent No.2-Mormugao Port Trust is situated in Goa, the Writ Petition was disposed of by continuing the ad-interim order for a period of six weeks. Thereafter, the Petitioner filed the present petition with the above prayer.

3. Rule was issued in this petition on 8 June 2017 and ad-interim order was continued. The Misc. Civil Application No.850 of 2017 was taken out by the Respondent No.2-Employer for vacating the ad-interim order. On various dates, when the Civil Application came up on board, none was present on behalf of the Petitioner. Notice had to be issued and on 5 March 2018, we passed a detailed order observing that since it is the Petitioner who has filed the petition and ad-interim order was granted and that this Court has provided various facilities to the litigants and that the status of the matter is reflected on the website of this Court, it is the duty of the Petitioner to

attend to his own case. After this order has been passed, the learned counsel appearing for the Petitioner has appeared. We had kept the Writ Petition today for disposal.

4. We have heard Mr. N. Govekar, learned counsel appearing for the Petitioner and Mr. Y. Nadkarni, learned counsel appearing for Respondent No.2.

5. The learned counsel for the Petitioner submitted that the Petitioner has sought protection in services in view of the decision of the Full Bench of this Court in *Arun Sonone V/s State of Maharashtra and others* and that the Petitioner has not committed any fraud and, therefore, his services be protected. He submitted that the Petitioner is also desirous of seeking a voluntary retirement.

6. The learned counsel for Respondent No.2-Employer submitted that the Apex Court in three Judge Bench in the case of *Chairman and Managing Director, FCI and others v Jagdish Balaram Bahira and others*² has taken a review of the position of law as regards the effect of invalidation of caste certificate on the services of the claimant. The learned counsel submitted that the decision of the Full

² AIR 2017 SC 3271

Bench in the case of *Arun Sonone V/s State of Maharashtra and others* has been overruled and, therefore, there is no question of granting any relief to the Petitioner.

7. The Apex Court in the case of *Chairman and Managing Director, FCI* has considered the entire case law and has also referred to the controversy in respect of Halba and Koshti community at length. The Apex Court, after considering the decisions on the issue recorded the conclusions at paragraph 57 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* (AIR 2001 SC 393) 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* (AIR 1995 SC 94) 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 (AIR 2004 SC 1469) and in Dattatray (AIR 2008 SC 1678) 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 (AIR

1995 SC 94). 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 sofaras 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 (AIR 2015 Bom 123) 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.”

8. The above conclusions makes it clear that the benefit secured by an individual, such as an appointment to a post on the basis that the candidate belonging to the reserved category, on invalidation of the caste certificate such appointment is rendered void

and non est. The Apex Court has categorically held that the decision of the Full Bench of this Court in *Arun Sonone V/s State of Maharashtra and others* is manifestly erroneous, and it was overruled. In view of this dicta of the Apex Court, there is no question of granting any relief to the Petitioner based on the decision in the case of *Arun Sonone V/s State of Maharashtra and others*, which now stands overruled.

9. The effect of the decision in the case of *Chairman and Managing Director, FCI* and whether any relief now can be granted based on the decision in the case of *Arun Sonone V/s State of Maharashtra and others* has been considered by the Division Bench of this Court (Nagpur Bench) in the case of *Dattakishor Jagannath Kumbhare and others v State of Maharashtra and others*³. The Division Bench disposed of various pending petitions and discontinued the interim orders and declined to extend any protection in services.

10. Since the Petitioner had filed this petition based on the decision in the case of *Arun Sonone V/s State of Maharashtra and others*, we had granted liberty to the learned counsel for the Petitioner

3 2017(6) MhLJ 449

to address us on merits of the challenge in the Petition to the decision of the Caste Scrutiny Committee, even though the Petitioner has expressly given up the challenge. We adopted this course of action so that the Petitioner is not prejudiced.

11. Before the Scrutiny Committee, the Petitioner produced the Caste Certificate, College leaving certificate, service book and his own affidavit. It is settled law that such self serving affidavit, College and School leaving certificates of recent years, cannot be considered as sufficient evidence in support of the caste. Following the decision of the Apex Court in the case of *Madhuri Patil vs Additional Commissioner Tribal Development*⁴, the Courts have insisted on entries in the pre-constitution period. The Vigilance Squad conducted an inquiry and collected the documents of the pre-constitution period. These documents completely falsify the case of the Petitioner. The documents in respect of his own father, paternal uncle and aunt of the year 1935, 1945 and 1949 show the entries as Koshti. The Petitioner did not produce any documents, other than the one referred to earlier. Even the Petitioner did not give correct answer in Affinity Test. Considering all these documents, the Scrutiny Committee rejected the claim of the Petitioner. Nothing has been shown to us how the

⁴ (AIR 1995 SC 94)

conclusion is perverse. The Petitioner has no documents whatsoever in support of his claim as belonging to Halba community. Merely because the Petitioner has given up his claim does not take away the fact that the Petitioner's claim was entirely bogus to start with. Thus, the Petitioner fraudulently secured appointment in the services of the Respondent No.2.

12. The Apex Court in the case of *Chairman and Managing Director, FCI* has emphasized that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained and such continuance causes detriment to the genuine candidate, who actually belongs to the reserved category who is deprived of an appointment. The selection of such a person who is not eligible allows someone who is ineligible to gain access to scarce public resources, secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected and thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. Such fraud on the Constitution must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected. Therefore, there is no question of grant of any relief to the Petitioner.

13. The learned counsel for the Petitioner seeks continuation of the interim order. Following the law laid down by the Apex Court, the Division Bench of this Court (Nagpur Bench) in the case of *Dattakishor Jagannath Kumbhare and others* disposed of the petition by discontinuing the interim order and the protection granted. Therefore, we are not inclined to accede to the request of the Petitioner for continuation of an ad-interim order any further, in view of the clear mandate of the Apex Court.

14. The Writ Petition is dismissed. Rule discharged. Interim order granted is vacated. No costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.