

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

**WRIT PETITION NO. 9885 OF 2019
WITH
CIVIL APPLICATION NO. 14568 OF 2019**

ASHABAI BHILA KOLI @
ASHABAI DEVMAN BORSE
VERSUS
BHARAT SANCHAR NIGAM LTD. AND OTHERS

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Advocate for Petitioner : Mr. Mahesh S. Deshmukh
ASG for Respondents No. 1 to 4 :
Mr. S. B. Deshpande

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WRIT PETITION NO. 13643 OF 2019

REKHA BABULAL MAHALE
VERSUS
UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Mr. Sushant C. Yeramwar
ASG for Respondents No. 1 to 3 :
Mr. S. B. Deshpande

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WRIT PETITION NO. 14678 OF 2019

ARUN SHANKAR LIMJE
VERSUS
THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Mr. Deepak D. Choudhari
ASG for Respondents No. 1 to 4 :
Mr. S. B. Deshpande

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WRIT PETITION NO. 14696 OF 2019

SURYNARAYAN SHANTARAM CHINTALOO
VERSUS
THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Mr. Deepak D. Choudhari
 ASG for Respondents No. 1 to 4 :
 Mr. S. B. Deshpande

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WRIT PETITION NO. 14702 OF 2019

MALA MADHUKARRAO BURDE
 VERSUS
 THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Mr. Deepak D. Choudhari
 ASG for Respondents No. 1 to 4 :
 Mr. S. B. Deshpande

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**CORAM: S. V. GANGAPURWALA &
 AVINASH G. GHAROTE, JJ.**

Reserved for orders on:	16.12.2019
Order Pronounced on:	13.03.2020

ORDER (Per S. V. Gangapurwala, J.):

1. The petitioners in all these writ petitions are employees of Bharat Sanchar Nigam Limited (BSNL). The BSNL has directed the petitioners to submit caste / tribe certificates issued by the competent authority. If caste / tribe validity certificates are not available, then to apply / register online for obtaining from State / District level scrutiny committee and submit the same immediately, failing which action like

reversion / removal / termination from service / launching of FIR under I.P.C. Section 420 and seizing of pension of retired employees would be undertaken. The petitioners have assailed the said communications in the present writ petitions. All the petitions are based on similar set of facts and involve common question of law. To avoid rigmarole are decided by the common order.

2. Mr. M. S. Deshmukh, learned Advocate eruditely advanced the lead arguments on behalf of the petitioner and the other Advocates adopted the arguments of Mr. Deshmukh, the learned Advocate. The submissions of the learned counsel for the petitioners can be summarised as under-

A. The "Government" is defined U/Sec. 2(e) of 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 (*hereinafter*

referred to "Maharashtra Act No. XXIII of 2001") means the "Government of Maharashtra". Section 6(3) of the Maharashtra Act No. XXIII of 2001 obliges appointing authority of Central or State Government or Public Sector Undertaking (PSU) etc. to make an application for verification of caste certificate and issue of validity certificate in case a person is selected for an appointment with the Government, Public Sector Undertaking etc. The learned Advocate submits that the conjoint reading of Section 2(e) and Section 6(3) suggest that the provision applies to such employees, who have been appointed against reserved categories, under Government i.e. Government of Maharashtra and not in the service of any Department of Union of India i.e. Central Government.

B. The Telecom Department with whom initially the petitioners were appointed, in the year 1983 was part of Union of India, as such basic appointment of the petitioner

being with Union of India provisions of Section 6(3) of the Maharashtra Act No. XXIII of 2001 would not apply to the "Service of the Petitioner".

C. After the establishment of B.S.N.L. which is Public Sector Undertaking, provisions under Section 6(3) of the Maharashtra Act No. XXIII of 2001 would not apply axiomatically. There is no decision by B.S.N.L., to make applicable provisions of Maharashtra Act No. XXIII of 2001 with retrospective effect. Thus impugned communication is unsustainable.

D. Service Regulations of erstwhile Telecom Department or present B.S.N.L. do not contain any such obligation on employee to submit proposal with scrutiny committee for verification of Caste / Tribe certificate and also to submit Caste / Tribe validity certificate.

In absence of provisions in Service Regulations more particularly obligations on employee to submit 'Caste Validity Certificate', neither respondent no. 3 nor B.S.N.L. is justified in issuing impugned communication thereby insisting to submit caste validity certificate.

E. Neither in order of appointment nor in promotion order, there is any such condition incorporated to submit caste validity certificate by employer, as such impugned communication is illegal, improper and without Authority of law.

F. In erstwhile Telecom Department or present B.S.N.L. which is Public Sector Undertaking of Government of India spread over entire India, for appointments from Reserved Categories concept of 'Migrant' is inapplicable. Accordingly, persons armed with caste certificate from any State / Region of India are entitled to be appointed / promoted

against reserved sections. Many employees of erstwhile Telecom Department or B.S.N.L. appointed against reserved seats are transferred, deputed from one State to another State in India.

G. In entire India hardly there are 4-5 States wherein concept of verification of caste certificate and grant of caste validity certificate is brought either by the way of appropriate Legislation or Government Resolutions.

The employees from other State appointed against reserved posts on the basis of their caste certificates and there being no such mechanism provided in their original / parent State for scrutiny of caste or grant of validity certificates, such employees are absolved from submission of caste validity certificate by B.S.N.L. However, employees from State of Maharashtra armed with the caste certificates are only

chosen for submission of caste validity certificates. Thus, there is apparent discrimination while treating employees, who are similarly situated, and is violative of Article 14 of Constitution of India.

H. Although, in the celebrated matter of *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others* reported in *AIR 1995 (SC) 94* (Page No. 37-50), the Apex Court issued directions for establishing scrutiny committee and vigilance cell. In the next judgment *Director of Tribal welfare, Government of Andhra Pradesh Vs. Laveti Giri and another* reported in *AIR (1995) 4 SCC 32*, the Hon'ble Apex Court observed that it was high time, that Government of India should have the matter examined in greater detail and bring out an uniform legislation. However, till this date no such Legislation is brought by Union of India regarding verification of caste certificate and submission of caste validity

certificate. In this view of the matter, in absence of Legislation or Government order by Union of India and also in absence of any provisions under Service Regulations, order of appointment, promotion regarding submission of validity certificate by employees of erstwhile Telecom Department or B.S.N.L. impugned communication issued by respondent no. 3 is unsustainable in eyes of law.

I. Respondent placed reliance on the judgment in matter of ***Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balram Bahir and others (2017) 8 SCC 670***. In the said matter, the applicability of the provision of Maharashtra Act No. XXIII of 2001 to the employees of B.S.N.L. *vis-a-vis* compulsion to submit caste validity certificate was not brought to the notice of Hon'ble Supreme Court. Said Judgment of Hon'ble Apex Court mainly deals with penal consequences of

provisions therein like withdrawal of benefits and prosecution. Applicability of Section 6(3) of the Maharashtra Act No. XXIII of 2001 more particularly obligation to submit proposal and ultimate caste validity certificate by employee appointed under erstwhile department of Union of India subsequently Public Sector Undertaking, was not subject matter before Hon'ble Supreme Court. Hence ratio of said judgment is inapplicable to the present facts of the case. The cases referred in said judgment before Hon'ble Apex Court are mainly arising out of invalidation of caste claims and extending protection thereafter.

The learned Advocate for the petitioner further submits that, in present petition the petitioner is specifically taking exception to the power of B.S.N.L. to insist for submission of caste validity certificate by employees particularly on a ground of inapplicability of provisions of

the Maharashtra Act No. XXIII of 2001 and secondly on the ground that there is no provision in Service Regulations or any condition in order of appointment to submit caste validity certificate by employee of B.S.N.L.

3. Mr. Deshpande, learned Assistant Solicitor General for the respondents lucidly canvassed following propositions.

A. B.S.N.L. on 09.09.2005, issued office memorandum regarding verification of caste status of Scheduled Castes, Scheduled Tribes and Other Backward Class candidates at the time of initial appointment / promotion. Therefore, it is very clear that the respondent has issued Office Memorandum asking the concerned employees to get Validity Certificate of their social status. Consequences are also clearly stipulated in the Office Memorandum. This Memorandum is

applicable to BSNL employees all over country.

B. The question of caste / tribe validity certificates to be obtained by persons appointed on reserved posts is conclusively decided by the Hon'ble Apex Court in the matter of *Chairman and Managing Director, Food Corporation of India and others V. Jagdish Balaram Bahira and others* reported in *2017 DGLS (SC) 696*. It is submitted that such petitions will have to be decided on the principle of fraud on the Constitution of India committed by the persons, who are illegally appointed on reserved posts. In paragraph 57 (b) and (c) of said judgment the Hon'ble Apex Court clearly held that scrutiny and verification of caste and tribe claims by scrutiny committees to be constituted by the State Government and the procedure for the conduct of investigation into the authenticity of the claim is mandatory.

C. The learned Assistant Solicitor General further submits that, the Hon'ble Apex Court in the matter mentioned herein above observed that if a person fails to get his social status verified through the procedure given in the Act of 2000 or the mechanism devised by respective State Governments, the consequences must follow. In this case, it must entail termination and withdrawal of all benefits accrued by the concerned employee.

D. The reliance by the petitioners in the matter of *Ganesh Hegade V/s. S. Bangarappa*, para 8, may not be of any help to the petitioners for the simple reason that all petitioners have obtained caste certificates from the State of Maharashtra. In Maharashtra State an Act on the line suggested by the Hon'ble Apex Court is already in force. Furthermore, even in that matter, the Hon'ble Apex Court was basically concerned about prescribing penal consequences on persons, who flouted the Constitution and cornered

the benefits reserved for the real tribals, so that the menace of fabricating the false record and to gain unconstitutional advantages by plain/spurious persons could be prevented. In view of conduct of the petitioners, they cannot take any aid of these observations. It is submitted that these observations are to prevent persons like petitioners from usurping constitutional benefits under false claims.

E. The provisions of Section 6(3) of the Act of 2000, are very clear. The opening words of this section speak about the appointing authority of the Central or State Government, local authority, public undertakings, etc. Therefore, this provision is clearly applicable to public undertakings such as BSNL, which is wholly owned subsidiary company of Union of India. Hence, there is absolutely no truth in the assertion of the petitioners that Maharashtra Act, 2000,

regarding verification of caste certificate is not applicable to them.

F. Some of the petitioners had already expressed their willingness to undergo the procedure for obtaining validity certificates. Petitioner in *Writ Petition No. 9885/2019, Ashabai Bhila Koli V/S. Bharat Sanchar Nigam Ltd. and others*, vide letter dated 2nd July, 2019, at page 36 of Writ Petition, accepted to submit proposal for caste validation to the concerned office. In view of this admission, petitioners cannot be allowed to reopen the matter.

G. There is absolutely no substance in the submission of the petitioners that in other States there is no mechanism or verification of the caste / tribe claims. It is submitted that the judgment of the Hon'ble Apex Court is binding on everyone in India. The Hon'ble Apex Court directed to get the social status verified through the machinery that has been

provided by the State Government, Maharashtra, from where all petitioners obtained their caste/tribe certificates and is within the legal framework in existence in this regard. Hence, they are duty bound to follow the provisions of 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 and also the directions of the Hon'ble Apex Court and Office Memorandum of the respondent/Company.

H. The petitioners cannot claim negative equity by citing examples of employees from other States. The other State Governments are also duty bound to implement and follow judgment of the Hon'ble Apex Court in this matter and by this time must have provided mechanism for verification of caste/tribe claim. Having enjoyed benefits of caste/tribe

certificate, the petitioners are now fighting shy of getting it verified on one or the other pretext.

4. Before we proceed to deal with the contentions of the learned counsel for the parties, it would be relevant to refer the relevant provisions viz. Section 6 of the Maharashtra Act No. XXIII of 2001.

"Section 6. Verification of Caste Certificate by Scrutiny Committee:- (1) *The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.*

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category for the purposes mentioned in section 3 may make an application, well in time in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee, for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational

institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed, by the Scrutiny Committees for the verification of such Caste Certificate and issue of a validity certificate, in case a person is selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-Operative Societies or any other Government aided institutions who has not obtained such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of such Caste Certificate and adhere to the time limit for the verification and grant of validity certificate, as prescribed."

5. The petitioners are the employees of respondent B.S.N.L. They have secured employment from reserved category. The petitioners at the time of entry in service represented that they belong to the reserved category. These petitioners have availed the benefits of social reservations.

6. The employer under the impugned communications have directed the petitioners to submit the caste certificate and if the caste validity certificate is not available, the petitioners are directed to apply / register

online for obtaining the caste validity certificate to the scrutiny committee and submit the same immediately or submit acknowledgment of online registration within three (03) months from the date of receipt of the letter failing which action would be taken of revocation / removal / termination from service / launching of F.I.R. under Section 420 of I.P.C. and seizing of pension of retired employees. The petitioners are aggrieved by the said communications.

7. The Government of Maharashtra has enacted the Maharashtra Act No. XXIII of 2001. It provides for the regulation of issuance and verification of caste certificates of the persons belonging to the reserved category and for the matters connected therewith. As per Section 3 of the Maharashtra Act No. XXIII of 2001, any person belonging to the reserved class is required to produce a caste certificate in order to claim the benefit of reservation provided to such castes, Tribes or Classes in any public employment. Under Section 4 of the Maharashtra Act No. XXIII of 2001, the

competent authority is empowered to reject or grant the application for the issuance of caste certificate. Sub Section 2 of Section 4 of the Maharashtra Act No. XXIII of 2001 provides that the caste certificate issued by the competent authority shall be valid subject to the verification and grant of validity certificate by the scrutiny committee. Section 6 of the Maharashtra Act No. XXIII of 2001 deals with the verification of the caste certificate by the scrutiny committee. Sub Section 1 of Section 6 of the Maharashtra Act No. XXIII of 2001 mandates the Government to constitute by notification in the official gazette one or more scrutiny committee(s) for verification of caste certificates issued by the competent authorities. Sub Section 2 of Section 6 of the Maharashtra Act No. XXIII of 2001 requires a person who has obtained the caste certificate to make an application to the scrutiny committee for verification of such caste certificate and issue of a validity certificate.

8. Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 is relevant for our consideration. Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 mandates the appointing authority of the Central or State Government, local authority, public sector Undertakings, educational institutions, Co-operative Societies or any other Government aided institutions to make an application in such form and in such manner as may be prescribed by the scrutiny committees for the verification of such caste certificate and issue of a validity certificate in case a person is selected for appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions who has not obtained such certificate. Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 cannot be read to be directory. The word used is "shall". The appointing authority of the central or State Government, local authority, public sector

undertakings "shall", make an application for verification of caste certificate and issue of a validity certificate in case a person is selected for an appointment. The word "shall", appearing therein, implies that it is obligatory on the employer / appointing authority to verify the caste certificate and apply to the committee for verification of caste certificate and issuance of a validity certificate in case of a person who has taken up his employment in any central or State Government, public sector undertakings, local authority. The use of the word "shall" makes the provision imperative and mandatory.

9. The respondent / Bharat Sanchar Nigam Limited (B.S.N.L.) is a Public Sector Undertaking. The said fact is not disputed. The petitioners are the employees of a public sector undertaking. Section 6(3) of the Maharashtra Act No. XXIII of 2001 would squarely apply with all its rigors.

10. Some of the petitioners are appointed from the year 1982. According to the petitioners, at

the time they were appointed there was no condition imposed of submitting the validity certificate nor the Maharashtra Act No. XXIII of 2001 was in force, as such they cannot be directed to submit the validity certificate. The said argument of the petitioners is required to be repealed at the threshold. The Maharashtra Act No. XXIII of 2001 came into force as a result of the judgment of the Hon'ble Apex Court in case of *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (supra)*. In the said judgment, the Hon'ble Apex Court directed the State Governments to constitute committees assisted by vigilance cells to scrutinise and decide the cases expeditiously. The Apex Court in the case of *Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra)* was dealing with the case of an employee of a Public Sector Undertaking. In the said case, the plea that appointments of the persons made prior to the date on which the Act came into force

would not be required to submit validity was rejected. The Apex Court interpreted Section 7 of the Maharashtra Act No. XXIII of 2001. The Apex Court observed that the expression before or after commencement of this Act under Section 7 of the Maharashtra Act No. XXIII of 2001 indicates that the scrutiny committee constituted U/Sec. 6 of the Maharashtra Act No. XXIII of 2001 is empowered to cancel caste certificate whether it was issued prior to the enforcement of the Maharashtra Act No. XXIII of 2001 or thereafter. Absence of the word before or after commencement of the Act in Section 10 makes no substantive difference because withdrawal of benefit as provided U/Sec. 10 is an event which flows naturally and as plain consequence of invalidation of a claim.

11. The petitioners contended that in other States the machinery such as the one provided in the State of Maharashtra for verification of the caste certificate is not in existence and as such there is discrimination. It is further contended that the persons appointed with B.S.N.L. in other

States may not be required to verify their caste certificates, whereas the employee in Maharashtra are being directed to verify their caste certificates. The B.S.N.L. operates throughout the country. The same would be discriminative and violative of Article 14 of the Constitution.

12. We cannot fathom and comprehend such an argument. The concept of equality envisaged in Article 14 of the Constitution is a positive concept. If the other States have not complied the judgment of the Apex Court in case of *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (supra)* and the State of Maharashtra has complied with the said judgment by constituting the scrutiny committee for verification of the caste certificate the petitioners appointed in the State of Maharashtra with public sector undertakings cannot be said to be aggrieved to complain about the constitution of scrutiny committee and submission of their caste certificate for verification. The same would tantamount to

claiming negative equality. Article 14 of the Constitution does not postulate negative equality.

13. The petitioners boldly claimed the benefits of reservation on the basis of caste certificates at the time of entry in service now are feeling shy to face the acid test for verification of the same certificates. The petitioners are in public employment. They have reaped the benefit of social reservation. If it is proved that petitioners do not belong to the reserved class of which they have taken benefits then the benefits are to be taken away as per the judgment of the Apex Court in case of *Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra)*.

The guidelines were detailed in the judgment of the Apex Court in case of *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (supra)* for constitution of the committees by the State Government for scrutinising claims of candidates belonging to a scheduled caste,

tribe or a backward community designated for reservations. It is no gain saying that in other States the committees are not constituted. The material is not placed before us about the mechanism provided in other States for verification of caste claims. However in the State of Maharashtra the mechanism is provided for verification of the caste certificates. The petitioners are appointed in the State of Maharashtra. They are bound by the provisions of the Maharashtra Act No. XXIII of 2001. It is also no gain saying on part of the petitioners that they are appointed prior to the enforcement of the Maharashtra Act No. XXIII of 2001 and condition does not exist for submission of the validity certificate in their appointment order. The Hon'ble Apex Court in the case of *Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra)* has specifically observed that even if the caste certificate relied is prior to the enforcement of the Maharashtra Act No. XXIII of

2001, the same can be dealt with and also if the employment is prior to the Maharashtra Act No. XXIII of 2001 the candidate is required to submit his / her caste certificate for validation and to present the validity certificate so as to protect his / her employment. In case of *Director of Tribal Welfare, Government Of Andhra Pradesh Vs. Laveti Giri and another (supra)* the Hon'ble Apex Court expected that the Government of India brings out uniform legislation with necessary guidelines and rules prescribing penal consequences on the persons who flouted the Constitution of India cornering benefits reserved for real tribals and backward class persons. The Government of India may not have brought about a uniform legislation but the State legislation holds the field. The State legislation is also applicable to the public sector undertakings as is abundantly clear upon reading Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 as discussed supra.

14. The petitioners have garnered the benefits of reservation at the time of appointment. The caste certificates obtained by them is required to be verified and examined by the scrutiny committee. The veracity of the claim of the petitioners belonging to the reserved category is required to be tested. The petitioners are bound by the State enactment in view of the fact that public sector undertakings are also within the ambit and purview of the Maharashtra Act No. XXIII of 2001. The Hon'ble Apex Court in case of *Chairman and managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra)* has observed that service under the Union and State or for that matter under the instrumentalities of the State subserves the public purpose. The Apex Court observed thus-

"46. Service under the Union and the States, or for that matter under the instrumentalities of the State subserves a public purpose. These services are instruments of governance. Where the State embarks upon public employment, it is under the mandate of Articles 14 and 16 to follow the principle of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality.

Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a choice amongst competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of 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. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. These effects upon good governance find a similar echo when a person who does not belong to a reserved category passes off as a member of that category and obtains admission to an educational institution. Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. Once the legislature has stepped in, by enacting Maharashtra Act XXIII of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in *Milind* spoke on 28 November 2000. The state

law has been enforced from 18 October 2001. Judicial directions must be consistent with law. Several decisions of two judge benches noticed earlier, failed to take note of Maharashtra Act XXIII of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the area was unregulated by statute. Shalini noted the statute but misconstrued it.

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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 filed 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 in 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 belonging 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."

15. The Apex Court in case of *Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others* (*supra*) was dealing with the matter of an employee from a public sector undertaking and as observed above Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 even covers

public sector undertakings. Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 is mandatory.

16. In the light of above, no case for interference is made out. Writ Petitions are dismissed.

17. In view of dismissal of the writ petition, the civil application is also disposed of.

18. The petitioners were directed to submit registration online within three months. Considering the fact that the interim order was passed by this Court, we extend the time for the petitioners to submit the documents for verification of their caste claim to the scrutiny committee / register online by one (01) month.

[AVINASH G. GHAROTE, J.] [S. V. GANGAPURWALA, J.]

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