

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2653 OF 2023

- PETITIONERS** : 1 Ku. Madhuri Ramesh Talewar, aged 26 yrs., Occu.-student, r/o CG-2, Archana Apartments, Bangali Camp, Uttam Nagar, Chandrapur.
- 2 Shefali Ramesh Talewar, aged 24 years, Occu.-Student, r/o CG-2, Archana Apartments, Bangali Camp, Uttam Nagar, Chandrapur.

..VERSUS..

- RESPONDENTS** : 1 The State of Maharashtra through its Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai.
- 2 The Director of Medical Education and Research, State of Maharashtra, St. Georges' Hospital Compound, Near C.S.T. Fort, Mumbai.
- 3 Admission Regulating Authority through its Chairman, State of Maharashtra, 9th Floor, New Excelsior Building, A.K. Nayak Marg, Fort, Near C.S.T., Mumbai.
- 4 Maharashtra University of Health Sciences, Nashik through its Registrar, Mhasrul, Vani-Dindori Road, Nashik.
- 5 The Dean, Government Medical College, Chandrapur, Ramnagar, Chandrapur.

Mr B. G. Kulkarni, Advocate for Petitioners.
Mr V. A. Thakare, AGP for Respondent Nos.1, 2 and 5.
Mr A. Deshpande, Advocate with Mr N. A. Gaikwad, Advocate for Respondent No.3.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 3rd AUGUST, 2023.

JUDGMENT : (PER : VALMIKI SA MENEZES, J.)

. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties and the petition is disposed of at the stage of admission.

2. By this petition, the petitioners invoke our writ jurisdiction under Article 226 of the Constitution of India seeking to quash the letter dated 21.01.2021 issued by respondent No.2 – Director of Medical Education and Research, effectively cancelling the admissions of the petitioners to the M.B.B.S. Course in the College run by respondent No.5.

Further, relief has been sought by the petitioners for the writ of mandamus to command respondent Nos.1 to 5 to regularize the admissions of the petitioners in the M.B.B.S. course conducted by respondent No.5 - College, as

an Open Category Candidate, and to permit the petitioners to complete their M.B.B.S. course in that category.

3. The facts in brief, which have led to the filing of this petition, are stated below :

a) The petitioners took admission in the Academic Year 2016-17 for the M.B.B.S. course conducted by respondent No.5- College and the College has granted admissions under the Scheduled Tribe Category, on the basis of a caste certificates obtained from the Sub-Divisional Officer, Nagpur on 04.08.2015, claiming to belong to the "Chattri" Scheduled Tribe. The admissions were made subject to the certificates produced by the petitioners being verified by the Caste Scrutiny Committee under the Maharashtra Scheduled Caste, 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 as the “Act”).

b) Accordingly, the petitioners produced evidence before the Scrutiny Committee, and on an enquiry being conducted, an order came to be passed by the Scrutiny Committee on 29.09.2020 rejecting the claim of the petitioners, that they belonged to “Chattri” Scheduled Tribe. By this time, the petitioners had completed three and half years of the M.B.B.S. course.

c) The petitioners raised a challenge to the order dated 29.09.2020 of the Caste Scrutiny Committee before this Court in Writ Petition No.804 of 2021, which was dismissed *vide* judgment dated 05.03.2021, upholding the Scrutiny Committee’s order that the petitioners did not belong to the “Chattri” Scheduled Tribe. The Hon’ble Supreme Court has, thereafter by its order dated 14.10.2022 passed in Special Leave Petition (Civil) Diary No(s).27880 of 2022, confirmed this Court’s

judgment dated 05.03.2021, bringing finality to the question of the petitioners' caste.

d) Thereafter, respondent No.2- Director of Medical Education and Research had issued letter dated 21.01.2021 calling upon each of the petitioners to pay a fine of Rs.10,00,000/- (rupees ten lakhs) for wrongly securing admissions to a seat in the Scheduled Tribe Category. The petitioners have paid this penalty. In addition, the respondent No.5- College issued letter dated 13.02.2023, by which the normal fees to be paid by the Open Category Candidates was also claimed from each of the petitioners in the amount of Rs.2,89,800/-. This amount was also paid by the petitioners to avoid any recovery proceedings under the Act.

4. In this background, the petitioners are now seeking intervention by this Court for a direction to the respondent No.2- Director of Medical Education and Research, to treat the M.B.B.S. course admissions of the

petitioners in the College of respondent No.5 to be regularized, and necessary directions be given to allow the petitioners to continue in and complete their M.B.B.S. course in the Open Category.

The main ground for seeking such a relief by the petitioners is that cancellation of their admissions in the College, after having been paid a substantial fine of Rs.10,00,000/-, and the entire fees for the general category, would be an arbitrary exercise on the part of the respondent No.2 and respondent No.5 to cancel the petitioners' admission all together. It is further submitted by the petitioners that they have successfully completed the curriculum course with high grades and now denying their continuation in the M.B.B.S. course until completion, in the Open Category would amount to a disproportionately high penalty, amounting to an unreasonable action.

5. The grant of relief in this petition has been vehemently opposed by the respondents, who have contended that the provision of Section 10 of the Act,

mandates the debarring of the petitioners from the concerned Educational Institution, since they have secured admissions on reserved Scheduled Tribe Category on the basis of a false caste certificate. It was submitted that the findings on the false claim of the petitioners to belong to the “Chattri” Scheduled Tribe have been confirmed all the way by the Hon’ble Supreme Court, and in that view of the matter, grant of relief as sought in the petition would amount to issuance of a writ contrary to the mandate of Section 10 of the Act. It was further submitted that the Hon’ble Supreme Court in *Chairman and Managing Director, Food Corporation of India and Ors. ..V/s.. Jagdish Balaram Bahira and Ors, (2017) 8 SCC 670*, has deprecated the practice of passing Government Resolutions or Circulars to override the statutory consequence of taking advantage of false caste certificates to obtain admission in colleges or occupy positions in public service.

6. We have gone through the record of the petition and heard the submissions on behalf of the petitioners and the respondents.

7. In Chairman and Managing Director, Food Corporation of India and Ors. .V/s.. Jagdish Balaram Bahira and Ors., (supra), the Hon'ble Supreme Court has considered precisely the very same question raised before us in this petition, as to whether the petitioners, having claimed admissions on a false caste certificates, and taken admissions to a reserved seat, would now claim that the action of debarring the petitioners from continuing the course in the general category, an arbitrary exercise on the part of the respondent No.2.

In that judgment, individuals had sought the benefit of public employment on the basis of a claim to belong to a beneficiary group, which upon investigation was found to be invalid. Despite invalidation of this claim, the argument raised by those petitioners to invoke the jurisdiction of a writ Court, was on the assertion that equities arise upon the lapse of time, and such equities, as in the present case, the petitioners having completed four years of the M.B.B.S. course, are capable or being protected by this Court in exercise of its jurisdiction under Article 226 of the

Constitution of the India.

8. We have quoted hereinbelow the relevant paragraphs from Chairman and Managing Director, Food Corporation of India and Ors. ..V/s.. Jagdish Balaram Bahira and Ors., (supra);

“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.

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.

67. *This aspect has been considered in a recent judgment rendered by one of us in Nidhi Kaim v. State of M.P., wherein, speaking for a Bench of three Judges, in a case of systemic fraud in relation to medical admissions in the State of Madhya Pradesh. It was observed as follows :*

“92... we are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to

espousing the cause of “the unfair”. It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course would cause people to question the credibility of the justice-delivery system itself. The exercise of jurisdiction in the manner suggested on behalf of the appellants would surely depict the Court's support in favour of the sacrilegious. It would also compromise the integrity of the academic community. We are of the view that in the name of doing complete justice it is not possible for this Court to support the vitiated actions of the appellants through which they gained admission to the MBBS course.”

Explaining the matter further, this Court held that :

*“99. Besides the consideration recorded by us in the foregoing paragraphs, we may confess, that we felt persuaded for taking the view that we have, for a very important reason — national character. **There is a saying—when wealth is lost, nothing is lost; when health is lost, something is lost; but when character is lost, everything is lost.** ... The issue in hand has an infinitely vast dimension. If we were to keep in mind immediate social or societal gains, the perspective of consideration would be different. The submission canvassed needs to be considered in the proper perspective. We shall venture to drive home the point by an illustration. We may well not have won our freedom, if freedom fighters had not languished in jails and if valuable lives had not been sacrificed. Depending on the situation, even civil liberty or life itself, may be too trivial a sacrifice, when national interest is involved. It all depends on the desired goal. The Preamble of the Indian Constitution rests on the foundation of governance on the touchstone of justice. The basic fundamental right of equality before law and equal protection of the laws is extended to citizens and non-citizens alike through Article 14 of the Constitution on the fountainhead of fairness. The actions of the appellants are*

founded on unacceptable behaviour, and in complete breach of the Rule of Law. Their actions constitute acts of deceit invading into a righteous social order. National character, in our considered view, cannot be sacrificed for benefits — individual or societal. If we desire to build a nation on the touchstone of ethics and character and if our determined goal is to build a nation where only the Rule of Law prevails, then we cannot accept the claim of the appellants for the suggested societal gains. Viewed in the aforesaid perspective, we have no difficulty whatsoever in concluding in favour of the Rule of Law. Such being the position, it is not possible for us to extend to the appellants any benefit under Article 142 of the Constitution.”

We are in respectful agreement with the above principle and statement of the legal position.

68. *Medical education is what middle-class parents across the length and breadth of the county aspire for their children (whether this will continue to be so in future is a moot question). There is intense competition for a limited number of undergraduate, postgraduate and super-speciality seats. This can furnish no justification for recourse to unfair means including adopting a false claim to belong to the reserved category. The fault-lines of our system, be it in education, health or law, are that its lethargy and indolence furnish incentives for the few who choose to break the rules to gain an unfair advantage. In such a situation, the court as a vital institution of democratic governance must be firm in sending out a principled message that there is no incentive other than for behaviour compliant with rules and deviance will meet severe reprimands of the law.*

I. Conclusion

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 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 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 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.*

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. 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;*

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 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;*

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 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.”

9. The view taken in Chairman and Managing Director, Food Corporation of India and Ors. ..V/s.. Jagdish Balaram Bahira and Ors., (supra), was later followed by the Hon’ble Supreme Court in Chandrabhan ..V/s.. State of Maharashtra, reported in (2021) 9 SCC 804, to hold that even the Supreme Court in pursuance of its power, under Article 142 of the Constitution of India, would not exercise its plainery jurisdiction under that provision, as it must have due regard to legislative mandate contained in the Act. It then held :

“10. The conclusions arrived at by this Court in Jagdish Balaram Bahira, 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.

11. Once the claim of the appellant that he belong to “Halba” stood negated by the Caste Scrutiny Committee, no advantage can therefore be extended to the appellant. Any such extension would be running counter to the legislation as well as the authoritative pronouncement in Jagdish Balaram Bahira.”

10. This being the mandate of the law, it is clear that the provisions of Section 10 of the Act mandate that on cancellation of the caste certificate, the petitioners shall be debarred from the concerned educational institution and shall not derive any benefit by virtue of the initial admission through the seats reserved in ST Category. The recovery of penalty and fees in the general category are only a consequence of not been entitled to continue with the course in the reserved category, and recovery of the same, would in any case follow in terms of sub-section (4) of Section 10 of the Act. The petitioners cannot be heard to argue that the penal consequence of their actions under sub-section (4) would amount to arbitrary exercise on the part of the respondent No.2.

11. It is trite law that a writ Court would be acting in excess of the powers vested in it under Article 226 of the Constitution of India, if it issues any direction which negates a provision or mandate of a law. The reliefs, if granted by this Court to the petitioners, would amount to granting a direction in contravention of the spirit of Section 10 of the Act; consequently,

there would be a bar at law for us to issue a writ in the nature claimed in this petition.

12. For reasons stated above, the petition is **dismissed**. No order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)