



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

WRIT PETITION NO. 5744 OF 2024

Anand Sheshman Patel .. Petitioner
Versus
The Registrar, North Maharashtra
University, Jalgaon and another .. Respondents

Ms. Shilpa P. Giratkar, Advocate for the Petitioner.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 25 JUNE, 2024.**

FINAL ORDER :

. Heard learned advocate for the petitioner. Though apparently the petitioner is coming with an innocuous prayer seeking a direction/writ of mandamus to the respondent No. 2 for releasing his final year marks sheet and degree certificate of B. Tech. (Chemical Engineering) and other documents, however, the matter is not as simple as it looks.

2. The petitioner had secured admission to the B. Tech. course against a reserved seat posing himself to be belonging to caste Kunbi in O.B.C. category. Admittedly, his certificate has been put under the scrutiny by the Scrutiny Committee in a proceeding under 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 (Maharashtra Act No. XXIII of 2001) and it has ultimately been cancelled and confiscated. Meaning thereby that he does not belong to the category of O.B.C. and still could complete the education against a seat reserved for that category.

3. It is in view of such peculiar state of affairs, petitioner's case would be governed by decision of the Supreme Court in the matter of Chairman and Managing Director Food Corporation of India and others Vs. Jagdish Balaram Bahira and others reported in *(2017) 8 SCC 670*. Suffice for the purpose to observe that it has been followed in the latest decision in the matter of Bhubneswar Development Authority Vs. Madhumita Das and others reported in *2023 LiveLaw (SC) 644* cited by the learned advocate for the petitioner. In fact, she was seeking to derive some benefit from this decision, but we fail to comprehend as to how the petitioner in the facts and circumstances could derive any benefit when rather it is other way round.

4. Learned advocate for the petitioner would submit that the petitioner is ready to be considered as having occupied a open seat and even ready to pay necessary fees. She would rely upon the decision in the matter of Lubna Shoukat Mujawar Vs. State of Maharashtra and others reported in *2024 SCC Online Bom 1322* decided at the Principal Seat on 09 May 2024. Learned advocate would submit that in the similar fact situation, Coordinate Division Bench has issued directions for treating the reserved category candidate of O.B.C for taking admission for M. S. course

to be regarded as open category candidate and permitted him to pay fees.

5. A careful reading of that decision in the matter of Lubna Shoukat Mujawar Vs. State of Maharashtra and others (supra) would indicate that the caste/tribe certificate of that petitioner was not confiscated and cancelled in an enquiry U/Sec. 7 of the Maharashtra Act No. XXIII of 2001. It was a matter of the petitioner failing to furnish a non creamy layer certificate having secured admission from O.B.C. category. Issue regarding non creamy layer certificate is beyond the purview of the Maharashtra Act No. XXIII of 2001. In the matter of Chairman and Managing Director Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra), the larger bench of the Supreme Court has empathetically concluded as under :

69. For these reasons, we hold and declare that

69.1 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;

69.2 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;

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 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;

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 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;

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 Sonone 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 XXIII of 2001 holds the field.

6. In our considered view petitioner will be robbed of all the benefits he has derived by securing admission to the reserved category seat, albeit, he has completed the course.

7. Writ petition is dismissed.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/June 24