

CASE NO.:
Appeal (civil) 3633 of 2006

PETITIONER:
Sandeep Subhash Parate

RESPONDENT:
State of Maharashtra & Ors.

DATE OF JUDGMENT: 24/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 9735/2005)

S.B. Sinha, J.

Leave granted.

The appellant claims himself to be a member of 'Halba' community. 'Halba' is a Scheduled Tribe. He obtained admission in the courses of Bachelor of Engineering (Instrumentation Engineering) in Pune University, (Respondent No.4), claiming himself to be belonging to 'Halba' a Scheduled Tribe community. According to the appellant, the question as to whether 'Koshti-Halbas' are members of Scheduled Tribe or not had been authoritatively decided for the first time in State of Maharashtra vs. Milind & Ors. [(2001) 1 SCC 4] and in that view of the matter, he had represented himself to be a member of Scheduled Tribe. Drawing our attention to the fact that even in Milind (supra), this Court directed that those, who have completed their courses from the universities, should be allowed to obtain degrees and get the benefit thereof as general candidates, the appellant was also entitled to a similar relief.

Indisputably, the Caste Scrutiny Committee constituted in terms of the decision of this Court in Kumari Madhuri Patil & Anr. vs. Additional Commissioner, Tribal Development & Ors. [(1994) 6 SCC 241] invalidated the caste certificate granted in favour of the appellant. In the writ petition filed by him thereagainst, an interim order was passed in his favour, in terms whereof he obtained admission in the course of Bachelor of Engineering (Instrumentation Engineering) in the Government Engineering College, Pune, which is affiliated to the respondent No.4-University. The High Court allowed the writ petition and remitted the matter back to the Scrutiny Committee. His claim was rejected by the Scrutiny Committee by an order dated 30th September, 2002. In a writ petition filed by him before the Nagpur Bench of the Bombay High Court questioning the said order of 30th September, 2002, no interim relief was granted, but, the appellant continued with his studies. The said writ petition was dismissed for default, but, it was restored. He completed his studies in the year 2004. He appeared at the examination. An application was filed by him for a direction to respondent No.4-University to supply him the degree along with the marksheet. However, in the meantime, the writ petition itself was dismissed on merits. Thus, no order was also passed on the said application. The review application filed by the appellant herein has been dismissed by the High Court by reason of the impugned order.

The learned counsel appearing on behalf of the appellant merely urged that this Court may issue a direction to the University to grant

him the degree as he has completed his courses of studies in the meantime.

Mr. Ravindra Kumar Adsure, learned counsel appearing on behalf of the State and Mr. Makrand D. Adkar, learned counsel appearing for respondent No.4-University, however, submitted that the appellant has not made out any case for obtaining any relief from the High Court having failed to show his bona fide.

It was urged that as the appellant has played fraud on the statutory authorities, he is not entitled to any equitable relief. Reliance has been placed on Bank of India & Anr. vs. Avinash Mandivikar & Ors. [(2005) 7 SCC 690] and Ram Saran vs. I.G. of Police, C.R.P.F. & Ors. [2006 (2) SCALE 131].

It now stands admitted that the appellant did not belong to 'Halba' community. He was a Koshti. On verification of his caste certificate the Vigilance Cell found that his school records clearly showed that the appellant belonged to the Koshti community.

The question as regards invalidation of caste certificate came up for consideration before this Court in Kumari Madhuri (supra), wherein this Court directed the Central Government and the State Governments to constitute Caste Scrutiny Committees to go into such issues as and when they arise for consideration. Indisputably, a finding of fact has been arrived at by the Caste Scrutiny Committee against the appellant negating his claim that he is a member of Scheduled Tribes. However, the fact remains that he got himself admitted in view of an interim order passed by the High Court. Indisputably, the question as to whether 'Koshti-Halbas' are members of Scheduled Tribe or not was authoritatively answered only in Milind (supra), which was decided on 28th November, 2000, wherein it was observed :

"Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practising as a doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose."

Yet again in R. Vishwanatha Pillai etc. vs. State of Kerala & Ors. etc. [(2004) 2 SCC 105], a Three Judge Bench of this Court had the occasion to deal with a similar issue. Following Milind (supra), this Court held:

"In this case we find that the appellant had joined Regional Engineering College in the year 1992. He completed the course of his studies in the year 1996 under the interim orders of (sic the High) Court which were subject to the final orders to be passed in the writ petition. No purpose

would be served in withholding the declaration of the result on the basis of the examination already taken by him or depriving him of the degree in case he passes the examination. In terms of the orders passed by the Constitution Bench of this Court in *State of Maharashtra v. Milind* we direct that his result be declared and he be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him. His caste certificate has been ordered to be cancelled. Henceforth, he will be treated as a person belonging to the general category for all purposes."

A different opinion, however, was struck in *Bank of India & Anr. vs. Avinash D. Mandivikar & Ors.* [(2005) 7 SCC 690], wherein a Two Judge Bench of this Court distinguished *Milind* (supra) and *R. Vishwanatha Pillai* (supra) stating that protection given therein cannot be extended to an employee of a Bank and, thus, the factors which weighed with this Court cannot be applied to the respondent therein. The Court observed that in any event, if Respondent No.1 had played fraud, he should not be allowed to get the benefits thereof. The same learned Judge in *Ram Saran* (supra) held that leniency should not be shown to a person who admittedly committed forgery.

The issue again came up for consideration in *LIC of India vs. Sushil* [(2006) 2 SCC 471], wherein this Court remitted the matter back to the High Court observing that :

"Before us it was urged on behalf of Respondent 1 that in the State of Maharashtra at the relevant time there were resolutions/government orders which made the respondent believe that there was no fraudulent intention in claiming to be Halba. Mr. Lalit, learned counsel for the respondent submitted that none of these aspects (including various GRs) have been considered. The High Court in the present case proceeded on the basis as if mere filing of an undertaking in the line suggested by the writ petitioner was sufficient to bring the case under the umbrella of the decision in *Milind* case. That is clearly not so.

As the High Court has not considered the matter in its proper perspective, except relying on *Milind* case we think it appropriate to remit the matter to the High Court for a fresh consideration on merits of the case on the grounds, if any, without being influenced by any observation in this order."

Some peculiar characteristics exist in this case:

- 1) The appellant completed his substantial tenure as a student under the interim orders passed by the High Court.
- 2) No opportunity of hearing was given to him by the Scrutiny Committee at the first instance and his first writ petition was allowed.
- 3) Although, in the second writ petition, he could not obtain any interim order, yet he was allowed to continue his studies without any demur by the State and University authorities.

4) He filed an application after completion of his studies that respondent No.4-University should be directed to issue to him the degree of Bachelor of Engineering. No order was passed thereupon.

5) A review application was filed on the basis that the Bench did not take into consideration the decision of this Court in Milind (supra).

A person indisputably is not entitled to a relief only because an interim order was passed in his favour, but the premise on which such an interim order was passed would assume some significance in the instant case in so far as a presumption may be drawn that prima facie the appellant was not considered guilty of commission of fraud and the possibility that the question in regard to his status as a member of Scheduled Tribe as the issue as to whether 'Koshti-Halbas' were members of Scheduled Tribe had not been finally determined, was in the mind of the court. {See for example, Employees State Insurance Corporation vs. Distilleries & Chemical Mazdoor Union & Ors. [2006 (7) SCALE 171].} The appellant took his admission in the year 1998, i.e., prior to the decision of this Court in Milind (supra). It is true that he had obtained his admission in a professional institution not purely on the basis of his merits but on the basis that he belonged to a reserved category. It is also true that thereby he might have deprived a genuine student of reserved category from obtaining admission, but, in a case of this nature, what is necessary to bear in mind is the bona fide or otherwise of the appellant. He might not have semblance of right as was observed by the High Court but as the learned counsel for the appellant states that he might have been under a bona fide belief that Koshti-Halbas were members of a Scheduled Tribe.

It is not in dispute that the Bombay High Court held so. However, as it appears from the decision of this Court in LIC (supra) that the State might have also issued some Government orders making such declaration. Indisputably, the conduct of a party assumes significance in moulding the relief. This court, while exercising its discretionary jurisdiction and to do complete justice between the parties in terms of Article 142 of the Constitution of India, must consider all relevant aspects of the matter, including the decisions of this Court. The doctrine of proportionality emerging from the recent trend of decisions in preference to the doctrine of Wednesbury unreasonableness is also a factor which weighs with us. {See Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh & Ors. [(2004) 2 SCC 130] and A. Sudhakar vs. Post Master General, Hyderabad & Anr. [2006 (3) SCALE 524].}

We do not find any lack of bona fide on the part of the appellant. He, it will bear repetition to state, got admission in the professional course as far back in the year 1998. For about last three years, he had not been able to receive his degree of Engineering, although, he pursued his studies after he had passed class 12th examination. Just like Medical Education, the State also incurs a heavy expenditure in imparting other professional education like Engineering. We, in the peculiar facts and circumstances of this case, are not inclined to go into the question as regards purported commission of fraud by the appellant, particularly, when the University admitted him without any demur whatsoever. We are doing so having regard to the doctrine of proportionality. The appellant has suffered a lot. He might not be entirely responsible therefor. He might have been under a bona fide belief that he comes within the purview of notified category. We, therefore, albeit with much reluctance accept the fervent and impassionate plan made by the learned counsel appearing for the appellant that he be allowed to obtain the degree. The same shall, however, be subject to payment of Rs.1 lakh in favour of the State of Maharashtra so as to recompense the State to some extent the amount spent on him for imparting education as a reserved category candidate.

Such payment must be made within three months from this date. On filing satisfactory proof of the deposit of such an amount, the respondent No.4 shall immediately issue the degree in his favour. The appellant shall not claim any benefit flowing from the caste certificate obtained by him, which shall stand cancelled. In future, for all purposes he will be treated to be a person belonging to the general category.

The appeal is allowed to the extent mentioned hereinbefore and on the aforementioned terms. No costs.

JUDIS