

CASE NO.:
Appeal (civil) 5186 of 2001

PETITIONER:
SUDHAKAR V1THAL KUMBHARE

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT: 18/11/2003

BENCH:
V.N. KHARE CJ & S.B. SINHA & DR. AR. LAKSHMANAN

JUDGMENT:
JUDGMENT

2003 Supp(5) SCR 746

The following Order of the Court was delivered :

The appellant is originally a resident of village Sawargaon, post Pandhurna, District Chhindwara in State of Madhya Pradesh. It is not disputed that as a result of State reorganization, a part of the said district being Chandrapur, which was originally in the State of Madhya Pradesh, had gone into the State of Maharashtra. Earlier in the Presidential Scheduled Tribes Order issued in the year 1950 the tribe 'Halba' was recognized as Scheduled Tribe in the District of Chhindwara in the State of Madhya Pradesh. After reorganization, when Chandrapur was included within the territory of State of Maharashtra, the caste 'Halba' was recognized as Scheduled Tribe also in the State of Maharashtra. It is also not disputed that the appellant herein was brought up and educated in District of Chhindwara. Subsequently, he applied in response to an advertisement for selection and appointment in the Maharashtra State Electricity Board for the post of Junior Engineer [Civil]. It is not disputed that he was selected and appointed against the non-reserved vacancy on the basis of merit in the said post. In the year 1987, the appellant was promoted to officiate as Assistant Engineer (Civil) against a reserved vacancy on the basis of a certificate of being belonging to Halba tribe issued by the competent authorities of the State of Madhya Pradesh. On 22nd August, 1988, respondent no. 2 herein issued him show cause notice as to why he should not be reverted from the post of Assistants Engineer as he was not entitled to the benefit of reservation for Scheduled Tribe in the State of Maharashtra. The appellant submitted an explanation to the said show cause notice justifying his promotion against the reserved post. Despite that explanation, the appellant was reverted from the post the of Assistant Engineer to the post of Junior Engineer. Aggrieved, the appellant filed a petition under Article 226 of the Constitution Challenging the order of reversion. The High Court by its judgment and order dated 23rd March, 2001 dismissed the petition on the ground that the petitioner who comes from the State of Madhya Pradesh though belonged to Scheduled tribe 'Halba' which is recognized as such in the State of Maharashtra is not entitled to benefit of reservation. It is against the said judgment of the High Court, the appellant is in appeal before us.

Mr. V.A. Mohta, learned senior counsel appearing for the appellant, urged that the question as to whether the appellant was entitled to the benefit of reservation in the State of Maharashtra ought to have been referred to the Statutory Committee constituted on the basis of directions issued by this court in Kumari Madhuri Patil and Anr. v. Addl. Commissioner, Tribal Development and Ors., [1994] 6 SCC 241, where it was directed that in course of employment if any dispute arises as regard to the benefit of reservation the matter is required to be referred to a Scrutiny Committee.

It is no doubt true that a Scheduled Tribe notified in one State may not be given the benefits therefor in another State having regard to the plain expression 'in relation to that State' in Article 342 of the Constitution. {See Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Anr., JT (1994) 4 SC 423 and U.P. Public Service Commission, Allahabad v. Sanjay Kumar Singh, JT (2003) 8, SC page 79.

But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and denied facilities for development and growth in several States. They are required protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantageous and developed sections of the Community. The question is as to whether the appellant being a Scheduled Tribe Known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in the Chhindwara region, a part of which, on States' reorganization, has come to State of Maharashtra, was entitled to the benefit of reservation? It is one thing to say that the expression 'in relation to that State' occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in other State whose Governor has not been consulted; but it is another thing to say that when an area dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of the Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of States' Reorganization Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the District of Chhindwara and the part of area of Chandrapur at one point of time belonged to the same region and under the Constitutional Scheduled Tribes Order 1950 as it originally stood the Tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganization might have agreed for inclusion of the said Tribe Halba/Halbi as a Scheduled Tribe in the State of Maharashtra having regard to the said fact in mind.

Here we find that the Maharashtra State Electricity Board acting upon the direction of the State Government has reverted the appellant without referring the matter to the Scurtiny Committee which was not the correct way to deal with the appellant's case. In fact, in such a situation the employer was required to refer the question before the Scrutiny Committee which admittedly had been constituted and established for coming to the matter. We may notice that in Kumari Madhuri Patil's case [supra] this Court observed:-

"The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine Candidates are also denied admission to educational institutions or appointment to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the scrutiny committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It

is the parent or the guardian who may play fraud claiming false status certificate"

Similar observation have been made in Director of Tribal Welfare v. Laveti Giri, [1995] 4 SCC 32. This aspect of the matter has been noticed following the observation of this Court in Kumari Madhuri Patil and Anr. v. Addl. Commissioner Tribal Development, Thane and Ors., (second) [1997] 5 SCC 437] in Punit Rai v. Dinesh Chaudhary, JT (2003) {Suppl. 1} SC 557 at 574]:-

3. "As regards prayer (b) read with direction no. (iv) of the order of this Court, we too appreciate the inconvenience caused due to vast area of the State. Therefore, instead of one committee of three officers, there will be three Scheduled tribe/Caste Scrutiny Committees comprising of five member with quorum of three members, as suggested in par 4 of the direction, to take a decision. At Pune, Nasik and Nagpur, six caste scrutiny committees for SCs, Denotified Tribes, Nomadic Tribes, other Backward Classes and the Special Backward category in existence at Mumbai, Pune, Nasik, Aurangabad, Amravati and Nagpur would continue to scrutinise the certificate issued by the respective officers and take a decision in that behalf. In this regard, it is also suggested by Shri Dholakia, learned senior counsel for the applicant, that in case any certificate has been wrongfully refused by the certificate issuing authority, the aforesaid committees also would go into the question and decide in that behalf, whether refusal was wrongful and in case it finds that the refusal was wrongful, they are at liberty to direct the authority to grant the certificate.

5. With regard to prayer (d), along with the vigilance cell, one research officer/tribal development or social welfare officer would be associated in finding the social status of eligibility of the officers."

In view of fact that the appellant's case was not referred to the appropriate Committee, the judgment and order under challenge deserves to be set aside, it will be open to the Maharashtra State Electricity Board to refer the matter to the Scrutiny Committee for verifying the eligibility of the appellant. We direct that the appellant shall be reinstated forthwith as Assistant Engineer and shall continue to hold the said post till the matter is decided by the Committee. The appeal is allowed on the aforementioned terms. There shall be no order as to cost.