
(2009) 09 AHC CK 0078
In the Allahabad High Court

Chhatrapati Sahuji Mahraj Medical University	APPELLANT
Vs	
Dr. Raj Kumar Gupta and Others	RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Constitution of India, 1950 — Article 141
Constitution of India, 1950 — Article 141
Constitution of India, 1950 — Article 141

Citation : (2009) 09 AHC CK 0078

Hon'ble Judges : C.K. Prasad, C.J.;D.K. Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

C.K. Prasad, C.J.—Aggrieved by judgment and order dated 01.04.2008 passed by a learned Judge in Civil Misc. Writ Petition No. 3065 (MS) of 2006 (Dr. Raj Kumar Gupta v. Director General, Medical Education and Training U.P. and Ors.) and Civil Misc. Writ Petition No. 2293 (MS) of 2006 (Dr. Raj Kumar Gupta v. Director General, Medical Education and Training U.P. and Ors.), respondent No. 2 - Chhatrapati Sahuji Mahraj Medical University, U.P. Lucknow - the appellant, has preferred this appeal under Rule 5 Chapter VIII of the Allahabad High Court Rules, 1952.

2. Pleadings, though voluminous, the facts lie in a very narrow compass. Despite wavering claim, fact of the matter is that the writ petitioner-respondent No. 1 (hereinafter referred to as the "writ petitioner") was admitted in 1992 Batch of the MBBS course on a seat reserved for the members of the Scheduled Caste. After completing the MBBS course, he appeared in the Post Graduate Entrance Examination - 2003 and the marks secured in this examination entitled him to be admitted to M.S. (General Surgery) course on an unreserved seat. At this stage, the writ petitioner changed his colour as he did not require the crutch of Scheduled Caste and to shed its ignominy, declared his caste as "Gupta" for admission in the M.S. (General Surgery) course. He pretended to be a member

of the Scheduled Caste category when needed for admission to the MBBS course but shed it off for admission in M.S. course. He was admitted to the M.S. course as a general category candidate. He completed two years of the M.S. course and by order dated 24.01.2006, he was expelled from the Chhatrapati Sahuji Mahraj Medical University, U.P. Lucknow, earlier known as the King George's Medical University (hereinafter referred to as the "University") for a period of three years. He challenged the said order in Writ Petition No. 443 of 2006 (M/S) and on 01.02.2006, when the case was taken up, a notice dated 31.01.2006 issued by the University was placed before the Court, by which the expulsion of the writ petitioner by order dated 24.01.2006 was withdrawn and the enquiry initiated vide order dated 20.01.2006 was directed to go on in accordance with law and principles of natural justice. Taking note of the aforesaid plea, this Court by order dated 01.02.2006 dismissed the writ petition. Relevant portion of the aforesaid order reads as follows:

Shri I.B. Singh has brought to the notice of this Court that a Notice No. 118/A (PG)/2006 dated 31.01.2006, written by Prof. U.S. Pandey, Registrar of King George's Medical University, wherein it has been mentioned that "vide Notice No. 108/A (PG) dated 24.01.2006 Dr. Raj Kumar Gupta, Junior Resident 2nd year was expelled from the University for a period of three years. The Hon'ble Vice Chancellor, KGMU, Lucknow having considered the matter has been pleased to observe that Dr. Raj Kumar Gupta should be afforded an opportunity of showing the cause before passing of the expulsion notice dated 24.01.2006. Therefore in view of the above facts, Notice No. 108/A (PG) dated 24.01.2006 is hereby withdrawn. However, the enquiry against Dr. Raj Kumar Gupta initiated vide order dated 20.01.2006 will go on in accordance with law and principles of natural justice.

The said Notification has been taken on record.

In view of the aforesaid statement, this writ petition has become infructuous.

Accordingly, the writ petition is dismissed.

3. It seems that thereafter by order dated 20th of April, 2006, the writ petitioner was put under suspension. He challenged the said order in Civil Misc. Writ Petition No. 2293 (MS), Dr. Raj Kumar Gupta v. Director General Medical Education and Training, U.P. and Ors., praying for quashing of the suspension order and other consequential benefits.

4. Thereafter, on 6th of March 2006, a charge sheet was issued to the writ petitioner containing four charges, including the charge that he is not a member of the Scheduled Caste and took admission in MBBS as a Scheduled Caste candidate. In answer thereto, the plea of the writ petitioner was that the controversy in regard to his caste having already been settled and the District Magistrate having held him to be a member of the Scheduled Caste, no further action is needed. The matter was examined by a three Member Committee of the University and by order dated 8th of May 2006, the Vice Chancellor of the

University cancelled the MBBS degree of the writ petitioner as also his admission in the M.S. course.

5. Writ petitioner challenged the aforesaid order before this Court, which was registered as Civil Misc. Writ Petition No. 3065 (MS) of 2006 (Dr. Raj Kumar Gupta v. Director General, Medical Education and Training, U.P. and Ors.).

6. Both the writ petitions, i.e. Civil Misc. Writ Petition No. 3065 (MS) of 2006 and Civil Misc. Writ Petition No. 2293 (MS) of 2006 were taken up together and have been allowed by the common judgment, impugned in the present appeal.

7. It was contended before the learned Single Judge that the writ petitioner was not given adequate opportunity to defend himself and further in view of the fact that he had already completed the MBBS course and was in the final year of the M.S. course, the cancellation of MBBS degree as also admission to M.S. course are absolutely uncalled for.

8. The learned Judge did not examine the writ petitioner's plea in regard to the complaint of inadequate opportunity but set aside the impugned order of cancellation of the MBBS degree and the admission to the M.S. course on the ground that it shall serve no purpose. However, the learned Judge declared that "the writ petitioner shall be given the degree of MBBS with the condition that he will not be treated as a Scheduled Caste candidate in future, either in obtaining service or for any other benefit." While doing so, the learned Judge observed as follows:

Without entering into the question, whether adequate opportunity was afforded to the petitioner or not and whether the charges sought to be levelled against the petitioner, could at all be levelled against him or not, since the case of the petitioner is squarely covered with the aforesaid decisions of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court after considering various citations directed the authorities to allow the appellant to take a degree but restrained him from taking any advantage of the Scheduled Caste Certificate in future. It may be added that cancellation of degree would not give any material advantage to the respondent but on the other hand, the same would cause grave and irreparable loss and hardship to the petitioner as it would affect his future career. Moreover, huge amount of public money has been spent on the petitioner for completion of medical course, which would go waste.

9. The learned Judge has further observed as follows:

Before parting, I would like to mention that it is not disputed by the respondents that the petitioner was given admission as a General Category candidate in M.S. General Surgery, as is evident from the letter dated 17th December, 2003 written by the Director General, Medical Education and Training to the Registrar, King George's Medical University, Lucknow. From the record it appears that at the relevant time when the impugned order was passed the petitioner had completed two years in M.S. General Surgery, therefore, the petitioner shall be allowed to

complete M.S. course, in case he was not permitted to complete the same on account of the impugned order.

10. In this appeal preferred by the University, by a detailed order dated 06.05.2008, operation of the order of the learned Single Judge has been stayed.

11. As stated earlier, the writ petitioner had wavering claim in relation to his admission to the MBBS course. It has been averred by him that while submitting the form for admission to the MBBS course, the writ petitioner applied as "Ex Army and Scheduled Caste candidate" and "was admitted as Scheduled Caste candidate in the King George's Medical College in the MBBS course on the basis of his being declared successful candidate in Pre Medical Test". The list of candidates also shows that he was admitted to the MBBS course on a seat reserved for a Scheduled Caste candidate.

12. It is relevant here to state that for admission in the MBBS course, he declared his caste to be "Karval" and claimed to be a member of the Scheduled Caste category. However, for admission to the M.S. course, he declared his caste to be "Gupta". As much has been said about the failure of the University to give him adequate opportunity, we had examined his grievance in this regard. It is not the case of the writ petitioner that he was given no opportunity at all but his plea is that he was not given adequate opportunity. Principle of natural justice is not an unruly horse and its application depends upon the facts and circumstances of the case. In view of the writ petitioner's own admission in the form filled up for admission to the M.S. course that he does not belong to the Scheduled Caste category and, in fact, is a Gupta by caste, this legal gymnastic of not giving adequate opportunity pales into insignificance. It is well settled that admission is the best evidence against the person making it and in view of the writ petitioner's own admission that he is Gupta by caste, the complaint of not giving him adequate opportunity is of no consequence.

13. Mr. Rajan Roy, appearing on behalf of the appellant, submits that the writ petitioner is not a member of the Scheduled Caste and, therefore, his admission to the MBBS course was itself void. He points out that the writ petitioner, having obtained admission by fraud and misrepresentation, is not entitled to any sympathy by this Court. In support of the submission, he has placed reliance on a judgment of the Supreme Court in the case of Gurdeep Singh Vs. State of Jammu and Kashmir and others, in which it has been held as follows:

12. What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will

jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly.

14. Mr. Roy points out that the learned Judge has allowed the writ petition solely relying on the judgment of the Supreme Court in the case of *State of Maharashtra v. Milind and Ors.* (2001) 1 SCC 4 , and *R. Vishwanatha Pillai Vs. State of Kerala and Others*, which cannot be said to have laid down any principle of law to be a binding precedent. In this connection, he has drawn our attention to the observation of the Supreme Court in the case of *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, and our attention has been drawn to paragraphs 16 and 18 of the judgment, which read as follows:

16. Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and vary in considering such cases.

18. The delay in the process is inevitable but that factor should neither be considered to be relevant nor be an aid to complete the course of study. But for

the fact that she has completed the entire course except to appear for the final examination, we would have directed to debar her from prosecuting the studies and appearing in the examination. In this factual situation no useful purpose would be served to debar her from appearing for the examination of final year MBBS. Therefore, we uphold the cancellation of the social status as Mahadeo Koli fraudulently obtained by Km Suchita Laxman Patil, but she be allowed to appear for the final year examination of MBBS course. She will not, however, be entitled in future for any benefits on the basis of the fraudulent social status as Mahadeo Koli. However, this direction should not be treated and used as a precedent in future cases to give any similar directions since the same defeats constitutional goals.

15. Mr. Roy further points out that a judgment of the Supreme Court, which itself says that it shall not be treated as a precedent, is not binding to this Court. Reference in this connection has been made to a decision of the Supreme Court in the case of *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, and our attention has been drawn to paragraphs 13 and 14 of the judgment, which read as follows:

13. The High Court in passing the impugned order took support of the judgment of this Court in *Regional Manager, Bank of Baroda v. Presiding Officer, Central Govt. Industrial Tribunal*. The very judgment specifically stated thus: (SCC p. 253, para 8)

We make it clear that this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future.

14. It is unfortunate that the High Court treated the said judgment as a precedent despite this Court's saying that it will not be treated as a precedent in future, while confining the said judgment to the peculiar facts and circumstances of the case.

16. Mr. Sandeep Dixit, appearing on behalf of the writ petitioner, submits that as the writ petitioner had passed the MBBS course and was in the last year of M.S. course, no useful purpose shall be served by cancelling his MBBS degree and admission to the M.S. course. Reliance has been placed on a decision of the Supreme Court in the case of *Milind (supra)*, and our attention has been drawn to paragraph 38 of the judgment, which reads as follows:

38. 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. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 of 1985 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

17. Reliance has also been placed on a decision of the Supreme Court in the case of R. Vishwanatha Pillai (*supra*) in which, after considering its earlier decisions in the case of Kumari Madhuri Patil (*supra*) and Milind (*supra*), the Supreme Court held as follows:

28. 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.

18. In all these cases, though directions have been issued to declare the result but in view of the plea taken by the appellant, the question which falls for determination is as to whether these directions can be treated as a binding precedent. Having given our anxious consideration, we are of the opinion that the direction of the Supreme Court in the cases of R. Vishwanatha Pillai (*supra*) and Milind (*supra*) relied on by the learned Judge while granting the relief to the writ petitioner, cannot be said to be a binding precedent. In these cases, the Supreme Court had not held that a candidate who had taken admission by misrepresentation has the right to continue with the course or to get his result declared but taking into account the huge amount spent on a candidate, depriving the service of a doctor to the society on whom public money has already been spent and cancellation of admission and result would not serve any purpose, directed not to cancel or withhold result but at the same time directed that they will not take advantage of reserved category in future. This direction was given in the peculiar facts of each case and in our opinion it cannot be said to have laid down any law for universal application. Such direction required to be followed by the Courts exercising inferior jurisdiction, which advances the path of

justice. Direction by the Supreme Court in a set of facts is not law having the status of a binding precedent under Article 141 of the Constitution of India.

19. Hence we proceed to consider the case on first principle. True it is that huge public money has been spent on writ petitioner's training and it is equally true that a member of the reserved category, to whom the seat legitimately belonged, may not get that seat. The Constitution makers, who were men of vision and statesmen of the highest order, were aware of the historic injustice and inequities afflicting the society, the prejudices and the social discrimination and did not rest content with evolving the framework of the State, but pointed out the goal and methodology for achieving that goal, from which emanated the provisions of reservation for members of the Scheduled Caste, Scheduled Tribe and Backward Classes. A person, who attempts to frustrate cherished goal of the makers, in our opinion, cannot seek protection and pray for continuance of his study and assail the cancellation of the result on the plea of equity. We shall not accept a plea, which will create hindrance in achieving the goal set out by the framers of the Constitution by providing reservation to the Scheduled Castes and the Scheduled Tribes. It shall add insult to the injury. Often, as in the present case, the plea of equities or promissory estoppel is put forth and its acceptance, in our opinion, shall impair the constitutional goals set out in the preamble, fundamental rights and the directive principles of the State policy. Persons not entitled for benefit of the Scheduled Castes, claim it in secrecy and the same does not come into surface immediately. The delay in the process is inevitable but, in our opinion, that factor should not be considered relevant to allow a person the benefit. In our opinion, such devices not only deprive individual body of the Scheduled Castes from getting admission but actually poses a threat and danger to the Constitution itself. True it is that the Court cannot, now undo the injury perpetrated on a person belonging to the Scheduled Caste, who could have got admission in place of the writ petitioner herein, but that itself does not persuade us to permit the writ petitioner to complete the course and set aside the order by which his result has been cancelled. We are of the considered view that it shall amount to giving further favour to an undeserving person, who have stolen the seat from a Scheduled Caste candidate. The frequency with which such claims come before the Court is a clear signal that a person, like the petitioner, deserves no sympathy. We are of the opinion that the plea of estoppel is not germane to the beneficial constitutional concession and opportunities given to the genuine tribes or castes and the Courts shall be circumspect and wary in considering such cases.

20. There is yet another reason to come to the said conclusion. Plea of the writ petitioner of being a Scheduled Caste being false, it is a quasi criminal act. While punishing an offender, many a times, the victim to the crime is not compensated and that cannot be taken into consideration not to punish the offender. Object of punishment is to deter the criminal charged or/and a reminder to persons prone to commit crime that its act would not go unpunished and thereby prevent the crime itself. Unduly lenient view of the Courts may create an impression that an

advantage secured by misrepresentation and fraud, stratagem and trickery can be rationalized in Courts on human considerations. It would invite cynical disrespect towards the judicial process and embolden candidates that gains obtained by fraud and misrepresentation could be preserved by an appeal to the sympathy of Court. Justice should be tempered with mercy but mercy which gives premium on fraud and misrepresentation has to be avoided.

21. When we consider the case in hand in the backdrop of what we have discussed, we are of the opinion that in the facts of the present case, the learned Judge erred in allowing the writ petitioner to complete the course and setting aside the order cancelling the MBBS degree.

22. In the result, the appeal succeeds and is allowed. The impugned judgment and order dated 01.04.2008 passed in Civil Misc. Writ Petition No. 3065 (MS) of 2006 and Civil Misc. Writ Petition No. 2293 (MS) of 2006 is set aside, but without any order as to costs.