
(2004) 04 BOM CK 0116

In the Bombay High Court

Case No : L.P.A. No's. 184 of 1999, 89, 144, 150, 161 and 167 of 2002 and 12, 14 and 120 of 2003 and C.P. No's. 5778 of 1999, 5134, 6000, 6328 and 7296 of 2002, 1762, 1060, 3750, 4067, 6292, 6734, 369 and 372 of 2003 and 1121 of 2004 in Writ Petition No's. 350 o

Patru Ghodmare

APPELLANT

Vs

Scheduled Tribes Caste Certificate Scrutiny Committee and Others

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2004) 3 MhLj 1055

Hon'ble Judges : C.K. Thakker, C.J.;B.R. Gavai, J

Bench : Division Bench

Advocate : A.C. Dharmadhikari, C.G. Madkholkar, M.G. Bhangde, S.R. Deshpande, Anil S. Mardikar, R.K. Deshpande and M.P. Gulhane, for the Appellant; S.S. Wandile, A.G. Mujumdar, T.R. Kankale, B.H. Dangre, I.L. Bodade and A.S. Kilor, Assistant Government Pleaders, S.W. Deshpande, N.W. Sambre, A.R. Patil, C.S. Kaptan, S.M. Puranik, G.G. Mishra, D.M. Kakani, A.D. Ranteke, P.B. Patil and T.D. Khade, for the Respondent

Final Decision : Dismissed

Judgement

C. K. THAKKER, C.J.—In all these Letters Patent Appeals, a common question of law has been raised. It is, therefore, appropriate to decide all the appeals by a common order.

2. All the above appeals were filed by the appellants being aggrieved by judgments and orders dated (i) 28th October, 1999 in Writ Petition No. 350 of 1998, (ii) 24th April, 2002 in Writ Petition No. 1683 of 2000, (iii) 3rd October, 2002 in Writ Petition Nos. 2499 of 2001, 4042 of 2001, 4259 of 2001, (iv) 7th October, 2002 in Writ Petition Nos. 2088 of 2002 and 2972 of 1999 and (v) 17th October, 2002 in Writ Petition No. 2708 of 2002 respectively passed by single Judges of this Court.

3. All the above writ petitions came to be instituted by the appellants-petitioners against orders passed by the Caste Scrutiny Committees invalidating and cancelling caste certificates issued in their favour. All Writ Petitions (except Writ Petition No. 350 of 1998; LPA No. 184 of 1999) were dismissed by the learned single Judge upholding and confirming the orders invalidating and cancelling certificates by the Caste Scrutiny Committee. So far as Writ Petition No. 350 of 1998 (LPA No. 184 of 1999) is concerned, the petitioner challenged the order passed by the Caste Scrutiny Committee invalidating the certificate. The learned single Judge allowed the petition, set aside the order passed by the Caste Scrutiny Committee but remanded the matter for fresh disposal in accordance with law. The grievance of the appellant-petitioner before the learned Single Judge was that the order passed by the Caste Scrutiny Committee was illegal, unlawful and improper and hence it was liable to be set aside by issuing a writ of mandamus directing the respondents to issue caste validity certificate in favour of the appellant-petitioner. Even though the petition was allowed and the order of the Caste Scrutiny Committee was set aside, the learned Single Judge remitted the matter back to the Caste Scrutiny Committee for fresh disposal. Limited grievance of the appellant in LPA No. 184 of 1999 is that the learned Single Judge has committed an error of law and of jurisdiction in not fully allowing the writ petition but by remitting the matter to the Caste Scrutiny Committee and permitting it to decide afresh in accordance with law. The learned Single Judge has committed an error of law in remanding the matter which deserves to be corrected by the Division Bench.

4. We have heard the learned counsel for the appellants appearing in all the appeals. We have also heard the learned Assistant Government Pleader for the State of Maharashtra.

5. A preliminary objection was raised on behalf of the contesting respondents that Letters Patent Appeals as instituted by the appellants against the orders passed by the learned single Judge in writ petitions are not maintainable. It was, therefore, submitted that without entering into merits of the matter and without deciding legality or otherwise of the orders passed by the learned single Judge all Letters Patent Appeals should be dismissed as "not maintainable".

6. For this submission, reference was made by the learned Assistant Government Pleader to a leading decision of the Supreme Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . In Kumari Madhuri Patil, the Supreme Court had an occasion to consider the provisions of Article 342 of the Constitution, the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Tribes) Order, 1950, and the power and jurisdiction of High Courts under Article 226 of the Constitution. Dealing with contentions raised by the parties and observing that it was necessary to "streamline the procedure for the issuance of a social status certificate, their scrutiny and their approval", the Supreme Court issued certain directions. The direction which is relevant and material for the purpose of deciding the controversy raised in the

present Letters Patent Appeals is direction No. 13. For ready reference, it is hereby reproduced;

"The High Court would dispose of these cases as expeditiously as possible within a period of three months, In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division Bench but subject to Special Leave under Article 136."

Strongly relying on the above direction of the Supreme Court, it was submitted by the respondents that since decisions have been given by the learned single Judge of this Court in exercise of writ jurisdiction, the only remedy available to the aggrieved appellants-petitioners is to approach the Supreme Court by filing Special Leave to Appeal under Article 136 of the Constitution. No Letters Patent Appeals, however, would lie against the orders passed by the learned single Judge. All the appeals, therefore, should be dismissed.

7. The learned counsel for the appellants strongly contested the matters and opposed the preliminary objection raised by the learned Assistant Government Pleader. It was urged that direction No. 13 in *Kumari Madhuri Patil* can neither be construed as taking away a right of appeal granted by Letters Patent as applicable to the High Court of Bombay nor it would create a bar to the jurisdiction of the Division Bench in entertaining such Letters Patent Appeals. Even if it is assumed that the said direction recites that no appeal would lie against an order passed by a single Judge of a High Court to a Division Bench of that Court, such direction would be per incuriam as Clause 15 of the Letters Patent as applicable to this Court has neither been referred to nor considered. It was also urged that *Kumari Madhuri Patil* was decided on September 2, 1994. Thereafter a special statute, namely, the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Classes Categories (Regulation of Issuance and Verification) of Caste Certificates Act, 2001 (Maharashtra Act No. XXIII of 2001) came into force with effect from October 18, 2001. After legislation by a competent legislature (State Legislature), the direction of the Supreme Court would not operate as bar to the jurisdiction of the Division Bench of this Court under Clause 15 of the Letters Patent against a "judgment" of a single Judge and an intra-Court appeal would be competent and maintainable.

8. It was also urged that some of the writ petitions were dismissed by the learned single Judge in limine and without recording reasons in support of such orders. The orders, therefore, are null and void and without jurisdiction. It is the power and duty of the Division Bench of this Court to correct the errors committed by the learned single Judge in exercise of authority under Clause 15 of the Letters Patent. It was submitted that some petitions were disposed of by a single Judge after a "practice note" was issued as per the order of the Chief Justice of this Court directing the Registry to place such matters before a Division Bench. After the "practice note", neither the registry could have placed any

petition against orders passed by Caste Scrutiny Committee before a single Judge nor a single Judge could have entertained, dealt with and decided such matters. To that extent, therefore, the orders passed by the learned single Judge were without jurisdiction and they should be set aside by allowing the Letters Patent Appeals and directing the Registry to place the matters before a Division Bench.

9. Having heard the rival contentions of the parties and giving anxious consideration to the submissions made, in our opinion, all the appeals deserve to be disposed of and dismissed on the ground that they are not maintainable. Some of the questions raised before us were also raised before this Court earlier. For instance, in Letters Patent Appeal No. 304 of 2000, *Milind Balkrishna Langhi v. State of Maharashtra and ors.*, decided on November 27, 2000, it was contended on behalf of the respondent-State that a Letters Patent Appeal was not maintainable in the light of direction No. 13 in *Kumari Madhuri Patil*. The Court upheld the contention and dismissed the appeal as not maintainable.

10. Again in Letters Patent Appeal No. 91 of 2002 in Writ Petition No. 1012 of 2002, decided on April 11, 2002, a similar question came up for consideration. The attention of the Court was invited to direction No. 13 in *Kumari Madhuri Patil* and the decision of the Division Bench of this Court in *Milind Balkrishna Langhi*. The Court noted the contention of the appellant that Clause 15 of the Letters Patent as applicable to this Court conferred right of appeal on the aggrieved party against "judgment" rendered by a single Judge and the said right could not have been curtailed by a judgment or decision of any Court. An intra-Court appeal, therefore, was maintainable. It was also submitted that the decision in *Milind Balkrishna Langhi* holding Letters Patent Appeal not maintainable was taken to the Supreme Court. The Supreme Court disposed of the matter and observed;

"Leaving the question of law, namely, whether an LPA is maintainable against the order of the learned Single Judge, open, the Special Leave Petitions are dismissed on the facts and in the circumstances of this case"

On the basis of the above observations, it was argued before the Division Bench that though some "observations" were made in *Kumari Madhuri Patil*, but the point as to whether or not LPA was maintainable was not finally decided by the Supreme Court and the question was left "open" in *Milind Balkrishna Langhi*.

11. Considering *Kumari Madhuri Patil*, the order of the Division Bench in *Milind Balkrishna Langhi* and the observations of the Supreme Court against the said order, speaking for the Division Bench, one of us (C. K. Thakker, C.J.) observed:

"It is true that under clause 15 of Letters Patent, a right has been conferred upon a party to file an appeal against an order passed by a learned Single Judge, if it is a judgment within the meaning of the said clause, it is also true that when *Milind Balkrishna* was taken to Supreme Court, the Supreme Court kept the question open. However, in view of the specific direction No. 13 in *Madhuri Patil*,

in our opinion, the Letters Patent Appeal must be held to be not maintainable. On that ground and without expressing any opinion on merits, the appeal deserves to be dismissed and is accordingly dismissed. Notice discharged. No order as to costs."

12. It may also be stated that even thereafter a group of Letters Patent Appeals were placed for hearing before a Division Bench of this Court being LPA Nos. 85 of 2001, 105 of 2002, 110 of 2001 and 237 of 2003. All appeals were decided by a common order on October 14, 2003. Considering the contentions of the appellants and quoting with approval the observations in paragraph 10 of the decision of the Division Bench in Letters Patent Appeal No. 91 of 2002, the Division Bench held that the Letters Patent Appeals were not maintainable. All the appeals were, therefore, ordered to be dismissed.

13. In the light of the above facts and enunciation of law by the Supreme Court followed by the Division Bench of this Court and reiterated from time to time, we have to hold that the Letters Patent Appeals are not maintainable and they should be dismissed observing that no such Letters Patent Appeals could have been instituted.

14. Keeping in view clear, express and unequivocal direction of the Supreme Court in Kumari Madhuri Patil (direction No. 13), it is not open to this Court to take a view that Letters Patent Appeals are maintainable upholding the contention of the appellants that the right to prefer an intra Court appeal has been conferred by Clause 15 of the Letters Patent as applicable to this Court and that right could not have been taken away by the Apex Court by issuing the said direction. It is equally not open to us to hold Letters Patent Appeals maintainable on the ground that direction No. 13 in Kumari Madhuri Patil, is per incurium inasmuch as it does not refer to Clause 15 of the Letters Patent as applicable to this Court.

15. It may be stated here that Chapter XVII of the Bombay High Court Appellate Side Rules, 1960 (hereinafter referred to as "the Rules") deals with "Petitions under Articles 226 and 227 and applications under Article 228 of the Constitution and Rules for the issue of writs and orders under the said Articles". Rule 18 of Chapter XVII ("Single Judge"s powers to finally dispose of applications under Article 226 or 227") enables a Single Judge to deal with and decide applications under Article 226 or 227 of the Constitution arising out of decrees or orders passed by subordinate Courts, tribunals or quasi-judicial authorities under Special or Local Laws as also under certain enactments referred to in the said Rule (Rule 18).

16. It is not in dispute that before 1999, petitions against orders passed by Caste Scrutiny Committees adjudicating caste claims were placed before a Division Bench. The Rule, however, was amended in 1999 and after entry (41), entries (42), (43) and (44) came to be inserted. Entry (44) which is material, reads thus; "Orders passed by the different Committees constituted by the State

Government for verification of the claims of Scheduled and Scheduled Tribe candidates".

17. Thus, after 1999, such petitions challenging orders passed by Caste Scrutiny Committees used to be placed before a single Judge.

18. In view of direction (No. 13) in Kumari Madhuri Patil and the decision of the Division Bench of this Court in Milind Balkrishna Langhi, the Hon'ble the Chief Justice, thought it proper to place such petitions before a Division Bench and accordingly, entry (44) was deleted with effect from November 29, 2002. It is not in dispute that all the petitions were decided prior to deletion of entry (44). It, therefore, cannot be said that the Single Judge could not have decided the petitions nor it can successfully be contended that the orders passed by the learned Single Judge were without jurisdiction.

19. It was also contended that after coming into force of the Act of 2001, Kumari Madhuri Patil has no application and hence an intra-Court appeal would lie.

20. We are unable to uphold the argument as well. Direction No. 13 in Kumari Madhuri Patil is express and explicit and the said direction cannot be ignored by this Court on the ground that with the passing of the Act of 2001, the direction of the Apex Court would not operate. The contention, therefore, stands rejected.

21. For the foregoing reasons, in our opinion, the preliminary objection raised by the learned Assistant Government Pleader is well founded and must be upheld by declaring that Letters Patent Appeals filed by the appellants against orders passed by the learned Single Judge of this Court are not maintainable. All the appeals, therefore, are held not maintainable and they are dismissed only on that ground, without observing anything on merits. Interim orders stand vacated.

22. No order on Civil Applications, in view of the above order. Issuance of certified copy of this judgment is expedited.