

(2008) 06 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 3407 of 2008

Shri Mukesh Devaram Mandora

APPELLANT

Vs

The State of Maharashtra, The Director of Technical Education
and The Regional Caste Validation Scrutiny Committee

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2008) 5 ALLMR 146 : (2008) 5 BomCR 100 : (2008) 110 BOMLR
2202 : (2008) 5 MhLj 714

Hon'ble Judges : S.S. Shinde, J; Bilal Nazki, J

Bench : Division Bench

Advocate : N.N. Vaishnawa, instructed by N.N. Vaishnawa, for the Appellant;
M.P. Thakur, AGP for Respondent Nos. 1 and 2 and A.M. Ranpise, for the
Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule returnable forthwith. By consent of the learned Counsel appearing for the respective parties, taken up for final hearing.

2. The present Petition is filed seeking direction to quash and set aside the letter dated 26th November, 2007 issued by the Respondent No. 3 to the Petitioner cancelling the admission of the Petitioner from the Respondent No. 3 college.

3. The Petitioner is a student who applied for admission to the first degree course in K.C.College of Engineering. The Petitioner's claims to belong to "Kumbar" caste included in Other Backward Category (OBC). The Petitioner was granted admission by the Respondent No. 3 College subject to the conditions that the Petitioner should submit the caste certificate for scrutiny within 12 weeks from the date of admission, failing which it was made clear to the Petitioner that the admission would be cancelled.

4. It is the case of the Petitioner that he was granted admission provisionally

from the reserved category in the Respondent No. 3 college on the basis of the caste certificate submitted by the Petitioner under the OBC category. The Petitioner applied for obtaining the caste certificate with the concerned Authorities and during the pendency of the said application, the Respondent No. 3 college cancelled the admission of the Petitioner. By the time Petitioner's admission was cancelled, the Petitioner had already completed two semester in engineering and was to appear for his 3rd semester examination.

5. Aggrieved by the cancellation of his admission the Petitioner preferred writ Petition No. 8836 of 2007 before this Court praying therein that Petitioners be allowed to continue and appear for examination during the pendency of the decision of the Caste Scrutiny Committee and that the said Committee be directed to take decision within reasonable time. It was also prayed that the order of cancellation of the admission of the Petitioner by the Respondent No. 3 be quashed and set aside.

6. This Court by interim order dated 4th December, 2007 permitted the Petitioner to appear for the examination and to attend the classes regularly.

7. The Caste Scrutiny Committee before whom the caste certificate of the Petitioner was pending for scrutiny held that the Petitioner is migrant and not entitled for validity certificate and thereby rejected the application of the Petitioner that he belongs to OBC. After decision of the Caste Scrutiny Committee, the writ petition No. 8836 of 2007 was heard and dismissed on 12th March, 2008 by this Court. While dismissing the said writ petition, this Court observed that it shall be open for the Petitioner to seek admission of any course in the open category to which he is otherwise entitled to. However, the Petitioner did not challenge the decision of the Caste Scrutiny Committee holding that Petitioner is not entitled for validity certificate claiming that, he belongs to "Kumbar" caste which is included in OBC in Maharashtra.

8. On the basis of the order dated 12th March, 2008 in writ petition No. 8836 of 2008 the Petitioner approached the Respondent No. 3 college for continuation of his admission in the open category. The Petitioner was informed that he should file written application and accordingly, the Petitioner submitted the application on 5th May, 2008 with Respondent No. 3 college through his father with request to allow the Petitioner to be considered from the open category. It was the contention of the Petitioner in said application that he has already paid examination fees for the 4th semester and Respondent No. 3 had accepted the said fees, the Petitioner be allowed to appear for the 4th Semester. The Respondent in turn replied to the Petitioner that unless there are appropriate instructions sought from the Respondent No. 2 to transfer the Petitioner from OBC category to open category, it is not possible for the Respondent No. 3 to allow the Petitioner to appear for the examination.

9. The Petitioner on 6th May, 2008 filed application with Respondent No. 2 to consider the Petitioner from the open category. The said application was filed by

the Petitioner through his father to which the Respondent No. 2 orally intimated that it is not possible to accept his request.

10. It is the contention of the Petitioner that he has already completed three semesters in engineering from the Respondent No. 3 college and the 4th semester is due to commence from 22nd May, 2008 and therefore the Petitioner be permitted to appear for the 4th semester examination. It is further contention of the Petitioner that while taking admission, he was not aware that his caste claim would not be upheld by the Caste Scrutiny Committee.

11. The present writ petition is filed seeking directions to the Respondents for regularisation of his admission from the open category / general category and by way of interim relief it is prayed that he should be permitted to attend the classes regularly and he should be allowed to appear for the examination.

The Petition was moved for urgent reliefs during summer vacation. The matter was heard by this Court on 21st May, 2008. This Court issued notices to the Respondents. This Court allowed the Petitioner to appear for the examination to be commenced on 22nd May, 2008. The statement of the Advocate for the Petitioner was recorded that the Petitioner will not claim equity because of the fact that this Court allowed him to appear for the examination. It was made clear in the said order that, the Petitioners appearing in the examination will be subject to further orders that may be passed by this Court in this petition.

12. We have heard the learned Counsel appearing for the respective parties.

The learned Advocate appearing for the Petitioner submitted that since the Petitioner has completed two years by appearing in the semester till 4th semester, in the interest of justice his admission be regularized and he may be allowed to complete course. It was further argued that, the Petitioner is prepared to opt from open category. It was prayed that he is not further claiming any benefits from OBC category, however, since he has completed two years, he should be allowed to appear for the 3rd year and consequently he should be allowed to complete the course. He has further submitted that in the interest of justice, the Petitioner should be allowed to attend the classes and complete the course. It was further argued that his caste certificate is invalidated merely on the ground that he is migrant from some other State.

13. On the other hand, the learned Assistant Government Pleader appearing for the State submitted that, once the caste certificate of the Petitioner is invalidated by the Caste Scrutiny Committee, his claim from the OBC Category does not survive and therefore, the admission taken by him from the OBC category requires to be cancelled irrespective of the fact that he has completed two years course. It is further submitted that by way of occupying one reserved seat meant for OBC category students / candidates, the Petitioner has deprived one genuine OBC candidate. It is further submitted that it is not possible to consider the request of the Petitioner that his admission should be treated from the open category relying on the paragraph two of the affidavit in reply filed on behalf of

the Respondents.

14. We have heard the learned Counsel appearing for the respective parties at length, and we have given our anxious consideration for the argument advanced by the Advocates and we are of the considered opinion that the relief prayed by the Petitioner in this Petition cannot be granted for the reasons stated hereinbelow.

15. The State of Maharashtra enacted an Act called The Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. Provisions of Section 10 of the said Act in unequivocal words states that, once caste validity certificate of any person is invalidated by the Caste Scrutiny Committee, the benefit which are obtained by the said person on submitting false caste certificate should be withdrawn immediately. The Provisions of Section 10 of the said Act reads thus:

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Caste, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Co-operative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such caste Certificate, by the Scrutiny Committee.

16. Mere perusal of the above section makes it clear that the persons who obtains admission from the reserved category and subsequently after scrutiny of the said certificate if same is found to be not valid, the benefits obtained by the said persons should be withdrawn immediately.

17. While dealing with the similar cases as in hand, the Apex Court has taken view that the students who have secured admissions from reserved category on

the basis of their caste certificate and said caste certificates are invalidated subsequently, and if the students have already completed the course and obtained the degree, in that case on filing an undertaking that he will not further claim the benefits on the said caste certificate, his degree should be protected.

18. The Supreme Court in *State of Maharashtra v. Milind and Ors.* reported in (2001) 1 SCC 4 in paragraph 38 on the fact of that case held that, the Respondent No. 1 therein joined the medical course for the year 1985-86 and almost 15 years have been passed and since his practicing as an Doctor, his degree should be protected. However, it was made clear that he will not claim further benefits on the basis of the said certificate.

19. We may also refer to the Judgment of the Supreme Court in the matter of Additional General Manager, Additional General Manager, Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, has crystalised the view taken by the Supreme Court so far in cases of person who secured an appointment on the basis of false caste certificate and the person who gets admission by submitting the false certificate. The Supreme Court in paragraph 13 held :

The principle, which seems to have been followed by this Court is that, where a person secures an appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. However, where a person has got admission in a professional course like engineering or MBBS and has successfully completed the course after studying for the prescribed period and has passed the examination, his case may, on special facts, be considered on a different footing. Normally, huge amount of public money is spent in imparting education in a professional college and the student also acquires the necessary skill in the subjects which he has studied. The skill acquired by him can be gainfully utilised by the society. In such cases the professional degree obtained by the student may be protected though he may have got admission by producing a false caste certificate. Here again no hard-and-fast rule can be laid down. If the falsehood of the caste certificate submitted by the student is detected within a short period of his getting admission in the professional course, his admission would be liable to be cancelled. However, where he has completed the course and has passed all the examinations and acquired the degree, his case may be treated on a different footing. In such cases only a limited relief of protection of his professional degree may be granted.

20. The Hon"ble Supreme Court in case of *Union of India (UOI) Vs. Dattatray Mendhekar and Others*, , in paragraph 6 referring to the earlier judgments in case of *Bank of India v. Avinash D. Mandivikar*, and *Additional GM, Human Resource Bharat Heavy Electricals Ltd. v. Suresh Ramkrishna Burde* and *State of Maharashtra v. Milind*, came to the conclusion that the limited protection to the candidate is available when already he has completed the course and secured degree and not the cases where the falsehood of his caste certificate is detected

in a short period from the date of admission.

21. Yet in another case the Hon"ble Supreme Court in Yogesh Ramachandra Naikwadi v. State of Maharashtra and Ors. AIR2008 Bom 448 in paragraph 6 held :

There may however be cases where it will not be proper to permit the student to retain the degree obtained by making a false claim. One example is where the candidates secure seats by producing forged or fake caste certificates. there may be cases, where knowing full well that they do not belong to a scheduled tribe/ caste, candidates may make a false claim that they belong to a schedule tribe/ caste. There may also be cases where even before the date of admission, the caste certificates of the candidates might have been invalidated on verification by the Scrutiny Committee. there may be cases where the admissions may be in pursuance of interim order granted by courts subject to final decision making it clear that the candidate will not be entitled to claim any equities by reason of the admission. The benefit extended in Milind and Vishwanatha Pillai, cannot obviously be extended uniformly to all such cases. Each case may have to be considered in its own merits. Further what has precedential value is the ratio decidendi of the decision and not the direction issued while moulding the relief in exercise of power under Article 142 on the special facts and circumstances of a case. We are therefore of the view that Milind and Vishwanath Pillai cannot be considered as laying down a proposition and in every case where a candidate's claim is rejected by a caste verification committee, the candidate should invariably be permitted to retain the benefit of the admission and the consequential degree, irrespective of the facts.

22. By mere reading of the above paragraph from the Supreme Court Judgment, it is clear that the benefits extended in case of Milind and Vishvanath Pillai cannot be extended uniformly to all cases and each case may have to be considered on its own merits.

23. In the present case, admittedly, the Petitioner has not completed the engineering course and consequently there is no question of obtaining any degree by him. We are of the view that no relief can be granted in favour of the Petitioner in view of the law laid down by the Apex Court in aforesaid cases.

The another prayer of the Petitioner to treat his case from the open category cannot be considered in view of the paragraph two of the affidavit in reply filed by the Respondent State which reads as under :

I say that the Petitioner has secured 137 merit marks in MHT-CET 2006. He has been allotted the seat in the First year of Degree Course in Engineering/ Technology in Electronics and Tele-Communication Engineering Branch during the year 2006-2007 under Other Backward Class category having General OBC Home University (GOBCH) Seat Type in Round -

1. The last admitted candidate in Open category under Home University in

Round-1 is having 154 merit marks in MHT-CET 2006 and at the same time the last admitted candidate in Open category under Home University in Round -

2 is having 147 merit marks in MHT-CET 2006. The sanctioned intake of the Respondent No. 3 College for the Electronics and Telecommunication Engineering Branch is 90 and total 90 seats have been filled which indicates that there is no vacancy in Open category in the electronics and Telecommunication Engineering Branch of Respondent No. 3 College in the Year 2006-2007.

24. In view of the discussion in foregoing paragraphs and provisions of Section 10 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimuka Jatis), Nomadic Tribes, Other Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, and in view of the view taken by the Hon''ble Supreme Court in aforestated Judgments, we decline to entertain this petition. Accordingly, the writ petition is, dismissed.