
(2007) 04 BOM CK 0117
In the Bombay High Court
Case No : Writ Petition No. 6512 of 2006

Sonali	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 341, 342

Citation : (2007) 5 MhLj 130

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : V.R. Choudhari, for the Appellant; K.S. Dhote, AGP, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable and is heard forthwith. Heard learned Advocate for the petitioner, and the learned AGP for the respondents.

2. Petitioner's caste certificate dated 31-7-1995 was furnished for scrutiny. In the meanwhile, the petitioner appeared in MAH-AR-CET 2004 Test on 11th July, 2004, and was granted admission subject to production of validity certificate of her caste (Halba Scheduled Tribe) for the Course of Bachelor of Architecture. She paid her tuition fees of Rs. 40,000/- on 7-8-2004.

3. In the meanwhile, the petitioner had completed her first year Engineering Course in Architecture in April, 2005, and thereafter, took admission in second year, and also paid the fees of Rs. 40,000/-.

4. The petitioner's caste claim was invalidated by judgment and order dated 8-9-2005 by the Scrutiny Committee. When the petitioner had completed her 3 months of instructions in the Engineering College, the invalidation has attained the finality.

5. We find that at present it is a common scene that students seek admission in

the reserved category seat on the basis of a certificate which is yet to be scrutinized, and invalidation thereof occurs after a long span of 2 to 5 years, and in the intervening period, the petitioner's educational career advances. Considering the factum of completion of the course, and loss incurred to State exchequer, and the years spent by students, as well as money, energy, and inputs of the educational institutions, the Courts are persuaded to protect the admission.

6. Relying upon the following judgments:

(1) Kum. Jyoti Pralhad Sangle Vs. The State of Maharashtra, (2) Sandeep Subhash Parate Vs. State of Maharashtra and Others,

the petitioner claims that her educational opportunity be protected, and she may be continued in the Course of B. Arch in open category.

Precedents as they are in the field:

7. In Kum. Jyoti Pralhad Sangle Vs. The State of Maharashtra, , the facts whereof were as follows:

(a) The petitioner had completed her medical course in Seth G.S. Medical College, Mumbai on taking admission in December 1994, and had completed third year MBBS Course, and even had appeared for examination, and had to clear two subjects. She had given undertaking at the time of admission that she would not claim any benefits of belonging to Scheduled Tribe "Mahadeo Koli" and accepted the finding recorded by the Scrutiny Committee.

(b) In the background that the petitioner had completed the Course of instructions, and only in two papers she has to pass, this Court found that her admission be protected relying on the reported Judgment in case of Yuvraj Laxman Mane v. State of Maharashtra and Ors. In case of Yuvraj Laxman Mane also the Court had held that "We are of the opinion that the direction for removing the petitioner from the college at this stage is not likely to benefit any other candidate, and the seat goes vacant. Moreover, the petitioner should be allowed to continue his studies". In another case relied upon in the said case namely Vishal Eknath Patil v. State of Maharashtra and Ors. this Court did not consider to cancel the performance of the petitioner as he had already completed Bachelor of Engineering in Architecture Course.

8. Mrs. Rudhita Damodhar Bade v. State of Maharashtra and Ors. (2006) 7 SCC 501 who was prosecuting her study in MBBS second year, similar protection was granted by this Court.

9. The petitioner then relied upon the case of Sandeep Subhash Par ate v. State of Maharashtra, in which the Court relied upon the case of State of Maharashtra v. Milind, and the Hon"ble Supreme Court directed the admission to be protected on said petitioner's paying token reimbursement of a sum of Rs. 1,00,000/-.

10. Learned AGP opposed the relief arguing that in fact, the petitioner has

snatched one seat of one eligible candidate from the category she claimed and her claim has been invalidated. According to learned AGP, the judgments relied upon by petitioner are all "fact judgments", and in neither law was laid down as dictum that such students admission ought to be protected. He further urged that loss of money and time is suffered/procured by the petitioner with open eyes and as a wager, and now the petitioner cannot lament to seek help of Court. Petitioner's lament and supplication is not for protection of any of her fundamental right or right whatsoever. Petitioner is in fact, invoking constitutional forum and jurisdiction when on way she has trampled on somebody's constitutional right emerging from constitutional reservation.

11. We find that in all these judgments the Hon'ble Apex Court as well as this Court, granted protection to the petitioner in the factual matrix of the cases concerned.

12. We find that unfairly exploited opportunity of snatching away the seat, reserved for a member of any particular class or community, is a loss in perpetuity to the members of said class/caste or community for whom the seat is reserved.

13. We find that so long the students taking the benefit of such admission get a feel that even if their caste claim is invalidated, the law of precedents as can be gathered from few judgments granting protection who have harvested said benefit, though without genuine right, title and interest thereto. This mischievously harvested gain keeps spreading a message in geometric progression that unconstitutional gains can be protected by constitutional fora.

14. After consistent record of wrongful exploitation of facility under protection thereof by using judicial forum under the device of the argument for sympathy towards loss of year and loss of money is turning out to be a counterfeit coin used in place of legitimate currency. We are, therefore, of the view that time has come to identify such counterfeit currency, and take a harsh and hammering action to dissuade the abuse of constitutional forum.

15. Considering this aspect, this Court recalls the spirit of reservations as noted in *Bhola Ram Kushwaha Vs. The State of Madhya Pradesh*, . Lordships of Apex Court observed that:

In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness, besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in brining a meaningful social change. But, unfortunately, even some better-placed persons by producing false certificates as belonging to Scheduled Tribes have been

capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognizing and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments lead to making mockery of the very reservation against the mandate and the scheme of the Constitution.

16. However, the tendency which has been noted by and large by the Courts is that a person would claim a seat in a professional course or in a professional service as a Scheduled Tribe, would enjoy the benefits for the duration in which the matter regarding the caste is under verification before the Scrutiny Committee. Later, if the Scrutiny committee finds that the alleged claimant was not a Scheduled Tribe, a case will be brought before the Court and ultimately, whatever benefits have already been derived by the alleged claimant would be protected prohibiting him from further taking any benefits as a Scheduled Tribe.

17. In following three cases while saluting what was found in Milind Katware's case (supra), Court had on fact protected candidates" studies observing that:

1. State of Maharashtra v. Milind and Ors. 2001 (1) Mh. L.J. 1 : (2001) 1 SCC 4, decided on November 28, 2000 as follows:

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 practicing as a doctor. In this view and at his 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 ST was deprived of joining medical course by the admission given to respondent. If any action is taken against respondent, 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 effect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to ST covered by ST order. Having regard to passage of time, in the given circumstances, including interim orders passed by this Court in SLP 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.

2. R. Vishwanatha Pillai Vs. State of Kerala and Others, decided on January 7, 2004.

In this case, the appellant joined the Regional Engineering College in the year 1992. He completed the course of his studies in the year 1996 under the interim

orders of High Court which were subject to the final orders to be passed in the Writ Petition. Again in this case, it was held that 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 the case he passes the examination. Orders were issued to declare the result of the petitioner 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. Caste certificate was cancelled and he was ordered to be treated as a general category candidate for all purposes.

18. The question which falls for consideration is that to what extent a person should be allowed to derive benefit out of the fraud committed on the Constitution. Whether it would not amount to unjust enrichment. Whether it would not give a precedent to the people, in this era of unemployment and scarcity of resources to tamper ones caste certificate and try a chance to have education on the place of a bona fide SC/ST candidate?

19. Bank of India and Another Vs. Avinash D. Mandivikar and Others, decided on September 14, 2005.

In this case, the Supreme Court took a different view that the two judgments cited above. Respondent No. 1 employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. The Scrutiny Committee examined the various documents and came to a definite conclusion that the documents were manipulated to present false claim. Though the Court did not overrule the view taken in Milind's case (It could not, as it would have required a 7 Judge Bench), it distinguished the situation by stating as follows:

The protection under Milind Case cannot be extended to respondent 1 employee as the protection was given under the peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. The Court noted that on a doctor, public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent 1 employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him.

The Hon^{ble} Supreme Court dealt extensively with the case from a different angle as to where fraud is perpetrated the parameters of consideration will be different. Mere delayed reference when the foundation for the same is an alleged fraud does not in any way affect the legality of the reference. The protection awarded to the respondent by the High Court was held as untenable and Court held that by giving protection for even a limited period, the result would be that a person who has a legitimate claim shall be deprived of the benefits. On the other hand, a person who had obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does not even have a shadow of right even to be considered for appointment. However, no cost was imposed.

20. Bank of India's case would lead judicial pronouncements on a track showing the locus of constitutional principles as regards protection of benefits derived from playing a fraud on the Constitution is concerned. It is now felt necessary that stricter view should be taken in such cases where somebody plays a fraud on the Constitution and avails of the benefits which are meant for the deprived class of the society.

21. According to the petitioner, the case of Bank of India v. Avinash Mandivikar cannot serve the purpose of a precedent governing matter of student. An employee continuing to harvest benefit of employment or promotion will stand on a different footing than of a student seeking protection of previous years of his career, which are lost while he may be pursuing legitimate right, which was purportedly and ostensibly available to him. The reply submission is very much attractive, impressive luring, however, without any answer as to how can such a candidate can come out of the blame of deprivation of a reserved seat being perpetually taken away.

Merely because some time has elapsed and one has completed a degree or is in employment since long time does not justify the unjust enrichment which that person derives, to which he is not entitled in law. We feel that there should be imposition of costs on such persons and if somebody has availed benefit of a SC/ST seat etc. and gained education at concessional rates, should pay back the amount to the Govt. Exchequer, and in the subsequent year one post/vacancy should be added from that money, and this preference should apply to exceptional case of protection in a rare in rarest case.

22. The issue which evolves in this situation is what shall be the judicial policy in this situation? Should Court protect a defeater of law and constitution or should protect such wrong doer with cordialness and compassion which is very basic to life of mankind. It has always been said that law is not averse to compassion, however, what shall be the dead line of law to help a wrong doer being impressed by compassion. On this issue of knot, this Court finds that compassion ought not override the constitutional goals and objectives. Compassion in solitary cases ought not be precedent. In this background to this Court this is an opportune time to say "No" to fall prey to the argument of compassion, and we say so in this case, and we accept to say "enough is enough" and no more.

23. We, therefore, prefer to rely on and apply the doctrine as enunciated in case of Milind as quoted in para 18 above, and Avinash Mandivikar, and hold that as a rule of precedent that a candidate who is wrongfully enjoying a seat under the reservation should not be entitled to any protection whatsoever. Rule of compassion cannot be lost, however, it shall be an exception of rarest of rare case, and not a counterfeit coin dominating genuine currency of genuine one.

24. When admission is cancelled, the loss of one year can be carried forward in the next year instead of allowing it to get extinguished.

25. We, therefore, hold that the petitioner who had completed one year's Course

in B. Arch, and had put in about 3 months in the instructions of second year of B. Arch does not entitle herself to get any protection whatsoever. The concept of wastage of seat would never out weigh the perpetual damage which is caused, and protection of such seat serves as a locus for such candidates who have caused the deprivation. This locus, which is sought to be converted into a royal road by abusing process of the Court, and that to the constitutional jurisdiction under Article 226 of the Constitution of India, needs to be demolished.

26. We, therefore, find that the present is a case where no indulgence is called for. The extra ordinary jurisdiction, which is for protection of fundamental rights not only for single litigant, but for the protection of fundamental rights of those whose interest is jeopardized, and should go on unrepresented before the Court, needs to be exercised being alive to this fact.

27. We, therefore, hold that the petitioner is not entitled to relief whatsoever by invoking the extraordinary jurisdiction under Article 226 either under the protective jurisdiction of this Court to safeguard the fundamental rights of the citizens or in plenary jurisdiction. We, therefore, discharge the rule and dismiss the writ petition leaving the parties to bear own costs.