

(2005) 09 BOM CK 0029
In the Bombay High Court
Case No : W.P.No. 9 of 1997

Surendra Gandam

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 10(1C)
Constitution of India, 1950 — Article 15(4), 16(4), 162, 226, 227

Citation : (2006) 1 ALLMR 347 : (2006) 1 MhLj 308

Hon'ble Judges : Vasanti A. Naik, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : A.S. Golegaonkar, for the Appellant; K.M. Suryawanshi, Assistant Government Pleader for respondent Nos. 1, 2 and 4 and M.S. Deshmukh, for the Respondent

Judgement

A.P. Deshpande, J.—The petitioner by filing the instant petition, is challenging an order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Nashik, rejecting the tribe claim of the petitioner to "Mannerwarlu", Scheduled Tribe. The petitioner came to be selected for being appointed as Police Sub-Inspector consequent upon his selection by the Maharashtra Public Service Commission against a seat reserved for Scheduled Tribe. Maharashtra Public Service Commission recommended the name of the petitioner for being appointed as Police Sub-Inspector and accordingly the petitioner came to be appointed in the said post. The petitioner was selected by the Maharashtra Public Service Commission in the examination held in the year 1987 and the petitioner was communicated about the same vide letter dated 4-4-1988. The petitioner was then sent for practical training and on successful completion of the training, joined regular service under the State with effect from 13-6-1989.

2. The caste, (tribe) certificate possessed by the petitioner was referred to the Committee for its scrutiny and verification. In the first instance, the Scrutiny Committee rejected the claim of the petitioner and being aggrieved, the petitioner filed Writ Petition bearing No. 4649/1995 challenging the order passed

by the Scrutiny Committee. This Court quashed and set aside the order passed by the Committee and remanded the matter for its decision at the hands of newly constituted Committee formed pursuant to the directions issued by the Apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . After remand, a de novo enquiry is made by the Committee and the tribal claim is rejected vide order dated 25-9-1996 which is the subject matter of challenge in the present petition.

3. Learned Counsel for the petitioner has made twofold submission, firstly, that the impugned order passed by the Committee is unsustainable in law as the order is perverse as it does not consider the evidence in its proper perspective, and secondly, that the petitioner's appointment as Police Sub-Inspector made in the year 1989 stands protected by the Government Resolution dated 15-6-1995.

4. Various documents were placed before the Committee with a view to substantiate the tribe claim of the petitioner. The Committee after considering the evidence on record found that the basic document viz. school leaving certificate pertaining to the petitioner himself issued by the Head Master of Zilla Parishad High School, Kinwat, reveals the entry against the caste column as "Munurwar", and hence chose to rely upon the said evidence and further held that other documents would be of little assistance to the petitioner to establish his tribe claim to "Mannerwarlu", Scheduled Tribe. Relying mainly on the school leaving certificate, the Committee concluded that the petitioner has failed to establish his claim to "Mannerwarlu", Scheduled Tribe. The Committee further concluded that the petitioner belongs to "Munurwar" caste which is included in "Special Backward Category" declared by the State Government. The other documents which goes to support the claim of the petitioner are in the nature of birth certificate of the candidate, a document indicating receipt of scholarship by the petitioner, service record of the candidate's relative, affidavits filed by the relatives of the petitioner, caste certificate possessed by the petitioner and copies of the orders passed in some petitions by the High Court. The Committee has rejected the birth certificate of the candidate by observing that the said document is recently procured and hence cannot be relied upon. As other documents are found to be pitted against a basic document, as described by the Committee, which is a school leaving certificate of the petitioner, the other documents have been rejected. The Committee has further observed in the impugned order that the petitioner has failed to establish ethnic linkage towards the traits, characteristics, customs and culture of the tribe and even on that count, a finding is recorded against the petitioner that he has failed to establish affinity with the said tribe. Learned Counsel for the petitioner has contended that barring one document, all other material and evidence placed on record of the Scrutiny Committee clearly indicate that the petitioner belongs to "Mannerwarlu", Scheduled Tribe. Per contra, the learned Counsel appearing for the Scrutiny Committee has supported the order by contending that this Court cannot reappraise the evidence and come to a different conclusion.

5. We find that the view taken by the Scrutiny Committee cannot be termed as perverse. We are further of the opinion that the view taken is a possible view. We cannot reappreciate the evidence and come to a different conclusion while exercising jurisdiction under Articles 226 and 227 of the Constitution of India. It is not the quantity of evidence which would be decisive but the quality of evidence. As the Committee has chosen to rely upon the basic document in the form of school leaving certificate, no fault can be found with the order impugned. In this view of the matter, we do not see any reason to interfere with the order passed by the Scrutiny Committee.

6. Turning to the next submission about the benefit extended by the Government Resolution dated 15th June, 1995, which goes to protect all appointments and promotions granted to the persons belonging to Special Backward Category on the basis of a caste certificate indicating that they belong to Scheduled Tribe, requires serious consideration. As the question involved in the present petition in regard to protection to the appointments and/or promotions granted prior to 15th June, 1995 has been cropping up in various matters, we have listed group of petitions involving the common question and we have heard the arguments of the learned Advocates appearing for the respective parties in their petitions involving the common question. We have picked up the present petition for elaborate consideration of the issue. We have had able assistance of Advocates, Mr. A. S. Golegaonkar, Mr. S. B. Talekar, Mr. S. R. Barlinge, Mr. M. S. Deshmukh, Mr. P. K. Joshi, and the learned Assistant Government Pleaders.

7. Having regard to the submissions made by the Advocates appearing for the rival parties, the following question arises for consideration.

(a) Whether Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance And Verification Of) Caste Certificate Act, 2000 (For short, hereinafter referred to as "the Act") nullifies the Government Resolution dated 15-6-1995 and results in withdrawal of the benefits made available under the said Government Resolution, or, whether the Act and the Government Resolution operate in a different area and hence there is no conflict ?

8. Before we proceed to deal with the intricate question which frequently arise in number of petitions, we would like to refer to the circumstances which brought into existence Special Backward Category in the State of Maharashtra. Prior to the year 1994, if we may say so, five groups by name, "Govari", "Mana", "Koshti (its sub-castes and/or synonyms)", "Koli" (its sub-castes and/or synonyms) and "Mannervarlu" (its sub-castes and/or synonyms), were claiming to be part of or groups within certain tribes but they were not being treated as such. The names of the abovereferred groups or castes were not included in the Presidential Order and, as such, they were denied the concessions and benefits which are otherwise available to Scheduled Tribe candidates. The Government in view of the social and educational backwardness of the said groups or castes, issued a resolution

on 7th December, 1994 declaring the abovereferred castes of "Govari", "Mana", "Koshti" (its sub-castes and/or synonyms), "Koli" (its sub-castes and/or synonyms) and "Mannervarlu" (its sub-castes and/or synonyms) which are enumerated in the Resolution as Special Backward Category. It is for the first time, that by Government Resolution dated 7th December, 1994, the said castes came to be recognized as Special Backward Category. It may not be out of place to state, at this juncture, that a Division Bench of this Court had held in a judgment reported in 1987 Mh.L.J. 572, in the case of Milind Sharad Katware and Ors. v. State of Maharashtra and Ors., that "Halba Koshti" is sub-tribe of tribe "Halba"/"Halbi" and are Scheduled Tribes. The said judgment at a later point of time, came to be reversed by the Constitution Bench of the Apex Court in the judgment reported in 2001(1) Mh.L.J.1, in the case of State of Maharashtra v. Milind and Ors. It is relevant to note that though the Supreme Court held that the Presidential Order has to be read as it is and no tinkering with the entries therein is permissible, it proceeded to protect all the appointments made and admissions granted which had assumed finality prior to the date of pronouncement of the judgment. In other words, the judgment was made prospectively operational and thereby the appointments and admissions given to the persons belonging to "Halba Koshti" were protected by the Apex Court. The relevant observations are in concluding part of para 36 which reads thus :

Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372/35 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

So, for the first time in 2001, the Apex Court authoritatively pronounced that no enquiry whatsoever is permissible to find out whether a given tribe or caste forms part of or groups within the tribe or caste as declared in the Presidential Order. It may be reiterated at this stage, that "Halba Koshtis" whose appointments and admissions had assumed finality before the pronouncement of the judgment, are protected by the Apex Court in the case of State v. Milind and Ors. (supra). "Koshti", "Halba Koshti", etc. find place in Clause No. 3 of the said Government Resolution dated 7th December, 1994. The Government Resolution carved out a Special Backward Category of castes which included the caste referred to in the resolution. The said Government Resolution then made available certain benefits and concessions to the persons belonging to Special Backward Category and the said concessions are enumerated in Schedule "A" appended to the resolution which mainly dealt with free education, scholarships, reservation in admissions to Medical and Engineering courses, free supply of books, free residence and food for students partaking education in Ashram Schools, etc. Thereafter the State Government issued Resolution dated 15th June, 1995 which was a step ahead of the Government Resolution dated 7th December, 1994. By the Government Resolution dated 15th June, 1995, three goals are achieved by the State, firstly, to provide for reservation of 2% for Special Backward Category in the employment of the State Government, Semi-

Government, Government controlled Corporations, Municipal Corporations, Municipal Councils, Zilla Parishads, Co-operative Banks, Government Undertakings and educational institutions, secondly, to provide reservation at the stage of initial appointment, so also, at promotional stage, and, lastly, to provide protection to the persons belonging to the Special Backward Category in regard to the appointments and promotions made before 15-6-1995. The controversy in the present petition revolves around the protection granted by the Government Resolution to the persons belonging to the Special Backward Category, who are appointed or promoted prior to 15-6-1995, on the basis of a Tribe Certificate indicating them to be belonging to a Scheduled Tribe. The Government Resolution then directed preparation of a fresh 200 Point roster providing for 2% reservation for the Special Backward Category. It is this Government Resolution dated 15th June, 1995 under which the petitioner claims protection of his appointment.

9. It is a matter of common knowledge that the groups which are now included in Special Backward Category and named as caste were all throughout claiming to be belonging to or included in some or the other tribe and hence many of them were possessed of Scheduled Tribe certificate indicating them to be tribals. Some of them were either appointed or promoted prior to 15th June, 1995 on the basis of Scheduled Tribe certificate legally issued by the competent authority. The Government being aware of this fact situation prevalent in the State of Maharashtra has granted protection to the appointments and promotions made before 15-6-1995, by issuing the said Government Resolution.

10. It is the case of the petitioner that the Government's power to declare a caste as a Backward Class, having regard to social and educational backwardness and to provide for benefits, concessions and reservation under Articles 15(4) and 16(4) of the Constitution, is in no way truncated or curtailed by Section 10 or other provisions of the Act. It is submitted that the Government's power to declare a caste as backward caste and to provide for reservation in admissions and employment, is not only an enabling power which flows from Articles 15(4) and 16(4) of the Constitution, but is coupled with an obligation cast on the State to provide for reservation in deserving cases. Reliance is placed on the observations made by the Apex Court in the judgment in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., . It is then submitted that the Government has recognized the legitimate claim of the persons belonging to Backward Class by declaring them to be belonging to "Special Backward Category" they being socially, economically and educationally backward. The State Government, as such, has carved out an independent category of persons belonging to Special Backward Category and reservation is provided to the extent of 2%.

11. Learned Counsel for the petitioner has then submitted that the Government Resolution dated 15th June, 1995 only protected the appointments and promotions granted prior to 15th June, 1995 and there is nothing wrong about

the same when even the Apex Court had granted similar protection while deciding the case of *State of Maharashtra v. Milind and Ors.* (supra). It is then submitted that it would not be in anyone's interest to unsettle the settled positions by depriving the persons so protected by the Government Resolution by interpreting the provisions of the Act in such a manner so as to render the Government Resolution nugatory. Lastly, it is submitted that the provisions of the Act do not expressly or by necessary implication take away the benefits made available by the Government Resolution dated 15th June, 1995 but the Act recognises the benefits, granted by the Government Resolution. Accrued rights cannot be taken away by implication in the absence of any clear intent expressed by the Act, is the last submission.

12. Per contra, learned Counsel appearing for the respondent has submitted that the very purpose sought to be achieved by Section 10 of the Act is to withdraw all benefits which a candidate has secured on the basis of a false caste certificate or on the basis of a caste certificate obtained fraudulently and if and in case, the Government Resolution dated 15th June, 1995 is not nullified, by holding that Section 10 obliges the withdrawal of all benefits obtained by persons on the basis of the caste certificate which at a later point of time has been found to be not true, the purpose sought to be achieved by the Act would be frustrated. This contention is elaborated by submitting that as the petitioner's tribe claim is rejected or invalidated by the Committee, the petitioner would be branded as a person who has obtained a false Caste Certificate, in which event, Section 10 would squarely apply, mandating withdrawal of the benefits. It is then submitted that every person whose claim to a tribe is invalidated would be a person possessing false Caste Certificate and even if he is found to be belonging to the Special Backward Category, he would still be regulated by Section 10 of the Act. It is lastly submitted that the phrase, "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", used in Section 10 is synonymous to a situation where certificate is found to be not true, and if so read, on cancellation of Caste Certificate, consequent upon rejection or invalidation of tribe claim, withdrawal of benefits u/s 10 would follow. According to the Counsel for the respondent, such persons could not be protected by virtue of the Government Resolution dated 15th June, 1995, as there is conflict between the provisions of the Act and the Government Resolution and even though the Resolution is referable to Article 162 of the Constitution of India, it must yield to the provisions of the Act. It is hence contended that the Government Resolution is rendered nugatory, on coming into force the provisions of the Act.

13. Before we proceed to deal with the questions raised by the respective parties, we prefer to refer to the judgments which proceed to consider these issues. The first judgment in point of time is an unreported judgment of a Division Bench of this Court (Coram: R. M. Lodha and A. S. Aguiar, JJ.) in Writ

Petition No. 3895/1990, in the case of Smt. Vandana Joseph Vaith v. State of Maharashtra and Ors., dated 10th March 2003. The petitioner in the said case had sought an appointment on the basis of a caste certificate issued in the year 1980 certifying that the petitioner belongs to "Mahadeo Koli", Scheduled Tribe. On invalidation of the tribe claim, the petitioner had approached the High Court. During the course of hearing, the petitioner gave up challenge to the order passed by the Scrutiny Committee and restricted the claim in the petition to the extent of seeking protection under the Government Resolution dated 15th June, 1995. It was contended by the respondent therein that by virtue of Maharashtra Act No. XXIII of 2001, and to be more specific, by virtue of Section 10, on invalidation of the tribe claim of the petitioner, she cannot claim any protection under the Government Resolution. In that context, the Court observed that the Maharashtra Act No. XXIII of 2001 does not in terms take away the protection of service which was granted under the Government Resolution dated 15th June, 1995. The relevant observations of the Division Bench are thus :

It does not appear to us that the benefit of protection of service which has accrued to the petitioner under the Government Resolution dated 15th June, 1995 has been taken away by the Maharashtra Act No. XXIII of 2001. There is no indication in the entire Act No. XXIII of 2001 that by this enactment, benefits already accrued under the then existing Government resolutions have been taken away. We need not overemphasize that the Government Resolution dated 15th June, 1995 was issued by the State Government in exercise of its power conferred under Article 162 of the Constitution of India. Executive power conferred under Article 162 of the Constitution of India is co-extensive with the legislative power. Thus the benefit which came to be accrued to a person under the Government Resolution i.e. the executive order dated 15th June, 1995 does not seem to have been taken away by the Maharashtra Act No. XXIII of 2001. If the argument of Mr. Abhay Patki, the learned Counsel for respondent No. 5, is accepted, that would amount to giving retrospective effect to the Maharashtra Act No. XXIII of 2001 which does not appear to be intended expressly or by necessary implication on the reading of the said Act."

According to the Division Bench, the benefit which accrued to a person under the Government Resolution dated 15th June, 1995 is not withdrawn by the Act. The Government Resolution is referable to Article 162 of the Constitution of India, and that the Act is not retrospective in operation.

14. The next judgment on which reliance is placed by the petitioner, is an unreported judgment of the Division Bench of this Court (Coram : A. P. Shah and D.G. Karnik, JJ.), in Writ Petition No. 194/2003, in the case of Kum. Bhamini Sadashiv Thanekar v. State of Maharashtra and Ors. In the said case, the petitioner was appointed in the year 1990 on the basis of a certificate indicating that he belongs to "Mahadeo Koli", Scheduled Tribe. His tribe/caste claim was rejected in the year 1996. The said petitioner gave up the claim to the Scheduled Tribe and restricted the claim in the petition only to the extent of seeking

protection to his appointment under the Government Resolution dated 15th June, 1995. It was not in dispute that the petitioner belongs to "Koli" caste which is included in Special Backward Class. Similar contention was raised by the respondent, as is raised in the present petition, that by virtue of provisions of the Act, the petitioner cannot claim the benefit under Government Resolution dated 15th June, 1995. While dealing with the issue in para 4 of the judgment, the Court, placing reliance on the earlier judgment referred to hereinabove, delivered by the Division Bench of this Court, concurred with the said view and observed thus:

However, according to him by virtue of the Maharashtra Act No. XXIII of 2001 entitled the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Castes Certificate Act, 2000, the petitioner whose certificate has been invalidated by the authority concerned cannot enjoy the protection of employment under Government Resolution dated 15-6-1995. The submission of the learned Counsel cannot be accepted in view of the decision of the Division Bench in Writ Petition No. 3895 of 1998 (Smt. Vandana Joseph Vaith v. State of Maharashtra and Ors.) dated 10th March, 2003. The Division Bench has categorically held that the Maharashtra Act No. XXIII of 2001 does not take away the protection of service which was provided under the Government Resolution dated 15-6-1995."

In para 5 of the judgment, the Division Bench has further observed thus :

We are in respectful agreement with the view expressed by the Bench. It was laid down by the Judicial Committee way back in 1905 [Colonial Sugar Refining Co. v. Irving, (1905) ARC 369] that while the provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. There is nothing in the Maharashtra Act No. XXIII of 2001 to suggest even remotely that the legislature intended to take away the benefit acquired under the Government Resolution dated 15-6-1995."

On considering the two abovereferred judgments, it is more than clear that all appointments made and promotions granted prior to 15-6-1995 stand protected even after coming into force of the Act.

15. Per contra, the respondent has relied upon a judgment reported in 2003 105(4) Bom. LR. 578, in the case of Priyanka Balmukund Khodke Alias Kum. Pingla Keshavrao Parate v. State of Maharashtra through its Secretary, Tribal Development Department and Ors., of this Court (Coram : C.K. Thakker, C.J. and Dr D. Y. Chandrachud, J.). This judgment is also delivered in similar set of facts. It was contended in the said case, that the Government Resolution dated 15th June, 1995 has lost its efficacy after coming into force of the Act of 2001. In that

context, speaking for the Bench, Justice C. K. Thakker, Chief Justice, as then he was, made the following observations in para 15 of the judgment:

Regarding Government Resolution dated June 15, 1995, and protection thereunder, it is clear that such a policy-decision has to be read in the light of the statutory provisions and the object which is sought to be achieved. While dealing with such a case, we will have to bear in mind the provisions of Maharashtra Act XXIII of 2001. We had an occasion to consider the provisions of the Act in Mohan Parasnath Goswami v. Committee for Scrutiny of Caste Certificates and Ors., 2003(5) Mh.L.J. 707 : (2003) 3 BCR 481 : 2003(2) All M.R. 409 : BLR 263. We have held that on the basis of report of the Scrutiny Committee and the orders passed, appropriate action can be taken by the authorities. Reading the provisions of the Act, it is clear that when a certificate is false or fake, it would be an offence, and penalty can be imposed. We may, however, make it clear that such action can be taken after following the provisions of the Act. But keeping in mind the relevant statutory provisions, it cannot be contended that no action of termination of service of the petitioner can be taken."

According to the abovereferred observations of the Division Bench, a policy decision, such as, one covered in the Government Resolution dated 15th June, 1995 has to be read in the light of the statutory provisions and the object which is sought to be achieved. It cannot be inferred from the said observations that the Court held that the Government Resolution dated 15th June, 1995 is rendered nugatory on coming into force of the Act No. XXIII of 2001. What is held is that the Government Resolution has to be read in the light of the object of the Act, meaning thereby, that the Government Resolution holds the field and the same has to be read, though in the light of the object of the Act. The rest of the observations are general in nature and does not go to answer the question in controversy. We do not find any conflict in the decision rendered in Priyanka's case with the earlier two judgments referred to herein above. We may hasten to add that the earlier two judgments which are rendered prior in point of time, were not brought to the notice of the Bench deciding Priyanka's case. Reference to Mohan Goswami's case, made in para 15 of the judgment in Priyanka's case, deals with the provisions of the Act and the Court did not have any occasion to consider the Government Resolution dated 15th June, 1995. Hence, the said judgment in Mohan Goswami's case is of no assistance in dealing with this question. We will refer to this judgment while dealing with the next contention.

16. The respondent then invited our attention to judgment of this Court (Coram : S. Radhakrishnan and P. B. Gaikwad, JJ.) delivered in Writ Petition Nos. 1801/2004 and 5743/2004, in the case of Rajnikant s/o. Lotu Salunke and Ors. v. The Maharashtra State Road Transport Corporation and Anr. In these petitions, though the question in issue was raised, the same is not categorically answered and on facts, the Court has rejected the Writ Petition after making the following observation :

It is also necessary to make it clear that present petitioners secured

appointments on the posts reserved for Scheduled Tribe candidates on the basis of forged, fake and false caste certificates. The said caste certificates and the Scrutiny Committee found that the said caste certificates are not issued by the competent authorities and when it was found that the petitioners do not belong to Scheduled Tribe, then the very basis of their appointment is nothing but a fraud. In such circumstances, it can be said that their appointments are not valid in the eye of law."

What is to be seen is that, as the Court found that the very certificates were procured fraudulently from an authority who had no jurisdiction to issue the same, the petitioners were not granted the benefit of the Government Resolution. Relying on the observations made in this judgment, it is contended by the respondent that if the benefits are to be withdrawn or denied, the same will have to be done u/s 10 of the Act. We do not agree with this proposition. We are of the view that in such situation, to deny the benefit of Government Resolution dated 15-8-1995, the provisions of Contract Act are very much capable and we need not have recourse to Section 10 of the Act.

17. It is next submitted by the learned Counsel appearing for the respondent, that there is a conflict between the decision rendered by the Division Bench of this Court in the case of Smt. Vandana Joseph Vaith v. State of Maharashtra and Ors. (supra) and in the case of Kum. Bhamini Sadashiv Thanekar v. State of Maharashtra and Ors. (supra), on the one hand, and the judgment, in the case of Priyanka Balmukund Khodke Alias Kum. Pingla Keshavrao Parate (supra) and in the case of Rajnikant s/o. Lotu Salunke and Ors. (supra), on the other hand. We do not see that any conflicting view is taken in the abovereferred cases. In our considered view, a combined reading of the provisions of the Act and the abovereferred judgments would result in the emergence of the following legal position :

(A) The provisions of Section 10 of the Act are not retrospective in operation,

(B) The protection granted by the Government Resolution dated 15-6-1995 is not withdrawn expressly or by necessary implication by the provisions of the Act. The Government Resolution is not rendered nugatory even after coming into force of the provisions of the Act and the same continues to hold the field.

(C) A person can be denied the benefit of the Government Resolution dated 15-6-1995, if he has procured the appointment on the basis of false Caste Certificate.

Who can be said to be a person who has procured the appointment on the basis of a false caste certificate, is a moot question, which requires deliberation. Dealing with the provisions of Madhya Pradesh General Sales Tax Act, 1959, the Supreme Court had an occasion to consider the question as to when a return filed by an assessee could be termed as "false" return inviting imposition of penalty. In the said context, the Supreme Court in the case of Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, ,

has interpreted the word "false" by making the following observations :

What Section 43 of the Madhya Pradesh General Sales Tax Act, 1958 requires is that the assessee should have filed a "false return and a return cannot be said to be "false" unless there is an element of deliberateness in it. It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no reasonable explanation forthcoming from the assessee for such want of care, the Court may, in a given case, infer deliberateness and the return may be liable to be branded as a false return. But where the assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable so to include it, it would not be right to condemn the return as a "false" return inviting imposition of penalty."

The Apex Court then proceeded to observe thus:

It is elementary that Section 43 of the Madhya Pradesh General Sales Tax Act, 1958 providing for imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the section cannot be invoked for imposing penalty.

(Emphasis supplied)

The Supreme Court has placed reliance on an earlier reported judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa, , adopting the same line of reasoning.

The next judgment dealing with this aspect is a judgment of Division Bench of this Court (Coram : C. K. Thakker, C.J. and Dr. D.Y. Chandrachud, J) reported in 2003(5) Mh.L.J. 707 : 2003(3) BCR 481, in the case of Mohan Parasnath Goswami v. Committee for Scrutiny of Caste Certificates and Ors.. In the said case, the Division Bench while dealing with the interpretation of Section 10 and 11 of the Act, as well as Section 10(1-C) of the Bombay Provincial Municipal Corporations Act, 1949, as amended by Maharashtra Act No. 11 of 2002, held that it would be apparent that apart from a mere invalidation of a caste certificate, an additional factor that the caste certificate must have been cancelled on the ground of the certificate having been based on a false claim or declaration has to exist before a candidate can be regarded as being disqualified from holding electoral office. Upholding the contention of the petitioner, the Court observed in para 11 thus :

On behalf of the petitioner, it has been submitted that the mere invalidation of the claim of a candidate to belong to a particular caste, tribe or backward class of citizens is not by itself a ground for disqualification. That submission has merit. Ex facie, in Clause (a) of Sub-section (1-C) of Section 10, the disqualification is attracted consequent upon the Scrutiny Committee declaring the caste certificate, to be invalid and cancelling the same "on the ground of the same having been based on a false claim or declaration made by such person claiming to be belonging to the reserved category".

18. In our view, if a claimant fails to substantiate and establish his caste claim because of insufficiency of evidence or lack of knowledge of traits or characteristics of his tribe, he cannot be termed as a person who has obtained and produced a false caste certificate. The phraseology "false caste certificate" or "a certificate obtained fraudulently" used in Section 7 of the Act cannot and does not cover bona fide cases where a claimant fails to establish his caste claim. To hold that a person has obtained a "false caste certificate" or a "certificate fraudulently", there need to exist an element of mens rea or a guilty mind and only on the establishment of the existence of said element, that a person could be branded as one who has obtained false caste certificate. It is in this sense, that we have observed in proposition "C" above, that a person can be denied the benefit of Government Resolution dated 15-6-1995, if he has procured the appointment on the basis of false caste certificate.

19. Ordinarily the proceedings before the Committee are for adjudication of the caste claim but in some cases, the Committee may prima facie find that the claim is false, on the ground that the certificate itself is forged or that the certificate is obtained fraudulently, etc. then in that situation, the claimant will have to be put on notice in that regard and afforded an opportunity of being heard to explain as to why the Committee should not hold the claimant guilty of producing a false, forged or fabricated certificate. Solely on the ground that the claim is invalidated, the Scrutiny Committee will not be justified in reaching a conclusion that the claimant has obtained a false certificate or he has produced a false caste certificate.

No one has disputed the proposition that only on establishment of the ingredients of Section 7 and consequential cancellation and confiscation of the Caste Certificate, a claimant exposes himself to an action u/s 10 or 11 of the Act and not otherwise.

20. Let us now consider the merit of the other submission made by the learned Counsel for the petitioner. It is submitted that the Government Resolutions dated 7th December, 1994 and 15th June, 1995 operate in a different area which is not covered by the provisions of the Act. It is submitted that the power of the State Government under Article 15(4) and 16(4) of the Constitution of India to provide for reservation and to grant benefits and concessions to the backward classes is, in no way, curtailed or truncated by the provisions of the Act and, to be precise, by Section 10 thereof. What is to be seen is that the Government Resolution dated 7th December, 1994 initially declared five main castes by name, "Govari", "Mana", "Koshti", "Koli" and "Mannervarlu" (along with some of their sub-castes or synonyms) as Special Backward Category. Having regard to the social and educational backwardness of the said castes, the State Government extended certain benefits and concessions to the persons belonging to the said category, whereas by the Government Resolution dated 15th June, 1995, a provision was made for reservation of 2% in the Government, Semi-Government, Corporations, etc. and besides granting protection to the appointments and promotions granted

prior to 15th June, 1995, it also directed preparation of a new roster. The Government Resolutions were issued under the executive power of the State under Article 162 of the Constitution, which power is co-extensive with the legislative power. What is dealt with under the Government Resolutions dated 7th December, 1994 and 15th June, 1995 is:

- (i) to declare certain backward classes as included in Special Backward category,
- (ii) granting benefits of the nature of free education, scholarships, reservation in admissions to Medical and Engineering courses, free supply of books, free residence and food for students partaking education in Ashram Schools, etc.
- (iii) making provision of 2% reservation in initial and promotional stage of appointments under the State and other services,
- (iv) to grant protection of service to those who are appointed or promoted before 15th June, 1995 in the post they held on that date.
- (v) to provide for preparation of a separate 200 Point roster earmarking 2% quota for Special Backward category.

21. Let us examine the scheme of the Act to find out as to whether any of the above issues are dealt with by the Act either expressly or by necessary implication. The object of Maharashtra Act No. XXIII of 2001 is to provide for regulation of the issuance and verification of the Caste Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward classes and Special Backward Category and for matters connected or incidental thereto.

22. To test the merit of the submission made on behalf of the petitioner, it is necessary to firstly turn to the definition clause.

The "Special Backward Category" has been defined in Sub-section (1) of Section 2 which reads thus :

"Special Backward Category" means Socially and Educationally Backward Classes of citizens declared as a Special Backward Category by Government."

Inclusion of the definition of "Special Backward Category" in the definition clause itself shows that the legislature was conscious of the fact of the declaration made by the Government by issuing the Resolutions dated 7th December, 1994 and 15th June, 1995, which carved out a separate category of Backward Castes.

We shall now advert our attention to Section 3 of the Act which reads thus :

"Any person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, required to produce a Caste Certificate in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes, either in any public employment or for admission into any educational institution, or any other benefit under any special provisions made under Clause (4) of

Article 15 of the Constitution of India or for the purpose of

It is relevant to note that Section 3 recognizes the need of procuring a Caste Certificate by a person belonging to Special Backward Category for claiming benefit of reservation in public employment and also recognizes their right to claim benefit under any special provision made under Clause (4) of Article 15 of the Constitution of India. Reading of the definition of "Special Backward Category" and Section 3 conjointly makes it clear that the declaration of Special Backward Category, providing for reservation by the Government Resolution dated 15-6-1995 and granting of certain other benefits including protection in service, is specifically recognized by the said section.

Section 4 deals with issuance of Caste Certificate by Competent Authority and Section 5 provides for an appeal against an order of rejection of application seeking a Caste Certificate. Section 6 deals with verification of Caste Certificates by the Scrutiny Committee and issuance of Caste Validity Certificate. Section 7 deals with confiscation and cancellation of false Caste Certificate. It reads thus :

(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution of India.

Section 8 casts the burden on the person, before the Competent Authority, the Scrutiny Committee or the Appellate Authority under the Act or in any trial of offence under the Act, to prove that the person belongs to such Caste, Tribe or Class.

Sections 10 and 11 are penal provisions. Section 10 of the Act reads thus :

Benefits secured on the basis of false Caste Certificate to be withdrawn -- (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 Castes, 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.

(4) ...

Section 11 of the Act reads thus :

Offences and penalties -- (1) Whoever --

(a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or

(b) 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 any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or Co-operative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate;

shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but, which may extend upto twenty thousand rupees or both. (2) No Court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorised by the Scrutiny Committee for this purpose.

23. What is to be noted is that in the scheme of the Act, there is nothing which either expressly or impliedly even remotely suggests withdrawal of benefits granted to the persons belonging to the Special Backward Category by the

Government Resolutions dated 7th December, 1994 and 15th June, 1995. On the contrary, reading of Section 3 makes it amply clear that the Act recognizes the entitlement of members of Special Backward Category to claim benefit of reservation and other concessions and benefits which are made available by the Government under Clause 4 of Articles 15(4) and 16(4) of the Constitution of India. Sections 10 and 11 of the Act do not deal with any class of persons carved out as Special Backward Category by the State Government with a view to extend benefit of reservation and other concessions. By no stretch of imagination could it be said that the persons who are protected by the Government Resolution dated 15th June, 1995 could be subjected to the rigours of Section 10 and/or Section 11 of the Act. It may not be out of place to reproduce Section 16 of the Act which reads thus :

No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Act or the rules made thereunder."

From the examination of the scheme of the Act, it is evident that the Act and the Government Resolutions operate in different spheres and there is no conflict whatsoever between the provisions of the Act and the Government Resolutions.

24. It may not be out of place to state that the benefit of Government Resolution dated 15th June, 1995 is extended to the employees belonging to Special Backward Category in the employment of the State Government, Semi-Government, Government controlled Corporations, Municipal Corporations, Municipal Councils, Zilla Parishads, Co-operative Banks, Government Undertakings and educational institutions. As the petitioner apprehends an adverse action in the nature of termination of service on account of invalidation of the tribe claim, the petitioner has sought protection of the Government Resolution dated 15th June, 1995. It is pointed out that since the issuance of Government Resolution in the year 1995, thousands of persons falling within the ambit of the said Government Resolution have been granted the benefit and protection, whereas the petitioner apprehends that the said protection may be denied to him.

25. In view of the findings that we have recorded hereinabove, we have no hesitation that the Writ Petition has to be partly allowed by protecting the appointment of the petitioner.

26. In the result, the Writ Petition is partly allowed.

(a) The Writ Petition fails to the extent it challenges the impugned order dated 25-9-1996 passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Nashik, the respondent No. 3, invalidating the claim of the petitioner to "Mannerwarlu", Scheduled Tribe.

(b) We declare that the petitioner is entitled to claim the benefit of the Government Resolution dated 15th June, 1995 and the initial appointment of the

petitioner made the post of Police Sub-Inspector in the year 1989 stands protected.

(c) We direct that the respondent Nos. 1 and 2 shall not take any adverse action against the petitioner, in the nature of termination of his service on the basis the invalidation of the tribe claim of the petitioner by the Scrutiny Committee.

27. Rule made absolute in the above terms. In the circumstances of the case, there shall be no order as to costs.