

(2008) 03 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No. 2079 of 2008 (Arising out of SLP (C) No. 8241 of 2006)

Yogesh Ramchandra Naikwadi

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : AIR 2008 SC 1784 : (2008) AIRSCW 2463 : (2008) 3 ALLMR 835 : (2008) 2 AWC 2109 Supp : (2008) 3 BomCR 639 : (2008) 3 CLT 643 : (2008) 5 JT 368 : (2008) 3 KLT 437 : (2008) 5 MhLj 658 : (2008) 3 MLJ 994 : (2008) 4 SCALE 668 : (2008) 5 SCC 652

Hon'ble Judges : K. G. Balakrishnan, C.J.; R. V. Raveendran, J

Bench : Division Bench

Advocate : Vinod A. Bobde, Shivaji M. Jadhav, Rahul Joshi and Brij Kishor Sah, for the Appellant; Sanjay V. Kharde and Asha Gopalan Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, C.J.—Leave granted. Heard learned Counsel for the parties.

2. The appellant sought admission to Engineering course claiming the benefit of reservation alleging that he belonged to "Mahadeo Koli" - a scheduled tribe. The Scrutiny Committee which verified the validity of his caste certificate, made an order dated 29.3.1995 rejecting his claim that he belonged to a Scheduled Tribe. The appellant challenged the order of the scrutiny committee in W.P. No. 2667/1995. In the said petition, the Bombay High Court issued an interim order directing the third respondent (Director of Technical Education, State of Maharashtra) to accept the application of Appellant for admission to BE course and process the same and give admission by treating him as a candidate belonging to a scheduled tribe, with a condition that the admission, if granted, will be provisional and subject to the final decision. In pursuance of it, the appellant was admitted to the BE course by extending the benefit of reservation

under the quota for Scheduled Tribes. Eventually he completed the Engineering course and was conferred a degree by the University of Pune on 31.3.2004.

3. The writ petition filed by the Appellant was dismissed by order dated 28.3.2006, upholding the order of the Scrutiny Committee, with a direction to the third Respondent to take appropriate steps for recall of the degree granted to the appellant. The said order of the High Court is challenged in this appeal by special leave. The only contention urged by the appellant is that even if his scheduled tribe claim was rejected, he should not have been denied the benefit of the degree obtained by him. In support of this contention, he relied on the decisions of this Court in 267473 and 281421

4. In *Milind*, a Constitution Bench of this Court while rejecting the caste claim of first Respondent therein, extended the benefit of retention of degree to him on the following reasoning:

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 this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose.

In *Vishwanatha Pillai*, this Court, following *Milind*, permitted one of the appellants therein, who had been admitted to an Engineering Degree College against a seat reserved for a scheduled caste and whose caste claim was negatived, to be allowed to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either for securing employment or other benefits on the basis of the cancelled caste certificate.

5. In *Milind*, the question was whether the first respondent who belonged to "Koshti" caste could claim the benefit of ST reservation on the ground that it was a sub-tribe of "Halba" [Entry No. 19 in Part IX of the Constitution (Scheduled Tribes) Order 1950]. This Court held that "Koshti" was not a part of the Scheduled Tribe of Halba and that the entries in the Scheduled Tribes Order could not be amended or expanded by any Authority. As a consequence, the State's appeal was allowed and the claim of first respondent therein that he belonged to a scheduled tribe was rejected. Having allowed the State's appeal, this Court moulded the relief in exercise of its power under Article 142 by permitting the first Respondent therein to retain the benefit of his degree (for the reasons

extracted above). Vishwanatha Pillai merely followed Milind. In Milind, there was a bona fide doubt as to whether "Halba-Koshti" could be considered as "Halba". In Vishwanatha Pillai, the candidate's caste certificate was cancelled merely as a consequence of cancellation of his father's caste certificate. Thus in Milind and Vishwanatha Pillai, the candidates apparently believed that they belonged to a scheduled tribe/caste when they sought admission and were admitted. Further, their caste certificates showing them as belonging to a scheduled tribe/caste had not been invalidated when they were admitted to the course. The direction in both cases permitting retention of degree was in exercise of power under Article 142 of the Constitution.

6. 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 scheduled 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 orders 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 on 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 Vishwanatha Pillai cannot be considered as laying down a proposition that in every case where a candidate's caste 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.

7. We may therefore examine the facts of this case to decide whether the appellant should be given any benefit and if so whether they should be similar to relief granted in Milind and Vishwanatha Pillai. As the caste claim of the appellant had been rejected by the Scrutiny Committee even before admission, this case stands on a different footing. But in this case though the scrutiny committee had rejected the appellant's claim even prior to his admission to the professional course, the High Court by order dated 22.6.1995 had directed the Director of Technical Education to accept the admission form of appellant without insisting upon the validation of caste and to process the same as if appellant belonged to Scheduled Tribe, making it clear that admission if any made was provisional, and if the appellant failed in his petition he will not be entitled to the benefit of degree he may obtain. As observed in Milind, if the appellant's admission or degree is to be annulled, it is to nobody's benefit as his seat cannot be offered to someone else. There is also no allegation that appellant forged or faked the

caste certificate. His admission to engineering course was nearly thirteen years back and he secured the degree more than four years back. We are therefore of the view that the appellant herein should be permitted to retain the benefit of the degree but subject to terms. The first is that he shall not claim or seek any further benefit by claiming to belong to a scheduled Tribe. The second is that if the State has spent or incurred any expenditure on the appellant's professional degree education by extending the benefit of exemption from payment of fee or award of scholarship or by extending the benefit of concession in fee (that is less than what is charged to general category students) by treating him as a Scheduled Tribe candidate, the appellant cannot retain such financial benefits. The third Respondent may, on behalf of the State Government, take appropriate steps to enquire and assess the amount, if any spent on the appellant either towards fee, scholarship or by way of concession in fee and make a demand on appellant for payment thereof. If the appellant fails to pay the amount so found due within six months of the demand by the third Respondent, the third Respondent may take steps for recalling the degree granted to the appellant. If no amount is found to be due or if the amount determined and demanded is paid by appellant, he may be permitted to retain the degree obtained by him.

8. The appeal is accordingly allowed in part, deleting the direction of the High Court to the third respondent to take steps to recall the degree awarded to the appellant.