Parinda Milind Keer Vs Indian Oil Corporation Ltd., a public limited company

Court: Bombay High Court

Date of Decision: July 19, 2007

Acts Referred: Constitution of India, 1950 â€" Article 14, 15(1), 15(4), 16(1), 16(4)

Citation: (2008) 1 BomCR 182 : (2007) 3 LLJ 1032

Hon'ble Judges: Swatanter Kumar, C.J; S.C. Dharmadhikari, J

Bench: Division Bench

Advocate: H.S. Venegaonkar and Ashok Purohit, for the Appellant; R.V. Paranjape, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, C.J.

Rule. Respondents waive service. By consent Rule made returnable forthwith. Heard both sides.

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and correctness of the letter

dated 8th May 2007 whereby the services of the petitioner were terminated by the respondents with immediate effect. The termination letter has

already taken effect and the petitioner is no more in the employment.

2. The relevant facts are that the petitioner is an Indian inhabitant and had applied to the respondents for the job for the post of typist/clerk in the

year 1995. She was called for interview on 8th June 1995 and after interview the petitioner was issued a letter of appointment dated 25th July

1995. The petitioner continued to be in the employment of the respondents and according to her, she worked to the satisfaction of all concerned

during the period of her service. However, on 15th February 2007 the respondents addressed a letter to the petitioner requesting the petitioner to

submit the original tribe certificate No. ADM/USR/72/82 dated 3rd February 1982. The petitioner did not submit the original certificate resulting in

issuance of another letter dated 15th March 2007 by the respondents. After the persistent requests from the respondents, the petitioner vide letter

dated 20th March 2005 informed the respondents that the said certificate along with other documents got washed away in the flood, as such the

petitioner could not furnish the said certificate and requested for grant of further time to obtain fresh certificate vide her letter dated 10th April

2007. She received a caste certificate from the Collector and she forwarded the same to the respondents on 23rd April 2007. According to the

petitioner, despite submission of the said certificate, her services were terminated vide letter dated 8th May 2007, which action of the respondents

is challenged in this petition. It is also averred by the petitioner that she was in possession of the certificate dated 30th July 2005 from the office of

the Department of Atomic Energy, Government of India, confirming that even her father was Scheduled Tribe and as such she would also be

entitled to the said benefit.

3. A reply affidavit has been filed on behalf of the respondents by the Manager (Employee Relations) of the respondent Corporation where it was

stated that the petitioner was appointed against reserve vacancy on the basis of her caste declaring herself to be ""Mahadeo Koli"" as Scheduled

Tribe. In the year 2005 an internal circular was issued by the respondents based on the directions contained in the judgment of the Delhi High

Court in Writ Petition No. 5976 of 2003 regarding securing employment in the Government of India and NCT of Delhi and their agencies on the

basis of forged/fake Scheduled Tribe Certificates thereby asking all the dealing officers to verify the Scheduled Tribes certificates of the candidates

in the light of the observations made therein. Guidelines were issued and it was required that all the respective departments should verify the caste

certificates and if on verification it is noticed that the candidate had submitted a bogus/false certificate, the candidate should be called upon to

deposit the original certificate and after due scrutiny, appropriate action should be taken. It is further averred in the reply that vide letter dated 28th

June 2005 the Tahasildar, Uran informed the Corporation that on checking the register of 1982 there was no record in their register regarding

issuance of Hindu Mahadeo Koli Scheduled Tribe Certificate No. ADM : 1 : USR : 72/82 dated 3rd February 1982 to Kumari Parinda

Prabhakar Keni residing at Karanja. After the receipt of this letter and as per the guidelines issued, three letters were written to the petitioner

calling upon her to produce original caste certificate, which she failed to do. Another certificate was submitted by her on 24th April 2007 wherein it

was mentioned that Mahadeo Koli is recognised as Special Backward category. The petitioner was appointed against the reserve vacancy for

Scheduled Tribe category and she having failed to submit the original certificate to the satisfaction of the concerned authority, her services were

terminated vide letter dated 8th May 2007.

4. From the above facts it is clear that the petitioner apparently failed to submit the original Scheduled Tribe caste certificate, despite several letters

and after a lapse of months she submitted a certificate, but the same was related to a different category i.e. special backward class. In the letter

dated 8th May 2007 it was specifically noticed that ""your appointment letter also provided that the appointment was provisional and subject to

verification of the caste certificate..."". She was appointed on 25th July 1995 and after the factum with regard to the furnishing of the false caste

certificate came to light of the Corporation, they took various steps to ensure that persons obtaining employment on bogus certificates should be

dealt with in accordance with rules and the guidelines framed by the Corporation. Reference was also categorically made to a letter dated 7th

January 2007 received from the office of the Tahasildar. The petitioner took no steps in furtherance of the said letter to convince the respondents

that the contents of the letter dated 8th May 2007 were in any way incorrect and she was possessed of the Scheduled Tribe certificate. Even

before this Court in the present petition no original certificate or copy thereof has been annexed.

5. The learned Counsel appearing for the petitioner has relied upon a Division Bench judgment of this Court in the case of Anil Vasantrao

Shirpurkar Vs. State of Maharashtra and Others, to contend that proceedings have been taken after a long period, as such the proceedings would

stand vitiated. We are not impressed by this argument. The petitioner was appointed on 25th July 1995 and action could be taken against her only

after the factum of submission of bogus certificate came to the knowledge of the authorities concerned. As is indicated in the affidavit filed by the

respondents and the letter dated 8th May 2007, this fact came to the notice of the respondents only on 8th January 2007 and immediately

thereafter they had admittedly called upon the petitioner to furnish original caste certificate. It was the petitioner, who first did not respond and then

asked for further time to submit the certificate, which she has not submitted till date and in fact she has relied upon a certificate of special backward

class, though she was appointed against a vacancy specifically reserved Scheduled Tribe. In other words she has deprived a genuine Scheduled

Tribe candidate of the right to be appointed against the reserve post and has taken undue benefit for a long period of about 9 years. Thus she can

hardly be permitted to take the advantage of her own misrepresentation.

6. The conduct of a petitioner has always been considered as relevant consideration for exercise of the jurisdiction of the court under Article 226

of the Constitution. Wherever benefit is obtained by fraud or misrepresentation, the time and the concept of acquiescence, has hardly any scope

because it would primarily depend upon detection of misrepresentation or fraud. Situation may be different where despite such detection the

authorities acquiesced of the same, sleep over the matter and take no steps in accordance with law for considerable time. That is not the situation

in the present case. The line of distinction between the administrative matters and/or quasi judicial functions, is a very fine one. In judicial process it

is an expected norm that every fraudulent act frustrates the reliefs. The Division Bench decision of this Court in Writ Petition No. 31 of 2005 Vimal

Vitthal Chavan v. Nava Maharashtra Education Society - a Trust and ors decided on 8th August 2005) can be usefully referred at this stage for

holding that clean hand doctrine commands that every equity will not grant relief to a party who seeks to set the judicial machinery in motion and

obtains some benefit and if such party in her conduct has violated the conscience or good faith or other equitable principles. The court also held as

under:

1. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , the Court observed that

...The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands. We are

constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other

unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to

say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of

litigationÃ¯Â¿Â½ A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in

order to gain by another''s loss. It is a cheating intended to get an advantage.... A litigant, who approaches the Court, is bound to produce all the

documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then

he would be guilty of playing fraud on the Court as well as on the opposite party.

2. In a well-known case, Chittaranjan Das v. Durgapore Project Limited and Ors. 99 CWN 897, the Court observed that ""Suppression of a

material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural

justice are not required to be complied with in such a situation. It is now well known that a fraud vitiates all solemn acts.

3. Reliance was also placed on a Division Bench judgment of Delhi High Court in Jeevan Kumar and Anr. v. Union of India 2002 VII AD (Delhi)

100, wherein the Court held that those who seek equity must approach the Court with clean hands.

4. In Rajabhai Abdul Rehman Munshi Vs. Vasudev Dhanjibhai Mody, , Their Lordships of the Supreme Court observed that a party who

approaches the Court knowing or having reason to believe that if the true facts were brought to its notice, the Court would not grant special leave,

and persuades the Court to grant leave to appeal is guilty of conduct, forfeiting all claims to the exercise of discretion in his favour. It is his duty to

state facts which may reasonably have a bearing on the exercise of the discretionary powers of this Court. Any attempt to withhold material

information would result in revocation of the order obtained from the Court.

5. In Hari Narain Vs. Badri Das, , Their Lordships of the Supreme Court observed that it is of utmost importance that in making material

statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue

or misleading. The special leave granted by the Supreme Court in this case was revoked and the appeal was, without dealing with the merits of the

case, dismissed with costs.

6. In Asiatic Engineering Co. Vs. Achhru Ram and Others, , the Court observed that no relief can be granted in a writ petition which is based on

misstatement or suppression of material facts. The Court observed in paragraph 51, page 767 ""In our opinion, the salutary principle laid down in

the cases should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary powers granted to the Court

under Article 226 of the Constitution. A person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extraordinary

powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from

making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons

invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression,

misrepresentation or misstatement of facts.

7. In Udai Chand Vs. Shankar Lal and Others, , the Court revoked the SLP and vacated the stay order. The Court, while following the ratio of the

aforementioned cases, observed that the Supreme Court would be justified in revoking the leave to appeal if the same was obtained by making

misstatement of a material fact. Special leave already granted was revoked and consequently, appeal was dismissed with costs. This principle has

been consistently followed in a number of other cases by various Courts.

8. Reliance was placed on New India Steel Industries Vs. V.D. Steel Industries and Another, . The Court observed:

After hearing Counsel for the parties we allow CMP 6495 of 1980 for the revocation of SLP granted as per this Court''s order dated December

12, 1979. There are two facts which stand out. Firstly, the appellant had made a misstatement of material fact that the proclamation of sale did not

contain any note that the property was being sold subject to the mortgage charge of Rs. 1,65,000/-. In fact, such a note does exist. Secondly, he

misconducted himself inasmuch as he published a public notice captioned as "Court Notice" on April 12, 1980, as if that notice was being

published under the orders of this Court. For these two reasons we revoke the SLP granted earlier and dismiss the appeal arising out of that SLP.

The stay already granted automatically stands vacated.

9. On the overall conduct of the parties, reliance was also placed on the Supreme Court judgment in Ram Chandra Singh Vs. Savitri Devi and

Others, . In this case, a very important principle of law has been crystallised when the Apex Court observed that fraud, as is well known, vitiates

every solemn act. Fraud and justice never dwell together.

10. The Delhi High Court in Manmohan Singh Dhaliwal Vs. Gurbax Singh Arora and Others, observed that the main function of the Court is to

administer justice. Judgment or order procured by playing fraud upon the Court cannot be rammed down the throat of the aggrieved party. Justice

and fraud are aliens to each other. Fraud pollutes the sanctity and solemnity of the judicial proceedings. This is why the Courts have inherent

powers to recall or set aside such a judgment or order.

11. In Derry and Ors. v. Peek (1886) All ER 1, the English Court described what constitutes "fraud" thus:

''Fraud'' is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly,

careless whether it be true or false.

5. In a recent judgment of the Supreme Court in the case of A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, signifying that

falsehood or fraud even vitiates judicial act, the court held as under:

Now, it is well settled principle of law that if any judgment and order is obtained by fraud, it cannot be said to be a judgment or order in law.

Before three centuries, Chief Justice Edward Coke proclaimed:

Fraud avoids all judicial acts, ecclesiastical or temporal.

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non

est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court,

superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings"". In the leading case of

Lazarus Estates Ltd v. Beasley (1956) 1 All ER 341, Lord Denning observed : All ER p 345.C

No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud"". In Duchess of Kingstone, Smith''s

Leading cases, 13th Edn, P 644, explaining the nature of fraud, de Grey, C.J. Stated that though a judgment would be res judicata and not

impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was ""mistaken"",

it might be shown that it was ""misled"". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that

an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was

one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

It has been said : fraud and justice never dwell together (fraus et jus nunquam cohabitant) : or fraud and deceit ought to benefit none (fraus et dolus

nemini patrocinari debent).

Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as ""wholly perverse"". Kuldip

Singh J. stated (SCC p.5.para 5):

The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are

constrained to say that more often than not, process of the court is being abused. Property grabers, tax-evaders, bank-loan dodgers and other

unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to

say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the

litigation.

In the above case the court also further held that even ""the principle of finality of litigation cannot be pressed to the extent of such an absurdity that

if becomes an engine of fraud in the hands of dishonest litigants"".

6. A reference can also be made to the judgment of the Supreme Court in the case of Kumari Madhuri Patil and Anr. v. Addl. Collector, Tribal

Development and Ors. 1995 (2) Bom C.R. 690 where the court cautioned the authorities to act free of provocative values and held that even

judiciary had no jurisdiction. While upholding the cancellation of the certificate in that case the Court held as under:

5. The Committee as well the Addl. Commissioner relied upon a report of expert committee which had gone into the sociological, anthropology

and ethnology of the Scheduled Tribes including ""Mahadeo Koli"" which formed the basis for the proforma questionnaire prepared by the

Government and as given to and answered by the father of the appellants. On the basis of the information furnished by the father of the appellants

and the anthropological and ethnology findings in that behalf, the Addl. Commissioner, in our view rightly, held that an argument of social mobility

and modernisation often alluringly put-forth to obviate the need to pass the affinity test is only a convenient plea to get over the crux of the question.

Despite the cultural advancement, the genetical traits pass on from generation to generation and no one could escape or forget or get them over.

The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some

extent may be modernised and progressed but they would not be oblivion to or ignorant of their customary and cultural past to establish their

affinity to the membership of a particular tribe. The Mahadeo Koli a Scheduled Tribe declared in the Presidential Notification 1950, itself is a tribe

and is not a sub-caste. It is a hill tribe, may be like ""Koya"" in Andhra Pradesh. Kolis, a backward class, are fishermen by caste and profession and

reside mostly in Maharashtra coastal area. Kolis have different sub castes. Mahadeo Kolis reside in hill regions, agriculture, agricultural labour and

gathering of minor forest produce and sale thereof is their avocation. Therefore, the cancellation of the social certificate issued by the concerned

Executive Magistrates by the Scrutiny Committee was legal.

9. The Preamble to the Constitution promises to secure to every citizen social and economic justice, equality of status and of opportunity assuring

the dignity of the individual. The Scheduled Tribes are inhabitants of intractable terrain regions of the country kept away from the main stream of

national life and with their traditional moorings and customary beliefs and practices, they are largely governed by their own customary Code of

Conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos. The Constitution guarantees to them

who are also Indian citizens of equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibits discrimination among

citizens on certain grounds, Article 15(4) empowers the State to make special provisions for advancement of Scheduled Castes and Scheduled

Tribes. Article 16(1) requires equality of opportunity to all citizens in matters of appointments to an office or a post under the Union or a State

Govt. or public undertakings etc. But Article 16(4) empowers the State to make provision for reservation of appointments or posts in favour of

classes of citizens not adequately represented in the services under the State. Article 46 enjoins the State by mandatory language employed therein,

to promote with special care the educational or economic interest of the Scheduled Tribes and Scheduled Castes and to protect them from ''social

injustice'' and ''all forms of exploitation''. Article 51A(h) enjoins every citizen to develop scientific temper, humanism and the spirit of inquiry and

reform. Again Article 51A(h) requires every citizen is strive towards excellence in all spheres of individual and collective activity so that the nation

constantly rises to higher levels of endeavour and achievement. It is, therefore, a fundamental duty of every citizen to develop scientific temper and

humanism and spirit of inquiry to reform himself in his onward thrust or his strive to improve excellence in all spheres of individual and collective

activity. Since the Scheduled Tribes are a nomadic class of citizens whose habitants being generally hilly regions or forests, results in their staying

away from the main-stream of the national life. Therefore, the State is enjoined under our Constitution to provide facilities and opportunities for

development of their scientific temper, educational advancement and economic improvement so that they may achieve excellence, equality of status

and live in dignity. Reservation in admission to educational institutions and employment are major State policies to accord to the tribes, social and

economic justice apart from other economic measures. Hence, the tribes, by reason of States'' policy of reservation, have been given the exclusive

right to admission into educational institutions or exclusive right to employment to an office or post under the State etc. to the earmarked quota.

For availment of such exclusive rights by citizens belonging to tribes, the President by a Notification specified the Scheduled Tribes or tribal

communities or parts or groups of tribes or tribal communities so as to entitle them to avail of such exclusive rights. The Union of India and the

State Governments have prescribed the procedure and has entrusted duty and responsibility to Revenue officers of gazetted cadre to issue social

status certificate, after due verification. It is common knowledge that endeavour of States to fulfill constitutional mandate of upliftment of Scheduled

Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are

sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as person

entitled to such status while in fact disentitled to such status. The case in hand is a clear instance of such pseudo status. Kolis have been declared to

be OBC in the State of Maharashtra being fishermen, in that their avocation is fishing and they live mainly in the coastal region of Maharashtra.

Mahadeo Kolis are hill tribes and it is not a sub-caste. Even prior to independence, the Maharashtra Govt. declared Mahadeo Koli to be criminal

tribe as earlier as May 29, 1933 in serial No. 15 in List II thereof. In 1942 resolution in serial No. 15 in Schedule B of the Bombay resolution

Mahadeo Koli tribe was notified as a Scheduled Tribe. It was later amended as serial No. 13. In the Presidential Scheduled Castes/Scheduled

Tribes Order 1950, it was reiterated. A slight modification was made in that behalf by the Presidential Notification dated October 29, 1956. In

1976 Amendment Act, there is no substantial change except removing the area restriction. Thus Mahadeo Koli, a Scheduled Tribe continued to be

a Scheduled Tribe even after independence. The Presidential Notification 1950 also does recognise by public notification of their status as

Scheduled Tribes. The assumption of the Division Bench of the Bombay High Court in Subhash Ganpatrao Kabade"s case, that Mahadeo Koli

was recognised for the first time in 1976 under Amendment Act, 1976, as Scheduled Tribe is not relatable to reality and an erroneous assumption

made without any attempt to investigate the truth in that behalf. Presidential declaration, subject to amendment by the Parliament being conclusive,

no addition to it or declaration of castes/tribes or sub- castes/parts of or groups of tribes or tribal communities is permissible.

12. We have seen that Scrutiny Committee proceedings although started on December 8, 1989 and were prolonged till June 26, 1992. We do not

have record to scan the reasons for the delay. It would appear that the Constitution of a Committee with large number of members and Secretary

as Chairman must have greatly contributed for the delay in deciding the claims for the social status. A right of appeal provided thereafter

compounded further delay though the Addl. Commissioner on the facts of this case has disposed of the appeal very expeditiously. However, all of

them are the contributory factors for the delay.

13.The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of

depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them

by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State

for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in

completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by

a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status

certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that

purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be

the following....

In this connection a reference can also be made to a recent judgment of the Division Bench of this Court in the case of Priti Girijashankar Varma v.

State of Maharashtra and Ors. Writ Petition Lodging No. 634 of 2007 decided on 21st June 2007.

7. In the present case, the petitioner had sought employment and admission in school on the basis of falsehood. By this falsehood she took

advantage for years together. But for this falsehood neither the petitioner would have got education at that time nor employment in 1990s. If upon

detection of such falsehood the respondents have taken action, interference with such action would tantamount to putting a premium of the

fraudulent act or the falsehoodness.

8. The petitioner has approached this Court under Articles 226 and 227 of the Constitution which itself is equitable jurisdiction. One who claims

equity must do equity. The petitioner invoking the extra ordinary jurisdiction of the court under Article 226 of the Constitution should approach the

court with clean hands. We have already noticed that even in this petition, the petitioner has not filed any Scheduled Tribe certificate. The letter

issued by the Tahasildar dated 8th January 2007 is under clout and no plausible or reasonable explanation has been given why did the petitioner

furnish Scheduled Tribe certificate when she was belonging to special backward class. The petitioner on the one hand sought employment on the

basis of incorrect or manipulated certificate and enjoyed the benefits of employment for a considerable period, while on the other hand she

deprived a Scheduled Tribe candidate, who on his/her own merit would have been appointed against a reserve vacancy. Today and even in recent

past, getting employment is not easy. Every field is very competitive. Even candidates belonging to reserve category have stiff competition interest

in class itself. The court cannot thus condone such unfair act and the action of the respondent-Corporation cannot be faulted, particularly when

they have acted with utmost expeditiousness, once they detected that the certificate furnished by the petitioner was bogus.

The writ petition is accordingly dismissed, leaving the parties to bear their own costs. Rule discharged.