

SUPREME COURT OF INDIA

Dist.Collector Satara

Vs.

Mangesh Nivrutti Kashid

C.A.No.2723 of 2015

(Sanjay Kishan Kaul and K.M.Joseph,JJ.,)

01.10.2019

JUDGMENT

Sanjay Kishan Kaul,J.,

1. The freedom at midnight was followed by the framing of the Indian Constitution. The Constitution of India (for short 'the Constitution') took special care, given the social and economic scenario of our country, to provide for certain special benefits and privileges for persons from the under-privileged communities, i.e., the Scheduled Castes (for short 'SCs') and the Scheduled Tribes (for short 'STs'). Thus, while prohibiting discrimination on grounds inter alia of race and caste, under Article 15 of the Constitution, while providing for equality of opportunity in matters of public employment under Article 16 of the Constitution, an enabling provision was made for providing reservation to people of these categories. In fact, Article 17, abolishing untouchability, was one more provision in this direction.

2. In the implementation of the aforesaid objectives, it became necessary to issue caste certificates for obtaining employment and admission to educational institutions. Unfortunately, this gave rise to vast area of malpractice as non-entitled persons managed to obtain such certificates for availing the benefits. This endemic problem forms the basis for the jurisprudential discussion in *Kumari Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors*! (*Kumari Madhuri Patil*).

3. The facts in *Kumari Madhuri Patil* case itself are an illustration of this problem. The appellant before the Court was seeking a Caste Certificate on the basis of a Caste Certificate obtained by her sister, who was claiming on the basis of their father having obtained caste certificate, certifying him to be of 'Hindu Koli' caste. On investigation, the caste claims were found to be wrong and the certificates issued to the appellant therein and her sister were cancelled. This Court in the *Kumari Madhuri Patil* case, while discussing the various provisions of the Constitution, emphasised that the State was enjoined under our constitutional scheme to provide facilities and opportunities to the SCs and STs for education and employment, so as to result in economic improvement, resulting in

excellence, equality of status and the right to live in dignity. Thus, any admission wrongly gained, or employment wrongly obtained, on the basis of a false social status certificate automatically has the effect of depriving a genuine person for whose benefit the rights have been conferred under the Constitution. Simultaneously, in view of the reservation, a General Category candidate loses the seat to an ineligible candidate, who really does not belong to the SC/ST community. No proper procedure or legislation provided for the checks and balances in issuance of these caste certificates and, thus, in the Kumari Madhuri Patil case, it was deemed necessary to issue directions to streamline the procedure for issuance of the social status certificates. There were fifteen (15) directions issued, but the two directions, which are relevant for the controversy raised in the present appeals, are as under:

“4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.”

4. The objective of issuing all these directions is enunciated in para 14 of this judgment, which reads as under:

“14. Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled

Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.”

It appears that these directions from the date of their issuance, on 2.9.1994 apparently seem to have worked well. The State of Maharashtra sought a review of this order, limited to the aspect of modification in the composition of the Scrutiny Committee, on account of certain administrative exigencies. This request was acceded to in *Kumari Madhuri Patil & Anr. v. Addl. Commr., Tribal Development, Thane & Ors*². (Kumari Madhuri Patil-II) in the following terms:

“3. As regards prayer (b) read with direction No. (iv) of the Order of this Court, we too appreciate the inconvenience caused due to vast area of the State. Therefore, instead of one committee of three officers, there will be three Scheduled Tribe/Caste Scrutiny Committees comprising of five members with quorum of three members, as suggested in para 4 of the directions, to take a decision. At Pune, Nasik and Nagpur, six Caste Scrutiny Committees for SCs, Denotified Tribes, Nomadic Tribes, Other Backward Classes and the Special Backward Category in existence at Mumbai, Pune, Nasik, Aurangabad, Amravati and Nagpur would continue to scrutinise the certificates issued by the respective officers and take a decision in that behalf. In this regard, it is also suggested by Shri Dholakia, learned Senior Counsel for the applicant, that in case any certificate has been wrongfully refused by the certificate issuing authority, the aforesaid Committees also would go into the question and decide in that behalf, whether refusal was wrongful and in case it finds that the refusal was wrongful, they are at liberty to direct the authority to grant the certificate.

4. With regard to prayer (c) also, we feel that the Caste Scrutiny Committees for Social Welfare, Cultural Affairs and Sports Department should comprise of Additional Commissioner (Revenue) — Chairman of the Revenue Division concerned; Divisional Social Welfare Officer-Member; and Research Officer as a Welfare Officer-Member-Secretary to function in that behalf.”

5. It appears that with the passage of time, and on examining the matter in issue, the State of Maharashtra resolved to place before the Assembly, a legislative enactment to cover aspects beyond education and employment, for different categories of SCs, STs and Backward Classes. The law was so enacted vide 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 (hereinafter referred to as the 'Act of 2000'), which was brought into force with effect from 18.10.2001. The Preamble of this Act reads as under:

“An act to provide for the 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 therewith or incidental

thereto. WHEREAS it is expedient to provide for the 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 therewith or incidental thereto;”

6. The Act of 2000 provided for the constitution of a Scrutiny Committee, while first defining Scrutiny Committee under Section 2(k) of the 'Definitions' clause and then providing for the constitution of that Committee under Section 6 of the Act of 2000. The said Sections read as under: “2. Definitions.

In this Act, unless the context otherwise requires,- (k) "Scrutiny Committee" means the Committee or committees constituted under sub-section (1) of section 6 for the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for verification of the Caste Certificate and to perform the function of Scrutiny Committee under this Act;”

“6. Verification of Caste Certificate by Scrutiny Committee.

(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, co-operative societies or any other Government aided

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.”

7. It may, thus, be noticed that the Act, in the context of the judgment in the Kumari Madhuri Patil case, neither specified the exact composition of the Scrutiny Committee, nor incorporated the aspect of the Vigilance Committee.

8. The Act of 2000 having come into force, the Scrutiny Committee continued as constituted under the Kumari Madhuri Patil case, and it was assisted by a Vigilance Cell, once again, constituted in terms of the said judgment.

9. In the year 2003, while exercising powers under Section 18(1) of the Act of 2000, empowering making of Rules, the State Government brought into force, The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 (hereinafter referred to as the 'Rules of 2003'), with effect from 4.6.2003. These Rules, as is apparent from their description, were restrictive in application, to the ST community. These Rules further did not lay down any specifications for the constitution of the Scrutiny Committee, other than to provide that there would be a Chairman, a Member Secretary and any other Member. It is these Rules, legislated as subordinate legislation, which brought in the Vigilance Cell. The relevant Rules read as under:

“10. Constitution of Vigilance Cell.- The State Government shall constitute a vigilance cell to assist each Scheduled Tribe Certificate Scrutiny Committee for conducting enquiry which shall consist of,-

(i) A Senior Deputy Superintendent of Police;

(ii) Police Inspector (number of Inspectors depending upon the number of cases);

(iii) Police Constables to assist the Police Inspector;

(iv) Research Officer. The police personnel shall investigate into the social status claims by conducting school and home inquiries and other enquiry as per the reference made by the Scrutiny Committee under sub-rule (2) of rule 12.”

“12. Procedure to be followed by Scrutiny Committee.

(1) On receipt of the application, the Scrutiny Committee or a person authorized by it shall scrutinize the application, verify the information and documents furnished by the applicant, and shall acknowledge the receipt of the application. The Member Secretary shall register the application, received for verification, in the register prescribed by the Chairman.

(2) If the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.

(3) The Vigilance Officer shall go to the local place of residence and original place

from which the applicant hails and usually resides, or in case of migration, to the town or city or place from which he originally hailed from.

(4)The Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or the guardian, as the case may be.

(5)The Vigilance Cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe, of the applicant.

(6)After completion of the enquiry, the Vigilance Cell shall submit its report to the Scrutiny Committee who will in turn scrutinize the report submitted by the Vigilance Cell.

(7)In case the report of Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true, the Scrutiny Committee may issue the validity certificate. The validity certificate shall be issued in Form G.

(8) If the Scrutiny Committee, on the basis of the Vigilance Cell report and other documents available, is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgement due. A copy shall also be sent to the Head of the Department concerned, if necessary. The notice shall indicate that the representation or reply, if any, should be made within fifteen days from the date of receipt of the notice and in any case not more than thirty days from the date of receipt of the notice. In case the applicant requests for adjournment or extension of the time-limit, reasonable time, may be granted.

(9)(a) After personal hearing if the Scrutiny Committee is satisfied regarding the genuineness of the claim, Validity Certificate shall be issued in Form G.

(b)After personal hearing, if the Scrutiny Committee is not satisfied about the genuineness of the claim and correctness of the Scheduled Tribe Certificate, it shall pass an order of cancellation and of confiscation of the Certificate and communicate the same to the Competent Authority for taking necessary entries in the register and for further necessary action. The Scheduled Tribe Certificate shall then be stamped as “cancelled and confiscated.””

A reading of the aforesaid Rules shows that the role of the Vigilance Cell was restricted as compared to the role envisaged under the Kumari Madhuri Patil case, inasmuch as the assistance to be provided to the Scrutiny Committee was not in every case, but only if the Scrutiny Committee was not satisfied with the documentary evidence produced by the applicant.

10. It appears that though this was restrictive, only to the STs, practically speaking, the Committee as constituted under Kumari Madhuri Patil continued and verification by the Vigilance Cell was done as per the aforesaid Rules, even though it was so confined to the ST category. This practice apparently continued without protest or any further clarification from this Court. On seeking clarification in this behalf, we were informed that the Rules of 2003 were so followed on the principle of application of an 'analogous' principle.

11. We may take note of another development, i.e., a challenge that was laid to the constitutional validity of the guidelines in Kumari Madhuri Patil case, which was referred to the Constitution Bench and these directions were upheld in *Dayaram v. Sudhir Batham & Ors*³. The Constitution Bench opined that the directions issued were intrinsic for the actual realization of the fundamental rights of the Backward Classes of citizens. However, what is relevant to note is that it was specifically opined that these directions would hold field so long as the State Governments did not come up with appropriate legislations to substitute the norms laid down in the Kumari Madhuri Patil case. It was also opined that enquiry by the Vigilance Cell was to be considered to be a core requirement for ascertainment of the veracity of the caste certificate. After discussing the aspect of judicial activism and judicial legislation coupled with judicial restraint, it was opined as under:

“22. Therefore, we are of the view, that Directions 1 to 15 issued in exercise of power under Articles 142 and 32 of the Constitution, are valid and laudable, as they were made to fill the vacuum in the absence of any legislation, to ensure that only genuine Scheduled Caste and Scheduled Tribe candidates secured the benefits of reservation and the bogus candidates were kept out. By issuing such directions, this Court was not taking over the functions of the legislature but merely filling up the vacuum till the legislature chose to make an appropriate law.”

12. The Act of 2000, having a wider compass qua all the certificates to be issued, it appears that there was some difficulty envisaged almost on the anvil of the local Self-Government elections, to be held in the year 2011. The controversy in issue, thus, begins with the issuance of a notification dated 30.7.2011, by the Social Justice, Special Assistance Department of the State of Maharashtra, exercising powers conferred under Section 6(1) of the Act of 2000. The provision reads as under:

“6. Verification of Caste Certificate by Scrutiny Committee. (1)The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees...”

13. It is the case of the State Government that with thousands of candidates seeking to contest the elections, an infrastructural boost was required to meet the deluge of applications for the issuance of caste certificates sought for contesting the elections. In terms of this Notification, thirty-five district level committees were constituted to verify

caste certificates of candidates who wished to contest the elections to local authorities. The Chairman of the Caste Scrutiny Committee was specified as the District Collector or the Additional District Collector (IAS), as against the earlier provision of Additional Commissioner (Revenue), under the Kumari Madhuri Patil-II case. The relevant portion of the said Notification is reproduced as under:

“And whereas the Government of Maharashtra has now decided to constitute District wise Caste Scrutiny Committees to appoint District Collector or Additional District Collector (I.A.S.) as the Chairperson of the said Scrutiny Committees for the purpose of verification of Caste Certificate of the candidates who (sic.) willing to contest for elective post in any local authority. Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the Maharashtra Scheduled Castes, De-Notified Castes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act 2000 (Mah. XXIII of 2001), the Government of Maharashtra hereby constitute Thirty-five District Caste Scrutiny Committees as specified in the Schedule appended hereto, for verification of Caste Certificates of the candidates who (sic) willing to contest for elective post in any local authority, issued by the Competent Authorities under the sub-section (1) of Section 4 of the said Act.”

A reading of the extract of the aforesaid notification, thus, makes it clear that the objective was to facilitate issuance of caste certificates for “...verification of Caste Certificate of the candidates who (sic) willing to contest for elective post in any local authority.”

14. The story that unfolded in this exercise is best illustrated by a chart produced in the impugned judgment, which was the result of compliance of directions issued in that matter. The chart was made division-wise, with each district specified. It is not necessary to reproduce the chart in its entirety, but it suffices for our purpose to reproduce headings and the final figures for the whole of Maharashtra:

PRAPATRA – B									
NECESSARY INFORMATION RELATING TO WRIT PETITION NO.853/2012 IN THE HIGH COURT, BOMBAY.									
Sr. No.	Name of the Committee/ District	Total numbe r of Validit y Certifi cates issued relatin g to electio n	Validit y Certifi cates verifie d by the Vigila nce Cell	Validit y certifi cates not verifie d by the Vigila nce Cell	Numb er of candid ates contes ting the electio n to whom validit y certifi cates are issued	Numb er of validit y certifi cates stamp ed only for electio n purpos e	The validit y certifi cates in which decisi on is given in one day.	The validit y certifi cates in which decisi on is given in two days	The validit y certifi cates in which decisi on is given in three or more days.
1	2	3	4	5	6	7	8	9	10
....
	Total Maharashtra	36929	1427	35505	7664	4359	388	290	36251

15. The aforesaid would, thus, illustrate that there were some certificates stamped only for election purposes, while others were not. The manner of verification of these certificates would be evident from the speed with which they were issued, making it difficult to accept that there could have been any proper verification. Columns 8 & 9 itself show how the exercise was undertaken. The lesser said the better about this exercise!

16. It is in the context of these facts that the High Court was greatly troubled while exercising the writ jurisdiction, where the prayer made by the petitioners, inter alia, was qua caste certificates issued and not issued. By an amendment, a writ was specifically sought seeking the quashing and setting aside of the aforesaid Government Resolution dated 30.7.2011. In these proceedings, through an elaborate judgment dated 4.5.2012, this Resolution was quashed, with a direction that both, the matters of constitution of the Committee and the operation of the Vigilance Cell (being mandatory), the directions in Kumari Madhuri Patil case have to be given full effect to. The original certificates issued in pursuance of the Government Resolution of 30.7.2011 were directed to be recovered from the respective persons and destroyed forthwith.

17. The aforesaid judgment was assailed in this batch of appeals before us, and the operation of the impugned judgment was stayed vide order dated 30.7.2012. The result has been that these certificates, issued under the aforesaid circular, have continued to hold the

field and the process

18. The next important development has been the enactment 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 Rules, 2012 (hereinafter referred to as the 'Rules of 2012'), which were notified on 31.8.2012. These Rules are comprehensive, unlike the Rules of 2003. The constitution of the Scrutiny Committee has been provided for in Rule 11, while the constitution of the Vigilance Cell is provided in Rule 12 of the Rules of 2012, and the same read as under:

(a)	Divisional Commissioner or Additional Divisional Commissioner (Revenue) or Collector or Additional Collector (I.A.S.) or Additional Collector (Selection Grade) or Joint Secretary of the State Government or any officer not below the rank of Joint Secretary to State Government	Chairman
(b)	Deputy Commissioner (Social Welfare) or Regional Deputy Commissioner (Social	Member
	Welfare) or Divisional Social Welfare Officer	
(c)	Research Officer or Assistant Commissioner (Social Welfare) or Special District Social Welfare Officer	Member-Secretary

“11. Constitution of Scrutiny Committee. - The Scrutiny Committee shall consist of the following members, namely:-

12. Constitution of Vigilance Cell. - (1) There shall be a Vigilance Cell to assist each Scrutiny Committee in conducting the field inquiry under rule 17. The Vigilance Cell shall consist of, -

- (a) Deputy Superintendent of Police or equivalent;
- (b) Police Inspectors;
- (c) Police Constables to assist the Police Inspectors.

(2) Jurisdiction of the Vigilance Cell shall be subject to territorial jurisdiction of concerned Scrutiny Committee, for all purposes, including domestic inquiry and verification of authenticity of documents:

Provided that, in appropriate case, if Scrutiny Committee feels, it may solicit a report of Vigilance Inquiry, from any other concerned Scrutiny Committee.

(3) Vigilance Cell shall work under the control and supervision of concerned Caste Scrutiny Committee.”

19. It is relevant to note that, once again, the discretion has been left to the Scrutiny Committee to solicit a report of vigilance inquiry, not making it mandatory. Thus, once these Rules were enacted, the process of verification and issuance of caste certificates has proceeded under these Rules.

20. In the course of hearing these appeals, what undisputedly emerged was that the window of period with which we are concerned is between the Notification being issued on 30.7.2011 and the Rules being notified on 31.8.2012. The Rules have not been challenged by any one, and hold the field. Thus, we are not really required to go into what had happened before the Notification came in, or after the Rules came in. We may also note that the challenge before us is in respect of only the certificates issued for the purposes of local self-body elections, as nobody from any other category has approached the Court. Thus, as to whether the Rules of 2003, applicable to the ST category, should have been applied to all the categories on an 'analogous' principle, does not require our adjudication. Neither the certificates issued post the notification of the Rules of 2012 require our adjudication. It is only the interregnum period that we are concerned with. However, to deal with this interim period, certain broader principles have to be discussed.

21. An aspect noticed in the impugned order, in para 22, is the order of the Division Bench of the Bombay High Court, opining in Writ Petition No.2527/2009, vide judgment dated 20.1.2010, that the appointment of the Additional Collector as a Chairman of the Scrutiny Committee is not in accordance with law, and that this matter was the subject matter of appeal before this Court in Special Leave Petition No.6003/2010, which had been admitted on 5.7.2011. In this behalf, we have been informed that when the appeal was taken up for hearing, the private respondents who had filed the petition withdrew the challenge to the validity of the Caste Scrutiny Committee and wanted to move an application before the High Court for disposal of the writ petition on merits. Thus, the appeal was disposed of as infructuous. The purpose of this is only to note that no opinion has been rendered in that behalf.

22. We may also note that there were three kinds of writ petitions filed before the High Court. The first set of writ petitioners were those who intended to participate in the ensuing elections of local Government, even though they did not, at that stage, have a caste validity certificate. The prayer was for relaxation of the condition to produce the caste validity certificate at the time of scrutiny, which had been made mandatory (though that certificate once issued was to remain valid for all purposes). The second set of writ petitioners were those whose caste certificates were invalidated by the Scrutiny Committees, and they sought to challenge the decision with a direction to the Returning Officer to allow them to participate in the ensuing elections. The third set of petitioners were those who challenged the Caste Validity Certificates granted to the candidates who were party respondents in both petitions, on the ground that the said certificates were obtained by fraud, with a prayer for direction to the Election Commission to reject the nomination papers of such

candidates. The impugned judgment has been rendered in the context of the third set of petitioners. The certificates in question were alleged to have been obtained without vigilance reports and within a very short period of time, as would be apparent from the chart aforesaid.

23. The grievance against the impugned order, however, is not only confined to the third set of petitioners, but also to some of the second set of petitioners, as in view of the Scrutiny Committees not being constituted in accordance with the Kumari Madhuri Patil-II case, their contention is that there was no validly constituted Scrutiny Committee, which could invalidate their caste certificates.

Composition of the Scrutiny Committees

24. The impugned order is predicated on a reasoning, as if the judgment in the Kumari Madhuri Patil case, as modified by the Kumari Madhuri Patil-II case, was engraved in stone, and it was not open for the legislature to have enacted law at variance with, or in derogation of the same.

25. On the aforesaid aspect, on hearing learned counsel for the parties, we are unable to persuade ourselves to agree with the line of reasoning adopted by the High Court. The purpose of any judicial legislation is to fill a vacuum. It does not preclude legislators from enacting law. Judicial activism or judicial legislation emerged on account of an existence of vacuum, and it was opined that the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redressal in such a situation (*Bandhua Mukti Morcha v. Union of India & Ors.*). It has been found by this Court that there is ample power conferred by Article 32, read with Article 142 of the Constitution to make orders which have the effect of law by virtue of Article 141 of the Constitution, by issuing directions to fill the vacuum till such time as the legislature steps in to cover the gaps, or the executive discharges its role (*Vineet Narain & Ors. v. Union of India & Ors.*). A classic example of this has been the seminal judgment of *Vishaka v State of Rajasthan* , which formulated effective measures to check the evil of sexual harassment of working women at the work place. There are numerous judicial pronouncements in this behalf, but they need not detain us further, specifically for the reason that in the very judgment relied upon in the impugned order, i.e., the Kumari Madhuri Patil case, the Constitution Bench, while examining the validity of the directions and upholding the same had clearly observed that “by issuing such directions, this Court was not taking over the functions of the legislature but merely filling up the vacuum till the legislature chose to make an appropriate law.” Needless to observe that these observations, being of the Constitution Bench, would be binding on us, and so would it naturally be on the High Court. We may note that while noticing the directions in the Kumari Madhuri Patil case, this Court had expressed a view that it was high time that the Government of India examine the matter in greater detail, and bring about a uniform legislation with necessary guidelines and rules (*The Director of Tribal Welfare, Andhra Pradesh v. Laveti Giri & Anr.*) and observed as under:

“8. While reiterating the above guidelines to be workable principles, it is high time

that the Government of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and come (sic.) the benefits reserved for the real tribals etc. etc., so that the menace of fabricating the false records and to gain unconstitutional advantages by plain/spurious persons could be prevented. Lest they would defeat the Constitutional objective of rendering socio-economic justice envisaged under Article 46 in the Preamble of the Constitution under Articles 14, 15, 16, 38 and 39.”

26. If we examine the controversy in the conspectus of the aforesaid legal position, insofar as the composition of the Scrutiny Committee is concerned, no doubt the composition of the said Committee was directed specifically in the Kumari Madhuri Patil case, and modified by the Kumari Madhuri Patil-II case. The occasion for modification also arose on account of large number of cases to be dealt with. So long as the procedure made under the notification or legislation meets the requirement of law, it cannot be said that the Committee has to be only as per the directions of this Court. We have already noticed that post the Rules of 2012 being notified, there is really no problem. It is not in doubt that the power to issue the Notification dated 30.7.2011 did exist, in terms of Section 6(1) of the Act of 2000. Thus, the composition of the Committee was made in pursuance of the specific statutory power. It was also to subserve the larger issue of setting up different committees by decentralizing the process, to meet the requirement of verification of the certificates. As far as a delegated legislation or a notification issued under statutory powers is concerned, the challenge can be laid only in terms of well settled principles. Either the rule or notification is contrary to the provisions of the Act, or contrary to any provision of the Constitution, or brings about a conflict which is required to be resolved by the Court. The challenge before us is not based on any of these parameters, but is simply on the ground that the notification is not in exact conformity with the directions issued by this Court in the Kumari Madhuri Patil case. Such a challenge would not be sustainable in view of the settled principles of examining such subordinate legislation/statutory notifications. Thus, once the legislature lays down a legislative policy, and confers discretion upon the administrative agency for the execution of such policy, it is up to the agency to work out the details within the framework of the policy.

Requirement of the Vigilance Cell Report

27. The second part of the challenge relates to the requirement of verification of the certificates by the Vigilance Cell. This was provided to be mandatory, in terms of the judgment in the Kumari Madhuri Patil case. The enormity of the problems faced by the High Court, through multifarious petitions arising qua the unverified issuance of such certificates, possibly persuaded the High Court to lay down stricter norms in this behalf. However, as implemented for the interregnum period in question, the input from the Vigilance Cell was obtained only selectively. Under the Rules of 2012 also, the requirement is not mandatory, but wherever the Scrutiny Committee feels it “may” solicit a report of vigilance inquiry. We have, however, no hesitation to emphasise the importance of proper verification of such certificates to be issued, and the exercise of issuance of the

certificates cannot be a casual one. The Scrutiny Committee constituted to issue the validity certificates must, thus, at the slightest doubt take the assistance of the Vigilance Cell to ensure that non-entitled persons do not get benefitted at the cost of entitled persons. We have no doubt that this is a process which will be so followed under the Rules of 2012.

28. The matter, however, cannot rest at this because the existence of power and its exercise are two different aspects. The view adopted by the High Court, appears to us, to have been in the context of the manner of exercise carried out by the Scrutiny Committee in the given situation, and the casual manner in which the assistance of Vigilance Cell was sought (or rather not sought). On those aspects, we are in complete agreement with the view of the High Court. The exercise carried out in the interregnum period, between 30.7.2011 (when the Notification was issued) and 31.8.2012 (when the Rules of 2012 were notified) leaves us, as the High Court, with grave doubt, and we are of the view that no proper exercise could have been carried out, or was carried out given the time frame within which the caste certificates were issued. The objective was clear, i.e., to somehow facilitate as many people as possible, as soon as possible, to contest the elections.

29. The troublesome aspect is that the validity certificates are not only valid for that election, but also for subsequent elections. They are not only valid for educational purposes (except for some cases so restricted), but also for all other purposes. These validity certificates can possibly become the basis for issuance of further certificates to the legal heirs. Thus, we have no doubt that the exercise so undertaken cannot be upheld and has to be quashed with the direction to carry out the aforesaid exercise afresh.

30. The further development, by the enactment of the Rules of 2012 is that the said mechanism is now available within the enacted Rules, itself. Even the contesting respondents could not seriously dispute that the proper methodology, now, would be for a fresh verification exercise to be carried out under the Rules of 2012. Learned counsel for the State Government could also not seriously dispute this exercise to be undertaken under the Rules of 2012, but only expressed concerns about the certificates already having been issued and the complication which would be created by forthwith withdrawal of those certificates.

31. We do appreciate the problem aforesaid and are, thus, of the view that the fresh exercise has to be undertaken within a period of six (6) months from today, i.e., on or before 31.3.2020. Till this exercise is completed, the existing certificates issued for the interregnum period would hold good. The exercise would have to be undertaken in respect of all the certificates, except those cases where the validity certificate was issued after verification by the Vigilance Cell. We may, however, hasten to add that, in view of the case pointed out to us, where the Vigilance Cell opined otherwise and yet a caste validity certificate has been issued, the exercise may be carried out afresh. Thus, wherever there is an adverse report of the Vigilance Cell and yet caste validity certificate has been issued the exercise has to be carried out afresh. It may be added that those, whose caste certificates were rejected by the Caste Scrutiny Committee, without any Vigilance Inquiry, may be given the right to appeal against such rejection, as per Rule 7 of the 2012 Rules.

32. We may note that one of the grievances raised by the affected private respondents before us is that though they were impleaded as respondents, no notice was every issued and their matter was tagged with the main matter and decided, in their absence. Thus, they had no opportunity to put forth their point of view. In the same line, learned counsel for the State of Maharashtra sought to place before us the problem where the directions now being issued to be carried out are with respect to parties who are not before us and may be affected by this exercise.

33. We are conscious of the aforesaid fact. However, it is impractical to have all the affected parties before us. Different groups in representative capacities are before us. In terms of the impugned order, all the original certificates issued by the specially constituted Scrutiny Committees under the Government Resolution dated 30.7.2011 were to be recovered from the respective persons and were to be destroyed forthwith for which three months time was granted. We have, in fact while setting aside the impugned order on the question of law, directed only re-verification of the certificates as to whether they are in accordance with law on account of the doubts cast over them, as per what we have set out aforesaid. The stand of the aggrieved parties by the impugned judgment was, in fact, represented by the appellant before us. Moreover, at the time of the fresh exercise of the validity certificate being issued, naturally the persons who have been issued these certificates would be issued notice. In our view that would suffice and the aforesaid directions are also necessary to do complete justice inter se the parties, for which we have the benefit of Article 142 of the Constitution. It will be for the Caste Scrutiny Committee to carry out the aforesaid exercise, while notifying the parties concerned, through appropriate public notices in this behalf. Directions we have now issued would ensure the objectives of the Act of 2000, i.e., issuance of certificates only to entitled persons, through a proper exercise, with proper assistance from the Vigilance Cell.

34. We end with the hope that the aforesaid exercise would sub-serve the very purpose for bringing the Act of 2000 into force, and confer benefits only on the entitled persons, while weeding out the non-entitled persons.

35. The appeals are accordingly allowed, leaving the parties to bear their own costs.

Judgment Referred.

¹(1994) 6 SCC 0241

²(1997) 5 SCC 0437

³(2012) 1 SCC 0333