

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00030/2018**

**Thursday, this the 1<sup>st</sup> day of February, 2018**

**CORAM:**

**Hon'ble Mr. U. Sarathchandran, Judicial Member**  
**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**

V.P. Prachod, S/o. The late V.P. Chathukutty,  
aged 50 years, HRMS No. 198704212,  
Sub Divisional Engineer (Civil) (under suspension),  
BSNL Civil Sub Division.I, Palakkad Business Area,  
Palakkad, residing at Chepp, Snow Valley,  
PO Kodumbu, Palakkad – 678 551.

..... **Applicant**

**(By Advocate : Mr. O.V. Radhakishnan, Sr. with  
Mrs. K. Radhamaniamma)**

**V e r s u s**

1. Bharat Sanchar Nigam Limited, represented by its  
Chairman and Managing Director, Statesman Building,  
New Delhi – 110 001.
2. Director (Human Resources), Bharat Sanchar Nigam Ltd.,  
SCT Cell, Eastern Court, BSNL Corporate Office,  
Janpath, New Delhi – 110 001.
3. General Manager and Chief Liaison Officer (CLO) (SCT),  
SCT Cell, BSNL Corporate Office, Janpath, New Delhi – 110 001.
4. Chief General Manager, BSNL, Kerala Telecom Circle,  
Thiruvananthapuram – 695 033.
5. General Manager, Telecom District,  
Bharat Sanchar Nigam Ltd.,  
Palakkad Secondary Switching Area,  
Palakkad-16.

..... **Respondents**

**(By Advocate : Mrs. K. Girija)**

This application having been heard on 12.01.2018 on interim relief,  
the Tribunal on 01.02.2018 delivered the following:

**O R D E R (On interim relief)**

**Per Hon'ble Mr. U. Sarathchandran, Judicial Member –**

The applicant who is presently working as Sub Divisional Engineer (Civil) in the office of respondent No. 5 BSNL at Palakkad is aggrieved by Annexure A14 order dated 30.12.2017 placing him under suspension with immediate effect.

2. Briefly stated, applicant's case is that on an earlier occasion he was subjected to disciplinary proceedings on the ground that he secured employment as Junior Engineer under the erstwhile P&T Department as a member of Scheduled Caste community (Moger) while he belonged to a community [which is listed as 'other backward community' ( for short OBC) ]. He states that in that disciplinary proceedings he was exonerated vide Annexure A11 order. His grievance is that vide Annexure A14 order of suspension he is again subjected to same allegations for which he was exonerated vide Annexure A11 order. According to him the impugned Annexure A14 order of suspension is legally impermissible, untenable and is ultra vires the power of the disciplinary authority. By way of interim relief he prays for staying the operation of Annexure A14 order issued by respondent No. 4 and to allow him to continue in service till the disposal of the OA.

3. At the time of admission hearing we have heard Shri O.V. Radhakrishnan, learned Senior Advocate for the applicant on the interim relief sought in the OA. We have also heard Mrs. Girija, learned Standing

Counsel for the respondents. Perused the record produced by the applicant.

4. The quintessence of the applicant's case is that if disciplinary proceedings are contemplated in pursuance of Annexure A14 suspension order that would amount to double jeopardy and hence it would be illegal and ultra vires the power of the disciplinary authority.

5. On perusal of the records we noticed that the Scrutiny Committee constituted under Kerala (Scheduled Caste & Scheduled Tribe) Regulation of Issue of Community Certificates Act, 1996 [hereinafter referred to as the 1996 Act] had considered the question whether the applicant belongs to Moger community which is a Scheduled Caste or that whether he is a member belonging to Mokayan community-listed as an OBC. The genesis of Annexure A6 proceedings undertaken by the Committee was a petition to the government authorities alleging that the applicant and his brother have secured job under the quota reserved for Scheduled Caste community while they actually were not members of Scheduled Caste. The Scrutiny Committee found that the applicant and his family members do not belong to 'Moger' community under the Scheduled Castes but are persons belonging to 'Mokayan' community which is an OBC. The Committee ordered that the Government employment and other benefits secured by the applicant and his brother on the basis of false caste certificate are to be cancelled and legal proceedings should be initiated against them. Accepting Annexure A6 minutes and order of the Scrutiny Committee, the Government of Kerala issued Annexure A7 order to prosecute the applicant

and his brother for claiming false of caste status to deprive the members of the Scheduled Caste of their benefits and thereby exploiting them for unlawful gains. A criminal case was registered against the applicant and his brother before the Judicial First Class Magistrate, Thalassery. By Annexure A13 order dated 9.7.2014 the learned Magistrate found that the accused have got employment even before the commencement of the 1996 Act and that since the alleged offences have been committed by the accused long before the enactment of 1996 Act, the materials produced by the prosecution do not disclose the commission of offence and hence they were discharged under Section 239 of the Cr. PC.

6. It appears that on the strength of Annexure A11 exoneration by the disciplinary authority and Annexure A13 order of discharge by the learned Magistrate the applicant alleges that he is being proceeded against again for the same misconduct for which he was already exonerated and discharged.

7. Referring to Section 8A of the 1996 Act Smt. Girija submitted that if on verification by the Scrutiny Committee the community certificate is found to be not genuine the same has to be cancelled. She submitted that Section 16 of the 1996 Act mandates that in such cases the benefit secured on the basis of false community certificate is to be withdrawn which includes removal of the person from service forthwith and any other benefits enjoyed by him including withdrawal of any amount paid to him by the Government.

8. We have noted that the applicant had approached the Hon'ble High Court challenging the findings of the Scrutiny Committee. The High Court vide Annexure A8 judgment found that as long as the caste status of his father remained undisputed and he belongs to Mukhayan community and that the challenge against the Scrutiny Report and the action taken by the Government thereupon should fail.

9. Smt. Girija brought to our attention the judgment of the 3 Judges Bench of the apex court in *Chairman & Managing Director FCI & Ors. v. Jagdish Balaram Bahira & Ors.* (Civil Appeal No. 8928 of 2015) and connected cases. In that case the apex court held:

“57. For these reasons, we hold and declare that

(i) The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in *Milind* were in pursuance of the powers vested in this Court under Article 142 of the Constitution;

(ii) Since the decision of this Court in *Madhuri Patil* which was rendered on 2 September 1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for (a) the issuance of caste certificates; (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government; (c) the procedure for the conduct of investigation into the authenticity of the claim; (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine; (e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and (f) Prosecution for a criminal offence;

(iii) The decisions of this Court in *R. Vishwanatha Pillai* and in *Dattatray* which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual – such as an appointment to a post or admission to an educational institution – on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered *void* or *non est*.

(iv) The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

(v) By Maharashtra Act XXIII of 2001 there is a legislative codification of the broad principles enunciated in *Madhuri Patil*. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates (Section 6(2) and 6(3)); cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

(vi) The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18 October 2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

(vii) Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

(viii) The decisions in *Kavita Solunke* and *Shalini* of two learned Judges are overruled. *Shalini* in so far as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

(ix) *Mens rea* is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

(x) The judgment of the Full Bench of the Bombay High Court in *Arun Sonone* is manifestly erroneous and is overruled; and

(xi) Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act XXIII of 2001 holds the field.”

10. By way of an introduction to the aforesaid judgment the apex court made some important observations regarding the Constitutional implications of a Government servant securing employment in a bogus manner by producing SC/ST certificates which are found to be not genuine by the Scrutiny Committee constituted by the State Government under the respective State laws enacted following the directions in the decision of the apex court in *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development* - (1994) 6 SCC 241. In a pithily worded introduction to the

*Jagdish Balaram Bahira's judgment (supra)* the apex court said:

“3. The framers of the Constitution conceived of a policy of affirmative action to redress the social exclusion, economic deprivation and political alienation suffered by historically disadvantaged classes of Indian society. Reservation of posts in public employment and seats for admission in educational institutions and the setting apart of seats in electoral bodies was envisaged by the Constitution for the fulfilment of a constitutional aspiration of social justice to the Scheduled Castes and Tribes and to socially and educationally backward classes of citizens. In pursuit of the constitutional goal of substantive equality, reservations have been envisaged as a means of enabling members of beneficiary groups to realise, in a true sense, dignity, freedom and liberty which the Constitution guarantees as its basic philosophy. But the problem which has confronted legislatures, policy makers as well as courts (as enforcers of the rule of law) is a capture of the benefits of affirmative action programmes by persons who do not genuinely belong to the beneficiary groups. This kind of capture poses a serious dimension. When a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution. For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. For another this deprives a beneficiary who is genuinely entitled to receive those benefits of a legitimate entitlement. This constitutes an egregious constitutional fraud. It is a fraud on the statutes which implement the provisions of the Constitution. It is a fraud on state policy. Confronted with this problem, the legislatures have intervened with statutory instruments while the executive has, in implementation of law, set down administrative parameters and guidelines to prevent the usurpation of benefits.

4. The batch of cases with which the court is confronted involves individuals who sought the benefit of public employment on the basis of a claim to belong to a beneficiary group which has, upon investigation been found to be invalid. Despite the invalidation of the claim to belong to a Scheduled Caste or, as the case may be, a Scheduled Tribe or backward community, the intervention of the Court is invoked in the exercise of the power of judicial review. The basis for the invocation of jurisdiction lies in an assertion that equities arise upon a lapse of time and these equities are capable of being protected either by the High Court (in the exercise of its jurisdiction under Article 226) or by this Court (when it discharges the constitutional function of doing complete justice under Article 142). The present batch of cases then raises the fundamental issue as to whether such equities are sustainable at law and, if so, the limits that define the jurisdiction of the court to protect individuals who have secured access to the benefit of reservation in spite of the fact that they do not belong to the caste, tribe or class for whom reservation is intended.

5. A large body of precedent has evolved both in the High Courts as well as in this Court in seeking to find answers to pleas raised by individuals that they are entitled to protection by a constitutional court, even after the invalidation of their caste or tribe claims. The decided cases reflect a profound awareness on the part of courts of the human element involved. Assessment of human consequences case by case has resulted in a conflicting line of approach, in the effort of the court to balance the letter of law with a sense of compassion. Since this Bench of three Judges is called upon to seek a median, through the body of judicial precedent, it is, at the outset, necessary to set out the fundamental values and vision which the court must pursue. Those values as well as the vision is charted out to the court by the Constitution and it is the Constitution which the court expounds. The constitutional policy of creating reservations subserves a high constitutional value of providing social redress and a life of dignity to castes, tribes and classes which were in a historical sense oppressed by a systemic pattern of social exclusion and human deprivation. The benefits which the Constitution has conferred on beneficiary groups cannot be dissipated by allowing others who do not belong to the designated castes or tribes to secure the benefit. Public employment is a significant source of social mobility. Access to

education opens the doors to secure futures. As a matter of principle, in the exercise of its constitutional jurisdiction, the court must weigh against an interpretation which will protect unjust claims over the just, fraud over legality and expediency over principle. As the nation evolves, the role of the court must be as an institution which abides by constitutional principle, enforces the rule of law and reaffirms the belief that claims based upon fraud, expediency and subterfuge will not be recognised. Once these parameters are established with a clear judicial formulation individual cases should pose no problem. Usurpation of constitutional benefits by persons who are not entitled to them must be answered by the court in the only way permissible for an institution which has to uphold the rule of law. Unless the courts were to do so, it would leave open a path of incentives for claims based on fraud to survive legal gambits and the creativity of the disingenuous.”

11. It is worth noticing that *Jagdish Balaram Bahira's* judgment (*supra*) was pronounced on 6.7.2017. Obviously, the impugned order was issued on 30.12.2017 after the *Jagdish Balaram Bahira* judgment (*supra*). In *Jagdish Balaram Bahira* the apex court held that securing employment claiming that a person belong to SC or ST or other backward class or other designated caste, tribe or community or class and securing award or contesting in an electoral seat **amounts to a fraud on the Constitution** as such benefits are conferred on the dis-developed classes of Indian society like SCs, STs and other backward classes, envisaged by the Constitution for fulfillment of a constitutional aspiration of social justice. It was held that once a person obtains benefit on false pretext of belonging to such caste or tribe/backward class, such a stratagem constitutes a fraud on the Constitution and fraud on the State policy. The judgment noted that the apex court had on earlier occasions had held that invalidation of the caste or tribe claim upon verification would result in the appointment or as the case may be, the admission, being rendered ***void or non est***.

12. In the light of the afore cited judicial decisions, we are of the prima facie view that there is nothing wrong for the respondents to initiate the



second disciplinary proceedings against him as the job the applicant appears to have been secured has become *void* or *non est* with the finding of the Scrutiny Committee which has attained finality. It appears that the respondents have placed the applicant under suspension vide Annexure A14 order in pursuance of Annexure A15 communication dated 20.12.2017 issued by the Corporate Office for the purpose of initiating disciplinary action against him in view of the final report of the Scrutiny Committee and in the light of the three Judges bench decision of the apex court in *Jagdish Balaram Bahira's* case (*supra*). Section 16 of the 1996 Act of Kerala also contemplates removal of such employee from service forthwith.

13. Since the apex court in the aforesaid judgment has held that securing of employment on a false caste certificate is a **fraud on the Constitution**, the facts that he was exonerated in the earlier disciplinary action for the misconduct of securing employment on false caste certificate, that subsequent correction of his caste status as OBC was made in his service book and that he was discharged in the criminal prosecution for procuring employment on false caste certificate, are of no consequence at all.

14. Hence, we hold that there is no prima facie case in favour of the applicant for seeking the interim relief of staying the operation of Annexure A14 order placing him under suspension. As a larger Bench of the apex court has laid down the law in *Jagdish Balaram Bahira's* judgment (*supra*) the respondents, by issuing Annexure A15, seem to have acted upon the law expounded in the aforesaid judgment of the apex court.

15. For the foregoing reasons we find no reason to grant the interim relief as prayed for.

16. List the matter on 12.3.2018 for completing the pleadings.

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

**(U. SARATHCHANDRAN)**  
**JUDICIAL MEMBER**

**“SA”**

**Original Application No. 180/00030/2018**

**APPLICANT'S ANNEXURES**

- Annexure A1** – True copy of the office memorandum dated 1.12.1992 of the Superintending Engineer © Telecom Civil Circle, Trivandrum.
- Annexure A2** – True copy of caste certificate issued by Tahsildar, Tellichery.
- Annexure A3** – True copy of the Biodata of the applicant.
- Annexure A4** – True copy of relevant page of the Secondary School Leaving certificate issued to Padmini M.K.
- Annexure A4(a)** – True copy of the community certificate dated 11.6.1973 issued by the Tahsildar, Tellicherry.
- Annexure A5** – True copy of the GO(MS) 11/77/DD dated 25.1.1977 of the Joint Secretary, by order of the Governor.
- Annexure A6** – True copy of report of scrutiny committee dated 7.3.1998 of the Chairman, Scrutiny Committee.
- Annexure A6(a)** – True copy of the English translation of Annexure A6.
- Annexure A7** – True copy of the GO(MS) No. 39/98/SCSTDD dated 17.4.1998 of the Principal Secretary to Government.
- Annexure A8** – True copy of the judgment dated 17.9.2008 in OP No. 8713 of 1998 of the Hon'ble High Court.
- Annexure A9** – True copy of the memorandum dated 22.12.2010 of Chief Engineer Kerala Civil Zone, BSNL, Thiruvananthapuram along with covering letter dated 31.12.2010 of the Superintending Engineer, BSNL Civil Circle, Calicut – 673 011.
- Annexure A10** – True copy of the inquiry report dated 20.5.2012 of the inquiry authority along with the covering letter dated 5.6.2012 of the Executive Engineer (EQ), BSNL, Trivandrum.
- Annexure A11** – True copy of the order dated 11.10.2012 of the 4<sup>th</sup> respondent.
- Annexure A12** – True copy of the letter dated 30.6.2015 of the Executive Engineer (HQ), BSNL, Trivandrum.

**Annexure A12(a)**–True copy of the letter dated 21.8.2015 of the Asst. General Manager (Admn.) O/o. PGMt, Thrissur.

**Annexure A13** – True copy of the order dated 9.7.2014 in CC 1682 of 2013 of the Judicial First Class Magistrate of Thalassery.

**Annexure A14** – True copy of the order dated 30.12.2017 of the 4<sup>th</sup> respondent.

**Annexure A14(a)**–True copy of the covering letter dated 30.12.2017 of the Assistant General Manager (Legal), O/o CGMT, BSNL Kerala Circle, Trivandrum.

**Annexure A14(b)**–True copy of the letter dated 1.1.2018 of the Deputy General Manager (P&A), Office of the General Manager Telecom, BSNL, Palakkad.

**Annexure A15** – True copy of the BSNL Corporate Office letter No. 60-10/2015-SCT/KRL/753 dated 20.12.2017 of the General Manager & CLO (SCT), BSNL, New Delhi.

**Annexure A16** – True copy of the office letter dated 12.12.2017 of the 2<sup>nd</sup> respondent.

### **RESPONDENTS' ANNEXURES**

Nil

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