

REGISTRAR GENERAL, CALCUTTA HIGH COURT

v.

SHRINIVAS PRASAD SHAH AND OTHERS
(Civil Appeal No. 4282 of 2013)

MAY 3, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

WEST BENGAL SCHEDULED CASTES AND
SCHEDULED TRIBES (IDENTIFICATION) ACT, 1994:

s.5 – Issuance of certificate — Competent authority — West Bengal Judicial Service Examination, 2007— Respondent claiming to be a member of Scheduled Tribe on the basis of certificate issued by Director, Backward Class Welfare, West Bengal – Treated as a general category candidate – Held: The notification specifically stipulates that a candidate belonging to SC/ST/BC must have a certificate in support of his/her claim from a competent authority as specified under the Act — There is no error in the decision taken by the Commission in not entertaining respondent's application as a ST candidate since no certificate was produced from competent authority – However, respondent would be appointed as a Judicial Officer consequent to the examination conducted in 2010 wherein he appeared by producing the certificate issued by competent authority.

The respondent in terms of Notification dated 17.1.2007, submitted his application for West Bengal Judicial Service Examination 2007 by paying an amount of Rs.200/- as required by General category candidates. However in the application he mentioned that he belonged to "Gonda Community", a Scheduled Tribe and also attached a certificate from the Director, Backward Class Welfare, West Bengal. The Commission considered him as a general candidate as he had not produced the

A certificate from the competent authority. The writ petition filed by him was allowed by the Single Judge of the High Court. The Division Bench declined to interfere.

Allowing the appeal, the Court

B HELD: 1.1. This Court is of the considered opinion that in view of the specific legislation passed by the West Bengal State Legislature Assembly i.e. West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994, and the specific stipulation in the notification
 C issued to the candidates, the guideline 10 of para 13 of *Kumari Madhuri Patil's* case is inapplicable, particularly to the facts of the instant case. The Act does not recognize the Director, Backward Class Welfare, West Bengal as a
 D the Commission was justified in not placing reliance on the certificate issued by the Director, Backward Class Welfare, West Bengal. [para 13] [220-G-H; 221-A]

Kumari Madhuri Patil and Another vs. Additional Commissioner, Tribal Development and Others, 1994 (3)
 E Suppl. SCR 50 = (1994) 6 SCC 241 - held inapplicable.

1.2. In the instant case, the Court is not concerned with dispute that is pending before the Scrutiny Committee. This is a case of total non-compliance of the
 F conditions stipulated in the notification dated 17.1.2007 (information to the candidates) wherein it has been specifically stated that a candidate claiming to be SC/ST/BC must have a certificate in support of his/her claim from a competent authority specified in the West
 G Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994. There is no error in the decision taken by the Commission in not entertaining the respondent's application as a ST candidate since no certificate was produced from the competent authority,
 H as provided under the Act. Consequently, in the absence

of the requisite certificate, the Commission was justified in treating him as a general category candidate. [para 12 and 15] [220-B-D; 222-B-C]

1.3. The guidelines in in *Kumari Madhuri Patil's* case or the brochure issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi would not override the specific conditions stipulated in the notification (information to the candidates) of compliance of the provisions of the West Bengal Act of 1994. [para 16] [222-D-E]

1.4. Further, clause 13.2 of Chapter 13 of the brochure issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi is also inapplicable in view of the statutory provision incorporated in the West Bengal Act of 1994. [para 13] [221-B]

1.5. The Judgment of the High Court is set aside. However, the respondent would be appointed as a judicial officer in the West Bengal Judicial Service consequent to the examination conducted in the year 2010 since he produced the Certificate issued by the competent authority under West Bengal Act of 1994 on 22.9.2009. [para 17] [222-F-H]

GM, Indian Bank vs. R. Rani and Anr. (2007) 12 SCC 796 – cited.

Case Law Reference:

1994 (3) Suppl. SCR 50 held inapplicable para 4
(2007) 12 SCC 796 cited para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4282 of 2013.

A From the Judgment & Order dated 16.09.2011 of the High Court at Calcutta in FMA No. 1217 of 2010.

B Jaideep Gupta, Raju Chatterjee, Sankar Divate, G.S. Chatterjee, Soumya Chakraborty, A. Deb Kumar, Atulesh Kumar, Y. Lokesh, Avijit Bhattacharjee, Bikas Kargupta for the appearing parties.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J 1. Leave granted.

C 2. The question raised in this case is whether the Public Service Commission of West Bengal (for short 'the Commission') was justified in considering the application of respondent No.1 as a general candidate for recruitment to the West Bengal Judicial Service Examination, 2007 rather than
D a member of the Scheduled Tribe Community.

3. The Commission circulated a notification on 17th January, 2007 for the information to the candidates on 17th February, 2007 of its conducting West Bengal Judicial Service
E Examination 2007. In response to the said information the respondent submitted his application by paying an amount of Rs.200/-, as required by the candidates in the general category in order to appear for the examination of 2007. In the application form he had mentioned that he belonged to 'Gonda
F Community' - Scheduled Tribe Community and also attached a certificate from the Director, Backward Class Welfare, West Bengal. The Commission considered the application of the respondent as a general candidate since he had not produced the certificate required to be produced from the competent
G authority. The respondent then attended preliminary examination and final examination as a general candidate. The result of the West Bengal Judicial Service Examination 2007 was published in the newspapers on 29.9.2007 and the respondent was shown as a general category candidate. Later
H the respondent appeared for the personality test as a general

category candidate on 4.12.2007. The Commission published the list of 152 selected candidates on 20.3.2008 and the respondent's name was rank No.86 among the general category candidates, he could not get appointment. A

4. The respondent then preferred a representation on 24.4.2008 to the Chairman of the Commission and to the various authorities to consider him as a member of the Scheduled Tribe Community and be selected in that category for the examination held in 2007. Since there was no response, he filed Writ Petition No.9756 (W) of 2008 before the High Court of Calcutta contending that since his status as a Scheduled Tribe was not in question, he should not have been considered as a general category candidate especially in view of the certificate produced by him from the Director, West Bengal Backward Class Welfare. Learned Single Judge of the Calcutta High Court noticed that he had produced a certificate issued by the Director, Backward Class Welfare, West Bengal on 08.01.2003 along with the application and hence he should have been considered as a member of the Scheduled Tribe Community, going by the principle laid down by this court in *Kumari Madhuri Patil and Another v. Additional Commissioner, Tribal Development and Others* (1994) 6 SCC 241. Learned Single Judge therefore directed the Commission and the High Court to appoint the respondent in West Bengal Judicial Service pursuant to the examination conducted in the year 2007 treating him as a member of the Scheduled Tribe Community. B
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5. The Registrar General, aggrieved by the judgment of the learned Single Judge filed FMA No.1217 of 2010 before the Division Bench of the Calcutta High Court. The Division Bench also concurred with the view of the learned Single Judge and dismissed the appeal. Against which the present appeal has been filed by the Registrar General, Calcutta High Court. G

6. Shri Jaideep Gupta, learned senior counsel appearing for the appellant submitted that the High Court has committed H

A an error in over-looking the specific conditions prescribed in the information to the candidates for the West Bengal Judicial Service Examination 2007. Learned senior counsel submitted that the information specifically stipulated that the caste certificate should be produced from a competent authority as specified in the West Bengal Judicial Service and STs (Identification) Act, 1994 and SCs/STs Welfare Department Order No.261-TW/EC/MR-103/94 dated 6th April, 1995. Further it is also pointed out that no claim from a member of SC/ST/BC or physically handicap would be entertained after submission of the application. Learned senior counsel also submitted that the Judgment of this Court in *Kumari Madhuri Patil's* case (supra) has been misinterpreted and mis-applied and nothing could be spelt out from that Judgment or subsequent judgments diluting the conditions stipulated by the Commission for the examination held in the year 2007.

D Learned senior counsel also submitted, though in the application form the respondent had indicated that he belonged to ST Community but he did not produce the required certificate as provided in the above-mentioned Act and that he had deposited Rs.200/-which was meant only for the general category candidates. The respondent sat for the said examination as a general category candidate and could not get appointment and having failed to get selected he is estopped from contending that he should have been treated as a member of the Scheduled Tribe for the 2007 examination. Learned senior counsel, however, submitted that later he has produced the required certificate in the 2010 Examination and he is being considered for appointment as a judicial officer in the West Bengal Judicial Service treating him as a member of the Scheduled Tribe.

G 7. Mr.Soumya Chakraborty, learned counsel appearing for the respondent submitted that the High Court has correctly applied the guidelines laid down by this Court in *Kumari Madhuri Patil's* case (supra) and also submitted that the principles laid down in that are binding judicial precedents.

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Reference was made to the Judgment of this Court in *GM, Indian Bank v. R. Rani and Another* (2007) 12 SCC 796. Learned counsel also referred to the brochure published by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi wherein it has been stated that where a candidate belonging to SC/ST is unable to produce a certificate from any of the prescribed authority he might be appointed provisionally, on the basis of a prime facie proof, subject to his furnishing the prescribed certificate within a reasonable time. Learned counsel submitted applying the principle laid down by this Court in *Kumari Madhuri Patil's* case (supra) and the brochure mentioned above, learned Single Judge, as well as the Division Bench of the High Court, was right in holding that the respondent be treated as a member of Scheduled Tribe for the 2007 Examination and be appointed accordingly.

8. We may first refer to the notification issued by the Commission (information to the candidates) for the West Bengal Judicial Service Examination 2007. Earlier part of the notification reads as follows:

“The relevant rules and necessary particulars are stated in the following paragraphs. A candidate should verify from the notified rules that he/she is eligible for admission to the examination. The condition prescribed cannot be relaxed”

9. The notification also refers to the particulars and certificates required, which reads as under:

PARTICULARS AND CERTIFICATES REQUIRED:

- (i) A candidate claiming to be SC/ST/BC must have a certificate in support of his/her claim from a competent authority of West Bengal as specified below [vide the West Bengal SCs and STs (Identification) Act, 1994 and SCs, STs Welfare

A Department Order No.261-1W/EC/MR-103/94 dated 06.04.1995]

(ii) In the District, the Sub-Divisional Officer of the Sub-Divisional concerned;

B (iii) In Kolkata, the District Magistrate South 24-Parganas or such Additional District Magistrates, South 24-Parganas as may be authorized by the District Magistrate, South 24-Parganas in this behalf.”

C Further, the notification also states as follows:

“No claim for being a member of the SC/ST and BC or a Physically Handicapped person will be entertained after submission of the application.”

D 10.We are in this case concerned with the question whether the Judgment in *Kumari Madhuri Patil's* case (supra), especially sub-paragraph 10 of Paragraph 13 or clause 13.2 of the Chapter 13 of the brochure would override the specific provision stipulated in the notification (information to the candidates). The notification specifically stipulates that a candidate belonging to SC/ST/BC must have a certificate in support of his/her claim from a competent authority as specified under the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994. That Act was enacted by West Bengal Legislature to provide for identification of SCs and STs in West Bengal and for matters connected therewith or incidental thereto. Section 4 of the Act deals with the identification of members of Schedule Tribe which reads as under:

G “4. Any person belonging to any of the tribes or tribal communities or parts of or groups within tribes or tribal communities, specified in Part XII of the Schedule to the Constitution (Scheduled Tribes) Order, and resident in the locality specified in relation to him in that Part of such

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Schedule, may be identified, by a certificate, to be a member of the Schedule Tribe.” A

Section 5 of the Act deals with the issuance of a certificate which reads as under:

“5. A certificate under section 3 or section 4 may be issued- B

(a) In the district, by the Sub-divisional Officer of the sub-division concerned, and

(b) In Calcutta, by the District Magistrate, South 24-Parganas, or by such Additional District Magistrate, South 24-Parganas, as may be authorized by the District Magistrate, South 24-Parganas, in this behalf.” C

Explanation I. “Calcutta” shall mean the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866. D

Explanation II – For the removal of doubt, it is hereby declared that for the purposes of this Act, the District Magistrate, South 24-Parganas, or the Additional District Magistrate, South 24-Parganas, authorized by the District Magistrate, South 24-Parganas, under clause (b) of this section, shall have jurisdiction over Calcutta. E F

Section 6 of the Act deals with the procedure of issuance of certificate under the Act, on application by the person requiring a certificate under that Act in such form and manner and upon production of such evidence, as may be prescribed. G

11. Power has been conferred on the prescribed authority under Section 7 to reject the application if it is not satisfied with the evidence produced by any person under Section 6 and the Rules made thereunder for the issuance of a certificate under H

A Section 5, giving a person an opportunity of being heard. Section 8 provides for an appeal against any refusal to issue a certificate.

B 12. We find no error in the decision taken by the Commission in not entertaining the respondent's application as a ST candidate since no certificate was produced from the competent authority, as provided under the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994. The information to the candidates specifically stated that the candidates claiming to be SC/ST/BC must have a certificate from a competent authority specified in the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994. No such certificate was produced from that competent authority by the respondent. Consequently, in the absence of the requisite certificate, the Commission was justified in treating him as a general category candidate. The first time the respondent produced the certificate from the competent authority was only when he appeared in the examination held on 30.7.2010, by that time he had obtained a certificate from the competent authority on 22.9.2009. Admittedly, at the time when 2007 examination was held no such certificate was produced from the competent authority along with the application. Consequently, the respondent was treated as a general category candidate and hence he could not get appointment as judicial officer in the examination held in the year 2007.

G 13. We are of the considered opinion that in view of the specific legislation passed by the West Bengal State Legislature Assembly i.e. West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994, and the specific stipulation in the notification issued to the candidates, the guideline 10 of para 13 of *Kumari Madhuri Patil's* case (*supra*) is inapplicable, particularly to the facts of this case. Act does not recognize the Director, Backward Class Welfare, West Bengal as a competent authority to issue the certificate.

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Therefore, the Commission was justified in not placing reliance on the certificate issued by the Director, Backward Class Welfare, West Bengal. Further clause 13.2 of Chapter 13 of the brochure issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi is also in applicable in view of the statutory provision incorporated in the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994. In this connection we may refer sub-para 10 of para 13 of *Kumari Madhuri Patil's* case (supra) which reads as under:

“In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.”

14. *Kumari Madhuri Patil's* case (supra) speaks of the constitution of a Scrutiny Committee to resolve the dispute on caste status. When there is a dispute with regard to the certificate produced, there is bound to be delay in finalization of the proceedings, it is in that context sub-para 10 of para 13 of *Kumari Madhuri Patil's* case (supra) stated that in case of any delay in finalizing the proceedings by the Scrutiny Committee and in the meanwhile last date for admission into an educational institutions or appointment to an officer post is getting expired, the candidate be admitted by the principal or such other authority competent in that behalf or appointed on the basis of social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of

A the enquiry by the Scrutiny Committee. In *GM, Indian Bank* (supra) this Court held that the directions issued by the Judgment in *Kumari Madhuri Patil's* case (supra) would have a binding force of law.

B 15. We are in this case not concerned with any dispute that is pending before the Scrutiny Committee, this is a case of total non-compliance of the conditions stipulated in the notification (information to the candidates) wherein it has been specifically stated that a candidate claiming to be SC/ST/BC must have a certificate in support of his/her claim from a competent authority specified in the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994.

C 16. In our view, the guidelines in *Kumari Madhuri Patil's* case (supra) or the brochure issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi would not override the specific conditions stipulated in the notification (information to the candidates) of compliance of the provisions of the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994. In such circumstances we find no error in the decision taken by the Commission in not entertaining the application of the respondent as a member of the ST Community due to non-production of the certificate from the competent authority specified in the above-mentioned Act.

D 17. The appeal is accordingly allowed and the Judgment of the High Court is set aside. However, we are inclined to record the submission of the learned senior counsel, appearing for the appellant that the respondent would be appointed as a judicial officer in the West Bengal Judicial Service consequent to the examination conducted in the year 2010 since he has produced the Certificate issued by the competent authority under The West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994. Appeal is, therefore, allowed as above, however there will be no order as to costs.

H R.P.

Appeal allowed.