

STATE OF U.P. & ORS.

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v.

RAVINDRA KUMAR SHARMA & ORS.

(Civil Appeal No. 758 of 2016)

FEBRUARY 03, 2016

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[M. Y. EQBAL AND ARUN MISHRA, JJ.]

*Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 – Verification of the disability certificates issued by the Medical Board under – Right of the Government – On facts, complaint of illegal usurpation of the quota reserved for handicapped persons on the basis of fraudulently procured certificates without suffering from the disability certified under the Rules – On the basis thereof, issuance of order by the Government for verification of such certificates issued by the Medical Board – Certificates of 21% of selected candidates of handicapped category found to be fraudulent – Challenge to – Division Bench of the High Court holding that it is not permissible to reopen medical certificate carried out under the Rules – On appeal, held: Fraud vitiates and in such a case when large number of candidates have illegally usurped the reserved seats of the persons suffering from disability the action of State Government did not call for interference – There was no scope for the Division Bench to interfere and issue order to perpetuate fraud – Order passed by the Division Bench of the High Court set aside.*

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**Allowing the appeal, the Court**

**HELD: 1.1 Fraud vitiates and in such a case when large number of candidates have illegally usurped the reserved seats of the persons suffering from disability the action of State Government did not call for interference. [Para 6] [848-F-G]**

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**1.2 The Division Bench of the High Court ignored and overlooked the material fact that verification had already been done by the Medical Board and it was found that certificates of 21% were fraudulently obtained. The High Court issued a direction in the impugned order for physical verification of the candidate by the authorities and in case he does not suffer from disability so certified candidate can be subjected to fresh medical**

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A test. The High Court overlooked that on mere physical verification it may not be possible to know various kinds of disabilities such as that of eyes, ear impairment etc. That can only be done by the medical examination and particularly when the High Court itself observed that in case there is genuine suspicion and fraud has been committed medical certification can be reopened. In the peculiar facts of the instant case of such a fraud and genuine suspicion raised in the representation lodged by the VS and when 21% of such certificates have been found to be fraudulently obtained there was no scope for the Division Bench to interfere and issue order to perpetuate fraud, writ is to be declined in such a scenario and no equity can be claimed by the respondents. The impugned judgment and order passed by the Division Bench of the High Court is set aside and the writ petition is dismissed. [Paras 10, 11, 12] [851-B-G]

D *Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors.* (2005) 7 SCC 605:2005 (2) Suppl. SCR 774; *Ram Chandra Singh v. Savitri Devi* (2003) 8 SCC 319: 2003 (4) Suppl. SCR 543; *Express Newspapers (P) Ltd. & Ors. v. Union of India & Ors.* (1986) 1 SCC 133: 1985 (3) Suppl. SCR 382 – referred to.

E Case Law Reference  
 2005 (2) Suppl. SCR 774 referred to Para 7  
 2003 (4 ) Suppl. SCR 543 referred to Para 8  
 1985 (3 ) Suppl. SCR 382 referred to Para 9

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 758 of 2016.

From the Judgment and Order dated 09.09.2010 of the High Court Allahabad at Allahabad in Special Appeal No. 811 of 2010.

M. R. Shamshad, Mr. Shashank Singh, Ms. Harshita Deswal, Advs. for appellants.

G R. Venkatramani, Pallav Shishodia, Sr. Advs., Rajiv Kumar, Abishek Srivastava, (For Ms. Kusum Chaudhary) Mr. Santosh Kumar Tripathi, Advs. for Respondents.

The Judgment of the Court was delivered by

H ARUN MISHRA, J. 1. Leave granted.

2. The question involved in the appeal is as to the right of the appellant to verify the disability certificates issued by the Medical Board under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996. The respondents applied for BTC training course under the physically handicapped category on the basis of certificates issued under the aforesaid Rules. It was claimed that they completed the training and had been offered appointment in the primary schools run and managed by the State Government. Complaint was received from Bhartiya Viklang Sangh of illegal usurpation of the quota reserved for handicapped persons on the basis of fraudulently procured certificates without suffering from the disability certified under the Rules of 1996. The State Government issued an order dated 3.11.2009 making a provision for constitution of fresh Medical Board in order to verify and assess the disability of the candidates. The candidates questioned communication dated 15.7.2010 issued by the Director, State Council for Educational Research & Training based upon the G.O. dated 3.11.2009 requiring them to appear before the Medical Board constituted in order to assess the disability. Out of the 234 candidates selected under the handicapped category on being examined by the Medical Board it was found that 21% of the candidates were not handicapped.

3. A Single Bench of the High Court of Allahabad vide judgment and order dated 31.8.2010 dismissed the writ application holding that under the Rule framed in exercise of the powers under sub-sections (1) and (2) of section 73 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the general eligibility to apply for facilities, concessions and benefits admissible under the scheme of the Act is subject to such conditions as the State Government may impose and the State Government has imposed a condition in the order dated 3.11.2009 of constitution of the Medical Board for verification of the disability. Even otherwise under the rules there can be a review of the decision upon representation by the applicant and fresh order can be passed. Thus the certificate issued is not final.

4. On appeal being preferred a Division Bench of the High Court of Allahabad by the impugned order has allowed the appeal and has held that while the certificate has been issued in accordance with the Rules of 1996, roving enquiry cannot be made until and unless fraud has been

A detected, it is not permissible to reopen medical certification carried out under the Rules of 1996. However the High Court has directed that a physical verification may be made and if the candidate has not been issued certificate of disability or otherwise or that he does not suffer from any disability so certified which entitles him to such a certificate, in that event the candidate can be subjected to fresh medical test not otherwise. Accordingly the directions by the Government in order dated 3.11.2009 and by the Director on 15.7.2010 for physical verification be construed in the aforesaid manner.

5. It is apparent from Rules of 1996 that disability certificate is required to be issued by Medical Board. It can issue permanent disability certificate or the Medical Board shall indicate the period of validity in the certificate in case where there is any chance of variation in the degree of disability. In case of refusal of disability certificate an opportunity is required to be given to the applicant of being heard, and there can be a review by the Medical Board on representation by the applicant and Rules contains a provision to the effect that the certificate issued by the Medical Board shall make a person eligible to apply.

6. In the facts of the instant case there was a serious complaint lodged by Viklang Sangh of illegal usurpation of the quota reserved for specially abled by large number of persons who were not in fact specially abled and have procured certificates fraudulently from their districts under the Rules of 1996. On the basis of the said complaint Government has issued an order for the purpose of verification of such certificates issued by the Medical Board and certificates of 21% of selected candidates of handicapped category were found to be fraudulent. It is settled proposition of law that fraud vitiates and in such a case when large number of candidates have illegally usurped the reserved seats of the persons suffering from disability the action of State Government did not call for interference.

7. In *Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors.* (2005) 7 SCC 605, it was observed :

“16. In *Lazarus Estates Ltd. v. Beasley* (1956) 1 All ER 341, Lord Denning observed at QB pp. 712 and 713: (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. Fraud unravels

everything.”

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In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p. 722) These aspects were recently highlighted in *State of A.P. v. T. Suryachandra Rao* (2005) 6 SCC 149.”

8. In *Ram Chandra Singh v. Savitri Devi* (2003) 8 SCC 319 it was held thus:

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“15. x x x Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

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17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

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23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

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25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.

26. In *Shrisht Dhawan v. Shaw Bros.* (1992) 1 SCC 534, it has been held that: (SCC p. 553, para 20)

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“20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.”

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A 29. In *Chittaranjan Das v. Durgapore Project Ltd.* (1995) 99 CWN 897, it has been held: (Cal LJ p. 402, paras 57-58)

“57. 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.

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58. It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby.”

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9. This Court in *Express Newspapers (P) Ltd. & Ors. v. Union of India & Ors.* (1986) 1 SCC 133 at para 119 has held thus:

“119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Partap Singh v. State of Punjab* AIR 1964 SC 72. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an ‘alien’ purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtoun* (1904) AC 515, ‘that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred’. It was said by Warrington, C.J. in *Short v. Poole Corpn.* (1926) Ch 66, that:

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‘No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.’” A

10. The Division Bench of the High Court has ignored and overlooked the material fact that verification has already been done by the Medical Board and it has been found that certificates of 21% were fraudulently obtained. The High Court has issued a direction in the impugned order for physical verification of the candidate by the authorities and in case he does not suffer from disability so certified candidate can be subjected to fresh medical test. The High Court has overlooked that on mere physical verification it may not be possible to know various kinds of disabilities such as that of eyes, ear impairment etc. That can only be done by the medical examination and particularly when the High Court itself has observed that in case there is genuine suspicion and fraud has been committed medical certification can be reopened. Direction issued in this regard has not been questioned by the respondents and in fact process of re-verification was already over when High Court issued aforesaid directions. B  
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11. In our considered opinion in the peculiar facts of this case of such a fraud and genuine suspicion raised in the representation lodged by the Viklang Sangh and when 21% of such certificates have been found to be fraudulently obtained there was no scope for the Division Bench to interfere and issue order to perpetuate fraud, writ is to be declined in such a scenario and no equity can be claimed by the respondents. E  
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12. In the circumstance we set aside the impugned judgment and order passed by the Division Bench of the High Court and dismiss the writ petition. However before taking any action against the individuals they shall be issued show cause in the matter and thereafter decision will be rendered in accordance with law. Let this exercise be completed within a period of four months. The appeal is allowed to the aforesaid extent. G

Nidhi Jain

Appeal allowed.

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