

Lillykutty vs Scrutiny Committee, S.C. & S.T. & Others on 6 October, 2005

Author: S.B. Sinha

Bench: S.B. Sinha

CASE NO.:

Appeal (civil) 7174 of 2004

PETITIONER:

Lillykutty

RESPONDENT:

Scrutiny Committee, S.C. & S.T. & Others

DATE OF JUDGMENT: 06/10/2005

BENCH:

S.B. Sinha

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

Although, I respectfully agree with the judgment and order proposed to be pronounced by Brother, Thakker, J., I would like to add a few words.

Scheduled Castes and Scheduled Tribes in view of the constitutional provisions contained in Articles 341 and 342 of the Constitution of India occupy a special position. Protective discrimination and affirmative action for the downtrodden people are envisaged in our constitutional scheme despite the fact that the equality clause enshrined under Article 14 of the Constitution of India is of great significance. [See E.V. Chinnaiah Vs. State of A.P. and Others, (2005) 1 SCC 394] When, thus, a person who is not a member of Scheduled Caste or Scheduled Tribes obtains a false certificate with a view to gain undue advantage to which he or she was not otherwise entitled to would amount to commission of fraud. Fraudulent acts are not encouraged by the courts. A person for the purpose of obtaining the benefits of the Presidential Order must fulfil the condition of being a member of Scheduled Castes and continue to be so. Conversion of a member of Scheduled Castes to a different religion may not, in certain circumstances, deprive him of the said benefits although there appears to be some divergence of views in this regard. [See State of Kerala and another Vs. Chandramohan, (2004) 3 SCC 429 and Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others, (2005) 2 SCC 244]. In this case, however, even the said question does not arise.

In Ram Chandra Singh Vs. Savitri Devi and Others [(2003) 8 SCC 319], this Court held:

"15 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."

It was further held:

"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.

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

24. In *Arlidge & Parry on Fraud*, it is stated at p. 21:

"Indeed, the word sometimes appears to be virtually synonymous with 'deception', as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context 'fraud' included certain kinds of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit 'under false pretences, or by means of any other fraud'. In *Jones*, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly, it has been suggested that a charge of conspiracy to defraud may be used where a 'false front' has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act, 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both *Jones* and the 'false front' could now be treated as cases of obtaining property by deception."

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.* it has been held that: (SCC p. 553, para 20) "20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.""

[See also *Vijay Shekhar and Another Vs. Union of India and others*, (2004) 4 SCC 666 and *Vice-Chairman, Kendriya Vidyalaya Sangathan and Another Vs. Girdharilal Yadav*, (2004) 6 SCC 325] Yet recently in *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Ors.* [JT 2005 (7) SC 530], a Division Bench of this Court inter alia following *Ram Chandra Singh* (supra) and other decisions observed:

"17. "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 words or letter "

In *Lazarus Estates Ltd. v. Beasley* [(1956) 1 All ER 341] the Court of Appeal stated the law thus:

"I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. 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. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;"

[See also *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, (2003) 8 SCC 311] Any action by the authorities or by the people claiming a right/ privilege under the Constitution which subverts the constitutional purpose must be treated as a fraud on the Constitution. The Constitution does not postulate conferment of any special benefit on those who do not belong to the category of people for whom the provision was made.

The fraud committed by the Appellant for obtaining unlawful gain has been found as of fact by a statutory committee. The said finding of fact has not been interfered with by the High Court. No case has been made out for us to take a different view.