

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT GOA**

WRIT PETITION NO. 387 OF 2014

Mr. Zacarias Mendes s/o Lucio Mendes
aged 38 years, Indian National
r/o Naikawado, Verla, Parra,
Bardez-Goa 403510

.. PETITIONER

VERSUS

1. Milton Olumpia Marques
s/o Olumpia Marques,
aged 52 years, Indian National
r/o House No. 250, Pintowado,
Verla, Parra, Bardez
Goa 403510.
2. The Deputy Collector & SDO,
Mapusa Sub-Division
Government of Goa,
Mapusa, Bardez-Goa.
3. Scrutiny Committee of Caste
Certificates, Government of Goa,
having office at Secretariat,
Porvorim-Goa.
4. State of Goa,
through its Chief Secretary,
having office at Secretariat,]
Porvorim-Goa.

.. RESPONDENTS

Mr. D.J. Pangam, advocate for petitioner.
Mr. P.A. Kamat, advocate for respondent no. 1.
Mr. P. Faldesai AGP for respondents 2 to 4.

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**CORAM : R.M. BORDE &
F.M. REIS, JJ.**

**RESERVED ON : 1st DECEMBER, 2014.
PRONOUNCED ON : 11th MARCH, 2015.**

JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.

3. Petitioner, who claims to be belonging to Other Backward Class, is challenging the order of validation of caste certificate issued by the Scrutiny Committee on 18.03.2014 in favour of respondent no. 1. Respondent no. 1 claims to be belonging to Christian Kharvi community which is categorised as Other Backward Class. Respondent no. 1 tendered an application to respondent no. 2 for issuance of caste certificate on 26.04.2012. Alongwith the application, respondent no. 1 tendered report of Talathi dated 26.04.2012, residence certificate dated 26.04.2012 and affidavit dated 26.04.2012 sworn by office bearers of Traditional Fisherman Association, Nerul, Bardez-Goa. On consideration of the application tendered by petitioner, caste certificate came to be issued in his favour on 27.04.2012. According to petitioner, respondents have issued caste certificate without holding proper enquiry and in a hasty manner. It is contended that the caste certificate was secured by respondent no. 1 with a sole object for contesting election of Village Panchayat Canca-Verla, Bardez-Goa as against the seat earmarked for OBC category. Petitioner contends that in the election held on 16.05.2012 respondent no. 1 was declared as returned candidate from ward no. 6 of Village Panchayat Canca-Verla. Petitioner presented election petition bearing no. 31/2012 before the Administrative Tribunal, Panji and the same is pending. It is the contention of petitioner that on 28.04.2012, respondent no. 1 presented nomination form from ward no. 5 of Village Panchayat Canca-Verla as a general category candidate for

contesting seat prescribed for open category. A few days thereafter, after receiving caste certificate, he proceeded to present nomination form for contesting election as against the seat earmarked for OBC category claiming himself to be a reserved category candidate. Petitioner contends that respondent no.1 does not belong to Christian Kharvi caste but infact belongs to Christian Chaddo (Maratha) community.

4. Petitioner contends that the constitution of the Scrutiny Committee is not in accordance with the directives issued by the Supreme Court in the matter of Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others reported in **(1994) 6 Supreme Court Cases 241**. Petitioner contends that while considering the issue in respect of validation of caste certificate, the Scrutiny Committee did not extend an opportunity to the petitioner to lead evidence with a view to rebut the contentions of respondent no. 1 that he belongs to OBC category. It is the contention of petitioner that the process of issuance of caste certificate itself is shrouded in suspicion since the certificate has been issued within less than 24 hours from tendering of application. Neither the issuing authority of the certificate nor the Scrutiny Committee has made proper enquiry which has resulted in conferment of benefits which are prescribed for persons belonging to the backward community on a person who does not belonging to said category. Petitioner thus contends that extracting the benefits available to the backward community by a person not belonging to the said community or as in the instant case, by respondent who infact belongs to open category, is fraud on constitution.

5. Respondent has presented affidavit-in-reply and controverted the contentions raised by petitioner. Respondent contends that due procedure has been adopted by the Dy. Collector and the S.D.O. while issuing the certificate as well as by the Scrutiny Committee while directing validation of the said certificate. It is contended by respondent that atleast on four occasions report from Vigilance Cell was called and, on consideration of the report of Vigilance Cell, the Scrutiny Committee proceeded to hold in favour of respondent. It is contended by respondent that since petitioner has lost the political battle, instant frivolous petition is lodged against him.

6. We have perused the order passed by the Scrutiny Committee and heard arguments advanced by learned counsel for the parties. It is not a matter of dispute that application for issuance of caste certificate was tendered by respondent no. 1 on 26.04.2012 and a certificate in the prescribed form has been issued on 27.04.2012 i.e. within 24 hours by the Deputy Collector and S.D.O., Mapusa. It also does appear on perusal of the order passed by the Scrutiny Committee that in view of revised guidelines, a separate report was called from the Superintendent of Police, North Goa, in respect of caste status of respondent and, on receipt of the report in the prescribed proforma, the matter was again taken up for consideration by the Scrutiny Committee. The Scrutiny Committee found that the Vigilance Cell during the enquiry on more than one occasions has reported that respondent no. 1 belongs to OBC category and as such proceeded to direct validation of caste certificate issued in his favour.

Scrutiny Committee did not find any contrary evidence so as to dis-lodge claim of respondent no. 1. Petitioner has also not produced any contra evidence, documentary or otherwise, on record to substantiate his claim. However, contention has been raised that petitioner has not been extended an opportunity of hearing and as such, he was not in a position to bring to the notice of the Scrutiny Committee any contra evidence.

7. The contention of petitioner that constitution of the Scrutiny Committee determining caste status of respondent no. 1 in the instant matter is not in accordance with the law laid down by the Supreme Court in the matter of Madhuri Patil (supra) deserves consideration. Apart from the aspect of constitution of the Scrutiny Committee, it is noticed that in the State of Goa, there is no legislation regulating (a) issuance of caste certificate and appeals thereon, (b) verification of caste certificate, (c) confiscation and cancellation of caste certificate and withdrawal of benefits secured on the basis of such certificate and (d) offences and penalties. The Supreme Court in the matter of State of Maharashtra Vs. Abhay reported in **1985 SC 328** expressed need of permitting a rational method for obtaining caste certificate so as to minimise hardship to the students belonging to backward community for securing admission to professional courses. The Supreme Court expressed hope that the State of Maharashtra will devise a proper scheme in that behalf. In the year 1994, in the matter of Madhuri Patil (supra) the Supreme Court has laid down procedure to be adopted in the absence of any legislation governing the field. While expressing desirability of framing scheme, the Supreme Court has proceeded to lay

down guidelines to be followed in the matter of issuance of social status certificate and validation thereof. It is observed in paragraph no. 13 of the judgment thus :

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a times the student may be a minor. It is a parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following :

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of caste or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed

at least six months in advance before seeking admission into educational institution or an appointment to a post.

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.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue

show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the

certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising 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.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition / miscellaneous petition / matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and

confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

Guideline no. 4 contained in paragraph no. 13 of the judgment prescribes that 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 Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities. In the instant matter, it transpires that the Scrutiny Committee consists of (I) Ex-officio Joint Secretary and Director of Social Welfare (II) Director (Admn.) Goa Medical College and, (III) Social Welfare Chairman. The Committee obviously is not in consonance with the directives laid down by the Supreme Court in the matter of Madhuri Patil (supra). The Director of Administration, Goa Medical College cannot be considered to be a person having intimate knowledge in respect of Scheduled Castes or the Scheduled Tribes or the backward classes. The Supreme Court expects that one of the members of the committee shall be an additional or joint secretary or any officer higher in rank of the Director

of the department concerned. It does appear that none of the members holds qualification prescribed by the Supreme Court. In our opinion, the matter in respect of determination and validation of caste certificate shall have to be dealt with by a committee constituted in accordance with the directives issued by the Supreme Court in the matter of Madhuri Patil (supra). The State of Maharashtra tendered a review application to the Supreme Court for granting relaxation in respect of the qualification of the members of the committee contending that the State would require to constitute several committees and it would be difficult to invest the functions of scrutiny and verification of caste certificate to an officer higher in rank than that of a director. The Apex court in the matter of Madhuri Patil (II) laid down that the Additional Commissioner (Revenue) should be the chairman of the Committee. So far as the State of Goa is concerned, since there is no legislation governing the field, until such legislation is framed, the directives issued by the Supreme court in the matter of Madhuri Patil (supra) hold the field and the committee shall have to be constituted in accordance with directive no. 4 in paragraph no. 13 of the judgment.

8. In our view, the directives issued in the matter of Madhuri Patil (supra) shall have to be observed until the legislation governing the field is framed. In this context reference would be necessary to the judgment of the Supreme Court in the matter of Dayaram Vs. Sudhir Batham And others reported in **(2012) 1 Supreme Court Cases 333**. One of the questions posed for consideration before the Supreme court was whether directives 1

to 15 in Madhuri Patil's case are impermissible being legislative in nature. While answering the question, the Supreme Court has observed in paragraph no. 10 of the judgment thus :

10. This Court has a constitutional duty to protect the fundamental rights of Indian citizens. Whenever this Court found that the socio-economic rights of citizens required to be enforced, but there was a vacuum on account of the absence of any law to protect and enforce such rights, this Court has invariably stepped in and evolved new mechanisms to protect and enforce such rights, to do complete justice. This has been done by re-fashioning remedies beyond those traditionally available under writ jurisdiction by issuing appropriate directions or guidelines to protect the fundamental rights and make them meaningful.

In paragraph no. 22 of the judgment it is observed that directives 1 to 15 issued in exercise of powers 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 secure the benefits of reservation and the bogus candidates were kept out. By issuing such directions, Supreme Court was not taking away the functions of the legislature but merely filling up the vacuum till the legislature chooses to make an appropriate law. In this context the Supreme Court has again reiterated need to have uniform legislation prescribing appropriate guidelines and rules and also prescribing penal consequences on a person who flout the Constitution and corner the benefits reserved for real tribals/beneficiaries. In paragraph no. 8 of the judgment it is observed thus :

8. This Court in Madhuri Patil case also observed that as the aforesaid procedure by

providing for a fair and just verification, could shorten the undue delay and also prevent the avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State 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 are not defeated by unscrupulous persons.

9. Thus, there is need to have a legislation prescribing the procedure for tendering an application and issuance of caste certificate by a competent authority. There is also need to prescribe guidelines to be followed by the competent authority while issuing certificates. There is also need to prescribe a forum for tendering appeal against rejection of order of issuance of caste certificate. The procedure for verification of the caste certificate by Scrutiny Committee also shall have to be prescribed in accordance with the guidelines issued by the Supreme Court in the matter of Madhuri Patil (supra) and subsequent decisions. There is also need to provide for confiscation and cancellation of false certificate and penalties and for withdrawal of benefits secured on the basis of false caste certificate and also prescribing penal consequences for obtaining false caste certificate by furnishing false information or filing false statement or document or for committing any fraudulent act. There is also need to provide for penalty for issuing a false caste certificate. The State Governments may also in its wisdom frame rules regulating issuance of caste certificate, prescribing competent authority and procedure to be adopted while issuing caste certificate, prescribing a forum for tendering appeal against the order of

rejection of caste certificate as well as providing for constitution of Scrutiny Committee, constitution of Vigilance Cell and prescribing procedure to be followed by the Scrutiny Committee while issuing validation certificate.

10. The State of Maharashtra has already enacted 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. There are separate rules prescribing issuance of caste certificates to the persons belonging to Scheduled Tribe, Scheduled Caste, Denotified Tribes (vimukta Jatis), Other Backward Classes and Special Backward Category etc. It would thus be in conformity with the expectations of the Supreme Court in the matter of Madhuri Patil (supra) as well as Director of Tribal Welfare Vs. Laveti Giri and another reported in **(1995) 4 Supreme court Cases 32** to frame a proper legislation and prescribe rules under the said legislation. At present, it is informed that the State of Goa has issued directives regulating the procedure for issuance of caste certificate and scrutiny of certificate in consonance with the decision of the Supreme Court in the matter of Madhuri Patil (supra). However, it is noticed in the instant matter that the constitution of the Scrutiny Committee is not in adherence to the decision in the matter of Madhuri Patil (supra). There is also complaint made by the petitioner that no appropriate opportunity has been extended to lead evidence by the Scrutiny Committee.

11. In the facts and circumstances of the case, we are of the opinion that

the order issued by the Scrutiny Committee needs to be quashed and set aside and the same is accordingly quashed and set aside. We direct that the matter in respect of verification / validation of caste certificate shall be placed before the duly constituted Scrutiny Committee in observance of the directives issued by the Supreme Court in the matter of Madhuri Patil and such committee shall proceed to consider the issue and take appropriate decision as expeditiously as possible, preferably within a period of six months from today. The State Government shall also consider desirability of bringing the legislation and framing rules regulating issuance and verification of caste certificate in the light of observations made in the judgment. It is further directed that until appropriate decision by the Scrutiny Committee in the matter of verification of caste certificate of respondent no. 1, no adverse action shall be taken against him only on the ground of quashment of order of the Scrutiny Committee in the instant petition. It is hereby clarified that the decision rendered in the instant petition shall not have any effect on such of those orders issued by the Scrutiny Committee against which no challenge has been raised and as such those orders have attained finality. Rule made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

(F. M. REIS)
JUDGE

(R. M. BORDE)
JUDGE