

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 771 OF 2014

Mr. Vishal Ashok Archaya,
son of late Ashok D. Acharya,
Age 31 years, Bachelor, Indian National,
resident of House no.299,
Pandav wada, Chorao,
Tiswadi, Goa.

..... Petitioner

V e r s u s

1. STATE OF GOA,
through Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa.

2. Mr. Sanjay Kalangutkar,
Major in age, Indian National,
residing at House No.188,
Muddiwada, Chodan,
Ilhas, Goa.

3. Mr. Sapnesh Candolkar,
Major in age, Indian National,
Residing H. No. 975/1,
Belbhat, Chodan, Ilhas, Goa.

4. Mrs. Leena Kandolkar,
Major in age, Indian National,
residing H. No.190,
Muddi, Chodan, Madel,
Tiswadi, Goa.

..... Respondents

Mr. S. G. Desai, Senior Advocate with Advocate Pavithran A.
V. for the Petitioner.

Ms. P. Bhandari, Addl. Government Advocate for Respondent
no.1.

Mr. C. Padgaonkar, Advocate the Respondent no.2.

CORAM: C. V. BHADANG, J.
Reserved on: 8th June, 2016.
Pronounced on: 12th August, 2016.

JUDGMENT:

The challenge in this petition is to the judgment and order dated 2/12/2014 passed by the Administrative Tribunal at Goa in Panchayat Election Petition No.36/2012. By the impugned judgment, the Election Petition filed by the second respondent has been allowed and the election of the petitioner from ward no.5 of Chodan-Madel village panchayat for the year 2012-2017 is declared void.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the election to the Gram Panchayat Chodan Madel were held on 16/5/2012 in which the petitioner and the respondent nos.2 to 4 were the contesting candidates from ward no.5 which was reserved for a candidate belonging to SC/ST or OBC. In the said election the petitioner was declared elected. The petitioner had contested the said election on the basis of a provisional caste certificate dated

18/4/2012 which showed that the petitioner was belonging to 'Viswakarma Chari Mesta', Community. The Respondent no.2 filed the aforesaid Election petition before the Administrative Tribunal contending that the said caste certificate of the petitioner herein was a provisional certificate subject to the decision of the Caste Scrutiny Committee. It was contended that the said cast certificate was obtained by the petitioner by furnishing false information to the Talathi. It was contended that it was incumbent upon the Talathi to ascertain that the father of the petitioner had migrated to the State of Goa prior to 16/2/1968. In short, it was contended that the petitioner was not eligible to contest the election from ward no.5 on the basis of the said caste certificate.

3. The petitioner contested the petition. The adverse allegations, were denied. It was denied that the caste certificate is obtained by furnishing any false information.

4. On the basis of the rival pleadings the Administrative Tribunal framed the following issues:

- i. Whether the petitioner proves that

the election of respondent no.1 to Ward no.5 of Village Panchayat of Chodan-Madel, Tiswadi, Goa for the period 2012-2017 is void as he is not a member of reserved category/OBC?

ii. Whether the petitioner proves that he is entitled to be declared as elected from Ward no. 5 of Village Panchayat of Chodan-Madel, Tiswadi, Goa for the period 2012 to 2017.

iii. Whether the respondent proves that the petition is bad for want of cause of action?.

5. The parties led their evidence. It appears that during the pendency of the petition the Caste Scrutiny Committee by its order dated 10/6/2014 had quashed and set aside the caste certified dated 18/4/2012 issued in favour of the petitioner. The Caste Scrutiny Committee held that the father of the petitioner, who belongs to 'Achari' caste, from Karnataka State, had migrated to State of Goa after 1968 and as such, the petitioner was not entitled to social status of Other Backward Caste (OBC) in the State, merely because he had married a woman belonging to OBC category

in Goa. In that view of the matter, the Administrative Tribunal found that the issue no.1 was 'proved'. As regards issue no.2 the Tribunal has placed reliance on the decision of this Court in the case of **Sandeep Arjun Vazarkar Vs. Rajesh Madhukar Khautankar & ors.** 2012 (1) Goa. L.R. 508 (Bom) (PB) and **Vishwanatha Reddy Vs. Ponnappa Rudrappa Nadgauda and anr.** AIR 1969 SC 604. The Tribunal found that there is no evidence on record to establish that the votes cast in favour of the petitioner can be considered as invalid votes. The Administrative Tribunal also found that as it was a multi- cornered election and as such the respondent no.1 cannot be declared herein as elected. In such circumstances, the election petition was allowed declaring the election of the petitioner herein from ward no.5 as void. Feeling aggrieved, the petitioner is before this court.

6. This Court had issued Rule on 4/3/2015 when the interim relief was refused.

7. The petitioner sought amendment of the petition in view of two subsequent events, namely, the decision of this

Court in W. P. No.464/2014 (Mr. Vishal Ashok Acharya Vs. Scrutiny Committee for Verification of caste Certificate and anr.) dated 23/12/2014 and the decision in the case of **Zacarias Mendes s/o Lucio Mendes Vs. Milton Olumpia Marques & Ors.** 2015 (4) ALL MR 665. By an order dated 21/3/2016 the amendment was allowed. I will revert back to the nature of these subsequent events and the nature of the amendments a little later.

8. The petitioner filed Civil application no.59/2016 for grant of stay of the impugned order on the basis of the subsequent events.

9. In view of the fact that the interim relief was refused earlier and the petitioner had placed reliance on certain subsequent events, the petition was taken up for hearing and final disposal, with consent of the parties.

10. I have heard Shri Desai, the learned Senior Counsel for the petitioner and Shri Padgaonkar, the learned counsel appearing for the contesting respondent no.2. I have

also heard the learned Additional Government Advocate for respondent no.1. There is no appearance on behalf of the other respondents.

11. It is submitted by Shri Desai, the learned Senior Counsel for the petitioner that this Court in the case of Zacarias Mendes (supra) has held that that the Constitution of the Scrutiny Committee is itself invalid as the same is not constituted in accordance with the decision of the Supreme Court in the case of **Madhuri Patil Vs. Addl. Commissioner, Tribal Development and others** (1995) (2) Bom. C.R. 690. It is further submitted that the Division Bench of this Court in Writ Petition No.464/2014 by judgment and order dated 23/12/2014 has set aside the order of the Scrutiny Committee, by which the caste claim of the petitioner was invalidated and the matter is sent back to the Scrutiny Committee. The learned Senior Counsel points out that the impugned judgment of the Administrative Tribunal which is exclusively based on the decision of the Scrutiny Committee, will have to be set aside.

12. On the contrary, it is submitted by the learned counsel for the respondent no.2 that merely because the order of the caste scrutiny committee is set aside, would not be sufficient to set aside the order passed by the Administrative Tribunal. The learned counsel points out that the matter has been sent back to the Scrutiny Committee and is still sub judice before it and there is no presumption that the caste certificate is valid. The learned counsel submitted that the invalidation of the caste certificate has the effect of nullifying nomination of the petitioner which goes to the root of the matter. The learned counsel pointed out, certain provisions of the Goa Panchayat Raj Act 1994 (Act for short) in order to urge that a candidate is required to produce not only the caste certificate but also the certificate issued by the Scrutiny Committee, validating such caste certificate, at the time of nomination. On behalf of the respondent no.2, Reliance is placed on the decision of this Court in the case of **Sujit Vasant Patil Vs. State of Maharashtra and Ors.** (W.P. No.6144 of 2002) dated 6/8/2004 and the decision of this Court in **Sandip Arjun Vazarkar Vs. Scrutiny Committee, through its**

Chairman, Deputy Collector and Sub-Divisional Magistrate etc. for Verification of Caste Certificate through its Chairman. (W. P. No.778/2008) dated 15/6/2009. Reliance is also placed on the decision of the Karnataka High Court in the case of **G.P. Srinivas Vs. K. Halappa and Ors.** dated 27/8/2003 (WP Nos. 30354 and 37758/2000 and 6759 and 7221/2002). The learned counsel submits that the fact that the order of Scrutiny Committee has been set aside would not be sufficient for the petitioner to get the order of the Administrative Tribunal set aside.

13. I have carefully considered the rival circumstances and the submissions made. The material facts are not in dispute. It can thus be seen that the seat in ward no.5 from which the petitioner got elected was reserved for a candidate belonging to OBC category. The petitioner had contested the said election on the strength of a caste certificate dated 18/4/2012 issued by the Dy. Collector. The second respondent challenged the election of the petitioner on the ground that the said caste certificate was obtained by making certain false representation. It was contended that the

petitioner cannot claim to belong to OBC category, as his father migrated to Goa after 29/3/1971. It appears that during the pendency of the election petition the Caste Scrutiny Committee by a judgment and order dated 10/6/2014 set aside the caste certificate. A perusal of the impugned judgment of the Administrative Tribunal would clearly show that in so far as the issue no.1 is concerned, the Administrative Tribunal has solely relied on the judgment of the Caste Scrutiny Committee. It would be worthwhile to reproduce the relevant observations in para 4 of the impugned judgment of the Administrative Tribunal thus:

"4. Considered arguments of the learned Advocates for both the parties and perused the records. As regards the first issue, though the parties have relied on various decisions, I do not find it necessary at this stage to consider the same. The reason being that the Scrutiny Committee of Caste Certificates vide its order dated 10/6/2014 has quashed and set aside the caste certificate bearing No.21/CERT/OBC/2012/323 dated 18/4/2012 issued by the Dy. Collector to the Respondent herein. It has been observed in this judgment and order that the father of the Respondent

who belongs to backward Achari caste of Karnataka state and having migrated to the State of Goa after 1968 was not entitled to social status of Other Backward Classes in the State of Goa merely because he married a woman belonging to Other Backward Classes of Goa. It has been specifically held that the respondent is not entitled to claim that he belongs to OBC in the State of Goa. Therefore the said judgment has put the first issue to rest. The reason is that he said seat for ward no.5 was reserved for OBC category and the respondent no.1 file nomination based on the provisional caste certificate mentioned above. He was also elected from the said ward. Since the said caste itself has been quashed, it has paved the way of the petitioner in proving issue no.1."

14. It can thus be seen that the Administrative Tribunal has solely relied upon the decision of the Caste Scrutiny Committee in holding issue no.1 to be proved. It is a matter of record that the order passed by the Scrutiny Committee has been set aside by this Court vide judgment and order dated 23/12/2014 in Writ Petition no.464/2014. This Court

has found that certain relevant circumstances ought to have been considered by the Scrutiny Committee. The following observations in para 12 of the judgment may be extracted with profit.

12. In the instant matter also the petitioner claims that by virtue of he being son of a father, who belongs to cast recognized as backward in the State of Karnataka and has migrated to the State of Goa and the caste of his father 'Acharya/Achari' is not recognized as 'OBC' in State of Goa and that his father having got married with his mother, who admittedly belongs to 'other backward' community has suffered deprivation, indignities, humiliate and handicaps like any other member of the backward community. The father of the petitioner died while he was of tender age of 13 years and he was brought up by his mother. These circumstances ought to have been considered by the Scrutiny Committee and the caste certificate issued in his favour ought to have been validated. This aspect of the matter has not been dealt with by the Scrutiny

Committee in its proper perspective. We are of the view that the petitioner needs to be extended an opportunity to lead proper evidence before the Scrutiny Committee and put forth his contentions to support his claim in consonance with the judgment in the matter of **Rameshbhai Dabhai Naika** cited supra. The Scrutiny Committee in our view has erroneously brushed aside the contentions raised by the petitioner based upon the judgment in the matter of **Rameshbhai Dabhai Naika** (supra). The Scrutiny Committee, in our view, needs to reconsider the matter. The evidence placed on record by the petitioner needs to be appreciated in the light of observations made by us in this judgment. The petitioner also shall be extended an opportunity to lead further evidence, if deemed necessary. The respondent no.2, who has lodged an objection shall also be extended an opportunity of hearing by Scrutiny Committee. Judgment and order passed by the Scrutiny Committee on 10/06/2014 thus deserves to be quashed

and set aside and the same is accordingly quashed and set aside. The matter stands remitted back to the Scrutiny Committee for disposal in accordance with law and in the light of observations made in this judgment. The Scrutiny Committee shall permit the petitioner to lead further evidence in the matter and tender further documents in support of his claim. The respondent no.2 shall also be extended an opportunity of hearing by Scrutiny Committee. The Scrutiny Committee shall after observing the procedure prescribed in that behalf shall decide the matter afresh as expeditiously as possible preferably within a period of 6 months from the date of the appearance of the petitioner before the Scrutiny Committee. The petitioner as well as respondent no.2 shall appear before the Scrutiny Committee on 5/01/2015 and, as such, no separate notice requiring their presence before the Scrutiny Committee shall be necessary. The parties shall have liberty to raise all contentions before Scrutiny Committee."

15. It can thus be seen that the very basis of the order passed by the Administrative Tribunal namely the order of the Scrutiny Committee has been set aside by this Court. Thus the submission on behalf of the respondent no.2 that setting aside the order of the scrutiny committee will have no effect on the impugned judgment of Administrative Tribunal cannot be accepted.

16. In the case of **Sujit Vasant Patil (supra)** the following issues were referred to a larger bench:

(i) Whether in the matter of scrutiny and verification of the case certificate and/or the caste claims of candidates elected to the Local Self-Government, the procedure laid down by the Apex Court in Kum. Madhuri Patil's case so also the procedure prescribed by the Resolution dated 1st January 1998, 19th April 1999 and 25th January 2000 could have any application even before coming in force of Act No.XXIII of 2011 for the reason that Local Self-Government Acts were holding filed and

more so in view of the bar contained in Article 243-O and 243-ZG of the Constitution of India and other statutory provisions contained in the Local Self-Government Act providing for a remedy of an Election petition?

(ii) Whether the provisions contained in Act No.XXIII of 2001 are repugnant to the scheme flowing from the provisions contained in Amending Act No.XI of 2002 and XXIV of 2000 and the other relevant provisions contained in parent Local Self-Government Act?.

(iii) Whether the provisions contained in Act No.XXIII of 2011 are in conflict with the constitutional mandate contained in Article 243-O(b) and 243-ZG(b) of the Constitution of India?

The issues arose in the context of the procedure laid down by the Apex Court in the case of **Madhuri Patil** (supra) and the provisions of Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes, Nomadic Tribes, Other Backward Classes or Scrutiny Caste Regulations of Caste Act 2001. On behalf of the petitioner reliance is placed on para

12(A) and part of para 12(B) which read thus :

12A. Thus, the scheme of the various Local Self-Government Act in relation to the filing of the nomination papers and their scrutiny and the scheme of the Maharashtra Act No. XXIII of 2001 appears to be that in case a person desires to contest an election to a reserved seat, it is obligatory on his part to get a caste certificate from the competent authority and then immediately apply to the Scrutiny Committee to get a validity certificate. Therefore, normally as the candidate is required to make an application to the scrutiny committee as soon as he receives a caste certificate from the competent authority, with the result that in many cases his application before the scrutiny committee for validity certificate would be pending when his nomination paper is accepted on the basis of the caste certificate. If his nomination paper is accepted on the basis of caste certificate issued by the competent authority and as the caste certificate itself is valid subject to the grant of

validity certificate, obviously acceptance of his nomination paper as valid will also be subject to the grant of validity certificate by the scrutiny committee. Therefore, once the scrutiny committee refuses to issue a validity certificate the nomination cannot survive and if the nomination cannot survive, election cannot survive. Therefore, cancellation of the election of such a candidate is a natural consequence of his caste certificate being found invalid.

12B. With the result, there is no caste certificate filed at scrutiny of the nomination papers and therefore the nomination papers itself becomes infirm and incomplete, and therefore, the returned candidate loses qualification to contest the seat and therefore he has to vacate his seat. In our opinion, in view of this scheme of the Act, even in the absence of Sub-section (4) of [Section 10](#), the consequences in law of the Scrutiny Committee refusing to issue valid caste certificate would be vacation of seat by the elected candidate.

16. It can thus be seen that the once the scrutiny committee refuses to issue the validity certificate the nomination cannot survive and if the nomination cannot survive the election cannot survive.

17. In the present case the order of the scrutiny committee invalidating the caste certificate has been set aside and thus it cannot be said that at present, the caste certificate of the petitioner stands invalidated. Thus the Full Bench decision in the case **Sujit Vasant Patil** cannot come to the aid of the petitioner at this stage.

18. In the case of **Sandip Vazarkar**, the challenge was to the order passed by the Scrutiny Committee invalidating the caste claim of the petitioner. In that case, the respondent no.4 had filed a complaint raising objections against the caste certificate of the petitioner and its verification. The inquiry before the SDO and the Dy. Collector and the Election Petition before the Administrative Tribunal were stated to be pending.

Although this Court had set aside the order of the Administrative Tribunal and remanded the matter back, considering the peculiar circumstances and the attitude of the petitioner, no interim orders were passed in order to enable him to continue as pancha. The circumstances which would make the said case distinguishable can be found in para 67 of the judgment. It can thus be seen that in the said case, in the first instance, the Election petition was pending and considering the attitude of the petitioner no interim relief was granted though the order of the caste scrutiny was set aside. In the present case, there are no such circumstances. Even in the case of **G.P. Shrinivas**, there was an order of the Caste Scrutiny Committee invalidating the caste claim. In the present case, the said order is set aside and the matter is pending before the Caste Scrutiny. In such circumstances, in my considered view, the matter will have to be remanded back to the Administrative Tribunal for deciding it afresh in accordance with law. Hence the following order:

ORDER:

- (i) The petition is partly allowed.
- (ii) The impugned judgment and order dated 2/12/2014 is

hereby set aside. Panchayat Election petition no.36/2012 is restored to the file of the learned Administrative Tribunal, for disposal according to law.

- (iii) Parties to appear before the Administrative Tribunal on 1/9/2016.
- (iv) The Administrative Tribunal shall decide the petition as expeditiously as possible and preferably within a period of four months from the date of the first appearance of the parties.
- (v) Rival contentions of the parties are left open.
- (vi) Rule is partly made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

AP/-