

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 556 OF 2016**

Mrs. Krupali Naik,
d/o Shri N. Banerjee Naik,
major in age,
r/o H. No.1110/A, Peddem,
Loliem, Cancona Goa.

.. Petitioner

Versus

1. State of Goa,
through the Chief Secretary,
Secretariat,
Porvorim Goa
2. Directorate of Social Welfare,
Through its Director,
having its office at
Panaji Goa.
3. The Scrutiny Committee
for Verification for Caste Certificate,
Through its Chairman,
having its office at
Department of Social Welfare,
Government of Goa,
Secretariat,
Porvorim Goa.
4. Deputy Collector and Sub Divisional Officer,
Canacona,
having its office at
Canacona Goa

5. Superintendent of Police,
South Goa District,
Margao Goa
6. Shri Damodar K. K. Ghanekar,
Major of age,
'YEVKAR' Campal,
Panaji Goa.

... Respondents

Mr. Nitin Sardessai, Senior Advocate with Ms. Neha Anil Shirodkar, Advocate for the petitioner.

Ms. A. Razaq, Government Advocate for the respondent nos. 1, 2, 4 & 5.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the respondent no. 6.

**Coram:- F. M. REIS &
PRITHVIRAJ K. CHAVAN, JJ.**

Date:- 14th June, 2017

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. N. Sardesai, learned Senior Counsel appearing for the petitioner, Ms. A. Razaq, learned Government Advocate appearing for the respondent nos. 1, 2, 4 and 5 and Mr. A. D. Bhobe, learned counsel appearing for the respondent no.6.

2. The challenge in the above petition is to the order dated 03.06.2016 passed by the Scrutiny Committee - respondent no.3 whereby a Caste Certificate produced by the petitioner came to be invalidated on the ground that the petitioner has failed to establish her claim to be "Naik Bhandari".

3. Mr. N. Sardessai, learned Senior Counsel appearing for the petitioner points out that the petitioner has taken a job of a teacher in the University of Goa for teaching Konkani language wherein she was selected on the reserved post in OBC category. The learned Senior Counsel further submits that the application for such post was accompanied by a certificate issued by the Gomantak Bhandari Samaj which *inter alia* shows that the petitioner belongs to "Naik Bhandari Caste". The learned Senior Counsel further submits that thereafter the respondent no.6 raised the dispute that the petitioner did not belong to the said caste and as such the certificate of the petitioner was submitted for verification before the respondent no.3. The learned Senior Counsel further pointed out that before the Scrutiny Committee

the petitioner produced the relevant documents in support of her case and thereafter the respondent no.3 directed that the report be submitted by the Vigilance Cell with regard to the caste of the petitioner. The learned Senior Counsel further pointed out that the Vigilance Cell after enquiry submitted a report confirming that the petitioner belongs to “Naik Bhandari Caste”. It is further pointed out that thereafter the respondent no.3 after hearing the parties has rejected the report of the Vigilance Cell and came to the conclusion that as the petitioner had not produced any evidence on record to substantiate her claim that she belongs to the “Naik Bhandari Caste”, the respondent no.3 invalidated the caste certificate in favour of the petitioner. The learned Senior Counsel further submits that in the meanwhile, the petitioner found a writing issued by the Escrivao of the Comunidade *inter alia* stating that the grandfather of the petitioner Natkarjun Naik was the share holder of the Comunidade of Cancona wherein the records reveal that he belongs to “Naik Bhandari Caste”. It is further pointed out that the birth certificate of the petitioner produced on record clearly shows the name of the grandfather of

the petitioner as Natkarjun Naik. The learned Senior Counsel further pointed out that though the father of the petitioner was from Kerala, nevertheless, her parents are from Goa and the father of the petitioner migrated to Goa somewhere in the year 1965 and had been living in Goa since then. The learned Senior Counsel further pointed out that apart from that, the mother of the petitioner is also from Goa and according to him the relative of the mother of the petitioner had also obtained a certificate to the effect that they belong to Pagi community which is also the OBC category. The learned Senior Counsel further pointed out that all these documents were in fact produced before the respondent no.3, the certificate issued to the relative of the mother of the petitioner to substantiate the claim of the petitioner that she belongs to the OBC category. The learned Senior Counsel in support of his submissions has relied upon the judgment of the Apex Court reported in **AIR 1995 SC 94** in the case of **Kumari Madhuri Patil and another V/s Addl. Commissioner, Tribal Development and others**, and gave more emphasis to the observations at paras 4 and 5 of the said judgment. The learned

Senior Counsel as such points out that the impugned order deserves to be quashed and set aside.

4. On the other hand, Ms. A. Razaq, learned Government Advocate appearing for the respondent nos. 1, 2, 4 and 5 has pointed out that there is no evidence on record to substantiate the claim of the petitioner that she belongs to the OBC category. The learned counsel further pointed out that the alleged document claimed to be from the Comunidade is not an authentic document as according to her there is nothing on record to show that such document was issued by the Comunidade in exercise of powers under the Code of Comunidade. The learned counsel further pointed out that the petitioner had claimed that she would produce the certified copy from the relevant records of the Comunidade which she failed to produce and as such according to the learned counsel the question of relying upon such document would not at all arise. The learned counsel has pointed out that as per the instructions received no such certificate was ever issued by the concerned Comunidade. The

learned counsel further submits that the father of the petitioner was from Kerala and as such according to the learned counsel the question of claiming to be from OBC category in the State of Goa would not at all arise. The learned counsel thereafter has taken us through the impugned order passed by the respondent no.3 to point out that there is no material on record to substantiate the claim that she was entitled to the reserved category post. The learned counsel further submits that as there is no reliable evidence produced by the petitioner to substantiate her claim, there is no question of any interference by this Court in the impugned order passed by the respondent no.3.

5. Mr. A. D. Bhobe, learned counsel appearing for the respondent no.6 has pointed out that no cogent evidence has been produced by the petitioner to substantiate her claim that she belongs to the OBC category, and as such there is no reason for this Court to interfere in the impugned order passed by the respondent no.3. The learned counsel thereafter has taken us through the averments made in the petition to point out that

though the petitioner claim that she would produce the certified copy from the Comunidade records, no such attempt was made by the petitioner to produce such document. The learned counsel further pointed out that as such based on such doubtful document produced by the petitioner, the question of granting any relief to the petitioner in the present Writ Petition under Article 226 of the Constitution of India would not at all be justified. It is further submitted that the contention of the petitioner that the petitioner also belongs to the OBC category through her mother was not even raised or contended before the Scrutiny Committee. The learned counsel further pointed out that as there was no material produced by the petitioner to substantiate her claim that she belongs to the OBC category, there is no case made out for any interference in the impugned order by this Court in a petition under Articles 226 and 227 of the Constitution of India. The learned counsel further submits that the petitioner has illegally availed of the benefits of taking a posting on the basis that she was belonging to the reserved category and as such the impugned order passed by the Scrutiny Committee clearly shows that the

petitioner is not entitled to claim any posting reserved for the OBC category. The learned counsel further pointed out that the caste certificate issued by the Samaj has been revoked during the pendency of the proceedings before the respondent no.3. The learned counsel as such points out that the petition be accordingly rejected.

6. We have considered the submissions of the learned counsel and we have also gone through the records. The Apex Court in the said judgment in the case of **Madhuri Patil** (supra) has clearly observed at paras 4 and 5 thus :

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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 concerned department, (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 also should 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 concerned castes or tribes or tribal communities etc.”

7. Taking note of the said observations in case the respondent no.3 had come to the conclusion that the report submitted by the Vigilance Cell which was otherwise favourable to the petitioner deserves to be rejected, it was incumbent upon the respondent no.3 to direct a fresh vigilance report to be

submitted by the concerned cell. The observations of the Apex Court in the case of ***Madhuri Patil*** (supra) clearly put an obligation on such committee to take all such measures to ascertain the veracity of the caste certificate which is sought to be validated in the present case, further we find that the respondent no.3 without examining the other material which is stated to be produced on record has proceeded to invalidate the caste certificate which was issued in favour of the petitioner. Mr. N. Sardesai, learned Senior Counsel appearing for the petitioner has pointed out that apart from the claim that the petitioner belongs to the OBC category through her father it was also the contention of the petitioner that she belongs to the OBC category on the basis that her mother belongs to Pagi caste. It is also pointed out that in fact the documents to that effect issued in favour of the relative of the mother were also produced before the respondent no.3. On perusal of the impugned order, we find that there is no reference to any such documents stated to have been produced by the petitioner. Apart from that, on perusal of the birth certificate of the petitioner, the name of the grandfather is

shown as Natkarjun Naik. Though the authenticity of the document placed on record at page 119 of the petition is disputed by the learned counsel appearing for the respondents, the veracity of such document would have to be considered by the Scrutiny Committee on its own merits while examining the claim of the petitioner that she belongs to the OBC category. Considering the view we propose to take in the present petition, we shall not proceed to examine the correctness or otherwise of such certificate which the respondent no.3 shall examine on its own merits after hearing the parties in accordance with law.

8. Considering that the directions issued in the said judgment in the case of **Madhuri Patil** (supra) have not been duly complied with by the respondent no.3 while proceeding to invalidate the caste certificate issued in favour of the petitioner and for the aforesaid reasons, we find that the impugned order passed by the respondent no.3 dated 03.06.2016 cannot be sustained and deserves to be quashed and set aside. The respondent no.3 shall accordingly proceed to reexamine the caste

certificate issued in favour of the petitioner on its own merits in the light of the observations made by the Apex Court in the said judgment after hearing all the concerned parties in accordance with law.

9. In view of the above, we pass the following :

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- (i) The impugned order dated 03.06.2016 passed by the respondent no.3 is quashed and set aside.
- (ii) The respondent no.3 is accordingly directed to decide the matter afresh in the light of the observations made herein above after hearing all the concerned parties in accordance with law.
- (iii) Rule is made absolute in the above terms.
- (iv) The petition stands disposed of accordingly.

PRITHVIRAJ K. CHAVAN, J.

F. M. REIS, J.

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