

Andreza

REPORTABLE

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 750 OF 2017

PUNAM NAVALO ZORE,

House No 119, Nagargao, Dhawe-Tar Valpoi,
Sattari, Goa.

...Petitioner

~VERSUS~

- 1. STATE OF GOA**
Through the Chief Secretary, Secretariat,
Porvorim, Goa.
- 2. THE DEAN**
Goa Medical College and Hospital,
Bambolim, Goa.
- 3. DIRECTOR**
Directorate of Social Welfare, Panaji, Goa.
- 4. DIRECTOR**
Directorate of Technical Education,
Porvorim, Goa.
- 5. SCRUTINY COMMITTEE FOR
VERIFICATION OF CASTE
CERTIFICATE**
Verification of Caste Certificate, Porvorim,
Goa.
- 6. OFFICE OF THE DEPUTY
COLLECTOR AND SDO**
Salcete, Margao, Goa.
- 7. MEDICAL COUNCIL OF INDIA,**
Through its President, having office at
pocket-14, Sector-8, Dwarka Phase,
New Delhi 110077.

8. NEHA NAGESH GOULI

Resident of House no. 5/A

Cavorim, Chandor, Salcete, Goa.

...Respondents

APPEARANCES

FOR THE PETITIONER

Mr SD Lotlikar, Senior

Advocate, with Mr C

Padgaonkar

**FOR RESPONDENTS NOS
1 TO 4 AND 6**

Ms Purna Bhandari, Addl.

Government Advocate

FOR RESPONDENT NO 8

Mr D Pangam, Advocate

**Mr. Pradeep Naik, Dean, Goa
Medical College, present.**

**CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ**

DATED: 13th September 2017

ORAL JUDGMENT (per GS Patel J):

1. Rule, returnable forthwith. Respondent nos. 1 to 7 waive service. By consent the Petition is taken up for hearing and final disposal.

2. This is one of those exceptional, and exceptionally unfortunate, that bring to the fore the problems faced by persons from the very communities sought to be protected by reservations or affirmative action policies when confronted with the inflexibility of educational admissions processes.

3. The Petitioner, Punam Zore (“**Punam**”) belongs to the Dhangar Community. This is recognised as an Other Backward Class by the Ministry of Welfare’s Resolutions dated 10th September 1993 and 6th December 1996, and Resolutions of 27th October 1999 and 6th December 1999 of the Ministry of Social Justice and Empowerment of the Government of India. There has been a long-pending demand by members of the Dhangar Community for a declaration that the community is in fact a Scheduled Tribe: Dhangars are fundamentally nomads who live on the outskirts of settlements. They are cattle herders. Other communities with greater advantages have over the years been included as recognised “Other Backward Classes”. The result is, the petition says, that the Dhangars have become marginalised even in the marginalised OBC Category. Within that categorisation as OBC, Dhangars now face fierce competition from other communities and classes in the annual scramble for educational admissions.

4. Punam is one of five daughters. Her father is an agricultural daily wage labourer. He earns no more than Rs.3000/- a month. The family is from Village in Dave-Tar Valpoi. This is one of the remotest villages in Goa, one that has been barely been brushed by any sort of development since 1961. Punam’s family falls below the poverty line. It is so classified.

5. In the face of these odds that seem to us overwhelming, Punam did reasonably well in the qualifying XIIth standard science examination and, later, in the Common Entrance Test (“**CET**”) conducted by the State of Goa for preparing a merit list to professional degree courses. Her placement for admission to the

MBBS degree course gave her finally, a realistic chance of admission against the reservations for OBC. The petition says the entire community was uplifted by the success of this one young lady; the more so because she comes from such a remote area in Goa. There is an Association, the Goa Dhangar Samaj Seva Sangh Sattari, that was determined to help her.

6. Punam applied for admission to the MBBS course in 2016-2017 — the year is important as we shall presently see — in the reservation for OBC. She was short-listed at serial no.38 in the merit list. The Goa Medical College, for that year had a total of 34 seats under reservation for the OBC category. Several students in the merit list from serial nos.1 to 34 opted for other courses. Other students obtained admission in the general category (i.e. without availing of the reservation) and thus the last student on the merit list of OBC candidates was one Soniya Sanjay Dongrekar. Her name was at serial no. 37, i.e., immediately above Punam, in the merit list. Soniya was not from the same community. On admission, Punam would have been the only lady student from the entire Dhangar community ever to have obtained admission to a medical college.

7. There is no complaint in this Petition against Soniya. What is stated is that the Goa Dhangar Association found that there was a student named Neha Naguesh Gouli (Respondent no.8) placed at serial no. 21 in the merit list who had staked a claim to admission in the reserved OBC category. This claim, it is said, was false and on the basis of a fake or illegal birth certificate. As it happens, we are not required to examine the validity of this certificate in light of what transpired subsequently.

8. The Petitioner and the Association were seeking redress between May and July 2017, the details of which are presently unimportant. It is sufficient to say that the information obtained showed that Respondent no.8 also claimed to be a member of the Dhangar Community but her father's caste certificate showed him to be from the Gawda Tribe, a Scheduled Tribe under the Scheduled Castes and Scheduled Tribes (Amendment) Act, 2002. There were then proceedings before the Goa Human Rights Commission, the State Commission for Backward Classes and the Caste Scrutiny Committee. A vigilance report was called for and these proceedings carried on through the end of July 2017.

9. The reason we will not dwell further on this aspect of the matter is simply because it is now an admitted position that Respondent no.8 has completely abandoned her admission. She discontinued attending lectures from 1st March 2017. On behalf of Respondent nos. 1, 2, 3, 4 and 6, Ms Bandhari states that there is in fact a resignation received from Respondent no.8 that has been forwarded to Government of Goa, through the Under Secretary Health. There is a reference to Respondent no.8 having demitted her seat in paragraph 16 of the Petition.

10. Punam now finds herself in a singularly difficult position because the Goa CET of 2016-17 is now defunct and there is in its place the National Eligibility Entrance Test ("NEET") with effect from 2017.

11. Having regard to this state of affairs, about one thing there is simply no doubt: that with Soniya Dongrekar being at serial no. 37, and had Neha Gouli, Respondent no.8, not demitted her seat and being validly continued, Punam would have missed gaining admission, albeit by but one ranking in the merit list. We could not in that situation have intervened in exercise of our powers under Article 226 of the Constitution of India and having regard to the extremely well settled law on the subject including the decisions of the Supreme Court in *Medical Council of India v Madhu Sing and ors.*¹ as also the recent decision of the Supreme Court in *S. Krishma Sradha v State of Andhra Pradesh and ors.*²

12. The situation tilts because of Respondent no.8's demitting her seat and sending in her resignation. This means that there was available in the academic year 2016-2017 one seat which was available to Punam. Neha's resignation is of 1st August 2017 but obviously it relates to her admission in the MBBS course in the academic year 2016-2017. It cannot conceivably be otherwise.

13. We believe that Mr. Lotlikar is completely correct therefore in saying that he seeks no creation of an additional post for the current year for the MBBS course. He says only that the seat that was vacated is one that should automatically be available to Punam. It would be heaping in justice on inequity if, given her background, and given that there is a vacancy Punam was to be denied it on the ground that the seat had "lapsed". We are told this. We are told this in so many words. We find it disturbing, and that is putting it mildly.

1 2002 (2) SCC 258.

2 2017 (4) SCC 516.

It shocks our conscience. Nearly seven decades after Independence we find it unacceptable that a young lady from a community that has been historically disadvantaged should now be told that for no fault of her own the educational dreams that she pursued and laboured for are nothing but dust and that she is condemned now to remain in that disadvantaged position, for she has neither the means nor the resources to pursue any alternative. This is the stark reality that faces us and we do not find it in ourselves to refuse the Petitioner relief. That requires of us perhaps a hardness of heart and a calculating coldness in such matters that we wholly and utterly lack. If that be a failing on our part, so be it. We do not believe that the interests of the medical institution are in any way impaired or that a case turns so narrowly on such peculiar facts can form any sort of precedent that could conceivably harm the interests of the Medical Council of India or the Goa Medical College such as would open the floodgates. Even if more petitions are attempted, we are sure to find a way to stem that flood and resist that tide. But we will not allow injustice to sweep away this young lady. The facts are such that they speak for themselves and require no great elucidation. Indeed in fairness it is pointed out by all concerned that there is on merits no doubt that Punam is in fact entitled to the seat.

14. Mr. Pangam draws our attention to the decision of the Supreme Court in *Chandigarh Administration & anr v Jasmine Kaur & Ors.*,³ though he does caution that this has subsequently been referred to a larger Bench, to say that as observed by the Supreme Court where a candidate is not selected during a particular academic year, the candidate should not be victimised if not at fault and the

³ (2014) 10 SCC 521.

Court can consider an appropriate compensation to offset the loss. We would read the word compensation to include a real compensation in terms of being able to afford a Petitioner such as Punam a chance at what is literally the opportunity of a lifetime, and an opportunity to make for herself and others around her a proper life in the way we understand it. The Supreme Court also said that all the principles that it culled out are necessarily case specific.

15. It is for this reason that we say this case is an exception and is in no way a rule. It can never serve as a precedent. We are laying down no law. We are adjusting an equity in the exercise of our jurisdiction under Article 226 of the Constitution of India. We do however recognise the limits placed on the Medical Council of India and we seek from them no concession. We note that admissions for the current year are already complete. We will not accept the statement of lapsing of the previous seat because that, as we said, seems to us to result in the complete devastation of Punam Zore's educational and medical aspirations. That cannot possibly be either the mandate or objective of the Medical Council of India.

16. We are mindful of the fact that what faces Punam Zore now is an even greater struggle. She will have to make up for lost time. We will allow her to do so and afford her the opportunity and wish her well in her journey in the hope that if she does succeed, we will be content in having played some small role in that success.

17. We will make the Petition partly absolute in terms of prayer clause(a). We will not grant the Petitioner relief in terms of prayer

clause(b) and we leave it to the authorities to pursue the verification proceedings in respect of Respondent no.8 on their own.

18. The Petition is disposed on these terms with no orders as to costs.

19. Before parting, we must express our gratitude to all appearing Counsel including Mr Lotlikar, Mr Pangam and Ms. Bandhari for the restraint with which they have each conducted their respective cases and, most of all, for their largeness of heart and breadth of mind when addressing a troubling issue.

NUTAN D. SARDESSAI J.

G. S. PATEL J.