

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 20 OF 2019

Peter Rock Samson Gonsalves,
son of Jose Maria Antonio Braz
Gonsalves, aged 46 years, Indian
National, resident of House No.220
Pereira Ward, Calata Village,
Salcete, Goa.

..... Petitioner.

Versus.

1. Jose Manuel Fernandes,
of major age, Indian National,
resident of House No.273,
Near Railway Station,
Majorda, Salcete, Goa.

2. Scrutiny Committee for
Verification of Caste Certificate,
having office at Panaji, Goa.

.... Respondents.

Mr. Devidas Pangam, Advocate for the Petitioner.

Ms. A. Kamat, Advocate for Respondent No.1.

Mr. Amogh Prabhudessai, Additional Govt. Advocate for Respondent No.2.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 16 January 2019.

ORAL JUDGMENT: (Per M.S. Sonak, J.)

Heard Mr. D. Pangam for the Petitioner, Ms. A. Kamat for Respondent No.1 and Mr. A. Prabhudessai for Respondent No.2.

2. Rule. With the consent of and at the request of the learned Counsel for the parties, Rule is made returnable forthwith.

3. At the outset, Ms. A. Kamat submitted that this Petition pertains to the assignment of the learned Single Judge, since the impugned order has been made by a quasi-judicial Authority. In response, Mr. Pangam, the learned Counsel for the Petitioner points out that the impugned order is not an order made under a statute referred to in Chapter XVII, Rule 18 of the Bombay High Court Appellate Side Rules, as applicable to the State of Goa. He submits that even at the Principal Seat at Mumbai, such matters are taken up for consideration before the Division Bench.

4. In the State of Goa, there is no statute, in terms of which the Caste Scrutiny Committee has been constituted for verification of the caste certificates. This exercise is undertaken in terms of the ruling of the Hon'ble Apex Court in the case of *Kumari Madhuri Patil and anr. vs. Addl. Commissioner, Tribal Development and ors*¹.

¹ (1994) 6 SCC 241,

At the principal seat at Mumbai as well, these matters are taken up before the Division Bench. The ruling relied upon by the Petitioner in the case of *Sandip Arjun Vazarkar vs. Scrutiny Committee for Verification of Caste Certificate*² also indicates that the matter of this nature was taken up and disposed of by the Division Bench itself. Taking into consideration all these factors, we hold that the Petition of this nature pertains to the assignment of the Division Bench.

5. Since the reply filed on behalf of Respondent No.1 was styled as a preliminary reply, we inquired from Ms. Kamat whether Respondent No.1 desires to file any further reply in the matter. Ms. Kamat having consented to the final disposal of this Petition, stated that the reply deals with all the averments in the Petition and, therefore, there is no necessity of filing any further reply.

6. The challenge in this Petition is to the order dated 23 November 2018 made by the Caste Scrutiny Committee invalidating the Caste Certificate dated 23 May 2017 issued to the Petitioner in relation to the Petitioner's claim that he belongs to the Kharvi Caste, which is recognized as an Other Backward Class in the State of Goa.

² (2009) 111 BOMLR 2371

7. Mr. D. Pangam for the Petitioner submits that the Scrutiny Committee has failed to record any independent findings on the issue of the Petitioner's caste. He submits that the Scrutiny Committee has misread the reports of the Deputy Collector, Margao, as well as the Vigilance Cell. He submits that there is ample material on record which establishes that the Petitioner belongs to the Kharvi Caste and all this material has been overlooked by the Scrutiny Committee. He submits that the Scrutiny Committee has not recorded any reason, but has merely proceeded on the basis of misreading and misinterpretation of the reports on record. He submits that the procedure followed by the Scrutiny Committee is not at all consistent with the procedure prescribed by the Hon'ble Apex Court in the case of *Kumari Madhuri Patil* (supra). He relies on the case of *Sandip Arjun Vazarkar* (supra) to point out the procedure which is expected to be followed by the Scrutiny Committee in dealing with the claims of caste scrutiny. For all these reasons, Mr. Pangam submits that the impugned order is liable to be set aside.

8. Ms. Kamat, the learned Counsel for Respondent No.1 points out that the scope of writ jurisdiction is extremely limited and, therefore, the issue of sufficiency of evidence may not be gone into. She points out that, as long as there is some material on record in

support of the certificate that the Petitioner does not belong to Kharvi caste, this Court, in exercising its extraordinary jurisdiction would not interfere with the impugned order. She points out that in this case, there is ample material available on record to establish that the Petitioner does not belong to Kharvi caste.

9. Ms. Kamat points out that the only documentary evidence on record is the marriage certificate of the Petitioner's grandfather. She points out that this document, in categorical terms, cites the grandfather's profession as that of violinist. She submits that this entry is quite inconsistent with the case of the Petitioner that the profession of his grandfather was fisherman. She points out that the statements of witnesses who have deposed in favour of the Petitioner are mere hear-say. On the contrary, she points out that the statement of Mario Fernandes that there is no individual from the fishing/Christian Kharvi community in the village of Calata is quite specific and deserves credence. She points out that his statement was not rebutted by the Petitioner despite opportunities. For all these reasons, Ms. Kamat submits that this Petition may be dismissed.

10. Mr. Prabhudessai, learned Additional Govt. Advocate submits that the impugned order speaks for itself and, therefore, this Court may not interfere with the same.

11. The rival contentions now fall for our determination.

12. In the case of *Kumari Madhuri Patil* (supra), the Apex Court has prescribed the detailed procedure to be adopted in the matters of scrutiny of caste certificates. There are directions for constituting the Caste Scrutiny Committee, as well as Vigilance Cell to investigate the caste claims. The Vigilance Cell is to comprise of a Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector has to 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. The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or 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 in proper proforma.

13. The procedure contemplates issuance of notice to the candidate concerned where, on receipt of the report of the Village Officer it is found that the claim for social status is not genuine, or

doubtful, or spurious or falsely or wrongly claimed. In case the report is in favour of the candidate, no further action need to be taken, except where the report or the particulars given are procured or found to be false or fraudulently obtained. The Committee is expected to apply its mind to the entire material in the form of reports from the various authorities and thereafter, decide whether the caste claim is genuine, or not.

14. In the present case, the Caste Scrutiny Committee has firstly relied upon the report from the Vigilance Cell i.e. the Superintendent of Police (South). All that the Caste Scrutiny Committee has observed is that this report “*doesn't precisely throw light on the caste status of the Respondent*”.

15. The aforesaid report of the Superintendent of Police dated 24 July 2018 is placed on record. The report refers to the certificate issued by “*Niz Ramponkarancho Ekvott*” which had stated that the Petitioner belongs to Kharvi Caste. The report also refers to the police making inquiries with the office bearers of this organization and the office bearers standing by the certificate issued by them. The report also refers to the local inquiries with one Smt. Alexandrina Pereira, and Conceicao Rosario, both aged 74 years, who again stated that the Petitioner hails from fisherman community.

There is also a statement of one Prakash Gracias, aged 67 years, who also stated that the Petitioner belongs to the fisherman community.

16. The Vigilance Cell also makes reference to the reports received from the Talathi which have been placed on record by Respondent No.1 to the Petition. Perusal of the report indicates that the Talathi has himself not expressed any conclusive opinion, but has referred to the inquiries with Shri Gaspar Baptista, aged 79 years and Shri Mario Fernandes, aged 77 years. These statements are also available on record.

17. Gaspar Baptista has stated that the Petitioner belongs to the Fishing/Christian Kharvi community. However, Mario Fernandes has stated that in the village of Calata there is no individual from the fishing/Christian Kharvi community.

18. From the aforesaid material, we are satisfied that the Caste Scrutiny Committee has either not read the report of the Vigilance Cell in its entirety or in any case, not applied its mind to the report of the Vigilance Cell and the material reflected therein. In fact, we are constrained to observe that the Members of the Scrutiny Committee have failed to scrutinise the material placed before the Committee, much less apply their mind and draw their own

independent conclusion on the basis of the material placed before the Committee. The Scrutiny Committee also had a report/comments of the Deputy Collector, in which it was stated that the provisional caste certificate was issued by examining the documents etc. Even, this aspect has not at all been considered by the Scrutiny Committee. The Scrutiny Committee, on the basis of the reports, has simply concluded that the Petitioner does not belong to the Kharvi caste and on that basis invalidated the caste certificate. From the perusal of the order dated 23 November 2018, it is apparent that there was no independent application of mind by the Members of the Scrutiny Committee.

19. Ms. Kamat's contention that only documentary evidence in the form of marriage certificate of the Petitioner's grandfather indicates that the Petitioner does not belong to Kharvi caste, cannot be accepted at this stage. The effect of this document, no doubt, is required to be examined by the Caste Scrutiny Committee. The impugned order does not even indicate that the conclusion of Caste Scrutiny Committee is based on this document. Mr. Pangam for the Petitioner contends that the marriage certificate only refers to the profession of the grandfather of the Petitioner, which is different and distinct from the caste of the grandfather. Ms. Kamat, however, states that the entire evidence led on behalf of the Petitioner refers to the

profession of his ancestors as that of fisherman. She argues that if this is the real position, then, the marriage certificate also would have reflected the Petitioner's grandfather's profession as that of fisherman. In this case, if the impugned order is perused, all these aspects have not even been considered by the Scrutiny Committee.

20. Since, we propose to remand the matter to the Caste Scrutiny Committee, we do not deem it appropriate to make any observations, on merits. All that we observe is that the Caste Scrutiny Committee, in the present case, has failed to scrutinise the material before it and arrive at its independent conclusion. This is a case of non-application of mind and failure to advert to the material on record.

21. In our jurisdiction under Article 226 of the Constitution of India, it is true, as contended by Ms. Kamat, that we will not ordinarily proceed to reassess or reevaluate the material on record as long as the conclusion is backed by the material on record. Ordinarily, we would not go into the issues of sufficiency or otherwise of the material on record. However, yet another important principle in this regard is that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, is more concerned in the decision making process than the ultimate decision itself. Since

in the present case the decision making process has been a casualty, we are constrained to interfere. Besides, there is a difference between reassessment or reevaluation of the material on record, and interference with an order, on the basis that the relevant evidence has not even been looked into by the decision makers. Non-adverting to the relevant material evidence, is certainly a ground for interference.

22. For all the aforesaid reasons, and without going into the merits of the matter, we set aside the impugned order dated 23 November 2018, and remand the matter before the Caste Scrutiny Committee for verification of the Petitioner's Caste Certificate, on its own merits and, in accordance with law. Needless to add that this time, the Caste Scrutiny Committee should afford an opportunity of hearing to the parties concerned, and thereafter decide the matter on its own merits, consistent with the guidelines laid down in the case of *Kumari Madhuri Patil* (supra).

23. We make it clear that observations, if any in this order, incidentally touching the merits of the matter, need not, in any manner, influence the Caste Scrutiny Committee in deciding the matter, afresh, on its own merits and in accordance with law.

24. Therefore, all contentions of all the parties are left open,

to be agitated before the Caste Scrutiny Committee.

25. Taking into consideration that the issue involved relates to disqualification of the Petitioner, who is an elected candidate, it is only appropriate that the Caste Scrutiny Committee disposes of the matter as expeditiously as possible and, in any case, within a period of three months from today.

26. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

27. All concerned to act on the basis of authenticated copy of this Judgment and Order.

Prithviraj K. Chavan, J.

M.S. Sonak, J.