

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 6 OF 2021

PANSARI CONSULTANCY,
through its proprietor Abrar Pansari,
son of Rehman Pansari, aged 49 years,
married, business, Indian National,
having his office at 205,
2nd floor, Morya Classic,
Behind Morya Landmark II,
Opp. Infinity Mall, New Link Road,
Andheri (West), Mumbai,
Maharashtra – 400053

.... Petitioner.

VERSUS

1. STATE OF GOA,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa - 403501.

2. THE GOA STATE COMMISSION
FOR SCHEDULED CASTES
AND SCHEDULED TRIBES,
Through its Commissioner,
Having office at, Shram Shakti Bhavan,
Gr. Floor Patto, Panaji, Goa - 403001.

3. DR. GOKULDAS H. MANGESHKAR,
Major of age, married, Indian,
doctor, Residing at,
Shop Nos.17,18,19, 1st Floor,
Royal Chambers,
Above IDBI Bank,
Tisk Ponda-Goa-403401

..... Respondents.

Ms. Asha Desai, Advocate for the Petitioner.

Mr. D.J. Pangam, Advocate General, with Ms. A. Kamat, Additional Govt. Advocate for Respondent No.1.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 28th June, 2021.

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

Heard Ms. Asha Desai for the Petitioner. Mr. D. Pangam, the learned Advocate General appears along with Ms. A. Kamat, Additional Govt. Advocate for Respondent No.1. The record indicates that Respondents No.2 and 3 have been duly served in this matter. In our order dated 4th January, 2021, we had made it clear that this Petition will be disposed of at the stage of admission.

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

3. The Petitioner's grievance is that the complaint made before the Goa State Commission for Scheduled Castes and Scheduled Tribes (Commission) does not plead about fulfillment of any of the jurisdictional parameters and, therefore, no notice should have been issued to the Petitioner by the Commission. Ms. Desai points out that the Commission has not only issued the notice, but has insisted

upon personal presence of the proprietor of the Petitioner who is based in Mumbai. She expressed apprehension that the Commission, without considering the preliminary objections raised by the Petitioner, may proceed to hear the matter on merits and thereby prejudice the Petitioner.

4. According to us, now that the Petitioner has already raised the preliminary objection as regards the maintainability before the Commission, the same will have to be decided by the Commission at the very outset, before it proceeds to entertain the complaint on merits. Therefore, we direct the Commission to take up the preliminary objection raised by the Petitioner in the first instance and decide the same without adjudicating upon the merits of the complaint. If the preliminary objection is upheld, then, there is no question of adjudicating upon the merits. Only, if the preliminary objection is not upheld, then, the issue of adjudication on merits would arise.

5. Besides, we feel that there is no justification to insist upon the personal presence of the proprietor of the Petitioner, at this stage. Ms. Desai has stated that the Petitioner will be represented by an Advocate and the Advocate will appear before the Commission on the appointed date and make submissions on the preliminary objection.

6. Besides, we find that during COVID pandemic, it is in the facts of the present case at least, not too appropriate to insist upon the personal presence of the proprietor of the Petitioner. The matter will have to be first heard on the preliminary objection raised by the Petitioner, which is basically an objection based on law. Accordingly, we set aside the order insisting upon the personal presence of the proprietor of the Petitioner, for the present. The Commission can issue such orders for personal presence depending upon its decision on the preliminary objection raised by the Petitioner at later stage.

7. By clarifying the aforesaid, we dispose of this Petition. The Counsel for the Petitioner and Respondent No.3 to appear before the Commission on 12th July, 2021 at 10.30 a.m. and file an authenticated copy of this order. If, for any reason, Respondent No.3 is not present, the Commission can always issue fresh notice to appear on some future date as per the convenience of the Commission.

8. The Rule is disposed of in this Petition in the aforesaid terms. There shall be no order as to costs.

9. All concerned to act based on an authenticated copy of this Order.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.