

Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.621 OF 2014**

Mr. Andrew D' Cunha,
age 52 years, Indian National,
service, resident of Boa Vista,
2/27/A Near Seashore, Vadem,
Vasco Da Gama, Goa -403802.

...PETTIONER

Versus

1. The Scrutiny Committee for
Verification of Other Backward Class
Certificate, Government of Goa,
having its office at Secretariat,
Porvorim, Bardez, Goa.

2. State of Goa,
through the Chief Secretary,
Government of Goa, having its
office at Secretariat,
Porvorim, Bardez, Goa.

3. Mr. Tukaram Kshemchandra Redkar,
Councillor from ward No.V of
Mormugao Municipal Council,
Age 40 years, resident of
H. No.13/278, Jetty,
Harbour Mormugao.

4. Smt. Manda Malwankar @
Suchita Subhash Shirodkar,
Councillor from Ward No.X
of Mormugao Municipal Council,
resident of H.No.564/09,
Pedenkar Building, Baina,
Mormugao.

5. Shri Manesh Chandrakant Arolkar,
Councillor from ward No.XIV of
Mormugao Municipal Council,
resident of H. No.236, Chandraprabha,
Belabai, Vasco-da-Gama.

6. Shri Premanand Pundalik Nanoskar,
Councillor of ward No. XVIII of
Mormugao Municipal Council,
residing behind Ganesh temple,
New Vaddem, Vasco-da-Gama,
Goa.

...RESPONDENTS

Mr. Gajendranath R. Usgaonkar, Advocate *for the Petitioner*.
Ms. Susan Linhares, Additional Government Advocate *for the State*.
Mr. V. Lawande with Mr. P. Redkar, Advocates for Respondent No.5.

**CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ**

DATED: 31st August 2021

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

1. Heard Mr. Gajendranath Usgaonkar for the Petitioner, Ms. Susan Linhares learned Additional Government Advocate for the State, and Mr. V. Lawande with Mr. P. Redkar for Respondent No.5.

2. The petitioner, by instituting the present petition, has applied for the following reliefs:

“(a) This Hon'ble Court be please to quash and set aside the impugned order dated 9th May 2014 passed by the Respondent No.1 and declare that Respondent Nos. 3 to 6 does not belong to “Bhandari naik” OBCs caste.

(b) This Hon'ble Court be please to direct the Respondent No.2 to re-constituted the Scrutiny Committee with Research Officer or person having knowledge of identification of caste.

(c) Further, direct the Scrutiny Committee Respondent No.1 to refuse the claim of those who fails to show on strength of document that their ancestors belonged to toddy tapper occupation of “Bhandari Naik”.

(d) This Hon'ble Court be please to direct respondent no.1 to place before this Hon'ble Court numbers of certificate issued by it by passing reasoned orders as directed by this Court in judgment passed in Writ Petition No.268 of 2013.

(e) Any other order as deemed fit and proper in the circumstances of the case.”

3. The petitioner, by instituting Writ Petition No.268/2013, had earlier challenged the order made by the Caste Scrutiny Committee upholding the validity of the provisional caste certificate issued in favor of respondents no.3 to 6. This Court, upon recording satisfaction that the Caste Scrutiny Committee,

had disposed of the matter before it without adhering to the guidelines laid down by the Hon'ble Supreme Court in the case of *Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and Others – (1994) 6 SCC 241*, set aside the order made by the Caste Scrutiny Committee and remanded the matter for fresh consideration. In the Judgment and Order dated 23.09.2013 disposing of the Writ Petition No.268/2013, this Court, recorded the statement of the learned Advocate General that the State would issue comprehensive order in tune with the guidelines laid down by the Hon'ble Supreme court in *Madhuri Patil (supra)*.

4. The State Government, as undertaken by it, issued an Order dated 15.11.2013 on the subject of verification of Social Status (Caste)Certificate setting out the guidelines/procedure to be adopted by the Vigilance Cell and the Caste Scrutiny Committee for grant and verification of caste certificates. This Order dated 15.11.2013 refers to and is required to be read along with the Office Memorandum dated 07.08.2013 on the subject.

5. The Caste Scrutiny Committee, on remand, has made the impugned Judgment and Order dated 09.05.2014, once again upholding the provisional caste certificates issued in favor of

respondents no.3 to 6 thereby declaring them as belonging to the Bhandari-Naik community. Hence this petition.

6. At the outset, we deal with the challenge of Mr. Lawande to the *locus standi* of the petitioner to institute the present petition. He submits that the petitioner is a mere interloper and since this petition is not public interest litigation or a petition seeking a writ of *quo warranto*, no *locus standi* ought to be conceded in favor of the petitioner. Mr. Lawande submitted that respondents no.3 to 6 are no longer the councilors of the Mormugao Municipal Council and as such, they do not hold any public office. He, therefore, submitted that the petitioner has no *locus standi* to institute the present petition and the present petition should therefore be dismissed.

7. According to us, the petitioner is interested in establishing that respondents no.3 to 6 do not belong to the Bandari-Naik community which they claim to. The petitioner has filed complaints and objections and has pursued this matter right from the beginning. Even the previous Writ Petition No.268/2013 had been instituted by the petitioner herein and despite the objection of *locus standi* raised by and on behalf of respondents no.3 to 6 herein, this Court not only entertained the said Writ Petition but also set aside the order of the Caste Scrutiny Committee and

remanded the matter for fresh consideration. Respondents no.3 to 6 may presently not be the councilors but based upon the impugned order, the said respondents might be entitled to contest elections against the reserved posts or claim other benefits of reservation. Therefore, we are unable to accept Mr. Lawande's contention based on any alleged lack of *locus standi* in the petitioner.

8. Based on this Court's Judgment and Order dated 23.09.2013 in Writ Petition No.268/2013, the Caste Scrutiny Committee was required to follow the procedure set out in the Order dated 15.11.2013 made by the State Government incorporating the guidelines laid down by the Hon'ble Supreme Court in *Madhuri Patil (supra)*. Similarly, the Caste Scrutiny Committee was also duty-bound to ascertain whether the Vigilance Cell had complied with the guidelines laid down by the Hon'ble Supreme Court in *Madhuri Patil (supra)* and if this was not done, then, at least, to require the Vigilance Cell to discharge its duty in accord with the law.

9. If the impugned Judgment and Order is perused then, it is clear that the Caste Scrutiny Committee has not even taken proper cognizance of the order dated 15.11.2013 which was required to be read and construed along with the Office

Memorandum dated 07.08.2013. The analysis of the impugned Judgment and Order would indicate that up to paragraph 14, the Caste Scrutiny Committee has merely noted the rival contentions. In paragraph 15, the Caste Scrutiny Committee, by reference to some submissions made before it has concluded that the parents of respondents no.3 to 6 were residing in Goa before 19.02.1968, the prescribed cut off date.

10. The only consideration, if at all, the same can be called as consideration, is to be found in paragraph 16 of the impugned Judgment and Order which reads as follows:

“16. The submission of the Ld. Advocate is that Shri Tukaram Kshemchandra Redkar is from Village Redi, post Redi, Taluka Vengurla, District Sindhudurg, Smt. Manda Namdeo Malwankar @ Smt. Suchita Subhash Shiroadkar is from Village “Malwan” of Taluka Malwan, District of Ratnagiri, Shri Manesh Chandrakant Arolkar, is from Aroli Siroda, Vengurla, Sindhudurg, Maharashtra and Shri Premanand Pundalik Nanoskar hails from Village Nanosa of Shiroda, Sidhudurg, and that all hails from Maharashtra and therefore, they cannot claim that they belong to “Bhandari Naik” Community, cannot hold good. Surname of a person cannot be sole criteria to determine place of origin. The another submission of the Ld. Advocate for the complainant that only “toddy tappers” can claim to be “Bhandari Naik” is also not true. “Toddy tapper” is one of the occupation which was practiced by the “Bhandari Naik” community besides many other

occupations. It is true that Vigilance Cell has to only submit facts derived after due inquiry. It cannot decide the caste of a person. It is Scrutiny Committee to decide the caste or community of a person. In view of the reports submitted by the Vigilance Cell and the evidence put forth by the Respondents herein and considering all the aspects of this case we pass the following order.

O R D E R

The Social Status Certificates issued to the Respondents by the Dy. Collector and SDM, Mormugao that they belong to OBC of “Bhandari Naik” community are found valid.”

11. According to us, the aforesaid hardly amounts to any consideration of the various contentions raised by and on behalf of the petitioner herein. The Caste Scrutiny Committee has not bothered to examine whether the reports of the Vigilance Cell are in accord with the Order dated 15.11.2013 and the Office Memorandum dated 07.08.2013. The Caste Scrutiny Committee has not bothered to find out whether the report of the Vigilance Cell was in accord with the guidelines laid down by the Hon'ble Supreme Court in *Madhuri Patil (supra)*. Without going into these issues, the Caste Scrutiny Committee has simply said that given the reports submitted by the Vigilance Cell and the evidence put forth by the respondents, the provisional caste certificates issued in favour of respondents no.3 to 6 are valid or stand verified. This is hardly the proper manner of dealing with a

matter of this nature. The Caste Scrutiny Committee has also ignored the directions issued by this Court whilst remanding the matter to it. For all these reasons the impugned Judgment and Order made by the Caste Scrutiny Committee is liable to be set aside and is hereby set aside.

12. In this case, we find that the Vigilance Cell has also not given appropriate reports by adhering to the guidelines set out in the Order dated 15.11.2013 and the Office Memorandum dated 07.08.2013. The procedure to be adopted by the Vigilance Cell before it makes its report has not been followed by the Vigilance Cell. This is evident from the material on record. Therefore, it is only appropriate that the Vigilance Cell undertakes the exercise of preparation of reports once again and places such reports before the Caste Scrutiny Committee. The Vigilance Cell is therefore directed to prepare fresh reports concerning respondents no.3 to 6 and submit them to the Caste Scrutiny Committee within a period of a maximum of three months from today.

13. Based on such fresh reports of the Vigilance Cell, the Caste Scrutiny Committee, is directed to once again consider and decide the issue of validation or otherwise of the provisional caste certificates issued to respondents no.3 to 6 herein within a period

of a maximum of three months from the receipt of the vigilance reports.

14. The aforesaid means that the Vigilance Cell and the Caste Scrutiny Committee will have to dispose of the matter within a maximum period of six months from today. In so disposing of the matter, both the Vigilance Cell as well as the Caste Scrutiny Committee will have to adhere to the Order dated 15.11.2013 and the Office Memorandum dated 07.08.2013 and the guidelines contained in *Madhuri Patil (supra)*. The Caste Scrutiny Committee will have to give an opportunity of hearing to both the petitioner as well as respondents no.3 to 6 herein and only thereafter make its decision in the matter.

15. At this stage, we have not gone into the merits of the issue as to whether respondents no.3 to 6 indeed belong to the Bhandari-Naik community or not. That is the matter which will have to be decided by the Caste Scrutiny Committee in the first instance, based upon the reports of the Vigilance Cell and other relevant considerations as have been prescribed. All contentions of all parties on merits are therefore left open.

16. The impugned Judgment and Order dated 09.05.2014 made by the Caste Scrutiny Committee is therefore set aside and

the Vigilance Cell, as well as the Caste Scrutiny Committee, are required to dispose of the matter as directed above. Since this is not some Public Interest Litigation, we do not go into the other reliefs prayed for in this petition. Even at the stage of arguments, such other reliefs were not pressed. The issues concerning such other reliefs are however left open.

17. The rule is made absolute in the aforesaid terms. There shall be no order as to costs.

18. All concerned to act based on the authenticated copy of this Order.

19. The parties to appear before the Caste Scrutiny Committee on 16.09.2021 and file the authenticated copy of this Order. In case any of the respondents do not appear on the said date, the Caste Scrutiny Committee to take steps to issue notices to them.

M. S. JAWALKAR, J.

M. S. SONAK, J.