

HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.959 OF 2019**

William Gonsalves
aged 60 years,
son of Antonio Gonsalves,
R/o. H. No.888, Alto Santa Cruz,
Goa.

.... **Petitioner**

Versus

- 1) State of Goa
Through Its Chief Secretary
Having Office at
Secretariat, Porvorim, Goa.
- 2) Scrutiny Committee for
Verification of Caste Certificate,
Through Its Chairman, Secretariat
Complex, Porvorim.
- 3) The Deputy Collector
And Sub Divisional Officer,
Panaji, Goa
- 4) Mariano Luis Anselmo De Araujo,
aged 57 years, s/o. Mr. Domingos
Eduardo De Araujo,
R/o H. No.1490, Cabesa,
St. Cruz, Goa

..... **Respondents.**

Mr. Parag Rao, Advocate for the Petitioner.

Mr. Devidas J. Pangam, Advocate General with Mr. Shivdatt Munj,
Additional Government Advocate for the Respondents No.1 and 3.

Mr. Amey Kakodkar, Advocate for the Respondent No.4.

**Coram : M.S. SONAK &
BHARATI H. DANGRE, JJ.
Dated: 01.02.2021**

JUDGMENT (Per: BHARATI H. DANGRE, J.):

The petitioner who was declared defeated in general elections held for the post of Panch member from Ward No.VII in Village Panchayat of Santa Cruz in the year 2017 at the hands of the petitioner, has assailed the order passed by the Scrutiny Committee for Verification of Caste Certificate, Porvorim, i.e. respondent no.2, allowing the claim of the respondent no.4 as belonging to Christian Mahar community (OBC). The respondent no.4, Mariano Luis Anselmo De Araujo contested the election from Ward no. VII on the basis of the certificate obtained by him from the Deputy Collector and Sub-Divisional Magistrate, Panaji-Goa on 24.05.2017, when the said certificate was put up for scrutiny before respondent no.2 Committee duly constituted for verification of caste claims, it is the petitioner who had intervened in the

proceedings before the Committee. By the impugned order passed on 11.04.2019, the complaint filed by the petitioner before the Caste Scrutiny Committee challenging the certificate issued in favour of the respondent no.4 has been rejected and by the very same order, the Committee scrutinized the claim of the respondent no.4 belonging to Christian Mahar community and has granted the claim, certifying that the respondent no.4 belongs to the said community which is included in the list of Other Backward Classes at serial no.12. The petitioner is aggrieved by the said decision and has impugned the same in the present writ petition.

2. We have heard the learned counsel, Mr. Parag Rao appearing for the petitioner, Mr. Devidas J. Pangam, the learned Advocate General with Mr. Shivdatt Munj, the learned Additional Government appearing for the respondents no.1 and 3 and Mr. Amey Kakodkar, learned counsel for respondent no.4.

The learned counsel for the petitioner Mr. Rao assails the impugned order passed by the Committee on various grounds, the predominant being non-adherence to the procedure prescribed while determining the claim of the respondent no.4 and, in particular, the procedure as set out in the order passed by the State Government on 01.11.2015 pursuant to the judgment delivered by this Court in the case of *Mr. Andrew D'Cunha v/s. State of Goa*

*And Others*¹. Mr. Rao would submit that the detailed procedure set out for verification of the social status which has been notified by the State Government has been completely given a go-by and the Committee has adjudicated the claim in a very perfunctory manner. He would invite our attention to the report of the Vigilance Cell which comprise of statements of the claimant's close relatives who deny his social status as claimed. He would invite our attention to the inquiry report submitted by the Superintendent of Police, North, Porvorim-Goa addressed to the Director of Social Welfare and relying upon the same, would submit that there is no evidence rendered by the claimant before the Committee to establish that he belong to Christian Mahar community which would have entitled him to contest the post which was reserved for the said category. The learned counsel would urge that the petitioner has raised serious objections to the claim set out by the respondent no.4 but his submissions have been rejected cursorily. He would submit that the reliance is placed on the certificate issued by the Christian Backward Class Committee which is unregistered society and which would confer no legal status on the claimant and has not backed his claim, Mr. Rao would argue that the claimant has even failed to produce any documents on record and despite his failure, the caste certificate in his favour has been verified and held to be valid.

1 Writ Petition No.268/2013 dated 23.09.2013

3. The learned Advocate General representing respondents no.1 to 3 would invite our attention to the procedure to be followed in verification of the caste claim in order to ascertain whether the claimant belonged to the particular caste, and he would submit that in view of the decision rendered by this Court (*supra*), where a statement was made to the effect that necessary guidelines could be formulated for verification of the claims of respective castes and tribes, in furtherance of the directions issued by the Apex Court in the case of *Kumari Madhuri Patil and another v/s. Addl. Commissioner, Tribal Development and others*² and since the State was committed to issue appropriate comprehensive order in tune with the said judgment, the order was issued by the State Government which dealt with verification of social status (Caste Certificate). The learned Advocate General would submit that the said procedure must be strictly adhered to for verification of social status and the said order issued on 01.11.2015 outlined the procedure to be adopted by the Vigilance Cell and also the procedure to be followed by Scrutiny Committee for grant of verification of social status. He would submit that the vigilance inquiry would provide in-depth assessment of the candidate's claim of belonging into a particular caste/tribe and the Scrutiny Committee, apart from the report of the Vigilance Cell, is expected

2 1994 SCC (6) 241

to obtain the report from the Sub-Divisional Magistrate based on the information provided by the applicant at the time when he prefer an application for securing the caste certificate. The Scrutiny Committee shall then pass a reasoned order and after affording opportunity to the claimant, adjudicate his claim either by confirming the said certificate or refusing to do so, thereby rejecting the claim. Falling in line with the decision of the Apex Court in the case of *Ayaaubkhan Noorkhan Pathan v/s. The State of Maharashtra & Ors*³, it is also permissible for the Committee to entertain the objections received by it while adjudicating claim of the candidate and after dealing with the issues raised by the objector, the Committee shall pass an order in the manner prescribed by the said order.

The learned counsel for the respondent no.4 state that the impugned order has followed the mandate of the order issued by the State Government and has dealt with the objections raised by the petitioner and has approved his claim of belonging to Christian Mahar community and has declared the certificate issued by the Deputy Collector and Sub-Divisional Magistrate, Panaji on 24.05.2017 to be valid. The learned counsel would submit that the respondent no.4 is presently holding the post of the Panch member of Village Panchayat Santa Cruz in pursuant to the election which

3 (2013) 4 SCC 465

he contested in the year 2017 on the basis of the provisional certificate and since now the certificate has been verified and he has been declared to be belonging to Christian Mahar community, the present petition deserves to be dismissed. The learned counsel would also submit that the petitioner has also otherwise challenged the election by filing an election petition before the Administrative Tribunal. The present writ petition according to him is merely an attempt to settle political vendetta which should not be entertained at any cost as the respondent no.4 has been declared elected by majority and has secured more votes than the petitioner clearly reflecting public mandate in his favour.

4. With the assistance of the learned counsel for the petitioner and the respondents we have perused the writ petition alongwith its annexures and also the affidavits of the respondent no.4 sworn on 22.02.2020 alongwith the documents annexed thereto.

The preamble of the Constitution of India promises to secure to all its citizens, Justice, social, economic and political; Equality of status and of opportunity. Article 14 of the Constitution prohibits the State from treating any persons unequally and ensure equal protection of law within the territory of India. Article 16 ensure equality of opportunity to all citizens in the

matters relating to employment or appointment to any office under the State. Though, there is a mandate that State shall not discriminate against any citizens on the ground of religion, race, caste, sex, place of birth or any of them, it is permissible for the State to make any special provision of advancement of any social or educational backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. The legislature of a State is empowered to make provisions of reservation of seats in any Panchayat in favour of backward classes of citizens. The claim of being belonging to the said class, which has been granted special protection must however be proved, is the mandate. What procedure should be adopted in issuance of a declaration in favour of the claimants as belonging to any of the reserved category was the issue which came up for consideration before the Apex Court and way back in the year 1994, in case of *Kumari Madhuri Patil and another v/s. Addl. Commissioner, Tribal Development and others* (supra), the Hon'ble Apex Court issued guidelines for issuance of the caste certificate for grant of social status and its verification. Holding that any admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Caste or Scheduled Tribe or Other Backward Class candidate as enjoined in the Constitution on the benefits conferred on them, and in order to deal with the ineligible

or spurious persons who have falsely gained entry by resorting to dilatory tactics and creating hurdles in completion of the inquiries, the procedure came to be streamlined by the Apex Court. The detailed procedure was highlighted in the said law report in paragraph 13.

It was directed that the Directorate should constitute a vigilance cell consisting of Senior Police officials to be assisted by the Police Inspectors to investigate into the social status claims. The necessary directions were contained in the said judgment and are reproduced as under:

'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 should also 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 castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.'

The inquiry was directed to be completed expeditiously and

preferably by day-to-day proceedings within such period not exceeding 2 months. On enquiry of the Committee arriving at a finding that the claim is spurious, it was directed that an order would be passed cancelling the said certificate and confiscating the same. The time limit for completion of the inquiry was emphasised so that a candidate who has secured admission in an educational institution or appointment in a post should not suffer. The directions were also issued to the effect that if the claim of social status was found to be false, the candidate/parent can be prosecuted for staking a false claim and if the prosecution ends in conviction, it would be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

5. In conformity with the said guidelines, the State has issued an order streamlining procedure, though we record that no legislative enactment exist in the State on the lines which have been formulated by the State of Maharashtra in form of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000) which provide for regulation of the issuance and verification of caste certificate to the persons belonging

to the categories mentioned in the said enactment. However, in absence of the said enactment, the State deemed it expedient to issue an order for verification of the claim of the social status and this is in furtherance of the guidelines of the Supreme Court. The order issued on 01.11.2015 govern the field regarding verification of the social status (Caste Certificate) and the parties are ad idem that the process of verification should be strictly in accordance with the said order.

6. The respondent no.4/claimant obtained a certificate from the Deputy Collector and Sub-Divisional Magistrate, Panaji-Goa, on 24.05.2017 declaring that he belong to Christian Mahar (OBC), which is recognised as Other Backward Class under the Government of India, Ministry of Welfare Resolution, as amended from time-to-time. The certificate recorded that it is provisional and is issued subject to the decision of the Scrutiny Committee. The claim of the petitioner was made over to the respondent no.2 Committee and an inquiry into the claim was conducted by the Superintendent of Police, through the PI, Old Goa Police Station and the report was forwarded to the Director of Social Welfare on 08.12.2017. During the said process, the statement of the local residents of Santa Cruz, Tiswadi-Goa came to be recorded. One of the statements is to the effect that the claimant was working as

technician in Shipyard at Vasco and his father was working as driver in Mines and he was never engaged in the work of Mahar community. During the inquiry, the statement of Asst. Secretary of Christian Mahar Society is also recorded who denied that the claimant ever approached for the Samaj certificate formalities and he also reiterate that the claimant was working as a technician at Shipyard and his father was working as a driver in mines. The statement of the President of the Association of Christian Backward Class of Christian Mahar Society having its office at Mapusa was also recorded who has stated that the name of the claimant is not registered with the said Society and he do not belong to the Christian Mahar community as per the record in the office. The report forwarded is therefore to the effect that no documents except the caste certificate has been produced by the claimant in support of his claim.

The claimant filed his reply to the objection filed by the present petitioner praying for cancellation of the caste certificate issued in his favour and question his locus. In the said affidavit he has reiterated that he possess evidence to show that he himself, his father were engaged in the vocation of grave digging or cemetery work.

7. On hearing the petitioner/the complainant who had

raised an objection before the Committee and in light of the affidavit produced by the claimant, a fresh inquiry report was sought by the Committee from the Superintendent of Police(North) Goa vide order dated 24.05.2018. Accordingly, on 03.10.2018, Superintendent of Police (North) Goa, once again forwarded a report on conducting an enquiry through the SDPO Panaji. During this round of enquiry a statement of a priest at Santa Cruz church was recorded who has stated that he knew the claimant but he was not aware whether he or his father and grandfather were ever engaged in the work of grave digging or engaged in other church activities. Statement of a prson working as Clerk in the office of the Administrator of Comunidade of Central Zone, Panaji-Goa was also recorded and he reported that there was no entry found in the cash book regarding payment made to the Grave Village Panchayat office. The said witness has stated that on conduct of inquiry with locals of Calapor Village it is revealed that the the claimant belongs to Christian Mahar community and is engaged in burial activities. However, the said statement was found to be without any basis as the report submitted by him do not mention the name of the locals who had furnished this information. Further, the statement of the President of Christian Mahar Community was also recorded who denied that the Society had issued certificate to the claimant and rather stated that the Society issue certificate only to persons with

Fernandes surname and no other surname. Other 2 statements of independent persons who were locals of Santa Cruz Village came to be recorded who also denied the claim of Mr. Mariano Luis Anselmo De Araujo. The report also mention that he was called for conducting enquiry at the Police Station vide notice dated 05.07.2018, but he failed to mark his presence. In absence of any documents except the caste certificate, it was reported that the claimant do not belong to Christian Mahar community as there exist no document nor the locals of the Village support his claim.

8. The issue about the verification of claim landed in this Court vide writ petition no.201/2019 alongwith the contempt petition and on 26.02.2019, directions were issued to the Committee to take a decision on the claim within a time-bound period. In terms of the said directions, the claimant presented himself in the office of Superintendent of Police, North, Porvorim and statement of 6 witnesses were recorded. The claimant stated that his late grandfather as well as his late father belonged to Christian Mahar community which is a community of grave diggers/cemetery workers. He asserted that his forefathers were actively involved in carrying out the final rites of the deceased by arranging coffins, transporting dead bodies from hospital to their family residence, helping the family in arranging church services on

occasion of funeral, anniversary masses, etc.

The Police Sub-Inspector attached to the police station personally visited Cabeza and recorded the statement of prominent persons residing in the locality on 11.03.2019. Out of the persons who got their statement recorded, 3 of them did not support the claim as belonging to Christian Mahar community whereas one Mr. Arnaldo Fernandes and Mr. Custodio S. De Araujo support his claim and state that his father used to conduct final rites and decorated graves in the cemetery. The parish priest of Santa Cruz church admitted that Mr. Mariano Luis Anselmo De Araujo is involved in church activities as Confraria member and helping families in arranging church activities on the occasion of funeral and anniversary masses but he is not aware about his caste.

9. With this material on record, the Scrutiny Committee proceeded to deal with the objection of the petitioner and simultaneously adjudicated the claim of the claimant based on the caste certificate in his favour. The Committee referred to the various inquiry reports in a chronological manner and also referred to the contradictory version of the residents of the locality, sometimes in support of the claimant, sometimes against him. On consideration of the oral and written submissions the Committee recorded the following findings:

A. That neither the complainant nor the Respondent has relied on any documentary evidence by which complainant claim that Respondent does not belong to Christian Mahar Community nor there is any documents produced by the Respondent based on which he claims to belong to Christian Mahar Community or caste. Even the Expert Opinion is not conclusive one. Hence the Caste Scrutiny Committee has to rely on the available documents, reports and statements of the witnesses to decide the complaint.

B. The Caste Scrutiny Committee is duly bound to give sufficient opportunity to the complainant and the Respondent to submit evidence to prove their respective claims. Moreover, the Caste Scrutiny Committee has referred the matter back to the Vigilance Committee of Superintendent of Police, North for submission of report and adhere to the guidelines issued in Madhuri Patil Case (Supra) by Hon'ble Supreme Court so that justice be done in the matter.

C. The Caste Certificate (provisional) issued by Dy. Collector, Tiswadi dated 24-05-2017 and the Samaj Certificate issued by Association of Christian Backward Classes issued on 14-05-2017 are the major evidences before the Caste Scrutiny Committee. No other documents placed on record by the complainant and documents relied upon by Respondent mention therein the Caste of the Respondent.

D. There is no any mention of Anthropological and Ethnological traits attached to the Christian Mahar Community has been highlighted either by the Complainant nor by the Respondent.

E. The Expert Member report submitted to the Caste Scrutiny Committee is also inconclusive one.

F. The Affidavits placed on record in support by complainant and affidavit placed on record in support of reply by respondent, statements recorded by the Superintendent of Police, North while conduction enquiry are the only source of evidence before the Caste Scrutiny Committee.

10. By recording as above, we find that the Committee has shifted the burden of proving the claim on the respondents, whereas it is for the claimant to assert that he belong to a particular caste/tribe and he must establish his claim by supporting evidence either in the form of documents and any evidence demonstrating that he belong to a caste which professes a particular occupation/avocation. No documentary evidence has been brought on record by the claimant. Statements recorded during the enquiry, though not conclusive but being of senior members of the community may carry greater probative value and the Committee in fact do not make a reference to the statements which the claimant rely upon and it is his version that he has furnished the affidavits of the said villagers before the Scrutiny Committee which include the statement of one Smt. Damian Carvalho e Fernandes, aged 75 years, Mr. Basappa Chandawa aged 61 years, Mr. Diogo Francisco Afonso, aged 76 years, Mrs. Estela Josephine Dias, aged 77 years, Mrs. Lira

Fernandes, aged 72 years, Mrs. Rose Maria Fernandes, aged 71 years. The affidavits of the said persons have been placed before us as annexures to the affidavit of the respondent no.4. The Committee has relied upon the certificates issued by Association of Christian Backward Classes, but the office bearers of this Association have denied that such a certificate is issued in favour of the claimant. Mere reliance on the Samaj certificate issued by the Association of the Christian Backward Classes and the Caste Certificate which is merely provisional cannot be construed as a document favouring the claim of the claimant. It may be true that for the caste Christian Mahar, there may not be any established anthropological and ethnological traits, but in this contingency, the Committee will have to be very vigilant in scrutinizing the claim by conducting a home inquiry, i.e. recording the statement of witnesses and find any supporting material in the form of any writings with the churches which could throw light on the claim of the claimant.

11. In the judgment of the apex court in the case of *Kumar Madhuri Patil* (supra) a detailed home enquiry is expected by the Vigilance Cell and now that there are directives in the form of the order issued by the State of Goa which adumbrate the procedure to be followed by the Scrutiny Committee for verification of the Caste Certificate, we expect the Committee to adhere to the said

procedure. Further, the Committee has not at all paid any attention to the report of the Sub-Divisional Magistrate who has granted the caste certificate and the Committee can ascertain from the said authority as to what claim was staked before it, by filing an affidavit and by producing supporting material. In any case, it is the veracity of the information provided by the claimant before the authority granting the certificate which require verification through the Scrutiny Committee by juxtaposing it with the inquiry report of the Vigilance Cell. No such exercise is carried out by the Committee while passing the impugned order. The perfunctory exercise by the Committee cannot be appreciated, as it is not expected of the Committee to rely upon the petitioner producing some documents or evidence to show that the claimant do not belong to the said caste, but it is expected that the Committee will assess the claim on its own merit and the burden to be discharged by the claimant to that effect.

In light of the aforesaid observations, we are constrained to quash and set aside the impugned order and remand the matter back to the respondent no.2 Committee for its fresh adjudication in light of the order issued by the State on 01.11.2015 and expect that the Committee would strictly abide by the same.

12. We are conscious of the fact that the respondent no.4 is

holding the post of Panch member in the Village Panchayat on being elected on the basis of the provisional certificate in his favour and the certificate which is provisional in nature is subject to verification. The Scrutiny Committee cannot choose to verify it according to its own time-frame but must act expeditiously. In the present case since the matter is pending before the Committee for considerable period, we direct the respondent no.2 Committee to conclude the proceedings within a period of 12 weeks from today. We also direct that neither the petitioner nor the respondent no.4 will make any attempts to prolong the proceedings and they shall assist the Committee to conclude the verification process within the period stipulated above.

13. At this juncture we would also like to issue general directions to the Scrutiny Committee to complete the process for verification of claims within the stipulated period. It is a well known fact that when an appointment is secured or an admission is obtained on the basis of caste certificate or as in the present case where a candidate has contested an election and holding on to a post on the basis of provisional caste certificate, it is incumbent on the Scrutiny Committee to scrutinize the claim placed before it within a stipulated time period. In the order issued on 01.11.2015 streamlining the procedure for verification of the caste certificates,

the time limit for conduct of inquiry by the Vigilance Cell is scheduled to be completed within a period of 3 months from the date of receipt of application from the Director of Tribal Welfare, however there is no time line fixed for the Committee to conclude the proceedings once the vigilance report is received. In absence of any timeline being prescribed, the whole purpose of verification of claims will stand defeated on account of the delay and there may be reasons when the candidate/claimant is interested in prolonging the said procedure. We, therefore, direct that the Scrutiny Committee in all cases when it is verifying the claim/social status, should complete its proceedings within a period of 3 months from the date of receipt of the Vigilance Cell.

14. With the aforesaid directions, the writ petition is disposed of.

BHARATI H. DANGRE,J.

M.S. SONAK,J.

msr.