

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.110 OF 2015

Mr. Cassian Crasto,
30 years of age, son of Joao Crasto,
Resident of H.No.673, Uddi vaddo,
Goa Velha, Tiswadi Goa.

... Petitioner

Versus

- 1 The Scrutiny Committee for
Verification Caste Certificates,
through its Chairman/The Secretary,
Department of Social Welfare,
having his office at Secretariat,
Alto Porvorim, Bardez Goa.
- 2 State of Goa,
Through its Chief Secretary,
Secretariat, Alto Porvorim,
Bardez Goa.
- 3 The Dy. Collector cum Sub Divisional
Officer, Panaji.
Having his office at Collectorate Building,
D. B. Bandodkar Road,
Panaji Goa.
- 4 Director General of Police,
having his office at Police Head Quarters,
Near Azad Maidan,
Panaji Goa.
- 5 Diogo Gracias,
major of age,
Son of Antonio F. Gracias,
Resident of H.No.674,

Uddi Vaddo, Goa Velha,
Tiswadi Goa.

...Respondents

Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Asmita Tirodkar, Advocate for the petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for Respondent Nos. 1 to 4.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Kenny, Advocate for Respondent No.5.

CORAM:	M. S. SONAK & SMT. M. S. JAWALKAR, JJ
Reserved on :	21st September 2021
Pronounced on:	23rd September 2021

JUDGMENT (Per M. S. Sonak, J)

1. Heard learned counsel for the parties. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks the following relief:

“(a) for a writ of Certiorari and/or any other writ, order or direction in the nature of Certiorari calling for the records and proceedings of Case No.5/2013 on the file of Respondent No.1 and upon perusing the legality and propriety of the impugned order dated 07.05.2014 passed in Case No.5/2013 be pleased to quash and set aside the impugned order and consequently hold the Respondent No.5 not to entitled to the benefit under the Addendum dated 01.03.2013.”

2. The petitioner, in effect, challenges the order dated 07.05.2014 made by the Caste Scrutiny Committee (CSC) confirming that respondent no.5, a Police Inspector belongs to

the OBC category and is entitled to the benefits of Addendum Notification dated 01.03.2013.

3. Respondent no.5, sometime in the year 2008 or thereabouts, was selected and appointed as Police Sub-Inspector (PSI) as against the post reserved for the OBC category. This was based on the respondent's claim that he belonged to the "Christian Kharvi Community".

4. The petitioner, by his complaint dated 25.02.2009, alleged that respondent no.5 did not belong to the notified OBC category in terms of the 1997 Notification. Since no action was taken on the petitioner's complaint, he instituted Writ Petition No.419 of 2010 before this Court.

5. By order dated 21.07.2010, the above petition was disposed of with directions to the CSC to verify the caste claim of respondent no.5.

6. By judgment and order dated 25.01.2011, the CSC held that respondent no.5 did not belong to the notified OBC category as claimed by him. The CSC, therefore, upheld the complaint of the petitioner and directed the concerned authorities to take further action in the matter.

7. Respondent no.5 then instituted Writ Petition No.191 of 2011 which was admitted and even interim relief was granted favoring respondent no.5.

8. The CSC, on 03.04.2011, filed Misc. Civil Application No.326 of 2013 in Writ Petition No.191 of 2011 urging the vacation of the interim relief and seeking a remand for fresh consideration of the case of respondent no.5 having regard to the Notification/Addendum bearing No.13/37/2011-SWD/11046 dated 01.03.2013 issued by the Director & Ex-Officio Joint Secretary, Social Welfare, Government of Goa including the caste "Agri (including Christian Saleiro/Saleineiro)" in the category of OBC.

9. Based on the plea of CSC, this Court quashed the judgment and order dated 25.01.2011 and remanded the matter to CSC for determination of the question afresh, including the question whether respondent no.5 will be entitled to the benefits of Addendum dated 01.03.2013.

10. The CSC, vide its impugned judgment and order dated 07.05.2014 has held that respondent no.5 gets the benefits of Addendum dated 01.03.2013 since he belongs to the caste "Agri (including Christian Saleiro/Saleineiro)". Hence the present Petition.

11. Mr. Mulgaonkar submits that the fact that the caste “Agri (including Christian Saleiro/Saleineiro)” had to be added to the 1997 Notification by the Addendum dated 01.03.2013, makes it clear that before this date such a caste was not recognized as OBC category. He, therefore, submits that the caste certificate issued to respondent no.5 in 2008-2009 was patently incorrect and unsustainable. He submits that this issue is no longer *res integra* having regard to the decision of the Division Bench of this Court in ***Krishna Pilernekar Vs Scrutiny Committee***, Writ Petition No.207 of 2013 decided on 04.07.2013. He submits that in this decision it is held that the Addendum dated 01.03.2013 is only prospective and the caste certificates issued before this date are invalid or in any case, valid only from 01.03.2013. Mr. Mulgaonkar submits that the CSC, in its impugned judgment and order dated 07.05.2014, has noted the decision in *Krishna Pilernekar* (supra) but decided contrary to its ratio. He, therefore, submits that the relief in this petition may be granted.

12. Mr. Lotlikar pointed out that after the review against the decision in *Krishna Pilernekar* (supra) was dismissed by this Court on 25.04.2014, the affected respondent therein i.e. Assis Fernandes has instituted petition(s) for Special Leave to Appeal No.14599-14600/2014, in which leave has been granted and the interim order, if any, is continued until further orders. He,

therefore, submits that the decision in *Krishna Pilernekar* (supra) may not be followed.

13. Mr. Lotlikar submits that several relevant documents including file notings were not brought to the notice of the Division Bench while deciding *Krishna Pilernekar* (supra). He submits that these documents make it clear that the Addendum dated 01.03.2013 was only clarificatory and therefore, retrospective. He submits that the community of Christian Kharvi includes the various communities as now clarified in the Addendum dated 01.03.2013. Therefore, there was no error in the caste certificate originally issued to respondent no.5 and confirmed by CSC vide impugned judgment and order dated 07.05.2014.

14. The rival contentions now fall for our determination.

15. In this case, there is no dispute that the 1997 Notification did not refer to the caste "Agri (including Christian Saleiro/Saleineiro)". Respondent no.5 was nevertheless issued a caste certificate based on the entry "Koli/Kharvi (including Christian Kharvi)". The authority issuing the caste certificate possibly accepted the contention of respondent no.5 that the said entry included "Agri, Christian Saleiro/Saleineiro". This

was obviously incorrect and therefore, the same was struck down by the CSC by its judgment and order dated 25.01.2011.

16. Therefore, the CSC's judgment and order dated 25.01.2011 was set aside and the matter was remanded to CSC to consider the impact of the Addendum dated 01.03.2013 on the caste certificate issued to respondent no.5. At that stage, the Division Bench of this Court had not decided *Krishna Pilernekar* (supra). The said case was decided on 04.07.2013.

17. Thereafter, the State of Goa issued Addendum dated 01.03.2013 to the 1997 Notification, which reads as follows:-

“ *Addendum*
13/37/2011-SWD/11046
Read : Not. No.13/1/97-SWD dated 3-3-1997.
At serial No.3 after the words “Koli/Kharvi (including Christian Kharvi)” of Notification referred above, the following shall be added :-
“Macchimar/Nustekar/Tisrekar/Kharekar/
Byannis (including Christian Peixeira, including Christian
Journaleiro/Trabhaladors),
Raponkars/Harkar/Magkar/Manshekar/
Futanikar/Jalkar/Pagui (including Christian Pascadors)
Tari/Tarukar/Hodekar (including Christian Maritino or
Marinheiro), Agri (including Christian
Saleiro/Saleineiro)”.
By order and in the name of the Governor of Goa.
V.M. Paranjape, Director & ex officio Joint Secretary
(Social Welfare).
Panaji, 1st March, 2013.”

18. In *Krishna Pilernekar* (supra) the Division Bench of this Court after considering the contention now reiterated before us that the Addendum dated 01.03.2013 was only clarificatory and therefore retrospective, specifically rejected such contention and held that the Addendum is prospective and not clarificatory or retrospective.

19. The relevant paragraphs in the aforesaid regard read as follows:

“16. Thus, from a bare perusal of the notification dated 01/03/2013, it is evident that it is not made expressly retrospective by the State Government. The Commission in terms of its advice rendered in the year 2011, had requested the State Government to include different categories in the notification dated 03/03/1997 and also to give retrospective effect. However, the State Government chose to add different categories to the said notification without expressly making it retrospective. In this factual background, the ratio of the judgments cited by Mr. Sardesai in support of his submission that the notification dated 01/03/2013 is prospective, deserves to be accepted. It was well within the competence of the State Government to issue the said notification by way of clarification making it effective from the date of earlier notification i.e. 03/03/1997, but the State Government chose not to do so. No doubt, in terms of Section 9(2) of the Act, the advice of the Commission is ordinarily binding on the State Government, but this fact by itself would not be sufficient to hold that the notification dated 01/03/2013 is clarificatory in nature.

17. *In our view, the ratio of the judgments relied upon by Mr. Sardesai to which we have made exhaustive reference hereinabove, is squarely applicable in the present case. The State Government by the notification dated 01/03/2013 has added certain categories to serial no.3 of the notification dated 03/03/1997. Admittedly, the petitioner did not belong to Koli/Kharvi community in terms of the original notification dated 03/03/1997, but belongs to Christian Saleiro/Saleineiro. Therefore, in our considered view, the notification dated 01/03/2013 has to be construed as prospective and not retrospective.*

18. *Insofar as the judgments relied upon by Advocate Mr. Usgaonkar on behalf of respondent no.4 are concerned, the same do not advance the case of respondent no.4. Whether the notification is clarificatory or prospective in nature has to be determined having regard to the words used in the notification. Having regard to the plain language of the notification dated 01/03/2013, we have no hesitation to hold that the said notification is prospective and not clarificatory, as contended on behalf of respondent no.4.*

19. *In the result therefore, the petition is partly allowed. Rule is made absolute in terms of prayer clause (bb) which reads thus :*

“(bb) to declare that the Notification dated 1.03.2013 is prospective in nature and consequently validity of the Caste Certificate issued by the Respondent No.3 in favour of the Respondent No.4 be valid from the date of the said Notification i.e. 1.03.2013 and not prior to the date of passing of the said above Notification”

20. Thereafter, a review petition was filed once again reiterating that the Addendum was clarificatory and therefore

had to operate retrospectively. On a detailed consideration, even this review petition was rejected by order dated 25.04.2014. The interim relief was continued for some time because otherwise the Respondent -Assis might have lost his employment.

21. No doubt, the decision in *Krishna Pilernekar* (supra) was challenged before the Hon'ble Supreme Court, and on 17.05.2018, leave has been granted and the interim relief has been continued. However, this does not mean that the decision in *Krishna Pilernekar* (supra) has itself been stayed and therefore, is not required to be followed by a coordinate bench.

22. The contention that several relevant documents were not shown to the bench that decided *Krishna Pilernekar* (supra) may not be correct. In any case, this may also not be a good ground for the coordinate bench to take some different position. Basically, reference was made by Mr. Lotlikar to the notings in the Government files to submit that the intention was always to clarify that the several castes and sub-castes referred to in the Addendum dated 01.03.2013 were always intended to be included in the original Notification of 1997.

23. The Division Bench has held that despite the recommendation of the Goa State Commission for Backward

Classes, the State quite consciously issued an Addendum. Having regard to the wordings of the Addendum and the several decisions relied upon, the Addendum dated 01.03.2013 was not clarificatory but prospective. As a coordinate bench, therefore, it will not be appropriate for us to deviate from this view simply because of the argument based on the notings in the file even assuming without accepting that such notings can be relied upon to interpret the final notification.

24. The CSC, in this case, has taken note of the decision of the Division Bench of this Court in *Krishna Pilernekar* (supra), however, refused to follow it simply because, in the remand order, this Court had observed that the effect of the Addendum dated 01.03.2013 will have to be considered by the CSC. This observation was made in the order dated 19.06.2013 and the decision in *Krishna Pilernekar* (supra) was delivered only subsequently i.e. on 04.07.2013. Therefore, the observation could not have been construed as a license to the CSC to take some view contrary to the view taken by the Division Bench in *Krishna Pilernekar* (supra). The decision of the Division Bench was binding on the CSC and therefore, the impugned order dated 07.05.2014 made by the CSC, to the extent it does not align with *Krishna Pilernekar* (supra) warrants interference.

25. The impugned order dated 07.05.2014 is therefore modified to hold that respondent no.5 herein will be entitled to the benefit of the Addendum dated 01.03.2013 prospectively i.e. with effect from 01.03.2013. The caste certificate issued to respondent no.5 will have to be construed accordingly.

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

SMT. M. S. JAWALKAR, J

M. S. SONAK, J.

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