

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 439 OF 2021

Mariano Luis Anselmo De Araujo, son of Domingos E. de Araujo, aged 59 years, Indian National, r/o. H. No. 1490, Cabesa, St. Cruz, ... Petitioner
Tiswadi, Goa.

Versus

1. The State of Goa, Thr. Chief Secretary, Government of Goa, Secretariat, Porvorim, Bardez, Goa.
2. The Scrutiny Committee for Verification of Caste Certificates, through its Chairman, with its office at Secretariat, Porvorim, Goa.
3. The Deputy Collector and Sub Divisional Magistrate, Tiswadi Taluka, Collectorate Building, Panaji, Goa.
4. Mr. William Gonsalves, son of Antonio Gonsalves, aged about 62 years, Indian, ...Respondents resident of House No. 888, Alto St. Cruz, Tiswadi, Goa.

Mr. A. F. Diniz, Senior Advocate with Mr. Ryan Menezes, Ms. Gina Almeida and Mr. Nigel Fernandes, Advocates for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. S. P. Munj, Additional Government Advocate for the Respondent nos. 1 to 3.

Mr. Parag Rao, Advocate with Ms. S. Drago, Advocate for the Respondent no.4.

**CORAM : DIPANKAR DATTA, C.J. &
 M. S. SONAK, J.**

DATE : 28th March 2022

ORAL JUDGMENT (*Per, Chief Justice*)

1. This writ petition dated 13.12.2021 registers a challenge to a decision dated 19.11.2021 of the Scrutiny Committee for Verification of Caste Certificate, respondent no.2, along with a consequential order dated 29.11.2021 of the Deputy Collector and Sub-Divisional Magistrate, Tiswadi taluka, Panaji, Goa.

2. By the order dated 19.11.2021, the respondent no.2 disposed of Case No. 6 of 2017 registered before it on the basis of a petition of complaint received from Mr. William Gonsalves, respondent no.4. The operative part of the order dated 19.11.2021, reads as follows:

ORDER

1. The OBC Certificate No. 21/CERT/OBC/2017/313 Dt. 24/05/2017 issued to Shri Mariana Luis Anselmo De Araujo by the Dy. Collector of Tiswadi, stands invalid and thus revoked.

2. The Dy Collector of Tiswadi Taluka is, therefore, directed to cancel the aforesaid certificate.”

3. It is in pursuance of such an order that the respondent no.3, by his order dated 29.11.2021, cancelled the caste certificate issued in favour of the petitioner.

4. The basic facts giving rise to the writ petition are not in dispute. The petitioner claimed that he belongs to *Christian Mahar* community and had, accordingly, applied for issuance of a certificate certifying that he belongs to the Other Backward Classes (hereafter “OBC”, for short). Based on such application, a provisional certificate was issued in favour of the petitioner by the respondent no.3, dated 24.05.2017. In the general elections to Panchayats in the year 2017, which were required to be conducted in terms of the provisions of the Goa Panchayat Raj Act, 1994, Ward No. VII of the village panchayat of St. Cruz was reserved for candidates belonging to the OBC category. Being a member of the *Christian Mahar* community and taking advantage of the certificate dated 24.05.2017, the petitioner stood as a candidate for election from the said ward. The respondent no.4 also contested the election from the said ward. In the election that ensued, the petitioner was declared elected. He out voted the respondent no.4 by sixteen votes. After such loss in the election, the respondent no.4 alleged that the petitioner was not a member of the *Christian Mahar* community and, as such, not entitled to contest or be elected from a ward reserved for candidates belonging to the OBC category. This resulted in the respondent no.4 filing a petition of complaint on 25.07.2017 before the respondent no.2 seeking cancellation of the certificate dated 24.05.2017. At the same time, the respondent no.4 filed an Election Petition before the Administrative Tribunal challenging the petitioner's election as member of the Panchayat. Hearing progressed before the respondent no.2 in course whereof written arguments were filed by the petitioner and the respondent no.4. Several rounds of litigation before this Court too ensued. We do not consider it necessary to refer to all such litigation, except a few as later noticed. In due course of time, the respondent no.2, by a decision dated 11.04.2019, dismissed the petition of complaint of the respondent no.4

and confirmed the provisional caste certificate issued in favour of the petitioner. Aggrieved by the decision dated 11.04.2019, the respondent no.4 invoked the writ jurisdiction of this Court by instituting Writ Petition No. 959 of 2019. A co-ordinate bench of this Court, of which one of us (*M. S. Sonak, J.*) was a member, by a judgment and order dated 01.02.2021 set aside the decision dated 11.04.2019 and remitted the matter to the respondent no.2 for fresh consideration. The respondent no.2 was also directed to conclude the proceedings before it within a particular time frame. The matter, upon being remitted, the respondent no.2 called for fresh reports from the Vigilance Cell. Such reports were considered apart from consideration of the statements of the witnesses who had deposed in course of inquiry. By an order dated 07.08.2021, the respondent no.2 once again dismissed the petition of complaint of the respondent no.4 and it was directed that status quo be maintained insofar as the provisional caste certificate issued in favour of the petitioner is concerned. The order dated 07.08.2021 gave rise to Writ Petition No.2125 of 2021 (F), at the instance of the respondent no.4. At the time of hearing of the same on 29.10.2021 before another co-ordinate bench, all the parties were *ad idem* that the impugned order dated 07.08.2021 had not been passed in terms of the direction given by this Court in its order dated 01.02.2021 while disposing of Writ Petition No. 959 of 2019. Accordingly, the impugned order was quashed by the Court and the respondent no.2 directed to decide the matter as expeditiously as possible and, in any event, within three weeks from date. It is pursuant to the matter being remitted to the respondent no.2 once again that such respondent passed the order dated 19.11.2021, noted at the beginning of this order.

5. Appearing in support of the writ petition, Mr. Diniz, learned senior advocate, contended that the respondent no.2 had acted in

breach of the order dated 01.02.2021 passed by this Court while disposing of Writ Petition No.959 of 2019. Although, the respondent no.2 was under obligation in terms of such order to follow the procedure laid down in the order dated 01.11.2015 on the subject of Verification of Social Status (Caste Certificate), the procedure laid down in the office memorandum dated 07.08.2013, published in the Official Gazette dated 22.08.2013, was followed and such action of the respondent no.2 is in the teeth of the order dated 01.02.2021. According to Mr. Diniz, it is therefore just and proper that the impugned order dated 19.11.2021 be set aside and the respondent no.2 directed to decide the petition of complaint of the respondent no.4 in accordance with the directions contained in the aforesaid order dated 01.02.2021.

6. Even otherwise, on merits, Mr. Diniz contends that based on the materials that were placed before the respondent no.2, the conclusion is inescapable that the petitioner does belong to *Christian Mahar* community and, therefore, there was no valid reason for the respondent no.2 to invalidate and revoke the provisional OBC certificate dated 24.05.2017.

7. Mr. Pangam, learned Advocate General, appearing for the respondent no.2, conceded that due to oversight, one material aspect of the circular dated 01.11.2015 was not brought to the notice of the co-ordinate bench while it decided Writ Petition No. 959 of 2019. In course of elaborating his submission, Mr. Pangam first invited our attention to the office memorandum dated 07.08.2013. According to him, such memorandum issued by the Department of Social Welfare in deference to the decision of the Supreme Court in *Kumari Madhuri Patil & anr. vs. Additional Commissioner, Tribal Development &*

Ors.¹ contained the procedure for issuance of Social Status Certificate and their scrutiny and it applied to all persons belonging to the Scheduled Castes/Schedule Tribes/OBCs; whereas, the order dated 01.11.2015 was issued by the Department of Tribal Welfare and the contents thereof, while laying down the procedure to be adopted for verification of certificates as well as other matters, was confined only to certificates issued to members of the Scheduled Tribes. To buttress his arguments, Mr. Pangam took us through the several annexures to the order dated 01.11.2015 to impress upon us that the procedure prescribed by such order would only apply to verification of certificates issued in favour of members of the Scheduled Tribes and not to members of the OBC community. It is further submitted by Mr. Pangam that omission to invite the attention of the co-ordinate bench to the contents of the order dated 01.11.2015 in its entirety resulted in the said bench observing at paragraph 5 of its judgment and order dated 01.02.2021 that

“...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”.

8. It is finally contended by Mr. Pangam that although there is no substantial difference between the procedures ordained by the office memorandum dated 07.08.2013 and the order dated 01.11.2015, reliance placed by the respondent no.2 in respect of vigilance reports generated upon following the terms of the memorandum dated 07.08.2013,

¹ (1994) 6 SCC 241

cannot be held to be fatal *qua* the process of decision making adopted by the respondent no.2. Based on his submission that the decision of the respondent no.2 neither suffers from any legal infirmity nor is the process leading to such decision tainted by any of the vices on which judicial review could be attracted, he has prayed that the writ petition be dismissed.

9. Mr. Rao, learned advocate appearing for the respondent no.4, advanced submissions of worth relying upon the materials forming part of the records.

10. We need not refer to the submissions of Mr. Rao in details, for, we are of the clear opinion that the writ petition is devoid of any merit and is, thus, liable to be dismissed.

11. The first point raised by Mr. Diniz that the appropriate procedure has not been followed and that consequently the impugned order of the respondent no.2 dated 19.11.2021 is in the teeth of the judgment and order dated 01.02.2021, although attractive at first blush, pales into insignificance in view of the submissions advanced by Mr. Pangam. We are *ad idem* with him that the co-ordinate bench while deciding Writ Petition No. 959 of 2019 by its judgment and order dated 01.02.2021 did not have the benefit of appreciating that the order dated 01.11.2015 had no application insofar as scrutiny of certificates issued in favour of OBC candidates is concerned. This resulted in an erroneous observation being made in paragraph 5 of the said judgment and order dated 01.02.2021, which we have quoted above. The order dated 01.11.2015 having been issued by the Tribal Welfare Department and confined to verification of certificates issued in favour of members

of the Scheduled Tribes, it stands to reason that such procedure could not have been made applicable *ex proprio vigore* to verification of certificates issued to members of the OBC.

12. Mr. Diniz was heard to submit that even if the judgment and order dated 01.02.2021 was passed on an erroneous premise, the appropriate recourse for the parties was to have the same reviewed and corrected according to the procedure mandated by law. Indeed, an application for review would have been the desirable recourse; however, this Court has plenary jurisdiction to correct an error apparent on the face of the record. We draw guidance at this stage from the decision of the Supreme Court in *A.R. Antulay vs. R.S. Nayak*². An observation from the concurring judgment of Hon'ble Misra, J. may be quoted. It reads:

“To err is human, is the oft-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both.”

13. Although, we do not in this case propose to go so far as to correct the erroneous observation in the said judgment and order dated 01.02.2021 despite our inherent jurisdiction to do so, there is no legal bar in deciding the contentious issues raised before us based on a proper appreciation of the relevant order dated 01.11.2015. Law is well-settled that no party ought to suffer for an error committed by the Court and we feel it is part of our duty, in the interest of justice, to proceed to adjudicate on the basis of what has now been shown to be

² (1988) 2 SCC 602

correct and relevant ~ all with a view to render justice between the parties.

14. At this juncture, a passage from the decision of the Supreme Court in *Escorts Farms Ltd. vs Commisioner, Kumaon Division*³, on when a remand may be ordered needs to be noticed. It was ruled that:

“Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”

(emphasis ours)

³ (2004) 4 SCC 281

15. It is, therefore, substantial justice and not completion of a mere ritual that ought to weigh in our minds, while we adjudicate as to whether the order dated 19.11.2021 deserves to be set aside and the matter remitted to the respondent no.2 merely because the respondent no.2 has followed the office memorandum dated 07.08.2013 and not the order dated 01.11.2015 which, in view of the discussions above, could not have been viewed to be relevant. Also, this round of litigation has been preceded by several other rounds before this Court and it would amount to a travesty of justice if we, without looking into the merits of the petitioner's claim, were to proceed mechanically to accept the contention of Mr. Diniz and order a remand.

16. In such view of the matter, we have no hesitation to hold that even if vigilance report has been obtained by the respondent no.2 bearing in mind the terms of the office memorandum dated 07.08.2013, the same does not render the final order dated 19.11.2021 vulnerable in any manner whatsoever, particularly when the petitioner has not been able to demonstrate any prejudice that he may have suffered by reason of adherence to the procedure prescribed by the said memorandum. We hold the objection to be thoroughly unmeritorious. This finding of ours, disposes of the first objection of Mr. Diniz to the impugned order of the respondent no.2 dated 19.11.2021.

17. Adverting to the merits of the petitioner's claim, we have found the absence of any documentary evidence resting on which the petitioner could have validly claimed to belong to the *Christian Mahar* community and, thus, entitled to a certificate certifying that he belongs to the OBC. Mr. Diniz himself invited our attention to a document titled '*People of India*', at page 48 of the writ petition. He followed it

up by reading pages 49 and 50, which happens to be an article containing narration about '*Catholic Mahar*'. We have read the article in between the lines and find that the *Mahar* name might have been derived from '*Mritaharins*', meaning those who remove the carcasses of dead animals. It is further gathered from such article that Fernandes and Pereira are the common surnames of the *Catholic Mahars* and that the *Catholic Mahars* are either drum beaters or craftsmen who are associated in making of mats and baskets from bamboos. It is also found that all the families of the *Catholic Mahars* live in co-operation and that they have a 'Debt Benefit Fund Society', a local co-operative Society, in which all *Catholic Mahars* of the village enroll themselves as members and regularly contribute sums to it. The petitioner as per his pleaded case does not fit in, in any of the traits to be regarded as a *Christian Mahar* in having regard to the contents of the said article.

18. We have also looked into the evidence of the petitioner's aunt and the petitioner's full-blooded brother. None of them asserted that they belonged to the *Christian Mahar* community. On the contrary, from the evidence of the petitioner's brother, it appears that their father was a businessman and was engaged in transportation of goods by trucks. Further, evidence of certain local people have been recorded and majority of them did not support the petitioner's claim. We also find on record evidence of two priests to have been recorded. Between 2013 and 2019, when one of the priests was in charge of the relevant church, he never employed the petitioner as a grave digger which, according to the respondent no.4, is also one other activity with which the *Christian Mahar* community is associated.

19. All these aspects appear to have entered into the consideration made by the respondent no.2 while concluding that the petitioner does

not belong to the *Christian Mahar* community and could thus be treated as a member of the OBC community. As a Court exercising the power of judicial review, it is our duty to ascertain whether the procedure leading to a particular decision suffers from illegality, irrationality and/or procedural impropriety. We do not find the decision making process to be affected by any of such vices. We are, thus, of the considered opinion that the petitioner has failed to set up any case for interference with the order dated 19.11.2021 of the respondent no.2 with the result that this writ petition ought to fail.

20. The order dated 19.11.2021 of the respondent no.2 is upheld and the writ petition stands dismissed. There shall be no order as to costs.

21. As a result of the aforesaid decision of ours, it is axiomatic that the petitioner shall not be treated to be a member of the OBC community henceforth; and, he may forthwith step down from the office to which he was elected in course of the process conducted in 2017 treating him to be a member of the OBC community.

M. S. SONAK, J.

DIPANKAR DATTA, CJ.