

(2011) 05 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 191 of 2011

Shri Diogo Gracias

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 18
Constitution of India, 1950 — Article 226, 227
Representation of the People Act, 1951 — Section 29A

Citation : (2011) 3 BomCR 508 : (2011) 5 MhLj 949

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : V.R. Tamba and D. Zaveri, for the Appellant; P. Talaulikar, A.G.A. for Respondent No. 6 and A.D. Bhobe, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Tamba, learned Counsel for the Petitioner, Mr. Talaulikar, learned Additional Government Advocate for Respondent No. 6 and Mr. Bhobe, learned Counsel for Respondent No. 9.

2. This petition has been filed by the Petitioner seeking the following relief:

For an appropriate writ order or direction quashing the impugned order dated 25.1.2011 duly served on the Petitioner on 27.1.2011, and consequently declare the Petitioner to be belonging to the community of Christian Kharvi under other backward classes.

3. The Petitioner was appointed to the post of Police Sub-Inspector which was reserved for Other Backward Class. The Petitioner was granted caste certificate dated 25th April, 2003 by the Deputy Collector and Sub-Division Officer, Panaji certifying that he belonged to Christian Kharvi community, which is recognized as backward class. Respondent No. 9 filed Writ Petition No. 419/2010 challenging the appointment of the Petitioner which was disposed of by order dated 21st July, 2010 directing the Caste Scrutiny Committee-Respondent No. 6 to verify the caste claim of the Petitioner herein within a period of two months. It was further

directed that in case the caste claim was not established, the concerned authorities of the State Government would, thereafter, take action in accordance with law.

4. Pursuant to the said directions, the Scrutiny Committee-Respondent No. 6 after conducting the proceedings, by the impugned order dated 25th January, 2011 held that the caste claim of the Petitioner was not established. Challenging the said order, the Petitioner has filed the present Writ Petition.

5. On behalf of the Respondent No. 6 Mr. Talaulikar, learned Additional Government Advocate and on behalf of Respondent No. 9, Mr. Bhohe, submitted that in terms of Bombay High Court Appellate Side Rules, 1960 ("The Rules" for short), the petition would lie before the Division Bench and not before this Court. According to the learned Counsel, in terms of Clause (44) of Rule 18 of Chapter XVII of The Rules, which stands deleted initially, Single Judge has jurisdiction to entertain the petition filed under Article 226 or 227 of the Constitution of India challenging the orders passed by the Committees or verification of the claim of Scheduled Caste and Scheduled Tribe Candidates. However, the said Clause (44) was deleted with effect from 29th November, 2002 and, therefore, it is the contention of the learned Counsel for Respondent Nos. 6 and 9 that the petition would lie before the Division Bench. According to the learned Counsel, Clause (3) of Rule 18 of Chapter XVII of The Rules, is not attracted since the Caste Scrutiny Committee cannot be termed as quasi judicial authority.

6. Per contra, Mr. Tamba, learned Counsel for the Petitioner submitted that in terms of Clause (3) of Rule 18 of Chapter XVII of The Rules, the order passed by the committee being quasi judicial authority, would lie before this Court and not before the Division Bench. In support of his submissions, he relied upon the following judgments:

(i) Indian National Congress (I) Vs. Institute of Social Welfare and Others, .

(ii) Prabhakar Sadasheo Nandanwar Vs. State of Maharashtra and Others, .

(iii) Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, .

(iv) Sanjay Sadashiv Patil Vs. State of Maharashtra and Vilas Haribhau Patil, .

7. I have carefully considered the rival submissions and perused the record and the judgments relied upon.

8. In view of the rival submissions, the short question which arises for consideration is whether the petition filed would lie before this Court in terms of The Rules. In terms of Clause (44) of Rule 18 of Chapter XVII of The Rules, till 29th November, 2002, the Single Judge had jurisdiction to entertain the petition challenging the orders passed by the Committees constituted for verification of the claims of Scheduled Caste and Scheduled Tribe Candidates as has been held by the Division Bench of this Court in the case of Prabhakar Nandanwar (supra).

The Committee has been constituted pursuant the directions given by the Apex Court in the case of Kumari Madhuri Patil (Supra) and the Apex Court has held that in case the petition challenging the orders passed by the Committees is disposed of by the Single judge no further appeal would lie before the Division Bench.

9. Therefore, the question which arises for consideration is whether the Caste Scrutiny Committee can be considered as quasi judicial authority for the purpose of Clause (3) of Rule 18 of Chapter XVII of The Rules since in terms of Clause (3), the petition challenging any order passed by the quasi judicial authority under Article 226 or 227 or under Article 226 read with Article 227 of the Constitution of India, would lie before Single Judge.

10. In the case of Indian National Congress (Supra), the Apex Court held that in terms of Section 29A of Representation of People Act, 1951, the Election Commission was bound to give decision only after making enquiry, wherein an opportunity of hearing is to be given to the representatives of the political parties and as such, the Commission was acting judicially and the decision rendered by it was quasi judicial order.

11. In the case of Sanjay Patil (supra), the learned Single Judge of this Court held that Writ Petition challenging the election of Agricultural Produce Market Committee was maintainable before the Single Judge in terms of Rule 18 of Chapter XVII of The Rules.

12. In my considered opinion, the ratio laid down in the above referred two cases, is of no help to the Petitioner. When the caste claim is referred to the Scrutiny Committee, the Scrutiny Committee in the absence of any legislation by the State Government, is bound to decide the caste claim of the persons in terms of the directions given by the Apex Court in the case of Kumari Madhuri Patil (supra). There is no dispute that in the State of Goa, there is no legislation, inter alia, dealing with verification of caste claims. State of Maharashtra has enacted "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", inter alia, to deal with the verification of the cast claims of scheduled caste and scheduled tribes candidates. In the State of Maharashtra, after deletion of Clause (44) of Rule 18 of Chapter XVII of The Rules, Writ Petitions challenging the orders passed by the Scrutiny Committees lie before the Division Bench.

13. I am unable to accept the submission of Mr. Tamba that in the absence of any legislation as in the State of Maharashtra, Writ Petitions challenging the orders passed by the Scrutiny Committees would lie before the Single Judge although Writ Petitions challenging such orders would lie before the Division Bench in the State of Maharashtra. In none of the two authorities relied upon by Mr. Tamba the issue involved in the present case was either before the Apex Court or this Court. I am unable to accept the submission of Mr. Tamba that the

Scrutiny Committee could be considered as a quasi judicial authority and, therefore, the writ petition challenging the order passed by the Committee would lie before Single Judge.

14. In view of the above, I hold that Writ Petition filed by the Petitioner would lie before the Division Bench and not before this Bench. Registry to place the petition before the appropriate Bench.