

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.494 OF 2023

Mr Uday Chari

.... Petitioner

Versus

- 1 The State of Goa
Represented through
Chief Secretary
Porvorim, Bardez Goa.
- 2 The Dy. Collector & SDO,
Office of the Dy. Collector
and SDO, Margao Goa.
- 3 The Director,
Director of Social Welfare,
Panaji Goa.
- 4 Scrutiny Committee for
Verification of Caste Certificate,
Through its Chairman,
Secretariat Complex,
Porvorim-Bardez Goa.
- 5 The Chairman,
The Goa State Commission for
Other Backward Classes,
Altinho, Panaji Goa.
- 6 Hanzel Feleciano Fernandes
H.No.618, Ward Grande,
Pulvaddo, Benaullim,
Salcete Goa.

7 The Vigilance Cell,
Through its authorized officer,
Dy. Superintendent of Police
(Crime Branch)
Ribandar, Panaji Goa.

8 The Goa State Election
Commission,
Through its Secretary,
Altinho, Panaji Goa.

9 All Goa Carpenters Association of
Aksona, through its President,
Having office at Aksona Benaullim,
Salcete Goa.

10 The Director of Panchayat,
Panaji Goa.

.... Respondents

Mr Vithal Naik, Advocate for the Petitioner

Mr D. Pangam, Advocate General with Mr N. Vernekar,
Additional Government Advocate for Respondent Nos. 1 to 3, 7
and 10.

Mr J. A. Lobo, Advocate for Respondent No.6.

Mr S. N. Joshi and Ms S. Rawool, Advocates for Respondent
No.8.

CORAM:

**M. S. SONAK &
BHARAT P.
DESHPANDE, JJ**

DATED:

28th AUGUST 2023

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

1. Heard Mr V. Naik, learned counsel for the Petitioner, Mr
D. Pangam, learned Advocate General with Mr N.

Vernekar, learned Additional Government Advocate for Respondent Nos. 1 to 3, 7 and 10, Mr J. A. Lobo, learned counsel for Respondent No.6 and Mr S. N. Joshi with Ms S. Rawool, learned counsel for Respondent No.8.

2. Rule. At the request and with the consent of the learned counsel for the parties, the rule is made returnable immediately.

3. The Petitioner challenges the judgment and order dated 13.02.2023 of the Caste Scrutiny Committee (CSC) in Case No. 4/2021, by which it declined to set aside the caste certificate dated 05.03.2020 issued by the Deputy Collector, Salcete Goa or rather verified such caste certificate dated 05.03.2020 concerning Respondent No.6. The Petitioner has also challenged the vigilance report dated 09.11.2022 and the OBC Certificates dated 05.03.2020, 12.12.2013 and 04.06.2010 as invalid and void ab initio.

4. After Respondent No.6 was elected as a Zilla Panchayat member in 2020 from a constituency reserved for “*Other Backward Class*” (OBC) based upon the caste certificate dated 05.03.2020 certifying that he belonged to Vishwakarma/Chari/Mesta Community which was

recognised as an OBC in the State list and Central list, the Petitioner filed complaints dated 05.02.2021 and 23.06.2021 before the Caste Scrutiny Committee (CSC). Since the complaints were not taken up for consideration by the CSC, the Petitioner instituted Writ Petition No.959/2019 in this Court.

5. Writ Petition No.959/2019 was disposed of by a judgment and order dated 01.02.2021, and the CSC was directed to consider and dispose of the Petitioner's complaints concerning the caste certificate issued to Respondent No.6. Despite directions, there was a delay in disposal of Petitioner's complaints. Therefore, the Petitioner instituted Writ Petition No.2005/2021 (F) seeking directions for the disposal of complaints expeditiously.

6. By judgment and order dated 28.10.2021, the directions were issued to the Respondents to dispose of the Petitioner's complaints expeditiously. Ultimately, the CSC, by the impugned judgment and order dated 13.02.2023, has disposed of the Petitioner's complaints by holding that the caste certificate issued to Respondent No.6 stands verified and consequently, the Petitioner's complaints stand dismissed. Hence, the present petition.

7. Mr V. Naik, learned counsel for the Petitioner, submits that the Government notification dated 29.12.2006 only includes “*Vishwakarma/Chari/Mesta*” in the State list of OBC community. He submits that the notification does not either include or clarify that this entry will also include Christian Vishwakarma/Chari/Mesta. He refers to several Government notifications to point out that whenever it was intended to include Christians in the State list of OBCs, the notifications said so or clarified so in clear terms. He presented that since there was no reference to Christian in the notification dated 29.12.2006, neither the Deputy Collector who issued the caste certificate dated 05.03.2020 nor the CSC were authorised to issue or verify that Respondent No.6 belongs to the OBC category. Mr Naik presented that the impugned certificate and the impugned judgment and order verifying the same is, therefore, illegal, null and void.

8. Mr Naik submitted that the notifications containing the list of OBCs issued by the Government cannot be tinkered with by the Deputy Collector or the CSC either under the guise of interpretation or otherwise. He submits that the Deputy Collector and the CSC have virtually added an additional class of Christian Vishwakarma/Chari/Mesta

in the notification dated 29.12.2006, which is an impermissible exercise. He submitted that such an addition is *ultra vires* the powers of the Deputy Collector and the CSC.

9. Mr Naik relied on *Bhaiya Lal Vs Harikishan Singh, AIR 1965 SC 1557, Srish Kumar Choudhary Vs State of Tripura, 1990 Suppl. SCC 220, Palghat Jilla Thandan Samudaya Samrakshana Samiti and others Vs State of Kerala and others, (1994) 1 SCC 359, Nityanand Sharma and another Vs State of Bihar and others, (1996) 3 SCC 576, State of Maharashtra Vs Milind and others, (2001) 1 SCC 4, and State of Maharashtra Vs Keshao Vishwanath Sonone and another, (2021) 13 SCC 336*, in support of above contentions.

10. The learned Advocate General submitted that the Government notification dated 29.12.2006 had only classified Vishwakarma/Chari/Mesta in the State list of OBC. Normally there are no castes among Christians. Therefore, if any Christians were intended to be included in the State list of OBCs, notifications clearly say so by using the expression “Koli/Kharvi (including Christian Kharvi)” or “Agri (including Christian Saleiro/Saleineiro”. He submitted that since, in this case, no such expression was

used in the notification, it is clear that, at least as of now Christian Vishwakarma/Chari/Mesta cannot be regarded as belonging to OBC's. He therefore, agreed that caste certificate dated 05.03.2020 issued by the Deputy Collector and the CSC's judgment and order dated 13.02.2023 were indefensible. The learned Advocate General fairly placed on record the decision of the Hon'ble Supreme Court in *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and another Vs State of Kerala and another, (1994) 1 SCC 359.*

11. The learned Advocate General pointed out that All Goa Carpenters Association (Respondent No.9) had in fact represented to the Government for the inclusion of Christian Vishwakarma/Chari/Mesta in the State list of OBC's and further, such representation was under serious consideration of the State Government. He submitted that this would not however assess Respondent No.6 in saving the caste certificate dated 05.03.2020 because even if the inclusion were to be agreed upon, the same would ordinarily be with prospective effect.

12. Mr Lobo, learned counsel for Respondent No.6 defended the impugned judgment and order of the CSC based on the reasoning reflected therein. He submitted that

notification dated 29.12.2006 did not exclude Christian Vishwakarma/Chari/Mesta. He submitted that any such exclusion, it would be based solely on Respondent No.6's religion would be *ex facie*, arbitrary or unconstitutional. He submitted that no citizen can be discriminated based upon his religious faith and such discrimination would foul of Articles 14, 15 and 16 of the Constitution of India.

13. Mr Lobo submitted that the vigilance cell's report had established that Respondent No.6 belonged to "*Mesta*" community involved in occupation of "*carpentry*". He submitted that Respondent No.6 should not be deprived of the benefit of the Government's notification dated 29.12.2006 merely because he belonged to the Christian community. He submitted that the CSC's impugned judgment and order were entirely consistent with constitutional provisions and warranted no interference.

14. Mr Lobo submitted that even the Goa State Backward Class had endorsed the position that Christians belonging to the Vishwakarma/Chari/Mesta community should be classified as OBC. He submitted that the commission made such a recommendation, and it is based on such a recommendation the notification dated 29.12.2006 was issued. He, therefore, submitted that the recommendation

of the Backward Class Commission was relevant material, and the CSC was justified in considering the same. For all these reasons, Mr Lobo submitted that this petition may be dismissed.

15. Mr Joshi, learned counsel for the Goa State Election Commission, left the matter for the resolution of the Court by pointing out that Respondent No.6 was allowed to contest from a constituency reserved for OBCs based upon the Deputy Collector's certificate dated 05.03.2020. Mr Joshi pointed out that even otherwise, no reliefs were claimed against the Goa State Election Commission.

16. Though Respondent No.9 was duly served, no response has been filed by them or on their behalf.

17. The rival contentions now fall for determination.

18. Based upon the Petitioner's complaints, after much delay, the CSC took up for consideration the issue of verification of the caste certificate dated 05.03.2020 issued by the Deputy Collector certifying that Respondent No.6 belong to Vishwakarma/Chari/Mesta community under the notification dated 29.12.2006, by which these communities were included in the State list of OBC's.

19. The CSC requested the vigilance cell, Crime Branch to conduct a detailed inquiry and furnish a report. Such report was furnished by the vigilance cell on 01.09.2021 though not in proper format. Accordingly, the CSC directed the vigilance cell to submit the report in proper format vide communication dated 27.09.2021. The vigilance cell submitted yet another report which the CSC found was “*also inconsistent with the prescribed guidelines*”. The CSC, therefore, again requested the vigilance cell to submit its report. The CSC also informed the vigilance cell about the orders made by this Court from time to time for expeditious disposal of the Petitioner’s complaints.

20. Ultimately, the vigilance cell submitted its report dated 09.11.2022 to the CSC. This delay on the part of the vigilance cell or its non-submission of the report in the prescribed format is quite depreciable. The Petitioner was consistently following up on his complaints. This Court made at least two orders for expeditious disposal of the Petitioner’s complaints. The vigilance cell was aware that Respondent No.6 was elected based upon a caste certificate dated 05.03.2020 issued by the Deputy Collector. This certificate had to be verified in one way or another because until then, Respondent No.6 was continuing as a ZP Member elected through a constituency reserved for OBCs.

21. The Hon'ble Supreme Court in the case of *Kumari Madhuri Patil and another Vs Addl. Commissioner, Tribal Development, Thane and others*, 1994(6) SCC 241, has set out the timelines that are required to be adhered to by all the authorities, including the vigilance cell. Despite all this, the vigilance cell initially delayed submitting its report and compounded this delay by submitting a report deviating from the prescribed format. As a result of this delay, Respondent No.6 continued as a ZP member even though he should not have. This delay, therefore, facilitated the continuance of Respondent No.6 as a ZP member even though we are now satisfied that he was not included in the Government notification dated 29.12.2006.

22. The vigilance cell's report was served upon the Petitioner and Respondent No.6, and their comments were invited. Respondent No.6 delayed the issue of comments and had to be reminded to do so by the CSC. Ultimately, Respondent No.6 filed his comments on 13.01.2023. The CSC heard the Petitioner and Respondent No.6 and has made the impugned judgment and order dated 13.02.2023, *inter alia* holding that the Government notification dated 29.12.2006 includes “*Christian Vishwakarma/Chari/Mesta*”. Such a conclusion, in our

judgment, is *ultra vires* and amounts to adding to the list of OBCs in the Government notification dated 29.12.2006.

23. The CSC posed to itself a wrong question, namely whether Respondent No.6 belonged to the Vishwakarma/Chari/Mesta community when admittedly, Respondent No.6 belongs to the Christian community, which ordinarily does not profess to follow any caste system. Nevertheless, in the State of Goa, for historical reasons like conversion, certain communities have been specifically included in notifications issued by the Government formulating the State list of OBCs, SCs, STs etc. In all such notifications, however, there is a positive and clear inclusion of members of the Christian community wherever the Government intended them to be included. Therefore, the correct question that the CSC should have posed was whether the notification dated 29.12.2006 included Christian Vishwakarma/Chari/Mesta. On a plain reading of the notification dated 29.12.2006, the answer would be in the negative. Since the CSC failed to pose itself a correct question, the CSC reached the wrong conclusion, which warrants interference.

24. The Government notification dated 29.12.2006 upon which Respondent No.6 relies reads as follows:-

“No. 13/13/2003-SWD/7430

Government of Goa,

Directorate of Social Welfare

Panaji Goa.

Dated: 29/12/2006

Read: 1. Order No. 13-3-84-LAWD/OBC dated 12-06-1987.

2. Addendum No. 13/1/97-SWD/(Vol.III) dated 06- 12-2001

3. Order No. 13-3-84-LAWD/OBC dated 09- 07-1987.

4. Notification No. 13/1/97-SWD dated 03-03-1997

5. Notification No. 13/1/97-SWD/1016 dated 30-06-2000.

6. Corrigendum No. 13/14/90-SWD/(Vol.III) dated 22-04-2003.

NOTIFICATION

The Government of Goa, after taking into account the educational and Social conditions of the people belonging to various Communities in Goa and further on the recommendation of the Goa State Commission Backward Classes, hereby notifies the following two communities as socially and educationally backward for the purpose of Article 15(4) and backward for the purpose of Article 16(4) of the Constitution and include in the State List of OBC Community:—

i. Thakar

ii. Vishwakarma/Chari/Mesta

By order and in the name of the

Governor of Goa.

Sd/-

N. D. Agrawal,

Ex officio Joint Secretary &

Director of Social Welfare.”

25. The above notification must be compared with several similar notifications concerning the inclusion of classes or communities in the State list of OBCs. The notification dated 30.06.2000 refers to Kumbhar, including Christian Kumbhar, Christian Mahar and Christian Barbar. The same notification refers to classes like Teli, Shimpi, Satarkar, Bhandari Naik, Kalaikar/Blacksmith/Tinsmith but does not specify the Christian counterpart of such communities. Thus, it is clear that where the Christian counterpart was intended to be included, the notification has positively and clearly said so in clear terms.

26. Similarly, the notification dated 22.06.2009 refers to “*Christian Renders*”. The notification dated 01.03.2013, which is, in fact, an addendum to the earlier notification dated 03.03.1997, adds the following classes to the said list of OBCs: -

“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)”.

27. Thus, even in the above notification dated 01.03.2013, wherever the Christian counterparts were intended to be included, the notification clearly and unambiguously says so in positive terms. Even the original notification dated 03.03.1997 includes the following communities in the State list of OBCs.

1. *Dhobi, Rajak, Madval (including Christian Dhobies);*
2. *Nhavi, Nai, Nabhik, Napit, Mahalo;*
3. *Koli, Kharvi (including Christian Kharvi);*
4. *Nathjogi;*
5. *Gosavi.*

28. Thus, the scheme is evident that whenever the Government intended to include the Christian counterparts in the State list of OBC, the Government notification said so in positive and clear terms. As a corollary, wherever there is no reference to the inclusion of a Christian counterpart, it must be held that the Government did not intend to include such a Christian counterpart in the State list of OBCs. Neither the Deputy Collector nor the CSC has the right or authority to tinker with the Government notification, or the State list of OBCs notified by the Government vide such notifications. If the CSC's

impugned judgment and order are to be upheld, then the same would amount to adding the class of Christian Vishwakarma/Chari/Mesta to the State list of OBCs. Such power or authority neither the Deputy Collector nor the CSC possesses.

29. The vigilance cell's report dated 09.11.2022 relied upon by the CSC only states that Respondent No.6 belongs to the "*Mesta community*". However, there is no dispute that Respondent No.6 is a Christian. There is also no dispute that the notification dated 29.12.2006 does not refer to "*Christian Mesta*", which is the class to which Respondent No.6 belongs. Incidentally, even the vigilance cell's report relies only on the statement of Respondent No.6 and the certificate issued by the All Goa Carpenters Association. No other material appears to have been considered by the vigilance cell.

30. The prescribed format in which the CSC ultimately forced the vigilance cell to report refers to the Roman Catholic faith professed by Respondent No.6. The CSC, however, did not consider this crucial disclosure in the vigilance report in the prescribed format. Even otherwise, there was no dispute about Respondent No.6 professing Christian faith.

31. In the context of Articles 341 and 342 of the Constitution of India, the Hon'ble Supreme Court has time and again held that to determine whether a particular caste is an SC or ST within the meaning of Articles 341 and 342, one has to look to the terms of the Presidential order enlisting SC and ST. It is not open to anybody to seek any modification of the Presidential order by producing any evidence to show that though Caste A alone is mentioned in the order, Caste B was also a part of Caste A and, as such, was deemed to be a Scheduled Caste. Wherever one caste has another name, it is mentioned in brackets after it in the order. Therefore, generally speaking, it would not be open to any person to lead evidence to establish that Caste B is part of Caste A notified in the order (See *Basavalingappa vs. Munichinappa*, AIR 1965 SC 1269 and *Revenue Officer vs. Prafulla Kumar Pati*, (1990) 2 SCC 162).

32. In *Nityanand Sharma Vs the State of Bihar* (1996) 3 SCC 576, the Hon'ble Supreme Court held that even the Court cannot give a declaration as to the social status of a particular tribe. It is for the Parliament to include or exclude tribes or communities from the categories of SC or ST. The Court cannot declare a particular tribe as equivalent to SC or ST. The Court cannot modify, add or

subtract any entry in the Presidential order, and the function of the Court is only to interpret the Presidential order. (See *Srish Kumar Chaudhary Vs State of Tripura, 1990 (Supp) SCC 220 and State of Maharashtra Vs Jamat Mandal, (2006) 4 SCC 98*).

33. In *Bhaiya Lal* (supra), the issue involved was whether the plea that the Dohar caste was a sub-caste of the Chamar caste could have been entertained in proceedings to question the election of a candidate from a reserved constituency, the Hon'ble Supreme Court held that it was not relying upon *B. Basavalingappa* (supra). In *Shish Kumar Choudhury* (supra), the Hon'ble Supreme Court has held that the entries in the Presidential order specified a class as ST or SC are normally not open to the Court's interference. When entries specify a class as ST, it is confined to that class alone, and it is not for the Court to inquire whether it includes any other class or sub-class.

34. In *Palghat Jilla Thandan Samudhaya* (supra), the Hon'ble Supreme Court held that neither the State Government nor the Court can enquire into or let in evidence about the correctness of any entry of SC in the SC order issued by the President which has to be applied as it stands until the same is amended by appropriate legislation.

The Court held that the Scheduled Castes order has to be applied as it stands, and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Caste order, except as contemplated by Article 341, is valid.

35. In *Nityanand Sharma* (supra), the Hon'ble Supreme Court held that alternation in, by inclusion, substitution or exclusion cannot be ordered to the SC or ST orders by the Court, nor can the Court declare synonyms of the SCs/STs or parts or groups thereof mentioned in such orders. To the same effect are the decisions in *A. Chinnappa* (supra), and the *State of Maharashtra and another Vs Keshao Vishwanath Sonone and another*, (2021) 13 SCC 336.

36. In *State of Maharashtra vs. Milind and others* (supra), the Constitution Bench of the Hon'ble Supreme Court, after an exhaustive review of the case law on this subject, observed the following in para 36 as follows:-

“36. In the light of what is stated above, the following positions emerge:-

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically

mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

*5. Decisions of the Division Benches of this Court in **Bhaiya Ram Munda vs. Anirudh Patar & others** (1971 (1) SCR 804) and **Dina vs. Narayan Singh** (38 ELR 212), did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter.”*

37. The principles laid down in the context of Articles 341 and 342 of the Constitution relating to SC and ST, respectively, also extended to Article 342(A) related to reservation for socially and educationally backward classes (SEBC) in the case of **Jaishri L. Patil Vs State of Maharashtra**, 2021 (8) SCC 1.

38. Thus, applying the above principles to the facts of the present case, it is apparent that the CSC's impugned judgment and order dated 13.02.2023 warrants interference.

39. Mr Lobo's contention based on discrimination cannot be accepted simply because the benefits of reservation are available *inter alia* to those classes included in the State OBC list vide notification issued by the Government from time to time. Regards some of the classes, the State Government has positively and clearly specified that they would include a Christian counterpart. Regards others, there is no such specification in positive terms. By invoking Article 14 or 16, the Christian counterpart not intended to be included cannot be included in the State OBC's list. In any case, the Deputy Collector issuing the caste certificate dated 05.03.2020 or the CSC, which was called upon to verify such caste certificate, was bound by what was specifically set out in the Government's notification, including class or classes in the State list of OBC. Accordingly, the arguments based on Article 14 or 16 or discrimination based on religion would not hold good in the present matter. The fact that there are pleas for the inclusion of Christian Mesta in the State OBC list or the

fact that the State Government is considering such inclusion implies that, as of now, Christian Mesta is not included in the State OBC list.

40. In *Soosai vs. Union of India and others, 1985 Supp. SCC 590*, the Hon'ble Supreme Court has held that when a violation of Article 14 or any of its related provisions is alleged, the burden rests on the person who alleges such violation to establish by clear and cogent evidence that the State or its agency have been guilty of arbitrary discrimination. The Court held that to establish that Para 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against Christian members of the enumerated castes, it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin- Hinduism continued in their oppressive severity in the new environment of a different religious community. The Court

held that in the absence of any authoritative and detailed study dealing with the present conditions of Christian society, it was not possible, merely on the basis of cursory references to the character and incidents of the castes within the Christian fold, to say that the President acted arbitrarily in the exercise of his judgment in enacting Para 3 of the Constitution (Scheduled Castes) Order.

41. Thus, for all the above reasons, this petition will have to be allowed, the impugned judgment and order dated 13.02.2023 and the Deputy Collector's caste certificates dated 05.03.2020, 12.12.2013 and 04.06.2010 will have to be set aside after declaring the same as invalid and void ab initio. Accordingly, the rule is made absolute. The CSC's impugned judgment and order dated 13.02.2023 is set aside. The Deputy Collector's caste certificates dated 05.03.2020, 12.12.2013 and 04.06.2010 declaring Respondent No.6 as belonging to the OBC category are declared as invalid and void ab initio. There shall be no order for costs.

42. Mr Lobo applied for a stay for a period of six weeks. After concluding that Respondent No.6 does not belong to the class that is included in the State list of OBC, we do not

think that it would be appropriate to stay our judgment and order. Accordingly, the request for a stay is not acceded to.

BHARAT P. DESHPANDE, J

M. S. SONAK, J.