
WRIT PETITION NO. 450 OF 2003

The Director General
of Police, Police
Department, Government
of Goa, having its office
at Police Headquarters,
Panaji, Goa.

... Petitioner

Versus

1. The Goa State Commission
for Backward Classes,
behind RMO's Hostel,
GMC Campus (old),
Panaji, Goa,

2. Mr. Satish Hanuman
Kuncolienkar, major
in age, House No.636,
Nagali, Taleigao, Ilhas,
Goa.

... Respondents.

Shri A.N.S. Nadkarni, Advocate General with Shri P.A. Kamat,
Addl. Government Advocate for the petitioner.

Shri V. Narvekar, advocate for respondent no.1.

CORAM : R. J. KOCHAR &
P. V. HARDAS, JJ.

DATE : 29th September, 2003.

ORAL JUDGMENT (Per Kochar, J.)

Rule. By consent Rule is made returnable forthwith
and heard finally.

The Director General of Police, Goa, is the
petitioner who is aggrieved by the impugned Order passed by
respondent no.1, on 27th March, 2002, in case no.
Misc/Comp/01/2001-2002, filed by the respondent no.2, making a
grievance before the respondent no.1, State Commission that he
was denied job opportunity from the OBC quota inspite of he

being duly qualified and having passed out all the tests and fulfilled all the requirements. The learned Chairman and other members of the respondent no.1 State Commission have passed the following order:-

" The application is allowed. The respondent is hereby directed to appoint applicant as Police Constable immediately. The 27% job reservation for OBC be strictly complied with and unfilled vacancies shall be filled at the time of immediate recruitment batch."

after recording their answers to the two issues which they framed as under:-

(a) Whether the respondent has fulfilled the criteria of 27% job reservation meant for OBC?

(b) Whether applicant is entitled for the post of Police Constable?"

2. Shri A.N.S. Nadkarni, learned Advocate General appearing for the petitioner has seriously questioned the powers and jurisdiction of the respondent no.1, State Commission, to pass the impugned Order issuing mandatory directions to appoint the respondent no.2 as Police Constable immediately. The Commission has further issued a mandatory direction to comply with the 27% job reservation for OBC and fill up the unfilled vacancies at the time of immediate recruitment batch. The learned Advocate General has submitted that the State Commission has travelled beyond its powers and jurisdiction under the Goa State Commission for Backward Classes Act, 1993, under which the State Commission was

established. According to the learned Advocate General, the functions of the Commission are specifically stipulated under Section 9 of the Act and it has no power or jurisdiction to issue any mandatory directions as it has purported to do in the present impugned Order. Shri Nadkarni, submitted that the Commission has crossed its jurisdictional limits and has usurped the powers and functions of the State Government and the appointing authority, including the petitioner. The learned Advocate General further submitted that the State Commission could not direct the petitioner to appoint the respondent no.2 by the impugned mandatory Order. The learned Advocate General submitted that the Commission could not have dealt with an individual complaint like the one which was made by respondent no.2 before the Commission. The functions of the Commission are of advisory nature in respect of inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward classes in such lists and tender such advice to the State Government as the Commission would deem appropriate. He further pointed out that such an advice tendered by the Commission is ordinarily binding on the State Government. He submitted that the Commission ought to have only tendered advice in respect of the complaint filed by respondent no.2 instead of issuing mandatory directions which the Commission has no power to do.

3. Shri Narvekar, learned counsel appearing for

respondent no.1, submits that from the purpose and object of the legislation we must interpret the provisions of Chapter III of the Act to read power and jurisdiction vested in the Commission to issue even mandatory orders, like the one impugned in the present petition. The learned counsel fairly did not stress or stretch his submissions any further.

4. We are in complete agreement with the submissions of the learned Advocate General that the impugned order passed by the State Commission is totally without jurisdiction and is ex facie illegal, being ultra vires the Act. We do not agree with the submissions of Shri Narvekar that we should read the provisions of the enactment by taking into account the object or purpose to enact the present legislation. Though the learned counsel has not shown us the Statement of Object of the Act, we are very clear in our mind about the interpretation of the statute that when there is no ambiguity or any doubt in respect of the clear Section we must give meaning to such provision without going to the Statement of Object or without taking into consideration any external aid to interpret a clear provision of the statute. In the present case, we do not find any ambiguity or any doubt while interpreting Sections 9 and 10 of the Act and we do not find an iota of evidence in both the Sections to read powers and jurisdiction vested in the Commission to issue mandatory directions to the authorities to appoint a candidate and obey the directions given in respect of individual complaints.

Apart from the clear provision of the Act which does not even remotely indicate that the Commission has powers and jurisdiction to issue mandatory directions even in the preamble of the statute, there is n evidence to read such powers even implicitly in the Commission. section 3 contemplates constitution of the State Commission for Backward Classes to exercise the powers conferred on and to perform the functions assigned to it under this Act. It is, therefore, clear that the Commission has to perform the functions assigned under this Act. The Commission is a statutory creature of the present Act and it has no independent source of power or inherent jurisdiction. The Commission has to function within the four corners of the Act. Its role is only advisory and it has no power and jurisdiction to adjudicate the disputes or to decide the complaints received by it from the citizens. The Legislature has deliberately created this body to receive proper advice in respect of the matters prescribed under the Act. The role of the Commission is only to tender such advice in respect of inclusion of a class of citizens as backward class or deletion or inclusion of other classes, if the Commission so deems appropriate. Ordinarily, such advice would be binding upon the State Government, but it is the discretion of the State Government even not to accept the advice tendered by the Commission. It is needless to mention that if the advice tendered by the Commission is not to be accepted, in that case, the State Government shall record its reasons therefor. It is further clear that

individual complaints are not within the prescribed functions of the Commission. The Commission is confined to the advisory role in respect of inclusion or exclusion of the class of citizens as a backward class in the list and to hear complaints of over-inclusion or under-inclusion of any backward class in such lists. The Commission cannot decide a complaint of an individual that he was not considered though he belonged to a particular backward class. even in such complaints the Commission cannot issue mandatory directions to appoint the complainant. Such mandatory directions are beyond the scope of the functions and powers of the Commission stipulated in Chapter III of the Act. It will be useful to reproduce the two Sections with which we are concerned in the present Writ Petition. They read as under:-

" 9. **Functions of the Commission** - (1)
the Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the State Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the State Government.

10. **Powers of the Commission** -

The Commission shall, while performing its functions under sub-section (1) of Section 9, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:-

(a) summoning and enforcing the

attendance of any person from any part of the State of Goa and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing Commission for the examination of witnesses and documents; and

(f) any other matter which may be prescribed."

5. The above provisions are crystal clear and there is no doubt or ambiguity to interpret them by taking any external aid such as Statement of Objects or debate or discussion on the floor of the Legislature. Shri Narvekar has not pointed out any other provisions to read powers and jurisdiction on the Commission to issue mandatory directions to the State Government. We have thoroughly gone through the entire Act which has 18 Sections and we do not find any such provision vesting powers and jurisdiction in the Commission to issue mandatory directions to the State Government or to any other authorities. Even the preamble of the Bill or the Act does not indicate any such power to be read in the above provisions conferring the wide power of issuing mandatory directions to the State Government or any other authority.

6. We are satisfied that the impugned Order by the State Commission is beyond its powers and jurisdiction. It

could not issue the mandatory directions issued by it to the State Government to appoint respondent no.2 as a Police Constable immediately and also to fill up the unfilled vacancies of OBC reserved class categories.

7. We, therefore, quash and set aside the impugned Order passed by respondent no.1 and we make the Rule absolute in terms of prayer clause (a).

8. We may observe that the petitioner may consider the impugned Order as an advice and make take appropriate decision according to its own administrative exigencies. We are sure that the petitioner would consider the order of the Commission as an advice and give due consideration to it, if it deems proper.

R. J. KOCHAR, J.

P. V. HARDAS, J.

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