

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 563 OF 2023

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1. Assistant Registrar (Academic) PG, Goa University, Taleigao-Goa.
 2. Goa University, Through its Registrar with office at Taleigao Plateau, Goa. ... Petitioners

V e r s u s

1. Shri Saprem Shirvoikar, R/o. H. No. 414, Oityant, Near Mahalaxmi Temple. Taleigao-Goa.
2. The Goa Commission for Scheduled Caste and Scheduled Tribes, with office at Patto-Panaji, Goa.
(All are registered addresses) ... Respondents

Ms. A. Agni, Senior Advocate with Ms. A. Harihar and Mr. Shaikh Junaid Vahidulla, Advocate for the Petitioners.

Respondent No.1 in person.

Mr. Abhijeet Gosavi, Advocate with Ms. K. Naik, Advocate for the Respondent No.2.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 13th FEBRUARY, 2024

JUDGMENT

1. Heard Ms Agni, learned Senior Advocate for the Petitioners, Respondent no.1, who is present in person and Mr Abhijeet Gosavi for Respondent no.2.

2. Rule. The rule is made returnable immediately at the request and with the consent of the first Respondent and the learned Counsel for the second Respondent.

3. The challenge in this Petition is to the Order dated 28.06.2023 made by the Goa Commission for Scheduled Castes and Scheduled Tribes (Commission) recommending the Petitioner-University to offer the immediate vacancy to undertake a PhD course in law to the first Respondent. The impugned Order required the Petitioner-University to submit an Action Taken Report within a period of three weeks.

4. Ms Agni learned Senior Advocate, contended that under the Goa Commission for Scheduled Castes and Scheduled Tribes Act, 2010 (*said Act*), the Commission can only make a recommendation but not issue a binding direction. She submits that the fact that the impugned Order requires the University to submit an Action Taken Report within three weeks means and implies that the Commission has issued a binding direction. She submits that issuing such a direction is in excess of the powers vested in the Commission by the said Act. Ms Agni relied upon the Judgment of the Supreme Court in the case of **All India Indian Overseas Bank SC & St Employees' Welfare Association & Ors. vs. Union of India & Ors.**¹

¹ (1996) 6 SCC 606

5. Ms. Agni submitted that the University followed the reservation policy. However, the first Respondent could not be awarded the PhD seat in law because he did not fulfil the conditions prescribed by the UGC Regulations of 2022, which bind the first Respondent and the Petitioner-University equally. She submitted that the recommendations of the Commission, which, according to her, conflict with the UGC Regulations of 2022, cannot be enforced. Ms. Agni relies upon the Judgment of the coordinate Bench at Aurangabad in the case of **Shilpa Gorakh Chavan vs. The University Grants Commission & Ors.**², in support of her contention.

6. Mr Gosavi learned Counsel for the Commission, states that the impugned Order is only a recommendation, and the Action Taken Report was only to enable the Commission to know about the action taken by the University on such recommendation. He submits that the University should not have rushed to this Court but instead submitted an Action Taken Report to the Commission within three weeks.

7. Without prejudice, Mr. Gosavi submitted that the first Respondent had been unjustly treated. He submits that there is no clarity on whether the University is indeed following the reservation policy, which is binding on the University. Secondly, he pointed out how the first Respondent passed the prescribed test but was still not

² WP No. 7795 of 2022 decided on 01.02.2024

awarded the PhD seat based on some interviews. He submits that the first Respondent was not even interviewed on one occasion. He, therefore, submits that the interest of justice requires that some direction be issued to Goa University to award the PhD seat to the first Respondent who, admittedly, belongs to the reserved category and has already cleared the UGC-prescribed test for admission to the PhD courses.

8. Mr Shirvoikar, Respondent No. 1, referred to his affidavit and submitted that Goa University was not following the reservation policy. He pointed out how, according to him, the University had treated him unjustly and denied him admission to the Ph.D. course in law. He adopted Mr Gosavi's arguments and submitted that this Court should issue directions to Goa University in this Petition itself to admit him to the PhD course in law.

9. Rival contentions fall for our determination.

10. The Commission has made the Commission's impugned Judgment and Order dated 28.06.2023 under the provisions of the said Act. Section 11(d) of the said Act provides that one of the functions of the Commission shall be to make recommendations with a view to ensure effective implementation and enforcement of all safeguards under the Protection of Civil Rights Act, 1955 (Central Act 22 of 1955

and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and other laws. Section 11(f) of the said Act lists as one of the functions of the Commission to look into specific complaints regarding deprivation of rights and safeguards in the interest of the Scheduled Castes and Scheduled Tribes. Section 11(g) also lists as one of the functions of the Commission to enquire into any unfair practice, take a decision thereon and recommend to the Government the action to be taken in that matter.

11. From the perusal of the provisions of Section 11 of the said Act, it does appear that the Commission has the power to make recommendations but not issue binding directions. That is why even the impugned Judgment and Order dated 28.06.2023 concludes with the Commission making a recommendation to Goa University. Merely because the operative portion requires the Goa University to submit an Action Taken Report, we cannot say that the Commission has acted ultra vires or that the Commission has issued any binding directions to the Goa University.

12. The operative portion of the impugned Judgment and Order dated 28.06.2023 reads as follows :

RECOMMENDATION

The Goa Commission for SC/ST recommends the Respondent Goa University that the immediate vacancy shall be given to the Applicant Shri Saprem Shirvoikar

being reserved category for Ph.D seat in the subject of law with immediate effect.

The Action Taken Report of this recommendation shall be submitted to this Commission within the period of three weeks.

Given under my hand and seal of this Commission”

13. There is no ambiguity in that the commission had only made a recommendation and not issued any binding direction. In any case, on instructions, Mr Gosavi, learned Counsel for the Commission, has clarified that the impugned Judgment and Order only makes recommendations and was never intended to issue any binding directions. This statement deserves to be accepted and is hereby accepted.

14. In the case of **All India Indian Overseas Bank SC & St Employees’ Welfare Association & Ors.** (supra), the Hon’ble Supreme Court, after advertng to the powers and functions of the National Commission for Scheduled Castes and Scheduled Tribes, held that the Commission was not specifically granted any power to issue interim injunctions and, therefore, lacked the authority to stay the promotion process pending investigation and a final verdict on the complaint received by it.

15. Ms Agni submitted that once it is clarified that the impugned Judgment and Order contained only a recommendation, Goa University would take a decision on the recommendation and submit its Action Taken Report within four weeks from today to the Commission. Accordingly, it is clarified that the impugned Judgment and Order contains only a recommendation and not a binding direction. The Goa University, consistent with the statement made on its behalf, must take a decision on such recommendation and submit an Action Taken Report to the Commission within four weeks from today. A copy of such decision along with the action taken report must also be forwarded to the first Respondent.

16. Regarding the contentions raised by Ms. Agni, Mr. Gosavi and Mr. Shirvoikar about the award of a Ph.D. seat to Mr. Shirvoikar, there is no question of examining the same in this Petition. Here, we were not concerned with the merits or demerits of Goa University's decision. The only issue in this petition was whether the Commission had issued any binding direction to Goa University and whether it could do so.

17. If any of the parties, including in particular the first Respondent, is aggrieved by any actions of the Goa University in denying him admission to the Ph.D. course in law, it is open to the first Respondent to take up such proceedings as he may be advised under the law for

redressal of his grievances. However, in these proceedings, it would not be appropriate for us to examine the merits or demerits of Goa University's actions or contentions. Therefore, liberty is granted, *inter alia*, to the first Respondent to take out appropriate proceedings before the appropriate forum for redressal of his grievances.

18. The Rule in this Petition is disposed of in the above terms by issuing the above clarifications and granting the above liberties. Once again, it is clarified that all contentions of all parties on the merits and demerits of the University's action are kept open. The rule is disposed of in the above terms without any order for costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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