

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 6057 OF 2015

Kalyan s/o Bhagwanrao Taral
age 32 years, occ. Agril,
r/o Padmavati, Tq. Bhokardan,
Dist Jalna.

.. PETITIONER

VERSUS

1. The Additional Divisional Commissioner,
Aurangabad.
2. The Additional Collector,
Jalna, Dist. Jalna.
3. The Tahsildar, Bhokardan
Tq. Bhokardan, Dist. Jalna.
4. The Gramsevak,
Grampanchayat Padmavati
Tq. Bhokardan, Dist. Jalna.
5. The State Election Commission
of Maharashtra, Mumbai.
6. The Scheduled Tribe Scrutiny Committee
Aurangabad Division, Aurangabad.
7. Chandrabhaga Ashok Shewale
age 42 years, occ. Member of G.P.
r/o Padmawati, Tq. Bhokardan
Dist. Jalna.

.. RESPONDENTS

Mr. G.B. Kulkarni, advocate for petitioner.
Mr. S.G. Karlekar, AGP for the State.
Mr. S.T. Shelke, advocate for respondent no. 5.
Mr. P.V. Jadhavar, advocate for respondent no. 7.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.
DATE : 21st AUGUST, 2015**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Respondent no. 7 was elected as a member of Village Panchayat as a candidate belonging to Scheduled Tribe category. The caste certificate issued in her favour has been held invalid by the Scrutiny Committee in view of order passed on 31.03.2008. Infact, it was a fraud on the part of respondent no. 7 to suppress the fact in respect of invalidation of her caste certificate and proceed to contest the election as a candidate belonging to Scheduled Tribe category. Taking note of the complaint presented by petitioner herein, the Additional Collector, Jalna passed order in respect of disqualification of respondent no. 7 as a member of Village Panchayat so also held her ineligible to occupy the post of Sarpanch with retrospective effect as permissible under section 10(1-A) of the Maharashtra Village Panchayat Act, 1958.
4. It is not a matter of dispute that the order of invalidation of caste certificate issued in favour of respondent no. 7 has not been set aside. It does appear on perusal of the record that respondent no. 7 proceeded to challenge the order passed by the Additional Collector holding her disqualified to occupy the post of member as well as Sarpanch of the Village Panchayat, by presenting appeal to the Additional Commissioner, Aurangabad. The appeal came to be allowed by the Additional

Commissioner in view of order passed on 27.01.2014 and the matter came to be remanded back to the Additional Collector for re-consideration. The Additional Collector, after remand of the matter, again considered the issues and confirmed the earlier order directing disqualification of respondent no. 7 to hold the post of member as well as sarpanch of Village Panchayat. It was not brought to the notice of the Additional Collector nor it has been informed to this Court that the order passed by the Scrutiny Committee directing invalidation of the caste claim of respondent no. 7 has been interfered by any forum. The fact thus remains that the caste certificate issued in favour of respondent no. 7 has been invalidated and, the order of invalidation issued by the Scrutiny Committee has not been interfered with and as such, by virtue of operation of section 10(1-A) of the Act of 1958, the election of respondent no. 7 as a member of Village Panchayat shall be deemed to have been terminated retrospectively and she is disqualified for being a Sarpanch of Village Panchayat. Thus, by virtue of provision contained in section 10(1-A) of the Act of 1958, since the membership of respondent no. 7 stood terminated retrospectively, she is not entitled to hold the office of Sarpanch of Village Panchayat.

5. In view of section 43 of the Act of 1958, it is the responsibility of the Collector to fill in the vacancy in the office of Sarpanch of Village Panchayat which has occurred on account of termination of membership of respondent no. 7, within a period of thirty days from the date of occurrence of the vacancy. The Collector has failed to perform his obligation imposed under proviso to section 43 of the Act. On account of invalidation of caste

certificate issued in favour of respondent no. 7, the seat has fallen vacant and, in any eventuality, considering the view of the Full Bench in the matter of Ramesh Suresh Kamble Vs. State of Maharashtra and others reported in **2006(6) Bom.C.R. 820** as well as judgment of Division Bench in the matter of Mohan Parasnath Goswami Vs. Committee for Scrutiny of Caste Certificates reported in **2003(3) Bom.C.R. 481 : 2003(5) Mh.L.J. 707**, respondent no. 7 is not entitled to continue to occupy the post of member as well as sarpanch of the Village Panchayat. Writ petition thus deserves to be allowed and the same is accordingly allowed. The Collector, Jalna, is directed to conduct election for filling the vacancy in the office of Sarpanch of Village Panchayat Padmavati, Tq. Bhokardan forthwith, in observance of the procedure prescribed under the Act and the rules. It would be the responsibility of the State Election Commission to fill in the vacancy in the office of member of Village Panchayat which has occurred on account of disqualification incurred by respondent no. 7, in observance of the procedure prescribed under the Act and the rules and, necessary steps shall be taken by the State Election Commission, expeditiously.

6. Since respondent no. 7 has usurped the benefits available for Scheduled Tribe community in securing elected office in the local authority i.e. Village Panchayat, knowingly, even after issuance of the order of invalidation of her caste certificate by the Scrutiny Committee and, knowing fully well that she is not a member of Scheduled Tribe community or that her status claim of belonging to Scheduled Tribe community has been rejected by the Scrutiny Committee, she is liable to be prosecuted for offence

within contemplation of section 11 of the 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. Respondents may initiate necessary proceedings against respondent no. 7.

7. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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