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HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 62 of 2016**

Smt. Babita Balmiki, aged about 32 years, W/o Shri Chhabilal Balmiki, R/o Gokulganj House 342, Ward No. 07, Motisagar Para, Korba, Tahsil and District Korba.

---- Petitioner**Versus**

1. Amrika Bai, aged about 52 years, W/o Shri Lakshman Bandhekar, R/o Ward No. 7, Motisagar Para, Tahsil and District Korba.
2. Koushalya Chouhan, aged about 50 years, W/o Pardeshi Chouhan, R/o Ward No. 7, Motisagarpara, Kunj Nagar, Tahsil and District Korba.
3. Zila Nirvachan Adhikari, Korba, District Korba.
4. Maheshwari Chouhan, aged about 30 years, W/o Shri Kailash Chouhan, R/o Dr. Shyamlal Gali, Sitamani, Korba, Tahsil and District Korba.

---- Respondents

For Petitioner	: Shri Parag Kotecha, Advocate.
For State	: Shri Prafull N Bharat, Additional Advocate General.
For Respondent No. 4	: Shri Dharmesh Shrivastava, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Order on Board**Per Deepak Gupta, Chief Justice****05/12/2016**

1. The following question has been referred for decision to the larger Bench:

"Whether the Election Tribunal under Section 441 of the Chhattisgarh Municipal Corporation Act, 1956 is entitled to consider and decide the question as to whether the returned candidate was entitled to contest from the served seat (Scheduled Caste) which includes the question of verification/determination of caste of the returned candidate for the limited purpose of deciding validity of election or the Election Tribunal's jurisdiction is barred under Section 16 of the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status

Certification) Act, 2013 in that regard and the matter has necessarily to be referred to the High Power Certification Scrutiny Committee under Section 7 of the Act of 2013 for that purpose?"

2. The issue involved is whether Section 16 of the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 (hereinafter called 'the Certification Act') bars the Election Tribunal constituted under Section 441 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter called 'the Act, 1956') from entertaining or deciding the issue whether an elected candidate belongs to a Scheduled Caste or Scheduled Tribe or not.

3. The factual matrix, necessary for decision of this case is that Smt. Babita Balmiki (Petitioner herein) was elected as Councillor to the Municipal Corporation, Korba from Ward No. 7 in the elections held on 29.12.2014. This seat was reserved for Scheduled Caste (Woman). Respondent No. 4 herein filed an election petition before the Tribunal constituted under Section 441 of the Act, 1956 and one of the points raised in this election petition is that the Petitioner herein does not belong to the Scheduled Caste category and has obtained a forged provisional caste certificate. The Petitioner herein filed an application before the Election Tribunal contending that the Election Tribunal had no jurisdiction to decide whether the caste certificate issued to her was false or not and further contended that this issue be referred for determination to the High Power Certification Scrutiny Committee (hereinafter called 'the Committee') constituted under the Certification Act. This application was rejected by the Election Tribunal holding that it was empowered to decide the issue. The Petitioner filed the present civil revision and reliance was placed by her on a judgment of the learned Single Judge of this Court delivered in *Rajkumari v. State of Chhattisgarh & Others* {2008 (2) CGLJ 45} wherein the learned Single Judge has held that this matter could be decided only by the Committee. The correctness of this judgment has been doubted in the reference order and since

the learned Single Judge could not persuade himself to agree with the earlier judgment, he has referred the aforesaid question for adjudication by the Division Bench.

4. Before referring to the particular provisions of the Certification Act, we may make it clear that this Act has been passed mainly to comply the judgment of the Apex Court passed in *Ku. Madhuri Patil & Another v. Additional Commissioner, Tribal Development & Others* {(1994) 6 SCC 241} wherein the Apex Court had directed as follows:

"13. xxx xxx xxx

(4). All the State Governments shall constitute a Committee of three officers namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status / certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities."

5. We may also make reference to the preamble of the Certification Act which reads as follows:

"An act to protect the interest of persons belonging to the Scheduled Castes, the Scheduled Tribes and Other Socially and Educationally Backward Classes of citizens in the State from those who fraudulently obtain false Social Status Certification, certifying that the person belongs to these sections of populations; and to provide for punishment for issuing and obtaining false Social Status Certification; and for matters connected therewith or incidental thereto."

6. The intention of the legislature was very clear that this Act has been framed with a view to protect the interest of the persons belonging to Scheduled Caste and Scheduled Tribes and also to punish those who obtained fraudulent and false certificates. Going beyond the judgment of the Apex Court, the State Government decided that this should be a criminal offence and therefore the criminal should be punished and those who are innocent and suffer at the hands of the persons who

obtain false certificates, are protected. The Certification Act contemplates constitution of District Level Certificates Verification Committee and as well as High Power Certification Scrutiny Committee under Sections 6 and 7. Sections 8 and 16 of the Certification Act are relevant for our purpose and read as follows:

"8. Cancellation and confiscation of false social status certificate. - (1) If after enquiry under Section 7 of this Act, High Power Certification Scrutiny Committee is of the opinion that, the social status certificate was obtained wrongfully or fraudulently, it shall, by an order in writing, cancel and confiscate the certificate by following such procedure as may be prescribed.

(2) The order passed by the High Power Certification Scrutiny Committee under this Act, shall be final and conclusive subject to the proceedings under Article 226 of the Constitution of India only.

16. Bar of Jurisdiction of Civil Courts. - No civil courts shall have jurisdiction to entertain, to continue or to decide any suit or proceeding or shall pass any decree or order or execute, wholly or partly any decree or order, if the claim involved in such suit or proceeding, or the passing of such decree or order or such execution would, in any way, be contrary to the provisions of the Act."

7. Section 8 of the Certification Act provides that High Power Certification Scrutiny Committee can hold an enquiry in terms of Section 7 and after holding such enquiry if it comes to the conclusion that the social status certificate was obtained wrongfully or fraudulently, it may, by way of a written order, order cancellation or confiscation of the certificate. Section 16 of the Certification Act is ambiguous and is not in a very clear cut language. However, one thing is clear that the jurisdiction of the civil court is barred only if the claim involved in such suit or proceeding, or the passing of such decree or execution thereof, would be contrary to the provisions of the Certification Act.

8. That brings us to the Act of 1956 under which the Election Petition was filed. Section 441 of the Act, 1956 deals with Election Petitions. Section 441-B deals with the grounds for declaring Elections or nominations to be void and clause (a) of sub-section (1) provides that one of the grounds would be that the

person elected as a Mayor or Councillor was not qualified or was disqualified to be elected to such office. Therefore, if a person challenges the election of the elected candidate on the ground that the elected candidate does not belong to the category for which the seat was reserved, then essentially he is alleging the person elected was not qualified to hold the office. A detailed procedure is provided under Part XII Chapter XXXIX of the Act, 1956.

9. Vide 74th Amendment Act, 1993, a new Chapter was added in the Constitution relating to "the Municipalities". Article 243-ZG of the Constitution of India reads as follows:

"243-ZG. Bar to interference by courts in electoral matters.-
Notwithstanding anything in this Constitution, -

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any court;
- (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

10. From a bare reading of the constitutional provision, it is apparent that election to any municipality or any office thereto cannot be called in question except by filing an election petition presented to such authority as may be provided for by the law made by the appropriate State. In this case, the State of Chhattisgarh has enacted a law and provided for an authority to hear the electoral disputes in terms of Section 441 of the Act, 1956.

11. In a constitutional democracy like India, the Constitution is supreme. Any law which is violative of the constitutional provision will have to give way to the Constitution. Article 243-ZG is absolutely clear and unambiguous. There is no manner of doubt that the Constitution provides that the election of the elected candidate to any office of the Municipality or Municipal Corporation can only be challenged by filing an election petition before the appropriate authority. This

would also mean that it is the appropriate authority which will decide all the issues raised before it and it therefore follows that one of the issues which can be decided by the Election Tribunal is whether the person elected was qualified to hold that office or not. While deciding this issue, the Election Tribunal can decide whether that elected person actually belong to the category for which the seat was reserved.

12. Shri Parag Kotecha, learned counsel for the Petitioner has mainly relied upon Section 16 of the Certification Act.

13. We have carefully gone through the Certification Act and we find that it does not bar the jurisdiction of the Election Tribunal constituted under the Act of 1956. We say this because what is expressly barred is only jurisdiction of the civil court. The Election Tribunal is not a civil court. Even if a Civil Judge is appointed as Election Tribunal for the purposes of deciding the election petition, he is not a civil court but a Tribunal constituted under the Act of 1956. We are therefore of the view that Section 16 of the Certification Act would not have application in such cases.

14. Even assuming that Section 16 of the Certification Act is attracted because the Election Tribunal is a civil court in terms of Section 441 of the Act, 1956, what is prohibited under Section 441 is that a civil court would not do anything which is contrary to the provisions of the Act. The jurisdiction of the civil court to decide the issue whether a person belongs to a particular caste or not is not barred. What is barred is that it cannot take any action which is contrary to the provisions of the Certification Act. We can from a reading of Section 16 of the Certification Act assume that if the Committee passes some order upholding or rejecting the validity of the social status, then the civil court may be bound by that order because that authority has been constituted under the provisions of the Act to decide these issues. However, if the High Power Committee has never dealt with

that issue in respect of an individual, then the jurisdiction of the Court to decide whether that individual belongs to a Scheduled Caste or Scheduled Tribe not is not barred under the provisions of the Act.

15. Another reason why we are inclined to hold that Section 16 of the Certification Act does not oust the jurisdiction of the Election Tribunal is that the Election Tribunal alone can set aside an election. If we accept the argument of learned counsel for the Petitioner then one issue would be referred to the High Power Committee for decision. The Election Tribunal shall then wait for the decision of the Committee and decide the matter as per the decision of the Committee. This is not the intention of the legislature and is also against the Constitutional scheme. Once an Election Tribunal is constituted and empowered to decide whether a person has been validly elected or not, then all the disputes which relate to that election must be and should be decided only by the duly constituted Election Tribunal. If we permit bifurcation of the case then it will lead to a result where no election petition should ever be decided within a reasonable period.

16. Though we have held that there is no conflict but even if we were to assume that there is conflict between Section 16 of the Certification Act and Section 441 of the Act, 1956, we are of the view that larger interest of justice and principles of harmonious construction require that the Election Tribunal should not be divested of its power to decide the question with regard to the status of the candidate. Lastly, we are of the view that the Election Tribunal does not decide whether the certificate granted is false or forged. It only decides whether the person belongs to particular caste or not and whether he is qualified or disqualified to contest the election and this matter has to be decided only by the Election Tribunal and cannot be decided by the Committee whose jurisdiction is limited to decide whether certification is proper or not.

17. Moreover, the jurisdiction of the Committee flows from Sections 7 and 8 of the Certification Act and Section 8 empowers the Committee to decide whether social status certificate was obtained wrongfully or fraudulently and it has power to cancel or confiscate such certificates. The role of the Committee is limited to decide whether certificates have been properly issued or not but the Election Tribunal can definitely decide the question whether a person belongs to a reserved category or not.

18. We have carefully gone through the judgment in *Rajkumari* (supra) and it appears that the attention of the learned Single Judge who decided the matter was not brought to the various provisions of law which we have referred to hereinabove and especially Article 243-ZG. We are unable to agree with the reasoning given and do not agree with the same. In our opinion, the decision does not lay down the correct law.

19. In view of the above discussion, we answer the question referred to us by holding that it is within the domain and jurisdiction of the Tribunal constituted under Section 441 of the Act, 1956 to decide the issue whether the elected candidate belongs to the Scheduled Caste and Scheduled Tribe category for which the seat was reserved. We do not feel it necessary to refer the matter back to the learned Single Judge because the dispute raised in this revision petition is only with regard to jurisdiction of the Election Tribunal. The petition is dismissed. The interim order is vacated and the Election Tribunal is directed to dispose of the matter latest by 31.03.2017, even if it has to hold day to day hearing.

20. The revision petition is dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE