

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13888 OF 2017

Shri Rajendra Jayant Devalekar,]
Adult, Occ. Social Work,]
R/of C-5/11, Anupam Nagar,]
Murbad Road, Kalyan (West),]
Dist. Thane.] Petitioner

Versus

1. Kalyan-Dombivli Municipal Corporation,]
A Body Corporate and Local Authority,]
constituted under the provisions of]
Maharashtra Municipal Corporation]
Act, 1949,]
Through its Municipal Commissioner,]
having Office at Shankar Rao Chowk,]
Kalyan, Dist. Thane.]
2. Shri Arjun Vishnu Mhatre,]
Aged 47 years, Occ. Business,]
R/of Viraj Niwas, Near Datta Mandir,]
Gauri Pada, Kalyan (West), Dist. Thane.]
3. Shri Sandeep Dattatraya Desai,]
Adult, R/of 4th Floor, Vallabh Tower,]
Syndicate, Kalyan (West),]
Dist. Thane.]
4. Smt. Jayashri Yogesh Gaikwad,]
Adult, R/of Milind Nagar,]
Near Buddha Vihar, Gauri Pada Road,]
Kalyan (West), Dist. Thane.]

5. Architect Ganesh Bharat Naik,]
Adult, R/of 4/2, Bhim Krupa Society,]
Bhawani Nagar, Opp. Prem Auto,]
Kalyan (West), Dist. Thane.]
6. The Returning Officer,]
Kalyan-Dombivli Municipal Corporation,]
(General Elections - Kalyan-Dombivli]
Municipal Corporation-2015)]
Having Office at Shivaji Chowk,]
Kalyan (West), Dist. Thane.]
7. The State Election Commissioner for the]
State of Maharashtra,]
Having Office at New Administrative Building,]
Opp. Mantralaya, Mumbai - 400 032.] Respondents

Mr. P.K. Dhakephalkar, Senior Advocate, i/by Mr. Abhijit P. Kulkarni,
for the Petitioner.

Mr. A.S. Rao for Respondent No.1.

Mr. Rajeev Patil, Senior Advocate, i/by Mr. J.M. Puranik, for Respondent
No.2.

Mr. Sachindra B. Shetye for Respondent No.7.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 9TH JANUARY 2018.

PRONOUNCED ON : 22ND JANUARY 2018.

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage
of admission itself, by consent of Mr. Dhakephalkar, learned Senior
Counsel for the Petitioner, Mr. Rao, learned counsel for Respondent

No.1, Mr. Patil, learned Senior Counsel for Respondent No.2, and Mr. Shetye, learned counsel for Respondent No.7.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the legality, validity and propriety of the order dated 30th November 2017 passed in Election Petition No.11 of 2015 by the Civil Judge, Senior Division, Kalyan, who is also designated, under Section 16 of the Maharashtra Municipal Corporations Act, 1949, to try the Election Petitions.

3. By the said order, the learned Trial Judge has allowed the Election Petition filed by Respondent No.2 and set aside the election of the present Petitioner as a 'Councilor' of the Kalyan-Dombivli Municipal Corporation for the term 2015 - 2020.

4. The gist of the facts of the Petition can be stated, in brief, as follows:-

. As per the case of the Petitioner, he belongs to 'Vaishyawani Caste', which is notified as "Other Backward Class", as per the Government Resolution issued by the State of Maharashtra on 21st August 1996, wherein this caste is included in Entry at 'Serial No.190'. In the year 2010, the Petitioner has contested the Elections as "Councilor" of

Kalyan-Dombivli Municipal Corporation, (*for short, "KDMC"*), on the seat reserved for 'Other Backward Class Candidate' and he was declared as 'elected' in the said Elections.

5. However, in the meanwhile, one Mr. Vishwanath B. Mahadeshwar, who also belongs to 'Vaishyawani Caste', has contested the Elections of the Municipal Corporation of Greater Bombay and whose 'Caste Validity Certificate' was invalidated by the Caste Scrutiny Committee, had filed Writ Petition No.4335 of 2017 in this Court. One another companion Writ Petition No.1148 of 2008 was also filed by one Mr. Suryawansh Balroop Thakur, who challenged the Government Resolution dated 21st August, 1996, whereby the Caste 'Vaishyawani' was included in Entry No.190 of Government Resolution dated 12th October 1976. This Court heard both the Writ Petitions and, by a common Judgment and Order dated 1st October 2010, held that, while issuing Government Resolution dated 21st August 1996, proper procedure, as laid down in law, has not been followed and, therefore, quashed the said Government Resolution dated 21st August 1996. Consequently, the castes 'Vaishyawani' and 'Kulwantwani', which were included and formed part of Entry No.190, as inserted vide Government Resolution dated 21st August 1996, came to be excluded from Entry No.190 since its inception.

6. In view of the aforesaid Judgment of this Court, the candidates,

who held 'Caste Certificate' / 'Caste Validity Certificate' as belonging to 'Vaishyawani' or 'Kulwantwani', their Caste Certificates became *non-est* and *void ab-initio* since inception. Though the said Judgment was challenged before the Hon'ble Supreme Court of India vide Special Leave Petition (Civil) No.32301 of 2010, the said Special Leave Petition was subsequently withdrawn.

7. Thereafter, one Chaitrali Prakash Borade, who had contested the General Elections of Kalyan-Dombivli Municipal Corporation, along with the Petitioner, for the term 2010 - 2015 and who was defeated in the said Elections, also filed Election Petition No.3 of 2011, challenging the election of the Petitioner. She had also filed Writ Petition No.10194 of 2010 on the basis of the Judgment of this Court in Writ Petition No.4335 of 2007, seeking invalidation of the election of the Petitioner on the count that, he was elected from the "Other Backward Class" category on the basis of the 'Caste Certificate' in the name of the caste 'Vaishyawani'.

8. The said Writ Petition No.10194 of 2010, along with the companion Writ Petition No.6638 of 2011, was heard and decided by this Court vide order dated 11th June 2012, quashing and setting aside the Government Resolution dated 19th July 2011 being illegal and unconstitutional. Accordingly, the 'Caste Validity Certificate' of the Petitioner as belonging to "Other Backward Class" was declared as *non-*

est since its inception and the same was quashed.

9. The Petitioner has challenged the said order by filing Special Leave Petition No.11687 of 2012 in the Hon'ble Supreme Court; however, it came to be dismissed on 1st July 2012.

10. During pendency of the said Writ Petition, the State Government of Maharashtra issued another 'Resolution' dated 19th July 2011, whereby the protection was granted to persons belonging to the caste 'Vaishyawani' and 'Kulwantwani', appointed against posts reserved for "Other Backward Class" in Government/Semi-Government services, by treating their appointments having been made from open categories, from the date of their appointments and to be shown on point of open categories in Roster. The said Resolution further provided that the persons belonging to the said caste 'Vaishyawani' and 'Kulwantwani', elected on seats reserved for Backward Class in Local Self Government will not come to an end due to change in Caste Category. The said Government Resolution further provided that, general benefits or concessions already availed by persons belonging to 'Vaishyawani' and 'Kulwantwani', as "Other Backward Class", from year 1989, should not be taken away with retrospective effect.

11. As this resolution was issued during pendency of the Writ Petition,

Petitioner therein by amending her Writ Petition, challenged the said Government Resolution as illegal, invalid, null and void or violative of the Judgment of this Court dated 1st October 2010 in the case of Mr. Vishwanath B. Mahadeshwar.

12. In view of the order of this Court dated 11th June 2012 in Writ Petition No.10194 of 2010, the learned Trial Judge, vide order dated 14th November 2012 passed in Election Petition No.3 of 2011, held that, the election of the Petitioner as “Councilor” to the Kalyan-Dombivli Municipal Corporation is illegal and, accordingly, set it aside.

13. The Municipal Commissioner of the KDMC has, in the meanwhile, on the basis of the decision of this Court dated 11th June 2012, issued to the Petitioner a letter dated 14th June 2012, informing the Petitioner that, as his caste 'Vaishyawani' does not fall under the category of “Other Backward Class” and as his 'Caste Validity Certificate' is cancelled, he is no more the 'Corporator' and, accordingly, his seat has become vacant. He was also informed by the said letter that, in view of the provisions of Section 10 of the Maharashtra Municipal Corporation Act, 1949, he has incurred “*disqualification*”.

14. The Petitioner was, thereafter, co-opted as 'Municipal Councilor', vide Special General Body Resolution dated 12th December 2012. The

said appointment was also challenged in this Court in Writ Petition No.688 of 2013 and this Court was pleased to issue the Rule.

15. Meanwhile, in view of the above-said Judgments of this Court in the case of *Vishwanath Mahadeshwar* and in the case of *Mrs. Chaitrali Prakash Borhade*, holding that the proper procedure was not followed by the State Government in adding the caste 'Vaishyawani' in Entry No.190, the Government of Maharashtra has, after following the due procedure of law, issued the fresh Government Resolution dated 9th March 2014, whereby the synonyms, such as 'Vaishyawani', 'Vaishya-Wani', 'Vai,Wani' and 'Panari', were included in Entry No.190 of "Other Backward Class".

16. Pursuant to the said Government Resolution dated 9th March 2014, Petitioner has applied to the Sub-Divisional Officer (Revenue), Dapoli Division, who issued fresh 'Caste Certificate' dated 29th September 2015, declaring the Petitioner as belonging to 'Wani' caste. The said Caste Certificate has been duly validated by the concerned 'Caste Scrutiny Committee' by issuing 'Caste Validity Certificate' dated 7th November 2015 in favour of the Petitioner.

17. As per the case of the Petitioner, on the basis of this 'Caste Validity Certificate', he contested the General Elections of Kalyan-Dombivli

Municipal Corporation, held in the year 2015, and in the said Elections, he was declared as 'elected' and has been subsequently elected as a "Mayor". As Respondent No.2 lost in the said Elections, she has, therefore, preferred Writ Petition No.11677 of 2015 in this Court, challenging the legality and validity of the Government Resolution dated 9th March 2014. The said Writ Petition is pending in this Court.

18. Respondent No.2 has, simultaneously, also filed Election Petition No.11 of 2015 before the Trial Court, challenging the election of the Petitioner, under Section 16 of the Maharashtra Municipal Corporation Act, 1949, contending, *inter alia*, that, the election of the Petitioner is illegal, invalid, *void ab-initio*, as the Petitioner has suppressed the true and material facts, while submitting the personal information in the Nomination Form. It was submitted that, the Petitioner has not disclosed the fact that his election as a 'Councilor' in the year 2010 was declared as '*void*' and set aside, in view of the order passed in the Election Petition No.3 of 2011 on 14th August 2012. Not only that, his 'Caste Validity Certificate' was also declared as '*non-est* and *void ab-initio*' by this Court in Writ Petition No.10194 of 2010 and in view thereof, he was declared '*disqualified*' for contesting the Elections. Hence, in view of Section 10(1-B) of the Maharashtra Municipal Corporation Act, 1949, (*for short*, "*Corporation Act*"), Petitioner is disqualified from contesting the Election for a period of six years from the date of receipt of the letter.

Despite being aware of the said fact, the Petitioner has filed Nomination Form, that too, without disclosing the said fact. It was contended that, the previous disqualification of the Petitioner goes to the root of the matter and the same is sufficient to disqualify the Petitioner from contesting this Election and hence, election of the Petitioner needs to be quashed and set aside and Respondent No.2 be declared as having been elected in the said Election.

19. Petitioner has contested this Election Petition vide his written statement (*Exhibit-25*), by submitting that, he has disclosed all the particulars in his Nomination Form and the contention of Respondent No.2 that the provisions of Section 10(1-B) of the Corporation Act are applicable to the case of the Petitioner, is incorrect. A specific plea was raised that, sub-section (1-B) and (1-C) to Section 10 of the Corporation Act, which were inserted in the Statute in the year 2002, were subsequently deleted in the year 2006. Though the said provisions were re-inserted in the year 2015, yet, at that time, when the communication dated 14th June 2012 was issued to him, disqualifying him under Section 10 of the Corporation Act, there was no provision on the Statute Book. Moreover, it was submitted that, the 'Caste Certificate' issued in favour of the Petitioner as belonging to 'Vaishwani' caste, is neither based on false claim, nor it has been invalidated or cancelled by the Caste Scrutiny Committee on the ground that it is based on false claim. As per

the order passed by this Court in Writ Petition No.4435 of 2007, the said 'Caste Certificate' was held to be *non-est* from its inception, as the Government Resolution issued by the State Government for inclusion of the said 'caste' was held to be not issued in accordance with the procedure of law. Thus, it was submitted that, there was no question of the Petitioner incurring '*disqualification*', as contemplated under Section 10(1-B) of the Corporation Act. There was also no suppression of material fact on the part of the Petitioner in not disclosing the earlier alleged '*disqualification*', which was not correct and not proper.

20. In support of their respective claims in the Trial Court, both, the Petitioner and Respondent No.2, examined themselves and the Trial Court, after hearing the arguments advanced by learned counsel for both the parties, vide its impugned Judgment and Order, allowed the Election Petition holding that, election of the Petitioner to Ward No.16 is invalid and set it aside on the ground that the Petitioner has suppressed the material fact that he was disqualified for a period of six years from 14th June 2012, in view of Section 10(1-B) of the Corporation Act and the letter issued by the Municipal Commissioner of KDMC of the said date. It was held that, as the period of six years has not expired, when the Petitioner has filed the Nomination Form for this Election, he has no legal right to contest the said Election as a 'qualified candidate', as he was incompetent to do so due to his disqualification.

21. While challenging this Judgment and Order of the Trial Court, the submission of learned Senior Counsel for the Petitioner is that, the learned Trial Court has committed a serious error in not appreciating the difference between “invalidation or cancellation” of the Caste Certificate on the one side and the Court holding the Caste Certificate as “*non-est or void ab-initio* since inception” on the ground that the Government Resolution, by which the caste of the Petitioner was included in Entry No.190, was not legal and proper, as the requisite procedure was not followed. It is submitted that, the disqualification can attach only when there is invalidation or cancellation of the Caste Certificate, that too, when such invalidation is on account of the “false” claim of belonging to 'Reserved Castes' and not when the Caste Certificate is held to be *non est* and *void ab-initio*.

22. Further it is submitted by learned Senior Counsel for the Petitioner that, the learned Trial Court also failed to appreciate the fact that, the question of disqualification for contesting the Election for the period of six years, as en-grafted in Section 10(1-B) and 10(1-C) of the Corporation Act, does not arise, as both these provisions were deleted from the Statute Book in the year 2006 and thereafter, re-inserted in the year 2015. However, on the date when the letter was issued by the Municipal Commissioner of KDMC, disqualifying the Petitioner on 14th

June 2012, the said provisions were not on the Statute Book. It is urged that, none of the conditions laid down in Section 16 of the Corporation Act are satisfied to set aside the election of the Petitioner. Therefore, the impugned order passed by the Trial Court cannot be sustained in law.

23. In support of his submissions, learned Senior Counsel for the Petitioner has placed reliance on the earlier orders passed by this Court in Writ Petition No.4335 of 2007 with Writ Petition No.1148 of 2008, and Writ Petition No.10194 of 2010 with Writ Petition No.6638 of 2011.

24. Per contra, learned counsel for Respondent No.2 has supported the impugned Judgment of the Trial Court by submitting that, when already the election of the Petitioner was declared as 'invalid', on the ground that the Caste Certificate, on which he has placed reliance, was held to be *non-est* and *void ab-initio* and when, admittedly, that fact was not disclosed by the Petitioner, on this very ground of suppression of material fact and also on the ground of the disqualification incurred by him and communicated to him by the letter dated 14th June 2012, the Trial Court has rightly set aside the election of the Petitioner and hence, no interference is warranted in the impugned Judgment and Order passed by the Trial Court.

25. The undisputed facts on record are to the effect that, the Petitioner

herein has earlier also contested the Election of KDMC for the term 2010-2015. His election was challenged in Writ Petition No.10194 of 2010 with Writ Petition No.6638 of 2011 and in Election Petition No.3 of 2011. This Court, vide its order dated 11th June 2012, has declared the 'Caste Certificate' and 'Caste Validity Certificate' of the Petitioner as *non-east* from its inception and quashed and set them aside. On the basis of the order passed by this Court, Election Petition No.3 of 2011 also came to be allowed. In view of this decision of the High Court dated 11th June 2012, the Commissioner of KDMC had issued letter dated 14th June 2012, informing the Petitioner of his disqualification, under Section 10 of the Corporation Act, as 'Municipal Councilor'. The said letter dated 14th June 2012 is produced on record of the Trial Court at "Exhibit-34" and it mentions that the Petitioner is disqualified, as per Section 10 of the Corporation Act, as in view of the decision of the High Court, his Caste Certificate was cancelled. In his cross-examination, the Petitioner has admitted that he was served with the letter "Exhibit-34", informing him about his disqualification. He has also admitted that he has not preferred any Petition challenging the said letter.

26. In the backdrop of these undisputed facts on record, the Trial Court has held that, in view of this letter dated 14th June 2012 issued in pursuance of the provisions of Section 10 of the Corporation Act and the decision of this Court in Writ Petition No.10194 of 2010, with Writ

Petition No.6638 of 2011, dated 11th June 2012, the Petitioner was disqualified to contest the Election for a period of six years with effect from the date of receipt of the said letter dated 14th June 2012. Hence, on the date of the Petitioner filling the Nomination Form for this Election of the term 2015-2020, the said disqualification was in force and, therefore, the Petitioner could not have contested the said Election. It was further held by the Trial Court that, as the Petitioner has not disclosed this material fact of his disqualification in the Nomination Form, on this ground also, his election was liable to be set aside.

27. Further facts are also not in the realm of dispute that, after the decision in Writ Petition Nos.10194 of 2010 and 6638 of 2011 was passed by this Court on 11th June 2012, declaring the 'Caste Validity Certificate' of the Petitioner as '*non-est*' since its inception on the count that, the Government Resolution dated 19th July 2011 issued by the State Government, was not in accordance with the procedure of law and hence, unconstitutional and illegal, the State Government has issued another Government Resolution dated 9th March 2014, including all synonyms of the 'Wani Community', like 'Vaishyawani', 'Vaishya-Wani', 'Vai,Wani' and 'Panari' etc. in Entry No.190 of "Other Backward Class". Though the said Government Resolution dated 9th March 2014 is also challenged in this Court and is the subject matter of the Writ Petition No.11677 of 2015 pending in this Court, as on today, it is not declared as

illegal or unconstitutional. On the basis of this Government Resolution, a fresh 'Caste Certificate' dated 29th September 2015, declaring the Petitioner as belonging to 'Wani' caste, is issued and the said Caste Certificate has been duly validated by the concerned Caste Scrutiny Committee, by issuing 'Caste Validity Certificate' dated 7th November 2015. Thus, as on the date of filing of the Nomination Form for the Election of the term 2015-2020, the Petitioner was having valid 'Caste Certificate' as belonging to 'Wani' caste, which is covered now in Entry No.190 of "Other Backward Class".

28. Hence, the necessary question arising for consideration is, about the effect of the letter dated 14th June 1992 (*Exhibit-34*) issued by the Commissioner of KDMC communicating to the Petitioner that, in view of the decision of this Court dated 11th June 2012 in Writ Petition No.10194 of 2010 and 6638 of 2011, he is disqualified from being the 'Member' of the KDMC in accordance with Section 10 of the Corporation Act. As this communication is issued on the basis of the decision of this Court in these two Writ Petitions, it is necessary to also consider those Petitions and the facts thereof in the context of which the decisions were rendered.

29. As stated above, the State Government of Maharashtra had issued a Government Resolution dated 21st August 1996, whereby the caste

'Vaishyawani' was included in Entry No.190. In Writ Petition No.4335 of 2007 filed by Mr. Vishwanath Mahadeshwar and Writ Petition No.1148 of 2008 filed by one Mr. Suryawansh Balrup Thakur, challenging the said Government Resolution dated 21st August 1996, this Court has, by its common Judgment and Order dated 1st October 2010, come to the conclusion that, while issuing Government Resolution dated 21st August 1996, proper procedure, as required in law, has not been followed; therefore, quashed the said Government Resolution dated 21st August 1996. Accordingly, the castes 'Vaishyawani' and 'Kulwantwani' came to be excluded from Entry No.190 from its inception.

30. It is a matter of record, that, thereafter, the State Government has issued another Government Resolution dated 19th July 2011, whereby protection and benefits granted to persons belonging to 'Vaishyawani' and 'Kulwantwani' were continued.

31. Meanwhile, as the Petitioner has also contested the Election for the term of 2010-2015, on the basis of the Government Resolution dated 21st August 1996, on 'Other Backward Class seat' on the count that, he belongs to 'Vaishyawani' caste, which was included in Entry No.190 by the said Government Resolution, his election also came to be challenged by the defeated candidate, Mrs. Chaitrali Prakash Borhade. In the light of its earlier Judgment dated 1st October 2010, passed in Writ Petition

Nos.4335 of 2007 and 1148 of 2008, this Court, by its order dated 11th June 2012, declared the 'Caste Validity Certificate' of the Petitioner also as '*non-est*' on the same count that the Government Resolution dated 21st August 1996 was not issued after following due procedure, as required by law and hence, the Government Resolution dated 19th July 2011 also cannot be sustained and is illegal and unconstitutional. The operative order passed by this Court in the said Writ Petition is of relevance and hence, reproduced as follows :-

- “(i) Rule is made partly absolute.*
- (ii) We declare that the highlighted portion of the preamble; paragraphs 1, 2 and 5 in its entirety; and highlighted portion of paragraph 3 of the Government Resolution dated 19th July, 2011, is quashed and set aside being illegal and unconstitutional.*
- (iii) The Caste Certificate issued by the Appropriate Authority and the Caste Validity Certificate issued by the Caste Scrutiny Committee, declaring Dewalekar as belonging to OBC are declared as non-est from its inception and the same are quashed and set aside.*
- (iv) The concerned Court is directed to expedite the hearing of Election Petition filed by the Petitioner in the first Writ Petition (Chaitrali Prakash Borhade). The same be finally disposed of preferably before 13th August, 2012. Although, that Court may declare the election of Dewalekar as invalid, yet, whether the Petitioner in the Election Petition should succeed in getting further relief of declaration that she is duly elected in place of Dewalekar, having secured second highest votes, is a matter to be*

considered on its own merits in accordance with law. All questions in that behalf are left open.

(v) The Petitioner in first Writ Petition and Dewalekar shall appear before the Concerned Court where the election petition is pending, on 15th June, 2012 at 11.00 a.m., when appropriate direction can be issued in the Election Petition for early disposal thereof. The Petitioner in the Election Petition and Dewalekar shall extend full cooperation to the concerned Court for early disposal of the said election Petition.

(vi) The Appropriate Authority shall forthwith initiate action, on the basis that Dewalekar has vacated his office in view of this decision, but shall not hasten the process of filling in that vacancy, until the decision of the Court in pending Election Petition - wherein further declaration is sought by the Petitioner (in Election Petition) that she is duly elected in place of Dewalekar.

(vii) Rule made absolute on the above terms with cost."

32. The perusal of this order and the entire Judgments of this Court in earlier two Petitions filed by Vishwanath Mahadeshwar and Suryawansh Balrup Thakur and in these two Writ Petitions filed by Chaitrali Prakash Borhade and Prem Seva Mahila Mandal, Kalyan, therefore, makes it abundantly clear that, as both the Government Resolution dated 21st August 1996, by which the caste of 'Vaishyawani' was included in Entry No.190, and the Government Resolution dated 19th July 2011, by which the protection was extended, were held to be illegal and unconstitutional and hence, quashed and set aside, as a

consequential result thereof, the 'Caste Validity Certificate' of the Petitioner as belonging to 'Vaishyawani' caste and, therefore, “Other Backward Class”, was declared as *non-est* since its inception and hence, same was quashed and set aside.

33. Therefore, it follows that, the 'Caste Certificate' of the Petitioner was not declared as invalid or cancelled, being based on a false claim, but, it was declared as *non-est* on account of the Government Resolution dated 21st August 1996, including the caste 'Vaishyawani' in “Other Backward Castes” and the Government Resolution dated 19th July 2011, extending the said protection and benefit given on the basis of earlier Government Resolution dated 21st August 1996, were declared as unconstitutional and illegal.

34. In this backdrop, now it is necessary to consider whether the provisions of Section 10 of the MMC Act, in accordance with which, the Petitioner was disqualified, vide letter dated 14th June 2012 (Exhibit-34), can be applicable in the instant case. The pivotal issue for consideration in this Writ Petition is, therefore, the applicability of Section 10 of the Corporation Act, particularly Sections 10(1-B) and (1-C(a)), which is reproduced as under :-

“10. Disqualification for being a Councillor :-

(1) Subject to the provisions of Sections 13 and

404, a person shall be disqualified for being elected and for being a 'Councillor', if such person -

.....

(1B)(a) A person shall be disqualified for being a Councillor, or for contesting an election for being elected as a Councillor, for a period of six years, if, an order is passed by the concerned authority, under Section 12 or, as the case may be, Section 16, holding that such person was elected as a Councillor to a seat which was reserved for a member belonging to a Scheduled Caste, a Scheduled Tribe or a Backward Class of Citizens (hereinafter referred to as "a reserved category") on the basis of false claim or a false Caste Certificate declaring that such person belonged to such reserved category.

(b) Such period of disqualification shall be computed with effect from the date of passing of such order by the concerned authority.

(1C)(a) Notwithstanding anything contained in sub-section (1B), a Councillor who has been elected to a reserved seat as mentioned in sub-section (1B), shall be disqualified for being such Councillor consequent upon the concerned Scrutiny Committee constituted under sub-section (1) of

Section 6 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 or any other competent authority specified by the State Government for the purpose of scrutiny of the Caste Certificates, declaring the Caste Certificate of such Councillor to be invalid and cancelling the same, on the ground of the same having been based on a false claim or declaration made by such person claiming to be belonging to the reserved category, and thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such Certificate to be invalid and cancellation of the same by the said Scrutiny Committee or by the competent authority.”

[Emphasis Supplied]

35. In the present case, admittedly, Section 10(1-C) of the MMC Act cannot be invoked, as Petitioner's Caste Certificate is not invalidated by the Caste Scrutiny Committee. Hence, it is necessary to consider the provisions of Section 10(1-B) of the MMC Act only.

36. The plain reading of Section 10(1-B) of the Corporation Act implies that, a person shall be disqualified for being a 'Councilor' or for contesting any Election for being elected as a 'Councilor' for a period of six years, if an order is passed by the Concerned Authority under Section 12, or, as the case may be, under Section 16, holding that, such person was elected as a 'Councilor' to a seat, which was reserved for a member belonging to a Scheduled Caste, a Scheduled Tribe, or, a Backward Class of citizens, further to the condition that, if he has contested the said Election on the basis of a *“false claim or a false Caste Certificate”*, declaring that he belongs to such reserved category. Thus, the most relevant words are, *“his claim as belonging to reserved category is found to be based on a false case or a false Caste Certificate”*.

37. Hence, merely because a person, who does not belong to 'Reserved Category', has contested the Election on a seat, which was reserved for a 'Reserved' category, he cannot be disqualified, unless it is proved that he has contested the said Election on the basis of false claim or false Caste Certificate. These words *“on the basis of false claim or false Caste Certificate”* are of great importance for the purpose of deciding the present Writ Petition.

38. In this context, reading of Section 10(1-C) also becomes relevant,

as it also lays down that, notwithstanding, anything contained in sub-section 10(1-B), a 'Councilor', who has been elected to a 'Reserved' seat, shall be disqualified for being such 'Councilor', when the concerned 'Caste Scrutiny Committee' declares his Caste Certificate to be invalid and cancels the same on the ground of the same having been based on a false claim or a declaration made by such person claiming to be belonging to a 'Reserved' category. Hence, in this provision also, the emphasis is on the “false claim” of belonging to 'Reserved Category'.

39. Thus, the conjoint reading of Sections 10(1-B) and 10(1-C) of the Corporation Act makes it clear that, only when the Election is contested on the basis of a “false claim or false Caste Certificate”, declaring that such person belong to such 'Reserved' category, such person incurs disqualification and, secondly, when the Caste Certificate issued in his favour is declared by the 'Caste Scrutiny Committee' as invalid and cancelled the same, again on the ground of the same having been based on “a false claim or a declaration” made by such person belonging to the 'Reserved' category.

40. Therefore, it follows that, the essential requirement for declaring a candidate as 'disqualified', under Section 10 of the Corporation Act, is that, the claim of such person as belonging to a 'Reserved' category is held to be “false or based on false Caste Certificate” or as per Section

10(1-C) of the Corporation Act, his Caste Certificate has been cancelled or invalidated on the ground that it is found to be based on “false claim or false declaration”.

41. This inference can be strengthened from the decision of the Division Bench of this Court in the case of *Mohan Parasnath Goswami Vs. The Committee for Scrutiny of Caste Certificates & Ors.*, 2003 (2) ALL MR 409. In this case, while interpreting the provisions of Section 10(1-B) and (1-C) of the Bombay Provincial Corporation Act, 1949, which are *pari materia* to the provisions of Sections 10(1-B) and (1-C) of the Corporation Act and the provisions of Section 10(4) 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, the Division Bench of this Court has, in the case of *Mohan Parasnath Goswami Vs. The Committee for Scrutiny of Caste Certificates & Ors.*, 2003 (2) ALL MR 409, was pleased to observe as follows :-

“The Ground for Electoral Disqualification :

11. On behalf of the Petitioner, it has been submitted that, the mere invalidation of the claim of a candidate to belong to particular caste, Tribe or Backward Class of citizens, is not by itself a ground for disqualification. That submission has merit. Ex-facie, in clause (a) of sub-section (1C) of Section 10, the disqualification is

attracted consequent upon the Scrutiny Committee declaring the caste certificate to be invalid and cancelling the same “on the ground of the same having been based on a false claim or declaration made by such person claiming to be belonging to the reserved category.” There is in this sense a degree of consistency in the statutory theme enacted in the provisions of Section 10(1C) of the Bombay Provincial Municipal Corporations Act, 1949 and the provisions of Section 10(4) of Maharashtra Act XXIII of 2001. Disqualification under Section 10(1C) results, where the ground for the invalidation and cancellation of the caste certificate is that, it is based on a false claim or declaration by such person claiming to belong to a reserved category. In Section 10(4) of Act XXIII of 2001, the disqualification is attracted, where a person has contested an election for a local authority, co-operative society or statutory body on a reserved seat by procuring a false caste certificate and on such false caste certificate being cancelled by the Scrutiny Committee. The power of cancellation is conferred upon the Scrutiny Committee by Section 7(1) of the said Act, under which the Committee is empowered to inquire into the correctness of the certificate and to cancel and confiscate, it if it is of the opinion that the certificate was obtained fraudulently. Therefore, on an interpretation of Sections 7(1) and 10(4) of Maharashtra Act XXIII of 2001 on the one hand, as well as of Section 10(1C) of the Bombay Provincial Municipal Corporations Act, 1949, as amended by Maharashtra Act 11 of 2002, on the other, it would be apparent that the legislature has required that, apart from a mere invalidation of caste certificate, an additional factor has to exist before a candidate can

be regarded as being disqualified from holding electoral office. In Section 10(1C), as amended by Act 11 of 2002, the additional factor is that the caste certificates should have been held to be invalid and must have been cancelled on the ground of the certificate having been based a false claim or declaration. In Section 10(4) of Act XXIII of 2001, the additional factor is the cancellation of false certificate. This has to be read together with Section 7, under which the power of cancellation arises, on the ground that the certificate was obtained fraudulently.”

[Emphasis Supplied]

42. In paragraph No.15 of the Judgment, thereafter, while determining the question as to when the claim can be held to be false, it was observed as follows :-

“15. In determining whether the candidate had made a false claim or declaration, the Scrutiny Committee has to assess and evaluate the facts and circumstances of each case.

The expression “false” must bear a meaning and connotation in the context of a statute where it is used. Black's Law Dictionary (Seventh Edition page 618) defines the expression “false” as something which is untrue, deceitful, lying, not genuine or inauthentic. The definition therein also goes on to state that “what is false can be so by intent, by accident or by mistake”. Whether an absence of intent or an accident or mistake should be sufficient to make a statement “false” must in our view depend

upon the statutory context and the object or purpose underlying the use of the phrase.”

43. In paragraph No.16 of its Judgment, it was further held as follows :-

“16. It needs emphasis that Section 10(1C) of the Bombay Provincial Municipal Corporation Act, 1949, provides for electoral disqualification. The consequence of the invalidation of a caste certificate and its cancellation on the ground of its being based on a false claim or declaration is that the Councilor is deemed to have vacated his office on the date of the declaration of invalidity and cancellation. Thereupon, the statute provides, the State Government shall be notification in the Official Gazette disqualify such person for being elected as or being a Councilor for six years. Serious consequences, therefore, ensue from the order of invalidation and cancellation of the caste certificate. The legislature, therefore, advisedly did not regard the mere cancellation and invalidation of the caste certificate as a ground for disqualification but mandated that a disqualification will ensue where the invalidation and cancellation is on the ground set out by the legislature, namely, that the certificate is based on a false claim or declaration by a person claiming to belong to a reserved category.”

[Emphasis Supplied]

44. Thus, it is categorically held that, as the serious consequences ensue from the order of invalidation and cancellation of the Caste Certificate, the Legislature has advisedly did not regard the mere

cancellation and invalidation of the Caste Certificate as a ground for disqualification, but mandated that a disqualification will ensue where the invalidation or cancellation is on the ground set out by the Legislature, namely, that the Certificate is based on a false claim or a declaration by a person claiming to belong to a reserved category. Thus, the crux of Sections 10(1-B) and (1-C) of the Corporation Act is that, the Caste Certificate must have been invalidated or cancelled on the ground that it is based on “false claim”.

45. In the present case, in the first place, the Caste Certificate of the Petitioner is neither invalidated nor cancelled. It is held by this Court as “non-est from its inception”, as it was issued in pursuance of the Government Resolution, which was held to be unconstitutional and illegal. Therefore, it is not the case where the Petitioner has made any false claim of belonging to “Other Backward Class” or “Reserved Category” and as it was found that his claim was false, either his election was cancelled or his Caste Certificate was invalidated.

46. In the present case, one has to bear in mind the difference between the cancellation or invalidation of the Caste Certificate on the ground of its being based on the false claim and declaration of Caste Certificate as *non-est void ab-initio* on the count that the Government Resolution, in pursuance of which his Caste was included in the category of “Other

Backward Class”, was declared as unconstitutional and illegal. It is not the case that, Petitioner has made any “false claim” as belonging to “Vaishyawani” caste. It is not disputed that, he belongs to 'Vaishyawani' caste. Hence, his claim as belonging to 'Vaishyawani' caste is not invalidated. However, as the Government Resolution dated 21st August 1996, including his caste in 'Reserved Category', was declared as illegal and unconstitutional, his 'Caste Certificate' as belonging to 'Reserved Category' was held “*non-est*”. It was the natural consequence of the Government Resolution being declared as unconstitutional and illegal. It has got nothing to his making any false claim as belonging to 'Vaishyawani' caste.

47. In such situation, in the considered opinion of this Court, the disqualification, as laid down in Section 10(1-B) or for that matter even Section 10(1-C) of the Corporation Act, cannot be said to have been incurred in this case by the Petitioner. That disqualification would have accrued, if the Petitioner's claim as belonging to 'Vaishyawani Caste' was found to be “false” or based on false declaration of belonging to that caste. However, that is not the case here. Hence, neither his 'Caste Certificate' nor 'Caste Validation Certificate' was cancelled or invalidated, nor his claim was found to be false. If it is so, then, the essential requisites of Section 10(1-B) of the Corporation Act, being not fulfilled in the present case, in the parameters of Section 10(1-B) or

10(1-C) of the Corporation Act, it has to be held that, the Petitioner has not incurred the disqualification.

48. Once it is held so, then, whatever communication, which was made by the Commissioner of KDMC vide letter (*Exhibit-34*) dated 14th June 2012, disqualifying the Petitioner under Section 10 of the Corporation Act, being not legal and correct, will not come into the way of the Petitioner in contesting the second Election held in 2015-2020. Therefore, it cannot be said that the Petitioner was de-barred from contesting Election on account of his disqualification for six years and, therefore, his election should be declared as invalid.

49. If there was no such disqualification within the parameters of Section 10(1-B) or (1-C) of the Corporation Act, then, there is also no question of Petitioner suppressing the material fact. Once it is held that, the communication (*Exhibit-34*) dated 14th June 2012 itself was not legal and correct, as the requisite condition laid down in Section 10(1-B) and (1-C) of the Corporation Act was not fulfilled in case of the Petitioner, as it was neither based on the false claim of belonging to 'Vaishyawani' caste, nor his Caste Certificate was invalidated or cancelled, on that ground, there was no legal obligation on the part of the Petitioner to make any disclosure about the said communication. Hence, on the aspect of suppression of material fact also, the election of the

Petitioner cannot be invalidated.

50. In this respect, learned counsel for the Petitioner has also pointed out that, Sections 10(1-B) and (1-C) of the Corporation Act, which were inserted in the year 2002, were deleted in the year 2006 and, therefore, when the communication (*Exhibit-34*) dated 14th June 2012 was issued to the Petitioner by the Commissioner of KDMC, informing him about his disqualification, that Section was not on the Statute Book. Both these Sections were re-inserted again by Maharashtra Amendment 43 of 2015 dated 31st December 2015 w.e.f. 5th October 2015.

51. It may be true that, therefore, the date on which the Petitioner has filed his nomination, the said Sections were on the Statute Book, but, when the communication (*Exhibit-34*) dated 14th June 2012 was made disqualifying the Petitioner, under Section 10 of the Act, both these Sections were not on the Statute Book. In such situation, it also becomes difficult to accept that the Petitioner was disqualified from contesting the Election for a period of six years on account of the disqualification incurred under Section 10(1-B) and (1-C) of the Corporation Act.

52. It is thus clear that, learned Trial Court has committed an error in not distinguishing the “invalidation or cancellation of Caste Certificate” on the ground that, it was based on “false claim” and holding the Caste

Certificate as “*non-est* from its inception” on the ground that it was issued on the basis of the Government Resolution, which was declared to be unconstitutional and illegal. As a result thereof, the learned Trial Court has erred in holding that the Petitioner has incurred the disqualification under Section 10(1-B) of the Corporation Act and as he has not challenged the said disqualification communicated to him by letter (*Exhibit-34*) dated 14th June 2012 and also not disclosed the said fact, his election was invalid. As held above, there was no necessity for the Petitioner to set aside the said communication, as it was not issued on correct understanding of the law. Moreover, when the said communication was issued, Section 10(1-B) of the Corporation Act was not on the Statute Book.

53. It is a matter of record that, thereafter, the State Government has, after following the due procedure of law, issued another Government Resolution dated 9th March 2014, including the caste 'Vaishyawani', to which the Petitioner belongs, in Entry No.190 of “Other Backward Class”. On the basis thereof, the fresh 'Caste Certificate' is issued to the Petitioner on 29th September 2015 and that 'Caste Certificate' is also validated by the concerned 'Caste Scrutiny Committee' by issuing 'Caste Validity Certificate' dated 7th November 2015. All these facts clearly go to prove that, on wrong interpretation and application of Section 10(1-B) of the Corporation Act, as the Trial Court has invalidated the

Petitioner's election, the impugned order of the Trial Court needs to be quashed and set aside.

54. Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court, declaring the election of the Petitioner to the post of 'Municipal Councilor' from Ward No.16 as invalid, is set aside. The Election Petition No.11 of 2015 stands dismissed.

55. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]