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

WRIT PETITION NO.10939 OF 2017

Navnath S/o Ranba Lambate,
Age: 45 years, Occu: Agri.,
R/o: 118, Tirkaswadi,
Post Andhawadi, Taluka Mudkhed,
District Nanded

..PETITIONER

VERSUS

- 1) State Election Commission,
Maharashtra State,
through its Commissioner,
Madam Kama Road,
New Administrative Building,
Opposite Mantralaya,
Mumbai – 32
- 2) State of Maharashtra,
Through Principal Secretary,
Tribal Development Department,
Mantalaya, Mumbai – 32
- 3) Scheduled Tribe Certificate Scrutiny Committee,
Aurangabad, through Member Secretary,
Sector E-1, Opposite CIDCO Bus Stand,
Town Center, CIDCO,
Aurangabad
- 4) Zilla Parishad, Nanded,
Through its Chief Executive Officer,
Nanded
- 5) Savita Santosh Varkad,
@ Savita Balaji Mupde,
Age: 31 years, Occu: Household,
R/o: At post Barad, Taluka Mudkhed,
District Nanded – 431 745

..RESPONDENTS

**WITH
CIVIL APPLICATION NO. 13749 OF 2019
IN
WRIT PETITION NO.10939 OF 2017**

(2)

Navnath S/o Ranba Lambate,
Age: 45 years, Occu: Agri,
R/o: 118, Tirkaswadi,
Post Andhawadi, Taluka Mudkhed,
District Nanded

..APPLICANT

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Age: 31 years, Occu: Household,
R/o: At post Barad, Taluka Mudkhed,
District Nanded – 431 745

..RESPONDENTS

Mr Mahesh Deshmukh a/w Mr S. S. Gangakhedkar, Advocates for
petitioner/applicant;

Mr S. S. Wagh, Advocate h/f Mr S. T. Shelke, Advocate for
respondent No.1;

Mr S. P. Sonpawale, A.G.P. for respondent Nos.2 & 3;

Mr S. B. Pulkundwar, Advocate for respondent No.4;

Mr V. D. Sapkal a/w Mr C. R. Thorat, Advocates for respondent No.5

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**CORAM : PRASANNA B. VARALE
AND
R. G. AVACHAT, JJ.**

DATE : 21st January, 2020

ORDER:

By way of present petition, the petitioner prays for issuing writ of quo-warranto or any other appropriate writ in the like nature, thereby respondent No.5 be declared as not eligible to continue as a member of Zilla Parishad, Nanded from Barad (Constituency No.23) Circle, Taluka Mudkhed, District Nanded.

2. Heard Mr Deshmukh with Mr Gangakhedkar, learned Counsel appearing on behalf of petitioner, Mr Wagh, learned Counsel for respondent No.2, Mr Sonpawale, learned AGP for respondent Nos.2 and 3, Mr Pulkundwar, learned Counsel for respondent No.4 and Mr Sapkal, learned Counsel appearing on behalf of respondent No.5.

3. Brief facts giving rise to file the present petition can be summarized as follows:

The petitioner is a ex-sarpanch of village Tirkaswadi, Taluka Mudkhed, District Nanded and presently working as a member of said Grampanchayat and is a voter of Barad Constituency of Zilla Parishad Nanded. Respondent No.1 declared the general elections of

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respondent No.4 – Zilla Parishad, Nanded and accordingly, the schedule of the elections was also declared and in the said process, as a part of the elections, certain seats were identified as reserved seats for Scheduled Castes, Scheduled Tribes and Other Backward Categories in view of the relevant provisions 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 (for short ‘The Act’).

4. Respondent No.5, on 1st February, 2017 had tendered her nomination form for the post of member from the Gut No.23 (Barad) for the seat which was reserved for Scheduled Tribe Category. By posing herself as a person belonging to ‘Mannervarlu’ community which is notified to be scheduled Tribe. Respondent No.5 filled in nomination form. Her candidature was nominated by the Indian National Congress Party. As per the procedure, respondent No.5 submitted an affidavit along with her nomination form stating that her tribe claim is validated by the competent Scrutiny Committee i.e. respondent No.3 on 20th December, 2017. Along with the affidavit, a copy of the caste certificate bearing No.TCSC/078092 issued by the Special Land Acquisition Officer, Nanded on 26th May, 2003 was submitted. Thus, respondent No.5 claimed her eligibility and

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entitlement for contesting the election as a candidate belonging to Scheduled Tribe category. On 20th February, 2017, results of elections were declared and respondent No.5 was declared as returning candidate and in Government Gazette notification dated 28th February, 2017, her name was published being elected candidate from Scheduled Tribe category.

5. The petitioner, being a vigilant voter was desirous to know the details of eligibility of the candidates contesting the election and also was desirous to know whether eligible candidate is contested the elections from the respective category including reserved category candidates. The petitioner then undertook the exercise of the verification and the inspection of the records available with respondent No.3 and on going through the record, it revealed that respondent No.3 Scrutiny Committee, by its decision dated 26th April, 2013 had invalidated the caste claim of the petitioner, her father and her relatives, who had obtained the certificates of validity by misrepresentation of facts and by suppression of the material information. It also revealed that the petitioner, her father and her relatives had submitted only partial and incomplete information to the competent Scrutiny Committee. It also revealed that in the order of the competent Scrutiny Committee, dated 26th April, 2013, there is a reference of the order of this Court passed in Writ Petition No.1954 of

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2009, dated 22nd August, 2012. The petitioner found that the respondent Scrutiny Committee had submitted an application bearing Civil Application No.2259 of 2012, requesting this Court to grant permission to re-open the cases and files of the relatives of the petitioners therein for fresh review of their respective caste claims and this Court, while disposing writ petition as well as civil application observed that respondent No.3 Scrutiny Committee was issued proper notices to the concerned validity holders so as to reconsider their claims. Mr Deshmukh, learned Counsel appearing for the petitioner submitted that in view of the order of this Court, show cause notice of hearing was issued to the concerned validity certificate holders. By an order dated 26th April, 2013, the competent Scrutiny Committee cancelled the caste certificate issued in favour of respondent No.5. A copy of the order of the Scrutiny Committee is placed on record at Exh.'D'.

6. Mr Deshmukh, learned Counsel for the petitioner, by inviting our attention to the order of the Scrutiny Committee, submitted that the order of the competent Scrutiny Committee, dated 26th April, 2013 refers to invocation of the provisions of the Act, more particularly, Section 10 and 11 thereof. Our attention is also invited to the copy of the petition filed on behalf of the petitioner and her father, namely, Writ Petition No.4115 of 2013 and a statement was made in the said

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petition that petitioner No.2 (respondent No.5 herein) is not taking any benefit of the reserved category. Then our attention is also invited to the order dated 15th May, 2013 passed by learned Single Judge in Vacation in a group of petitions to submit that this order granted protection only to other petitioners who were enjoying the benefits derived from the validity certificates. It is the submission of Mr Deshmukh that this interim order was of no help to respondent No.5 for the reason that it was already stated in the petition filed by respondent No.5 that she has not availed any benefit of the caste certificate.

7. It is then submitted by Mr Deshmukh that the validity certificate issued in favour of respondent No.5 was already cancelled by the order of the competent Scrutiny Committee and there was no protection to respondent No.5 and as such, respondent No.5 can neither take any benefit of the interim order dated 15th May, 2015, passed by the learned Single Judge in vacation nor she can take any benefit of continuation of that interim order. He then submitted that post the order in Writ Petition No.4115 of 2013, respondent No.5 contested the election under her matrimonial status i.e. as Mrs Savita Santosh Varkad.

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8. Mr Deshmukh then submitted that respondent No.5 was declared as a returning candidate. The copy of the declaration is placed on record at Exh. 'C'. Accordingly, the name of respondent No.5 was also appeared in the Government Gazette Notification dated 28th February, 2017. A copy of the same is also placed on record. The declaration of respondent No.5 as a returning candidate finds place in the Government Gazette Notification dated 28th February, 2017.

9. Mr Deshmukh then vehemently submitted that at the time of contesting the election, respondent No.5 was not possessing any validity certificate, on the contrary her validity certificate was cancelled and there was no order of stay by any judicial forum in her favour and thus, by complete suppression of the facts, the mischief is played by respondent No.5. Mr Deshmukh then submitted that the act of respondent No.5 was to obtain the benefits by posing herself as a candidate belonging to Scheduled Tribe category and this act is nothing but a serious breach of the democratic process.

10. Mr Deshmukh then by inviting our attention to the provisions under Section 12A of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961, submitted that having a validity certificate issued by the competent Scrutiny Committee is the prerequisite for a candidate to contest election for becoming member of the Zilla Parishad. He

then also invited our attention to the provision of the Act to submit that the law makers have framed specific provisions to curve the misdeeds i.e. obtaining validity certificate by fraudulent means and accordingly stringent provision and action are referred to in the Act.

11. Mr Deshmukh then placed heavy reliance on the provisions, namely, Section 10 and Section 11 of the At. It is also submitted by Mr Deshmukh that Sub Section 4 of Section 10 specifically comes in play in the present matter as it provides termination of the election of a person retrospectively. Mr Deshmukh also invited our attention to the Section 11, wherein a reference is made to the offences and penalties.

12. Mr Deshmukh relied on the various judgments of the Honourable the Apex Court in support of his submissions. He invited our attention to the Full Bench Judgment of this Court in the matter of **Ramesh Suresh Kamble Vs. State of Maharashtra & ors.**, reported in **2006 (6) ALL M.R. 803**. It would be useful for our purposes to refer to the relevant paragraphs, which read thus:

“26. A candidate who sets up a claim as belonging to a particular caste by making an application to the Competent Authority and obtains the Caste Certificate based on such claim and information and contests the election of the Councillor from the reserved seat and gets elected and if, ultimately; the Scrutiny Committee upon

inquiring into the correctness of such certificate declares such certificate invalid and cancels the same, it is obvious that such Caste Certificate has been obtained by that person on the basis of the declaration or information or claim which was not correct or true and upon invalidation and cancellation of the Caste Certificate by the Scrutiny Committee, such person incurs disqualification automatically. There is no escape from it.”

13. Mr Deshmukh then invited our attention to the judgment of the Honourable the Apex Court in the matter of **Chairman and Managing Director, Food Corporation of India and Ors. Vs. Jagdish Balaram Bahira & ors.**, reported in **(2017) 8 SCC 670**. We may refer to the relevant observations of the Honourable the Apex Court which read thus:

“62. The regime which obtained since 2 September 1994 under the directions in *Madhuri Patil* was granted a statutory status by the enactment of Maharashtra Act XXIII of 2001. [Section 7](#) provides for the cancellation and confiscation of a false caste certificate whether it was issued before or after the commencement of the Act. The expression “before or after the commencement of this Act” indicates that the Scrutiny Committee constituted under [Section 6](#) is empowered to cancel PART A a caste certificate whether it was issued prior to 18 October 2001 or thereafter. [Section 10](#) which provides for the withdrawal of benefits secured on the basis of a false caste certificate

which is withdrawn is essentially a consequence of the cancellation of the caste certificate. Where a candidate has secured admission to an educational institution on the basis that he or she belongs to a designated reserved category and it is found upon investigation that the claim to belong to that category is false, admission to the institution necessarily falls with the invalidation of the caste certificate. Admission being founded on a claim to belong to a specified caste, tribe or class, it is rendered void upon the claim being found to be untrue. The same must hold in the case of an appointment to a post. Therefore, the absence of the words “before or after the commencement of this Act” in [Section 10](#) makes no substantive difference because a withdrawal of benefit is an event which flows naturally and as a plain consequence of the invalidation of the claim. Moreover, as we have seen even prior to the enactment of the state legislation, the benefit which was secured on the basis of a caste claim was liable to be withdrawn upon its invalidation. [The Act](#) has hence neither affected vested rights nor has it imposed new burdens. [The Act](#) does not impair existing obligations in [Sections 7](#) and [10](#).”

14. He also invited our attention to the conclusions drawn in the aforesaid judgment of the Honourable the Apex Court and more particularly, we may refer to the relevant observations of the Honourable the Apex Court in Para Nos 69.1, 69.2 & 69.5, which read thus:

“69. For these reasons, we hold and declare that :

69.1. The directions which were issued by the Constitution

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Bench of this Court in paragraph 38 of the decision in Milind were in pursuance of the powers vested in this Court under [Article 142](#) of the Constitution;

69.2. Since the decision of this Court in Madhuri Patil which was rendered on 2 September 1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for :

- (a) the issuance of caste certificates;
- (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;
- (c) the procedure for the conduct of investigation into the authenticity of the claim;
- (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;
- (e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and
- (f) Prosecution for a criminal offence.

69.5. By Maharashtra Act XXIII of 2001 there is a legislative codification of the broad principles enunciated in Madhuri Patil. The legislation provides a statutory framework for regulating the issuance of caste certificates ([Section 4](#)); constitution of Scrutiny Committees for

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verification of claims ([Section 6](#)); submission of applications for verification of caste certificates ([Section 6\(2\)](#) and [6\(3\)](#); cancellation of caste certificates ([Section 7](#)); burden of proof ([Section 8](#)); withdrawal of benefits obtained upon the invalidation of the claim ([Section 10](#)); and initiation of prosecution ([Section 11](#)), amongst other things;”

15. Then it was submitted by Deshmukh that as a counter, the respondents would submit that there is an alternate remedy of election petition so as to unseat the respondent No.5, but when facts are clearly establishing the mischief played by respondent No.5 who was not having any validity certificate at the time of contesting the election and on misrepresentation of the facts she was declared as a returning candidate, in such a case, this Court can exercise its extraordinary powers and can issue a writ of quo-warranto.

16. Mr Deshmukh then invited our attention to the judgment of the Honourable the Apex Court in the matter of **Venkati Ganpat Vs. State of Madhya Pradesh & ors.**, reported in **AIR 1955 Nagpur 9**. It would be useful for our purposes to refer to para 5 of the said judgment, which reads thus:

“5.

We are of the view that an election petition can be made at any time after the result of the election is declared

by the Returning Officer but not later than 14 days from the date of the notification under S.20 of the Act. No. doubt, the fact that there is an alternative remedy does not take away the jurisdiction of the High Court under Art.226; but none of the remedies provided by the Article are as of right. Where there is another remedy available, to which is adequate and effective, a writ will not ordinarily be issued, but the Court may issue a writ of 'quo warranto; where the alleged intrusion is patent."

17. Mr Deshmukh then placed reliance on the judgment of the Honourable the Apex Court in the matter of **K. Venkatachalam Vs. A. Swamickan & anr.**, reported in **AIR 1999 SC 1723**. The observations made in the said judgment by the Honourable the Apex court at para Nos.20, 26 and 27 read thus :

"20. In all these cases there is a common message that when the poll or re-poll process is on for election to the Parliament or Legislative Assembly, High Court cannot exercise its jurisdiction under 226 of the Constitution and that remedy of the aggrieved parties is under the Act read with [Article 329\(b\)](#) of the Constitution. [The Act](#) provides for challenge to an election by filing the election petition under [Section 81](#) on one or more grounds specified in sub-section(l) of [Sections 100](#) and [101](#) of die Act. There cannot be any dispute that there could be a challenge to the election of the appellant by filing an election petition on the ground improper acceptance of his nomination inasmuch as the appellant was not an elector on the electoral roll of Lalgudi Assembly Constituency and for

that matter also by any non-compliance, with the provisions of the Constitution or of the Act. If an election petition had been filed under [Section 81](#) of the Act High Court would have certainly declared the election of the appellant void. It was, therefore, submitted that respondent could not invoke the jurisdiction of the High Court under [Article 226](#) of the Constitution in view of [Article 329\(b\)](#) of the Constitution read with [Sections 81](#) and [100](#) of the Act and only an election petition was maintainable to challenge the election of the appellant. That right the respondent certainly had to challenge the election of the appellant. Election petition under [Section 81](#) of the Act had to be filed within forty-five days from the date of election of the returned candidate, that is the appellant in the present case. This was not done. There is no provision under the Act that an election petition could be filed beyond the period of limitation prescribed under [Section 81](#) of the Act. That being so the question arises if the respondent is without any remedy particularly when it is established that the appellant did not have the qualification to be elected to the Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency.

26. The question that arises for consideration is if in such circumstances High Court cannot exercise its jurisdiction under [Article 226](#) of the constitution declaring that the appellant is not qualified to be member of the Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency. On the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as `Venkatachalam s/o

Pethu', taking advantage of the fact that such person bears his first name. Appellant would be even criminally liable as he filed his nomination on affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be fraud to the constitution.

27. In view of the judgment of this Court in the case of [Election Commission of India v. Saka Varikata Rao](#), AIR (1953) SC 210 it may be that action under [Article 192](#) could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court, which have been referred to by the appellant that jurisdiction of the High Court under [Article 226](#) is barred challenging the election of a returned candidate and which we have noted above, do not appear to apply to the case of the appellant now before us. [Article 226](#) of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under [Article 226](#) of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one bar of [Article 329\(b\)](#) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under [Article 226](#) of the Constitution?"

18. Thus, the submission of Mr Deshmukh, learned Counsel for the petitioner is, the bar of filing of election petition would not operate in the present matter.

19. Mr Deshmukh also placed heavy reliance on the judgment of the Honourable the Apex Court in the matter of **Rajesh Awasthi Vs. Nand Lal Jaiswal & ors.**, reported in **AIR 2013 Supreme Court 78**. We may refer to the observations made in the said judgment at Para Nos. 24, 25, 27 and 28, which read thus :

“24. As is evincible from the factual exposition, a writ of quo warranto has been issued by the High Court of Allahabad, Bench at Lucknow declaring that the appellant is not entitled to continue as the Chairperson of U.P. State Electricity Regulatory Commission (for short ‘the State Commission’) on the foundation that there had been total non-compliance of the statutory provision enshrined under sub-section (5) of [Section 85](#) of the Electricity Act, 2003 (for brevity ‘the Act’).

25. As the facts have been stated in detail by my learned Brother, it is not necessary to repeat the same. Suffice it to state that the pleas of locus standi and delay and laches have not been accepted and a finding has been returned by the High Court that the selection of the appellant was in flagrant violation of the provisions of the Act and, therefore, his continuance in law is impermissible.

27. In The University of Mysore v. C.D. Govinda Rao and another, while dealing with the nature of the writ of quo warranto, Gajendragadkar, J. has stated thus: -

“Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

28. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in [Dr. Kashinath G. Jalmi and another v. The Speaker and others.](#)”

20. Mr Deshmukh then submitted that the opposition to the petition on the ground of *locus standi* of the petitioner also would not have any role to play. He then submitted that the petitioner is a voter and having every right to know the credential of a candidate who is contesting the election and being voter, the petitioner is having right to assess the candidate when he votes for the candidate in any election. In respect of his submission, Mr Deshmukh places reliance on the judgment of the Honourable the Apex Court in the matter of **Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo & ors.**, reported in **AIR 2014 SC 246**. It would be useful for our purposes to refer to the observations made in the said judgment, which read thus:

“18. From the aforesaid exposition of law it is clear as noon day that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only

be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on one hand and an interest by a citizen as a relator to the court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds.”

21. Mr Deshmukh also invited our attention to the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification) Certificate Rules, 2003, more particularly, Rule 11 (2) (a) (ii) thereof. He then submitted that the Rules have also specified about the candidate possessing validity certificate at the time of contesting election and

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this is a prerequisite referred to in the clauses of 'FORM E' more particularly in Clause 17 (a) and (b).

22. Per contra, Mr Sapkal, learned Counsel appearing on behalf of respondent No.5 vehemently opposed the petition. It was the submission of Mr Sapkal that against the order of the Scrutiny Committee, a joint petition was filed by respondent No.5, her father. There was an interim order in favour of the petitioners. He then submitted that the Collector Nanded had initiated a proceeding against respondent No.5 for her disqualification and in order dated 12th April, 2018, the proceedings were kept in abeyance till the decision in petition filed by the respondent No.5.

23. It is the submission of Mr Sapkal that as there is parallel proceedings pending, the petitioner ought not to have approach this Court. It is also submitted by Mr Sapkal that there is an alternate remedy of filing election petition and as such, the petition filed in this Court by the petitioner for seeking writ of quo warranto is not tenable. It is also the submission of Mr Sapkal that there are disputed facts involved in the present petition. He then invited our attention to the Act to submit that there is a separate procedure set out in the Act for confiscation and cancellation of validity certificate under Section 7 thereof.

24. Mr Sapkal also placed reliance on the judgment of the Honourable the Apex Court in the matter of **Bharati Reddy Vs. State of Karnataka & ors.**, reported in **AIR 2018 SC 1059**.

25. On hearing learned Counsel for the respective parties and going through the material placed on record, we are of the opinion that Mr Deshmukh, learned Counsel for the petitioner has made out a case for allowing the petition.

26. As the facts and submissions are referred to in detail by us, we may not repeat the same, suffice it to say that normally this Court would be slow in unseat the elected candidate and ask the party to take up an appropriate proceedings in the nature of election petition, but the facts of the present case prompt us to take departure.

27. On perusal of the record, we find considerable merit in the submissions of Mr Deshmukh that at the time of contesting the election, respondent No.5 was not in possession of validity certificate issued by the competent authority i.e. Scrutiny Committee. The material placed before us makes it very clear that at the time of contesting election, the validity certificate issued in favour of respondent No.5 was cancelled under the order of the Scrutiny Committee. Respondent No.5 had approached this Court by filing writ

petition. In that writ petition, a specific statement was made by respondent No.5 that she had not availed any benefit from the validity certificate. There is also merit in the submission of Mr Deshmukh that in the interim order passed by learned Single Judge of this Court in vacation, directing the authorities not to take any coercive action against the petitioner, would be of no help to respondent No.5. A reference made by learned Counsel Mr Deshmukh to the Rules of the Act and the Proforma also makes it clear that it is the prerequisite of possessing a validity certificate issued by the competent authority for contesting the election.

28. We find considerable merit in the submission of Mr Deshmukh that the concept of locus standi of the petitioner would not play any role in the present matter. Mr Deshmukh also justified in placing the reliance on the various judgments of the Honourable the Apex Court referred to above. The judgments relied on by Mr Deshmukh support the case of the petitioner. Needless to state that though Mr Sapkal, learned Counsel for respondent No.5 vehemently opposed the petition on the ground raised by him, already referred by us, we are unable to accept the submission of Mr Sapkal. Resultantly, we are of the opinion that the petition needs to be allowed. Accordingly, following order is passed :

The present writ petition is allowed in terms of prayer clause (B).

In view of disposal of writ petition, the pending civil application also stand disposed of.

(R. G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

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