

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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WRIT PETITION NO. 3867 OF 2018

1. Pandurang Ramrao Londhe
Aged 48 years, occu: Agriculturist
R/o At & Post Lakh, Taluka Aundha
Nagnath, Dist.Hingoli.

2. Manikrao Sadashivrao Londhe
Aged about 77 years, occu Retired
R/o At & Post: Lakh, Taluka Aundha
Nagnath, Dist. Hingoli.

..Petitioners

versus

1. State of Maharashtra
Through the Ministry of Social Justice
and Tribal Welfare Department
Mantralaya, Mumbai-400 032.

2. District Caste Certificate Scrutiny
Committee, Buldana,
Social Justice Bhavan, Trisharan Square
Chikhli Road,Buldana.
Through its Member Secretary/Chairman.

3. State Election Commissioner
Through Its Commissioner
Madam Cama Road
Nariman Point, Mumbai- 400 021.
(Amended as per Courts order
dated 07.08.2018)

4. The Collector
Hingoli.

5. Chief Executive Officer
Zilla Parishad, Hingoli.

6. Sub-Divisional Officer
Mehkar, Dist.Buldana.

7. Manishkumar Shamrao Akhare
Aged about 45, Nava Mondha, Hingoli
Tah. Hingoli, Dist. Hingoli -431 513.
(Amended as per Courts order
dated 07.08.2018)

.. Respondents

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Mr. Anil S.Mardikar, Senior Advocate assisted by Mr. Narayan Phadnis, Advocate for Petitioners

Mr. Nitin Rode, Assistant Government Pleader for Respondent Nos. 1,2,4 and 6

Mr. Jemini B. Kasat, Advocate for Respondent No.3

Mr R.L.Khapre, Senior Advocate assisted by Ashwin Deshpande, Advocate for Respondent No.7

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CORAM: NITIN JAMDAR &
ANIL L.PANSARE,JJ

DATE OF RESERVING: 09 March 2022

DATE OF PRONOUNCEMENT: 17 March 2022

JUDGMENT: (PER ANIL L. PANSARE, J.)

Heard Mr. Anil S.Mardikar, learned senior Advocate assisted by Mr. Narayan Phadnis, Advocate for the Petitioners; Mr.

Nitin Rode, the learned Assistant Government Pleader for Respondent Nos. 1,2,4 and 6; Mr.J.B. Kasat, learned Advocate for Respondent No.3 and Mr.R.L.Khapre, learned senior Advocate assisted by Ashwin Deshpande, Advocate for Respondent No.7.

2. **Rule.** Rule, made returnable forthwith. Heard finally with the consent of respective parties.

3. By means of this Petition, the Petitioners are seeking to quash and set aside the order dated 27 April, 2018 passed by the Respondent No.2-Scrutiny Committee thereby granting validity in favour of Respondent No.7 as 'Kunbi' Other Backward Class. They are further seeking to quash and set aside the caste certificate issued by the Respondent No.6-Sub-Divisional Officer, Mehkar, District Buldana, in favour of Respondent No.7-Manishkumar Akhare as 'Kunbi'.

4. It is the case of the Petitioners that they are the residents of Lakh, Taluqa Aundha-Nagnath, Dist.Hingoli and also the voters in the election of Zilla Parishad, Hingoli. Both of them have contested the election as a Member of the Zilla Parishad held in January/February 2017. The Petitioner No.2 and Respondent No.7 had contested the election as a Member of the Zilla Parishad, Hingoli from one and the same *Prabhag*.

5. According to the Petitioners, the Respondent No.6-SDO has no jurisdiction to issue caste certificate to the Respondent No.7 because the ancestors of Respondent No.7 were resident of Mhalasgaon, Tq. Aundha Nagnath, Dist Hingoli. The Respondent No.7 who claims to be 'Kunbi' OBC, has contested the election as a Member of Zilla Parishad, Hingoli from Prabhag No.32 which is reserved for Other Backward Class candidate and was elected from the said Prabhag.

6. It is the case of the Petitioners that the Respondent No.7 has obtained caste certificate by playing fraud upon the authorities below. The Respondent No.7 has made an application dated 13 December 2016 before the Respondent No.6-SDO who, on the same day, issued the caste certificate in favour of the Respondent No.7 as 'Kunbi' OBC. The Respondent No.7 then submitted the said certificate for verification to the Respondent No.2-Committee. The Petitioners objected for issuance of validity certificate, *inter alia* on the ground that Respondent No.7's family is not resident of Shelgaon-Deshmukh, Tq.Mehkar rather Respondent No.7 and his family are permanent resident of Mhalasgaon, Tq.Aundha Nagnath, Dist.Hingoli. It is also submitted before the Respondent No.2-Committee by the Petitioners that the genealogy submitted before the Committee by Respondent No.7 is incorrect and illegal. The same is not the family of Respondent No.7 and that he has taken an undue advantage of one entry of his relative having name as

Vithoba. Accordingly, the order impugned has been challenged by the Petitioners on multiple grounds.

7. Mr. R.L.Khapre, learned senior Advocate for Respondent No.7 has raised preliminary objection on maintainability of the petition. According to him, the results of the election were declared on 27 February 2017. The first meeting was held on 21 March 2017. The tenure of the Council is for a period of five years. Resultantly, the tenure will come to an end on 21 March 2022. In these circumstances, it will be an exercise in futility to issue any writ including the writ of *quo warranto*. He has relied upon the judgment in the case of *Mahesh Chandra vs. Tara Chand Mod¹*. In this case, the judgment was passed by majority in respect of the provisions under Section 87A of the U.P. Municipalities Act relating to calling of the meeting and the actual holding of the meeting as also conduct of the meeting itself. It is held that first portion of the said Section is mandatory but not the second portion. However, on the point, as to whether the discretion in the writ jurisdiction should be exercised when the tenure of elected body is to conclude at the time of final hearing of the Petition, the Full Bench had held that since the life of the Board has practically come to its end and fresh elections have already been held of the members of the Board and since the elections of the President and the Vice-president will take place shortly, it would be futile to issue any of the writs prayed for

1 AIR 1958 Allahabad 374

by the Petitioner therein. It is then held that it is well-settled principle on which the Courts have agreed that the issue of writ being within the discretion of Court, the Court would rarely issue writ if the issuance of such writ would be futile.

8. Another judgment which has been pressed in service by Mr. Khapre, senior Counsel is in the case of *K N Guruswamy vs. State of Mysore*². The constitutional Court was dealing with the Appeal in respect of sale of liquor contract for the year 1953-54 in the State of Mysore. However, by the time the matter was taken up for hearing there was little time left for the contract to conclude. The Court, taking into consideration the fact that a short time is left for the contract to go, held that the excise year for the said contract would expire in a little time and, therefore, writ would be ineffective and that it is not the practice of the Court to issue meaningless writ. The Bench accordingly thought it proper to dismiss the appeal.

9. It is accordingly argued that in the present case as well, it will be futile to issue any writ inasmuch as the tenure of the Council would come to an end on 21 March 2022.

10. The second ground on which the issue of maintainability is raised is that the only remedy that is available to the Petitioners is to file Election Petition. According to Mr Khapre, *locus* of the

Petitioners is to challenge the election of Respondent No.7. Except for the challenge to the election of Respondent No.7, there is absolutely no other legal injury caused to Petitioners to challenge the validity certificate. Therefore, the statutory remedy as available under Section 27 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 is the only remedy available to the Petitioners.

11. The Petitioners have alleged that caste certificate has been obtained by Respondent No.7 by playing fraud and therefore, according to Mr Khapre, the plea falls under the caption of 'corrupt practice'. As such, the Petitioners could have challenged the acceptance of nomination as well under Rule 19(a) of the Maharashtra Zilla Parishads (Electoral Division and Conduct of Election) Rules, 1962. Further, even if the acceptance of nomination is not challenged as afore-stated, the persons like the Petitioners could still challenge the election by filing Election Petition. Reference is made to the judgment in *Dattatraya Narhar Pitale vs. Vibhakar Dinkar Gokhale & another*³ on the point that if challenge is not so made against acceptance of nomination, the Petitioners could still challenge the petition by filing an Appeal. However, it is argued that in the present case, such a challenge to the election of Respondent No.7 could have been made within 15 days of the date of declaration of the result of the election. The Petitioners have not challenged the election within the stipulated period. Therefore, the

basic right to challenge the election has been lost by the Petitioners, in turn, the bar under Article 243-O of the Constitution will come in play. Article 243-O(b) provides that no election to any Panchayat shall be called in question except by an Election Petition presented to such authority and in such a manner as is provided for by or under the law made by the Legislature of a State. In support, he has referred to the judgment of the Hon'ble Supreme Court in *State of HP vs Surinder Singh Banolta*⁴. In this case, the Respondent No.1 therein was elected as Member of Zilla Parishad. The result of election was declared on 5 January 2001. An application was filed by Respondent No.2 therein before the Deputy Commissioner, Shimla District, alleging that as he, having been declared an encroacher within the meaning of the provisions of Himachal Pradesh Public Premises Act, 1971 was disqualified to hold the elected post. The Deputy Commissioner took cognizance of said complaint and by a reasoned order declared Respondent No.1 as disqualified for being chosen as a Member of Zilla Parishad and consequently his election was set aside. The Hon'ble Supreme Court by referring to Article 243F and Article 243-O of the Constitution and various provisions of Himachal Pradesh Panchayati Raj Act, 1994 has held that once a person is declared to be an encroacher prior to the date on which he has been declared elector and if the said order has attained finality, the question as to whether he is to be

disqualified in terms of the provisions of the Act must be raised by way of an election petition alone.

12. Mr Khapre, by taking aid of such observations and the findings in the said judgment, has contended that once a person is declared elected and if the said order has attained finality, the question as to whether he is to be disqualified in terms of the provisions of any Act, must be raised by way of an Election Petition alone. It is thus contended by Mr. Khapre that if it is to be assumed that the Petitioners would succeed in the present Petition, the consequence will be, so far as the election of Respondent No.7 is concerned, is that Respondent No.7 will be disqualified to be elected as a member through the *Prabhag* that was reserved for OBC category. Therefore, and in terms of above ruling, the Petitioners will have to approach the competent forum by way of Election Petition.

13. In a given case, it is argued by Mr Khapre, the Petitioners could have filed Election Petition. Since it is the case of the Petitioners that the caste certificate was not validated by caste Scrutiny Committee by that time, the Petitioners should have then sought stay to the election petition pending decision of the Scrutiny Committee. The Scrutiny Committee has validated the caste claim on 27 April 2018 and the Petitioners thought it proper to challenge the same by way of present Petition. The Petitioners ought to have sought stay to the Election Petition had they filed it, or could have

made prayer in the Election Petition to keep the same in abeyance, pending decision of the present Petition. The Petitioners, however, could not have opted for any other forum to challenge the election of Respondent No.7 but way of Election Petition. Having not done so, it will indeed be futile to issue writ in the present petition when the tenure of elected body will be concluded in little time.

14. Mr Khapre, has relied upon the judgment in support of his contention that if Civil Court has no jurisdiction to decide a part of the dispute it would wait till the decision on the said part is rendered by the competent forum. In the case of *Dhondi Tukaram vs. Dadoo Piraji and others*⁵, the issue involved was in respect of tenancy under the Tenancy and Agricultural Lands Act. In the said suit, the defendant therein claimed himself to be a tenant. The coordinate Bench held that in such cases where the civil court cannot entertain the plea and accepts the objection that it has no jurisdiction to try the said issue (of tenancy) the Civil Court should not proceed to dismiss the suit straightaway, but should direct the party who raises such plea to obtain a decision from the Mamlatdar within a reasonable time. Accordingly, it is argued that the Petitioners failed to avail the remedy as available in law and therefore the petition is not maintainable.

15. Mr.Mardikar, learned senior Advocate for the Petitioners, in support of maintainability of the Petition contends that both the Petitioners are voters in the election of Zilla Parishad. They had raised their objection right before holding the elections. Their basic objection is the issuance of caste certificate which, according to Petitioners, has been issued without jurisdiction by Respondent No.6-SDO. The Petitioners, therefore, have sought relief that the issuance of caste certificate itself should be quashed and set aside. Further prayer of the Petitioners is that the order impugned by which the caste claim has been validated by Respondent No.2-Committee, should also be quashed and set aside. Both the prayers, according to Petitioners, are in the nature of seeking writ of *certiorari* and not *quo warranto*. It is accordingly argued that the judgments cited by Mr Khapre having been rendered in the writ of *quo warranto* and not *certiorari*, the said judgments will not be applicable in the present case.

16. It is the case of the Petitioners that the Respondent No.7 and his forefathers were not residents of the area falling within the jurisdiction of SDO Mehkar but were residents of Aundha-Nagnath District Hingoli. The said grievance was ventilated by Petitioners before the Respondent No.6-SDO as well as before the Respondent No.2-Committee, but both authorities failed to take due cognizance of the said objection and, therefore, have committed serious error. According to Mr.Mardikar, once the Petitioners succeed in their

challenge in the present petition, the consequence would automatically follow in terms of Section 10 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 (in short "Act of 2000"). It provides for withdrawal of all the benefits secured on the basis of false caste certificate. It is therefore not necessary for the Petitioners to file election petition. In fact, it is argued that the challenge by the Petitioners is not limited to present election but would cover the larger issue of benefits that would pass on to the Respondent No.7 and his family in terms of the validation of the caste claim. Thus, it is argued that it is not at all mandatory for the Petitioners to file Election Petition, particularly when they had pursued their grievance of issuance of incorrect caste certificate in favour of Respondent No.7.

17. In support, Mr. Mardikar, would refer to the judgment in *R. Vishwanatha Pillai vs. State of Kerala and others*⁶ wherein on the point of consequence of appointment on the basis of false caste certificate, the Supreme Court referred to the judgment of the High Court which held that if very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the

Constitution could flow. Reliance has also been placed on the judgment in *Nutan Vidarbha Shikshan Mandal vs. Presiding Officer*⁷ in respect of consequence of invalidation of caste claim. The coordinate Bench has held that merely because no case of any fraud being played in obtaining the caste certificate is made out, that by itself would not be sufficient to contend that consequence specified under section 10 of the Act of 2000 would not follow even after invalidation of caste claim. It is then held that the invalidation of caste claim and cancellation of the certificate would obviously invite consequence specified under the said provisions of law. Mr. Mardikar has then relied upon the judgment in *Ku. Madhuri Patil and another vs. Additional Commissioner, Tribal Development*⁸ which laid down the guidelines to streamline the procedure for the issuance of social status certificate. In doing so, the Hon'ble Supreme Court held that once it is found that the caste certificate is not valid, no sympathy and equitable consideration can come to the rescue of the person claiming benefits of such social status. The finding is based on the well-settled principle that if a party comes to Court it must come with clean hands and that he who comes to the Court with false claim cannot plead equity nor the Court would be justified in granting equitable jurisdiction in his favour. Another judgment which has been pressed in service by Mr Mardikar is in the case of *Sujit Patil vs. State of Maharashtra &*

7 2007(2) Mh.L.J.440

8 AIR 1995 SC 94

*others*⁹. Following three questions that fell for consideration of the Full Bench were :

(1) *Whether in the matter of scrutiny and verification of the caste certificate and/ or the caste claims of candidates elected to the Local Self-Government, the procedure laid down by the Apex Court in Kum. Madhuri Patil's case so also the procedure prescribed by the Resolution dated 1st January 1998, 19th April, 1999 and 25th January 2000 could have any application even before coming in force of Act No. XXIII of 2001 for the reason that Local Self-Government Acts were holding field and more so in view of the bar contained in Article 243-O and 243-ZG of the Constitution of India and other statutory provisions contained in the Local Self Government Act providing for a remedy of an Election Petition?*

(2) *Whether the provisions contained in Act No. XXIII of 2001 are repugnant to the scheme flowing from the provisions contained in Amending Act No. XI of 2002 and XXIV of 2000 and the other relevant provisions contained in parent Local Self-Government Act?*

(3) *Whether the provisions contained in Act No. XXIII of 2001 are in conflict with the constitutional mandate contained in Article 243-O(b) and 243-ZG (b) of the Constitution of India?*

18. The full Bench, after having considered various provisions of the Constitution and the Act of 2000, so also the resolutions under question and while dealing with the first question,

has held that there is no scope of there being any possibility of any conflict between the Government Resolutions, various local self-Government Acts as also the provisions of Article 243-O and 243-ZG of the Constitution of India. The High Court further held that there are two types of procedures for removal of an elected candidate in such scenario. The first being by filing Election Petition and the second being disqualification in terms of the local Self-Government Act. On second question, the Full Bench has recorded a finding that there is no repugnancy in the provisions of two Acts.

19. So far as the third question is concerned, the principal contention which was urged before the Full Bench was that the provisions of Act No. XXIII of 2001 are *ultra vires* the Constitution of India inasmuch as Section 10(4) of the Maharashtra Act No. XXIII of 2001 empowers the Scrutiny Committee appointed under the Act to set aside the election of the candidate who has been elected against the reserved seat on the local self Government authority on the ground that the caste certificate on the basis of which he contested the election from a reserved constituency is invalid. While holding that the Act of XXIII of 2021 was not in conflict with the constitutional mandate contained in Article 243-O and 243-ZG of the Constitution of India, the full Bench has rendered its finding in the following manner :-

“16. In substance, we find that the provisions that have been made in Maharashtra Act No. XXIII of 2001 are related to the provisions of filing nomination papers and its scrutiny and the Act provides for the consequences of nomination papers being rejected because the candidate does not possess requisite qualification and therefore it has nothing to do with challenge to the election of the "candidate and therefore, in our opinion, there is no question of there being any conflict between the provisions of the Act and the provisions of Article 243-ZG of the Constitution. So far as the penal consequence provided by the Act are concerned, they ensue because the person concerned chooses to contest the election on the basis of tentative certificate without getting that certificate finalised. Perusal of the provisions of Section 10 shows that if a person does not contest the election on the basis of a tentative caste certificate then he is visited with no penal consequence. Perusal of Section 11 shows that a person can be prosecuted if he obtains false caste certificate by furnishing false information or by filing a false statement and false documents or adopt any fraudulent means. This is related to the information, documents or statements submitted before the competent authority and the scrutiny committee and if a person is prosecuted under this provision, the prosecution will have to establish that the person who is accused has submitted false information or has filed false statements or documents or has adopted any fraudulent means. So far as Clause (b) of Sub-section (1) of Section 11 is concerned, it comes into operation only after benefits are taken on the basis of a tentative certificate. Therefore, penal consequences automatically flow from invalidity of caste claim only after the benefits are taken on the basis of tentative certificate.

17. *As we find that the scheme of the Act is that normally person who claims benefits available to the backward classes only on the basis of final caste certificate which has been verified by the scrutiny committee, and therefore, we hope and trust that the State Government will take steps to see that citizens are able to get orders made by the competent authority and the scrutiny committee under the Act in a expeditious manner and that because of paucity of machineries to be provided by the State Government, citizens are not forced to claim benefits on the basis of tentative caste certificate issued by the competent authority.*

18. *One more aspect that is to be seen is that the Scrutiny Committee will not make an order setting aside the election of the candidate. The order that the Scrutiny Committee makes is either the caste certificate issued to the candidate is valid or invalid. Consequence of declaration by the Scrutiny Committee that the caste certificate is not valid is provided by Section 10(4) of the Maharashtra Act No. XXIII of 2001. If the contention on behalf of the Petitioner is accepted, then the elected candidate whose caste certificate has been held to be invalid by the Scrutiny Committee will continue to occupy the office to which he has been elected till the election petition filed challenging his election is decided. It is further pertinent to note here that Sub-Section (2) of Section 7 of the Maharashtra Act No. XXIII of 2001 lays down that the caste certificate issued by the Scrutiny Committee shall be final and shall not be challenged before any authority or Court except this Court in a petition under Article 226 of the Constitution of India. Thus, take a case that where the returned candidate's election is challenged by a voter in a Election Petition on the ground that the returned candidate does not belong to the caste or tribe*

for which the seat is reserved, during the pendency of that Election Petition the Scrutiny Committee passes an order holding caste certificate issued in favour of the candidate on the basis of which his nomination paper was accepted to be invalid, the order of the Scrutiny Committee cannot be challenged by the returned candidate in any Court except this Court in a petition filed under Article 226. Therefore, so far as the Court hearing the Election petition is concerned, the order will be binding. We do not understand as to what useful purpose will be served by allowing the candidate to continue in the seat till the election petition is decided, if the election petition is bound to be decided on the basis of the decision of the Scrutiny Committee. If Section 10(4) of the Act is not on the statute book, an elected candidate whose caste certificate has been held to be invalid by the Scrutiny Committee, will continue to occupy the seat, even though the decision of the Scrutiny Committee is upheld by this Court in case a voter or other contested candidate does not file an election petition. It is, thus, absolutely clear that the necessity of enacting the provision like Sub-section (4) of Section 10 is implicit in the legislative scheme itself.”

20. Mr. Mardikar, then, referred to the judgment in *Lilly Kutty vs. Scrutiny Committee and others*¹⁰ to contend that since the Respondent No.7 has not raised the ground of bar under Art. 243-O of the Constitution before the Respondent No.2-Committee, the same cannot be raised before this Court and that the consequence of invalidation will follow. The Hon’ble Supreme Court did not express final opinion on applicability or otherwise of Article 243-O of the

10 AIR 2005 SC 4313

Constitution but held that the action of cancellation of certificate would follow the consequences. Lastly, Mr Mardikar has referred to the judgment of Full Bench of the Bombay High Court, reported in *Dattatraya Pitale vs. Prabhakar Gokhale and others*¹¹. Two contentions were raised in the Election Petition before the learned Assistant Judge - firstly it was contended that having regard to the provisions of Rule 15(i) of the Maharashtra Municipalities Election Rules 1966 and Section 44 of the Act, it was not permissible to challenge the validity of Petitioner's election on the ground that the applicant was disqualified within the meaning of Section 16(i) of the Act. Both these contentions of the Applicant were rejected by the learned Judge and the election was set aside. The Full Bench has dealt with various provisions of the Act and the Election Rules and observed that the provisions of Sections 44 and Section 21 of the Act operate upon different field, though to a certain extent, there is possibility of overlapping. It is then held that the question whether the ground of disqualification of a candidate can be urged for challenging the validity of an election will depend upon the language of the statute and upon proper interpretation of Section 21 and that such a ground is always open either to a candidate or to a voter who is entitled to challenge the validity of election. According to Mr Mardikar, in the present case, the grievance of the Petitioners being issuance of false caste certificate and since the remedy to challenge the same has been provided under the Act of 2000, it was

11 MANU/MH/0147/1975

not necessary for the Petitioners to challenge disqualification of the Respondent No.7 by filing Election Petition. The Petitioners had chosen to opt for a particular forum as provided under the law and, therefore, have rightly pursued the remedy under the said Act. If the challenge of the Petitioners is upheld not only that the Respondent No.7 will lose the benefit of being elected as councillor but also the other benefits attached to his social status.

21. Having heard both the sides on preliminary issue and having given thoughtful consideration to the rival contentions, we are of the opinion that the Act of 2000 is a complete code in itself. It provides for the regulation of the issuance and verification of the caste certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, Denotified Tribes, Nomadic Tribes, other Backward Classes and Special Backward Category. The Regulation also includes to withdraw the benefits secured by the persons on the basis of false caste certificates. One of the consequence of withdrawal of benefits will be disqualification of Respondent No.7 to contest election under OBC category. Therefore, once it is declared that the caste claim is invalidated, the benefits obtained by a person under such caste certificate would automatically be withdrawn. The law in this regard has been crystallized, some of these judgments, have been referred by Mr. Mardikar as well.

22. The Full Bench in *Sujit Patil's* case (supra) has categorically held that the provisions in Maharashtra Act No. XXIII of 2001 are related to the provisions of filing nomination papers and its scrutiny and the Act provides for the consequences of nomination papers being rejected because the candidate does not possess requisite qualification and, therefore, it has nothing to do with the challenge to the election of the candidate. It is also held by the Full Bench that there are two types of procedure for removal of an elected candidate in such scenario. The first being by filing an Election Petition and the second being disqualification in terms of the local Self-Government Act - in the present case, Act of 2000. Thus, it is not mandatory for the Petitioners to file Election Petition. He can very well pursue the remedy as available under the Act of 2000.

23. The Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as "Rules of 2012") particularly Rule 19 provides that any complaint or allegation in respect of issuance of caste certificate shall be inquired into by Scrutiny Committee. Thus, complaint can be made by any person. Thereafter, it is for the Committee to deal with it and decide in accordance with law. In the circumstances, merely because the tenure of the Respondent No.7 as a councillor is likely to be

completed in a few days, it cannot be said that issuance of writ of *certiorari* would be a futile exercise. Mr. Mardikar is correct in contending that consequence of invalidation will not only affect the present election but would also affect the other benefits attached to the social status of Respondent No.7 for rest of his life. Therefore, the judgments cited by Mr.Khapre to that extent may not be relevant in this case, particularly when Act of 2000 provides for such remedy. Therefore, the argument of Mr.Khapre that Petitioners could have challenged the election of Respondent No.7 through the Election Petition and that the Election Petition is the only remedy available to the Petitioners is without substance, inasmuch as the provisions of Act of 2000 are self-sufficient.

24. The Petitioners by present writ petition, have mainly emphasised on their grievance of obtaining caste certificate by playing fraud. From their point of view one of the consequence will be setting aside the election of Respondent No.7 but it is not the only consequence of invalidation of caste claim of Respondent No.7. In the circumstances, it will not be proper for this Court to view the prayer of Petitioners as challenge to election of Respondent No.7. The social status of a person as declared under the Act of 2000 carries multiple benefits. Therefore issuance of caste certificate and its validation is a crucial aspect for all the citizens. In that view of the matter, in our opinion, it cannot be said that the petition is not

maintainable. We, accordingly, overrule the preliminary objection raised by the Respondent No.7.

25. On merit, the controversy revolves around two points - the first being, the Respondent No.6-SDO Mehkar had no jurisdiction to issue caste certificate and the second being, the only document which is a pre-Independence document, refers to entry of the month of July 1922 relating to Register of Birth and Death has no nexus with Respondent No.7's ancestors. The particulars of the entry would show that son of Vithoba who was one-year-old and was not named, has expired. The entry refers to village Shelgaon-Mehkar. It is the case of the Petitioners that the Respondent No.7 has failed to establish nexus of Vithoba with him. The Respondent-authorities failed to consider this aspect and without ruling out possibility that Vithoba described in the aforesaid entry is indeed grandfather of Respondent No.7, has issued and validated caste certificate of Respondent No.7. It is also the case of Petitioners that except for this document, there is no other document which would describe the caste 'Kunbi' of Respondent No.7's relatives. All other documents submitted by the Respondent No.7 would indicate the caste as "Kunbi-Maratha".

26. Mr. Mardikar has taken us through various documents filed by Respondent No.7 before the Respondent No.2-Committee to contend that the place of residence of Respondent No.7 and his

ancestors was Aundha-Nagnath. The first document is the order issued by office of SDO, Mehkar. It indicates that Respondent No.7 has applied for getting a certificate for 'Kunbi' caste. Only two documents were furnished. The first document is the application in prescribed format and affidavit. The second document is school leaving certificate of Respondent No.7. There is a remark on this order-sheet which indicates that documents were from Aundha-Nagnath area. Thus, it is argued that the order-sheet itself indicates that documents were obtained from the area outside the jurisdiction of SDO Mehkar, Aundha-Nagnath being under the jurisdiction of SDO Basmath. It is then contended that the application was filed on 13 December 2016 and the certificate came to be issued on the same day. Accordingly, it is argued that the certificate has been obtained under the influence of Respondent No.7.

27. Our attention is then drawn to the school leaving certificate which shows that the caste of Respondent No.7 is recorded as "Maratha Kunbi". Thereafter, the affidavit dated 13 December 2016 sworn in by Respondent No.7 has been referred to, which shows that the affidavit has been sworn for declaration that the father of Respondent No.7 is illiterate. Mr. Mardikar would then argue that the said affidavit is blatantly false inasmuch as the documents submitted by Respondent No.7 before the authorities below would also include the Service Book of the father of

Respondent No.7, which would show that father of Respondent No.7 stood retired as Talathi.

28. Mr.Mardikar has then contended that the name of father of Respondent No.7 is Shamrao Akhare, however, he has fabricated documents to show that Vithoba is his (Shamrao's) father. One of such documents is a letter dated 3 April 2018 issued by Shamrao Akhare to the Tahsildar, Kalamnoorie. He has written to Tahsildar that Petitioner No.1 has made a false complaint. The name of grandfather of Respondent No.7 is Vithoba Motiram Akhare who expired when the Respondent No.7 was young. It is then mentioned in the letter that Vithoba Akhare has located himself to Mhalasgaon Tq.Aundha-Nagnath from Taluqa Shelgaon-Deshmukh. Shamrao Akhare then brought up Respondent No.7. An entry was also made in 7/12 extract which refers Shamrao as guardian of Respondent No.7. It is under this background that the name of Respondent No.7 is recorded as Manishkumar Shamrao Akhare but, in fact, the name of father of Respondent No.7 is Motiram, the son of Vithoba. Thereafter, the entries of ration card and election card in the name of Respondent No.7 were referred to show that address of Respondent No.7 is of Mhalasgaon, Tq. Aundha-Nagnath, Dist. Hingoli.

29. Mr. Mardikar has then referred to the letter dated 15 March 2017 issued by Police Patil, Shelgaon, in favour of Deputy Collector, Mehkar. The Police Patil has written to the Deputy

Collector that Respondent No.7 and his father Shamrao are not resident of Shelgaon and that on 9 December 2016 he (Police Patil) has inadvertently issued the certificate of residence and genealogy of Respondent No.7 to be of Shelgaon. Accordingly, it is argued that Respondent No.7 was resident of Aundha-Nagnath and was not hailing from Mehkar, therefore, the Respondent No.6-SDO Mehkar had no territorial jurisdiction to issue the caste certificate. In support reference is made to the judgment in the case of *Rajendra Shivram Thakur vs. State of Maharashtra and others*¹². It is held thus,

“45. Hence, we hold that the Competent Authority while considering the applications of persons who are not original residents of area specified lack the inherent jurisdiction and it is not a mere issue of lack of territorial jurisdiction.”

30. Taking aid of the aforesaid citation and Rules 3,4, and 5 of the Rules of 2012, it is argued that Respondent No.7 has obtained the certificate by fabricating documents.

31. Mr. Mardikar has then drawn our attention to the impugned order. He contends by referring to the said order that the documents filed by Petitioners would show that the caste of Respondent No.7 in the records maintained by various authorities including school, revenue, is ‘Maratha-Kunbi’ and that he and his ancestors were residing at Tq. Aundha-Nagnth, District Hingoli.

The order also refers to the document submitted by Respondent No.7 including document at Sr. No.5 having entry dated July 1922 in the name of Vithoba. According to Mr. Mardikar, the order impugned would show that except for document at Sr. No.5, all other documents submitted by Respondent No.7 were ignored, mainly on the count that the documents were of recent period. The order then indicates that the vigilance enquiry was conducted and that according to vigilance report, there is absolutely no nexus of entry dated July 1922 with the genealogy of Respondent No.7. Accordingly, the Committee has rejected the vigilance report and sought a fresh report from vigilance cell on the point of genealogy of Respondent No.7 by conducting affinity test. A fresh report was called on the assertion having been made by Respondent No.7 that the name of his grandfather was Vithoba Motiram Akhare and not Vithoba Rajaram Akhare. In support, he had filed affidavits of six persons.

32. The second vigilance report would show that grandfather of Respondent No.7 has shifted to Hingoli from Shelgaon-Deshmukh and thereafter to Mhalasgaon. Accordingly, the Committee has recorded the finding that the ancestors of Applicant were residing at Shelgaon-Deshmukh, Tq. Mehkar, District Buldana till 1922 and that some time in the year 1952-53, they have shifted to Mhalasgaon, Dist. Hingoli. It is then recorded that Vithoba Motiram Akhare is the grandfather of Respondent No.7. The

Committee has then referred to the affidavits of seven persons which were tendered by Respondent No.7 in proof of his residence of Shelgaon-Deshmukh, Tq.Mehkar and caste as 'Kunbi'. The Respondent No.2-Committee taking aid of second vigilance cell report believed the aforesaid contentions of Respondent No.7 and held that entry dated July 1922 is indeed of grandfather of Respondent No.7. The entry records caste as 'Kunbi', the said entry being prior to deemed date i.e.13 October 1967 (for Other Backward Classes) has been relied upon. The Committee has then recorded its finding that the Respondent No.7 has also furnished oral evidence in support of his caste as 'Kunbi'. The Petitioners did not cross-examine the Respondent No.7 and accordingly, validated the caste certificate.

33. Mr. Mardikar has drawn our attention to the notice issued by the Committee to the Respondent No.7 calling upon him to prove his claim on the ground that the documents furnished by him were not sufficient to validate his caste claim. One of the documents referred to is the entry dated July 1922. The Committee has observed that said entry being singular *viz*, showing only the name of person, the Committee was not satisfied with the said document amongst others, to validate the claim and accordingly, the Respondent No.7 was called upon to prove his caste claim in terms of Section 8 of the Act of 2000. Mr Mardikar would also contend that the Committee in the impugned order has initially rejected some of the documents furnished by Respondent No.7 on the ground that

the document in the form of affidavit in respect of genealogy of Respondent No.7 and other claims, cannot be accepted as evidence. Thus, at one stage, the Committee has rejected the document in the form of affidavit and later relied upon the affidavit of few persons to validate the caste claim of the Respondent No.7.

34. It is also argued by the Petitioners that they were not given opportunity to cross-examine the Respondent No.7. However, during the course of rebuttal of aforesaid contention, Mr Khapre, has pointed out that opportunity was given but was not not availed. He referred to *Roznama* dated 19 August 2017 which shows that on 14 December 2017 the request made by the Petitioners to cross-examine the Respondent No.7 was allowed by the Committee. On the next date, i.e. 21 December 2017, the Respondent No.7 was not present and, therefore, the cross-examination could not be conducted. However, on 27 April 2018 the Respondent No.7 was present but the Petitioners did not press for cross-examination of Respondent No.7 but chose to argue the case. In response, Mr. Mardikar, would contend that even if it is presumed that the Petitioners were given opportunity to cross-examine the Respondent No.7 and that Petitioners did not cross-examine him, that by itself, does not permit the Committee to blindly believe the claim made by Respondent No.7 through oral evidence called chief-examination. What Respondent No.7 has claimed in chief-examination is that Vithoba named in entry dated July 1922 is his grandfather. Such assertion,

when the entry is singular, cannot be made by the Respondent No.7. It is for Vithoba to assert that Respondent No.7 is his grandson, which may have some evidentiary value if the said person is not cross-examined by the other side.

35. Mr. Mardikar has then referred to Rule 17, sub-clauses 4, 6, 7, 9, 11 (ii) of the Rules of 2012 to contend that it is the sole responsibility of Respondent No.7 (Applicant before the Committee) to prove his case. It is the duty of the Scrutiny Committee to satisfy itself of the genuineness of the caste claim made by the respective Applicants. It is the duty of the Committee to satisfy itself whether the claim made by the respective Applicants through affidavit is a conclusive evidence on the point of caste claim by such person. It is also provided under the Rules that vigilance cell inquiry is to be made for respective territorial area of jurisdiction of concerned Scrutiny Committee. It is then argued that both the vigilance cell reports are/were inconclusive on the point of caste claim made by Respondent No.7. The Committee has not given any reason as to why the entries in the vigilance cell reports which were against the Respondent No.7 have been discarded and accordingly argued that the order is patently illegal.

36. Mr. Mardikar has further contended, by referring to entry dated July 1922, that the entry pertains to Vithoba. The age of son of Vithoba is mentioned as one year and it is stated that son was

not named. Such entry, according to Mr Mardikar, is doubtful, inasmuch as it is difficult to digest that one year son would not be named. Mr Mardikar has then pointed out by referring to entry from service record of father of Respondent No.7 viz, Shamrao Akhare which shows that the date of birth of Shamrao is 24 July 1949. Mr. Mardikar would contend that Respondent No.7 has submitted a genealogy which was issued by Police Patil of village Shelgaon-Deshmukh, Tq. Mehkar, Dist. Buldana, to indicate that Vithoba had two sons, namely, Shamrao and Ramrao. The Respondent No.7 claims that entry dated July 1922 relates to son of Vithoba who expired at the age of one year. It means that the said son was born some time in the year 1921. As against the other son named Shamrao is born on 24 July 1949 as mentioned above. If these two entries are to be taken together, it becomes highly doubtful whether the person named Vithoba in the entry dated July 1922 is indeed grandfather of Respondent No.7 for the simple reason that there cannot be a gap of 28-years between two sons. Therefore, it is argued that the Committee ought to have insisted upon proof of relation between said Vithoba and Respondent No.7.

37. As against, Mr. Khapre, while supporting the impugned order, contends that the Committee has followed entire procedure in terms of provisions of the Act of 2000 and the Rules framed thereunder. The Respondent No.7 has tendered an affidavit in chief-examination before the Scrutiny Committee. He has made a

categorical statement that the name of Vithoba reflected in July 1922 is of his grandfather. As stated earlier, Mr. Khapre has pointed out by referring to *Roznama* that though Petitioners were given opportunity to cross-examine the Respondent No.7, they failed to cross-examine and, therefore, the claim made by Respondent No.7 through chief-examination remained uncontroverted and stands proved accordingly. Similarly, it is also mentioned in the chief-examination that the ancestors of Respondent no.7 were resident of Shelgaon-Deshmukh, Tq. Mehkar, Dist. Buldana. His grandfather shifted to Mhalasgaon, Tq.Aundha-Nagnath some 80 to 90 years back. Some of the relatives of Respondent No.7 are still residing at Shelgaon-Deshmukh. Even the said statement remained uncontroverted and, therefore, stands admitted. Even the vigilance cell report would support the aforesaid contentions of Respondent No.7. Accordingly, it is argued that there is no substance in the Petition.

38. Mr. Nitin Rode, learned Assistant Government Pleader would contend that Petitioners failed to cross-examine the Respondent No.7 so also the vigilance officers. He states that though the cross-examination of vigilance officer is not envisaged but since there were two reports of vigilance cell, the Petitioners could have at least made an attempt to make a request to cross-examine the said officials. Accordingly, he supports the findings rendered by the Scrutiny Committee.

39. We have given our thoughtful consideration to the rival submissions. What we find from the arguments made by the Petitioners is that there is only one document which has been heavily relied upon by the Respondent No.7, so also by the Scrutiny Committee in support of the caste claim as belonging to 'Kunbi'. The entry is of the month of July 1922. The first vigilance cell report is dated 10 August 2017. It refers to various documents including the entry dated July 1922. It is then mentioned that all these documents and evidences were originated from village Mhalasgaon, Tq. Aundha Nagnath, District Hingoli and are beyond the jurisdiction of the Scrutiny Committee and, therefore, were not examined. Thereafter statements of some members of Akhare family were recorded. They have stated that they know Respondent No.7 and his family members and that his caste is 'Kunbi'. The vigilance cell has also recorded statements of the then Police Patil and other persons. One of the persons by name Raghunath Dhadkar, aged 77 years, has stated that he is resident of Shelgaon by birth and is residing at Shelgaon. He is acquainted with Akhare family; he knows Vithoba Rajaram Akhare and his family. Vithoba had three sons namely Prakash Dnyaneshawar and Ambadas. He has further stated that Vithoba had no son by name Shamrao. The person named Shamrao Vithoba Akhare is not resident of Shelgaon-Deshmukh. It is then stated that except Vithoba Rajaram Akhare, there is no other person in the village having name Vithoba or that no such person has ever left for Hingoli. It is then stated that Akhare family belongs to

“Maratha” community. The other person namely Rauf Shah, aged 70 years was an ex-Police Patil. He also stated that he is residing at Shelgaon-Deshmukh by birth. He knew almost everyone from Shelgaon Deshmukh. He also knows Akhare family. There was only one family belonging to Vithoba Akhare; he had three sons namely Prakash, Dnyaneshwar and Ambadas. He has also stated that Vithoba has no son by name Shamrao. It is then stated that there is no person by name Manish Shamrao Akhare who is resident of Shelgoan-Deshmukh. The Akhare family belongs to ‘Maratha’ community.

40. The second report of vigilance cell which is dated 18 November 2017. It refers to documents obtained from Respondent No.7. One of the important entry is the entry dated July 1922. As referred to herein-above the vigilance officer has recorded the statement of Respondent No.7 and other persons in terms of the information furnished by Respondent No.7. The report would refer to the claim made by Respondent No.7 and the complaint made by Petitioners, however, there is no final conclusion on the point of the caste claim made by Respondent No.7 particularly by referring to entry dated July 1922.

41. There is no dispute that except for the document dated July 1922 there is no other document prior to deemed date to support the caste claim of Respondent No.7. The moot question is

whether the Respondent No.7 has proved his claim of 'Kunbi' caste on the basis of the entry dated July 1922 with any verifiable material. It is further the question as to whether the Scrutiny Committee has taken efforts to rule out the possibility that the entry dated July 1922 in the name of Vithoba is indeed the entry of grandfather of the Respondent No.7. We have some doubt on this count. At least, we may say in the backdrop of the discussion made hereinabove that the Respondent No.7 ought to have placed before the Committee some verifiable material in support of his claim that Vithoba named in entry dated July 1922 is indeed his grandfather. It is so because the first report of the vigilance cell refers to Vithoba who was resident of Mhalasgaon; had three sons namely Prakash, Dnyaneshwar and Ambadas. Thus, said Vithoba had no son by name Shamrao or Ramrao. Secondly, there appears no reason why should Respondent No.7 sworn in an affidavit for declaration that his father was illiterate, particularly when there was record available to show that his father Shamrao retired as Talathi. Thirdly, the entry in the service record of the father of Respondent No.7 i.e. S.D.Akhare would show that date of birth of Shamrao D. Akhare is 24 July 1949. This entry leads to the fallacies as to how the brothers of Shamrao could be born 28 years ago if entry of the month July 1922 is to be treated as a proof in support of caste claim of Respondent No.7. In the light of Above, the theory of Respondent No.7 that Shamrao has been brought up by Dnyanoba because

Vithoba expired while the Respondent No.7 (he) was young needs to be thoroughly scrutinised.

42. The Respondent No.7 has not really countered the arguments of Petitioners in respect of the entry in the Service record of S.D.Akhare, except that the aforesaid documents have not been proved by leading evidence. In our opinion, the law is well settled on this point that if a party submits documents in the proceedings including photocopies of documents and if the other party refers to it in the argument, such document including photo copy can be looked into and relied upon as admissible evidence by the Court to adjudicate the matter. Further, there is also doubt about the place of residence of forefathers of Respondent No.7 as to whether they belonged to Mhalasgaon or were resident of Aundha-Nagnath. The place of residence of forefathers of Respondent No.7 would be crucial even to decide whether Respondent No.6-SDO, Mehkar had jurisdiction to issue caste certificate.

43. In the circumstances, we deem it appropriate to refer the matter back to the Respondent No.2-Scrutiny Committee to have a detailed enquiry in this regard. The Respondent No.7 will also get an opportunity to lead the evidence in support of his caste claim, particularly in respect of entry dated July 1922 in the name of Vithoba.

44. With the above observations, we set aside the impugned order dated 27 April 2018 passed by the Respondent No.2-Committee. We remand the matter back to the Respondent No.2 Committee to decide the caste claim of the Respondent No.7 afresh as early as possible, in the light of the observations made in the body of the order.

45. There are two aspects : First, that we have remanded the matter to the Respondent No.2-Scrutiny Committee as further deliberations are required before concluding whether the caste certificate obtained by Respondent No.7 is legal or it is obtained by fraud and, therefore, setting aside the impugned order will not be construed as we have declared that the caste certificate has been obtained by fraud for the Section 10 of the Act of 2000 to come into operation. The issue whether Section 10 of the Act will come into operation or otherwise will depend on the order passed by the Scrutiny Committee on remand. Second, the term of the Respondent no.7 as a Councillor is about to end within a period of few days and, therefore, this is an additional ground which we must keep in mind not to declare that the election of the Respondent No.7 as Councillor is invalid at this stage.

46. We also clarify that the observations made in this judgment are as regards why the remand is necessary and they are not

to be construed as concluding the matter on merits, as the issue will be decided by the Scrutiny Committee.

47. The writ petition is partly allowed. Rule is made absolute in above terms, with no order as to costs.

[ANIL L. PANSARE,J.]

[NITIN JAMDAR,J.]

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