

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 11276 OF 2022

Archana W/o. Ananda Shembalwad @
Archana D/o. Ramji Pillewad,
Age 40 years, Occu. Household,
R/o. Karla, Tq. Umari,
District Nanded

....Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Additional Commissioner,
Aurangabad Division, Aurangabad.
3. District Collector, Nanded.
4. Sub Divisional Officer, Bhokar,
Tq. Bhokar, District Nanded.
5. Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Region,
Aurangabad
Through its Member Secretary.
6. Pandurang S/o. Nagoji Kolhe,
Age 30 years, Occu. Agril.,
R/o. Karla, Tq. Umari,
District Nanded.

....Respondents

...

Mr. A.N. Nagargoje, Advocate for petitioner.

Mrs. V.N. Patil-Jadhav, AGP for respondent/State.

Mr. G.R. Syed, Advocate for respondent No. 6.

...

CORAM	: ARUN R. PEDNEKER, J.
CLOSED ON	: 10/04/2023
DELIVERED ON	: 18/04/2023

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent of the parties,

heard finally.

2) By the present writ petition, the petitioner is challenging the order dated 9.5.2022 passed by the respondent No. 3 – District Collector, Nanded and confirmed by the order dated 26.7.2022 passed by the respondent No. 2 – Additional Divisional Commissioner, Aurangabad, thereby disqualifying the petitioner under section 10-1A read with section 16 of the Maharashtra Village Panchayat Act, 1958 for non submission of caste validity certificate within time stipulated in section 10-1A.

3) The brief facts, leading to the institution of the present writ petition, are summarized as under :-

The petitioner contends that she belongs to Koli Mahadeo Tribe which is a scheduled tribe. On 25.2.1991 the competent authority issued tribe certificate in favour of the petitioner.

4) The petitioner contends that general election of Village Panchayat Karla, Tq. Umari, District Nanded was declared in 2015 and one post was reserved for S.T. Women category. The petitioner contested the election of the said Village Panchayat against the post reserved for S.T. Category and got elected for the said post. The petitioner submits that as per section 10-1A of the Maharashtra Village Panchayat Act, the candidate contesting the election against the reserved post is required to submit the caste validity certificate along with the nomination form and in the event, she does not have a caste validity certificate at the time of filing nomination, then the candidate has to produce the proof of submitting the caste certificate to the Scrutiny Committee for verification through the concerned authority.

5) In the instant case, the petitioner contends that the petitioner did not have caste validity certificate at the time of nomination and as such, the

petitioner had forwarded the proposal for validation of her caste certificate to the Scrutiny Committee on 12.1.2015. The petitioner contends that the Scrutiny Committee disposed of the proposal of the petitioner by order dated 18.3.2016 by which the Scrutiny Committee confiscated the tribe certificate of the petitioner, however, leaving it open to the petitioner to get the appropriate caste certificate from the competent authority as it was not as per the Presidential Order. It is the contention of the petitioner that the petitioner was not aware of the order dated 18.3.2016. Meanwhile the earlier term of the petitioner was over and the new term of the village panchayat was declared in the month of December 2020.

6) The petitioner contends that the petitioner again contested the election against the post reserved for S.T. Women category in the same village panchayat. She filed her nomination form and produced her acknowledgment of the earlier caste certificate being submitted to the Scrutiny Committee, on the alleged impression that the scrutiny of her caste certificate was pending before the Caste Scrutiny Committee and was not invalidated on 18.3.2016.

7) The petitioner submits that the petitioner again got elected on 19.1.2021 against the reserved post of S.T. Women category from the said village panchayat. The petitioner was not able to produce the caste certificate within the stipulated period of twelve months from the date of election.

8) Sometime in the month of February 2022 after the period of one year was over to submit the caste validity certificate, the respondent No. 6 – Pandurang Nagoji Kolhe filed dispute before the respondent No. 3 - District Collector, Nanded by taking recourse to the provisions of sections 10-1A

read with 16 of the Maharashtra Village Panchayat Act and prayed that the petitioner be declared as disqualified as her caste certificate is invalidated by the Scrutiny Committee in the year 2016. The respondent No. 6 alleged that the petitioner's caste claim was invalidated in the year 2016, she did not get new certificate and thus, did not submit caste certificate before the Scrutiny Committee for verification and has misrepresented to the authorities at the time of nomination that her caste certificate is pending for verification and based on her earlier verification submission receipt, had filed her nomination.

9) The petitioner contends that on knowing about the complaint, she applied for fresh certificate which is issued to her on 4.7.2022 and the petitioner had applied to the Scrutiny Committee for verification of her caste claim on 15.7.2022. However, the same has not been accepted for verification as it is not through the proper authority.

10) The petitioner contends that on the dispute filed by the respondent No. 6, the respondent No. 3 – District Collector, Nanded by impugned order dated 9.5.2022 disqualified the petitioner for being the member of the Village Panchayat on account of non submission of the validity certificate within a stipulated period. The petitioner filed appeal before the respondent No. 2 – Additional Divisional Commissioner, Aurangabad, which was also dismissed by the impugned order dated 26.7.2022. Thus, the petitioner has filed the present writ petition.

11) Mr. A.N. Nagargoje, learned counsel for the petitioner submits that the respondent Nos. 2 and 3 have wrongly entertained the dispute filed by respondent No. 6 and disqualified the petitioner for being the Member of the village panchayat. Mr. Nagargoje, learned counsel submits that only election

dispute can be filed as the petitioner did not have caste validity certificate at the time of filing of the nomination and that the petitioner has not incurred the disqualification for non submission of the caste certificate and as such, the petitioner could have been disqualified only by election petition under section 15 of the Maharashtra Village Panchayat Act and not by the application filed for disqualification before the Collector under section 16 of the Maharashtra Village Panchayat Act.

12) Mr. Nagargoje, learned counsel for the petitioner has also contended that one Shivaji Dashrath Igave has filed dispute on 25.1.2021 by taking recourse of the provisions of section 10-1A read with section 16 of the Maharashtra Village Panchayat Act and prayed for disqualification of the petitioner. The said dispute was dismissed by the District Collector, Nanded vide order dated 4.2.2021 and the respondent No. 6 had questioned the said order before this Court by filing Writ Petition No. 4723/2021 and the said writ petition was withdrawn on 31.3.2022. The learned counsel submits that thus, the second dispute filed by respondent No. 6 raising the almost similar contention was not maintainable as the dispute was already decided by the Collector, Nanded and the dispute filed by the respondent No. 6 was not sustainable.

13) Mr. A.N. Nagargoje, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported as **AIR 2007 SUPREME COURT 903 [State of H.P. and Ors. Vs. Surinder Singh Banolta]** and submits that it has been held in the said case that once disqualification is incurred prior to filing of the petition, the same must be raised by filing election petition only. The learned counsel also relied upon the judgment reported as **2010(3) Bom.C.R. 635 [Shrikrishna Wasudeo Dange Vs. Shivcharan**

Trimbakrao Kalne & Ors.], and submits that it has been held in the said case that the disqualification is on the ground of encroachment which had taken place prior to the election, then the candidate can be disqualified only by filing election petition under section 15 and proceeding under section 14 are not tenable.

14) Per contra, Mr. G.R. Syed, learned counsel for the respondent No. 6 contends that the F.I.R. was already registered against the petitioner on 2.7.2021 for having obtained bogus caste certificate. The learned counsel further submits that the petitioner cannot take benefit of his own wrong and this Court should not interfere with the order passed by the authorities below :-

15) Having considered the rival submissions, the relevant provisions relating to the disqualification and determination of validity of election can be noted as under :-

Section 10-1A of the Maharashtra Village Panchayat Act reads as under :-

"10-1A. Person contesting election for reserved seat to submit Caste and Validity Certificate -

Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (*Vimukta Jatis*), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 :

Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2012, in accordance with the election programme declared by the State Election Commission, a

person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, alongwith the nomination papers,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of twelve months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee :

Provided further that, if the person fails to produce the Validity Certificate within a period of twelve months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member.

16) Section 14 deals with disqualification and relevant provision of section

14 (k) reads as under :-

"14. Disqualification.- (1) No person shall be a member of a *panchayat* continue as such, who -

(a)

(k) is disqualified under any other provisions of this Act, and the period for which he was so disqualified has not elapsed."

17) Section 15 relates to procedure of determination of validity of elections, which reads thus :-

"15. Determination of validity of elections; enquiry by Judge; procedure. - (1) If the validity of any election of a member of a *Panchayat* is brought in question by any candidate at such election or by any person qualified to vote at the election to which such question refers, such candidate or person may, at any time within fifteen days after the date of the declaration of the result of the election, apply to the Civil Judge (Junior Division) and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereafter, in each case referred to as "the Judge") having ordinary Jurisdiction in the area within which the election has been or

should have been held for the determination of such question.

(2) Any enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside. For the purposes of the said enquiry the said Judge may exercise all the powers of a Civil Court, and his decision shall be conclusive. If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 11.

(3) All applications received under sub-sections (1) -

(a) in which the validity of the election of members to represent the same ward is in question, shall be heard by the same Judge, and

(b) in which the validity of the election of the same member elected to represent the same ward is in question; shall be heard together.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not permit (a) any application to be compromised or withdrawn or (b) any person to alter or amend any pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is *bona fide* and not collusive.

(5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of subsection (6), he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under sub-section (2) and shall set aside the election of such candidate if he has been elected.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:

Provided that for the purpose of such computation, no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person known or unknown, in giving or obtaining it:

Provided further that, after such computation if an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to total number of valid votes found to have been received in favour of such candidate or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.

(6) A person shall be deemed to have committed a corrupt practice,-

(a) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person, or

(b) who with a view to inducing any to stand or not to stand or to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise of individual profit or holds out any threat of injury to any person, or

(c) who hires or procures, whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station:

Provided that the hiring of a vehicle or vessel by a voter or by several voters at their joint cost for the purpose of conveying him or them to or from any such polling station shall not be deemed to be corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tram-car or railway carriage by any voter at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be a

corrupt practice under this clause.

Explanation 1. - A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2. - "A promise of individual profit" does not include a promise to vote for or against any particular measure which may come before a *panchayat* for consideration, but subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested

Explanation 3. - The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicle or otherwise.

(7) If the validity of any election is brought in question only on the ground of an error made by the Officer charged with carrying out the rules made in this behalf under section 176 read with sub-section (2) of section 10 and section 11, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election."

18) Section 15A relates to bar to interference by Courts in electoral matters, which reads thus :-

"15A. Bar to interference by Courts in electoral matters. - No election to any *Panchayat* shall be called in question except in accordance with the provisions of section 15; and no court other than the Judge referred to in that section shall entertain any dispute in respect of such election."

19) Section 16 of the Act relates to disability from continuing as member of Panchayat, which is relevant in this context reads. thus :-

"16. Disability from continuing as member.- (1) If any member of a *Panchayat*,—

(a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed, incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) If any question whether a vacancy has occurred under this Section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final :

Provided that, no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard."

20) In the case of **State of H.P. Vs. Surinder Singh Banolta** cited supra, and relied upon by the petitioner the Hon'ble Supreme Court considered sections 122 (1), 122(2), 163 and 175 of the Himachal Pradesh Panchayati Raj Act relating to disqualification and in para 17 and 18 observed as under :-

"17. Once, thus, a person is declared to be an encroacher prior to the date on which he has been declared as elector and if the said order has attained finality, the question as to whether he stood disqualified in terms of the provisions of Section 122 of the Act, in our opinion, must be raised by way of an election petition alone. If the submission of Mr. Attri is to be accepted, the same may result in an anomalous position.

18. If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of Section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, it is well settled, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a situation, therefore, must be avoided. It will also lead to an absurdity if two different Tribunals are allowed to come to contradictory decisions. "

In the case of **Surinder Singh Banolta**, this Court has held that two parallel proceedings for the same cause has to be avoided as it would lead to conflict of judgments.

21) The judgment of Bombay High Court (Nagpur Bench) in the case of **Shrikrishna Wasudeo Dhage** cited supra and relied upon by the petitioner, this Court has considered the provisions of Bombay Village Panchayat Act, the above judgment of Surinder Singh Banolta (supra) and has held at paragraph Nos. 8 to 11 as under :-

"8. Section 14 of the 1958 Act, states that no person can be a Member of Panchayat or can continue as a member of Panchayat, if he is encroacher as stipulated in its sub-section [1][j-3]. Thus bar is not only from getting elected, but also from continuing as Member. There are two forums provided for getting rid of such disqualified person. Application under section 14 read with section 16 before respondent no.2 Additional Collector is one such remedy. Against order passed in those proceedings Statute provides appeal under section 16[2], to respondent no.1 Additional Commissioner. The other forum is of filing an Election Petition under Section 15 before the Civil Judge, Junior Division or Civil Judge, Senior Division as the case may be. The election petition is required to be filed within 15 days after the date of declaration of result and by any candidate who has lost election or by any person qualified to vote in it. The proceedings under Section 16[2] for disqualification can be

undertaken by respondent no.2 suo motu or on an application made to him by any person.

9. In the case of State of Himachal Pradesh and others (supra), the Hon'ble Apex Court states the right approach when for same cause of action two remedies are open. There the Hon'ble Apex Court has found that Section 122 of Himachal Pradesh Panchayat Raj Act, 1994 contemplated both situations, namely where a person shall be disqualified for being chosen as and also for being a office bearer of Panchayat, if he has encroached upon any land belonging to any Authority, as mentioned in that section. The findings in paragraph no.9 show that when a person is shown to be encroacher prior to the date on which he has been declared as elected and if that order has attained finality, the question whether he stood disqualified, must be raised by way of election petition under Section 163 of that Act before authorized officer. Consideration in paragraph no.10 shows that otherwise a situation may arise where two different proceedings may be filed before two different authorities for such disqualification at the instance of two different persons. Section 162 of that Act expressly provided for exclusive jurisdiction of authorized officer to determine the existence or otherwise of any ground enumerated in Section 175 thereof. In the light of provisions of Article 243-O of the Constitution of India, the Hon'ble Apex Court noted that the election cannot be set aside, save and except by an order passed by the authorized officer. Hence remedy for disqualification in relation to any order passed after election process is over, has been held to be before the Deputy Commissioner. In view of these two remedies the Hon'ble Apex Court has found that under a given situation, two different proceedings may be filed before two different authorities at the instance of two different persons. It has been held that two parallel proceedings cannot be allowed to be held at the same time and a construction of statute which may lead to such a situation therefore must be avoided. It is noticed that it will be absurd to allow two different tribunals to come to contradictory decision. In facts before it, the Hon'ble Apex Court found that respondent no.1 before it was declared encroacher in the year 1998 and he was elected in result of election declared on 15.01.2001, hence in terms of provisions of Article 243-O, read with Section 163 the Election Petition was maintainable for setting aside his

election. Hence filing of disqualification proceedings before the Deputy Commissioner in view of Section 122 was not permissible. The Hon'ble Apex Court also expressed that matter would have been different if respondent no.1 was declared to be an encroacher after the election process was over and thus became disqualified to continue to be an office bearer of Panchayat or Zilla Parishad.

10. This judgment relied upon by Shri Samarth, learned counsel shows that it does not favour petitioner at all, as present petitioner has been found to be an encroacher after commencement of her term and after noticing this, she tried to get those proceedings of regularization of encroachment dropped by giving her statement accordingly on 26.11.2009 to the Sub Divisional Officer. This judgment of Hon'ble Apex Court again shows that when ground for disqualification can be used in election petition and also in disqualification proceedings under Section 16[2] of the Bombay Village Panchayat Act, 1958 the question of parallel proceedings can arise. Here election petition is contemplated under Section 15 of the Bombay Village Panchayat Act. It's perusal reveals that the Civil Judge dealing with the election petition cannot nullify the election of petitioner on the ground that she has done encroachment or she was encroacher. The interference in election petition is possible only if the elected candidate is found to have committed a corrupt practice within the meaning of sub-section [6] or has submitted a false claim or false caste certificate as given in its sub-section [5] [a].

11. The Division Bench of this Court has considered the similar challenge in proceedings in Maharashtra Zilla Parishad and Panchayat Samitis Act, in a judgment reported at 1976 Mh.L.J. 621 (Manik Mallappa Karale .vrs. Kisan Nagurao Patil and others). There the provisions of Section 27 permit filing of Election Petition while Section 16 prescribes disqualification. The Division Bench after considering all relevant provisions noticed that the election of respondent no.3 before it was challenged on the ground that he was initially disqualified to be elected. The jurisdiction of the Court trying election petition is regulated by sub-section [27] [2] and [5] of the Zilla Parishad Act. The Division Bench noticed that sub-section [5] thereof gives the ground on which election of an elected candidate can be set aside, and

hence it held that the said Court had no power to go into the question whether elected candidate was disqualified at the time when his nomination paper was accepted. It has relied upon the earlier Division Bench judgment taking similar view and reported at 1965 Mh.L.J. Note 56 (Brijlal Sao .vrs. D.J. Bhandara). This judgment covers the controversy involved before me. It is apparent that the question whether nomination paper of present petitioner deserved to be rejected under Section 14[1][j-3] of the 1958 Act, cannot be gone into in election petition under section 15 thereof. In short, there are no parallel proceeding in so far as the disqualification of petitioner as encroacher is concerned, contemplated in law. I therefore, do not find any substance in challenges raised by petitioner Vandana and Writ Petition No. 5658/2009 accordingly deserves to be dismissed by upholding the concurrent views and findings of respondent nos.1 and 2."

This Court in the case of **Shrikrishna Wasudeo Dhage** has held that the interference in the election petition is possible only if the elected candidate is found to have committed a corrupt practice within the meaning of sub-section (6) as has submitted a false claim or false caste certificate as given in it's sub-section (5)(a) of section 15 of the Maharashtra Village Panchayat Act. However, it is required to be noted that the words 'has submitted a false claim or a false certificate' as provided in sub-section 5(a) of section 15 are deleted by amendment dated 21.12.2006. The impact of deletion of the above words is discussed later in this judgment.

22) In the case of **Manik Mallappa Karale Vs. Kisan Nagurao Patil and Ors.** reported in 1976 Mh.L.J. 621, this Court in paragraph 7 as held as under :-

"7. Mr. Kankaria emphasised the words "validity of any election" in the opening part of Section 27 of the Zilla Parishads Act and the argument made was that when the Legislature used the words "any election", it must be taken to mean that an election could be challenged on any ground whatsoever including disqualification incurred even before the nomination paper was filed. It is difficult for us to accept

this contention. It is difficult to appreciate how these words could indicate, even remotely, the scope of the challenge which could be made in an election petition or how those words could give any indication with regard to the powers of the Court entertaining an election petition. All that Section 27 does is to give a right to file an election petition when validity of any election of a councillor is brought in question either by a candidate or by any person qualified to vote at the election the validity of which is put in issue. The jurisdiction which the Court trying the election petition could exercise would have to depend on the statutory provisions made in sub-section (2) and sub-section (5) and, as we have already pointed out, none of these provisions indicate that the question of initial disqualification of a candidate could be put in issue while challenging his election. In our view, there is no substance in this petition. The petition must fail and is dismissed. Rule discharged with Costs."

23) The Division Bench of this Court in the case of **Manik Mallappa Karla** cited supra has held the jurisdiction of a Court trying an election petition to depend upon the statutory provision.

24) In the case of **Soni w/o. Gajanan Kurkute Vs. Election Officer, Gram Panchayat, taroda and Ors. reported in 2020 (2) Mh.L.J. 941**, this Court in para Nos. 16 has held as under :-

"16. I find that if the words 'submitted a false claim or a false caste certificate', were continued under 15(5)(a), the case of the complainant that the petitioner has submitted a false birth certificate, could have been tenable. It is possible that the words 'false claim' could have included a false claim as regards the date of birth of a candidate and if such interpretation is to be arrived at, the case of the complainant could have been covered under section 15(5)(a). However, now that the said words have been deleted, discloses the intent of the legislature in restricting section 15 only to corrupt electoral practices."

25) In the case of **Soni w/o. Gajanan Kurkute**, this Court has held that legislature has intended 'election petition' under section 15 of Maharashtra Village Panchayat Act to be restricted to only 'corrupt electoral practices' and submission of false claim or false caste

certificate is taken out of the purview of the election petition.

26) From the law discussed in above judgment and by analysing the provisions of the Maharashtra Village Panchayat Act, the picture that emerges is that the jurisdiction of the Civil Judge, trying an election petition under section 15 of the Maharashtra Village Panchayat Act is circumscribed by sub-section (5) and (6) of section 15. The words 'or submitted a false claim or a false Caste Certificate' in section 15 (5)(a) were deleted with effect from 21.12.2006. Thus, 'the submission of a false claim or a false caste certificate' was taken out from the purview of the judge determining the election petition. Section 10-1A was also introduced with effect from 21.12.2006, wherein any person desirous of contesting the election to a seat reserved for scheduled castes, scheduled tribe or backward classes shall be required to submit alongwith nomination paper, caste certificate issued by the competent authority and the validity certificate issued by the scrutiny committee. The proviso to section 10-1A gives an option of submitting the caste validity certificate at the time of filing of the nomination or to produce proof of having made an application to the Scrutiny Committee to validate his caste validity certificate and in the event, the caste validity certificate is not produced within a period mentioned in section 10-1A, his election is deemed to have been terminated retrospectively and he shall be disqualified for being a member.

27) Disqualification of a membership is determined under section 16 by the Collector and not by an election petition under section 15. The Collector under section 16 of the Maharashtra Village Panchayat Act has exclusive jurisdiction to deal with the issue of submission of a false claim or a false caste certificate at the time of nomination or non submission of caste

validity certificate within the period contemplated in section 10-1A of the Village Panchayat Act.

28) Reliance placed on the judgment of **State of H.P. Vs. Surinder Singh Banolta** cited supra is of no assistance to the learned counsel for the petitioner as there are no two parallel proceedings contemplated for the same reason i.e. an election petition and a disqualification proceeding under section 16 of the Maharashtra Village Panchayat Act. Exclusive jurisdiction is vested in the Collector to deal with the disqualification on account of filing a false claim or a false caste certificate even at the time of filing the nomination, so also to deal with the disqualification for non-submission of caste validity certificate within the time stipulated in section 10-1A of the Maharashtra Village Panchayat Act. This issue is also squarely covered by the judgment in the case of **Soni w/o. Gajanaj Kurkute Vs. Election Officer, Gram Panchayat Taroda** cited supra, wherein this Court has held that words 'or submitted a false claim or a false caste certificate' being deleted from section 15 (5) (a), the intent of legislature is clear i.e. to restrict only "corrupt electoral practices" as enumerated in sub-section (6) of section 15 to be determined by an election petition under section 15 of the Maharashtra Village Panchayat Act.

29) In view of the above, the Collector has rightly exercised his jurisdiction under section 16 of the Maharashtra Village Panchayat Act, disqualifying the petitioner under section 10-1A of the Maharashtra Village Panchayat Act. The Collector as well as the appellate authority has held that the petitioner has not produced the caste validity certificate within the time stipulated in section 10-1A of the Maharashtra Village Panchayat Act. As the matter of record, the petitioner also did not have a caste validity certificate

till the date of reserving this judgment. Non-submission of caste validity certificate within time stipulated under section 10-1A leads to termination of election retrospectively and is disqualified for being a member of the Village Panchayat. The principle of res-judicata cannot be applied in the instant case for disqualification under section 10-1A. In any event, the earlier application for disqualification filed by Mr. Shivaji Dashrath Igave was dismissed by the Collector on 25.1.2021, which was within one year of her election and the time for submission of the caste validity certificate under section 10-1A had not expired. The judgment relied upon by the petitioner in the case of **State of H.P. Vs. Surinder Singh Banolta** is not applicable to the instant case as I have held that the Collector has exclusive jurisdiction under section 16 to deal with the disqualification on account of submission of a false claim or a false caste certificate or non filing of the caste validity certificate within the period stipulated under section 10-1A and the same is not covered within the meaning of 'corrupt practice' as enumerated in section 15 (6) of the Maharashtra Village Panchayat Act.

30) In view of the above, the writ petition is dismissed. Rule is discharged.

[ARUN R. PEDNEKER J.]

SSC/