

## Bharati Reddy vs The State Of Karnataka on 6 March, 2018

**Equivalent citations: AIR 2018 SC (SUPP) 1057, 2018 (6) SCC 162, (2018) 3 SCALE 703, (2018) 3 KANT LJ 161, (2018) 2 PAT LJR 357, (2018) 3 ALL WC 2240, (2018) 126 CUT LT 601, (2019) 1 CALLT 67, (2018) 2 JCR 299 (SC), (2018) 2 JLJR 185, 2018 (3) KCCR SN 306 (SC), AIRONLINE 2018 SC 628**

**Author: A.M. Khanwilkar**

**Bench: D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra**

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REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1763 OF 2018  
(Arising out of SLP (Civil) No.1532 of 2018)

Bharati Reddy

....Appellant(s)

:Versus:

The State of Karnataka & Ors.

....Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. This appeal, by special leave, takes exception to the judgment and order passed by the Division Bench of the High Court of Karnataka, Dharwad Bench dated 04.12.2017 in Writ Appeal No.5872 of 2017.

2. Briefly stated, pursuant to notification dated 04.12.2015, elections were held and the appellant was elected on 28.03.2016 as a member of the Zilla Panchayat from 13- Badanahatti Constituency, Ballari District, Karnataka which was reserved for General (Women) Category. Later, the State Government published a notification on 15.04.2016 declaring the reservation for the post of Adhyaksha and Upa-Adhyaksha of Zilla Panchayats in the State. In Ballari Zilla Panchayat, the post of Adhyaksha was reserved for the category of Backward Caste-B (Women). After the said notification, since the appellant intended to contest the election to the post of Adhyaksha of Ballari Zilla Panchayat, she made an application on 22.04.2016 to the jurisdictional Tahshildar for issuance

of Income and Caste Certificate, a certificate which was a prerequisite for submitting the nomination form for the election to the post of Adhyaksha. That certificate was issued by the Tahshildar on 26.04.2016 on the basis of which the appellant contested the election held on 29.04.2016 and was declared elected. As required in terms of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.) Act, 1990 and the Rules framed thereunder, the Income and Caste Certificate has been forwarded to the District Caste Verification Committee Ballari. The process of verification thereof is still in progress.

3. According to the appellant, at the behest of the unsuccessful candidates who could not file any election petition to challenge the election of the appellant, respondent Nos.6 to 9 filed a writ petition before the High Court of Karnataka, Dharwad being Writ Petition No.106417 of 2016, about 3 months after the election of the appellant as Adhyaksha. The substance of the allegation made in the said writ petition against the appellant was that she played fraud on the Government and public by submitting a false affidavit before the Tahshildar for issuance of Income and Caste Certificate, on the basis of which she contested the election for the post of Adhyaksha Zilla Panchayat and got elected to the said post, to which she was otherwise not entitled to or qualified for. The allegation about the nature of fraud committed by the appellant can be discerned from the assertions made in paragraphs 6 and 7 of the writ petition, which read thus:

“6. It is submitted that the 6th Respondent in order to grab the post of Adhyaksha of Zila Panchayat has submitted a bogus and false caste certificate to show that she belongs to the Backward community-B Category obtained from the 5th Respondent. It is further submitted that in the application filed by 6th Respondent to 5th Respondent for issuance of caste certificate, she filed an affidavit stating that her livelihood is agriculture and that she owns 1.03 acres of agricultural land in Badanahatti village and 3.50 Acres of land in Sy. No. 36A in Yarrangaligi village. Further she also declared that her family income is not more than Rs.3,50,000/- per annum from all other sources and that she and her husband are not assessed to Income Tax and Commercial Tax. The said declaration made by the 6th Respondent is totally false to the knowledge of herself, which is clear from the Affidavit filed by the 6th Respondent before the 2nd Respondent while contesting for the member of Bellary Zilla Panchayat General Elections. It is further submitted that the 6th Respondent in her affidavit dated 06.02.2016 declared that she is getting rent of Rs.1,40,000/- per annum and her husband getting 4,80,000/- per annum, which details are found in paragraph 4-A. This itself shows that her family income from one source only is more than 3,50,000/- as declared in the affidavit dated 26.04.2016 filed before the 5th Respondent for issuance of Caste and Income Certificate. That apart she has also declared in the said affidavit dated 26.04.2016 that she and her husband are not assessed to the Income Tax and Commercial Tax, which are also contrary to the declaration made in the affidavit dated 06.02.2016 filed before 2nd Respondent that she has been assessed to Income Tax and has paid Income Tax, the said details are stated in paragraph 5 of the said affidavit. It is also reliably learnt that the husband of the 6th Respondent is Class-I contractor and is having more than income of Rs. 1,00,00,000/- per annum and is assessed to Income Tax and

Commercial Taxes. True copies of the Affidavit dated 06.02.2016, 26.04.2016 and Caste and Income Certificate issued by the 5th Respondent dated 26.04.2016 are produced herewith as Annexure-E,F and G respectively.

7. It is further submitted that in the proceedings held on 29.04.2016 under the Chairmanship of Regional Commissioner, Kalburgi Division, Kalburgi, the 6th Respondent was successful in getting elected as Adhyaksha under the Category-Backward Community-B based on the above said false Caste and Income Certificate which was issued by the 5th Respondent on the same day of application without any proper enquiry as required under the law. A true copy of the said proceedings dated 29.04.2016 is produced herewith as Annexure-H.” (emphasis supplied) On the basis of these allegations, the respondent Nos.6 to 9 prayed for the following reliefs in the said writ petition:

“PRAYER Wherefore, this Hon ble Court may be pleased to a. Issue a writ of Quo Warranto directing the 6th Respondent to vacate the office of the Adhyaksha, Zilla Panchayat, Bellary.

b. set aside the proceedings dated 29.04.2016 bearing No. SUM./KAM/Pra HaGu/chunavana/05/2016-17 declaring the 6th Respondent as Adhyaksha of Zilla Panchayat, Bellary vide Annexure-H. c. consequently quash the caste certificate issued to the 6th Respondent vide order dated 26-04-2016 in application No. 01/16-17 issued by the 5th Respondent vide Annexure-G. d. pass such other or further orders or directions as this Hon ble Court may deem fit, in the interest of justice”.

(emphasis supplied)

4. This writ petition was contested by the appellant inter alia on the ground that the same was not maintainable in view of the bar contained in Article 243-O of the Constitution of India. Further, the writ petitioners were only voters and therefore, had no locus to challenge the election of the appellant as Adhyaksha, which was an indirect election. Rule 7 of the Karnataka Panchayat Raj Rules explicitly envisages that only a member of the Panchayat may challenge the validity of the election of Adhyaksha and Upa-Adhyaksha. It was also pointed out that the writ petition filed by the said respondents was a politically motivated petition and filed at the behest of unsuccessful candidates who could not prevent the appellant from getting elected as Adhyaksha. As regards the allegations in the writ petition that the appellant had made false declarations and filed incorrect affidavits, the appellant contended that the Income and Caste Certificate was issued in favour of the appellant by the competent authority after completing all the formalities and procedure. So long as the said certificate was valid and in force, issuance of writ of quo warranto was misplaced. For, there is legal presumption about the validity of the said certificate in terms of Rules 3-C of the Rules of 1992 framed under the 1990 Act. The said Rule makes it amply clear that the certificate would remain valid until it is cancelled by the jurisdictional Caste Verification Committee. The appellant also pointed out that the allegation made in the writ petition, regarding the false or incorrect income

disclosure made by the appellant, was wrong and ill- founded. Such allegation was based on far-fetched logic and untenable assumptions. The affidavit dated 06.02.2016 submitted along with the nomination form filed for contesting elections from 13-Badanahatti Constituency was in reference to the factual position stated therein. Similarly, the affidavit filed by the appellant dated 26.04.2016 was also true, faithful and accurate as it disclosed facts in reference to the qualification required for contesting the election of Adhyaksha at the relevant time, in respect of post reserved for “B” Category (Women) Backward Caste. In other words, both the affidavits and the information disclosed therein were truthful, accurate and contextual, as noted in the respective affidavit. The appellant also asserted that the fact that the Income and Caste Certificate was issued within five days from the date of application for the said certificate or on the same date the affidavit dated 26th April, 2016 was filed before the Tahshildar, could not give rise to a presupposition, inference or assumption that the same was issued without necessary and proper enquiry. On the other hand, there is legal presumption that the same was valid, having been issued by the jurisdictional Tahshildar competent in that regard. The circumstances, of the time of issue of E-stamps at about 5:27 P.M. or the date of affidavit being 26.04.2016, cannot be a just basis to assume that the certificate was fraudulent, in the face of the statutory provision making it explicit that it would be valid until cancelled by the Caste Verification Committee. Thus, the circumstances relied upon by the writ petitioners were neither relevant nor sufficient to draw any inference on fact, much less legal inference, so as to conclude that the certificate was fraudulently issued. The fact that the appellant belongs to “Kapu Caste”, which is notified as B Category Backward Class; and the declaration regarding income made by the appellant, are issues which are intrinsically mixed with the issuance of the Income and Caste Certificate. It is not open to question the validity of the said certificate much less to entertain the prayer for issuance of a writ of quo warranto on the assumption that the said certificate was fraudulent because of some fortuitous circumstances. It was pointed out by the appellant that the writ of quo warranto is not an ordinary power to be exercised by the High Court and moreso, in the matter involving disputed questions of fact. The High Court may be justified in issuing such a writ only if it is indisputable that the elected public representative was ineligible or disqualified to contest the election or had incurred disqualification at a later point of time. In either case, such a person cannot justify holding on to the public post such as that of Adhyaksha. That situation will arise only if the Caste Verification Committee was to invalidate and cancel the Income and Caste Certificate issued in favour of the appellant and not otherwise. On these contentions, the appellant prayed for dismissal of the writ petition.

5. Preliminary objection regarding bar of jurisdiction in terms of Article 243-O of the Constitution of India and locus of the writ petitioners raised by the appellant commended to the learned Single Judge, who dismissed the writ petition vide judgment and order dated 21.10.2016.

6. Being aggrieved by the dismissal of the writ petition, the writ petitioners (respondent Nos.6 to 9 herein) carried the matter in Writ Appeal No.101459 of 2016. The Division Bench reversed the judgment of the learned Single Judge and allowed the writ appeal vide judgment and order dated 05.06.2016. It remanded the matter to the learned Single Judge for fresh decision.

7. The appellant therefore, approached this Court by way of Special Leave Petition (Civil) No.17059 of 2017 (converted to Civil Appeal No.10587 of 2017) wherein the preliminary objection regarding

the bar under Article 243-O of the Constitution of India and locus of the writ petitioners, as also the contention that the only remedy to challenge the election of the appellant would be an election petition, was reiterated. The two-Judge Bench of this Court disposed of the appeal preferred by the appellant on the finding that the voter of the Panchayat cannot be rendered remediless and if he is aggrieved by the election of the Adhyaksha of the Panchayat, it is open to him to seek the remedy of judicial review under Articles 226/227 of the Constitution of the India. In such proceedings, it is open to the High Court to undertake judicial review of the subject matter. In paragraph 13 of its judgment, this Court observed thus:

“13. It is thus clear that power of judicial review under Articles 226/227 of the Constitution is an essential feature of the Constitution which can neither be tinkered with nor eroded. Even the Constitution cannot be amended to erode the basic structure of the Constitution. Therefore, it cannot be said that the writ petition filed by respondent Nos. 6 to 9 under Article 226 of the Constitution is not maintainable. However, it is left to the discretion of the court exercising the power under Articles 226/227 to entertain the writ petition.” Again in paragraph 15, the Court observed thus:

“15. As noticed above, though respondent Nos. 6 to 9 are the voters are not the members of the Zilla Panchayat. They are aggrieved by the election of the appellant to the office of the Adhyaksha. They cannot challenge the election of the appellant to the office of Adhyaksha by filing an election petition as they are not the members of the Zilla Panchayat in question. In our view, a voter of the Zilla Panchayat who is not a member cannot be denied an opportunity to challenge the election to the office of Adhyaksha under Articles 226/227 of the Constitution. Therefore, we hold that the writ petition filed by respondent Nos. 6 to 9 before the High Court is maintainable.” After this decision, the preliminary objections regarding the maintainability of writ petition stood concluded. An attempt was made by the appellant to question the correctness of the view expressed by this Court in the aforesaid decision.

Concededly, even if the arguments of the appellant may appear to be attractive, it cannot be entertained in relation to the decision inter partes.

8. Be that as it may, in light of the view expressed by this Court, the parties were relegated before the learned Single Judge of the High Court. Before the remanded writ petition was taken up for hearing by the learned Single Judge, the appellant filed a writ petition bearing Writ Petition No.108700 of 2017 (LB-RES) before the High Court of Karnataka, Dharwad Bench, challenging the note appended to the notification dated 13.01.1995. That notification had been issued by the State Government in exercise of powers conferred under Section 2(2) of the Karnataka Panchayat Raj Act, 1993, for classifying and notifying the classes of citizens as Backward Class, for the purpose of reservation of seats and office of Chairperson in Zilla Panchayat, Taluk Panchayat and Gram Panchayat. The note predicates that no person falling under category “B” would be entitled to the benefit of reservation in the seats and office of Adhyaksha and Upa-

Adhyaksha of Zilla Panchayat, Taluk Panchayat and Gram Panchayat if, inter alia, he/she or either of his/her parents/guardians was an income tax assessee/wealth tax assessee (Clause ii). This stipulation has been assailed by the appellant as being in the teeth of the exposition of this Court in K. Krishna Murthy (Dr.) and Others Vs. Union of India and Another<sup>1</sup> and Indra Sawhney and Others Vs. Union of India<sup>2</sup>. The High Court being prima facie convinced with the said contention granted interim stay to the said stipulation (Clause ii) in the notification dated 13.01.1995.

9. Reverting to the remanded writ petition from which the present appeal arises as aforesaid, the same was to be heard by the learned Single Judge on merits of the controversy for grant of reliefs prayed in the writ petition including for issuance of a writ of quo warranto. The learned Single Judge, after examining the rival contentions and after taking note of the original documents forming part of the original file 1 (2010) 7 SCC 202 2 (1992) Supp (3) SCC 210 produced by the Government advocate, opined vide judgment and order dated 21.09.2017 as under:

“11. Learned AGA appearing for respondents 1,3 to 5 filed following documents pertaining to issuance of caste and income certificate to respondent No. 6-Smt. Bharati Reddy w/o Sri Thimmareddy for perusal of this Court.

1. Application dated 22.04.2016 for issue of caste and income certificate (Xerox copy).

2. Notice dated 23.04.2016 issued by the Revenue Inspector.

3. Report of the Revenue Inspector dated 26.04.2016 bearing No. Sam.Kam.Jaa and Aa Zi.

Pam.Chu/01/16-17 dated 26.04.2016.

4. Mahazar

5. Statement

6. Affidavit of the applicant sworn before the Advocate Notary

7. Applicant's identity card (Xeroxcopy)

8. Applicant's voter identity card (Xerox copy)

9. Transfer Certificate (certified copy)

10. Study Certificate (certified copy)

11. Original Caste and Income Certificate bearing No. Sam.Kam.01/06-07 dated 26.04.2016.

12. Form No. 24 regarding applicant's land holding.

12. On perusal of the documents it is seen that on 22.04.2016 the respondent No. 6 has filed application for issue of caste and income certificate; on 23.04.2016 the jurisdictional Revenue Inspector has issued notice to respondent No. 6 pointing out the discrepancies with regard to issuance of caste and income certificate; on 26.04.2016 the Revenue Inspector has submitted a report recommending to issue caste certificate to the petitioner in Backward Caste II(B); revenue inspector had conducted mahazar along with the Village Accountant and opined that there is no objection for issue of caste certificate to the petitioner in Backward Caste II(B); statement of Smt. C. Bharathi w/o V.C. Thimma Reddy before the Revenue Inspector; affidavit of Smt. C. Bharathi w/o V.C. Thimma Reddy sworn before the Advocate Notary, Ballari Tq. Rev. Area on 26.04.2016; Xerox copy of the original voters list of the year 2015; Xerox copy of the voter's identity card; certified copy of the transfer certificate; certified copy of the study certificate and also the original certificate issued by the Special Tahasildar, Kurugodu, declaring the caste of the respondent No. 6 as Kapu which comes under Backward Category „B on 26.04.2016 so also the original of Form No. 24 regarding holding of land by the respondent No. 6.

13. The entire process of issuance of caste certificate is concluded in five days, i.e., application was filed on 22.04.2016 and the caste certificate was issued on 26.04.2016, which cannot be said to be illegal, as contended by the learned counsel for respondent No.6. However, on perusal of the affidavit filed by the respondent No. 6 before the Notary it is seen that the e-stamp paper is purchased at 5.27 PM on 26.04.2016 and after purchase affidavit was sworn before the Notary and on that day itself the caste certificate is issued. It is also seen that the date 26.04.2016 is over-written. This creates a serious doubt about the process of issuance of caste certificate by the respondent No.5.

14. The respondent No. 5 being a responsible officer of the Revenue Department has issued the caste certificate in a mortal hurry. The respondent No. 6 who purchased the E-stamp paper on 26.04.2016 at 5.27 PM and on the same day she files the affidavit on the E-Stamp paper before the Advocate Notary and the same is submitted before the Special Tahsildar and the Tahsildar after verification has issued caste certificate to the respondent No.6, being the contested candidate for the post of Adhyaksha of Zilla Panchayat, Ballari. The same is found in the documents produced by the learned AGA. From this process it can be said that the respondent No. 5 being a responsible officer has not taken care and diligence in issuing the caste certificate and had adopted a casual working nature.

Whether this casual attitude of the respondent No.5 can be said as illegality or negligence is to be considered in a separate proceedings”.

(emphasis supplied) Again, while dealing with the factual matrix of the case, the learned Single Judge, in the same judgment, analysed the issue as follows:

“35. In this writ petition the core issue relates to the holding of the office of Adhyaksha of Zilla Panchayat, Ballari, by the respondent No.6 and also seeking quashing of Annexure-H the notification declaring the respondent No. 6 as Adhyaksha of Zilla Panchayat Ballary. Therefore, the concept of creamy layer as stated supra, does not come in the way of disposal of this writ petition which is filed for issue of writ of quo warranto against the respondent No. 6 to vacate the office of the Adhyaksha of Zilla Panchayat, Ballary and also to quash Annexure-H. In view of the same, the contention of the respondent No.6 does not hold substance.

36. In the instant petition it is relevant to state that the procedure of writ of quo warranto confers jurisdiction and authority on the Court to control executive action in the matter of making an appointment of a person to the public office against the relevant statutory provisions. In the instant case, the petitioners are the voters/electorates and so also the whistle blowers. It is also relevant to state that, the writ of Quo Warranto protects from illegal deprivation of public office to which they may have a right and also it relates to protect the public from usurping of public office by a person who is not entitled to hold the public office as a result of connivance of executive or that its active help, wherein the respondent No. 5 being the responsible Tahasildar, Kurugodu, issued caste certificate to respondent No. 6, on the basis of which she was able to contest and elect for the post of Adhyaksha of Zilla Panchayat, Ballari. The respondent No.6 was contested and elected for post of Zilla Panchayat Member from 13-

Badanahatti Constituency which was reserved for General Category (Woman). In her affidavit (Annexure-E dated 06.2.2016) itself she has stated that she is an income tax assessee and has even furnished PAN (permanent account number). However, the said fact is suppressed in the subsequent affidavit vide Annexure-F dated 26.04.2016 submitted before the Tahasildar, Kurugodu (respondent No. 5) along with her application for obtaining Backward Class B Community certificate.

xxx xxx xxx xxx 38... However, the respondent No.5 is under suspension pending enquiry with regard to the procedure adopted by him in issuing the caste certificate to the respondent No.6.

39. The respondent No.6 who is elected by a democratic process, she belonged to Kapu caste, which caste falls under Backward Class-B category, which is indicated in the Government Notification dated 13.01.1995 of the Government of Karnataka. However, now the issue is pending before the Caste Verification Committee and that issue cannot be decided under the jurisdiction of this court under Article 226 of the Constitution of India.

40.... whereas in the instant writ petition the Income Tax Returns filed by the respondent No. 6 pertains to the year 2013-14. But she sworn in the affidavit that she is not an assessee for the year



2015-16. It reflects the conduct of the respondent No.6.” (emphasis supplied) Finally, the learned Single Judge concluded as under:

“42. It cannot be lost sight of the fact that, the E-stamp paper was purchased at 5.57 pm on 26.04.2016 and the caste cum income certificate was issued on the same day, which fact reveals that the certificate was issued in a mortal hurry. Accordingly, this writ petition is filed for issue of writ of Quo Warranto in respect of quashing the proceedings vide Annexure-H dated 29.04.2016 and also to direct the respondent No. 6 to vacate the office of Adhyaksha of Zilla Panchayat, Ballari.

43. Respondent No. 6 being a responsible member of Zilla Panchayat, Ballari as she was the successful candidate elected from 13 Badanahatti constituency which was reserved for General Category (Woman) as per the notification dated 28.03.2016 published in Karnataka Gazatee. The post of Adhyaksha of Zilla Panchayat was reserved for Backward Category B Woman. The respondent No.6 belonged to Kapu community which belongs to Category B Community.

However, the declaration regarding her family income reveals that it is more than Rs.3,50,000/- p.a. that too only from the rental income. This shows that the respondent No. 6 files an affidavit to secure the caste and income certificate from the respondent No.5, who issued the certificate in a mortal hurry. This creates serious doubt about the genuinity or otherwise of the process of issuing the caste certificate. However, the issue is now pending before the Caste Verification Committee, which is a fact finding committee and would be decided in its own course. Hence, the question of fact as regarding the caste of respondent No. 6 in this writ petition does not arise for consideration.

In view of the aforesaid reasons, I am of the opinion, since the respondent No. 6 has not declared her correct and proper family income only with an intention to hold the post of Adhyaksha which is a public office, must be prevented from holding the office.” (emphasis supplied) On the said finding and after recording its opinion, the learned Single Judge passed the following order:

“ORDER Writ Petition is allowed in part. Accordingly, the proceedings dated 29.04.2016 bearing No. SUM./KAM/PraHaGu/ chunavana/05/2016-17 declaring the 6th respondent as Adhyaksha of Zilla Panchayat, Ballari, vide Annexure-H is hereby quashed. Consequently, writ of quo warranto is issued directing the 6th respondent to vacate the office of Adhyaksha, Zilla Panchayat, Ballari. Rest of the prayers do not arise for consideration and accordingly they are rejected.

The records submitted by the learned A.G.A. before this court on 07.09.2017 are directed to be returned by substituting them with Xerox copies.

The observations made in this Writ Petition is restricted for disposal of this case and shall not have any bearing regarding the pending litigation before the Caste Verification Committee. The Caste Verification Committee shall independently hold an enquiry and dispose of the case in accordance with law”.

(emphasis supplied)

10. Aggrieved by the aforesaid decision, the appellant filed Writ Appeal No.5872 of 2017. The writ petitioners (respondent Nos.6 to 9 herein) also filed a cross appeal being Writ Appeal No.100657 of 2017. Both the appeals were heard and decided together by the Division Bench of the High Court of Karnataka, Dharwad Bench vide judgment and order dated 04.12.2017. The Division Bench broadly reiterated the view expressed by the learned Single Judge and affirmed the conclusion of the learned Single Judge both on factual and legal matters. While analysing the factual matrix, the Division Bench observed as follows:

35... “As narrated in the preceding paragraph Nos. 12 and 13, supra, the appellant filed an application before the jurisdictional Tahsildar for issue of Caste cum Income Certificate on 22.04.2016 in the prescribed format as per the Notification dated 13.01.1995. On considering the same, the jurisdictional Revenue Inspector has issued notice to the appellant calling upon her to rectify the defects pointed out, pursuant to which, the appellant filed an affidavit on India, Non-Judicial, Government of Karnataka, e-stamp paper issued on 26.04.2016 at 5.27 p.m. declaring that the appellant and her husband are neither income tax assesses nor sales tax assesses. Annexure-G to the Writ Petition No. 106417/2016 is the application filed by the appellant in the prescribed format in terms of the notification dated 13.1.1995, whereby in Clause - 11, it is stated that the applicant or their father/mother/guardian are not the assessee of income tax/wealth tax. This is the moot point which requires to be considered to decide whether the appellant has played any fraud on the constitution.” (emphasis supplied)

11. Again in paragraph 36, the Division Bench noted as follows:

“36. It is not in dispute that any affidavit filed before the authorities has sanctity in the eye of law and the same, if found to be false statement and misrepresentation, it is a case of perjury punishable under criminal law. Based on the statement declared by the appellant, the jurisdictional Tahasildar has issued verification certificate certifying that the appellant belongs to backward Class-B Category in terms of the notification dated 13.1.1995. It is not in dispute that the statements were made by the appellant on the E-stamp paper issued on 26.04.2016 at 5.27 p.m. and the jurisdictional Tahasildar has issued the certificate on the very same day i.e. 26.04.2016, based on the application bearing No. 01/16-17, dated 25.04.2016. Fraud played by the appellant is manifest from the certificate issued by the jurisdictional Tahasildar. Based on these facts, the Government of Karnataka has now suspended the jurisdictional Tahasildar for providing false certificate. On 06.02.2016, the appellant swearing to an affidavit that she is an income-tax assessee, furnishing the PAN card details, subsequently giving statements before the Revenue Inspector that she is not a PAN card holder and not an income tax assessee prima facie proves the fraudulent act of the appellant. In addition to that filing a false affidavit in order to

usurp a public office is highly deplorable. In such circumstances, if the appellant is continued to chair and hold the office of Adhyaksha, her action would be fraud on the constitution....” (emphasis supplied) The other relevant extract of the impugned judgment of the Division Bench in paragraph 44, reads thus:

“44. The issue relating to the caste, whether the appellant belongs to Kapu caste or not is a disputed question of fact. It is true that there is no absolute bar under Articles 226 and 227 of the Constitution of India to consider annulment of caste certificate de hors alternative statutory remedy available provided the disputed question of facts are not involved and the circumstances warrant invoking of the extraordinary writ jurisdiction. The judgments relied upon by the respondents on this point do not assist the respondents since the matter is already pending before the Caste Verification Committee, considering this prayer at this stage would be, entertaining the parallel proceedings which is not tenable. The determination of caste requires a full-fledged enquiry, as such the learned single judge directing the caste verification committee, to proceed with the matter cannot be found fault with. Confirming the order of the learned single Judge, we direct the Caste Verification Committee to proceed with the matter in accordance with law without being influenced by any of the observations made above. All rights and contentions of the parties are left open. Caste Verification Committee shall decide the matter in an expedite manner.

In the result, both the appeals stand dismissed.” (emphasis supplied)

12. We have heard Mr. C.A. Sundaram, learned Senior Counsel appearing for the appellant and Dr. Rajeev Dhawan & Mr. S.M. Chander Shekhar, learned Senior Counsel appearing for the respondents.

13. It is indisputable that the post of Adhyaksha of Zilla Panchayat is a public office in relation to which a writ of quo warranto can be issued, if the post is occupied by a person who is not eligible to be so appointed or incurs disqualification to continue to occupy the post. Indeed, when a statutory remedy is provided for removal of disqualified person from the public office who is allegedly usurper of public office, the writ court would be ordinarily slow in interfering, much less, issuing a writ of quo warranto. The Constitution Bench of this Court in the case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*<sup>3</sup> has observed thus.

“6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

7. As Halsbury has observed :

„An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.

8. Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds 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, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a 3 (1964) 4 SCR 575 right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.” (emphasis supplied)

14. The moot question in the present case is: whether the High Court, in the facts of the present case, was justified in invoking its extraordinary jurisdiction to issue a writ of quo warranto? Let us advert to the assertion made in the writ petition in support of such a relief claimed by the respondent Nos.6 to 9. The relevant paragraphs have been extracted in paragraph 3 of this judgment, being paragraphs 6 and 7 of the writ petition. The case of the writ petitioners was that the appellant, in order to grab the post of Adhyaksha of Zilla Panchayat, submitted a bogus and false certificate indicating that she belongs to the backward community-B category, which was surreptitiously obtained from respondent No.5. In support of this plea, the crux of the allegation is that a false, incorrect and misleading declaration was given by the appellant in respect of her financial status and income. In that, in the first affidavit dated 6th February, 2016 she had declared that she was receiving rent of Rs. One lakh forty thousand per annum and her husband was receiving rent of Rs. Four lakh eighty thousand per annum. Whereas in the second affidavit dated 26th April, 2016 filed in support of the application for grant of Income and Caste Certificate, she has stated that the annual income of her family was only Rs. Three lakh fifty thousand; and that she and her husband were not paying income tax and commercial tax. According to the writ petitioners, this declaration was false to the knowledge of the appellant. Further, the caste certificate was issued on the same day of the application without any proper inquiry as required under the law. On these assertions, the matter proceeded before the High Court. We will advert to the explanation offered by the appellant a little later.

15. First, we must notice the other material which had come on record during the hearing of the writ petition and which weighed with the High Court. During the hearing, the original official file relating to the grant of caste certificate to the appellant was produced by the Government Advocate, as noted in paragraph 11 of the judgment of the learned Single Judge and extracted in paragraph 9 above. On analyzing the documents contained in the original file, it is noticed that the certificate was not

granted to the appellant on the same day of the application as alleged but it took almost five days time for processing the application and for its issuance. In that, first, a notice was issued by the Revenue Inspector, then, a report of the Revenue Inspector was obtained, Mahazar was prepared, statement was recorded, and then affidavit of the appellant came to be filed along with other documents, as has been noted in the original file.

16. The concurrent finding recorded by the learned Single Judge and the Division Bench of the High Court is that the process of issuance of the certificate to the appellant by the jurisdictional Authority was done in a mortal hurry. This inference has been drawn by the High Court in light of the facts revealed from the original official file - that the appellant purchased stamp paper for preparing affidavit at 5.27 p.m. on 26th April, 2016 and used the same for notarization and also submitted it to the respondent No.5, who then issued the caste certificate on the same day i.e. 26th April, 2016. The Court has also noted that there was some overwriting in relation to the date. After advertent to these circumstances, the High Court opined that there was something seriously wrong about the process adopted by the respondent No.5 for issuance of caste certificate, which was obviously done to favour the appellant who could then contest the election. The High Court also noted that the respondent No.5 who had issued the stated certificate was later on suspended, pending departmental enquiry against him in reference to the selfsame certificate issued to the appellant. Additionally, the High Court has found that there was discrepancy in the two affidavits filed by the appellant, which is in the nature of suppression and non-disclosure of material financial information. Finally, the High Court concluded that since the issue regarding the validity of Income and Caste Certificate was pending before the Caste Verification Committee, which was a fact finding Committee, the Committee would decide the same on its own merits. Notably, the High Court did not quash the caste certificate as being void but left it open to the Caste Verification Committee to proceed in accordance with law.

17. It is pertinent to mention that the Division Bench of the High Court, while deciding Writ Appeal No.101459 of 2016, vide judgment dated 5th June, 2017, has recorded in Para 12 of the judgment that there is no dispute as to the caste status of the appellant herein; that she belongs to "Kapu" Caste is not at all in dispute. Considering the above, the issue before the Caste Verification Committee would essentially be one relating to the income eligibility of the appellant. That may be a mixed question of fact and law. Presumably, therefore, the High Court stopped short of quashing the Income and Caste Certificate issued in favour of the appellant as being void.

18. In this backdrop, the controversy will have to be analysed so as to determine whether the High Court was justified in issuing a writ of quo warranto in such a situation. Interfering in exercise of writ jurisdiction is limited to judicial review of the decision making process and not of the decision itself. In this case, the final decision regarding the validity of Income and Caste Certificate issued to the appellant has been advisedly kept open, thereby the same, in law and in fact, is still valid and in force. There is statutory presumption that such caste certificate shall be valid until it is cancelled by the Competent Authority. However, the only logic that can be deduced from the contemplation done by the learned Single Judge and the Division Bench of the High Court, is that the process followed by the respondent No.5 for issuing the stated certificate to the appellant is replete with serious doubt and, therefore, is prima facie fraudulent.

19. In other words, the existence of the caste certificate or for that matter the fact that it has been so issued by the respondent No.5, is not doubted or in dispute. It is not a case of appellant relying on a non-existing or officially non-issued caste certificate. Thus, enquiry will have to be made about the circumstances warranting issuance of stated certificate in a tearing hurry by the respondent No.5, allegedly to favour the appellant. The other aspect is about the discrepancies in the two affidavits submitted by the appellant and including the suppression and non-disclosure of her truthful financial information.

20. Indubitably, both these aspects will be the subject matter of the enquiry before the Caste Verification Committee, being intrinsically mixed with the question of validity of the stated certificate. Appellant had offered explanation on both these matters. Regarding the factum of mortal hurry allegedly displayed by the respondent No.5 in issuing the caste certificate, she contends that it was not issued on the same day as alleged but after due enquiry. That is evinced from the original official file produced before the Court. In that, the application was made on 22nd April, 2016 whence the process commenced and then concluded on 26th April, 2016. The process was required to be completed expeditiously as the certificate was required for contesting the impending election of Adhyaksha scheduled on 29th April, 2016. This explanation certainly will have to be examined by the Caste Verification Committee, before invalidating the caste certificate on the ground that proper procedure was not followed. For the present, suffice it to observe that the mere fact that the certificate was issued in a short span of five days from the date of the application, per se, does not lead to an inference that the required procedure has not been followed.

21. The fact as to whether necessary procedure has been complied with or not will be one aspect of the enquiry before the Caste Verification Committee, apart from the core aspect of whether in fact the appellant fulfills the income and financial criteria. The mere fact that the caste certificate has been issued within a short span of five days albeit after following due procedure, can be no just basis to invalidate the certificate by the Caste Verification Committee. The said Committee will be obliged to record a clear finding of fact about the eligibility of the appellant in reference to her financial status and income, keeping in mind the purport of Clause (ii) of the Note to Notification dated 13th January, 1995. While considering that matter, the Committee will have to make an enquiry as to whether the appellant or her parent(s)/guardian(s) "is" an income tax assessee /wealth tax assessee on the date of issuance of the certificate. As regards this fact, Caste Verification Committee will have to examine the correctness and efficacy of the two affidavits in its proper perspective known to law. According to the appellant, there is no discrepancy in the disclosures made by her in the two declarations concerning her financial matters at the relevant time. The first affidavit dated 6th February, 2016, correctly discloses the fact that the appellant possessed PAN Card and was an income tax assessee, having paid income tax for the Financial Year 2013-14. The second affidavit dated 26th April, 2016 is also accurate and discloses the correct financial position wherein it is stated that the annual income of her family is Rs. Three lakh fifty thousand from all the sources; and neither she nor her husband are income tax and commercial tax payers in reference to the Financial Year (2015-16), for which the affidavit was sworn on 26th April, 2016. It is also contended by the appellant that Clause (ii) of the Note posits two aspects:- the first is that the incumbent or either of his/her parents/guardian should not be an income tax or wealth tax "assessee" at the relevant time. The expression used in this clause, "is" an income tax assessee/wealth tax assessee, pre supposes

that it is in praesenti and for the relevant period. Secondly, the incumbent must necessarily fall within the expression “assessee” given in the concerned tax laws. That means only a person, by whom any tax or any other sum of money is payable under the Act for the concerned period and not otherwise. No material has been produced or is forthcoming that the appellant, or for that matter, her husband, had paid any tax or are liable to pay tax or a sum of money under the concerned tax legislation, for the relevant period i.e. Financial Year 2015-16. Absence of such evidence, the Income and Caste Certificate issued to the appellant cannot be invalidated. Furthermore, the income of her husband / spouse is not a relevant fact for issuance of the Income and Caste Certificate. For, Clause (ii) excludes benefit only if the incumbent or either of his/her parent/guardian is an income tax assessee or wealth tax assessee. This provision will have to be interpreted strictly, as in the case of provision for any other disqualification. The appellant also asserts that there is no discrepancy or for that matter suppression or non- disclosure of financial information in the declarations submitted by her. In any case, that would be a disputed question of fact and per se concerning the issue of validity of Income and Caste Certificate.

22. According to the appellant, as long as the Income and Caste Certificate is valid and in force, which has only been doubted by the High Court having been issued by the respondent No.5 in a mortal hurry, the matter must rest at that. We find force in the submission of the appellant that all these issues will be the subject matter during the enquiry into the question of validity of the stated Income and Caste Certificate, which is pending before the Caste Verification Committee. Even the High Court was conscious of this position and perhaps, therefore, did not quash or set aside the Income and Caste Certificate as being void. A writ of quo warranto cannot be issued on the basis of assumptions, inferences or suspicion regarding the factum of fulfillment of eligibility criteria. Being an extraordinary power, ordinarily such a writ ought to be issued only on the basis of indisputable facts leading to a singular conclusion that the incumbent was in fact or in law disqualified to occupy the public office or has incurred disqualification to continue to remain therein. Only whence such a person would fall within the description of an usurper of public office without legal authority. On the other hand, for a person possessing an Income and Caste Certificate issued by the jurisdictional Authority and so long as it is valid and in force, in fact and in law, treating such a person as usurper of the public office and occupying it without legal authority, cannot be countenanced. In our opinion, the High Court had plainly erred in engaging itself in an enquiry into a prohibited area which is already the subject matter of the proceedings pending before the Caste Verification Committee, without realizing that the observations made by it were inherently bound to influence the Committee from taking a just and proper decision in accordance with law irrespective of its observation to decide without being influenced by its decision.

23. Strikingly, neither the learned Single Judge nor the Division Bench of the High Court thought it appropriate to quash and set aside the Income and Caste Certificate as being void. If the High Court was to allow that relief or other reliefs claimed by the writ petitioners in entirety after a full-fledged enquiry, the correctness of that approach could have been tested on a different scale. We must immediately clarify that we may not be understood to have said that such a course was open to the High Court. That issue does not arise in this appeal.

24. As aforementioned, the High Court stopped short of concluding that the Income and Caste Certificate issued to the appellant is void. It merely expressed a prima facie opinion that the process adopted by the respondent No.5 to issue the Income and Caste Certificate to the appellant created a serious doubt. At best, it observed that the appellant was instrumental in playing fraud upon the jurisdictional Authority and/or the said Authority colluded with the appellant, by surreptitiously issuing the Income and Caste Certificate to the appellant. But, finally, it has left the question regarding the validity of the certificate open to be decided by the Caste Verification Committee, in the pending proceedings, dealing with the factum of validity of the certificate issued to the appellant. Having said this, the High Court could not have issued a writ of quo warranto. That writ could be issued only if the Income and Caste Certificate was held to be void or after it was invalidated by the Competent Authority.

25. The distinction between a void and voidable order was considered in the case of Nawabkhan Abbaskhan Vs. State of Gujarat.<sup>4</sup> The Court noted the dictum of Rubinstein that, when an act is not voidable but void, it is a nullity and can be disregarded and impeached in any proceedings, before any Court or Tribunal and whenever it is relied upon. In other words, it is made subject to „collateral attack . The Court observed that illegal act of authorities, if can be defied on self-determined voidness, startling consequences will follow. It, however, made an exception of cases where the order is passed by the jurisdictional authority without hearing the party affected, which entails injury to a (1974) 2 SCC 121 Constitutionally guaranteed right to the affected party. It held that such orders may be treated as void and ineffectual to bind the parties from the beginning. That is not the case on hand. The underlying principle is that, in cases such as the one under consideration, the Income and Caste Certificate can only be invalidated after affording opportunity to the holder of the certificate. It will be useful to reproduce the legal position summed up by the Court in paragraph 18 as follows:

“18. ....Decisions are legion where the conditions for the exercise of power have been contravened and the order treated as void. And when there is excess or error of jurisdiction the end product is a semblance, not an actual order, although where the error is within jurisdiction it is good, particularly when a finality clause exists. The order becomes „infallible in error , a peculiar legal phenomenon like the hybrid beast of voidable voidness for which, according to a learned author, Lord Denning is largely responsible. The legal chaos in this branch of jurisprudence should be avoided by evolving simpler concepts which work in practice in Indian conditions. Legislation, rather than judicial law-making will meet the needs more adequately. The only safe course, until simple and sure light is shed from a legislative source, is to treat as void and ineffectual to bind parties, from the beginning, any order made without hearing the party affected if the injury is to a constitutionally guaranteed right. In other cases, the order in violation of natural justice is void in the limited sense of being liable to be avoided by Court with retroactive force.” (emphasis supplied) As the subject certificate still holds the field and until it is invalidated by the Competent Authority, it is unfathomable as to how the appellant can be said to have occupied the public office without legal authority so as to invoke the extraordinary writ jurisdiction of issuing a writ of quo warranto.



26. In *K. Venkatachalam Vs. A. Swamickan*<sup>5</sup>, the challenge was to the election of the appellant to the Legislative Assembly in Tamil Nadu by way of a writ under Article 226 of the Constitution filed by the contesting candidate (respondent therein) for a declaration that the appellant was not qualified to be a Member of Tamil Nadu Legislative Assembly, since he was not enrolled as an elector in the electoral roll in the concerned constituency for the general elections in question. The Court analysed the factual matrix which pointed out that, admittedly, the incumbent was not an elector of the concerned constituency and that he blatantly and fraudulently impersonated himself as another elector in the constituency. Accepting that indisputable position, the Court proceeded to conclude that the appellant was not eligible to contest elections from the concerned constituency, not being a voter in that constituency. It thus held that the appellant therein lacked the basic qualification under Clause (c) of Article 173 of the Constitution of India read with Section 5 of the 1951 Act, which was quintessential to be elected from the constituency. On such finding, the Court entertained the writ petition under Article 226 and declared the appellant to be occupying the public office without legal authority and issued a writ of quo warranto. In other words, the matter was decided on the basis of indisputable and established facts. This judgment will be of no avail to the writ petitioners in the present case, so long as the Income and Caste Certificate issued to the appellant is in force.

27. In *Kurapati Maria Das Vs. Ambedkar Seva Samajan*<sup>6</sup> the Court distinguished the decision in *K. Venkatachalam* (supra) being on the facts of that case and reversed the judgment of the High Court under challenge, whereby a writ of quo warranto was issued against the appellant therein. The reason for doing so may have some bearing on the matter in issue as in that case, there was dispute about the caste status of the appellant. The Court <sup>6</sup> (2009) 7 SCC 387 opined that the issue regarding the caste status can be decided only by the Competent Authority under the relevant enactment and not by the High Court. The Court accepted the contention of the appellant that continuance of the post of Chairperson depended directly on his election, firstly, as a ward member and secondly as the Chairperson, which election was available only to the person belonging to the Scheduled Caste. In paragraph 32 of the reported decision, the Court while accepting the contention of the appellant noted that the question of caste and his election are so inextricably connected that they cannot be separated and therefore, when the writ petitioners challenged the continuation of the appellant on the ground of his not belonging to a particular caste what they actually challenged was the validity of the election of appellant though, apparently, the petition was for a writ of quo warranto.

28. We agree with this exposition. It applies on all fours to the case on hand. Inasmuch as, what the writ petitioners (respondents 6 to 9) had questioned was the correctness of the declarations submitted by the appellant about her financial status and income which, according to them was beyond the prescribed limit and disentitled the appellant to get the Income cum Caste Certificate. The firm stand taken by the appellant is that there was no discrepancy between the two declarations muchless indicative of excess income of the appellant at the relevant time. In our opinion, there is no tittle of material forthcoming to show that in fact, the appellant or her parents/guardians had paid income tax or wealth tax during the relevant Financial Year 2015-16. That indeed could have disentitled the appellant from getting an Income and Caste Certificate. This submission of the appellant is founded on the setting in which Clause (ii) of the Note has been placed and is attracted

only to an income tax assessee/wealth tax assessee as per the relevant taxation laws during the current period. An assessee is a person who pays taxes or is liable to pay tax or any other sum of money payable by him/her. The argument is that the fact that the appellant has been issued PAN number or has filed tax return and paid tax in the past will be of no consequence and does not impair or impinge upon the eligibility of the appellant to get an Income and Caste Certificate for the relevant period in any manner. As noted earlier, these are matters to be considered by the Caste Verification Committee and only if rejected, the caste certificate in question could be invalidated. Until a final decision is taken by the Caste Verification Committee, in law, it will have to be presumed that subject certificate is valid and in force in view of the statutory provision making it explicit to that effect.

29. In the case of Arun Singh alias Arun Kr. Singh Vs. State of Bihar and Others<sup>7</sup>, this Court over turned the decision of the High Court issuing a writ of quo warranto, on the ground that it was unclear from the orders passed by the Superintendence of Police or the District Magistrate, or for that matter, the State Election Commissioner, suggestive of the fact that the appellant therein was held to have committed any misconduct within the meaning of the Service Rules. In paragraph 13, the Court observed thus:

“13. ....No cogent or sufficient reasons have been given by the High Court for setting aside the well-considered order of the State Election Commission. Furthermore, issuance of a writ of quo warranto is discretionary and such a writ should be issued only upon a clear finding that the appointment to a public office was contrary to the statute. For the said purpose it was obligatory on the part of the High Court to arrive at a finding that the disqualifying clause contained in Section 139(1)(f) was squarely attracted in the case of the appellant, in the light of the order of the 7 (2006) 9 SCC 375 State Election Commission. Evidently, the appellant was not disqualified.”

30. In B.R. Kapur Vs. State of Tamil Nadu & Anr.<sup>8</sup> the Constitution Bench was called upon to consider the situation where a person convicted for a criminal offence and whose conviction has not been suspended pending appeal, could be sworn in as the Chief Minister of a State and continue to function as such. The Court was called upon to answer the controversy on the basis of indisputable fact that the incumbent Chief Minister had already been convicted of a criminal offence and such conviction had not been suspended in the pending criminal appeal. After considering the purport of Article 164 and Article 173 of the Constitution, the Court concluded that the appointment of the second respondent in the appeal as the Chief Minister was in clear violation of the constitutional provisions and thus a writ of quo warranto was inevitable. The substratum of the exposition was the factum of basic ineligibility of the person to be appointed or continue as Chief Minister. In a concurring judgment by Brijesh Kumar, J. (as His Lordship then was) the nature of writ of quo warranto has been explicated in the following words:

8 (2001) 7 SCC 231 “79. ....A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo

warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in the proceedings for writ of quo warranto and its original form, as it used to be, it would be beneficial to quote from Words and Phrases, Permanent Edn., Vol. 35-A, p. 648. It reads as follows:

“The original common law writ of quo warranto was a civil writ at the suit of the Crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well as to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the Crown. Long before our revolution, however, it lost its character as a criminal proceeding in everything except form, and was applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor, the fine being nominal only; and such, without any special legislation to that effect, has always been its character in many of the States of the Union, and it is therefore a civil remedy only.”

80. In the same volume of Words and Phrases, Permanent Edn., at p. 647 we find as follows:

“The writ of „quo warranto is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf. McKittrick v. Murphy<sup>9</sup> Information in the nature of „quo warranto does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex inf. Walsh v. Thatcher<sup>10</sup>.” (emphasis supplied)

81. In Halsbury s Laws of England, 4th Edn., Reissue Vol. I, p. 368, para 265 it is found as follows:

“265. In general.—An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.” <sup>9</sup> 148 SW 2d 527, 529, 530 : 347 Mo 484 <sup>10</sup> 102 SW 2d 937, 938 : 340 Mo 865

31. In the case of High Court of Gujarat and Anr. Vs. Gujarat Kishan Mazdoor Panchayat and Ors.<sup>11</sup> (supra) in a concurring judgment S.B. Sinha, J. (as His Lordship then was) noted that the High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. However, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. The Court went on to observe that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules as held in *Mor Modern Coop. Transport Society Ltd. Vs. Financial Commr. & Secy. To Government of Haryana*<sup>12</sup>. The Court also took notice of the exposition in *R.K. Jain Vs. Union of India*<sup>13</sup>. The Court noted that with a view to find out as to whether a case has been made out for issuance of quo warranto, the only question which 11 (2003) 4 SCC 712 12 (2002) 6 SCC 269 13 (1993) 4 SCC 119 was required to be considered was as to whether the incumbent fulfilled the qualifications laid down under the statutory provisions or not. This is the limited scope of inquiry. Applying the underlying principle, the Court ought not to enquire into the merits of the claim or the defence or explanation offered by the appellant regarding the manner of issuance of Income and Caste Certificate by the jurisdictional Authority or any matter related thereto which may be matter in issue for scrutiny concerning the validity of the Caste Certificate issued by the jurisdictional statutory authority constituted under the State Act of 1990 and the rules framed thereunder. That inquiry may require examination of all factual aspects threadbare including the legality of the stand taken by the appellant herein.

32. In the case of Chairman and Managing Director, Food Corporation of India and Others Vs. Jagdish Balaram Bahira and Others<sup>14</sup>, the question was in reference to the Caste Certificate which was invalidated after the verification done by the jurisdictional Scrutiny Committee. The observations in the said 14 (2017) 8 SCC 670 decision may be of some import, if the Caste Verification Committee was to invalidate the Caste Certificate issued to the appellant after due verification. As a matter of fact, the enquiry before the Caste Verification Committee ought to proceed in terms of the procedure prescribed by the Act of 1990 and Rules framed thereunder and including the dictum of this Court in, amongst others *Madhuri Patil Vs. Commr., Tribal Development*<sup>15</sup>.

33. In *Rajesh Awasthi Vs. Nand Lal Jaiswal and Ors.*<sup>16</sup>, the Court noted that a writ of quo warranto will lie when the appointment is made contrary to the statutory provisions as held in the case of *Mor Modern Coop. Transport Society Ltd.* (supra) Further, relying on the decision in the cases of *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees Asson.*<sup>17</sup> and *Hari Bansh Lal Vs. Sahodar Prasad Mahto*<sup>18</sup>, wherein the legal position has been restated that the jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued if the appointment is 15 (1994) 6 SCC 241 16 (2013) 1 SCC 501 17 (2006) 11 SCC 731 18 (2010) 9 SCC 655 contrary to the statutory rules and the Court has to satisfy itself that the appointment is contrary to the statutory rules. In that case, the Court after analysing the factual matrix found, as of fact, that there was non-compliance of sub-Section (5) of Section 85 of the Electricity Act, 2003, in the matter of appointment of the incumbent to the post of Chairperson of the Commission for which it became necessary to issue a writ of quo warranto. In the supplementing judgment by one of us

Dipak Misra, J. (as His Lordship then was), the settled legal position expounded in B.R. Kapur (supra), University of Mysore (supra), High Court of Gujarat (supra), Centre for PIL Vs. Union of India<sup>19</sup> has been recapitulated in paragraphs 29 to 33 of the reported decision.

34. We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the 19 (2011) 4 SCC 1 indisputable facts, the High Court ought not to entertain the prayer for issuance of a writ of quo warranto.

35. In the case of K. Krishna Murthy (Dr.) (supra) the Constitution Bench of this Court examined two questions as noted in paragraph 9 of the reported judgment, which read thus:

“9. In light of the submissions that have been paraphrased in the subsequent paragraphs, the contentious issues in this case can be framed in the following manner:

(i) Whether Article 243-D(6) and Article 243-T(6) are constitutionally valid since they enable reservations in favour of backward classes for the purpose of occupying seats and chairperson positions in panchayats and municipalities respectively?

(ii) Whether Article 243-D(4) and Article 243-T(4) are constitutionally valid since they enable the reservation of chairperson positions in panchayats and municipalities respectively?” The Court opined that the objectives of democratic decentralisation are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of society. The Court went on to observe that reservations in local self-government are intended to directly benefit the community as a whole, rather than just the elected representatives. It is for this very reason that there cannot be an exclusion of the “creamy layer” in the context of political representation. It also noted that while exclusion of the “creamy layer” may be feasible as well as desirable in the context of reservations for education and employment, the same principle cannot be extended to the context of local self-government.

We may note that this decision may be of relevance to the appellant to pursue his remedy before the High Court in the writ petition No.108700 of 2017, questioning the validity of Clause (ii) of the notification dated 13.01.1995 providing for exclusion of “creamy layer” against the reserved category. We may, however, without any hesitation record that the High Court had justly negated the argument of the appellant which was founded on the interim relief granted by the High Court in the stated writ petition on the ground that the same cannot validate an action which was illegal so as to alter the eligibility criteria for contesting the election of Adhyaksha conducted on 26th April, 2016.

We do not intend to express any opinion either way on the pending issues in that proceedings, which are not the subject matter of this appeal. The High Court is free to deal with that writ petition on its own merits in accordance with law.

36. This, however, will make no difference to the conclusion which we must reach in this case that the High Court could not have issued a writ of quo warranto until the Income and Caste Certificate issued in favour of the appellant, on the basis of which she participated in the election for the post of Adhyaksha and got elected, was to be declared void or invalidated by the Caste Scrutiny Committee. We do not wish to dilate on other incidental aspects/arguments as the same will not have any bearing on the conclusion noted above.

37. In a matter of this nature, the High Court, having kept open the issue regarding the validity of the Income and Caste Certificate to be decided by the jurisdictional Caste Verification Committee and finding no legal basis to declare the certificate as void ab initio or choosing to do so, ought to have instead directed the Caste Verification Committee to expedite the enquiry and conclude the same in a time bound manner. The course adopted by the High Court has only prolonged the consideration of that issue by the competent authority and embroiled the parties in avoidable proceedings.

38. Accordingly, we allow this appeal and set aside the decisions of the learned Single Judge and the Division Bench of the High Court which are impugned in the present appeal. We, however, dispose of the writ petition filed by the respondents 6 to 9 being Writ Petition No.106417 of 2016 only by directing the Caste Verification Committee to expedite the enquiry regarding the validity of the Income and Caste Certificate issued to the appellant by respondent no.5 and conclude the same preferably within two months and also intimate its final decision to the appellant within the same time. Needless to observe that the Caste Scrutiny Committee will decide the matter on its own merit and without being influenced whatsoever by any observations made in the impugned judgments but in accordance with law. Besides, it shall deal with every contention raised before it by recording tangible reasons.

39. The appeal is allowed in the aforementioned terms with no order as to costs.

.....CJI.

(Dipak Misra) .....J. (A.M. Khanwilkar) .....J. (Dr. D.Y. Chandrachud) New Delhi;

March 6, 2018.