

# Vishwanath S/O. Mahadeo Alte And Others vs Dr. Kalge Shivaji Bandappa And Others on 10 September, 2024

2024:BHC - AUG:21373

EP 3 & 6/

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

ELECTION PETITION NO. 3 OF 2024

Narsingrao s/o. Nivruttirao Udgirkar  
Age 67 yrs., Occu. Business,  
R/o. White House, Degloor Road,  
Udgir, Dist. Latur - 413517.

....Petitioner

Versus

1. Shivaji s/o. Bandappa Kalge,  
Age 54 yrs., Occu. Medical Practitioner,  
R/o. C/o. Laxmi Netralya & Maternity Home,  
Opposite to Government Veterinary Hospital,  
Zilla Parishad Office, Nataji Nagar,  
Latur, Tq. Latur, District Latur,  
Maharashtra State - 413512.
2. The Returning Officer,  
41- Latur (SC) Parliamentary Constituency,  
District Latur.
3. The District Election Officer,  
District Collectorate, Latur,  
District - Latur.
4. The Chief Election Commission of India,  
Office of the Chief Election Commission,  
Nirvachan Sadan, Ashok Road,  
New Delhi - 110001.
5. Sudhakar s/o. Tukaram Shrangare,  
Age 62 yrs., Occu. Agriculture,  
R/o. House No. 332, Gharni,  
Tq. Chakur, Dist. Latur,  
At present Shankar - Shubham Nath Nagar,  
Latur, Tq. Latur, Dist. Latur - 413512.
6. Atithi Khanderao Suryawanshi,  
Age 46 yrs., Occu. Household,  
R/o. 45-K, Nath Nagar,

Nalanda Housing Society,  
Surywanshi Nagar, Latur  
Tq. Latur, Dist. Latur 413512.

7. Alte Vishwanath Mahadev,  
Age 41 yrs., Occu. Agriculture,  
R/o. Siddharth Society Road No. 5,  
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Nanded Road, Latur,  
Tq. Latur, Dist. Latur - 413512.

8. Kamant Machhhindra Gunwantrao,  
Age 64 yrs., Occu. Business,  
R/o. Punyaji Niwas, Dr. Sanjeev  
Reddy Colony, Degloor Road,  
Udgir, Tq. Udgir, Dist. Latur - 413517.
9. Abhang Gangaram Surywanshi,  
Age 51 yrs., Occu. Agriculture,  
R/o. At Ambegao Post Gurnal,  
Tq. Devani, Dist. Latur.
10. Dattu Sopan Narsinge,  
Age 52 yrs, Occu. Agriculture,  
R/o. Siddeshwar Nagar,  
Malvati Road, Latur,  
Tq. Latur, Dist. Latur - 413512.
11. Deepak Chandrabhan Kedar,  
Age 39 yrs., Occu. Agriculture,  
R/o. Near Dhoot Hospital,  
Chikalthana, Aurangabad,  
Tq. Aurangabad, Dist. Aurangabad.
12. Umesh Ambadas Kamble,  
Age 28 yrs, Occu. Agriculture,  
R/o. Laxmi Niwas, in front of Municipal  
Corporation, Latur, Tq. & Dist. Latur.
13. Bansode Raghunath Waghoji,  
Age 57 yrs., Occu. Agriculture,  
R/o. Pavan Colony, Nath Nagar,  
Latur, Tq. Latur, Dist. Latur.
14. Bharat Hariba Nanaware,  
Age 61 yrs., Occu. Agriculture,  
R/o. Siddharth Housing Society,  
Nanded Road, Latur,  
Tq. Latur, Dist. Latur - 413512.
15. Shrikant Baburao Hoval,

Age 42 yrs., Occu. Agriculture,  
R/o. Patharevasti Loni,  
Tq. Haveli, Dist. Pune- 412201.

16. Pravin Madhav Johare,  
Age 38 yrs, Occu. Agriculture,  
R/o. At post Hangarga,  
Tq. Ahmedpur, Dist. Latur.

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17. Panchshil Vikram Kamble,  
Age 41 yrs., Occu. Agriculture,  
R/o. Dr. Ambedkar Nagar,  
Loha, Tq. Loha, Dist. Nanded.
18. Shankar Hari Tadakhe,  
Age 63 yrs, Occu. Agriculture,  
R/o. Sahitya Samrat Annabhau Sathe Nagar,  
Near Bhairavnath Mandir,  
37/A, Aundhraod, Khadki,  
Pune - 411020.
19. Amol Malu Hanmante,  
Age 28 yrs., Occu. Agriculture,  
R/o. At Post Kavthala,  
Tq. Devni, Dist. Latur.
20. Adv. Kasbekar Shridhar Limbaji,  
Age 74 yrs., Occu. Lawyer,  
R/o. Survey No. 35/3/7,  
Dhankwadi, Gurudattkrupa Gruhnirman  
Society, Flat No. B-23, Mohan Nagar,  
Pune.
21. Balaji Sheshrao Bansode,  
Age 35 yrs., Occu. Agriculture,  
R/o. At post Talegaon (Bho),  
Tq. Devni, Dist. Latur-413519.
22. Bhikaji Gangaram Jadhav,  
Age 61 yrs., Occu. Agriculture,  
R/o. C/o. Narayan Tulshiram Kachave Guruji,  
Kokanga, Po. Tq. Ahmedpur, Dist. Latur.
23. Vikas Kondiba Shinde,  
Age 27 yrs., Occu. Agriculture,  
R/o. at Konali Dongar Post Mangrool,  
Tq. Jalkot, Dist. Latur.
24. Lakhan Rajaram Kamble,  
Age 33 yrs., Occu. Agriculture,

R/o. At Post. Bolegaon (Bu).,  
Tq. Shirur Anantpal, Dist. Latur.

25. Balaji Tukaram Gaikwad,  
Age 51 yrs., Occu. Agriculture,  
R/o. Dr. Babasaheb Ambedkar Nagar,  
Room No. 1850, Sadhu T.L. Waswani  
Marg, Cuff Parafde, Colaba, Mumbai.

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26. Sudhakar Tukaram Suryawanshi,  
Age 56 yrs., Occu. Agri., R/o. c/o. Koralikar  
Niwas, Veer Fakira Chowk, Kahdegaon Road,  
Latur - 413512.

27. Papita Raosaheb Randive,  
Age 43 yrs., Occu. Household,  
R/o. At Post Migarga, Tq. Ausa,  
Dist. Latur.

28. Adv. Pradip S. Chincholikar,  
Age 43 yrs., Occu. Laywer,  
R/o. at Chincholi Bh. Post. Yelnur,  
Tq. Nilanga, Dist. Latur.

29. Mukesh Govindrao Ghodake,  
Age 33 yrs., Occu. Agriculture,  
R/o. Eqbal Chowk, Near Araft Maszeed,  
Latur, Dist. Latur.

30. Pankaj Gopalrao Wakharadakar,  
Age 33 yrs., Occu. Agriculture,  
R/o. Sagar Niwas, Malhar Nagar,  
Nava Mondha, Kandhar,  
Tq. Kandhar, Dist. Nanded-431714

....Respondents

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Dr. Jayshree Patil, Advocate for the petitioner.

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AND

ELECTION PETITION NO. 6 OF 2024

1. Vishwanath s/o. Mahadeo Alte,  
Age 43 yrs., Occu. Business,  
R/o. Sonai Niwas, Road No. 15,  
Siddharth Housing Society,  
Nanded Road, Latur.
2. Dattu s/o. Sopan Narsinge,  
Age 53 yrs., occu. Self Employed,  
R/o. Siddeshwar Nagar, Malwati Road,

Latur, Dist. Latur.

3. Bharat s/o. Hariba Nanaware,  
Age 60 yrs., Occu. Legal Practitioner,  
R/o. Road No. 12, Siddharth Housing Society,  
Nanded Road, Latur.
4. Pravin s/o. Madhav Johare,  
Age 38 yrs., Occu. Legal Practitioner,

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R/o. At Post Hungarga, Tq. Ahmedpur,  
Dist. Latur.

5. Vitthal s/o. Mahapurao Bhosle,  
Age 71 yrs., Occu. Pensioner,  
R/o. "Varsha", Bank Colony,  
Vikram Nagar, Latur.

....Petitioners

Versus

1. Dr. Kalge Shivaji Bandapp,  
Age 65 yrs., Occu. Medical Practitioner,  
R/o. Laxmi Netralaya Maternity Home,  
Netaji Nagar, Latur.
2. Sudhakar s/o. Tukaram Shrangare,  
Age Adult,  
R/o. House No. 332, Gharni,  
Tq. Chakur, Dist. Latur,  
At present - Shankar-Shubham,  
Nath Nagar, Latur.
3. Atithi Khanderao Surywanshi,  
Age Adult,  
R/o. 45K, Nath Nagar, Nalanda  
Housing Society, Surywanshi  
Nagar, Latur.
4. Ad. Kasbekar Shridhar Limbaji,  
Age Adult,  
R/o. Sy. No. 35/3/7, Dhanakwadi,  
Gurudutta Krupa Ghraha Nirman  
Society, Flat No. B-23, Mohan  
Nagar, Pune - 411043.
5. Kamant Machhindra Gunvantrao,  
Age Adult,  
R/o. "Punyal Niwas", Dr. Sanjiv  
Reddy Colony, Degloor Road,  
Udgir, Tq. Udgir, Dist. Latur-413517.

6. Narsingrao Udgirkar,  
Age Adult,  
R/o. "White House", Degloor Road,  
Udgir, Tq. Udgir, Dist. Latur-413517.

7. Balaji Tukaram Gaikwad,  
Age Adult,  
R/o. Dr. Babasaheb Ambedkar Nagar,  
Room No. 1850, Sadhu T.L. Waswani  
Marga, Kaf Pared, Kulaba, Mumbai-5.

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8. Bhikaji Gangaram Jadhav,  
Age Adult,  
R/o. C/o. Narayan Tulshiram Kacchve  
Guruji, Kokanga, Tq. Ahmedpur,  
Dist. Latur - 413515.

9. Lakhan Rajaram Kamble,  
Age Adult,  
R/o. At Post Bolegaon (Bk),  
Tq. Shirur Anantpal, Dist. Latur.

10. Vikas Kondiba Shinde,  
Age Adult,  
R/o. At Konali (Dongar),  
Post Manglur, Tq. Jalkot,  
Dist. Latur, Maharashtra-413532.

11. Shankar Hari Tadakhe,  
Age Adult,  
R/o. Sahitya Samrat Annabhau Sathe  
Nagar, Near Bahiravnath Temple,  
37/A, Aundh Road, Khadki,  
Pune - 411020.

12. Shrikant Baburao Hoval,  
Age Adult,  
R/o. Pathare Vasti, Loni Kalbhor,  
Tq. Haveli, Dist. Pune - 412201.

13. Abhang Gangaram Suraywanshi,  
Age Adult,  
R/o. Ambegaon, Post Gurnal,  
Tq. Deoni, Dist. Latur.

14. Amol Malu Hanmante,  
Age Adult,  
R/o. At Post Kawthala,  
Tq. Deoni, Dist. Latur.

15. Umesh Ambadas Kamble,  
Age Adult,  
R/o. Laxmi Nivas, In front of M.C.  
School No. 5, Latur, Dist. Latur.

16. Deepak Kedar,  
Age Adult,  
R/o. Near Dhoot Hospital,  
Chikalthana, Aurangabad.

17. Papita Raosaheb Randive,

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Age Adult,  
R/o. At Post Morarga, Tq. Ausa,  
Dist. Latur.

18. Pankaj Gopalrao Wakharadakar,  
Age Adult,  
R/o. Sagar Nivas, New Mondha,  
Kandhar, Tq. Kandhar,  
Dist. Nanded - 431714.

19. Panchshil Vikram Kamble,  
Age Adult,  
R/o. Dr. Ambedkar Nagar, Loha,  
Tq. Loha, Dist. Nanded.

20. Adv. Pradip S. Chincholikar,  
Age Adult,  
R/o. At Chincholi (Bhoyar)  
Post Yelnur, Tq. Nilanga, Dist. Latur.

21. Bansode Raghunath Waghoji,  
Age Adult,  
R/o. Pavan Colony, Nath Nagar,  
Latur.

22. Balaji Sheshrao Bansode,  
Age Adult,  
R/o. At Post Talegaon (Bho),  
Tq. Deoni, Dist. Latur-413519.

23. Mukesh Govindrao Ghodake,  
Age Adult,  
R/o. Ekbal Chowk, Near Arafat  
Masjeet, Latur, Dist. Latur.

24. Sudhakar Tukaram Suryawanshi,  
Age Adult,  
R/o. C/o. Koralikar Nivas,  
Veer Fakira Chowk, Khadgaon Road,

Latur - 413512.

25. Returning Officer,  
Latur Parliamentary Constituency,  
Latur.
26. The State of Maharashtra,  
Through its Department of Social  
Justice, Mantralaya, Mumbai.
27. District Caste Scrutiny Committee,  
Latur.

....Respondents

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...  
Mr. Uttam Laxmanrao Telgaonkar, Advocate for the petitioners.  
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CORAM : ARUN R. PEDNEKER, J.  
DATED : 10/09/2024

JUDGMENT :

1) Election Petition Nos. 3 of 2024 and 6 of 2024 are filed, challenging the election of respondent No. 1 - Shivaji Bandappa Kalge, the returned candidate from 41-Latur (SC) Parliamentary Constituency, State of Maharashtra for the election held on 7.5.2024 on the ground of qualification or disqualification of the returned candidate by contending that the returned candidate does not belong to the 'Mala Jangam' Scheduled Caste category as declared by him in his nomination papers. Both the petitions are taken up for hearing jointly in view of the provisions of section 86 (3) of the Representation of Peoples Act, 1951 (hereinafter referred to as 'the R.P. Act' for short).

2) In Election Petition No. 3/2024, the petitioner seeks declaration that on the date of election, the returned candidate/respondent No. 1 was not qualified to be chosen to fill the seat in the House of People from 41-Latur (SC) Parliamentary Constituency reserved for Scheduled Caste member or he was not having requisite qualification within the meaning of Section 4 (a) of the R.P. Act, to be chosen to fill the seat in the House of People from 41- Latur (SC) Parliamentary Constituency. The petitioner also seeks declaration that the election of respondent No.1/returned candidate has been materially affected by the acceptance of his nomination along with his caste certificate, validity certificate, affidavit, declaration and nomination by the returning EP 3 & 6/24 officer and as such, be declared void. Thus, the petitioner challenges election of respondent No. 1/returned candidate on the grounds mentioned in section 100 (1)(a), 100 (1) (d) (i) & (iv) r/w. section 4 (a) of the R.P. Act.

3) It is the case of the petitioner in Election Petition No. 3/2024 that the respondent No. 1 belongs to Hindu Jangam caste, at Sr. No. 58, which is recognised as Other Backward Class under the Maharashtra Government Resolution Nos. (1) 1096/PK-48/MVK-5 dated 03.06.1986, (2) CBC 1098/PK-185/OBC-5 dated 1.1.2001 and (3) CBC-14/2001/PK-232/MVK-5 dated 1.6.2004.



Respondent No. 1 is an elector for 41 Latur (SC) Parliamentary Constituency in Maharashtra State and his name is entered at Sr. No. 973, in Part No. 157 of the elector roll for 238 - Nilanga Assembly Constituency, comprised within 41 Latur Parliamentary Constituency in Maharashtra State. It is further case of the petitioner that petitioner and other respondent Nos. 5 to 30 have contested the election to the House of People from 41-Latur (SC) Parliamentary Constituency in Maharashtra State in which they all have lost the same whereas the respondent No. 1 has won the election by margin of 61881 votes. Respondent No. 1 belongs to the Indian National Congress party whereas petitioner belongs to Vanchit Bahujan Aghadi.

4) To substantiate the case, the petitioner has relied on following documents :-

(a) General Register of Zilla Parishad, Primary School of village Ankulanga (Rani) at entry No. 324 wherein the caste of respondent No. 1 is shown to be Hindu (Jangam). The word 'Mala' EP 3 & 6/24 was subsequently added and there is also difference in the ink and handwriting.

(b) One Chandrama Kashinath Kalge is cousin sister of respondent No. 1 and in the General Register of Zilla Parishad, Primary School of village Ankulga (Rani), at Sr. No. 51, her caste is shown to be Lingayat (Jangam) and it falls in Other Backward Class.

(c) One Lata Bai Bandappa Kalge is the real sister of respondent No.1 and her caste in the General Register of Zilla Parishad, Primary School of village Ankulnga (Rani) is shown to be Lingayat (Jangam), so also in her school leaving certificate dated 12.06.1974 she is shown to be Hindu Jangam, which is recognized as Other Backward Class.

(d) One Shankar Shivbas Kalge is real cousin brother of respondent and his caste is Jangam.

(e) In the Khasara Pahani Patrak record i.e. Village Namuna Number 13 of village Ankulnga (Rani) the caste of her real uncles by name Vadappa Mahalingappa, Kashinath Mahalingappa and Vishwanath Mahalingappa was not shown to be caste of his father to be Mala Jangam.

5) Brief history is given in Election Petition No. 3/2024 from para Nos.

11 to 16 showing as to how the caste certificate was procured by the respondent No. 1. The Executive Magistrate, Tahsil Office, Nilanga had issued caste certificate dated 14.7.1986 and on that basis the Sub- Divisional Officer, Nilanga had issued caste certificate dated 13.3.2013 in EP 3 & 6/24 favour of respondent No. 1 and thereafter validity certificate was received by respondent No. 1 on 22.2.2019, which is issued by the District Caste Certificate Scrutiny Committee, Latur. It is the case of the petitioner that Executive Magistrate or Sub-Divisional Officer had not called report from Vigilance Committee before issuance of caste certificate to respondent no. 1 which is mandatory. Thus, it is

submitted that the respondent No. 1 does not belong to the Scheduled Caste category as notified in the State of Maharashtra and his election be declared as void.

6) The Election Petition No. 3/2024 has verification clause at page No. 25, so also affidavit in support of election petition in Form No. 25 which has also verification at page No. 37-A and concise statement at page No. 38 of the petition.

7) Dr. Jayshree Patil, learned counsel for the petitioner in Election Petition No. 3/2024 has relied upon paragraph Nos. 10, 11, 13 and 16 of the judgment of Hon'ble Supreme Court in the case of Mohan Rawale Vs. Damodar Tatyaba @ Dadasaheb & Anr. reported in (1994) 2 SCC 392 and contends that a reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But, so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The learned counsel submits that even if she has very weak case, this Court has to entertain the election petition and give an opportunity to the petitioner to substantiate his case.

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8) In the Election Petition No. 6/2024, the petitioners claim to be belonging to scheduled caste category and challenges the election of respondent No. 1/returned candidate on similar grounds as mentioned in Election Petition No. 3/2024. Petitioner Nos. 1 to 4 contested the election from different political parties and petition No. 5 is the voter. In support of the election petition, the petitioners have produced following documents and stated as under :-

(a) It is stated that respondent No. 1 has obtained caste certificate of "Mala Jangam" on 13.3.2014 from Sub Divisional Officer, Nilanga and validity certificate on 22.2.2019 from District Caste Scrutiny Committee. It is stated that both the certificates are obtained by applying fraudulent ways and means and by suppression of reality and true facts. The copies are enclosed as Exh. B collectively.

(b) It is stated that Latabai Bandappa Kalge and Nirmala Kashinathappa Kalge are the real sister and real cousin of respondent No. 1, respectively. Their caste is mentioned as Hindu Jangam in their respective school record. The copies of entries are enclosed as Exh. D.

(c) It is stated that caste of respondent No.1 was mentioned as Hindu Jangam in his school admission register of Zilla Parishad Primary School, Ankulga Rani, however, respondent No. 1 has got added the word "Mala" later on with collusion of concerned authority and it is seen that the word "Mala" is written in different hand and ink and it is clear manipulation of record. The copy of EP 3 & 6/24 school admission register is enclosed at Exh. E.

(d) It is stated that caste of Bandappa Mahalingappa Kalge (father of respondent No. 1) is not mentioned in the Pahani Patrak of village Ankulga (Rani) for the year 1953-54 and 1955 to 1960 and the copies of Pahani Patra are enclosed as Exh. F collectively.

(e) It is stated that the castes of other people are not mentioned in the form of Gaon Namuna Number 13 of village Ankulga (Rani), but caste of only Bandappa Mahalingappa Kalge, father of respondent No. 1 was mentioned in it later on. The copy of Gaon Namuna Number 13 is enclosed as Exh. G.

(f) It is also stated that the respondent No.1/returned candidate is habitual in obtaining such fake caste certificates.

Respondent No. 1 had obtained the false caste certificate of "Mala Jangam" dated 14.7.1986 from Executive Magistrate, Nilanga. The same was rejected by the then Caste Verification Committee, Pune. He had preferred appeal before the Divisional Commissioner, Aurangabad and he was successful in appeal. However, the said order was cancelled by the Government in review. Thereafter, he filed writ petition in this Court which was allowed on the ground of jurisdiction without touching the merits of the matter. The copies of caste certificate, judgment of appeal and judgment of this Court in writ petition are enclosed as Exh.

"H" Collectively.

9) As regards Election Petition No. 6/2024 is concerned, ground is taken EP 3 & 6/24 in para No. 7 that the respondent No. 1 has obtained caste certificate of "Mala Jangam" caste and certificate of validity by applying fraudulent ways and means by suppressing the reality and true facts from the Caste Scrutiny Committee. It is also submitted that respondent No. 1 has given false affidavits and declaration before the Returning Officer and Returning Officer has erroneously accepted the nomination of respondent No. 1. It is also stated at para 17 of the petition that that the returned candidate has obtained caste certificate of his daughter Shreya Shivaji Kalge by producing all the fake documents. It is stated in the petition that the petitioners have raised objection before the Returning Officer, which was rejected. It is submitted that the cause of action arose to file the election petition on 20.4.2024 when the Returning Officer rejected the objection of the petitioners and when the District Caste Scrutiny Committee Latur had rejected the complaint of petitioner No. 5 on 11.6.2024. It is also stated in the petition that the petitioners have challenged the caste validity certificate of respondent No. 1 by filing a separate writ petition bearing No. 7868/2024 before the Division bench of this Court and notice is issued in that matter on 31.7.2024.

10) Mr. U.L. Telgaonkar, learned counsel for the petitioners in Election Petition No. 6/2024 has relied upon paragraph No. 11 the judgment of the Hon'ble Supreme Court in the case of Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Ors. reported

as (2005) 2 SCC 244 and submits that the caste certificate and validity certificate could be considered as the piece of evidence in the present election petition and on the basis of the evidence produced in the election petition, the caste status of the EP 3 & 6/24 respondent No. 1/returned candidate that he does not belong to category of Scheduled Caste namely "Mala Jangam" be declared.

11) On the basis of above submissions and documents, the petitioners in both the petitions submit that notice be issued to the respondents and it be held that the respondent No. 1 was not qualified to contest the assembly election from the constituency reserved for scheduled caste category as the respondent No. 1 does not belong to category of scheduled caste as claimed by him in his declaration in the nomination form.

12) Considering the submissions raised, this Court has to decide whether the petitioners have made out case for issuance of notice or the election petitions need to be rejected outright under Order VII, Rule 11 of Civil Procedure Code (hereinafter referred to as 'CPC' for short) r/w. Section 83 of the R.P. Act.

13) To understand the nature of 'caste certificate' and 'caste validity certificate' issued by the competent authority and the Caste Scrutiny Committee under the Maharashtra Scheduled Caste, Scheduled Tribes, De-

notified Tribes (Vimukta jatis), Nomatic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as 'the 2000 Act' for short), reference can be made to the judgment of the Hon'ble Supreme Court in the case of Kumari Madhuri Patil V. Commissioner, Tribal Development reported in (1994) 6 SCC 241 and Mah. Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra decided on 24th EP 3 & 6/24 March 2024 in Civil Appeal No. 2502/2022. In case of Madhuri Patil cited supra, the the Supreme Court has noted that it was necessary to streamline the procedure for issuance of social status certificate, their scrutiny and their approval. The need to lay down procedure guidelines was felt as in several cases where it was noticed that candidates on the basis of false social status certificates obtained admissions to educational institutions which necessarily had the effect of depriving admissions to genuine candidates belonging to Scheduled Castes or Scheduled Tribes. In the case of Madhuri Patil (supra), the Supreme Court at para 13 has held that :-

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the

applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may EP 3 & 6/24 be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a Vigilance Cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be.

He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to

their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc. EP 3 & 6/24

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue showcause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. ....

10. ....

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11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie."

(emphasis added)"

14) In the case of Mah. Adiwasi Thakur Jamat Swarakshan Samiti (supra), it is observed that so far as the State of Maharashtra is concerned, with effect from 18.10.2011 the 2000 Act was brought into force. The 2000 Act contains a very elaborate mechanism for regulating the issue and verification of caste certificates to persons belonging to various categories of backward classes. A two level mechanism is provided. The first level is of the Competent Authority issuing a caste certificate which is valid only subject to verification and grant of validity certificate by the Scrutiny Committee constituted under the 2000 Act. Power is vested in the Scrutiny Committee constituted under section 6 to verify the correctness of the caste certificates issued by the Competent Authority. Section 9 confers powers on the Competent Authority and the Scrutiny Committee of a civil court of summoning and enforcing the attendance of witnesses, requiring the discovery and inspection of documents, receiving evidence on affidavits, requisitioning any public record or a copy thereof from any Court or office and issuing Commissions for the examination of witnesses or production of documents. Elaborate rules are formulated under the 2000 Act known as The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 Rules (hereinafter referred to as 'the 2003 Rules' for short). Rule 10 and Rule 12 of the 2003 Rules provide for the constitution of Vigilance Cells to assist the Scrutiny Committees for EP 3 & 6/24 Scheduled Castes and Scheduled Tribes respectively for conducting an enquiry. Rules 2003 also provide powers to Scrutiny Committee to conduct affinity test.

15) In Mah. Adiwasi Thakur Jamat Swarakshan Samiti cited supra, the Hon'ble Supreme Court in para Nos. 15, 17 and 18 has held as under :-

"15. The law contemplates very detailed scrutiny of the caste claim by the Scrutiny Committee. If both the Competent Authority and the Caste Scrutiny Committee were to make the same degree of scrutiny and detailed enquiry into caste claims, the very object of the two-tier scrutiny will be frustrated. Section 8 provides that the burden of proving a caste claim before the Competent Authority and the Scrutiny Committee is on the applicant. For discharging the said burden before the Competent Authority, it is enough if the applicant produces prima facie material to show that his caste claim is genuine. The burden put by Section 8 on the applicant to prove his caste status before the Scrutiny Committee is much higher than the burden which he is required to discharge before the Competent Authority.

16. ....

17. Section 6 deals with the procedure to be followed by the Caste Scrutiny Committee for verification of caste certificates. Sub-section (4) of Section 6 lays down that the Scrutiny Committee shall follow the procedure as laid down by the Rules framed under the 2000 Act. Rule 4 of the ST Rules lays down the procedure to be followed by the Competent Authority. We must note that under Rule 10, a provision has been made for constituting a Vigilance Cell to assist the Scheduled Tribes Caste

Scrutiny Committee in conducting an enquiry. As noted earlier, the Vigilance Cell consists of Police Officers of three different ranks as provided therein and a Research Officer.

Rule 11 provides details of the documents the applicant must submit to verify the Scheduled Tribes certificate. Sub- rules 2 and 3 of Rule 11 read thus:

EP 3 & 6/24 "11. (1).....

(2) The applicant shall submit the following documents with his application for verification of his Scheduled Tribe Certificate :--

(a) Original documents.--

(i) the original Scheduled Tribe Certificate of the applicant alongwith one attested copy,

(ii) an affidavit in Form F;

(b) Documents of which, only attested copies are to be submitted in respect of applicant--

(i) Primary School leaving certificate.

(ii) An extract of school admission register.

(iii) An extract of birth register.

(c) Documents in respect of father,--

(i) An extract of birth register.

(ii) Primary school leaving certificate.

(iii) Extract of school admission register.

(iv) Scheduled Tribe Certificate.

(v) If a father is in service, the extract of the pages of the service record (book) which contain religion and tribe entry.

(vi) If a father is illiterate, the primary school leaving certificate of the real elderly blood

relatives of the paternal side of the applicant and extract of school admission register.

(d) Other documents,--

(i) Revenue record like, birth register, extract of



7/12, Sale Deed etc.

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- (ii) Any other relevant documents in support of his Scheduled Tribe claim.

(iii) Affidavits of the near relatives whose Validity Certificates are submitted in support of the Scheduled Tribe claim of the applicant.

(3) The applicant shall submit original certificates and documents for verification whenever required by the Scrutiny Committee.

18. Rule 12 lays down the procedure to be followed by the Scrutiny Committee. It contains a provision regarding forwarding a case to the Vigilance Cell to hold an enquiry. Rule 12 reads thus:

"12. Procedure to be followed by Scrutiny Committee.

(1) On receipt of the application, the Scrutiny Committee or a person authorised by it shall scrutinise the application, verify the information and documents furnished by the applicant, and shall acknowledge the receipt of the application. The Member Secretary shall register the application, received for verification, in the-register prescribed by the Chairman.

(2) If the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry.

(3) The Vigilance Officer shall go to the local place of residence and original place from which the applicant hails and usually resides, or in case of migration, to the town or city or place from which he originally hailed from.

(4) The Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or the guardian, as the case may be.

(5) The Vigilance Cell shall also examine the parents or guardian or the applicant for the purpose of verification of their Tribe, of the applicant.

EP 3 & 6/24 (6) After completion of the enquiry, the Vigilance Cell shall submit its report to the Scrutiny Committee who will in turn scrutinise the report submitted by the Vigilance Cell. (7) In case the report of Vigilance Cell is in favour of the applicant, and if the Scrutiny Committee is satisfied that the claim of the applicant is genuine and true, the Scrutiny Committee may issue the validity certificate. The validity certificate shall be issued in Form G. (8) If the Scrutiny Committee,

on the basis of the Vigilance Cell report and other documents available, is not satisfied about the claim of the applicant, the Committee shall issue a show cause notice to the applicant and also serve a copy of the report of the Vigilance Officer by registered post with acknowledgment due. A copy shall also be sent to the Head of the Department concerned, if necessary. The notice shall indicate that the representation or reply, if any, should be made within fifteen days from the date of receipt of the notice and in any case not more than thirty days from the date of receipt of the notice. In case the applicant requests for adjournment or extension of the time- limit, reasonable time, may be granted.

(9) (a) After personal hearing if the Scrutiny Committee is satisfied regarding the genuineness of the claim, Validity Certificate shall be issued in Form G.

(b) After personal hearing, if the Scrutiny Committee is not satisfied about the genuineness of the claim and correctness of the Scheduled Tribe Certificate, it shall pass an order of cancellation and of confiscation of the Certificate and communicate the same to the Competent Authority for taking necessary entries in the register and for further necessary action. The Scheduled Tribe Certificate shall then be stamped as " cancelled and confiscated".

16) The Hon'ble Supreme Court in the case of Mah. Adiwasī Thakur Jamat Swarakshan Samiti (supra) has observed that it is not possible to exhaustively lay down in which cases the Scrutiny Committee must refer the case to Vigilance Cell and it is observed that in the case of Madhuri Patil EP 3 & 6/24 cited supra, it lays down that the documents of the pre-constitution period showing the caste of the applicant and their ancestors have got the highest probative value and if the applicant is able to produce authentic and genuine documents of the pre-constitution period showing that he belongs to a tribal community, there is no reason to discard his claim as prior to 1950, there were no reservations provided to the tribes included in the ST order and in such cases the reference to Vigilance Cell is will not be required. The Supreme Court has also held that for verification of the social status as contemplated by sub-rule (4) of Rule 12 of the 2003 Rules, in a given case, affinity test can be resorted to by the Vigilance Cell.

17) The Hon'ble Supreme Court has also held that the scheme of the 2000 Act and the 2003 Rules provides for the Scrutiny Committee holding an enquiry on the caste claim of the applicant, if necessary, after examining the applicant on oath, recording evidence of witnesses and calling for documents and records etc., the Scrutiny Committee is expected to record reasons for granting and rejecting the prayer for issue of caste validity certificates and thus, the Scrutiny Committee has all the trappings of a quasi-judicial authority.

18) Thus, the Competent Authority and the Caste Scrutiny Committee have exclusive jurisdiction to grant caste certificate and grant validity to the caste certificate under the 2000 Act.

19) The Hon'ble Supreme Court in the case of Collector, Bilaspur Vs. Ajit P.K. Jogi and Ors, reported as (2011) 10 SCC 357 has held that having EP 3 & 6/24 regard to sub-clause (b) of clause (5) of Article 338 of the Constitution of India, the S.C. and S.T. Commission could have right to entertain and inquire into the specific complaints about deprivation of any rights and safeguards of Scheduled

Tribes. However, the Commissioner on receipt of complaint cannot decide the tribe status of an individual and the Commission can refer the matter to the concerned authority i.e. Scrutiny Committee for disposal in accordance with the scheme formulated by the Supreme Court in the case of Madhuri Patil cited supra for verification of the caste/tribe and for determination of the caste/tribe status.

20) It is apparent that the Caste Scrutiny Committee conducts exhaustive enquiry in to the status of the individual. It is not mentioned in the present election petitions, whether all the documents which the petitioners have relied upon were available before the Caste Scrutiny Committee. This is a serious lapse in pleading of material facts in Election Petition. However, oral statement is made by Dr. Jayshree Patil, learned advocate for the petitioner in Election Petition No. 3/2024 that all the documents produced in the election petition challenging the caste status of returned candidate/respondent No. 1 are received from the Caste Scrutiny Committee.

21) The Division Bench of this Court in the case of Rakesh Bhimashankar Umbarje and Ors. Vs. State of Maharashtra and Anr. in Writ Petition No. 5364/2023 decided on 3.5.2023 has held that the order passed by the Scrutiny Committee under the 2000 Act shall be final and shall not be challenged before any authority or court except the High Court under Article EP 3 & 6/24 226 of the Constitution of India. Section 15 of the 2000 Act provides bar of jurisdiction of the Civil Court to decide such matters. Section 15 provides that no civil Court shall have jurisdiction to entertain, to continue or to decide any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order, if the claim involved in such suit or proceeding, or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of the 2000 Act. In the case of Rakesh cited supra, the Division Bench of this Court held that the scheme of the 2000 Act would reveal that it would be the exclusive jurisdiction of the Caste Scrutiny Committee to consider the application for a caste validity certificate. The Division Bench has also held that a 'caste certificate' is certainly not a 'caste validity certificate', as issuance of a caste validity certificate is an independent exercise to be undertaken by the Caste Scrutiny Committee by exercising its quasi-judicial powers. The Division Bench of this Court in the case of Rakesh cited supra also held that caste validity certificate confers substantive rights on the person holding such certificate, by virtue of which a right in rem is conferred on such person on the basis of such caste validity certificate.

22) The Hon'ble Supreme Court in the case of Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi reported in AIR 1986 SC 1534, while considering the election petition on the ground that the respondent had ceased to be an Indian citizen and, therefore, was disqualified to be a candidate, has observed at para 5 and 12 as under :-

"5. As regards ground No. (i) it has to be observed that the High Court was in error in construing that it could decide the question whether a person had ceased to be an Indian EP 3 & 6/24 citizen. The High Court was of the view that since in an election petition the High Court is called upon to decide whether the returned candidate was disqualified to be chosen as a member of the Lok Sabha it was open to the High Court by virtue of that power to decide the question whether a candidate had ceased to be

an Indian citizen notwithstanding the statutory bar contained in S. 9 (2) of the Citizenship Act, 1955.

6. ....

12. In the circumstances it is difficult to agree with the view of the High Court that when a question whether a person has acquired the citizenship of another country arises before the High Court in an election petition filed under the Representation of the People Act, 1951 it would have jurisdiction to decide the said question notwithstanding the exclusive jurisdiction conferred on the authority prescribed under Section 9(2) of the Citizenship Act, 1955 to decide the question. Whatever may be the proceeding in which the question of loss of citizenship of a person arises for consideration, the decision in that proceeding on the said question should depend upon the decision of the authority constituted for determining the said question under Section 9(2) of the Citizenship Act, 1955."

The Hon'ble Supreme Court in Bhagwati Prasad Dixit (supra) has held that the question of loss of citizenship of a person arises for consideration in an election petition it would depend upon the decision of the authority constituted for determining the said question under section 9(2) of the Citizenship Act, 1955 and rejected the argument that in election petition the Court can consider the issue.

23) This Court in the case of Ishvarbhai Jaganji Naik Vs. The Returning Officer and Ors. reported in 1991 (1) SLJ 36 (Bombay) [MANU/MH/1071/1990] has held that section 41 of Evidence Act is not EP 3 & 6/24 exhaustive of the types of cases covered by it. The category of cases declaring "Status" are on the increase. This is particularly so when the trend is to, set up courts of exclusive Jurisdiction. Judgments of Courts/Tribunals must receive respect and must be held binding on all Courts/Tribunals who cannot try those questions. They must necessarily be binding on parties who are not necessary/proper parties in the proceedings before the Court/Tribunal of exclusive jurisdiction.

Thus, applying the principles laid down in the case of Ishvarbhai (supra), section 41 (Section 35 of Bhartiya Sakshya Adhiniyam) of the Evidence Act will apply to the judgment of the Caste Scrutiny Committee, granting validity to the caste certificate of the returned candidate.

24) In the judgments of Mah. Adiwasi Thakur Jamat Swarakshan Samiti (supra) and Rakesh Bhimashankar Umbarje (supra), the Hon'ble Supreme Court and the Division Bench of this High Court held that the Caste Scrutiny Committee has power to decide the caste claim of a person, validating the caste certificate in exercise of its quasi judicial function and grants declaration as to the status of the person whether he belongs to the particular caste or tribe. The said status cannot be challenged in the Civil Court as it is exclusive domain of the Scrutiny Committee to decide the status of the person holding the caste certificate.

25) Having dealt with the provisions of the 2000 Act, I now turn to the relevant provisions of the R.P. Act, 1951. The relevant provisions are quoted as below :-

EP 3 & 6/24 "4. Qualification for membership of the House of the people.-

A person shall not be qualified to be chosen to fill a seat in the House of the People unless-

(a) in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

33. Presentation of nomination paper and requirements for a valid nomination.-

(1) .....

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

36. Scrutiny of nominations.-

(1) .....

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :-

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-

Articles 84, 102, 173 and 191 (part II of this act and section 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or EP 3 & 6/24

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

100. Grounds for declaring election to be void .- (1) Subject to the provisions of sub-section (2), if the High Court is of the opinion -

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or

(b) .....

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected--

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate 6 [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

26) It is to be noted that the R.P. Act or the Conduct of Election Rules 1961 does not provide for production of caste certificate and the caste validity certificate along with the nomination form. Section 33 (2) provides for declaration to be made by the candidate contesting any reserved seat, specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a scheduled caste or as the case may be, a Scheduled Tribe of the State.

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27) In the nomination filed by the respondent No. 1/returned candidate, which is at page 108 of the Election Petition No. 3/2024, it is mentioned that the returned candidate has not supplied caste certificate and that he has to furnish caste certificate at the commencement of the scrutiny at 11.00 a.m. on 20.4.2024. At page 121 of the Election Petition No. 3/2024, it is seen that on 20.4.2024 the Returning Officer has passed the following order :-

"Nomination accepted. Objections rejected. Seperate summary enquiry order is enclosed herewith."

28) In the Election Petitions above summary enquiry order of the Returning Officer is not enclosed. All the documents which were available before the Scrutiny Committee while validating the claim of the petitioner on 22.2.2019 are not mentioned/produced in the Election Petition No. 3/2024 or Election Petition No. 6/2024.

29) The Hon'ble Supreme Court in the case of Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju & Ors., reported in MANU/SC/2505/2005 [(2006) 1 SCC 212] has held that the decision in election petition regarding status of the caste of an individual is not a judgment in rem and every subsequent election gives rise to a fresh cause of action. In para 10, it is observed that :-

"10. .... It is not an action for establishing the status of a person. It is not an action initiated by a person to have his status established or his jural relationship to the world generally established, to borrow the language of Spencer Bower. No doubt in E.P. 13 of 1983, the question was whether the election petitioner therein who alleged that the EP 3 & 6/24 appellant before us was not qualified to contest as a candidate belonging to a Scheduled Tribe, in a constituency reserved for that tribe and to that extent, having relationship to the status of the appellant. In such an action under the Representation of the People Act, 1951 what is decided is whether the election petitioner had succeeded in establishing that the successful candidate belonged to a caste or community, that was not included in the Scheduled Tribes Order."

30) Considering the law laid discussed in the above referred judgments it is to be noted that grant of caste certificate is exclusive domain of the Caste Scrutiny Committee after the enactment of the 2000 Act. The Civil Court's jurisdiction is barred. Since the Caste Scrutiny Committee has exclusive jurisdiction to decide the caste status of an individual as regards the caste or tribe claim, this Court in the election petition would not render alternate finding as regards the caste of the returned candidate unless case is made out that the judgment of the Caste Scrutiny Committee, granting validity to the caste certificate of the returned candidate is not issued by the competent authority or is vitiated by fraud. The material produced in the election petition, even if accepted as it is cannot lead to the conclusion that the returned candidate does not belong to 'Mala Jangam', a Scheduled caste as the caste validity certificate is granted to him after following the due process of law by the Caste Scrutiny Committee.

31) The next issue that arises for consideration is whether this Court can reject the election petitions on the ground that the election petitions are bereft of material facts as regards the pleadings in the petitions qua EP 3 & 6/24 documents available before the Caste Scrutiny Committee and how the judgment of the Scrutiny Committee is vitiated by fraud if the documents were already before the Caste Scrutiny Committee and the Caste Scrutiny Committee has rendered the judgment on caste status of returned candidate.

32) The law on the subject of rejection of election petition at the outset has been reiterated by the Hon'ble Supreme Court in the case of Karim Uddin Barbhuiya Vs. Animul Haque Laskar & Ors. reported as (2024) 4 S.C.R. 523, wherein the Hon'ble Supreme Court in para 15 has observed as under :-

"15. The legal position with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act and the rejection of Election Petition under Order VII Rule 11, CPC has also been regurgitated recently by this Court in case of Kanimozhi Karunanidhi vs. A. Santhana Kumar and Others (supra): -

"28. The legal position enunciated in afore-stated cases may be summed up as under:

--

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

EP 3 & 6/24 iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non- compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.""

33) The Supreme Court in the judgment of Karim Uddin (supra) has held that election petition can be rejected under Order VII, Rule 11 of Civil Procedure Code if the material facts are not stated in the election petition. Material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute a cause of action. Every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

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34) The material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

35) The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor it is given to a person who uses it as a handle for vexatious purpose. An election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII Civil Procedure Code read with the mandatory requirements enjoined by section 83 of the R.P. Act.

36) Considering the law as noted above, it is to be required to be noted that the returned candidate has caste certificate and a caste validity certificate in his favour granted by the quasi judicial authority i.e. by the Caste Scrutiny Committee. The caste certificate and validity certificates were produced before the Returning Officer at the stage of scrutiny. The reasoned order of the Returning Officer rejecting the objections is not annexed with the petition. The election petitioners have produced incomplete documents which were before the Caste Scrutiny Committee on the basis of which they seek declaration that the respondent No. 1 does not belong to Scheduled Caste Category as claimed by him as "Mala Jangam". This Court in absence of pleading of material facts as to how the judgment of the caste validity certificate is obtained by fraud cannot entertain the EP 3 & 6/24 present election petitions as the Caste Scrutiny Committee under the 2000 Act has exclusive jurisdiction to determine the validity of caste certificate granted in favour of the returned candidate. Enquiry cannot be conducted in the status of the returned candidate and he be declared as not belonging to "Mala Jangam" community scheduled caste as the returned candidate has a caste validity certificate in his favour by the Caste Scrutiny Committee which has exclusive jurisdiction to grant caste validity certificate.

37) The documents produced by the petitioners even if accepted as they are, no findings can be rendered that the returned candidate does not belong to caste "Mala Jangam" and negate the caste validity certificate granted to returned candidate by the Caste Scrutiny Committee. Caste validity of caste certificate is granted under the 2000 Act after an elaborate enquiry and is influenced by various factors i.e. pre-constitution period documents etc.

38) On the basis of caste certificate and caste validity certificate it is not known as to how the Returning officer could have rejected the claim of the returning candidate as belonging to the Scheduled Caste category. In the case cited by the petitioners in Election Petition No. 6/2024 i.e. Sobha Hymavathi Devi supra is concerned, it relates to caste certificate and not with caste validity certificate. As such, the Hon'ble Supreme Court has held that the caste certificate could be used as evidence in the Court and evidentiary value has to be assigned in the Court.

39) Relying upon the judgment of Ishvarbhai (supra), I have held at para EP 3 & 6/24 22 that section 41 of the Evidence Act (Section 35 of Bharatiya Sakshya Adhiniyam) will apply to the judgment of the Caste Scrutiny Committee, granting validity to the caste certificate of the returned candidate. Thus, in terms of section 44 of the Evidence Act (Section 38 of Bharatiya Sakshya

Adhiniyam) r/w. Section 83 of R.P. Act, election petition must plead material facts as to how the judgment of the Caste Scrutiny Committee is vitiated by fraud moreso when the documents filed with the election petitioner were available before the Caste Scrutiny Committee.

40) In view of the discussion made above, I deem it appropriate to hold that the election petitions are bereft of material particulars as to how the judgment of the Caste Scrutiny Committee granting validity to the caste certificate of the returned candidate is vitiated by fraud and needs to be ignored is not pleaded. Mere usage of words like 'fraudulent' and 'fake' documents and production of some contra documents which would indicate that the returned candidate does not belong to 'Mala Jangam' caste is not sufficient. Even an erroneous decision of the Caste Scrutiny Committee, granting validity to the caste certificate cannot be challenged in election petition. Election petition being the serious matter, no inquiry can be continued in to the status of the respondent No. 1/returned candidate as the candidate has a caste certificate and a caste validity certificate granted by the Scrutiny Committee. The judgment of the Caste Scrutiny Committee granting declaration of caste status is a judgment in Rem. The status of the person cannot be different from that granted by the Caste Scrutiny Committee unless the judgment of Caste Scrutiny Committee granting the validity certificate is vitiated by fraud and has to be ignored.

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41) Thus, in view of the law laid down in the case of Karim Uddin (supra), the Election petition Nos. 3 and 6 of 2024 are liable to be dismissed in terms of order 7, Rule 11 (a) of CPC as it does not disclose the cause of action. In view of the above, the election petitions are dismissed.

[ARUN R. PEDNEKER J.] SSC/