Benedict Denis Kinny vs Tulip Brian Miranda on 19 March, 2020

Equivalent citations: AIR 2020 SUPREME COURT 3050, AIRONLINE 2020 SC 381

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Bench: R. Banumathi, Ashok Bhushan, A.S. Bopanna

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1429-1430/2020
(arising out of SLP (C) Nos. 13703-13704 of 2019)

BENEDICT DENIS KINNY ...APPELLANT(S)

VERSUS

TULIP BRIAN MIRANDA & ORS. ...RESPONDENT(S)

WITH
CIVIL APPEAL NO.1431/2020
(arising out of SLP (C) No. 19732 of 2019)

SMT. PRACHI PRASAD PARAB ...APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA & ORS. ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

The question which has arisen in these appeals is as to whether the High Court in exercise of its Constitutional jurisdiction conferred under Article 226 of Constitution of India can pass an order interdicting a legal fiction engrafted in a State Date: 2020.03.19 18:37:13 IST Reason:

enactment.

2. These two appeals have been filed against common judgment dated 02.04.2019 passed in Writ Petitions filed by the contesting respondent. Order dated 02.05.2019 in Review Petition No. 20 of 2019 filed in Writ Petition No.3673 of 2018 has also

been challenged.

3. Brief facts giving rise to these appeals are: -

A. Civil Appeal NoS.1429-1430/2020 Benedict Denis Kinny versus Tulip Brian Miranda & ors.

i) The respondent as well as appellant contested the election on the seat of Counsellor in Mumbai Municipal Corporation reserved for Backward class citizens. On 23.02.2017, the respondent No.1 was declared elected. Section 5B of Mumbai Municipal Corporation Act required the candidate to submit caste validity certificate on the date of filing Nomination paper. A candidate who has applied to Scrutiny Committee for the verification of his caste certificate before date of filing Nomination but who had not received the validity certificate on the date of filing Nomination has to submit an undertaking that he shall submit within a period of six months from the date of election, the validity certificate issued by the Scrutiny Committee.

ii) It was further provided that if a person fails to produce the validity certificate within a period of six months from the date of election, that election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Counsellor. The period of six months was amended to be twelve months by Amendment Act, 2018.

iii) The Scrutiny Committee vide its order dated 14.08.2017 held that respondent No.1 do not belong to East Indian Category. Therefore, it refused to grant Caste validity certificate in favour of the respondent. Writ Petition No.2269 of 2017 was filed by respondent challenging order of the Caste Scrutiny Committee dated 14.08.2017.

iv) The High Court vide order dated 18.08.2017 passed an interim order in favour of respondent No.1 in terms of Prayer clauses (b) and (c). The High Court vide its judgment and order dated 02.04.2019 allowed the writ petition filed by respondent No.1 and quashed the order of the Scrutiny Committee dated 14.08.2017 and remanded the matter to Scrutiny Committee for fresh consideration.

v) The High Court by the judgment dated 02.04.2019 also directed that the respondent No.1 is entitled to continue in her seat, since the effect of disqualification was postponed by interim order and the impugned order of the Caste Scrutiny Committee has been set aside.

vi) Aggrieved by the judgment and order dated 02.04.2019, Review Petition(L) No.20 of 2019 was filed by the appellant which too has been rejected by the High Court by the order dated 02.05.2019. Both the orders dated 02.04.2019 and 02.05.2019 have been challenged by the appellant in this appeal.

Smt. Prachi Prasad Parab versus The State of Maharashtra and ors.

i) Both, the appellant and respondent No.5, Sudha Shambu Nath Singh contested election to the Mumbai Municipal Corporation held from ward No.67 which was reserved for Backward class citizen. The respondent No.5 was declared elected on 23.02.2017. The Scrutiny Committee rejected the claim of respondent No.5 that she belongs to 'Koyari' caste which is included in the category of OBC in the State of Maharashtra vide order dated 19.08.2017. The respondent No.5 filed a Writ Petition No.145 of 2017 in which interim order dated 22.08.2017 was passed directing the respondent not to take any coercive action against the respondent No.5 on the basis of Order passed by Scrutiny Committee.

ii) The High Court by impugned judgment dated 02.04.2019 allowed the writ petition filed by respondent No.5 by setting aside the order dated 19.08.2017 passed by Caste Scrutiny Committee and declared that the respondent No.5 belongs to Koyari Caste.

iii) In view of setting aside of the order of Caste Scrutiny Committee, it was held that respondent No.5 was entitled to continue in her seat since the effect of disqualification was postponed by an interim order passed by the High Court in the writ petition.

iv) The appellant aggrieved by the judgment dated 02.04.2019 has come up in this appeal.

4. We have heard Shri Sudhanshu S. Choudhari, learned counsel for the appellant, in both the appeals. Shri C.A. Sundaram, learned senior counsel has appeared on behalf of Tulip Brian Miranda. Shri Sidharth Bhatnagar, senior Advocate appeared for respondent No.5. We have also heard learned counsel appearing for the State of Maharashtra.

5. Shri Sudhanshu S. Choudhari, learned counsel for the appellant submits that requirement of submission of Caste validity certificate by Caste Scrutiny Committee within period of one year from the date of election is a mandatory requirement as held by the Full-Bench of Bombay High Court in Anant H. Ulahalkar and Ors. Vs. Chief Election Commissioner and Ors., 2017 (1) BomCR 230, which has received approval by this Court in case of Shankar S/o Raghunath Devre (Patil) Vs. State of Maharashtra and Others, (2019) 3 SCC 220. The contesting respondent having failed to submit Caste Scrutiny certificate within one year from 23.02.2017, their election as counsellor retrospectively stands terminated and High Court committed error in allowing them to continue on their seat.

6. It is submitted that High Court could not have extended the period beyond one year to produce the Caste Validity certificate. The provisions of Section 5B of Mumbai Municipal Corporation being mandatory, it has to be strictly construed and in no case the said period could have been extended by order of the High Court in exercise of jurisdiction under Article 226 of Constitution of India. The High Court could not have passed any interim order against the statutory provision as contained in Section 5B.

7. Shri C.A. Sundaram, learned senior counsel appearing for the respondent contends that Judicial remedy cannot be taken away by the statutory provisions. The right of the respondent to judicial remedy is a Fundamental Right. The High Court passed an order within the time and High Court in Writ Petition was considering a wrong order against which Interim order was rightly passed to protect right of the respondent so that whole exercise may not be rendered infructuous.

8. Alternately, it is submitted that in pursuance of the remand order now subsequently the Caste Scrutiny Committee has verified the caste of the respondent and the order shall relate back to the date when it was initially passed i.e. on 14.08.2017.

9. Learned counsel appearing for respondent No.5 in Civil Appeal No.1431/2020 contends that jurisdiction under Article 226 cannot be curtailed by any statutory provision. The respondent No.5 cannot be left remedy less. It has been held that there is an inherent power in the High Court to pass interim orders even in Election matters. The final order of the High Court must relate back to the date of the impugned order before the High Court. The time taken in the adjudication before the courts ought not to be used against the respondent No.5. The interim order granted by the High Court was to protect the rights of respondent No.5 during pendency of the writ petition so that in event the wrong order passed is set aside, the respondent No.5 may not be put to irreparable loss.

10. From the submissions of learned counsel for the parties and pleadings on record following points arise for consideration:-

> (i) Whether the jurisdiction of the High Court under Article 226 of the Constitution of India is ousted due to statutory Scheme of Section 5B of the Mumbai Municipal Corporation Act?
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> (ii) Whether High Court had no jurisdiction to pass an interim or final order, the effect of which is to interdict the statutory fiction under Section 5B to the effect that in event the Caste Scrutiny Certificate is not submitted within six months (now twelve months) from the date of election, the election shall be deemed to have been terminated retrospectively and the candidate shall be disqualified for being Councillor?
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> (iii) Whether the interim order dated 18.08.2017 in Writ Petition No.2269 of 2017 staying the order dated 14.08.2017 of the Caste Scrutiny Committee with direction to respondent Nos.

2 to 4 not to take any action of disqualification as well as the final judgment dated 02.04.2019 remanding the matter to the Caste Scrutiny Committee during which writ petitioner was held to be entitled to continue, were the orders beyond jurisdiction of the High Court under Article 226 and could not have been passed in view of the Statutory Scheme of Section 5B?

(iv) Whether the interim order of the High Court dated 22.08.2017 passed in Writ Petition No. 145 of 2018 directing the respondents not to take any coercive action against the writ petitioner on the

basis of the Caste Scrutiny Committee's order as well as the final judgment of the High Court dated 02.04.2019 allowing the writ petition and holding that writ petitioner was entitled to continue on her seat, were the orders beyond jurisdiction of the High Court under Article 226 and could not have been passed in view of the Statutory Scheme delineated in Section 5B?

11. Before we proceed to consider the respective submissions of the learned counsel for the parties on the points as noted above, we may first look into the relevant Constitutional and statutory provisions governing the field.

12. By the Constitution (Seventy-fourth Amendment) Act, 1992, Part IXA "The Municipalities" have been inserted in the Constitution. Article 243T provides for reservation of seats in a municipality. In consequence of Constitutional (Seventy-fourth) Amendment, the provisions of the Mumbai Municipal Corporation Act, 1888 were amended by inserting Section 5A by Maharashtra Act No. 41 of 1994 providing for reservation of seats. Section 5B was inserted by Maharashtra Act No.25 of 2006 w.e.f. 19.08.2006 providing for "person contesting election for reserved seat to submit Caste Certificates and Validity Certificate". The provision of Section 5B were deleted by Maharashtra Act No.13 of 2008 but were again re- inserted w.e.f. 08.10.2012 by Maharashtra Act No.21 of 2012. By Maharashtra Act No.13 of 2015, the expression "before 31.12.2013 came to be substituted by the expression before 31.12.2017", which came into effect w.e.f. 01.04.2015. At the time, when the election in question was held, following provision of Section 5B was in force:-

> "5B. Person contesting election for reserved seats to submit Caste Certificate and Validity Certificate:- Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes, or, as the case may be, Backward Class of Citizens, shall be required to submit, alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Nag, XXIII of 2001).
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> Provided that for the General or bye- elections for which the last date of filing of nomination falls on or before the 31st December, 2017, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination papers but who has not received the validity certificate on the date of filing of the nomination papers shall submit alongwith the nomination papers,-
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> (i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the validity certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of six months from the date of his election, the validity certificate issued by the Scrutiny Committee;

Provided further that, if the person fails to produce the validity certificate within a period of six months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor."

13. A further amendment was made in Section 5B by Maharashtra Act No.LXV of 2018. In Section 5B of the Mumbai Municipal Corporation Act, following amendments were made:-

"2. In section 5B of the Mumbai Municipal Corporation Act (hereinafter in this Chapter referred to as "Mumbai Corporation Act"),—

(a) in the first proviso, in clause

(ii), for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 7th April 2015;

(b) in the second proviso, for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 7th April 2015;

(c) after the second proviso, the following proviso shall be added, namely:— "Provided also that, in respect of the undertaking filed by any person under clause (ii) of the first proviso, before the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Third Amendment) Act, 2018, the period of "six months" specified in such undertaking shall be deemed to have been substituted as "twelve months".".

14. Two more provisions of Maharashtra Act No. LXV of 2018 needs to be noted, which are contained in Chapter V "Miscellaneous", i.e., Sections 8 and 9, which are to the following effect:-

"8. Nothing in this Act shall affect the elections conducted by the State Election Commission for conducting the elections or any programme declared by it therefor, prior to the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Third Amendment) Act, 2018, for filling up the resultant vacancy in view of the provisions of section 5B or sub-section (2A) of section 37 of the Mumbai Municipal Corporation Act, section 5B or sub-section (1B) of section 19 of the Maharashtra Municipal Corporations Act, section 9A or section 51-1B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act,1965, as it stood prior to such date of commencement.

9. Any person, who has obtained the Caste Certificate and validity certificate but has not filed such certificate prior to the date of commencement of this Act, shall not be deemed to be disqualified under the provisions of the relevant Municipal law, if he submits such certificate within a period of fifteen days from the date of commencement of this Act:

> Provided that, the provisions of this section shall not apply where the State Election Commission has already prior to the date of commencement of this Act held elections to fill the vacancy of such person or declared the programme for holding of such election."

> 15. Now, reverting to the facts of case in Civil Appeal Nos.1429-1430 of 2020, the election was held and the respondent was declared elected on 23.02.2017 and as per Section 5B as existing at that time, the Caste Scrutiny Certificate verified by Caste Scrutiny Committee was to be submitted within six months i.e., by 22.08.2017. The Caste Scrutiny Committee rejected the claim of respondent by order dated 14.08.2017, which was challenged by filing a Writ Petition No. 2269 of 2017 before he Bombay High Court. On 18.08.2017 Bombay High Court granted interim order in terms of prayer clause (b) & (c) of the writ petition. Paragraph 5 of the interim order dated 18.08.2017 is to the following effect:-

> "5. In that view of the matter, issue notice, returnable after two weeks. In the meantime, there shall be ad-interim relief in terms of prayer clauses (b) and (c)."

> 16. Prayers (b) and (c) in the writ petition were to the following effect:-

> "(b) Pending the hearing and final disposal of the present petition, this Hon'ble Court may be please to stay the effect, operation and implementation of the impugned judgment and award dated 14/08/2017 passed by the Respondent No.5.

> (c) Pending the hearing and final disposal of the present petition, this Hon'ble Court may be please to direct the respondent No.2 and 4 not to take any action of dis-qualification based on the impugned judgment and award dated 14/08/2017 passed by the Respondent No.5"

> 17. The effect of the interim order dated 18.08.2017 was that the respondent Nos.2 and 4 to the writ petition were restrained from taking any action of dis-

qualification based on the order dated 14.08.2017 of the Caste Scrutiny Committee. The respondent thereafter due to stay of disqualification continued to hold his office. The writ petition was finally decided by the Bombay High Court on 02.04.2019. The High Court held that order of the Scrutiny Committee dated 14.08.2017 rejecting the claim of the respondent is unsustainable. The writ petition was allowed and the matter was remanded to the Scrutiny Committee for reconsideration. High Court vide its judgment dated 02.04.2019 also took the view that since interim order was granted protecting the elected candidate, keeping in abeyance the consequences flowing from

invalidation of the claim, they were entitled to continue in their seats. In paragraph 57 of the judgment, following has been held:-

> "57. .....The question is only about the two petitioners i.e. in Writ Petition Nos. 145/2018 and 3673/2018 where we have allowed the writ petition and have quashed and set aside the order passed by the Scrutiny Committee. The elections to the Municipal Corporation were held in February 2017 and the result came to be declared on 23rd February 2017. This Court, by interim order dated 19th August 2017 had granted protection and have put in abeyance the consequences flowing from invalidation of the claim of the petitioner. In light of the said interim order passed by us, the petitioner continued to hold the office. The claim of the petitioners has been found to be improperly rejected and we have quashed and set aside the said order and given a declaration to the effect that they belong to the caste which they claim and hence should continue to hold the said post. Pursuant to their election, in light of the said aforesaid position, the petitioners in Writ Petition Nos. 145/2018 and 3673/2018 are entitled to continue in their seats since the effect of disqualification was postponed by an interim order and we have now quashed and set aside the impugned order."

18. The validity of the interim order passed by the High Court dated 18.08.2017 as noted above and the final judgment dated 02.04.2019 are up for consideration before us. The similar issues have been raised in Civil Appeal No. 1431 of 2020, the consideration of Civil Appeal Nos. 1429-1431 of 2020 shall suffice to decide Civil Appeal No.1431 of 2020 also.

19. Whether the interim order of the High Court dated 18.08.2017 could have been continued the respondent – Tulip Brian Miranda on her seat even though six months period prescribed in Section 5B for submitting Caste Scrutiny Certificate came to an end on 22.08.2017 and whether the election of respondent shall stand retrospectively terminated on 22.08.2017 and further judgment dated 02.04.2019 could not have allowed the respondent to continue on her seat despite expiry of period of one year, which was substituted in place of six months by Maharashtra Act No. LXV of 2018. These are the various aspects, which need to be answered in these appeals.

20. We need to first notice the nature and extent of the jurisdiction of the High Court under Article 226 of the Constitution of India. The power of judicial review vested in the High Courts under Article 226 and this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under Article 226 is original, extraordinary and discretionary. The look out of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or an authority within meaning of Article 12 of the Constitution. The judicial review is designed to prevent cases of abuse of power or neglect of a duty by the public authority.

The jurisdiction under Article 226 is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The Courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice wherever it is found. The High Court and Supreme Court are the Constitutional Courts, which have been conferred right of judicial review to protect the fundamental and other rights of the citizens. Halsbury's Laws of England, Fifth Edition, Volume 24 dealing with the nature of the jurisdiction of superior and inferior courts stated that no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so. In paragraph 619, Halsbury's Laws of England States:-

> "The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of claims, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular claim."

> 21. The nature of jurisdiction exercised by the High Courts under Article 226 came for consideration by this Court in large number of cases. In Sangram Singh Vs. Election Tribunal Kotah and Another, AIR 1955 S.C. 425, Article 226 of the Constitution of India in reference to Section 105 of the Representation of the People Act, 1951 came for consideration. Section 105 of the Representation of People Act provided that "every order of the Tribunal made under this Act (Representation of People Act) shall be final and conclusive". Argument was raised in the above case that neither the High Court nor the Supreme Court can itself transgress the law in trying to set right what it considers is an error of law on the part of the Court or Tribunal whose records are under consideration. It was held that jurisdiction of the High Court remains to its fullest extent despite Section 105. This Court also held that jurisdiction of the High Court in Article 226 and under Article 136 conferred on this Court cannot be taken away by a legislative device. In paragraph 13, following has been laid down:-

> "13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of

an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105."

22. A Seven Judge Bench of this Court in In re The Kerala Education Bill, 1957, AIR 1958 SC 956 had occasion to consider the jurisdiction of High Court under Article 226 in reference to a provision in Kerala Educational Bill, 1957. Clause 33 of Kerala Education Bill provided:-

"33. Courts not to grant injunction - Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, no court shall grant any temporary injunction or make any interim order restraining any proceedings which is being or about to be taken under this Act."

23. In exercise of power vested in him by Article 143(1), the President of India had referred to this Court four questions for consideration. Question No.4, which is relevant for the present case was to the following effect:-

"Q.4. Does clause 33 of the Kerala Education Bill or any provisions thereof, offend Article 226 of the Constitution in any particulars or to any extend?"

24. Answering the question No.4, this Court held that no enactment of State Legislature can take away or abridge the jurisdiction and power conferred on the High Court under Article 226. The learned counsel appearing for the State of Kerala submitted before this Court that the Constitution is the paramount law of the land, and nothing short of a constitutional amendment as provided for under the Constitution can affect any of the provisions of the Constitution, including Article 226. It was submitted that the power conferred upon High Courts under Article 226 of the Constitution is an over-riding power entitling them, under certain conditions and circumstances, to issue writs, orders and directions to subordinate courts, tribunals and authorities notwithstanding any rule or law to the contrary. The Constitution Bench in paragraph 35 has noticed the stand taken on behalf of State of Kerala in following words:-

"35. XXXXXXXXXXXXXXXXXXXX The State of Kerala in their statement of case disowns in the following words all intentions in that behalf:

"52. Kerala State asks this Honourable Court to answer the fourth question in the negative, on the ground that the power given to High Courts by Article 226 remains

unaffected by the said clause 33.

53. Kerala State contends that the argument that clause 33 affects Article 226 is without foundation.

54. The Constitution is the paramount law of the land, and nothing short of a constitutional amendment as provided for under the Constitution can affect any of the provisions of the Constitution, including Article

226. The power conferred upon High Courts under Article 226 of the Constitution is an overriding power entitling them, under certain conditions and circumstances, to issue writs, orders and directions to subordinate courts, tribunals and authorities notwithstanding any rule or law to the contrary."

25. This Court expressed its agreement with the submissions made by State of Kerala and held that clause 33 is subject to the overriding provisions of Article 226 of the Constitution of India. This Court laid down following:-

"Learned counsel for the State of Kerala submits that clause 33 must be read subject to Articles 226 and 32 of the Constitution. He relies on the well known principle of construction that if a provision in a statute is capable of two interpretations then that interpretation should be adopted which will make the provision valid rather than the one which will make it invalid. He relies on the words "other law for the time being in force" as positively indicating that the clause has not the Constitution in contemplation, for it will be inapt to speak of the Constitution as a "law for the time being in force". He-relies on the meaning of the word "law" appearing in Articles 2, 4, 32(3) and 367(1) of the Constitution where it must mean law enacted by a legislature. He also relies on the definition of "Indian law" in Section 3(29) of the General Clauses Act and submits that the word "law" in clause 33 must mean a law of the same kind as the Civil Procedure Code of 1908, that is to say, a law made by an appropriate legislature in exercise of its legislative function and cannot refer to the Constitution. We find ourselves in agreement with this contention of learned counsel for the State of Kerala. We are not aware of any difficulty — and none has been shown to us — in construing clause 33 as a provision subject to the overriding provisions of Article 226 of the Constitution and our answer to Question 4 must be in the negative."

26. What has been laid down by Constitution bench of this Court in above case makes it beyond any doubt that the power under Article 226 of the Constitution overrides any contrary provision in a Statute and the power of the High Court under Article 226 cannot be taken away or abridged by any contrary provision in a Statute.

27. Gajendragadkar, C.J. speaking for a Constitution Bench of this Court in Re: Under Article 143 of the Constitution of India, AIR 1965 SC 745 held that existence of

> judicial power in the High Court under Article 226 and this Court under Article 32 postulate the existence of a right in the citizen to move the Court otherwise the power conferred on the High Courts and this Court would be rendered virtually meaningless.

In paragraph 129 following was held:-

> "129. If the power of the High Courts under Article 226 and the authority of this Court under Article 32 are not subject to any exceptions, then it would be futile to contend that a citizen cannot move the High Courts or this Court to invoke their jurisdiction even in cases where his fundamental rights have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the Court in that behalf; otherwise the power conferred on the High Courts and this Court would be rendered virtually meaningless. Let it not be forgotten that the judicial power conferred on the High Courts and this Court is meant for the protection of the citizens' fundamental rights, and so, in the existence of the said judicial power itself is necessarily involved the right of the citizen to appeal to the said power in a proper case."
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> 28. A Seven Judge Bench in L. Chandra Kumar Vs. Union of India and Others, (1997) 3 SCC 261 again had occasion to examine the nature and extent of jurisdiction of the High Court under Article 226. It was held that power of judicial review under Article 226 and Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. The Constitution Bench was examining the validity of clause 2(d) of Article 323A and clause 3(d) of Article 323B, which excluded the jurisdiction of the High Court. Article 323A clause 2(d) provided as under:-
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> "323A. Administrative tribunals.- (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.
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> (2) A law made under clause (1) may— XXXXXXXXXXXXXXXXXXX
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> (d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

XXXXXXXXXXXXXXXX"

29. The provisions of clause 2(d) of Article 323A and clause 3(d) of Article 323B were held to be unconstitutional. In paragraph 99, Constitution Bench laid down following:-

> "99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution....."

30. In Election Commission of India through Secretary Vs. Ashok Kumar and Others, (2000) 8 SCC 216, a Three Judge Bench had occasion to consider the jurisdiction of the High Court under Article 226 to entertain a petition and to issue interim direction after commencement of electoral process. In reference to bar as created by Article 329 of the Constitution of India, this Court quoted with approval statement of Halsbury's Laws of England, Fourth Edition, Volume 10, Para 713, in following words:-

> "15. The constitutional status of the High Courts and the nature of the jurisdiction exercised by them came up for the consideration of this Court in M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd., 1993 Supp. (2) SCC 433 It was held that the High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and supplementary powers.

Unless expressly or impliedly barred and subject to the appellate or discretionary jurisdiction of Supreme Court, the High Courts have unlimited jurisdiction including the jurisdiction to determine their own powers. The following statement of law from Halsbury's Laws of England (4th Edn., Vol. 10, para 713) was quoted with approval:

> "Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court."
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> 16. This Court observed that the jurisdiction of courts is carved out of sovereign power of the State. People of free India are sovereign and the exercise of judicial power is articulated in the provisions of the Constitution to be exercised by courts under the Constitution and the laws thereunder. It cannot be confined to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience.

> 17. That the power of judicial review is a basic structure of Constitution — is a concept which is no longer in issue."

31. This Court laid down in the above case that arbitrariness and malafide destroy the validity and efficacy of all orders passed by public authorities. This Court in the above case held that the jurisdiction of Article 226 is not even barred in election matter though it has to be sparingly exercised. This Court held that provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum. In paragraph 30, following was laid down:-

> "30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case, (1978) 1 SCC 405). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over.

Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy."

32. We may notice another Three Judge Bench judgment of this Court in Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation, (2018) 16 SCC 299. In the above case, jurisdiction of the High Court under Article 226 came to be considered in light of provisions of Section 19(3)(c) of the Prevention of Corruption Act, 1988. We may first notice Section 19(3)(c) of the Prevention of Corruption Act, which is to the following effect:-

> "19. Previous sanction necessary for prosecution.— XXXXXXXXXXXXXXXX (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—
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> (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings."

33. There being difference of opinion amongst different Benches of this Court as well as of all the High Courts, a reference was made to a Three Judge Bench of the Delhi High Court. In the above Three Judge Bench, High Court had held that even if a petition Under Section 482 of the Code of Criminal Procedure or a writ petition Under Article 227 of the Constitution of India is entertained by

the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act. Justice Adarsh Kumar Goel speaking for this Court held that despite Section 19(1)(c), the High Court in an appropriate case can grant stay and laid down following in paragraph 28:-

> "28. We have thus no hesitation in concluding that the High Court has jurisdiction in an appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further."

34. Justice R.F. Nariman delivered a concurring opinion and in his judgment after extracting Section 19 of Prevention of Corruption Act, 1988 held that Section 19(3)(c) cannot be read as a ban on the maintainability of a petition before a High Court. In paragraph 52 and 54, following has been laid down:-

> "52. The question as to whether the inherent power of a High Court would be available to stay a trial under the Act necessarily leads us to an inquiry as to whether such inherent power sounds in constitutional, as opposed to statutory law. First and foremost, it must be appreciated that the High Courts are established by the Constitution and are courts of record which will have all powers of such courts, including the power to punish contempt of themselves (see Article
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> 215). The High Court, being a superior court of record, is entitled to consider questions regarding its own jurisdiction when raised before it. In an instructive passage by a Constitution Bench of this Court in Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964, Gajendragadkar, C.J. held: (SCR p. 499 : AIR p. 789, para
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> 138) "138. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. "Prima facie", says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court' [Halsbury's Laws of England, Vol. 9, p. 349]."
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> 54. It is thus clear that the inherent power of a court set up by the Constitution is a power that inheres in such court because it is a superior court of record, and not because it is conferred by the Code of Criminal Procedure. This is a power vested by the Constitution itself, inter alia, under Article 215 as aforestated. Also, as such High Courts have the power, nay, the duty to protect the fundamental rights of citizens under Article 226 of the Constitution, the inherent power to do justice in cases involving the liberty of the citizen would also sound in Article 21 of the Constitution.

This being the constitutional position, it is clear that Section 19(3)(c) cannot be read as a ban on the maintainability of a petition filed before the High Court under Section 482 of the Code of Criminal Procedure, the non obstante clause in Section 19(3) applying only to the Code of Criminal Procedure……"

35. The Delhi High Court's judgment's conclusion in paragraph 36(d) was set aside. The Delhi High Court in paragraph 36(d), which judgment was impugned before this Court had laid down:-

"36. In view of our aforesaid discussion, we proceed to answer the reference on following terms:

(d) Even if a petition under Section 482 of the Code of Criminal Procedure or a writ petition under Article 227 of the Constitution of India is entertained by the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act."

36. Justice Nariman ultimately after referring the judgment of L. Chandra Kumar (supra) has set aside the conclusion of Delhi High Court in paragraph 36(d). The above judgment, thus, laid down that despite restraint in Section 19(3)(c) of Prevention of Corruption Act, the jurisdiction of the High Court to issue an interim order is not precluded. This Court in the above case has dealt with a situation when a statutory provision, i.e., Section 19(3)(c) of Prevention of Corruption Act creates a specific bar in passing a stay order. When despite the aforesaid statutory bar, High Court was held to have jurisdiction to pass an interim order, in the present case, we are concerned in a statutory scheme where there is no express or implied bar in passing an interim order by the High Court.

37. As per Section 5B, a candidate belonging to reserved category, who has made an application to the Scrutiny Committee for issuance of Validity Certificate prior to date of filing of nomination is obliged to submit the certificate within six months from the date of election(now substituted by twelve months), failing which his election shall be deemed to have been terminated retrospectively. The second proviso to Section 5B creates a deeming fiction, which operates when a person failed to produce the Validity Certificate within a period of six months/twelve months from the date of his election. The present is a case where before expiry of period of six months from the date of election, i.e., 23.02.2017, the Caste Scrutiny Committee has rejected the claim of respondent and a writ petition was filed by the respondent before expiry of period of six months and the High Court also granted an interim order on 18.08.2017, i.e., within a period of six months, after expiry of which the deeming fiction was to come into existence. The interim order was passed by the High Court before a deeming fiction of termination of election retrospectively came into operation. The consequence of non-filing of Validity Certificate within a period of six months was postponed rather interdicted by the interim order of the High Court. The jurisdiction

> of the High Court to pass the above interim order dated 18.08.2017 is questioned by the appellants. Caste Scrutiny Committee, which is a statutory authority constituted under State enactment to verify the caste claimed by citizens, in event, illegally rejects the claim of citizen, does the citizen has no right to seek judicial remedy? Can the illegal rejection of caste claim of a citizen is a fait accompli after expiry of period of six months? When a citizen has right to judicial review against any decision of statutory authority, the High Court in exercise of judicial review had every jurisdiction to maintain the status quo so as to by lapse of time, the petition may not be infructuous. The interim order can always be passed by a High Court in exercise of writ jurisdiction to maintain the status quo so that at the time of final decision of the writ petition, the relief may not become infructuous.
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> 38. We are conscious of the fact that the High Court has to exercise jurisdiction under Article 226 with due regard to the legislative intent manifested by provisions of enactment. A Nine Judges Constitution Bench in Mafatlal Industries Ltd. and Others Vs. Union of India and Others, (1997) 5 SCC 536 had laid down such preposition in paragraph 108 in following words:-
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> "108. XXXXXXXXXXXXXX XXXXXXXXXXXXXX
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> (x).....So far as the jurisdiction of the High Courts under Article 226 of the Constitution — or of this Court under Article 32 — is concerned, it remains unaffected by the provisions of the Act.

Even so, the Court would, while exercising the jurisdiction under the said articles, have due regard to the legislative intent manifested by the provisions of the Act. The writ petition would naturally be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them."

39. Learned counsel for the appellant has laid great emphasis on the Full Bench Judgment of the Bombay High Court in Anant H. Ulahalkar and Ors. (supra). The three questions, which were referred before the Full Bench were as follows:-

> "2. The genesis of this reference is the order dated 11 August 2015 made in the present Writ Petition by the Division Bench (Coram: Naresh H. Patil & V.L. Achliya, JJ). This order takes cognizance of the aforesaid conflict and opines that the matter be placed before the Hon'ble Chief Justice to consider whether reference needs to be made to a Larger Bench. The order also notes that the following questions of law arise :

"(i) Whether the time limit prescribed under section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission of caste validity certificate by elected Councillor is mandatory in nature?

(ii) Whether the failure on the part of person elected as Councillor to produce the caste validity certificate within the period of six months from the date on which he was declared elected, irrespective of facts and circumstances and eventuality beyond the control of such person to produce validity certificate would automatically result into termination of his election with retrospective effect?

(iii) Whether the validation of caste claim of elected Councillor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councillor with retrospective operation?"

40. The Full Bench in the above case was considering Section 9-A of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, which is pari materia to Section 5B of Mumbai Municipal Corporations Act, 1888. The High Court after elaborate consideration has held that requirement of submitting the caste certificate within a period of six months is a mandatory requirement. In paragraphs 98, 99 and 100, following was laid down:-

"98. In the present case also the legislature in enacting Section 9-A has provided for a statutory fiction, which is evident from the use of expression "his election shall be deemed to have been terminated retrospectively and he shall be disqualified being a Councillor". The statutory fiction must be allowed to have its full play. No other provision or reason has been pointed out to take the view that consequences prescribed under second proviso to Section 9-A are not automatic or would require any further adjudication once it is established that the person elected has failed to produce the Validity Certificate within a stipulated period of six months from the date of his election.

99. The validation of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to Section 9-A i.e. deemed retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor's election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby.

100. In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9-A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

Further, in terms of second proviso to Section 9-A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor. Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly."

41. The judgment of the Full Bench of Bombay High Court came for consideration before this Court in Shankar S/o Raghunath Devre (Patil) Vs. State of Maharashtra and Others, (2019) 3 SCC 220. This Court after noticing the above provision upheld the decision of the Full Bench of the Bombay High Court that Statute engrafts a mandatory requirement in law. In paragraphs 7, 8 and 9, this Court laid down following:-

> "7. A proviso to the aforesaid main provision of the statute was brought in subsequently which permitted a candidate to file his/her nomination even in the absence of the validity certificate provided he/she encloses with the nomination a true copy of the application filed by him/her before the Scrutiny Committee and an undertaking that he/she shall submit, within a period of six months from the date of his/her election, the validity certificate issued by the Scrutiny Committee.
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> 8. There is a second proviso which contemplates that on the failure of the person(s) concerned to produce the validity certificate within the time-frame stipulated his election "shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor".
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> 9. We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusions that the aforesaid provisions of the statute engrafts a mandatory requirement in law. The High Court, in our considered view, very rightly came to the aforesaid conclusion along with the further finding that equities in individual case(s) would not be a good ground to hold the provision to be directory. In fact, the High Court has supported its decision by weighty reasons to hold that reading the provisions to be directory would virtually amount to rendering the same to be nugatory.

42. This Court also rejected the submission that hardship in few cases would not be a good ground to hold the provision to be directory. There can be no dispute to the preposition as laid down by this Court that requirement of submitting the Caste certificate within a period of six months (now twelve months) under proviso to Section 5B is a mandatory requirement and consequences of non-submission within the period prescribed is automatic retrospective termination of the election. The above pronouncement of law by Three Judge Bench is a binding precedent. The requirement of submission of certificate is a mandatory requirement failing which deemed termination of election automatically shall ensue. We, in the present case, are not to take any other view of the law as laid

down in the above case. However, the point which has arisen for determination in these appeals is different i.e. as to whether High Court in exercise of jurisdiction under Article 226 can interdict the above consequences envisaged by Section 5B by passing an interim or final judgment. Before the Full Bench of the Bombay High Court as well as the Three Judge Bench of this Court in Shankar S/o Raghunath Devre (Patil) (supra), the issue as to whether the High Court has jurisdiction under Article 226 to stay the consequences of deeming provision was neither considered nor answered. We may clarify that in event there are no orders staying the consequences of deeming fiction as envisaged in proviso to Section 5B, the election shall automatically stand terminated retrospectively but in the present case in the facts of both the appeals, the consequences of deeming fiction as contained in second proviso to Section 5B were stayed/interdicted by order of the High Court, hence the retrospective termination could not take place.

43. Shri Sudhanshu S. Choudhari, learned counsel for the appellant has also submitted that High Court was not empowered to continue the interim relief granted to the writ petitioners beyond a period of one year from the date of election as per the statutory scheme under Section 5B. It is true that requirement of submission of Caste Validity Certificate within a period of one year is statutory requirement but in the facts of the case before us before the expiry of the period, Caste Scrutiny Committee has illegally rejected the claim necessitating filing of writ petition by aggrieved persons in which writ petition the interim relief was granted by the High Court. The power of the High Court to grant an interim relief in appropriate case cannot be held to be limited only for period of one year, which was period envisaged in Section 5B for submission of the Caste Validity Certificate. No such fetter on the power of the High Court can be read by virtue of provision of Section 5B.

44. The reliance of learned counsel for the appellant on the judgment of this Court in the case of The State of Orissa Vs. Madan Gopal Rungta, 1952 SCR 28: AIR 1952 SC 12 that interim relief can be granted only in aid of and as ancillary to the main relief, does not support the case of the appellant. In the present case, the interim relief was granted by the High Court, which was in aid of and ancillary to the main relief, which could be granted to the appellant at the time of determination of his rights.

45. Shri Choudhari further submits that this Court in State of U.P. and Others Vs. Harish Chandra and Others, (1996) 9 SCC 309 has held that there can be no mandamus against a statute, hence, the High Court could not have issued a writ of mandamus because there was an interim order in favour of respondent No.1. In the final judgment passed by the High Court dated 02.04.2019, there is direction of the High Court to continue the respondent in their elected office. The tenure of the office for which the respondents were elected had not come to an end, hence, present was not a case of issue any direction to continue the respondent beyond the period of tenure. The interim order passed by the High Court was in exercise of judicial review by the High Court to protect the rights of the respondents.

46. Learned counsel for the appellant has also relied on judgment of this Court in Bihar Public Service Commission and Another Vs. Dr. Shiv Jatan Thakur and Others, (1994) Supp. 3 SCC 220. This Court in the above case in paragraph 38 has laid down following:-

> "38. .....It is true that Article 226 of the Constitution empowers the High Court to exercise its discretionary jurisdiction to issue directions, orders or writs, including writs in the nature of habeas corpus, certiorari, quo warranto and mandamus or any of them for the enforcement of the rights conferred under the Constitution or for an other purpose, but such discretion to issue directions or writs or orders conferred on the High Court under Article 226 being a judicial discretion to be exercised on the basis of well-established judicial norms, could not have been used by the High Court to make the said interim orders which could not have in any way helped or aided the Court in granting the main relief sought in the writ petition....."

47. From the above preposition laid down by this Court, it is clear that such interim direction can be passed by the High Court under Article 226, which could have helped or aided the Court in granting main relief sought in the writ petition. In the present case, the decision of the Caste Scrutiny Committee having been challenged by the writ petitioners and the High Court finding prima facie substance in the submissions granted interim order, which ultimately fructified in final order setting aside the decision of the Caste Scrutiny Committee. The interim order, thus, passed by the High Court was in aid of the main relief, which was granted by the High Court.

48. The learned counsel for the appellant has also referred to Land Acquisition Act, 1984 and submit that there is no provision under Section 5B similar to Explanation to Section 11A of the Land Acquisition Act, 1984, which exclude the period of stay granted by the Court in computing the period mentioned in the main provision. The provision of Section 11A of the Land Acquisition Act, which provides for the period within which an award shall be made contains a legislative scheme in reference to the Land Acquisition Act, 1894, the Explanation to Section 11A providing that in computing the period of two years referred to in Section 11A, the period during which any action or proceeding to be taken in pursuance of said declaration is stated by an order of the Court shall be excluded. Section 11A is a legislative scheme in reference to Land Acquisition Act, which provision is entirely different and does not lend any support to the submission made by the learned counsel for the appellant.

49. Learned counsel for the appellant has relied on judgment of this Court in Padma Sundara Rao (Dead) and Others Vs. State of T.N. and Others, (2002) 3 SCC 533 for the preposition that legislative casus omissus cannot be supplied by judicial interpretative process. This Court in the above case laid down following in paragraph 14:-

> "14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd., (2000) 5 SCC 515) The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case, (1996) 3 SCC 88.

In Nanjudaiah case, (1996) 10 SCC 619 the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non- prescribed period. Same can never be the legislative intent."

50. In the above case, this Court had occasion to consider Section 6 of Land Acquisition Act. In the above case, Notification under Section 4 was issued before the commencement of Land Acquisition (Amendment) Act, 1984. The Notification under Section 6(1) was issued within the period of three years prescribed under proviso to Section 4 as it existed then. This Court held that the period prescribed is pre-emptive in nature and cannot be stretched. The observation as extracted above in paragraph 14 was made in the above context. The above judgment has no application in the issues, which have come for consideration in the present case. Present is not a case of any causes omissus, which is sought to be filled up by any kind of judicial interpretation.

51. Shri Choudhari has also placed reliance on K. Prabhakaran Vs. P. Jayarajan, (2005) 1 SCC 754 for the preposition that subsequent decision of setting aside the conviction would not have the effect of wiping out the disqualification, which did exist on the focal point dates. The decisive dates are the dates of election and the date of scrutiny of nomination and not the date of judgment in an election petition or in appeal there against. There can be no dispute to the preposition as laid down by this Court in K. Prabhakaran (supra). Present is not a case of any kind of disqualification of the respondent at the time of holding election or on the date of scrutiny of nomination. The above judgment has no application at all. We, thus, do not find any substance in the submission of the learned counsel for the appellant that High Court could not have passed an interim order in the writ petitions filed by the respondents, which may have effect of the respondents' continuance after expiry of period of six months by which date, they had to file their Caste Validity Certificate. There is no fetter in the jurisdiction of the High Court in granting an interim order in a case where caste claim by respondents was illegally rejected before the expiry of period of six months and the High Court granted the interim order before the expiry of period of six months. In the facts of the present case, the deeming fiction of retrospective termination of the election could not come in operation due to the interim order passed by the High Court, hence deeming fiction under Section 5B second proviso never came into existence to retrospectively terminate the election of the respondent. We have already held that the submission of the appellant that interim order of the High Court could not have been allowed to continue beyond the period of six months/one year cannot be accepted. No such fetter can be read in the jurisdiction of the High court or in the interim order passed by the High Court in exercise of the jurisdiction under Article 226 nor any kind of fetter can be read from any State enactment. In view of the foregoing discussions, we arrive at following conclusions:-

> (i) The power of judicial review vested in the High Courts under Article 226 and this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under Article 226 is original, extraordinary and discretionary. The look out of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a tribunal, a statutory authority or an authority within meaning of Article

12 of the Constitution.

(ii) The Courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice wherever it is found.

(iii) The power under Article 226 of the Constitution overrides any contrary provision in a Statute and the power of the High Court under Article 226 cannot be taken away or abridged by any contrary provision in a Statute.

(iv) When a citizen has right to judicial review against any decision of statutory authority, the High Court in exercise of judicial review had every jurisdiction to maintain the status quo so as to by lapse of time, the petition may not be infructuous. The interim order can always be passed by a High Court in exercise of writ jurisdiction to maintain the status quo in aid of the relief claimed so that at the time of final decision of the writ petition, the relief may not become infructuous.

(v) It is true that requirement of submission of Caste Validity Certificate within a period of one year under Section 5B of Mumbai Municipal Corporation Act is mandatory requirement but in the facts of the case before us before the expiry of the period of six month, the Caste Scrutiny Committee had illegally rejected the claim necessitating filing of writ petition by aggrieved persons in which writ petition the interim relief was granted by the High Court. The power of the High Court to grant an interim relief in appropriate case cannot be held to be limited only for a period of one year, which was period envisaged in Section 5B for submission of the Caste Validity Certificate. No such fetter on the power of the High Court can be read by virtue of provision of Section 5B.

(vi) There is no fetter in the jurisdiction of the High Court in granting an interim order in a case where caste claim of the respondents was illegally rejected before the expiry of period of six months and the High Court granted the interim order before the expiry of the period of six months, as then prescribed.

(vii) In the facts of the present case, the deeming fiction under Section 5B of retrospective termination of the election could not come in operation due to the interim order passed by the High Court.

52. We, for the discussion and conclusions as above, answer the points formulated in following manner: -

(i) Section 5B of the Mumbai Municipal Corporation Act does not oust the jurisdiction of High Court under Article 226 of the Constitution.

(ii) The High Court in exercise of jurisdiction under Article 226 of the Constitution can pass an order interdicting the legal fiction as contemplated under second proviso to Section 5B, provided the legal fiction had not come into operation.

(iii) The interim order dated 18.08.2017 in Writ Petition No.2269 of 2017 as well as the impugned final judgment dated 02.04.2019 were not beyond the jurisdiction of High Court under Article 226 of the Constitution.

(iv) The interim order dated 22.08.2017 and final judgement dated 02.04.2019 in Writ Petition No.145 of 2018 were not the orders beyond the jurisdiction of High Court under Article 226 of the Constitution.

53. We do not find any error in the impugned judgment of the High Court insofar as it continues the respondent No.1 in Civil Appeal Nos. 1429-1430 of 2020 till the decision of Scrutiny Committee is taken consequent to the setting aside of the report of the Scrutiny Committee by the impugned judgment. Insofar as the case of the respondent in Civil Appeal No. 1431 of 2020 is concerned, the High Court by the impugned judgment has not only set aside the order of the Scrutiny Committee but declared the respondent to be belonging to backward class, i.e., Koyari.

54. In the counter affidavit filed by the respondent No.1 in Civil Appeal Nos. 1429-1430 of 2020, the respondent No.1 has brought on record the order dated 30.09.2019 of the Caste Scrutiny Committee by which the Caste Scrutiny Committee has upheld the claim of respondent No.1 to belong to backward class.

55. In view of the foregoing discussions and conclusions, we do not find any error in the impugned judgment of the High Court dated 02.04.2019. There is no merit in the appeals. All the appeals are dismissed.

.....J. (ASHOK BHUSHAN) .....J. (NAVIN SINHA) New Delhi, March 19, 2020.