

Smt. Bharati Reddy vs The State Of Karnataka on 4 December, 2017

Equivalent citations: AIR 2018 (NOC) 441 (KAR), 2018 (1) AKR 273, (2018) 1 KANT LJ 385, (2018) 1 KCCR 930

Bench: S.Sujatha, H.B.Prabhakara Sastry

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH
DATED THIS THE 4TH DAY OF DECEMBER, 2017

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PRESENT
THE HON'BLE MRS. JUSTICE S.SUJATHA
AND
THE HON'BLE Dr. JUSTICE H. B. PRABHAKARA SASTRY
W.A. No.5872/2017 (LB-RES)
C/w.
W.A. No.100657/2017

W.A. No.5872/2017 :

BETWEEN:

SMT. BHARATI REDDY
W/O. THIMMAREDDY,
AGED ABOUT 45 YERS,
ADHYAKSHA
ZILLA PANCHAYAT BALLARI
R/O BADANAHATTI VILLAGE,
BALLARI DISTRICT-583116.

... APPELLANT

(BY SRI RAVI VERMA KUMAR, SENIOR COUNSEL FOR
SRI GANGADHAR J.M., ADVOCATE)

AND :

1. THE STATE OF KARNATAKA
DEPARTMENT OF RURAL DEVELOPMENT
AND PANCHAYAT RAJ
M.S. BUILDING AMBEDKAR VEEDHI
BENGALURU-560 001
REP BY ITS PRINCIPAL SECRETARY.
2. STATE ELECTION COMMISSION
KSLMF BUILDING ANNEX # 8TH
CUNNINGHAM ROAD,

BENGALURU-560 052
REP BY TIS SECRETARY

3. THE DEPUTY COMMISSIONER
OFFICE OF THE DEPUTY COMMISSIONER
BALLARI DISTRICT
BALLARI-583 101
4. THE ASSISTANT COMMISSIONER
OFFICE OF THE ASSISTANT COMMISSIONER
BALLARI DISTRICT
BALLARI -583 101
5. THE TAHASILDAR
KURUGODU
BALLARI DISTRICT-583116
6. D. SIDDAYYA
S/O. THIMMAPPA
AGED ABOUT 61 YEARS,
R/O. NO.38 ASHRAYA COLONY,
MOKA BALLARI
BALLARI DISTRICT-583 117
7. RAGHVENDRA
S/O. LATE VENKATESHWARA
AGED ABOUT 32 YEARS,
OCC BUSINESS
R/O NO.13/6
OLD MUNICIPAL OFFICE ROAD
BALLARI-583 101
BALLARI DISTRICT
8. ASUNDI B NAGARAJGOWDA
S/O. B SIDDANGOWDA
AGED ABOUT 45 YEARS,
OCC. BUSINESS
R/O. NO.2 ESHWAR TEMPLE
ASUNDI VILLAGE-583 101
BALLARI DISTRICT
9. SATISH REDDY
S/O. SHIVARAM REDDY,
AGED ABOUT 27 YEARS,

3

OCC. BUSINESS,
R/O. HARIJAN KERE

NEAR BALLARI ROAD,
KOLLAGALLU 583 101
BALLARI DISTRICT

... RESPONDENTS

(BY SRI S.M. CHANDRASHEKAR, SENIOR COUNSEL FOR
SRI RAJASHEKAR BURJI, ADVOCATE FOR C/R6 TO C/R9;
SRI C.S. PATIL, A.G.A. FOR R1, R3 TO R5;
SRI SHIVARAJ C. BELLAKKI, ADVOCATE FOR R2)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER
DATED 21/09/2017 PASSED IN WRIT PETITION NO.106417/2016.

W.A. No.100657/2017 :

BETWEEN:

1. D. SIDDAYYA
S/O. THIMMAPPA
AGE: 62 YEARS
OCC: AGRICULTURE
R/O. NO. 38,
ASHRAYA COLONY, MOKA,
BELLARY TQ & DIST.,
BELLARY-583117.
2. RAGHVENDRA
S/O. LATE VENKATESHWARA
AGE 33 YEARS
OCC: BUSINESS
R/O. NO. 13/6,
OLD MUNICIPAL OFFICE ROAD
BALLARI TQ & DIST.,
BELLARY-583101.
3. ASUNDI B. NAGARAJGOWDA
S/O. B. SIDDANGOWDA

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AGE 46 YEARS
OCC: BUSINESS
R/O. NO. 2,
ESHWAR TEMPLE,
ASUNDI VILLAGE,
BELLARY TQ & DIST.,
BELLARY-583101.

4. SATISH REDDY,
S/O. SHIVARAM REDDY,
AGE 28 YEARS,
OCC: BUSINESS
R/O HARIJAN KERE,
NEAR BELLARY ROAD,
KOLLAGALLU,
BELLARY-583101,
BALLARI TQ & DISTRICT.

... APPELLANTS

(BY SRI S.M. CHANDRASHEKAR, SENIOR COUNSEL FOR
SRI RAJASHEKAR BURJI, ADVOCATE)

AND :

1. THE STATE OF KARNATAKA
DEPARTMENT OF RURAL DEVELOPMENT
AND PANCHAYAT RAJ,
M.S. BUILDING,
AMBEDKAR VEEDHI,
BANGALORE-560001
REPRESENTED BY ITS
PRINCIPAL SECRETARY
2. STATE ELECTION COMMISSION
KSLMF BUILDING,
ANNEX # 8TH,
CUNNINGHAM ROAD,
BENGALURU-560052.
REPRESENTED BY ITS SECRETARY
3. THE DEPUTY COMMISSIONER,
BALLARI DISTRICT.
BELLARY-583101.

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4. THE ASSISTANT COMMISSIONER,
BELLARY-583101.
5. THE TAHASILDAR,
KURUGODU,
BELLARY-583116
6. SMT.BHARATI REDDY,
W/O. SRI.THIMMAREDDY,
ADHYAKSHA,
ZILLA PANCHAYAT, BELLARY
AGED ABOUT 46 YEARS,

R/AT BADANAHATTI VILLAGE-583116,
BALLARI TQ & DISTRICT.

... RESPONDENTS

(BY SRI C.S. PATIL, A.G.A. FOR R1, R3 TO R5;
SRI SHIVARAJ C. BELLAKKI, ADVOCATE FOR R2;
SRI GANGADHAR J.M., ADVOCATE FOR R6)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE ONLY IN RESPECT OF THE LEARNED SINGLE JUDGE'S REFUSAL TO CONSIDER THE PRAYER-C IN THE WRIT PETITION FOR QUASHING OF THE CERTIFICATE DATED:26.04.2016 IN APPLICATION NO.01/16-17 ISSUED BY THE 5TH RESPONDENT AS PER ANNEXURE-G TO THE WRIT PETITION AND ETC.

THESE APPEALS COMING ON FOR PRELIMINARY HEARING, THE SAME HAVING BEEN HEARD AND RESERVED ON 20.11.2017, THIS DAY, S.SUJATHA J., DELIVERED THE FOLLOWING:

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JUDGMENT

These are intra court appeals filed under Section 4 of the Karnataka High Court Act, 1961.

2. Since these two appeals arise from the order of the learned single Judge in W.P. No.106417/2016 dated 21.09.2017 and the issues involved being inter related, the same are heard together and disposed of by this common order.

3. Facts in brief are, the State Election Commission issued calendar of events on 18.01.2016 to hold general elections of the Zilla Panchayats and Taluk Panchayats in the State of Karnataka. The election for Ballari Zilla Panchayat was held on 20.02.2016. The Ballari Zilla Panchayat consists of 40 constituencies. The appellant in W.A. No.5872/2017 (hereinafter referred to as the 'appellant') contested from Badanhatti Constituency - 13 which is reserved for General (Women). The appellant got elected as a member of Ballari Zilla Panchayat from Badanhatti Constituency-13. After the elections to the Zilla Panchayat, the Government announced the reservations for the post of Adhyaksha and Upadhyaksha of all 30 Zilla Panchayats of the State. In respect of Ballari Zilla Panchayat, Adhyaksha post was reserved for the Backward Community-B and Upadhyaksha was reserved for the scheduled caste. The appellant made an application before the concerned authority for the caste certificate. The concerned authority granted a certificate to the effect that the appellant belongs to 'Backward Community-B' Category.

4. The appellant contested the election of Adhyaksha of Ballari Zilla Panchayat, which was held on 29.04.2016 and she got elected as Adhyaksha of the Ballari Zilla Panchayat. The voters of the said

constituency filed W.P. No.106417/2016 before this Court challenging the election of the appellant to the office of Adhyaksha mainly on the ground that the appellant is not qualified contestant for the election of Adhyaksha since she does not belong to 'Backward Community-B' category in terms of the notification dated 13.01.1995 issued by the Government of Karnataka. The learned Single Judge dismissed the writ petition on the ground of constitutional bar under Article 243-O.

5. The respondents being aggrieved by the order of the learned Single Judge filed W.A. No.101459/2016 before this Court. The Division Bench of this Court by order dated 05.05.2017 allowed the writ appeal and remanded the matter to the learned Single Judge to decide the same on merits. The appellant being aggrieved by the order of Division Bench of this Court filed a Special Leave Petition No.17059/2017 before the Hon'ble Apex Court. The Hon'ble Apex Court by order dated 17.08.2017 after upholding the order of the Division Bench of this Court directed the learned Single Judge to decide the case on merits.

6. In the meantime, the appellant filed W.P. No.108700/2017 before this Court questioning the legality and validity of the notification dated 13.01.1995. This Court was pleased to stay the 'Note' under 'category-B' of the notification dated 13.01.1995, by order dated 01.09.2017 as far as the appellant is concerned.

7. Pursuant to the directions issued by the Hon'ble Apex Court, the learned Single Judge of this Court considered the case on merits and disposed of the W.P. No.106417/2016 on 21.09.2017 issuing a writ of quo warranto directing the appellant to vacate the office of Adhyaksha, Zilla Panchayat, Ballari, quashing Annexure- H to the writ petition whereby respondent No.6 was declared as Adhyaksha of Zilla Panchayat, Ballari. However, the prayer relating to annul the caste certificate issued to the appellant vide order dated 26.04.2016 in Application No.1/16-17 issued by the Tahsildar, Kurugodu, Ballari (respondent No.5 in W.P. No.106417/2016) was rejected observing that the caste verification committee shall independently hold an enquiry and dispose of the case in accordance with law.

8. Being aggrieved by the order of the learned Single Judge, the appellant has preferred W.A. No.5872/2017, as regards issuance of quo warranto, directing the appellant to vacate the office of Adhyaksha, Zilla Panchayat, Ballari, whereas the petitioners No.1 to 4 in W.P. No.106417/2016/respondents No.6 to 9 in W.A. No.5872/2017 have preferred W.A. No.100657/2017 (hereinafter referred to as the 'respondents') as against the rejection of annulment of Caste Certificate issued by the jurisdictional Tahsildar.

9. Learned Senior Counsel Sri Ravi Verma Kumar representing the learned counsel Sri Gangadhar J.M., for the appellant contended as under :

CONTENTIONS ON BEHALF OF THE APPELLANT :

Notification dated 13.01.1995 :

The Notification dated 13.01.1995 issued by the Government of Karnataka has classified backward classes for the purpose of reservation of seats and offices of chair persons in Zilla Panchayats, Taluk Panchayats and Gram Panchayats as Category-A and B. Category-A consists of 190 castes and tribes and they are entitled to contest seats reserved for backward classes irrespective of their land holding or economic status as the doctrine of 'creamy layer' is made inapplicable to them. However, insofar as 'Category-

B' consisting of 9 communities, doctrine of 'creamy layer' is applied and the member belonging to these communities is not entitled to the benefit of reservation under the Panchayat Raj Act unless the 'Note' appended to the said notification dated 13.01.1995 is satisfied/fulfilled. Elaborating the arguments on this point, learned Senior Counsel placed reliance on the judgment of the Hon'ble Apex Court in K. Krishna Murthy (DR.) and others v.

Union of India and another, (2010) 7 SCC 202, to contend that the doctrine of 'creamy layer' has no application to backward classes for the purpose of reservation in political institution, the notification dated 13.01.1995 insofar as it applies the doctrine of 'creamy layer' to the persons coming under 'Category-B' of the backward classes is therefore unjust and unconstitutional from the date of declaration of law by the Hon'ble Apex Court in K.Krishna Murthy supra. Learned Senior Counsel referred to the interim order of stay of 'Note' appended to the Notification dated 13.01.1995 issued by this Court in W.P. No.108700/2017 as far as the appellant is concerned. Reference was made to Articles 243-D(6) and 243-T(6) of the Constitution of India in addition to Article 243-O of the Constitution of India.

ISSUANCE OF QUO WARRANTO :

The learned Senior Counsel submitted that no writ of quo warranto can be issued in election matters and more particularly when there are disputed questions of facts. It is contended that the writ of quo warranto is not issued as a matter of right, it is a discretionary relief and where there are statutory provisions dealing with the conduct of election, the writ of quo warranto is displaced. An election can be challenged only in the manner laid down by the statute and not otherwise. In support of this contention, the following judgments were referred to:

- I. BHAIRULAL CHUNILAL MARWADI V.
STATE OF BOMBAY AND OTHERS, ILR
1954 BOM 154;
- II. KURAPATI MARIA DAS V.
DR.AMBEDKAR SEVA SAMAJAN AND
OTHERS, (2009)7 SCC 387;
- III. SMT. RANIYAMMA V. M. HEMALA
NAYAKA AND OTHERS, ILR 1997 KAR
2518;

IV. HIGH COURT OF GUJARAT AND
ANOTHER V. GUJARAT KISHAN
MAZDOOR PANCHAYAT AND OTHERS,
(2003)4 SCC 712;

V. K. J. JOSEPH V. HON'BLE JUSTICE
K.SUKUMARAN AND OTHERS, AIR 1987
KER 140.

NON-JOINDER OF NECESSARY PARTY:

The learned Senior Counsel submitted that the Regional Commissioner, Kalaburagi, who is necessary and proper party to the proceedings is not made as party. The prayer in the writ petition is to set-aside the proceedings dated 29.04.2016 bearing Sum/Kam/PraAagu/Chunavane/05/2016-17 declaring the 6th respondent as Adyaksha of Zilla Panchyath vide Annexure-H. The said proceedings are recorded and issued by the Regional Commissioner, Kalaburagi, as such no writ can be issued or order would be passed in the absence of necessary party to the proceedings. The defect of non-joinder of necessary party is not tinkering in nature, one which goes to the root of the matter. In support of this contention, learned senior counsel placed reliance on the judgments of the Hon'ble Apex Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member Board of Revenue, Bihar & Another, 1963 Supp (1) SCR

676. Nextly, it was contended that entire case of the respondent Nos.6 to 9 is on the ground of malafides act committed by the Tahasildar, Kurugodu. If any malafides are attributed to the officer, it is necessary to make such party by name.

In the absence of necessary party made by name, the allegations against the Tahasildar requires to be dismissed for non-joinder of necessary party.

10. Learned Senior Counsel Sri S.M. Chandrashekar, representing the learned counsel Sri Rajashekar Burji appearing for the respondent Nos.6 to 9 submitted as under:

CONTENTIONS ON BEHALF OF THE RESPONDENTS :

"FRAUDULENT CERTIFICATE": Notification dated 13.1.1995 issued by the Government of Karnataka is appended with a note, which reads thus:

"Note:- No person falling under Category 'B' shall be entitled to the benefit of reservation in the seats and offices of Adhyaksha and Upadhyaksha of Zilla Panchayat, Taluk Panchayat and Grama Panchayat if.-

i) He/She or either of his/her parents/guardian is a Class I or Class II officer in the service of the Government or holds an equivalent post in public sector undertaking or an employee under a private employer and draws a salary which is not less than that of a Class II Officer (initial stage of the pay scale of Rs.2050-3950);

ii) He/She or either of his/her parents/guardian is an Income Tax Assessee/Wealth Tax Assessee;

iii) He/She or either of his/her parents/guardian is assessed to Sales Tax;

iv) He/She or either of his/her parents/guardian or both together owns more than 8 hectares of rainfed or dry land or its equivalent."

In terms of the Class II of the said note, He/She (returned candidate) or either of his/her parents/guardian is an Income Tax Assessee/Wealth Tax Assessee shall not be entitled to the benefit of the reservation in the seats in the offices of Adhyaksha and Upa-

adhyaksha of Zilla Panchayath/Taluk Panchayath/Grama Panchayath falling under Category B.

11. Inviting the attention of this Court to Annexure-E, Affidavit filed by the appellant dated 6.2.2016 pointed out that for the Financial Year 2013-14, income tax returns were filed with number 574525430010615 dated 8.6.2015, PAN number being BCCPR700784. On 26.04.2016, the appellant has filed another affidavit stating that the appellant and her husband are not the income tax assesses nor sales tax assesses. This Certificate was made by the appellant on the stamp paper, dated 26.04.2016 issued at 5.27 p.m. On the same day, 5th respondent-Tahasildar had issued caste cum income verification certificate for the purpose of election, certifying that the appellant belongs to backward Class B Category and this certificate has been issued based on the application of the applicant dated 25.04.2016. The said two declarations made by the applicant are prima facie contradictory to each other. At the first instance, it was categorically declared by the appellant on 06.02.2016 that she is an income tax assessee but in order to obtain B Category backward certificate, the appellant has made false statement that she is not an income tax assessee. Any certificate obtained by fraud is nullity in the eye of law. Any further proceedings claiming any benefits under the certificate is vitiated. In support of this contention, learned Senior Counsel placed reliance on the following judgments of the Hon'ble Apex Court:

I) STATE OF ORISSA V/S BIBISHAN KANHAR, CIVIL APPEAL NO.9124/2017.

II) CHAIRMAN & MANAGING DIRECTOR FCI & ORS. VS. JAGADISH BALARAM BAHIRA & ORS., CIVIL APPEAL NO.8928/2015.

III) K. VENKATACHALAM VS. A SWAMICKAN & ANOTHER, AIR 1999 SC 1723.

Thus, it was contended that the act alleged against the appellant would not only constitute fraud, but in effect committing fraud on the Constitution, as she has usurped the office of the Adhyaksha to discharge duties under the Constitution of India and the Panchayat Raj Act, 1993.

"QUO WARRANTO": It was submitted that the power is vested with the High Courts under Article 226 of the Constitution of India to issue a writ of quo warranto, if the following conditions are satisfied.

- a) Whether a person is holding a public office.
- b) When the said public office is without qualification or usurpation of post.
- c) If a person holding a public office failed to show cause, then a writ of quo warranto can be issued.

The appellant is holding a public office of Adhyaksha of Zilla Panchayat, Bellary Dist. The qualification for election/holding of office is a by a person belonging to 'B' Group-Women Category, by virtue of Notification dated 15.04.2016 to qualify herself for the post, the appellant obtained a certificate from jurisdictional Tahasildar. The said certificate is obtained by making false statement and misrepresentation and also after office hours. Thus, she has usurped public office which she has is not otherwise entitled. Further, the Government in a proceedings dated 26.07.2016 has suspended Tahasildar (Respondent No.5 in WA No.100657/2017) for issuing the false caste certificate in favour of the appellant, which demonstrates that the appellant was not entitled for the said caste cum income certificate. The following judgments were referred to:

I. K. VENKATACHALAM VS. A. SWAMICKAN, AIR 1999 SC 1723.

II. B.R. KAPUR VS. STATE OF TAMILNADU & ANOTHER, 2001(7) SCC 231.

III. P.M. PARAMESHWARAMURTHY & OTHERS VS. STATE OF KARNATAKA & OTHERS.

"JURISDICTION TO ANNUAL CASTE AND INCOME CERTIFICATE": It was argued that the appellant contended before the caste verification committee that the proceedings are not maintainable in view of the judgment of this Court, but is taking contrary stand before this Court in writ petition that there is an alternative remedy to adjudicate validity of the caste cum income certificate.

The stand of the appellant approbating/reprobating regarding forum for adjudicating the validity of the certificate deserves to be unsustainable. In support of this proposition, reference is made to the following judgments:

- I) SRI. CHIKKANNA VS. DISTRICT SOCIAL
WELFARE & ANOTHER, WP NO.13173/2008
(DD 23.01.2009)
- II) SMT. JYOTHI VS. THE ASSISTANT
COMMISSIONER & OTHERS.

"MAINTAINABILITY OF THE WRIT PETITION AND ALTERNATIVE REMEDY": It was contended that the power of judicial review is part of the basic structure of the Constitution. The voters are not members of the Zilla Panchayat, therefore, they cannot challenge election of the appellant to the office of the Adhyaksha by filing election petition. There is no bar to entertain a writ petition de hors alternative remedy available under a statute when fraudulent act has been played by the appellant in obtaining caste-cum-income certificate to make herself eligible to contest for the elections to the office of the Adhyaksha. Following judgments were referred in respect of the said contention:

- I) HIS HOLINESS KESAVANANDA BHARATI
SRIPADAGALAVARU VS. STATE OF KERALA &
ANOTHER, 1973(4) SCC 225.
- II) L. CHANDRA KUMAR VS. UNION OF INDIA &
OTHERS, 1997(3) SCC 261.
- III) I.R. COELHO (DEAD) BY LRS. VS. STATE OF
TAMILNADU, 2007(2) SCC 1.
- IV) SMT. BHARATHI REDDY VS. STATE OF
KARNATAKA & OTHERS, CIVIL APPEAL
NO.10587/2017.

The interim order granted by this Court in WP No.108700/2017 is a subsequent development. The interim order in the writ petition and challenge made to the Government order dated 13.01.1995 on the said writ petition is of no consequence. It was submitted that the appellant was aware of the conditions at the time of obtaining the caste cum income certificate and has sworn to an affidavit/declaration was made with a false statement in order to get qualified to contest for the reserved post of Adhyaksha. The act of the appellant in swearing to an affidavit/declaration is relevant, considering the eligibility/qualification prescribed by the Government of Karnataka under the Notification dated 13.01.1995, particularly with reference to the note appended thereto. At the time of making declaration to secure the caste cum income certificate, from the jurisdictional Tahasildar, note appended to the

Notification dated 13.01.1995 was in operation. Any interim order of stay of the note granted by this Court subsequently in WP No.108700/2017 would not validate fraudulent act of the appellant.

"THE CONTENTION REGARDING CREAMY LAYER":

It was argued that the observation made by the Hon'ble Apex Court in the case of K. Krishna Murthy supra do not indicate the final verdict with regard to creamy layer, the same is kept open for being challenged with reference to a notification/statute and hence the same is not applicable to the facts of the present case.

Thus, it was contended that a person who holds public offices must be free from blemish. If such public officers act fraudulently and deliberately files false affidavits/declaration, it is necessary that the action be taken against them for serious criminal misconduct.

When the facts remain unrebutted and the fraud is obvious, to force the respondents No.6 to 9 to avail of an alternate remedy would be complete failure of justice violating the constitutional provisions and laws. The appellants does not have any right to continue in the position of Adhyaksha and should not be allowed to continue on the purported contention of existence of an alternative remedy, when fraud is writ large.

12. Learned Government Advocate, Sri. C.S. Patil, appearing on behalf of respondents No.1, 3 to 5 has placed original file relating to the caste-cum-income certificate issued by the jurisdictional Tahasildar and the same is perused by this Court. The details of which are as under:

1. Application dated 22.04.2016 for issue of caste and income certificate (photo copy).
2. Notice dated 23.04.2016 issued by the Revenue Inspector.
3. Report of the Revenue Inspector dated 26.04.2016 bearing No.Kan.Jaa & Aa Zi.Pan.Chu/01/16-17 dated 26.04.2016.
4. Mahazar
5. Statement
6. Affidavit of the applicant sworn before the Advocate Notary dated 26.04.2016.
7. Applicant's identity card (photo copy)
8. Applicant's voter identity card (photo copy)

9. Transfer Certificate (certified copy)

10. Study Certificate (certified copy)

11. Original Caste cum Income Certificate dated 26.04.2016 (impugned).

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

13. On perusal of these documents, it is manifestly clear that on 22.04.2016, the respondent No.6 has filed application for issue of caste cum income certificate. On 23.04.2016 the jurisdictional Revenue Inspector has issued notice to respondent No.6 pointing out the deficiencies and to set right the same for issuance of caste cum income certificate; on the statement of appellant before the Revenue Inspector supported by an affidavit sworn before the Advocate Notary, Ballari Tq. REV. Area on 26.04.2016 made on the stamp paper issued on 26.04.2016 at 5.27 p.m., revenue inspector had conducted mahazar along with the Village Accountant and recommended for issue of Backward 'B' - Category Certificate to the appellant on 26.04.2016. The jurisdictional Thasildar issued the caste cum income certificate certifying that the appellant comes under Backward Class-Category 'B' as per the Notification dated 13.01.1995 on the same day, i.e., 26.04.2016.

14. We have heard the learned senior counsel representing the learned counsel for the parties and perused the material on record.

15. Before analyzing the factual aspects of the matter, it is appropriate to refer to the judgments relied upon by the learned counsel for the parties in order to collate the legal principles enunciated by the Courts.

16. The constitutional validity of Articles 243-D(6) and 243-T(6) were called in question in the case of K.Krishna Murthy supra. Their Lordships upholding the constitutional validity of these Articles and the reservation of chairperson posts in the manner contemplated by Articles 243-D(4) and 243-T(4) as constitutionally valid, observed thus :

" 51. Before addressing the contentious issues, it is necessary to examine the overarching considerations behind the provisions for reservations in elected local bodies. At the outset, we are in agreement with Shri Rajeev Dhavan's suggestion that the principles that have been evolved for conferring the reservation benefits contemplated by Articles 15(4) and 16(4) cannot be mechanically applied in the context of reservations enabled by Articles 243-D and 243-T. In this respect, we endorse the proposition that Articles 243-D and 243-T form a distinct and independent constitutional basis for reservations in local self- government institutions, the nature and purpose of which is different from the reservation policies designed to improve access to higher education and public employment, as

contemplated under Article 15(4) and 16(4) respectively.

53. In this respect, we are in partial agreement with one of the submissions made by Shri M. Rama Jois that the nature of disadvantages which restrict access to education and employment cannot be readily equated with disadvantages in the realm of political representation. To be sure, backwardness in the social and economic sense does not necessarily imply political backwardness. However, the petitioner's emphasis on the distinction between "selection" (in case of education and employment) and "election" (in case of political representation) does not adequately reflect the complexities involved. It is of course undeniable that in determining who can get access to education and employment, due regard must be given to considerations of merit and efficiency which can be measured in an objective manner. Hence, admissions to educational institutions and the recruitment to government jobs is ordinarily done through methods such as examinations, interviews of assessment of past performance. Since it is felt that applicants belonging to the SC/ST/OBC categories among others are at a disadvantage when they compete through these methods, a level-playing field is sought to be created by way of conferring reservation benefits.

55. It must be kept in mind that there is also an inherent difference between the nature of benefits that accrue from access to education and employment on one hand and political representation at the grassroots level on the other hand. While access to higher education and public employment increases the likelihood of the socio-economic upliftment of the individual beneficiaries, participation in local self-government is intended as a more immediate measure of empowerment for the community that the elected representative belongs to.

56. The objectives of democratic decentralisation are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of society. In this sense, reservations in local self-government are intended to directly benefit the community as a whole, rather than just the elected representatives. It is for this very reason that there cannot be an exclusion of the 'creamy layer' in the context of political representation. There are bound to be disparities in the socio-economic status of persons within the groups that are the intended beneficiaries of reservation policies. While the exclusion of the 'creamy layer' may be feasible as well as desirable in the context of reservations for education and employment, the same principle cannot be extended to the context of local self-government.

57. At the level of panchayats, the empowerment of the elected individual is only a means for pursuing the larger end of advancing the interests of weaker sections. Hence, it would be counter- intuitive to exclude the relatively better-off persons among the intended beneficiaries from the reservation benefits that are designed to ensure diversity in the composition of local bodies. It is quite likely that such persons

may be better equipped to represent and protect the interests of their respective communities. We can now attempt to provide answers to the contentious issues."

17. The Hon'ble Apex Court, while summing up, has categorically held thus :

"82. In view of the above, our conclusions are:-

(i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Article 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for purposes of Articles 15(4) and 16(4), but can be much shorter.

(ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable the State Legislatures to reserve seats and chairperson posts in favour of backward classes. Concerns about disproportionate reservations should be raised by way of specific challenges against the State legislations.

(iii) We are not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of "backward classes"

under Article 243- D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purpose of Article 16(4).

(iv) The upper ceiling of 50% vertical reservations in favour of SCs/STs/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.

(v) The reservation of chairperson posts in the manner contemplated by Articles 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment."

18. In the case of Kurapati Maria Das supra, the candidate elected as Councillor and further elected as chairperson of the Municipal Councillor, which was reserved for the scheduled caste on the basis of claiming himself belonging to scheduled caste was challenged on the ground that the candidate belong to the backward Class 'C' category as he was an M converted to Christianity. The learned single Judge concluded that the writ petition was maintainable and thus allowed it. Appeal filed before the Division Bench was dismissed against which appeal was preferred before the Hon'ble Apex court in the said scenario it was observed thus :

"24. It is further clear from the writ petition that the writ-petitioners were themselves aware of the situation that the writ of quo warranto could have been prayed for only on invalidation or quashing of the election of the appellant, firstly as a Councillor and secondly, as a Chairman and that was possible only by an election petition. The two decisions quoted above, in our opinion, are sufficient to hold that a writ petition of the nature was not tenable though apparently the writ petition has been couched in a safe language and it has been represented as if it is for the purpose of a writ of quo warranto.

27. We are afraid, we are not in a position to agree with the contention that K. Venkatachalam v. A. Swamickan, (1999) 4 SCC 526 is applicable to the present situation. Here the appellant had very specifically asserted in his counter-affidavit that he did not belong to the Christian religion and that he further asserted that he was a person belonging to the Scheduled Caste. Therefore, the Caste status of the appellant was a disputed question of fact depending upon the evidence. Such was not the case in K.Venkatachalam v. A Swamickan. Every case is an authority for what is actually decided in that. We do not find any general proposition that even where there is a specific remedy of filing an election petition and even when there is a disputed question of fact regarding the caste of a person who has been elected from the reserved constituency still remedy of writ petition under Article 226 would be available.

32. The Counsel for the appellant rightly urged that the question of caste and the election are so inextricably connected that they cannot be separated. Therefore, when the writ petitioners challenged the continuation of the appellant on the ground of his not belonging to a particular caste what they in fact challenged is the validity of the election of the appellant, though apparently the petition is for the writ of quo warranto.

33. There is yet another distinguishing feature in K. Venkatachalam v. A Swamickan. In that case there is a clear finding that the elected person therein played a fraud with the Constitution inasmuch as that he knew that his name was not in electoral roll of that constituency and he impersonated for some other person taking the advantage of the similarity of names. The appellant herein asserts on the basis of his caste certificate that he still belongs to Scheduled Caste. We are, therefore, of the clear opinion that K.Venkatachalam v. A Swamickan is not applicable to the present case

and the High Court erred in relying upon that decision.

34. Once it is held that the aforementioned case was of no help to the respondents, the only other necessary inference which emerges is that the bar under Article 243-ZG would spring in action.

36. It seems that in this case, the High Court has gone out of its way, firstly in relying on the xerox copies of the service records of the appellants and then at the appellate stage, in calling the files of the Electricity Board where the appellant was working.

This amounted to a roving enquiry into the caste of the appellant which was certainly not permissible in writ jurisdiction and also in the wake of Section 5 of 1993 Act."

19. The Division Bench of this Court in the case of Smt.Raniyamma supra, while considering the challenge made to the election to the office of Adhyaksha and Upadhyaksha of the Zilla Panchayat and thereby seeking for issuance of writ of quo warranto against the elected candidates, restraining them from functioning as the Adhyaksha of Shimoga District, Zilla Panchayat, Kulugatte Gram Panchayat, has observed thus :

9. A writ of quo-warranto is a judicial remedy against a occupier or an usurper of a public office, franchise or liberty. By such a writ the alleged usurper is called upon to show as to by what authority he was holding the office or franchise. If the answer is not found to be satisfactory by the Court, the usurper can be ousted by a command in the nature of quo-

warranto. After referring to the observations of Halsbury's Laws of England, 3rd Edition, Vol.II, P.145, the Supreme Court in UNIVERSITY OF MYSORE vs. C.D. GOVINDA RAO AND ANOTHER, observed :

"Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to

occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointments of the said alleged usurper has been made in accordance with law nor not."

10. Quo warranto is a remedy given by law at the discretion of the Court. The powers under Article 226 of the Constitution are of discretionary nature though the discretion has to be exercised in accordance with judicial principles. Mere irregularity in the matter of appointment can not be a ground for the issuance of writ of quo warranto. The Kerala High Court in *ALEX BEETS, v. M.A. URMESE AND ANOTHER*, AIR 1970 KER 312, and Delhi High Court in *S.C. MALIK v. P.P. SHARMA*, AIR 1982 Delhi 83, refused the motion for writ of quo-warranto where order of appointment though violating Article 16 was shown by the respondents. It was observed that the ground under Article 16 may be heard in a motion of Certiorari or prohibition but cannot be heard in a quo warranto. As Quo warranto is a discretionary remedy, the existence of alternative remedy will, therefore, be taken into consideration in determining whether quo warranto should be issued or not. The Court would generally refuse to issue such a writ where there is equally an efficacious alternative remedy available. Speaking for the Court CHAGLA C.J. in *BHAIRULAL CHUNILAL v. STATE OF BOMBAY*, AIR 1954 Bombay 116, held:

"It is well settled that where you have statutory provisions dealing with the conduct of an election, the writ of 'quo warranto' is displaced. An election then can only be challenged in the manner laid down by the statute."

20. In the case of *Gujarat Kishan Mazdoor Panchayat supra*, the decision to fill up the post of President of Industrial Court by way of nomination, as provided under the Rules was challenged inter alia seeking for a writ of quo warranto, the Hon'ble Apex Court in the concurring judgment of Hon'ble Justice S.B. Sinha observed thus:

"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. [See *R.K. Jain Vs. Union of India*, (1993) 4 SCC 119 para 74]

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. [See *Mor Modern Coop. Transport Society Ltd. Vs. Financial Commr. & Secy. to Govt. of Haryana*, (2002) 6 SCC 269]."

21. In the case of *K.J. Joseph supra*, a writ of quo warranto was sought for calling upon the Hon'ble sitting Judge of the Kerala High court to show before the Court under what authority, the first respondent is holding the office of a Judge of the court on the ground that there was no proper,

effective and meaningful consultation as contemplated under Article 217 of the Constitution of India in the matter of the appointment of the first respondent as a Judge of the Court. In such circumstances, it was observed thus :

"8. Regarding the discretionary nature of the writ, I shall also refer to the American Law as stated in American Jurisprudence (Vol. 65) Notes 5 and 10.

Note 5, Nature of remedy.

"Quo warranto is an extraordinary prerogative, writ and as such is administered cautiously and in accordance with certain well defined principles. Although the ancient writ of quo warranto was an original one issuing out of chancery, the remedy is now of legal, rather than of equitable, cognizance. Inquiry in quo warranto proceedings into the regularity of a judgment has been ordinarily, although not invariably, regarded as a collateral attack on the judgment.

The reasons for this cautious application of this jurisdiction is stated thus : --

"This approach has been justified on the ground that the writ, or a judgment of ouster: thereunder, may have drastic consequences affecting the public welfare." (Vide Note 10).

Both English Law and the American Law definitely state that in exercising the discretion, the court should consider all the circumstances of the case, including lapse of time, and circumstances which would establish laches, acquiescence or estoppel, and whether the public interest will be served. Chief Justice Chagla said in Bhairulal Chunilal v. State of Bombay AIR 1954 Bom 116 thus : --

"Now the writ of 'quo warranto' is not issued as a matter of right. It is discretionary relief and the court has always to ask itself whether under the circumstances of each case the petitioner should be given the relief in the nature of quo warranto which he seeks. In this particular case every factor which can be taken into consideration weighs against the petitioner being entitled to this relief."

14. I feel that in a writ of quo warranto, this court has no jurisdiction or power to examine and explore the mind of the appointing authority. What all facts entered the mind of the appointing authority in appointing a particular person seems to be not a relevant fact to be considered in a proceeding for a writ of quo warranto. This is so because the main question that is before the court for determination is the title of the person who holds the office. It is a case of an examination whether the first respondent concerned is a usurper. This court's function is circumscribed to a query to the person in question "what is your authority to hold the office"? Of course, he can be asked, whether the authority or the warrant he produced is by the person who is authorised to make an appointment to the office which he holds. The petitioner has no case that the first respondent is holding the office without a warrant properly signed and issued by the President of India and that

the President has no power to appoint the first respondent as a Judge of this Court."

22. The Constitution Bench of the Hon'ble Apex Court in the case of His Holiness Kesavanand Bharati Sripadagalvaru Vs. State of Kerala and Anr. supra, has held that the power of judicial review over legislative action is a part of the basic structure of the constitution, which cannot be diluted nor eroded.

The Hon'ble Apex Court in the case of B.R. Kapur, supra, has held that in appointment of respondent No.2 therein as the Chief Minister, there being clear infringement of constitutional provisions, a writ of quo- warranto must issue, for whatever reasons, the Governor does appoint the chief minister, a person who is not qualified to be a member of legislative or who is disqualified to be such appointment, is contrary to the provisions to the Constitution and the authority of the appointee to hold the appointment can be challenged in a quo-warranto proceedings.

23. In the case of Kasambhai F. Ghanchi supra, the question which arose for consideration was whether the appellant therein, who belongs to a backward class but had been elected to the Jambusar municipality from an unreserved seat, could stand for election for the post of President of the Municipality which was reserved for a backward class candidate or whether a candidate for that post could only be a person who was elected to the municipality from a caste which was reserved for the backward class. It was held that the appellant therein who belongs to backward class was eligible to the office of the President even though she had been elected as a member of the Municipality not from a reserved seat, but from a general seat. The respondents herein are not challenging the election of the appellant on this ground, as submitted by the learned Senior Counsel for the respondents. There is no quarrel for the applicability of the said proposition to the facts of the present case.

24. In the case of Udit Narain Singh Malpaharia supra, the question that arose for consideration was whether the writ in the nature of certiorari filed under Article 226 of the Constitution, the party or parties in whose favour a tribunal or authority had made an order, which is sought to be quashed, is or are necessary party or parties. In such circumstances, it was observed thus :

" 7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

8. The next question is, what is the nature of a writ of certiorari. What relief can a petitioner in such a writ obtain from the Court. Certiorari, lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. It is not necessary for the purpose of this appeal to notice the distinction between a writ of certiorari and a writ in the nature of certiorari: in either case the High Court directs an inferior tribunal or

authority to transmit to itself the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same. It is well settled law that a certiorari lies only in respect of a judicial or quasi-judicial act as distinguished from administrative act. The following classic test laid down by Lord justice Atkin, as he then was. XXXXXXXXXXXXXXXXXXXXXXXXXXXX."

25. In the case of Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121, where the petitioner was effecting of a direction issued by the Police Commissioner, on contravention of the order and was prosecuted but acquitted by the trial Court in the appeal filed by the State it was held that the accused had re-entered the forbidden area during the currency of the order. The High Court convicted the accused. The reasoning of the High court was that a distinction has to be drawn between an order which is ab initio void and an order which is subsequently quashed on account of some technical defect or irregularity. If the order was ab initio void if it was a nullity from the inception, if it was a still born child, the matter would have stood on a different footing. When the child was alive and kicking and apparently healthy, the subsequent death during the course of an exploratory operation would render the order to be invalid and it was quashed on the ground that it cannot be sustained on account of some defect, infirmity or irregularity which has been subsequently discovered. The Hon'ble Apex Court, in such circumstances, held that :

"10. All these lines of approach have received judicial blessings from the House of Lords in the landmark case of Ridge v. Baldwin. The legal choice depends not so much on neat logic but the facts of life- a pragmatic proposition. Where the law invests an authority with power to affect the behaviour of others what consequence should be visited on abuse or wrong exercise of power is no abstract theory but experience of life and must be solved by practical considerations woven into legal principle. Verbal rubrics like illegal, void, mandatory, jurisdictional, are convenient cloaks but leave the ordinary man, like the petitioner here, puzzled about his remedy. Rubinstein poses the issue clearly :-

"How does the validity or nullity of the decision affect the rights and liabilities of the persons concerned? Can the persons affected by an illegal act ignore and disregard it with impunity ? What are the remedies available to the aggrieved parties? When will the courts recognise a right to compensation for damage occasioned by an illegal act? All these questions revert to the one basic issue; has the act concerned ever had an existence or is it merely a nullity ?

Voidable acts are those that can be
invalidated in certain proceedings; these

proceedings are especially formulated for the purpose of directly challenging such

acts..... On the other hand, when an act is not merely voidable but void, it is a nullity and can be disregarded and impeached in any proceedings, before any court or tribunal and whenever it is relied upon. In other words, it is subject to 'collateral attack'."

Kelson's view, when a court holds an act a nullity, is that it is not a declaration of nullity, "it is a true annulment, an annulment with retroactive force".

11. Even so, the dilemma of the petitioner is, if an authority in excess or error of jurisdiction directs an illegal act, should the citizen suffer it until upturned in a legal proceeding directly or collaterally? Can he resist the injury even if the seat of authority simulates validity? The eloquent words of Wedderburn quoted by Rubinstein in the context of nullity are pertinent:

"What is a sentence ? It is not an instrument with a bit of wax and the seal of a court put to it; it is not an instrument with the signature of a person calling himself a register; it is not such a quantity of ink bestowed upon such a quantity of stamped paper; a sentence is a judicial determination of a cause agitated between real parties, upon which a real interest has been settled,."

26. In the case of *State of Orissa and Another v. Bibhisn Kanhar* supra, the order for removal of the respondent, who was working as Farash in the office of the Revenue Divisional Commissioner, Central Division, Cuttack, was the subject matter before the Hon'ble Apex Court, whereby it was held thus :

"4(e). It is clear from the facts that the Respondent fraudulently obtained a certificate showing that he belongs to Schedule Tribes community which stands cancelled by the order passed by the State level scrutiny committee.

It was held by Denning, L. J. in *Lazarus Estates, Ltd. v. Beasley* (1956) 1 All E.R. 341, 345 that "No Court will allow a person to keep an advantage which he has obtained by fraud. [...] Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever".

27. In the case of Jagadish Balaram Bahira and others supra, the Hon'ble Apex Court while considering the batch of matters relating to the individuals who sought the benefit of public employment on the basis of claim that they belong to a beneficiary group which, upon investigation is found to be invalid. With reference to the legislation in Maharashtra, held thus :

"46. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

28. In the case of K.Venkatachalam supra, the appellant before the Hon'ble Apex Court was not an elector in the electoral roll for the Lalgudi Assembly Constituency for general elections of December, 1984 and that he in blatant and fraudulent manner represented to be an elector of that constituency while using the similarity in the name of another person. This act on the part of the appellant therein, was questioned before the learned Single Judge of the High Court of Judicature at Madras who dismissed the writ petition and on appeal filed by Swamickan, the Division Bench of the High Court declared the election of Venkatachalam was illegal, issuing the writ of quo warranto and the same was challenged before the Hon'ble Apex Court, inasmuch as he did not possess the basic constitutional and statutory qualifications. In such circumstances, it was held thus:

"26. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. On the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as venkatachalam s/o Pethu, taking advantage of the fact that such person bears his first name. Appellant would be even criminally liable as he filed his nomination on affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be fraud to the Constitution."

29. In the case of Chikkanna supra, the learned Single Judge of this Court while considering the provisions of Karnataka Scheduled Caste, Scheduled Tribe and Other Backward Classes (Reservation of Appointments etc.,) Act, 1990 and Rules 1992 held that the said Act and Rules are enacted for the purpose of issuing a caste certificate or validity certificate only in the event of the said certificate being made use of for the appointment or for getting an admission to a course in an educational institution. In case where the petitioner has not made use of the caste certificate either for appointment in the State or Central Government or for admission in educational institution and is used to support his contention that he belongs to Scheduled Tribe at the time of filing nomination papers to a reserved constituency, the notice issued by the Deputy Commissioner calling upon him to produce documents for verification of his caste is held to be without jurisdiction.

30. Similarly, in the case of Smt.Jyothi, the learned Single Judge of this Court considering the dispute as to the certificate issued to the petitioner therein by way of an appeal before the Assistant Commissioner filed under Section 49 of the Karnataka Land Revenue Act, 1964, held that the caste certificate issued under the provisions of the Karnataka Scheduled Caste/Scheduled Tribe and Other Backward Classes (Reservation of Appointments etc.,) Act, 1990 or Rules for the purpose of education and employment, if the Certificate is sought under the provisions of the Panchayathraj Act, it is required to look into the provisions of the statute only and nothing can be borrowed from the other Acts/Rules; the Assistant Commissioner before whom an appeal was preferred under Section 49 of the Karnataka Land Revenue Act was held not maintainable. In other words, it was held that the Assistant Commissioner has no jurisdiction to annul the certificate in an appeal filed under Section 49 of the Karnataka Land Revenue Act.

31. The judgment which is more relevant for the adjudication of the dispute in these appeals is the very same appellant's case before the Hon'ble Apex Court in Civil Appeal No.10587/2017. It is categorically held that if the petition is dismissed on the ground of maintainability, the voter, who is not a Member of Zilla Panchayath and aggrieved by the election of the Adhyaksha, will remain

remediless. Accordingly, it is held that a voter of Zilla Panchayath who is not a member cannot be denied an opportunity to challenge the election to the office of Adhyaksha under Article 226/227 of the Constitution of India. The writ petition filed by respondents before this Court is held to be maintainable.

32. In the light of these judgments, the appeals on hand are examined and analysed. Considering the rival submissions of both the parties, the points that arises for consideration in these appeals are:

- i) Whether the learned Single Judge was justified in issuing a writ of quo-warranto directing the appellant to vacate the office of Adhyaksha, Zilla Panchayath, Bellary?
- ii) Whether the doctrine of exclusion of 'creamy layer' to political representation is applicable to the present facts of the case?
- iii) Whether the petition/appeal is not maintainable for non-joinder of necessary party?
- iv) Whether the learned Single Judge was justified in giving a finding that the Caste Verification Committee shall independently hold an enquiry regarding the pending litigation relating to the challenge made to the caste-cum-income certificate issued to the appellant?

33. As regards point No.1, it is well settled law that the High Court exercising the power under Article 226 of the Constitution of India can issue a writ of quo warranto, if the following conditions are satisfied:

- i) the Court must be satisfied that the Office in question is a public office and is held by an usurper without legal authority,
- ii) When the said public office is held without qualification and that necessarily leads to the enquiry as to whether the appellant of the said alleged usurper has been made in accordance with law or not.
- iii) Person holding a public office failed to show cause.

34. Indisputably, the appellant is holding a public Office of Adhyaksha of Zilla Panchayath, Bellary District. The qualification for election/holding the Office is by a person belonging to Backward Class 'B' Group - Woman Category by virtue of Notification dated 15.04.2016. To qualify for the said post, the conditions prescribed under the Notification dated 13.01.1995 issued by the Government of Karnataka are required to be fulfilled. The said Notification issued by the Government of Karnataka exercising the powers conferred by clause (2) of Section 2 of the Karnataka Panchayathraj Act, 1993, classifies and notifies the classes of citizens as Backward Classes for the purpose of reservation of seats and office of Chair Persons in Zilla Panchayath, Taluk Panchayath and Grama Panchayath, namely category 'A' and 'B'. Category 'A' consists of 190 castes. Category 'B' consists of 9 castes. It is

the claim of the appellant that she belongs to Kapu caste which is figured at category 'B' - 1 (n). The note appended to the said Notification plays an important role in the present set of facts, particularly, clause (ii) which reads thus:

"(ii) He/She or either of his/her
parents/guardian is an Income-tax
Assessee/Wealth Tax Assessee;"

35. Clause (ii) of the said 'Note' specifies that the returning candidate or either of his/her parents/guardian if an Income-tax Assessee/Wealth Tax Assessee, is not entitled for the benefit of reservation in the seats and offices of Adhyaksha and Upadhyaksha of Zilla Panchayath, Taluk Panchayath and Grama Panchayath. It is relevant to note that on 06.02.2016, the appellant has filed an affidavit on India Non-Judicial, Government of Karnataka, e-Stamp Paper, to the effect that she has filed the income tax returns for the financial year 2013-2014 through e-filing No.574525430010615 dated 08.06.2015 with PAN No.BCCPR 70784 which is marked as Annexure-E to W.P. No.106417/2016. As narrated in the preceding paragraph Nos.12 and 13, supra, the appellant filed an application before the jurisdictional Tahsildar for issue of Caste cum Income Certificate on 22.04.2016 in the prescribed format as per the Notification dated 13.01.1995. On considering the same, the jurisdictional Revenue Inspector has issued notice to the appellant calling upon her to rectify the defects pointed out, pursuant to which, the appellant filed an affidavit (ಫೈದಾವಿ ಆನ್ ಇಂಡಿಯಾ, ನಾನ್-ಜುಡೀಷಿಯಲ್, ಗವರ್ನಮೆಂಟ್ ಆಫ್ ಕರ್ನಾಟಕ, ಎ-ಸ್ಟಾಂಪ್ ಪೇಪರ್) on India, Non-Judicial, Government of Karnataka, e- stamp paper issued on 26.04.2016 at 5.27 p.m. declaring that the appellant and her husband are neither income tax assesses nor sales tax assesses. Annexure-G to the Writ Petition No.106417/2016 is the application filed by the appellant in the prescribed format in terms of the notification dated 13.1.1995, whereby in Clause - 11, it is stated that the applicant or their father/mother/guardian are not the assessee of income tax/wealth tax. This is the moot point which requires to be considered to decide whether the appellant has played any fraud on the constitution.

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

the appellant is continued to chair and hold the office of Adhyaksha, her action would be fraud on the constitution. The appellant in order to over-come this serious lapse on her part in obtaining the false certificate to make herself qualified candidate for the office of Adhyaksha has now taken a ground that 'note' appended to the notification dated 13.1.1995 is constitutionally invalid and contrary to the dictum pronounced by the Hon'ble Apex Court in the case of Krishna Murthy supra. Much emphasis is placed on doctrine of exclusion of creamy layer in the political representation.

37. It is obvious that the appellant has filed WP No.108700/2017 challenging the note contemplated under notification dated 13.1.1995 and an order of stay of the 'note' in the said notification in so far as the petitioner is concerned is operating w.e.f. 01.09.2017. The interim order of stay of the 'note' as far as the petitioner is concerned is a subsequent act. The contravention of the notification is made by the appellant at the time of obtaining the false caste-cum-income certificate on 26.04.2016, whereas the interim order of the note is granted by this Court vide order dated 01.09.2017. In such circumstances, any contravention made/fraud played, basis of which has been subsequently stayed, admittedly not being available at the relevant time i.e., while committing fraudulent act of obtaining the false certificate would not validate such fraudulent act. There being no interim order of stay of the 'note' appended to the notification dated 13.1.1995, at the relevant material time, would it exonerate the appellant from the guilt has to be examined. The notification dated 13.1.1995 with the 'note' prescribing the conditions was already alive and was in operation. If subsequently, its operation is stayed, it cannot be said that the said notification was void. The notification does not render nullity from its inception, the interim order of stay of the note is not retrospective. Note is stayed w.e.f. the date of issuance of the stay order. The mis-conduct committed cannot be wiped out by virtue of an interim order subsequently granted, the fraudulent act continues to remain a mis-conduct. The interim relief is granted only in aid of, and ancillary to, the main relief which may be available to a party on final determination of his right in the proceedings. It is to ensure that the final relief that may be granted does not become infructuous or to ensure that the ends of justice are not defeated. Interim orders are only therefore necessarily always subject to the final order and normally come to an end or become ineffective when the final decision is rendered. The interim order can always be corrected or revised at the final stage, it is only to preserve any status-quo to rights of the parties, which is tentative in nature. Merely granting of an interim order would not eschew the appellant from the applicability of the 'note' appended to the notification retroactively at the time of making false statements. Any attempt or claim made by the appellant to interpret the notification in anticipation that the court shall uphold her contention and violate the conditions of the notification cannot be appreciated. Disobeying and later on seeking for legitimizing disobedience by the court would not extinguish from the misconduct already committed. The false certificate obtained by the appellant on making false declaration that she was not an income tax assessee is nothing but usurping the power of a public office. A chair person of the office or Adhyaksha of the Zilla Panchayath who is holding a public office must be free from any flaw. If such public officer acts fraudulently and deliberately files a false affidavit, it is necessarily to be construed as serious criminal mis-conduct. Fraud of colossal proportion would be in complete violation of the constitution and laws.

38. The view expressed in Swamickan's case is not over-ruled by the Hon'ble Apex Court in the case of Kurapati Maria Das. The judgment of Kurapati Maria Das was rendered in the context of

determining the caste status of the returning candidate, which was disputed question of fact depending upon the evidence. Since the question of facts were involved, regarding the caste, entertaining the writ petition going into the disputed question of fact regarding the caste status, was held to be unsustainable. But the facts in the present case are clearly distinguishable from Kurapati Maria Das supra and the judgment of K. Venkatachalam Vs. A Swamickan's case supra, is squarely applicable to the case on hand. Similarly, B.R. Kapur's case also comes to the assistance of the respondents. In Nawabkhan Abbaskhan's case, the Hon'ble Apex Court held that voidable acts are subject to collateral attacks. Hence, we are of the considered view that the appellant holding a public office has misrepresented and usurped the power and as such issuance of the writ of quo warranto by the learned single Judge directing the appellant to vacate the office of Adhyaksha from Zilla Panchayath is in order.

39. The Hon'ble Apex Court in the case of K. Krishna Murthy supra while summing up, has categorically held that "this Court is not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which indeed quite different from the patterns of disadvantages in the matter of access to education and employment".

40. The finding regarding creamy layer is kept open for being challenged with reference to the notification/statute before the High Court. The arguments of the learned counsel for the appellant that the concept of exclusion of creamy layer from a political representation has to be considered from the date of the judgment rendered by the Hon'ble Apex Court i.e. 11.05.2010 and has to be made applicable to the notification dated 13.1.1995, cannot be countenanced for the reason that unless there is judicial pronouncement to that effect, quashing the eligibility conditions, the notification cannot be adjudged by the appellant on her own to commit a fraud in obtaining a false certificate on the false statement made. Even if there is any such judicial order, it has to be in operation on the relevant date, at the time of committing the mis-conduct. Subject to provisions made by imposing certain conditions qualifying the candidate for the post of Adhyaksha cannot be hosted when an imposter, who does not possess such qualification is selected, the purpose of the notification would be defeated and it would amount to fraud on the constitution.

41. In view of the latest judgment of the Hon'ble Apex Court in the very case of appellant, Smt. Bharathi Reddy supra, the judgment of the Smt. Raniyamma's case supra is of no assistance to the appellant. The availability of filing of election petition under the Karnataka Panchayat Raj Act, 1993, is not available to the respondents, they being voters and not the members of the Zilla Panchayath. This issue is no more res integra, in view of Bharathi Reddy's case supra. It is well settled by now that if a person files false certificates to usurp the post of Adhyaksha/Upadhyaksha by playing fraud on the Constitution, issuance of writ of quo warranto against such persons is not barred by Article 243ZG of the Constitution of India. Writ petition is maintainable.

42. As regards the applicability of doctrine of exclusion of creamy layer to the political representation, it was argued by the learned Senior Counsel appearing for the appellant, that the issue is covered by K. Krishna Murthy, supra, we are of the considered opinion that the Hon'ble

Apex Court in the case of K. Krishna Murthy supra has left the final verdict on this issue to the appropriate Court, where the notification or State legislature is challenged, merely dictum pronounced by the Hon'ble Apex Court would not render the notification dated 13.1.1995, particularly, note appended thereto, invalid, unless final verdict is pronounced by an appropriate court in this regard. The appellant cannot act as a Judge to interpret the notification or cannot act contrary to the terms of the notification. The false statement made by the appellant that she is not an income tax assessee in order to qualify herself for the post or office of the Adhyaksha of Zilla Panchayath, Ballari would be nothing but a fraud played on the Constitution. There is no doubt that the fraud vitiates all proceedings. Fraud unravels everything. Any fraudulent act committed cannot be cured subsequently challenging the notification on the plea of doctrine of exclusion of any creamy layer to the political representation, the false certificate obtained which is nullity in the eye of law cannot be revived. It is nullity from its inception.

43. As regards maintainability of the writ petition for non-joinder of necessary parties particularly, the Regional Commissioner, Kalaburagi not being made as party, it is necessary to observe that the Regional Commissioner, Kalaburagi was a Returning Officer, who conducted the election, subsequent to declaration of result by the Regional Commissioner, he ceases to be a Returning Officer and becomes functus officio, as such the writ petition cannot be held to be not maintainable for non- joinder of the Regional Commissioner of Kalaburagi. the respondent No.1 is the State of Karnataka, Department of Rural and Panchayath Raj. The Regional Commissioner comes within the ambit of this department. Similarly, it was also argued that the jurisdictional Tahasildar ought to have been made party by person, the same do not appeal to us since jurisdictional Tahsildar is arrayed as a party to the proceedings. Moreover, these are only technical grounds.

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

In the result, both the appeals stand dismissed.

(Sd/-) JUDGE (Sd/-) JUDGE hnm/JTR/JM