IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2155/2024

PETITIONER : Rashmi w/o Shyamkumar Barve
(Rina d/o Somraj Sonekar, name before marriage)
Aged about 37 years, Occ : Zillha Parishad
Member, R/o Ward No.6, Shankar Nagar,
Tah. Parseoni, Kanhan, Dist. Nagpur – 441 401.

...VERSUS...

RESPONDENTS :
1. Deputy Commissioner & Member,
District Caste Certificate Scrutiny
Committee, Nagpur.

2. Deputy Secretary, Govt. of Maharashtra,
Social Justice & Special Assistance
Department, Mantralaya Annex Bhawan,
Mumbai.

3. State of Maharashtra, Through
Superintendent of Police, Nagpur (Rural).
Civil Lines, Nagpur.

4. The Election Commission of India,
Through its Chief Election Commission,
New Delhi.

5. The Returning Officer and Additional
Collector-9, Ramtek Parliamentary
Constituency, Nagpur, Tah. and District -
Nagpur.

6. Vaishali Ishwardas Deviya,
Aged Major, R/o Ward No.4,
Tekade Colony, Post – Godegaon Tekade,
Tah. Parseoni, District – Nagpur.

(Respondent no.6 deleted as per order dt. 3.05.2024)

7. Sunil s/o Uttamrao Salve
Aged major, R/o Ward No.9,
Siddharth Nagar, Mahadula (Koradi),
Tah. Kamptee District – Nagpur.

8. The Divisional Commissioner, Nagpur
Development Branch (Establishment),
Room No.119, Old Secretariat Building
First Floor, Civil Lines, Nagpur – 440001.

(Amended Res. no.8 as per Court's order dtd. 22/04/24)

(Amendment carried out as per Court's order dated 22/04/24)

Mr. S.R.Narnaware, Advocate a/w Mr. Sameer Sonwane, Mr. Amit Thakur, Mr. Aaquid Mirza and Ms Shiba Thakur, Advocates for the petitioner.
Mr. Dr. Birendra Saraf, Advocate General with Mr. D.V. Chauhan, GP for respondent Nos.1 to 3, 5 and 8
Ms Neerja Choube, Advocate for respondent no.4
Mr. M.P. Khajanchi, Advocate for respondent no.7

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

Date of reserving the judgment : 09/05/2024
Date of pronouncing the judgment : 24/09/2024

J U D G M E N T : (PER : AVINASH G. GHAROTE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsels appearing for the parties.

2. Heard Mr. S.R. Narnaware, learned counsel for the petitioner; Dr. Birendra Saraf, learned Advocate General with Mr. D.V. Chavan, learned Government Pleader for respondent Nos.1 to 3, 5 and 8; Mr. M.P. Khajanchi, learned counsel for respondent No.7 and Miss Neerja Choube, learned counsel for respondent No.4.

3. On 04/04/2024, upon hearing the learned counsels for the parties for interim relief, we had passed the following order :

> *"1. Heard Mr. Narnaware, learned counsel for the petitioner. Mr. Deven Chauhan, learned Government Pleader for the respondent nos. 1 to 3 and 5, Miss Neerja Choubey learned Counsel for the respondent no.4 and Mr. S P. Dharmadhikari, learned Senior Counsel for the respondent no.7, all of whom have appeared suo motu.*
>
> *2. The basic reliefs claimed in the petition is against the decision passed by the Caste Scrutiny Committee, Nagpur, dated 28/03/2024, (page 135), by which, the caste claim of the petitioner belonging to Scheduled Caste – 'Chambhar' which was earlier validated by the Caste Scrutiny Committee on 17/02/2020, on the complaint of respondent No.6 dated 20/03/2024 (page 104) has been canceled on the ground, that the earlier validity certificate which was obtained by the petitioner, on 17/02/2020, was by practicing fraud. It also challenges the order dated 28/03/2024 (page 150) passed by the Returning Officer of 9 Ramtek Parliamentary Constituency, Nagpur by which the nomination of the petitioner, for the ongoing Lok Sabha Elections, has been rejected.*
>
> *2.1. Mr.Narnavare, the learned counsel for the petitioner assailing both these orders contends, that once the Caste Scrutiny Committee had validated the caste claim of the petitioner by*

issuing validity certificate on 17/02/2020, a complaint against which, by the respondent No.7 on 27/02/2024 (page 159) was rejected in the light of Section 7(2) of the Maharashtra Scheduled Caste, 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 (hereinafter referred to as "Caste Certificate Act"), it was not permissible for the Caste Scrutiny Committee to have revisited the decision by exercising the power of review.

2.2. It is further contended that even if the decision dated 28/03/2024, by the Caste Scrutiny Committee had been taken on the complaint by the respondent No.6 however, the complaint by respondent No.6 indicates that it was at the behest of the respondent No.7 itself, for which he invites my attention to the last para (on record page 108), in the said complaint, which indicates that the documents for filing the said complaint were obtained by respondent no.6 from the respondent no.7.

2.3. In support of his contention that the Scrutiny Committee has no power of review, he relies upon ***Bharat Nagu Garud Vs. State of Maharashtra, 2023 SCC OnLine Bom 2537 as well as Sameer Hariram Shende Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee, Gondia in Writ Petition No.1224/2024*** *(para 28 to 30), and* ***Ishwar Naga Bondalwar and anr. v. The District Caste Certificate Scrutiny Committee, Gadchiroli and others, Writ Petition No.472/2020*** *(page 139- in the compilation).*

2.4. Further relying upon the language of section 7(1) of the Caste Certificate Act, it is contended that the same would be restricted to cancellation of certificate issued by the Competent Authority under Section 4 of the said Act and does not relate to a validity issued by the Scrutiny Committee under Section 6 of the said Act. He therefore submits that, the impugned decision of the Caste Scrutiny Committee, which cancels the validity, therefore, cannot be sustained in law.

2.5. Insofar as the locus of the respondent No.7 is concerned, it is contended that the earlier complaint filed by respondent No.7 in this regard on 27/02/2024 (page 159), already stood rejected,

apart from which he would not fall within the definition of an 'aggrieved party', so as to have the locus to challenge the validity issued in favour of the petitioner, for which he places reliance upon ***Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra****, reported in* ***(2013) 4 SCC 465*** *(para-9).*

2.6. He further contends that while taking the decision dated 28/03/2024, by the Caste Scrutiny Committee there has been violation of the principles of natural justice for which he points out a series of events commencing from the complaint filed by the respondent No.7, which are as under :

(i) It is contended that on 30/01/2024 (page 95) the respondent no.7 had filed a complaint under Section 18(1) of the Right to Information Act, 2005 with the State Information Commissioner, alleging that the validity in favour of the petitioner was obtained by practicing fraud.

(ii) Surprisingly the State Information Commissioner took cognizance of the complaint and by order dated 28/02/2024 directed an enquiry by the Superintendent of Police, Nagpur Rural in this regard.

(iii) A challenge to this order was raised in Writ Petition No.1578/2024, by the petitioner in which by an order dated 05/03/2024, this Court prima facie recorded that the State Information Commissioner had exceeded its jurisdiction, in directing an enquiry by the Superintendent of Police, Nagpur (Rural) and consequently granted a stay to all the proceedings taken out by the State Information Commissioner (page 103).

(iv) It is submitted that in pursuance to the directions of the State Information Commissioner, as contained in the order dated 21/02/2024, the Superintendent of Police, Nagpur (Rural) has conducted an enquiry and submitted a report on 16/02/2024 (page 111) indicating commission of an offence under sections 420, 425, 468, 471 of the IPC, by the petitioner.

(v) However, before the matter in Writ Petition No.1578/2024 could be decided, the State Information Commissioner, by a pursis

dated 21/03/2024 (page 123) intimated withdrawal of all the orders dated 07/02/2024 and 21/02/2024 which were impugned in that petition on account of which by an order dated 22/02/2024, the Writ Petition No.1578/24 came to be disposed of (page 127).

(vi) It is just prior to this that on 20/03/2024, the respondent No.6 filed a complaint of a similar nature as that filed by the respondent No.7 earlier in point of time (page 104), before the Caste Scrutiny Committee.

(vii) It is on the basis of this complaint, by the respondent no.6, that the Caste Scrutiny Committee issued a notice to the petitioner on the same day i.e. 20/03/2024 (page 115) calling upon the petitioner to show cause by 22/03/2024 at 11:00 a.m. as to why the validity granted in her favour, ought not to be cancelled. It is material to note, that in this show cause notice dated 20/03/2024 (page 115) itself, the Caste Scrutiny Committee records, regarding the rejection of earlier complaint of a similar nature filed by the respondent No.7.

(viii) By communication dated 22/03/2024, the petitioner raised three preliminary objections namely that the complainant had no locus, second the Caste Scrutiny Committee has no power of review and third that the matter was then pending before the High Court in Writ Petition No.1578/2024 in which the stay was granted. A demand for supply of the copy of the complaint made by the respondent no.6 along with a time of 14 days to submit a detailed explanation was also sought (page 120).

(ix) It is further contended that instead of deciding the preliminary objection, the Caste Scrutiny Committee by the communication dated 27/03/2024 (page 134), intimated to the petitioner, the receipt of the Vigilance Report and had asked the petitioner to remain present on 28/03/2024 at 9:45 a.m. (page 134). It is contended that this communication was received by the petitioner on 28/03/2024 at 10:00 a.m. thereby making it impossible for the petitioner to attend.

(x) Since the petitioner could not appear before the Committee on 28/03/2024 for the reason aforesaid, the Caste Scrutiny Committee by the impugned order dated 28/03/2024, declared the validity dated 17/02/2020 earlier issued in favour of the petitioner as having obtained by suppression of material facts and therefore invalid.

(xi) In the light of this narration Mr.Narnaware, learned counsel for the petitioner contends, that even the principle of natural justice of according the reasonable opportunity of being heard has not been followed. According to him, such a requirement is indicated in Section 7(1) of the Caste Certificate Act as well as Rule 17(11) (i),(ii) & (iii) of the Caste Certificate Rules, 2012. He therefore submits that on this touchstone also the action of the Caste Scrutiny Committee in invalidating the caste claim of the petitioner was not justified.

2.7. It is also contended by him, relying upon the communication dated 22/03/2024, (page 128), addressed by the Under Secretary of the State of Maharashtra, to the Caste Scrutiny Committee, Nagpur, that the decision of the Caste Scrutiny Committee was not an independent decision, but was politically motivated.

2.8. It is therefore, in the light of above position, it is contended that the decision of the Caste Scrutiny Committee and all consequent actions are not tenable in law, and need to be stayed.

2.9. Mr.Chavan, learned Government Pleader on behalf of the respondents No.1 to 3 and 5, contends, that the impugned decision of the Caste Scrutiny Committee dated 28/03/2024, against the petitioner, was not ex-parte but on each and every stage, the petitioner was put to notice. Mr.Chavan, learned Government Pleader submits that the communication dated 27/03/2024, asking the petitioner to attend the Caste Scrutiny Committee on 28/03/2024 at 9.45 a.m., was in fact served upon the petitioner by e-mail on 27/03/2024 at 11.45 p.m. and therefore the petitioner was aware on 27/03/2024 itself in this regard and therefore there is no violation of the principles of natural justice.

2.10. He further relies upon the language of Section 7(1) of the Caste Certificate Act, to contend that the Caste Scrutiny Committee, had power to recall validity issued, in case fraud is committed by a person in whose favour it is issued.

2.11. Insofar as locus is concerned, he contends, that Section 7(1) of the Caste Certificate Act itself empowers the Caste Scrutiny Committee to take action either suo motu or otherwise, which would indicate that such an action can be initiated even on the basis of the illegality being brought to the notice of the Committee by any person whomsoever, and therefore, the question of locus would be immaterial, for which, reliance is placed by him on ***Rajeshwar Baburao Bone v. State of Maharashtra, reported in (2015) 14 SCC 497****.*

2.12. He submits that even if the entire procedure or orders passed by the State Information Commissioner were ignored, even then, the independent examination of the impugned order of the Caste Scrutiny Committee, would indicate, that relevant material has been considered for passing the said decision which was necessary on the ground that while issuing the validity dated 17/02/2020 (page 165), no vigilance enquiry was carried out, which according to him is necessary in view of ***District Collector, Satara and anr. v. Mangesh Nivrutti Kashid****, reported in* ***(2019) 10 SCC 166*** *(para 28 to 32), in spite of which directions, the vigilance was not conducted, justifying the revisiting of the grant of validity.*

2.13. It is further contended by him that the situation has lost its urgency inasmuch as the nomination of the petitioner, was rejected on 28/03/2024 and the stage has proceeded to the allotment of symbols which also has been crossed. It is therefore contended, relying upon ***N.P. Ponnuswami v. The Returning Officer****, reported in* ***AIR 1952 SC 64*** *(para 8) that no interference in the election process now is permissible and the only remedy is to question the result of the election by way of an Election Petition.*

2.14. He further points out, that the membership of the petitioner of Zilla Parishad, Nagpur also has consequently being canceled by the order dated 02/04/2024 passed by the Divisional

Commissioner, Nagpur.

2.15. It is therefore, contended, that nothing has survived in the petition so far as grant of interim relief is concerned.

3. Mr. S. P. Dharmadhikari, learned Senior Counsel appearing for the respondent No.7 contends that the petition challenging the rejection of nomination paper of the petitioner, was clearly not maintainable, in view of law laid down by the Hon'ble Apex Court in ***Ponnuswami*** *(supra) and in the light of what is laid down in Section 100(1)(c) of Representation of People Act 1951 and election petition was now the only remedy available.*

4. Ms. Neerja Choube, learned counsel for the respondent No.4 submits, that the decision by the Returning Officer, to reject the nomination paper of the petitioner, was justified as the seat was reserved for a Scheduled Caste candidate and since the petitioner had lost that status, on account of her validity being declared as illegal, the only option open for the Returning officer was to reject her nomination. She further contends that now, the only mode of questioning the rejection of the nomination was by filing an election petition, as the process of election had already commenced. Ms Choube, learned counsel for the respondent No.4 relies on ***Ponnuswami*** *(supra) also places reliance upon* ***Mohinder Singh Gill v. Chief Election Commissioner*** *reported in* ***(1978) 1 SCC 405*** *and the proposition enunciated in para-92(1)(a) and (b). She also places reliance upon* ***Election Commission of India v. Shivaji*** *reported in* ***(1988) 1 SCC 277*** *(para-6) and* ***Manda Jaganath v. K.S.Rathnam,*** *reported in* ***(2004) 7 SCC 492*** *paras-12 and 13 to contend that the remedy of the petitioner, vis-a-vis the rejection of the nomination paper would be only by filing an election petition under the relevant provisions of the Representation of People Act, 1951.*

5. Mr. Narnaware, learned counsel for the petitioner in rebuttal submits that ***Mangesh Kashid*** *(supra) was not attracted on account of language of Section 7(2) of the Certificate Act of 2000. He submits, by relying upon* ***State of Punjab Vs. Davinder Pal Singh Bhullar****, reported in* ***(2011) 14 SCC 770*** *(para 108) that in case, the basis of the proceedings is gone, all consequential acts, actions,*

orders would fall to the ground automatically. He also places reliance upon ***Union Territory of Ladakh and others v. J & K National Conference*** *reported in 2023* ***LawSuit (SC) 890,*** *in support of his contention, that interference by this Court in the order dated 28/03/2024 by the Returning Officer will be permissible.*

6. He also submits, that though on an earlier occasion, the notice dated 20/03/2024 was challenged before the Hon'ble Apex Court by filing petition under Article 32 of the Constitution, vide Diary No.1443/2024, in the light of the pendency of the present petition, the same was withdrawn on 01/04/2024.

7. Having heard the above arguments, we are of the considered opinion that a case for deciding the controversy on its merits has been made out. The question whether the power to cancel the validity vests with the Caste Scrutiny Committee in view of the language of Sec.7(1) of the Caste Certificate Act or the High Court also needs determination. The plea that when on similar allegations, by the respondent no.7, the Caste Scrutiny Committee itself had dismissed the complaint of the respondent no.7, then on the same set of allegations, whether it was permissible for it to again consider the objection to the caste validity of the petitioner also needs determination. The manner in which the proceedings were conducted by the Caste Scrutiny Committee with the filing of the complaint by the respondent No.6 on 20/03/2024 and the passing of the impugned order on 28/03/2024, within a period of nine days, also needs to be gone into in light of the plea regarding violation of principles of natural justice and denial of a fair opportunity to the petitioner. Hence, issue notice for final disposal returnable on 22/04/2024. Learned Government Pleader Mr. Chavan waives notice for the respondents 1 to 3 and 5. Miss. Choube waives notice for the respondent no.4 and Mr. S.P.Dharmadhikari, learned Senior Counsel waives notice for the respondent no.7. The petitioner shall serve the respondent no.6 by all modes permissible in law including hamdast by the returnable date. The respondents who have appeared shall complete their pleadings by the returnable date, with advance copies to the petitioner.

8. Insofar as the plea for interim relief vis-à-vis the impugned order dated 28/03/2024 passed by the Caste Scrutiny Committee is concerned, we are of the considered opinion that the narration of events, as recorded above, which have led to the cancellation of the validity of the caste certificate of the petitioner, prima facie, indicate that no reasonable and fair opportunity of hearing has been afforded to the petitioner, by the Caste Scrutiny Committee, which is evident by the admitted position on record that the notice indicating the supply of the vigilance report to the petitioner, even presuming what has been said by Mr. Chavan learned Government Pleader, was sent by e-mail on 27/03/2024 at 11.45 p.m. asking the petitioner to remain present before the Caste Scrutiny Committee on 28/03/2024 at 9:45 a.m., to be correct, clearly cannot be considered to be a reasonable opportunity.

Section 7 (1) and (2) of the Caste Certificate Act, 2000 read as under:

> *"7. **Confiscation and cancellation of false Caste Certificate**. -(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.*
>
> *(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution of India."*

Rules 17(11) (i), (ii) and (iii) of the Caste Certificate Rules, 2012 read as under:

"17. Procedure of Scrutiny Committee.-

(1).....
(2) .....
(3) .....
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(8) .....
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(10) .....

(11) (i) In case of those cases which are refered to Vigilance Cell, upon considering the 'Report of Vigilance Cell', if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste claim, by discharging his burden, as contemplated under section 8 of the Act, by issuing a notice in FORM-25 coupled with copy of 'Report of Vigilance Inquiry';

(ii) After issuance of notice/intimation, if applicant requests, by way of written application, for copies of vigilance inquiry report or any other document or prays for adjournment, reasonable time for final hearing or for submitting written submission, it may be granted;

(iii) After affording an opportunity of hearing, Scrutiny Committee shall,-

(a) on being satisfied regarding the genuineness of the Caste claim, decide the matter finally, upon appreciation of evidence, by its reasoned decision, i.e. decision of committee and issue Certificate of Validity, in FORM-24; and forward the same to concerned authorities within thirty days, by preserving its scanned copy (in electronic form);

(b) on being not satisfied about the genuineness of the claim and veracity of the Caste Certificate, it shall

pass its decision, thereby canceling and confiscating the original Caste Certificate and invalidating the Caste or Tribe Claim of the applicant / claimant;

(c) upon invalidation of Caste or Tribe claim, the Caste Certificate under inquiry shall be stamped as "canceled and confiscated", and forward the same along with copy of decision, to the Competent Authority and concerned parties, by preserving its scanned copy (in electronic form);

(d) after conclusion of the hearing of the case, the work of writing of the decision shall be assigned to one of its member by the Scrutiny Committee;

(e) in case of difference of opinion amongst the members of Committee, on the main order of majority, the dissenting member shall write his separate order;

(f) The name of member of Committee to whom work of writing final order was assigned, shall be mentioned in the Roznama. Moreover, front page of final order shall disclose the date of the order."

9. That a reasonable opportunity has to be afforded is clearly spelt out from a reading of section 7(1) of the Caste Certificate Act, as well as Rules of 2012, framed thereunder and specifically Rules 17(11) (i),(ii) & (iii) of the Caste Certificate Rules, 2012. Apart from the above, the impugned order canceling the caste validity of the petitioner, has been passed on 28/03/2024 itself, the date on which, the petitioner was asked to appear. The tearing hurry, which is indicated from the narration of events above, resulting in completion of the enquiry within a period of nine days from the date of the filing of the complaint on 20/03/2024 and passing of the impugned order on 28/03/2024 by the Caste Scrutiny Committee, leaves much to be said about the conduct of the Caste Scrutiny Committee, Nagpur in the matter of passing of the impugned order dated 28/03/2024. The role of the State Information Commissioner, for the State, in directing enquiry into the caste validity granted by the Caste Scrutiny Committee, which was definitely, beyond his jurisdiction, appears to be the genesis of the entire issue. Though the order has subsequently been withdrawn, that does not absolve the State Information

Commissioner, of culpability in the matter, as it is his order dated 28/02/2024, which has set the ball rolling. Hence by way of an interim order, we direct that the effect and operation of the impugned order dated 28/03/2024, passed by the Caste Scrutiny Committee shall stand stayed till further orders.

10. Insofar as the plea for interim relief vis-à-vis the impugned order dated 28/03/2024 passed by the Returning Officer, rejecting the nomination of the petitioner is concerned, it is necessary to note that the election programme has commenced from 20/03/2024 and has reached a stage where admittedly, as of today, even the election symbols have been allotted. In ***Ponnuswami*** *(supra) the 6 Judges Bench of the Hon'ble Apex Court, while considering the scope of interference by the High Court in view of the bar as contained in Article 329(b) of the Constitution had the following to say :*

> *"8. In construing this article, reference was made by both the parties in the course of their arguments to the other articles in the same Part, namely, Articles 324, 325, 326, 327 and 328. Article 324 provides for the constitution and appointment of an Election Commissioner to superintend, direct and control elections to the legislatures; Article 325 prohibits discrimination against electors on the ground of religion, race, caste or sex; Article 326 provides for adult suffrage; Article 327 empowers Parliament to pass laws making provision with respect to all matters relating to, or in connection with, elections to the legislatures, subject to the provisions of the Constitution; and Article 328 is a complementary article giving power to the State Legislature to make provision with respect to all matters relating to, or in connection with, elections to the State Legislature. A notable difference in the language used in Articles 327 and 328 on the one hand, and Article 329 on the other, is that while the first two articles begin with the words "subject to the provisions of this Constitution", the last article begins with the words "notwithstanding anything in this Constitution". It was conceded at the Bar that the effect of this difference in language is that whereas any law made by Parliament under Article 327, or by the State Legislatures under Article 328, cannot exclude the jurisdiction of the High Court under*

Article 226 of the Constitution, that jurisdiction is excluded in regard to matters provided for in Article 329 ”

11. The dictum in ***Ponnuswami*** *(supra) has been further considered by a still larger Bench of seven Judges of the Hon’ble Supreme Court in* ***Hari Vishnu kamath v. Syed Ahmad Ishaque,*** *reported in* ***(1954) 2 SCC 881****, where the above position has been accepted and it has been clarified that the bar under Article 329(b) of the Constitution would not be attracted, only where an election petition, questioning the election already stands filed before the Tribunal, for in that case, the matter has to be viewed in light of the general powers of superintendence of the High Court over the Tribunals. The position has been further considered by Constitution Bench of Five Judges in* ***Mohinder Singh Gill*** *(supra) in the following terms :*

92. Diffusion, even more elaborate discussion, tends to blur the precision of the conclusion in a judgment and so it is meet that we, synopsize the formulations. Of course, the condensed statement we make is for convenience, not for exclusion of the relevance or attenuation of the binding impact of the detailed argumentation. For this limited purpose, we set down our holdings :

1 (a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.”

12. The position of non-interference has also been reiterated in ***Ram Phal Kundu v. Kamal Sharma, reported in (2004) 2 SCC 759*** *(para 24), by holding that once the nomination paper of a candidate is rejected, the Representation of People Act, 1951, provides 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, by relying upon ***Mohinder Singh Gill*** *(supra) and* ***ECI v. Shivaji*** *(supra). In* ***Manda Jaganath v. K. S. Rathnam*** *(supra), which was a case of rejection of Form B, which was found to be unacceptable and therefore though the nomination was accepted, the symbol reserved for the Telangana Rashtra Samithi was not allotted, while holding that whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent therein or not, was not a matter for the High Court to decide in the exercise of its writ jurisdiction and this issue should be agitated by an aggrieved party in an election petition only, it was also held that under Article 329(b) of the Constitution of India there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the Houses of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. Parliament has by enacting the Representation of the People Act, 1951 provided for such a forum for questioning such elections hence, under Article 329(b) no forum other than such forum constituted under the RP Act can entertain a complaint against any election. It was also held that the word "election" has been judicially defined by various authorities of the Hon'ble Supreme Court, to mean any and every act taken by the competent authority after the publication of the election notification.*

13. In ***Vinod Pandurang Bharsakade v. Returning Officer,*** *reported in* ***2003 (4) Mh.L.J. 359****, the Full bench of this Court while considering Article 243-O(b) of the Constitution, the language of which is similar to that used in Article 329(b) of the Constitution, in the context of rejection of the nomination paper in Panchayat elections, held as under:*

> *"67. To us, the law appears to be well settled and it is that once the election process has started, it has to be over in accordance with the provisions of the relevant statute. Once an election notification is issued, the process can be said to have started. There are various stages of election. One of such stages is scrutiny of nomination papers. It is thus a part and parcel of election process. The law contemplates only one attack in election matters, and that*

too, after the election is over. A petition under Article 226 of the Constitution against rejection of nomination paper, therefore, cannot lie. Since, in the instant cases, nomination papers of the petitioner have been rejected, keeping in view the mandate of the Constitution in Article 243-O(b) and sections 15 and 15-A of the Act, the remedy available to the petitioners is to file election petition in accordance with provisions of the Act and not to invoke extraordinary jurisdiction of this court under Article 226 of the Constitution."

14. Another Full Bench of this Court in ***Karmaveer Tulshiram Autade & ors v. State Election Commission and connected matters*** *reported in* ***2021 SCC OnLine Bom 1150*** *while considering a similar challenge as was considered in* ***Vinod Pandurang Bharsakade*** *(supra) has answered the questions as under :*

Sr. No.	*Question*	*Opinion*
(i)	*Does allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection, amount to intervention, obstruction or protraction of the election or is it a step to facilitate the process of completion of election?*	*(i) Allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to subserve the progress of election and/or facilitate its completion in the sense enunciated in Mohinder Singh Gill (supra) and explained in Ashok Kumar (supra) though it may not always amount to intervention, obstruction or protraction of the election;*

(ii)	*Whether rejection of nomination form would attract the provisions of Article 243-O(b) of the Constitution of India?*	*(ii) Article 243-O(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a writ petition is presented before a Court for its consideration;*

15. The above position clearly indicates that rejection of a nomination paper by the Returning Officer, would not be susceptible to a challenge before this Court by invoking the jurisdiction under Article 226 of the Constitution and the remedy would be an election petition, and we are bound by the aforesaid view.

16. It is also material to note that Sec.100(1)(c) of the Representation of People Act, 1951, while delineating the grounds on which an election can be challenged, provides that improper rejection of the nomination can be one of the grounds available for challenge of the election, which in turn would indicate that such a challenge at an interim stage would not be permissible, considering that it cannot be considered as a step in aid of the election. The position, rather would be otherwise and would result in obstructing the conduct of the election, which is impermissible.

17. Though Mr. Narnavare, learned Counsel for the petitioner relies upon ***Davinder Pal Singh Bhullar*** *(supra) and specifically paras 108 to 110, to contend that once the impugned order goes, all consequent orders automatically vanish, that however, has to be viewed in light of the mandate of Article 329(b) of the Constitution and Sec.100(1)(c) of the Representation of People Act, 1951, as indicated above. That apart the challenge*

to the impugned order dated 28/03/2024 passed by the Caste Scrutiny Committee, is still under consideration on account of which reliance upon ***Davinder Pal Singh Bhullar*** *(supra) is of no assistance to the learned counsel for the petitioner.*

18. ***J & K National Conference*** *(supra) was a case pertaining to the non-allocation of the plough symbol in the general elections of Ladakh Autonomous Hill Development Council, in spite of the same having been reserved, for the J & K National Conference, to its candidates and the interference by the learned Single Judge, by directing notification of this symbol allotted to the party in terms of para-10 and 10(A) of the Election Symbols (Reservation and Allotment) Order, 1968 and to allow the candidate set up by the petitioner party to contest on the reserved election symbol already allotted to the party, was clearly a step in aid of the election, on which count it was held that the interference was warranted (para 40). As indicated above, interference in the rejection of the nomination paper by the Returning Officer, is not something, which can be considered as a step in aid of the election process, as the remedy there against, is only by way of an election petition under section 80 of the RP Act, 1951 in which the plea that the nomination has been improperly rejected is open to be raised for declaring election to be void, under section 100(1)(c) of the RP Act, 1951.*

19. We therefore are of the opinion, that though the action of the Caste Scrutiny Committee in passing the impugned order dated 28/03/2024, cannot be countenanced and the order dated 28/03/2024 by the Returning Officer is a fall out of the said order, however, in view of the law as applicable in the matter, as stated above, we are unable to grant any interim relief, to the petitioner vis-à-vis the order dated 28/03/2024 passed by the Returning Officer. The prayer therefore in that regard, for interim relief, visa-vis the order dated 28/03/2024 by the Returning Officer, will have to be turned down.

20. The matter may now be posted on 22/04/2024 as indicated earlier for final disposal."

4. The factual position, as narrated in para 2.6 of the interim order dated 04/04/2024, substantially remains the same, except for the addition that the initial validity granted to the petitioner by the Caste Scrutiny Committee ("CSC", for short hereinafter) was again tested by the CSC, in view of the judgment of the Hon'ble Supreme Court in the case of ***District Collector, Satara and another Vs. Mangesh Nivrutti Kashid (2019) 10 SCC 166*** and a validity was again issued to the petitioner by the CSC on 17/02/2020 (pg.165), which has now been cancelled by the CSC by the impugned decision. So also, subsequently the membership of the petitioner of the Zilla Parishad, Nagpur, has also been cancelled on account of the impugned decision of the CSC.

5. In addition to the arguments canvassed for the interim relief, as stated above, Mr. Narnaware, learned counsel for the petitioner, contends that the issuance of validity to the petitioner by the CSC, dated 17/02/2020 (pg.165) was on the basis of documents and evidence produced before it, which were verified and scrutinized by the CSC, only after which the caste claim of the petitioner was granted. It is, therefore, submitted that once the same

is issued, in light of the mandate of Section 7(2) 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 ["Caste Certificate Act, 2000", for short hereinafter], the CSC had no jurisdiction or authority to review or recall the same, as in light of the mandate of Section 7 (2) the decision attains finality, and is incapable of being questioned before any Court, except this Court under Article 226 of the Constitution. That being so, he submits that the CSC did not have any jurisdiction whatsoever, to revisit the validity certificate granted to the petitioner. He places heavy reliance upon the judgment of the Hon'ble Apex Court in ***Civil Appeal Nos.2741-2743 of 2024, Navneet Kaur Harbhajansingh Kundles @ Navneet Kaur Ravi Rana Vs. The State of Maharashtra and others [Civil Appeal No(s).2741-2743 of 2024 decided on 04/04/2024 (Supreme Court)]*** and specifically paras 12, 17, 19, 20 to 22 to contend that the CSC had no power of review. It is also contended, by relying upon ***Navneet Kaur Rana*** (supra) that, an enquiry by the Vigilance Cell is not mandatory in every case and only in case the CSC is not satisfied with the documents placed on

record in support of the tribe claim, that an enquiry by the Vigilance Cell is warranted. Reliance for this proposition is also placed upon the judgment of the Hon'ble Apex Court on ***Ishwar s/o Naga Bondalwar and another Vs. The District Caste Certificate Scrutiny Committee (Writ Petition No.472/2020, decided on 26/07/2021)*** (para 6); ***Rakesh Bhimashankar Umbarje and others Vs. State of Maharashtra through its Secretary, Tribal Development Department and another 2023 SCC OnLine Bom 1013; 2024 (1) Bom CR 294*** (paras 27, 28, 29, 30 and 34); ***Bharat Nagu Garud Vs. State of Maharashtra Through its Secretary Tribal Development Department and others 2023 SCC OnLine Bom. 2537*** (para 40, 46); ***Bharat Bhagwant Tayade Vs. The State of Maharashtra through its Secretary, Tribal Development Deparatment, Mantralaya, Mumbai 400 032 and others 2022 SCC OnLine Bom. 637.***

5.1. On the ground of absence of locus to the respondent No.6/7 to file a complaint before the CSC and for the CSC, to undertake the exercise of invalidating the tribe claim of the petitioner, in respect of the validity already granted, reliance is placed upon ***Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and others (2013) 4 SCC 465*** (para 22 and 39). He

further relies upon ***Dinesh Gupta Vs. State of Uttar Pradesh and another (Criminal Appeal No.214/2024, decided on 11/01/2024) AIR 2024 SC 574*** (para 39) to submit that substantial costs should be imposed.

5.2. It is, therefore, contended, that the dictum of the Hon'ble Apex Court in ***Mangesh Nivrutti Kashid*** (Supra-SC) could not be applied, again, to the case of the petitioner, as consequent to the said judgment, the validity was issued again.

5.3. It is also contended that once the first complaint by respondent No.7 stood rejected in terms of the mandate of Section 7 (2) of the Caste Certificate Act, 2000, the second complaint by respondent No.6 on the same ground could not have been entertained by the CSC at all.

5.4. By inviting our attention to the language of Maharashtra Scheduled Castes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance And Verification Of) Caste Certificate Rules, 2012 ["Caste Certificate Rules, 2012" for short hereinafter] it is contended that the mandatory procedure therein was clearly ignored and the impugned decision was under political pressure and a

deliberate attempt on part of the respondents, to undermine the rule of law. The very fact that the scrutiny of the nomination paper of the petitioner was to be held on 28/03/2024 at which time the certified copy of the decision of the CSC was produced, in itself was indicative, of the fact that the CSC, was misusing its position and was acting under the thumb of the Deputy Secretary.

5.5. Further relying upon Rule 17 (8) of the Caste Certificate Rules, 2012 it is contended that reasonable time for replying to the vigilance report had to be granted, which has not been done, which vitiates the impugned decision.

5.6. Mr. Narnaware, learned counsel for the petitioner relies upon the following decisions :-

> *(i) Pankaj Kumar Vs. State of Jharkhand & Others, Civil Appeal No(s).4864/2021, decided on 19.08.2021, para 56.*
>
> *(ii) Devendra S/o Dashrath Sahare Vs. District Caste Certificate Scrutiny Committee, Nagpur and Another, [Writ Petition No.2972/2021, decided on 30.08.2021].*
>
> *(iii) State of Maharashtra & Others Vs. Prashant Shamraoji Shende, Special Leave to Appeal (C) No(s). 13095/2017, decided on 18.04.2022.*

(iv) Prashant Shamraoji Shende Vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur & Others, Writ Petition No.6836/2013, decided on 14.12.2016. para 3 & 4.

(v) Sonal Prakash Bakade Vs. Joint Commissioner and Vice Chairman, S. T. C. C. S. C., Amravati, Writ Petition No.289/2016, decided on 22.08.2016.

(vi) Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others, Civil Application No.5186/2001, decided on 18.11.2003, para 5.

(vii) Bharat s/o Bhimrao Malakwade Vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur & Another, 2013 (5) Mh.L.J. 946.

(viii) Dhammanand s/o Maniram Jambhulkar Vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur & Another, Writ Petition No.559/2014, decided on 18.06.2014, para 10-13.

(ix) Badalsingh s/o Bharosa Rawale Vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur & Another, Writ Petition Nos.6889, 2591 & 6586/2014, decided on 30.10.2015, para 22 & 24.

(x) Vaibhav Sudhakar Patne Vs. Divisional Caste Certificate Scrutiny Committee No.1, Nagpur & Others, Writ Petition No.5392/2016, decided on 19.07.2019, para 7 & 9.

(xi) Pawankumar s/o Gattayya Agdari Vs. The District Committee for Scrutiny and Verification of

Chandrapur & Ors. Writ Petition No. 4558/2018, decided on 25.07.2019.

(xii) Sameer Hariram Shendre Vs. The Scheduled Tribe Caste Certificate Scrutiny Committee, Gondia, Writ Petition No.1224/2024, decided on 22.02.2024, para 2.

(xiii) Rajwardhan Ishwardas Metekar Vs. State of Maharashtra & Others, Writ Petition No.4906/2021, decided on 14.03.2024.

(xiv) Ku. Priyanka Nagesh Erla Vs. District Caste Certificate Scrutiny Committee, Chandrapur & Another, Writ Petition No.919/2020, decided on 30.08.2022, para 9.

(xv) Hari Singh Vs. State of Haryana, Criminal Appeal No.698/1985, decided on 13.04.1993.

(xvi) Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others [Supreme Court] Civil Appeal No.2502/2022 decided on 24/03/2023.

(xvii) Shashant Giridhar Nandanwar Vs. State of Maharashtra [Civil Application No.185/2024 in Writ Petition No.6407/2023, decided on 23/04/2024].

(xviii) Mahesh Pralhadrao Lad Vs. The State of Maharashtra and others [Writ Petition No.4068/2008, decided on 14/07/2008].

(xix) Ashwin Rajendra Parate Vs. The State of Maharashtra and others [Writ Petition No.2716/2022, decided on 24/06/2022].

(xx) Abhijit Suryakant Thakar and another Vs. The State of Maharashtra and others [Writ Petition No.4407/2019, decided on 5/1/2023].

(xxi) Shreyash Pradip Dange Vs. The State of Maharashtra and others [Writ Petition No.3656/2018, decided on 28/09/2018].

(xxii) Sayanna Vs. State of Maharashtra and others [Supreme Court] Civil appeal No.6253/2009, decided on 15/9/2009.

(xxiii) Dinesh Gupta Vs. State of Uttar Pradesh and another [Criminal Appeal No.214/2024, decided on 11/01/2024].

(xxiv) Jankesh Govardhan Sonawale Vs. The State of Maharashtra and others [Writ Petition No.867/2017, decided on 17/8/2021].

(xxv) Rakesh Bhimashankar Umbarje and others Vs. State of Maharashtra through its Secretary, Tribal Development Department and another, 2023 SCC OnLine Bom. 1023.

(xxvi) Ishwar s/o Naga Bondalwar and another Vs. The District Caste Certificate Scrutiny Committee, Gadchiroli through its Principal Secretary and others [Writ Petition No.472/2020, decided on 26/07/2021].

(xxvii) Navneet Kaur Harbhajansing Kundles @ Navneet Kaur Ravi Rana Vs. The State of Maharashtra and others [Civil Appeal No(s).2741-2743 of 2024 decided on 04/04/2024 (Supreme Court)].

(xxviii) Union Territory of Ladakh and others; Union Territory of Ladakh through its Chief Secretary, Chief Election Officer Vs. Jammu and Kashmir National Conference and another, 2023 LawSuit SC) 890.

(xxix) Dr. Jagmittar Sain Bhagat and otehrs Vs. Director Health Services, Haryana and others decided on 11/07/2013.

(xxx) Bharat Nagu Garud Vs. State of Maharashtra Through its Secretary Tribal Development Department and others [Writ Petition No.8822/2022, decided on 01/11/2023]; 2023 SCC OnLine Bom. 2537.

(xxxi) Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and others [Civil Appeal No.7728/2012, decided on 08/11/2022 (Supreme Court)].

(xxxii) Bharat Bhagwant Tayade Vs. The State of Maharashtra through its Secretary, Tribal Development Department, Mantralaya, Mumbai 400 032 and others (Writ Petition No.11617/2017 decided on 15/03/2022) ; 2022 SCC OnLine Bom 637.

(xxxiii) Shreyash Pradip Dange Vs. The State of Maharashtra and others [Writ Petition No.3656/2018, decided on 28/09/2018].

6. Dr. Birendra Saraf, the learned Advocate General assisted by Mr. D.V. Chauhan, learned Government Pleader for the respondent Nos.1 to 3, 5 and 8 contends as under :

(i) The validity issued to the petitioner, on 17/02/2020 (pg.165), was issued without a vigilance, which is the reason, why the need for revisiting it was felt by the CSC.

(ii) That respondent No.7, in his communication addressed to the CSC, had indicated that the genealogy given by the petitioner was false, on account of which the police enquiry report was initiated, which *prima facie* indicated a case of fraud. The enquiry was not initiated on the basis of the police report, but on the basis of the material, as indicated in the complaint of respondent No.6, which indicated a *prima facie* case of fraud.

(iii) It is the duty of the CSC, in case fraud is brought to its notice, to initiate an inquiry, even *suo motu* by recalling the certificate.

(iv) The vigilance enquiry report *prima facie* indicates a fraud being practiced by the petitioner in obtaining the validity by incorrectly showing relations from the maternal side; the father of the petitioner also being shown as illiterate when in fact he was literate, as is indicated by the certificate, which is now placed on

record by the petitioner to claim support regarding the validity granted.

(v) Judicial proprietary requires that in case an earlier judgment, was not considered [para 19 of the judgment in ***Bharat Nagu Garud*** (supra)], the earlier judgment on the point would prevail.

(vi) Since the petitioner realizes that fraud is demonstrated, learned counsel for the petitioner is not willing to address the Court on merits.

(vii) ***Mangesh Nivrutti Kashid*** (supra) indicated a window of 30/07/2011 and 31/08/2012, during which the certificates which were issued were susceptible as no proper exercise for verification could have been carried out given the time frame in which the certificates were issued. The original certificate to the petitioner was dated 20/01/2012 and therefore, fell within this window and on this ground the recall was proper (para 28 and 32), leading to the issuance of the validity certificate dated 17/02/2020 (pg.165) to the petitioner, which subsequently on account of the complaint regarding fraud being practiced in its obtaining, on account of false genealogy and documents, has been cancelled.

(viii) ***Navneet Rana*** (supra), according to him, was a case in which the first validity issued in favour of the petitioner, was after a full vigilance enquiry and therefore, the recall was held to be incorrect and improper. This would not apply to the case of the petitioner, in which, on both the occasions, 20/01/2012 and 17/02/2020 the validity was without vigilance.

(ix) If the Committee has power to recall, then from where the information comes, becomes immaterial.

(x) ***Ayaaubkhan Noorkhan Pathan*** (supra) relied upon by the learned counsel for the petitioner, for absence of locus, has been dealt with in ***Shakila Begum Faiyyazuddin Vs. The State of Maharashtra, Through its Secretary, Social Welfare Department, Mantralaya, Mumbai - 32 (Writ Petition No.7518/2016 decided on 26/04/2018)***, in which it has been held that in exceptional circumstances even if the *bona fides* of a third person are doubted, but the issue raised by him in the opinion of the Court requires consideration, the Court may proceed *suo motu* in the said respect. It is, therefore, contended that the complaint by respondent No.6 was rightly acted upon by the CSC.

(xi) It is contended that even if there was no power to review, but a power to recall would be available to the CSC, if it was brought to its notice that the validity was obtained by fraud or procedure was not followed.

(xii) The complaint from respondent No.7 was not accompanied by any document/material in its support, and therefore, no cognizance was taken, however, the subsequent complaint by respondent No.6 was accompanied with the copy of the police report and had other material indicating a fraud being practiced in obtaining the validity. Therefore, cognizance was taken as there was something on record to indicate fraud. The decision was not based upon the police report but material otherwise disclosed from the complaint.

(xiii) Section 7 (1) of the Caste Certificate Act, 2000 is not the only source of power.

(xiv) The conduct of the petitioner, in not complying with the timelines is required to be taken into consideration. When notice was issued on 20/03/2024 by the CSC (pg.115), no reply was given by the petitioner, but instead a preliminary objection was raised regarding jurisdiction and locus of respondent No.6 and time to file reply was sought. Even after the vigilance when intimation was

given on 27/03/2024 to appear before the Committee on 28/03/2024, no objection was raised to the vigilance report, as a result of which, the CSC passed an order. Though it was open for the petitioner to file a counter-affidavit in response to the vigilance, controverting the material found in the vigilance enquiry, by not doing so, the petitioner has forfeited her right to object.

(xv) In the reply of the respondents, details of the vigilance enquiry have been summarized, which need to be taken into consideration for the purpose of deciding the petition, as it indicates false information being provided by the petitioner regarding the genealogy tree as well as other factual aspects.

6.1. In respect of ***Bharat Nagu Garud*** (supra) it is contended that the argument advanced regarding power of recall with the CSC has been misconstrued as power of review, on account of which, reliance cannot be placed thereupon.

6.2. In ***Rakesh Umbarje*** (supra) it is contended that though the High Court had directed issuance of validity, the CSC had reopened and the power of recall has not been considered.

6.3. Dr. Saraf, learned Advocate General for respondent Nos.1 to 3 and 5 relies upon the following decisions :

(i) District Collector, Satara and another Vs. Mangesh Nivrutti Kashid (2019) 10 SCC 166.

(ii) Sangita Sharad Kolse Vs. State of Maharashtra and others 2006 SCC Online Bom. 1713.

(iii) Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and others (2008) 9 SCC 54.

(iv) Devendra Gurunath Khedgikar Vs. Scheduled Tribe Certificate Scrutiny Committee, Pune and another 2009 (3) Mh.L.J. 433.

(v) Sandeep s/o Manoharrao Waysal Vs. State of Maharashtra and others 2010 (1) Mh.L.J. 205

(vi) Apoorva d/o Vijay Nichale Vs. Divisional Caste Certificate Scrutiny Committee No.1 and others 2010 (6) Mh.L.J. 401.

(vii-A) Jyoti Sheshrao Mupde Vs. State of Maharashtra (Writ Petition No.1954 of 2000) [22nd August 2012].

(vii-B) Kum Jyoti Sheshrao Mupde Vs. State of Maharashtra and others [Special Leave Petition (C) No.9594/2013 (25th October, 2013).

(viii-A) Rajeshwar Baburao Bone Vs. State of Maharashtra 2013 SCC OnLine Bom. 1999 (Decided on 17th December, 2013).

(viii-B) Rajeshwar Baburao Bone Vs. State of Maharashtra (2015) 14 SCC 497.

(ix-A) Shakila Begum Faiyyazuddin Vs. The State of Maharashtra (Through its Secretary), Social Welfare Department, Mantralaya, Mumbai – 32 [Writ Petition No.7518 of 2016 decided on 26th April, 2018].

(ix-B) Shakila Begum Faiyyazuddin Vs. State of Maharashtra 2018 SCC OnLine SC 2989.

(x-A) Rajesh Ramesh Gaikwad Vs. State of Maharashtra (Writ Petition No.9237 of 2016, decided on 2nd July, 2019].

(x-B) Rajesh Ramesh Gaikwad Vs. The State of Maharashtra and others (SLP No.17107/2019) [dismissed as withdrawn] (29th July, 2019).

(xi) Farha Ashfaqali Shaha Vs. Member Secretary & Research Officer, Caste Certificate Scrutiny Committee 2019 SCC OnLine Bom 4206 (16th August, 2019).

(xii) Vishnu Rajaram Thakar Vs. State of Maharashtra and another 2022 SCC OnLine Bom. 10379.

(xiii) Balaji Vs. State of Maharashtra, Through its Secretary, Tribal Development Department and another 2022 SCC OnLine Bom. 1888.

(xiv) Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd (1996) 5 SCC 550.

(xv) United India Insurance Co. Ltd. Vs. Rajendra Singh and others (2000) 3 SCC 581.

(xvi) Indian National Congress (I) Vs. Institute of Social Welfare and others (2002) 5 SCC 685.

(xvii) **Sukh Sagar Medical College and Hospital Vs. State of Madhya Pradesh and others (2021) 13 SCC 587.**

7. The factual position in the instant matter is as under :

7.1. The petitioner, claiming to be belonging to 'Chambhar', Scheduled Caste, had submitted the caste certificate granted to her by the Competent Authority dated 12/12/2007 (pg.163), to the CSC for verification and issuance of a validity.

7.2. The CSC on 20/01/2012, after examining the caste certificate and the documents and being satisfied with it, had without directing any vigilance enquiry, issued a validity bearing No.796 in favour of the petitioner.

7.3. In view of the judgment of the Hon'ble Apex Court in ***Mangesh Nivrutti Kashid*** (supra-SC), which indicated a window of 30/07/2011 and 31/08/2012, during which the certificates which were issued were susceptible, as no proper exercise could have been carried out given the time frame in which the certificates were issued and as the original validity certificate to the petitioner was of

20/01/2012 and therefore, fell within this window, on this ground, the CSC recalled the same.

7.4. The CSC, thereafter upon verification of the certificate and documents, again issued a validity to the petitioner on 17/02/2020, bearing No.A-2371711 (pg.165).

7.5. On 30/01/2024 (pg.95) respondent No.7 had filed a complaint under Section 18(1) of the Right to Information Act, 2005 with the State Information Commissioner, alleging that the validity in favour of the petitioner was obtained by practicing fraud.

7.6. The State Information Commissioner took cognizance of the complaint and by order dated 28/02/2024 directed an enquiry by the Superintendent of Police, Nagpur (Rural).

7.7. A challenge to this order was raised in Writ Petition No.1578/2024, by the petitioner, in which by an order dated 05/03/2024, a Co-ordinate Bench of this Court, *prima facie*, recorded that the State Information Commissioner had exceeded his jurisdiction, in directing an enquiry by the Superintendent of Police, Nagpur (Rural) and consequently, granted a stay to all the proceedings taken out, by the State Information Commissioner (pg.103).

7.8. However, pursuance to the directions of the State Information Commissioner, as contained in the order dated 21/02/2024, the Superintendent of Police, Nagpur (Rural) conducted an enquiry and submitted a report on 16/02/2024 (pg.111) indicating commission of an offence under Sections 420, 425, 468, 471 of the IPC, by the petitioner.

7.9. Before the matter in Writ Petition No.1578/2024 could be decided, the State Information Commissioner, by a pursis dated 21/03/2024 (pg.123) intimated withdrawal of all the orders dated 07/02/2024 and 21/02/2024, which were impugned in that petition, on account of which, by an order dated 22/03/2024, Writ Petition No.1578/2024 came to be disposed of (pg.127).

7.10. It is just prior to this that on 20/03/2024, respondent No.6 filed a complaint of a similar nature as that filed by respondent No.7 earlier in point of time (pg.104), before the CSC.

7.11. It is on the basis of this complaint, by respondent No.6, that the CSC issued a notice to the petitioner on the same day i.e. 20/03/2024 (pg.115) calling upon the petitioner to show cause by 22/03/2024 at 11:00 a.m. as to why the validity granted in her favour, ought not to be cancelled. In this show-cause notice dated

20/03/2024 (pg.115) itself, the CSC records the rejection of earlier complaint of a similar nature filed by respondent No.7.

7.12. By communication dated 22/03/2024, the petitioner raised three preliminary objections (i) the complainant had no locus, (ii) the CSC has no power of review and (iii) the matter was then pending before the High Court in Writ Petition No.1578/2024 in which the stay was granted. A demand for supply of the copy of complaint made by respondent No.6 along with a time of 14 days to submit a detailed explanation was also sought (pg.120).

7.13. Instead of deciding the preliminary objection, the CSC by the e-mail communication dated 27/03/2024 at 11: 45 p.m. (pg.134), intimated to the petitioner, the receipt of the Vigilance Report and asked the petitioner to remain present on 28/03/2024 at 9:45 a.m. (pg.134). This communication is claimed to have been received by the petitioner on 28/03/2024 at 10:00 a.m. thereby making it impossible for the petitioner to attend.

7.14. Since the petitioner did not appear before the CSC on 28/03/2024, the CSC, by the impugned order, dated 28/03/2024, declared the earlier validity dated 17/02/2020 issued in favour of the petitioner, as having been obtained by suppression of material

facts, as thus invalid. It is this decision of the CSC which is in question.

8. A perusal of the above narration of events would indicate that the preliminary objection regarding absence of power of review/recall, as raised by the petitioner, was never decided by the CSC.

8.1. In exercise of the power under Section 18 (1) of the Caste Certificate Act, 2000, a draft Notification of the Rules was published in the State Gazette, dated 26/12/2001, calling for objections. However, before they could be finalized, the State enacted the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003. These Rules, however, though only addressed the issuance and verification of validities to the Scheduled Tribes, however, in practice they were used for the purpose of issuance and verification of validities to the Scheduled Castes and other Category applicants.

8.2. The State, thereafter, has in exercise of the powers under Section 18 (1) of the Caste Certificate Act, 2000 published the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis),

Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. Since we are here concerned with the claim of the petitioner belonging to the 'Chamar' Scheduled Caste, it is these Caste Certificate Rules, 2012, which require consideration.

8.3. Rules 17 (11) (i) & (ii) of the Caste Certificate Rules, 2012 in the present context being material are reproduced as under :

> *"17 (11) (i) In case of those cases which are refereed to Vigilance Cell upon considering the 'Report of Vigilance Cell', if the Scrutiny Committee is not satisfied about the claim of the applicant, it shall call upon the applicant to prove his Caste claim, by discharging his burden, as contemplated under section 8 of the Act, by issuing a notice in FORM-25 coupled with copy of 'Report of Vigilance Inquiry';*
>
> *(ii) After issuance of notice/intimation, if applicant requests, by way of written application, for copies of vigilance inquiry report or any other document or prays for adjournment, reasonable time for final hearing or for submitting written submission, it may be granted;*
>
> *(iii) After affording an opportunity of hearing, Scrutiny Committee shall,----"*

The narration of events above, would demonstrate that though Rule 17(11) (i) of the Caste Certificate Rules, 2012 mandates that upon considering the 'Report of Vigilance Cell', if the CSC is not satisfied about the claim of the applicant, it shall call upon the applicant to

prove his caste claim, by discharging his burden, as contemplated under Section 8 of the Caste Certificate Act, 2000, by issuing a notice in FORM-25 coupled with copy of 'Report of Vigilance Enquiry', which would require a reasonable period of time to be granted to the applicant, and Sub-Rule (ii), mandates that reasonable time for final hearing or for submitting written submission consequent to the vigilance enquiry report has to be granted, however, in view of the admitted position that the e-mail with the vigilance cell report was issued by the CSC on 27/03/2024 at 11:45 p.m. (pg.134), asking the petitioner to remain present before it on 28/03/2024 at 9:45 a.m. (pg.134), which communication is claimed to have been received by the petitioner on 28/03/2024 at 10:00 a.m. and the impugned decision is of 28/03/2024 itself, it is apparent that there is an absolute lack of a reasonable opportunity afforded by the CSC to the petitioner in the matter. The CSC, therefore, has miserably failed in its duty to comply with the requirement of sub-rule 11(i) & (ii) of Rule 17 of the Caste Certificate Rules, 2012, on account of which alone, the impugned decision cannot be sustained and is required to be quashed and set aside. The requirements of Rule 17 (11) (i) & (ii) of the Caste

Certificate Rules, 2012, are mandatory, as they direct providing of an opportunity to the petitioner, to prove her caste claim, in the manner as provided for in the Rules and denial of this opportunity, would clearly vitiate all that has been done, in absence thereof.

9. The entire action of the CSC, as is clearly apparent was not an independent action, as is the necessary mandate of law, but is an action, which could be said to be clearly motivated by extraneous considerations, which is apparent from the communication dated 22/03/2024 (pg.128) as addressed by the Under Secretary of the State of Maharashtra, to the CSC, Nagpur. A perusal of this communication (pg.128) indicates that the Under Secretary, had issued the communication on the complaint of respondent No.7, asking the CSC to take action. The Under Secretary, in fact, had no business to write to the CSC to do anything at all. That apart, it would be material to note that the complaint of respondent No.7, already stood filed by the CSC vide its decision dated 27/02/2024 (pg.159), by relying upon Section 7(2) of the Caste Certificate Act, 2000. The complaint, by respondent No.6, is dated 20/03/2024 (pg.104). The impugned decision of the CSC (pg.254), dated

28/03/2024, indicates that a copy of the same was also directed to be sent to respondent No.7, whose similar complaint already stood filed by the CSC on 27/02/2024 (pg.159). The impugned decision, further indicates that it is the letter of the Under-Secretary dated 22/03/2024, which is the basic reason for the CSC, to reopen the matter, as is indicated from what has been said by the CSC at page 6 of the impugned decision.

9.1. When hundreds of matters for deciding the validity are pending before the CSC from years together and at times, are not decided, in spite of the directions by this Court, leading to the filing of contempt petitions against the CSC, it is quite inexplicable as to what prompted the CSC, to complete the entire exercise of cancelling the validity granted twice earlier, to the petitioner within a period of a mere nine (9) days, that too by completing a vigilance enquiry. The petitioner, by the e-mail dated 27/03/2024 at 11:45 p.m. (pg.134), was asked to appear on 28/03/2024 at 9:45 a.m. which is not even a 24 hours notice. As the petitioner did not appear, the impugned decision which runs into 15 pages appears to have been passed by the CSC on the same day. There is no reason whatsoever, as to why the CSC could not wait for a reasonable

period of time, before passing the impugned decision, or for that matter grant a reasonable notice period.

9.2. It is also material to note that the scrutiny of the nomination form of the petitioner for the Ramtek Parliamentary Constituency was fixed on 28/03/2024 (pg.150). Respondent No.7, [not respondent No.6 at whose behest the impugned decision was taken by the CSC] filed an objection, to the nomination of the petitioner on the ground that the caste certificate of the petitioner was invalidated, which was accompanied with a copy of the order dated 28/03/2024, passed by the CSC. From a perusal of the order dated 28/03/2024, by the Returning Officer, it is apparent that the objection was raised sometime during the day, and the summary enquiry was fixed at 5:00 p.m. on the same day. The Research Officer, CSC was directed to remain present for the enquiry with certified copy of the decision of the CSC. At 5:00 p.m. the enquiry was conducted, in which the Research Officer of the CSC was present with the certified copy of the decision of the CSC, based upon which, the nomination of the petitioner was rejected by the Returning Officer by his decision dated 28/03/2024. If what Mr. Narnaware, learned counsel for the petitioner claims that the CSC,

had passed the decision at 11:00 a.m. of 28/03/2024, is correct, that would mean that in spite of the matter being posted on 28/03/2024 at 9:45 a.m. for the appearance of the petitioner, on account of non-appearance of the petitioner at that time, the CSC claims to have heard the complainant, the departmental officials and then passed a 15 page order, which was typed, corrected and signed and was out at 11:00 a.m. This would mean that the CSC did not even wait for the appearance of the petitioner on 28/03/2024 for any reasonable period of time, during the day itself and proceeded to pass the impugned decision, copy of which was then supplied to respondent No.7, who on its basis took an objection to the nomination of the petitioner before the Returning Officer on the same date, who, in turn relying upon the same, rejected the nomination. All this would clearly indicate that the entire decision was orchestrated with the sole intention to get the nomination of the petitioner rejected, which clearly appears to be at the behest of the Under Secretary and respondent No.7 and therefore, cannot be termed as an independent decision of the CSC. The above narration would also indicate that the decision of the CSC, is also not sustainable on this count too.

10. The need for a vigilance enquiry, realizing the pernicious practice of false caste certificates being utilized for the purpose of securing admission to educational institutions and public employment depriving genuine candidates of the benefits of reservation, was spelt out by the Hon'ble Apex Court in ***Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others (1994) 6 SCC 241***, in which the following directions were issued :

> *"13. 1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.*
> *2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.*
> *3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.*
> *4. All the State Governments shall constitute a committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has*

intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a Vigilance Cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste, etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. by the castes or tribes or tribal communities concerned, etc.

6. The Director concerned, on receipt of the report from the Vigilance Officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the Vigilance Officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to

him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

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

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

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

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

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

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie

against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal, etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

10.1. In ***Dayaram Vs. Sudhir Batham (2012) 1 SCC 333***, considering a challenge posed to the directions, as contained in ***Madhuri Patil Vs. Additional Commissioner, Tribal Development*** (supra), it was held the directions were to hold the field till such time an appropriate legislation does not take its place.

"17. The directions issued in Madhuri Patil [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] were towards furtherance of the constitutional rights of the Scheduled Castes/Scheduled Tribes. As the rights in favour of the Scheduled Castes and Scheduled Tribes are a part of legitimate and constitutionally accepted affirmative action, the directions given by this Court to ensure that only genuine members of the Scheduled Castes or Scheduled Tribes were afforded or extended the benefits, are necessarily inherent to

> *the enforcement of fundamental rights. In giving such directions, this Court neither rewrote the Constitution nor resorted to "judicial legislation". The judicial power was exercised to interpret the Constitution as a "living document" and enforce fundamental rights in an area where the will of the elected legislatures have not expressed themselves."*

10.2. The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 were enacted by the State of Maharashtra for the purpose of more effectively implementing the Caste Certificate Act, 2000 and the directions as contained in ***Madhuri Patil Vs.*** Additional ***Commissioner, Tribal Development*** (supra), and were amended in 2012, which amendment was brought into force w.e.f. 31/08/2012, which have been amended from time to time, thereafter too. Consequent to the enactment of the Caste Certificate Rules, 2012, the matter now, has to be tested on the anvil of these Rules.

10.3. The question whether in each and every case there is necessity of a vigilance enquiry, required to be directed is one, to which the provisions of the Caste Certificate Rules, 2012, itself, give an answer. The relevant provisions in this regard are Section 6 of the Caste Certificate Act, 2000 and Rules 12, 13, 17 (6), (7), (10) & (13) of the Caste Certificate Rules, 2012, which, for the sake of

ready reference are reproduced below :

> ***"Section 6. Verification of Caste Certificate by Scrutiny Committee.-*** *(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.*
>
> *(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.*
>
> *(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions who has not obtain such certificate.*
>
> *(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.*

Caste Certificate Rules, 2012

> ***Rule 12. Constitution of Vigilance Cell*** *.—(1) There shall be Vigilance Cell to assist each Scrutiny Committee in conducting the field inquiry under rule 17. The Vigilance Cell shall consist of,—*
>
> *(i) Deputy Superintendent of Police or equivalent;*
>
> *(ii) Police Inspectors ;*

(iii) Police Constables to assist the Police Inspectors.

(2) -----

(3) Vigilance Cell shall work under the control and supervision of concerned Caste Scrutiny Committee.

***13. Report of Vigilance Cell and Issues to be dealt with** — (l) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim, referred to it,—*

(a) to (e)……

(2) Notwithstanding anything contained in any provision of these rules,- -

(a) the Vigilance Cell shall not record concluding remark or opinion, since vigilance inquiry is meant for internal assistance to the Scrutiny Committee and adjudication of Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category status is exclusive domain of the Scrutiny Committee;

(b) finding recorded and opinion expressed, if any, by the Vigilance Officer shall not be binding on Scrutiny Committee nor could be used as evidence, in support of Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim.

*17. **Procedure of Scrutiny Committee** .—(1) On receipt of. application, the Scrutiny Committee shall ensure that the application and the information supplied therewith is complete in all respects and to carry out scrutiny of the application.*

(2) to (4)

(5) The Roznama of the Scrutiny committee shall be self evident as to what transpired on a particular day and it shall be signed by all the members of the Scrutiny Committee.

(6) If Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the form of Affidavit filed in consonance with Order 18 Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal is satisfied, about the genuineness of

Scheduled Caste, Scheduled Caste converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes, Other Backward Classes or Special Backward Category claim the Scrutiny Committee shall forthwith issue Validity Certificate in FORM-20 without enquiry by vigilance cell.

(7) If Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the form of Affidavit filed in consonance with Order 18 Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal , is of the opinion that the documents do not satisfy or conclusively prove the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category claim, the Scrutiny Committee by mentioning the same in the Roznama, shall refer such case to the Vigilance Cell for carrying out suitable inquiry, as is deemed fit, by the Scrutiny Committee:

Provided that, finding recorded by the Vigilance Cell shall not be binding on the Scrutiny Committee, as the vigilance inquiry is meant for internal assistance to the Scrutiny Committee. The Scrutiny Committee shall record its reasons for discarding the report of Vigilance Cell.

(8) to (12)……..

(13) If the Scrutiny Committee finds and concludes that the report of Vigilance Cell is false or unrealistic, it shall record the reason in decision and direct appropriate action as contemplated under section 14, read with section 11 and 12 of the Act and also recommend Departmental inquiry against such Vigilance Officer:

Provided that, an opportunity of being heard be granted to the concerned Vigilance Cell Officer prior to any direction for appropriate action. This hearing shall be independent to adjudication of Caste or Tribe claim."

Section 6 of the Caste Certificate Act, 2000, constitutes the CSC, and empowers it to verify the certificate issued by the Competent Authority and issue a validity as regards the same. Sub-section 4 of

Section 6 of the Caste Certificate Act, 2000, directs that the CSC shall follow such procedure for verification of the caste certificate, as may be prescribed.

10.4. The Vigilance Cell is constituted under Rule 12, sub-rule 1 of the Caste Certificate Rules, 2012, which mandates that its constitution is to assist the CSC, and sub-rule 3 of which mandates that it shall work under the control and supervision of the CSC. Sub-rule 2 (a) of Rule 13 mandates that the Vigilance Cell shall not record concluding remark or opinion, since the vigilance enquiry is meant for internal assistance to the CSC and adjudication of the category status is the exclusive domain of the CSC, which is also indicated in the proviso to Rule 11(7). Sub-rule 2(b) of Rule 13 further mandates that the finding recorded and opinion expressed, if any, [as sub-rule 2(a) prohibits the Vigilance Cell to do so,] shall not be binding upon the CSC nor could be used as evidence in support of category claim.

10.5. It is Rule 17 sub-rules 6 and 7 of the Caste Certificate Rules, 2012, which specifically deal with the position in this regard. A perusal of Rule 17(6) would indicate that if on appreciating the statement of the applicant/claimant as submitted in the relevant

Form on affidavit, as well as other evidence and documents, the CSC is satisfied about the genuineness of the claim, it shall forthwith issue validity certificate in Form-20, without enquiry by the vigilance. This would categorically point out that the vigilance enquiry is not mandatory, for the issuance of a validity certificate. Once the CSC is satisfied about the genuineness of the claim on the basis of documents placed before it, then in terms of the mandate of Rule 17(6), it has to issue a validity certificate.

10.6. The requirement of directing a vigilance enquiry, arises only when the CSC is not satisfied about the genuineness of the claim made by the applicant/claimant on the basis of the application and documents submitted along with it, as is the mandate of Rule 17(7) of the Caste Certificate Rules, 2012. It is, therefore, expected that the CSC, before it directs a vigilance enquiry, would record short reasons, as to why, it feels that a vigilance enquiry is necessary and then only direct one. The reasons for directing a Vigilance Cell enquiry have to be recorded in the Roznama, by mentioning the same, therein, as is the requirement of sub-rule 7 of Rule 17(7).

10.7. It is, thus, apparent that under the Caste Certificate Rules, 2012, the directing of a Vigilance Cell enquiry is not mandatory and

it is only when the CSC is not satisfied with the caste/tribe claim of an applicant on the basis of information contained in his application and documents submitted in support of the claim, that for short reasons to be recorded in the Roznama, a vigilance enquiry can be ordered.

10.8. The position that a vigilance enquiry is not mandatory or necessary in each and every case, has been laid down in a catena of judgments, and is illustrated by ***Mangesh Nivrutti Kashid*** (supra-SC), wherein it has been held as under :

> *"Requirement of the Vigilance Cell Report*
> ***28.*** *The second part of the challenge relates to the requirement of verification of the certificates by the Vigilance Cell. This was provided to be mandatory, in terms of the judgment in Madhuri Patil case [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] . The enormity of the problems faced by the High Court, through multifarious petitions arising qua the unverified issuance of such certificates, possibly persuaded the High Court to lay down stricter norms in this behalf. However, as implemented for the interregnum period in question, the input from the Vigilance Cell was obtained only selectively. Under the 2012 Rules also, the requirement is not mandatory, but wherever the Scrutiny Committee feels it "may" solicit a report of vigilance inquiry. We have, however, no hesitation to emphasise the importance of proper verification of such certificates to be issued, and the exercise of issuance of the certificates cannot be a casual one. The Scrutiny Committee constituted to issue the validity certificates must, thus, at the slightest doubt take the assistance of the Vigilance Cell to ensure that non-entitled persons do not get benefitted at the cost of entitled persons. We have no doubt*

that this is a process which will be so followed under the 2012 Rules."

In ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and Others 2023 SCC OnLine SC 326*** the following has been said in this regard :

"19. Sub-rule (2) of Rule 12 clearly provides that only if the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant, it shall forward the application to the Vigilance Cell for conducting the school, home and other enquiry. Therefore, in every case, as a matter of routine, the Scrutiny Committee cannot mechanically forward the application to Vigilance Cell for conducting an enquiry. When sub-rule (2) of Rule 12 contemplates that only if the Scrutiny Committee is not satisfied with the documents produced by the applicant that the case should be referred to Vigilance Cell, it follows that the Scrutiny Committee is required to pass an order recording brief reasons why it is not satisfied with the documents produced by the applicant. Before referring the case to the Vigilance Cell, application of mind to the material produced by the applicant is required and therefore, the application of mind must be reflected in the order sheets of the Scrutiny Committee."

This has been followed in ***Navneet Kaur Harbhajansing Kundles @ Navneet Kaur Ravi Rana*** (supra) wherein it has been held as under :

"12. A combined reading of the Sections of 2000 Act and Rules of 2012 Rules, makes it clear that a detailed procedure has been prescribed for the Scrutiny Committee to deal with the claim of an applicant seeking validation of caste certificate issued by the Competent Authority. The power to deal with such verification has been specifically vested with Scrutiny Committee and it falls within the exclusive domain of it in view of Rule 13(b) of 2012 Rules. For the purposes of verification, the Scrutiny Committee has all the powers of Civil Court while

> *trying a civil suit and it can further take internal assistance of Vigilance Cell for verification in those cases as and when needed by the Committee. It is pertinent here to note that, as per Rule 13(2)(b), the findings recorded, and opinion expressed by the Vigilance Cell shall not be binding on Scrutiny Committee and nor could be used in evidence for the purpose of claim. Further, Rule 17(6) provides that if the Scrutiny Committee upon appreciation of statement of applicant in prescribed format as well as other evidence and documents furnished along with it, is satisfied about the genuineness of same, then it shall forthwith issue the validity certificate in FORM-20 without enquiry by Vigilance Cell. In other words, the said Rule provides for subjective satisfaction of the Scrutiny Committee when a claim is made and does not mandate verification in each case by the Vigilance Cell. At this juncture, Section 7(2) of the 2000 Act also assumes significance. It fortifies the exclusive domain of Scrutiny Committee and deals with the finality of the orders passed by Scrutiny Committee under the 2000 Act stating that the orders passed by Scrutiny Committee shall be final and it shall not be open to challenge before any authority or Court except High Court under Article 226 of Constitution of India. The said language used in sub clause (2) clearly reflects the intention of legislature to ensure minimal interference with the orders of Scrutiny Committee."*

Thus, the view that in all cases there has to be a vigilance enquiry, is clearly not tenable and the CSC, if satisfied upon the basis of the documents placed before it, as to the caste claim of the applicant, can straightaway proceed to issue a validity.

11. The judgment in ***Mangesh Nivrutti Kashid*** (supra-HC), needs a closer scrutiny to understand under what circumstances it was passed. The learned Division Bench in ***Mangesh Nivrutti Kashid***

(supra-HC) was considering three sets of petitions in the background of advent of elections to Local self-Government in the State in February, 2012. As the need for having validity certificates under the Caste Certificate Act, 2000, was felt urgently, CSCs were constituted under the notification dated 30/07/2011, which Committees had issued validity certificates. The notification dated 30/07/2011 was questioned in several petitions. The first set of the petitions was of those petitioners, who intended to participate in the ensuing elections of the Local Government, even though they did not have caste validity certificates, and prayed for relaxation of the condition to produce validity certificate at the time of scrutiny. The second set of petitions related to those petitioners, whose caste certificates were invalidated by the CSCs and they sought to challenge the said decisions coupled with a direction to the Returning Officer to allow them to participate in the ensuing election. The third set of petitions related to those petitioners, who had challenged the caste validity certificates granted to the respondents on the ground that the said certificates were obtained by fraud with further prayer that the Election Commission should reject the nomination papers of such candidates. The learned Division Bench, upon enquiring with the

Assistant Government Pleader as to how validity certificates were issued in such a summary manner, without calling for the vigilance cell report, was informed that the CSCs specially constituted for the purpose of elections in past few months had granted several such validity certificates to thousands of persons without any enquiry at all, whereupon it came to the conclusion that such candidates may contest the elections on the basis of validity certificates issued in summary manner, and further the validity certificates so obtained could be used by the candidates for all other purposes as well and so also the relatives of each of such candidates could use them as evidence in furtherance of their claim of entitlement to the benefit of reservation policy, considering which, the following directions were issued :

> *"**55.** In the result we direct as under:*
> *(i) The Government Resolution dated 30-7-2011 is quashed and set aside.*
> *(ii) It is declared that the composition of the scrutiny committees constituted by the State of Maharashtra by the Government Resolution dated 30-7-2011 is not backed by law and is contrary to the judgment of the Apex Court in the case of Madhuri Patil v. Commr., Tribal Development, reported in (1997) 5 SCC 437 and the validity certificates issued by such committees will have no force of law and are void ab initio.*
> *(iii) It is declared that the validity certificates issued by the Scrutiny Committees without calling for the report from vigilance cell, being a mandatory requirement of law, cannot be considered as valid in the eyes of law and suffer from jurisdictional error*

which goes to the root.

(iv) We direct the State Government to ensure that all the original certificates issued by the specially constituted Scrutiny Committees under the Government Resolution dated 30-7-2011, are recovered from the respective persons and are destroyed forthwith. This shall be done within three months from today."

The judgment in ***Mangesh Nivrutti Kashid*** (supra-HC) was pronounced on 04/05/2012, and operation of the directions contained in paragraph No.55 of the judgment, as quoted above, was stayed for a period of ten weeks from the date of the judgment by the Bench which delivered it. What is necessary to note is that Special Leave Petitions were filed before the Hon'ble Apex Court, against the aforesaid judgment being Special Leave to Appeal (Civil) No(s).16728/2012 ***Mangesh Nivrutti Kashid*** (supra) in which while issuing notice on 03/07/2012, the stay granted by the High Court of its own judgment was continued. The stay was continued, even after leave was granted in Civil Appeal No.2723 of 2015, till its decision on 01/10/2019. This would make it apparent that the directions as contained in para 55 of ***Mangesh Nivrutti Kashid*** (supra-HC), never came into effect in view of the stay granted by the Court, which passed it and thereafter too, the stay having been continued by the Hon'ble Apex Court in ***Mangesh Nivrutti Kashid*** (supra-SC).

11.1. What is also necessary to consider is that the Hon'ble Apex Court in the challenge to ***Mangesh Nivrutti Kashid*** (supra-H C), noted the following position regarding the issuance of the validity certificates by different CSC as culled out by the learned Division Bench in ***Mangesh Nivrutti Kashid*** (supra-HC) :

PRAPATRA — B									
NECESSARY INFORMATION RELATING TO WRIT PETITION NO.853/2012 IN THE HIGH COURT, BOMBAY.									
Sr. No.	*Name of the Committee/District*	*Total number of validity certificates issued relating to election*	*Validity certificates verified by the Vigilance Cell*	*Validity certificates not verified by the Vigilance Cell*	*Number of candidates contesting the election to whom validity certificates are issued*	*Number of validity certificates stamped only for election purpose*	*The validity certificates in which decision is given in one day*	*The validity certificates in which decision is given in two days*	*The validity certificates in which decision is given in three or more days*
1	2	3	4	5	6	7	8	9	10
***									
	Total Maharashtra	36929	1427	35505	7664	4359	388	290	36251

This is what has been held in ***Mangesh Nivrutti Kashid*** (supra-SC) in that regard :

> *"17. The aforesaid judgment was assailed in this batch of appeals before us, and the operation of the impugned judgment was stayed vide order dated 30.7.2012. The result has been that*

these certificates, issued under the aforesaid circular, have continued to hold the field and the process followed has been as per the Act of 2000, read with the Rules of 2003.

20. In the course of hearing these appeals, what undisputedly emerged was that the window of period with which we are concerned is between the Notification being issued on 30.7.2011 and the Rules being notified on 31.8.2012. The Rules have not been challenged by any one, and hold the field. Thus, we are not really required to go into what had happened before the Notification came in, or after the Rules came in. We may also note that the challenge before us is in respect of only the certificates issued for the purposes of local self-body elections, as nobody from any other category has approached the Court. Thus, as to whether the Rules of 2003, applicable to the ST category, should have been applied to all the categories on an 'analogous' principle, does not require our adjudication. Neither the certificates issued post the notification of the Rules of 2012 require our adjudication. It is only the interregnum period that we are concerned with. However, to deal with this interim period, certain broader principles have to be discussed.

22. We may also note that there were three kinds of writ petitions filed before the High Court. The first set of writ petitioners were those who intended to participate in the ensuing elections of local Government, even though they did not, at that stage, have a caste validity certificate. The prayer was for relaxation of the condition to produce the caste validity certificate at the time of scrutiny, which had been made mandatory (though that certificate once issued was to remain valid for all purposes). The second set of writ petitioners were those whose caste certificates were invalidated by the Scrutiny Committees, and they sought to challenge the decision with a direction to the Returning Officer to allow them to participate in the ensuing elections. The third set of petitioners were those who challenged the Caste Validity Certificates granted to the candidates who were party respondents in both petitions, on the ground that the said certificates were obtained by fraud, with a prayer for direction to the Election Commission to reject the nomination papers of such candidates. The impugned judgment has been rendered in the context of the third set of petitioners.

> *The certificates in question were alleged to have been obtained without vigilance reports and within a very short period of time, as would be apparent from the chart aforesaid.*
>
> *23._____ The challenge before us is not based on any of these parameters, but is simply on the ground that the notification is not in exact conformity with the directions issued by this Court in the* ***Kumari Madhuri Patil***$_2$ *case. Such a challenge would not be sustainable in view of the settled principles of examining such subordinate legislation/statutory notifications. Thus, once the legislature lays down a legislative policy, and confers discretion upon the administrative agency for the execution of such policy, it is up to the agency to work out the details within the framework of the policy."*

So far as the requirement of the vigilance cell report, it opined in para 27 (para 28 of SCC) already quoted above, that under the Caste Certificate Rules, 2012 also, the requirement was not mandatory, but wherever the Scrutiny Committee felt, it "may" solicit a report of vigilance enquiry but expressed that it had no hesitation to emphasize the importance of proper verification of such certificates to be issued, and that the exercise of issuance of the certificates cannot be a casual one. It expressed concern about the time-frame within which the validities were issued by the CSC and held as under :

> *"29. The matter, however, cannot rest at this because the existence of power and its exercise are two different aspects. The view adopted by the High Court, appears to us, to have been in the context of the manner of exercise carried out by the Scrutiny Committee in the given situation, and the casual*

manner in which the assistance of Vigilance Cell was sought (or rather not sought). On those aspects, we are in complete agreement with the view of the High Court. The exercise carried out in the interregnum period, between 30-7-2011 (when the notification was issued) and 31-8-2012 (when the 2012 Rules were notified) leaves us, as the High Court, with grave doubt, and we are of the view that no proper exercise could have been carried out, or was carried out given the time-frame within which the caste certificates were issued. The objective was clear i.e. to somehow facilitate as many people as possible, as soon as possible, to contest the elections.

30. The troublesome aspect is that the validity certificates are not only valid for that election, but also for subsequent elections. They are not only valid for educational purposes (except for some cases so restricted), but also for all other purposes. These validity certificates can possibly become the basis for issuance of further certificates to the legal heirs. Thus, we have no doubt that the exercise so undertaken cannot be upheld and has to be quashed with the direction to carry out the aforesaid exercise afresh.

31. The further development, by the enactment of the 2012 Rules is that the said mechanism is now available within the enacted Rules, itself. Even the contesting respondents could not seriously dispute that the proper methodology, now, would be for a fresh verification exercise to be carried out under the 2012 Rules. The learned counsel for the State Government could also not seriously dispute this exercise to be undertaken under the 2012 Rules, but only expressed concerns about the certificates already having been issued and the complication which would be created by forthwith withdrawal of those certificates.

32. We do appreciate the problem aforesaid and are, thus, of the view that the fresh exercise has to be undertaken within a period of six (6) months from today i.e. on or before 31-3-2020. Till this exercise is completed, the existing certificates issued for the interregnum period would hold good. The exercise would have to be undertaken in respect of all the certificates, except those cases where the validity certificate was issued after verification by the Vigilance Cell. We may, however, hasten to add that, in view of the case pointed out to us, where the Vigilance Cell opined otherwise and yet a caste validity

> *certificate has been issued, the exercise may be carried out afresh. Thus, wherever there is an adverse report of the Vigilance Cell and yet caste validity certificate has been issued the exercise has to be carried out afresh. It may be added that those, whose caste certificates were rejected by the Caste Scrutiny Committee, without any vigilance inquiry, may be given the right to appeal against such rejection, as per Rule 7 of the 2012 Rules.*
>
> *34. We are conscious of the aforesaid fact. However, it is impractical to have all the affected parties before us. Different groups in representative capacities are before us. In terms of the impugned order [Mangesh Nivrutti Kashid v. District Collector, 2012 SCC OnLine Bom 690 : (2012) 5 Mah LJ 473], all the original certificates issued by the specially constituted Scrutiny Committees under the Government Resolution dated 30-7-2011 were to be recovered from the respective persons and were to be destroyed forthwith for which three months' time was granted. We have, in fact while setting aside the impugned order [Mangesh Nivrutti Kashid v. District Collector, 2012 SCC OnLine Bom 690 : (2012) 5 Mah LJ 473] on the question of law, directed only reverification of the certificates as to whether they are in accordance with law on account of the doubts cast over them, as per what we have set out aforesaid. The stand of the aggrieved parties by the impugned judgment was, in fact, represented by the appellant before us. Moreover, at the time of the fresh exercise of the validity certificate being issued, naturally the persons who have been issued these certificates would be issued notice. In our view that would suffice and the aforesaid directions are also necessary to do complete justice inter se the parties, for which we have the benefit of Article 142 of the Constitution. It will be for the Caste Scrutiny Committee to carry out the aforesaid exercise, while notifying the parties concerned, through appropriate public notices in this behalf. Directions we have now issued would ensure the objectives of the 2000 Act i.e. issuance of certificates only to entitled persons, through a proper exercise, with proper assistance from the Vigilance Cell."*

Thus, though ***Mangesh Nivrutti Kashid*** (supra-SC) set aside the judgment of the learned Division Bench in ***Mangesh Nivrutti Kashid***

(supra-HC), it has expressed its agreement with the finding of the Division Bench, about the manner in which the validities were issued and thus it has also issued directions to carry out the exercise of issuance of the validity certificates afresh within a period of six months from 31/03/2020.

What ***Mangesh Nivrutti Kashid*** (supra-SC) records is that the issuance of the validity has to be in consonance with the provisions of the Caste Certificate Rules, 2012, and in case it is felt by the CSC upon a consideration of the documents submitted to it, direct a vigilance cell enquiry. ***Mangesh Nivrutti Kashid*** (supra-SC) was decided on 01/10/2019, consequent to which, validity was granted by the CSC to the petitioner on 17/02/2020 (pg.165).

12. It is necessary to note what has been recorded in the certificate dated 20/01/2012, by which a validity certificate was issued to the petitioner :

"GOVERNMENT OF MAHARASHTRA
Social Justice and Special Assistance Department
CERTIFICATE OF CASTE VALIDITY
Read : (1) Maharashtra SC, ST, DT (VJ), NT, OBC and SBC (Regulation of Issuance and Verification of) Caste Certification Act, 2000 (Ac No.XXIII of 2001)
(2) Government of Maharashtra social Justice Special Assistance Department GR No.CBC-12/2010/CR. 193/Mavak-s,Dated 14/5/2010

(3) TAHSILDAR Parseoni

DISTRICT CASTE VERIFICATION COMMITTEE Nagpur District Nagpur (MAHARASHTRA)

Committee Decision No./CVN/ELE/1678/11 Dated 20 JAN 2012

WHEREAS, an application dated _____From Shri/Smt./Kumari REENA SOMRAJ SONEKAR r/o KHARSOLI Taluka_____District NAGPUR along with the documents was received by the Committee for verification of Caste Certificate of Scheduled Castes/Vimukta Jati-A/Nomadic Tribe/B/C/D/ Other Backward Class/Special Backward Class and the same was placed before the said committee in the meeting held on 19 JAN 2012 AND WHEREAS, in accordance with the powers conferred on it under the Act mentioned in above preamble the committee has, on the basis of the documents produced before it, verified and scrutinized the said caste certificate/claim.

NOW, THEREFORE, the committee hereby certifies that the caste claim is found to be correct and the Caste Certificate bearing No.369/MRC-81/2007-08 Dated 12/12/2007 issued by the Executive Magistrate/Dy. Collector/Sub-Divisional Officer KATOL District NAGPUR certifying that Shri/Smt./Kumari REENA SOMRAJ SONEKAR r/o KHARSOLI district NAGPUR Belongs to CHAMBHAR is found to be VALID.

SC

Member-Secretary
District Caste Verification Committee
Nagpur District Nagpur"

12.1. The second validity certificate dated 17/02/2020 (pg.165), records the following position :

"GOVERNMENT OF MAHARASHTRA
Social Justice and Special Assistance Department
CERTIFICATE OF VALIDITY
[Rules 17(6), 17(10) and 17(11)(iii)(a)]
No. A 2371711

CASTE CERTIFICATE SCRUTINY COMMITTEE
District Caste Certificate Scrutiny Committee, Nagpur

*Committee Decision No. **SC/ELE/368/2019**, dated **17.02.2020***

*WHEREAS, an application of **Reena Somraj Sonekar** dated **10.12.2019** along with the documents was received by the Scrutiny Committee for verification of Caste Certificate of **Scheduled Caste** and the same was placed before the said Committee in the meeting held on **14.02.2020.***

AND WHEREAS in accordance with the powers conferred on it under Maharashtra Scheduled Caste, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Category (Regulation of Issuance and Verification of) Castes Certificate Act, 2000 (Mah. XXIII of 2001); Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012, the Committee on the basis of the documents and evidence produced before it verified and scrutinised the said Caste Certificate/Claim.

*NOW, THEREFORE, the Committee hereby certifies that caste claim is found to be correct and the caste certificate bearing No.**369/MRC-81/2007-2008** dated **12.12.2007** issued by the **Sub-Divisional Officer, Katol** District **Nagpur** certifying that **Reena Somraj Sonekar** belongs to **Chambhar (11)** Caste/Tribe is found to be VALID.*

(R. D. Atram)
Member
(Dy. Commissioner Social Welfare)
Caste Certificate Scrutiny Committee.
District Caste Certificate Scrutiny Committee, Nagpur"

12.2. The above would clearly indicate that two CSCs, were satisfied with the genuineness of the claim as made by the petitioner, of belonging to the 'Chambhar', Scheduled Caste, on the basis of the application and documents filed along with it.

12.3. In fact, it is also material to note that the second certificate dated 17/02/2020 (pg.165) was given to the petitioner, consequent to the judgment of the Hon'ble Supreme Court in the case of ***Mangesh Nivrutti Kashid*** (supra-SC), which came to be decided on 01/10/2019.

12.4. Thus if, even after the judgment in ***Mangesh Nivrutti Kashid*** (supra-SC), the CSC finds the claim of the petitioner to be genuine, then there was no reason whatsoever, that the matter was required to be reopened. The CSC is a Statutory Body created under Section 6 of the Caste Certificate Act, 2000, and performs quasi-judicial functions of verifying the caste/tribe claim made by an applicant and then grants validity, which is accepted by all Government Departments/Educational Institutions and thus has a great responsibility to act in a fair, reasonable and independent manner.

13. What is also necessary to consider is that on the complaint filed by respondent No.7, with the CSC, regarding the validity granted to the petitioner, on a similar set of allegations, that the validity granted to the petitioner was on the basis of false and

fabricated documents, the CSC, by its order dated 27/02/2024 (pg. 159) had found that the validity granted on 17/02/2020, by the then CSC was in pursuance to the directions as issued by the Hon'ble Apex Court in Civil Appeal No.2723/2015 [***Mangesh Nivrutti Kashid*** (supra-SC)] and therefore, any challenge to the same was not tenable before the CSC and ought to be raised before this Court under Article 226 of the Constitution of India. There is no reason as to why the same course of action was not followed in respect of the complaint filed by respondent No.6. The impugned order in this context is totally silent and does not assign any reason as to why a similar course of action could not have been taken by it in respect of the complaint by respondent No.6. This would clearly indicate the double standards being adopted by the CSC in dealing with identical complaints before it. The entire conduct of the CSC is clearly deprecating and we do so record it to be so and such conduct cannot be countenanced in law.

REVIEW

14. Review, is a power conferred to rectify an error of fact or law apparent on the face of the record. If a judgment or order has been rendered on an erroneous assumption, in ignorance of an

essential fact or piece of evidence and its perpetuation would result in a miscarriage of justice, the Courts and quasi-judicial authorities would be bound to correct and rectify that decision or order. The mistake or error must be established to be glaring, patent, substantial and of a compelling character. The mistake must be found to be one that goes to the very root and foundation of the judgment or order sought to be reviewed. There cannot be two opinions with the proposition that the power of review is a creature of the Statute and if the concerned Statute, does not confer any such power upon an authority exercising jurisdiction, then such power of review cannot be held to be available to such authority. There is no inherent power of review. This is amply illustrated by what has been held in ***Patel Narshi Thakershi and others Vs. Shri Pradyumansinghji Arjunsinghji, 1971 (3) SCC 844***, which holds that that the power to review is not an inherent power, it must be conferred by law either specifically or by necessary implication [see : ***Shri Ram Sahu (Dead) Through Legal Representatives and others Vs. Vinod Kumar Rawat and others, (2021) 13 SCC 1*** ; ***Lily Thomas and others Vs. Union of India and others, (2000) 6 SCC 224*** and ***Araine Orgachem Pvt. Ltd., Mumbai and others Vs. Wyeth Employees Union, Mumbai and***

others, 2018 SCC OnLine Bom 15945]. No review is available upon a change or reversal of a proposition of law by a Superior Court or by a Larger Bench of this Court overruling its earlier exposition of law whereon the judgment/order under review was based [see : *Government of NCT of Delhi through its Secretary, Land and Building Department and Another Vs. K.L. Rathi Steels Limited and Others*, 2024 SCC OnLine SC 1090].

14.1. The power of review permits of being construed in two senses : (1) Procedural Review and (2) Substantial Review or Review on merits.

14.2. Procedural law is the law establishing the rules of the Courts of law, setting forth the steps that must be followed to prosecute or defend a case. Procedural laws sets forth the manner and methods by which a substantive right under the law is to be enforced in the Court of law. While most substantive law is set out in statutes, procedural laws are usually set out in Rules, like the Rules of Civil Procedure, or the Rules of Criminal Procedure, the Evidence Act etc., which govern the procedure to be followed in Courts for the enforcement of the substantial law, and in the present case the Caste Certificate Rules, 2012. Not all violation of procedural can give rise

to a plea for procedural review. Procedural review would be permissible only in cases where it is *prima facie* demonstrable that a procedure which materially affects the rights of a party to effective prosecution or defence has been bypassed or not followed which causes prejudice to the party. In ***State of Uttar Pradesh Vs. Sudhir Kumar Singh and others, (2021) 19 SCC 706*** it has been held that mere violation of the principles of natural justice may not be enough, but prejudice which materially affect the right of a party, adversely has to be demonstrated. Examples of procedural review could be (a) matter proceeding in spite of non-service of notice upon a party; (b) non-posting the matter for evidence of a party, which deprives it of the opportunity of leading evidence [in cases where leading of evidence is statutorily permissible] and (c) not affording an opportunity to a party which is statutorily mandated, etc.

14.3. The Hon'ble Apex Court in ***Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others, 1980 (supp) SCC 420***, in this context has held as under :

> *"The expression 'review' is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that*

> *the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal. {Para 13}."*

14.4. What is meant by a procedural review has been very lucidly explained in ***Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. and another (2005) 13 SCC 777*** by following ***Grindlays Bank Ltd.*** (supra):

> ***"19.*** *Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no*

> *fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420 : 1981 SCC (L&S) 309] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."*

Kapra Mazdoor Ekta Union (supra) also explains that a substantial review or a review on merits, means that a judgment rendered on merits by a judicial or quasi-judicial Court/authority is sought to be corrected on merits. This would mean a review based upon the principles, as contained in Order 47 Rule 1 of CPC. Thus, whereas a procedural review is not concerned with the merits of the decision, a substantial review is only concerned with the merits of the decision.

14.5. In ***Abhijit Suryakant Thakar*** (supra) it has been held that the CSC has no power of review.

14.6. The only repository of power in the CSC is Section 6 of the Caste Certificate Act, 2000 under which it can validate the caste/ tribe certificate issued by the Competent Authority in favour of a

person; Section 7(1) under which it can confiscate and cancel such 'caste certificate' issued by the 'Competent Authority' and Section 10 empowering it to withdraw benefits received by a person, whose caste certificate has been cancelled. There is no other power vested in the CSC in the Caste Certificate Act, 2000, other than the above.

14.7. Section 7(1) of the Caste Certificate Act, 2000, reads as under :

> *"7. Confiscation and cancellation of false Caste Certificate.- (1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order, cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.*
>
> *(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India."*

A perusal of Section 7(1) would therefore indicate that the power to confiscate and cancel, conferred upon the CSC, is in respect of a

'caste certificate', which could only mean the 'caste certificate' as defined in Section 2(a) as issued under Section 4(1) by the 'Competent Authority' as defined in Section 2(b), and cannot be inferred to be in respect of a validity issued by the CSC in respect of a Caste/Tribe Certificate, as the CSC while validating a 'caste/tribe certificate', does not issue the same but tests it's genuineness on the basis of documents placed before it, in support of the claim and upon being satisfied holds that the certificate issued by the Competent Authority is valid. In case the CSC is not satisfied about the genuineness of the certificate on the basis of documents placed before it, then it will have to record short reasons for not doing so, and then refer the matter to the Vigilance Cell for an enquiry and depending upon the report of the enquiry made, if it accepts it, hold the certificate to be genuine and thus grant a validity, and in case it does not accept the enquiry report, for the reasons to be recorded, pass such orders as it may deem fit, including declining to grant validity to the certificate issued by the Competent Authority. Thus, Section 7(1) of the Caste Certificate Act, 2000, cannot be held to empower the CSC to confiscate and cancel a caste certificate

validated by the CSC in exercise of the powers conferred under Section 6 of the Caste Certificate Act, 2000.

14.8. Section 10 of the Caste Certificate Act, 2000 when it speaks about withdrawal of benefits, also speaks so in reference to a person producing a false 'Caste Certificate', which has been cancelled by the Scrutiny Committee. This is also what is indicated by Sections 11 and 13 of the Caste Certificate Act, 2000, when they provide for offences and penalties, which also are in relation to obtaining a false 'Caste Certificate' by furnishing false information or filing false statement or documents or by any other fraudulent means and do not relate to a validity having been issued by the CSC.

14.9. Thus, Section 7(1) and Section 10 of the Caste Certificate Act, 2000, cannot be held to empower the CSC to confiscate and cancel a caste certificate validated by the CSC in exercise of the powers conferred under Section 6 of the Caste Certificate Act, 2000.

14.10. This being the position as spelt out from the provisions of the Caste Certificate Act, 2000, then the power of review being a creature of Statute, cannot be inferred to have been conferred upon the CSC, in absence of any provision in that regard in the Statute and since there is no such provision in the Caste Certificate Act,

2000, the CSC will have to be held not to possess any power of review.

RECALL

15. That takes us to the ubiquitous plea that the CSC or for that matter every Court, quasi-judicial body or any body exercising judicial function, has a power of recall in case of a fraud being practiced upon it in the matter of invoking its jurisdiction and having impressed upon it to have passed an order based upon such fraud.

15.1. Fraud, is an anathema to the rule of law and vitiates everything [see : ***S.P. Chengalvaraya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs. and others (1994)1 SCC 1*** and ***Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through Legal Representatives and others (2019) 14 SCC 449***] and a person having obtained any benefit by having practiced fraud, cannot be permitted to retain or enjoy such benefit.

15.2. When a fraud is practiced upon the Court or a body exercising quasi-judicial power, it is mislead into passing the order on account of the fraud practiced upon it.

15.3. '*Ex debito justitiae*', is a Latin term, which means 'from or as a debt of justice' and is an obligation of justice as a matter of

right, and means, that no one should suffer because of mistakes of Courts. This principle would equally be applicable to judicial/quasi-judicial bodies/authorities for the reason that they are also equally enjoined with the delivery of justice, where they are so empowered under the Statute by which they have been created. This has been recognized in ***Rupa Ashok Hurra Vs. Ashok Hurra*** **and another (2002) 4 SCC 388**, wherein in the context of entertaining a curative petition, the Hon'ble Apex Court while considering the principle, culled out the parameters, in which the same could be exercised in the following words :

> ***"51.*** *Nevertheless, we think that a petitioner is entitled to relief* ***ex debito justitiae*** *if he establishes (1) violation of the principles of natural justice in that he was not a party to the lis but the judgment adversely affected his interests or, if he was a party to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice, and (2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner."*

The principle has been considered recently in ***Government of NCT of Delhi through its Secretary, Land and Building Department and Another Vs. K.L. Rathi Steels Limited and Others, 2024 SCC OnLine SC 1090***, by considering ***A.R. Antulay Vs. R.S. Nayak and another,*** **(1988) 2 SCC 602** which has been explained in the following words :

"94. A superior court, in exercise of its inherent power, is authorized to do such justice that the cause before it demands. Upon satisfaction being reached by a court that a mistake has been committed by it, which is gross and palpable, it is not the law that the mistake has to be corrected by exercising the power of review only. Such power can be exercised, only if the person aggrieved by the order or decree applies therefor. On its terms, section 114 of the CPC read with Order XLVII thereof does not conceive of a suo motu power of review being exercised by the court. The words "court on its own motion" are absent in the statutory provision. However, once the court is satisfied that a mistake committed by it needs to be rectified, it is always open to exercise the inherent powers to achieve the desired result. As has been held by the Constitution Bench in A.R. Antulay v. R.S. Nayak[45], an order of court - be it judicial or administrative - which is made per incuriam or in violation of certain Constitutional limitations or in derogation of principles of natural justice can always be remedied by the court ex debito justitiae. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. After all, "to err is human" is the oft-quoted saying and courts including the apex court are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority; perhaps, it would enhance both. On the other hand, when it involves invocation of the power of review and such power is traceable in a statute, which also has provisions regulating the exercise of the review power, it has to be held that the power of review is not an inherent power. That power of review is not an inherent power has been held in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji[46]. If a power of review is statutorily conferred, it would be inappropriate, nay incompetent, for the court exercising review power to travel beyond the contours of the provision conferring the very power. A statutorily conferred power to review is not to be confused with the inherent power of the court to recall any order. The said power inheres in every court to prevent miscarriage of justice or when a fraud has been committed on court or to correct grave and palpable errors."

Thus, every Court or quasi-judicial authority, will have to be held to possess, the power to correct its own mistake, which has led to the passing of the decision, if it is satisfied that the decision is rendered upon such mistake, as the same cannot be permitted to prejudice the rights of a party which it has in law, based upon the principle of '*ex debito justitiae*' or if it found that the decision is based upon a fraud practiced upon it by a party to the *lis*.

15.4. Even otherwise, a decision obtained by practicing fraud upon the Court or the quasi-judicial authority, would be a decision, which can always be recalled and revoked by such Court or quasi-judicial authority, if such fraud is established and attributed to the party in whose favour such decision has been given. Reliance for this can be placed on ***United India Insurance Co. Ltd. Vs. Rajendra Singh and others (2000) 3 SCC 581***, which holds that no Court or Tribunal is powerless to recall its order if it is convinced that the order was obtained by fraud or misrepresentation. When it is established that a fraud has been practiced upon a Court or quasi-judicial authority, in obtaining a decision, it cannot be heard to be said that such Court or quasi-judicial authority, would not have the power and authority to undo the wrong and is helpless in that regard. On the contrary, it

becomes an obligation of such Court or quasi-judicial authority, to undo, the wrong, upon the decision being found to have been tainted with fraud in the obtaining of it, and recall it by nullifying the effect of such decision or benefit accrued to the party instrumental in practicing such fraud, for to hold that such power of recall does not exist, would have the effect of continuing such fraud, in spite of having found it to be established and perpetrating injustice, which cannot be countenanced. In ***Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550,*** while considering a plea of fraud having been practiced upon the National Consumer Commission, this is what has been said in this regard:

> *"22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.*
>
> *23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled*

> *by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See: Benoy Krishna Mukerjee v. Mohanlal Goenka [AIR 1950 Cal 287] ; Gajanand Sha v. Dayanand Thakur [AIR 1943 Pat 127 : ILR 21 Pat 838] ; Krishnakumar v. Jawand Singh [AIR 1947 Nag 236 : ILR 1947 Nag 190] ; Devendra Nath Sarkar v. Ram Rachpal Singh [ILR (1926) 1 Luck 341 : AIR 1926 Oudh 315] ; Saiyed Mohd. Raza v. Ram Saroop [ILR (1929) 4 Luck 562 : AIR 1929 Oudh 385 (FB)] ; Bankey Behari Lal v. Abdul Rahman [ILR (1932) 7 Luck 350 : AIR 1932 Oudh 63] ; Lekshmi Amma Chacki Amma v. Mammen Mammen [1955 Ker LT 459] .) The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar [AIR 1954 Pat 450]) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh [AIR 1958 Pat 618 : 1958 BLJR 651] ; Tara Bai v. V.S. Krishnaswamy Rao [AIR 1985 Kant 270 : ILR 1985 Kant 2930].)"*

While noting that the Consumer Protection Act, 1986, conferred power upon the Commission, in view of sub-section (4) of Section 13 of the Consumer Protection Act, for the summoning and enforcing attendance of witnesses, discovery, production, reception of evidence on affidavits, issuing commission for examination of witnesses, it held that the plea of fraud could also be decided on the basis of the admitted material on record :

> *"31. The Privy Council in Satish Chandra Chatterji v. Kumar Satish Kantha Roy [AIR 1923 PC 73 : (1923-24) 28 CWN 327] laid down as under:*
> *"Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them*

> *— proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dextrous knave would escape."*
>
> *32. The above principle will apply not only to courts of law but also to statutory tribunals which, like the Commission, are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on affidavits. The Commission under the Consumer Protection Act, 1986 decides the dispute by following the procedure indicated in Section 22 read with Section 13(4) and (5) of the Act."*

15.5. In ***Sukh Sagar Medical College and Hospital Vs. State of Madhya Pradesh and others (2021) 13 SCC 587*** (paras 20 & 21) it has been held, that a quasi-judicial authority is empowered to withdraw its order if it is obtained by fraud or no enquiry is conducted.

15.6. It is, thus, apparent that it would also be open for establishing the plea of fraud, to exercise all the powers which are vested in the Courts or quasi-judicial/statutory authorities, of summoning and enforcing attendance of witnesses, discovery, production, reception of evidence on affidavits, issuing commission for examination of witnesses. These powers are vested in the CSC by

virtue of Section 9 of the Caste Certificate Act, 2000.

15.7. The power of the CSC, to recall an order/decision obtained by practicing fraud upon it, has also been recognized by a series of decisions, which would be apparent from the following judgments relied upon by Dr. Saraf, the learned Advocate General :

(i) In ***Sangita Sharad Kolse*** (supra) in which a plea that an order validating caste certificate obtained by suppression and fraud was under consideration, a learned Division Bench of this Court held that the CSC had inherent powers to recall it. While noting the distinction between a procedural review and a review on merits, it was held that fraud would confer inherent jurisdiction upon the CSC to recall its decision. This has been followed in ***Rajesh Ramesh Gaikwad*** (supra), Special Leave Petition No.17107/2000 against which, was dismissed as withdrawn, on 29/07/2019.

(ii) In ***Devendra Khedgikar*** (supra) which was prior to the Caste Certificate Rules, 2012, it has been held that the CSC possesses power of recall only in case of element of misrepresentation or concealment, and interference is to be confined to such misrepresentation or fraud, which has been followed in ***Jyoti***

Sheshrao Mupde (supra-HC) Special Leave Petition (C) No.1954/2009 against which, has been dismissed on 25/10/2013 and ***Sandeep Manoharrao Waysal*** (supra) which holds that once complaint is lodged before the CSC, it is for the CSC to look into the matter whether validity is obtained by practicing fraud. Both ***Devendra Khedgiker*** (supra) and ***Jyoti Sheshrao Mupde*** (supra) have been followed in ***Vishnu Rajaram Thakar*** (supra).

(iii) ***Apoorva Nichale*** (supra) also holds that CSC may grant, validity without calling vigilance cell report, if blood relative of applicant belongs to same caste is granted validity. However, if it is found that earlier caste certificate was obtained by fraud, the Committee can refuse to grant Validity.

(iv) In ***Rajeshwar Bone*** (supra-SC), the Hon'ble Apex Court, while considering the plea of the validity having been obtained by practicing fraud, has held as under :

> ***"7.*** *The appellant challenged the aforesaid order dated 24-2-2012 passed by the Scrutiny Committee by filing a writ petition being Writ Petition No. 5160 of 2012 in the High Court of Bombay at Aurangabad Bench. The High Court after hearing the appellant, dismissed [Rajeshwar Baburao Bone v. State of Maharashtra, WP No. 5160 of 2012, order dated 17-12-2013 (Bom)] the writ petition and observed as under:*
>
> *"In our opinion, the petitioner has wilfully misled the Scrutiny Committee for securing the validity certificate wrongfully. The*

petitioner is guilty of making false statements on oath before the Scrutiny Committee. As a result of misrepresentation made by the petitioner earlier, the Scrutiny Committee had issued validity certificate in his favour. However, after realising the fraudulent act of the petitioner, the Committee proceeded to recall its earlier order. Since the petitioner has played fraud by filing false affidavits on record before the Committee, the Committee was justified in recalling its earlier order of granting validity certificate in favour of the petitioner. It is well established that in the event of occurrence of fraud, the Scrutiny Committee can recall its earlier order even in the absence of specific provision enabling the Committee to exercise powers of review."

11. In the instant case, the appellant claimed to be a member of the Scheduled Tribe on the basis of false statements and false affidavits submitted by him. At the same time indisputably in the year 1991, the appellant got employment on the basis of his claim to be a member of the Scheduled Tribe. After 18 years of his employment, the matter was referred to a Scrutiny Committee for verification. On consideration of all the documents, the enquiry conducted by the vigilance cell, a validity certificate was issued by the Scrutiny Committee on 19-6-2010. However the matter was reconsidered by the Scrutiny Committee for the reason that the tribe certificate issued in favour of his brother was invalidated by the Committee in 2004 and the order attained finality up to this Court. The Scrutiny Committee after giving an opportunity recalled its earlier order dated 19-6-2010, whereby a validity certificate was issued in favour of the appellant."

(v) In ***Shakila Begum Faiyyazuddin*** (supra) the learned Division Bench, while considering a plea of the validity having obtained by fraud, on the ground that the first vigilance cell report was without verification of documents, held that in such cases CSC can revisit the order.

(vi) In ***Farha Shaha*** (supra) another Division Bench of this Court held that the CSC can recall an order obtained by misrepresentation of facts or fraud and as such a power is inherent in CSC to decide or adjudicate a dispute and pass an order.

(vii) In ***J. Chitra Vs. District Collector and Chairman State Level Vigilance Committee, Tamil Nadu and others (2021) 9 SCC 811*** the Hon'ble Apex Court held that the reopening of enquiry into caste certificate can only be done, if it is vitiated by fraud or issued without proper enquiry, which has been followed in ***Balaji Vs. State of Maharashtra*** (supra) by also considering ***Jyoti Mupde*** (supra) and ***Rajeshwar Bone*** (supra).

(viii) In ***Raju Ramsingh Vasave*** (supra) (paras 26 to 28) the Hon'ble Apex Court has gone even a step further by holding that if while granting certificate to a member of a family vital evidence has been ignored, it would be open for the CSC to arrive at a different finding.

15.8. ***Rakesh Umbraje*** (supra) on which reliance has been placed by Mr. Narnaware, learned counsel for the petitioner was a case in which on the basis of an earlier judgment of this Court in *Anshuman Mahesh Umbarje Vs. State of Maharashtra and others*

(Writ Petition No.13103 of 2022 decided on 11 November 2022), as considered by a Coordinate Bench of this Court, the caste claim of petitioner Anshuman as 'Koli-Mahadev' was invalidated. The father of Anshuman, however, was issued a caste validity certificate under the orders of this Court in Writ Petition No.2386/1994. This order had attained finality. The other relatives of the petitioner were also issued with the validity under the orders of this Court. Based on the validity certificates of the father, granted under the orders of this Court, the Coordinate Bench, by its order dated 11/11/2022, had directed the Scrutiny Committee to issue validity certificate to the petitioner. However, there was a passing reference in the order that there appeared to be some discrepancies in the genealogy of the relatives of the petitioner Anshuman. In the entire order passed by this Court, the Coordinate Bench never directed/ordered to reopen the caste validity proceedings of the petitioners. The CSC was found to have misconstrued the order in such a way as if the Court directed the reopening of the proceedings of the validity certificates issued to the petitioners.

It has thus been held that the scheme of the Caste Certificate Act, 2000, as noticed from the provisions, revealed that it

would be the exclusive jurisdiction of the CSC to consider the application for a caste validity certificate, as provided for in Section 6. Sub-section (2) of Section 7 of the Caste Certificate Act, 2000 clearly provides that the orders passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution of India. Thus, against any order passed by the CSC, the remedy for a person aggrieved is only to approach the High Court by invoking its jurisdiction under Article 226 of the Constitution of India and in no other manner. What is however material to note is that whether the CSC has a power to recall in case a fraud is established, has not been considered in ***Rakesh Umbraje*** (supra) nor the judgments as indicated above appear to have been brought to its notice and therefore, it cannot be said to hold the field on account of non- consideration of the settled legal position as emanating from the judgments, as discussed above, apart from which it is distinguishable on facts.

15.9. ***Abhijit Suryakant Thakar*** (supra) relied upon by Mr. Narnaware, learned counsel for the petitioner is on the proposition that old binding decisions cannot be reopened with

which proposition there cannot be any dispute.

15.10. ***Ishwar Naga Bondalwar*** (supra) relied upon by Mr. Narnaware, learned counsel for the petitioner holds that the CSC has no power to review and relies upon ***Apoorva Nichale*** (supra) for that. This was therefore not a case of fraud, as it was held that what the CSC could discover through the Vigilance Cell by due diligence cannot be categorized as *suggestio falsi or suppressio veri*. Moreover, even the show-cause notice in this case did not state any aspect of fraud and therefore, is not on a proposition that in the case of a *prima facie* position of fraud being established on record, the order cannot be recalled.

15.11. ***Vaibhav Sudhakar Patne*** (supra) was a case in which the real cousin sister from the paternal side of the petitioner was already granted validity on 15/03/2011 by the CSC and since the relationship with the petitioner in the genealogy was not disputed, it was held that the petitioner was entitled to a validity and is of no relevance to the point in issue.

15.12. ***Badalsingh Bharosa Rawale*** (supra) was a case in which the matter was remitted back to the CSC to consider it afresh by permitting the petitioners therein to adduce evidence on the

question as to when the petitioners or their forefathers have migrated to the State of Maharashtra and also has no relevance to the issue under consideration. ***Sameer Hariram Shendre*** (supra) is merely an order issuing notice and is therefore, of no assistance. ***Rajwardhan Ishwardas Metekar*** (supra) considers the position that there were already two validity certificates issued by the CSC in favour of the nephew and niece of the petitioner, which still hold the field and therefore, denial of validity to the petitioner therein was not justified, which is beside the point under consideration. ***Ku. Priyanka Nagesh Erla*** (supra) remands the matter to the CSC to re-examine the claim of the petitioner by following the procedure prescribed. ***Jagmittar Sain Bhagat*** (supra) is on the proposition that the finding of a Court or Tribunal without inherent jurisdiction would be nullity. ***Sayanna*** (supra) holds that a finding regarding fraud so as to enable the CSC to cancel and confiscate the caste certificate has to be made based upon relevant considerations.

15.13. What is also necessary to note is that in ***Mangesh Nivrutti Kashid*** (supra-HC/SC) the Court was concerned with the huge number of validity certificates issued within the time-frame and indicated therein, which pointed out the impossibility of the

provisions of the Statute being complied with, and thus were not concerned with cases of fraud having been practiced on the CSC, by a claimant, in the nature of withholding of any document, information, material which had a relevant bearing upon the question of issue of validity.

15.14. An inherent duty therefore lies in every Court/judicial/ quasi-judicial authority, to render a correct decision in order to do complete justice and for that purpose, if it is brought to the notice of the Court/judicial/quasi-judicial authority that the decision has been obtained by suppressing material facts, documents or otherwise by an act which could be termed as a fraud upon the Court/judicial/ quasi-judicial authority, the duty to render complete justice, would then require such Court/judicial/quasi-judicial authority, to recall such decision and then to proceed to hold an enquiry, so as to obtain the correct facts, and then render an appropriate decision based upon such correct position.

15.15. It will thus have to be held that the CSC, has the power to recall an order/decision, granting validity, in case it is found that the same was obtained by practicing a fraud upon the CSC, which may include non-disclosure or suppression of material facts and/or

documents, non-disclosure of rejection of validity to a sibling or a member in the genealogy, etc. It is, however, material to note that merely because the validity was granted without a vigilance enquiry, that would not by itself, be sufficient to recall the order/decision granting validity, as that is permissible to the CSC, in terms of the Caste Certificate Rules, 2012.

15.16. A caveat, however, needs to be sounded inasmuch as not every such decision is susceptible to a recall, as it cannot be done as a matter of course, for in order to exercise a power to do complete justice, it would be necessary for the Court/judicial/quasi-judicial authority to at least *prima facie* come to an opinion, on the basis of material being made available to it, by recording short reasons, that a case for recall, on the ground of fraud, is spelt out and only then, to issue notice to the other party to show cause as to why the decision ought not be recalled and that too, only upon hearing the other side and taking such material on record as would be permissible, to arrive at a conclusion by recording reasons that a recall is necessary and only then do so. The power of recall therefore is one, which cannot be routinely used, but can be only done, where there is no remedy available to the party aggrieved to redress its

grievance. It is, therefore, needless to state that where the wrong can be addressed in an appeal or revision, then that would be a ground for not exercising such a power of recall, for then such a grievance can be readily addressed in appeal/revision, nor can the same be exercised where a power of review is there.

16. We have perused the file of the CSC, as made available to us by Mr. D.V. Chauhan, learned Government Pleader on behalf of the learned Advocate General. In the instant case, there are no reasons recorded in the file, as to why a vigilance enquiry was necessary, in spite of the fact that on earlier two occasions, a validity certificate was issued to the petitioner. That was the least expectation from the CSC, before directing a vigilance enquiry, to act in terms of what has been held in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and Others*** (supra). Even in a case of an allegation of fraud in obtaining the validity, on the allegation of the applicant having filed false and fabricated documents, in our considered opinion, the matter cannot be reopened merely on the basis of such an allegation. The CSC, has to apply its mind to the averments in the complaint and the

documents filed along with it and only when it is *prima facie* satisfied that there is some grain of truth in the allegation, then for the reasons to be recorded, it can direct an enquiry in the complaint. The order should indicate application of mind by the CSC and its satisfaction that a *prima facie* case is made out, mandating an enquiry.

16.1. If this is not done, then for each and every allegation the enquiry could be ordered, which would lead to the very process of granting validity suspect and no finality being rendered at all to the validities, apart from the fact that it would become a tool of misuse in the hands of unscrupulous persons.

16.2. In the instant case, it is already on record that an identical application filed by respondent No.7, had been rejected by the CSC, citing Section 7(2) of the Caste Certificate Act, 2000, and there is absolutely no reason in the impugned decision as to why it thought otherwise, when an application came to be filed by respondent No.6, on the same set of allegations as to how, the same view as was taken earlier, based upon Section 7(2) of the Caste Certificate Act, 2000, ought not to prevail.

16.3. As indicated in the earlier paragraphs the CSC, ventured into reopening the validity already granted, not on the ground, that it was *prima facie* satisfied that a fraud had been committed upon it, but on the ground that the Deputy Secretary by his communication dated 23/02/2024 by e-mail had asked the CSC to do so as is indicated, from the perusal of the impugned decision (internal pg. 6/pg.140 of the record), which cannot be sustained in law.

17. Considering the above position, it would have been permissible to remand the matter back to the CSC. However, in view of the conduct of the CSC as not above, we do not deem it proper to do so and consider it appropriate to decide the matter on the facts as available on record.

17.1. The genealogy given by the petitioner in her application dated 10/12/2019 indicates that Ganpat Dhulba Sonbarse was her grandfather, who had two sons Somraj (father of the petitioner, deceased 19/10/1997) and Manichandra Ganpat Sonbarse (Statement at page 294 of R & P). Ganpat Dhulba Sonbarse is stated to have born on 24/04/1941 and studied in the school at Murti where he was admitted on 01/04/1948.

17.2. The statement of Manichandra Ganpat Sonbarse (pg.294 of the R & P), which has been relied upon by the Committee, to contend that the petitioner, was the daughter of his maternal uncle, on account of which, his father Ganpat Dhulba, caste 'Chambhar', was not related to the petitioner, itself is a contradictory statement, for the statement indicates a relation, though on the maternal side. The statement itself, indicates that the father-in-law of Chandrakala (mother of the petitioner Rashmi @ Reena) was residing at Hiwara Senadwar, Tah. and Distt. Pandhurna (MP) and her husband, namely, Somraj Somekar was also belonging to the caste 'Chambhar'. The statement further indicates, that Chandrakala, had left Somraj Sonekar and was residing with her maternal uncle deceased Chindba Sitaram Chawade, caste 'Chambhar', resident of Kharsoli, Tah. Narkhed, along with her two daughters Reena and Minakshi and even on the date of the statement which was recorded on 27/03/2024, she was residing at Mouza Kharsoli and the education and marriage of Reena and Minakshi, was done by Chindba Sitaram Chawade. Even if this statement is taken at its face value, it will indicate, that even the father of the petitioner namely, Somraj Sonekar, was stated to be belonging to the caste 'Chambhar'.

17.3. The Vigilance Cell has also placed reliance upon the statements of (1) Balaji Paradkar (2) Janabai Paradkar (3) Madan Bansod and (4) Ramesh Sonekar to come to a conclusion that the genealogy given by the petitioner was incorrect.

17.4. Statement of Balaji Paradkar (pg.262 of R & P) resident of village Giri states that the name of the father of Somraj was Ganpat Ganya Sonekar, who had two sons Hiralal and Dajiba. Both Hiralal and Ganya Sonekar and Dajiba Sonekar are claimed to have passed away in the Murti itself, whose children are stated to be still residing in the same village. Hiralal Ganya Sonekar has issues by name (a) Ramesh (b) deceased Shyamrao and (c) Chanda and Radha. Dajiba Ganya Sonekar had one daughter Nirmala who is residing at Chhindwara. He further states that he was unable to make any statement as to where the children of Somraj Ganpat Sonekar were.

17.5. The statement of Janabai Chirkut Paradkar (pg.264 of the R & P) resident of Giri, records that name of the father of Somraj was Ganpat. Ganpat had two sons (a) Hiralal and (b) Dajiba in whose respect the statement of Balaji Paradkar is reiterated. She further states that Somraj had ancestral lands in village Murti, which she had taken on cultivation, however, the said land, had been

inundated. She further states that Somraj was addicted to liquor and gambling, on account of which his wife Chandrakala most of the time did not reside with him. Somraj had two daughters Reena and Minakshi from Chandrakala. She further states that she was unable to tell anything about the widow and children of Somraj.

17.6. Statement of Madan Natthuji Bansod (pg.266 of R & P) is in consonance with what has been stated by Janabai Paradkar.

17.7. Statement of Ramesh Hiralal Sonekar (pg.268 of R & P) resident of Hiwara Senadwar, Tah. and Distt. Pandhurna (MP) states that Somraj was his first cousin and the name of his father was Ganpat Ganya Sonekar, who had two brothers, Hiralal and Dajiba. He further makes a statement that the ancestral land of Sonekar family i.e. Khasra No.910/663, admeasuring 18 acres was in village Hiwara Senadwar, however, the land in the share of Dajiba, his uncle and of Somraj s/o Ganpat had been acquired for a dam. Hiralal Ganya Sonekar, according to him, had passed away at village Hiwara Senadwar Tah. Pandhurna (MP). He did know when Ganpat Ganya Sonekar and Dajiba Ganya Sonekar as well as his cousin Somraj passed away. He further states that his cousin Somraj Ganpat Sonekar was addicted to liquor and gambling, on account of which

there was continuous quarrel between him and his wife Chandrakala, from whom he had two daughters Rashmi and Minakshi, whose education was done at Narkhed. He further states that Hiralal had apart from him one son deceased Shyamrao and two daughters Chandra and Radha and Dajiba Ganpat Ganya Sonekar had one daughter Nirmala, who was residing at Chhindwara. He further states that the education of Somraj and himself had taken place at primary school Hiwara Senadwar, Tah. Pandhurna (MP) and further education at higher secondary school Badchicholi, Distt. Pandhurna (MP). After the demise of Somraj, his widow and daughters had permanently shifted to Narkhed and his cousin niece Reena daughter of Somraj Sonekar @ Rashmi Shyamkumar Barve was the resident of Parshioni, District Nagpur and was the President of Zilla Parishad Nagpur.

17.8. It is material to note that even according to the vigilance report Ramesh Hiralal Sonekar is the son of Hiralal brother of Somraj.

17.9. Though Balaji Paradkar, Janabai Paradkar and Madan Bansod in their statements state, that the children of Hiralal were residing at village Murti, the residence of Ramesh, who is the son of

Hiralal is shown at Hiwara Senadwar, Tah. and District Pandhurna (MP), which contradicts the stand of the aforesaid persons. The contradiction is also in respect of the place of demise of Hiralal and Dajiba as well as the residence of the children of Hiralal and the ownership in respect of the ancestral property of Sonekar family.

17.10. The Vigilance Cell, itself opines that the caste of the paternal ancestors of the petitioner was “Chambhar”, however, it further opines that since before 10/08/1950 they were residing at Hiwara Senadwar, Tah. and Distt. Pandhurna (MP) and even today the cousin of Somraj, namely, Ramesh Hiralal Sonekar was still residing there. It further records that the father of the petitioner, Somraj Ganpat Sonekar was also a resident of Hiwara Senadwar Tah. and Distt. Pandhurna (MP), however, on account of his habit of drinking and gambling, his wife Chandrakala had left him along with the two daughters Reena and Minakshi and had permanently shifted to her father deceased Chindba Sitaram Chawade’s (who is also claimed to be her maternal uncle) residence at village Kharsoli, Tq. Narkhed, Distt. Nagpur, long back. It further records that upon an inquiry, to fill in the form for affinity test, it was stated upon telephonic contact on the cellphone of the husband of the petitioner

that the applicant was in an election meeting for the ensuing Lok-Sabha and would be meeting the Vigilance Officer on the next day on which date, the affinity form was required to be filled in. The report does not say anything as to what had happened on the next day or on which day the husband of the petitioner was contacted for filling the affinity form. The vigilance report itself opines (pg.259 of the R & P) that the caste of the petitioner and her paternal ancestors, was “Chambhar” and prior to 10/08/1950 they were residing at Hiwara Senadwar Tah. and Distt. Pandhurna (MP). It therefore opined that the information given by the petitioner, in her application (pg.161 of the R & P) was incorrect on account of the fact that Ganpat Dhulba, caste ‘Chambhar’, was not related to her, nor was Manichandra Ganpatrao Sonbarse, who was claimed to be her uncle, related to her and the documents filed by her in support of her caste claim, were not related or relevant.

ROLE OF THE VIGILANCE AND CASTE SCRUTINY COMMITTEE

18. The role of the vigilance or for that matter the CSC is not of an adversarial nature, but is to determine, the correctness of the caste claim, put forth by the applicant. While doing so, the CSC, has

to necessarily bear in mind, that the benefits accruing on account of a person belonging to a particular caste/tribe, are a constitutional mandate and the Caste Certificate Act, 2000 and the Rules framed thereunder are enacted with an intention, that the benefits on account of it, are availed of and conferred upon a person who rightfully establishes, a claim of belonging to the caste/tribe to which the benefits are due on account of their conferment.

18.1. The purpose of an enquiry under the Caste Certificate Act, 2000, is to determine the claim of the applicant of belonging to a particular caste/tribe so that the applicant can claim entitlement to the benefits available on that count. The process of such determination begins from the application filed by the applicant, in which he/she has to give details of the genealogy, the documents in support of the claim, any validity granted to a relative and such other material as is contemplated by the provisions of Rule 16 of the Caste Certificate Rules, 2012 and such other material as the applicant feels is necessary to support such claim. Does it mean that for the purpose for determining the claim for the caste validity, it is only the material/documents filed by the applicant alone which has to be considered? The answer has to be an emphatic loud and

clear - **No**, for the reason that Rule 17(7) of the Caste Certificate Rules, 2012, requires the CSC to direct a vigilance enquiry to be conducted in such a claim, if it is not satisfied by the documents annexed to the claim, regarding the claim made by the applicant of belonging to a certain caste/tribe and therefore, would indicate that material/documents found during such vigilance enquiry can also be taken into consideration for determining the caste/tribe claim.

18.2. The purpose of an enquiry by the Vigilance Cell can never be with an avowed intention to disprove the caste/tribe claim of the applicant, but is to find out the truth in the claim and for this purpose to make all such enquiries as may be possible. It is equally possible that in such an enquiry by the Vigilance Cell, documents or material may be unearthed, though not filed by the applicant in support of his/her claim, which may disclose the truthfulness of the claim of the applicant.

18.3. It is true that the report of the Vigilance Cell is not binding upon the CSC and it can for the reasons stated, decline to accept such report and take an opposite view. That, however, does not deter from the fact that material unearthed by the Vigilance Cell, other than what has been placed on record by the applicant can also

be considered by the CSC for determining the caste/tribe claim. In case such material otherwise available on record, satisfies the CSC of the genuineness of the caste/tribe claim of the applicant, nothing prevents, it from considering such material and granting validity based upon it.

18.4. This is also to be considered in light of the fact that passage of time, migration from one place to another, change of schools, impact of modernization and such other factors, there is every possibility of a candidate not being aware of the correct genealogy/or his various relations or for that matter whether his/her ancestors had taken any education or where they were born, resided, migrated, as well as documents relating to their education, birth, properties and such other factors, as are required to be considered for the purposes of establishing the caste/tribe claim.

18.5. Thus, if such material comes on record, apart from what has been filed by the applicant, which establishes the caste/tribe claim of the applicant, it would not be permissible for the CSC to ignore such material and reject the claim of the applicant on the ground that the contents of the application and documents annexed thereto, do not establish the claim of the applicant belonging to a

particular caste/tribe. The purpose is not to deny the claim based upon the contents of the application and documents annexed with it, but to provide the benefits of reservation to a person genuinely belonging to the caste, for which the reservations are meant, and to ensure a fair and impartial enquiry into the caste/tribe claim, either on the basis of the documents placed on record by the applicant, or what have been unearthed by the Vigilance Cell, in case they have a bearing upon the matter.

MIGRATION

19. The vigilance report dated 27/03/2024, records that the paternal ancestors of Somraj Ganpat Sonekar, were belonging to the caste 'Çhambhar', and they were residing at village : Hiwara Senadwar, Tah. Pandhurna, Distt. Chhindwara, Madhya Pradesh prior to the deemed date of 10/08/1950 (Date of Presidential Notification). Even today, the paternal uncle of the petitioner, namely, Ramesh Hiralal Sonekar is said to be a resident of the above village. As Somraj s/o Ganpat Sonekar, the father of the petitioner was said to be addicted to liquor, her mother Chandrakala, is said to have left him, and had come to reside with her father Chinda Sitaram Chawade at village: Kharsoli, Tah: Narkhed, District

Nagpur. Somraj s/o Ganpat Sonekar is said to be visiting Chandrakala at Kharsoli, time to time, where the petitioner and her sister have been born. It is the maternal grandfather of the petitioner, who is claimed to have brought up the petitioner and her sister and imparted education to them at Kharsoli.

19.1. The report of the Vigilance Cell dated 27/03/2024 (pg.257 of the R & P), though indicates discrepancies in the information contained in the application and the documents filed in support of her claim of belonging to the Scheduled Caste 'Chambhar', however, the vigilance cell report itself unequivocally states that Somraj s/o Ganpat Sonekar, the father of the petitioner and his ancestors belonged to the caste 'Chamar', which admittedly is a Scheduled Caste. The statement of Ramesh Hiralal Sonekar, as referred to above in this regard, the paternal uncle of the petitioner, clearly establishes this position. That apart the statements of (1) Balaji Paradkar (2) Janabai Paradkar and (3) Madan Bansod, who all are residents of village Murti, as referred to above, also establishes this position, that the father of the petitioner belonged to the 'Chamar' caste.

19.2. Though the vigilance cell report dated 27/03/2024, indicates that the caste of Somraj s/o Ganpat Sonekar, father of the petitioner was 'Chamar', it indicates that the claim ought to be rejected as the father of the petitioner was a resident of village : Hiwara Senadwar, Tah. Pandhurna, Dist. Chhindwara, Madhya Pradesh and the validity was sought in the State of Maharashtra.

20. Before we proceed ahead in this regard, the position with respect to the caste 'Chamar' as on the date of the Presidential Notification, by which Scheduled Castes were notified would be material to be noted. By a notification issued in exercise of the powers under Article 342 of the Constitution dated 10/08/1950, the Hon'ble President, declared the castes which would be entitled to the benefit of reservations in the matter of public employment and education.

Chhindwara District in which Pandhurna is situated was included in the State of Madhya Pradesh as it then was, which also included Nagpur District. Because of the States Reorganisation Act, 1956, which came into effect on 31/08/1956, the areas comprising

of the District of Nagpur by virtue of Section 8(1)(c) of the States Reorganisation Act, 1956, came to be included in the Bombay State.

20.1. By virtue of Section 3(1)(b) of the Bombay Reorganisation Act, 1960, which came into effect from 25/04/1960, the State of Bombay came to be known as 'Maharashtra', with certain areas as indicated in Section 3(1)(a) therein going to the State of Gujarat. The position, however, as to Nagpur District, as indicated above, remained the same.

20.2. The question, as what was the position when a resident of District Chhindwara, which was a part of the erstwhile State of Madhya Pradesh migrated to the District Nagpur, which was also a part of the erstwhile State of Madhya Pradesh before the States Reorganisation Act, 1956, came up for consideration in ***Sudhakar Vitthal Kumbhare Vs. State of Maharashtra (2004) 9 SCC 481***, when this is what has been stated :

> ***"5.*** *But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and been denied facilities for development and growth in several States. They require protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantaged and developed sections of the community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of*

Maharashtra having their origin in Chhindwara region, a part of which, on States' reorganisation, has come to the State of Maharashtra, was entitled to the benefit of reservation. It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind."

20.3. The issue then came up in ***Bharat Bhimrao Malakwade Vs. Divisional Caste Certificate Scrutiny Committee 2013(5) Mh. LJ 946***, which opined as under:

"10. In our view, earlier Chhindwara where the ancestors of the petitioner had been permanently residing and Nagpur where

the petitioner and his family are now permanently residing, had been parts of the C.P. and Berar before reorganization of the States. After reorganization of the States, Chhindwara became part of the Madhya Pradesh State and Nagpur became part of the Maharashtra State. These peculiar facts are considered by the Apex Court in the case of Sudhakar Vithal Kumbhare (cited supra) and it is held that such persons whose Caste/Tribe is recognized in both the States, are entitled for the benefits of reservation. We are of the opinion that in view of the peculiar facts of the present case, as in the case of Sudhakar Vithal Kumbhare (cited supra), the petitioner will be entitled for the benefits as a Scheduled Caste candidate as it is not disputed that "Mahar" has been recognized as Scheduled Caste in the Madhya Pradesh State and it is recognized as Scheduled Caste in the Maharashtra State also."

20.4. It also came for consideration in ***Prashant Shamraoji Shende Vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and others [Writ Petition No.6836/2013, decided on 14/12/2016]***, in which it has been held as under:

"2. The petitioner has approached this Court being aggrieved by the order passed by respondent no.1 dt.9.12.2013, vide which the claim of the petitioner of belonging to 'Mahar' Scheduled Tribe came to be rejected. The petitioner since was employed with respondent no.2 as a Peon on the basis of his claim of belonging to 'Mahar' Scheduled Tribe, his caste claim came to be referred to respondent no.1 for scrutinizing the said claim. The claim of the petitioner has been rejected only on the ground that fore-fathers of the petitioner were not residents of the State of Maharashtra prior to the year 1950. The claim is basically rejected in view of the Judgment of the Apex Court in the case of Marri Chandrashekhar Rao .vs. Dean, G.S. Medical College and Others reported in (1990) 3 SCC 130 and the

Judgment in the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another vs. Union of India and another reported in (1994) 5 SCC 244.

3. It is not in dispute that the petitioner's forefathers are residents of village Tigaon, Tq.Pandhurna, District Chhindwada. It is also not in dispute that the petitioner's father has migrated to Nagpur. Pandhurna Taluka is a part of Chhindwada District. Chhindwada District and Nagpur District were part of the same State i.e. Madhya Bharat prior to re-organisation of the State. Similar factual scenario was considered by the Apex Court in the case of Sudhakar Vithal Kumbhare vs. State of Maharashtra reported in 2004 (4) Mh.L.J. (SC) 784. Whereas the Division Bench of this Court in the case of Bharat s/o. Bhimrao Malakwade vs. Divisional Caste Certificate Scrutiny Committee No.3, Nagpur and another reported in 2013 (5) Mh.L.J. 946 has also held that if the areas where ancestors of the claimants reside and the areas where they have migrated form part of the same State prior to re-organisation of the State, then such claimants cannot be denied benefits of reservation meant for the candidates belonging to either Scheduled Castes or Scheduled Tribes.

4. We find that the facts in the present case are squarely covered by the Judgment of the Apex Court in the case of Sudhakar Vithal Kumbhare (cited supra). Apart from that, perusal of the Vigilance Cell report itself would reveal that the Vigilance Cell found that the petitioner's fore-fathers reside in village Tigaon, Tq.Pandhurna, Distt. Chhindwara and the documents prior to 1950 also show the caste of the fore-fathers of the petitioner to be 'Mahar'. Undisputedly, caste 'Mahar' is recognized as a Scheduled Caste in both the Maharashtra State and the State of Madhya Pradesh. In that view of the matter, the petition deserves to be allowed."

20.5. The position has been recently considered by the Hon'ble Supreme Court in ***Pankaj Kumar Vs. State of Jharkhand and***

others (2021) 20 SCC 545 [Civil Appeal No.4964/2021 decided on 19/08/2021], in which after consideration ***Sudhakar Vitthal Kumbhare*** (supra) this is what has been opined :

> *"54. The collective readings of the provisions of the Act, 2000 makes it apparent that such of the persons whose place of origin/domicile on or before the appointed day was of the State of Bihar now falling within the districts/regions which form a successor State, i.e., State of Jharkhand under Section 3 of the Act, 2000 became ordinary resident of the State of Jharkhand, at the same time, so far as the employees who were in public employment in the State of Bihar on or before the appointed day, i.e. 15 th November, 2000 under the Act 2000, apart from those who are domicile of either of the district which became part of the State of Jharkhand, such of the employees who have submitted their option or employees who are junior in the cadre of their seniority as per the policy of the Government of India of which a reference has been made, either voluntarily or involuntarily call upon to serve the State of Jharkhand, their existing service conditions shall not be varied to their disadvantage and stands protected by virtue of Section 73 of the Act, 2000.*
>
> *55. In our considered view, such of the employees who are members of the SC/ST/OBC whose caste/tribe has been notified by an amendment to the Constitution(Scheduled Castes)/(Scheduled Tribes) Order 1950 under Vth and VIth Schedule to Sections 23 and 24 of the Act 2000 or by the separate notification for members of other backward class category, benefit of reservation including privileges and benefits flowing thereof, shall remain protected by virtue of Section 73 of the Act 2000 for all practical purposes which can be claimed (including by their wards) for participation in public employment.*
>
> *56. It is made clear that person is entitled to claim benefit of reservation in either of the successor State of Bihar or State*

> *of Jharkhand, but will not be entitled to claim benefit of reservation simultaneously in both the successor States and those who are members of the reserved category and are resident of the successor State of Bihar, while participating in open selection in State of Jharkhand shall be treated to be migrants and it will be open to participate in general category without claiming the benefit of reservation and vice-versa."*

20.6. The above proposition has also been laid down in ***Devendra Dashrath Sahare*** (supra) and ***Dhammanand Maniram Jambhulkar*** (para11) [supra].

20.7. The above legal proposition, is clearly attracted to the case of the petitioner, considering the fact position, as narrated above.

LOCUS OF RESPONDENT NOS.6 AND 7.

21. In ***Ayaaubkhan Noorkhan Pathan*** (supra) the issue of locus, was considered in the light of who can be said to be an aggrieved party, by the Hon'ble Apex Court in the following words :

> *"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ*

jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta [1951 SCC 1024 : AIR 1952 SC 12], Saghir Ahmad v. State of U.P. [AIR 1954 SC 728], Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044], Rajendra Singh v. State of M.P. [(1996) 5 SCC 460 : AIR 1996 SC 2736] and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [(2009) 2 SCC 784].

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387 : AIR 1974 SC 1719] and State of Rajasthan v. Union of India [(1977) 3 SCC 592 : AIR 1977 SC 1361] .)

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a visa". Many societal pollutants create new problems of non-redressed grievances, and the court

> *should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide P.S.R. Sadhanantham v. Arunachalam [(1980) 3 SCC 141 : 1980 SCC (Cri) 649 : AIR 1980 SC 856], Dalip Singh v. State of U.P. [(2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324], State of Uttaranchal v. Balwant Singh Chaufal [(2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807] and Amar Singh v. Union of India [(2011) 7 SCC 69 : (2011) 3 SCC (Civ) 560] .)*
>
> *17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."*

21.1. While considering ***Ayaaubkhan Noorkhan Pathan*** (supra) a learned Division Bench of this Court in ***Shakila Begum Faiyyazuddin*** (supra) has held that in exceptional circumstances, even if the bona fides of a third person are doubted, but the issues raised by him in the opinion of the Court requires consideration, the Court may proceed *suo motu* in the said respect.

21.2. In ***Shashant Giridhar Nandanwar*** (supra) while considering an application for intervention by a third party in a caste claim, it has been held that it is a personal claim, which is required to be proved before the authority appointed for that purpose under the relevant Statute and the question that is to be decided would only be whether such personal claim is proved or not and cannot be turned

into an adversarial proceedings by permitting intervention of third parties, as if some private dispute is going on between them. ***Mahesh Pralhadrao Lad*** (supra) holds that all documents, whether post or pre-constitutional or Presidential or State notification, can be considered as also oral evidence, treated in the form of evidence. ***Ashwin Rajendra Parate*** (supra) is on facts considering absence of contra evidence. ***Bharat Bhagwant Tayade*** (supra) holds that the validity granted could not have been rejected, there being no allegations of it having obtained by fraud or misrepresentation or suppression of facts.

21.3. Examining the claim of respondent Nos.6 and 7, in light of the above proposition, we find that nothing is said by them, as to how they are aggrieved persons and thus acquire locus. The CSC also has not delved on this issue, which, in fact, was its bounden duty, before taking cognizance of any such claim by respondent No.6, specifically when a similar claim at the behest of respondent No.7, had been rejected by it, in view of Section 7(2) of the Caste Certificate Act, 2000.

21.4. Even presuming otherwise, the third party, in case it feels that any statutory provision has been violated or there is something

amiss in a decision having been rendered, its role would be limited to the same being brought to the notice of the concerned authority, who is empowered to rectify the same, and the matter cannot be converted to an adversarial litigation on that count. We, therefore, hold that respondent Nos.6 and 7, having brought to the notice, the plea as raised by them in their complaints, it was for the CSC then to take over and in case it found a *prima facie* case of fraud for reasons to be recorded in writing, to proceed ahead. The role of respondent Nos.6 and 7, would thus end at the stage of they having brought their grievance to the CSC and the CSC having taken cognizance thereof.

21.5. It is also necessary to note the background for deletion of respondent No.6 by the order dated 03/05/2024, at the request of the learned counsel for the petitioner. We had heard the matter substantially and had also expressed our opinion, stating our dis-satisfaction with the conduct and decision of the CSC when, on the next date i.e. 02/05/2024, a Counsel appeared and made a statement that a Counsel, whose matters my learned Sister on the Bench does take up, had filed her Vakalatnama on behalf of respondent No.6. We, therefore, had disapproved of such conduct,

which was solely aimed at scuttling the course of the proceedings and amounted to Bench hunting.

21.6. At this juncture, the learned counsel for the petitioner, in the above background, made a statement for deletion of respondent No.6, which was so directed to be done by the order dated 03/05/2024. This is only to put on record the lengths at which, respondent Nos.6 and 7, and persons backing them have gone to ensure that the matter is not decided.

22. In view of the facts as culled out supra and the law as indicated above, we are of the considered opinion that the petitioner has made out a case that she belongs to the Scheduled Caste 'Chambhar', as even the material unearthed by the Vigilance Cell indicates that her father was belonging to that caste. The CSC appears to have gone on a witch hunt, being influenced by the letter of the Under-Secretary to the State and the complaints received by it, and instead of applying an independent mind, has danced to the tune of respondent No.7, who, once having failed in an earlier attempt in this regard, enlisted the help of the Under-Secretary to the State, to influence the CSC into discarding its earlier stand taken

on his application, in conjunction with respondent No.6 and other officials to ensure that all mandatory Rules, which govern the field and even the principles of natural justice of affording a reasonable opportunity, are thrown to the winds, in order to reject the caste claim of the petitioner, to ensure that she would not be a candidate in the parliamentary elections. The impugned decision, which is a result of such shenanigans cannot be permitted to stand and specifically so, when there is material found in the independent enquiry by the Vigilance Cell to indicate that the caste claim of the petitioner is genuine.

23. Though Dr. Saraf, the learned Advocate General, has valiantly tried to defend the conduct of the CSC, which we appreciate, however, before parting with this judgment, considering the discussion above, we feel it our bounden duty to strongly deprecate the conduct of the CSC, who, instead of acting independently, dispassionately and within the four corners of the Caste Certificate Act, 2000 and the Rules framed thereunder, has conducted the enquiry, in a manner, which no Court of the land can accept, as it has merely acted as a lackey of the administration, in

view of which, we feel it our duty to saddle a cost of Rs.1,00,000/- upon the CSC, so that it in future the same would act as a deterrent before it even thinks of dancing to the tune of someone else, instead of performing its statutory functions within the four corners of the Statute, under which it is created.

24. We, therefore, quash and set aside the impugned decision of the Caste Scrutiny Committee, dated 28/03/2024 and direct that it shall issue a validity certificate to the petitioner of she belonging to the Scheduled Caste 'Chambhar', within a period of one week from today. The Caste Scrutiny Committee is directed to pay a cost of Rs.1,00,000/- (Rupees One Lakh Only) to the petitioner within a period of one week. As a result of the above, all consequent actions done or effected in pursuance to the impugned decision, dated 28/03/2024, shall be rendered *non est*.

25. Rule is made absolute in the aforesaid terms.

26. We also thank the learned Counsels for the respective parties and also the learned Advocate General, for the erudite

arguments advanced by them, which have been of a great assistance to us in deciding the matter.

(SMT. M.S. JAWALKAR, J.) **(AVINASH G. GHAROTE, J.)**

At this stage, Mr. D.V. Chauhan, learned Government Pleader for the State makes a request to keep the effect and operation of the judgment in abeyance for a period of two weeks. However, considering what has been discussed in the judgment, we do not see any reason to accept the request. The same is, therefore, declined.

(SMT. M.S. JAWALKAR, J.) **(AVINASH G. GHAROTE, J.)**

Khunte/Wadkar