

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 12336 OF 2022 AND
CIVIL APPLICATION NO. 16722 OF 2022 IN WP/12336/2022**

Shri Jagdishchandra S/o Ramesh Valvi,
Age : 59 years, Occu. : Agriculture,
R/o : Mahavir Nagar, Plot No. 1, Old Yawal Road,
Chopda, Tq. Chopda, District Jalgaon

.. PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Principal Secretary,
Social Justice and Special Assistance Department,
Hutatma Rajguru Chowk, Madam Cama Road,
Mantralaya, Mumbai – 32.
- 2] The Principal Secretary / President,
Legislative Assembly, Maharashtra State, Mumbai
- 3] The Hon'ble Governor,
Raj-Bhavan, Maharashtra State, Fort, Mumbai – 32
- 4] The Deputy Director and Member Secretary,
Scheduled Tribe Certificate Verification Committee,
Nandurbar, District – Nandurbar
- 5] The Election Commission of India,
Nirvachan Sadan, Ashoka Road, Pandit Pant Marg Area,
Sansad Marg Area, New Delhi, Delhi – 110001
- 6] The State Election Commission,
New Administrative Bhavan, Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai – 32, Maharashtra State,
- 7] The Commissioner, Jalgaon Municipal Corporation,
Jalgaon, District Jalgaon

.. RESPONDENTS

...
Advocate for petitioner : Mr. Y.B. Bolkar
Mr. Mahesh S. Deshmukh, Advocate for applicant in CA
GP for the respondent – State : Mr. D.R. Kale
Advocate for respondent no. 5: Mr. A.B. Kadethankar with Mr. Alok Sharma
...

CORAM : **MANGESH S. PATIL &
Y.G. KHOBRAGADE, JJ.**

RESERVED ON : **21 DECEMBER 2022**
PRONOUNCED ON : **13 JANUARY 2023**

(THROUGH VIDEO CONFERENCING)

ORDER (MANGESH S. PATIL, J.) :

In spite of the immunity under Article 361 of the Constitution of India, the petitioner has impleaded the Hon'ble Governor as the respondent no. 3. We had directed the petitioner to forthwith delete the respondent no. 3. We had also not issued any notice to the respondents but they have appeared *suo motu*.

2. We have heard the learned advocate for the petitioner, learned Government Pleader, learned advocate Mr. Kadethankar and Mr. Sharma who appears for the respondent no. 5 - Election Commission of India and Mr. Deshmukh who appears for the intervenor.

3. By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner is seeking a declaration about the intervenor who has been elected as a member of the State Legislative Assembly from 10 - Chopda (ST) constituency in the elections held in 2019, was not qualified to file her nomination from the reserved category when her scheduled tribe certificate has been cancelled and the decision has reached finality up to the Supreme Court.

4. Learned advocate Mr. Bolkar would submit that since it has now finally been concluded that the intervenor was not qualified to file

nomination to a seat which was reserved for scheduled tribe category, it is not a disqualification which she can be said to have incurred after she was elected. She was basically not eligible to contest the election in view of the provisions of section 5 of the Representation of the People Act, 1951 (**R.P. Act**). He would submit that though the petitioner has filed an election petition as contemplated under section 80-A of the R.P. Act, independently, the respondents ought to have taken immediate steps but are sitting over and not taking any decision and thereby have tacitly permitted the intervenor to occupy the seat to which she was never qualified.

5. Mr. Bolkar relies upon the decision in the matter of ***K. Venkatachalam Vs. A. Swamickan and another; (1999) 4 SCC 526***, to submit that the High Court in an appropriate case like the present one, in exercise of the powers under Article 226 of the Constitution of India, can declare election of the intervenor as void and can declare the seat to be vacant even without resorting to the election petition under section 80-A of the R.P. Act.

6. Mr. Bolkar would also refer to the following decisions :-

- i) Sujit Vasant Patil Vs. State of Maharashtra and others; 2004(3) Mh.L.J. 1109
- ii) Ramesh Suresh Kamble V. State of Maharashtra & others; 2007(1) Mh.L.J.423
- iii) Chairman and Managing Director, Food Corporation of India and others; (2017) 8 Supreme Court Cases 670
- iv) Brudaban Nayak Vs. Election Commission of India & anr.; AIR 1965 SC 1892

7. Learned Government Pleader and Mr. Deshmukh for the intervenor at the outset, strongly object to the attempt being made by the petitioner to simultaneously resort to the election petition filed by him under section 80-A of the R.P. Act and filing present petition invoking the powers under Article 226 of the Constitution on same set of facts. They would submit that once having instituted the election petition, he ought not to have resorted to a separate proceeding in the form of present writ petition.

8. They would further submit that though the intervenor's scheduled tribe certificate has been conclusively cancelled that would not result in automatic disqualification. They would submit that in view of section 5 of the R.P. Act, definition of "disqualified" contained in clause (b) of section 7 read with section 100 of the R.P. Act clearly demonstrate that even in respect of a ground for declaring the election to be void because the returning candidate was not qualified to be elected to fill the seat can be only by way of an election petition. They would submit that Articles 190(3) and 192(1) of the Constitution of India and the procedure prescribed thereunder would be applicable to post election disqualification incurred by a returned candidate. To buttress their such submission, they would rely upon the decisions of the Supreme Court in the matter of ***Election Commission of India V. Saka Venkata Rao; AIR 1953 SC 210***, subsequently followed in the

matter of ***Brudaban Nayak V. Election Commission of India and another*** (supra).

9. The learned Government Pleader and Mr. Deshmukh would submit that the consequences of invalidation of the scheduled tribe claim of the intervenor as contemplated under section 10 and 11 of the 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 (**Maharashtra Act no. XXIII of 2001**) would not be applicable in this case. As contemplated under section 10 and 11 would be applicable *inter alia* in respect of the elections to the local bodies constituted under the various local self Governments like Maharashtra Village Panchayat Act, 1981, Maharashtra Municipal Council Act, Maharashtra Municipal Corporation Act etc. They would submit that the requirement of provisions of the caste validity certificate under various provisions of these statutes is conspicuously absent in the R.P. Act and the conduct of Election Rules, 1961 which merely require a candidate filing nomination for election to a seat reserved for State Legislative Assembly to file a declaration. Therefore, there cannot any automatic disqualification in respect of the pre-existing ineligibility of a candidate who is returned to the State Legislative Assembly in the elections held under the R.P. Act and the conduct of election rules framed thereunder. They would submit that

the decisions in the matter of Sujit Patil, Ramesh Kamble and Food Corporation of India (supra) would not enure to the benefit of the petitioner. They would submit that in the matter of **Venkatachalam** (supra), the Supreme Court had upheld the decision of the High Court of exercising the powers under Article 226 of the Constitution of India, firstly, because it was a case of impersonation by the returned candidate whose name was not appearing on the electoral roll and that the time for filing the election petition under section 80-A of the R.P. Act had expired.

10. We have considered the rival submissions and perused the papers.

11. At the outset, it is necessary to note that admittedly, the petitioner has filed election petition under section 80-A of the R.P. Act which is pending before this Court. When the petitioner has already invoked the statutory remedy available to him in law, his conduct in simultaneously seeking to invoke the powers of this Court under Article 226 of the Constitution cannot be countenanced. In none of the aforementioned matters referred to by both the sides, a situation has been comprehended where simultaneously, both such remedies can be invoked.

12. In the matter of **Venkatchalam** (supra), an impersonator whose name was not even appearing in the electoral roll was elected,

the time for filing an election petition under section 80-A of the R.P. Act had elapsed and in the peculiar facts and circumstances, the Supreme Court had concluded that the High Court had rightly exercised the jurisdiction and the powers under Article 226. In the matter in hand, the petitioner has already filed an election petition and should have waited for the result instead of circuitously seeking the same relief by requesting this Court to exercise the powers under Article 226. For this reason alone, the petition is liable to be dismissed.

13. Independently, even if the matter is to be considered on merits, it is conspicuous to note that the intervenor has been elected as a member of the Legislative Assembly in the light of the provisions of the Constitution and the R.P. Act. Unlike the specific provisions contained in various State Legislations in respect of local self Government (supra), neither the Constitution nor the R.P. Act contains any stipulation regarding presentation of caste / tribe validity certificate when a candidate intends to contest the election to the State Legislative Assembly on a seat reserved for that specific category. The R.P. Act and the conduct of elections rules merely require a declaration to be filled in as is conspicuous from Article 332 of the Constitution and section 5 and section 33(2) of the R.P. Act.

14. The provisions of the Maharashtra Act No. XXIII of 2001 would not be applicable to and would regulate operation of the provisions contained in the R.P. Act. The consequences stipulated in

section 10 and 11 of that Act regarding withdrawal of the benefits obtained on the basis of a false caste certificate and the prosecution, would only come into play in respect of the elections to the local authority. In view of the definition of local authority contained in section 2(c) of the Maharashtra Act No. XXIII of 2001 it would mean municipal corporation, municipal council, zilla parishad, panchayat samiti, industrial township, nagar panchayat and village panchayat.

15. Consequently, merely because the scheduled tribe certificate of the intervenor has been cancelled and the decision has reached finality, the consequences are not automatic as is contemplated under section 10 and 11 of the Maharashtra Act No. XXIII of 2001. The ordeal of resorting to the election petition under section 80-A of the R.P. Act will have to be undergone for unseating a returned candidate to State Legislative Assembly who was not qualified to take part in the election to the Legislative Council which specifically lays down that no election shall be called in question except by an election petition presented in accordance with the provisions under that Act.

16. The petition is dismissed.

17. Pending civil application is disposed of.

[Y. G. KHOBRAGADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/