

(2016) 12 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 10478 of 2014

Anant H. Ulahalkar

APPELLANT

Vs

Chief Election Commissioner

RESPONDENT

Date of Decision : 09-12-2016

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 7
Constitution of India, 1950 — Article 243V
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 9A, Section 9A
Maharashtra Scheduled

Citation : (2017) 1 AIRBomR 327 : (2017) 1 ALLMR 1 : (2017) 1 BCR 230 :
(2017) 1 ESC 483 : (2017) 1 MhLJ 431

Hon'ble Judges : A.S. Oka, M.S. Sonak and A.S. Gadkari, JJ.

Bench : Full Bench

Advocate : Ms Shriya Jadhav i/b Mr. Sachindra B. Shetye, Advocates, for the Respondent No. 1; Mr. Murtaza Nazmi and Mr. Vaibhav Gaikwad, Advocates, for the Intervener; Mr. A.B. Vagyani, Government Pleader a/w. Mr. V.B. Thadhani, AGP, Mr. P.G. Sawant, AGP and Ms Tint

Final Decision : Disposed Off

Judgement

M.S. Sonak, J. - This reference concerns interpretation of Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Section 9A). The main provision of Section 9A provides that any person desirous of contesting election to a reserved seat must submit along with his nomination papers, a caste certificate issued by the Competent Authority and a Caste Validity Certificate (Validity Certificate) issued by the Scrutiny Committee in accordance with 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 Act 2000). The first proviso to Section 9A, however, subject to certain conditions, permits a person to so contest even without submitting the Validity Certificate, provided, he files an undertaking that he shall

submit the Validity Certificate within a period of six months from the date on which he is elected. The second proviso to Section 9A provides that, if such person fails to produce Validity Certificate within a period of six months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

The main issue involved in this reference is whether the aforesaid stipulation of six months for production of Validity Certificate is only directory as held by the Division Bench (Coram S. B. Mhase and D. G. Karnik, JJ) in the case of *Dadasaheb A. Gulve v. State of Maharashtra and Ors.* 2008(2) Bom.C.R.712(Gulve) or whether the same is mandatory, as held by the Division Bench (Coram : D. D. Sinha and A. P. Bhangale, JJ.) in *Sadashiv J. Shrote v. State of Maharashtra and Ors.* 2010(1) Mh.L.J. 203 (Shrote).

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

(i) Whether the time limit prescribed u/s 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission of caste validity certificate by elected Councilor is mandatory in nature?

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

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

3. The Hon''ble Acting Chief Justice, by administrative order dated 20 November 2015 constituted the Full Bench and made the present reference. Later on, by an order dated 28 June 2016, the constitution of the Full Bench was changed to its present Coram.

4. Although, we are not required to go into the factual controversy in the petition, a brief reference to the facts will assist in the appreciation of factual setting in which the issues referred for determination arise.

5. Manisha (respondent No.4), relying upon the first proviso to Section 9A filed her nomination papers on 29 May 2013 for election as a Councillor from Ward No.2, Bhore Municipal Council (BMC), a position reserved for women belonging to Other Backward Classes (OBC). Along with her nomination papers, she submitted the prescribed statutory undertaking that she will submit Validity Certificate

within a period of six months from the date of her election. Manisha was declared elected on 23 June 2013 defeating inter alia, the petitioner no.2 (Sneha). The six months period expired on 22 December 2013, within which period Manisha failed to produce Validity Certificate from the Scrutiny Committee. Sneha and her husband petitioned the authorities by invoking the second proviso to Section 9A and urging that Manisha's election stands terminated retrospectively and she stands disqualified from being a Councillor. During the pendency of such proceedings, Manisha produced the Validity Certificate dated 29 January 2014 before the authorities on 12 February 2014.

6. The authorities have neither accepted nor rejected the contentions of either parties, but merely refrained from taking any decision in the matter. Sneha and her husband have therefore instituted the present petition seeking a declaration that Manisha's election stands terminated retrospectively and that she is disqualified for being a Councillor. Consequent directions for bye elections from Ward No.2, BMC have also been applied for.

7. Mr. P. D. Dalvi, learned Counsel for the petitioners and Mr. A. B. Vagyan, learned Government Pleader for the State, submit that the stipulation as to time in Section 9A is mandatory and must be construed accordingly. They submit that the right to contest election to a Municipal Council is only a statutory right and therefore, restrictions imposed upon such right by the Statute have to be strictly construed and enforced. They submit that the legal provisions of Section 9A are plain, clear and unambiguous. Therefore, they submit that compliance with such provisions cannot be avoided having regard to any alleged harsh or absurd consequences.

8. Mr. Dalvi and Mr. Vagyan submit that legislature has consciously used the term "shall", not merely with regard to the production of Validity Certificate, but, also with regard to the production of Validity Certificate within a stipulated period of six months. They submit that legislature has also provided consequences, in case of non compliance with the condition of producing the Validity Certificate within a stipulated period. These, according to the learned counsel, are sufficient indications to construe Section 9A as mandatory. They submit that in case the provisions are construed as directory, then, significant portions of Section 9A, including the entire second proviso to Section 9A will be rendered redundant. They submit that any interpretation which renders the provisions of a Statute redundant, otiose or surplusage has to be avoided. They rely upon the decisions in *Padubidri D. Shenoy v. Indian Airlines Ltd.* and *anr.* AIR 2009 SC (SUPP) 1921, *Gurudevdatla VKSSS Maryadit and anr. v. State of Maharashtra* AIR 2001 SC 1980, *State of Jharkhand v. Govind Singh* AIR 2005 SC 294, *MRF Ltd., v. Manohar Parrikar* (2010) 11 SCC 374, *Union of India and ors. v. A. K. Pandey* (2009) 10 SCC 552, *Jaswant singh Mathurasingh and anr. v. Ahmedabad Municipal Corporation and ors.* 1992 Supp (1) SCC 5, *Ku. Nirmala G. Parate v. State of Maharashtra & ors.* 2010(3) All. M.R.904 and *Banwari Dass v. Sumer Chand* (1974) 4 SCC 817, *Bipinchandra S. Thombre and ors. v. State of*

9. Mr. L. M. Acharya, learned counsel for Manisha, submits that the present reference is itself incompetent or in any case, should be returned unanswered. He submits that the precondition for making reference to the Full Bench is the existence of conflict between the decisions of two coordinate Benches. He submits that in this case, there is no conflict between Gulve and Shrote, since, Shrote, according to him, was decided per incuriam. He submits that Shrote, which was decided on 10 June 2009 had failed to notice that the two provisos, which contain the stipulation as to time, were not even on the statute book on the said date. Further, he submits that Shrote had failed to take notice of the binding precedent in Gulve decided on 20 December 2007. Further, he points out that the Special Leave Petition (SLP) against Gulve was dismissed by the Supreme Court on 18 February 2008. This means that the view in Gulve was affirmed by the Supreme Court and constituted a binding precedent upon the Bench which decided Shrote at a later date. For these reasons, the learned counsel contends that Shrote is clearly per incuriam and therefore, the present reference is either incompetent or in any case, must be returned unanswered. He relies upon Sundeep Kumar Bafna v. State of Maharashtra 2014(16) SCC 623, and Union of India v. R. P. Singh 2014(7) SCC 340 to explain the concept of per incuriam.

10. Mr. Acharya, without prejudice to above, submits that Gulve represents the correct position in law. He submits that an elected Councillor, by applying to the Scrutiny Committee for issue of Validity Certificate even before filing his nomination papers has done everything within his power and means and such elected Councillor cannot be prejudiced for failure of the Scrutiny Committee to expeditiously dispose of his application for issue of Validity Certificate. Having regard to harsh, inequitable and even absurd consequences, he they submits that whilst production of Validity Certificate may be mandatory, the stipulation as to time within which the same has to be produced, is only directory. The learned counsel cites the case of Manisha as a classic instance, in which, the hardship, inequity and the absurdity would be writ large, if the provision as interpreted as mandatory.

11. Mr. Acharya submits that use of expression like "shall" or provision of consequence in case of breach are not, by themselves, determinative in the construction of the provisions as mandatory or directory. He submits that object of the legislation and the intent of the legislature are equally important factors. Relying upon Dattatraya Moreshwar Pangarkar v. State of Bombay AIR 1952 SC 181, he submits that since the provision relates to performance of public duty and disregard causes serious prejudice to those for whose benefit such provision is enacted and at the same time, such persons have no control over the performance of that duty, such provision has to be construed as directory and not mandatory. He submits that construing such provision as mandatory will possibly render the provision ultra vires and unconstitutional being arbitrary and

unreasonable. He submits that such a construction will defeat the mandate of Article 243T of the Constitution of India which provides for reservations at municipal election. The learned counsel submits that where two interpretations are reasonably possible, the interpretation which saves the provisions for the charge of unconstitutionality must be preferred.

12. Finally, Mr. Acharya, by reference to the provisions contained in Sections 4 and 10 of Caste Act 2000 submits that Section 10(4) of the Caste Act 2000 has been construed as an additional disqualification in all acts dealing with election to various local authorities in the decision of Division Bench of this Court in *Dattatraya R. Thorat v. State of Maharashtra* 2003 (5) Mh.L.J. 539. He submits that the view taken in this decision has been upheld by the two Full Benches in *Sujit Vasant Patil v. State of Maharashtra* 2004 (3) Mh.L.J. 1109 and *Ramesh Suresh Kamble v. State of Maharashtra and ors.* 2007(1) Mh.L.J. 423. In view of this position, the learned counsel submits that the provision in Section 10(4) of the Caste Act 2000, which even otherwise, commences with a nonobstante clause, will override the provisions in Section 9A of the said Act. Thus construed, election of a candidate elected to a reserved seat could stand automatically terminated if and only if his Caste Certificate is found to be false, bogus or is cancelled by the Scrutiny Committee in accordance with the procedure laid down under the Caste Act and the Rules made thereunder and not otherwise.

13. Mr. Murtaza Nazmi, learned counsel and others whilst adopting the submissions made by Mr. Acharya, submitted that severe hardships would result elected Councilors, if the provisions are construed as mandatory. They submit that delay in issuance of Validity Certificate can never be for reasons attributable to the elected Councilors and therefore, it is unfair that such elected Councilors suffer for no fault on their part. Having regard to the drastic consequences prescribed, they submit that the provisions must be construed as directory so that the provisions can be sustained and at the same time its harsh consequences, neutralised.

14. The rival contentions now fall for our consideration.

15. The submissions as to incompetency of the reference proceed upon the premise that the power of the Chief Justice to make such reference is confined only to cases where a conflict is noticed between decisions of two or more coordinate Benches. Such a premise, is neither supported by any legal provisions nor by precedents.

16. In *Central Board of Dawoodi Bohra Community and anr. v. State of Maharashtra and anr.* (2005) 2 SCC 673 and *Vinayak H. Kulkarni v. State of Maharashtra and ors.* 2010(4) Mh.L.J. 868, the Supreme Court and the Full Bench of this Court have traced the power of the Chief Justice to make reference to the Full Bench to the very position of the Chief Justice being "Master of the Roster" as also to Clause 36 of the Letters Patent. The Full Bench also makes reference to Rule 7 of Chapter I of the Bombay High Court Appellate Side Rules,

1960. No provision was pointed out in support of the submission that the power of the Chief Justice to make a reference to the Full Bench can be exercised only when a conflict is noticed between the decisions of two or more coordinate Benches. Rather, the provision in Rule 7 Chapter - I, suggests the absence of any such fetter.

17. Rule 7 Chapter-I which came up for consideration in *Shaikh Babbu s/o. SK. Khutbuddin v. Sayeda Masarat Begum w/o. Shaikh Babbu and anr.* 1999 (3) Mh.L.J. 465 and *Vinayak Kulkarni (supra)*, provides that if it shall appear to any Judge, either on the application of a party or otherwise, that an appeal or other matter can be more advantageously heard by a Bench of two or more Judges, he may report to that effect to the Chief Justice who shall make such order thereon as he shall think fit. The circumstance that the Division Bench, in its order dated 11 August 2015 has noted that the petition raises the stated important questions of law is sufficient to infer that the Division Bench was indeed of the opinion that this is the matter which can be more advantageously heard by a Bench of more than two Judges. The Chief Justice, upon consideration of the order dated 11 August 2015 and even otherwise, was therefore competent to make the present reference and it will not be appropriate to return such reference unanswered.

18. Even otherwise, the submission that *Shrote*, which was decided on 10 June 2009 failed to notice the correct text of the provisions as on that date and is therefore per incuriam, cannot be accepted. If the facts in *Shrote* are minutely examined, it is clear that *Shrote* was elected as a Councillor on 8 October 2007. On that date, as also on the date of expiry of period of three months from the date of such election, the two provisos to Section 9A of the said Act were very much a part of the statute. The question which *Shrote* decides is in the context of the provisions as they stood upon the relevant date. For this purpose, there was no necessity to take cognizance of the deletion of the two provisions w.e.f. 2 May 2008 or the status of the provisions as existing on the date of decision, i.e., 10 June 2009. On the ground urged therefore, it cannot be said that *Shrote* was decided per incuriam.

19. Although, it is correct that *Shrote*, which was decided on 10 June 2009 has failed to take note of *Gulve* decided by the coordinate Bench on 20 December 2007, that by itself, will not render the present reference incompetent. As noted earlier, the power of the Chief Justice to make reference to the Full Bench is not confined only to the situation where a conflict is noticed between the decisions of two or more coordinate Benches. Similarly, the summary dismissal of SLP against *Gulve* does not attract doctrine of merger and therefore, in that sense, it cannot be said that the ratio of *Gulve* stands affirmed by the Supreme Court in its order dated 18 February 2008, summarily dismissing the SLP. In terms of law laid down by the Supreme Court itself in *Kunhayammed v. State of Kerala* (2000) 6 SCC 359, *V.M. Salgaocar and Bros. Pvt. Ltd v. Commissioner of Income Tax* (2000)5 SCC 373, the dismissal of SLP without commenting upon the correctness or otherwise of the order from which leave to appeal came to be applied, only

means that the Supreme Court did not consider the matter to be fit enough for exercise of jurisdiction under Article 136 of the Constitution of India. Accordingly, we are unable to either hold that the present reference is itself incompetent or that we ought to return the present reference, unanswered.

20. A brief reference to the legislative history will assist in determination of the scope and import of Section 9A. This section has its genesis in the constitution (74th Amendment) which introduced Part - IX A in the Constitution comprising Article 243P to 243ZG. Particular reference is necessary to Article 243T which mandates that seats shall be reserved for scheduled caste and scheduled tribes at election to local bodies. Clause 6 of Article 243T provides that nothing in Part-IXA shall prevent the legislature of a State from making any provision for reservation of seats in any Municipality or offices of chairpersons in the Municipalities in favour of backward class of citizens.

21. In order to fulfil the constitutional mandate of Article 243T, the State of Maharashtra, by Maharashtra Act No. XXXV of 2006 (which came into force from 19 August 2006) amended several municipal legislations dealing with local bodies, including, by way of introducing Section 9A. Incidentally, Section 9A in its original form had no provisos and reads thus :

"9A. Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes, or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000."

22. The two proviso were added to Section 9A by the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Ordinance 2006 which came into force from 27 October, 2006. The two provisos, then, read thus:

"Provided that, a person who has applied to the Scrutiny committee for the verification of his Caste Certificate before the date of filing the nomination paper but who has not received the validity certificate on the date of filing of the nomination paper,

i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the validity certificate or any other proof for having made such application to the Scrutiny Committee; and

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

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

being a Councillor".

23. The statement of objects and reasons appended to the above Ordinance dated 27 October 2006 read thus :

"STATEMENT

By the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 2006 (Mah.XXXV of 2006), the Mumbai Municipal Corporation Act, the Bombay Provincial Municipal Corporations Act, 1949, the City of Nagpur Corporation Act, 1948 and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, have been amended to provide that a person who desires to contest election to a reserved seat shall submit, at the time of filing of nomination, the Caste Certificate issued to him by the competent authority and the validity certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, DeNotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

2. The Government has received the number of representations from people's representatives to the effect that in view of the pendency of large number of applications with the Scrutiny Committee, number of persons desirous of contesting the elections to the reserved seats, will not get the validity certificate issued by the Scrutiny Committee before the date of filing nominations and, as a result, they would be deprived of their right to contest the election. The Government, therefore, considers it expedient to amend the aforesaid Acts with a view enable the person who has applied for issuance of validity certificate to the Scrutiny Committee but who has not received the validity certificate to contest the election to the reserved seat on the condition that he will submit, at the time of filing the nomination paper, true copy of the application made by him to the Scrutiny Committee and give an undertaking that he will produce the validity certificate within a period of three months from the date of his election. Provision is also proposed to be made that if he fails to produce the validity certificate within a period of three months as per the undertaking given by him, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councilor.

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Mumbai Municipal Corporation Act, the Bombay Provincial Municipal Corporations Act, 1949, the City of Nagpur Corporation Act, 1948 and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,

S.M. KRISHNA,

Dated the 27th October 2006.

Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

DR. J.M. PHATAK,

Principal Secretary to Government."

24. The Ordinance was replaced by the Maharashtra Municipal Corporations, Municipal Councils (Second Amendment) Act 2006, which was again, deemed to have come into force on 27 October 2006 for the sake of continuity. This was by virtue of Maharashtra Act No. XLIX of 2006 published in the Official Gazette on 29 December 2006.

25. By the Maharashtra Act No. XIII of 2008 which came into force from 2 May 2008, both the aforesaid provisos to Section 9A, came to be deleted. Thus, between 2 May 2008 and 8 October 2012 (the date of reintroduction of two provisos) in terms of Section 9A, a person desirous of contesting an election to a reserved seat was required to submit along with his nomination papers, not only a Caste Certificate issued by the competent authority but also Validity Certificate issued by the Scrutiny Committee.

26. By the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships, (Second Amendment) Ordinance 2012, which came into force from 8 October 2012, the two provisos, with some slight modifications, came to be reintroduced. The two provisos, then, read thus :

"Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2013, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, along with the nomination paper,

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that, he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee;

Provided further that, if the person fails to produce the Validity Certificate within a period of six months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor."

27. The Ordinance of 2012 was replaced by Maharashtra Act No. XXXI of 2012 published in Official Gazette on 24 December 2012, thereby, formally introducing the aforesaid two provisos to Section 9A, then, with effect from 8 October 2012 in order to ensure continuity. The statement of objects and reasons issued at that stage read thus :

"STATEMENT OF OBJECTS AND REASONS

Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965) provided that a person who desires to contest election to a reserved seat shall submit, along with the nomination papers, the Caste Certificate issued to him by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, DeNotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001).

2. The general elections of approximately ten Municipal Councils were scheduled to be held in October 2012 and preliminary work for holding those elections had already commenced. Such elections of other Municipal Councils are also likely to be held in near future. Taking into consideration the pendency of large number of applications with the Scrutiny Committee, number of persons desirous of contesting the elections to the reserved seats would not have got the Validity Certificate issued by the Scrutiny Committee before the date of filing nomination and as a result, they would have been deprived of their right to contest the election. The Government, therefore, considered it expedient to amend the said Act with a view to allow the persons desirous of contesting election for reserved seats and who had applied to the Caste Scrutiny Committee for obtaining Caste Validity Certificate at the time of filing the nomination, to submit the Caste Validity Certificate within six months from the date on which they were declared elected. Similarly, the Government considered it expedient to amend section 511B of the said Act to allow Presidents of the Councils elected against reserved post, to submit the Validity Certificate within six months from the date on which they were declared elected.

3. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965), for the purposes aforesaid, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Ordinance, 2012 (Mah. Ord. X of 2012), was promulgated by the Governor of Maharashtra on the 8th October 2012.

4. The Bill is intended to replace the said Ordinance by an Act of the State Legislature."

28. In order to complete the narration of legislative history, we refer to Maharashtra Act No. XIII of 2015 which came into force from 7 April 2015, by which, the expression "before 31 December 2013" in the first proviso to Section 9A was substituted by the expression " before 31 December 2017". This amendment however has no significant bearing upon the issues raised in the present reference.

29. In this case, we are concerned with the provisions of Section 9A as they stood on the date when Manisha filed her nomination papers i.e., on 29 May 2013; or on the date of election i.e., 23 June 2013; or on 23 December 2013 i.e., expiry of six months from the date of elections. On all these dates, Section 9A with which we are concerned, read thus :

"9A. Person contesting election for reserved seats to submit Caste Certificate and Validity Certificate: - Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes, or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

Provided that, for the General or bye elections for which the last date of filing of nomination falls on or (before the 31st December 2013), in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, along with the nomination paper,

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that, he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee;

Provided further that, if the person fails to produce the Validity Certificate within a period of six months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor."

(emphasis supplied)

30. Upon the plain reading of the provisions of Section 9A in their entirety, we find that the main provision lays down the general rule that a person desirous of

contesting election to a reserved seat has to submit along with the nomination papers, caste certificate and Validity Certificate issued in accordance with the Caste Act, 2000. The first proviso, which was to apply for general or bye-election for which the last date of filing nomination fell on or before 31 December 2013 however makes an exception or grants a concession from the application of general rule in the main provision. It provides that a person who has applied to the Scrutiny Committee for issuance of Validity Certificate before the date of filing nomination papers, but who has not received the Validity Certificate on the date of filing the nomination papers shall submit along with the nomination papers, (i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and (ii) an undertaking that, he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee. From the context and the legislative intent, it is clear that the first proviso enables such person to contest the election. The second proviso provides for consequences where the beneficiary of exception or the concession fails to comply with the conditions subject to which the exception or the concession was availed. It provides that where such person fails to produce Validity Certificate within period of six months, as statutorily provided and as undertaken by him from the date of his election, then, the election of such person shall be deemed to have been terminated retrospectively and he shall be disqualified from being a Councillor.

31. In *Gulve*, the Division Bench has construed the stipulation of six months within which to produce the Validity Certificate as directory and on such basis held that failure to produce the Validity Certificate within the stipulated period of six months neither terminates the election of such Councillor nor does it render him disqualified for being a Councillor. The reasoning seems to proceed on the basis that the delay in producing the Validity Certificate is invariably for reasons attributable to the Scrutiny Committee and, in any case, for reasons not attributable to the elected Councillor. In such circumstances, it is reasoned that it would be harsh and inequitable to penalise the elected Councillor for circumstances over which he has no control. In construing the provision as directory, the Division Bench has held the following :

(i) that the use of the term "shall" and the providing of consequences for breach, are not always conclusive in determining the imperative nature of the provision; rather, the emphasis has to be on the object, which, in the present case is not to deny "persons genuinely belonging to the backward classes" their right to contest elections to reserved seats, but the object is to disable "imposters or fraudsters" from wrongfully claiming such benefit;

(ii) the requirement of producing Validity Certificate within six months from the date of election is only a procedural requirement; the persons desirous of contesting to reserved seats, having applied for issue of Validity Certificate

before filing nomination papers, cannot be prejudiced on account of delay on the part of Scrutiny Committee in issuing the same; to penalise the elected person for no fault on his part or rather, on account of the fault on the part of the Scrutiny Committee in not disposing of his application with promptitude, would amount to inequity. Having regard to such consequences, provision is required to be interpreted as directory;

(iii) since the provision requires a statutory authority to do the thing within specified period and the citizen has no control over the statutory authority requiring it to do the thing within the specified period, applying the principle laid down by the Supreme Court in the case of Dattatraya Moreshwar Pangarkar (supra), the provision has to be construed as directory ; and

(iv) the provisions of Section 10(4) of the Caste Act 2000 and Section 9A have to be interpreted harmoniously and harmony can be achieved only by interpreting the stipulation as to time, as directory.

32. The aforesaid reasoning is reflected in paragraphs 10, 16, 17 and 21 of Gulve, transcribed below for convenience of the reference.

10. The object of section 5B of the MMC Act is to ensure that only the persons belonging to backward classes are only elected and occupy the post of councillor reserved for backward classes. The persons, who do not belong to backward classes but who falsely claim the social status of belonging to backward classes, should not usurp the benefit of reservation made in favour of backward classes. It is with this object that section 5B was introduced by an amendment in the MMC Act requiring production of a caste certificate and caste validity certificate at the time of filing of the nomination paper. However, that object was defeated because even the genuine persons belonging to backward classes were some times denied the opportunity to contest election merely because though they had obtained the caste certificate had not been able to obtain the caste validity certificate from the Scrutiny Committee before the last date for filling up the nomination paper. Often on account of their backwardness, they were unable to make application for verification of the caste certificate well in advance of the proposed elections and some times though they had made applications for obtaining caste validity certificate well in advance, the same was not decided by the Scrutiny Committee for no fault of theirs. To deny such genuine persons belonging to backward classes an opportunity to contest the election would amount to travesty of the constitutional mandate of reservations in favour of the backward classes. It is for this reason that two provisos to section 5B were added in the MMC Act enabling the persons belonging to backward classes to contest the election by producing at the time of nomination paper the caste certificate along with a proof of having applied for verification of the caste certificate and filing an undertaking for production of the caste validity certificate within the prescribed period. It is worthy to note that initially the period prescribed by the second proviso to section 5B of the MMC Act for production of caste certificate was three months. The Legislature however was aware that the Scrutiny

Committees were flooded with applications for validation of the caste certificates, especially in the aftermath of the elections to the municipalities, and were therefore unable to decide the applications within three months. The Legislature, therefore, by an amendment extended the period for production of caste validity certificate from three months to four months (vide Maharashtra Act No.XV of 2007). The penal consequence provided by the second proviso to section 5B of the MMC Act is really not meant to operate against genuine and bona fide persons belonging to the backward classes, but is intended to operate against an impostor, a fraudster, a spurious person who, though not belonging to any of the backward classes, contests the elections on a false claim of having social status of backward class. It is in order to see that such impostors and fraudsters do not continue to reap the benefits as councillors and represent the constituency reserved for backward classes that a provision of automatic termination of election has been made. The object of penal provision is not to punish for the delay genuine persons whose caste claims have been accepted by the Scrutiny Committee, but to punish impostors or fraudsters who had wrongly claimed the social status of belonging to backward classes.

.....

.....

16. If we hold that period of 4 months for production of caste validity certificate as mandatory, the consequence would result in frustration of constitutional mandate of reservation for backward classes contained in Articles 243D and 243T of the Constitution of India. That is impermissible. We are of the view that the period of 4 months is directory.

17. It is trite to say that when a statute requires anything to be done by a statutory authority or a Government officer within a prescribed period and the citizen has no control over the statutory authority or the Government officer requiring him to do the thing within the specified time, the provision of a statute or rule requiring the thing to be done within the specified time must be held to be directory. This is because the citizen has no control over the statutory authority or the Government officer and he cannot suffer from the negligence of the statutory authority or the Government officer in failure to perform the duty within the specified time. This principle was enunciated by the Constitution Bench of the Supreme Court in *Dattatraya Moreshwar v. The State of Bombay*, reported in AIR 1952 SC 181, wherein Das J. observed:

"In my opinion, this contention of the learned Attorney General must prevail. It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the

practise of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

.....

.....

21. Aims and object of section 5B and the provisos thereto is that while persons belonging to backward classes get the benefit of reservation of seats, persons who do not belong to a backward class do not illegally usurp the benefit of reservation in favour of backward classes. The real intention of the legislature is to ensure that the candidate elected to a reserved seat belongs to a backward class. The period of 4 months for production of caste validity certificate is merely a procedural requirement. It cannot supplant the constitutional mandate and even invalidate the election of a person who belongs to a backward class. We, therefore, hold that the period of 4 months prescribed for production of caste validity certificate by proviso to section 5B of the MMC Act and the BPMC Act, section 9A of the Municipalities Act, section 12A of the Zilla Parishads Act and section 10A of the Village Panchayats Act is merely directory. However, by holding it to be directory we do not mean to say that the elected candidate can go on seeking adjournments before the Scrutiny Committee at the time of hearing and continue to hold the post of a councillor. An impostor and a fraudster, who does not belong to a backward class, would always try to seek adjournments before the Scrutiny Committee so as to continue to reap the benefits of reservation. In such a case, the appropriate authority would not be powerless to declare his election to be terminated retrospectively on his failure to produce caste validity certificate within a reasonable time (which in no case can be shorter than the statutory period of 4 months). If, however, for no fault of his the Scrutiny Committee is unable to decide on the validity of his caste certificate and actually decides his claim say after about 56 months instead of 4 months, the period of 4 months cannot be held to be mandatory. If, however, the Scrutiny Committee invalidates the caste claim of the elected candidate and/or cancels the caste certificate obtained from the competent authority by him, then the election shall stand terminated forthwith on the decision of the Scrutiny Committee".

33. On the other hand, Shrote has held that the stipulation as to time within which to produce the Validity Certificate is mandatory. The Division Bench has reasoned that the provision of Section 9A is "specific, clear and self explanatory". The legislature has used the expression "shall" and the proviso to Section 9A not only stipulates that the Validity Certificate must be produced but further that the Validity Certificate must be produced within a stipulated time limit of six months from the date of election. Further, second proviso, in terms, provides the consequences in case of failure to produce the Validity Certificate within a stipulated period. The consequences are the automatic termination of election of such candidate with retrospective effect and disqualification for being a Councillor. In such a situation, not even a formal declaration in that regard by

any authority is necessary. The provision is a self contained code which provides not only the procedure to be followed by the elected Councillor, but also the consequences in case of omission to follow the said procedure.

34. The reasoning in Shrote is reflected in paragraphs 6, 7 and 8, and the same is transcribed below for the reference of convenience.

"6. In the instant case, the following facts are not in dispute: The petitioner contested the election of the Councilor from the Scheduled Tribe category. The petitioner has submitted his caste claim to the Scrutiny Committee for verification before filing the nomination and, as per the proviso to section 9A the petitioner was required to submit validity certificate within a period of three months from the date of election, i.e., 8th October, 2007 which the petitioner could not submit since the caste claim of the petitioner was not decided by the Scrutiny Committee.

7. Proviso to section 9A required candidate to give an undertaking, that he shall submit within a period of three months from the date of his election the validity certificate issued by the Scrutiny Committee. It also gave consequences of failure to submit validity certificate within a period of three months from the date of election, i.e., election of such candidate shall be deemed to have been terminated retrospectively and such candidate shall be disqualified for being a Councillor. It is, therefore, evident that the proviso to section 9A which was inserted by the Maharashtra Municipal Corporations and Municipal Council (Amendment) Ordinance, 2006 did not leave any room for doubt about the consequences, on failure to submit validity certificate within a period of three months from the date of election by the elected candidate. The provision is specific, clear and self explanatory (now deleted).

8. It is no doubt true that once the caste claim is submitted to the Scrutiny Committee for verification. It is for the Scrutiny Committee to decide the same according to the procedure and provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (VJ) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and the candidate who has submitted his/her caste claim for verification has no role to play in this regard. However, the proviso to section 9A not only gave time within which validity certificate was required to be submitted by the elected Councillor but also provided consequences for failure to submit validity certificate within a period of three months from the date of election. Thus, the consequences were automatic cessation/termination of election of such candidate with retrospective effect and such candidate shall also be disqualified for being a Councillor. It is in such situation not even a formal declaration in this regard by the Authority was necessary. If the elected candidate failed to submit the validity certificate within three months from the date of election, the election of such candidate would stand terminated automatically with retrospective effect and such candidate also stood disqualified for being a Councillor. The provision was self contained code which had provided

not only the procedure to be followed by the elected Councilor but also provided consequences in case of omission to follow the said procedure. As per the said provision it was not even necessary for the Collector to declare the election of such candidate was terminated and he/she has incurred disqualification for being a Councillor. However, in the case of the petitioner, the Collector, Nagpur gave such declaration which is impugned in the present writ petition. It is not in dispute that the petitioner could not submit validity certificate within three months from the date of election and, therefore, the election of the petitioner was liable to be terminated with retrospective effect and petitioner was disqualified as a Councillor."

35. As noted earlier, the main issue in this Reference is whether the stipulation as to time in the two provisos to Section 9A, within which, an elected candidate is required to produce Validity Certificate is directory or mandatory. There are several rules to determine whether a provision is mandatory or directory. However, such rules are neither exhaustive nor universal. In fact, the universal rule is that there is no universal rule in such matters. In *Liverpool Borough Bank v. Turner* (1860) 30 LJ Ch. 379 , Lord Campbell, C.J. At p.380 said : (ER p. 718) :

"..... No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of the Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed".

36. Some of the well known tests to determine whether a provision is mandatory or directory are as follows:

(i) The use of expressions like "shall" or "may" are not conclusive and regard must be had to the true intent of the legislation. However, use of expressions like "shall" or "should" or "must" by the legislature at least prima facie, indicates mandatory nature. Similarly, the use of expressions like "may" or "as nearly as may be" by the legislature, at least prima facie indicates directory nature. *State of UP v. B. R. Upadhyaya* AIR 1961 SC 751;

(ii) The circumstance that the statute itself provides consequences of breach or noncompliance, normally suggests a mandatory nature; *Maqbool Ahmad v. Onkar Pratap Narain Singh* AIR 1935 PC 85, p.88, *Manilal Shah v. Sardar Mahmud* AIR 1954 SC 349;

(iii) A provision couched in negative form, generally suggests mandatory nature; Affirmative words, simpliciter, generally suggest directory nature; *M. Pentiah v. Muddala* AIR 1961 SC 1107; *Dharamdeo Rai v. Ramnagina Rai*, 1972(1) SCC 460;

(iv) A procedural rule, should ordinarily, not be construed as mandatory; If a provision relates to performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time, who have no control over the

performance of the duty, such provision should be treated as directory; Dattatraya Moreshwar (supra);

(v) If a statute confers a concession or privilege and prescribes a mode of acquiring it, the mode so prescribed must be adopted as even affirmative words in such cases are construed imperative; *Edward Ramia Ltd. v. African Woods Ltd.* 1960 (1) ALL ER 627;

(vi) Where a provision prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as mandatory one;

(vii) Provisions which impose private duties or obligations upon private parties are ordinarily to be regarded as mandatory; *Kedarnath Jute Mfg, Co. Ltd. v. Commercial Tax Officer*, AIR 1966 SC 12 ;

(viii) If exceptions, exemptions or concessions are granted by a statute subject to fulfilment of certain conditions, then such conditions must be mandatorily fulfilled. Subject to fulfilment of conditions, the provision may be liberally construed;

(ix) The nature, design and consequences which would follow from construing the provision as "mandatory" or "directory". Where construction of a provision as directory will render the provision or significant parts otiose, redundant or a surplusage. The principle is that the legislature does not use words in vain; and

(x) Where the construction of a provision as mandatory would result in absurdity, which could never have been intended by the legislature, the provision can be construed as directory.

37. Applying the aforesaid tests and having due regard to the terms of the provisions, in our considered opinion, the stipulation as to time in the two provisos to Section 9A, is required to be construed as mandatory for several reasons. Firstly, the legislature has repeatedly used the expression "shall" when it comes to the requirement of producing Validity Certificate within the stipulated period and when it comes to providing consequences for breach; Secondly, the legislature in the form of second proviso to Section 9A has provided in no uncertain terms the consequences for failure to produce the Validity Certificate within the stipulated period; Thirdly, the provision which permits a person to contest without producing Validity Certificate along with nomination papers, is in the nature of exemption or concession. Such exemption or concession is conditional. One of the conditions prescribed is production of Validity Certificate within the stipulated period. Such a condition will have to be strictly construed, otherwise, the conditional exemption will be availed, but the condition will be breached. Fourthly, a directory construction would render significant portions of Section 9A redundant and unworkable. Fifthly, the individual hardship or trauma is quite irrelevant when the statutory provision is plain, clear and unambiguous.

Such individual hardship or trauma is in fact inevitable even when the provision is construed as directory. Sixthly, the principle in *Dattatraya Moreshwar Pangarkar* (supra) is inapplicable where consequences of breach are statutorily provided. Seventhly, the reasoning in *Gulve* not only renders significant portions of the provision redundant, but results in rewriting the provision itself, which is impermissible.

38. One of the cardinal principles of interpretation of statutes is that the words of a statute must prima facie be given their ordinary meaning, unless of course, such construction leads to absurdity or unless there is something in the context or in the object of the statute to the contrary. Therefore, when the words of a statute are clear, plain and unambiguous, then, the Courts are bound to give effect to that meaning, irrespective of the consequences involved. Normally, the words used by the legislature themselves declare the legislative intent, particularly where the words of the statute are clear, plain and unambiguous. The effort must be to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being redundant or surplus, particularly when such words can have proper application in circumstances conceivable within the contemplation of the statute. *Union of India v. Tata Chemicals Ltd.*, 2014 (6) SCC 335.

39. In every case involving the construction of a statute, the starting point must be the language used by the legislation. In enacting Section 9A, the legislature has not minced words. The main provision employs the expression "shall be required to submit...", when it comes to submission caste certificate and Validity Certificate along with the nomination papers. The main provision embodies the general rule that a valid nomination be accompanied by not only the caste certificate, but also the Validity Certificate. In fact, in case of *Thombre* (supra) the Division Bench of this Court has already construed this requirement as mandatory. The first proviso, which is in the nature of an exemption or concession, enables acceptance of nomination papers though unaccompanied by Validity Certificate, subject to fulfilment of the specified conditions. One of the conditions prescribed is that "he shall submit, within a period of six months from the date on which he is declared elected, the validity certificate issued by the Scrutiny Committee". The second proviso, again in clear, plain and unambiguous terms provides for the consequences where such person fails to produce the Validity Certificate within a period of six months from date of his election, as undertaken by him. The consequence is that "his election shall be deemed to have been terminated retrospectively" and "he shall be disqualified for being a Councillor".

40. The words and expressions employed by the legislature in enacting Section 9A are plain, clear and unambiguous. In such a situation, the words and expressions employed, themselves, declare the intention of the legislature. There is no necessity to apply any other aids or interpretation. The marginal notes, the legislative history and even the statement of objects and reasons suggest that

the general rule in such matters is that the person desirous of contesting to a reserved seat must submit along with his nomination papers, both, the caste certificate and the Validity Certificate. Only in certain specified cases, exemption or concession is granted from the production of Validity Certificate along with nomination papers, provided such person furnishes an undertaking that he shall produce the Validity Certificate within six months from the date of election. Perhaps, in order that there remains no ambiguity as to the consequence of failure to produce such Validity Certificate within the stipulated period, the legislature, by means of the second proviso to Section 9A has made it clear that the failure will entail retrospective termination of the election and disqualification for being a Councillor. When words and expressions employed by the legislature are plain, clear and unambiguous, the Courts are bound to give effect to the meaning, irrespective of the consequences.

41. In this case, the legislature has repeatedly used the word "shall" and further, provided consequences in case of breach. There is nothing, either in the text or in the context which suggests that the provision, expressed so clearly, was intended to be construed as directory or that the consequences so clearly prescribed were intended to only apply in a situation where the elected candidate was found to be responsible for the delay in the proceedings before the Scrutiny Committee. In fact, Section 9A does not even provide for any authority or mechanism to inquire into or determine whether the elected candidate was responsible for the delay in the proceedings before the Scrutiny Committee or not. These are, in our opinion, weighty reasons for construing the provision as mandatory.

42. No doubt, the use of expressions like "shall" or "may" are not conclusive in determining whether the provision is mandatory or directory. However, user of expressions like "shall", "should", "must" raise a presumption that the provision is imperative or prima facie mandatory. Further, when consequence of nullification on failure to comply with a prescribed requirement is provided by the statute itself, there is greater reason to construe such statutory requirement as mandatory.

43. In *Maqbool Ahmad v. Onkar Pratap Narain Singh*, (supra) it is held that the period prescribed in the Schedule to Indian Limitation Act, 1908 for bringing a legal proceeding are mandatory since the consequence of expiry of period of limitation is provided by Section 3 of the Act in that the Court is enjoined to dismiss a legal proceeding instituted after the expiry of the prescribed period. In this case, the second proviso to Section 9A, prescribes in precise terms the consequences, where, there is failure to produce the Validity Certificate within the stipulated period. To disregard such consequence would virtually amount to grant of conditional exemption or concession without insistence upon compliance with the statutorily prescribed condition. The conditional concession or exception would then be availed but the condition would remain unfulfilled. Such an interpretation will not be consistent either with the text or the context of the

provisions.

44. As mentioned earlier, the general rule in such matters is that the person desirous of contesting election to a reserved seat must produce along with his nomination papers both, the caste certificate as well as the Validity Certificate. The first proviso, subject to the fulfilment of the prescribed conditions, dilutes the rigour of this general rule. Therefore, the conditions subject to which such exemption or concession is granted are required to be strictly construed. Otherwise, the conditional concession or exemption would be availed but the condition, statutorily undertaken by such person to be fulfilled would be breached.

45. In case of Sujit Vasant Patil (supra), the Full Bench of this Court, in the context of inter play between similar Municipal Legislations and the Caste Act 2000, has held that the legislature expects a person to claim benefit of contesting to a reserved post only after obtaining Validity Certificate from the Scrutiny Committee, though it also permits a person to claim such benefit on the basis of a tentative caste certificate issued by the competent authority, if such a person is willing to take the risk. Such reasoning is reflected in paragraphs 12A, 12B and 12C. Since paragraph 12B is most relevant, it is transcribed below for reference of convenience :

"12B. Thus the scheme is that a person who obtains a caste certificate has to himself apply to the Scrutiny Committee for scrutiny of his caste certificate, so that he can secure a valid certificate from the Scrutiny Committee, and it is only after the Scrutiny Committee issuing a valid certificate that the caste certificate issued in favour of the person by the competent authority becomes final. In our opinion, the scheme of Subsection (2) of Section 6 is that any candidate who desires to avail of any benefit available to backward class has to get a caste certificate as also the validity certificate before he makes a claim for the benefits. But if a candidate chooses to make claim to the benefits on the basis of a tentative certificate namely a certificate issued by the competent authority, he takes the risk of his losing the benefits that he has claimed and obtained and also being visited with penal consequences on the refusal of the Scrutiny Committee to validate his caste claim. The Act contemplates conscious decision being made by a person at the time of claiming benefits. The Legislature expects a person to claim the benefits only after obtaining the validity certificate, but the Legislature also permits a person to claim the benefits on the basis of a tentative certificate issued by the competent authority, if he is willing to take the risk mentioned above. In our opinion, therefore, the validity certificate is one of the essential ingredient of the candidate being qualified to contest for the reserved seat...."

(emphasis supplied)

46. According to Sujit Vasant Patil (supra), therefore, a person who seeks to contest election to reserved posts without compliance with the general rule of

producing Validity Certificate along with nomination papers, "takes a risk" . The first proviso to Section 9A, in such a case, makes this position quite clear by requiring such person to furnish a statutory undertaking to produce Validity Certificate within six months from the date of election. The second proviso, in terms, provides for consequence in case of breach. Such person, having taken the risk, cannot, in the absence of any ambiguity in the provision, be permitted to wriggle out from the consequences of breach so clearly and statutorily provided in the provision itself. Otherwise, such person, will avail of a conditional concession, without, fulfilling the condition subject to which such concession came to be granted in the first place by the provision.

47. The concession or exemption in the matter of contesting to a reserved post without compliance with the general rule of producing Validity Certificate along with the nomination papers is provided by enacting a "proviso" to Section 9A. This proviso is further qualified by yet another proviso specifying consequences of the breach of the condition, subject to which the concession or exemption is to be granted in terms of the first proviso. The rules with regard to interpretation of a "proviso" are quite well settled. If any exception is made or any exemption or concession granted by enacting a proviso to the main provision and the same is subject to fulfilment of certain prescribed conditions, then, ordinarily, the fulfilment of the prescribed conditions is imperative. The question of liberal construction in such matters arises only upon proof of fulfilment of the conditions prescribed.

48. The rules with regard to interpretation of a "proviso" support such position. The normal function of a proviso is to provide an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise normally fall within the general language of the main enactment. Therefore, usually a proviso cannot be interpreted as a general rule that has been provided for. So also, it cannot be interpreted in a manner which would nullify the enactment or take away in entirety, a right conferred by the statute. When exception is made or exemption is granted subject to fulfilment of certain conditions, then, normally the provisions which relate to such conditions are required to be construed as mandatory. (Rohitash Kumar v. Om Prakash Sharma AIR 2013 SC 30).

49. The rules with regard to interpretation of a "proviso" are succinctly set out by the Supreme Court in Satya Pal Singh v. State of Madhya Pradesh, 2015 Cr.L.J. 4929 at paragraphs 11 to 13. In paragraph 12, by reference to Sunderam Pillai v. V.R. Pattabiraman, 1985(1) SCC 591, the Supreme Court has observed as follows :

"12. Further, a three Judge Bench of this Court by majority of 2:1 in the case of Sunderam Pillai v. V.R. Pattabirama (1985) 1 SCC 591 has elaborately examined the scope of proviso to the substantive provision of the Section and rules of its

interpretation. The relevant paras are reproduced hereunder:

"30. Sarathi in Interpretation of Statutes at pages 294295 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

XXX

32. In *Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai* it was held that the main object of a proviso is merely to qualify the main enactment. In *Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality* Lord Macmillan observed thus:

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case."

33. The above case was approved by this Court in *CIT v. Indo Mercantile Bank Ltd.* where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha Hidayatullah, J.*, as he

then was, very aptly and succinctly indicated the parameters of a proviso thus:

"As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.

XXX

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself."(Emphasis supplied)

Thus, from a reading of the above said legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Code of Criminal Procedure must be read along with its main enactment i.e., Section 372 itself and together with Subsection (3) to Section 378 of Code of Criminal Procedure otherwise the substantive provision of Section 372 of Code of Criminal Procedure will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Cr.P.C."

50. Applying the aforesaid principles, it is quite clear that the first proviso is in the nature of an exception to the general rule provided in the main provision of Section 9A. The first proviso grants exemption or concession in the matter of compliance with the general rule in the main provision of Section 9A. The provision of a statute which makes an exception or grants an exemption or concession has to be tested on a different anvil since it grants freedom from liabilities, which would otherwise be attracted (*State of Haryana v. Bharti Teletech Ltd.* (2014) 3 SCC 556). If a person is desirous of availing exemption or concession in terms of the provision to Section 9A, then, such person has to comply with the conditions subject to which such exemption or concession is granted. There can be no question of any laxity in the matter of such compliance, particularly when the provision in unambiguous terms provides for the consequences of breach. This is yet another reason to construe the provision as mandatory and not directory.

51. *I.T.C. Bhadrachalam Paperboards and anr v. Mandal Revenue Officer, A.P. & Ors.* (1996) 6 SCC 634 is an authority for the proposition that the condition subject to which any exemption is granted by the statute, is normally to be construed as mandatory. In the said case, the Supreme Court was interpreting Section 11 of the Andhra Pradesh Non Agricultural Lands Assessment Act, 1963 (NALA), which had conferred upon the Government the power to exempt any class of non-agricultural lands from levy, inter alia "by order, published in the

Andhra Pradesh Gazette". The Government had made an order of exemption, which might have covered the appellants land, however, such order had not been published in the A.P. Gazette and therefore, the question arose as to whether the publication in the Gazette was a mandatory requirement for claiming exemption or whether the same was only directory. The Supreme Court ruled that the requirement of publication in the Official Gazette was mandatory since a levy created by a statute can be lifted, suspended or withdrawn only by a statute or in the manner prescribed by the statute creating the levy. The Supreme Court held that dispensing with the levy and payment of tax is a serious matter. It is done only with a view to promote countervailing public interest. The provision in Section 11 regards the publication in the Official Gazette is of a substantive nature besides being in the nature of an exemption. The principle in the case of Dattatraya Moreshwar Pangarkar (supra) that the provisions which relate to the performance of public duties are to be construed as directory since construing such provisions as mandatory would work out serious general inconvenience or injustice to persons who have no control over those entrusted with such duties, was held as inapplicable in a situation where conditions subject to which an exemption could be availed of were set out in the statute itself.

52. If the stipulation as to time in the two provisos to Section 9A is held as directory, then, the significant portions of the two provisos will be rendered otiose, redundant or a mere surplusage. Several questions then arise for which, at least Section 9A as it stands, has no answers to offer. Is there any presumption that the delay in issuance of Validity Certificate is for reasons always attributable to the Scrutiny Committee only ? Or is it not conceivable that an elected candidate, perhaps conscious that the tentative caste certificate produced by him might not stand, may delay the proceedings before the Scrutiny Committee, if, in the meanwhile he can continue as a Councillor ? Do the provisions of Section 9A, as they stand, contemplate any adjudication or determination as to who is responsible for the delay in the proceedings before the Scrutiny Committee ? If so, which is the authority prescribed by law for purpose of such adjudication or determination ? If the Validity Certificate need not be submitted within six months from the date of election, then within how much time is the elected Councillor required to produce the Validity Certificate ? If the time limit of six months is held as directory, then under what circumstances will the second proviso to Section 9A operate ?

53. If the stipulation as to time limit is construed as directory and consequentially left in a state of limbo, then, the very requirement of furnishing a statutory undertaking that such Validity Certificate shall be produced within a period of six months from the date of election will be rendered otiose. Similarly, the entire second proviso, which in plain, clear and unambiguous terms provides for consequences for failure to produce the Validity Certificate within six months will be rendered otiose, redundant and surplusage. In fact, such construction will virtually render the entire second proviso unworkable. An interpretation which renders the significant portions of the provision otiose, redundant or surplusage

cannot be preferred over an interpretation which assigns and ascribes meaning to every portion, to every word used by the legislature in enacting the provisions in question.

54. In interpreting a statute, effort should be made to give effect to each and every word used by legislature. The Courts always presume that the legislature inserted every part, or every word for a purpose and the legislative intention is that every part or every word of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See *Nathi Devi v. Radha Devi Gupta*) (2005) 2 SCC 271.

55. In *Mithilesh Singh v. Union of India and ors.* (2003) 3 SCC 309, a member of Railway Protection Force had applied for leave and thereafter remained absent. Rule 147(iv) of the Railway Protection Force Rules, 1959 declared the absence by an enrolled member of the force "without proper intimation" to be a serious misconduct. In this context, the Supreme Court held that the application for leave may at the highest constitute "intimation", but the same could not have been construed as "proper intimation" for diluting the requirement of obtaining permission before absents from duty. The Supreme Court held that the use of expression "proper" cannot be regarded as surplusage and rejection of the words as meaningless has to be avoided. It is not a sound principle of construction to brush aside the word(s) in a statute as being inapposite, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In interpretation of a statute, the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of a statute should have effect. The legislature is deemed not to waste its words or to say anything in vain.

56. The major premise discernible from the reasoning in *Gulve* is the alleged hardship or inequity arising in a situation where the elected candidate, for no fault on his part, is required to suffer retrospective termination of his election or a disqualification, if he is unable to produce the Validity Certificate within six months from the date of his election from the Scrutiny Committee. *Gulve* reasons that the object of the statute is not to penalise "persons genuinely belonging to the backward classes" but the object is to disable "imposters of fraudsters" from wrongfully claiming the benefit of reservation. *Gulve* reasons that penalising such persons genuinely belonging to the backward classes might frustrate the constitutional mandate of Article 243T.

57. With great respect, we are unable to share the aforesaid reasoning. *Gulve*, in our opinion, gives no credence to the language used by the legislature, which, in our view, is quite plain, clear and unambiguous. The legislature has not only repeatedly used the expression "shall" but further, in clear and unambiguous terms provided for consequences in case of failure to submit the Validity Certificate within the stipulated period of six months. In terms of the main provision of Section 9A, the general rule prescribed is the submission of both,

caste certificate and Validity Certificate, along with the nomination papers. The provisos are in the nature of exception. The provisos merely grant an exemption or concession, subject to fulfilment of certain conditions. Gulve fails to notice that such conditions are required to be strictly construed. There is no question of availing an exemption or concession which is conditional and thereafter failing to comply with the condition. Gulve fails to notice that construing the stipulation as to time as directory will render significant portions of the two provisos redundant, otiose and the surplusage.

58. The question of alleged hardships or inequity ought not to enter into the realm of statutory interpretation where the statutory provision is plain, clear and unambiguous. The nebulous concept of hardship or alleged inequity, in the face of clear, plain and unambiguous statutory provision, is not reason enough to either deviate from or resist compliance with statutory provisions.

59. In *Martin Burn Ltd. v. The Corporation of Calcutta* AIR 1966 Supreme Court 529, the Supreme Court has held that a result flowing from a statutory provision is never an evil. A Court has no power to ignore the provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not. When the High Court found that the relevant Section had been attracted to the case, it had no power to set that provision at naught.

60. In *Hyder Consulting (UK) Limited v. Governor, State of Orissa* (2015) 2 SCC 189, the Supreme Court has warned against tinkering with plain and unambiguous words in the statute, on the basis of regard to ensuing consequences.

61. In *Ganga Prasad v. State of Bihar* 1995(Suppl. (1) SCC 192, the Supreme Court has held that where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature. The Supreme Court, approving the decision of Privy Council in *King Emperor v. Benoari Lal Sarma* AIR 1945 PC 48 has held that the settled law admit results of construction even if they be strange or surprising, unreasonable or unjust or oppressive. By reference to *Maxwell on Interpretation of Statutes*, the Supreme Court has held that the desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision. Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the Court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded.

62. Even in case of social welfare legislation, the Supreme Court in *Jeewanlal*

Ltd. and ors. v. Appellate Authority under the Payment of Gratuity Act and ors. (1984) 4 SCC 356 , has held that in construing a social welfare legislation, the Court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the Courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the Courts must not yield to the temptation of seeking ambiguity when there is none.

63. In this case, we are concerned with a provision of limitation or stipulation as to time. Such provisions, by their very nature, frequently result in hardship or in some cases even inequity. By their very nature, some amount of arbitrariness (so to say) is inevitable in such provisions. However, where the provision is clear and unambiguous and the legislature has also provided for consequences where the given act is not performed within the prescribed period of limitation, it is not for the Courts of law to relax such provision on a case to case basis, depending upon its notion of hardship and inequity. Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice entertained by the Court. (State of Rajasthan v. Mrs. Leela Jain, AIR 1965 SC 1296) In such a situation, the provision as to limitation or stipulation of time has to be construed as mandatory and such construction cannot be avoided on the touch stone of perceived hardship or inequity.

64. In R. Rudraiah and anr. v. State of Karnataka and ors. (1998) 3 SCC 23, the Supreme Court was called upon to consider whether provisions of Sections 45, 48A of the Karnataka Land Reforms Act, 1961 dealing with period of limitation for filing application for grant of occupancy right (namely six months from the date of commencement of Section 1 of Act 1 of 1979, i.e., 3061979) are clear and unambiguous and not capable of extension on the ground that there is ambiguity or on the ground that they lead to grave injustice ? Upon concluding that the provisions were clear and unambiguous, the Supreme Court rejected the contention based upon absurdity or grave injustice by observing at paragraph 17, thus:

17. It is true there is a principle of interpretation of statutes that the plain or grammatical construction which leads to injustice or absurdity is to be avoided (see Venkatarama Iyer, J. in Tirath Singh v. Bachittar Singh (AIR at 855). But

that principle can be applied only if "the language admits of an interpretation which would avoid it". *Shamrao V. Parulekar v. District Magistrate* (AIR at 327). In our view Section 48A, as amended, has fixed a specific date for the making of an application by a simple rule of arithmetic, and there is therefore no scope for implying any "ambiguity" at all. Further

"the fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide".

(*Sir Dinshaw Mulla in Nagendranath De v. Sureshchandra De.*)

(emphasis supplied)

65. In *R. v. Weir* (2001) 2 ALL ER 216, the House of Lords speaking through Lord Bingham of Cornhill was construing Section 2 of the Administration of Justice Act, 1960 which had provided that an application to the Court below for leave to appeal (to the House of Lords) shall be made within a period of 14 days beginning with the date of the decision of that Court; and an application to the House of Lords for such leave shall be made within the period of 14 days beginning with the date on which the application is refused by the Court below. On the issue as to whether the period of 14 days stipulated in the provision was to be construed as mandatory or directory, it was held that where time limit is laid down and no power is given to extend it, the ordinary rule is that the time limit must be strictly observed. The House of Lords quoted with approval, the following passage from *Petch v. Gurney (Inspector of Taxes)* 1994(3) ALL ER 731:

"If the only time limit which is prescribed is not obligatory, there is no time limit at all. Doing an act late is not the equivalent of doing it in time. That is why Grove J said in *Barker v. Palmer* "provisions with respect to time are always obligatory, unless a power of extending the time is given to the court". This probably cannot be laid down as a universal rule, but in my judgment it must be the normal one. Unless the court is given a power to extend the time, or some other and final mandatory time limit can be spelled out of the statute, a time limit cannot be relaxed without being dispensed with altogether; and it cannot be dispensed with altogether..."

(emphasis supplied)

66. In *Visitor, AMU v. K. S. Misra* (2007) 8 SCC 593 , the Statute 61(6)(iv) of the Aligarh Muslim University provided that an employee must exercise an option within prescribed time limit failing which the employee was deemed to have opted for retention of the benefits already received by him. The Supreme Court, construed the provision as to time limit as mandatory emphasising that the statute had not only provided time limit but also the consequences in case of failure to adhere to the time limit. The Supreme Court also went on to add the

construction of such provision as directory might result in the provision being rendered unworkable, redundant or otiose. The reasoning is in paragraphs 11 to 14 which read thus :

11. The High Court in the impugned order has held that the time-limit provided in Statute 61(6)(iv) is merely directory in nature and not mandatory and after holding so has granted relief to the respondent. In our opinion the view taken by the High Court is clearly erroneous in law. Sub-clause (c) of Statute 61(6)(iv) lays down that the option under this clause shall be exercised within a period of one year and if no option is exercised within the prescribed limit, the employee shall be deemed to have opted for retention of the benefits already received by him. This clause provides for the consequences which will ensue in the event of non-exercise of option within the prescribed period of one year.

12. A three-Judge Bench in *Balwant Singh v. Anand Kumar Sharma* has explained in what circumstances the duty cast upon a private party can be said to be mandatory and para 7 of the Report reads as under: (SCC p. 436, para 7)

"7. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if a thing is required to be done by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In *Sutherland's Statutory Construction*, 3rd Edn., Vol. 3, at p. 107, it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow noncompliance with the provision. At p. 111 it is stated as follows:

"As a corollary of the rule outlined above, the fact that no consequences of noncompliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive." "

Therefore, in accordance with the law laid down in the above authority, the provisions of Statutes 61(6)(iv)(b) and (c) should be treated as mandatory as it is a private party who has to do a particular act within a specified time.

13. The problem can be looked from another angle. If the view taken by the High Court that the provision is directory is accepted as correct, it would in effect amount to making the provisions of sub clause (c) of Statute 61(6) (iv) otiose. In such a case the consequences provided therein that if no option is exercised within the prescribed timelimit, the employee shall be deemed to have opted for the retention of the benefits already received by him would never come into play. It is wellsettled principle of interpretation of the statute that it is incumbent upon

the court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., p. 68.)

14. The provisions of sub clause (c) of Statute 61(6)(iv) should be interpreted in a manner which makes the provision workable and not redundant or otiose. It is, therefore, not possible to accept the view taken by the High Court that the provision is directory as in such a case this clause will never come into operation if the employee exercises his option at any point of time before his retirement.

(emphasis supplied)

67. The three instances of hardship referred to in Gulve or for that matter the instance in the present petition may, to a certain extent, involve hardship or even inequity qua the elected candidates. However, as noted earlier, such individual instances or hardship or trauma are inevitable, but, not reasons good enough for bypassing statutory compliances, particularly where the statutory provisions are plain, clear and unambiguous.

68. This is not a case of some obvious *causus omissus* or some obvious drafting error. Rather, it is legitimate to proceed on the basis that the legislature, in enacting Section 9A, was quite conscious of the consequences arising out of stipulating that the Validity Certificate must be produced within six months from the date of the election. The statement of reasons and objects bears out that the legislature was conscious of the position of matters before the Scrutiny Committees. The legislature, in such a situation, is presumed to be conscious of the hardships, inequities and trauma, resulting from a situation where the Scrutiny Committee, after several years concludes that the elected candidate does not belong to the reserved category and, therefore, is dis entitled to the Validity Certificate. In such a situation, the elected candidate, who was in the first place, ineligible even to contest the election to a reserved seat would have continued in Office for several months or on occasions, for several years to the detriment of not only the defeated candidate, but also the electorate, which had the right to be represented by a candidate genuinely belonging to a reserved category. Such a situation will also lead to the frustration of the constitutional mandate of Article 243T.

69. In such matters therefore, it is not safe to premise an interpretation based upon any alleged individual hardship or trauma. Rather, the only safe guide to

apply would be adherence to the statutory provisions, particularly where the statutory provision is clear, plain and unambiguous. Besides, the significance of requiring the person who seeks to avail the benefit of exemption or concession under the first proviso to Section 9A to submit his undertaking that he shall produce the Validity Certificate within the stipulated period, cannot be lost sight of. This means that the legislature, despite, being aware of the pendency position before the Scrutiny Committees, intended to place the duty upon such private person, since, such private person wished to deviate from the general rule and avail an exemption or concession to contest without producing the Validity Certificate along with his nomination papers. There is reasonable certainty when it comes to election schedules to local authorities. Therefore, nothing really prevents a person desirous of contesting for elections to a reserved seat to apply well in advance of the election schedule for issue of the Validity Certificate. In fact, as noted by the Full Bench in case of Sujit Vasant Patil (supra), the legislature expects a person to claim benefits of reservation only after obtaining the Validity Certificate. Thus construed, this is not really a case of either impossibility in the compliance with the condition prescribed or a case of some insurmountable hardship as projected by the learned Counsel for Manisha.

70. In *B. Premanand and ors v. Mohan Koikal & ors.* (2011) 4 SCC 266, the Supreme Court after opining that Rule 27(c) of the Seniority Rules was plain and clear, held that the same will have to be construed as mandatory and implemented, even though, equity may be in favour of the respondents who were selected earlier. The court observed that in case of conflict between equity and law, it is the law which must prevail. It was held that if the provision is unambiguous and if from the provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. In paragraphs 11 to 21, the Supreme Court has digested various decisions which state that the mandatory nature of a statute, which is clear, plain and unambiguous, must not be diluted having regard to what the court regards as inequitable consequences:

11. As stated by Justice Frankfurter of the US Supreme Court (see of *Law & Men : Papers and Addresses of Felix Frankfurter*): "Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great Judges have constantly admonished their brethren of the need for discipline in observing the limitations. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

12. As observed by Lord Cranworth in *Gundry v. Pinniger*: (ER p. 648)

"to adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

13. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's *Principles of Statutory Interpretation*, 9th Edn., pp. 4549). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

14. As the Privy Council observed (per Viscount Simon, L.C.):

"Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used." (See *King Emperor v. Benoari Lal Sarma*, IA p. 71 : AIR p. 53.)

15. As observed by this Court in *CIT (Ag) v. Keshab Chandra Mandal*: (AIR p. 270, para 20)

"20. . Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute.."

(emphasis supplied)

16. Where the words are unequivocal, there is no scope for importing any rule of interpretation (vide *Pandian Chemicals Ltd. v. CIT*). It is only where the provisions of a statute are ambiguous that the court can depart from a literal or strict construction (vide *Nasiruddin v. Sita Ram Agarwal*). Where the words of a statute are plain and unambiguous effect must be given to them (vide *Bhaiji v. SDO*).

17. No doubt in some exceptional cases departure can be made from the literal rule of the interpretation, e.g. by adopting a purposive construction, Heydon mischief rule, etc. but that should only be done in very exceptional cases. Ordinarily, it is not proper for the court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible (vide *J.P. Bansal v. State of Rajasthan* and *State of Jharkhand v. Govind Singh*). It is for the legislature to amend the law and not the court (vide *State of Jharkhand v. Govind Singh*).

18. In *Jinia Keotin v. Kumar Sitaram Manjhi* 2003 (1) SCC 730(SCC p. 733, para 5) this Court observed:

"48. . The court cannot legislate under the garb of interpretation."

Hence, there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron.

19. In *Shiv Shakti Coop. Housing Society v. Swaraj Developer* this Court observed: (SCC p. 669, para 19)

"19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

20. Where the language is clear, the intention of the legislature has to be gathered from the language used (vide *Grasim Industries Ltd. v. Collector of Customs and Union of India v. Hansoli Devi*).

21. In *Union of India v. Hansoli Devi* this Court observed: (SCC p. 281, para 9)

"9. . It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

(emphasis supplied)

71. In *Prakash Nath Khanna v. CIT* (2004) 9 SCC 686, the Supreme Court has held that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming that there is defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency and the Court should not seek to amend the law in the garb of interpretation.

72. In matters of this nature, there are certain presumptions which go with legislations enacted by competent legislatures. There are presumptions that the legislature knows the needs of its people. There are presumptions that the legislature is conscious, not merely of existing position in law, but also, the nature of the mischief which it seeks to remedy by enacting the law. There are presumptions that the legislature is conscious of the degrees of harm that need to be addressed or redressed. In addressing problems which are of complex nature, it is not always possible to have any perfect solutions. There are presumptions that the legislature is aware of the complexities of the problem and has consciously adopted a solution, which, in its wisdom, may be least harmful, though, not foolproof. These are all matters of value judgments. Out of a range of options available to the legislature, if, the legislature has consciously and by employing clear, plain and unambiguous terms, chosen one such option, it is not

for the Courts, in the guise of interpretation, to deviate from the text of the statute or judicially relax the consequence prescribed by the statute.

73. The reasoning similar to the one adopted by Gulve of reading into the statute legislative intent of checking "imposters or fraudsters" but not depriving "genuine persons belonging to backward classes" their right to contest elections to reserved seats was tacitly disapproved by the Supreme Court in the case of *Authorised Officer, Thanjavur and anr. v. S. Naganatha Ayyar and ors.* (1979) 3 SCC 466

74. In the aforesaid case, the Supreme Court was concerned with Section 22 of Tamil Nadu Reforms (Fixation of Ceiling on Land) Act, 1961, which provided that where on or after the date of commencement of this Act, but before the notified date, any person has transferred any land held by him or, has effected a partition of his holding or part thereof, the Authorised Officer may, after notice to such person and other persons affected by such transfer or partition and after such enquiry as he thinks fit to make declare the transfer or partition to be void "if he finds that the transfer or the partition as the case may be, defeats any of the provisions of this Act." The High Court, in the order appealed, had held that the transfers between the dates, i.e., the date of commencement of act and the notified date, if only established to be sham, mala fide or intended to defeat the provisions of Section 22, will be void, thereby, saving transfers, which may be bona fide or made any good faith and not to defeat or thwart the purpose of provisions of the Act. The Supreme Court reversed the High Court by observing that Section 22, literally read, leads only to one conclusion, that any transfer, bona fide executed or not, is liable to be declared void by the authorised officer "if he finds that the transfer defeats any of the provisions of the Act". The Supreme Court conceded that such an interpretation might cause hardship to some, but explained that every cause claims martyrs. Individual trauma is inevitable while ushering in a new economic order. To allow the sense of the text and to mix alien concepts is to debase the statutory metal. Likewise, laws are not value free and so he reads the symbols of words best who projects in the process the values of the legislation as distinguished from his own. Reading other values into the legislators' words may judicially demonetize the statute and break the comity between constitutional instrumentalities. The current and correct view of the interpretative process is that words must be given their "literal" or "ordinary" meaning unless there are compelling reasons, recognised by canons of construction, to the contrary. By importing the element of malafides or lack of good faith the Courts cannot amend sections or dilute its imperative, scared by consequences or moved by extraneous sympathies. Subconscious forces and individual prepossessions have a subtle way of entering the interpretative verdict of the Judge. The Courts have to be constantly careful to exclude such intrusions.

75. The above decision in case of *Authorised Officer, Thanjavur* (supra), is significant because the Supreme Court reversed the High Court which had imported the element of malafides or lack of good faith in matter of transfer of

property within the prescribed period, when in fact, the legislature had voided all transfers within the prescribed period, irrespective of whether they were malafide or bona fide. The Supreme Court conceded that such a construction might cause hardships to some but explained that every cause claims martyrs and that individual trauma is inevitable. Stressing upon the principle of literal interpretation when the provisions of the statute are plain, clear and unambiguous, the Supreme Court cautioned against reading other values into the legislator's words, which may judicially demonetize the statute and break the comity between constitutional instrumentalities. The Supreme Court went on to observe that by importing the element of malafides or lack of good faith, the Courts cannot amend sections or dilute its imperatives, scared by consequences or moved by extraneous sympathies.

76. Construing the provisions of Section 9A as they stand, we are unable to agree with Gulve, which, in effect holds that the stipulation as to time may be construed as mandatory when it relates to preventing "imposters and fraudsters" from claiming benefit of reservation but the same stipulation must be construed as directory, when it comes to "genuine persons belonging to backward classes" claiming benefit of reservation.

77. Again, we are also unable to accept that the construction of the provision as mandatory will result into "absurdity". There is no question of any absurdity as such involved in the situation arising out of compliance with provisions of Section 9A, both, in their letter as well as spirit. This was also not the basis of reasoning in Gulve. In fact, from the scheme of Section 9A, it is apparent that the main enactment only reinforces the general rule in such matters that a person desirous of contesting to a reserved seat must produce along with his nomination papers both caste certificate as well as the Validity Certificate. The election schedules to local authorities are fairly certain. Nothing therefore prevents persons desirous of contesting to reserved seats from applying and obtaining Validity Certificate well in advance. As a general rule, this is what is expected in such matters so that there is no suspense with regard to the status of the candidate.

78. There is no absurdity involved in the expectation, as a general rule, that a person desirous of contesting election to a reserved seat produces a Validity Certificate along with his nomination papers. This will ensure that there is no doubt with regard to the caste status of such person. In fact, the constitutional validity of Section 9A (sans its two provisos) has been specifically upheld in Thombre's case. The contention that Section 9A (sans the two provisos) was arbitrary or unreasonable, inasmuch as it failed to take cognizance of right of a person who had applied to the Scrutiny Committee for issuance of Validity Certificate but, on account of delay on the part of the Scrutiny Committee had not been issued the Validity Certificate on or before the last date of filing the nomination papers was specifically rejected. The Division Bench (Coram : A.M. Khanwilkar, J., as His Lordship then was and S.S. Shinde, J.) has held that if such

persons were interested in contesting the election to a reserved seat, they ought to have obtained the Validity Certificate well in advance and there is no justification on their part in not doing so. We are in respectful agreement with the view expressed by the Division Bench in Thombre's case.

79. The reasoning in Thombre's case is reflected in the following passages which are reproduced for convenience of the reference:

(6) Having given serious consideration to the submissions made across the Bar from both sides, we have no hesitation in taking the view that the challenge to Section 9 A even on the ground that it is ultra vires Article 14 of the Constitution of India is devoid of merits. In the first place, it is well established position that right to participate in election process is not a fundamental right. It is obviously a statutory right. It is nobody's case that the State has no legislative competence to enact provisions such as Section 9A of the Act. The argument however, is that in the peculiar facts of the present case, the operation of the section is unreasonable and prejudicial for no fault of the prospective candidates.

(9) The argument of the Petitioners is in effect, to follow the regime prescribed under the proviso which has already been deleted. The validity of the Amendment Act of 2008 whereby the proviso was deleted has not been challenged in these Petitions. What is, however, challenged is the main provision Section 9A of the Act of 1965 as it exists as of now. The provision of Section 9A as it exists, will have to be construed on its own. Indubitably, it is well established canons of construction that the statutory provisions of election law are to be strictly construed and its requirement strictly observed. (See *Banwari Dass v. Sumer Chand* (1974) 4 S.C.C. 817). As aforesaid, going by the plain language of Section 9A, it is mandatory to submit caste certificate issued by the competent authority and the validity certificate issued by the Scrutiny Committee along with the nomination paper. Only then the nomination paper can be said to be validly presented. The fact that the Petitioners were unable to obtain validity certificate before the date of filing of nomination paper, cannot be the basis to hold that Section 9A is unreasonable. The purport of Section 9 A is that a person aspiring to contest election to a seat reserved for S.C., S.T. or O.B.C. category, as the case may be, should prepare himself well in advance to present the caste certificate and validity certificate along with his nomination paper. The fact that the Municipal Council has been constituted only on 31st August, 2009 and there was not enough time to process the application of the Petitioner or that the Caste Scrutiny Committee has wrongly returned the proposal, in our view, cannot be the basis to hold that Section 9A is ultra vires Article 14 of the Constitution.

(11) The argument of the Petitioners that they were unable to apply six months in advance before the issuance of notification of election programme deserves to be stated to be rejected. The fact that the Municipal Council has been constituted only on 31st August, 2009 would make no difference to the requirement of the Section 9A of the Act of 1965. Merely because Section 9A mandates submission of validity certificate along with the nomination paper, that by no standards be

said to be unreasonable or arbitrary requirement. That requirement is to ensure free and fair election and to provide opportunity to participate in election "only to those" who are eligible to contest the election as per the requirement of the said provision on the date of presentation of nomination papers. If the Petitioners were interested in participating in such election, they ought to have obtained validity certificate well in advance as the same was required to be accompanied along with nomination paper.

..

(16) Assuming that the Scrutiny Committee has committed some irregularity including of deciding the applications of only selected few, that, however, cannot be the basis to challenge the validity of Section 9A of the Act of 1965. So long as Section 9A remains on the Statute Book, only such nomination papers which are accompanied by caste certificate and validity certificate can be presented as valid nomination of the candidate intending to contest election for reserved seat.

(17) It was lastly submitted that in any case the provision such as Section 9A will have to be construed as directory. We do not find force in this submission, having regard to the language of the said Section as it appears in the Statute. The decision in the case of *Dadasaheb Arjun Gulve v. State of Maharashtra & others* (supra), in our opinion, has no bearing on the controversy on hand. The observation is in respect of expression appearing in the proviso, which obviously was an enabling provision. We cannot overlook the fact that the said proviso has now been deleted. We cannot give the same meaning to the purport of Section 9A and thereby restore the regime which operated during the existence of Proviso, which is no more on the Statute Book.

(18) Taking any view of the matter, therefore, there is no substance in the challenge to validity of section 9A of the Act of 1965 on the grounds pressed into service."

(emphasis supplied)

80. If, the legislature, as a rule, intended to permit only such persons, about whose caste status there are no disputes or doubts, then, the enforcement of such a provision cannot be avoided or diluted on the ground that it would be harsh or inequitable to do so. The Division Bench, in *Thombre*, has specifically upheld the constitutional validity of Section 9A, while, the two provisos to it were not on the statute book. The provision then rendered only such persons who were able to submit caste certificate and Validity Certificate along with their nomination papers as eligible to contest election to the reserved seats. If the legislature, for a limited period of time, taking into consideration pendency of applications for issuance of Validity Certificate before the Scrutiny Committee grants some exemptions or concession to persons who have applied for issue of Validity Certificate before the date of filing nomination papers, but who have not received such Validity Certificate on the date of filing of nomination papers, subject to such persons producing the Validity Certificate "within period of six

months from the date of election", there is no reason to treat the stipulation as to time has merely directory and thereby enlarge or extend the exemption or the concession granted by the legislature.

81. If, the intention of the legislature was to grant exemption from the requirement of producing Validity Certificate, until, the elected candidate's application is disposed of by the Scrutiny Committee, nothing prevented the legislature from saying so expressly or at least by necessary implication. Instead, in this case, and perhaps, for good reason, the legislature has consciously deemed it appropriate to insist that the person submits an undertaking that he shall produce the Validity Certificate within six months and further, the legislature, in clear, unambiguous and express terms has provided that upon the failure of such person to produce the Validity Certificate within six months from the date of election, his election shall be deemed to have been retrospectively terminated and he shall be disqualified for being a Councillor. If, the stipulation as to time is construed as directory, then, the legislative intent, so clearly expressed, will be defeated. The significant portions of the provision will be rendered a mere surplusage. In essence, this Court would be rewriting the statute on the basis of its own value judgments or notions of equity and inequity.

82. As noted earlier, individual instances of hardship and inequity arise irrespective of the construction of the provision as mandatory or directory. Just as it might appear harsh to unseat a person who has failed to produce Validity Certificate within six months, but produced the same some days or months later, so also, there is harshness and inequity involved where an elected person continues in office for years together or even upto the conclusion of the term and then the Scrutiny Committee finds that such person does not belong to the reserved category. Therefore, individual instances of hardship cannot dictate statutory interpretation, particularly where the provision itself is plain, clear and unambiguous. In such a situation, this court will have to defer to the wisdom of the legislature, the choices which the legislature has made and above all, the words which it has employed, to make its intent clear.

83. Though the right to contest elections may not be fundamental right, after the coming into force of 74th amendment to the Constitution of India and the insertion of Part IXA, it may not very accurate to describe such right as "statutory right, pure and simple". The right to contest, can now, be regarded as a constitutional right (*Rajbala & ors. v. State of Haryana*, 2016(2) SCC 445) . However, there can be no dispute that such right to contest election can always be subject to certain qualifications and disqualifications as may be prescribed by the statute.

84. In *Rajbala* (supra), the Supreme Court, upheld the constitutional validity of the provisions in the Haryana Panchayat Raj Act, 1994, which rendered persons indebted to cooperative bodies, or to electricity departments or those not having a functional toilet at their place of residence as ineligible to contest Panchayat elections. In this case, the Supreme Court accepted the position that the

legislature best comprehends the needs of the society and the decision to prescribe such qualification is in the realm of wisdom of the legislature and the Courts, normally, do not sit in judgments over such wisdom. The Supreme Court also held that no enactment can be struck down on the ground that the court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the peoples, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. The Supreme Court, held that the disqualification based upon lack of prescribed educational qualification or indebtedness or the lack of functional toilet cannot be struck down merely on the ground that large number of persons would be deprived of the right to contest elections by observing that the numerical dimensions of such classes should make no difference for determining whether prescription of such disqualification is constitutionally permissible.

85. Considering the provisions and the scheme of Section 9A, the principle laid down in the case of Dattatreya Moreshwar (supra) will not apply to the present case. In the said case, the Supreme Court was considering a challenge to a detention order on the ground that it was not expressed or authenticated in the manner prescribed by Article 166 of the Constitution of India. The Supreme Court held that since the duty was cast upon a public authority and the persons for whose benefits such duty was cast, had no control over its performance and at the same time, would suffer serious inconvenience, as a matter of practice, such a provision should be regarded as directory and not mandatory.

86. The Preventive Detention Act, 1950 which fell for consideration in Dattatreya Moreshwar (supra), had made no specific provision with regard to expression or authentication of the detention order. Naturally, therefore, there was no question of prescribing any consequences, in case of breach. In contrast, there are specific and clear provisions in Section 9A as to manner in which exemption or concession is to be availed and the consequences for noncompliance have also been specified. Besides, the duty under Section 9A has been cast upon a private party and not a public authority. As noted in Thombre, nothing prevents a person desirous of contesting election to a reserved seat from applying for and obtaining a Validity Certificate well in advance. Therefore, this is not a case of impossibility of compliance or insisting upon compliance over which the person concerned, has no control whatsoever. Even Dattatreya Moreshwar (supra), lays down that generally speaking the provisions of a statute conferring private rights or requiring a private person to do some act are to be regarded as imperative. In ITC Bhadrachalam Paperboards (supra), the Supreme Court has held that where a statute provides for a manner in which an executive act is to be discharged, its mandate cannot be diluted by resort to Dattatreya Moreshwar (supra) principle.

87. The contention premised upon Sections 4 and 10 of the Caste Act 2000 does not commend to us. None of the provisions of the Caste Act 2000, by themselves, create any vested right in a person to contest elections to a reserved

post merely on the basis of a Caste Certificate, which is only tentative in nature. Section 3 of the Caste Act 2000 only provides that where any person belonging to the reserved category is required to produce a caste certificate in order to contest for any elective post in a local authority, he shall apply in such form and in such manner as may be prescribed to the competent authority for the issue of caste certificate. Section 4 then provides that a caste certificate is to be issued by the Competent Authority and the same shall be valid only subject to verification and grant of Validity Certificate by the Scrutiny Committee. Section 6(2) provides that after obtaining caste certificate from Competent Authority, such person may make an application well in time, in such form and in such manner as may be prescribed to the concerned Scrutiny Committee for verification of caste certificate and issue of Validity Certificate. Section 7 provides for confiscation and cancellation of false caste certificate. Section 10 provides that the benefits secured on basis of false caste certificate are to be withdrawn.

88. Since, great emphasis is laid upon the provision in Section 10(4) of the Caste Act 2000, the same is transcribed for reference of convenience :

"10. Benefits secured on the basis of false Caste Certificate to be withdrawn.

(1) ...

(2) .

(3) .

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, Cooperative Society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

(emphasis supplied.)

89. In *Dattatraya R. Thorat (supra)*, *Sujit V. Patil (supra)*, and *Ramesh Suresh Kamble (supra)*, the main issue involved was whether the provision in Section 10(4) of the Caste Act 2000 constitutes disqualification for being a Councillor or Member of a local authority and if so, whether the provision in Section 10(4) of the Caste Act 2000 is in conflict with the legislations dealing with election to local authorities and the constitutional scheme prescribed by the 74th Amendment.

90. In *Sujit V. Patil (supra)* the Full Bench of this Court has held that there is no repugnancy between the said Act and the Caste Act 2000. Further, Section 10(4) is not violative of Article 243ZG of the Constitution of India on the ground that it

empowers the Scrutiny Committee constituted under the Caste Act 2000 to declare an elected Councillor disqualified or to set aside his election. It was held that the job of the Scrutiny Committee is either of issuing the Validity Certificate or refusing to do so. If Validity Certificate is refused, then the Caste Certificate issued by the Competent Authority ceases to exist. With the result, there is no caste certificate filed at the scrutiny of nomination paper and, therefore, the nomination papers itself become infirm and incomplete, and the returned candidate loses the qualification to contest the seat and therefore, he has to vacate his seat. In view of such scheme, even in the absence of Section 10(4) of the Caste Act 2000, the consequences in law of the Scrutiny Committee refusing to issue valid caste certificate would be vacation of seat by the elected candidate. Even if it is assumed that section 10 (4) deals with qualification or disqualification for continuing as elected member of local authorities, the Full Bench has held that the State legislature is competent to enact such a provision in view of Article 243 (v) of the Constitution of India.

91. Mr. Acharya has however contended that the aforesaid decisions hold that the provision in Section 10(4) of the Caste Act 2000 constitutes an "additional disqualification" for being a Councillor and since, Section 10(4) of the Caste Act 2000 opens with a nonobstante clause, the same overrides similar disqualifications in legislations dealing with elections to local authorities. Mr. Acharya submits that therefore, unless, the Scrutiny Committee actually cancels the caste certificate, the election of the Councillor concerned cannot be deemed to have been terminated with retrospective effect. Again, we see no force in this submission.

92. If, the provision in Section 10(4) of the Caste Act 2000 is to be regarded as an "additional disqualification" as contended by Mr. Acharya, then, such circumstance, by itself, does not render the other disqualifications prescribed under the law as either redundant or repugnant. There is in fact, no necessity to advert to the provisions in Section 10(4) of the Caste Act 2000 if regard must be had to the scheme of Section 9A which is a special provision and the complete code. Section 9A lays down the normal rule that only a person who submits his caste certificate and Validity Certificate along with his nomination papers is eligible to contest election to a reserved seat. The first proviso grants an exemption or concession from the application of this general rule, subject to fulfilment of certain specified conditions. One of the conditions is the furnish of undertaking by the person availing the exemption or concession that he shall produce the Validity Certificate within a period of six months from the date of election. The second proviso, in terms, provides that the failure to produce Validity Certificate within the stipulated period will result in retrospective termination of the election and disqualification of the Councillor. The additional disqualification in Section 10(4) of the Caste Act 2000, in such circumstances, is not at all attracted and the non obstante clause has no effect upon the provisions and scheme of Section 9A. The two provisions to that extent operate in different spheres and there is no question of any repugnancy.

93. In any case, as noted earlier, the contention based on repugnancy stands specifically rejected by the Full Bench in *Sujit Patil (supra)*. In these circumstances, we are unable to accept the submission that construing the stipulation as to time as mandatory might result in disharmony between the provisions of Section 9A and Section 10(4) of the Caste Act 2000.

94. On the issue of automatic termination of election upon the failure to produce Validity Certificate within the stipulated period, the reasoning in *Shrote*, which is followed by the subsequent Division Benches in the cases of *Nirmala Parate v. State of Maharashtra and ors.*, (2010)3 AllMR 904, *Gita Rupchand Dekate v. State of Maharashtra and ors.*, 2010(1) Mh. L. J. 497, *Raju Bawane and ors. v. State of Maharashtra and ors.*, (2008) 6 Mh.L.J. 76 commends to us. A plain reading of the provisions of second proviso to Section 9A of the said Act lends support to such a construction. Besides, no provision was pointed out to us with regard to any official or authority to determine the issue as to whether failure on the part of the elected candidate to produce the Validity Certificate within a stipulated period is for any reason attributable to such elected Councillor or whether such failure is entirely for reason attributable to either Scrutiny Committee or some other parties who may have unduly protracted the proceedings before the Scrutiny Committee. In the absence of any such official or authority vested with the power to determine the cause for failure to produce the Validity Certificate within the stipulated period and considering the categorical provisions of the second proviso to Section 9A, we are of the opinion that the failure on the part of the elected Councillor to produce the Validity Certificate within the stipulated period would automatically result in termination of his election with retrospective effect.

95. In *Bhaskar Timappa Shetty v. Caste Scrutiny Committee and ors.*, 2007(2) Mh. L. J. 222 the Division Bench of this Court was called upon to interpret Section 10(1C)(a) and (b) of the Bombay Provincial Municipal Corporations Act, 1949, which read thus :

"(a) Notwithstanding anything contained in subsection (1B), a Councillor who has been elected to a reserved seat as mentioned in subsection (1B), shall be disqualified for being such Councillor consequent upon the Caste Certificate Verification Committee or any other Competent Authority specified by the State Government for the purpose of scrutiny of the Caste Certificates, declaring the Caste Certificate of such Councillor to be invalid and canceling the same, on the ground of the same having been based on a false claim or declaration made by such person claiming, to be belonging to the reserved category, and thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such certificate to be invalid and cancellation of the same by the said Committee or the Competent Authority.

(b). On any person having been disqualified for being a Councilor and consequently, his seat as such Councilor having become vacant under clause (a), the State Government shall, by notification in the Official Gazette, disqualify such

person for being elected or being a Councilor for a period of six years from the date of such Order."

96. The Division Bench, in the aforesaid case, has held that since a Caste Scrutiny Committee invalidated and cancelled the caste certificate of the Councillor, such Councillor stands disqualified and seat held by him becomes vacant. In such a situation, there is no question of any doubt or dispute as to whether the petitioner has ceased to hold the office or not. The reasoning is reflected in paragraphs 15, 16 and 18 which are transcribed below for reference of convenience:

"15. This wording of Section 10(1C)(a) of the Act makes it abundantly clear that as soon as the Caste Scrutiny Committee invalidates and cancels Caste Certificate of a Councillor, such Councillor stands disqualified. This Section 10(1C) (a) further provides that thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such Certificate to be invalid and cancellation of the same by the said Committee. This part of the provisions of Section 10(1C)(a) clearly states that as soon as the Caste Certificate is invalid and cancelled, the seat becomes vacant.

16. The Legislature has not made any provision to defer the decision of Caste Scrutiny Committee. The Legislature has regarded the decision of Caste Scrutiny Committee as final in this regard and, as soon as it decides the question against elected candidates, he becomes disqualified and the seat becomes vacant. The Legislature does not say that any other authority is required to make a declaration in that regard. Falling of seat vacant is a natural consequence to be immediately followed or which immediately follows by cancellation of Caste Certificate. It is true that a person has right to challenge the decision of Caste Scrutiny Committee before the High Court. But nothing was pointed out before us by learned counsel Mr. Sakhare that from the date of letter dated 2.1.2003, referred by the Commissioner in his letter dated 7.1.2003 (Exhibit-A), any petition challenging the decision of Caste Scrutiny Committee was filed by the petitioner and, if filed, any stay in between was granted by the High Court. No submissions in this regard were made, but we were informed that the petitioner's attempt in the High Court was unsuccessful.

.....

.....

18. Mr. Sakhare, the learned counsel appearing for the petitioner, tried to place reliance upon Section 12 of the Act of 1949. The Section 12 reads thus :

"(1). If any doubt or dispute arises whether a councillor has ceased to hold office as such under section 11, such councillor or any other councillor may, and at the request of the Corporation, the Commissioner shall, refer the question to the Judge.

(2). On a reference being made to the Judge under subsection (1) such councillor

shall not be deemed to be disqualified until the Judge after holding an inquiry in the manner provided by or under this Act determines that he has ceased to hold office."

Mr. Sakhare, therefore, contended that in case of doubt or dispute of the nature contemplates in Section 12, it was obligatory upon the Commissioner to refer the question to the Judge. We are not in agreement with this submission made by learned counsel Mr.Sakhare. This is not a case where Section 12 is attracted or can be placed in to service at all. When subsection (1C)(a) of Section 10 of the Act of 1949 provides that a Councillor shall be disqualified for being such Councillor consequent upon the declaration by the Caste Certificate Verification Committee that his certificate is invalid and, therefore, cancelled, and when in fact such decision was given against the petitioner by Respondent No.1, then there is no question of doubt or dispute whether the petitioner has ceased to hold office or not. It is altogether different that the petitioner could have and had challenged the decision of Caste Scrutiny Committee before the High Court, but the fact that the seat falls vacant is a natural consequent of the decision of Caste Scrutiny Committee and no doubt can be there in that regard. This may not apply to other kind of disqualifications contemplate by Section 10 of the Act of 1949. However, that is totally different issue."

97. In the context of the phraseology employed in Section 10(4) of the Caste Act 2000, including in particular the deeming fiction therein, the Supreme Court in *Kalpna Dilip Bahirat v. Pune Municipal Corporation and others*, (2014) 15 SCC 654 has observed thus :

"The consequence is that the election of a person who has contested on a seat reserved for the aforementioned categories on false caste certificate as belonging to such caste, tribe or class "shall be deemed to have been terminated retrospectively". The deeming provision in subsection (4) of Section 10 of the 2000 Act is a statutory fiction which has to be given effect to and the Commissioner of the Municipal Corporation has given effect to the deeming provision and has thus acted in accordance with law."

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

99. The validation of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to Section 9A i.e. deemed

retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor's election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby.

100. In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory. Further, in terms of second proviso to Section 9A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor. Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election. The questions raised, stand answered accordingly.

101. We direct the Registry to place the matter before the Bench which is assigned to take up Writ Petition No. 10478 of 2014 so as to enable the Bench to dispose of the petition.