

(2002) 04 BOM CK 0093
In the Bombay High Court
Case No : Writ Petition No. 5345 of 2001

Dattatraya Thorat

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 13, 134A, 14, 15, 16
Penal Code, 1860 (IPC) — Section 153A, 505
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 22

Citation : (2002) 4 ALLMR 807 : (2002) 104 BOMLR 561

Hon'ble Judges : N.H. Patil, J;B.H. Marlapalle, J

Bench : Division Bench

Judgement

B.H. Marlapalle, J.—Heard Shri Golegaonkar, the learned Counsel for the Petitioner.

2. The petition was heard by us on 27th and 28th of March, 2002 as well as on 1st April, 2002.

3. Rule, Shri Sawant, learned Government Pleader waives service for Respondent Nos. 1 to 3 and 6, Shri Shelke, learned Advocate waives service for Respondent No. 4 and Shri Soman, learned Advocate waives service for Respondent No. 5. Rule made returnable forthwith.

4. The Petitioner claims that he belongs to the "Kunbi" caste which is listed in Other Backward Classes at Serial No. 83 in the list, as published by the State Government, and the Taluka Executive Magistrate, Aurangabad had issued to him a Caste Certificate to that effect on 15th June, 1996/2nd July, 1996. On the basis of the said Caste Certificate he contested the elections of the Aurangabad Municipal Corporation from Ward No. 42 which was reserved for the Other Backward Classes. He was declared elected sometimes in April, 2000. The Commissioner of Aurangabad Municipal Corporation, vide his Order dated 26th of April, 2000, referred the Petitioner's caste claim for verification to the

Respondent No. 2 Committee on the basis of a complaint filed by the rival defeated candidates. Thus, the Caste Certificate dated 2nd July, 1996, issued by Respondent No. 3, became a subject matter of verification by the Respondent No. 2 Committee.

5. Before the Scrutiny Committee the Petitioner submitted as many as 50 documents in support of his caste claim and these were the certificates in respect of the Petitioner's family members (grandfather, father, brothers, sisters and cousin brothers/sisters) from the paternal side and other relations from the paternal as well as maternal side. Vigilance inquiry, as required, was directed and the Vigilance Cell submitted its report on 11th October, 2001 to the Respondent No. 2 Committee. A copy of the said report was made available to the Petitioner and he was called upon to file his say. By our order dated 24th October, 2001, passed in Writ Petition No. 916 of 2001, the Respondent No. 2 Committee was directed to complete the caste verification proceedings in respect of the five Corporators as they were pending for more than one year. While the verification of Petitioner's caste claim was in progress, the Maharashtra Legislature enacted 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 (for short, the Act). The State Government issued a notification dated 17th of October, 2001 u/s 1(2) of the Act and appointed 18th of October, 2001 as the date on which the Act came into force. The Respondent No. 2 invoked powers u/s 9 of the Act and called upon the Gram Sevak, Village Panchayat, Dongargaon Kada, Taluka and District Aurangabad as well as the Head Master of Zilla Parishad Primary School, Bhoigaon Taluka and District Aurangabad for recording evidence in support of the documents at Serial Nos. 48 and 49 as well as 50 respectively and the evidence of these two persons was recorded before the Committee on 28th November, 2001. Finally, by Order dated 1st December, 2001 the Respondent No. 2 Committee has rejected the petitioner's caste claim and held the Caste Certificate dated 15th June, 1996/2nd July, 1996 as invalid. The Committee directed for confiscation of the said certificate. Hence, this petition.

6. The substantial relief prayed for in this petition is in terms of prayer clauses (B) to (E) and hence the same are reproduced hereinbelow :

(B) To quash and set aside the decision of the Committee dated 1.12.2001 and declare that the Petitioner belongs to Kunbi Other Backward Caste, by issuing appropriate writ, order or directives, as the case may be.

(C) To quash and set aside the decision of the Committee dated 1.12.2001 and declare that the Caste Certificate issued by the Respondent No. 3 in favour of the Petitioner is valid, by issuing appropriate writ, order or directives, as the case may be.

(D) To quash and set aside the impugned decision of the Committee dated 1.12.2001 and remand the matter to the Committee for deciding the tribe claim

afresh, as per the guidelines laid down by the Honourable Apex Court in Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, , by issuing appropriate writ, order or directives, as the case may be.

(E) To declare that the provisions under 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. No. XXIII of 2001] in general and the provisions under Sub-clause (4) of Section 10 of the Act No. XXIII of 2001 in particular, are ultra vires and unconstitutional.

7. The relief claimed for in this petition is, thus, in two parts viz. the challenge to the Caste Claim Invalidation Order dated 1st December, 2001 and to the validity of the Act in general and section 10(4) of the said Act, in particular. The validity of the Act is being challenged by the Petitioner on account of the fact that he has suffered an order of disqualification and a declaration that he ceases to be an elected Corporator of the Aurangabad Municipal Corporation, from the subject Ward No. 42. If such an order was not passed, mere invalidation of his caste claim by Order dated 1st December, 2001 would not have given a cause for the Petitioner to challenge the validity of the Act. We have to, therefore, decide the petition in two parts and in the first part we shall examine the challenge to the Caste Certificate Invalidation Order dated 1st December, 2001 and in the second part we shall examine the challenge to the validity of the Act.

8. The Member Secretary of Respondent No. 2 Committee has filed affidavit in reply and submitted that the Order dated 1st December, 2001 does not suffer on account of any procedural errors and the law laid down by the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, has been strictly followed. The Committee has been properly constituted in conformity with the directions of the Apex Court in the case Kum. Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development, Thane and others, and the said Committee has been constituted pursuant to the Government Resolution dated 20th December, 1999. The documents submitted by the Petitioner were carefully examined alongwith the pedigree (genealogy) submitted by him from time to time. The order does not suffer from any error apparent on the face of the record and the Petitioner failed to establish his caste claim that he belongs to the "Kunbi" caste. The Petitioner is a resident of Bhoigaon in Taluka and District Aurangabad whereas most of the documents produced by him pertain to the persons who are residents of Chikalgaon in Taluka and District Akola and he could not establish his blood relationship with these persons hailing from Chikalgaon and hence the documents pertaining to them were rightly not considered by the Committee. The pedigree was found to be unreliable for the deficiencies which have been noted by the Committee in the impugned order. The learned Government Pleader has also addressed us on the point of the Constitutional validity of the Act on behalf of Respondent No. 6 and submitted that the challenge to the validity of

the Act is devoid of any merits. The Act has been framed in keeping with the law laid down in the case of Kumari Madhuri Patil (supra) and subsequent decisions of the Apex Court. The provisions of the Act do not affect adversely any fundamental right guaranteed by the Constitution in Part-III [Articles 13 to 21] of the Constitution.

9. When the petition came up for the first time on 28th December, 2001 before the learned Vacation Judge ad interim stay in terms of prayer clause (F) was granted while issuing notice before admission returnable after two weeks as a result of which, the impugned Order dated 1st December, 2001 passed by the Respondent No. 2 Committee came to be stayed pending hearing and final disposal of this Petition. As per our directions, the record and proceedings from the Respondent No. 2 Committee has been placed before us and we have gone through the same while considering the challenge raised against the decision of the Committee.

10. In support of his caste claim the Petitioner submitted as many as fifty documents, as detailed below and a genealogy (family tree) vide his affidavit dated 29th October, 2001.

During the course of vigilance inquiry also his statement was recorded and he submitted the same genealogy starting from one Shri Tatya Thorat, Resident of Chikalgara, Taluka and District Akola. Again, on 7th November, 2001 he submitted the same genealogy before the Committee. The genealogy is reproduced, as under :

In this genealogy the Petitioner claimed to represent the sixth generation with reference to Tatya Patil Thorat, Vigilance inquiry was directed and the Vigilance Cell submitted its report dated 11th October, 2001. This report has been signed by the Police Inspector, Vigilance Cell, Directorate of Social Welfare, Maharashtra State, Pune-1 and a copy thereof has been marked to the Deputy Superintendent of Police of the said Cell. The report has been submitted alongwith Annexures running into 75 pages. The Committee considered all the documentary evidence as well as the report submitted by the Vigilance Cell and rejected the caste claim of the Petitioner vide the impugned decision. The Petitioner's challenge to the said decision is on the following grounds :

(a) The Committee failed to consider the documents submitted by him and the Committee did not apply its mind considering the evidentiary value of each and every document, some of which are of the pre-independence period.

(b) The Committee mechanically categorised the documents in three different groups and rejected the documents from the maternal side, the documents in respect of the Petitioner himself and affidavits as well as the Caste Certificates of near relations.

(c) The caste claim of some of the nearest relations viz. Trimbak G. Tupe, who is the Petitioner's uncle was verified by the Additional Collector, Jalna vide his

decision dated 4th March, 1996, only because Shri Tupe is maternal uncle. Similarly, caste claim of Kumari Gayatri P. Wakhure was held as valid by the very same Scrutiny Committee at Aurangabad by its decisions dated 18th June, 1996 and the said Kumari Gayatri is the paternal cousin of the Petitioner. Shri A. M. Thorat is the cousin of the Petitioner and his caste claim has been validated by the Committee vide its decision dated 18th March, 2001. These documents were not considered by the Committee on the ground that the Petitioner failed to prove the pedigree (genealogy) as submitted by him.

(d) While considering the documents at Serial Nos. 31, 32, and 43 the Committee failed to consider the judgment of this Court in the case of Abhay Shrawanji Parate v. State of Maharashtra and Ors. /9 and the Committee failed to follow the law laid down by the Apex Court in the case of Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, as well as the law said down in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others,

(e) The Committee has committed a gross error in not considering the certificates at Serial Nos. 14, 15, 18, 19, 25, 27, 29, 30, 33, 38, 40, 41, 42, 44 and 45 on the ground that they were not issued prior to declaration of "Kunbi" caste as "Other Backward Class" and the approach of the Committee is totally perverse.

(f) Kunbis are a sub-caste of Maratha and by hereditary they are farmers or tillers of the soil whereas those Kunbis who joined the military were/are called as Marathas.

(g) The distinction between Maratha and Kunbi caste has been considered by some of the Scholars and more particularly by one Shri Madhav Joshi in his research paper. In the judgment of the Madras High Court in the case of Maharaja of Kolhapur Vs. S. Sundaram Ayyar and Others, the High Court held that Maratha is the name of the nation and not of a caste and the Kunbis who were engaged in farming are also known as Maharattas. The Committee failed to apply its mind to this judgment also.

(h) The Vigilance Officer has recorded findings in favour of the Petitioner and it was not proper on the part of the Committee to brush aside the findings recorded by the Vigilance Cell.

(i) The Vigilance Cell was headed by a Police Inspector who is not competent to conduct such an inquiry especially when social status is required to be ascertained by a competent officer.

(j) Research Officer - Tribal Development or Social Welfare Officer was not a member of the Vigilance Cell and, therefore, on that count also the decision of the Committee is vitiated.

11. The Government of Bombay issued a Resolution dated 23rd April, 1942 and declared the list of intermediate communities, scheduled castes, aboriginal and

hill tribes and other backward communities. At Serial No. 124 in Schedule-A (list of intermediate communities), Kunbi (Except Tiloni Kunbi in Ratnagiri district) was shown whereas under list of Other Backward Communities at Serial No. 73, Kunbi Tiloni in Ratnagiri district was shown. This position was continued in the subsequent Government Resolutions published on 1st November, 1950, 29th October, 1956 and 21st November, 1961. However, the Government of Maharashtra published a fresh Resolution on 13th October, 1967 declaring a separate list of Other Backward Classes and at Serial No. 83 "Kunbi caste" has been shown in the said list. It is, thus, clear that till 1967, Kunbi Tiloni in Ratnagiri district were treated as O.B.Cs. and in other parts of the State (Bombay State/ Maharashtra State) they were treated as an intermediary community and for the first time in 1967 Kunbi caste was shown to be in Other Backward Classes for the entire State of Maharashtra.

The erstwhile State of Hyderabad had also published the list of other backward classes, as recommended by the Backward Classes Commission, the said list enlisted the castes in other backward classes and also castes considered most backward. The caste "Kunbi" was not included in this list and, therefore, the same caste was not recognised as other backward class for the Aurangabad district so long as it was part of the erstwhile Hyderabad State. It is pertinent to record, at this stage, that the Petitioner claims to be the resident of Aurangabad district right from his grandfather's grandfather.

12. In the case of Kumari Madhuri Patil (supra) the Apex Court, in para 15, observed :

High Court is not a Court of Appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and record a finding, though another view, as a Court of Appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to the relevant facts which have led the Committee ultimately to record the finding. Each case must be considered in the backdrop of its own facts.

In the case of State of Maharashtra v. Milind and Ors. AIR 2000 S.C.W. 4303 : AIR 2001 SC 393 : 2001 All M.L.R. 573 : 2001 (1) Mah. L.J. 1 : 2000 (1) SCC 4 a Constitution Bench of the Apex Court, in para 33, observed :

The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of Inferior Tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the Tribunal, only when it records a finding that the Inferior Tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the Inferior Tribunal

has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.

On the scope of High Court's powers under Articles 226 and 227 of the Constitution, the Supreme Court in the case of *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, restated the law in these words:

The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep Inferior Courts and Tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardships or wrong decisions made within the limits of the jurisdiction of the Courts Subordinate or Tribunaals. Exercise of this power and interfering with the orders of the Courts or Tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains unconnected. It is also well settled that the High Court while acting under this Article cannot exercise its powers as an Appellate Court or substitute its own judgment in place of that of the Subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of Inferior Court or Tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or Tribunal has come to.

13. We are required to consider the Petitioner's claim challenging the decision of the Committee on the touchstone of these enunciations and unless we record a finding that the evidence, which had more probative value, has not been considered by the Committee or the Committee committed a gross error in appreciating the evidence so produced by the Petitioner or the Committee acted in flagrant violation of fundamental principles of law or justice causing grave injustice to the Petitioner or the findings of the Committee are so perverse and unreasonable that no reasonable person can possibly come to such a conclusion, which the Committee has come to, we cannot interfere with the decision of the Committee. It is also well settled principle in law that while dealing with the claims of social status a claimant has to stand on his/her own feet and establish such a claim by submitting evidence which has probative value and the evidence from the maternal side, wife's side or other relations other than from the paternal side does not weigh in support of such claim as much as the evidence from the paternal side has more evidentiary value. When a claimant submits a pedigree/genealogy it is necessary, at the first instance, that the same is duly proved so that the Committee considers the documentary evidence on the basis of such a genealogy. If the claimant fails to prove the pedigree/genealogy, undoubtedly the Committee is not bound to accept each and every document as relevant qua such a genealogy.

14. The pleas raised by the Petitioner, while attacking the impugned decision of the Committee, by relying upon the judgment of the Madras High Court in the case of Maharaja of Kolhapur (supra) and the ethnographical literature in respect of the Kunbi community in respect of his claim that Maratha is not a caste by itself and in any case Kunbis are a sub-caste of Maratha fell for our consideration in the case of Vasant Pandurang Narwade and Ors. v. State of Maharashtra and Ors. Writ Petition No. 4219 of 2000 and we rejected these contentions of general nature regarding the Kunbi caste or the Maratha caste. The general issues so raised are, thus, no more res Integra.

15. Let us examine the different genealogies/pedigrees submitted by the Petitioner before the Committee. As noted earlier, with reference to Shri Tatya Thorat Patil the Petitioner claimed to represent the sixth generation. It was his contention that Tatya Thorat Patil had three sons by name Raoji, Vithoba and Tukaram. Vithoba and Tukaram continued to reside in Akola district whereas Raoji migrated to the Aurangabad district. Raoji had a son by name Laxman who, in turn, had two sons viz. Aba and Bapurao. Bapurao, in turn, had two sons by name Tukaram and Ramrao (Petitioner's father). There was no evidence placed on record by the Petitioner in support of his contentions that Raoji, Vithoba and Tukaram were the three sons of Tatya Patil, This is the first ground on which the Petitioner failed to prove the genealogy. Secondly, during the course of his caste claim adjudication he admitted that his father Ramrao had two brothers by name Tukaram and Himmatrao. However, the name of Himmatrao did not figure in any of the genealogies the petitioner submitted on oath. This Himmatrao retired as a Gram Sevak and his Service Book could be a document of more probative value in support of the caste claim. The Petitioner did not disclose the name of Himmatrao in the pedigree and did not take any steps to bring on record the Service Book of Shri Himmatrao who was his real uncle from paternal side. Thirdly, at serial No. 13 he submitted the certificate of Lilabai Ramrao, his sister but her name was not shown in the pedigree submitted along with the affidavit dated 29th October, 2001 as well as through his written submissions dated 7th November, 2001 before the Verification Committee. However, in the statement made by him on 20th December, 2000 before the Vigilance Cell he gave the name of Lilabai as his sister. But, there again, he failed to show Tukaram's branch correctly inasmuch as in the earlier two genealogies he had shown that Tukaram's grandson Shaligram had two sons by name Mukundrao and Yadavrao, whereas in the pedigree submitted before the Vigilance Cell he showed that Shaligram had only one son by name Mukundrao. These are additional reasons as to why the genealogy submitted by the Petitioner could not be relied upon. We, therefore, do not find any error committed by the Scrutiny Committee by not relying upon the said genealogy submitted by the Petitioner on different occasions during the verification proceedings.

16. The Verification Committee considered all the fifty documents and noted that (a) the documents at Serial Nos. 33, 35, 36 and 47 were in respect of the Petitioner himself, (b) documents at Serial Nos. 25, 26, 29, 30, 31, 38 and 45

were in respect of the relations from his mother's side, (c) documents at Serial Nos. 10, 14, 15, 18, 20, 32, 41 and 42 were in respect of the relations who could not be proved to be blood relations and, therefore, all these documents in three different groups could not be relied upon by the Petitioner. The documents at Serial Nos. 1 to 9, 11 to 13, 16, 17, 19, 21 to 24, 27, 28, 34, 37, 39, 40, 42 to 44 and 48 to 50 were shown to be in respect of the blood relations. However, from amongst the documents at Serial Nos. 9, 16, 17, 23, 28, 37 could not be so established on the basis of the genealogy submitted by the Petitioner and, therefore, the same were not considered. No fault could be found with the approach of the Committee in that respect. In fact, the documents in respect of the two branches settled at Chikalgaon. Taluka and District Akola i.e. the branches from Vithoba and Tukaram could not be relied upon by the Petitioner unless there was plausible evidence to show that Vithoba and Tukaram were the real brothers of Raoji who is shown to have been a permanent resident of Aurangabad District. There was no evidence placed before the Committee to the effect that Chinkaji Vithoba Thorat is the cousin of the Petitioner. The documents at Serial Nos. 30 and 31 were in respect of Trimbak Ganpatrao Tupe, the document at Serial No. 32 was in respect of Kumari Gayatri Wakhure, who is purportedly the daughter of the petitioner's father's sister and the document at Serial No. 43 was in respect of Ashish Mukundrao Thorat. Though these are all of probative value inasmuch as the competent Committees had issued the Caste Validity Certificates, the Petitioner could not establish his relationship with Ashish Mukundrao Thorat from paternal side and the other three documents i.e. in respect of Shri Trimbak Ganpatrao Tupe and Kumari Gayatri Wakhure could not be relied upon. The Committee did not fall in error by not relying upon these documents.

On the other hand, it is interesting to note the documentary evidence in respect of the Petitioner, his three brothers, his father and grandfather. Petitioner's grandfather's name was Aba s/o Laxman Thorat. The Khasra Patrak for the years 1953-54 showed his caste as "Maratha" whereas in the Khasra Patrak for 1952-53 his caste was shown as "Maratha" and the word "Kunbi" appears to have been subsequently added. At some place, after "Maratha", "Ku" has been added. The Khasra Partakes issued in the name of Petitioner's grandfather i.e. Bapurao Laxman Thorat, which are on record, also showed his caste as "Maratha" and the word "Kunbi" has been subsequently added. The Vigilance Cell obtained these documents. There is no caste as "Maratha Kunbi" listed under the Other Backward Classes by the Government of Maharashtra at any time from 1967 onwards.

17. Petitioner's father Shri Ramrao Thorat retired as Tahsildar (Executive Magistrate). However, his Service Book was not submitted before the Committee. The original complainant made an application to bring this document on record but the said application was rejected by the concerned officer from the Revenue Department. The Vigilance Cell could not lay its hand on this document nor the Petitioner submitted the same at any time. The Vigilance Cell visited the Maratha

High School, Aurangabad where the Petitioner's father studied and it noticed that his caste was recorded as "Maratha" in the school record. The learned Government Pleader had sought time to produce the Service Book of the Petitioner's father and in spite of about more than two weeks' time having been granted, the Service Book could not be produced before us, purportedly the same has been missing from the office of the Tahsildar and it is apprehended that the Petitioner has some hand in this episode. Be that as it may, relevant record from the Tahsil Office, Gangapur has been produced before us and in that there is a list of employees, which was forwarded to the Collector, Aurangabad and in the same all the service particulars, including caste, were shown. This list was perhaps to demonstrate the total employment position, including reservation. The Petitioner's father's name appears at Serial No. 22 and against his name his caste has been stated as "Maratha". It is also evident from the service record of the petitioner's father that he did not seek the benefit of reservation for promotion etc. on the ground that he belongs to the caste "Kunbi" (O.B.C.). In this regard, we may usefully refer to yet another decision of the Supreme Court in the case of S. Nagarajan Vs. District Collector, Salem and others, In para 7 of the said decision, the Apex Court noted :

7. ...His father N. Siddareddy had never claimed his status. Though in the ordinary course he would have claimed to be belonging to Scheduled Tribe community to avail the benefit of reservation available in the State service. The learned Single Judge was right in concluding that the applicant's father having been in Government service would not have omitted to claim his status as belonging to Scheduled Tribe had he really been a member of Scheduled Tribe community (Konda Reddy). On the other hand, his father was Reddy which is a forward caste and that, therefore, the subsequent interpolation that he was Konda Reddy (interpolation) is not genuine and an incorrect document was thus brought into existence to claim the status as Scheduled Tribe....

18. The Petitioner's real uncle Himmatrao also retired as Gram Sevak and his Service Book has been placed before us. This Service Book has been prepared when he had joined the service and in the said Service Book his caste has been shown as "Maratha". The Service Book also shows that he did not seek promotion or any other benefit as belonging to "Kunbi" (O.B.C.) nor such benefit was extended to him all along.

19. The Petitioner has three brothers and he claimed to have one sister. Let us see the Caste Certificates each one of them possessed and as was produced before the Scrutiny Committee. His brother Ashok Ramrao Thorat was admitted in the Zilla Parishad Primary School at Bhoigaon and the admission register showed his caste as "Nirank". Similarly, his other brother Kailash Ramrao Thorat was a student of Hindi Vidyalaya at Aurangabad and the Head Master of the said school issued a School Leaving Certificate dated 18th June, 1979 in which the caste of Kailash was shown as "Nirank". His sister Lilabai was also a student of Zilla Parishad Primary School, Bhoigaon and the Head Master of the said school

issued a School Leaving Certificate on 13th July, 1968 in which her caste is shown as "Nirank". Ashok Ramrao Thorat, the Petitioner's brother was issued a Caste Certificate by the Taluka Executive Magistrate, Aurangabad on 10th July, 1981 and for the first time his caste came to be shown as "Kunbi". Petitioner's third brother Radhakrishna was a student of Maratha School at Aurangabad and the admission application dated 27th June, 1985 showed his caste as "Maratha". Radhakrishna was issued a School Leaving Certificate by the Head Master of Maratha High School on 24th June, 1988 and his caste was shown as "Nirank". Kailash Ramrao Thorat was issued a Caste Certificate by the Taluka Executive Magistrate, Aurangabad on 20th November, 1986 and for the first time his caste was shown as "Kunbi". The Petitioner was issued College Leaving Certificate on 18th June, 1999 by the Principal of Arts and Science College at Aurangabad and his caste was shown as "Nirank". The documents at Serial Nos. 49 and 50 are in respect of his cousin brothers from paternal side and both these documents indicated the caste of the respective persons as "Maratha".

20. Thus, the school/college record in respect of the Petitioner, his brothers, sister and cousins indicated the caste either as "Maratha" or "Nirank" and the Caste Certificates as belonging to "Kunbi" caste were issued in respect of his brothers as well as himself for the first time by the Taluka Executive Magistrate, Aurangabad and, therefore, this evidence itself is sufficient to hold that the Petitioner did not belong to the caste "Kunbi".

21. In the case of Kumari Madhuri Patil (supra) the Apex Court, in para 10, noted :

...This school record, comparatively, is not only oldest but it being the record pertaining to candidate's father's admission to school prior to independence, it carries greatest probative evidentiary value. The caste of the person, as stated earlier, is determined on the basis of the caste of their parents, basically for the reasons that the caste is acquired by birth. When the school record of the candidate's father shows his caste as Koli, the documents which the candidates have produced (documents quoted at Sr. Nos. 3, 5 to 8, 11, 13 to 16) showing their caste as Mahadev Koli cannot be relied upon. All these documents furnished by the candidates are those manipulated and fabricated with the intention to knock of the seats in educational institutions defrauding the true Scheduled Tribes to their detriment and deprivation. As the school record of the candidate's father shows his caste as "Koli", the Caste Certificates which have been issued to the appellants and their relatives by the Executive Magistrate, Greater Bombay (documents at Sl. Nos. 9, 10, 12, 17 to 19) are without proper inquiry and investigation, besides being without jurisdiction. Its reiteration in service record would not carry any credibility or a ground to accept the caste as Scheduled Tribe....

The observations made by the Apex Court in Kumari Madhuri Patil's case (supra) are squarely applicable in the instant case as well regarding the documentary evidence in respect of the petitioner's father and his grandfather's brother

which, undoubtedly, showed their caste as "Maratha" or "Maratha Kunbi". In the Resolutions issued by the State Government enlisting the caste in the backward classes there is no mention of the "Maratha Kunbi" caste if such a caste really exists. His father's caste in the Maratha High School at Aurangabad, while granting him admission on 2nd July, 1951, was shown as "Maretha". The Committee has drawn an adverse inference against the Petitioner as the Service Book of his father (retired Tahsildar) was not submitted before the Committee. The documents at Serial Nos. 49 and 50 are in respect of the Petitioner's first cousin i.e. the sons of Himmatrao Thorat. The Head Master of the school, in which these two cousins viz. Sandeep and Sudhakar, had studied, was called before the Committee with the concerned record and it was noticed from the said record that in respect of the students admitted from 28th April, 1967 to 8th August, 1977 the column of caste was left blank. The students admitted from 8th October, 1977 to 12th June, 1999 and a surname Thorat were shown to belonging to the Maratha caste whereas from the year 2000-2001 onwards all the students with surname Thorat gave their caste as Maratha Kunbi. In village Bhoigaon where the petitioner was born, there are about 25 to 28 families with surname "Thorat" and excluding the entries made in the year 2000-2001, all other entries showed the caste as "Maratha" in respect of these Thorat Family children who were admitted in the school. The Petitioner has alleged that when this Head Master was called by the Committee the Petitioner had no notice. Even if we do not consider this evidence, the other record, as considered by the Committee, does not support the caste claim of the Petitioner and his uncle's (Himmatrao) Service Book showed his caste as "Maratha" and this was never corrected. Himmatrao did not avail or seek the benefit of reservation for O.B.C. while in service. This is a damning evidence against the Petitioner and he kept this evidence away from the Committee as well as the Vigilance Cell.

22. The Petitioner has attacked the constitution of the Scrutiny Committee inasmuch as he states that the Committee, which decided his caste claim, was not constituted in compliance with the directions of the Supreme Court in Kumari Madhuri Patil's (supra) case (review order). We may refer to para 4 of the said order Harayana Urban Development Authority Vs. Smt. Nalini Aggarwal etc, etc., "The Caste Scrutiny Committee for Social Welfare Agricultural Affairs and Sports Department should comprise of Additional Commissioner (Revenue) as Chairman, the Divisional Social Welfare Officer as member and Research Officer/ Welfare Officer as Member Secretary. The present Verification Committee certainly meets these directions. Though, the Supreme Court observed that alongwith the Vigilance Cell one Research Officer/Tribal Development or Social Welfare Officer would be associated in finding the social status, the absence of a Research Officer or Social Welfare Officer in the Vigilance Cell by itself would not vitiate the findings of the Scrutiny Committee so long as the Scrutiny Committee has been constituted as per the law laid down by the Apex Court.

23. We have examined the decision of the Committee in all its perspectives and on the grounds it is assailed before us and we are of the considered view that the

said decision cannot be dubbed as erroneous, leave aside manifestly erroneous. The Committee has appreciated the evidence placed before it correctly and the reasoning given by the Committee in support of its findings cannot be faulted with. There is no case made out by the Petitioner to interfere with the said decision of the Committee by exercising our powers under Articles 226 and 227 of the Constitution and hence the petitioner's challenge against the said decision must fail.

24. It is on record that the Respondent No. 2 Committee has been constituted by the State Government as per Government Resolution dated 1st January, 1998 and 20th December, 1999 pursuant to the directions given by the Apex Court in the case of Kumari Madhuri Patil (supra). The State Government issued a fresh Government Resolution on 25th January, 2000 and issued revised guidelines for the working of the said Committees which are constituted at all the six revenue divisional headquarters. In clause 4(14) of the said Government Resolution the Committees have been vested with the powers for verification of the caste claim of those persons who have contested elections to the local self government bodies like the Village Panchayat, Panchayat Samitis, Zilla Parishad and Municipal Council as well as Municipal Corporation against seats reserved for Scheduled Castes, Scheduled Tribes and O.B.Cs. It is provided therein that the Caste Certificates of all those returned candidates are required to be submitted to the Verification Committee within ten days and the Committee is expected to complete the verification process within 45 days and decision be communicated to the concerned Collector/Municipal Commissioner. The respondent No. 2 Committee having been constituted as per the directions of the Supreme Court and having been invested with the powers to verify the caste claim of the elected representatives on the local self government bodies against seat reserved for O.B.C., has adjudicated the Petitioner's caste claim by following the guidelines laid down in the Government Resolution dated 20th December, 1999 as well as 25th January, 2000. The contentions that the Committee is not a statutory body within the meaning of the Verification Act and, therefore, it was not competent to adjudicate upon the Petitioner's caste claim are without any merit and we hold that the Committee was bestowed with the powers to verify the Petitioner's caste claim as per the Government Resolutions referred to hereinabove and also the directions issued by the State Election Commission in that regard. In fact, the Petitioner's caste claim was referred for verification vide letter dated 26th April, 2000 and the Act has come into force only from 18th October, 2001. When the Committee commenced the verification proceedings in respect of the Petitioner's caste claim the Act was not enacted and it cannot be said that the said verification has been conducted under the said Act merely because two witnesses were called by the Committee for recording their evidence, by invoking powers u/s 9 of that Act. Even if we discard the evidence of these two witnesses, the service record of his father and uncle (father's brother) clearly demolishes his claim that he belongs to the "Kunbi" caste.

25. We now come to the second limb of this petition viz. the constitutional

validity 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 and more particularly section 10(4) of the same. As noted earlier, the challenge to the validity of the Act is raised as the Petitioner has suffered an order u/s 10(4) of the said Act by which the Commissioner, Aurangabad Municipal Corporation issued a declaration that the Petitioner ceases to be an elected member of the Aurangabad Municipal Corporation retrospectively. The challenge to the validity of these provisions, as raised by the Petitioner, is on the following lines.

(a) The provisions of Section 9 of the Act are contrary to the Scheme of the Corporations Act.

(b) Formation of the Committee u/s 6(1) is contrary to the directions set out by the Apex Court in the case of Kumari Madhuri Patil (supra).

(c) Section 10(4) of the Act is ultra vires and is against the guarantee enshrined under Articles 14 and 15 of the Constitution. The said provision has made the relevant provisions of the Corporations Act redundant. The remedy of election dispute, as provided u/s 16 of the Corporations Act has been virtually made nugatory as by the operation of section 10(4) of the Act the elected candidate's membership is deemed to have terminated retrospectively after his caste claim is invalidated by the Committee. Even if an election petition is pending u/s 16 of the Corporations Act, on the decision of the Committee invalidating the caste claim of the returned candidate such election petition virtually stands allowed without trial and, therefore, the provisions of section 10(4) of the Act override the remedy of election petition as provided u/s 16 of the Corporations Act. Section 16(2A) of the Corporations Act provides a bar to entertain any dispute in respect of an election except by way of an election petition and this provision has been added after the 74th amendment to the Constitution incorporating Chapter IX A. When a special statute has provided a specific bar it cannot be made redundant by the Legislature by enacting another statute. The learned Counsel, in this regard, has relied upon the decisions of the Supreme Court in the case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, and Union of India (UOI) Vs. G.R. Prabhavalkar and Others, Reliance has been also placed on a judgment of this Court in the case of Martin Nirmal Vs. State of Maharashtra and Others,

(d) When Article 243ZG of the Constitution has specifically provided that no election to any municipality shall be called in question except by an election petition presented to such authority in such manner, as is provided by or under any law made by the Legislature of a State, there cannot be a subsequent statute framed by the Legislature which would virtually result into taking away this guarantee provided by the Constitution. The returned candidates having been elected in a democratic process have been guaranteed a protection by Article 243ZG and the provisions of section 10(4) of the Act take away the said guarantee and hence they are ultra vires. Reliance in this regard has been placed on the following decisions of the Supreme Court :

- (i) Election Commission of India Vs. Shivaji and Others,
- (ii) Anugrah Narain Singh, and Anr. v. State of Uttar Pradesh and Ors.

1. Martin Nirmal Vs. State of Maharashtra and Others,
 2. Election Commission of India Vs. Shivaji and Others,
 3. Anugrah Narain Singh and Another Vs. State of U.P. and Others,
- Rom. L.R. 260

3.

(e) To avail constitutional benefits meant for a particular caste/tribe is a civil right of a claimant (returned candidate) and, therefore, a declaration of social status of being member of a particular caste/tribe is purely of civil nature. Such a right amounts to civil right within the meaning of Section 9 of the Code of Civil Procedure, 1908 and thus only a Civil Court has jurisdiction to decide such a right of a claimant. The provisions of section 10(4) of the Act are, therefore, contrary to the provisions of Section 9 of the Civil Procedure Code.

26. The preamble of the Act states that it is an Act to provide for the regulation of the issuance and verification of Caste Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto. The said Act was published after having received the assent of the President in the Maharashtra Government Gazette on 23rd May, 2001, the State Government issued a notification which was published in the Gazette on 17th October, 2001 and the Act came into force from 18th of October, 2001 as appointed u/s 1(2) therein. Section 2 deals with the definitions of various terms. Section 5 provides with an appeal against an order rejecting an application submitted for Caste Certificate. Section 6 provides for verification of Caste Certificate by a Scrutiny Committee. Section 7 provides for confiscation and cancellation of false Caste Certificates by the Scrutiny Committee if the Caste Certificate was found to be false and the order passed by the Scrutiny Committee under the Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution. Section 8 states that where an inquiry is required to be conducted in the caste claim by the Scrutiny Committee the burden to prove that a person belongs to a caste, tribe or class shall be on such claimant/applicant. Section 9 bestows powers of Civil Court to the Competent Authority, Appellate Authority and Scrutiny Committee while holding an inquiry into the caste/tribes claim. Section 10 provides for withdrawal of the benefits secured on the basis of the false Caste Certificate and section 11 deals with offences and penalties. Section 12 states that offences punishable u/s 11 shall be cognizable and non-bailable and every offence punishable under the Act shall be tried by any Magistrate of First Class in a summary way and provisions of section 262 except Sub-section (2) to 265, both inclusive, of the Code of Criminal Procedure, shall as far as

possible may be applied to such trial. Section 13 provides for penalty for issuing false Caste Certificate and states that no Court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government. Section 15 provides a bar of jurisdiction of Civil Courts, it would be advantageous to reproduce some of the relevant provisions of the Act.

2. Definitions.- In this Act, unless the context otherwise requires,-

(f) "Local Authority" means in relation to local areas comprised within the jurisdiction of a Municipal Corporation, the concerned Municipal Corporation and in relation to any other local area in the State, the concerned Municipal Council, Zilla Parishad, Panchayat Samiti, Industrial Township, Nagar Panchayat or Village Panchayat, having the jurisdiction over such local area;

(h) "Other Backward Classes" means any Socially and Educationally Backward Classes of citizens as declared by the Government and includes Other Backward Classes declared by Government of India in relation to the State of Maharashtra;

(k) "Scrutiny Committee" means the Committee or Committees constituted under Sub-section (1) of section 6 for the Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special backward Category for verification of the Caste Certificate and to perform the function of Scrutiny Committee under this Act;

6. Verification of Caste Certificate by Scrutiny Committee.- (1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under Sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a Validity Certificate.

(3) The Appointing Authority of the Central or State Government, Local Authority, Public Sector Undertakings, Educational Institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a Validity Certificate, in case a person selected for an appointment with the Government, Local Authority, Public Sector Undertakings, Educational Institutions, Cooperative Societies or any other Government aided institutions who has not obtained such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the

Caste Certificate and adhere to the time limit for verification and grant of Validity Certificate, as prescribed.

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

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution of India.

9. Civil Court powers to Competent Authority, Appellate Authority, and Scrutiny Committee.- The Competent Authority, the Appellate Authority and the Scrutiny Committee shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office; and
- (e) issuing Commissions for the examination of witnesses or documents.

10. Benefits secured on the basis of false Caste Certificate to be withdrawn.- (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, Local Authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Cooperative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed

or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate, by the Scrutiny Committee.

(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, Co-operative Society or any Statutory Body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified 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.

11. Offences and penalties. -

(1) Whoever

(a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, Local Authority or any other Company or Corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such, Castes, Tribes or Classes or is elected to any of the elective offices of any Local Authority or Co-operative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate;

shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No Court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any

other officer duly authorised by the Scrutiny Committee for this purpose.

13. Penalty JOT issuing false Caste Certificate.- (1) Any person or authority performing the functions of Competent Authority under this Act, who intentionally issues a false Caste Certificate, shall on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No Court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government.

15. Bar of Jurisdiction of Civil Courts.- No Civil Court shall have jurisdiction to entertain, to continue or to decide any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order, if the claim involved in such suit or proceedings, or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

17. Provisions of this Act to be in addition to any other law time being in force.- The provisions of this Act shall be in addition to the provisions of any other law for the time being in force.

18. Power to make rules.- (1) The Government may, subject to the previous publication, by notification In the Official Gazette, make rules to carry out all or any of the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall, from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

19. Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of State Legislature.

27. We also deem it appropriate to reproduce some of the relevant provisions of

the Corporations Act.

2. In this Act, unless there be something repugnant in the subject or context,-

(3A) "Backward Class of citizens" means such classes or parts of or groups within such classes as are declared, from time to time, by the State Government to be Other Backward Classes and Vimukta Jatis and Nomadic Tribes.

(9) "City" means the larger urban area specified in a notification issued in respect thereof under clause (2) of Article 243-O of the Constitution of India or under Sub-section (2) of section 3 of the Act, forming a City;

(10) "Corporation" means the Municipal Corporation constituted or deemed to have been constituted for a larger urban area known as a City;

(11) "Councilor" means a person duly elected as a member of the Corporation; and includes a nominated Councilor who shall not have the right,-

(i) to vote at any meeting of the Corporation and Committees of the Corporation; and

(ii) to get elected as a Mayor of the Corporation or a Chairperson of any of the Committees of the Corporation;

(29) "the Judge" means in the (City of Pune) the Judge of the Court of Small Causes, and in any other City the Civil Judge (Senior Division) having jurisdiction in the City);

(62A) "State Election Commission" means the State Election Commission consisting of the State Election Commissioner appointed in accordance with the provisions of clause (1) of Article 243-K of the Constitution of India];

5A. Reservation of Seats.- (I)(a) In the seats to be filled in by election in a Corporation, there shall be seats reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women, as may be determined by the State Election Commissioner, in the prescribed manner.

9. Qualification for election as Councilor. -(1) Subject to the provisions of this .Act, a person who is not less than twenty-one years of age on the last date fixed for making nominations for any general election or by-election and is enrolled in the municipal election roll as a voter for a ward shall be qualified to be a Councilor and to be elected either from such ward or from any other ward.

(2) Any person who ceases to be a Councilor shall, if qualified under Sub-section (1), be eligible for re-elections as such.

10. Disqualification for being a Councilor.- (1) Subject to the provisions of section 13, and 404, a person shall be disqualified for being elected and for being a Councilor, if such person -

(a-i) has, at anytime after the commencement of section 5 of the Maharashtra Municipal Corporations (Amendment) Act, 1970, been convicted of an offence punishable u/s 153-A or Sub-section (2) or (3) of section 505 of the Indian Penal Code :

Provided that, such disqualification shall be for a period of six years from the date of such conviction.

(a-ii) has been so disqualified by or under any law;

(i) for the time being in force for the purpose of elections to the Legislature of the State :

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if has attained the age of twenty one years;

(ii) made by the Legislature of the State of Maharashtra; or

(a) has been convicted by a Court in India or any offence involving moral turpitude, unless a period of six years has elapsed since the date of such conviction : or

Provided that, on the expiry of such sentence, the disqualification incurred under this clause shall cease :

Provided further that the expiry of such sentence shall not entitle the person to continue as a Councilor or to stand for election at any by-election held during the remainder of the current term of office of the Councilors;

(b) is undischarged insolvent;

(c) holds the office of Commissioner or any other office or place of profit under the Corporation;

(d) is a licensed surveyor, architect or engineer, structural designer, clerk of works or plumber or a member of a firm of which any such licensed person is a member;

(e) holds any judicial office with jurisdiction within the limits of the City;

(f) subject to the provisions of Sub-section (2), has directly or indirectly by himself or his partner any share or interest in any contract or employment with, by or on behalf of the Corporation;

(g) having been elected a Councilor is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner or with whom he is engaged in a professional capacity in connection with any cause or proceeding in which the Corporation or the Commissioner or the Transport Manager is interested or concerned; or

(h) fails to pay arrears of any kind due to the Corporation by him otherwise than as a trustee, within three months after a special notice in this behalf has been

served on him by the Commissioner;

(1) has more than two children :

Provided that, a person having more than two children on the date of commencement of the Maharashtra Municipal Corporations and Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Act, (Mah. XLIII of 2000) 1995 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase :

Provided further that a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

(1A) A person shall be disqualified for being a Councilor, if such person has, at any time during the term of his office, become disqualified, under the Maharashtra Local Authority Member's Disqualification Act, 1986 for being a Councilor,

(2) A person shall not be deemed to have incurred disqualification under clause (f) of Sub-section (1) by reason only of his,-

(a) receiving a municipal pension;

(aa) any relation being employed with by or on behalf of the Corporation, as an officer or servant thereof;

(b) having any share or interest in any lease, sale, exchange or purchase of land or any agreement for the same.

(i) any lease, sale, exchange or purchase of land or any agreement for the same;

(ii) any agreement for the loan of money or any security for the payment of money only.

(iii) any newspaper in which any advertisement relating to the affairs of the Corporation is inserted.

(iv) any Joint Stock Company or any society, registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, which shall contract with or be employed by the Commissioner or the Transport Manager on behalf of the Corporation;

(v) the occasional sale to the Commissioner or Transport Manager on behalf of the Corporation of any article in which he regularly trades to a value not exceeding in the aggregate in any one official year two thousand rupees; or

(vi) the occasional letting out on hire to the Corporation or in the hiring from the

Corporation of any article for an amount not exceeding in the aggregate in any one official year five hundred rupees;

(c) occupying as a tenant for the purpose of residence any premises belonging to the Corporation; or

(d) receiving conveyance charges as a member of the Transport Committee.

11. Disabilities from continuing as Councilor.- A Councilor shall cease to hold office as such if at any time during his term of office he,-

(a) becomes disqualified for being a Councilor by reason of the provisions of section 10:

(b) absents himself during three successive months from the meetings of the Corporation, except from temporary illness or other cause to be approved by the Corporation;

(c) absents himself from, or is unable to attend, the meetings of the Corporation during six successive months from any cause whatever, whether approved by the Corporation or not; or

(d) acts as a Councilor or as a member of any Committee of the Corporation by voting on, or taking part in the discussion of, or asking any question concerning, any matter or in which he has directly or indirectly by himself or his partner any such share or interest as is described in clause (b) of subsection (2) of section 10 or in which he is professionally interested on behalf of a client, principal or other person.

12. Questions as to disqualification to be determined by the Judge.- (1) If any doubt or dispute arises whether a Councilor has ceased to hold office as such u/s 11, such Councilor or any other Councilor 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 Sub-section (1) such Councilor 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.

14. State Election Commission.- (1) The superintendence direction and control of the preparation of electoral rolls for and the conduct of, all elections to the Corporations shall vest in the State Election Commissioner.

(2) The State Election Commissioner may be order, delegate any of his powers and functions to any officer of the State Election Commission or any officer of the State Government not below the rank of Deputy Collector or any officer of the Corporation not below the rank of the Assistant Municipal Commissioner.

(3) All the officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of election of Corporations under this Act or the Rules shall function under the superintendence, direction and control

of the State Election Commissioner.

(4) Notwithstanding anything contained in this Act and the Rules, the State Election Commissioner may issue such special or general orders or directions which may not be inconsistent with the provisions of the Act and the Rules for fair and free elections.

16. Election Petition.- (1) If the qualification of any person declared to be elected a Councilor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the State Election Commissioner of a nomination, or of the improper reception or refusal of a vote, or by reason of a material irregularity in the election proceedings, corrupt practice, or any other thing materially affecting the result of the election, any person enrolled

in the municipal election roll may at any time within ten days after the result of the election has been declared submit an application to the Judge for the determination of the dispute or question.

(2) The State Election Commissioner may, if it has reason to believe that an election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed by order in writing, authorise any officer of the Commission to make an application to the Judge at any time within one month after the result of the election has been declared for declaration that the election of the returned candidate or candidates is void.

(2A) No election to any Corporation shall be called in question except by an election petition presented to the Judge referred to in Sub-section (1) and no Judge other than the Judge referred to in Sub-section (1) shall entertain any dispute in respect of such election.

(3) The Judge shall decide the applications made under Sub-section (1) or (2) after holding an inquiry in the manner provided by or under this Act.

404. (1) If the Judge sets aside an election of a candidate on the ground that a corrupt practice has been committed in the interest of such candidate, he shall declare such candidate to be disqualified for the purpose of any fresh election which may be held under this Act.

(2) If in any proceedings u/s 16 of the Judge finds that a corrupt practice has been committed within the meaning of that section by any person he may, if he thinks fit, declare such person to be disqualified for being elected and for being a Councilor for such term of years not exceeding seven as he may fix :

Provided that no such declaration shall be made unless such person has been given a reasonable opportunity to be heard :

Provided further that the State Government may by order in writing at any time relieve such person from such disqualification but, subject only to such order, the declaration by the Judge shall be conclusive.

28. The learned Counsel for the Petitioner also submitted that the provisions of Section 10(4) of the Act giving retrospective effect to the invalidation of the caste claim and termination of his election as a Councilor are contrary to the provisions of section 12 of the Corporation Act. To elaborate this point, it is submitted by him that on invalidation of his caste claim, the Corporation will have to refer the question as to whether he has ceased to hold the office as such u/s 11, to the Judge u/s 12(1) and the Councilor shall not be deemed to be disqualified until the Judge, after holding an inquiry in the manner provided by or under the Corporations Act convinced he has ceased to hold office. This submission is made in addition to the earlier contentions that an elected Councilor can be unseated only by way of an election petition even if his caste claim is invalidated by the Verification Committee at any time viz. either during the pendency of the election petition or even otherwise. The contentions so made, relying upon the provisions of section 12 of the Corporations Act, are misconceived and deserve to be rejected. As per section 10(1)(a-ii)(ii) of the Corporations Act, subject to the provisions of sections 13 and 404 a person shall be disqualified for being elected and for being a Councilor, if such person has been disqualified by or under any law made by the Legislature of the State of Maharashtra. Similarly, an elected Councilor shall be disqualified for being continued to be a Councilor if he has been convicted by a Court in India of any offence involving moral turpitude unless a period of six years is elapsed since the date of such conviction or has been convicted for an offence punishable u/s 153A or 505(2) or (3) of the Indian Penal Code. u/s 10(1A) of the Corporations Act a person shall be disqualified for being a Councilor if such a person has at any time during the term of his office become disqualified under the Maharashtra Local Authority Member's Disqualification Act, 1986 for being a Councilor. Section 11 states that a Councilor shall cease to hold office as such if at any time during his term of office he becomes disqualified for being a Councilor by reasons of the provisions of section 10. It is, thus, clear that when a sitting Councilor becomes disqualified for being a Councilor by any of the reasons set out in Section 10, the provisions of section 11 immediately operate and the Councilor concerned shall cease to hold office forthwith. When the disqualification u/s 10(1) of the Act is sustained under any law made by the State Legislature or conviction for an offence involving moral turpitude or because of the provisions u/s 10(1A) there cannot be any further adjudication on such disqualification under the provisions of Section 12(1), by the Judge which means in the city of Pune, the Judge of the Court of Small Causes and in any other city, the Civil Judge, Senior Division, having jurisdiction in the city. The disqualification within the meaning of section 10(1)(a-i), (a-ii)(i) and (if), (a) and 10(1A) is by way of an adjudication process or by trial, as the case may be, and section 12(1) of the Act cannot be read to make such orders a subject of further adjudication by the Judge. The Councilor aggrieved by an order of disqualification made under any law enacted by the State Legislature or on conviction by a competent Court or under the Maharashtra Local Authority Members Disqualification Act has an independent remedy to challenge such orders of disqualification under the respective statutes

under which such orders of disqualification are passed and these orders cannot be a subject matter of reference contemplated within the meaning of section 12. In addition, an order of conviction can not be a subject matter of judicial scrutiny by the Judge u/s 12 of the Corporations Act and the same is the case in respect of orders passed by the quasi judicial forums created under special statutes or rules/resolutions.

29. The preamble of the Constitution promises to secure to every citizen social and economic justice, equality of status and of opportunity assuring the dignity of the individual. The Constitution guarantees to the Scheduled Tribes and Scheduled Castes and the Other Backward Class of Citizens of equality before law and the equal protection of law. Though Articles 14 and 15(1) prohibits discrimination amongst citizens on certain grounds. Article 15(4) empowers the State to make special provisions for advancement of the backward classes. Article 16(1) requires equality of opportunity to all citizens in the matters of appointments to an office or a post under the Union or a State Government or Public Undertakings etc. But, Article 16(4) empowers the State to make provisions for reservation of appointments or posts in favour of backward classes of citizens not adequately represented in the services under the State. Article 46 enjoins the State by mandatory language employed therein to promote with special care the educational or economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. The Scheduled Tribes, Scheduled Castes and Other Backward Classes of Citizens have been given the exclusive right to employment to an office or post under the State etc. to the earmarked quota, by reason of the State's policy of reservation. For availment of such exclusive rights they are required to obtain a Social Status Certificate which is more popularly known as "Caste Certificate" to be issued by a competent officer designated by the State Government. The State Government had prescribed the procedure in this regard. A Revenue Officer holding the post of Tahsildar or Sub-Divisional Officer was empowered to issue a Caste Certificate and on his rejecting such an application, an appeal would lie before the Divisional Commissioner. It is common knowledge that the endeavour of State to fulfill constitutional mandate of upliftment of the backward classes by providing for reservation of seats in educational institutions and for reservation of posts and appointments are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservation posing themselves as persons entitled to such status while, in fact, they do not belong to such Backward Classes. The admissions wrongly given or appointments wrongly obtained on the basis of false Social Status Certificate have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or the Other Backward Class candidates as enjoined under the Constitution all the benefits conferred on them by it. The genuine Scheduled Castes or Scheduled Tribes or the Backward Class candidates are denied admissions to educational institutions or appointment to office or posts under a State for want of Social Status Certificate. The ineligible or spurious persons who are falsely given entry,

resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny/Verification Committee. The State Government, therefore, thought it fit to have the process of verification of such status claim by a Committee. It consisted of a Secretary, a Chairman and two members as well as a Research Officer-cum-Director who had intimate knowledge in the identification of the specified castes/tribes. If the caste claim was rejected by such a Verification/Inquiry Committee there was a provision of appeal before the Revenue Divisional Commissioner and his order could be subject to challenge in a writ petition only.

30. Realising the difficulties being faced by the persons belonging to such reserved categories the Supreme Court in the case of *State of Maharashtra Vs. Abhay and Others*, desired the State of Maharashtra to devise a proper procedure for issuance of such certificates and the inquiry therein. The observations made in that regard by the Apex Court are, thus:

...We consider it more desirable that the State of Maharashtra shall devise a proper procedure which must commence soon after the candidate clears examination by the Board at the end of Xth year in secondary school for issuing the final certificate after making whatever necessary inquiry they may want to initiate before the certificate can be granted and submitted for admission on passing Higher Secondary examination. The intending candidate may be directed to preferably make the requisite application as soon as or soon after he gets admission in XIth Standard. On receipt of the application, the inquiry may start as early as possible and the candidate will have to submit to such inquiry to obtain a regular certificate, whatever inquiry is to be held must be completed at least two months before the result of Higher Secondary Examination is declared whereafter one becomes eligible to seek admission to a medical college. We hope that the State of Maharashtra will devise a proper scheme in this behalf....

Then came the decision in the case of *Kumari Madhuri Patil* [supra) wherein the Supreme Court laid down the procedure for issuance of social certificates, their scrutiny and approval, and in the case of *Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another*, while reiterating the procedure" set out in the decision of *Kumari Madhuri Patil* (supra), the Supreme Court, in para 7 observed :

While reiterating the above guidelines to be workable principles, it is high time that the Government of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals, etc. etc., so that the menace of fabricating the false records and to gain constitutional advantages by plain/spurious persons could be prevented. Lest, they would defeat the Constitutional objective of rendering socio-economic justice envisaged under Article 46 in the Preamble of the Constitution under Articles 14, 15, 16, 38 and 39.

31. With the introduction of Part-IX by the Constitution (73rd Amendment) Act,

1992 and Part-IX-A by the Constitution (74th Amendment) Act, 1992 reservation of seats to the local self governing bodies like Panchayats. Municipalities and Municipal Corporations etc. in favour of the Scheduled Castes and Scheduled Tribes, O.B.Cs. and Women became a part of the constitutional guarantee and, therefore, the respective statutes concerning the governance of such local self governing bodies came to be suitably amended by the State Legislature thereby providing for reservation of seats in favour of these classes/categories. The Government of Maharashtra issued a Resolution on 1st January, 1998 and directed that the caste claim of those elected representatives to the local self governing bodies against seats reserved for Scheduled Castes, Scheduled Tribes or O.B.Cs. shall be referred for verification by the competent Verification Committee. As per the said Resolution, the District Collector was required to forward these caste claims for verification within 15 days from the declaration of election results to the Verification Committee which, in turn, was required to adjudicate the said claims within a period of 45 days and communicate the decision to the Collector concerned. Further Resolutions in this regard came to be issued on 31st December, 1998 and 19th April, 1999. Based on these Resolutions, the State Election Commission issued a Circular on 4th June, 1999 and directed the Commissioners of the respective Municipal Corporations to refer the caste claims of the Corporators elected against reserved seats and such reference was not left to the Collector or to the Divisional Commissioner concerned. The State Election Commission issued a communication dated 10th September, 1999 and informed the Municipal Commissioners as well as the District Collectors, all over the State, that the period of 15 days to refer the caste claim for verification, was removed. The State Government issued yet another Resolution on 25th January, 2000 and specifically designated the Caste Verification Committees for the respective revenue divisions. From these Resolutions as well as the Circular issued by the State Election Commission it is evident that the State Government constituted Caste Verification Committees for verification of the caste claims of the elected members to the local self governing bodies like Village Panchayat, Panchayat Samitis, Zilla Parishads, Municipal Councils and Municipal Corporations. The Government Resolutions have also set out guidelines for the working of the Verification Committees in keeping with the law laid down by the Apex Court, from time to time, including the review order in the case of Kumari Madhuri Patil (supra). A corrigendum to the Government Resolution dated 9th September, 1999 came to be issued on 15th January, 2000 and it provides that the Municipal Commissioner should send the Caste Certificates of the members elected on a seat reserved to Scheduled Tribes in the Municipal Corporation, to the concerned Scheduled Tribe Caste Certificate Scrutiny Committee and the concerned Collector should send the Caste Certificates of the members against the reserved seats for Scheduled Tribes in the Zilla Parishads, Panchayat Samitis, Gram Panchayats, Municipalities and Nagar Panchayats, from the local self governing institutions, to the concerned Scheduled Tribes Caste Certificate Scrutiny Committee, The Caste Certificate Scrutiny Committee to take steps immediately on receipt of the applications from

the concerned Collector and Municipal Commissioner regarding verification of the Caste Certificates of the elected candidates and communicate its decision within 45 days.

32. Writ Petition No. 2885 of 2000 came to be decided by us (Marlapalle and Dabholkar, JJ.) on 11th October, 2000. Following the decision of the Apex Court in the case of Laveti Giri (supra) we had expected the State Government to carry out suitable amendments to the respective statutes governing these local self governing bodies so as to provide for the disqualification of candidates elected against seats reserved, on their caste claim being invalidated or found to be false. The State Government enacted the Act and though the same was published in the Government Gazette on 23rd May, 2001, the State Government issued notification u/s 1(2) of that Act and it came into force from 18th of October, 2001. If regards be had to the entire scheme of the Act it is evident that it is divided in the following main stages :

- (a) Issuance of Caste Certificate and appeal thereon;
- (b) Verification of Caste Certificate;
- (c) Confiscation and cancellation of Caste Certificate and withdrawal of benefits secured on the basis of such certificate;
- (d) Offences and penalties.

The procedure for obtaining Caste Certificate is set out in section 3 and the Competent Authority is required to issue Caste Certificate as per section 4 and such a certificate issued shall be valid only subject to the verification and grant of Validity Certificate by the Scrutiny Committee. Any person aggrieved by an order of rejection of application for Caste Certificate may, within 30 days from the date of receipt of order, appeal to the Appellate Authority specified by the Government by notification in the Official Gazette. u/s 6 the Government is required to constitute by notification in the Official Gazette one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities u/s 4(1). As per section 6(4) the Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of certificate, as prescribed. The provisions of Section 6, in no way, are counter to the guidelines laid down by the Apex Court in the case of Kumari Madhuri Patil (supra) for constituting the Scrutiny Committees and also for the procedure to be laid down for verification, including the time limit, as has been referred to hereinabove vide different Government Resolutions right from 1998 onwards. Section 7 empowers the Scrutiny Committee, suo motu. or otherwise, to call for the record, and inquire into the correctness of a Caste Certificate issued, before or after the commencement of the Act, and by an order to cancel and confiscate such certificate if it is of the opinion that the certificate was obtained fraudulently. It has been further mandated that while doing so, the Scrutiny Committee shall follow such procedure as prescribed and give the person concerned an opportunity of being heard before the order of confiscation/

cancellation is passed. This is in keeping with the principles of natural justice. Sub-section (2) of Section 7 states that the order passed by the Scrutiny Committee under the Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution. Section 8 deals with the burden of proof and it lies on the claimant/applicant. Section 10 provides for withdrawal of the benefits secured on the basis of False Caste Certificate. Section 11 deals with offences and penalties and states that whosoever obtains a False Caste Certificate by furnishing false information or by filing false statement or documents or by any other fraudulent means, shall on conviction be punished with a rigorous imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than Rs. 2,000/- but which may extend to twenty thousand rupees, or both. Section 12 states that offences punishable u/s 11 shall be cognizable and non-bailable and every offence punishable under the Act shall be tried by the Magistrate of First Class in a summary way. Section 13 goes one step further to penalise the authority who issued a False Caste Certificate. It states that any person or authority performing the functions of Competent Authority under the Act, who intentionally issues a False Caste Certificate, shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine which shall not be less than Rs. 2,000/- but which may extend up to twenty thousand rupees or both and no Court shall take cognizance of the offence punishable under this section except with the previous sanction of the Government. Section 14 provides for penalty for abatement and Section 15 sets out a bar of jurisdiction of Civil Courts. All these provisions are in keeping with the guidelines set out by the Supreme Court in the case of Kumari Madhuri Patil (supra) as well as the provisions of the Code of Criminal Procedure, 1973.

33. Sub-section (4) of Section 10 of the Act fell for our consideration in Writ Petition No. 916 of 2000 decided on 24th October, 2001 and in para 12 of that judgment we held that a candidate who is elected against a reserved seat could not continue to represent the electorate immediately after invalidation of his caste status and this disability/disqualification did exist right at the time when he submitted his nomination form and hence the declaration made by the Verification Committee relates back to the stage of submission of such nomination form. We have also held that such a person was not eligible to contest the election against a seat reserved for a respective category right at the time when the elections were announced. The provisions in section 10(4) regarding retrospective operation for disqualification on the Caste Certificate being cancelled cannot be faulted with and it cannot be held to be ultra vires the constitution. Section 10(4) further provides that on such disqualification any benefits obtained by such person shall be recoverable as arrears of land revenue. It was contended by the learned Counsel for the Petitioner assuming that there may not be anything illegal in declaring the election of such person deemed to have been terminated retrospectively, recovery of benefits obtained by such

person as arrears of land revenue is illegal and unconstitutional on the grounds that when he has acted as a Corporator till his caste claim was invalidated, such recoveries cannot be held to be a State largesse and such monetary benefits by way of allowances etc. are obtained by him in lieu of the services he has rendered as a Corporator/Councilor.

34. It is of common knowledge that in some cases before the Verification Committee the Caste Certificates, which were under scrutiny, were allegedly either not issued by the competent officer or the record to be maintained in the office of such officer was missing. Under such circumstances it was necessary to have the Committee vested with the powers of recording evidence, both oral as well as documentary. It is for these reasons that Section 9 of the Act equips the Committee with the powers of Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or office; and
- (e) issuing Commissions for the examination of witnesses or documents.

It has been argued on behalf of the Petitioner that the Committee is not a Court and it could not have been vested with such powers. This argument is fallacious. The Committee is an expert body, empowered to adjudicate the social status claim and it is a quasi judicial body with all the trapping of a Court. Its orders are subject to challenge only by a writ petition under Article 226 of the Constitution. We may usefully refer to similar provision u/s 22 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the validity of the said Act fell for scrutiny before the Apex Court in the case of Union of India and Another Vs. Delhi High Court Bar Association and Others, and the said Act has been held to be valid and intra vires.

35. In holding the provisions of the statute to be ultra vires it becomes necessary to take into consideration the purpose of such enactment as a whole, starting from the preamble to the last provision thereto and if the entire enactment, read as a whole, indicates to achieve that purpose there could be no case to hold the enactment as ultra vires the constitution. Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with the law, yet whenever challenge is thrown to any of such actions, initial burden of showing the prima facie existence of violation of the mandate of the constitution lies upon the person approaching the Court. The Petitioner has failed to discharge his burden and nothing has been pointed out in the Act to show that it lays down unguided discretions in favour of any of the authorities viz. the Competent Authority, Appellate Authority or the Scrutiny Committee. Obtaining

the benefits of reservation by submitting False Caste Certificates has become a social menace and, in fact, it is as serious an offence as the election offence. The preamble of the Act sets out clearly the purpose and the provisions of the Act aimed at achieving the said objects in consonance with the law laid down by the Apex Court in the case of Kumari Madhuri Patil (supra).

36. In Writ Petition No. 2885 of 2000 (supra) we had also dealt with the contentions, as have been raised, in this petition, regarding the availability of remedy of election petition u/s 16(1) as well as the bar u/s 16(2A) of the Corporations Act, for entertaining a writ petition under Article 226 of the Constitution. Our observations in para 24 and 25 in the said judgment are as follows :

24. In the case at hand, it is obvious that the present scheme of the Act does not provide for a remedy to declare the Corporator as disqualified to hold the office of Corporator on account of his caste claim having been negated or found to be bogus or fabricated and that would not refrain us from exercising our constitutional obligation under Article 226 of the Constitution, when we have recorded a finding that the Corporator belongs to the Maratha caste and he did not have a Caste Certificate in his favour, that he belongs to Kunbi caste, which is classified as Other Backward Class. It is high time for the State Legislature to amend the provisions of the Act as well as all other Acts pertaining to the local self Government elections, like Village Panchayats, Zilla Parishads. Panchayat Samitis, and Municipal Councils etc. and take appropriate steps to update these statutory provisions so as to provide for unseating of the elected representative on account of his caste claim having been negated or having been found to be false. In absence of such a provision in the statute, it would be absurd to presume that the elected representative cannot be unseated, unless by way of an election petition, even if his caste claim is found to be bogus or false and in fact such a contention would run counter to the provisions of reservation. The basic philosophy behind providing reservation for the socially under privileged classes would be defeated if we fail to exercise our powers under Article 226 of the Constitution, in such a case in the absence of a specific statutory provisions and, therefore, the Constitution mandates that such an elected representative is unseated by declaring that he is disqualified to hold the elected office on account of his caste claim having been found to be false/ bogus.

25. The law laid down by Apex Court in Venkatchalam's case (supra) empowers us to declare the Corporator as disqualified to hold the office of Corporator and the arguments advanced by the learned Counsel for the Corporator do not in any way limit our powers in a writ jurisdiction. The submissions regarding the maintainability of the petition are hereby rejected.

Though the public interest petitioner is a political activist and he had sought to contest the Corporation elections, we need not detain us from entertaining the petition and the arguments that the petition has been filed for personal reasons or to settle political scores did not impress us. He was not in the fray from Ward

No. 63 of the Corporation as a candidate of his political outfit and he has been successful in unravelling a fraud on the society at large and the voters in Ward No. 63 more specifically.

This opinion of ours regarding the bar of section 16(2A) of the Corporations Act emanating from the provisions of Article 243-ZG(b) of the Constitution so as to entertain a writ petition under Article 226 of the Constitution was not brought to the attention of the Division Bench which decided the case of Martin Nirmal Moresh (supra). Subsequently, in Writ Petition No. 916 of 2001 (supra) the same issue was raised before us and we have answered the same again the Petitioner by setting out a detailed reasoning in para 7 to 15 of our judgment dated 24th October, 2001 and we are bound by the same view unless it is set aside by the Apex Court.

38. Sub-section (4) of Section 10 of the Act is, in fact, nothing short of an additional disqualification provided by the Legislature within the meaning of section 10(I)(a-ii)(ii) of the Corporations Act so that section 11 of the Corporations Act operates and the Councilor shall cease to hold office automatically. The disqualifications set out u/s 10 and their consequences, as set out u/s 11, are independent of the remedy of election petition u/s 16(1) of the Corporations Act so as to unseat the Councilor/Corporator. For example, if an elected Councilor has sustained the disqualification within the meaning of Section 10(I)(a), (b) and 10(1A) the provisions of section 11 therein shall automatically apply and the Councilor shall cease to hold office forthwith. It is not contemplated that such a disqualified Corporator is required to be unseated by filing an election petition. The same logic, must be made applicable to a disqualification sustained u/s 10(I)(a-i) or (a-ii) of the Act. The State Legislature has enacted the Act which has come into force from 18th October, 2001 and the legislating power of the State Government in enacting such a statute are unquestionable. Article 13(3) of the Constitution defines the term "Law" which includes any ordinance, order, by-law, rule, regulation, notification, custom or usages having in the Territory of India the force of law. This provision of Section 10(4) of the Act is a disqualification within the meaning of section 10(1) of the Act and, therefore, for its operation u/s 11 or its consequential effects the bar of Section 16(2A) of the Corporations Act shall not operate. We must also note that in such cases it is not the election of the concerned candidate which is brought in question and what is brought in question is his social status and thus his right to contest the said election against a seat reserved for a particular category in view of the mandate of Article 243T of the Constitution, which has been incorporated in terms of Section 5A of the Corporations Act. Challenge to the election, as contemplated within the meaning of Section 16, is totally different than termination of membership of the elected body on account of social claim being invalidated and such a contingency falls within the ambit of section 11 of the Corporations Act. We, therefore, hold that the provisions of section 10(4) of the Act do not run counter to the provisions of either section 16(2A) or Section 12 of the Corporations Act. When a person was disqualified to contest the election on a

seat reserved right at the threshold, he cannot be allowed to continue to hold the elected office even after his social status claim has been invalidated or found to be bogus merely by taking the support of section 16(1) or 16(2A) of the Corporations Act. Any further continuation as such an elected representative would, undoubtedly, be a perpetuation of a fraud played on the Constitution as well as the voters concerned. The bar of Article 243-ZG is for interference in the election process already set in motion. Article 243-V(I) of the Constitution does provide for disqualification of being a member of the Municipal Corporation. A person who was disqualified at the threshold cannot be allowed to take a plea that he can be unseated only by way of an election petition. In this regard we refer to the Constitution Bench judgment of the Apex Court in the case of B. N. Kapar (*supra*).

39. In the case of Kumari Madhuri Patil (*supra*) while laying down the guidelines the Supreme Court stated - (a) the order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution, (b) no suit or other proceedings before any other authority should lie.

40. u/s 6 of the Act provision has been made for constituting, by notification in the Official Gazette; one or more Scrutiny Committee(s) for verification of Caste Certificates and it is further provided that the said Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of Validity Certificate, as prescribed. The composition of the Committee viz. the number of members etc., has not been spelt out and, therefore, the natural presumption that is required to be drawn is that the composition of the Committee shall be as per the directives laid down by the Apex Court in Kumari Madhuri Patil's case (*supra*). The provisions of Section 6 of the Act are clear on the composition of the Committee and the contentions that they are contrary to the directives issued by the Supreme Court are without any substance.

41. Sub-section (1) of section 6 of the Act states that the Government shall constitute by notification in the Official Gazette one or more Scrutiny Committees for verification of the Caste Certificates and after the Act came into force on 18th October, 2001 admittedly the State Government has not issued such a notification. However, that itself shall not vitiate the operation/enforcement of the Act and as referred in the earlier part of this judgment the State Government has already appointed Scrutiny Committees at the respective revenue divisions pursuant to the decision of the Supreme Court in the case of Kumari Madhuri Patil (*supra*). Section 19 of the Act empowers the State Government to issue orders, as may appear to be necessary, for removing the difficulties.

All the provisions of the Act and more particular the provisions of Sections 9 and 10, as scanned hereinabove, do not suffer from any infirmities and they are, in fact, in consonance with the law laid down by the Apex Court in the case of Kumari Madhuri Patil (*supra*) and Laveti Giri (*supra*) in their letter and spirit. The

provisions of section 10(4) of the Act do not violate the mandate of Articles 14 to 16 of the Constitution.

42. Article 13(2) of the Constitution provides that the State shall not make any law which takes away or abridges the rights conferred by Part-III and any law made in contravention of the said clause shall, to the extent of the contravention, be void. The right to contest an election is a statutory right within the meaning of the Corporations Act and even in respect of Backward Classes of Citizens a special reservation has been provided under Article 243T of the Constitution carving out a special quota of seats to the municipalities. The Petitioner has not pointed out any provision of the Act which is contrary to the mandate of Article 13(2) of the Constitution inasmuch as it is not pointed out that any provision of the Act has taken away or abridged any fundamental rights provided in Part-III of the Constitution.

43. In the result, the challenge raised by the Petitioner against the impugned order 1st December, 2001 as well as to the validity of the Act and more particularly the provisions of sections 9 and 10(4) of the said Act fails on all counts and the petition, therefore, deserves to be dismissed and the same is hereby dismissed. This is a fit case to saddle the petitioner with costs, quantified at Rs. 3.000/- (Rupees three thousand only) to be deposited by the Petitioner within two weeks from today. Rule discharged. Interim order granted earlier stands vacated.

44. The learned Government Pleader may take appropriate steps for final disposal of similar pending petitions in which the validity of the Act has been challenged before this Court.

Certified copy, if applied, be issued on priority basis.

This judgment was pronounced at 10.30 a.m. and when we resumed in the second session today, Shri Golegaonkar, the learned Counsel appearing for the petitioner submitted an oral application for a certificate for leave to appeal to the Supreme Court under Article 134-A of the Constitution. We are satisfied that this case does not involve any substantial question of law of general importance and, therefore, his oral application is hereby rejected.

Shri Golegaonkar, then prayed for stay to the operation of our judgment. This prayer is also devoid of merits and more so when we have negated the challenge to the validity of the Act, it would not be expedient to stay the operation of an order which is passed by the Scrutiny Committee.