

(2008) 03 BOM CK 0092

In the Bombay High Court

Case No : Criminal Writ Petition No. 53 of 2008

Kaisaroddin

APPELLANT

Vs

The Divisional Caste Verification and Scrutiny Committee and
Others

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 243O, 243ZG
Consumer Protection Act, 1986 — Section 28
Industrial Disputes Act, 1947 — Section 37
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 16
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 — Section 10, 10(4), 11, 11(1), 11(2)
Maharashtra Universities Act, 1994 — Section 109
Mumbai Municipal Corporation Act, 1888 — Section 16(1C)

Citation : (2008) 110 BOMLR 1080

Hon'ble Judges : P.R. Borkar, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : V.D. Sapkal, for the Appellant; B.L. Sagar Killarikar, for Respondent No. 1, S.S. Thombare and S.D. Kaldate, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Naresh H. Patil and P.R. Borkar, JJ.—Rule. Rule made returnable forthwith with consent of learned Counsel for parties.

2. This petition is filed for direction to respondent No. 1 Scrutiny Committee to prosecute respondent No. 2 u/s 11 of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 (hereinafter referred to as, "the

Maharashtra Act XXIII of 2001") by issuing necessary writ.

3. Facts which appear from the record are that the petitioner and respondent No. 2 had contested elections of Khultabad Municipal Council and both were declared elected as Councillors in the Maharashtra Government Gazette dated 23.1.2002, copy of which is produced at Exh. "A" with the petition.

4. Respondent No. 2 had contested election from a ward which was reserved for Other Backward Class. Respondent No. 2 claimed that he belonged to Momin Other Backward Class category. The petitioner challenged the caste claim of respondent No. 2. As a result, the caste certificate of respondent No. 2 was referred to respondent No. 1 Divisional Caste Verification and Scrutiny Committee, Aurangabad (hereinafter referred to as, "respondent No. 1 Committee") for verification by order dated 11.10.2005, copy of which is produced at Exh. "B" with the petition. Respondent No. 1 Committee held that respondent No. 2 is not of Momin caste and as such invalidated the caste certificate issued in his favour by the Executive Magistrate, Aurangabad.

5. The decision of respondent No. 1 Committee declaring caste claim of respondent No. 2 as invalid was challenged by respondent No. 2 before this Court in Writ Petition No. 7478 of 2005 and this Court by judgment and order dated 18.7.2006 upheld the decision of respondent No. 1 Committee and dismissed the petition. Same was again challenged before the Honourable Supreme Court of India by way of Petition for Special Leave to Appeal Civil No. 20164 of 2006, but the same was also dismissed on 27.11.2006.

6. Thereafter the Collector, Aurangabad exercised powers u/s 16 of the Maharashtra Municipal Councils and Nagar Panchayats and Industrial Townships Act, 1965 and disqualified respondent No. 2 for a period of six years. The copy of the order is produced at Exh. "E" with the petition.

7. It is case of the petitioner that respondent No. 1 Committee ought to have prosecuted respondent No. 2 u/s 11 of the Maharashtra Act XXIII of 2001 and for taking such action, the petitioner made applications dated 4.10.2007 and 16.11.2007. Respondent No. 1 Committee did not take any action u/s 11(2) of the Maharashtra Act XXIII of 2001 and therefore, this petition is filed for direction to prosecute respondent No. 2 u/s 11 of the Maharashtra Act XXIII of 2001.

8. Respondent No. 2 appeared and filed affidavit in reply and stated that the petitioner is the political opponent of respondent No. 2. He has filed this application for just harassment. It was held by this Court and the Supreme Court that respondent No. 2 had failed to prove his caste claim. The complaint was lodged against respondent No. 2 by the petitioner out of personal disputes over furnishing documents to one Akbar Baig and another person. It is case of personal vendetta out of political incidents and mainly because respondent No. 2 and other councillors had moved no confidence motion on 7.3.2005 against the petitioner. It is also stated that the petitioner has made false caste claim and he

has not come with clean hand before the court and, therefore, the petition should not be entertained. It is further stated that as per Section 11(2) of the Maharashtra Act XXIII of 2001, no court shall take cognizance of an offence punishable under said Section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorised by the Scrutiny Committee. In the present case, respondent No. 1 Scrutiny Committee while adjudicating the caste claim did not find it fit case to initiate prosecution nor such direction was given by this Court in writ petition and, therefore, issue is already concluded. One letter dated 24.7.2006 issued by the Member Secretary of respondent No. 1 Committee is produced at Exh. "R-4" and therein it is mentioned that respondent No. 1 Committee has not given any directions for prosecution in its decision nor authorised any officer to lodge prosecution. The petitioner is not a person who has obtained and produced a false certificate within language of Section 7 of the Maharashtra Act XXIII of 2001. Reference was made to Swami Kalavati Vs. State of Maharashtra and Another, ; wherein this Court observed that said case was not fit for sanctioning prosecution. It is also observed that respondent No. 1 Committee rightly decided not to initiate prosecution against the petitioner. In view of Section 16 of the Maharashtra Act XXIII of 2001 no prosecution would lie and hence petition be dismissed.

9. No affidavit in reply is filed on behalf of other respondents.

10. It is argued on behalf of the petitioner that in the facts and circumstances of the present case, no discretion is left with respondent No. 1 Committee to lodge prosecution against respondent No. 2. Reliance was placed on the observations made in the case of Sujit Vasant Patil Vs. State of Maharashtra and Others, ; and Ramesh Suresh Kamble Vs. State of Maharashtra and Others, . It is argued that prosecution is necessary consequence upon invalidation of caste claim and, therefore, petition be allowed. On the other hand, it is argued by Shri S.S. Thombare, learned Counsel appearing for respondent No. 2 that Section 11(2) of the Maharashtra Act XXIII of 2001 gives discretion to respondent No. 1 Committee to initiate or not to initiate prosecution. The petitioner is entitled to benefit of Section 16 of the Maharashtra Act XXIII of 2001. Reliance was also placed on the case of Swami Kalawati (supra). On the other hand, learned Counsel appearing for the petitioner also relied upon case of Shivling Jadhav Vs. The State of Maharashtra, Rural Development Department, The Scheduled Caste, OBC, SPBC, VJNT Certificate Verification Committee, Aurangabad Division, The Additional Collector and Ganpat Kamble, .

11. Section 11 of the Maharashtra Act XXIII of 2001 is as follows:

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.

Section 16 of the Maharashtra Act XXIII of 2001 is as follows:

16. Protection for acts done in good faith:

No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Act or the rules made thereunder.

12. It is argued before us on behalf of the petitioner that respondent No. 2 is not only held to be not belonging to Other Backward Class, but it is further proved in the facts and circumstances of the case that respondent No. 2 secured benefit exclusively reserved for the Other Backward Class category by contesting election from a constituency reserved for the Other Backward Class category and after election enjoyed the office as a councillor of Khultabad Municipal Council. So present case falls u/s 11(1)(b) of the Maharashtra Act XXIII of 2001 and all ingredients are satisfied.

13. Shri Sagar Killarika, learned Counsel appearing for respondent No. 1 Committee stated that respondent No. 1 Committee has expressed doubt whether present Committee can take decision regarding prosecution of respondent No. 2 whose caste verification application had been disposed of by earlier members of the Committee. He, however, supported the view canvassed by the petitioner so far as interpretation of Section 11 of the Maharashtra Act XXIII of 2001 is concerned.

14. We may refer to the authorities cited before us. The first is Sujit Vasant Patil Vs. State of Maharashtra and Others, a Full Bench decision of this Court which considered Sections 2, 6, 10 and 11 of the Maharashtra Act XXIII of 2001. Three questions were referred for consideration to the Full Bench. They are as follows:

(1) Whether in the matter of scrutiny and verification of the caste certificate and/or the caste claims of candidates elected to the Local Self-Government, the procedure laid down by the Apex Court in Kum Madhuri Patil's case so also the

procedure prescribed by the Resolution dated 1st January, 1998, 19th April, 1999 and 25th January, 2000 could have any application even before coming in force of Act No. XXIII of 2001 for the reason that Local Self-Government Acts were holding field and more so in view of the bar contained in Article 243-O and 243-ZG of the Constitution of India and other statutory provisions contained in the Local Self-Government Act providing for a remedy of an Election Petition?

(2) Whether the provision contained in Act No. XXIII of 2001 are repugnant to the scheme flowing from the provisions contained in Amending Act No. XI of 2002 and XXIV of 2000 and the other relevant provisions contained in parent Local Self-Government Act?

(3) Whether the provisions contained in Act No. XXIII of 2001 are in conflict with the constitutional mandate contained in Article 243-O(b) and 243-ZG(b) of the Constitution of India?

Para 16 is as follows:

16. In substance, we find that the provisions that have been made in Maharashtra Act No. XXIII of 2001 are related to the provisions of filing nomination papers and its scrutiny and the Act provides for the consequences of nomination papers being rejected because the candidate does not possess requisite qualification and therefore, in our opinion, there is no question of their being any conflict between the provisions of the Act and the provisions of Article 243-ZG of the Constitution. So far as the penal consequences provided by the Act are concerned, they ensue because the person concerned chooses to contest the election on the basis of tentative certificate without getting that certificate finalised. Perusal of the provisions of Section 10 shows that if a person does not contest the election on the basis of the tentative caste certificate then he is visited with no penal consequence. Perusal of Section 11 shows that a person can be prosecuted if he obtains false caste certificate by furnishing false information or by filing a false statement and false documents or adopt any fraudulent means. This is related to the information, documents or statements submitted before the Competent Authority and the Scrutiny Committee and if a person is prosecuted under this provisions, the prosecution will have to establish that the person who is accused has submitted false information or has filed false statements or documents or has adopted any fraudulent means. So far as Clause (b) of Sub-section (1) of Section 11 is concerned, it comes into operation only after benefits are taken on the basis of a tentative certificate. Therefore, penal consequences automatically flow from invalidity of caste claim only after the benefits are taken on the basis of tentative certificate.

15. It is argued before us that the Full Bench of this Court has clearly laid down that so far as Clause (b) of Sub-section (1) of Section 11 is concerned, it comes into operation only after benefits are taken on the basis of a tentative certificate. Therefore, penal consequences automatically flow from invalidity of caste claim only after the benefits are taken on the basis of tentative certificate as in the

present case. It is argued by learned Counsel for the petitioner that respondent No. 2 on the basis of certificate issued to him by the Executive Magistrate, contested election from reserved category and then enjoyed the office of Councillor after he was elected and thereafter his caste claim was invalidated and, therefore, penal consequences must automatically flow.

16. In para 18 of *Sujit Vasant Patil (supra)* it is stated that Scrutiny Committee will not make an order setting aside the election of the candidate. The order that the Scrutiny Committee makes is either the caste certificate issued to the candidate is valid or invalid. Consequence of declaration by the Scrutiny Committee that the caste certificate is not valid is provided by Section 10(4) of the Maharashtra Act No. XXIII of 2001. This Court made it further clear that no election is required to be filed against such candidate. It is observed that the order of the Scrutiny Committee cannot be challenged by the returned candidate in any Court except this Court in a petition filed under Article 226. Therefore, as far as the Court hearing the Election petition is concerned, the order of the Scrutiny Committee will be binding. In these facts and circumstances the various issues referred were answered.

17. Another case cited is *Ramesh Suresh Kamble Vs. State of Maharashtra and Others*, . In this Full Bench ruling, in para 24, following observations are made.

24. ...If the Caste Certificate is cancelled by the Caste Scrutiny Committee, it obviously means that the Caste Certificate has been obtained by that person from the Competent Authority on incorrect facts or erroneous representation. It is not necessary that such claim or declaration must involve turpitude of mind. There may not be any deliberateness in it. The failure on the part of the candidate to establish his caste claim before the Scrutiny Committee and the declaration that the Certificate obtained from the Competent Authority is invalid and thereby cancelled leads to necessary inference that such person made a false claim of his caste belonging to the reserved category to which he did not belong and, thus, incurring disqualification u/s 16(1C)(a).

The Full Bench made further following observations in paras 27 and 28:

27. The Division Bench in the case of *Surendra Hanmanloo Gandam* unfortunately did not notice the Full Bench decision of this Court in *Sujit Vasant Patil* and, thus cannot be said to lay down good law to the extent it is inconsistent with the Full Bench Judgment cited *supra*. The legal position highlighted by the Division Bench in the case of *Mohan Parasnath Goswami*, "that apart from a mere invalidation of caste certificate, an additional factor has to exist before a candidate can be regarded as being disqualified from holding electoral office viz., that the caste certificate should have been held to be invalid and must have been cancelled on the ground of the certificate having been based a false claim or declaration" and the observations made in paragraphs 11 and 16 of the Judgment to the extent these are inconsistent with the Judgment of the Full Bench in the case of *Sujit Vasant Patil* stand impliedly over-ruled.

28. It is not necessary for the Caste Scrutiny Committee, as we have already discussed above, to record specifically that the Caste Certificate has been obtained by the applicant by making false claim or declaration. Once the Caste Certificate obtained by the candidate u/s 4 from the Competent Authority is cancelled by the Scrutiny Committee u/s 7(1) of the Maharashtra Act No. XXIII of 2001, the implicit inference is that such certificate has been obtained by making false claim or declaration because the power of the Scrutiny Committee to cancel the caste certificate is founded on such certificate having been obtained fraudulently.

So from paras 24 and 27 it is clear that as soon as caste claim is invalidated it would be presumed that the caste certificate is obtained by making false claim or declaration. So it is argued before us that in this case so far as respondent No. 2 is concerned, it should be presumed that he obtained caste certificate on incorrect facts or erroneous representation. It is also observed that it is not necessary that such claim or declaration must involve turpitude of mind or there may not be any deliberateness in it and failure to establish caste claim would incur disqualification u/s 16(1C)(a) of the Mumbai Municipal Corporation Act, 1888. Para 28 clearly shows that such invalidation raises implied inference that such certificate has been obtained by making false claim or declaration because the power of the Scrutiny Committee to cancel the caste certificate is founded on such certificate having been obtained fraudulently. In the case of Ramesh (supra), the petitioner was Christian by birth and still he claimed to be belonging to Scheduled Caste. In the result, disqualification of the petitioner (who was earlier elected as a Corporator from seat reserved for Scheduled Caste) u/s 16(1C)(a) of the Mumbai Municipal Corporation Act, 1888 was upheld.

18. The case of Shivling Jadhav Vs. The State of Maharashtra, Rural Development Department, The Scheduled Caste, OBC, SPBC, VJNT Certificate Verification Committee, Aurangabad Division, The Additional Collector and Ganpat Kamble, which is Division Bench judgment of this Court has been relied upon. In that case it is held that failure to establish caste claim results in vacation of office/post as well as the same incurs criminal prosecution. It is argued before us that this Court in neither of the two Full Bench decisions, cited above, nor in the case of Shivling Jadhav, laid down that criminal prosecution of a person, whose caste claim is invalidated, is automatic result flowing from such invalidation. Learned Counsel Shri S.S. Thombare invited our attention to Section 11(2) of the Maharashtra Act XXIII of 2001. He pointed out that though as per Section 12 of the Maharashtra Act XXIII of 2001 the offences are cognizable and non-bailable, the legislature put restriction by Section 11(2) of the Maharashtra Act XXIII of 2001 that 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. It is argued that this condition in Sub-section (2) of Section 11 of the Maharashtra Act XXIII of 2001 clearly shows that discretion is vested in the Scrutiny Committee as to whether to launch prosecution in a particular case or

not. It cannot be said that in every case Scrutiny Committee is under mandate or obligation to launch prosecution either through itself or through any officer on its behalf. In that case there was no need of incorporating Sub-section (2) of Section 11 of the Maharashtra Act XXIII of 2001, as mere making offence cognizable or non-bailable would have been sufficient.

19. Learned Counsel appearing for respondent No. 2 relied upon the case of Swami Kalavati Vs. State of Maharashtra and Another, . In that case the Court came to a conclusion that the petitioner, who was resident of Andhra Pradesh was belonging to Jangam caste which was recognised as Other Backward Class in Maharashtra State. The petitioner was held not belonging to Other Backward Class in Maharashtra State since her father and she herself were not residents of State of Maharashtra prior to 13.10.1967. It is held that the petitioner was not entitled to any rights, benefits or privileges conferred on Other Backward Class by the State of Maharashtra. In para 27 the Court concluded as follows:

27. ...Suffice it to state that the petitioner would not be disentitled from seeking the benefits granted to persons belonging to her caste in her State of origin namely Andhra Pradesh merely on the basis of the impugned order. Of course even if such procedure is provided such a caste certificate would not and cannot confer on such persons any rights, benefits and privileges conferred on the members of their caste by the State of Maharashtra to which they have migrated.

In para 28 the Court further observed:

28. Further, this is not a fit case for sanctioning prosecution or any other action against the petitioner. The petitioner has not concealed any facts. The petitioner has honestly disclosed the relevant facts. This was a question of law.

In the result the Court set aside the impugned order of invalidation of caste claim to the extent that it sanctioned any action against the petitioner including u/s 11 of the Maharashtra Act XXIII of 2001. It is also clarified that the petitioner will not be disentitled from claiming any benefits from her State of origin merely on the basis of the impugned order. In that case the petitioner had migrated after marriage to State of Maharashtra.

20. It is, therefore, argued by Shri Thombare, learned Counsel that as per the view taken by the Division Bench, prosecution does not automatically flow and it is within the discretion of the Scrutiny Committee while considering invalidation to decide as to whether to launch prosecution by lodging complaint or authorise somebody to prosecute as per Section 11(2) of the Maharashtra Act XXIII of 2001, or not.

21. Learned Counsel also relied upon the case of Nutan Vidarbha Shikshan Mandal v. The Presiding Officer, School Tribunal, Amravati and Ors. 2007 (2) ALL MR 60. In that case it is held that the caste certificate was obtained fraudulently, caste being within the knowledge of the claimant, by no stretch of imagination, it can be said that his claim can be false by mere mistake or by accident.

22. So far as Section 16 of the Maharashtra Act XXIII of 2001 is concerned, it is argued on behalf of the petitioner that the said Section gives protection for acts done in good faith to any person or anything which is done in good faith and intended to be done in pursuance of the Act or Rules made thereunder and the petitioner can also be covered if he ultimately proves that his claim was made in good faith, though he has no sufficient evidence to prove it.

23. Indemnity Clauses like Section 16 of the Maharashtra Act XXIII of 2001 are found in several Central or State Legislations, but generally they are intended to protect the authorities and officers who act in pursuance of the provisions of the Act. Section 37 of the Industrial Disputes Act, 1947 lays down that no suit, prosecution or other legal proceedings shall lie against any person or anything which is in good faith done or intended to be done in pursuance of that Act or any rules made thereunder. Under the Consumer Protection Act, 1986, we find similar provision in Section 28. In the Maharashtra Co-operative Societies Act, 1960, we find similar protection given by Section 162, which lays down that no suit, prosecution or other legal proceeding shall lie against the Registrar or any person subordinate to him or acting on his authority, in respect of anything in good faith done, or purported to be done by him by or under this Act. Under the Maharashtra Universities Act, 1994, we find similar provision u/s 109. In the Hyderabad Tenancy and Agricultural Lands Act, 1950 there is such provision u/s 101, which lays down that no suit or other proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.

24. So far as Section 16 of the Maharashtra Act XXIII of 2001 is concerned, whether such defence of acting in good faith should be allowed in prosecution u/s 11 of the Maharashtra Act XXIII of 2001 or not, needs to be examined.

25. While considering Section 11 and particularly Section 11(2) of the Maharashtra Act XXIII of 2001, though ordinarily person who deliberately makes false claim of caste or tribe or who knows that he does not belong to particular Scheduled Caste, Scheduled Tribe, De-notified Tribe, Vimukta Jatis, Nomadic Tribe, Other Backward Class or Special Backward Category, secures such benefit or appointment to post exclusively reserved for such Caste, Tribe or Class, needs to be prosecuted. So if we consider Section 11(1)(a) of the Maharashtra Act XXIII of 2001, it lays down that obtaining a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means, is an offence. So far as Section 11(1)(b) of the Maharashtra Act XXIII of 2001 is concerned, it lays down a person not belonging to any of the Scheduled Caste, Scheduled Tribe, De-notified Tribe, Vimukta Jatis, Nomadic Tribe, Other Backward Class or Special Backward Category, secures such benefit or appointment to post exclusively reserved for such Caste, Tribe or Class is an offence. For offence under Sub-sections 1(a) and 1(b) of Section 11 of the Maharashtra Act XXIII of 2001 minimum punishment is provided. The last phrase used in Section 11(1)(b) of the Maharashtra Act XXIII of 2001 is "by producing a

false Caste Certificate". In our opinion, Section 11(1) and Section 11(2) of the Maharashtra Act XXIII of 2001 will have to be read as a whole. There is no difficulty so far as Section 11(1)(a) of the Maharashtra Act XXIII of 2001 is concerned as it itself incorporates mens rea (guilty mind) of the claimant. So far as Section 1 (1)(b) of the Maharashtra Act XXIII of 2001 is concerned, the Full Bench Rulings referred to above clearly show that once person secures benefit or appointment by producing false caste certificate, it will be presumed that he has committed the offence and he will be liable for prosecution.

26. In our opinion, looking to the facts and circumstances of the case, the Scrutiny Committee or this Court u/s 226 of the Constitution of India has discretion to direct or not to direct prosecution depending upon facts of each case, particularly we may refer to facts involved in the case of Swami Kalavati (supra). In that case the petitioner Swami Kalavati belonged to Jangam caste. It is held that she was not entitled to benefits of Other Backward Class in Maharashtra because she was a migrant and not because she has made false caste claim. In the case of Hitesh Dasiram Murkute Vs. State of Maharashtra and Others, , Division Bench of this Court has taken a view that a person who has migrated the State of Maharashtra from State of Madhya Pradesh and whose caste was shown to be included in Other Backward Class of State of Madhya Pradesh as well as in the State of Maharashtra, is entitled to have his caste claim examined by the Caste Scrutiny Committee. A person claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in schedule from a place identified in the schedule. In that case the relevant date is not date of migration but date of inclusion of caste or tribe in the schedule. It is laid down that migrant belonging to a community which was recognised as scheduled caste or scheduled tribe in any locality which has been divided upon reorganization of States and his caste is recognised as Scheduled Caste/ Scheduled Tribe even in such formed newly State, the migrant would be entitled to benefit of reservation even in the State in which part of the locality other than his place of origin has been merged.

27. In State of Maharashtra and Ors. v. Sanjay K. Nimje AIR 2007 Bom 268 the Supreme Court considered Government Resolution dated 15.6.1995 which was beneficent in nature to the employees who have entered into service or who have obtained promotion on the basis of Scheduled Caste or Scheduled Tribe certificate and directed that they should not be reverted or terminated from service for invalidation of their caste/tribes claim. In paras 18 to 20 following observations are made:

18. The extent of jurisdiction of the Caste Scrutiny Committee came up for consideration before this Court in State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, wherein this Court categorically held that the Caste Scrutiny Committee has the requisite jurisdiction in relation thereto, stating:

The makers of the Constitution laid emphasis on equality amongst citizens.

Constitution of India provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter.

19. We may also notice that ordinarily a person, who has obtained appointment on the basis of a false certificate, cannot retain the said benefit. See *Bank of India and Another Vs. Avinash D. Mandivikar and Others*, , *Ram Saran Vs. I.G. of Police, CRPF and Others*, and *The Superintendent of Post Offices and Ors. v. R. Valasina Babu Civil Appeal No. 5868 of 2006*, disposed of on 14.12.2006.

20. In a situation of this nature, whether the court will refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India or not would depend upon the facts and circumstances of each case. This aspect of the matter has been considered recently by this Court in *Sandeep Subhash Parate Vs. State of Maharashtra and Others*, .

28. After considering the relevant provisions of the Maharashtra Act XXIII of 2001 and the judgments cited supra, we are of the considered view that the said Act does not explicitly mandates that in each and every case wherein the Scrutiny Committee invalidates a caste claim a complaint u/s 11(2) of the said Act has necessarily to be filed. We do not see any mandate under the law given to the Scrutiny Committee for filing such complaint. We find that in some of the matters relating to the verification of caste claim the Scrutiny Committee refuses to validate the caste claim on the ground of insufficiency of the evidence relied upon by the applicants therein. Therefore, if a candidate approaches the Scrutiny Committee seeking validation of the caste claim with some evidence in support of the claim but fails to satisfy the requirements set out for establishing his claim or fails to satisfy the Scrutiny Committee then in such cases the Scrutiny Committee would decide as to whether in case of invalidation of caste claim a complaint should be lodged. Obviously in matters where falsity of information or falsity of any nature amounting to fraud is noticed by the Scrutiny Committee, the Scrutiny Committee would be bound to lodge complaint in case of invalidation of caste claim.

29. In the facts of the present case it is pointed out to us that respondent No. 1 Committee on internal page 7 of its order has observed that caste "Momin" is included in Other Backward Class by Government Resolution dated 16.7.1977 and the petitioner did not produce any documentary evidence prior to 16.8.1977 to show that he was Momin. The burden of proof the caste is on the petitioner. All documents produced of recent origin created with particular object. Instead of obtaining caste certificate from Khultabad the petitioner has obtained it from

Aurangabad and the original record of the caste certificate was not available. On the other hand, there was contrary evidence and in these circumstances it (the Committee) came to the conclusion that the petitioner was not of Momin caste.

30. Even the High Court in its order in Writ Petition No. 7478 of 2005 (filed by the present petitioner challenging invalidation of his caste claim) in para 8 made following observations.

The petitioner filed his caste certificate issued by the Executive Magistrate at Aurangabad. The petitioner is inhabitant of Khultabad. He could have sought caste certificate from Taluka Magistrate at Khultabad. The Vigilance Report dated 17.08.2005 (Exhibit-H) reveals that the veracity of the petitioners caste certificate could not be verified from the record of concerned register. The Tahsildar-cum-Executive Magistrate, Aurangabad informed that the relevant register pertaining to the caste certificate was not available in the record room. Thus, the Vigilance Cell could not verify the corresponding entries in the register maintained by the Executive Magistrate, Aurangabad. One does not know on what basis it was issued. The fact that the caste certificate was not obtained from the Executive Magistrate at Khultabad, and was obtained from the Executive Magistrate at Aurangabad and further that the relevant register is not available in the record room of the Executive Magistrate, at Aurangabad are the tale telling circumstances. It may be inferred, therefore, that the caste certificate of the petitioner is a dubious document with suspicious origin.

31. So it is clear from the above said observations that in this case the petitioner has obtained false certificate and his case clearly falls u/s 11(1)(a) and (b) of the Maharashtra Act XXIII of 2001. In our opinion, in the facts and circumstances of the case, respondent No. 1 Caste Scrutiny Committee ought to have exercised powers u/s 11(2) of the Maharashtra Act XXIII of 2001.

32. We make it clear that in this case we have explained the scope and ambit of Section 11(2) of the Maharashtra Act XXIII of 2001. The observations made by us in this judgment regarding the caste claim of the petitioner shall not affect the merits of the petitioner's defence before the Criminal Court. The Criminal Court shall deal with the case before it on its own merits.

33. In this view of the matter, we allow the present petition and direct respondent No. 1 Caste Scrutiny Committee to initiate prosecution of respondent No. as per Section 11(2) of the Maharashtra Act XXIII of 2001.

34. Rule is made absolute in the above terms.

35. Learned Counsel Shri Thombare prays for staying the effect and operation of the judgment for a period of two weeks. We do not find any justifiable ground and reasons for staying the operation of our order. The prayer stands rejected.