

(2019) 04 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 145, 146, 147, 181, 3673 Of 2018, Notice Of Motion No.536 Of 2017, Notice Of Motion (L) No. 549, 550, 559, 560, 561 Of 2018

Kesharben Murji Patel

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965 — Section 9A
Mumbai Municipal Corporation Act, 1888 — Section 5, 5A, 5B, 5B(1), 37(2A)
Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships (Amendment) Ordinance, 2018 — Section 7, 8, 9, 10, 11, 12, 18(1)
Land Acquisition Act, 1894 — Section 30
Maharashtra Scheduled Caste, Scheduled Tribes, DeNotified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes And Special Backward Category (Regulation Of Issuance And Verification of) Caste Certificate Rules 2012, — Rule 12, 13, 13(1)(d), 14, 17, 17(11)
Constitution Of India, 1950 — Article 14, 15, 15(4), 16(4), 142, 243D, 243Q, 243R, 243T

Citation : (2019) 04 BOM CK 0003

Hon'ble Judges : Ranjit More, J;Bharati H. Dangre, J

Bench : Division Bench

Advocate : P.K. Dhakephalkar, Pramod Patil, Ajit Hon, Govind Solanke, Sanjay S. Dudhane, A.Y.Sakhare, Pramod N. Patil, Ajit Hon, Govind Solanke, Sanjay S. Dudhane, A.Y. Sakhare, Pramod Kathane, Pralhad Paranjape, R.K. Mendadkar, G.S.Godbole, Chintamani K.Bhangoji, Nitin Pradhan, Hamid Mulla, Vishnu S. Madane, A.A.Kumbhakoni, H.S. Venegaonkar, Geeta Shastri, Jyoti Chavan, R.V.Pai, A.R.Pai, Akshay R. Pai, Neuty N. Thakkar, A.M. Bhat, Siddhant Josh, Nikita K. Dharamashi , R.K. Mendadkar, C.K. Bhangoji, S.S. Dube, Nagendra Dube, Burhan Bukhari, Rupali Adhate, Chintamani K. Bhangoji, Ajinkya M. Udane

Judgement

Bharati H. Dangre, J

1. The Full Bench of this Court on 9th December 2016 in case of Anant H. Ulahalkar & Anr Vs. State Election Commissioner and anr, answered the

reference made over to it and held that the stipulation of six months for production of validity certificate contained in Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 for production of validity certificate is a mandatory stipulation. It also held that in terms of second proviso appended to the said section, if a person fails to produce the validity certificate within a period of six months from the date on which he is elected, his election shall be deemed to have terminated retrospectively, and he shall be disqualified for being a Councillor and such a retrospective termination of election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

After a lapse of almost two years, we are confronted with the similar issue but this time in the wake of the legislative amendment to the identically worded section in the Mumbai Municipal Corporation Act, 1888 i.e. Section 5B by the Amending Act No.XXI of 2018. The Writ Petitions listed before us revolve around the amended provision of the Mumbai Municipal Corporation Act, initially, by an Ordinance and subsequently by an amending Act and the question that falls for our consideration is whether the decision rendered by the Full Bench, as mentioned above, still holds good or the amendment has brought change in the legal scenario calling for its reconsideration.

The five Writ Petitions listed before us involve a common question of law pitted against distinct set of facts. However, since we are called upon to deal with a common question of law, the said writ petitions were tagged together and heard finally by consent of all the parties. The claims of the petitioners before us have been invalidated by the competent Caste Scrutiny Committee constituted under the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes; other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 and we would delve into the facts of each case separately after answering the common question which has been raised in all the petitions.

2. The Writ Petitions filed before us raise two important questions i.e. whether the period of six months and the further extended period of 12 months stipulated by the legal legislature i.e. the Mumbai Municipal Corporation Act, to submit caste validity certificate is mandatory or directory ? The second point which is put forth by the petitioners is in relation to the improper constitution of the vigilance cell, in absence of the participation of Deputy Superintendent of Police in the conduct of Enquiry by Vigilance Cell, and whether the decision of the caste scrutiny committee is sustainable in the backdrop of the said lacunae sought to be put forth by the petitioners.

3. All the cases before us revolve around Elections to Mumbai Municipal Corporation Act, 1888 and it would be appropriate to refer to a brief legislative history of the relevant section and the amendments which were effected in the said section from time to time.

The 74th Amendment Act, 1992 introduced Part IXA in the Constitution of India with regards to Municipalities. 'Municipality' was contemplated as an institution of self government constituted under Article 243-Q and it provided for constitution of a Nagar Panchayat, Municipal Council and the Municipal Corporation for a larger urban area in accordance with the provisions of the said Part. Article 243-R provide for composition of municipalities whereas Article 243-T provide for reservation of seats in the municipalities for Scheduled caste and scheduled Tribe. Sub-section (6) of Article 243-T enable the legislature of a State to make any provision for reservation of seats in any municipality in favour of backward classes of citizens. The Mumbai Municipal Corporation Act, 1888 is an enactment relating to municipal government of Brihan Mumbai and it governs the municipal administration of the city of Mumbai. The said enactment provides for the constitution of Municipal Corporation and it also sets out the composition of Corporation in Section 5. The issue being adjudicated by us revolves around Section 5B of the said enactment.

Section 5 of the said Act provides for composition of the Corporation which shall be a body corporate having a perpetual succession and a common seal and which may sue and be sued. Section 5A was inserted in the said enactment in the year 1994 providing for reservation of seats for the persons belonging to Scheduled Caste, Scheduled Tribe, women and backward classes of citizens so as to give effect to Article 243T. We are concerned with Section 5B of the said enactment which was inserted by Maharashtra Act No.35 of 2006 for the first time. The provision stipulate that every person desirous of contesting election to a seat reserved for the Scheduled Caste, Scheduled Tribe or, as the case may be, backward class of citizens, shall submit along with the nomination papers, caste certificate issued by the competent authority and the validity certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes; other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001).

4. By the Amendment with effect from 27th October 2006, two provisos were inserted and a period of six months was granted to submit the validity certificate. However, by amendment of 2nd May 2008, the provisos were deleted. The two provisos came to be reintroduced and the validity submission period was fixed as six months. By Act No.13 of 2015, the relevant date came to be amended to 31.12.2017. The Full Bench interpreted the provisions as they stood under the amendment as mandatory and imperative stipulation.

5. On 20th March 2018, Section 5B was again amended and the date contained in the first proviso was changed to 30th June 2019, the period of filing validity certificate being retained as six months. On 27th September 2018, the Maharashtra Ordinance XX of 2018 was promulgated to amend the Mumbai Municipal Corporation Act, Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act,

1965 The said ordinance came into effect from 27th September 2018 and two changes were effected by the said ordinance i.e. that the period of six months was extended to 12 months and this ordinance comprehended two important provisions i.e. "saving as to certain elections" and "saving as to certain disqualification". The said Ordinance was converted into an enactment by the Maharashtra Act No.LXV of 2018 which received an assent of the Governor on 14th December 2018. The said Act was referred to as Mumbai Municipal Corporation Act, Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (3rd Amendment) Act, 2018. It was deemed to have come into force on 27th September 2018. The said amending Act retained amendments brought by the Ordinance No.XX of 2018 and following changes are introduced in Section 5B of the Mumbai Municipal Corporation Act which read thus :

2.. In Section 5B of the Mumbai Municipal Corporation Act (hereinafter in this Chapter referred to as "Mumbai Corporation Act") -

(a). in the first proviso, in clause (ii), for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 7th April 2015 :

(b). in the second proviso, for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 7th April 2015.

(c). after the second proviso, the following proviso shall be added, namely "-

"Provided also that, in respect of the undertaking filed by any person under clause (ii) of the first proviso, before the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Third Amendment) Act, 2018, the period of "six months" specified in such undertaking shall be deemed to have been substituted as "twelve months".

3.. In Section 37 of the Mumbai Corporation Act, in sub- section (2A) -

(a). in the first proviso, in clause (ii), for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 7th April 2015;

(b). in the second proviso, for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 7th April 2015.

(c). after the second proviso, the following proviso shall be added, namely "-

"Provided also that, in respect of the undertaking filed by any person under clause (ii) of the first proviso, before the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships

(Third Amendment) Act, 2018, the period of "six months" specified in such undertaking shall be deemed to have been substituted as "twelve months"

6. The said Act also accordingly amended Section 5B of the Maharashtra Municipal Corporation Act, Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and it also, in Chapter 5 retained the provisions of Sections 8, 9 and 10 of the Ordinance XX of 2018. The Mumbai Municipal Corporation Act, Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (3rd Amendment Act) Ordinance 2018 was repealed. Notwithstanding any such repeal, it also provided that anything contained or any action taken under the corresponding provisions of the Mumbai Municipal Corporation Act, Maharashtra Municipal Corporation Act, and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 as amended by the Ordinance shall be deemed to have been continued, taken or issued under the corresponding provisions of the said Act.

The issue involved in all the aforesaid Writ Petitions revolve around an amended provision of Section 5B of the Mumbai Municipal Corporation Act as introduced by the Act No.45 of 2018 with effect from 27th September 2018.

7. The elections to Kalyan Dombivli, Kolhapur and the Mumbai Municipal Corporation were held on different dates. In case of Mumbai Municipal Corporation, results of the election were declared on 23rd February 2017 and all the petitioners in the five petitions contested election to the post of Councillor in the various wards of Mumbai Municipal Corporation. The elections to 67 Nagar Panchayats in the State were held in 2015 itself and results were declared on distinct dates. We are, however, only concerned with the elections of Mumbai Municipal Corporation.

8. We have heard learned senior counsel Advocate Shri Dhakephalkar, appearing for the petitioner in Writ Petition Nos. 181/18 and 146/18. As far as the common issue involved in all the Writ Petitions, the learned Senior Counsel would submit that the Full Bench Judgment in Anant H. Ulahalkar, while interpreting the provisions of Section 9A of Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 has laid down the proposition of law that the stipulation contained in Section 9A to submit a validity certificate by a candidate who is desirous to contest the election to the reserved seat within the stipulated period is mandatory. He makes a submission that the proviso inserted to Section 5B granted a concession and the date for which the concession would operate was modified from time to time. However, the said proviso is merely in form of an exception or concession. It is intended to protect those persons who had applied to the scrutiny committee for issuance of validity certificate before the date of filing of nomination paper but who have not received the validity certificate on the date of filing of nomination, then it permits the said person to submit a true copy of the application made to the scrutiny committee for issuance of the validity certificate with an undertaking that the validity certificate

would be submitted within a period of six months from the date on which he is declared as elected.

According to the learned senior counsel, the second proviso prescribes the consequences where the beneficiary of the exception fails to comply with the condition subject to which the exception or the concession was availed and this provision entails serious consequences to the effect that the person shall be deemed to have been terminated retrospectively and he shall be disqualified being a Councilor. According to learned senior counsel, the promulgation of the Maharashtra Ordinance No.XX of 2018 dated 27.09.2018 which substituted the period of six months by twelve months in both the provisos and Second Proviso was also accordingly amended and undertaking to be submitted in order to give effect to the First Proviso. The learned senior counsel would submit that though the Full Bench has categorically laid down the law to the effect that the stipulation of period in the Proviso inserted to Section 9A which is similar to the present Section 5B is mandatory, Shri.Dhakephalkar would submit that the statement of objects and reasons of the Ordinance clearly perceives a situation where the Caste Scrutiny Committees are overburdened and they are not able to deliver within the time schedule, resultantly, a candidate who is desirous of contesting an election on the basis that he belongs to backward class, contest the election by taking aid of the First Proviso and submits an undertaking that he would procure the validity certificate within the period which he has undertaken, he is rendered helpless as the proceedings before the Caste Scrutiny Committee are beyond his control. Shri.Dhakephalkar thus makes a submission that the intention of the legislature was not to put the candidates belonging to the backward communities to disadvantageous position and, therefore, the said Ordinance substituted the period of 6 months by 12 months and not only that it also accommodated the persons who had obtained the Caste Validity Certificate to submit the same within the period of 15 days from the date of the commencement of the Ordinance and then the rigor of disqualification or retrospective termination of election will not fall upon such candidates. Thus, according to Shri Dhakephalkar what is sought to be done initially by an ordinance and subsequently by the legislation is not only to extend the period for submitting the validity from 6 months to 12 months, but even beyond that period, and this was reflective of the intention of the legislature not to make the period granted for submission of validity, mandatory but it will have to be construed as directory.

Shri.Dhakephalkar has also invited our attention to Rule 14 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules 2012. According to him, the said Rules stipulates that the application for obtaining the validity certificate should be preferred in the forms which are appended to the said Rules along with an affidavit. He would take us to the form which is prescribed for election purposes where the candidate in Clause 18 of the prescribed Form No.20, is to

specify the purpose of Scrutiny and also to state from which ward of Reserve Category, he intend to contest the election. Apart from this, the candidate is required to attach a certificate issued by the Collector or the Election Officer certifying that the candidate is contesting election from the reserved seat mentioned in prescribed form. He would thus submit that a candidate cannot just obtain a Caste Validity Certificate as and when he wishes or much before the anticipated date of election and even if such an application is made, it will not be entertained by the Scrutiny Committee. Shri Dhakephalkar would thus submit that for the first time like the petitioner, who is contesting the election for the first time, it is only on the declaration of the election program and on reservation of wards is declared, the petitioner can make an application for securing a validity certificate in support of his claim.

The Act No. XXIII of 2000 and the Rules stipulate that the claims of the candidates are to be scrutinized within a period of six months but as legislature itself has recognized that deciding his claim within the stipulated period by the various committees has become an impossibility in view of the huge pendency of the claims not only of the candidates to be elected but the Committees are flooded with claims of the aspiring students who wish to secure seat in the professional courses on the basis that they belong to reserved category. The legislature has, therefore, rightly stepped in according to Shri.Dhakephalkar and has relaxed the rigors contained in Section 5B and similarly worded section in various State legislations and has relaxed the stipulation of six months and from this, an intention of the legislation is apparent i.e. not to construe the said provisions as mandatory but to make it flexible.

Shri.Dhakephalkar, would also submit that because of the new amendment brought in and the period has been made flexible, it varies from candidate to candidate and he cites the example to the effect that the candidates who were declared elected in the year 2015, he would produce the certificate within 12 months i.e. January 2016 and the period that is relaxed in his favour is from 01st January 2016 to 15 days after 27th September 2018 whereas, a candidate who is declared elected on 1st January 2017, the time to produce validity certificate expires on 01st January 2018 and he gets benefit of extended period from 01st January 2018 to 15 days from 27th September 2018 when the Ordinance has been brought into force. He would thus submit that depending on the date of election, the concession granted to the candidate would vary from case to case and thus the intention of the legislature was to keep it flexible by taking into consideration the doctrine of impossibility which contemplates that the things which are not within the control of the candidate, it cannot hit him adversely.

9. Shri.Dhakephalkar, has also seriously pressed into service another legal submission as regards the improper constitution of the Vigilance Cell. According to the learned senior counsel, the composition of Vigilance Cell has been laid down by the Hon'ble Apex Court in case of judgment of Kumari Madhuri Patil & Anr Vs. Additional Commissioner, Tribal Development & ors, AIR 1995 SC 94 and

it has found its place in the Rules framed under the Act No.23 of 2000 known as the Maharashtra Scheduled Caste, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules 2012. The submission advanced by the learned counsel is that the entire proceedings before the Committee are vitiated on the point of non-compliance of Rules of 2012 as the Vigilance Cell is not constituted in terms of the said Rules. Factually, he submits that the Deputy Superintendent of Police who is integral part of the Vigilance Cell has not endorsed the Vigilance Cell report and in light of the liberty granted by the Hon'ble Apex Court in the earlier round of litigation when the proceedings were taken to the Apex Court consequent to the prima facie negation of the said submission by the Division Bench of this Court, he has extensively amended the petition and now a stand is taken that the Deputy Superintendent of Police had not only endorsed the Vigilance Cell report but there is no participation by the Deputy Superintendent of Police in any manner and at any stage of the enquiry and investigation and submission of the report. He has invited our attention to the transfer order issued by the State Government by which Mr.Ravindra Patil who was assigned the additional charge of the Vigilance Cell attached to the Mumbai Caste Scrutiny Committee, Suburban District was transferred with effect from 01st July 2017 and according to him, there is nothing on record to indicate that after the said transfer Mr.Ravindra Patil in any manner, at any stage participated in the Vigilance Cell Enquiry and finalization of Vigilance Cell Report. According to him, this vitiates the conduct of Vigilance Enquiry and in turn vitiates the impugned order of the Caste Scrutiny Committee which is based on the said Vigilance Cell Report.

Based on the two legal submission Shri Dhakephalkar, has prayed that rejection of the claim of the petitioner as belonging to Lewapatil which is recognized in Other backward Class in State of Maharashtra is liable to be declared illegal and he has also amended the Writ Petition to pray and to seek a declaration that the condition of submitting caste validity certificate within the time prescribed under the amended Proviso to Section 5B of the Mumbai Municipal Corporation Act and Section 9 of the Ordinance dated 27th September 2018 be declared as directory.

10. We have also heard the learned senior counsel Shri Sakhare, appearing for the petitioner in Writ Petition Nos. 145/18, 147/18 and 3673/18. He is in agreement with the submission advanced by Shri Dhakephalkar and he goes to the extent of submitting that the Full Bench decision is per incuriam since it did not take into consideration Rule 14 of the 2012 Rules. He makes a submission that Rule 14 of the 2012 Rules prescribes the point of time when a person should make an application to the Committee when he is desirous of availing the benefits and concessions provided to the Scheduled Caste, Scheduled Tribe, De-notified Tribes and Nomadic Tribes, Other Backward Class as mentioned in Section 3 of the Act and the application has to be preferred in the forms which are prescribed. Shri Sakhare would submit that though the enactment sets out a procedure to be followed for verification of the claim, the rules lay down with the

said procedure and it contemplates that the process of scrutinizing the claim based on Caste Certificate should be completed within a period of three months and in exceptional circumstances, additional period of two months may be taken by the Committee. However, Shri.Sakhare would submit that the practical scenario is not in tune with the provisions contained in the statute and the Rules and in fact the Committees consume considerable time in deciding the claims, and at times, the persons desirous of availing benefits are constrained to approach the Court and seek directions to expedite the verification of their claims. He would request us to take judicial note of the cases which land up in this Court seeking such a direction. In such circumstances, he would urge the Court to construe the mandate of Section 5B as merely directory and not mandatory, as has been held by the Full Bench of this Court. He also reiterates the submission of Advocate Shri Dhakephalkar, as regards the lacunae in the Vigilance Cell and he would take further submit that mere presence of the Deputy Superintendent of Police as a part of the Vigilance Cell as contemplated under Rule 12 is not construed only as an empty formality. He submits that when the Rule contemplates Constitution of the Vigilance Cell, it has cast a duty upon it to investigate into the said claim and this investigation can be done in the manner prescribed in Rule 13 of the Rules 2012 which includes the actual visit to the permanent place of residence and conduct of domestic enquiry and collection of information, including the socialistic and anthropological and ethnological traits of the caste/tribe. In light of the specific role assigned to the Vigilance Cell, the learned senior counsel submits that the Vigilance Cell in the present case was not properly constituted and this lacunae goes to the root of the matter and therefore, according to him, the entire order based on the Vigilance Cell Report is liable to be revoked.

11. We have also heard Shri Godbole appearing for the respondent No.5 in Writ Petition No. 147 of 2008, respondent no.5 in WP No.145 of 2018, Shri Bhangoji for respondent no.6 and for respondent no.5 in WP No.181 of 2018.

On the first legal issue as to whether the decision of the Full Bench still holds the field in light of the subsequent legislative amendments and the stipulation of submitting the caste validity certificate in the prescribed period is mandatory, the learned counsel would submit that the decision of the Full Bench has now merged into the decision of the Hon'ble Apex Court and the Apex Court has upheld the findings recorded by the Full Bench. Shri Godbole further submits that the Amendment Ordinance or the Act in no way dilutes the mandatory nature of the provisions of Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 or of Section 5B of the Maharashtra Municipal Corporation Act, 1888. He would further submit that the amending Act is not a validating legislation which is a legislative tool employed for nullifying the binding effect of the precedent. According to Shri Godbole, the legislature has no power to nullify a judgment and by no means, the legislature intended to dilute the imperative effect of Section 5A and Section 9A of the respective enactments. He would submit that the Section, as originally enacted,

made it imperative for the candidate to submit a validity certificate with nomination form. The original section did not contain a proviso which subsequently conferred a concession. According to Shri Godbole, Maharashtra Act No.XXXI of 2012, two provisos were inserted with effect from 8th October 2012. By the said amendment, in case where the last date of filing nomination was on or before 31st December 2013, when a person has applied for, but not received the validity certificate, a concession was made in his favour to file an undertaking along with a proof of application for obtaining validity and his nomination paper was liable to be accepted. The second proviso inserted a stipulation that in accordance with the undertaking submitted, if the validity could not be submitted within the period mentioned in the undertaking for whatsoever reason, his election was to stand terminated with retrospective effect. It is this amended provision which was holding the field when the Full Bench pronounced its verdict and according to Shri Godbole, the concession which was granted by the provisos, in no case, can whittle down a substantive provision of a statute which made it imperative for a candidate to submit a validity certificate along with his nomination paper. By inviting our attention to the subsequent amendments either by ordinance or the amending Act, learned counsel would submit that all that has been done by the said amending Act, is to extend the period of concession for submitting the validity from six months to twelve months without diluting the mandate of the original enactment. Shri Godbole would submit that Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 or Section 5B of the Mumbai Municipal Corporation Act, 1888 has not been subjected to any change, thereby leading to an irresistible conclusion that the mandatory character of the provision has been retained. He would further submit that the proviso could serve a limited purpose and therefore, it cannot control the main substantive section. The judgment of the Full Bench, in case of Anant Ulahalkar (supra), according to Shri Godbole, being upheld by the Supreme Court, now, it is not open for a Division Bench to enter into the question as to whether the original provisions are mandatory or directory and in absence of any change in the substantive provision in the sections prescribing the limitation, the question of reconsideration do not arise. He would also invite our attention to the relevant portion of the said judgment which has held that the individual hardship cannot be a ground to nullify the mandatory nature of the time stipulation. He would further submit that the amendment does not nullify the judgment of the Full Bench and the Hon'ble Supreme Court and in fact whenever the legislature desires to wipe out the effect of binding precedent, the legislative tool which is implemented is to nullify the said judgment by using the non-obstante clause and by providing that the substantive provisions to be construed as directory, but having failed to do so, the legislature do not intend to wipe out the authoritative judicial pronouncements. He placed reliance on the following judgment of the Hon'ble Apex Court to substantiate his points.

(i). Justice K.S. Puttaswamy (Retd) & Anr Vs. Union of India & ors, 2018 SCC

(ii). A. Manjula Bhashini & ors Vs. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited & Anr, (2009) 8 SCC 531

(iii). D. Cawasji & Co. Mysore Vs. State of Mysore & Anr

(iv). Bhubhaneshwar Singh & Anr Vs. Union of India & Ors, (1994) 6 SCC 77

(v). M/s.Utkal Contractors and Journey (P) Ltd & Ors Vs. State of Orissa, 1987 (Supp) SCC 751.

(vi). Hindustan Gum and Chemicals Ltd Vs. State of Haryana (1985) 4 SCC 124

The said judgments have been relied upon to support his submission that in exercise of legislative power, the legislature cannot directly overrule, revise or override a judicial decision. He submits that the validating legislation must remove the cause of invalidity and the binding nature of the judgment of the Court cannot be ignored by a subsequent legislation. He also submits that if the legislature has to amend the law retrospectively, it should remove the basis of the decision by the High Court and if it is so done, it cannot be considered as an encroachment on the judicial power.

12. We have also heard the learned counsel Shri Pai appearing for the respondent on the issue as to whether the amended provision dilutes the effect of the Full Bench decision. Shri Pai would advance a submission that Section 8 and 9 contained in the amending Act are in form of transitional provisions. He would submit that the transitional provision is the one whose operation is temporary and its important feature is that it becomes spent when all the past circumstances with which it is designed to deal have been dealt with although it may envisage that could take a considerable period of time while the primary legislation continues to deal indefinitely with new circumstances which arise after its passage. He submits that Section 30 of the Land Acquisition Act (Amendment Act 1984) is one such provision which enacts as to what extent the new provision will apply to the proceedings pending on the commencement of the Amending Act or in other words, as to how far the new provision which amended the substantive provision of the parent Act are retrospective. According to him, the statute may, instead of itself enacting a provision leave this to be laid down by dedicated legislation to be made under the Statute. According to him, the transitory provision may be of the nature that remains in force until the main provision of the statute come into operation.

As far as the second issue which the counsel for the petitioner have pressed into service about the non-compliance of the procedural requirement of Constitution of Vigilance Cell, Shri Godbole submits that the petitioner is granted liberty by the Hon'ble Apex Court to raise the issue about not conducting inquiry under Rule 13(1)(d) of the Rules of 2012. The contention of Shri Godbole is that the Vigilance Cell has conducted a detail inquiry in terms of Rule 13 of Rules of 2012. The issue as to whether the Vigilance Cell was properly constituted and the

argument that on the date on which the Vigilance Cell was conducted, there was no responsible Officer holding charge of the post of Deputy Superintendent of Police in light of the transfer order transferring the said particular officer, he submits that there is no record to show that the additional charge of the Deputy Superintendent of Police was withdrawn. On the contrary, the Police Department as well as the Scrutiny Committee had supplied information under the Right to Information Act to respondent no.5 that it has no record to show that the additional charge was taken away and therefore, the challenge of the petitioners to the improper constitution of Vigilance Cell must fail. In the backdrop of the aforesaid legal submissions, Shri Godbole has also extensively opposed the petition on merits, however, we would deal with the said submission at a later point of time.

13. In order to appreciate the first submission involved in the group of petitions as to whether the decision delivered by the Full Bench in case of Anant Ulahalkar needs a reconsideration in the wake of subsequent legislative amendments, it would be appropriate to refer to certain provisions of the enactment.

In the aforesaid writ petitions, we are concerned with the provisions of the Mumbai Municipal Corporation Act. The Mumbai Municipal Corporation Act, 1888 provides for constitution of Mumbai Municipal Corporation and the said corporation, in terms of Section 5 shall consist of 227 Councillors directly elected at Ward Election and five nominated Councillors. In consonance with Article 243-T, the said Act includes a provision in form of Section 5A for reservation of seats in favour of Scheduled Castes, Scheduled Tribes, Women and Backward Classes of Citizens. We are concerned with Section 5B of the Mumbai Municipal Corporation Act, 1888. Section 5B came to be inserted by Maharashtra Act No.35 of 2006 i.e. after the State of Maharashtra had enacted the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes; other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001). Section 5-B in its original form read thus :-

5B Persons contesting election for reserved seat to submit Caste Certificate and Validity Certificate - Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class or Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001)

The said section thus contemplate that a person who intend to contest the election to a reserved seat shall submit along with the nomination paper a caste certificate issued by the competent authority and also a validity certificate issued

by the Scrutiny Committee in accordance with Act No.XXIII of 2001. It is pertinent to note that the said portion of the section has not undergone any change and continues to remain the same. A proviso came to be inserted to the said section and by virtue of the said proviso, a concession is granted to a candidate who at the time of submitting nomination paper, is not in possession of a validity certificate but is only in possession of caste certificate issued by a competent authority, then, he is permitted to file a nomination paper which shall be accompanied by a true copy of application preferred by him to the Scrutiny Committee for issuance of validity certificate or any other proof of having made such application and also an undertaking that he shall submit within a period of six months from the date of his election the validity certificate issued by the Scrutiny Committee. Second proviso that came to be inserted provides that if a person fails to produce the validity certificate within a period of six months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a councillor. The said proviso underwent a change from time to time in terms of the stipulation for last date of filing of nomination paper but the stipulation which conferred such a concession, requiring a candidate to submit a true copy of application preferred by him to the Scrutiny Committee for scrutinizing his claim and the undertaking to submit validity within a period of six months from the date of his election along with the effect of non-production of the validity certificate within the time mentioned in the undertaking did not undergo any change. It would be appropriate to mention that when both these two provisos came to be inserted in the year 2006 and the three enactments came to be amended i.e. Maharashtra Municipal Corporation Act, Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Mumbai Municipal Corporation Act as well as the Bombay Provincial Municipal Corporation Act. The statements of objects and reasons appended to the ordinance dated 27th October 2006 which introduced the proviso for the first time, contained a statement to the following effect :

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

his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councilor.

The said Ordinance was replaced by the Amendment Act of 2006 which was deemed to have come into force on 27th October 2006. The said provisos were deleted by Maharashtra Act No.XIII of 2008 with effect from 2nd May 2008 and the result of the said stipulation was that a person who was desirous of contesting the election to a reserved seat was required by law to submit along with his caste certificate, a validity certificate issued by the Scrutiny Committee. By the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (2nd Amendment) Ordinance, 2012, two provisos were again re-inserted with effect from 8th October 2012 and the said ordinance came to be replaced by Maharashtra Act No.XXI of 2012. The statements of objects and reasons of the said Amendment Act also contains the following statement :

"The general elections of approximately ten Municipal Councils were scheduled to be held in October 2012 and preliminary work for holding those elections had already commenced. Such elections of other Municipal Councils are also likely to be held in near future. Taking into consideration the pendency of large number of applications with the Scrutiny Committee, number of persons desirous of contesting the elections to the reserved seats would not have got the Validity Certificate issued by the Scrutiny Committee before the date of filing nomination and as a result, they would have been deprived of their right to contest the election. The Government, therefore, considered it expedient to amend the said Act with a view to allow the persons desirous of contesting election for reserved seats and who had applied to the Caste Scrutiny Committee for obtaining Caste Validity Certificate at the time of filing the nomination, to submit the Caste Validity Certificate within six months from the date on which they were declared elected. Similarly, the Government considered it expedient to amend section 51-1B of the said Act to allow Presidents of the Councils elected against reserved post, to submit the Validity Certificate within six months from the date on which they were declared elected".

14. Subsequently, by Maharashtra Act No.XIII of 2015, the expression 'before 31st December 2013' came to be substituted by the expression 'before 31st December 2017', and this came into effect from 7th April 2015. The said provision gave rise to a reference being made to the Full Bench, in view of the divergence of opinion as to whether the stipulation of six months for production of validity certificate is only directory as held by a Division Bench of this Court in case of Dadasaheb A. Gulve vs. State of Maharashtra & ors (2008) 2 BCR 712 or whether it is mandatory as held by a Division Bench held by this Court in case of Sadashiv J. Shrote Vs. State of Maharashtra and ors 2010(1) Mh.L.J. 203. Reference was made to the Full Bench and it was called upon to answer the following points of reference.

(i). Whether the time limit prescribed u/s 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission

of caste validity certificate by elected Councilor is mandatory in nature?

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

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

By the time when the Full Bench answered the reference, the Act No.XIII of 2015 had already come in force from 7th April 2015. At the relevant time, the first proviso contained a stipulation of submitting an undertaking that within a period of six months from the date on which the election result is declared, the candidate will produce the validity certificate issued by the Scrutiny Committee and in the second proviso which was in conformity with the first proviso, provided that if a person failed to provide a validity certificate within a period of six months from the date on which he is declared elected, his election is deemed to have been terminated, retrospectively and he shall be disqualified for being a Councillor. The Full Bench proceeded to answer the said Reference and it was considering Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 which is similarly worded as Section 5B of the Mumbai Municipal Corporation Act, which we are required to deal with. After an elaborate enunciation of the principles laid down to determine whether the provision is mandatory or directory and after making a reference to various authoritative pronouncements as to when a provision can be construed to be mandatory, the Full Bench carefully tread on the language used by the legislature and in paragraph nos.39 to 41, it made the observations to the following effect:

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

undertaken by him. The consequence is that "his election shall be deemed to have been terminated retrospectively" and "he shall be disqualified for being a Councillor".

40]. The words and expressions employed by the legislature in enacting Section 9A are plain, clear and unambiguous. In such a situation, the words and expressions employed, themselves, declare the intention of the legislature. There is no necessity to apply any other aids or interpretation. The marginal notes, the legislative history and even the statement of objects and reasons suggest that the general rule in such matters is that the person desirous of contesting to a reserved seat must submit along with his nomination papers, both, the caste certificate and the Validity Certificate. Only in certain specified cases, exemption or concession is granted from the production of Validity Certificate along with nomination papers, provided such person furnishes an undertaking that he shall produce the Validity Certificate within six months from the date of election. Perhaps, in order that there remains no ambiguity as to the consequence of failure to produce such Validity Certificate within the stipulated period, the legislature, by means of the second proviso to Section 9A has made it clear that the failure will entail retrospective termination of the election and disqualification for being a Councillor. When words and expressions employed by the legislature are plain, clear and unambiguous, the Courts are bound to give effect to the meaning, irrespective of the consequences.

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

The Full Bench also held that the proviso to Section 9A was in form of concession or exemption in the matter of contesting to reserved post without compliance with the general rule of producing validity certificate along with nomination papers. This proviso was also further qualified by another proviso specifying the consequence of breach of condition, subject to which the concession or exemption is to be granted in terms of the first proviso. On a detail discussion about the Rules with regard to the interpretation of 'proviso', it arrived at a following conclusion.

56] The major premise discernible from the reasoning in Gulve is the alleged hardship or inequity arising in a situation where the elected candidate, for no fault on his part, is required to suffer retrospective termination of his election or

a disqualification, if he is unable to produce the Validity Certificate within six months from the date of his election from the Scrutiny Committee. Gulve reasons that the object of the statute is not to penalize 'persons genuinely belonging to the backward classes' but the object is to disable 'imposters of fraudsters' from wrongfully claiming the benefit of reservation. Gulve reasons that penalizing such persons genuinely belonging to the backward classes might frustrate the constitutional mandate of Article 243T.

57] With great respect, we are unable to share the aforesaid reasoning. Gulve, in our opinion, gives no credence to the language used by the legislature, which, in our view, is quite plain, clear and unambiguous. The legislature has not only repeatedly used the expression "shall" but further, in clear and unambiguous terms provided for consequences in case of failure to submit the Validity Certificate within the stipulated period of six months. In terms of the main provision of Section 9A, the general rule prescribed is the submission of both, caste certificate and Validity Certificate, along with the nomination papers. The provisos are in the nature of exception. The provisos merely grant an exemption or concession, subject to fulfillment of certain conditions.

Gulve fails to notice that such conditions are required to be strictly construed. There is no question of availing an exemption or concession which is conditional and thereafter failing to comply with the condition. Gulve fails to notice that construing the stipulation as to time as directory will render significant portions of the two provisos redundant, otiose and the surplusage.

The argument of alleged hardships or inequality was turned down with the following observations :

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

As far as the consequences to follow on failure to produce the validity certificate as contemplated in second proviso, the Full Bench concluded thus :-

94] On the issue of automatic termination of election upon the failure to produce Validity Certificate within the stipulated period, the reasoning in Shrote, which is followed by the subsequent Division Benches in the cases of *Nirmala Parate v. State of Maharashtra and ors.*, (2010)3 AllMR 904 *Gita Rupchand Dekate v. State of Maharashtra and ors.*, 2010(1) Mh. L. J. 497 *Raju Bawane and ors. v. State of Maharashtra and ors.*, (2008) 6 Mh.L.J. 76 commends to us. A plain reading of the provisions of second proviso to Section 9A of the said Act lends support to such a construction. Besides, no provision was pointed out to us with regard to any official or authority to determine the issue as to whether failure on the part of the elected candidate to produce the Validity Certificate within a stipulated period is for any reason attributable to such elected Councillor or whether such

failure is entirely for reason attributable to either Scrutiny Committee or some other parties who may have unduly protracted the proceedings before the Scrutiny Committee. In the absence of any such official or authority vested with the power to determine the cause for failure to produce the Validity Certificate within the stipulated period and considering the categorical provisions of the second proviso to Section 9A, we are of the opinion that the failure on the part of the elected Councillor to produce the Validity Certificate within the stipulated period would automatically result in termination of his election with retrospective effect.

15. The conclusions arrived at were summarized by the Full Bench in the following three paragraphs which read thus:

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

99] The validation of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to Section 9A i.e. deemed retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor's election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby.

100] In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

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

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly."

16. The judgment of the Full Bench came to be delivered on 9th December 2016.

The said judgment came up for consideration before the Hon'ble Apex Court in case of Shankar Vs. State of Maharashtra 2018 SCC Online 2842 and the Special Leave Petitions came to be entertained. After a brief reference to the conclusions reached by the Full Bench as regards Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 5B of the Maharashtra Municipal Corporation Act, Their Lordships of the Apex court observed thus :

"8 Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 5B of the Maharashtra Municipal Corporations Act (Act No.59 of 1949) require a member of the Scheduled Castes, Scheduled Tribes or other Backward Classes to enclose with the nomination for election his/her Caste Certificate issued by the Competent Authority and also the Validity Certificate issued by the Caste Scrutiny Committee.

9. A proviso to the aforesaid main provision of the statute was brought in subsequently which permitted a candidate to file his/her nomination even in the absence of the validity certificate provided he/she encloses with the nomination a true copy of the application filed by him/her before the Scrutiny Committee and an undertaking that he/she shall submit, within a period of six months from the date of his/her election, the validity certificate issued by the Scrutiny Committee.

10. There is a second proviso which contemplates that on the failure of the concerned person(s) to produce the validity certificate within the time frame stipulated his election "shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor".

11. We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusions that the aforesaid provisions of the statute engrafts a mandatory requirement in law. The High Court, in our considered view, very rightly came to the aforesaid conclusion along with the further finding that equities in individual case(s) would not be a good ground to hold the provision to be directory. In fact, the High Court has supported its decision by weighty reasons to hold that reading the provisions to be directory would virtually amount to rendering the same to be negatory.

12. Compounded is the fact that the proviso was deleted in the year 2008 and reintroduced in the year 2012. The same would go to show that sans the proviso the main provision would debar a candidate who does not possess a validity certificate from contesting the election as a reserved category candidate. If that is so the proviso has to be strictly construed and the deeming provision contained in the second proviso together with the plain language used can lead to only one conclusion, namely, that the legislative intent was to make the provision of the statute mandatory irrespective of individual hardships.

13. We, therefore, are of the view that the High Court of Bombay was perfectly justified in coming to the impugned conclusion on the basis of the reasoning that was adopted, which we hereby affirm. Consequently, we dismiss all the special

leave petitions and pending applications.

17. The position that emanated after confirmation of the judgment delivered by the Full Bench was to the effect that the time limit prescribed in Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 for submission of caste validity certificate was mandatory in nature and on failure of the concerned person to produce the validity certificate within the time frame stipulated results in consequence of termination of the election retrospectively and the candidate being disqualified as a Councillor. After the decision of the Full bench and before the judgment was upheld by the Hon'ble Apex Court, to be precise on 23rd August 2018, the State Legislature brought in certain changes to the relevant provisions which were subject matter of interpretation before the Full Bench. The Maharashtra Ordinance No.XX of 2018 was promulgated on 27th September 2018 by the Governor on being satisfied that the circumstances existed rendered it necessary to take immediate action to amend the Mumbai Municipal Corporation Act, Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The ordinance, hereinafter referred to 'Ordinance of 2018' amended Section 5B of the Municipal Corporation Act, Section 5B of the Maharashtra Municipal Corporation Act and Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The said Ordinance brought in two changes i.e.(a) in the first proviso, for the words 'six months', the words 'twelve months' was substituted and it shall be deemed to have been substituted with effect from 7th April 2015. In the second proviso, the words 'six months' were replaced by the words 'twelve months' and it was deemed to have been substituted with effect from 7th April 2015. A new proviso came to be inserted which read thus:

"Provided also that, in respect of the undertaking filed by any person under clause (ii) of the first proviso, before the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Third Amendment) Act, 2018, the period of "six months" specified in such undertaking shall be deemed to have been substituted as "twelve months".

The Maharashtra Ordinance of 2018 under the caption "Miscellaneous" inserted two provisions. Section 8 came to be inserted and it provide for 'saving as to certain election'. The said section thus provide for a mechanism to save the elections conducted by the State Election Commission for conducting the election or any programme declared by it prior to 27th September 2018 i.e. coming into effect the date of the ordinance if such election was conducted or programme was declared to fill up the resultant vacancy in view of the subsisting provision. Another saving clause was contained in form of Section 9 in the said ordinance which provided for 'saving as to certain disqualification'. By virtue of the said section, any person who had obtained the caste validity and validity certificate but has not submitted/filed such certificate prior to 27th September 2018 i.e. the

date of coming into force of ordinance, was saved from disqualification under the provisions of the relevant municipal law if he submits such a certificate within a period of 15 days from 27th September 2018. This provision, however, did not apply where the State Election Commission had already held the election prior to 27th September 2018 to fill the vacancy of such person or had declared the programme for holding of such election. The ordinance of 2018 therefore saved certain elections and also saved certain disqualification.

The said Ordinance came to be replaced by Maharashtra Act No.45 of 2018 and it was known as Mumbai Municipal Corporation Act, Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (3rd Amendment) Act of 2018 and it was deemed to have come into force on 27th September 2018. The said amending Act inserted the amendments in Section 5B of the Mumbai Municipal Corporation Act and similar municipal laws in its distinct provisions. The Amending Act also provide for saving of certain elections and saving of certain disqualification. The Ordinance of 2018 came to be repealed with the saving clause. It is the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (3rd Amendment) Act of 2018 which falls for our consideration and we are called upon to test the imperative nature of the stipulations contained in the said amending Act on the touchstone of the Full Bench decision in case of Anant Ulahalkar (supra).

18. The State of Maharashtra had enacted the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes; other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah.XXIII of 2001) which provides for regulation of issuance and verification of the caste certificates belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes; other Backward Classes and Special Backward Category. The said enactment is the legislative culmination of the guidelines issued by the Hon'ble Apex Court in case of Madhuri Patil (supra). The Hon'ble Apex Court while dealing with the situation of the necessity to eliminate the spurious claims of the stake holders in order to avail the benefits of reservation, had issued directions for issuance of social status certificates and their scrutiny. The Hon'ble Apex Court directed constitution of Committees including a person having intimate knowledge in the verification and issuance of the social status certificates. It also directed for constitution of a vigilance cell consisting of a Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into social status claims. The entire procedure to be followed by the scrutiny committee was set out by their Lordships and which ultimately find its way in Maharashtra Act No.23 of 2001 enacted by the State legislature. In exercise of the powers conferred under the said enactment to make Rules, the State Government has notified the rules applicable to the Scheduled Tribes in form of Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Caste Rules 2003 and Maharashtra Scheduled Caste, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward

Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules 2012.

By virtue of the said enactment, any person belonging to any of the reserved categories, and who intends to claim the benefits of any reservation provided to such caste, tribes or classes, either in any public employment or admission to any educational institutions or any other benefit under any special provisions made under clause 4 of Article 15 of the Constitution or for the purpose of contesting of elective post in any local authority or in the co-operative societies, it is imperative for him to obtain the caste certificate. This caste certificate is subject to verification by the Caste Scrutiny Committees constituted under the said enactment.

19. The Maharashtra Act of 2000, apart from prescribing the procedure for obtaining the caste certificate and its verification has also dealt with the consequences of failure to establish a claim. In terms of Section 8 of the enactment, whenever an application is made to a competent authority for issuance of a caste certificate or for its scrutiny, the burden would lie upon the person staking such a claim.

Section 10 of the said enactment prescribes for the consequences if a person is not able to establish his claim and caste certificate issued to him is cancelled. The consequences that would entail is debarring from the concerned educational institutions or discharge from the employment forthwith and depriving the person of the benefits enjoyed or derived by virtue of such admission of appointment. It also contemplates cancellation of any degree, diploma or any other educational qualification acquired by such a person on the basis of a certificate which is subsequently proved to be false and stands cancelled. As regards the election on the basis of such a claim, sub-section. (4). of. Section. 10. provide. the. Following consequences.

"(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being an 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 the 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.

20. Section 11 of the said enactment makes the act of obtaining a false Caste Certificate by furnishing false information or by filing false statement or documents or the act of securing any benefits or appointments exclusively reserved for such Castes, Tribes or Classes or being elected to a seat as an offence and on conviction such a person is liable to be punished with Rigorous

Imprisonment for a term which shall not be less than six months but which may extend to two years or a fine. The offences under the said Act are made cognizable and non-bailable by virtue of Section 12. Thus, the said Act is a complete Code prescribing the mechanism for issuance of caste certificate, its verification, cancellation and the consequences flowing from such a cancellation leading to imposition of penalty for staking a false or fraudulent claim. The said enactment also covers the benefits derived by a candidate while contesting a seat which is reserved and the consequences of invalidation of a caste claim of such a candidate, the consequences provided are to the effect that election of such a person shall be deemed to have been terminated retrospectively.

In order to translate the said provisions into the local laws providing for election of the candidate, provisions came to be introduced in the local enactment and in the State of Maharashtra in case of the laws relating to the municipal councils, Nagar Panchayats, Corporations, Village Panchayats etc. The Mumbai Municipal Corporation Act is also such an enactment where the provision was inserted in Section 5B.

21. The Mumbai Municipal Corporation Act came to be amended in the year 2006 and Section 5B was inserted making it imperative for every person desirous of contesting election to a reserved seat, to submit along with the nomination paper, caste certificate issued by the Competent Authority and also the validity certificate issued by the Scrutiny Committee in accordance with the provisions of the Act No.XXIII of 2001. The Section originally inserted therefore made it mandatory to file the nomination paper for contesting a seat from reserved category along with a caste certificate and the validity certificate. The proviso came to be inserted in the said section for the first time in the year 2006 itself and to be precise with effect from 27.10.2006, by which a period of four months was granted to submit the validity certificate. The said proviso however, came to be deleted in the year 2008. Once again the proviso was reintroduced on 31.12.2013 and the time to submit validity certificate was stipulated as 6 months. On 07.04.2014 the proviso was substituted and this intended to cover those nominations for which the last date of filing was scheduled on or before 31.12.2017, in accordance with the election program declared by the State Election Commission. The said proviso carved out an exception to the operational part of Section 5B and stipulated that the candidate who were to submit the nomination paper on or before 31.12.2017 and who had applied to the Caste Scrutiny Committee for verification of his caste certificate but has not received the same, the concession was made in his favour by permitting him to file along with the nomination paper, a true copy of the application preferred by the Scrutiny Committee for issuance of the validity certificate or any other proof demonstrating that he had preferred such an application and an undertaking to be submitted that he shall submit the validity certificate within a period of 6 months from the date of the election. A second proviso inserted stipulated the consequences if there was a failure to abide by the undertaking and to produce the validity certificate within a period of six months, then the election of such

candidate shall be deemed to have been terminated retrospectively and he was liable to be disqualified as being a councilor. When the said amendment was introduced, the intention of the legislature could be clearly read in the statement of objects and reasons and made it clear that Caste Scrutiny Committees are not able to decide the claims within the period stipulated and the concession was granted in favour of the candidate who though applied for verification of his/her claim was not able to obtain the validity certificate and the claim was pending before the committee. The intention was to confer a relaxation for period of 6 months in favour of a candidate who was not armed with the validity certificate and since he has already approached the Committee and the Committee was expected to take some time for adjudicating his claim, the undertaking submitted by the candidate that he will produce the validity certificate within a period of 6 months was considered sufficient compliance of sub-section (1) of Section 5B. The proviso thus carved out an exception to the contingency contemplated by Section 5B, namely, that a person should be armed with the validity certificate at the time of submission of his nomination paper. This amendment was subject matter of the decision of the Full Bench, and the Full Bench after referring to the clear and unambiguous language employed by the legislature held the said provision to be mandatory. The Full Bench construed the said proviso merely as an exception and construed the time limit of "6 months" prescribed in the two provisos appended to Section 9A (similar to Section 5B of the MMC Act) within which an elected person is required to produce validity certificate from the Scrutiny Committee and this time limit of 6 months prescribed in the two provisos was construed to be mandatory. The Full Bench also held that the second proviso enshrined the consequences of failure to produce validity certificate within the stipulated period and then the election of such a candidate shall be deemed to have been terminated retrospectively and this disqualification would be automatic and validation of his caste claim after the stipulated period would not restore his period of election. The said views and conclusions reached by the Full Bench were upheld by the Hon'ble Apex Court.

22. The question that is now posed before us is whether the said decision of Full Bench requires reconsideration and it is sought to be canvassed before us that the subsequent legislative amendments convey an intention that the stipulations which have been held mandatory by the Full Bench should be construed as directory in nature. In light of the said issue we make reference to the amendment to the Mumbai Municipal Corporation Act brought in initially by the Ordinance No.XX of 2018 and subsequently by Act No.LXV/2018. The statement of objects and reasons appended to the Ordinance set out the reasons for introducing the said Ordinance which reads thus :-

"3. The Caste Scrutiny Committees are overburdened with the task of issuing the validity certificates and this results in difficulties for the elected candidates to obtain the Caste Validity Certificate. In view of the provisions of the relevant Municipal law, in case the elected candidate fails to produce the validity certificate, within a period of six months from the date of his election, his

election shall stand to be terminated retrospectively and shall stand disqualified for holding the post.

4.. To ensure that the elected candidates who have already obtained the Caste Certificate and the Validity Certificate would not be disqualified merely because of failure to produce the Caste Validity Certificate issued by the Caste Scrutiny Committee in time as per the undertaking furnished by him, it is considered expedient to provide for further extension of six months to the elected candidates for submitting such certificate. In view of this, it is expedient to suitably amend section 5B of the Mumbai Municipal Corporation Act (III of 1888), and of the Maharashtra Municipal Corporations Act (LIX of 1949) and section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1955 (Mah. XL of 1965), retrospectively, i.e. the date of commencement of the Maharashtra Act No.XIII of 2015."

With this objective in mind changes that are effected by the said Ordinance are two fold, namely, in the first and second proviso the word "6 months" is replaced by "12 months" and it is deemed to have been substituted with effect from 07.04.2015. After the second proviso, another proviso is inserted which provides that the undertaking which is filed by a person under Clause 2 of the first proviso, the period of 6 months as specified in the undertaking shall be deemed to have been substituted as 12 months.

What is thus apparent from the said substitution is that the period of 6 months has been extended to 12 months, thereby conveying that the requirement of obtaining a submission of validity certificate will now be 12 months and therefore the undertaking would also contain a stipulation of producing the validity certificate within 12 months and from 07.04.2015 if a person has produced an undertaking, then it should be read to be 12 months. The second proviso of Section of 5B which provided for consequences of not producing a validity certificate, however, remain unchanged except the relaxation from 6 months to 12 months. The legislature introduced the said Ordinance which came to be replaced by an amendment being conscious of the fact that the Scrutiny Committees are overburdened with the task of scrutinizing the claim and there are delays and the Committees are not able to decide the matter within the time prescribed by the Rule and this result in difficulties for the candidate to procure the validity certificate. To relax the drastic consequences which would fall on the candidate, if he is not in a position to produce the validity certificate within the stipulated period, the legislature has stepped in and saved him of the disastrous consequences for the reasons which were beyond his control and attributable exclusively to the Scrutiny Committee, the legislature amended the said provision with a retrospective effect. While granting a retrospective effect to the said provision it also incorporated a saving provision. By the said saving provision, the legislature intended that if a seat had become vacant before coming into effect of the said amendment with effect from 27.09.2018 and the said seat is filled in by conducting election or if the program for filling the seat is

declared, then such election shall not be disturbed and it would be saved. At the same breath a candidate who has obtained the caste certificate but do not obtain validity certificate prior to the date of commencement of the Act i.e. 27.09.2018 is saved from disqualification and the period of 15 days is given to him to produce the validity certificate. It is no doubt true that the benefits enjoyed by a person under the provisions of the Amendment Act would vary depending upon the date on which the result of election is declared and it may vary as regards the period for which the relaxation is granted and a person can seek benefit and though it is argued before us that this intends to create different classes, each one distinct in itself, we are not inclined to go into the said issue since the validity of the said provision is not questioned before us. We are only called upon to adjudicate as to whether the legislature intended that the time stipulation of producing the validity certificate is mandatory or directory. The Full Bench has concluded that the legislature always intended that the stipulation of period of 6 months is a mandatory requirement and if it is not produced, and if the validity certificate is not produced within the said period in terms of the undertaking, the candidate would be required to meet the consequences. The amended provision except substituting the period of 6 months to one year has not deviated in its intention and still it intends that the candidate who comes and files nomination papers for a reserved seat must have submitted his claim for verification to the Committee and tendered a proof thereof and also submit an undertaking that he would produce the validity certificate within a stipulated period of one year and if he is unable to do so after one year, the consequences of disqualification would fall on him. In that sense, the mandatory nature of the requirement of producing the validity certificate within a stipulated period has not been disturbed by the legislature. However, while bringing in effect the said amendment it has given a retrospective effect from 07.04.2015, thereby saving the disqualification of those candidates who have submitted an undertaking and their period of undertaking though having expired and though the candidate would have deemed to have been disqualified, such disqualifications are saved by Section 9. At the same time if the seat had fall in vacant on account of the candidate incurring disqualification and is filled in by another candidate by conduct of election or if the election program is declared, then such elections conducted or declared are saved. We once again make it clear that we are not dealing with the validity of the said amending provision but we are ascribing meaning to the said amendment by ascertaining the intention of the legislature.

23. We have construed the said provision as it reads by applying the Rule of literal construction since the language employed by the legislature is clear and unambiguous. In words of Lord Evershed M.R. "The length and detail of modern legislature, has undoubtedly reinforced the claim of literal construction as the only safe Rule." If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. The Rule of literal construction is to find out that the legislature must have intended and what it has actually expressed. Maxwell on

Interpretation of Statutes has describe the Role of literal construction in the following words:-

"Where in languages claim and admits of one meaning, the task of interpretation can hardly be set to arise."

"The decision in this case said Lord Morris of Borth-Y-Gest in a revenue case "calls for full and fair application of particular statutory language to particular facts as found. The desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision".

Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature it must be enforced however found absurd or contrary to common sense the result may be. The intention of a statute is not to be collected from any notion which may be entertained by the Court and what is just and expedient. The duty of the Court is to expound the law as its stand and to "leave the remedy to others".

The primary function of the Court is *jus dicere* and not *jus dare*. The duty of the Court is to give meaning to the language used by the Statute by ascertaining the intention of the legislature which can be gathered from the statement of objects and reasons, the legislative history and such other internal and external aids in the construction of statute. Adding/altering would be entrenching upon the prerogative of the legislature. If the language is clear and unambiguous, it would be a determinative factor of the legislative intent and it is not permissible for the Court to read anything alien to such provision nor add any words thereto, nor evolve some legislative intent, not found in the statute. If the statutory provision is enacted by legislature in a certain manner, the only reasonable interpretation which can be resorted by Courts is that it was the intention of the legislature and the Court is duty bound to respect the same and give effect to it since it was consciously enacted. The Will of the legislature is supreme and when a legislature drafts a piece of legislation, it expresses its intention by using words and it expresses itself through these words. The said words are to be construed in the schematic context and at times, being conscious of the needs of society. The primary duty of the Court being to ascertain the intention of the legislature and give effect to the statute and not to legislate or substitute its own wisdom on the intention of the legislature. It is with this principle we have to construe the Amending Act and attempt is being made to give effect to the intention of the legislature.

24. The Full Bench of this Court has in great detail dealt with the reason why it has construed the stipulation of time limit contained in the two provisos of Section 9A, within which the person elected is required to produce the validity certificate from the Scrutiny Committee to be mandatory. Failure to comply with the said stipulation result in consequences. The consequences must fall whatever may be reasons for non- production of the validity certificate. The State legislature being conscious of the difficulties faced by the candidates has stepped

in and saved the disqualifications from a retrospective effect but from a particular stipulated date and not from a point prior thereto and further provided a window of 15 days from the date of coming into effect of the Act, namely, period of 15 days to produce the validity certificate in order to save such candidates from the axe of disqualification being falling on them. But if such qualification is incurred by deeming provision and if a candidate is already substituted by another candidate, then the legislature did not intend to open such cases and confer the benefit. This is how the plain and unambiguous words of the amending Act reads and we have construed them accordingly by keeping in mind the intention of the legislature. We are not therefore ready to accept that the provision contained in Section 5B becomes directory subsequent to its amendment. From the date of coming into effect of the amending Act and the substituted proviso, it would be imperative for a candidate contesting election from 27.09.2018 to submit an undertaking that he will produce the validity certificate, within a period of 12 months and if he does not produce a validity certificate then 12 months he would deem to have been disqualified retrospectively. The legislature has thus not conveyed any relaxation in its intention for the consequences to fall in case of non-production of the validity certificate within the period undertaken by the candidate. We are therefore not inclined to accept the submission of the learned senior counsels and we say so in light of the authoritative pronouncement by the Full Bench on the said point and since according to us the amended legislation do not change the intention of the statute to make it mandatory.

Our attention was also invited to Rule 14 of the Rules of 2012 which prescribes the procedure for verification of claims of Scheduled Caste, De-Notified Tribes (Vimukt Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category. Rule 12 sets out the mechanism to be followed for verification of a caste claim and it prescribes that a person desirous of verification of his caste claim for any of the purposes mentioned in Section 3 of the Act, shall submit an application in the various forms appended to the Rules. This covers submission of an application in Form No.16 - verification of caste claim for the purposes of education, form no.18 - verification for the purposes of service, form no.19 - verification for the purposes of Government, Semi-Government employee, Form no.20 - verification for the purposes of election etc. Perusal of Form no.20 appended to the Rules of 2012 is the prescribed form in which the applicant is to prefer an application whenever he desires to contest an election. The said form is accompanied by two important documents, one is the certificate issued by the Collector/Election Officer and another is the affidavit to be submitted along with the certificate for caste verification. The certificate issued by the Collector/Election Officer reads thus :

"CERTIFICATE TO BE ISSUED BY

COLLECTOR/ELECTION OFFICER

This is to certify that

(a). Proposed Election for Grampanchayat /Municipal Council /Municipality/
Municipal Corporation/

Panchayat Samiti/Zilha Parishad/..... Organisation will be held on
dated.....

(b). Notice is published in this regard, in Local News Paper dated

(c). Certified that original residence of the willing Contestant Shri/ Smt..... for
the said is in the State of Maharashtra .

(d). Shri/Smt is contesting election Corporation of Grampanchayat/
Municipal Council/ Municipality/Municipal corporation/ Panchayat Samiti/ Zilha
Parishad/..... Organisation in Ward No. / Group No./GAN/ Prabhag No.....
Reserve

The Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jastis), Nomadic
Tribes, Other Backward Classes and Special Backward Category (Regulation of
Issuance and Verification of) Caste Certificate Rules, 2012 for Scheduled Caste/
Backward Class of Citizen on basis of certificate of caste..... (Strike out
which is not applicable) It is requested to scrutinize the Caste / Claim of the
Candidate and communicate within a period of 6 months.

Place:

Date:. Signature and Seal of the/ Collector/ Election officer

The format of affidavit is as follows :

AFFIDAVIT TO BE SUBMITTED WITH APPLICATION FOR CASTE CERTIFICATE
VERIFICATION

I Shri/Smt..... age..... year,

Occupation residing. at

hereby solemnly affirm today dated. that. I am

contesting election of Grampanchayat/ Panchayat Samiti / Municipal Council /
Municipality/ Municipal Corporation/ Zilha
Parishad/.....Organisation from ward/

Group No. Reserve for Scheduled Caste/ Backward

Class of Citizen on bases of certificate of caste.....

Number..... dated..... issued by Tahasildar and

Executive. Magistrate/Deputy. Collector/Sub-Divisional

Officer District is submitted for the

Scrutiny.

The documents and proofs attached with the application Form are obtained by me from Competent Authority. These documents are true and correct and obtained by following proper procedure. No alterations/ corrections/changes are made in these documents. I affirm hereby that these documents are not duplicate or bogus.

Perusal of the prescribed forms reveal that whenever a person intends to contest an election, he would be required to approach the Scrutiny Committee only when the election is declared and he has made up his mind to contest a seat from the reserved category from any of the wards. It requires certification from the Election Officer and also an affidavit of a candidate. The concomitant effect of the said forms is that for a first timer who is intending to contest an election for the first time, he approaches the Committee just in time after the elections are declared and then when he submits an undertaking to submit the validity certificate within a period of six months and the Scrutiny Committee fails to verify his claim, then the consequences provided by the second proviso to Section 5B would fall on him. A candidate who is a repeater and contesting an election may not be faced with such difficulty but we appreciate the contention advanced on behalf of learned counsel for the petitioner that the validity certificate cannot be obtained in advance and as per the sweet desire of the candidate with a presumption that in a future point of time, he may avail the benefits for the purposes of education, employment or for contesting the election. Even for the purposes of education, a candidates can apply and approach the Committee for verification of his caste certificate only when he is desirous of seeking an admission in the professional courses and in case of employment, when the appointing authority certifies that the particular person is under consideration of appointment/promotion and that the post is reserved for a backward category. In the scheme of the enactment and the Rules, the submission of learned counsel for the petitioner that the time period prescribed for the Committee to decide upon the validity of a caste certificate which was initially six months is short, taking into consideration the pendency of the claims before the various Committees and, therefore, it is attempted to canvass that procuring a validity certificate within the stipulated period is an impossibility and that is the reason why the consequences of non-procurement of the validity certificate would adversely affect a candidate who is armed with a caste certificate, in absence of the said certificate being validated. We are conscious of the said legal scenario which is prevailing and we also have taken a judicial note that the Committees are, at times, unable to decide the claim in the backdrop of the fact that the scrutiny contemplated is a detailed one and the compliance of the procedure set out in the Rules is mandatory. Moreover, it requires an indepth inquiry into the claim and cannot be a hasty prima facie decision. It is probably for this reason that the legislature has extended the period of six months by the recent amendment to one year and has also extended the benefit upon those who were not able to submit the validity certificates within a period of six months, in absence of the Committees conferring validity upon them. However,

legislature stepped in and enhanced the period of six months to one year and also protected the candidates who had submitted an undertaking, but were not able to produce the validity certificate in the stipulated period. It is ultimately for the State Government to derive a mechanism for speedy disposal of the claims within the time line framed by the statute and the present amendment is one of the steps taken by the State Government. The State Government may even evolve a mechanism of constituting more Committees and we are not expected to advise the State Government on what steps it should take for disposal of the claims expeditiously. However, in no case, we would direct the State Government to dilute the mandate of the concession being offered to a candidate for producing the validity within a stipulated period and we are not inclined to accept the submission that this difficulty of the State Government would dilute the mandate of law.

25. Another submission which is advanced before us is about the improper constitution of the Vigilance Cell. Reliance is placed on the Rules of 2012 which are framed by the Government of Maharashtra in exercise of powers conferred by Sub-Section (1) of Section 18 of the Act No.XXIII of 2001. The rules set out the procedure to be followed for obtaining the caste certificate from the Competent Authority. It also provides for constitution of the Scrutiny Committee. The said Rules translate the guidelines of the Hon'ble Apex Court in case of Madhuri Patil (supra) and Rule 12 provides for Constitution of Vigilance Cell which reads thus :-

"12. Constitution of Vigilance Cell :-(1) There shall Vigilance Cell to assist each Scrutiny Committee in conducting the field inquiry under rule 17. The Vigilance Cell shall consist of :-

(i). Deputy Superintendent of Police or equivalent;

(ii). Police Inspectors;

(iii). Police Constables to assist the Police Inspectors.

(2). Jurisdiction of the Vigilance Cell shall be subject to geographical jurisdiction of concerned Scrutiny Committee, for all purposes, including domestic inquiry and verification of authenticity of documents:

Provided that, in appropriate case, if Scrutiny Committee feels, it may solicit a report of Vigilance Inquiry, from any other concerned Scrutiny Committee.

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

Rules 13 which deals with the report of the Vigilance Cell and the issues to be dealt by it reads thus:-

"13. Report of Vigilance Cell and Issues to be dealt with:-(1) Vigilance Cell Officer(s) shall submit report upon investigating into the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis),

Nomadic Tribes, Other Backward Classes or Special Backward Category claim, referred to it,-

(a). by visiting permanent place of residence and conducting domestic inquiry; or/and

(b). by recording statements of respected and responsible persons from concerned area, including representatives of Local Self Government, Police Patil, etc; or

(c). by collecting information, as part of recording statement(s), as regards to name, age educational qualification, occupation, existing place of residence and information regarding properties (existing and disposed of) of family members of applicant or Claimant; or

(d). by collecting information including the sociological, anthropological and ethnological (anthropological moorings and ethnological kinship), genetical traits of the Scheduled Caste, Scheduled Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, if any; or

(e). by personally visiting Office(s) of Competent Authority or revenue or school or other officers."

26. The opinion expressed by the Vigilance Cell is not binding on the Scrutiny Committee but the Scrutiny Committee is expected to take into consideration the enquiry by Vigilance Cell, which is of great significance in the entire process of verification of claim and specifically in relation to the tribes. The Vigilance Cell would collect the information about the candidate by conducting an enquiry in the manner that is prescribed in Rule 13 and it is also expected to collect the information including the sociological, anthropological and ethnological, genetical traits if any and this would assist a committee to arrive at a conclusion whether a person belongs to the said caste or tribe as claimed by him. On receipt of the report of Vigilance Cell, it is incumbent on part of the Committee to supply the report of the Vigilance Cell to the candidate and the Vigilance Cell Report can be discarded by the Committee by recording reasons. There is time stipulated for the Vigilance Cell to complete its enquiry namely 6 months.

27. In the backdrop of the said statutory mechanism in place the submission advanced on behalf of the petitioners is that the Vigilance Cell Officer was not associated with the enquiry. It is to be noted that when these Writ Petitions were heard by Division Bench of this Court and Rule came to be issued on 17.07.2018 by a Bench headed by Justice Shri.R.M. Savant, the Bench had dealt with the proposition advanced in support of the petitioner. The Bench in detail dealt with the issue raised before it that the reports of the Vigilance Cell which have been submitted have not been submitted with the endorsement of the Deputy Superintendent of Police of having accepted the reports and therefore the said reports could not have been taken into consideration by the Scrutiny Committee

and having done so, the order passed by the Scrutiny Committee are vitiated. This submission was dealt in great detail and in a detailed order passed by this Court on 17.07.2018, it was recorded that there is no statutory requirement of report of the Vigilance Cell to be endorsed by the Deputy Superintendent of Police. It was also observed that even in respect of the violation of mandatory provision, it is trite that a person alleging violation as to show prejudice caused to him. The contention of the learned counsel for the petitioner that the Superintendent of Police was required to endorse the report and such a practice followed by the Vigilance Cell was turned down and it was categorically held that non-endorsement of report by the Superintendent of Police would not vitiate the reports of the Vigilance Cell. The said order of the Division Bench was taken to the Hon'ble Apex Court and by order dated 30.07.2018, the SLP came to be disposed of by permitting the petitioner to raise the contention based on Rule 12 and also Rule 13(1)(d) of the Rules of 2012. Accordingly, the petition has been amended and the said ground has been inserted in paragraph Nos. 19A to 19E.

The amended petition raises a ground that on 04.02.2017 additional charge of Deputy Superintendent of Police of Vigilance Cell in various Caste Scrutiny Committees in Maharashtra State was given to the Officers mentioned in the said order. One Mr.Ravindra Patil was given additional charge of Deputy Superintendent of Police, Vigilance Cell, Mumbai Suburban District however he came to be transferred by order dated 17.07.2017 issued by the Director General of Police, Maharashtra State, Mumbai and he was relieved from the post on 01.08.2017. It is then stated that no other person or officer of the rank of Deputy Superintendent of Police was appointed on full time basis or was given additional charge of the Vigilance Cell attached to Caste Scrutiny Committee, Mumbai Suburban. It is then stated that the first Vigilance Report was submitted on 28.06.2017, second Vigilance Cell report submitted on 03.08.2017 and third report was submitted on 10.08.2017 and at least two Vigilance Cell Reports are prepared and submitted much after the date of transfer of Shri.Patil Dy.S.P. Vigilance. It is thus attempted to canvass that there is nothing on record to indicate that Mr.Patil has at any stage participated in Vigilance Cell Enquiry and therefore argument advanced is that presence of the Deputy Superintendent of Police is a mandate of the Rules and also the mandate of the Hon'ble Apex Court in case of Madhuri Patil (supra) and it is not mere presence but his active participation which is imperative but in the peculiar circumstances when the said officer was transferred, he would not have continued to hold the additional charge of the Vigilance Cell and did not actually participate.

28. We have considered the said submission advanced on behalf of the petitioner. No doubt, the purpose of conduct of an enquiry through the Vigilance Cell is to inquire into the Anthropological, Ethnological and social cultural traits of a particular claimant and the Vigilance Cell is expected to carry an inquiry which is in the nature of Home Enquiry and initially, the Hon'ble Apex Court in the judgment of Madhuri Patil had set out a mechanism to be followed by scrutinizing the claim and subsequently, the same mechanism finds place in the Rules framed

under the Act No.XXIII of 2001. The Vigilance Cell which is expected to be comprising of Deputy Superintendent of Police or is equivalent and the Police Inspector/Police Constable is expected to conduct a domestic enquiry and also verify the authenticity of documents. The report of the Vigilance Committee is placed before the Scrutiny Committee for its consideration. The petitioners were granted liberty before the Hon'ble Apex Court to raise the issue about not conducting the enquiry under Rule 13(1)(d) of the Caste Certificate Rules 2012. The enquiry was conducted by the Vigilance Cell and the grievance raised is that at the time of submission of the Vigilance Enquiry Report, the Deputy Superintendent of Police was transferred. We have perused the transfer orders and what is noted by us that the concerned Officer came to be transferred from one place to another place in Mumbai itself. The said Officer was bestowed with additional charge, but there is nothing on record to show that his additional charge of the post of Deputy Superintendent of Police was withdrawn. In any contingency, the Vigilance Cell is expected to carry out an investigation and submit its report. In each individual cases before us, we have noted that the Vigilance Cell had tendered its report and even the petitioners were afforded an opportunity to submit their response to the said enquiry report. There is no imperative condition that the report of the Vigilance Cell must be endorsed by the Deputy Superintendent of Police and this is what the Division Bench has clearly expressed on an earlier occasion. What is only imperative is that the Vigilance Cell would consists of a Deputy Superintendent of Police and the actual investigation/enquiry can be carried out by the Police Inspector/Police Constables for ascertaining the information as contemplated under Rule 13 and which would be submitted in form of a report. The petitioners are advancing a submission that the Deputy Superintendent of Police who was given additional charge, came to be transferred. This, however, do not lead to a conclusion that he was divested of his charge of Deputy Superintendent of Police. In such circumstances, the said submission advanced by the petitioners do not warrant any merit, when the Vigilance Enquiry was conducted and the petitioners had responded to the Vigilance Cell Report and the principles of natural justice were followed.

For the aforesaid reasons, we reject the said submission advanced on behalf of the petitioners.

We also do not agree with the submission of the learned counsel that the said provision is transitory. On the other hand, we have already expressed that the provision is rather mandatory and the new amending Act is only provided a window protecting only certain invalidations but the legislature in any case, do not intend to dilute the rigors of the provision making it imperative for a candidate to produce the validity certificate within the period stipulated by the statute.

We had called upon the learned AGP Ms.Shastri to place before us the data pertaining the disposal and pendency of application of caste validity certificate in respect of the election held in the State of Maharashtra and she has placed an

affidavit on record which is sworn by the Joint Secretary (Social Justice and Special Assistance Department) on 14th February 2019. The said affidavit is accompanied with the data at Exhibit-1, 2 and 3 giving the details of the disposal and pendency of the applications for the year 2016-17, 2017-18 and 2018-19. We have made a reference to the said affidavit for the limited purpose of assessing the total number of cases received by Social Justice Committee relating to Scheduled Caste and Other Backward Classes and we could note that the Committees are unable to deliver the results in considerable number of cases within the period stipulated of six months. Moreover, this is a data which only pertains to Scheduled Caste and Other Backward Classes and we are not aware of the pendency of the cases in case of Tribes. In any contingency, the fact remains that the Committees are overburdened and this is one of the paramount consideration of the State Government to amend the law and increase the period of obtaining the validity to one year.

30. Now, we will turn to the merits of the matter and the submissions advanced by the petitioners in each individual case and we will deal with the case at seriatim.

A WRIT PETITION NO. 181 OF 2018 Petitioner - Kesharben Murji Patel

31. Writ Petition No.181 of 2018 is filed by Kesharben Murji Patel assailing the impugned order dated 19th August 2017 passed by the Scrutiny Committee. The petitioner claims to be belonging to Leva Patidar Caste which is recognized as 'Other Backward Class' in the State of Maharashtra. The petitioner had obtained a certificate from Deputy Collector, Mumbai Suburban District dated 15th December 2016, certifying that the petitioner belongs to the said Caste which is recognized as 'Other Backward Class'. She contested the Elections from Ward No.76 which was reserved for Backward Class for citizens. The election was held on 21st February 2017 and the result of the election was declared on 23rd February 2017 and she came to be declared as elected by securing highest number of votes.

The petitioner who claims to be belonging to Leva Patidar - a recognized Other Backward Class relied on the following four documents :

Sr.No.

Particulars of evidence/documents

Relation with Applicant

Entry of caste

1

The Caste Certificate No.1404/2016 dated 15.12.2016 issued by the Deputy Collector, Sanjay Gandhi Yojana Mumbai Suburban District in favour of Smt.Kesharben Bhachubhai Patel.

Self

Leva Patidar

2

The School Leaving Certificate Reg.No.665, dated 23.01.2017 issued by the Head Master, YJS Gujrati Night High School, Tardeo, Mumbai, in favour of Smt.Kesharben Bhachubhai Pate.

Self

Hindu - Leva Patidar

3

The School Leaving Certificate Reg.No. 2361, dated 11.08.1989 issued by the Head Master, Mandavi High School, Mumbai in favour of Shri Bhachubhai Harjibhai Patel

Father

Leva Patidar

4

The Voters Certificate for the period of 20.12.1960 to 19.12.1964 issued by the Municipal Corporation of Greater Mumbai in favour of Bhana Kika Patel.

Father

Leva Patidar

The Vigilance Cell submitted its report on 28th June 2017 and show cause notice came to be issued to the applicant. The Scrutiny Committee also received complaints from one Mr.Nitin Salagre, Jagat Gautam, Santosh Giri and Anita Pal. The Committee afforded an opportunity of hearing to the complainants and their Advocates and even issued notices to the Head Masters/representatives who produced before it the original school records for verification of the school leaving certificates on which the petitioner has placed reliance. An opportunity was also afforded to the complainants to inspect the originals which were produced and even notice was issued to Tahsildar, Andheri to verify the 7/12 extract relied upon by the petitioner. The complainant opposed the claim of the petitioner on the ground that the petitioner is resident of village Adhoi, Taluka Bachchav, District Kacch, Gujarat, and it was stated before the Committee that the voters list of Gram Panchayat, Adhoi still includes the name of Murji Patel and the affidavits filed by Kesharben Murji Patel and Murji Kanji Patel are false affidavits and the School Leaving Certificate of the petitioner of Shree Udaypur (Adhoi) Primary School where the petitioner prosecuted her studies since 7th Standard, was relied upon and it is then stated that thereafter she never went to any school. The complainants doubted the authenticity of the documents relied upon

by the petitioner. All the complainants put their written statement before the Committee and the petitioner was given opportunity to deal with the said allegations and she submitted a detailed written submission on 4th August 2017. Perusal of the order passed by the Committee makes a reference in great detail to the complaints as well as the written response of the petitioner.

The Committee then proceeded to verify the authenticity of the documents relied upon by the petitioner. The first document dealt by the Committee is a School Leaving Certificate, General Register No.665 dated 23rd January 2017 issued by the Head Master of Y.J.S. Gujarati Night School, Tardeo, Mumbai in her favour. The main old register was destroyed and therefore, a new general register had been prepared. The Vigilance Cell report which examined the said document mentions that as per entries made therein, the same is true/correct, however, there is no permission from the Education Department or any other government department for transporting the new entries and the Committee had discarded the said documents as it cannot be considered as conclusive proof of the applicant's claim. The Committee has observed that the original school register from where the entry was taken was destroyed by moths and is in tatters and it was re-written. In any contingency, there was no opportunity to examine the original documents from which the entries were transferred into new register and mere statement of Head Master would not guarantee its authenticity. The Committee has, therefore, rejected the said document since the data was not transferred with the prior approval of the Education Department and there was no means of ascertaining its authenticity. Another document which the petitioner had placed on record was her own School Leaving Certificate dated 16th June 1993 issued by the Fort and Proprietary High School where the date of admission is recorded as 15th June 1989. The first Vigilance Cell report makes a reference to the said document and records that nobody is aware of existence of such a School. On enquiry with the Education Department of MCGM, it is revealed that the said school was a private school and it was closed long back and no records of the said school are available with the Education Department of MCGM. In absence of any records being traced, the School Leaving Certificate relied on by the petitioner was rightly rejected by the Committee as it was not reliable. Two other documents which stirred the controversy and the complainants took strong objection to the documents is the School Leaving Certificate of the petitioner's father from Mandvi School. The said School Leaving Certificate dated 11th August 1989 reflects the caste of the incumbent as 'Leva Patidar' and the date of birth is recorded as '2nd March 1941' and the date of admission is recorded as '14th June 1947'. The first Vigilance Cell report states that the said school is closed and records of the said school has been preserved at another school viz. Khoja Khan Mohd. Habibbhai High School. The General Register of the School was found to be in good condition. However, peculiarly, the page containing the information regarding the candidate is completely torn off. Shri Godbole has placed before us a compilation of documents and he has produced a true copy of the School Leaving Certificate and the true copy of the School Leaving Certificate

produced by the petitioner and also the School Leaving Certificates issued by the very same school from Serial Nos. 6427 to 6432 and also the copies of extract of school register of Mandvi School. The said document bears the register number of the pupil as '2361' and the name of the pupil in Column No.1 is written as full name "Bhachubhai Harjibhai Patel". The said document which is obtained on 11th August 1989 and the registration number is 2361. In respect of the said document, the Committee has observed that the very page of the register is torn and therefore, the original entries could not be verified. Further, the entries in the original register in Column Nos.6 to 18 do not tally with the entry in the certificate that has been issued, for example, date of entry in the school, date of school leaving, Standard in which the candidate left the school etc. On enquiry with the Head Master, he claimed complete ignorance. The Committee has also specifically observed that when the duplicates of the School Leaving Certificates which have been issued between 4th August 1986 to 26th August 1989 are observed and they bear the number 6427, 6428, 6429, 6430, 6431 and 6432 and have been issued from Mandvi High School. However, the said book do not reflect the issuance of certificate no.2361 on 11th August 1989. Further, there is also a stark difference in the handwriting of the said extracts and also the signature of the Head Master.

In the backdrop of this fact, the Committee has asserted that the said document appears to be doubtful.

32. Another document on which the petitioner has placed reliance is the school leaving certificate of the petitioner's father from J.J. Shatabdi H.P. Gujarati School, Mumbai dated 11th February 2017 which is produced as an additional document. In respect of the said document, Shri Godbole has placed on record the School Leaving Certificate produced by the father and the other School Leaving Certificates issued by the same school and also the extract of outward register and the copies of the extract of school register of J.J. Shatabdi School. The Vigilance Cell has categorically recorded that the Head Master of the School has confirmed that the said certificate is issued by their school and entries made in the said certificate are as per the original record. Thereafter, the General Register was verified, however, the same was found to be in very old and completely torn condition and none of the entries could be read. It was found that all the entries made in the register are re-written with the assistance of a ball pen and in front of the applicant's name, the word "Hindu" is written by Ink pen and Leva Patidar is written in ball pen. We have examined the General Register which is produced by Shri Godbole and there is sufficient substance in the finding of the Committee in arriving at such a conclusion merely because the Head Master says that the entries were as it is, the document cannot be relied upon in absence of its original being produced. The original record was called for verification by the Committee and the Committee has noted that it was examined by everyone, including the petitioner. The said document has, therefore, been rejected by the Committee. We do not find any perversity in the said finding recorded by the Committee which is based on the documents verified by

Vigilance Cell and produced before it. The said two documents, therefore, could not conclusively establish the claim of the petitioner as its originals are in a destroyed state and without verification of the said documents from the original documents, it cannot inspire any confidence.

33. Learned counsel for the petitioner has also strongly relied on the material produced before the Scrutiny Committee to establish that her family was a resident of State of Maharashtra prior to 1967 and it includes the village 7/12 extracts of the grand-father of the petitioner. The said document was verified by the Vigilance Cell and on the application made by the complainant on 4th August 2017, the original record of the said document was called before the Committee and it was perused. The entry of Bhana Kika Patel of the year 1938-39 made in the said document is found by the Committee in different handwriting than that of others. The Committee observed that the writing seems to be old but it is difficult to guess about the ink used in the writing. The said document do not contain any remark about the applicant's residence and caste. Another document produced on record is recording the name of great grand-father of the petitioner in the voters list of the year 1966. The voters list produced on record are for the years 1960 to 1964 and name of Patel Bhana Kika - grand-father of the petitioner is at Serial No.2461 and name of one Gajari Bhana is at Serial No.2463. The address mentioned is M.H. 17E, Bhaga Revla Patil Shed. However, in the voters list published on 1st January 1966, which was produced by the complainant Nitin Salagre containing the name of the great grand-father of the petitioner. The address is mentioned as Yusuf Umar Chawl, Patel Bhana Kika, aged 28 years and Patel Gajriben Bhana, aged 26 years. Learned counsel Shri Godbole would submit that the said document cannot be considered as authentic and is a simple manipulation, since going by the said document which is of the year 1966, the age of the applicant's great grand-father is shown as 28 years and in the school leaving certificate submitted by the applicant, the petitioner's father Bhachubhai Harjibhai Patel is born in the year 1941. It would thus give rise to a conclusion that at the time when Bhachubhai was born, the applicant's great grand- father Bhana was three years old, which is a sheer mockery and therefore, the Committee has rejected the said document. The petitioner has also placed reliance on the receipts issued by Shri T.S. Gaikwad, A. Gaikwad chawl, Satamwadi, Chakala Road, Andheri (East) dated 20th September 1972 for the year 1982 where the name of the applicant's father Bhachubhai Hirji Patel is recorded. The said receipts were verified by the Vigilance Cell. Statement of one Smt.Sangeeta Dhondiram Gaikwad who claims to be the daughter of the person who has issued those receipts is recorded. She confirms her father's signature. However, this do not prove the genuineness of the receipts and the Committee records that the receipts are freshly prepared and are not old. In the Home Enquiry, the Vigilance Cell has recorded that the native place of her father is Post: Bacchav, Taluka Adhoi, District Kaccha, where the applicant's ancestors were engaged in activity of farming and other farming related works for their survival. The father of the applicant came to Mumbai in search of work and he

was frequenting between Mumbai and his original place of birth, and therefore, the Committee has concluded that the forefathers of the applicant were never permanent residents of Maharashtra State on or before the cut-off date of 1967. The Committee has therefore arrived at a conclusion based on the documents produced before it, on examining the three Vigilance Cell reports that the petitioner do not belong to Leva Patidar caste as claimed by her. It also negated the contention of the petitioner that her forefathers were residing in State of Maharashtra prior to the due date. The Committee has therefore, rightly rejected the claim of the petitioner. The finding recorded by the Committee is borne from the record which is produced before it and in absence of the original documents being in existence, the certificates produced by the petitioner to prove her claim were accorded as appropriate treatment at the hands of the Committee and we do not find any flaw in the conclusion derived by the Committee in terms of Section 8 of the Act No.XXIII of 2001. The burden is upon the applicant who stakes to prove such a claim and this burden can be discharged by producing the documents like the School Leaving Certificates, the extracts from the school admission register, extract of the birth register etc. The petitioner has made a feeble attempt to place on record the documents of her father but both the two documents did not find favour with the Committee since its originals were not produced and the Committee has rightly observed that mere extracts or certificates issued and a statement of a person that is true and correct is not sufficient proof of its genuineness. The Committee has afforded enough opportunity to the petitioner by supplying the copy of Vigilance Cell and it is not the grievance of the petitioner that her say was not taken into consideration. The Committee, on exercising its powers conferred on it, has even summoned the attendance of Head Masters, Tahsildars to prove the said documents and has recorded submissions of the said persons, but ultimately has concluded that the petitioners do not belong to Leva Patidar.

We do not find any perversity in the order passed by the Scrutiny Committee since it has considered the material produced by her in detail and has arrived at a conclusion that the petitioner is not able to establish his claim. Petition, therefore, deserves to be dismissed.

B. Writ Petition 146 of 2018

Petitioner - Murji Kanji Patel

34. The said petitioner also claims to be belonging to Leva Patidar, Nomadic Tribe which is recognized as Other Backward Class in State of Maharashtra. The petitioner has proceeded to state that his family surname is Manodara and Patel a titular surname on vide gazette notification dated 13.09.2007 he has changed his surname to Patel. He obtains a caste certificate on 16.01.2017 from the Deputy Collector, Mumbai City which certified that he belongs to Leva Patidar Caste. The petitioner contested the election from Ward No.81 of the Mumbai Municipal Corporation, which was reserved for Backward Classes of citizens. The election was held on 21.02.2017 and the result was declared on 23.02.2017 and

the petitioner secured highest number of votes from Ward No.81.

The claim of the petitioner was made over to the respondent No.4-Committee. He placed reliance on several documents including his caste certificate dated 16.01.2017. He also submitted a school leaving certificate issued by the Headmaster YJS Gujarati Night High School, Mumbai. He also relied on the school leaving certificate dated 08.06.1997 issued by the Principal of Children Academy, Mumbai in favour of his father Shri.Kanji Lira Patel where the caste is shown as Leva Patidar. Certain other documents were placed on record but they did not reflect the caste. The copy of birth certificate dated 24.11.1974 issued by the Medical Officer, Health Department, MCGM in favour of his father was also submitted where the caste is reflected as Leva Patidar.

35. Opposing the claim of the petitioner, one Shri.Sandeep Naik, Santosh Giri, Smt.Jyoti Madhukar Girje and Shri.Omprakash Rajkumar Bhargave raised objections. The Police Vigilance conducted an enquiry and submitted its report on 28.06.2017 and the Committee communicated the said report to the petitioner and asked him to respond. The Committee heard the petitioner and all the four complainants and their advocates. The Committee also called upon the representatives/Headmaster of YJS Gujarati Night School along with records in connection with the General Register and also called upon Medical Officer, F/ South, MCGM. The Committee also directed the Deputy Director, Children Academy School to remain present in respect of the claim. The opportunity was afforded for cross-examination and after hearing all the complainants and their counsel, the Committee recorded its finding. Perusal of the order passed by the Committee disclose that in great detail it has set out the objections raised by the complainants to the petitioners claim. The complainant raised an objection about the issuance of the caste certificate by the Deputy Collector (Entertainment Tax) in favour of the petitioner and as to whether he was ordinary resident of State of Maharashtra prior to the deemed date i.e. 13.10.1967. The Committee then proceeded to deal with the material placed on record by the petitioner to prove his claim. As far as his father's birth certificate is concerned, the Committee takes into account the report of the Vigilance Cell, which was recorded that it do not match with the original record maintained by the Health Department. The Assistant Medical Officer gives a report that the entries in the said certificate written are correct as per original record. The Committee, therefore, sought production of the original record through the Assistant Medical Officer of Health Department and noted that the entries in the certificate do not match with the General Register, Alphabetical Register and the Form. The Assistant Medical Officer had produced all the three registers, namely, the Birth record Register, General Register and Alphabetical Register. On examination of the records, the Committee arrived at a conclusion that the letter issued by the Assistant Medical Officer do not match with the original record and therefore the said document of the father's birth record cannot be taken into consideration.

36. Another document relied upon by the petitioner is his father's school leaving

certificate issued by the Principal, Children Academy dated 08.06.1997. The said certificate records the date of birth as 16.07.1939, date of admission on 13.06.1948 and the caste as 'Leva Patidar'. The Committee records that the said date on which the certificate, was issued was Sunday. In order to verify the genuineness of the said certificate the Vigilance Cell Report submitted on 08.08.2017 was relied on which reports that no record of the said school is to be found nor there is any order leading to a conclusion that the record is transferred to any other school. The Education Inspector has gone on record to state that no record of the school is traceable. In these circumstances, the Committee disbelieved the said document. Apart from this fact, the petitioner had categorically made a statement in his affidavit that his father was residing at Mazgaon, Girgaon in rented premises however in absence of documentary evidence being brought on record like in the form of voters list, rent agreement, rent receipt and electricity bills etc, the Committee did not accept the contention of the petitioner that his ancestors were residing in Mumbai prior to the cut off date. The petitioner had placed on record a copy of the survey map which was also subjected to the enquiry through the Vigilance Cell and it endorsed that on enquiry with the District Land Record Officer, Borivali, Tahsil Office, one head clerk and peon of the land record gave xerox copy of the original record when the original was sought for. It was informed that the office of District Land Record, Bandra is closed, some of the papers were transferred but it was also informed that the copy of the said map does not belong to their office. It is the contention of the petitioner that survey was conducted in the year 1960 and copy was sought in the year 2000 but the Committee did not accept the said statement of the petitioner and did not consider the said document as demonstrating that the ancestors of the petitioners were residing in Mumbai prior to 13.10.1967. On the contrary, the Committee concluded that the certificate produced by the petitioner about his father's birth is false and in fact the applicant and his father were residing in Gujarat and it was only in the year 1989 the applicant migrated to Maharashtra for the purpose of the education. The Committee also records that petitioner has produced false document to prove that his father was residing in Maharashtra i.e. 1937 and he also obtained a caste certificate by furnishing false and bogus documents. It is also held that the Committee that the Deputy Collector (Entertainment Tax) could not have issued caste certificate to the applicant since his forefather was not ordinary resident of Maharashtra prior to 1937. As far as the claim is concerned, the committee has concluded that there is no material brought on record to demonstrate that the petitioner belongs to Leva Patidar caste and by the impugned order, the Committee has rejected the claim. The submission of the learned senior counsel do not persuade to us to take a different view.

37. The birth extract dated 23.11.1974 which is alleged to have been issued in the name of the father of the petitioner and the birth certificate was heavily relied upon by the petitioner. The extract bears registration No.E702180 of 1974. The said very document was referred to the enquiry to the Vigilance Cell was

person visited to Public Health Department, MCGM and noted that the original District Register No.2180 has been completely manipulated. The respondent No.5 has placed on record the said document along with his affidavit filed on 07.06.2018. Perusal of the said document would make the manipulation so obvious. Attempt has been made to tamper the entire document to suit the convenience of the petitioner. The District Registrar, Register No.2180 is specifically manipulated and the document is self-speaking and we are aghast to take note of the manipulation. The manipulation is so glaring. The manipulation is further apparent if one compares this registration No.21605 with the Alphabetical Register of the year 1939 which shows the entry of one Limba Ambaji Savitribai. Perusal of the Birth Register of MCGM in relation to No.21605 dated 16.07.1939 also confirms that the original record stands in the name of Limba Ambaji Savitribai which is manipulated to read Lira Ambalal Patel. The whole manipulation has been brought on record by the Vigilance Cell attached to the Respondent No.4-Committee. Not only this, the enquiry was conducted into the said aspect and the report has been tendered to the Health Officer, Public Health Department of the MCGM. The instructions have been issued to take appropriate steps to curb such manipulation. We have also gone through the reports and noting of the MCGM reflecting a gross case of manipulation. Further, the Police Inspector attached to the Police Vigilance Cell, on verification of school records of the father of the petitioner has reported on 08.08.2017 that the said document is fraudulent. It is recorded in the said report that on factual verification the said school was in existence but there is no record available of this Children Academy nor there are any orders saying that it was transmitted to any other school. Further, no information could be gathered about the grant or permission in favour of the said school. As far as the school leaving certificate of Hejibhai V. Patel, Chandan Wadi Municipal School is concerned even the said school was found to be closed and on enquiry it is noted that the name of the said school do not find place in the list of secondary school. It cannot be said to be mere coincidence that all the documents placed by the petitioner are from the school which is placed no record are closed. We do not intend to make any more comment on the said issue however, in absence of the original document being produced, we do not find any fault in the Committee in arriving at a conclusion that the documents produced by the petitioner are false and cannot conclusively establish the claim of the petitioner.

The rejoinder of the petitioner place on record rent receipt issued by one Bai Rehmata Bai w/o Seth Haji Zakeria Haji Hemat Patel Wakf and the endorsement cannot conclusively establish that the ancestors of the petitioner were residing in Mumbai prior to the cut off date. These are the documents which were being produced for first time in this Court and were not placed before the Committee for its verification and therefore the said document cannot be relied upon at this stage. The Committee has recorded the finding that the petitioner was not able to establish his claim and the burden lies on him to establish the same in terms of Section 8 of the Act cannot easily be brushed aside.

We have not heard the learned counsel for the petitioner making any grievance about the opportunity not being offered. The petitioner has placed on record a detailed response to the Vigilance Cell report dated 28.06.2017 and the Committee has taken into consideration the said reply analyzing the same in light of the document placed on record by the complainant along with the finding of the Vigilance Officer. In such circumstances, we are not satisfied that the order of the Committee calls for any interference.

Note: Perusal of the said document which is a report of birth in City and Island of Mumbai and reflects the date as 20.07.1939 contains a number "21605" at the top and the date of birth is mentioned as 16.01.1939. The name of the father is written as Nira Ambalal Patel, name of the mother is recorded as Jesubai. The District Registrar, register number is recorded at the bottom as 2180. However, the Alphabetical Register of Birth in the year 1939 as Register No.21605 has the entry of Lima Ambaji Savitribai. Further, the extract from the birth register also records the name of Lima Ambaji Savitribai at Serial No.21605. The said manipulation is thus apparent.

We are therefore, not persuaded to find any illegality or perversity in the order passed by the Scrutiny Committee and we are not inclined to interfere in the said order in exercise of our writ jurisdiction. Petition thus deserves a dismissal.

C. WRIT PETITION 145 OF 2018

Petitioner Sudha Shambhunath Singh

38. The petitioner in this case claims to be belonging to Koyari Caste which is recognized as Other Backward Classes in State of Maharashtra and finds place at Serial No.85. The said caste was inserted in the list of Backward Classes by Government Resolution dated 30th January 2014. The petitioner obtained a certificate from the Deputy Collector, Sanjay Gandhi Scheme, Mumbai Suburban District on 13th January 2017. The said certificate has been issued after following the prescribed procedure. The petitioner contested the election of Ward No.67 which was reserved for Backward class of citizens and she also forwarded her claim for verification to the respondent no.4 Committee through an application dated 25th January 2017. Election was held on 21st February 2017 and the result of the election was declared on 23rd February 2017. The petitioner came to be declared as elected from Ward No.67.

39. The petitioner placed reliance on the following documents in support of her claim before the respondent no.4 Committee.

(i). Caste certificate dated 13th January 2017 issued by the Deputy Collector, Sanjay Gandhi Yojna, Mumbai Suburban District certifying that petitioner belongs to Koyari caste which is recognized as Other Backward Class in the State of Maharashtra. A copy of the said caste certificate is annexed at Exhibit-B to the petition.

(ii). Petitioner's Birth Certificate dated 16th February 1964 issued by Block

Development Officer, Gaunda, Uttar Pradesh. A copy of the said certificate dated 16th February, 1964 is hereto annexed and marked as Exhibit "F".

(iii). Petitioner's father's School Leaving Certificate dated 18th December, 1965 issued by the Head Master, Guilder Tank, Ucch Prathamik School, wherein petitioner's father's date of admission is mentioned as 1st August, 1950, date of birth is mentioned as 23rd December, 1937 and caste is mentioned as Hindu Koyari. A copy of the said School Leaving Certificate dated 18th December, 1965 is hereto annexed and marked as Exhibit "G".

(iv). A certified extract of electoral roll for the period between 20th December, 1956 to 19th December, 1960 issued by the Election Officer on 23rd March, 1986, wherein the name of petitioner's grandfather - Singh Baldev Mathuraprasad is shown at Sr.No.1235 of the electoral roll of 76-K/west. A copy of said extract of electoral roll for the period between 20th December, 1956 to 19th December 1960 is hereto annexed and marked as Exhibit "H".

40. During the Vigilance Cell enquiry, the petitioner also tendered a leave and licence agreement dated 25th July 1967 executed between Swami Haridas Jagan, the lessor and the petitioner's father Balakdas Haridas Joshi, the lessee. The case of the petitioner is that the Vigilance Cell which submitted its report on 15th June 2017 verified the documents and it substantiated the claim of the petitioner as belonging to Koyari caste and also that her ancestors were residing in State of Maharashtra prior to 1967. The petitioner was again issued

with a notice dated 22nd/ 23rd June 2017, thereby informing the petitioner that the claim of the petitioner was considered but the Committee is not yet satisfied with the claim social status as claimed by the petitioner. Learned counsel appearing for the petitioner submits that the Committee did not dispute the findings of the Vigilance Cell. According to the petitioner, the complainant i.e. respondent no.5 submitted a voters list of Ward No.33 of MCGM for the period commencing from 28th December 1960 to 19th December 1964 of Dadar area and this list was sent for verification to the Vigilance Cell and the Vigilance Cell recorded a finding that prior to 1960, ward number of Dadar area would be different and since the voters list of 1960 are not available with the Election Officer, the concerned Officer was not in a position to state anything about the ward formation prior to 1960. This report of the Vigilance Cell is dated 10th August 2017. The petitioner had categorically put her case in her reply where she had stated that she had lodged an FIR with the Versova Police Station long back on 14th November 2003 in respect of a theft which took place at the residence of a relative like her sister and several articles and documents were stolen. The case of the petitioner is that the documents tendered by her were verified by the Committee through the Vigilance Cell and a positive finding has been recorded in the report dated 15th June 2017 and no adverse or contradictory material has been brought on record. The documents were duly verified through Vigilance Cell in the Home and School Enquiry and it is the case of the petitioner that the Committee, however, did not accept the Vigilance Cell

report on a flimsy ground and rejected the claim of the petitioner. Learned counsel for the petitioner has placed reliance on the Division Bench judgment of this Court in case of

Lawrence Salvador D'Souza Vs. State of Maharashtra and ors, 2016(3) All MR 717 where the Division Bench has considered the effect of Rule 17(11) of the Rules of 2012 and the said Rule has been held to be mandatory and failure to issue notice before invalidation of the claim has been frowned upon. The petitioner also submits that though the order is a lengthy one, the findings are recorded in a summary manner and no reason is cited by the Committee to deviate from the findings recorded by the Vigilance Cell.

41. The claim of the petitioner was opposed by respondent no.5 and 6 before the Committee and the respondent no.5 has also supported the order passed by the Committee and vehemently opposed the petition. We have heard the respective counsel for the parties and also perused the record produced before us. The petitioner has placed reliance on the caste certificate issued in her favour and also a birth certificate issued by the Block Development Officer, Gaunda, where her date of birth is recorded as '16/2/1964'. The focal point of the decision of the Committee is the School Leaving Certificate dated 18th December 1965 issued by the Head Master of Gilder Tank Gujrati School, Sub-Primary Municipal Gujrati School, Mumbai in favour of the father Shri Banarasilal Baldev Singh. The said certificate records the caste of Banarasilal as 'Hindu Koyari'. This document is the bone of contention between the parties. In order to verify the truthfulness of the said document, the original record in relation to the said document was called by the respondent no.4 Committee and one Ashok Parmar was called by the Committee who stated that the General Register does not bear the name of said Gilder Tank School and the name of the school is recorded as Jagannath Shankar Sheth School. He proceeded to state that the entire record of the school is re-written and he is not aware as to when it happened. He also stated that he was not aware that any permission of Education Officer was taken for rewriting of record. The Committee has discarded the said document by doubting its genuineness on the ground that it is clear from the examination of the school representative by the Advocate for the complainant that the School Leaving Certificate of the father on which reliance is placed by the applicant as proof for caste is from a re-written register and not from the original record register and there is no evidence adduced as to when this document was issued. According to the Committee, the school representative was not able to give correct information to the questions put to him and therefore, the said document cannot be said to be admissible proof in support of the claim of the petitioner.

The case of the petitioner is that several old schools in 'C' and 'D' ward were merged with other schools and Gilder Tank School was initially merged with Jagannath Shankar Sheth Gujrati School which subsequently merged with Khetwadi Gujrati School. Petitioner has placed on record the said document of merger and the chart prepared by the Education Officer on 20th November 2009

disclosing that around 18 schools were merged in Jestharam Premji Municipal Primary Gujarati School. The name of the Gilder Tank school is included at Serial No.16 and name of Jagannath Shankar Seth school finds place at Serial No.14. The petitioner has placed on record various orders of the merger of these schools. Further, the petitioner has also placed on record a chart dated 27th April 2007 received by the petitioner from Jestharam School where the information is submitted to the Administrative Officer (School) 'C' Ward with regard to merger of several schools and the various records of the said school. In the said chart, name of Gilder Tank Gujarati School is at Serial No.16 and General Register of this School is shown to have been transferred. The petitioner is also able to procure a letter issued by Jestharam Gujarati School addressed to the Administrative Officer (School) 'C' Ward seeking permission to destroy the old and tattered record of Jagannath Shankar Seth Gujarati School, Null Bazar Gujarati School and Khetwadi Gujarati School which was merged with Jestharam Gujarati School and the permission for which was granted on 28th July 2002. The petitioner has also placed on record another letter dated 3rd August 2017 issued by the Head Maser of Jestharam Primary Municipal Gujarati School in which the Gilder Tank school was merged and it is informed by the said letter that the records mentions therein clearly indicate that the old and new register is of Gilder Tank School and the said School Leaving Certificate is genuine. It is thus clear that the record of the Gilder Tank School was transferred and it ultimately merged with Jestharam Gujarati School. No other doubt is expressed by the Committee on the said document and the letter which is issued by the Committee which is placed on record in form of Annexure 'BB' addressed to the Scrutiny Committee clearly mentions that the name of Gilder Tank School is in the register and the copy of the School Leaving Certificate which contains the information which is included in the General Register and it also bears the stamp of Gilder Tank Gujarati School. The said document has not been considered by the Committee at all.

The respondent Committee has wrongly brushed aside the vital documents and also not taken into consideration the evidence rendered to the effect that the ancestors of the petitioners were residing in State of Maharashtra prior to the datum line. The enquiry conducted by respondent no.4 Committee thus suffers from the vice of arbitrariness on account of the non-consideration of the relevant material and it suffers from conjectures and surmises. The Committee has also completely ignored a Vigilance Report with regard to the Home Enquiry and there is no cogent reason cited by the Committee for discarding the Vigilance Cell report. In such circumstances, we are satisfied that the order passed by the Committee calls for an interference on account of non-consideration of the relevant materials brought on record by the petitioner to establish that she belongs to Koyari caste.

In the result, we are inclined to grant the relief claimed by the petitioner and we quash and set aside the impugned order dated 19th August 2017 passed by the respondent no.4 Committee and declare that the petitioner belongs to Koyari caste.

D. WRIT PETITION NO.3673 OF 2018 Petitioner - Tulip Brian Miranda

42. The petitioner in this petition claims to be belonging to East Indian which is notified as 'Other Backward Class' and is presently a Councillor of the Mumbai Municipal Corporation. The caste 'East Indian' came to be included in the list of Other Backward Class' by issuing a resolution on 1st March 2006. This inclusion was a result of representations of the various East Indian Companies to conduct a survey in respect of their educational, economical and social condition and to recognize their community as 'Other Backward Class'. Pursuant to the said representations, the Government of Maharashtra vide its order dated 6th August 2004 directed the State Backward Class Commission to conduct a survey and file its report. Accordingly, a survey was conducted through study based on the evidence submitted by the Association regarding Historical, Literature, Socio-Economic issues and on the basis of the literature to be verified before the Commission and this survey was conducted in Thane, Mumbai and Raigad District as the community is mostly located in these districts. The Backward Class Commission made a positive recommendation for inclusion of East Indian, East Indian Christian and East Indian Catholic as a group of communities to be included in the list of Other Backward Class. On its inclusion, in the list of Other Backward Class, the Government issued resolutions dated 1st November 2001 and 27th December 2012 and it is from this point of time, caste certificates came to be issued to the persons belonging to the said classes.

The petitioner obtained a caste certificate on 19th November 2016 from the Deputy Collector, Sanjay Gandhi Yojna, Mumbai Suburban District, declaring her to be belonging to East Indian Caste which is recognized as 'Other Backward Class' at Serial no.341 under the Government Resolution issued by the Department of Social Welfare on 1st March 2006. It was also declared by the certificate that the petitioner and her family are residents of village Kole-Kalyan, Taluka Andheri, Mumbai, Sub-District of State of Maharashtra. The petitioner contested the election of the steps of the said certificate and her claim for verification of the caste certificate was forwarded to the respondent no.5 District Caste Scrutiny Committee, Mumbai Sub-District at Bandra.

In support of her claim, the petitioner placed reliance on several documents apart from the caste certificate issued in her favour. She relied on a school leaving certificate issued by the Head Master of St. Teresa Convent High School, Santacruz in her favour. The two important documents placed on record by her are the Baptism certificate by Peris, Principal, St. Francis Xavier Church, Mumbai in her favour as well as in favour of her father Oswald John Antony Misquitta. In both the said certificates, the caste of the certificate holders is recorded as East Indian Catholic. She also placed reliance on a certificate issued by Bombay East Indian Association in favour of her father on 4th August 2015 where the caste is recorded as 'East Indian Catholic'. In order to demonstrate that her ancestors i.e. her grand parents were residents of Mumbai, she placed on record the property card issued by City Land Survey Officer, Vile Parle dated 18th May 2014 in

favour of her grand father Peter Michael Misquitta and also the 7/12 extract dated 17th August 1996 in the name of Cathrine Jao Anthon Misquitta who is her grand-mother. Reliance is also placed on record of rights issued by the Talathi, Vile Parle dated 17th August 1996 in favour of her great grand-father. The claim of the petitioner was opposed by one Mr.Benedict Denis Quinny, Oniel Anthony Quinny and one Rajesh Kumar Kanojia who are impleaded as respondent nos.6, 7 and 8 respectively to the petition. The Committee afforded an opportunity of hearing to all the complainants and also permitted them to file their submissions. The Vigilance cell enquiry was conducted and its report came to be submitted on 6th June 2017. Copy of the Vigilance Cell report was also submitted to the complainants. A show cause notice was issued to the petitioners. On the date of hearing, the counsel of Benedict Quinny made a request to verify the file submitted by the applicant where birth certificate of her aunt Emelda was to be verified. Therefore, the Vigilance Cell was directed to verify the same and the matter was fixed on 20th July 2017. In pursuance of the said directions, the Vigilance Cell submitted a fresh report on 19th July 2017. The matter was, therefore, heard by the Committee by affording opportunity to the parties and their counsel to advance their submissions. The petitioner also placed reliance on several photographs and her statement was recorded in support of a death certificate of her great great grand-father Mr.Francis Lawrence Misquitta of 1922 wherein his caste is recorded as East Indian. She also placed reliance on the book titled "Trace and the East Indians", clarifying the existence of East Indian community. The applicant also responded to the three queries raised by the Committee on 1st February 2017 and she dealt with the queries in seriatim. Learned Senior counsel Shri Sakhare appearing for the petitioner submits that the petitioner is East Indian Catholic by birth and she is a resident of village Pond, Vile Parle and her family is residing there since times immemorial. She had stated that she was born and brought up in the village of Pond, Vile Parle which was mostly populated by East Indian Catholics - the oldest inhabitants of Mumbai. Shri Sakhare had taken us to entire compilation of documents highlighting the existence of East India in the Mumbai Gazettier in Thane District. He also invites our attention to the Historical sketch which is presented by the Association of the East Indian Community consisting about a 100 thousand souls which exists to a population of almost three thousand persons belonging to the said caste located in Vile Parle. He has also invited our attention to the literature available on the East Indian community and the survey and the questionnaire adopted by the State Backward Class Commission. According to Shri Sakhare, the Committee has superficially touched the entire issue and has not gone to the root of the matter. The submission of Shri Sakhare is to the effect that since this is a community which is newly added in the list of Other Backward Class, the Committee ought to have scrutinized the claim of the petitioner as an expert and since the members of the Committee as well as the Vigilance Cell itself is not aware as to the traits of the East India, it has misguided itself and held that the petitioner claims to be belonging to East Indian Catholic herself, but she has obtained a certificate of belonging to East Indian and has approached it for its

verification. Shri Sakhare has also taken us through the order passed by the Scrutiny Committee to show that the approach of the Committee is totally misconceived. We have also heard Shri Godbole assisted by Shri Bhangoji appearing on behalf of respondent no.5. Shri Godbole has placed on record the two Baptism Certificates of the petitioner and submits that there is a stark difference in the first certificate produced by her and the second certificate contains a remark and includes the remark on the caste "East Indian Catholic" and this is the subsequent insertion, since in the affidavit filed by the petitioner herself, she had categorically stated that the Baptism certificate issued in her favour do not mention the caste. Shri Godbole has also placed heavy reliance on a certificate in favour of her aunt Emilda Vilma, where the caste is recorded as East Indian Christian and this document is of pre-constitutional period, conclusively leads to an inference that the claim staked by the petitioner as 'East India' cannot survive. He also invites our attention to the school leaving certificate issued by St. Teresa Convent High School, Santacruz, Mumbai, where her race and caste is recorded as 'Christian'. Shri Bhangoji has placed reliance on the judgment of the Hon'ble Apex Court in case of Bharati Balkrishna Dhongade Vs. State of Maharashtra, (2012) 1 SCC 566 and he submits that whether the caste or sub-caste falls under the category of Backward class, it is not open for the committee to declare that a particular candidate does not belong to the said caste, but belongs to another caste in the said list, cannot be sustained. He also placed reliance on the Division Bench judgment of this Court in case of Dattatraya Laxman Durgavale Vs.State of Maharashtra, WP 10545/2014 dtd.30/10/2017. The respondent no.6 has thus opposed the claim of the petitioner vehemently and submits that the order dated 14th August 2017 passed by the Committee, is legal and valid order. After taking into consideration the conduct of the petitioner in producing the false and fabricated documents and after taking into consideration the findings of the Vigilance Cell inquiry. The respondent specifically alleges that since the petitioner is found guilty of fabrication of documents, no benefit of any principles of equity be extended to the petitioner. He therefore, prays for dismissal of Writ Petition. The respondent no.7 has also placed an affidavit on record and the claim of the petitioner is opposed by placing on record voluminous material in form of various letters issued by the Ministry of Social Justice and Empowerment and report of the District Social Officer, Mumbai. The said respondent also makes a claim that the Samajacha Dakhla issued by Bombay East India Association to the petitioner on which the petitioner stakes her claim, needs to be cancelled.

43. We have carefully perused the material produced before us and have also considered the submissions advanced by the learned counsel. The petitioner has placed reliance on the school leaving certificate dated 30th June 1995 issued by the Head Master, St.Teresa Convent High School, Santacruz, Mumbai. In the said certificate, the date of birth is recorded as '18th November 1978' and date of admission in school is recorded as '10th May 1988'. The place of birth of the petitioner is recorded as 'Mumbai', Vile Parle and in caste column, 'Christian' is

recorded. The vigilance squad verified the said documents and found it to be true and genuine. The controversial document is the Baptism Certificate No. 110 of 1978 dated 1st November 2016 issued by Parish Priest, St. Francis Xavier Church, Mumbai. It is the Baptism Certificate issued to the applicant by the Church. The name of the applicant is mentioned as 'Tulip Luiz Beatrice' and in the remark column, the following noting is made as per Bishop's House letter dated 1st November 2016, Mrs. Tulip Luiz Beatrice Misquitta is the East Indian Christian (Membership No.M-910 dated 5th January 2016). The Committee has rejected this document on the ground that the caste is claimed as East Indian whereas this document records the caste as East Indian Catholic, and therefore, this certificate cannot be considered as a profound proof of caste. The issuance or existence of the said certificate is not doubted by the Committee. We have also considered the submission of Shri Godbole about the two certificates of Baptism being produced by the petitioner and we have carefully perused the said certificates. The first certificate which is the Baptism certificate issued by Parish Priest is dated 9th September 2015. In this certificate, there are 24 columns and the last column of remarks is blank. This certificate is obtained by respondent no.6 under Right to Information Act. What the petitioner has produced is a Certificate which is signed by Parish Priest and which is dated 15th February 2016. In the remarks column, the following endorsement is to be found as per Bishop's House Letter dated 1st November 2016 Mrs.Tulip Luiz Beatrice Misquitta, is an East Indian Catholic (Membership No.M-910 dated 5th January 2016). Further, endorsement reads thus :

"For authenticity of Extract : The 1st day of November 2016.

Verified the contents of the certificate with original Baptism register 6/5/2017.
sd/-"

It also bears a stamp of St.Francis Xavier Church, Vile Parle (West) Mumbai 400056. It is thus clear that the noting of the remarks column is inserted on 1st day of November 2016. However, since the Church itself has authenticated contents of the said certificate, after comparing with the original Baptism register, the said certificate cannot be questioned. Though it appears that the respondent has obtained a copy of the certificate dated 9th September 2015, what is in existence as on today is the certificate with the remarks above-mentioned, entered on 1st November 2016. In such circumstances, the authenticity of the said certificate cannot be doubted. Furthermore, Baptism certificate issued in favour of the father of the petitioner which contains a similar remark to the effect that Mr.Oswald John Antony Misquitta is an East Indian Catholic is also recorded on 15th February 2016. This also does not create any doubt as these are the Baptism certificates which mentions the date of Baptism which had taken place at a much earlier point of time i.e. in case of the petitioner on 17th December 1978 and in case of her father on 26th July 1942. It is the case of the petitioner that Baptism is a celebration of the community and which is done with great pomp and show in the community. She has narrated the

details about her Baptism as was described to her by her father. In any contingency, these remarks are entered as per the Bishop's House letter and they appear to have been entered into the original Baptism register.

Hence, we do not feel that there is any reason to doubt the authenticity of the said documents.

44. The father of the petitioner Oswald John Anthony is also issued with a Baptism certificate and the date of his Baptism is 26th July 1942. In the remarks column, the entry of the caste of the father of the petitioner finds place as an East Indian Catholic and the said certificate produced on record finds certified to the effect that contents of the certificate are based on the original Baptism register. It bears the stamp of the St. Francis Xaviers Church and there is no reason to doubt the said certificate since no material has been brought on record to contradict the same.

The moot question that arises and on the basis of which the claim of the petitioner has been opposed is that the petitioner herself has stated in the petition that she belongs to East Indian Catholic and the documents produced by her even if assuming to be genuine would establish her caste as East Indian Catholic. It is the case of the respondent authorities that the certificate obtained by the petitioner and which has been forwarded for verification is declaring her as 'East Indian'. Therefore, it is sought to be submitted before us by the learned counsel for the respondent that it is not open for the Committee or this Court to declare that she belongs to East Indian Catholic. We have carefully considered the said documents. The State of Maharashtra through the Department of Social Justice, Cultural Affairs and Special Assistance has issued a resolution on 1st March 2006. By the said resolution, the Government has granted sanction to the recommendation received from the State Backward Class Commission. As per the recommendations of the Committee, three Castes were inserted at Serial No. 341 of the list of Other Backward Classes with the description 'East Indian', 'East Indian Christian' and 'East Indian Catholic'. The Committee has rejected the claim of the petitioner on the basis of the record that is produced by her where the caste of the petitioner and her father is recorded as East Indian Catholic and in one of the school leaving certificate of the father, the caste is recorded as Indian Christian. The Committee has also placed reliance on the report dated 6th June 2017 submitted by Vigilance squad wherein it has made the following observations:

"In House Enquiry visited residence of the Applicant's father at Pond Gaothan, Village Vile Parle (West) the senior citizens and original residents of that area informed that Shri. Oswald John Misquitta and his family members are original residents and their ancestors were working with British regime. Even after independence, their family members in the service in Railway or Government Job. Most of the Christian families in Pond Gaothan have been staying since Portuguese regime and as a hobby they were doing fishing, hunting etc. and therefore in the said village almost in every house gun licence is there in every

house. The villagers during Portuguese and British retime were staying with the Government authorities and doing job in their offices.

One of the resident from the said village Domnic Marcos Baptista, Age 73 years, Occupation : Retired, R/o House No.31, Pond Gaothan when asked personally stated that the his ancestors, grandfather, father and he himself was in Government job. His family is not aware whether his family or ancestors had land for farming or by cultivating the same they were running family. Similarly he was knowing Peter Michael Misquitta and Oswald Misquitta who were original resident of Pond Village and they and their ancestors were also running family by doing job in Government. Other persons in their village of other caste were carrying out agricultural work. Peter Michael and his family members and ancestors are from Christian caste and religious ceremonies, traits, marriages etc. have been carried out as per practice of Christian religion.

A senior citizen from the said village John Peter Cuotinho, Aged 72 years, Occupation : Retired, R/o House No.126, Pond Gaothan when asked personally stated that he and his family members are original residents of the said village and he knows Oswald Misquitta and his family members. He was not aware about the source of income of Misquitta family in the past. Similarly he was also not aware about the holding of agricultural land. However he stated that most of the residents in Pond village used to do job and fishing etc and running the families.

45. Reference is also made by the Vigilance Cell to the statement of Shri Valerian Charley Pereira, aged 59 years and one Vilma Angelo Quity, aged 71 years who were known to the family of the petitioner. It is stated by Vilma that in Christian community, there are Roman Catholic, Protestant and Orthodox family and in Roman catholic church, generally residents reside at the bay of the sea and visit the Church, including the Christian people staying at Mangalore, Goa and Western Region and they believe in Roman Catholic Church. We have carefully perused the report of the Backward Class Commission while including group of three caste at Entry No.341. A survey was carried out in the district of Thane, Mumbai and Raigad and there are total 167 families belonging to the three caste. The entire class was found to be a backward class after examining their educational, financial and social status. The finding is recorded that the said group carries out agricultural occupation and labour, but there is no fixed source of income and the educational level of the community is very low.

The Committee makes a reference to the report of the Commission and observes that the survey carried out by the Commission, the information recorded and the criteria fixed are not applicable to the applicant because there is no similarity in the same. The Committee further records that none of the family members of the applicant are engaged in agricultural occupation, nor they are working as labour in field and it is stated that their hobby is hunting. The Committee also concludes that the applicant's family and ancestors are permanent residents of Mumbai and their financial status is not as bad as stated in the report and on the basis of the 7/12 extract of the property card in the house enquiry and survey from the

ancestors of the applicant. It is clear that they were never cultivating land and rather they were engaged in job and earning a livelihood out of that. The Committee, therefore, concludes that the applicant is not falling in the group recommended on the basis of criteria fixed by the backward class commission.

46. We have perused the report of the Backward class Commission and the material which was placed before the Commission which is in form of certain literature. The literature placed on record makes the following observations :-

"The present Christian population of Bombay, Salsette and Bassein, know as " East Indians"may rightly trace their descent from the natives who most probably first saw the light of Christianity at the hands of the Franciscan missionaries in the early part of the sixteenth century (1534 -38) and after 1542 at the hands of the Jesuit fathers under St. Francis Xavier and his successors. The converted Christians were composed of Bramhins, Prabhus, Panchkalshis, Charkalshis, Sonars, Khattris, Bhandaris, Kharpatels, Kunbis, Kambhars, Nahvis, Dhobis, Kolis, Mhars and Chamars and in some converts were Mussalman weavers. As the converts made by the Portuguese were not obliged to give up their caste distinctions; their descendants have retained many of them and many of them can tell of what caste his family belonged before conversion.

Among all converted Christians adopted Portuguese name. Among the educated Christians they are unaltered but among the lower classes and the uneducated, they are so transformed as to be scarcely recognizable. Such name as Sabastian is written and pronounced as Bastao, Manuel as Munnoo, francis as Fursoo, Gonsalves as Gosal, Da Dilva as Seal and so on. The difference is most probably due to the dialect of the Marathi language spoken by these people. In order to arrive at a satisfactory solution of the problem in hand, it is necessary to trace, in as precise a manner as possible, the descent of the term "East Indian" by which the present East Indians community is "appropriately" known By the Charter of 21st December 1600, the East India Company, then known as "Governor and Company of Merchants of London trading to the East Indies" obtained the privileges of trading to the "East Indies", that is, according to James Mill, to all places beyond the Cape of Good Hope and the Straites of Magelhaes. Indian being the center of trade and commerce was commonly called the by the trading nations of the West. Consequently, the term "East Indian" was adopted by all the classes in to distinguish the descendants of Europeans and native mothers (Cyclopedia of India Vol I, A-Gyr)

47. The East Indian or East Indian Catholic is described in the Wikipedia as the Ethno-Religions Indian Christian Community who are members of Catholic Church. They live primarily in the city of Mumbai, with smaller population of portions of Palghar and Thane district in the Indian State of Maharashtra. The history about the East Indians disclose the following descent :

Pre-Portuguese Era

According to tradition, Bartholomew the Apostle visited India and elsewhere

during the first century AD. The Dominican friar Jordanus Catalani, who was Catalan or Occitan (southern French), began evangelizing in Sopara, Thana and north Konkan. Sopara was an ancient port and an international trading center.

Most Indian church history was lost between the ninth and fourteenth centuries as Persia converted to Nestorianism in 800 AD. Since church offices and public worship was dependent on a foreign source, when the foreign aid was withdrawn Indians became nominal Christians.

Portuguese era

Main article: History of Bombay under Portuguese rule (1534-1661)

The Portuguese came to India in 1498, and their policy was to return the Indian Christians to Roman Catholicism. (1) Although Brahmins and other high- status Hindus who were ceremoniously converted by the Portuguese were treated with honor and distinction, (1) groups engaged in agriculture, fishing and other rural occupations handed down by their ancestors received neither secular nor religious education.(1) Among the Portuguese converts were a number of descendants of the Christian community reportedly founded by Apostle St. Bartholomew, (1) whom the Portuguese molded into a community (1) sometimes known as "Portuguese Christians".(1)

The Franciscans spearheaded the evangelization of the "Province of the North" (Província do Norte). From 1534 to 1552 a priest, António do Porto, converted over 10,000 people, built a dozen churches and founded a number of orphanages and monasteries. Prominent among the converts were two yogis from the Kanheri Caves who became known as Paulo Raposo and Francisco de Santa Maria. They introduced Christianity to their fellow yogis, converting many in the process. Another notable convert during this period was the Brahmin astrologer Parashuram Joshi, who was baptized on 8 September 1565 with the name Henrique da Cunha. Joshi was followed by 250 Hindus, including over 50 Brahmins. In Salsette, the priest Manuel Gomes converted over 6,000 Hindus in Bandra and was known as the Apostle of Salsette.

In 1573, 1,600 people were converted. Beginning in 1548, Jesuits in Bassein (Baçaim) and Bandra converted many upper-class Indians; Bassein Cathedral recorded 9,400 baptisms. The Jesuit superior Gonçalo Rodrigues baptized between 5,000 and 6,000 people in Thane (Tana), many of whom were orphans or the young children of lower-caste Hindus who were sold by their parents. By the end of the 16th century the Roman Catholic population of the Portuguese Province of the North was 10,000 to 15,000, centered mainly in and around Bassein.

After the defeat of the Portuguese by the Maratha, Catholics were discriminated against by the state government. Following the fall of Bassein, many Catholics were heavily taxed by Maratha who used the money to feed Brahmins and conduct a successful campaign to return them to Hinduism. Most Portuguese

priests were forced to leave, and only five churches (three in Bassein City, one in Bassein District and one in Salsette) were permitted to remain. The remainder of the Christian population was left to native clergy under a vicar general in Kurla. When Antequil du Perron visited Salsette in 1757, he found a flourishing Catholic population with many churches rebuilt and Christianity practiced openly but no European priests.

British and modern eras

Main articles: History of Bombay under British rule and Bombay Presidency.

Changes occurred under British rule. On 11 May 1661, the marriage treaty of Charles of England and Catherine of Braganza -Catarina de Bragança, daughter of King Joao IV of Portugal-made Bombay part of the British Empire as intended since the British takeover of Surat (allegedly as part of Catherine's dowry to Charles). A weakened Portugal, no longer part of the Crown of Spain, had to oblige. Nevertheless, parts of present-day Mumbai (such as Bandra, Thane and Vasai) remained Portuguese well into the first third of the 18th century.[9] Since the early days of the East India Company, there were no other Indian Christians in the North Konkan except the East Indian Catholics. Employment intended for Christians was monopolized by the East Indians. With railways and steamships came immigrants from Goa who were also known as Portuguese Christians. The British adopted a designation which would distinguish the Christians of North Konkan (who were British subjects) from the Goan Catholics, who were Portuguese subjects (the Mangalorean Catholics were no longer Portuguese subjects). For Queen Victoria's Golden Jubilee, the Christians of North Konkan changed their name from "Portuguese Christians" to "East Indian" to impress on the British government of Bombay that they were the earliest Roman Catholic subjects of the British Crown in that part of India and were entitled to certain natural rights and privileges compared with the immigrants.

The Bombay East Indian Association was founded on 26 May 1887 to advance the education, employment, rights and economic development of the East Indians. P. F. Gomes, who was knighted by Pope Leo XIII in 1888, was its first president and J. L. Britto its first Secretary. D. G. Almeida donated ₹ 100,000 to establish an education fund.

During the 1960s, the Archdiocese of Bombay estimated that there were 92,000 East Indians in Bombay: 76,000 in suburban Bombay and 16,000 in the city.

In September 2014, local non-governmental organizations such as the Watchdog Foundation, Mobai Gaothan Panchayat, the Bombay East India Association, Vakola Advanced Locality Management, Kalina Civic Forum and the Koloverly Welfare Association formed the Maharashtra Swaraj Party (MSP). The party, which represents the East Indian community, was expected to support five candidates from Mumbai's suburbs in the 13th Maharashtra Legislative Assembly elections.

The other material which is placed on record by the Association of the East Indians before the Backward Class Commission is also on similar lines. The Backward Class Commission has included in the list of the backward classes a group of East Indian', 'East Indian Christian' and 'East Indian Catholic'. The Scrutiny Committees which are experts to find out the Ethno- logical and Anthropological traits of a particular community should be aware of such traits and in order to ascertain whether the candidate belongs to a particular caste or tribe must be in a position to find out whether he satisfy the said test. When it is observed that the Backward Class Commission that the East Indian Catholic Community approximately of 3.5 lakhs are the original inhabitants of Mumbai, Vasai, Thane and Raigad districts and the Backward Class Commission had recommended inclusion of all the three castes in the list, it was incumbent on part of the Scrutiny Committee through its research officer to identify the distinct traits of each of the caste. Merely on the basis of the observations by the Commission that the East Indians were engaged in the business of agriculture and the family of the petitioners were not engaged in the said occupation, but were engaged in services, is no ground to reject the claim. From the material placed on record, there can be no doubt about the fact that the East Indians are Christians. Christian refer to a follower of Jesus Christ who may either be a Catholic, Protestant, Evangelical, Anglican or Orthodox. A catholic is a Christian who follows the catholic religion as transmitted through succession of Pope. Thus, Catholicism is the largest denomination of Christianity. All Catholics are Christians but all Christians are not Catholics. The documents produced by the petitioner describe that she and her ancestors are following Christianity and some documents disclose her caste as East Indians whereas some documents disclose her caste as East Indian Catholic. The fact that the commission has listed the three caste together and in one group, is on the basis of a representation collectively moved by the said community. The line of distinction between the three castes enlisted at Sr.No. 341 of the Backward Class list may be thin and fine and that is what precisely the Committee is expected to do. It cannot merely pick up the traits of a particular community noted by the Backward Class Commission and apply the same to the family of the petitioners and conclude that since they are not engaged in agriculture, she and her ancestors cannot be East Indians. The petitioner in her reply to the Vigilance Cell has given list of the traits reflecting the culture followed by the East Indian. The Committee has not bothered to ascertain whether they were the true traits of East Indian caste and as to how they are distinct from East Indian Catholic. It is no doubt true that it is not within the domain of the Caste Scrutiny Committee to declare a person to be belonging to Caste 'B' when he claims to be belonging to Caste 'A'. The only course available to the Committee is to reject the claim of Caste 'A' which has been put forth before it, but it cannot give a declaration that the candidate do not belong to Caste 'A' but belong to caste 'B'. We are quite conscious of the said legal position. However, we are not satisfied with the approach of the Committee who has merely picked up a paraphrase from the report of the Backward Class Commission and conclusively held that the

petitioner do not belong to East Indian Caste. Another aspect which requires consideration is an additional affidavit filed by the petitioner before this Court on 18th April 2018. In the said affidavit, the petitioner has made the following averments :

1. I have filed the present Writ Petition challenging the legality and correctness of the impugned judgment and award dated 14/08/2017 passed by the Ld. District Caste Certificate Scrutiny Committee, Bandra, Mumbai, whereby the Ld. District Caste Certificate Scrutiny Committee has rejected my caste claim as belongs to "East Indian" which is notified as "Other Backward Class" vide Government Resolution dated 01/03/2006. That, during the Verification Proceeding before the Ld. District Caste Certificate Scrutiny Committee, Bandra, Mumbai, I have filed various documents in support my caste claim as belongs to "East Indian" such as Revenue Records, School record, Church Record, etc.

2.. That, I repeat and reiterate all the contents and submissions of the Petition. That, on account of discovery of valuable documents viz. School Records Documents of my Late Grandfather Pater Michael Misquitta which are permanent while considering my Caste Claim hence I am filing this present additional affidavit.

3.. That, during the pendency of present Petition, I again made an attempt to search and obtain document of my family to substantiate Caste Claim and during the said process, I though my acquaintance came to know that my Grandfather was serving with the Indian Railway.

4. That, on going deeper I came to know that my grandfather had initially studied at St. Xavier School, Vile Parle, Mumbai. That, on enquiry with St. Xaviers School, Vile Parle, Mumbai, I was informed that the said school did not possess any record prior to 1965.

5. That, on further enquiry with the family members I learnt that my Grandfather further studied at St. Stanislaus High School at Bandra, Mumbai. That, on enquiry with the Principal (Primary Section) of St. Stanislaus High School, the Petitioner was informed that as per the record of the School, the Grandfather i.e. Late Peter Michael Misquitta was admitted in their School on 05/06/1925, however, they denied to give any details by stating the rules and norms of the School.

6.. That, on 20/03/2018 I find appropriate application along with necessary affidavits and documents as required by the Principal of St. Stanislaus High School, in the name of my father Mr.Oswald Misquitta.

7.. That, on 23/03/2018, the Principal of St. Stanislaus High School, Bandra issued a School Leaving Certificate of the Grandfather of Late Peter Michael Misquitta wherein the Caste is mentioned as "East India" That, the School Leaving Certificate is issued on the basis of School Admission Record Book of the year 1925. The copy of School Leaving Certificate of the Grandfather of Late

Peter Michael Misquitta is annexed herewith and marked as Exhibit "A1"

8.. That, the Principal of St.Stanislaus High School, Bandra, Mumbai also given a copy of School Leaving Certificate of the previous School namely St. Xavier School, Vile Parle in which my Grandfather of Late Peter Michael Misquitta was studied upto Standard III. The Principal of St Stanislaus High School, Bandra also showed me, the Original Extract of the School Leaving Certificate issued by St. Xavier School, Vile Parle however declined to issue certified copy of the said School Leaving Certificate by stating reason that since the original is not issued by their School namely St. Stanislaus High School, Bandra, Mumbai, it cannot certify the same. The copy of School Leaving Certificate of Later Peter Michael Misquitta issued by St. Xavier School, Vile Parle, Mumbai is annexed herewith and marked as Exhibit "A2".

9.. That, the original Record and Extract in respect of documents annexed at Exhibit "A1 and A2" are in possession of Principal of St. Stanislaus High School, Bandra, Mumbai.

The said documents were not placed before the Committee at the time when her claim was scrutinized. The said documents are of grave importance since they are of pre-constitutional period and has great probative value. The petitioner has made a categorical statement that the original record and extract in respect of both these documents are in possession of the Principal of the said school. The petitioner has also cited reason as to why these documents were not brought before the Committee on the earlier occasion. We have perused the said affidavit and we are of the opinion that the petitioner deserves one opportunity to be afforded to take these documents before the Scrutiny Committee and the Scrutiny Committee should examine the said documents. This is for the reason that we are otherwise not convinced with the reasoning of the Scrutiny Committee in rejecting the claim of the petitioner, but if the Committee wants to re-affirm its views, it can conduct an in- depth inquiry about the cultural traits and peculiar characteristics of the caste claim by the petitioner and while doing so, it may also take into consideration the new evidence which is establish before us through the said affidavit.

For the aforesaid reasons, we are inclined to allow the Writ Petition and remand the matter back to the Scrutiny Committee for its reconsideration, specifically for ascertaining the traits and characteristics of the caste claimed by the petitioner and also for examining the additional documents brought on record.

E. Writ Petition No.147 of 2014 Petitioner Rajpati Bargun Yadav

48. By the said petition the petitioner has assailed the order passed by the respondent No.4 - Scrutiny Committee on 21.08.2017 thereby rejecting the claim of the petitioner as belonging to Yadav Caste, which is recognized as Other Back Ward Class. The petitioner claiming to be belonging to the said Caste obtained a certificate on 03.10.2016 certifying that the petitioner belongs to Yadav Caste which was recognized as

Other Backward Class by Government Resolution dated 05.10.1979. The petitioner came to be declared as elected from Ward No.228 for which the elections were held on 21.02.2017. Her claim was made over to the respondent No.4-Committee. The petitioner placed reliance on the following documents in order to establish her claim.

Sr. No.

Particulars of evidence/documents

Relation with Applicant

Entry of caste

2

The School Leaving Certificate Reg. No.87, dated 04.05.1979 issued by Head Master, Pal Rajendra Hindi High school, Kandivali Mumbai, in favour of Shri.RajpathiBargun Yadav

Self

Hindu Yadav

3

The Birth Certificate No.HW295 dated 14.01.1969 issued by the Health Department, Municipal Corporation of Greater Mumbai.

Self

4

The School Leaving Certificate Reg.No.79, dated 26.06.1954 issued by Head Master, Progressive Night High School, Mumbai, in favour of Shri.Bargun Saitar Yadav.

Father

Hindu Yadav

5

The relevant extract of voters list No.Election/893/Certificate dated 10.03.2006 issued by Election Officer, Municipal Corporation of Greater Mumbai in favour of Shri.Bargun Saitar Yadav

Father

-

6

The Death Certificate No.741205835 dated 13.04.2009 of Bargunchitar Yadav issued by the Health Department, Municipal Corporation of Greater, Mumbai

Father

-

7

The relevant extract of voters list No.Election/1145/Certificate, dated 01.07.2017 issued by Election Officer, Municipal Corporation of Greater Mumbai.

Father, uncle & Grandmother

-

8

The License No.00549, dated 27.01.1988 issued by the Controller of Cattle, Maharashtra Government, in favour of Shri.Bargun Chitar Yadav.

Father

-

9

The License No.00514, dated 29.03.1995 issued by the Controller of Cattle, Maharashtra Government, in favour of Shri.Bargun Chitar Yadav.

Father

-

10

The School Leaving Certificate Reg.No.0310, dated 01.08.2017 issued by Head Master, in favour of Shri.Rajpati Bargun Yadav

Self

-

11

The School Leaving Certificate Reg.No.0437, dated 05.05.2016 issued by Head Master, Shri.Raghveer Secondary School, Mumbai, in favour of Shri.Rajpati Bargun Yadav

Self

Hindu Yadav

12

The Leaving Certificate Reg.No.0470, dated 06.08.1991 issued by Principal, Airport Junior College, Mumbai, in favour of Shri.Rajpati Bargun Yadav

Self

The said documents are relied upon by the petitioner for two purposes, namely, to establish her caste as Yadav and to establish that the ancestors of the petitioners were resident of State of Maharashtra prior to the cut off date of 13.10.1967.

49. The Scrutiny Committee took up the claim of the petitioner for verification and referred the matter to the Vigilance Cell. The Vigilance Cell submitted its first report on 28.06.2017. A show cause notice came to be issued to the petitioner on 28th/30th June 2017 in which it recorded its finding in respect of the documents produced by the petitioner, including the school leaving certificate, issued by Pal Rajendra High School and also the school leaving certificate of the father issued by the Progressive Night High School and also the petitioners birth certificate. The Committee called upon the petitioner as to why his claim should not be rejected in light of the report of the Vigilance Cell. The petitioner submitted a detailed reply on 18.07.2017 and in the said reply for the first time he takes a stand that he will not rely upon the said two documents and that he would restrict his claim on the basis of the two school leaving certificates issued by Shri Raghuv eer Primary School and Shri Raghuv eer Madhayamik Vidyalaya to prove the certificate. At this stage, the petitioner produced the death certificate issued by the Health Department of the Municipal Corporation of Greater Mumbai, upon the death of his father. He also placed on record the revised Electoral Roll of the year 1966 of the Bandra Assembly Constituency where in the petitioners mother name recorded at Serial No.131, name of the petitioners father recorded at Serial No.132 and his uncle Yadav Kishor Chaitar is recorded at Serial No.133. He also produced on record a certified extract of Electrol Roll of MCGM for the period of 20.12.1967 to 19.12.1972 in respect of Ward No.99, Jawahar Nagar where the names of the petitioners father, mother and uncle finds place. The petitioner also placed on record a certificate issued on 06.10.2001 issued by Smt.BCJ General Hospital, Santacruz certifying that the petitioners mother delivered a child on 27.12.1968. A copy of license dated 27.01.1988 for Keeping Cattle issued in favour of petitioners father by the Licensing officer Office of the Control of the Cattle, Mumbai is also placed on record.

The said documents were again forwarded to the Vigilance Cell for verification and it submitted second report on 08.08.2017. The said documents confirmed the name of the petitioners father, mother and uncle in the voters list however as far as the certificate issued by BCJ General Hospital is concerned since the old record was not available with the hospital it could not be verified. The death certificate in respect of the petitioners father was found to be correct as per original record and so also license issued Keeping Cattle in favour of petitioners and his father was also found to be correct. On 04.08.2017, the petitioners filed an application and produced on record the school leaving certificate issued by Raghuv eer Primary School and Raghuv eer Madhaymik Vidyalaya and also a leaving certificate issued by Air Court Junior College in favour of the petitioner. Once again the said documents were forwarded to the Vigilance Cell for verification and third report of the Vigilance Cell was submitted on 10.08.2017.

Perusal of the report reveals that entries made in the certificate issued by Air Court Junior College are as per record. As per other two leaving certificates it was reported that the documents have been verified earlier.

50. The claim of the petitioner came to be opposed by the respondent No.5 and the complaint was filed on 15.03.2017 which was further supplemented by Additional Complaint filed on 18.04.2017. The respondent No.5 also produced certain documents on record demonstrating that the petitioners father was also listed as voter in Worli Ward. The Committee proceeded to hear the matter and offered an opportunity to the counsel for the petitioner and the counsel for the respondent No.5 to submit its say. After a close analysis of the documents produced by the petitioner, the three reports of the Vigilance Cell placed on record and by referring to all the material placed by the petitioner in support of his claim, the Committee rejected the claim of the petitioner. The committee relied on the findings of the Vigilance Cell. This included the school leaving certificate of Pal Rajendra High School which was verified by the Vigilance Cell. The observation of the Vigilance Cell records the following conclusion.

"In the report it is mentioned that, the school leaving certificate issued by the Pal Rajendra Hindi School, Hanuman Nagar, Kandivali, Mumbai and certificate No.199, General Register No.87 dated 04.05.1979 Caste Hindu-Yadav admission date 13.06.1978 date of birth 27.12.1968, place of birth Mumbai mentioned therein are verified by the Vigilance Cell, by letter dated 12.04.2017 the Pal Rajendra Hindi and Marathi informed that the record of the year 1979 is not available and school was sanctioned in the year 1985 and also informed that none of the aforesaid thing matches with the record. As also they produced general register 87 wherein name of Shaikh Ali SahebGafurSaheb, caste Muslim is mentioned. Therefore, it proves that the school leaving certificate produced by the applicant for issuance of caste certificate is false and bogus."

51. In respect of the school leaving certificate of the petitioners father the observations of the Vigilance Cell which are relied upon the Committee are to the following effect.

"The applicant's father's school leaving certificate produced along with the application is verified by the Vigilance Cell. In the said report it is mentioned that the applicant's father-BargunSaitar Yadav's admission dated 19.06.1953 in Progressive Night High School, Caste- Hindu-Yadav, date of birth 10.03.1940, place of birth are verified by themselves. The Head Master informed that the said certificate is not issued by their school. The said school is started in the year 11959 and in General Register 79 there is entry of GeroldKauvda. From the year 1959 the said school was known as Progressive Night School and now it is known as Peoples English School. On perusal of the said certificate he informed that certificate number is not mentioned thereon and the same is not issued by their school. The copy of General Register is placed on record, wherein name of Gerald Kauvda is mentioned. Hence it is proved that the school leaving certificate of BargunSaitar Yadav produced for issuance of caste validity certificate is false and

bogus."

52. The Committee also records the finding that along with the application of the caste validity certificate, the applicants produced the voters list No.Election/893/certificate issued by the Election Officer, MCGM. In the said certificate, there is an entry in Nagpada Ward at Serial No.5435 which reads as Yadav Bargun Saitar. However, while obtaining the caste certificate, the applicant has produced voters list of Worli. The time period of both the list is between 20.12.1960 to 19.12.1964. The Committee, therefore, records the finding that it is nothing but an attempt to misguide the Committee by filing different documents. The Committee also did not agree with the claim of the petitioner that the ordinary residences of his family prior to the deemed date i.e 13.10.1967 is Mumbai. As far as the claim about the caste is concerned, the reliance placed by the petitioner on the two documents i.e. his school leaving certificate where the caste is recorded as Hindu Yadav, the Committee fall back of the finding of the Vigilance Cell where it is recorded that the certificate mentioned that it is issued in the year 1979. However, the school itself is sanctioned in the year 1985 and there is no record available in the school in respect to the school leaving certificate which is issued in the year 1979. It is revealed during enquiry that in General Register 87, there is entry of one Mr.Shaikh Ali Saheb Gafur Saheb, caste-Muslim. As regards the school leaving certificate of Progressive Night High School in favour of the father of the petitioner, the Vigilance Cell has recorded a categorical finding that on enquiry of the Headmaster of the said school, the certificate is not issued by the school and the said school started in the year 1969 and in General Register No.79, the entry is in the name of one Gerald Kauvda. It is also revealed that from the year 1969 the said school was known as Progressive Night High School and now it is known as Pupils English School. In the said certificate, certificate number is not mentioned and when the copy of the General Register is examined, it finds name of one Gerald Kauvda and therefore the committee arrives at a conclusion that the said certificate is false and fraudulent. The complainant who had approached the Committee and it was heard by the Committee the certificate has produced before it the school leaving certificate of his father which is submitted by the applicant while obtaining the caste certificate. In the said certificate, the caste is recorded as Yadav, date of birth is recorded as 15.05.1938, date of admission is recorded as 18.06.1949 and date of school leaving is recorded as 15.08.1960. The said certificate is issued by Sahakar Vidyamandir, Tardeo. However, the date of birth and other school leaving certificate is distinct. The Committee has also recorded that his father had studied upto 08th Standard and he prosecuted his education in Progressive Night High School. However, while obtaining the caste certificate, the applicant has produced his fathers school leaving certificate issued by Sahakari Vidhyamandir, Tardeo. However, at the time of the verification of the caste claim the applicant has placed reliance on the school leaving certificate of Progressive Night High School. The Vigilance Cell has already recorded a finding that the said certificate is false and bogus. The Committee has also recorded a finding that

applicant has indulged into a fraudulent act and has attempted to misguide the Committee. The said certificate is found by the Committee to be fraudulent and bogus and it arrived at this conclusion on the basis of the following finding.

"On perusal of entries in the said certificate it seems that date of birth is mentioned as 15.05.19338, previous school is mentioned as primary, date of admission is mentioned as 18.06.1949 and date of school leaving is mentioned as 15.08.1950. In the column of studying standard and year it is mentioned that 12th standard since June 1950 on perusal of said entries it seems that the said student was studying in 12th standard at the age of 12 years, which is not possible. As also in the year 1950 the class of 12th standard was not available in the said school. After considering aforesaid facts the said school leaving certificate is proved false and bogus. Therefore verification of this document was not necessary. The prima facie it seems to be false and bogus. Therefore committee has not considered the same.

53. Very conveniently, now the petitioner takes a stand before this Court and also in his response to the Vigilance Cell that he did not intend to rely upon the said two certificates. After the first Vigilance Cell recorded finding that the said certificates are bogus, he presents himself before the Committee and placed reliance on the school leaving certificate issued by Headmaster of Raghuv eer Primary School, Akurli Road, Kandivali (East), in the said certificate the date of birth is mentioned as 10.11.1968, date of admission recorded as 10.06.1974 and caste is recorded as Hindu Yadav and place of birth is record as Gram Peropur, Dhakawa, Azamgarh, Uttar Pradesh. The Vigilance Cell also verified the said documents and found that the said entries are as per original record. However, while preferring an application for issuance of the validity certificate he has mentioned his place of birth as Mumbai and date of birth as 27.12.1968. However, in the certificate which is produced from the Raghuv eer Primary School, the date of birth is mentioned as 10.11.1968. In any contingency, only one of these dates can be corrected. While preferring an application for issuance of the validity certificate, date of birth mentioned in the birth certificate records the date of birth as 27.12.1968. However, the subsequent documents records it as 10.11.1968. The Committee has therefore rightly concluded that the whole attempt of the petitioner was to mislead and misguide the Committee and he has failed to discharge the burden cast upon him to establish his claim in terms of Section 8 of Act No.23 of 2001. In the said circumstances, the committee has proceeded to reject the claim of the petitioner as belonging to Caste Yadav. The attempt on part of the petitioner to mislead the Committee and to take different stands according to his own convenience and when the documents relied by him were found to be fraudulent, then relying upon the subsequent documents can only be described as a fraudulent Act. The Scrutiny Committee has offered ample opportunity to the petitioner and this is apparent from the fact that whenever he had produced, the Committee had referred the same for verification through the Vigilance Cell. When the Vigilance Cell records a finding that the document produced in the initial round of his own and his father is false, the petitioner

takes a stand that he do not intend to rely on the said document. Then he relies on the school leaving certificate issued by the Progressive Night High School which the Vigilance Cell finds, is not genuine. Then the petitioner again takes a stand that he do not want to rely on the said document and offers an explanation. He then places on record a birth certificate dated 26.09.2008 issued by the concerned office, F/South Ward but the Committee records a finding that the entries in the said certificate do not match with the original record. The petitioner again takes a stand that he do not want to rely on the said documents. This approach of the petitioner deserves to be condoned and merely because in the home enquiry, statements of the aged persons of the family have been recorded reflecting that the petitioner's family belongs to caste Yadav, they cannot be accepted as gospel truth. The petitioner has thus failed to substantiate his claim and therefore mere possession of the Tabela license, cannot be considered to be a proof for the petitioners claim of belonging to caste Yadav.

54. Reliance placed by the learned counsel for the petitioner in case of *Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra* (1996) 3 SSC 685 is totally mis-founded. In the said case, the Hon'ble Apex Court was dealing with the fact where the Committee failed to consider the relevant material placed before it and did not apply its mind to an important document which led the Committee to record a finding against the appellant. The word of caution by the Hon'ble Apex Court that great care has been taken before granting or rejecting any claim for the caste certificate has to be read in reference to the context. Before us, the petitioner who has taken different stance at different stages according to his convenience. The Committee has relied upon the Vigilance Cell report which has carefully verified the documents produced by the petitioner and when they are found to be false the petitioner adopted a stand that he do not intend to rely on the said documents. We do not find any perversity in the finding recorded by the petitioner and we are not convinced to take any view distinct and different from that taken by the Committee. For the reasons recorded above, we upheld the order passed by the Scrutiny Committee and reject the present petition filed by the petitioner seeking a declaration that he be declared as belonging to caste Yadav which is recognized as Other Backward class.

55. The Indian Constitution guarantee to all its citizens equity of status and opportunity. Article 14 of the Constitution cast a duty on the State not to deny to any person equality before law or equal protection of laws within the territory of India. The Constitution itself provides for reservation as one of the tools that is used to preserve and promote the essence of equality with an object that the disadvantageous group can be brought to the forefront of civil life. It is the duty of the State to promote positive measures to remove barriers in equality. Article 15(4) and Article 16(4) are the enabling provisions which can be put to use by the State for upliftment of the backward classes or where the State is of the opinion that the said classes are not adequately represented in services. Through the said Articles, equality is ushered in to the underprivileged classes in the matters of education, social advancement schemes or in the case of services.

Part IX of the Constitution inserted by the 73rd Amendment provides for Constitution of the Panchayats and the Municipalities in Part X and as an extension of the principle of equality and upliftment of the backward classes, Article 243D provides for reservation of seats in Panchayats on one hand and Article 243T provides for reservation of seats in the municipalities. The seats to be reserved for Scheduled Caste and Scheduled Tribe are proportionate to the total number of seats to be filled in by the direct election in that Panchayat as the population of the Scheduled Caste or Scheduled Tribe bears to the total population of that area. The provision of reservation contained in this Article ensures and translate the principle of equality embodied in the principle of the Constitution to the grass root levels in Panchayats and Municipalities. The respective State Legislatures have given effect to the Articles by introducing appropriate provisions in the respective statutes and this includes the Mumbai Municipal Corporation Act which we are dealing with. The intention of the framers of the Constitution and the legislators in enacting the local laws is to ensure that the provision of reservation is availed by those who deserve it and who are found to be belonging to backward classes. Equality can only be assured in letter and spirit if the backward classes availed the said benefits enshrined in the Constitution in terms of the local laws and it results into their upliftment. However, lately, a judicial note is taken of the fact that the benefits of these reservations is usurped by the wrong persons for seeking advantages and benefits flowing from the Constitution and the local enactments. Long back in the year 1994, the Hon'ble Apex Court took note of the said fact that in case of *Madhuri Patil vs. State of Maharashtra* (1994) 6 SCC 241. The Apex Court took note of the fact that the admissions wrongly gained or appointment wrongly obtained on a basis of a false social status certificate, necessarily has the effect of depriving the genuine Scheduled Caste or Schedule Tribe or Other Backward Class candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. It was noted that the illegible or spurious person who falsely gained entry, resort to dilatory tactics and create hurdles in completion of enquiries by the Scrutiny Committee and then, it becomes necessary that the certificates are scrutinized at the earliest and with utmost expedition and promptitude. The Hon'ble Apex Court, therefore, issued guidelines to streamline the procedure for issuance of social status certificates, their scrutiny and approval. The Maharashtra Act No.XXIII of 2001 is legislative ushering of the said directives and it provides the mechanism for regulation of the issuance and verification of the caste certificates to the persons belonging to the Scheduled Caste, Scheduled Tribes and Other Backward Classes as well as Special Backward Classes. The said enactment also prescribes that the consequences would fall upon a person if on scrutiny of his claim, it is found that he do not belong to the said caste or tribe and he had obtained a false caste certificate. The consequences prescribe that on cancellation of the caste certificate by the Scrutiny Committee in terms of Section 10 provides for debarment of a candidate from the concerned educational institution and discharge from employment forthwith along with other benefits that are enjoyed or derived from such

admission or appointment. Any amount paid to such person by Government by way of scholarship, grant, allowance or other financial benefit is also liable to be recovered from such person as arrears of land revenue. Section 10 also prescribes for consequences if a person who has contested election for a local authority, co-operative society or any statutory body on a seat reserved for either of the category by procuring a false caste certificate belonging to a particular caste/tribe, and if such certificate is cancelled, the benefits accruing to this person, shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively. Since it was noted that the tendency to usurp the benefits by spurious claimants is on the rise, the said enactment also introducing a provision for making such an action an offence and by prescribing a punishment under Section 11 of the said Act.

56. The invalidation of a caste certificate thus result in two consequences (a) immediate cancellation or withdrawal of the benefits received by the candidate on the basis of such a false caste certificate and (b) prosecution of a claimant who procures the certificate which is found to be false by the Scrutiny Committee. The intent of a candidate would be of some relevance in case of a prosecution for a criminal offence. However, where the civil consequences of withdrawing the benefits which are approved on the basis of false claim, are to be determined. The intention of the legislature as contained in Section 10 of Act No.XXIII of 2001 must be given its full weightage. The Hon'ble Apex Court in the judgment of *Chairman and Managing Director, Food Corporation of India Vs. Jagdish Balaram Bahira & ors* (2017) 8 SCC 670 deserves a reference at this stage. The observations of their Lordships while setting aside a Full Bench judgment of this Court in case of *Arun Vishwanath Sonone vs. State of Maharashtra* in relation to protection of service after invalidation of caste claim, needs a reproduction :

"2. The framers of the Constitution conceived of a policy of affirmative action to redress the social exclusion, economic deprivation and political alienation suffered by historically disadvantaged classes of Indian society. Reservation of posts in public employment and seats for admission in educational institutions and the setting apart of seats in electoral bodies was envisaged by the Constitution for the fulfilment of a constitutional aspiration of social justice to the Scheduled Castes and Tribes and to socially and educationally backward classes of citizens. In pursuit of the constitutional goal of substantive equality, reservations have been envisaged as a means of enabling members of beneficiary groups to realise, in a true sense, dignity, freedom and liberty which the Constitution guarantees as its basic philosophy. But the problem which has PART A confronted legislatures, policy makers as well as courts (as enforcers of the rule of law) is a capture of the benefits of affirmative action programmes by persons who do not genuinely belong to the beneficiary groups. This kind of capture poses a serious dimension. When a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its

member, such a stratagem constitutes a fraud on the Constitution. For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. For another this deprives a beneficiary who is genuinely entitled to receive those benefits of a legitimate entitlement. This constitutes an egregious constitutional fraud. It is a fraud on the statutes which implement the provisions of the Constitution. It is a fraud on state policy. Confronted with this problem, the legislatures have intervened with statutory instruments while the executive has, in implementation of law, set down administrative parameters and guidelines to prevent the usurpation of benefits.

48. The regime postulated in the judgment of this Court in *Madhuri Patil* (supra) took effect from 2 September 1994, which was the date of the judgment. Eventually in the State of Maharashtra these directions received legislative recognition upon the enactment of the Maharashtra Act XXIII of 2001 which came into force in the State on 18 October 2001. However, it is important to notice that even before the State Legislature stepped in to confer a statutory form to the directions which were issued by this Court in *Madhuri Patil* (supra) the regime, as it then obtained prior to the enactment of the law, also envisaged consequences upon a caste or tribe claim being found to be false upon a verification by the Scrutiny Committee. The cancellation of a certificate would, as a necessary consequence, involve the invalidation of the appointment to a post or admission to an educational institution. Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group PART A would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained. The same principle would apply where a candidate secures admission to an educational institution on the basis of a false claim to belong to a reserved category. A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter a detriment is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of

an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would PART A be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is intended. This was the position under the regime which prevailed following the decision in Madhuri Patil.

54. The object and purpose underlying the enactment of the state legislation is to regulate the issuance of caste certificates and to deal with instances which had come to light where persons who did not belong to the Scheduled Castes or Tribes or reserved categories were seeking appointments or admissions to the detriment of genuine candidates. The basic purpose and rationale for the legislation is to secure the just entitlements of legitimate claimants. The judgment in Shalini (supra) is with respect in error in imputing the requirement of a dishonest intent into the provisions of Section 10. Sections 7 and 10 have to be construed in harmony. Section 7 provides for the cancellation of a caste certificate where before or after commencement of the Act, a person who does not belong to a reserved category has obtained a false caste certificate and the Scrutiny Committee, after enquiry, is of the opinion that the certificate was PART A obtained fraudulently. These requirements have to be fulfilled before the certificate is cancelled. The falsity of the caste certificate and the opinion of the Scrutiny Committee of its being fraudulently obtained form the basis of a cancellation under Section 7. Section 10 prescribes that a person who does not belong to a reserved category and secures admission or obtains appointment against a reserved post by producing a false caste certificate shall upon its cancellation by the Scrutiny Committee be debarred from the institution or as the case may be discharged from employment and the benefits derived shall be withdrawn. Sub-section (2) provided for the recovery of all financial benefits while sub-section (3) provides for the cancellation of a degree, diploma or educational qualification. Sub-section (4) provides for disqualification from electoral office. The falsity of the certificate is the basis of an order under Section 7. Section 10 provides the consequence. The challenge to an order of the Scrutiny Committee (invalidating a caste or tribe certificate) may fail or succeeds. If the challenge before the High Court succeeds, no question of the consequence under Section 10 arises. If the challenge fails, the consequence under Section 10 follows the finding in the order under Section 7 that the certificate is false. Similarly, if the order under Section 7 is not challenged, or if the challenge is given up, there is no occasion to protect the benefits secured on the basis of a certificate which is invalidated. The expression "false" must be construed in contra-distinction to that which is true, genuine or authentic. Falsity in this sense means the setting up of a claim to belong to a reserved category.

67. This aspect has been considered in a recent judgment rendered by one of us in Nidhi Kaim and Another V. State of Madhya Pradesh And Others 41 , wherein,

speaking for a Bench of three Judges, in a case of systemic fraud in relation to medical admissions in the State of Madhya Pradesh. It was observed as follows :

"92...We are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to espousing the cause of "the unfair". It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course would cause people to question the credibility of the justice-delivery system itself. The exercise of jurisdiction in the manner suggested on behalf of the appellants would surely depict the Court's support in favour of the sacrilegious. It would also compromise the integrity of the academic community. We 41 (2017) 4 SCC 1 PART A are of the view that in the name of doing complete justice it is not possible for this Court to support the vitiated actions of the appellants through which they gained admission to the MBBS course."

Explaining the matter further, this Court held that :

(SCC pp.67-68, para 99)

"99.....Besides the consideration recorded by us in the foregoing paragraphs, we may confess, that we felt persuaded for taking the view that we have, for a very important reason - national character. There is a saying-when wealth is lost, nothing is lost; when health is lost, something is lost; but when character is lost, everything is lost. The issue in hand has an infinitely vast dimension. If we were to keep in mind immediate social or societal gains, the perspective of consideration would be different. The submission canvassed needs to be considered in the proper perspective. We shall venture to drive home the point by an illustration. We may well not have won our freedom, if freedom fighters had not languished in jails ... and if valuable lives had not been sacrificed. Depending on the situation, even civil liberty or life itself, may be too trivial a sacrifice, when national interest is involved. It all depends on the desired goal. The Preamble of the Indian Constitution rests on the foundation of governance on the touchstone of justice. The basic fundamental right of equality before law and equal protection of the laws is extended to citizens and non-citizens alike through Article 14 of the Constitution on the fountainhead of fairness. The actions of the appellants. are. founded. on. Unacceptable behaviour, and in complete breach of the Rule of Law. Their actions constitute acts of deceit invading into a righteous social order. National character, in our considered view, cannot be sacrificed for benefits - individual or societal. If we desire to build a nation on the touchstone of ethics and character and if our determined goal is to build a nation where only the Rule of Law prevails, then we cannot accept the claim of the appellants for the suggested societal gains. Viewed in the aforesaid perspective, we have no difficulty whatsoever in concluding in favour of the Rule of Law. Such being the position, it is not possible for us to extend to the

appellants any benefit under Article 142 of the Constitution."

(emphasis supplied)

We are in respectful agreement with the above principle and statement of the legal position."

The Hon'ble Apex Court in no uncertain terms has held that the consequences must strictly follow on invalidation of a claim of caste staked by a particular candidate and therefore, there is no escape from the provisions of Section 10 of the Act No.XXIII of 2001. Once the candidate's claim has been found to be either false or fraudulent and if he has contested the election on a seat reserved for Other Backward category and is not able to substantiate his claim and the claim is rejected by the competent Scrutiny Committee, then, the seat which he has secured and belonging to the backward class category deemed to be effected with retrospective effect.

57. In case of petitioners in Writ Petition Nos. 181/18, 146/18 and 147/14, we have recorded the finding that the claim of the petitioner is not substantiated by sufficient evidence being adduced before the Scrutiny Committee and since they are unable to prove the claim, it came to be rejected. Once the claim is found to be rejected, the consequences of disqualification must fall upon them and the seat stands vacated. The question is only about the two petitioners i.e. in Writ Petition Nos. 145/2018 and 3673/2018 where we have allowed the writ petition and have quashed and set aside the order passed by the Scrutiny Committee. The elections to the Municipal Corporation were held in February 2017 and the result came to be declared on 23rd February 2017. This Court, by interim order dated 19th August 2017 had granted protection and have put in abeyance the consequences flowing from invalidation of the claim of the petitioner. In light of the said interim order passed by us, the petitioner continued to hold the office. The claim of the petitioners has been found to be improperly rejected and we have quashed and set aside the said order and given a declaration to the effect that they belong to the caste which they claim and hence should continue to hold the said post. Pursuant to their election, in light of the said aforesaid. position,. the. petitioners. in. Writ. Petition. Nos. 145/2018 and 3673/2018 are entitled to continue in their seats since the effect of disqualification was postponed by an interim order and we have now quashed and set aside the impugned order.

In light of the reasons in the aforesaid paragraphs, we pass the following order :

O R D E R

(i) It is declared that the condition of submission of Caste Validity Certificate within a period of 12 months as stipulated in the first proviso to Section 5B of the Mumbai Municipal Corporation Act as amended by the Amending Act LXV of 2018, is mandatory and in case of failure to comply with the time stipulation, the necessary consequences would follow on an elected candidate. This is, however, subject to the saving clause of the Amending Act.

(ii) Writ Petition Nos.181 of 2018 is dismissed. Notice of Motion (L) Nos.550/18 in WP 181/18 is for vacating of interim relief. In view of the disposal of WP 181/18 does not survive and is disposed of accordingly.

(iii) Writ Petition Nos.146 of 2018 is dismissed. Notice of Motion (L) Nos.561/18 in WP 146/18 is for vacating of interim relief. In view of the disposal of WP 146/18 does not survive and is disposed of accordingly.

(iv) Writ Petition Nos.147 of 2018 is dismissed. Notice of Motion (L) Nos.559/18 in WP 147/18 is for vacating of interim relief. In view of the disposal of WP 147/18 does not survive and is disposed of accordingly.

(v) Writ Petition No.145 of 2018 is allowed in terms of prayer clause (b). Notice of Motion (L) No. 560/18 in WP 145/18 is for vacating of interim relief. In view of the disposal of Writ Petition, Notice of Motion does not survive and is disposed of accordingly.

(vi) Writ Petition No.3673 of 2018 is partly allowed and impugned order is quashed and set aside. The matter is remanded back to the Scrutiny Committee for its reconsideration and the Caste Scrutiny Committee is directed to take a decision within a period of six months.

Notices of Motion No. 536/18 is for vacating of ex- parte order. In view of the disposal of Writ Petition No.3673 of 2018,, Notice of Motion 536/18 does not survive and is disposed of accordingly.

Notices of Motion (L) No. 549/18 is for vacating of interim relief. In view of the disposal of Writ Petition No.3673 of 2018, Notice of Motion (L) 549/18 does not survive and is disposed of accordingly.

Writ Petitions are disposed of accordingly.