

(2004) 08 BOM CK 0132

In the Bombay High Court

Case No : Writ Petition No. 6144 of 2002

Sujit Vasant Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Constitution of India, 1950 — Article 243O, 243ZG
Maharashtra Municipal Corporations and Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2002 — Section 1
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 — Section 1, 10(4), 6(2)

Citation : AIR 2005 Bom 1 : (2004) 4 ALLMR 537 : (2004) 5 BomCR 497 : (2004) 4 CTC 572 : (2004) 3 MhLj 1109

Hon'ble Judges : D.K. Deshmukh, J;A.S. Oka, J;A.P. Shah, J

Bench : Full Bench

Advocate : Shekhar Naphade and R.R. Mendadkar, for the Appellant; C.R. Sonawane, AGP for respondent Nos. 1 to 3, R.V. More and P.B. Shah, for the Respondent

Judgement

D.K. Deshmukh, J.—This Writ Petition has been placed before us because the Division Bench of this Court has referred following three questions for consideration to the Full Bench by order dated 30-1-2004.

(1) Whether in the matter of scrutiny and verification of the caste certificate and/or the caste claims of candidates elected to the Local Self-Government, the procedure laid down by the Apex Court in Kum. Madhuri Patil's case so also the procedure prescribed by the Resolution dated 1st January 1998, 19th April 1999 and 25th January 2000 could have any application even before coming in force of Act No. XXIII of 2001 for the reason that Local Self-Government Acts were holding field and more so in view of the bar contained in Article 243-O and 243-ZG of the Constitution of India and other statutory provisions contained in the Local Self-Government Act providing for a remedy of an Election Petition?

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

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

2. Now, for the purpose of considering the first question, it becomes necessary to refer to the judgment of the Supreme Court in the case of Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, . In that judgment the Supreme Court noted that the Constitution permits reservation of seats in services under the State as also in Schools and Colleges for persons belonging to the Scheduled Caste and Scheduled Tribes and also after referring the provisions of Articles 341 and 342 of the Constitution, whereunder the Scheduled Caste and Scheduled Tribes have been declared, the Supreme Court noted in paragraph 9 of the judgment thus :--

"It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of Scheduled Caste and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status.

The Supreme Court in paragraph 13 of its judgment in Madhuri Patil's case observes thus :--

"The admission wrongly gained or appointment wrongly obtained on the basis of the false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution."

The Supreme Court, therefore, found that it has become necessary that the caste certificate issued by the authorities has to be scrutinised at the earliest and with utmost expedition and promptitude. The Supreme Court in that judgment laid down the procedure for issuance of social status certificate, their scrutiny and their approval, in the following manner.

"For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following :

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and Sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a committee of three officers, namely (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene

the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim of the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to be parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be

regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

It is clear that above procedure laid down by the Supreme Court is to be followed for the purpose of scrutiny of social status certificate. Once, the social status certificate is issued, it can be used by a person in whose favour the certificate has been issued either for getting employment under the State or for getting admission in educational institution or even for contesting elections. The procedure laid down by the Supreme Court in Madhuri Patil's case is for scrutiny of the caste certificate/social status certificate issued by the authorities.

3. The Division Bench has referred to the Government Resolution dated 1-1-1998 in its order. Perusal of the Government Resolution dated 1-1-1998 shows that the State Government in that Resolution first noted that committees have been constituted in various regions of the State for the purpose of scrutinising the social status certificate issued in relation to the persons claiming to be the members of Scheduled Castes, Nomadic Tribes, Other Backward Classes etc. It is noted that those Committees so far have been scrutinising the caste certificates which have been used either for getting employment under the State or for getting admission in educational institution. It is further stated that in the Local Self Government seats have been reserved for candidates belonging to the Scheduled Caste, Scheduled Tribes, Nomadic Tribes etc. and against these seats persons get elected on the basis of false social status certificate and therefore it becomes necessary that the social status certificates which are used by persons for contesting the elections to seats under the Local Self-Government should also be scrutinised by the scrutiny committee. Therefore, it was provided that after completion of the process of election, the Collector of each district within a period of 15 days shall send social status certificate used by the elected candidate from the reserved constituency to the scrutiny committee for verification and that the scrutiny committee shall complete the process of verification within a period of 45 days and communicate its decision to the Collector.

4. The second Government Resolution that has been referred to by the Division Bench is the Government Resolution dated 19th April, 1999. The Government Resolution dated 19th April, 1999 is to the same effect as the Government

Resolution dated 1-1-1998, except that the Government Resolution dated 19th April, 1999 relates to social status certificate issued to a person who claims to belong to Scheduled Tribes.

5. The third Government Resolution referred to by the Division Bench is the Government Resolution dated 25-1-2000. We do not find that Resolution on the record of the Writ Petition, none of the parties produced that Resolution before us. However, we find that in the order dated 26-9-2002 passed in Writ Petition No. 1373 of 2002, Ayub Khan s/o Sardar Khan v. State of Maharashtra and other connected petitions, the Division Bench has referred to that Resolution in following terms :

"By the Government Resolution dated 25th January, 2000 bearing No. CBC/12/2000/252/Pra.Kra/I/OBC/5, after considering all the instructions issued by it from 6th May, 1980 onwards upto 20-12-1999 the Government has consolidated the procedure, constitution of the Committees and issued a composite Government Resolution.

6. The question that is raised by the Division Bench, to our mind, appears to be that whether the Collector could have, as per the Government Resolutions referred to above, referred social status certificates issued to the candidates elected from the reserved constituencies on various authorities under the Local Self-Government to the scrutiny committee constituted pursuant to the judgment of the Supreme Court in Madhuri Patil's case, because in each Local Self-Government Act there is a machinery provided for challenging the election of a returned candidate including the candidate elected from the reserved constituency. However, apart from their being a provision for challenging the election of the returned candidate including the candidate elected from the reserved seat, there are also provisions made empowering the authorities to remove the elected candidate from the seat, in case he incurs disqualification.

7. The Government Resolutions which we have referred to above do not provide as to what the Collector has to do after receiving the decision from the scrutiny committee. However, it is clear to our mind that in case the decision of the scrutiny committee is that the social status certificate of a particular returned candidate is invalid, the Collector would either exercise his own power under the relevant law to remove that candidate or he may forward the decision to other authorities which may be competent to do so in accordance with the provisions of the relevant law. As the Government Resolutions referred to above do not provide that the Collector shall on the basis of the report of the scrutiny committee remove the returned candidate, there is no scope of there being any conflict between the scheme of the Government Resolutions referred to above and the scheme of the various Local Self-Government Acts. The Division Bench has also made reference to the provisions of Articles 243-O and 243-ZG of the Constitution. Article 243-O lays down that election of a candidate as a member of Panchayat can be called in question only by an Election Petition presented to the authority designated by the State Legislature. Article 243-ZG contain identical

provisions in relation to candidate elected to a seat in a Municipal Council. We do not see any conflict between the provisions of Article 243-O and Article 243-ZG and the Government Resolutions. To our mind it appears that as the Government Resolutions do not provide for removal of the elected candidate whose caste certificate has been found to be invalid by the scrutiny committee there is no question of there being any conflict between the provisions contained in various legislations relating to the Local Self-Government and Articles 243-O and 243-ZG of the Constitution. The whole purpose of the Government Resolutions appears to be to get the social status certificate used to the candidates who have been elected to the reserved seat scrutinised by the scrutiny committee and in case the scrutiny committee finds that the certificate is invalid then use that material for initiating action against the concerned candidate in accordance with the provisions of the various Local Self-Government Legislations. It is to be noted here that as observed above, in all local self-government legislations there are two types of procedure provided for removal of an elected candidate. First type of procedure that is provided is that either the rival candidate or voter files an election petition in accordance with the Act before the competent Court or authority and in that election petition the elected candidate's election can be set aside, either because he was not holding requisite qualification or because he was disqualified or because he was guilty of any corrupt practice.

Second type of procedure provided is that if the competent authority finds that an elected candidate is disqualified either for being a member of the Council or a panchayat or for continuing to be a member of such Council or Panchayat, the authority issues a show cause to the concerned candidate and on being satisfied that he is so disqualified, removes him from the office. To our mind it appears that the Government Resolutions referred to above were issued by the State Government so that the Collector after receiving decision from the scrutiny committee takes action to trigger mechanism provided in Local Self-Government Act for removal of the elected candidate whose social status certificate has been found to be invalid by the scrutiny committee, and in this view of the matter, we do not find that there is any scope of there being any possibility of any conflict between the Government Resolutions, various Local Self-Government Act as also the provisions of Article 243-O and Article 243-ZG of the Constitution of India. This was the position before Maharashtra Act No. XXIII of 2001 was enacted. Now, because of Section 10 of the Maharashtra Act No. XXIII of 2001 the position has changed. Section 10 reads as under :--

10. (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or co-operative Society against a post reserved for such Castes, Tribes, or Classes by producing a false Caste Certificate shall, on

cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

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

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

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

Now consequence of cancellation of a social status certificate by the Scrutiny committee is that the elected candidate automatically loses his seat.

8. It may be pointed out here that we have expressed our opinion on the first question because it has been referred by the Division Bench, though no arguments were advanced before us on this question.

9. So far as second question referred by the Division Bench is concerned, before us submissions were not advanced even on this point. Perusal of Maharashtra Act No. XXIII of 2001 shows that it incorporates the provisions for cancellation of the election of a person who has been elected against a reserved seat either on municipal council or on panchayat on his caste certificate being found invalid by the scrutiny committee. So far as Maharashtra Act No. XXIII of 2001 is concerned, it incorporates in various Local Self-Government Act a "disqualification". It provides that if a person is elected to a reserved seat and his caste claim is found to be invalid by the scrutiny committee then he will be disqualified. It also provides for removal of that person from the seat that he holds on a finding being recorded by the competent authority that the caste certificate on the basis of which he filed his nomination paper is invalid. Both these legislations have been enacted by the same Legislature, namely the Legislature of the State of Maharashtra. It is nobody's case that there is

likelihood of lack of legislative competence to enact both these legislations. Perusal of the legislations shows that first Maharashtra Act No. XXIII of 2001 was enacted and thereafter in order to give effect to the provisions of that Act amendments were thought necessary in various Local Self-Government Acts and therefore Act No. XXIII of 2001 was enacted. We do not see any repugnancy in the provisions of two Acts. In any case at the hearing, as observed above, this question was not argued by the learned Counsel appearing for the Petitioner. No repugnancy was pointed out to us.

10. All the arguments that were advanced before us were advanced on the third question referred to by the Division Bench. The principal contention which was urged before us was that the provisions of the Act No. XXIII of 2001 are ultra-vires the Constitution of India. Attack was mainly based on the provisions contained in Chapter IXA of the Constitution and the provisions of Articles 14, 21, 223 and 234 of the Constitution. It is submitted that Section 10(4) of the Maharashtra Act No. XXIII of 2001 empowers the security (sic : scrutiny) committee appointed under the Act to set aside the election of candidate who has been elected against the reserved seat on a local self-Government authority on the ground that the caste certificate on the basis of which he contested the election from a reserved constituency is invalid. It is pointed out that Article 243-ZG contained in Part IX of the Constitution of India lays down that no election to any municipality shall be called in question except by election petition presented to such authority and in such manner as it provided for by or under any law made by the Legislature of the State. It is submitted that the mandate of Article 243-ZG is clear. It provides for an election petition to an authority established under the relevant statute. It is submitted that under the Bombay Provincial Municipal Corporation Act as also under other relevant laws the election petition is provided to a Court and the question whether the returned candidate was qualified to contest the reserved seat can be decided in the election petition by the Court. It is submitted that Section 16(2)(a) in the BPMC Act provides that an election of the elected candidate can be challenged only by election petition. That provision has been made, according to the Petitioner to give effect to the Article 243-ZG. It is, therefore, submitted that the mandate of the Constitution is that the dispute relating to elections, even if it relates to caste claim, must be decided by the Election Petition and not otherwise, and therefore, Section 10(4) of the Act No. XXIII of 2001 which empowers the scrutiny committee to cancel the election of the returned candidate is repugnant to provisions of Article 243-ZG of the Constitution. It is further submitted that the State Legislature could not have enacted Section 10(4) of the Maharashtra Act No. XXIII of 2001 even in exercise of its power under Article 243-T(6) because of specific provisions of Article 243-ZG that an election of the return candidate can be challenged only in an election petition. It is submitted that the provisions of Section 10(4) cannot be sustained by referring to Article 243-V(2). Article 243-V(2) permits a law being made by the State legislature for referring the question of disqualification of any candidate to such authority as the legislature of the State may by law provide. It is

submitted that therefore the provisions can be made by the State Legislature for referring the question of disqualification to an authority. It is submitted that Maharashtra Act No. XXIII of 2001 does not deal with disqualification, but it deals with qualification or its absence and therefore the provisions made by the State Legislature in Maharashtra Act No. 23 of 2001 are not saved even by provisions of Article 243-V(2). It is submitted that the question whether the returned candidate holds the requisite qualification or not is required to be decided in an election petition as laid down by Article 243-ZG. It is further submitted that the reference to the term authority in Article 243-V(2) necessarily means a judicial authority because when Article 243-V(2) was framed by the Parliament invariably in laws relating to Local Self-Government an election petition was provided before the Court. The scrutiny committee to whom now the power has been given to decide the question of qualification is not a judicial authority, but is a administrative authority and the law does not provide any qualification for appointment of member of the committee. It is submitted that judicial power of the State is conferred on the scrutiny committee without prescribing qualifications that are necessary for being appointed as a member of the scrutiny committee and it is violative of guarantee of Article 14 of the Constitution. It is submitted that as the law does not lay down any qualification for the members of the scrutiny committee it amounts to vesting arbitrary powers in the State to appoint any person on that committee. It is further submitted that the Act also does not prescribe any procedure that is to be followed by this committee. The power that is conferred on the scrutiny committee is the drastic power and for exercise of this drastic power no safeguards have been provided and therefore it is violative of the guarantee of Article 14 of the Constitution. It is further submitted that the Maharashtra Act No. XXIII of 2001 also does not provide for any guidelines for the scrutiny committee to exercise its power and therefore the power vested in the scrutiny committee is a drastic and arbitrary in nature and conferral of such powers on the administrative authority violates the guarantee of the Article 14 of the Constitution. It is also submitted that the provisions of the Act cannot be read in the context what is provided in Madhuri Patil's case. The judgment of the Supreme Court in Madhuri Patil's case does not form part of the statute. It is submitted that the consequences that ensue from the order of the scrutiny committee holding a caste certificate to be invalid are drastic. Apart from the person concerned losing his seat, the benefits derived by him for holding his office can be recovered from him as arrears of land revenue. The rejection of his caste claim operates in rem. His children are also precluded from claiming benefits under the similar caste claim in future. He is also liable to be prosecuted and punished. It is submitted that as such drastic consequences flow from the order of the scrutiny committee, there have to be procedure and guidelines provided so that the scrutiny committee exercises its power in accordance with law. It is further submitted that the Act does not provide for any appeal or revision against the decision of the scrutiny committee and therefore, according to the petitioner it is necessary for the legislature to prescribe qualifications for

being appointed as a member of the scrutiny committee as also to streamline the procedure to be followed by the scrutiny committee.

11. Now to appreciate these contentions it is necessary to refer to the provisions of Maharashtra Act No. XXIII of 2001. The preamble of the Act states that it is an Act to provide for the regulation of the issuance and verification of caste certificates to the persons belonging to the scheduled castes, scheduled tribes, Denotified tribes (Vimukta Jatis), nomadic tribes, other backward classes and special backward category and for matters connected therewith or incidental thereto. The said Act was published after having received the assent of the President in the Maharashtra Government Gazette on 23rd May, 2001, the State Government issued a notification which was published in the Gazette on 17th October, 2001 and the Act came into force from 18th of October, 2001 as appointed u/s 1(2) therein. Section 2 deals with the definitions of various terms. Section 5 provides with an appeal against an order rejecting an application submitted for caste certificate. Section 6 provides for verification of caste certificate by a scrutiny committee. Section 7 provides for confiscation and cancellation of false caste certificates by the scrutiny committee if the caste certificate was found to be false and the order passed by the scrutiny committee under the Act shall be final and shall not be challenged before any authority or Court except the High Court under Article 226 of the Constitution. Section 8 states that where an inquiry is required to be conducted in the caste claim by the scrutiny committee the burden to prove that a person belongs to a caste, tribe or class shall be on such claimant/applicant. Section 9 bestows powers of Civil Court to the Competent Authority, Appellate Authority and Scrutiny Committee while holding an inquiry into the caste/tribes claim. Section 10 provides for withdrawal of the benefits secured on the basis of the false caste certificate and Section 11 deals with offences and penalties. Section 12 states that offences punishable u/s 11 shall be cognizable and non-bailable and every offence punishable under the Act shall be tried by any Magistrate of First Class in a summary way and provisions of Section 262 except Sub-section (2) to 265, both inclusive, of the Code of Criminal Procedure, shall as far as possible may be applied to such trial. Section 13 provides for penalty for issuing false caste certificate and states that no Court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government. Section 15 provides a bar of jurisdiction of Civil Courts. It would be advantageous to reproduce some of the relevant provisions of the Act.

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

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

(h) "Other Backward Classes" means any Socially and Educationally Backward

Classes of citizens as declared by the Government and includes other Backward Classes declared by Government of India in relation to the State of Maharashtra;

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

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

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

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions. Cooperative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions who has not obtained such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.

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

any.

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

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

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

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

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

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

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

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has

contested the election for local authority, Co-operative Society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.

11. Offences and penalties.-- (1) Whoever --

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

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

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

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

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

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

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

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

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

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

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

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

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

12. The question before us in relation to the validity of the Maharashtra Act No. XXIII of 2001 was argued with reference to Part IX and Part IXA of the Constitution. Part X of the Constitution consists of Articles from 243 to 243-O relating to Panchayat and Part IXA contains identical provisions contained in Article 243-P to Article 243-ZG relating to Municipality. As in the written submission submitted before us, provisions from Part IXA have been referred to, we will also refer to the provision in Part IXA, though there are identical provisions to be found in relation to Panchayat in Part IX. Article 243-T lays down that seats shall be reserved for the Scheduled Castes and Scheduled Tribes in every Municipality. Sub-Article (6) of Article 243-T empowers the State Legislature to make provisions for reservation of seats in any Municipality in favour of backward class of citizens. The State Legislature has enacted laws providing for reservation of seats in Municipality for Scheduled Castes, Scheduled Tribes and OBC. Now, in order to be qualified to contest for such reserved seat it is necessary that the candidate must belong to the category of backward class for which the seat has been reserved. There are provisions contained in laws relating to various Local Self-Government Authority for filing of nomination

papers to all the seats including the reserved seats and the nomination papers, insofar as reserved seats are concerned, require a declaration from a candidate that he belongs to the particular type of backward class for which the seat has been reserved. The submissions that were advanced before us related to Section 10(4) of Maharashtra Act No. XXIII of 2001, which relate to election to the Local Self Government Authority. Municipal Corporations in Maharashtra State are constituted under the Bombay Provincial Municipal Corporations Act, 1949. Under that Act seats have been reserved for scheduled castes and scheduled tribes and other sections of backward classes. Rule 9 in Schedule (d) of that Act lays down that the nomination paper for election as a member of the Municipal Corporation is to be filed in Form-A. Perusal of Form-A shows that in case the candidate wants to file the nomination paper for seats reserved for any section of any backward class of citizens, then the caste or community to which the candidate belongs is to be mentioned in nomination papers. The Municipal Councils in the State are constituted under the Maharashtra Municipalities Election Rules, 1966. Election Rules have been framed under that Rules for holding elections to the office of the members of the Municipal Council. Rule 12(4) of these Rules lays down that where a seat is reserved for scheduled caste or scheduled tribe, the candidate has to make a declaration that he belongs to scheduled tribe or scheduled caste. Rule 12(4) reads as under :--

"12(4) In a ward where the seat is reserved for Scheduled Castes or Scheduled Tribes, a candidate shall not be deemed to be qualified to be chosen to fill that seat, unless nomination paper contains a declaration by him specifying the particular Scheduled Caste or Scheduled Tribe of which he is a member."

The nomination form prescribed by these rules requires the candidate to indicate the particular caste or tribe to whom he belongs, in case he is contesting the election for a reserved seat. Similar provision is to be found in the rules framed under the Bombay Village Panchayat Act and Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. Thus every statute, dealing with constitution of the local authority in the State of Maharashtra insofar as the elections to the seats reserved for backward classes of citizens are concerned, requires a candidate who desirous to contest such a seat to make a declaration that he belongs to backward class for which the seat has been reserved. Each of these statutes provides for scrutiny of the nomination papers. At the scrutiny of the nomination paper, every candidate who has submitted the nomination paper has to satisfy the returning officer that his claim that he belongs to particular caste or tribe is correct. The enquiry to be held by the returning officer in this regard is a summary inquiry and the officers of the State Government who are appointed as the returning officers, in case of elections to various wards of the Municipal Corporation, Municipal Council, Village Panchayat and Zilla Parishads, are mostly drawn from the Revenue Department and are officers of the rank of Tahsildar and below. Considering the nature of inquiry that is to be conducted by the returning officer and the situation of the returning officer it cannot be said that the returning officer is in a position to conduct a detailed inquiry to find out the truth

or otherwise of the claim made in the nomination paper by candidate that he belongs to particular caste or tribe. Therefore, these returning officers of necessity will have to rely on a caste certificate issued by the competent authority, specially because the State Government has already set up a machinery for issuance of caste certificate. Therefore, perusal of the scheme of the various Local Self Government Authority leads one to the conclusion that it is a requirement of filing a nomination paper for a seat reserved for backward classes that a caste certificate issued by the competent authority should either accompany the nomination paper or be filed before the returning officer at the time of scrutiny of the nomination papers, and therefore, in our opinion, in view of this requirement Section 3 of the Maharashtra Act No. XXIII of 2001 comes into play. It reads as under :--

3. Any person belonging to any of the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, required to produce a Caste Certificate in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes, either in any public employment or for admission into any educational institution, or any other benefit under any special provisions made under Clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or in the Co-operative Societies; or for purchase or transfer of land from a tribal land-holder or any other purposes specified by the Government, shall apply in such form and in such manner as may be prescribed, to the Competent Authority for the issue of a Caste Certificate.

Perusal of the above section makes it clear that if there is a requirement to produce a caste certificate then the person concerned has no option but to apply for a caste certificate to the competent authority. Sub-section (2) of Section 4 in terms lays down that no authority other than the competent authority can issue a caste certificate and if any authority other than the competent authority issues a caste certificate it is invalid. Sub-section (2) of Section 4 also lays down that a caste certificate issued by the competent authority is valid subject to its scrutiny by the scrutiny committee and it is thereafter that Sub-Section (2) of Section 6 lays down if a person has secured the caste certificate from the competent authority and if he wants to avail of any benefits available to the backward class of citizens, which are mentioned in Section 3, then it is for him to make an application to the scrutiny committee to get a validity certificate. He is under an obligation to make an application well in time. The provisions of Sub-section (2) of Section 4 of the Act read as under :

4(2) A Caste Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

12A. Thus, the scheme of the various Local Self-Government Act in relation to the filing of the nomination papers and their scrutiny and the scheme of the

Maharashtra Act No. XXIII of 2001 appears to be that in case a person desires to contest an election to a reserved seat, it is obligatory on his part to get a caste certificate from the competent authority and then immediately apply to the Scrutiny Committee to get a validity certificate. Therefore, normally as the candidate is required to make an application to the scrutiny committee as soon as he receives a caste certificate from the competent authority, with the result that in many cases his application before the scrutiny committee for validity certificate would be pending when his nomination paper is accepted on the basis of the caste certificate. If his nomination paper is accepted on the basis of caste certificate issued by the competent authority and as the caste certificate itself is valid subject to the grant of validity certificate, obviously acceptance of his nomination paper as valid will also be subject to the grant of validity certificate by the scrutiny committee. Therefore, once the scrutiny committee refuses to issue a validity certificate the nomination cannot survive and if the nomination cannot survive, election cannot survive. Therefore, cancellation of the election of such a candidate is a natural consequence of his caste certificate being found invalid.

12B. Thus the scheme is that a person who obtains a caste certificate has to himself apply to the Scrutiny Committee for scrutiny of his caste certificate, so that he can secure a valid certificate from the Scrutiny Committee, and it is only after the Scrutiny Committee issuing a valid certificate that the caste certificate issued in favour of the person by the competent authority becomes final. In our opinion, the scheme of Sub-section (2) of Section 6 is that any candidate who desires to avail of any benefit available to backward class has to get a caste certificate as also the validity certificate before he makes a claim for the benefits. But if a candidate chooses to make claim to the benefits on the basis of a tentative certificate namely a certificate issued by the competent authority, he takes the risk of his losing the benefits that he has claimed and obtained and also being visited with penal consequences on the refusal of the Scrutiny Committee to validate his caste claim. The Act contemplates conscious decision being made by a person at the time of claiming benefits. The Legislature expects a person to claim the benefits only after obtaining the validity certificate, but the Legislature also permits a person to claim the benefits on the basis of a tentative certificate issued by the competent authority, if he is willing to take the risk mentioned above. In our opinion, therefore, the validity certificate is one of the essential ingredient of the candidate being qualified to contest for the reserved seat. It may be pointed out here that nobody can doubt the necessity of power being vested in an authority for issuance of caste certificate. If it is necessary to vest the power in an authority to issue a caste certificate, then in view of various types of claims being made, it is equally necessary to provide for scrutiny of those certificates. The determination of a caste is a job for the expert. Therefore, definitely there is a need of appointing an authority which is competent to issue caste certificates, which can be accepted by the returning officer at their face value. In our opinion, therefore, in the face of the provisions of the Act, the

nomination papers which have been accepted on the basis of certificate issued by the competent authority gets rejected on the refusal by the Scrutiny Committee to issue validity certificate and therefore the candidate loses his title to the seat against which he has been elected. There is no question of the election of that candidate being set aside by the Scrutiny Committee. The job of the Scrutiny Committee is of either issuing the final caste certificate or refusing to do so. If the Scrutiny Committee refuses to issue a final caste certificate, then the caste certificate issued by the competent authority ceases to exist. With the result, there is no caste certificate filed at scrutiny of the nomination papers and therefore the nomination papers itself becomes infirm and incomplete, and therefore, the returned candidate loses qualification to contest the seat and therefore he has to vacate his seat. In our opinion, in view of this scheme of the Act, even in the absence of Sub-section (4) of Section 10, the consequences in law of the Scrutiny Committee refusing to issue valid caste certificate would be vacation of seat by the elected candidate.

12C. In our opinion, therefore, reference to provisions of Article 243-ZG, which lays down that no election to any Municipality shall be called in question except by election petition presented to such authority and in such manner as is provided by or under the law made by the State Legislature is not relevant. In the proceedings before the Scrutiny Committee, the election of the candidate is not in question, what is done by the Scrutiny Committee is that it scrutinises the caste certificate on the basis of which the candidate has contested the election. Nobody calls the election in question before the Scrutiny Committee. The candidate himself files an application to get a validity certificate. In our opinion, the scheme of the Act is that the election of a person from a reserved seat who has contested on the basis of tentative certificate issued by the competent authority is itself provisional. Nomination papers and the election become final on the issuance of validity certificate and it gets cancelled on the refusal to issue a validity certificate. In our opinion, therefore, there is no question of there being any conflict with the provisions of Article 243-ZG. So far as the competence of the State Legislature to make such provisions is concerned, in our opinion, the State Legislature gets competence to make such provisions because it has the competence to make reservation of the seats.

13. It goes without saying that the power to issue or refuse to issue caste certificate as also the power to scrutinise a caste certificate is a drastic power, and therefore, that power has to be exercised in consonance with and in compliance with the principles of natural justice. The Supreme Court in its judgment in Madhuri Patil's case has considered this aspect of the matter and has issued detailed guidelines as to how the competent authority and the scrutiny committee have to proceed. The Act obliges the scrutiny committee to follow the procedure as may be prescribed by the Rules. Rules admittedly have not been so far framed. Therefore, it goes without saying that the directions issued by the Supreme Court in Madhuri Patil's case which are to be regarded as a law in force, at least till the rules are framed by the Government, will have to

be followed by the competent authority and the scrutiny committee. It is nobody's case before us that the procedure that has been laid down by the Supreme Court in Madhuri Patil's case is not being followed either by the scrutiny committee or by the competent authority.

14. So far as the objection raised on behalf of the Petitioner that the Act does not lay down any qualification for being appointed as a member of the scrutiny committee is concerned, we find that the Supreme Court itself in its judgment in Madhuri Patil's case has laid down as to how the Scrutiny Committee is to be constituted. If one compares the detailed directions that have been framed by the Supreme Court contained in paragraph 13 of the judgment in Madhuri Patil's case and the provisions of the Act No. XXIII of 2001, one finds that the Act itself is moulded on the directions issued by the Supreme Court and therefore, the State will have to constitute the scrutiny committee in accordance with the directions issued by the Supreme Court.

15. We have referred to above that it was argued before us that to determine the caste claim is a judicial power of the State and that has been conferred on the administrative authority. In the face of the judgment of the Supreme Court in Madhuri Patil's case this argument has to be rejected. The Supreme Court has provided for constitution of the scrutiny committee and it consists of administrative officer and in our opinion, in the face of the judgment of Supreme Court in Madhuri Patil's case no such submission can be made.

16. In substance, we find that the provisions that have been made in Maharashtra Act No. XXIII of 2001 are related to the provisions of filing nomination papers and its scrutiny and the Act provides for the consequences of nomination papers being rejected because the candidate does not possess requisite qualification and therefore it has nothing to do with challenge to the election of the "candidate and therefore, in our opinion, there is no question of there being any conflict between the provisions of the Act and the provisions of Article 243-ZG of the Constitution. So far as the penal consequence provided by the Act are concerned, they ensue because the person concerned chooses to contest the election on the basis of tentative certificate without getting that certificate finalised. Perusal of the provisions of Section 10 shows that if a person does not contest the election on the basis of a tentative caste certificate then he is visited with no penal consequence. Perusal of Section 11 shows that a person can be prosecuted if he obtains false caste certificate by furnishing false information or by filing a false statement and false documents or adopt any fraudulent means. This is related to the information, documents or statements submitted before the competent authority and the scrutiny committee and if a person is prosecuted under this provision, the prosecution will have to establish that the person who is accused has submitted false information or has filed false statements or documents or has adopted any fraudulent means. So far as Clause (b) of Sub-section (1) of Section 11 is concerned, it comes into operation only after benefits are taken on the basis of a tentative certificate. Therefore, penal

consequences automatically flow from invalidity of caste claim only after the benefits are taken on the basis of tentative certificate.

17. As we find that the scheme of the Act is that normally person who claims benefits available to the backward classes only on the basis of final caste certificate which has been verified by the scrutiny committee, and therefore, we hope and trust that the State Government will take steps to see that citizens are able to get orders made by the competent authority and the scrutiny committee under the Act in a expeditious manner and that because of paucity of machineries to be provided by the State Government, citizens are not forced to claim benefits on the basis of tentative caste certificate issued by the competent authority.

18. One more aspect that is to be seen is that the Scrutiny Committee will not make an order setting aside the election of the candidate. The order that the Scrutiny Committee makes is either the caste certificate issued to the candidate is valid or invalid. Consequence of declaration by the Scrutiny Committee that the caste certificate is not valid is provided by Section 10(4) of the Maharashtra Act No. XXIII of 2001. If the contention on behalf of the Petitioner is accepted, then the elected candidate whose caste certificate has been held to be invalid by the Scrutiny Committee will continue to occupy the office to which he has been elected till the election petition filed challenging his election is decided. It is further pertinent to note here that Sub-Section (2) of Section 7 of the Maharashtra Act No. XXIII of 2001 lays down that the caste certificate issued by the Scrutiny Committee shall be final and shall not be challenged before any authority or Court except this Court in a petition under Article 226 of the Constitution of India. Thus, take a case that where the returned candidate's election is challenged by a voter in a Election Petition on the ground that the returned candidate does not belong to the caste or tribe for which the seat is reserved, during the pendency of that Election Petition the Scrutiny Committee passes an order holding caste certificate issued in favour of the candidate on the basis of which his nomination paper was accepted to be invalid, the order of the Scrutiny Committee cannot be challenged by the returned candidate in any Court except this Court in a petition filed under Article 226. Therefore, so far as the Court hearing the Election petition is concerned, the order will be binding. We do not understand as to what useful purpose will be served by allowing the candidate to continue in the seat till the election petition is decided, if the election petition is bound to be decided on the basis of the decision of the Scrutiny Committee. If Section 10(4) of the Act is not on the statute book, an elected candidate whose caste certificate has been held to be invalid by the Scrutiny Committee, will continue to occupy the seat, even though the decision of the Scrutiny Committee is upheld by this Court in case a voter or other contested candidate does not file an election petition. It is, thus, absolutely clear that the necessity of enacting the provision like Sub-section (4) of Section 10 is implicit in the legislative scheme itself.

19. It is further to be seen here that even if it is assumed that Section 10(4) attaches disqualification for continuing as a member of Local Self Government, in our opinion, in view of the provisions of Article 243-V of the Constitution, competence of the State Legislature to enact such a law cannot be disputed. Article 243-V of the Constitution reads as under:--

243V. Disqualifications for membership.-- (1) A person shall be disqualified for being chosen as, and for being a member of a Municipality --

(a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

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

(b) If he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in Clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Article 243-V empowers the State Legislature to prescribe disqualification for a person to continue to be a member of the Local Self Government. Section 10(4) says that in case a person who has been elected to a seat reserved for backward class of citizens shall be disqualified to continue to occupy that seat if the caste certificate issued by the Competent Authority in his favour is held to be invalid by the Scrutiny Committee. Article 243-V also empowers the State Legislature to constitute an authority to decide this question. We find that the view that has been taken by the Division Bench of this Court in the case of Dattatraya Ramrao Thorat v. The State of Maharashtra and Ors. 2003(5) Mh.L.J. 539 : 2002 (4) All 807 is correct.

20. The issues that have been referred by the Division Bench are answered by us. The office is directed to place the petition before the Division Bench for decision in accordance with law and in the light of the above observations.