IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8389 OF 2005

Ramesh Suresh Kamble,
age about 35 years, An Adult Indian
Inhabitant, Residing at Buddhanagar Hsg.
Soc. Buddhanagar Star Seva Mandal,
P.L. Lokhande Marg, Govandi,
Mumbai--400 043. : Petitioner

V/s.

1. The State of Maharashtra
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai--400 032.

2. Divisional Caste Certificate
Scrutiny Committee,
Through its Member Secretary,
Kokan Region, Kokan,
Having office at Kokan Bhavan,
5th Floor, C.B.D., Belapur,
New Bombay.

3. Municipal Corporation of Greater
Mumbai, Through its Commissioner,
having its office at Mahapalika
Marg, Mumbai--400 001.

4. Rajendra Waman Waghmare,
An Adult Indian Inhabitant,
Residing at Buddhanagar Hsg. Soc.
Buddhanagar Star Seva Mandal,
P.L. Lokhande Marg, Govandi,
Mumbai--400 043.

5. The Deputy Collector,
Mumbai Suburban District,
Mulund, Mumbai. : Respondents

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Ms Varsha Palav with Mr.R.V.Govilkar for the petitioner.

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Mr.C.R.Sonawane, Assistant Government Pleader for respondent nos.1, 2 and 5.

Mr.A.Y.Sakhare, Senior Counsel, with Mr.A.J.Bhor for respondent no.3.

Mr.R.K.Mendadkar for respondent no.4.

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CORAM : R.M.LODHA, S.A.BOBDE & S.B.DESHMUKH,JJ.

DATE : OCTOBER 20, 2006.

ORAL JUDGEMENT (Per R.M.Lodha,J.)

Ramesh Suresh Kamble - the petitioner - has filed this Writ Petition challenging the order dated 5.12.2005 passed by the respondent no.3 disqualifying him under section 16(1C)(a) of the Mumbai Municipal Corporation Act, 1888 (for short the "M.M.C. Act") as Councillor with effect from 24.11.2005. The order dated 5.12.2005 came to be passed because the petitioner's caste certificate dated 9.10.1998 was invalidated by the Divisional Caste Scrutiny Committee, Konkan Division. The Division Bench before which the matter came up for consideration was of the view that it required consideration by the larger Bench. This is what the Division Bench observed in the order dated 12.7.2006:-

> "By this petition, petitioner has questioned his automatic disqualification under the provisions of Sec.16(1C)(B) of BMC Act. Division Bench of this court of which I, (V.G.Palshikar,J.) was member, had taken a

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view that in order to attract provisions of Sec.16(1C)(B), Caste Scrutiny Committee has imposed fine and stated that the certificate was false and the order was obtained by false claim or representation. Similar view is taken in reported decision in 2006(1) MH.L.J. Surendra Vs. State of Mah. 308. When both the matters were argued and decided, Full Bench judgment of this court reported in 2004(3)MH.L.J. Sujit Vasant Patil Vs. State of Mah. 1109 was not brought to the notice of the Bench. Today, when this matter was heard for quite some time, Shri Mendadkar, learned counsel for the respondent, relied on this judgment for contending that the petition is liable to be dismissed. Reference was made by him to paragraphs 12A and 12B of the Full Bench judgment. From the perusal of the contents of the paragraphs, it appears that provisions contained in Sec.16(1C) and similar provisions in other enactments were not brought to the notice of Full Bench. If those provisions are looked into, in our opinion, matter requires re-consideration. Hence, place the papers of this petition before My Lord The Chief Justice for appropriate orders regarding hearing."

2. Hon'ble the Chief Justice, accordingly, has assigned the Writ Petition for hearing to this Full Bench.

3. We may set out the essential facts first. The Deputy Collector, Mumbai Suburban District, on the application made by the petitioner, granted certificate to him on 9.10.1998 certifying that he belongs to Scheduled Caste community, viz., Boudha. Armed with the said certificate, the petitioner contested the general election to the Municipal Corporation of Brihan Mumbai from ward no.192 - reserved ward for Scheduled Castes

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held on 10.2.2002. The respondent no.4, amongst others, also contested the said election. The petitioner was declared as the elected candidate.

4. On the complaint of the respondent no.4, the caste claim of the petitioner was sent to the Divisional Caste Scrutiny Committee, Konkan Division, for verification. The Divisional Caste Scrutiny Committee, after holding the necessary inquiry, by its order dated 11.11.2005 declared that the Caste Certificate dated 9.10.1998 issued by the Deputy Collector, Mumbai Suburban District to the petitioner, was invalid. The Caste Scrutiny Committee, accordingly, cancelled the said certificate. The operative order of the Divisional Caste Scrutiny Committee dated 11.11.2005, on translation into English, reads thus:-

> The Committee made scrutiny of proofs (No.1 to 88) submitted by the candidate, complainant and police vigilance squad and took the same into consideration. Similarly, the evidence and proofs submitted before the committee have been discussed from time to time as above and on that basis the committee has arrived at the decision that as Baptism of Shri Suresh Waman Kamble, the father of Candidate Shri Ramesh Suresh Kamble is performed on the date 22/3/1970, and as his mother is Christian, the candidate Shri Ramesh Suresh Kamble becomes Christian by birth. Even the proof of first entry made in his school of he being a Christian is submitted before the committee and the committee has considered even the same. As on today he may be "Boudha" but, no proof of he being "Mahar" earlier has been produced

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before the committee. Even the certificate produced by his father regarding his own birth registration, is of the year 1951, wherein Suryabhan Waman Kamble is seen to be mentioned therein. This person can be another person. Similarly, no old entries are found anywhere to show that Suryabhan and Suresh is one and the same person. Similarly, entry as regards marriage of Shri Suresh Waman Kamble being performed on the date 15.5.1970 by Christian rites and rituals, is found in the old records with St. Paul's church, Matunga Labour Camp. From this it appears that before embracing "Boudha" religion, this family was Christian. Even if a person belongs to Scheduled Caste earlier, he can get constitutional benefits despite belonging to "Boudha" religion. As per the constitution order (Scheduled Caste) 1950 as well as according to para 20 of the Government Resolution dated 21.3.1979, a person claiming to be belonging to scheduled caste can be of either Hindu, Sikh, or Bouddha religion. In case of conversion or reconversion, if any person has embraced his original religion, he gets the status of his original religion. Shri Ramesh Kamble was initially Christian and subsequently he embraced "Boudha" religion. That means he has not adopted his original Hindu Religion. That means as the candidate was Christian earlier, he is not eligible for the concessions and benefits of Scheduled Caste on the point of religion. Similarly, the School Certificate produced by him as that of his father's at the time of obtaining his Caste Certificate, is not of his father. Similarly, before obtaining certificate belonging to "Boudha" caste he has not produced any proof before the Tahasildar about he being "Mahar" and, therefore, the Caste Certificate bearing No.MSC/SR/B/K-3121/19 dated 9.10.1998, issued by the Deputy Collector and Special Land Acquisition Officer, Mumbai suburban District, is being declared invalid and the same is being cancelled. Similarly even the candidate's claim of he belonging to "Boudha" (Scheduled Caste) is being declared invalid."

5. The order dated 11.11.2005 came to be challenged by

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the petitioner by filing Writ Petition no.8301 of 2006 before this Court. The said Writ Petition was dismissed by the Division Bench on 12.7.2006 by the following order:-

> "By this petition, petitioner has impugned the order passed by the Caste Scrutiny Committee holding invalidity of his certificate and proclaiming him to be Christian Caste person.
>
> Voluminous evidence was led before Caste Scrutiny Committee and the Committee has, by elaborated well reasoned order, came to the conclusion that the petitioner has failed to prove that he belongs to Mahar Community which is scheduled caste and therefore certificate of validity was not granted.
>
> Jurisdiction of High Court under Art. 226 and 227 of the Constitution of India, of scrutinizing the judgment and order of subordinate courts, is limited. If the order does not violate principles of natural justice and infringe fundamental rights and is based on permissible evidence, then interference is not possible. In this case, there is no question of fundamental right being infringed. There is no complaint of violation of principles of natural justice. Entire evidence before the committee was scrutinized by the Committee and at a time which was either rejected or accepted, such well reasoned order can not be interfered under Art. 226 and 227 of the Constitution of India. Hence, petition is dismissed."

6. The petitioner challenged the order of the Division Bench dated 12.7.2006 by filing Petition for Special Leave to Appeal (Civil) before the Supreme Court which came to be dismissed on 18.8.2006. Thus, the

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invalidation of the Caste Certificate obtained by the petitioner from the Deputy Collector, Mumbai Suburban District, on 9.10.1998 has attained finality right upto the highest Court.

7. 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 (for short "Maharashtra Act No.XXIII of 2001" came into effect on 23.5.2001. Section 3 thereof, inter alia, provides that any person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, if intend to take benefit of any reservation provided to such Castes, Tribes or Classes, shall apply to the Competent Authority for issue of a Caste Certificate in such form and in such manner as specified. Section 4 provides that the Competent Authority, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, may issue a Caste Certificate to such candidate. The Caste Certificate issued by any person, officer or authority other than the Competent Authority is invalid; the Caste Certificate issued by the Competent Authority is valid only subject

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to verification and grant of validity certificate by the Scrutiny Committee. Under sub-section (1) of section 6, the Government is required to constitute Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities. Any person who has obtained Caste Certificate from the Competent Authority, if he desires to avail of the benefit or concession available to such caste, has to make an application for verification of the caste claim to the concerned Scrutiny Committee in such form and in such manner as provided.

8. Section 7 of Maharashtra Act No.XXIII of 2001 is quite relevant, and we reproduce the same as it is:-

> "7.(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

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or court except the High court under Article 226 of the Constitution of India."

9. It is pertinent to notice that the Scrutiny Committee has been empowered to inquire into the correctness of the Caste Certificate obtained by a person from the Competent Authority and if the Scrutiny Committee is of the opinion that the certificate has been obtained fraudulently, it is further empowered to cancel and confiscate such certificate.

10. Section 10 makes a provision for withdrawal of the benefits secured by a person on the basis of false Caste Certificate. Sub-section (4) thereof reads thus:-

"10.(1) .....
(2) .....
(3) .....

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

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11. Pursuant to Maharashtra Act No.XXIII of 2001, amendments have been brought in various enactments providing for election to local authority, co-operative society and statutory body wherein seats have been reserved for reserved category candidates. M.M.C. Act also underwent change accordingly. Section 5A of the M.M.C. Act provides for reservation of seats for the members belonging to Scheduled Castes, Scheduled Tribes, Women and the Backward Class of Citizens in the Municipal Corporation of Brihan-Mumbai. By Maharashtra Act No.XI of 2002, the following provision was inserted in section 16:-

> "16.(1B)(a) A person shall be disqualified for being a Councillor or for contesting an election for being elected as a Councillor, for a period of six years, if, an order is passed by the concerned authority, under section 18 or as the case may be, section 33, holding that such person was elected as a Councillor to a seat which was reserved for a member belonging to a Scheduled Caste, Scheduled Tribe or a Backward Class of Citizens (hereinafter referred to as "a reserved category"), on the basis of a false claim or a false Caste Certificate declaring that such person belonged to such reserved category.
>
> (b) Such period of disqualification shall be computed with effect from the date of passing of such order by the concerned authority.
>
> (1C)(a) Notwithstanding anything contained in sub-section (1B), a Councillor

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

(b) On any person having been disqualified for being a Councillor and consequently, his seat as such Councillor having become vacant under clause (a), the State Government shall, by notification in the Official Gazette, disqualify such person for being elected or being a Councillor for a period of six years from the date of such order.

(1D) A Councillor shall be disqualified for being a Councillor, if such Councillor has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; and has directly or indirectly been responsible for, or helped in his capacity as such Councillor, in carrying out such illegal or unauthorised construction or has by written communication or physically, obstructed or tried to obstruct any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure. Such disqualification shall be for the remainder of his term as a Councillor from the date of the declaration of such structure to be illegal or unauthorised by the concerned authority under the provisions of the said Acts or, as the case may be, from the date of commission of the act of interference or obstruction by the

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Councillor against the Competent Authority."

12. Section 16(1C)(a), thus, provides that a Councillor elected to a reserved seat shall be disqualified for being Councillor upon the Caste Certificate of such Councillor being invalidated and cancelled by the Scrutiny Committee on the ground of such Caste Certificate having been based on a false claim or declaration made by such person claiming to be belonging to the reserved category. The disqualification, in that event, comes into effect from the date such certificate has been declared invalid and cancelled by the Scrutiny Committee.

13. At this stage, we may notice few judgements of this Court bearing some relevance on the issue under consideration by us.

14. In the case of Dattatraya Ramrao Thorat v. State of Maharashtra and others (2003 (5) Mh.L.J. 539), before the Division Bench, the constitutional validity of section 10(4) of Maharashtra Act No.XXIII of 2001 was under consideration. The Division Bench in paragraphs 33 and 37 of the report held thus:-

"33. Sub-section (4) of section 10 of the Act fell for our consideration in Writ

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Petition No.916 of 2000 decided on 24th October, 2001 and in para 12 of that judgement we held that a candidate who is elected against a reserved seat could not continue to represent the electorate immediately after invalidation of his caste status and this disability/disqualification did exist right at the time when he submitted his nomination form and hence the declaration made by the verification committee relates back to the stage of submission of such nomination form. We have also held that such a person was not eligible to contest the election against a seat reserved for a respective category right at the time when the elections were announced. The provisions in section 10(4) regarding retrospective operation for disqualification on the caste certificate being cancelled cannot be faulted with and it cannot be held to be ultra-vires the constitution. Section 10(4) further provides that on such disqualification any benefits obtained by such person shall be recoverable as arrears of land revenue. It was contended by the learned counsel for the petitioner assuming that there may not be anything illegal in declaring the election of such person deemed to have been terminated retrospectively recovery of benefits obtained by such person as arrears of land revenue is illegal and unconstitutional on the grounds that when he has acted as a Corporator till his caste claim was invalidated, such recoveries cannot be held to be a State largese and such monetary benefits by way of allowances etc. are obtained by him in lieu of the services he has rendered as a Corporator/Councillor.

37. Subsection (4) of section 10 of the Act is, in fact, nothing short of an additional disqualification provided by the Legislature within the meaning of section 10(1)(a-ii)(ii) of the Corporation Act so that section 11 of the Corporations Act operates and the councillor shall cease to hold office automatically. The disqualifications set out under section 10 and their consequences, as set out under section 11, are independent of the remedy of election petition under section 16(1) of the Corporations Act so as to unseat the councillor/corporator. For example, if

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an elected councillor has sustained the disqualification within the meaning of sections 10(1)(a), (b) and 10(1A) the provisions of section 11 therein shall automatically apply and the councillor shall cease to hold office forthwith, it is not contemplated that such a disqualified Corporator is required to be unseated by filing an election petition. The same logic must be made applicable to a disqualification sustained under section 10(1)(a-i) or (a-ii) of the Act. The State Legislature has enacted the Act which has come into force from 18th October, 2001 and the legislating power of the State Government in enacting such a statute are unquestionable. Article 13(3) of the Constitution defines the term "Law" which includes any ordinance, order, bylaw, rule, regulation, notification, custom or usages having in the territory of India the force of law. This provision of section 10(4) of the Act is a disqualification within the meaning of section 10(1) of the Act and, therefore, for its operation under section 11 or its consequential effects the bar of section 16(2A) of the Corporations Act shall not operate. We must also note that in such cases it is not the election of the concerned candidate which is brought in question and what is brought in question is his social status and thus his right to contest the said election against a seat reserved for a particular category in view of the mandate of Article 243T of the Constitution, which has been incorporated in terms of section 5A of the Corporations Act. Challenge to the election, as contemplated within the meaning of section 16, is totally different than termination of membership of the elected body on account of social claim being invalidated and such a contingency falls within the ambit of section 11 of the Corporations Act. We, therefore, hold that the provisions of section 10(4) of the Act do not run counter to the provisions of either section 16(2A) or section 12 of the Corporations Act. When a person was disqualified to contest the election on a seat reserved right at the threshold, he cannot be allowed to continue to hold the elected office even after his social status claim has been invalidated or found to be bogus merely by taking the

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> support of section 16(1) or 16(2A) of the Corporations Act. Any further continuation as such an elected representative would, undoubtedly, be a perpetuation of a fraud played on the Constitution as well as the voters concerned. The bar of Article 243-ZG is for interference in the election process already set in motion. Article 243-V(1) of the Constitution does provided (sic) for disqualification of being a member of the Municipal Corporation. A person who was disqualified at the threshold cannot be allowed to take a plea that he can be unseated only by way of an election petition. In this regard we refer to the Constitution Bench judgement of the Apex Court in the case of B.N.Kapur (supra)."

15. The judgement in the case of Dattatraya Ramrao Thorat's case has been approved by the Full Bench in the case of Sujit Vasant Patil v. State of Maharashtra and others, 2004 (3) Mh.L.J. 1109. Inter alia, the issue before the Full Bench was whether the provisions contained in Maharashra Act No.XXIII of 2001 are in conflict with the constitutional mandate articulated in Article 243-O(b) and 243-ZG(b) of the Constitution of India.

16. The Full Bench, while dealing with the said issue, surveyed the provisions contained in Chapter IX-A and also Articles 14, 21, 223 and 234 of the Constitution of India. The Full Bench comprehensively referred to the provisions of Maharashtra Act No.XXIII of 2001 and also the provisions of the Bombay Provincial Municipal

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Corporations Act and the Maharashtra Municipal Election Rules. In paragraphs 12A and 12B, the Full Bench crystalised the legal position thus:-

> "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

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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.

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> 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."

17. In the case of Mohan Parasnath Goswami v. Committee for Scrutiny of Caste Certificates and others, 2003 (5) Mh.L.J. 707, inter alia, the issue for consideration before the Division Bench was whether on declaration of the Caste Certificate being invalid and its cancellation by the Scrutiny Committee, the Councillor would be deemed to have vacated his office. The petitioner therein contested the election to the Municipal Corporation of Thane from ward no.19-C which was reserved for the candidate belonging to Other Backward Class on the basis of a Certificate stating therein that he belonged to Nomadic Tribe - Gosavi community. The Scrutiny Committee by order dated 30.1.2003 invalidated and cancelled the Caste Certificate of the petitioner therein. The Division Bench surveyed the legal provisions, including

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Maharashtra Act No.XXIII of 2001, Maharashtra Act No.XI of 2002 and the provisions of several local Acts. In paras 16 and 19 of the report, the Division Bench observed thus:-

> "16. In the present case, it needs emphasis that section 10(1C) of the Bombay Provincial Municipal Corporations Act, 1949 provides for electoral disqualification. The consequence of the invalidation of a caste certificate and its cancellation on the ground of its being based on a false claim or declaration is that the Councillor is deemed to have vacated his office on the date of the declaration of invalidity and cancellation. Thereupon, the statute provides, the state Government shall by notification in the Official Gazette disqualify such person for being elected as or being a Councillor for six years. Serious consequences therefore ensue from the order of invalidation and cancellation of the caste certificate. The legislature therefore advisedly did not regard the mere cancellation and invalidation of the caste certificate as a ground for disqualification but mandated that a disqualification will ensue where the invalidation and cancellation is on the ground set out by the legislature, namely that the certificate is based on a false claim or declaration by a person claiming to belong to a reserved category.
>
> 19. An applicant for the issuance of a caste certificate must in his conduct and dealings in that regard display utmost good faith. Section 8 of Maharashtra Act XXIII of 2001 casts the burden on the claimant applicant (i) seeking the issuance of a caste certificate; (ii) in the enquiry conducted by the Competent Authority, Scrutiny Committee or Appellate Authority; and (iii) in a trial of an offence under the Act of establishing that he belongs to the concerned Scheduled Caste or Tribe, De-notified or Nomadic Tribe or Other Backward Class. Undoubtedly, the Competent Authority which

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issues the caste certificate has to satisfy itself of the genuineness of the claim and follow the procedure prescribed. The Scrutiny Committee to whom a caste certificate is forwarded has to similarly conduct an enquiry in the manner prescribed, involving, as the Supreme Court laid down in Madhuri Patil's case, the Vigilance Cell and a due opportunity of being heard to the candidate. Yet there is an affirmative duty on the applicant for the issuance of a caste certificate to disclose all circumstances within his knowledge which have a bearing on the legitimacy of his claim. A candidate who sets up a claim cannot be heard to say that having asserted that claim, he will leave it to the authorities to ferret out information to the contrary. True enough, there are genuine cases where poverty, ignorance and illiteracy of the members of those communities for whom benefits are reserved and the social prejudice or discrimination practised on a systemic scale may pose serious hurdles in producing material from the remote past. Bona fide cases must evince empathy so that genuine candidates are not excluded. Equally, the candidate must and is bound to make a full disclosure of all material facts within his knowledge by producing relevant documentary and other material which will enable a proper assessment of his claim to be possible. A suppression of fact or a failure to produce documentary material available with the candidate will sustain an inference that there was a deliberateness in his conduct to establish a false caste claim. At the same time, it is necessary to emphasize that the question as to whether a caste certificate has been based on a false claim or declaration is a question which has to be decided on the basis of the documentary and other material and the surrounding circumstances of the case. The Committee which decides the question cannot be subjected to the impossible ask of probing the inner processes of the mind of the applicant. To expect the Committee to discharge an impossible function like that will defeat the purpose of the legislation. The element of deliberateness implicit in the lodgment of a false claim or declaration is

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hence to be deduced from the material before the Committee, the conduct of the claimant and the circumstances of the case. When the Court reviewing the decision of the committee under Article 226 considers the case, the order of the Committee must be assessed in its entirety in deciding whether any interference is warranted. The reviewing Court is not an appellate forum. The Court is not a fact finding authority nor does it substitute its own opinion for that of the Committee."

18. The Division Bench further held that the Caste Certificate having been held to be invalid and cancelled on the ground of its having been raised on a false ground of declaration, the disqualification under sub-section (1) of section 10 was attracted. The Division Bench said in paragraphs 24 and 25 thus:-

"24. As the facts of the case would demonstrate, almost the exclusive foundation for claiming that the petitioner belonged to the Gosavi community and obtaining a caste certificate in the first instance was the certificate issued by the Tahsildar, Patti of Pratapgarh, in the State of Uttar Pradesh. Even that certificate was to the effect that the petitioner belonged to the Gosavi community. The Gosavi community, it must be noted, was not designated as a reserved community, either as a Nomadic Tribe or otherwise on the date when either of the two caste certificates came to be issued to the petitioner by the authorities in Maharashtra in 1989 or 1997. The Gosavi community, it is common ground, has subsequently been included in the list of Nomadic Tribes in the State of Maharashtra on 14th February, 2001. If the case of the petitioner was that he genuinely belonged to the Gosavi community, he ought to have made an application for the issuance of the caste certificate certifying that he belonged to the Gosavi community by producing

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relevant and cogent material to the effect that he belonged to that community. The petitioner, it must be noted, has neither made an application for the issuance of a caste certificate to the effect that he belongs to the Gosavi community nor did he contest the election of the Thane Municipal Corporation in February, 2002 on that basis. In that view of the matter, we are of the view that the findings of fact which have been recorded by the Scrutiny Committee are based on material on record and do not call or any interference in the exercise of the writ jurisdiction under Article 226. The caste certificate of the petitioner has been held to be invalid and it has been cancelled on the ground of its having been based on a false claim or declaration within the meaning of Clause (a) of Sub section (1C) of section 10.

25. Finally, a grievance that was sought to be urged was in respect of a communication dated 3rd February, 2003, by which the Municipal Commissioner informed the petitioner that he has been declared as disqualified under the provisions of section 10(1B) and (1C) of the Bombay Provincial Municipal Corporations Act, 1949. The letter of the Municipal Commissioner is only a formal communication. The disqualification under sub section (1C) of section 10 is attracted once the Scrutiny Committee has declared the caste certificate of the Councillor to be invalid and has cancelled the same on the ground of the certificate having been based on a false claim or declaration. The law provides that "thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such certificate to be invalid and cancellation of the same by the said Committee."

19. The Aurangabad Bench of this Court in the case of Surendra Hanmanloo Gandam v. State of Maharashtra and others, 2006 (1) Mh.L.J. 308, was concerned with the

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question whether section 10 of Maharashtra Act No.XXIII of 2001 nullifies the Government Resolution dated 15.6.1995 and whether they operate in different areas and there is no conflict. Incidentally, it may be noticed that by the Government Resolution dated 15.6.1995, the State Government granted protection to the appointments and promotions made before 15.6.1995. The case in Surendra Hanmanloo Gandam arose from the order passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, Nasik, rejecting the petitioner's claim therein that he belonged to Mannerwarlu Scheduled Tribe. The question relating to disqualification of the Councillor was not involved in that case. The Division Bench referred to few judgements, including the judgement of this Court in the case of Mohan Parasnath Goswami (supra) and held that the scheme of Maharashtra Act No.XXIII of 2001 does not expressly or impliedly suggest withdrawal of benefits granted to persons belonging to specially backward category by the Government Resolution dated 15.6.1995. While holding so, the Division Bench made the following observations:-

> "18. In our view, if a claimant fails to substantiate and establish his caste claim because of insufficiency of evidence or lack of knowledge of traits or characteristics of his tribe, he cannot be termed as a person who has obtained and produced a false caste certificate. The phraseology 'false caste certificate' or 'a certificate obtained

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fraudulently' used in section 7 of the Act cannot and does not cover bona fide cases where a claimant fails to establish his caste claim. To hold that a person has obtained a 'false caste certificate' or a 'certificate fraudulently', there need to exist an element of mens rea or a guilty mind and only on the establishment of the existence of said element, that a person could be branded as one who has obtained false caste certificate. It is in this sense, that we have observed in proposition "C" above, that a person can be denied the benefit of Government Resolution dated 15-6-1995, if he has procured the appointment on the basis of false caste certificate.

19. Ordinarily the proceedings before the Committee are for adjudication of the caste claim but in some cases, the Committee may prima facie find that the claim is false, on the ground that the certificate itself is forged or that the certificate is obtained fraudulently, etc. then in that situation, the claimant will have to be put on notice in that regard and afforded an opportunity of being heard to explain as to why the Committee should not hold the claimant guilty of producing a false, forged or fabricated certificate. Solely on the ground that the claim is invalidated, the Scrutiny Committee will not be justified in reaching a conclusion that the claimant has obtained a false certificate or he has produced a false caste certificate."

20. Any person belonging to any of the Scheduled Castes, Scheduled Tribes and all other categories referred to in Act No.XXIII of 2001 has to apply, in such form and in such manner as prescribed, to the Competent Authority for issue of Caste Certificate if such person is required to produce the Caste Certificate in order to claim the benefit of any reservation provided to such caste. In the Rules framed thereunder the form is prescribed

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wherein that person has to give various information to the Competent Authority, including the information about his father and whether the father or close relative of the applicant has obtained the caste certificate. The applicant also has to make a declaration that the information furnished by him in the application is correct and that if such information is found to be incorrect later on, he is liable to be prosecuted under the provisions of sections 199, 200 and 193(2) of the Indian Penal Code. The Caste Certificate issued by the Competent Authority is valid only if it is verified by the Caste Scrutiny Committee and the Validity Certificate is issued. The Caste Certificate issued by any person or authority other than the Competent Authority is invalid per se. Under sub-section (2) of section 6 of Maharashtra Act No.XXIII of 2001, the applicant who desires to avail of the benefit or concession available to such caste has to apply to the Scrutiny Committee for verification of such Caste Certificate and the issuance of validity Certificate. The Caste Scrutiny Committee, upon such application being made under section 6(2), inquires into the correctness of such certificate under section 7(1) and if it (Caste Scrutiny Committee) forms the opinion that the caste certificate was obtained by the applicant from the Competent Authority fraudulently, it cancels and confiscates the certificate; obviously,

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in accordance with the procedure prescribed and after giving the person concerned an opportunity of being heard. What is important to be noticed is that the inquiry made by the Scrutiny Committee is always into the correctness of the Certificate obtained by the applicant from the Competent Authority. The Caste Scrutiny Committee cancels such certificate or for that matter, confiscates that certificate where it is satisfied that such certificate has been obtained fraudulently by the applicant. Upon conjoint reading of sections 6(2) and 7(1) of Maharashtra Act No.XXIII of 2001, it becomes very clear that the Caste Certificate is cancelled and confiscated when the Scrutiny Committee is of the opinion that the certificate has been obtained fraudulently by the applicant. Conversely, once the certificate obtained by the applicant from the Competent Authority is cancelled and confiscated, logically what follows from it is that the Caste Scrutiny Committee was not satisfied with the correctness of the certificate obtained from the Competent Authority; though the Caste Scrutiny Committee may not say in so many words that such certificate has been obtained fraudulently. What is important for the purposes of section 16(1C)(a) of the M.M.C. Act is not the express finding by the Caste Scrutiny Committee that the caste certificate was obtained by the applicant by making false claim or declaration, but the factum of

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invalidation and cancellation of caste certificate by the Scrutiny Committee. The cancellation of caste certificate by the Scrutiny Committee implies that in the opinion of the Scrutiny Committee, such certificate has been obtained fraudulently because the inquiry by the Scrutiny Committee centres around the correctness of such caste certificate obtained from the Competent Authority.

21. In Black's Law Dictionary, Seventh Edition, "false claim" is defined to mean "an assertion or statement that is untrue". A "false statement" is "an untrue statement knowingly made with the intent to mislead". A false statement is making a false, fictitious, or fraudulent representation.

22. A false statement is a statement made of the existence of non-existing fact, ordinarily, such statement is made to obtain some benefit.

23. The Law Lexicon, Second Edition, 2001, by P. Ramanatha Aiyer defines the term "false" as "erroneous, untrue; the opposite of correct, or true. The term 'false' does not necessarily involve turpitude of mind.

24. The true meaning of the term "false claim or declaration" in section 16(1C)(a) of the M.M.C. Act has

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to be found in the context it has been used. Section 16(1C)(a), in our considered opinion, cannot be read in isolation from the provisions contained in section 6(2) and section 7(1) of Maharashtra Act No.XXIII of 2001. By section 16(1C)(a), the provision is made that a Councillor who has been elected to a reserved seat shall be disqualified consequent upon the Caste Verification Committee declaring the Caste Certificate of such candidate to be invalid and cancelling the same on the ground of the same having based on a false claim or declaration made by such person claiming to be belonging to the reserved category. The inquiry under section 7(1) of Maharashtra Act No.XXIII of 2001 by the Caste Scrutiny Committee is focussed on the correctness of the Caste Certificate obtained by such person from the Competent Authority. The Caste Certificate is issued by the Competent Authority on the application made by the concerned person disclosing certain information. If the Caste Certificate is cancelled by the Caste Scrutiny Committee, it obviously means that the Caste Certificate has been obtained by that person from the Competent Authority on incorrect facts or erroneous representation. It is not necessary that such claim or declaration must involve turpitude of mind. There may not be any deliberateness in it. The failure on the part of the candidate to establish his caste claim before the

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Scrutiny Committee and the declaration that the Certificate obtained from the Competent Authority is invalid and thereby cancelled leads to necessary inference that such person made a false claim of his caste belonging to the reserved category to which he did not belong and, thus, incurring disqualification under section 16(1C)(a).

25. We find ourselves in full agreement with the observations made by the Full Bench in the case of Sujit Vasant Patil that the caste validity certificate is one of the essential ingredients of the candidate being qualified to contest for the reserved seat and the other observations made in paragraphs 12A and 12B of the judgement which we have reproduced above and we need not repeat the same. It is true that section 16(1C)(a) of the M.M.C. Act is not specifically noticed by the Full Bench in its judgement in the case of Sujit Vasant Patil, but from the reading of the entire judgement, it cannot be said that the Full Bench was not alive to the provisions contained in various Local Self-Government Acts. As a matter of fact, paragraph 12A of the judgement in Sujit Vasant Patil begins with the scheme of various Local Self-Government Acts and the scheme of Maharashtra Act No.XXIII of 2001. What has been said by the Full Bench in Sujit Vasant Patil's case, applies on

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all fours to the case under section 16(1C)(a) of the M.M.C. Act.

26. A candidate who sets up a claim as belonging to a particular caste by making an application to the Competent Authority and obtains the Caste Certificate based on such claim and information and contests the election of the Councillor from the reserved seat and gets elected and if, ultimately, the Scrutiny Committee upon inquiring into the correctness of such certificate declares such certificate invalid and cancels the same, it is obvious that such Caste Certificate has been obtained by that person on the basis of the declaration or information or claim which was not correct or true and upon invalidation and cancellation of the Caste Certificate by the Scrutiny Committee, such person incurs disqualification automatically. There is no escape from it.

27. The Division Bench in the case of Surendra Hanmanloo Gandam unfortunately did not notice the Full Bench decision of this Court in Sujit Vasant Patil and, thus, cannot be said to lay down good law to the extent it is inconsistent with the Full Bench judgement cited supra. The legal position highlighted by the Division Bench in the case of Mohan Parasnath Goswami, "that apart from a

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mere invalidation of caste certificate, an additional factor has to exist before a candidate can be regarded as being disqualified from holding electoral office viz., that the caste certificate should have been held to be invalid and must have been cancelled on the ground of the certificate having been based a false claim or declaration" and the observations made in paragraphs 11 and 16 of the judgement to the extent these are inconsistent with the judgement of the Full Bench in the case of Sujit Vasant Patil stand impliedly over-ruled.

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

29. On facts also, from the operative order passed by

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the Scrutiny Committee that we have noticed above, it is apparent that the certificate dated 9.10.1998 obtained by the petitioner was declared invalid and cancelled as it was found that the applicant was Christian by birth and still he claimed that he belonged to Scheduled Caste. What more is required to be shown that the Caste Certificate was obtained by the petitioner by making false claim or false declaration. Pertinently the petitioner has lost upto the highest Court in challenging the order of the Scrutiny Committee.

30. Since the entire petition has been referred by the Division Bench, for the reasons afore-stated, we find no merit in the challenge to the order dated 5.12.2005 passed by the Additional Municipal Commissioner, Municipal Corporation of Brihan-Mumbai.

31. Writ Petition is dismissed with no order as to costs. Rule stands discharged.

Oral prayer for stay is rejected.

Sd/-

R.M. LODHA, J.

Sd/-

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S.A. BOBDE, J.

Sd/-

S.B.DESHMUKH, J.

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